

Standard Terms and Conditions of KCOM Group PLC for the provision of KCOM Backup Services

1 TERM

1.1 This Contract will come into effect on the Contract Date and continue until the expiry of the Initial Term. Following the expiry of the Initial Term this Contract will continue unless and until terminated by either party giving the other no less than 30 days' prior written notice.

2 PROVISION OF THE SERVICE

2.1 We shall use Our reasonable endeavours to provide the Service in accordance with the Service Standards. We will use Our reasonable skill and care in the provision of the Service however, You acknowledge that the Service cannot be provided fault free and We do not warrant free or uninterrupted use of the Service nor guarantee the continued availability of the Service.

2.2 We shall use all reasonable endeavours to make the Service available for use by You from the Proposed Start Date unless otherwise expressly agreed in writing or unless We are unable to do so as the result of a failure by You to fulfil Your obligations in clause 3 of this Contract.

2.3 In the event that We are unable to provide the Service by the Proposed Start Date as the result of a failure by You to fulfil Your obligations in clause 3 You will pay the Charges for that Service from the Proposed Start Date as if We had commenced providing the Service to You on that date.

2.4 We shall be entitled to:

- (a) change the technical specification of the Service where necessary for technical regulatory or operational reasons (provided that such changes do not materially affect the performance of the Service);
- (b) modify the Service (at no cost to You) provided that such changes do not materially affect the performance of the Service; and
- (c) give You instructions which We reasonably believe to be necessary for health and safety or security reasons or for maintaining the quality of the Service.

2.5 Suspension of Service

We shall be entitled to suspend Service:

- (a) with Your prior agreement or in the absence of Your agreement upon reasonable notice for planned maintenance to Our Internet Network, and/or the Service,
- (b) without notice when necessary for operational reasons, or in case of emergency;
- (c) to comply with any Legislation, court order or other governmental request or order requiring immediate action;
- (d) to prevent interference with, damage to, or degradation of Our Internet Network;
- (e) to eliminate a hazardous condition;
- (f) if You use the Service in a manner that will, does, or may expose Us to legal liability or that violates any applicable Legislation or the terms of the EULA and whether such use is by You, or any other entity or person using the Service, and whether or not such use is authorised by You;
- (g) without notice where We reasonably believe there has been a breach of clauses 6.1 and 6.2 of this Contract; and
- (h) if You fail to pay an amount when due and You still do not pay the amount due within 10 days after You receive a written notice from Us that an amount is due.

If We suspend the affected Service for any of the reasons outlined in clauses 2.5(g) or 2.5(h) and You cure the cause of the Service suspension within 30 days of receiving a notice from Us specifying the breach and the action required (the "Cure Period") We will resume the Service once You have paid Our reasonable charges associated with resuming the affected Service. We may terminate this Contract and/or the affected Service if You do not cure the cause of a Service suspension within the Cure Period or You do not pay the associated charges for Us resuming the Service. If such termination is effective prior to the expiry of the Initial Term, You will also pay Us the Early Termination Charges.

3 YOUR OBLIGATIONS

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

- (a) co-operate with all reasonable instructions We may provide from time to time in order to enable Us to provide the Service or otherwise perform Our obligations under this Contract;

(b) at all times have suitable computer hardware, software and telecommunications services and equipment installed on the Customer Equipment;

(c) change Your encryption password for the Service, as soon as reasonably possible following the Service Start Date. If You fail to do so, We shall not be liable for any damage You or Your Data may suffer as a consequence.

(d) activate Your licence key for the Service, as soon as reasonably possible following the Service Start Date. If You fail to do so, We shall be entitled to change Your licence key for You in accordance with clause 7;

(e) take appropriate security precautions and maintenance to maintain and safeguard Your Data for example (but not limited to) by regularly backing-up Your Data, regularly ensuring that Your Data has been backed up successfully and by using current up to date firewall and anti-virus software with appropriate security updates. If You discover that Your Data has not been backed-up successfully, then You must inform Us immediately;

(f) take appropriate security measures to safeguard the use of or access to the Service by any unauthorised person. You are responsible for any person who has access to the Service and You must ensure that they comply with this Contract;

(g) adhere at all times to the terms of the current EULA;

(h) comply with all applicable Legislation relating to Your use of the Service; and

(i) provide Us with full, accurate and up to date information on any matter which We reasonably believe is relevant to Our provision of the Services to You and provide such information within a reasonable time of being requested by Us to do so.

3.2 Prior to providing the Services to You, We may request You to provide Us with a physical copy of the Data from the Customer Equipment. If We do so, We will supply the Data Shuttle to You, to enable You to take a copy of the Data. You shall pay for any set-up costs associated with the delivery of the Data Shuttle to You and the return to Us.

3.3 You shall inform Us in writing prior to modifying, updating, upgrading or installing any Software or system which may affect the KCOM Equipment and/or Our ability to deliver the Service to You. If We are unable to continue to supply the Services to You as a consequence of any such modification, update or upgrade or installation, We shall not be liable to You as a consequence.

3.4 You shall comply with all reasonable instructions communicated by Us to You for the safe and proper use of the Customer Equipment from time to time

3.5 You will indemnify and keep Us indemnified from and against all costs, (including, without limitation, any legal costs and disbursements), expenses, damages, liabilities, losses, actions suffered by Us, directly or indirectly and whether wholly or in part resulting from failure by You to comply with the terms of clause 3 of this Contract. We will not be liable to You where We are unable to carry out Our obligations under this Contract as a result of a breach by You of the provisions of clause 3.

4 SOFTWARE AND EULA

4.1 To receive the Services you must accept the terms of the EULA when you install the Software.

4.2 We and our licensors reserve the right to amend the terms of the EULA from time to time. If the terms of the EULA are changed, We will place the current EULA on Our internet site at www.Heybusiness.kcom.com;

5 OUR OBLIGATIONS

5.1 You accept and agree that the Service that We provide to You is based on Your requirements as agreed and described in this Contract and that if the information You gave Us is incomplete, incorrect or inaccurate:

(a) We will not be responsible for providing a Service that fails to meet Your needs;

(b) We may review the Service and suggest changes which may have a price impact; and

(c) We may revise or replace the Service provided pursuant to this Contract.

6 USE

6.1 Under the terms of the Contract You will not use or permit any User or third party to use the Service for the purposes of sending, posting, publishing, distributing, disseminating or transmitting, storing, or in any way in connection with, any message communication or

material which is offensive, abusive, indecent, obscene, harassing or menacing or which does, or is intended to, cause annoyance, inconvenience or worry or which is fraudulent or defamatory or contains or breaches another party's proprietary information (including trademarks or other copyright material) or is otherwise unlawful or which (in Our reasonable opinion) brings the name of KCOM into disrepute or in any way which intentionally causes damage or disruption to the Service or which damages, or may damage, Our brand and/or Our reputation.

6.2 Both parties agree to fully co-operate with the Police and any other relevant authorities (the "Regulatory Authorities") in connection with any misuse or suspected misuse of the Service and You consent to Our co-operating with any Regulatory Authorities in connection with any suspected illegal and/or fraudulent activity related to or connected with the Service and You agree that We may divulge such information as the Regulatory Authorities may reasonably require in relation to this Contract.

7 STORAGE, RETENTION AND RESTORE

7.1 The amount of storage space available to You is as detailed in this Contract. You may increase the amount of storage space through additional orders. We shall charge You for such increased storage space at the same storage rate as We have agreed to supply the Services to You at this time as an additional service order.

7.2 You acknowledge that this is not an archive service. Any files You delete from Your Customer Equipment will only be available during the Retention Period. The default retention period for the Service is set at sixty (60) days.

7.3 Following provision of the Service, You shall be able to change the default provisions of the Services as further described in clause 8.

7.4 For the avoidance of doubt, We shall be entitled at any time and for any reason, to change the default scheduling of the Service. Prior to doing so, We will use Our reasonable endeavours to inform You in advance and request You to make the change. If You fail to comply with Our request, We will change the scheduling on Your behalf and inform You that We have done so.

7.5 You shall be entitled to perform a restore of Your Data on-line via the Services at any time. You will need Your encryption password in order to do so.

8 SERVICE REGRADES

8.1 Following provision of the Service, multi-user accounts will provide you with access to the Admin Console for the Service (the "Portal"). Through the Portal, You shall be able to allocate licences and quotas (GB) to individuals. If You require more licences or quotas (GB) You can request changes to the Service Elements. Such amendments shall be called "Service Regrades".

8.2 We shall either accept or reject Your request as soon as reasonably possible following Our receipt of Your request for a Service Regrade. There may be limitations with the Services that may require Us to reject Your Service Regrade request. In such circumstances, We may suggest a Service Regrade that We are able to supply to You. Once We have reached agreement regarding the Service Regrade, We commit to make available to You the Service Regrade required, subject to the terms of this Contract.

8.3 The Charges shall be in accordance with the Service Regrade You chose and You shall be liable for the payment of such Charges from the date of the implementation of the Service Regrade.

8.4 You will not be able to request a Service Regrade which has the effect of reducing any of the Service Elements or the Charges payable for the Service, during the Initial Term.

8.5 If You have selected a Service or a Service Regrade which is insufficient for Your purposes and You continuously use more storage space, accounts or any other Service Elements, than that provided pursuant to this Contract or any Service Regrade, We shall be entitled to recommend that You perform a Service Regrade, in accordance with this Contract.

8.6 If You do not perform a Service Regrade and You continually exceed the Service Elements:

- (a) You shall immediately pay Us on demand an amount equal to the difference between the Charges paid by You to date and the amount which would have been paid had the Charges applicable to the Service Elements actually being used by You applied from the Service Start Date; and

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- (b) We shall at Our option (without prejudice to any of Our other rights) be entitled to suspend the Service until We receive payment from You in accordance with clause 8.6(a).
- 8.7 You acknowledge that despite the provisions of this clause 8, You will be charged at the storage rate applicable to this Contract for any storage space used in excess of the storage space agreed with You under the Order or as amended pursuant to a Service Regrade.
- ## 9 SUPPORT SERVICES AND MONITORING AND REPORTING SERVICES
- ### 9.1 Support Services
- (a) In case of any difficulties, Our technical team will use its reasonable endeavours to provide support during the hours posted on the Web Site. Unfortunately We cannot guarantee that We will be able to resolve or give advice on all issues. We cannot accept liability for any issues arising from Your failure to follow our advice and recommendations or non-compliance with this Contract.
- (b) You will be required to give a username and password for the purposes of using the Services which encrypts Your Data, in order to provide You with file security, as further detailed in clause 3. You shall have sole responsibility for ensuring the safety of the password. We shall not be able to provide any support services to You if You forget Your encryption password.
- (c) The support service does not cover maintenance of hardware or software purchased from other vendors or software generated by You, or support outside the usual hours of support (as advertised on the Web Site).
- (d) You agree to co-operate with Us or Our suppliers in diagnosing faults including but not limited to carrying out any diagnostic and test routines yourself and allowing remote diagnostic tests if required.
- ## 10 DATA SECURITY
- 10.1 You acknowledge that You have sole responsibility for ensuring that the encryption password that You use in connection with the Service is kept safe and secure and is not compromised in any way. We shall not be liable to You for any damages, losses or liabilities arising as a consequence of:
- Your failure to retain your encryption password safely and securely;
 - any disclosure of Your Data as a result (which may include confidential information or personal data); or
 - Your inability to perform a Data restore as a result.
- 10.2 You are responsible for:
- ensuring that You log off from the Service when You have finished using it, in order to prevent third parties from viewing Your Data; and
 - taking appropriate steps to maintain and safeguard Your Data. You should ensure that the Services are operating fully pursuant to this Contract and ensure that regular backups of Your Data are made, pursuant to clause 3.1(e). You should ensure that You are running up to date virus software and adopting other appropriate security and maintenance procedures.
- 10.3 We will use our reasonable endeavours to maintain the confidentiality of Your Data. We will not conduct any cryptographic analysis of Your Data nor will We sell Your Data to a third party.
- ## 11 CHANGES TO THE SERVICE
- 11.1 We may from time to time make changes to the specifications in the Service Standards. Such changes will be notified to You not less than 30 days prior to their taking effect and if any such changes are considered material adverse changes, the parties will endeavour to agree such changes. If the parties fail to agree such changes, You may terminate this Contract upon 30 days notice. It is agreed that if You terminate the Contract pursuant to this clause 11.1, You shall not be liable to pay an Early Termination Charge.
- ## 12 CHARGES AND PAYMENT TERMS
- 12.1 The Charges in relation to each Service shall comprise a set-up charge (for all new and upgrade installations) and an ongoing monthly service charge.
- 12.2 You will pay Us all appropriate Charges at the rates, times and frequencies as set out in this clause 12 and as detailed in the Order and elsewhere in this Contract.
- The set-up Charges will be payable on or prior to the Service Start Date for the applicable Service.
 - The monthly Charges payable in relation to each Service will be payable monthly in advance commencing on the Service Start Date, unless otherwise stated in the Order.
- (c) Any other Charges shall be payable monthly in arrears.
- 12.3 We may charge such additional fees for any technical assistance that You may require at Our standard hourly rate (or such pro-rated amount thereof), for the provision of any technical support over and above that which We deem reasonable, in Our sole discretion.
- 12.4 We will issue invoices to You for the Service electronically via the Portal. We will notify You that Your invoice is available by email to the email address stated in this Contract. You must ensure that the email address is correct and shall notify Us immediately if Your email address changes. The invoice shall be deemed received by You, 2 days after We send notice to You (to the email address provided by You), that Your invoice is available. We reserve the right to issue a paper invoice to You should We deem it appropriate in Our sole discretion.
- 12.5 Following the expiry of the Initial Term, We may increase the Charges by giving You 30 days' prior notice. Notwithstanding the provisions of clause 1.1, You may terminate this Contract on 30 days written notice if You do not want to pay the increased Charges.
- 12.6 All Charges due under this Contract will be payable within 30 days of the date of the relevant invoice (the "Due Date") and will be paid in full without any set-off, deduction or withholding of any kind. If You have chosen to make payment of the Charges by Direct Debit, We will give You 14 days prior notice of Our intention to request payment from Your bank account. We reserve the right to charge daily interest on any outstanding amounts from the Due Date 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. In addition We may suspend the Service until all Charges have been paid in full pursuant to clause 2.5(h).
- 12.7 All Charges are exclusive of value added tax and any other applicable taxes.
- 12.8 Where any Charges or other monies properly due to Us or any member of the KCOM Group under this Contract or any other agreement 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 this Contract or any other agreements under which We or any member of the KCOM Group provides You with telecommunications or data services.
- 12.9 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 reasonable security deposit against non-payment. If You fail to provide such security deposit within 10 Working Days then We may suspend and/or terminate this Contract with immediate effect by giving written notice.
- 12.10 In respect of the KCOM Backup 1User (5GB) service only, there is no monthly service charge but a £1 set up charge applies.
- ## 13 SOFTWARE LICENCE
- 13.1 Any software or documentation provided by Us in connection with the provision of the Service is, and will remain, Our property or that of Our licensors.
- 13.2 We grant to You a non-exclusive licence for the duration of the Initial Term to use the Software in object code form for Your personal use only, on the Customer Equipment as follows:
- If We are supplying KCOM Backup Services to You – on one or more personal computers or laptops; or
 - If We are supplying KCOM Backup Services to You – on a server which may be used in conjunction with a number of personal computers or laptops, for the purpose of backing up on-line, retrieving and restoring Your Data.
- 13.3 You:
- will install and use the software on the Customer Equipment, as detailed in clause 13.2 above, and only as permitted for the Service taken. Please note that if the software is installed on a shared user laptop or PC then each User will be able to browse Your Data;
 - will not make any modifications to such software or documentation;
 - shall not (and shall not permit any third party to) copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the software in whole or in part except as permitted by law;
 - shall not resell, sub-license or assign the benefit or burden of this Contract in whole or in part, or allow the software to become the subject of any charge, lien or encumbrance,
- You will indemnify and keep Us indemnified against any costs, losses, damages, or liability that We may incur due to You amending or in any way altering such software or documentation, or using it for a purpose not permitted by this Contract.
- 13.4 You may make such number of back-up copies of the software as may be necessary for its lawful use. You shall record the number and location of all copies of the software and take steps to prevent unauthorised copying.
- 13.5 If the Service is materially impaired due to a problem with the software then We shall, at Our option, do one of the following:
- repair the Software; or
 - replace the Software; or
 - terminate this Service immediately by notice in writing to You and refund any of the Charges paid by You as at the date of termination (less a reasonable sum in respect of Your use of the Service to the date of termination) on return of the software (and all copies), provided that You provide all the information that may be necessary to assist Us in resolving the defect or fault, including sufficient information to enable Us to re-create the defect or fault.
- 13.6 Upon termination of this Contract, each party shall immediately cease to use the others software and/or documentation supplied under this Contract and (at the others absolute discretion) shall return or destroy the same.
- 13.7 Any software contained on the Service and any software or documentation provided by Us in connection with the provision of the Service is, and will remain, Our property or that of Our licensors.
- 13.8 If the terms of this clause 13 conflict with any of the terms of the EULA, the terms of the EULA shall take precedence.
- ## 14 TERMINATION
- 14.1 If either party is:
- in breach of any provision of this Contract and fails to remedy such breach within 30 days' of written notice to do so;
 - unable to pay its debts as they fall due or threaten to suffer any resolution to wind up the 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 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.
- 14.2 We may terminate this Contract (either in whole or in part) with immediate effect if:
- You are in breach of clause 6.1 or 6.2 as breach may be a criminal offence and/or cause serious harm to Our reputation; and/or
 - KCOM's authorisations to provide the Services are altered in a way that is material to the Service.
- 14.3 We will continue to provide the Services in accordance with Clause 2 until termination of this Contract but if:
- You are late in making any due payment, or
 - We become entitled to terminate this Contract early for any reason, or
 - 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.
- 14.4 If You choose to terminate this Contract prior to the end of the Initial Term, other than pursuant to clause 14.1, You must give Us not less than 30 days written notice and pay Us an early termination charge ("Early Termination Charge"). The Early Termination Charge will be the monthly Charge multiplied by the number of remaining months of the Initial Term.
- 14.5 You acknowledge that Our Charges have been calculated on the basis that this Contract will continue until the end of the Initial Term as We may have spent money on set up costs and accordingly agree that it is reasonable for Us to require the payment of the Early Termination Charge as calculated above.
- 14.6 Upon termination of this Contract:
- We will not provide any further Services in respect of Your Data;

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- (b) You will use the Service to obtain a full restore of Your Data within thirty (30) days of the date of termination;
- (c) Subject to clause 14.6(b), You will cease to use the Service and will pay to Us all outstanding Charges due up to and including the date of termination; and
- 14.7 Following the expiry of thirty (30) days from the date of termination of the Contract, We will delete Your Data from the KCOM Equipment, without any liability for loss or damage.
- 14.8 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.
- ## 15 LIMITATION OF LIABILITY
- 15.1 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, sub-contractors or agents; or
- (c) breach of the terms implied by s. 12 of the Sale of Goods Act 1979; or
- (d) the indemnity set out in clauses 3.5 and 13.3.
- 15.2 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 liabilities (if any) are excluded to the fullest extent permitted by law.
- 15.3 Without prejudice to clause 15.1, We shall not be liable to You whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any:
- (a) loss of business; or
- (b) loss or corruption of data or information; or
- (c) loss of profits; or
- (d) loss of goodwill; or
- (e) loss of business opportunity; or
- (f) loss of anticipated savings even when advised of the possibility,
- suffered by You under or in connection with this Contract.
- 15.4 Without prejudice to clause 15.1, We shall not be liable to You whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any special, indirect or consequential loss or damage (including legal and other professional fees and expenses) or expenses of any nature.
- 15.5 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.
- 15.6 Without prejudice to clauses 15.1 and 15.5, each party's maximum aggregate liability in connection with this Contract whether arising in contract, tort (including negligence) or restitution or for breach of statutory duty or misrepresentation, or otherwise, shall be limited in the aggregate in each Contract Year to the greater of:
- (a) £250,000 (two hundred and fifty thousand pounds); and
- (b) the value of the Charges paid by You in the preceding Contract Year (the "Liability Sum")
- 15.7 With reference to clause 15.6, in the event that a Contract Year has not elapsed from the Service Start Date, the Liability Sum will be calculated by multiplying the monthly Charges incurred over the elapsed period by 12.
- 15.8 We will not be liable to You in any circumstances for or in connection with any merchandise, information, and/or products provided or accessed via the internet.
- 15.9 The limitations of liability set out in this clause 15 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 15 to any other liabilities You may incur under or in connection with this Contract.
- 15.10 This clause sets out each party's entire financial liability (including any liability for the acts or omission of their respective employees, agents or subcontractors) to the other in respect of:
- (a) any breach of this Contract; or
- (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 negligence) arising under or in connection with this Contract.
- ## 16 FORCE MAJEURE
- 16.1 Neither party will be liable to the other for any loss or damage caused to or suffered by the other 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 control (a "Force Majeure Event"). If either party is prevented from performance of its obligations for a continuous period of 3 months either party may terminate the Contract by giving written notice.
- ## 17 GENERAL
- 17.1 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.
- 17.2 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 will operate to limit or exclude any liability for fraud.
- 17.3 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.
- 17.4 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.
- 17.5 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.
- 17.6 Members of KCOM Group may enforce their rights under 12.8 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 this Contract (but this does not affect any rights or remedies of a third party which exist or are available apart from that Act).
- 17.7 You may not assign the whole or part of this Contract without Our prior written consent such consent not to be unreasonably withheld.
- 17.8 We may assign this Contract to any company which from time to time is a member of the KCOM Group.
- 17.9 Subject to clause 17.8, We may not assign this Contract to any other third party without Your prior written consent such consent not to be unreasonably withheld.
- 17.10 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 be in writing and agreed between the parties.
- 17.11 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 from time to time.
- 17.12 Any notice addressed as provided in clause 17.11 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.
- 17.13 Notwithstanding anything to the contrary, You acknowledge and agree that We may use Your information (which may include Your or Your suppliers', customers', affiliates' or contractors' personal data and/or personal data relating to Your or Your suppliers', customers', affiliates' or contractors' employees or staff) ("Customer Information") for the purpose of supplying the Services to You, administering this 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 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 emailing businessmarketing@Heybusiness.kcom.com.
- 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.
- 17.14 We shall be entitled to carry out credit checks on You. We may use information that We hold about You from Our own records and/or We may request information from a credit reference agency. We accept no liability for the accuracy or otherwise of information provided to Us from credit reference agencies. If at any time before or during the term of this Contract You fail to meet the standard of creditworthiness deemed acceptable by Us, We shall be entitled to:
- (a) terminate this Contract, in whole or in part immediately on written notice to You;
- (b) require You to make a deposit as security against future payments or such regular instalment payments in advance on account of any future charges as We shall deem appropriate;
- (c) impose credit limits on You in respect of Charges and to suspend the Service at any time when such limits are reached until payment in full of such outstanding Charges has been made; and
- (d) impose such other measures on Your right to use any of the Services as We shall deem appropriate.
- 17.15 This Contract will be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.
- ## 18 DATA PROTECTION
- 18.1 It is agreed that You are the Data Controller and We are the Data Processor with those expressions having the meaning given to them in the Data Protection Act 1998 (the "Act").
- 18.2 The parties acknowledge that in providing Services to You, We may process Personal Data including without limit transferring it outside the European Economic Area and/or disclosing it to third parties.
- 18.3 We shall:
- (a) put and in place adequate, technical and organisational security measures so that the confidentiality of this processing complies with the Act; and
- (b) only act in accordance with Your instructions as reasonably necessary for the provision of the Service when processing Personal Data.
- 18.4 You shall:
- (a) comply fully with all of Your obligations under the Act and not cause Us to be in breach of the Act;
- (b) obtain adequate consents from Your customers and/or employees for any transfer of Personal Data; and
- (c) be responsible for the instructions You may give Us regarding the processing of Personal Data.
- ## 19 DEFINITIONS
- 19.1 Except where the Contract otherwise requires the following terms shall have the following meanings the singular shall include the plural and one gender shall include all genders:
- "Charges" any set up charges for new and Service Regrade installations, any monthly charges, additional usage charges, ad hoc charges or other charges payable by the Customer;
- "Contract" means these Terms and Conditions, the Order and all other parts of this document and any of the same as may be amended from time to time;
- "Contract Date" the date that We accept Your Order and agree to enter into this Contract, which will be the date of Our email or letter to You that states that We agree to enter into this Contract;
- "Contract Year" a period of 12 months from and including the Service Start Date and each consecutive 12 month period thereafter (but additionally including the period between the Contract Date and the Service Start Date in respect of the first Contract Year);
- "Cure Period" has the meaning given in clause 2.5;



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"Customer Equipment" a personal computer, laptop or server equipment that You use to enable You to use the Service

"Data" the data that You choose to backup using the Service;

"Data Shuttle" the equipment We send to You to enable You to make a physical copy of Your Data from the Customer Equipment;

"Early Termination Charge" has the meaning given in clause 14.4;

"EULA" is the end user licence agreement you must enter into with our licensors when installing the Software.

"Force Majeure Event" an event of force majeure as that term is described in clause 16.

"Industry Agreements" any standard industry agreements or third party agreement which impact upon KCOM's ability to provide the Service;

"Initial Term" the period of time, which shall be no less than 12 months, stated in the Order which commences on the Service Start Date and "Term" means the Initial Term together with any further period during which We provide Service to You pursuant to clause 1.1;

"Internet Network" Our infrastructure at the Site which is connected to the internet via Our high bandwidth fully meshed national IP network;

"KCOM Group" means Us, Our holding company, Our subsidiaries, and any subsidiary of Our holding

company. The terms "subsidiary" and "holding company" have the meanings given to them by section 1159 and Schedule 6 of the Companies Act 2006 (as amended);

"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;

"Order" means the order for the Services placed by You via the telephone, the material details of which will be confirmed to You in writing by email or letter on or after the Contract Date;

"Personal Data", "personal data" and "Sensitive Personal Data" have the meaning given to those terms under the Data Protection Act 1998;

"Portal" means an area on Our website through which You can access Your account details and allocate licences and Quota;

"Proposed Start Date" the date (if any) specified in the Order or as amended on which the Service is due to be made available to You;

"Service" the provision of the KCOM Backup services that are selected by You, the supply of the Software and the retrieval and restoration of Your Data via a secure, fast transmission over the internet and associated support as specified in this Contract;

"Service Elements" means the technical aspects of the Services including storage, number of accounts or any other element of the Services;

"Service Regrade" means changes to certain elements of the Services, as agreed by Us, pursuant to clause 8;

"Service Standards" the document incorporated into this Contract set out below these Terms and Conditions;

"Service Start Date" the Proposed Start Date or if different the date upon which the Service is made available for use in accordance with the terms of this Contract;

"Site" means the site from which We will provide the Services to You;

"Software" the backup software and any modification, update or upgrade which is acquired by You and/or provided by Us during the Initial Term;

"User" any individual or organisation authorised by You to use the Service;

"We/Us" KCOM Group Plc, trading under the name KCOM (registered number 2150618) whose registered office is at 37 Carr Lane, Hull, HU1 3RE;

"Working Day" Monday to Friday inclusive except for UK bank and public holidays;

"You" or "Your" means the person or company to whom the Service is provided.



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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.

2 SERVICE DESCRIPTION

2.1 General

KCOM Backup allows an organisation to automate or schedule backups on a monthly basis. The service provides access to backup and restore files via the Backup & Restore software, via Web Access and via a mobile client.

2.2 Service Options

The Services are available with the following options:

KCOM BACKUP			
	Backup Licence*	Backup Size	Admin Console
KCOM Backup 1User	Single PC	5GB	No
KCOM Backup 1User	Single PC	50GB	No
KCOM Backup 50GB	Multiple PC's	50GB	Yes
KCOM Backup 100GB	Multiple PC's	100GB	Yes
KCOM Backup 250GB	Multiple PC's	250GB	Yes
KCOM Backup 500GB	Multiple PC's	500GB	Yes
KCOM Backup 1000GB	Multiple PC's	1000GB	Yes
KCOM Backup 3000GB	Multiple PC's	3000GB	Yes
KCOM Backup 5000GB	Multiple PC's	5000GB	Yes

* Multiple PC's means a restriction free licence count subject to a minimum quota of 1GB per licence, suitable for PC's, MACs or Servers.

2.3 Service Details

Backup made easy: KCOM backup saves your business time and money with simple, secure, and affordable backup solutions for computers and servers. You can be up and running in no time, as KCOM Backup gives you the flexibility to deploy and manage multi-user environments from the convenience of a single online administrative console.

Back up locally and online with KCOM Backup 2xProtect. A sound backup strategy involves both a local and an offsite copy of your data. 2xProtect, available Windows, delivers both at no additional cost.

Professional support: KCOM Technical Support are available via email and phone 8am-6pm Monday to Friday & 8am-4pm Saturday, with fault logging outside these hours, to assist you with any recovery issues you may have.



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Administrative Console: This allows you to:

- Create sub-administrators
- View account usage, history, and stats
- Generate & email reports automatically
- Change account status
- View and distribute license keys
- Customize configuration settings

Through the KCOM Backup software users can:

- Select folders and files to back up
- Set automatic and scheduled backups
- See a history of all backups
- Configure options and set bandwidth throttling
- Restore files and folders
- Enable local backup with 2xProtect

KCOM Backup feature set

Fast

- Data Shuttle: Move terabytes to the cloud in no time with the Data Shuttle service.
- File scanning: Back up millions of files effortlessly with advanced file scanning.
- Incremental backups: After the initial backup, KCOM Backup only backs up new or changed portions of files, saving bandwidth and ensuring future backups are lightning fast.

Simple

- Easy account management: Manage multiple desktops and servers from anywhere with the online Admin Console and custom reports regarding the backup health of your account.
- Automatic or scheduled backups: Set KCOM Backup to back up automatically or to a schedule you choose.
- Custom configurations: Set policies on bandwidth usage and backup speeds, create custom backup sets or define what file types should be backed up.
- Reliable data restores: Browse and search your backed up files, then restore file versions up to 30 days in the past. Files may be restored on the web, via the software client, or by ordering a DVD restore.
- Local backup with KCOM Backup 2xProtect: Windows users can back up locally to an external device as well as online to the KCOM Backup data centres for double protection.

Secure

- Encryption: All user data is encrypted locally with military- grade encryption prior to transfer. Choose a managed encryption key or a personal key for added security.
- World-class data centres: Data is stored in state-of-the-art data centres, which employ the highest security standards.
- Audits and certifications: KCOM Backup is SSAE 16 audited and ISO 27001 certified.
- Near continuous data protection: KCOM Backup automatically detects and backs up new and changed files.



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Flexible

- Mobile app: Access your data from any iOS or Android device with the free KCOM Backup mobile app.
- SQL, Exchange, SharePoint, and network drive support:
- KCOM Backup backs up all open and locked files as well as common business applications running on Windows servers.
- Windows and Mac support: KCOM Backup supports Windows 8, 7, 2008, Vista, XP, and 2003, 2012 (desktop/server) and
- Mac OS X 10.8, 10.7, 10.6, 10.5, & 10.4 (desktop/server).
- Open and locked file support — KCOM Backup backs up all open and locked files, including Outlook PST files.

3 SERVICE DELIVERY

3.1 Delivery Management

We will use our reasonable endeavours to ensure that the KCOM Backup Service is Ready for Use from the Proposed Start Date. Single user accounts will be sent download instructions for the software and a licence key to activate the software. Multi-User accounts will be given access to

an administration portal to activate User accounts. Billing will commence once the portal and licences have been made available to you. You are responsible for provisioning of your KCOM Backup Service with your end users.

3.2 Restrictions

If You cancel an order, or significantly modify it (e.g. changes in 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.

4 SERVICE AVAILABILITY

4.1 Our Obligations

We will use all reasonable endeavours to provide the Services 24 hours a day throughout the year, excluding planned maintenance. Our Service Availability obligation will be achieved if the Services are available for 99.9% of the time during each calendar month, commencing on the Service Start Date.

4.2 Restrictions

4.2.1 Planned Outages

Planned Outages caused by the carrying out of any planned maintenance services on the KCOM Group Network or on any of our equipment previously notified to you shall not be deemed occurrences of unavailability for the purposes of calculating Service Availability under this Service Standard. Planned Outages may occasionally be necessary for us to carry out essential Maintenance work or network upgrades, these will be kept to a minimum.

Except in an emergency or when circumstances are beyond our reasonable control, we will give you advance notice of any planned maintenance which will impact service availability.



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4.2.2 Customer Responsible Faults

Outages which are the result of actions or omissions of the Customer shall also not be included when calculating the Service Availability. In the event that a fault is identified as being attributable to the action of the Customer, employees or agents of the Customer, the fault shall be deemed the responsibility of the Customer. Any service unavailability shall not be included in the Service Availability calculation.

5 INCIDENT MANAGEMENT

5.1 Incident Reporting

In the event that you become aware of any problem or a breakdown in the operation of the Services, you should notify us by contacting the Service Desk using the following methods:

- Email via businesstechsupport@kcom.com; or telephone the Technical Support Centre on 0808 208 3000, 08:00 to 18:00 weekdays Monday to Friday, 08:00 to 16:00 Saturday. Outside these hours you can log a fault with us that will be acted upon the Next Working Day.

5.2 Our Obligations

The Time to Resolve (TTR) targets for Your Service will vary depending on the type of fault. We will endeavour to resolve issues via the Service Desk in working hours. Faults that require escalation from the service desk have the following TTR.

KCOM BACKUP	
Backup	Business Care TTR
Service issue affecting all users	Same Day Response, if reported before 12 noon, else Next Working Day, Monday – Friday 8am-6pm
Service issue affecting single user	End of Next Working Day Response, Monday – Friday 8am-6pm

6 DEFINITIONS

Customer Responsible Faults

In the event that a Service affecting or non-Service affecting fault is identified as being attributable to Customer Equipment, customer network, software, content, any actions or omissions of you or your employees or agents the fault shall be deemed your responsibility. Any service unavailability shall not be included in Service Availability calculations.

Fault Reference Number

The unique number issued when logging a fault with us.

Planned Outage

All necessary equipment maintenance or network upgrades will, wherever possible, be planned to avoid any interruption to the provided Service. In general planned work would be scheduled at low traffic periods to minimise any disruption. Except in an emergency, or when events outside our control do not allow, We will provide 24 hours' notice to You of any planned works that will affect the availability of the service.



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Service Availability

The time for which our Service is usable, expressed as a percentage of the time during the Service Measurement Period. A Service shall be deemed available for the purposes of calculating Service Availability if it is not usable due to an event outside of our control (including any Force Majeure Events), a Customer Responsible Fault, a third party attributable fault or is due to a Planned Outage.

For the avoidance of doubt, a Force Majeure Event includes denial of service attacks, mail bombing and other flooding techniques.