

Standard Terms and Conditions for the provision of Office 365 Services

1 TERM

- 1.1 This Contract will come into effect on the Commencement Date. The Contract will continue until the expiry of one Contract Year ("the Initial Term"). Following the expiry of the Initial Term this Contract shall continue for subsequent periods of no less than 12 months ("the Renewal Term") unless terminated in accordance with this Contract.
- 1.2 Subject to clause 1.1 You may terminate this Contract by giving Us no less than 30 days written notice prior to the expiry of the Initial Term or any subsequent Renewal Term.
- 1.3 We may terminate this Contract by giving You 30 days' written notice at any time.
- 1.4 You acknowledge and agree that this Contract is conditional on Us carrying out a Survey between the Commencement Date and any Proposed Start Date and/or the Service Start Date (and/or after the Service Start Date in respect of any Migration Services). Where the outcome of the Survey is such that (in Our reasonable discretion) We would be unable to provide the Service to You, We may terminate this Contract (or any relevant part thereof) immediately on written notice to You (without any liability to You).

2 PROVISION OF THE SERVICE

- 2.1 We will provide the Service from the Service Start Date, subject to these terms and conditions and this Contract. We shall use Our reasonable endeavours to provide the Service in accordance with the relevant Product Schedule and the provision of the Service shall otherwise be subject to the relevant Product Schedule.
- 2.2 We will use Our reasonable skill and care in the provision of the Service and We will use Our reasonable endeavours to make the Service and Software operationally available to You throughout the duration of this Contract (subject to the terms of this Contract), 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 or any particular service level.
- 2.3 If You request the Migration Service, the Migration Terms shall apply. The Migration Service will run in parallel with the provision of the Service from the Service Start Date.
- 2.4 In the event that We are unable to provide the Service by any Proposed Start Date as the result of a failure by You to fulfil Your obligations, 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. In such circumstances, the Service Start Date shall be deemed to be the Proposed Start Date.
- 2.5 We shall be entitled without Your consent to:
- change the technical specification of the Service where necessary for technical, regulatory or operational reasons (provided that such changes do not materially affect the performance of the Service);
 - modify the Service (at no cost to You) provided that such changes do not materially affect the performance of the Service;
 - amend Our Acceptable Use Policies from time to time. If We change Our Acceptable Use Policies We will place Our current Acceptable Use Policies on Our web site at www.business.kcom.com; and
 - give You instructions which We reasonably believe to be necessary for health and safety or security reasons or for maintaining the quality of the Service.
- 2.6 Suspension of Service
- We shall be entitled to suspend the Service (without any liability to You):
- with Your prior agreement, or in the absence of Your agreement upon at least 24 hours' prior notice or in accordance with clause 2.6(b), for planned maintenance to the Network Service or Software or to equipment used to provide the Service;
 - without notice when necessary for operational reasons, or in circumstances outside of Our reasonable control, or in case of emergency;
 - without notice to comply with any Legislation, court order or other governmental request or order requiring immediate action;
 - without notice to prevent interference with, damage to, or degradation of the Network;

- without notice to eliminate a hazardous condition;
- without notice 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 Our then current Acceptable Use Policies and whether such use is by You, or any other entity or person using the Service, and whether or not such use is authorised by You;
- without notice where We reasonably believe there has been a breach of clauses 8.1 and/or 8.2 of this Contract; and/or
- without notice 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.

Without prejudice to Our other rights and remedies, if We suspend the affected Service for any of the reasons outlined in clauses 2.6(f), 2.6(g) or 2.6(h) and (if it is possible to cure) You cure the cause of the Service suspension within 10 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 then current 30 Day Period, You will also pay Us the Rental Charges for the terminated Services to the end of the then current 30 Day Period and any other outstanding Charges due and payable.

- 2.7 The Services provided by Us to You in accordance with this Contract shall be subject to the KCOM Office 365 Service Level Agreement.

3 YOUR OBLIGATIONS

- 3.1 You shall, at Your own cost:
- co-operate with all reasonable instructions that We may provide from time to time in order to enable Us to provide the Service or otherwise perform Our obligations under this Contract;
 - at all times have suitable computer hardware, software and telecommunications services and equipment for use with the Service;
 - take appropriate security precautions and maintenance to maintain and safeguard Your Data for example (but not limited to) by regularly backing-up Your Data and by using current up to date firewall and anti-virus software with appropriate security updates;
 - 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;
 - adhere at all times with Our Acceptable Use Policies and procure the same from any employees, directors and/or agents who use the Service;
 - comply with all applicable Legislation relating to Your use of the Services; and
 - 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 You confirm that You understand, that the Cloud PBX Service:
- may not offer all of the features You may expect from a 'traditional' fixed-line telephony service, including (without limitation) the Service constraints detailed in the Product Schedule
 - may sometime be unavailable as a result of matters beyond Our control, such as power disruptions, etc. You acknowledge that on occasion, parts or all of the functions of the Cloud PBX Service may be unavailable, including access to Emergency Call Services;
 - may not offer the ability to transfer (port) Your existing number to an alternative service if Your Service ends, depending on the type of Cloud PBX Service deployed.
- 3.3 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.

- 3.4 You may only use the Service for business purposes and not for residential purposes.
- 3.5 You will indemnify and keep Us indemnified from and against any and all costs, (including, without limitation, any legal costs and disbursements), expenses, damages, liabilities, losses, or 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.
- 3.6 We will not be liable to You where We are unable to carry out any or all of Our obligations under this Contract as a result of: (a) a breach by You of any of the provisions of this Contract; or (b) Your negligence or any other act or omission by You or Your employees or agents; or (c) faults with, defects in, or problems with Customer Equipment; or (d) faults with, defects in, or problems with Your network, software or content; or (e) the acts or omissions of a third party which are beyond Our reasonable control.

4 SOFTWARE LICENCE

- 4.1 Any Software or Documentation provided by Us in connection with the provision of the Services is, and will remain, Our property or that of Our licensors. All Intellectual Property Rights in the Software, Documentation and Services are owned by, and will remain vested in, Us or Our licensors. Nothing in this Contract shall operate to assign or otherwise transfer ownership of any such Intellectual Property Rights to You or any third party.
- 4.2 You are granted a non-exclusive, non-transferable, limited right to use the Software and Documentation during the term of this Contract and only for the purpose of using the Service.
- 4.3 You agree to be bound by and comply with the licensing terms of Our licensors as set out in clause 6, in respect of Microsoft software and Licensed Products. Where any other Software or Documentation is owned, or licensed to Us, by another third party supplier who determines any terms upon which that Software or Documentation is licensed to You, We shall, if required by that third party supplier or Us, procure the grant of a licence encompassing those terms directly from such third party supplier to You and You shall comply with the terms of such licence.
- 4.4 You agree to be bound by and comply with Microsoft's Skype for Business Online PSTN Service Use Terms as published here: <https://support.office.com/en-gb/article/Skype-for-Business-Online-PSTN-services-use-terms-dc6e95cd-51e8-49ca-bcd3-78dc9dae486a?ui=en-US&rs=en-GB&ad=GB> as varied or substituted from time to time.
- 4.5 You:
- shall not make any modifications to the Software or Documentation or use the Software or Documentation in any manner not expressly authorised in this Contract;
 - shall not (and shall not permit any third party to) copy, adapt, reverse engineer, decompile, disassemble, modify or make error corrections to the Software in whole or in part except as permitted by law or clause 6.5;
 - shall not rent, lease, lend, make available or distribute the Software or the Documentation; assign the benefit or sub-contract the burden of this Contract in whole or in part; or allow the Software or Documentation to become the subject of any charge, lien or encumbrance; and
 - shall not (and shall not permit any third party to) export the Software, Documentation or any hardware upon which the Software is embedded, out of the UK without the prior written consent of Us or Our licensors.
- 4.6 You shall not resell the Services or sub-licence the Software or Documentation to any third party, without Our express consent. Such consent shall be at Our sole discretion and subject to You entering into a separate contract with Us.
- 4.7 You shall not modify, obscure or remove any copyright or proprietary notices on the Software or Documentation and You shall reproduce such notices on any authorised copies of the Software or Documentation or part thereof You may make in the format in which they appear on the original.
- 4.8 You will permit Us or the Software or Documentation licensor, upon reasonable notice, to enter during normal working hours any premises owned or controlled by You in order to review Your use of the Software and/or the Documentation and to ensure that You are using the

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same in accordance with this Contract and You will (as an additional obligation) provide all information requested by Us or Our software licensors in relation to Your use of the Software and Documentation (at Your own cost).

4.9 You will indemnify and keep Us indemnified against any and all costs, losses, damages, or liability that We may incur due to: (i) You amending or in any way altering the Software or Documentation, or using it for a purpose not permitted by this Contract; (ii) Your breach of this clause 4 or any of the provisions of Our licensors as set out in clause 6, in respect of Microsoft software and Licensed Products; or (iii) any third party claim in relation to Your unlawful or improper use of the Software or Documentation (including where such a claim arises due to a breach by You of the terms of this Contract).

4.10 If You become aware of an IPR Claim, You will:

- promptly and fully notify Us of the IPR Claim;
- allow Us to conduct all negotiations and proceedings and to settle the IPR Claim if We require such;
- take such action as We may reasonably request to avoid, dispute, compromise or defend the IPR Claim;
- provide Us with any reasonable assistance regarding the IPR Claim as is required by Us, and
- not make any admission of liability, agreement or compromise in relation to the IPR Claim without Our prior written consent.

4.11 Upon termination of this Contract, Your right to use the Software and/or the Documentation shall cease and You shall, at Our absolute discretion, return or destroy the same (if applicable) and otherwise cease use.

5 SERVICE FAILURE AND WARRANTIES

5.1 If the Service is materially impaired due to a fault, defect or problem with the Software or Network, or if there is any other material Service failure, then We shall, at Our option, do one of the following:

- use reasonable endeavours to repair the Software or Network, and where the Service is unavailable You will not be charged (and shall be refunded if applicable) for each full day that the Service is unavailable; or
- use reasonable endeavours to replace or modify, or otherwise remedy the failure of, the Software, Network or Service, and where the Service is unavailable You will not be charged (and shall be refunded if applicable) for each full day that the Service is unavailable; or
- (if We have failed to achieve either the repair of, or replacement / modification / remedy of, the Software, Network or Service (as applicable) in accordance with clauses 5.1(a) or 5.1(b)) within 15 days of Us becoming aware of the issue) terminate, or allow You to terminate, the Service immediately by notice in writing (without You being required to pay the Rental Charges from the date of termination to the end of the then current 30 Day Period and We will issue a credit note for any Rental Charges paid in advance in respect of the period between the date of termination and the end of that 30 Day Period),

subject to You providing all the information and assistance that may be necessary to assist Us in resolving the fault, defect or problem, or other failure, including sufficient information to enable Us to re-create the defect, fault or problem (if applicable).

You acknowledge and agree that the refund or waiver of Charges from the date of termination to the end of the then current 30 Day Period on termination under clause 5.1(c) and/or any refund or waiver of Charges under clauses 5.1(a) or 5.1(b) shall constitute Your sole and exclusive financial remedies for any Service failure or disruption or Service unavailability.

5.2 We will not be responsible for, You shall have no claim or entitlement in relation to, and clause 5.1 shall not apply to, any fault, defect or problem with the Software or Network, or any other Service failure or disruption, if such is caused by or is attributable to;

- a suspension of Service under the terms of this Contract;
- an error or act by or of You;
- Your, or any third party's, services, software, network, computer system, wiring, cabling, telecommunications lines, or equipment not provided by Us under or pursuant to this Contract;
- any changes, modifications, updates, alterations or enhancements to the Software, Documentation

or Customer Equipment not provided by Us under or pursuant to this Contract or caused by the incorrect use, abuse or corruption of the Software, Documentation or Customer Equipment, or by the use of the Software or Service with other computer programs or on equipment with which it is incompatible;

- any inaccuracies, delays, interruptions, or errors occurring as a result of incorrect data or data which does not conform to required input formats;
- any changes, modifications, updates, alterations or enhancements to, and any inaccuracies, delays, interruptions or errors caused by, any software, equipment or services not provided and/or developed by Us under or pursuant to this Contract;
- faults or omissions of the internet;
- a virus introduced negligently or otherwise by You on to Customer Equipment (such as where You fail to abide by Our or Our third party providers' virus protection policy or Your failure to introduce virus scanning in accordance with Our reasonable recommendation);
- the Software, Service, or Network being used other than as permitted by this Contract; any breaches by You of the terms of this Contract or a breach of Our or Our third party providers' security policies; and/or
- without prejudice to any of the foregoing, where clause 3.5 or 17.1 applies.

5.3 If a Service fault, defect or problem is found upon investigation by Us not to be Our responsibility under this Contract We may (without prejudice to Our other rights and remedies) in Our sole discretion charge You on a time and materials basis at Our then current rates for all time spent and all costs and expenses reasonably and properly incurred by Us in the course of or in consequence of such investigation.

5.4 You warrant that You have full capacity and authority to enter into and to perform this Contract and that this Contract is accepted and/or executed by Your duly authorised representative.

5.5 You acknowledge that You have all responsibility for selecting the Software to meet Your requirements. We do not warrant that the Software will be suitable for such requirements nor that any use will be uninterrupted or free of minor defects.

6 MICROSOFT LICENCE

This clause governs the use of Microsoft software which includes computer software or services provided to You by Us and which may also include associated media, printed materials, and "online" or electronic documentation (individually and collectively, "Licensed Products"). We do not own the Licensed Products (and the Licensed Products are licensed to Us by Microsoft and Our direct supplier of the Licensed Products) and the use thereof is subject to certain rights and limitations of which We must inform You. Your right to use the Licensed Products is subject to the terms of Your Contract with Us and Our contract with Our direct supplier of the Licensed Products, and to Your understanding of, compliance with, and consent and agreement to the following terms and conditions (and You hereby give Us and Microsoft such consent and agreement), which We do not have authority to vary, alter, or amend.

6.1 **Definitions**
"Client Software" means software that allows a Device to access or utilize the services or functionality provided by the Server Software.

"Server Software" means software that provides services or functionality on a computer acting as a server.

"Redistribution Software" means the software described in clause 6.4 ("Use of Redistribution Software") below.

6.2 Ownership of Licensed Products

The Licensed Products are licensed to Us from an affiliate of the Microsoft Corporation (collectively "Microsoft"). All title and intellectual property rights in and to the Licensed Products (and the constituent elements thereof, including but not limited to any images, photographs, animations, video, audio, music, text and "applets" incorporated into the Licensed Products) are owned by Microsoft or its suppliers. The Licensed Products are protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. Your possession, access, or use of the Licensed Products does not transfer any ownership of the Licensed Products or any intellectual property rights to You. You may only use the

Licensed Products in accordance with the terms of this Contract.

6.3 Use of Client Software

You may use the Client Software installed on Your Devices by Us only in accordance with the instructions, and only in connection with the Services, provided to You by Us. The terms of this document permanently and irrevocably supersede the terms of any Microsoft End User License Agreement that may be presented in electronic form during Your use of the Client Software.

6.4 Use Of Redistribution Software

In connection with the Services provided to You by Us, You may have access to certain "sample," "redistributable" and/or software development ("SDK") software code and tools (individually and collectively "Redistribution Software"). **YOU MAY NOT USE, MODIFY, COPY, AND/OR DISTRIBUTE ANY REDISTRIBUTION SOFTWARE UNLESS YOU EXPRESSLY AGREE TO AND COMPLY WITH CERTAIN ADDITIONAL TERMS CONTAINED IN THE MESSAGING SERVICES USE RIGHTS APPLICABLE TO YOU BY US.** Microsoft does not permit You to use any Redistribution Software unless You expressly agree to and comply with such additional terms, as provided to You by Us.

6.5 Copies

You may not make any copies of the Licensed Products; provided, however, that You may (a) make one copy of Client Software on Your Device as expressly authorized by Us; and (b) You may make copies of certain Redistribution Software in accordance with clause 6.4 (Use of Redistribution Software). You must erase or destroy all such Client Software and/or Redistribution Software upon termination or cancellation of Your Contract with Us, upon notice from Us or upon transfer of Your Device to another person or entity, whichever occurs first. You may not copy any printed materials accompanying the Licensed Products.

6.6 Limitations on Reverse Engineering, Decompilation and Disassembly

You may not reverse engineer, decompile, modify, or disassemble the Licensed Products, except and only to the extent that applicable law, notwithstanding this limitation, expressly permits such activity.

6.7 No Rental

You may not rent, lease, lend, pledge, or directly or indirectly transfer or distribute the Licensed Products to any third party, and You may not permit any third party to have access to and/or use the functionality of the Licensed Products.

6.8 Termination

Without prejudice to any other rights and remedies, We may terminate Your rights to use the Licensed Products if You fail to comply with this clause 6. In the event of termination or cancellation of Your Contract with Us or Our agreement under which the Licensed Products are licensed to Us, You must stop using and/or accessing the Licensed Products, and destroy all copies of the Licensed Products and all of its component parts and all Your rights to use the Licensed Products and the Services shall automatically terminate.

6.9 No Warranties, Liabilities Or Remedies By Microsoft

ANY WARRANTIES, LIABILITY FOR DAMAGES AND REMEDIES, IF ANY, ARE PROVIDED SOLELY BY US AND NOT BY MICROSOFT, ITS AFFILIATES OR SUBSIDIARIES.

6.10 Product Support

Any support for the Licensed Products is provided to You by Us and is not provided by Microsoft, its affiliates or subsidiaries.

6.11 Not Fault Tolerant

THE LICENSED PRODUCTS MAY CONTAIN TECHNOLOGY THAT IS NOT FAULT TOLERANT AND ARE NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE IN ENVIRONMENTS OR APPLICATIONS IN WHICH THE FAILURE OF THE LICENSED PRODUCTS COULD LEAD TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL, PROPERTY OR ENVIRONMENTAL DAMAGE.

6.12 Export Restrictions

The Licensed Products are of U.S. origin for purposes of U.S. export control laws. You agree to comply with all applicable international and national laws that apply to the Licensed Products, including the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by the U.S. and

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other governments. For additional information, see <http://www.microsoft.com/exporting/>.

6.13 Verification

In addition to, and notwithstanding anything to the contrary in, clause 4.7, You agree to keep records relating to the licensing of the Licensed Products and relevant Microsoft Software and Documentation and agree to Microsoft having the right to verify compliance with the license terms for the Licensed Products and relevant Microsoft Software and Documentation. To verify compliance Microsoft will engage an independent auditor which will be subject to a confidentiality obligation. Verification will take place upon not less than 30 days' notice, during normal business hours and in a manner that does not interfere unreasonably with Your operations. You agree to promptly provide the independent auditor with any information it reasonably requests in furtherance of its verification, including access to systems running the Licensed Products and relevant Microsoft Software and Documentation and evidence of licenses for the Licensed Products and relevant Microsoft Software and Documentation. As an alternative You agree to Microsoft or Us requesting the completion of a self-audit questionnaire in relation to licenses for, and use of, the Licensed Products and relevant Microsoft Software and Documentation.

6.14 Contact Details

We may be required to provide Your or Your Users' contact details, including contact names and addresses, to Microsoft or Our third party licensor and You hereby irrevocably authorise Us to do so.

6.15 Liability For Breach

In addition to any liability You may have to Us, You agree that You will also be legally responsible directly to Microsoft for any breach of this clause 6 or clause 4 so far as clause 4 relates to Microsoft software or documentation and Licensed Products.

6.16 Publicity

Microsoft may publicly disclose that you are a customer of Microsoft and a purchaser of the Product(s), including in a list of Microsoft customers and other promotional materials.

6.17 Eligibility for Academic and Government Versions

You agree that if You are purchasing an academic or government offer, You meet the respective eligibility requirements for a Qualified Educational User or Qualifying Government Entity published at <http://www.microsoft.com/licensing>. Microsoft reserves the right to verify eligibility at any time and suspend the Online Service if such eligibility requirements are not met.

6.18 Compliance with Policy

You agree that in using or operating the Licensed Products you shall comply with the [Microsoft Online Services Terms](#)

7 CUSTOMER EQUIPMENT

7.1 You shall ensure that the Customer Equipment (or any Device used in relation to the Service) is in good working order.

7.2 You acknowledge and agree that You shall be responsible for obtaining and maintaining Your own compatible computer system and all equipment, Customer Equipment, Devices, software and communications lines, including any public lines, required by You to access the Services

8 USE OF THE SERVICES

8.1 You will, and will ensure that any Users;

- will, use the Service only in accordance with Our instructions as may be notified in writing from time to time and in accordance with the relevant provisions of the Acts and any other relevant Legislation; and
- will not use the Service to commit an offence under the Acts or any other relevant Legislation.

8.2 You will not use or permit any User or third party to use the Service:

- in an illegal manner or for an illegal purpose;;
- in connection with any criminal or public nuisance offence;
- to knowingly or recklessly transmit any material which contains software viruses or any computer codes, files or programs designed to interrupt, damage, destroy or limit the functionality of any computer software or hardware; or
- in any way in connection with, any message or communication which is offensive, abusive,

indecent, obscene or menacing or which does, or is intended to, cause annoyance, inconvenience nuisance or worry or which is fraudulent, defamatory, an act of treason or intended to be a hoax call to any emergency services or which (in Our reasonable opinion) brings Our name into disrepute or in any way which intentionally or recklessly causes damage or disruption to the Service or the Network or a third party network, or use the Service in a manner which constitutes a violation or infringement of the rights of any other person.

8.3 Both parties agree to fully co-operate with the Police and any other relevant authorities (including but not limited to the Inland Revenue, the Trading Standards Office and/or OFCOM and any successors from time to time) in connection with any misuse or suspected misuse of the Service and You consent to Us co-operating with any other telecommunications operators in connection with any fraudulent activity related to or connected with the Service and agree that We will be entitled to divulge the name and address and account information relating to You to such third parties.

8.4 You will, and You will ensure that any Users when using the Service will, use reasonable endeavours to avoid causing congestion on Our Network and do not misuse Our Network in any way. Where We notify You of any such congestion or misuse, then You shall immediately take all steps to prevent such congestion or misuse. If You do not promptly take such steps then We shall be entitled to take all reasonable steps to protect Our Network including the suspension and/or termination of the Services or any part of the Services.

8.5 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 this Contract.

8.6 We will use reasonable endeavours to assist You with identifying any fraudulent activity connected with use of the Services. However, You acknowledge and agree that You are responsible for maintaining the security of the Customer Equipment.

8.7 Allocation and Use of Service Numbers

8.7.1 Any Service Numbers allocated to You by Us (if any) do not belong to You. You accept that You do not acquire any intellectual property rights whatsoever in such telephone numbers and You must make no attempt to apply for registration of the same as a trademark, service mark, or domain name whether on its own or in conjunction with some other words or trading style.

8.7.2 You are not entitled to sell or agree to transfer to a third party any Service Number allocated to You by Us.

8.7.3 You acknowledge that there are restrictions in place for the Service regarding number portability for certain number ranges.

8.7.4 If You have not initiated use of any of the Service Numbers within 6 months of the Service Start Date, We may recall such Service Numbers from You and We will be entitled to use such Service Numbers for third parties.

8.7.5 We shall be entitled, for commercial, operational or technical reasons or in order to comply with the requirement of any competent authority to withdraw or change any Service Numbers or code or group of Service Numbers or codes allocated or provisionally allocated to You. Where a Service Number is already in operational use by You, We shall use Our reasonable endeavours to give You reasonable prior notice. We shall not be liable for any costs, inconvenience or other losses (including without limitation marketing and stationery costs) incurred by You as a result of any change or withdrawal as described in this clause.

8.7.6 If at Your request a specific Service Number is allocated to You, You shall be responsible for all necessary investigations and inquiries as to the legitimacy or use of such numbers and We shall have no liability whatsoever with respect to the number chosen and its use by You.

8.7.7 If You are allocated a Service Number which falls within a range of numbers classified from time to time by OFCOM (or any other competent authority) as being for the provision of a particular type of service, then You must ensure that any service provided by You on that number conforms at all times with the type allocated to that number range. In the event You lose Your right to use such number, You must inform Us immediately

and We will terminate provision of such Service Number to You.

8.7.8 You acknowledge that:

- We may bar access to certain types of number ranges if You are in breach of this Contract (or if We reasonably suspect You are in breach of this Contract) or for commercial or regulatory reasons;
- the Service does not support certain outgoing calls, incoming calls, sms and text messaging services, as further detailed in the Product Description; and [Note to Will: We will need to insert the information from the Service Standard into the Product Description]
- Where We are notified that You are making an abnormally high number of calls to an international destination, then We may instigate network management control measures in order to prevent any security risk to the Network. In such circumstances We will notify You of the action We have taken as soon as reasonably practicable.

8.7.9 We cannot guarantee that We can provide Services to specific numbers where such number(s) have been transferred to Our Network from another telecommunications operator or where there are national code or number changes and We shall not be liable for any loss or damage You may incur due to Your inability to receive any incoming calls to any such number.

8.7.10 You shall supply Us with such information regarding Your use of any Service Numbers We supply to You pursuant to this Contract, that may be reasonably requested by Us.

9 DOMAIN NAMES

9.1 If You so request, We shall in Our discretion apply for domain names at an additional cost per domain name. Also, We will apply to transfer any domain names registered in Your name from any other Internet Service Provider. All costs incurred in applying for domain names and all charges incurred from the managing organisation, in respect of the domain names shall be at Your cost and expense.

9.2 We have no control over the availability of domain names and accept no responsibility for the availability of any domain name.

9.3 In respect of any actions taken by Us pursuant to this clause 9, We may levy such additional charges on You, as may be agreed.

10 SERVICE REGRADES

10.1 The Service Elements as at the Commencement Date shall be as agreed in the Order. Following provision of the Service, You shall be provided access to the KCOM portal (the "Portal"). Through the Portal, You shall be able to request changes to the Service Elements. Such amendments shall be called "Service Regrades".

10.2 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.

10.3 The Charges shall be in accordance with the Service Regrade You chose and You shall be liable for the payment of such Charges in accordance with clause 15.

10.4 If You have selected a Service or a Service Regrade which is insufficient for Your purposes and You allow more Users to use the Service than agreed or continuously use more storage 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.

10.5 Following a recommendation pursuant to clause 10.4 if You do not perform a Service Regrade and You continually exceed the Service Elements:

- 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
- 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 10.5(a).

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11 SUPPORT SERVICES

- 11.1 In case of any difficulties, Our technical team will use its reasonable endeavours to provide support during the hours posted on the web site. 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.
- 11.2 The support service does not cover maintenance of Customer Equipment or software purchased from other vendors rather than from Us or software generated by You, or support outside the usual hours of support (as advertised on the web site).
- 11.3 You agree to co-operate with Us or Our suppliers in diagnosing faults including but not limited to the carrying out of any diagnostic and test routines yourself and allowing remote diagnostic tests if required.
- 11.4 You agree to pay any charges imposed on Us by Our supplier as a result of the supplier responding to a fault and either (i) determining that such fault has not occurred as a consequence of Our supplier's equipment or network; or (ii) the visit being aborted for any reason.

12 EMERGENCY CALL SERVICES

- 12.1 You confirm that You understand that the Service will connect You to public Emergency Call Services but may not provide Your telephone number(s) and location details to the operator if You make an Emergency Call Services call, depending on the type of Service deployed.
- 12.2 You shall provide Us with all relevant information that We may request from You, in such format as We may request, to enable Us to provide You with Emergency Call Services. Further You agree to notify Us immediately, in the event of any change to the information requested from You pursuant to this clause 12.2.
- 12.3 You also confirm that it shall be Your sole responsibility to make available to Users of the Service alternative means of accessing Emergency Call Services in circumstances where these are unavailable through the Service, and to inform or otherwise make Users aware of the Service purchased by You (whether they gain access to the Service with Your permission or not) of the possible limitations of the Service.
- 12.4 You acknowledge and agree that in order to make Emergency Call Services You agree that:
- (a) You shall ensure the Customer Equipment used to make the Emergency Call Services is connected to a mains power supply;
 - (b) You will inform Your Users that they must provide or confirm their location details, as may be requested by the Emergency Call Services operator; and
 - (c) Any calls made using the Emergency Call Services may not receive the same priority as an emergency call made using a mobile or telephony network.
- 12.5 We accept no responsibility whatsoever in the event that a call is made using the Services or an attempt is made to make a call using the Services to the Emergency Call Services and You will indemnify and keep Us indemnified from and against all costs, (including without limitation, any legal costs or disbursements on an indemnity basis), 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 this clause 12.
- 12.6 This service shall only be available for access where the Emergency Call originates from a calling party located in the UK having a telephone number conforming to the National Telephone Numbering Plan, and being either from a geographic number range or from non-geographic number ranges 055, 056, 03 or 08. The appropriate "i" digits will be inserted by Us to identify the call as VoIP originating.
- 12.7 We shall give You not less than 6 weeks written notice of any material change to the Emergency Call Services, or such lesser period as may be agreed with you such agreement not to be unreasonably withheld.
- 12.8 You shall provide Us with all relevant information that We may request from You, in such format as We may request, to enable Us to provide You with Emergency Call Services. Further You agree to notify Us immediately, in the event of any change to the information requested from You pursuant to this clause 12.8.

13 CHANGES

- 13.1 We reserve the right to vary these terms and conditions and/or the Product Schedule(s) by giving You at least 14 days' written notice. The updated terms and conditions and/or Product Schedule(s) will be those that appear on Our website from time to time and You agree to be bound by such updated terms. If any variation would cause a material detriment to You, then You may terminate this Contract immediately by giving written notice to Us within 30 days of the date We give notice of the variation to You (without the requirement to pay Us the Rental Charges from the date of termination to the end of the then current 30 Day Period and We will issue a credit note for any such Rental Charges already paid from the date of termination to the expiry of the then current 30 Day Period). You will be deemed to accept the variations if you do not so terminate.

14 CREDIT REFERENCE

- 14.1 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 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.

15 CHARGES AND PAYMENT TERMS

- 15.1 The core Charges in relation to each Service shall comprise a Rental Charge.
- 15.2 You will pay Us all appropriate Charges at the rates, times and frequencies as set out in this clause 15 and on the Order:
- (a) The Rental Charge payable in relation to the Services will be payable monthly in advance commencing on the Service Start Date, unless otherwise stated on the Order;
 - (b) Where a Service Regrade that results in additions to the Service Elements takes effect part way through a 30 Day Period, You will pay the Rental Charges for the additional Service Elements as though the Service Regrade took effect at the start of that 30 Day Period. In such circumstances, at the start of the next 30 Day Period, You will be invoiced for: (i) the additional Rental Charges resulting from the Service Regrade for the entirety of the 30 Day Period in which the Service Regrade took effect; and (ii) the full Rental Charges for the Service (including the additions) for the new 30 Day Period. Thereafter, the Rental Charge for Service Regrades will be payable in accordance with clause 15.2(a). You will inform Your Users that they must provide or confirm their location details, as may be requested by the Emergency Call Services operator;
 - (c) Where a Service Regrade that results in a reduction to the Service Elements takes effect part way through a 30 Day Period, You will still be required to pay the invoice for the full Rental Charge for that 30 Day Period that would have applied without the Service Regrade. However, We will issue You with a credit note in the next invoice in relation to the period from the date the Service Regrade took effect to the expiry of the 30 Day Period in which the Service Regrade took effect. Thereafter, the Rental Charge for Service Regrades will be payable in accordance with clause 15.2(a); and
 - (d) Any other Charges shall be payable upon demand.
- 15.3 Any charges for calls made using the Cloud PBX Services shall be payable directly to Microsoft. Microsoft. Microsoft Cloud PBX call charges are based on two monthly call packages (one for UK-based calls and another for international calls). Each package includes a fixed amount of minutes (the "Agreed Usage"). In the event that You exceed the Agreed

Usage for the relevant package, Microsoft reserves the right, at their discretion, to either:

- (a) suspend Your account in order that You are unable to continue making calls using the Cloud PBX Service; or
- (b) where you have provided a payment source (such as a credit card), to debit funds directly from your payment source to cover the cost of any calls that are in excess of the Agreed Usage.

- 15.4 We will issue invoices to You for the Service electronically via the Portal. If You have opted in, We will notify You that Your invoice is available by email to the email address stated on the Order. Otherwise, it is Your responsibility to check the Portal for invoices. You must ensure that the email address is correct and shall notify Us immediately if Your email address changes. We reserve the right to issue a paper invoice to You should We deem it appropriate in Our sole discretion.
- 15.5 We may increase the Charges by giving You 30 days' prior written notice and the increase will apply to the next 30 Day Period onwards following the expiry of that notice. You may terminate this Contract on written notice to Us within the 30 day notice period if You do not want to pay the increased Charges (without the requirement to pay Us the Rental Charges from the date of termination to the end of the then current 30 Day Period and We will issue a credit note for any Rental Charges paid in advance in respect of the period between the date of termination and the end of that 30 Day Period). You will be deemed to accept the variations if you do not so terminate.
- 15.6 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 2% 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 2.6(h).
- 15.7 All Charges are exclusive of value added tax and any other applicable taxes.
- 15.8 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.
- 15.9 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. If we terminate this Contract under this clause 15.8, You will pay all Rental Charges for the terminated Service to the end of the then current 30 Day Period and any other outstanding Charges due and payable.

16 TERMINATION

- 16.1 If either party is:
- (a) in material breach of any provision of this Contract and (if capable of remedy) fails to remedy such breach within 30 days' of written notice to do so;
 - (b) unable to pay its debts as they fall due or threaten to suffer any resolution to wind up 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.
- 16.2 We may terminate this Contract (either in whole or in part) with immediate effect if:
- (a) You are in breach of clause 8.1 or 8.2; and/or;
 - (b) You are in breach of clause 4 or 6; and/or;

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- (c) Our authorisations to provide the Services (including any agreement with Our suppliers) are altered in a way that is material to the Service or are terminated.
- 16.3 We will continue to provide the Services in accordance with clause 2 until termination of this Contract but if:
- (a) You are late in making any due payment, or
 - (b) We become entitled to terminate this Contract early for any reason, or
 - (c) You break any material term of another contract with Us or another company in the KCOM Group, then We may partially or completely suspend the Services without limiting Our ability to enforce other remedies that may be available. While the Services are suspended You must continue to pay the Charges.
- 16.4 Where We terminate this Contract in accordance with this clause 16 (other than under clause 16.2(c)) You will pay all Rental Charges for the terminated Services to the end of the then current 30 Day Period and any other outstanding Charges due and payable. Where You terminate this Contract in accordance with clause 16.1 or We terminate under clause 16.2(c), You will not be required to pay the Rental Charges from the date of termination to the end of the then current 30 Day Period and We will issue a credit note for any Rental Charges paid in advance in respect of the period between the date of termination and the end of that 30 Day Period.
- 16.5 Upon termination of this Contract You will:
- (a) cease to use the Service, Software and/or Documentation supplied under this Contract and (at Our absolute discretion) shall return or destroy the same (as applicable); and
 - (b) pay to Us all outstanding Charges due up to and including the date of termination.
- 16.6 Following expiry of this Contract, You acknowledge that We may (subject to the relevant Product Schedule) retain Your Data in accordance with Our obligations under any Legislation or pursuant to any Industry Agreement.
- 16.7 The expiry or termination of this Contract will be without prejudice to any other rights either party may be entitled to and will not affect any accrued rights or liabilities of either party.
- 16.8 Any reference in these Terms and Conditions to You being required to pay Us the Rental Charges to the end of the then current 30 Day Period in the event of termination shall be without prejudice to Our other, and any additional, rights and remedies.
- 16.9 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.
- ### 17 LIMITATION OF LIABILITY
- 17.1 Both parties accept liability for, and nothing in this Contract shall exclude or limit liability for, death or personal injury resulting from that party's own negligence or that of its employees, sub-contractors or agents.
- 17.2 Nothing in this Contract shall exclude or limit liability for: (a) fraud; or (b) any indemnity given under the express terms of this Contract; or (c) anything that cannot be excluded or limited by applicable law.
- 17.3 We warrant that We will provide the Service to You in accordance with the terms of this Contract. All other conditions, warranties, terms, 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.
- 17.4 Neither Us nor Our licensors will, in any circumstances, be liable to You in contract, tort (including negligence) or otherwise for any:
- (a) loss of business (whether direct or indirect);
 - (b) loss or corruption of data or information (whether direct or indirect);
 - (c) loss of profits (whether direct or indirect);
 - (d) loss of goodwill (whether direct or indirect);
 - (e) loss of anticipated savings even when advised of the possibility (whether direct or indirect);
- (f) loss of revenue (whether direct or indirect); or
- (g) indirect, special or consequential losses, liabilities or costs.
- 17.5 Both parties accept liability in respect of damage to the other's tangible property resulting from its or its employees', agents' or subcontractors' negligence up to an aggregate of £2,000,000 (two million pounds).
- 17.6 Other than in respect of clauses 17.1, 17.2 and 17.5 and subject to clause 17.4 Our maximum aggregate liability in contract, tort, negligence or otherwise arising out of, or in connection with, this Contract will be limited in the aggregate in each Contract Year to the greater of:
- (a) £10,000; and
 - (b) the value of the Charges paid by You in the preceding Contract Year (the "Liability Sum").
- In the event that a Contract Year has not elapsed from the Commencement Date, the Liability Sum will be calculated by multiplying the average monthly Charges incurred over the elapsed period by 12.
- ### 18 FORCE MAJEURE
- 18.1 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 reasonable control and which by its nature could not have been foreseen by such a party or if it could have been foreseen was unavoidable (a "Force Majeure Event"). If either party is prevented from performance of its obligations due to a Force Majeure Event, for a continuous period of 45 (forty five) days, either party may terminate the Contract (or the affected part) by giving written notice.
- ### 19 DATA PROTECTION
- 19.1 For the purpose of providing the Services to You, 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").
- 19.2 You agree that We may process Personal Data for the purposes of providing the Services to You and Your Users, including without limit transferring it outside the European Economic Area and/or disclosing it to third parties.
- 19.3 We shall:
- (a) put in place appropriate technical and contractual measures to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data) as required by the seventh Data Protection Principle in Schedule 1 of the Act; and
 - (b) only act in accordance with Your reasonable instructions and as reasonably necessary for the provision of the Service when processing Personal Data (and You hereby authorise and instruct Us to process the Personal Data and Sensitive Personal Data as necessary for the provision of the Service and otherwise as permitted or required by this Contract).
- 19.4 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 each User or any other third parties, as applicable, for the processing of Personal Data by Us or Our third party providers and sub-contractors, including the transfer of Personal Data to Our licensors or other third parties, as may be required, and whom may be located outside the European Economic Area, for the purpose of providing the Services to You;
 - (c) give consent for Us to process Your Personal Data for the purposes described in clause 19.4(b) above;
 - (d) be responsible for the instructions You may give Us regarding the processing of Personal Data; and
 - (e) notify Us in advance if You require Us to process Sensitive Personal Data on Your behalf and the nature of such Sensitive Personal Data and state what (if any) additional measures You require Us to take in relation to the processing of such Sensitive Personal Data.
- 19.5 You hereby acknowledge and agree that We may use third party providers and sub-contractors to process Your Personal Data and Sensitive Personal Data in accordance with the terms of this Contract.
- ### 20 CONFIDENTIAL INFORMATION
- 20.1 Each party shall:
- (a) keep secret and not disclose any Confidential Information received or obtained from the other party to any third party for any purpose except with the prior written consent of the other party (except where such disclosure is required by law as confirmed by written legal advice);
 - (b) only use any Confidential Information received or obtained from the other party for the purpose of performing its obligations under this Contract;
 - (c) protect the Confidential Information received or obtained from the other party with the same standard of skill and care as it uses for its own confidential information (but, in any event, at least reasonable skill and care); and
 - (d) limit dissemination of the Confidential Information received or obtained from the other party to those of its employees, agents or officers that need to know the information for compliance with clause 20.1(b).
 - (e) loss of anticipated savings even when advised of the possibility (whether direct or indirect);
 - (f) loss of revenue (whether direct or indirect); or
 - (g) indirect, special or consequential losses, liabilities or costs.
- 20.2 The provisions of clause 20.1 shall apply for a period of 4 years from the Commencement Date.
- ### 21 GENERAL
- 21.1 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.
- 21.2 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.
- 21.3 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.
- 21.4 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.
- 21.5 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.
- 21.6 Members of KCOM Group may enforce their rights under clause 15.7 and Microsoft may enforce its rights under clause 6.15, 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). The consent of the KCOM Group or Microsoft is not required for variations to this Contract.
- 21.7 You may not assign the whole or part of this Contract without Our prior written consent such consent not to be unreasonably withheld.
- 21.8 We may assign this Contract to any company which is a member of the KCOM Group.
- 21.9 Subject to clause 21.8, We may not assign this Contract to any other third party without Your prior written consent such consent not to be unreasonably withheld.
- 21.10 We may sub-contract the provision of the Services (in whole or in part) to a third party provider, or otherwise use third parties to provide the Services (in whole or in part), without Your consent.
- 21.11 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 other party at the address of the party concerned set out in this Contract, or its registered address, or any other address notified from time to time. Either party may also serve written notices to the other party by email: (a) to any email address provided by You in connection with the Service where We are serving such a notice; and (b) to mycare@kcom.com here You are serving such a notice on Us.

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21.12 Any notice addressed as provided in clause 21.11 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. Any notice given by email shall be deemed sent and received simultaneously on the date and time that the email was sent by the sending party if such email is sent between 09.00 and 17.00 on a Working Day ("Working Times"). If such email notice is sent outside of Working Times, then the email notice shall be deemed given to and received by the receiving party at 09.00 on the Working Day immediately following the time that the email was sent. An email notice's sent time and date shall be the time and date displayed on the email, in accordance with the email software's standard function for such, as received by the receiving party.

21.13 We use Your information (which may include individuals within Your organisation's personal data) ("Customer Information") for the purposes of administering this Contract including handling orders, billing, processing payments, payment collection and communicating with You regarding the Services. We may pass this Customer Information on to third parties or other members of the KCOM Group: (a) to undertake these functions on Our behalf; or (b) if required by law. 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 change Your settings accordingly on the Portal or notify us by email to marketing@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.

21.14 This Contract will be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

22 DEFINITIONS AND INTERPRETATION

22.1 Words in the singular include the plural and in the plural include the singular.

22.2 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.

22.3 Clause, schedule and appendix headings shall not affect the interpretation of this Contract.

22.4 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking into account of any amendment, extension or re-enactment and includes subordinate legislation for the time being in force made under it.

22.5 Unless a right or remedy of a party is expressed to be an exclusive right or remedy, the exercise of it by a party is without prejudice to that party's other rights and remedies.

22.6 Any phrase introduced by the words "including", "includes", "in particular" or "for example" or similar shall be construed as illustrative and shall not limit the generality of the related general words.

22.7 Save in relation to references to a third party or where the context requires otherwise, references to a "party" in this contract are references to You or Us (as applicable).

22.8 Except where the Contract otherwise requires the following terms shall have the following meanings:

"30 Day Period" has the meaning given in clause 1.1;

"Acts" the Communications Act 2003, the Telecommunications Act 1984 and the Electronic Communications Act 2000 (each as amended from time to time);

"Acceptable Use Policies" Our acceptable use policy and that of any third party provider of the Services (each as amended from time to time) and which We will place on Our web site;

"Charges" any set up charges for new and Service Regrade installations, any monthly charges, the Rental Charges, additional usage charges, ad hoc charges,

other charges payable by the Customer, each as detailed on the Order and/or Our website or otherwise in, or in accordance with, this Contract, or the Migration Charges (if applicable);

"Cloud PBX Services" a set of calling features delivered in Office 365 with Skype for Business Online which enables You to make and receive calls using your phone, PC or mobile device;

"Confidential Information" means any information that ought reasonably to be regarded as confidential and/or which is marked or identified as confidential, but excluding information which is: (i) in the public domain at the time of disclosure by the disclosing party; or (ii) enters the public domain through no fault of the receiving party; or (iii) was in the receiving party's possession free of any obligation of confidence at the time of disclosure by the disclosing party; (iv) is developed by the receiving party independently of and without reference to the Confidential Information; or (v) is identified in writing by the disclosing party as no longer being Confidential Information.

"Contract" means these terms and conditions and the Product Schedule(s), the Order, the Migration Terms (if applicable) and all other parts of this document and any of the same as may be amended from time to time;

"Commencement Date" means the date that We accept Your Order and agree to enter into this Contract, which will be the date of Our order confirmation email to You;

"Contract Year" a period of 12 months from and including the Commencement Date and each consecutive 12 month period thereafter;

"Cure Period" has the meaning given in clause 2.6;

"Customer Equipment" any equipment provided or used by You, including any Devices, to enable You to use the Service;

"Data" the messages or other data that You obtain by using the Service and any other data provided or obtained in connection with Your use of the Service;

"Device" means each of a computer, workstation, terminal, handheld PC, pager, telephone, personal digital assistant, "smart phone," server or other electronic device;

"Documentation" the operating manuals, user instructions, technical literature, and other related materials in eye-readable form published or otherwise made available by Us relating to the use and application of the Software (including any Microsoft documentation);

"Emergency Call Services" means the conveyance of a call made to the 999 (or 112) services, using the Cloud PBX Services;

"Force Majeure Event" an event of force majeure as that term is described in clause 18. For the avoidance of doubt, a Force Majeure Event includes denial of service attacks, mail bombing and other flooding techniques;

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

"Intellectual Property Rights" patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including, without limitation, know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including, without limitation, all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;

"IPR Claim" a claim that Our provision of the Software, Documentation or Service infringes a third party's Intellectual Property Rights;

"KCOM Group" Us, Our holding company, Our subsidiaries and any subsidiaries of Our holding company. The terms "subsidiary" and "holding company" have the meanings ascribed to them by Section 1159

and Schedule 6 of the Companies Act 2006 (each as amended from time to time);

"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;

"Licensed Products" has the meaning given to it in clause 6.

"Migration Charges" the charges for the Migration Service (if applicable) in accordance with the Migration Terms;

"Migration Service" the migration of Your relevant data by Us in relation to Our Hosted Exchange products where We are providing such a product to You under this Contract;

"Migration Terms" the terms and conditions for the Migration Service, attached;

"Network" the infrastructure and the servers attached to the infrastructure used by Us to provide the Service to You;

"Order" the order for the Service placed by You via Our website or by telephone in relation to this Contract;

"Personal Data" and "Sensitive Personal Data" have the meaning given to those terms under the Data Protection Act 1998 and relate to such of Your or Your employees', agents', staffs or sub-contractors' Personal Data and Sensitive Personal Data as is provided by You to Us or otherwise obtained by Us during the course of the provision of, and in connection with, the Service;

"Portal" means an area on Our web site through which You can access Your account details and make Service Regrades;

"Product Schedule" the product schedule for each Service;

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

"Rental Charge" means the monthly rental service charge for the Service;

"Service(s)" the provision of KCOM Office 365 services or Cloud PBX Services that are selected by You which We will provide to You as specified in the Order (including the Migration Service, if applicable and where the context requires);

"Service Elements" means the technical aspects of the Services, including the number of mailboxes or Users, the amount of storage or any other element of the Services (each as applicable);

"Service Numbers" those number ranges (including but not limited to 01xxx, 02xx, 0800, 0845, 0870, 0900) as varied or substituted from time to time in accordance with clause 8.7;

"Service Regrade" has the meaning given in clause 10.1;

"Service Start Date" the date upon which the Service is made available for use in accordance with the terms of this Contract, being the date that We email You to confirm such;

"Software" the computer program(s) provided or otherwise made available by Us to You (including any Licensed Products) to enable Your use of the Services and any modifications that are acquired by You from Us during the term of this Contract;

"Survey" a survey by Us of Our ability to provide, and the requirements for the provision of the, Service and of any requirements of any of Our third party providers in relation to the provision of the Service;

"User" any individual 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.

Migration Terms

- 1.) These Migration Terms apply (in addition to the Standard Terms and Conditions for the provision of KCOM Office 365 Services) if You have requested the Migration Service.
- 2.) Defined terms in these Migration Terms have the same meanings given to them in the Standard Terms and Conditions for the provision of KCOM Office 365 Services. The following terms have the following meanings in respect of these Migration Terms:
 - a. "Discovery" the process during which We assess the scope of, and requirements for, the Migration Service;
 - b. "Proof of Concept" the testing by Us, carried out at Our discretion and with Your assistance, of the methods and procedures to be carried out for the Migration Service following agreement of the Scope of Work;
 - c. "Scope of Work" the document detailing the finalised scope of the Migration Service prepared and agreed in accordance with clause 3 of these Migration Terms;
- 3.) The parties will work together as soon as reasonably practicable following completion of the Discovery process to determine the Scope of Work. We will create and submit the Scope of Work for Your approval by email. We will only provide the Migration Service once You have confirmed that You agree to the Scope of Work by emailing Us at cloud@kcom.com directly in response to Our email attaching the Scope of Work. If the parties fail to agree the Scope of Work within 30 days following Our first submission of the Scope of Work by email for Your approval, then We reserve the right to refuse to provide the Migration Service whatsoever or to refuse to submit further versions of the Scope of Work for Your approval.
- 4.) The Migration Services will be carried out in accordance with the agreed Scope of Work. The migration will not include operations outside of the agreed Scope of Work. Additional operations or changes required on Your part are at Our discretion, which may result in a delay to the schedule, or result in additional charges depending on the scale and complexity. Deviation from the agreed Scope of Work must be agreed by Us submitting the revision to You by email and You confirming Your approval to that revision in accordance with clause 3 of these Migration Terms.
- 5.) During a migration the following are prohibited:
 - Domain Transfers
 - Legacy Data Import, if the data sits outside of the mailboxes in PST archives either on a Server, or on a user's machine
- 6.) You will provide all reasonable assistance to Us, and will comply with all reasonable instructions given to You by Us, in relation to Our provision of the Migration Service (including, without limitation, in any Proof of Concept) and You will comply with Your obligations under the Scope of Work and respond fully and accurately to Our questions in the Discovery process.
- 7.) Any resource (admin) changes on Your part should be notified well in advance of their occurrence (i.e. holiday) since this may necessitate a handover, or a conference call to familiarise the individuals involved. In the event of a sudden change in circumstance (i.e. illness) a proxy should be available who understands the process outlined in the Discovery and Scope of Work and who has been involved in the Proof of Concept. In the event of no proxy on Your part, We reserve the right to suspend the migration until resource availability is resolved without any liability to You for such suspension.
- 8.) The migration will be subject to the timescale of 09:00 to 16:00 Monday to Thursday. Out of hours support can be made available at additional cost, which will be agreed by email and paid for in advance of the work being provided.
- 9.) If You currently use Semantic Messagelabs ("Messagelabs"), then all timeframes are provisional and dependent on Messagelabs' authorisation of the movement of the account. Messagelabs require co-authorisation from both the new provider and the Primary Contact of the existing Messagelabs Account; whether this is You or another Messagelabs Partner. Authorisation and movement of the account is usually standardised as 5 – 7 days but no warranty, undertaking or representation is given that this timescale will be achieved. An indicative timescale cannot be provided if co-authorisation is not given, nor if there is an existing contract with Messagelabs that remains contested. If there is a commercial dispute regarding the existing contract, this must be resolved between You and Messagelabs before the migration is authorised.
- 10.) Proof of Concept is mandatory for all clients larger than 100 users in order to conform to best practices. Rejection by You of any Proof Of Concept may result in Us delaying or cancelling the migration (without any liability to You for any such delay or cancellation).
- 11.) Charges for the Migration Service will be set out in the Scope of Work (subject to these Migration Terms) and will be payable in accordance with the Standard Terms and Conditions for the provision of KCOM Office 365 Services.
- 12.) All essential information required for the migration should be provided by You to Us to the best of Your knowledge and having undergone validation by You. Failure to supply the correct information, information which is omitted or emerges during the migration will be subject to review and may result in the delay or cancellation of the migration by Us (without any liability to You for any such delay or cancellation) and additional charges.
- 13.) Our provision of the Migration Service will be in accordance with and subject to the below:

Description

The automated migration tool used for the Migration Service is a copy tool which takes data from the source mailbox to the destination mailbox. It is not a synchronisation, or bi-synchronisation tool, which makes continuous real-time duplicates of the data or overwrites it if performing a migration with an initial-delta approach. The tool is operated by Us (and/or any third party provider) with input data provided by You. It can be operated in a whole-organisation approach or in batches if moving over several sites during coexistence.

Supported Messaging Systems

The migration tool supports migrations from BPOS, Google Apps/Mail (GAPE), All IMAP Systems (i.e. Kerio, Lotus, Novell, Open X-Change, Yahoo), Lotus Notes 7 & 8, Microsoft Exchange 2003, 2007, 2010, Microsoft Office365, Novell Groupwise 7 & 8 and VMWare Zimbra Server 6 +

Item and Folder Processing

The following table denotes items moved by the migration tool to Exchange

	Emails	Calendars	Contacts	Tasks	Journals	Notes
BPOS	X	X	X	X	X	X
Office365	X	X	X	X	X	X
Exchange 2003/2007/2010	X	X	X	X	X	X
Google Apps/Gmail	X	X	X			
Groupwise 7+	X	X	X	X		
IMAP	X					
Lotus Notes 6.5+	X	X	X	X		
VMWare Zimbra 6+	X	X	X	X		

System Folder Mapping

Irrespective of mailbox language, recognised system folders are mapped between source and destination systems.

Exchange Server	Google Apps/Gmail	Novell Groupwise	VMWare Zimbra	Lotus Notes	IMAP
Inbox	Inbox	Inbox	Inbox	Inbox	Inbox
Contacts	Contacts	Contacts	Contacts		
Calendar	Calendar	Calendar	Calendar		
Deleted Items		Deleted Items	Deleted Items		
Drafts		Drafts	Drafts		
Junk Mail		Junk Mail	Junk Mail		
Sent Items		Sent Items	Sent Items		
Tasks		Tasks	Tasks		
Journal					
Notes					

Migration Terms

Items which are not migrated

The migration tool does not move the following objects

- Items that do not match folder types (I.e. Contact within a Mail Folder)
- Custom items that do not inherit from the core system types
- Distribution Lists
- Bounce notifications such as Non-Delivery Reports (NDR's) and Delivery Status Notifications (DSN)
- RSS Feeds
- Archives outside of the mailbox (I.e. PST's on the local machine)
- Outlook rules
- Nk2 files

The migration tool may not wholly reconstitute Vote responses (position) or categories (colour schema).

System Requirements and Recommendations

For the migration tool to function, it will require

- Internet Accessible Messaging System (I.e. Outlook Web Access)
- Ability to allow Read Access to the Messaging System (I.e Full Mailbox Permissions)
- Ability to modify Ports (I.e. 993 IMAP, 7191 Groupwise)
- Ability to apply Firewall Exceptions (I.e. IP TCP 25)
- Ability to install applications (I.e. Extractor for Lotus Notes)

It is also recommended that:

- The Internet Accessible Messaging System is public, and not behind a firewall
- The line speed which the Messaging System uses is at least 2MB up

14.) Declaration

You agree that the speed of the migration is wholly dependent on the line from the source server and any relevant telecommunications lines and that factors upon that line (such as, without limitation, throttling, fault, heavy use of bandwidth) may erode performance and cause increased migration time. Large mailboxes will take longer to complete, and Your users should use the new OWA once the migration commences. Once Your users are using the new OWA they should no longer send out of the old mailbox, or any device attached to it. In the event that any of Your users do use the old mailbox, the mailbox may need to be re-migrated and You will be charged for another migration. If the migration is from SBS 2003, the tool uses WebDAV to move items — You agree that mailboxes with high quanta in one folder (over 8000 items) may delay the completion of that mailbox (without any liability to You for any such delay) due to added parsing and enumeration.

15.) These Migration Terms shall prevail over anything to the contrary in the Scope of Work.