



**Registration of a Charge**

Company Name: **KCOM GROUP LIMITED**

Company Number: **02150618**



XC6IEIIX

Received for filing in Electronic Format on the: **26/06/2023**

**Details of Charge**

Date of creation: **16/06/2023**

Charge code: **0215 0618 0012**

Persons entitled: **KINGSTON COMMUNICATIONS (HULL) TRUSTEES LIMITED AS SECURITY TRUSTEE**

Brief description:

**Contains fixed charge(s).**

**Contains floating charge(s) .**

**Contains negative pledge.**

**Authentication of Form**

This form was authorised by: **a person with an interest in the registration of the charge.**

**Authentication of Instrument**

Certification statement: **I CERTIFY THAT SAVE FOR MATERIAL REDACTED PURSUANT TO S.859G OF THE COMPANIES ACT 2006 THE ELECTRONIC COPY INSTRUMENT DELIVERED AS PART OF THIS APPLICATION FOR REGISTRATION IS A CORRECT COPY OF THE ORIGINAL INSTRUMENT.**

Certified by: **EVERSHEDS SUTHERLAND (INTERNATIONAL) LLP**



## **CERTIFICATE OF THE REGISTRATION OF A CHARGE**

Company number: 2150618

Charge code: 0215 0618 0012

The Registrar of Companies for England and Wales hereby certifies that a charge dated 16th June 2023 and created by KCOM GROUP LIMITED was delivered pursuant to Chapter A1 Part 25 of the Companies Act 2006 on 26th June 2023 .

Given at Companies House, Cardiff on 27th June 2023

The above information was communicated by electronic means and authenticated  
by the Registrar of Companies under section 1115 of the Companies Act 2006



**Companies House**



**THE OFFICIAL SEAL OF THE  
REGISTRAR OF COMPANIES**

EXECUTION VERSION



Dated 16 June 2023

KCOM HOLDINGS LIMITED

KCOM GROUP LIMITED

KINGSTON COMMUNICATIONS (HULL) TRUSTEES LIMITED

We certify this document as a true copy of the original, save for material  
redacted pursuant to section 859G Companies Act 2006.  
26 June 2023 Eversheds Sutherland (UK) LLP  
Eversheds Sutherland (International) LLP

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CHARGE

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This Deed is made on

16 June

2023

Between

- (1) **KCOM Holdings Limited** (Company Number 03317871) (**First Chargor**) and **KCOM Group Limited** (Company Number 02150618) (**Second Chargor**) (and each a **Chargor** and together the **Chargors**); and
- (2) **Kingston Communications (Hull) Trustees Limited** (Company Number 08397843) as security trustee for the Trustees (**Security Trustee**).

It is agreed

## 1 Definitions and interpretation

### 1.1 Definitions

In this Deed:

**Assets** means the assets described in the Schedule to this Deed, (including all appliances, parts, spare parts, instruments, accessories and other equipment of any kind installed on or in such assets) and any and all substitutions, alterations, replacements, renewals and additions made for, or in relation to, the same, and where the context so admits, any part or parts of them

**Business Day** means a day (other than a Saturday or Sunday) on which banks are open for general business in London

**Deed of Undertaking** means the deed of undertaking executed by the Employer, the Chargors and the Trustees on or about the date of this Deed

**Employer** means KCH (Holdings) Limited (registered in England with number Company Number 06072997)

**Existing Charge** means a charge dated 24 March 2014 and originally made between First Chargor, Second Chargor and the Employer (as beneficiary)

**Floating Charge Assets** means all the assets and undertaking from time to time subject to the floating charge created under clause 3.2

**Party** means a party to this Deed

**Schemes** means collectively KCPS and the Data Scheme

**Secured Obligations** means the Secured Payment as due, owing or incurred by the Employer or the Chargors to the Trustees pursuant to the Deed of Undertaking

**Security** means a mortgage, charge, pledge, lien, assignment or other security interest securing any obligation of any person or any other agreement or arrangement having a similar effect

**Security Period** means the period beginning on the date of this Deed and ending on the earlier of (i) date on which the Security Trustee is satisfied (acting reasonably) that the Secured Obligations have been irrevocably and unconditionally satisfied or discharged in full and (ii) 31 March 2030

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**Trustees** means Kingston Communications (Hull) Trustees Limited (acting as trustee of the Kingston Communications Pension Scheme, **KCPS**) and Kingston Communication (Data) Trustees Limited (acting as trustee of the Kingston Communications (Data) Pension Scheme **Data Scheme**)

### 1.2 Interpretation

- (a) Unless a contrary indication appears, a reference in this Deed to:
  - (i) the **Security Trustee**, a **Chargor**, the **Employer** or any other person shall be construed so as to include its successors in title, permitted assigns and permitted transferees;
  - (ii) a **person** includes any individual person, firm, company, corporation, government, state or agency of a state or any association, trust, joint venture, consortium or partnership (whether or not having separate legal personality) or any other entity or body of any description;
  - (iii) a provision of law is a reference to a provision of any treaty, legislation, regulation, decree, order or by-law and any secondary legislation enacted under a power given by that provision, as amended, applied or re-enacted or replaced (whether with or without modification) whether before or after the date of this Deed; and
  - (iv) **sterling** and **£** shall be construed as a reference to the lawful currency of the United Kingdom.
- (b) Clause and Schedule headings are for ease of reference only.
- (c) Any word importing the singular shall include the plural and vice versa.
- (d) A term defined in this Deed has the same meaning when used in any notices, acknowledgements or other documents issued under or in connection with this Deed.
- (e) Terms defined in the Deed of Undertaking shall (unless a contrary indication is stated) have the same meaning in this Deed.

### 1.3 Third party rights

- (a) Unless expressly provided to the contrary in this Deed or otherwise agreed in writing by the parties hereto), a person who is not a Party has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce or enjoy the benefit of any term of this Deed.
- (b) Unless expressly provided to the contrary in this Deed or otherwise agreed in writing by the parties hereto the consent of any person who is not a Party is not required to rescind or vary this Deed.

## 2 Covenant to pay

The Chargors covenant with the Security Trustee (as security trustee for the Trustees) to pay and discharge the Secured Obligations when they become due for payment and discharge in accordance with the terms of the Deed of Undertaking.

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### 3 Charging provision

- 3.1 Subject to the Existing Charge, each Chargor charges to the Security Trustee by way of first fixed charge with full title guarantee all their respective right, title and interest in and to the Assets, as security for the Secured Obligations.
- 3.2 Subject to the Existing Charge, each Chargor charges to the Security Trustee by way of first floating charge with full title guarantee all their respective right, title and interest in and to the Assets, as security for the Secured Obligations, to the extent not effectively charged by way of fixed charge under clause 3.1.
- 3.3 The First Chargor's charge contained in this Charge is a charge of the First Chargor's beneficial interest in the Assets.
- 3.4 The Second Chargor's charge contained in this Charge is a charge of the Second Chargor's legal interest in the Assets.
- 3.5 This Deed does not contain a qualifying floating charge and paragraph 14 of Schedule B1 of the Insolvency Act 1986 does not apply to the floating charge created under this Deed.
- 3.6 The Security Trustee may at any time by notice in writing to any Chargor convert the floating charge created under clause 3.2 into a fixed charge as regards any Floating Charge Asset as it shall specify in the notice if in the reasonable opinion of the Security Trustee that Floating Charge Asset is in danger of being seized or any legal process or execution is being enforced against that Floating Charge Asset.
- 3.7 If (unless permitted in writing by the Security Trustee):
- (a) a Chargor creates or attempts to create or permits to exist any Security over any of its Floating Charge Assets;
  - (b) any person levies or attempts to levy any distress, attachment, execution or other legal process against any Floating Charge Asset; or
  - (c) any corporate action, legal proceedings or other procedures or steps are taken for the winding up, dissolution, administration or reorganisation of any Chargor,

the floating charge created by this Deed will automatically and immediately without notice be converted into a fixed charge over the relevant assets or, in the circumstances described in clause 3.7(c), over all of the Floating Charge Assets.

### 4 Continuing security

The Security constituted by this Deed shall be continuing security and shall remain in full force and effect regardless of any intermediate payment or discharge by the Employer or any other person of the whole or any part of the Secured Obligations.

### 5 Negative pledge

Other than the Existing Charge, neither Chargor shall create or permit to subsist any Security over their respective interest in any of the Assets which ranks either in priority to or *pari passu* with the Security created by this Deed unless the prior written consent of the Security Trustee is obtained.

**6 Further assurance**

Each Chargor shall promptly do all such acts and execute all such documents as the Security Trustee may reasonably specify (and in such form as the Security Trustee may reasonably require) in favour of the Security Trustee or its nominee(s) to create, perfect, protect and maintain the Security created or intended to be created under or evidenced by this Deed.

**7 Replacement**

7.1 The Security Trustee acknowledges and agrees that the Chargors may substitute, alter, replace, renew and add to all or any part of the Assets as part of the Chargors' general programme of maintenance and repair of, and investment in, the Assets, and following any such substitution, alteration, replacement, renewal and addition the relevant assets shall be part of the Assets and be subject to the Security created by this Charge.

7.2 The Security Trustee further acknowledges and agrees that Assets which are substituted, replaced or renewed in the course of the Chargors exercising their rights under clause 7.1 will no longer be Assets, will no longer be subject to the Security created by this Charge and may be dealt with as the Chargors, in their discretion, see fit.

**8 No enforcement**

8.1 The Chargors and the Security Trustee expressly agree that:

- (a) nothing in this Deed shall confer on the Security Trustee (or, for the avoidance of doubt, the Trustees) any right to enforce the benefit of this Deed, including any right to appoint an administrator of any Chargor, or an administrative receiver or a receiver; and
- (b) the Security Trustee, by entering into this Deed, waives all rights which it may have to enforce the security created by this Deed.

8.2 The Chargors acknowledge and affirm that, without prejudice to clause 8.1:

- (a) the Security constituted by this Deed is a Security, second ranking only to the Existing Charge and, until the end of the Security Period, shall remain in full force and effect; and
- (b) the Security Trustee shall remain a creditor of the Employer for the Secured Obligations until such time as those obligations are fully and irrevocably paid.

**9 Warranties**

The Chargors jointly and severally warrant to the Security Trustee as follows:

- (a) **Status:** It is a limited liability company, duly incorporated and validly existing under the laws of England and Wales and it has the power to own its assets and carry on its business as it is being conducted.
- (b) **Binding obligations:** The obligations expressed to be assumed by it in this Deed are legal, valid, binding and enforceable obligations (subject to the principle that equitable remedies are discretionary and subject to any applicable insolvency laws).
- (c) **Non-conflict with other obligations:** The entry into and performance by it of, and the transactions contemplated by, this Deed do not and will not conflict with (a) any law or regulation applicable to it, (b) its constitutional documents, or (c) any agreement or

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instrument binding upon it or constitute a default or termination event (however described) under any such agreement or instrument.

- (d) **Power and authority:** It has the power to enter into, perform and deliver, and has taken all necessary action to authorise its entry into, performance and delivery of, this Deed and the transactions contemplated by this Deed.

## 10 Notices

### 10.1 Communications in writing

Any communication to be made under or in connection with this Deed shall be made in writing and, unless otherwise stated, may be made by fax or letter.

### 10.2 Addresses

The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each Party for any communication or document to be made or delivered under or in connection with this Deed is that identified with its name below or any substitute address, fax number or department or officer as the Party may notify to the others by not less than 5 Business Days' notice.

### 10.3 Delivery

Any communication or document made or delivered by one person to another under or in connection with this Deed will only be effective:

- (a) if by way of fax, when received in legible form; or
- (b) if by way of letter, when it has been left at the relevant address or 3 Business Days after being deposited in the post postage prepaid in an envelope addressed to it at that address.

## 11 Invalidity

If, at any time, any provision of this Deed is or becomes illegal, invalid or unenforceable in any respect under any law of any jurisdiction, neither the legality, validity or enforceability of the remaining provisions nor the legality, validity or enforceability of such provision under the law of any other jurisdiction will in any way be affected or impaired.

## 12 Assignment

No party may assign their rights under this Deed without the consent of the other parties other than in accordance with the Deed of Undertaking.

## 13 Releases

Upon the expiry of the Security Period, the Security Trustee shall, at the request and cost of the Employer, take whatever action is necessary to release and reassign to each Chargor:

- (a) its rights arising under this Deed;
- (b) the Assets from the Security created by and under this Deed,

and return all documents or deeds of title delivered to it under this Deed.

**14 Counterparts**

This Deed may be executed in any number of counterparts, and by each party on separate counterparts. Each counterpart is an original, but all counterparts shall together constitute one and the same instrument. Delivery of a counterpart of this Deed by e-mail attachment or telecopy shall be an effective mode of delivery.

**15 Governing law**

This Deed and any non-contractual obligations arising out of or in connection with it are governed by English law.

**16 Jurisdiction of English courts**

16.1 The courts of England have exclusive jurisdiction to settle any dispute arising out of or in connection with this Deed (including a dispute relating to the existence, validity or termination of this Deed or any non-contractual obligation arising out of or in connection with this Deed) (**Dispute**).

16.2 The Parties agree that the courts of England are the most appropriate and convenient courts to settle Disputes and accordingly no Party will argue to the contrary.

**This Deed** has been entered into as a deed on the date given at the beginning of this Deed.

## The Schedule

### The Assets

All rights, title and interests, whether vested or contingent, of the First Chargor and the Second Chargor from time to time in or to the physical network infrastructure, consisting of the KC Core Network, the KC Access Network and the Customer Premises Equipment (as defined below) and used by the First Chargor to provide a telecommunications service in the OLA and the East Yorkshire Expansion Area (i.e. the geographical area shown shaded in green and blue in the attached map), but excluding any duct, copper and fibre infrastructure which provides a link to, and forms part of, the Second Chargor's national network) as shown in green and as defined as "Kcom Fibre" on the demarcation diagram attached at Appendix 1.

Without prejudice to the definitions set out below, a high level diagram showing elements of the KC Core Network at the date of this Deed at Appendix 2.

For the purposes of this Schedule, the terms used shall have the following meanings:

<b>KC Core Network</b>	means the electronic communications network or networks comprising the Cabling, Infrastructure and Equipment that connect Exchanges and any points of interconnection with the KCOM National Network and/or Third Party Networks, including the Dunnington Link;
<b>KC Access Network</b>	means the electronic communications network or networks comprising the Cabling, Infrastructure, and Equipment (excluding any Customer Premises Equipment) that connect the network termination points and optical termination points (as applicable) of residential and business premises to the Exchanges; and
<b>Customer Premises Equipment</b>	means the cabling, wiring and communications equipment (including telephones, routers, servers, PBXs and boosters) located in any residential or business premises after the network termination point or optical termination point (as applicable) of the KC Access Network which are owned by the First Chargor or the Second Chargor.

For the purposes of the definitions of the KC Core Network and the KC Access Network, the following terms shall have the following meanings:

<b>BSS</b>	means systems and applications software (but for the avoidance of doubt, excluding Infrastructure and Equipment) solely used to support the marketing and general business operations of the First Chargor or the Second Chargor;
<b>Cabling</b>	means copper cables and or fibre cables (whether lit or in the form of dark fibre);
<b>Cabinets</b>	means cabinets including street cabinets but excluding Exchanges;
<b>Dunnington Link</b>	means the fibre link from Kirkella Exchange to Dunnington as shown on the demarcation diagram attached at Appendix 1, as well as the Cabling, Infrastructure and Equipment up to the point of interconnection at Dunnington;

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### **East Yorkshire Expansion Area**

means the area highlighted in green on the attached map;

### **Equipment**

means switches (including soft switches), routers, servers, concentrators, software embedded on hardware by manufacturers (but not including BSS or OSS), gateways, border controllers, receivers, transceivers, antennae, platforms, transmission equipment and cards, and other electronics, including environmental equipment (such as generators, uninterrupted power sources and air conditioning units) and Customer Premises Equipment;

### **Exchanges**

means the exchanges within the real estate described in Schedule 3 to the Amended and Restated Limited Partnership Agreement relating to the SLP dated 28 March 2013 and any other relevant exchanges there are, or may be, from time to time;

### **Infrastructure**

means the active and passive infrastructure (including Cabinets, trunk, ducts and telegraph poles);

### **KCOM National Network**

means the electronic communications network or networks operated by Second Chargor outside of the OLA and East Yorkshire Expansion Area;

### **OLA**

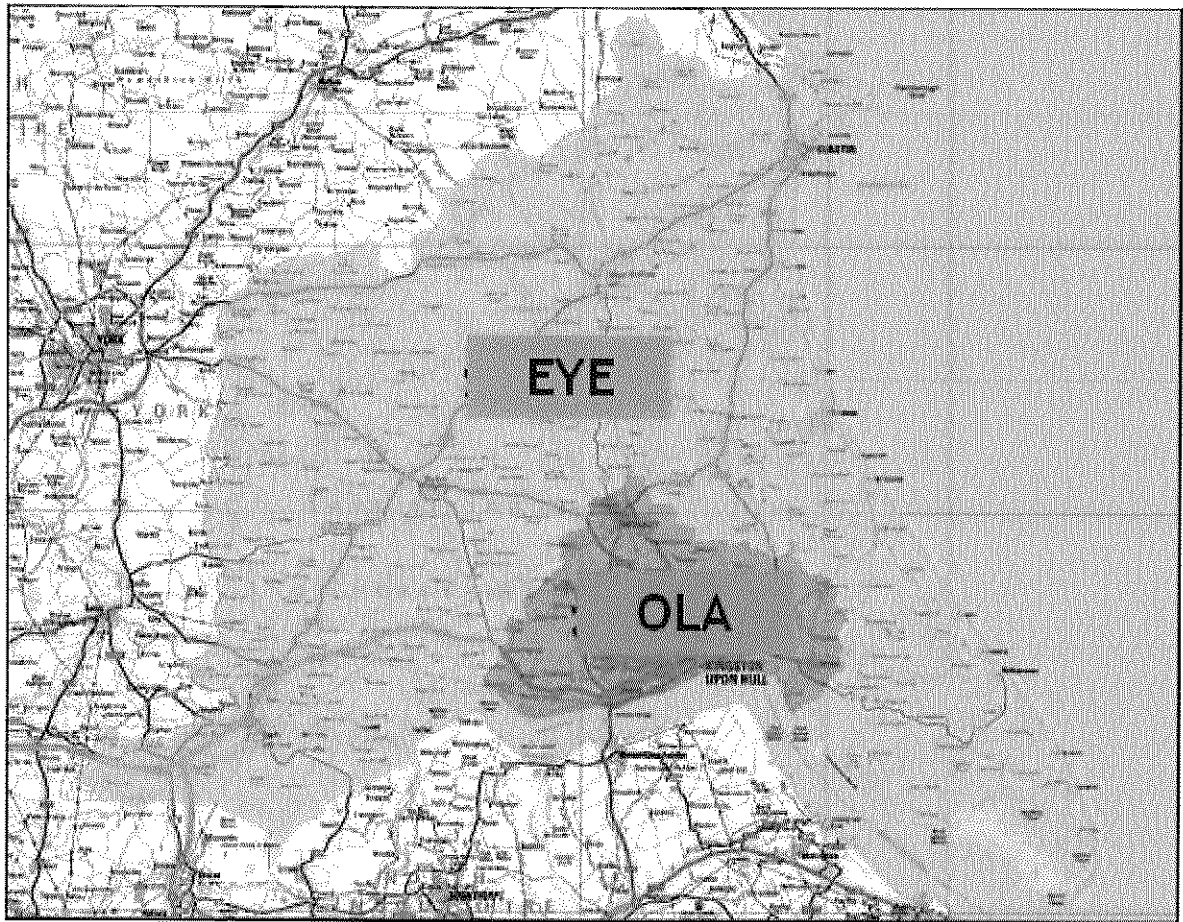
means the original licensed area for which the First Chargor is designated as having significant market power and is required to satisfy the universal service conditions imposed by Ofcom under the Communications Act 2003 as shown shaded in blue in the attached map;

### **OSS**

means the systems (including applications and software, but for the avoidance of doubt, excluding Infrastructure and Equipment) used for the operation and support of the KC Network; and

### **Third Party Networks**

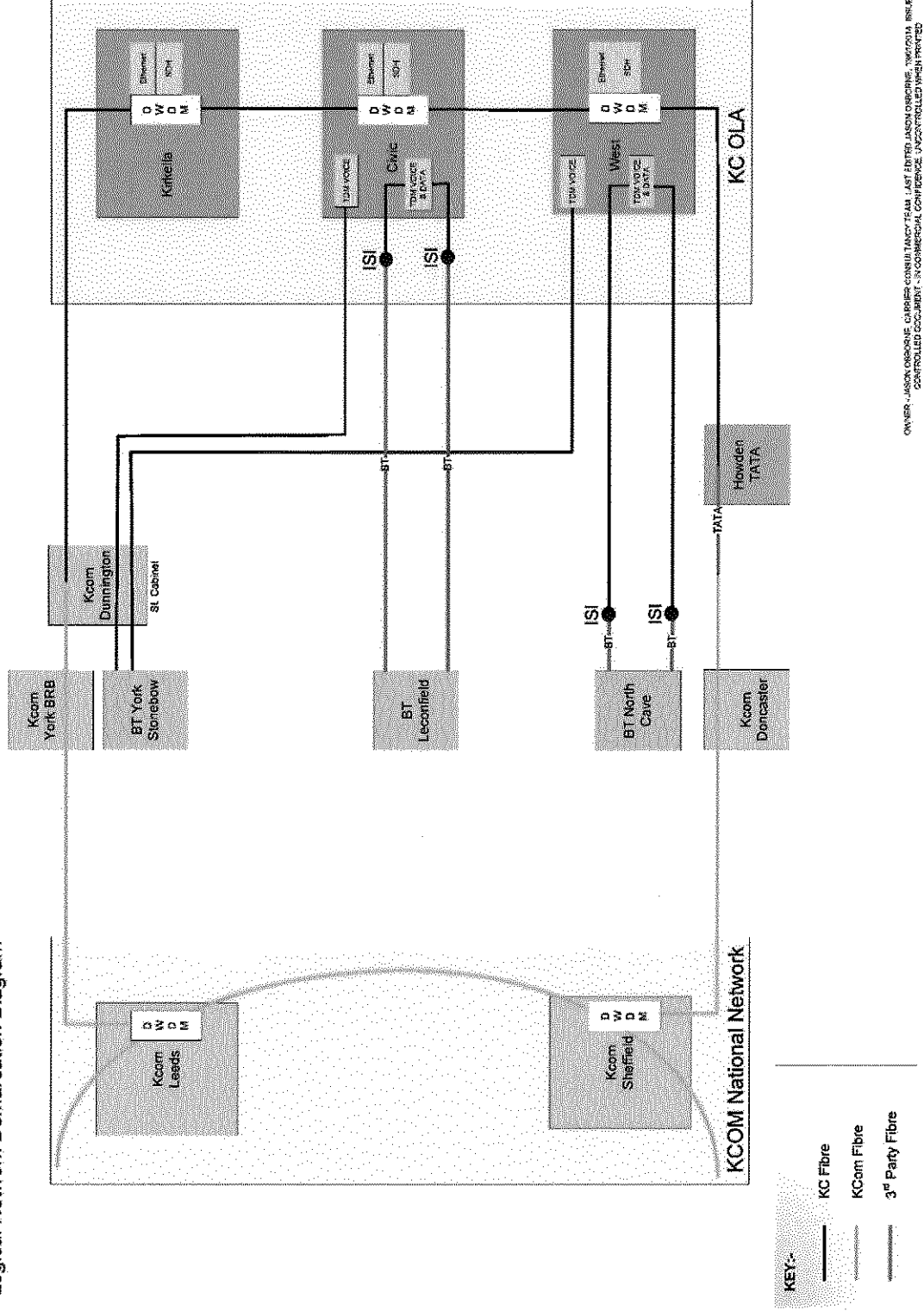
means any electronic communications network or networks owned and operated by any person other than the First Chargor or the Second Chargor, including but not limited to the communications networks owned by British Telecommunications Plc.



Appendix 1

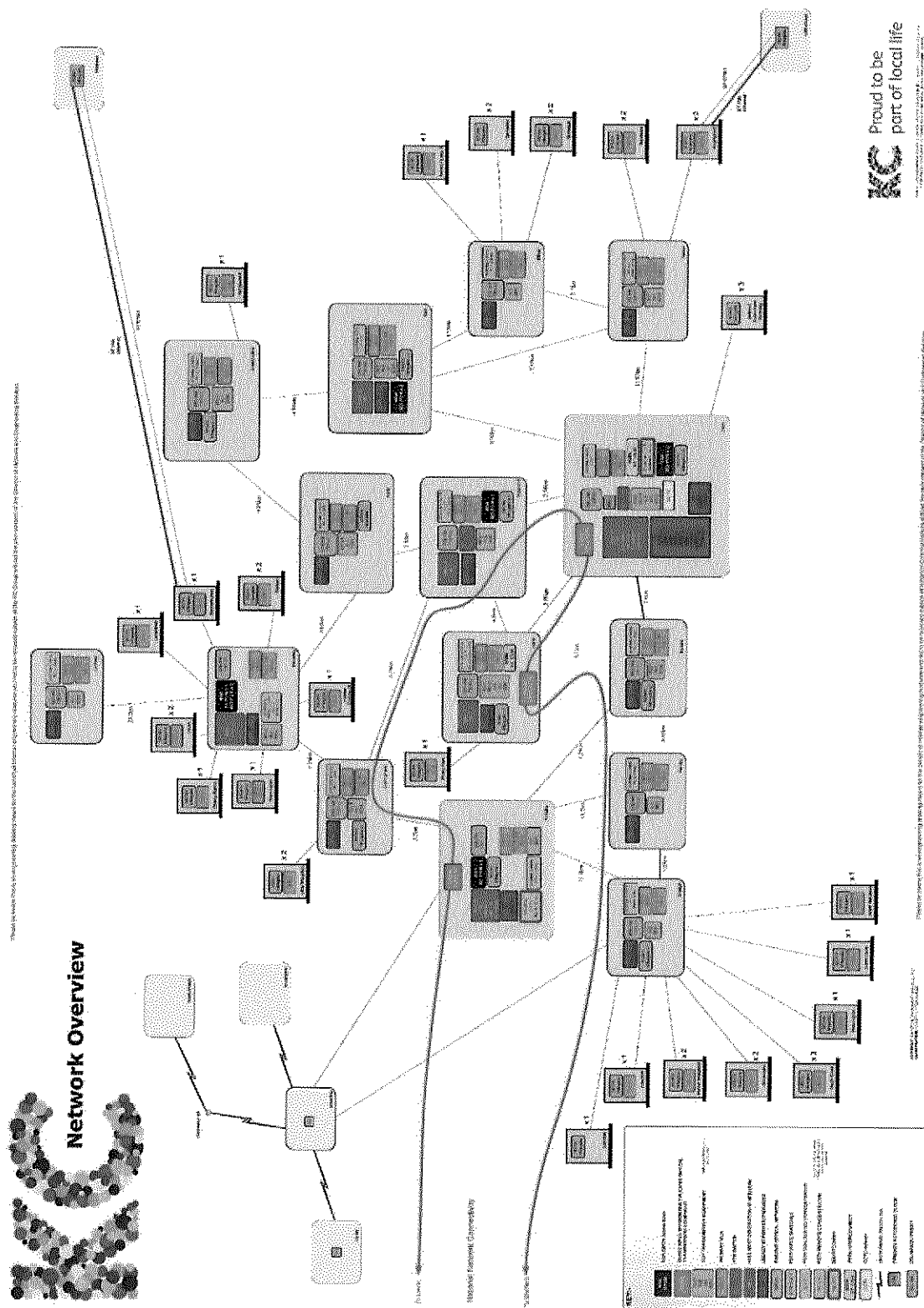
Logical network Demarcation Diagram

Logical Network Demarcation Diagram



## Appendix 2

### KC Core Network Diagram



EXECUTION VERSION

SIGNATURES TO THE CHARGE

Chargors

Executed as a deed by

**KCOM Holdings Limited**

acting by a director in the presence of

)

)

)

Director

Signature of witness

Name JOHN HAKNER

Address

Address: 37 Carr Lane, Hull, East Yorkshire, HU1 3RE

Facsimile:

♦

Attention:

Company Secretary

Executed as a deed by

**KCOM Group Limited**

acting by a director in the presence of

)

)

)

Director

Signature of witness

Name JOHN HAKNER

Address

Address: 37 Carr Lane, Hull, East Yorkshire, HU1 3RE

Facsimile:

♦

Attention:

Company Secretary

EXECUTION VERSION

Security Trustee

Executed as a deed by )  
**KINGSTON COMMUNICATIONS (HULL)** )  
**TRUSTEES LIMITED** ) Ross Trustees Services Limited  
acting by Ross Trustees Services Limited represented by Kate Hardingham  
represented by Kate Hardingham

in the presence of the following witness:

.....  
Signature of witness

Name .....

Address .....

.....

Address: 37 Carr Lane, Hull, East Yorkshire, HU1 3RE

Facsimile: ♦

Attention: Company Secretary