



## Reference Offer for Dark Fibre Services

### Schedule 2: Service

#### 1 The Service

- 1.1 The Dark Fibre to which this Agreement applies, and which may be ordered by the CP pursuant to the terms of this Agreement, is set out and further described in Appendix 1 of this Schedule 2.
- 1.2 Dark Fibre provides a dedicated, unmonitored, unlit optical fibre path between two Sites in the Hull Area. Save as listed in paragraph 1.3 of Appendix 1 of this Schedule 2, CPs can use Dark Fibre to build infrastructure or design and scale connectivity solutions.
- 1.3 Detailed information regarding the Services and the applicable Charges are set out in the Price List. Further information regarding the operation of the Services is set out in the Service Operations Manual and Customer Interface Publication: CIP044 Dark Fibre Description and Technical Characteristics ("CIP044") that will be issued to the CP separately by KCOM.

#### 2. Ordering and Provision

- 2.1 The CP will provide KCOM with details of the CP Order Correspondence Contact(s) and the CP Operational Contact(s) and their details shall be set out in the Customer Service Plan. KCOM will only accept Orders placed by the CP Order Correspondence Contact(s) named in the Customer Service Plan and KCOM shall only address incidents raised by the CP Operational Contact(s) set out in the Customer Service Plan.
- 2.2 The CP must place Orders by following processes set out in the Service Operations Manual. KCOM will process all Orders in the order in which they are received, and the CP acknowledges that the provision of the Services will be subject to a feasibility study and/or a survey. Upon receipt of an Order, KCOM will process the Order in accordance with the Service Operations Manual and this paragraph 2 of Schedule 2. Subject to the provisions of Clause 10 (Service Orders) of the Agreement, this paragraph 2 of Schedule 2, and paragraphs 1.6 to 1.9 inclusive of Appendix 1 of this Schedule 2 (Diversity), Orders will be completed by KCOM on or prior to the Proposed Start Date or the date by which the CP requires the Services to commence, whichever is the later.



### Pre-Order Process

- 2.3 Before placing an Order, the CP may make an enquiry of the KCOM wholesale sales team, whereupon the sales representative shall offer the CP a feasibility study to identify any technical or geographical limitations to the provision of the Services.
- 2.4 Upon receiving the offer of a feasibility study, the CP shall either:
- (a) accept the offer; or
  - (b) place an Order.

### Pre-Order Feasibility Study

- 2.5 If the CP accepts the offer of a feasibility study, KCOM will complete the feasibility study as soon as is reasonably practicable and when issuing the quotation resulting from the feasibility study to the CP, KCOM will provide:
- (a) an Indicative Lead Time; and;
  - (b) an indication of whether the proposed works comprise a Network Adjustment or a Network Extension, and an indication of the extent of any Excess Construction Charges that might be payable by the CP,
- which shall be valid for 10 Working Days.
- 2.6 In the circumstances detailed at paragraph 2.5(b), KCOM reserves the right to inform the CP it will not be proceeding with any Order if it has no obligation to provide the Services as per paragraphs 1.5(a) and 1.5(b) of Appendix 1 of this Schedule 2.
- 2.7 Provided KCOM has not exercised its right under paragraph 2.6, then within 10 Working Days of receiving the quotation under paragraph 2.5, the CP shall either place an Order or inform KCOM it does not wish to proceed. If the CP does not respond within 10 Working Days of receiving the quotation, it will be deemed not to wish to proceed. Any subsequent quotations will only be given as a result of a new enquiry made under paragraph 2.3.

### Orders Placed Without a Pre-Order Feasibility Study

- 2.8 If the CP has placed an Order under paragraph 2.4(b), KCOM will carry out a feasibility study as soon as reasonably practicable in order to confirm:
- (a) the Proposed Start Date; and



(b) whether the works comprise a Network Adjustment or a Network Extension, and the extent of any Excess Construction Charges payable by the CP.

- 2.9 In the circumstances detailed at paragraph 2.8(b), KCOM reserves the right to cancel the Order if it has no obligation to provide the Services as per paragraphs 1.5(a) and 1.5(b) of Appendix 1 of this Schedule 2. In these circumstances, no Cancellation Payment would be payable by the CP.
- 2.10 If either the Proposed Start Date is beyond the date specified in the Service Operations Manual, and/or Excess Construction Charges are payable by the CP, the CP has 10 Working Days from receipt of the feasibility study to decide whether it wishes to proceed with the Order. The total number of Working Days during which the CP is considering its decision will be added to the Proposed Start Date. If the CP informs KCOM it wishes to cancel the Order pursuant to this paragraph 2.10, the CP is not required to pay any Charges set out in the Price List (but, for the avoidance of doubt, save for paragraph 2.16, the CP will be required to pay the Cancellation Payments otherwise when it cancels the Order). If the CP confirms it is happy with the Proposed Start Date and/or the Excess Construction Charges, or it does not respond within 10 Working Days of receipt of the feasibility study, then the Proposed Start Date in the feasibility study (plus the number of Working Days the CP takes to decide whether it wishes to proceed with the Order, or plus 10 Working Days if the CP does not respond) shall apply for the purposes of the Service Standard in Schedule 3.

#### Orders Placed With a Pre-Order Feasibility Study

- 2.11 If the CP has placed an Order under paragraph 2.7, KCOM will carry out a further feasibility study or a survey as soon as reasonably practicable in order to confirm:
- (a) any change from the Indicative Lead Time (which will become the Proposed Start Date); and
  - (b) any changes as to whether the works comprise a Network Adjustment or a Network Extension, and any changes as to the extent of any Excess Construction Charges payable by the CP.
- 2.12 In the circumstances detailed at paragraph 2.11(b), KCOM reserves the right to cancel the Order if it:
- (a) now has no obligation to provide the Services as per paragraphs 1.5(a) and 1.5(b) of Appendix 1 of this Schedule 2; and



(b) it did not previously have the opportunity to exercise this right under paragraph 2.6.

2.13 If either the Proposed Start Date is beyond the date specified in the Service Operations Manual, and/or Excess Construction Charges are payable by the CP, the CP has 10 Working Days from receipt of the further feasibility study or survey (as the case may be) to decide whether it wishes to proceed with the Order. The total number of Working Days during which the CP is considering its decision will be added to the Proposed Start Date. If the CP informs KCOM it wishes to cancel the Order pursuant to this paragraph 2.13, the CP is not required to pay any Charges set out in the Price List (but, for the avoidance of doubt, save for paragraph 2.16, the CP will be required to pay the Cancellation Payment otherwise when it cancels the Order). If the CP confirms it is happy with the Proposed Start Date and/or the Excess Construction Charges, or it does not respond within 10 Working Days of receipt of the further feasibility study or survey (as the case may be), then the Proposed Start Date in the feasibility study (plus the number of Working Days the CP takes to decide whether it wishes to proceed with the Order, or plus 10 Working Days if the CP does not respond) shall apply for the purposes of the Service Standard in Schedule 3.

#### Suspension, Modification and Cancellation of an Order

2.14 In addition to the suspension of the Proposed Start Date set out in paragraphs 2.72.10 and 2.13, KCOM can suspend delivery of an Order on the CP's behalf as follows:

- (a) where KCOM is awaiting information from the CP in order to continue delivery of the Order;
- (b) where the CP has failed to agree with KCOM an appointment date within 10 Working Days from the previously agreed appointment date;
- (c) where a wayleave or other Third Party consent is required before KCOM can continue the work necessary to deliver an Order;
- (d) where KCOM is unable to complete delivery of an Order due to unforeseen engineering obstacles, including but not limited to notices issued pursuant to section 58 of the New Roads and Street Works Act 1991;
- (e) where there is a lack of provisions such as fibre in order to continue delivery of the Order that is outside of KCOM's reasonable control;
- (f) if installation of the Services cannot proceed due to a CP or End User related issue, e.g. no available power sockets, no wall space, or access to the End User Site is refused; and



- (g) where KCOM identifies further Network Adjustments and/or Network Extensions beyond those detailed in the feasibility study.
- 2.15 KCOM may cancel a suspended Order when the Order has been suspended for more than 90 cumulative Working Days either:
- (a) pursuant to paragraph 2.14 (a), (b), (c) or (f); or
  - (b) where the CP has suspended delivery of an Order pursuant to clause 10.1 of the Agreement, and
- if KCOM cancels an Order in accordance with this paragraph, the CP must pay the Cancellation Payment specified in the Price List, save for a cancellation following a suspension pursuant to paragraph 2.14(c) if the obtaining of the wayleave or other Third Party consent does not reasonably require the assistance of the CP.
- 2.16 Subject to paragraph 2.18, where KCOM suspends delivery of an Order on the CP's behalf pursuant to paragraph 2.14 (d), (e) or (g) for more than 10 Working Days and advises the CP in writing that, in KCOM's reasonable opinion, the suspension will result in an extension to the Proposed Start Date of at least 30 Working Days, the CP may notify KCOM in writing that it wishes to cancel the Order and the CP is not required to pay any Charges set out in the Price List (but, for the avoidance of doubt, save for paragraphs 2.10 and 2.13, the CP will be required to pay the Cancellation Payment otherwise when it cancels the Order).
- 2.17 Subject to paragraph 2.18, where KCOM suspends delivery of an Order on the CP's behalf pursuant to paragraph 2.14 (d), (e) or (g), KCOM may cancel a suspended Order when the Order has been suspended for more than 90 cumulative Working Days, and the CP is not required to pay any Charges set out in the Price List.
- 2.18 Where KCOM suspends delivery of an Order on the CP's behalf pursuant to paragraph 2.14 (g), KCOM reserves the right to cancel the Order if it:
- (a) now has no obligation to provide the Services as per paragraphs 1.5(a) and 1.5(b) of Appendix 1 of this Schedule 2; and
  - (b) it did not previously have the opportunity to exercise this right under paragraphs 2.6 and 2.12.



- 2.19 If the Order recommences progression after a suspension, the total number of Working Days for which the Order was suspended will be added to the Proposed Start Date, which for the avoidance of doubt becomes the Service Standard. The CP will be advised of the revised date in accordance with the process set out in the Service Operations Manual.
- 2.20 If the CP cancels an Order other than pursuant to paragraphs 2.10, 2.13 and 2.162.10, or significantly modifies an Order (where modifications shall include but not be limited to changes in service location, delivery dates, and requirements for junction fibre), KCOM reserves the right to charge the CP for KCOM's reasonable costs incurred as a result of such cancellation or modification (including but not limited to the full costs of duct or junction fibre upgrades and money spent in preparing to provide the Services, provided KCOM will take reasonable steps to mitigate the amount of such costs and expense), in addition to the Cancellation Payment specified in the Price List. KCOM will no longer be bound by the Proposed Start Date following modifications to an Order detailed in this paragraph.
- 2.21 If installation of the Services cannot proceed due to a CP or End User related issue, e.g. no available power sockets, no wall space, or access to the End User Site is refused, a Missed Appointment Fee may be raised.

#### General Compliance Provisions

- 2.22 The CP is responsible for:
- (a) compliance with the terms of this Agreement and any instructions provided by KCOM in relation to the Services and;
  - (b) the acts and omissions of its employees and agents in connection with the repair and/or any other alternative process set out in this Agreement and the Service Operations Manual.
- 2.23 The CP shall ensure that any equipment connected to the Services, including but not limited to the CP Equipment:
- (a) is used and connected in accordance with any relevant instructions or laws;
  - (b) is technically compatible with the Services;
  - (c) shall not harm:
    - (i) the KCOM Network;
    - (ii) the Services;



- (iii) the KCOM Equipment, where supplied;
  - (iv) any Third Party's network or equipment;
- (d) is connected and used in accordance with any relevant standards including any standards that KCOM notifies to the CP from time to time in writing and, in the following order of precedence:
- (i) any legal requirements imposed upon the parties including requirements arising from the General Conditions;
  - (ii) any relevant specification notified by Ofcom implementing the recommendations of the Network Interoperability Consultative Committee;
  - (iii) any relevant recommendations or standards of the European Telecommunications Standards Institute; and
  - (iv) any relevant recommendations of the Telecommunications Standards Bureau (formerly the International Telegraph and Telephone Consultative Committee) of the International Telecommunication Union.

### **3. Site Access**

- 3.1 KCOM will arrange all engineering visits and site surveys with the CP Operational Contact.
- 3.2 Without prejudice to KCOM's remedies in paragraph 2, where an appointment is agreed with KCOM for work at a CP Site and/or End User Site and KCOM is unable to carry out the work or if the appointment is cancelled by the CP or the CP's Operational Contact, KCOM may charge the CP a Missed Appointment Fee as specified in the Price List.

### **4. Incident Management**

- 4.1 KCOM will only accept fault reports directly from the CP's Correspondence Contact(s). If the fault is not attributable to the KCOM Network the CP will be liable for Time Related Charges as set out in the Price List.
- 4.2 The CP will report all faults in accordance with the Service Operations Manual.

### **5 KCOM Liaison with End Users**

- 5.1 All communications between KCOM and End Users will be arranged via the CP except that if



the Services are to be delivered to an End User Site, KCOM may contact End Users directly in the following circumstances:

- (a) where the CP has requested KCOM to contact the End User directly; or
- (b) in relation to all appointments, changes to appointments and access arrangements with the End User for engineering visits; or
- (c) to assist with fault diagnostics.





## APPENDIX 1 – DARK FIBRE APPLICATIONS AND RESTRICTIONS

### 1 Dark Fibre Access, Service Usage and Restrictions

1.1 Dark Fibre provides a dedicated, unmonitored, unlit optical fibre path between two sites in the Hull Area. It is described in the applicable Customer Interface Publication published on the KCOM Website at <https://www.kcom.com/wholesale/products/service-information/technical-interface-information/>.

1.2 CPs can only use Dark Fibre to connect:

- (a) CP Site to End User Site (and vice versa);
- (b) End User Site to End User Site; and
- (c) Co-Location Hostel to an End User Site (and vice versa),

within the Hull Area, provided that where reference above is made to a CP Site this may be CP owned Street Furniture, except where paragraph 1.3 below of this Appendix 1 applies.

#### Restrictions on use of Dark Fibre

1.3 Dark Fibre cannot be used for connections which are outside the scope of those identified above, including but not limited to:

- (a) where the usage is for the purpose of building or extending Core Network; or
- (b) where the intent is to replicate and substitute KCOM's Network; or
- (c) connectivity between Exchange Sites; or
- (d) connectivity to Datacentres used for aggregation; or
- (e) connectivity to a Third Party Communications Provider Point of Presence; or
- (f) where an Order is placed for the purpose of connecting Fibre to the Premises (FTTP) aggregation nodes connecting multiple End User Sites including homes or business premises;  
or
- (g) where the End User Site or the CP Site is a fibre aggregation node serving multiple sites including but not limited to homes, business premises or other fibre aggregation nodes; or
- (h) connectivity to overhead or underground methods of termination; or
- (i) where the End User Site or the CP Site is an intermediary fibre network node serving a single



site.

- 1.4 Any use of Dark Fibre for taking Dark Fibre to radio and the converting of the radio signal back to fibre to service multiple end user premises would be subject to the written agreement of KCOM on an Order by Order basis.

Circumstances where no fibre is available

- 1.5 KCOM will provide Dark Fibre where there is existing fibre available. Where no fibre is available, either because there is no duct and/or fibre on that route or because fibre on that route is exhausted, KCOM will assess alternative route options. If no alternative routes are available:

(a) Where the supply of new fibre is a Network Adjustment, KCOM will assess whether provision of that fibre is reasonable. Where it is reasonable, KCOM will supply the Service and for the avoidance of doubt, Excess Construction Charges will not be applied. Where it is not reasonable, KCOM has no obligation to supply the Service, and KCOM will advise the CP of its intentions (including but not limited to any changes to the Proposed Start Date and the Excess Construction Charges that will be applied) in these circumstances via an update to the Order as soon as is reasonably practicable; or

(b) Where the supply of new fibre constitutes a Network Extension, KCOM will assess the commercial feasibility of supplying new fibre but there shall be no obligation for KCOM to supply the Service. Where KCOM decides to provide a Network Extension (to be communicated to the CP via an update to the Order (including but not limited to any changes to the Proposed Start Date) as soon as is reasonably practicable) this will be provided subject to Excess Construction Charges.

Diversity

- 1.6 The CP may request Diversity when placing an Order. The CP shall specify the type of Diversity required and KCOM shall, subject to its ability to do so (as detailed in the product description in CIP044), provide written confirmation of the Diversity which can be provided and supply the relevant Diversity. KCOM will provide the CP with a price for Diversity on application and for the



avoidance of doubt:

- (a) any Orders for Diversity are not subject to Schedule 3 (Service Standards); and
- (b) once KCOM and CP agree the terms upon which an Order including Diversity will be delivered, if the CP either cancels or significantly modifies (where modifications shall include but not be limited to changes in service location, delivery dates, and requirements for junction fibre) the Order, KCOM reserves the right to charge the CP for KCOM's reasonable costs incurred as a result of such cancellation or modification (including but not limited to the full costs of duct or junction fibre upgrades and money spent in preparing to provide the Services, provided KCOM will take reasonable steps to mitigate the amount of such costs and expense), in addition to the Cancellation Payment specified in the Price List.

- 1.7 KCOM's restoration or repair of a fibre may result in Diversity being suspended for one or more of the diversely routed fibres. If this occurs KCOM shall reinstate the Diversity as soon as reasonably practicable.
- 1.8 If the Diversity is found to have varied from that which was ordered by the CP due to changes to the KCOM Network (due, for example but not limited to, civil engineering carried out under the New Roads and Streetworks Act 1991 or the Traffic Management Act 2004) or otherwise, the parties shall consult with a view to reinstating the Diversity. If KCOM is unable to reinstate the Diversity, the CP may elect to do one of the following:
- (a) accept the reduced level of the Services;
  - (b) cancel the relevant individual circuit that no longer meets the level of Diversity and no longer pay the relevant Charges detailed in the Price List, provided that KCOM reserves the right to re-engineer the remaining circuit to least cost routing;
  - (c) convert the diverse circuits impacted to standard circuits without Diversity; or
  - (d) cancel the affected circuits.
- 1.9 Where a CP selects the option set out in paragraph 1.8(b), 1.8(c), or 1.8(d) above, the CP will not be liable for any Termination Payment that may be due for terminated individual Services. KCOM agrees to repay or credit the CP for the period from which the CP's liability to pay ceases.



## 2 Dark Fibre Access Verification

- 2.1 The CP represents and warrants that it will use the Services in accordance with paragraph 1 of Appendix 1 of this Schedule 2 (“Usage”).
- 2.2 On each 1 January and 1 July following the CP’s first use of the Services, the CP will confirm in writing that it is compliant with paragraph 1 of Appendix 1 of this Schedule 2. If the CP fails to provide the Usage confirmation letter then KCOM reserves the right to refuse to accept any new Orders for the Services. The CP will provide such assistance as KCOM may reasonably require to enable KCOM to verify that the CP’s use of the Services is and remains consistent with Usage.
- 2.3 If KCOM reasonably believes that the CP is using or has used the Services other than in accordance with paragraph 1 of Appendix 1 of this Schedule 2, then it will notify the CP of this belief together with its reasons and the CP must then respond within 20 Working Days of this notice setting out full details of why it believes that its use of the Services is consistent with paragraph 1 of Appendix 1 of this Schedule 2. KCOM will respond to the CP as soon as reasonably practicable setting out its decision on the CP’s use of the Service, taking into account the response from the CP. If KCOM still reasonably believes the CP is in breach of paragraph 1 of Appendix 1 of this Schedule 2 above then KCOM may request the CP provide a draft remedial plan to rectify the Usage of the Services.
- 2.4 The draft remedial plan, which must be prepared and presented at the CP’s cost and expense must:
- (a) identify the steps that the CP proposes to take to rectify and comply with Usage; and
  - (b) include committed and clear timescales for conclusion of remedial works to comply with the Usage obligations and which are consistent with the urgency of the failure or delay.
- 2.5 The draft remedial plan must be submitted to KCOM for approval (such approval not to be unreasonably withheld or delayed) promptly following a request from KCOM. The CP will incorporate into a revised draft of the remedial plan all reasonable requests or reasonable comments raised by KCOM. KCOM will not issue a breach notice to the CP pursuant to clause



24.4 relating to Usage where the CP provides and performs to a remedial plan which has been approved in writing by KCOM.

- 2.6 The CP shall comply with the remedial plan following its approval by KCOM and if it fails to do so, save where that failure is directly attributable to KCOM, then KCOM reserves the right to reject Orders for the Services until such time as the CP can satisfy KCOM that it will meet the obligations and rules on Usage.
- 2.7 If the CP:
- (a) fails to respond to a notice from KCOM issued under paragraph 2.3 of Appendix 1 of this Schedule 2; or
  - (b) fails to provide a draft remedial plan; or
  - (c) provides a draft remedial plan which KCOM refuses to accept because the plan does not bring the CP to compliance with its obligations in paragraph 1 of Appendix 1 of this Schedule 2 within a reasonable time period,

then KCOM may at its sole discretion issue a breach notice to the CP pursuant to clause 24.4 of the Agreement and, without prejudice to KCOM's rights under clauses 24.5 to 24.7 inclusive of the Agreement, refuse to accept any Orders for the Services and/or terminate any Services that are in breach of paragraph 1 of Appendix 1 of this Schedule 2, until the breach has been rectified to KCOM's reasonable satisfaction or until the CP provides a remedial plan which is acceptable to KCOM.

- 2.8 If the CP is in breach of paragraph 1 of Appendix 1 of this Schedule 2 and KCOM serves a breach notice pursuant to clause 24.4 of the Agreement then in addition to any other right and remedy KCOM may have it may also recover from the CP any and all losses and costs it incurs arising from the breach and the exclusions and limitations of liability at clause 17 of the Agreement will not apply.
- 2.9 The CP shall provide, if KCOM requests, a copy of the following statement signed by a suitably authorized representative of the CP in respect of this Agreement (failure to do so shall represent a material breach of this Agreement):



“It is hereby confirmed that the CP has, following detailed assessment and review, complied with the rules on Usage of the Services as set out in paragraph 1 of Appendix 1 of Schedule 2 of the Reference Offer for the Provision of Dark Fibre Services.”

2.10 KCOM reserves the right at any time, acting reasonably, to audit and review the CP’s use of the Service. The CP shall provide such assistance and information as KCOM may reasonably require to enable KCOM to fully and properly monitor and check the CP’s compliance with the terms of this Agreement. The CP shall have and maintain full and accurate records of any and all use of the Services.

2.11 The CP shall keep and maintain the records for the period of this Agreement and for three years thereafter and shall provide to KCOM on reasonable request a current copy of those records.

### **3 Optical Power**

3.1 All CP Equipment or End User Equipment connected to the Service will incorporate sufficient safety features to ensure that lasers cannot operate at optical powers greater than Class 1M even under fault conditions and are safe for live working. Under no circumstances should laser power levels above those defined in KCOM’s Customer Interface Publications, including but not limited to CIP044 be applied to any part of the KCOM Network. Any laser power levels identified as being above the safe limit will be immediately isolated from the KCOM Network. This may cause an interruption to the Service and may ultimately lead to a termination of the Service. If the Service is terminated for the reasons detailed above KCOM will have no liability to the CP. The CP will be responsible for any loss or damage caused as a result of failing to comply with this paragraph.

### **4 Projects**

4.1 If a CP’s forecast produced under clause 9 of the Agreement indicates the CP intends to place 10 or more Orders in one month, then KCOM reserves the right to organise a meeting pursuant to clause 9.2 of the Agreement in order to propose to the CP:

- (a) which Orders KCOM will implement as a standalone project implementing all of such Orders in a single block; and
- (b) an Indicative Lead Time for such Orders.



- 4.2 Where KCOM has issued a proposal under paragraph 4.1 of Appendix 1 of this Schedule 2, the CP can:
- (a) approve KCOM's proposal, whereupon the parties will follow the process set out in paragraph 2 of Schedule 2 for the proposed Orders that KCOM will implement as a standalone project; or
  - (b) reject KCOM's proposal and inform KCOM it does not wish to proceed; or
  - (c) reject KCOM's proposal and revert to KCOM with a new forecast under clause 9 of the Agreement.