Standard Terms and Conditions of KCOM Group PLC for the provision of Hosted Messaging & Collaboration Services

1 TERM

1.1 If You request a free trial, We agree to provide the Services to You for a period of 30 days without any charge (the "Trial Period"). The terms of this Contract, as applicable, shall apply to You during the Trial Period. Following the expiry of the Trial Period, this Contract will come to an end and You shall cease to use the Service, Software and/or Documentation.

1.2 This Contract will come into effect on the Commencement 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.

1.3 If this Contract continues at the end of the Initial Term We may require You to pay a further Charge for the Service. In the event that You fail to agree the payment of such monies within 30 days of Our recommendations, either party may terminate this Contract on 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. In the event that We fail to meet the Service Standard, You agree that Your sole remedy is under the Service Credit regime.

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 any of Your obligations as set out in 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, You will pay the Charges specified in the Order 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;

(c) amend Our Acceptable Use Policy from time to time. If We change Our Acceptable Use policy We will place Our current Acceptable Use Policy on Our web site at www.business.kcom.com; and

(d) 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,

(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 Our then current Acceptable Use Policy 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 10.1 and 10.2 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 time have suitable computer hardware, software and telecommunications services and equipment installed on the Customer Equipment;

(c) change Your password(s) 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) 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;

(e) 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;

(f) adhere at all time with Our current Acceptable Use Policy and procure the same from any employees, directors and/or agents who use the Service;

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

(h) 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 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

3.3 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 LICENCE

4.1 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.

4.2 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, clause 7, in respect of the Archiving software and clause 8, in respect of the Blackberry services.

4.3 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.

4.4 You:

(a) will not make any modifications to the Software or Documentation;

(b) 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;

(c) 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 to become the subject of any charge, lien or encumbrance; and

(d) 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 licensor's.

4.5 You shall not resell the Services or sub-licence the Software to any third party, without Our express consent. Such consent shall be at Our sole discretion and subject to You entering into separate contract with Us.

4.6 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.

4.7 You shall not modify, obscure or remove any copyright or proprietary notices on the Software or Documentation and shall reproduce such notices on any 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 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 same in accordance with this Contract.

4.9 You will indemnify and keep Us indemnified against any 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, clause 7, in respect of the Archiving software and clause 8, in respect of the Blackberry services; or (iii) any other third party claim. 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 clauses 4, 6, 7 or 8.

4.10 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.

5 WARRANTIES

5.1 If the Service is materially impaired due to a problem with the Software then We shall, at Our option, do one of the following:

(a) repair the Software; or

(b) replace the Software; or

(c) 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),

subject to You providing 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.

5.2 We will not be responsible for any failure to comply with the above warranties if such a failure is attributable to:

(a) You, or any third party's services, software or equipment not provided and/or developed by Us under or pursuant to this Contract;

(b) any changes, modifications, updates, alterations or enhancements to the Software 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 or Customer Equipment, or by the use of the Software with other computer programs or on equipment with which it is incompatible;

(c) any inaccuracies, delays, interruptions, or errors occurring as a result of incorrect data or data which does not conform to required input formats;

(d) 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; and/or

(e) the Software being used other than as permitted by this Contract.

5.3 If a fault or problem is found upon investigation by Us not to be Our responsibility under the any warranty in this Contract We may 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 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 may include associated media, printed materials, and "online" or electronic documentation (individually and collectively, "Licensed Products") provided by Us. We do not own 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 to Your understanding of, compliance with, and consent to the following terms and conditions, 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.

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

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

"Software Documentation" means any end user document included with server software.

"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 SoftwareLicensed 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.

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 SERVICES PROVIDER USE RIGHTS ("SPUR") APPLICABLE TO US, WHICH TERMS MUST BE PROVIDED 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, 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 may not permit any third party to have access to and/or use the functionality of the Licensed Products except for the sole purpose of accessing the functionality of the Licensed Products in the form of software services in accordance with the terms of this clause 6 and any agreement between You and Us.

6.8 Termination

Without prejudice to any other rights, 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 with Microsoft under which the Licensed Products are licensed, You must stop using and/or accessing the Licensed Products, and destroy all copies of the Licensed Products and all of its component parts.

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 U.S. 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 other governments. For additional information, see http://www.microsoft.com/exporting/.

6.13 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.

7 ARCHIVING SOFTWARE

7.1 The Service is intended to be supplied to customers located within the UK. If You are requesting Services for use outside of the UK, You accept that We may not be able to supply certain elements of the Services to You and that We have a right to terminate the Services in whole or in part, in Our sole discretion. In order to assist Us and/or Our licensors in determining whether We can provide the Services to You, You agree that We may supply certain information about You to Our licensors.

7.2 If at any time during the Term of this Contract, it comes to Our attention that You are using the Services from outside of the UK, We reserve Our right to terminate this Contract (in whole or part) immediately and without penalty to You.

7.3 The Software includes code called "pocketSOAP" provided under the terms of the Mozilla Public License Version 1.1 ("Mozilla 1.1 License"). Neither Us or Our licensor's have modified this software. The contents of such file are subject to the Mozilla 1.1 License. You may not use such code except in compliance with the Mozilla 1.1 License. You may obtain a copy of the Mozilla 1.1 License at http://www.mozilla.org/MPL/. Software distributed under the Mozilla 1.1 License is distributed on an "AS IS" basis, WITHOUT WARRANTY OF ANY KIND, either express or implied. See the Mozilla 1.1 License for specific language governing rights and limitations under the Mozilla 1.1 License. For those components subject to Mozilla 1.1 License, for a period of one (1) year following Your receipt of the Software, You may contact Us in writing and request a copy of the source code for such Mozilla software.

7.4 If Your use of the Service results in any single mailbox archive being greater than 25Gb in size, We reserve the right to request that You either: (i) transfer the archive to offline storage; or (ii) separate the archive into two or more additional mailbox archives. Should You fail to comply with the request within five (5) Working Days, We reserve the right to delete any data stored in excess of the limit detailed in this clause 7.4, without any liability to You.

8 BLACKBERRY SERVICES

8.1 If We agree to supply You with Blackberry Services, You agree to the following additional terms:

(a) You shall enter into and agree to be bound by the Blackberry Internet Service End User Agreement, available at: http://www.blackberry.com/legal/pdfs/BIS/BIS_EUA_Global_English.pdf, which may be amended from time to time, on behalf of Yourself and each User;

(b) You shall not use the Blackberry Services for any purpose other than Your own internal business or personal purposes;

(c) You shall only permit such number of Users to use the Blackberry Services as We provide You with licence keys for use by You. In the event of breach of this clause 8.1(c), We shall be entitled to charge You for the actual number of licence keys required by You;

(d) Any warranties stated in this Contract are provided by Us and not Our licensor's. The liability of Our licensor is limited to You, in accordance with the provisions of clause 18; and

(e) You shall provide all reasonable assistance or information to Us, as may be requested in order to assist with the provision of the Blackberry Services.

8.2 The Blackberry Services are intended to be supplied to customers located within the UK. If You are requesting Services for use outside of the UK, You accept that We may not be able to supply the Blackberry Services to You and that We have a right to terminate the Services in whole or in part, in Our sole discretion and without notice. In order to assist Us and/or Our licensors in determining whether We can provide the Services to You, You agree that We may supply certain information about You to Our licensors.

8.3 You acknowledge that the Blackberry Services are limited to the supply of wireless connectivity. The Blackberry Services do not include the provision of handsets and/or, airtime or access to the wireless network and that You must have a subscription for access to the wireless network in order to use the BlackBerry Services. You shall be responsible for obtaining such services from Us (or an alternative supplier). The provision of such services shall be subject to a separate contract.

8.4 If We agree to supply You with any technical support or other services as part of the Blackberry Services, beyond that provided within this Contract, You agree that such further services shall be subject to a separate contract.

8.5 In addition to any rights stated elsewhere in this Contract, We shall have the right to terminate this Contract, in whole or in part, in Our sole discretion, as detailed below immediately and cease the Service:

(a) if We or Our licensor's have reasonable grounds to believe that You are or may become a competitor of Our licensor; and

(b) if Our licensor's terminate their agreement with Us for any reason.

9 DELIVERY AND INSTALLATION

9.1 Risk in the media on which the Software and any Documentation are recorded shall pass to You on delivery or upon installation where We are installing it at Your request.

9.2 You shall ensure that the Customer Equipment (or any Devices on which the Software will be installed) is in good working order.

9.3 You shall ensure in the interests of health and safety that Our personnel, whilst on Your premises for the purposes of this Contract, are at all times accompanied by a member of Your staff familiar with its premises and safety procedures.

10 USE

10.1 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 Our name 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.

10.2 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.

11 DOMAIN NAMES

11.1 If You so request, We shall 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.

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

11.3 In respect of any actions taken by Us pursuant to this clause 11, We may levy such additional charges on You, as may be agreed.

12 SERVICE REGRADES

12.1 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**".

12.2 We shall either accept or reject Your request by email 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.

12.3 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.

12.4 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.

12.5 Following a recommendation pursuant to clause 12.4, 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

(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 12.5(a).

13 SUPPORT SERVICES

13.1 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.

13.2 You will be required to give a username and password for the purposes of using the Services. You shall have sole responsibility for ensuring the safety of the password.

13.3 The support service does not cover maintenance of Customer Equipment 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).

13.4 You agree to co-operate with Us or Our suppliers in diagnosing faults including but not limited to the carrying out any diagnostic and test routines yourself and allowing remote diagnostic tests if required.

13.5 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.

14 CHANGES TO THE SERVICE

14.1 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 14.1, You shall not be liable to pay an Early Termination Charge.

15 CREDIT REFERENCE

15.1 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 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.

16 CHARGES AND PAYMENT TERMS

16.1 The Charges in relation to each Service shall comprise a monthly rental service charge.

16.2 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 monthly rental service 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) The first monthly rental service charge for Service Regrades, will be payable as a pro-rata proportion of the monthly rental service charge and shall be payable in arrears for the first month of service following the Service Regrade. Thereafter, the monthly rental service charge for Service Regrades will be payable in accordance with clause 16.2(a).

(c) Any other Charges shall be payable upon demand.

16.3 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 on the Order. 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, two (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.

16.4 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.

16.5 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 2.5(h).

16.6 All Charges are exclusive of value added tax and any other applicable taxes.

16.7 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.

16.8 If at any time during this Contract, in Our reasonable opinion Your financial standing changes adversely or You persistently default in paying the Charges then We may request a 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.

17 TERMINATION

17.1 If either party is:

(a) in breach of any provision of this Contract and 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.

17.2 We may terminate this Contract (either in whole or in part) with immediate effect if:

(a) You are in breach of clause 10.1 or 10.2 as breach may be a criminal offence and/or cause serious harm to Our reputation; and/or

(b) Our authorisations to provide the Services are altered in a way that is material to the Service.

17.3 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.

17.4 If You choose to terminate this Contract prior to the end of the Initial Term, other than pursuant to clause 17.1, 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 rental Charge multiplied by the number of remaining months of the Initial Term.

17.5 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 Termination Payment as calculated above.

17.6 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; and

(b) will pay to Us all outstanding Charges due up to and including the date of termination.

17.7 Following expiry of this Contract, You acknowledge that We will retain Your Data in accordance with Our obligations under any Legislation or pursuant to any Industry Agreement.

17.8 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.

18 LIMITATION OF LIABILITY

18.1 Both parties accept liability for death or personal injury resulting from its own negligence or that of its employees, sub-contractors or agents.

18.2 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.

18.3 Neither Us or Our licensors will, in any circumstances, be liable to You in contract, tort (including negligence) or otherwise for any loss of business; loss of data; loss of profits; loss of goodwill; loss of anticipated savings even when advised of the possibility; loss of revenue or; any indirect or consequential losses, liabilities or costs.

18.4 Both parties accept liability in respect of damage to the others tangible property resulting from its or its employees' negligence up to an aggregate of £2,000,000 (two million pounds).

18.5 Other than in respect of clause 18.1 and 18.4 and subject to clause 18.3 each party's maximum aggregate liability in contract, tort, negligence or otherwise arising out of, or in connection with this Contract will be limited in aggregate to the greater of:

(a) £250,000; 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 Service Start Date, the Liability Sum will be calculated by multiplying the monthly Charges incurred over the elapsed period by 12.

18.6 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.

19 FORCE MAJEURE

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 due to a Force Majeure Event, for a continuous period of 3 months either party may terminate the Contract by giving written notice.

20 GENERAL

20.1 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.

20.2 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.

20.3 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.

20.4 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.

20.5 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. In the event that We fail to meet any delivery time date or period Our maximum liability to You will be under the Service Credit regime.

20.6 Members of KCOM Group may enforce their rights under 16.7 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).

20.7 You may not assign the whole or part of this Contract without Our prior written consent such consent not to be unreasonably withheld.

20.8 We may assign this Contract to any company which from time to time is Our holding company or subsidiary (as defined in section 736 and 736A of the Company Act 1985 to include parent and subsidiary undertakings as defined in section 258 Companies Act 1985).

20.9 Subject to clause 20.8, We may not assign this Contract to any other third party without Your prior written consent such consent not to be unreasonably withheld.

20.10 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.

20.11 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.

20.12 Any notice addressed as provided in clause 20.11 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.

20.13 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.

20.14 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@business.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

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

21 DATA PROTECTION

21.1 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 Protections Act 1998 (the "Act").

21.2 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.

21.3 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.

21.4 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, 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, if any, for the purposes described in clause 21.4(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.

22 DEFINITIONS

22.1 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:

"Acceptable Use Policy" Our acceptable use policy which We may amend from time to time and which We will place on Our web site;

"Blackberry Services" means the provision of Our Services which are intended to integrate with and provide a consolidated link between one or more messaging platforms, other corporate application servers and Blackberry devices provisioned to operate with the Blackberry Services. The Blackberry Services are designed to communicate with Blackberry devices using push-based encrypted wireless data transmission, and are provided to You by Us, Our licensor and/or their distributors;

"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 as detailed on the Order;

"Contract" means these Terms and Conditions and the Service Standard, the Order(s) 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 of this Contract;

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

"Cure Period" has the meaning given in clause 2.5;

"Customer Equipment" any equipment provided 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;

"Documentation" the operating manuals, user instructions, technical literature, and other related materials in eye-readable form published by Us relating to the use and application of the Software;

"Early Termination Charge" has the meaning given in clause 17.4;

"Force Majeure Event" an event of force majeure as that term is described in clause 19. 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;

"Initial Term" the period of time, which shall be no less than 1 month, as stated on the Order, and 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 which is connected to the internet via Our high bandwidth fully meshed national IP network, and the servers attached to the infrastructure to provide the Service;

"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 736 and 736A of the Companies Act 1985 (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; "Personal Data" and "Sensitive Personal Data" have the meaning given to those terms under the Data Protection Act 1998;

"Order" the order for the Services placed by You via the Portal or attached to this Contract, which describes Your requirements and which will be used by Us to identify the Services provided by Us;

"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 web site through which You can access Your account details and make Service Regrades;

"Proposed Start Date" the date specified on the Contract or as amended on which the Service is due to be made available to You;

"Service" the provision of those managed hosting and collaboration services that are selected by You which We will provide to You as specified in the Order;

"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;

"Service Regrade" means changes to certain elements of the Services, as agreed by Us, pursuant to clause 11;

"Service Standards" the Service levels set out in the document attached to the Contract;

"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;

"Software" the computer program(s) provided by Us to You to enable Your use of the Services and any Modifications that are acquired by You from Us during the term of this Contract;

"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.

23 COPYRIGHT NOTICES

MICROSOFT SQL SERVER 2000 DESKTOP ENGINE REDISTRIBUTABLE CODE, Copyright © 1999-2002 Microsoft Corporation. MICROSOFT Visual Studio REDISTRIBUTABLE CODE, Copyright © 1999-2004 Microsoft Corporation. Icon Experience REDISTRIBUTABLE CODE, Copyright © 2001-2003 INCORS GmbH - All rights reserved. dtSearch REDISTRIBUTABLE CODE, Copyright © dtSearch Corp. MimeType REDISTRIBUTABLE CODE, Copyright © 2003 Jeff Lee. All rights reserved. PocketSOAP originally developed by Simon Fell. Portions created by Simon Fell are Copyright (C) 2000-

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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.

1.1 Service Options

The Services are available with the following options:

	Hosted Exchange		Hosted SharePoint
Mailbox Options	**Standard**	**Premium**	
Storage Space	100 – 2000MB	100 – 2000MB	
Mobile Enabled	Blackberry	Blackberry/Windows	-
Archive	If required	If required	-
Additional Storage Space	Up to 25GB	Up to 25GB	Up to 25GB

1.2 Service Details

Site environment

Hosted Messaging and Collaboration Services are offered from any of our Data Centres. Physical access to each of the Data Centres is strictly controlled. The Data Centres are continuously monitored using 24-hour security guard surveillance and closed-circuit television (CCTV). The Data Centres environment is rigorously controlled. Customers are not allowed physical access to the Hosted Messaging and Collaboration platforms.

Hardware Maintenance

We are responsible for maintaining the equipment and the network at our Data Centres. Should any server downtime be required, for instance to replace faulty hardware, we will notify you via the Status Page on the portal. Our Service includes repair and replacement of any defective hardware, in addition to the installation of any hardware upgrades. Software maintenance includes upgrades to the operating system and other supporting system software. Any scheduled maintenance will normally be notified to you via the Status Page on the portal at least 24 hours in advance of it taking place.

Security Updates

All Microsoft operating systems and applications are fully tested and hardened for security as advised by Microsoft before being released into an operational environment. Additionally, all software and system updates will be carried out by us. We reserve the right to install updates to the servers without prior consultation should a security issue be identified that could threaten the integrity of the hosted servers or of the KCOM Group network itself. Where at all possible, we will advise you when we will apply these updates if it will affect your service

Backup and Restore - Exchange

We do not backup individual mailboxes as standard. We do operate a 7 day mail retention policy which allows you to restore deleted mail using the standard Microsoft Outlook Recover Deleted Items tool for up to 7 days. If you require additional backup features then you may choose our Exchange Archiving solution.

Backup and Restore - SharePoint

All SharePoint data is backed up on a daily basis and retained for 7 calendar days. This is included with the service. We are able to restore data up to 7 days old upon request. This is a chargeable service.

Service Access

To access the Hosted Messaging and Collaboration Services, you must provide at the very minimum: an Internet connection with sufficient bandwidth and quality; the network connection should not impede Microsoft Exchange or SharePoint functionality; Microsoft Internet Explorer 6.0 or above; Microsoft Outlook 2003

software (available from us for each Exchange user, if required) and Microsoft Windows XP with service patch 2.0 applied for each user who will connect directly to the Exchange server.

Mail limits and delivery

Inbound and Outbound emails are limited to 10MB in size.

The Exchange server uses SMTP to deliver outbound messages. This protocol does not guarantee immediate delivery of email messages. By default, the Exchange server makes a delivery attempt every ten minutes three times; after that the server will attempt message delivery every fifteen minutes. If there is no successful delivery attempt within twelve hours, a delay notification will be emailed to the sender. If there is no successful delivery attempt within two days, the message will be returned to the sender.

Mobile Wireless access

If Windows Mobile access or Blackberry mobile access is provided as part of the service, success in configuration and setup of the wireless access is dependant upon the device and wireless access provider chosen by you. We can therefore only support you within reasonable limits for these devices.

Archiving

Archiving of individual mailboxes is available as a chargeable option. Accessed via the Microsoft Outlook Client this allows policy-based archival of all email attachments and calendar items. Mailboxes archives are of unlimited size. However, any single mailbox archive should not exceed 25Gb. If usage exceeds this fair usage policy, we may exercise our rights as detailed in clause 7.4 of the terms and conditions.

Data Retention

All customer data is deleted immediately upon termination of the account.

Storage Limits

Storage limits are decided by the customer and set at the time of purchase for each service. Once these limits are reached then the service will no longer; send or receive emails in Exchange or save further data in SharePoint. It is not our responsibility for any service unavailability or data loss caused by exceeding the storage limits.

Anti Spam / Virus

All email is passed through our Anti Spam and Virus service using third party filtering rules. We are not responsible for lost or corrupted messages due to Anti Spam filtering.

Passwords

We have a strong password policy in place for the Hosted Messaging and Collaboration Services. All passwords must be at least 8 characters long and contain a mix of alphanumeric and symbol characters. We do not expire passwords. However, we strongly recommend that you regularly change your passwords in order to protect the security of your information. We do not have the ability to retrieve your password if lost or stolen; but we can reset it in such circumstances.

2 SERVICE DELIVERY

2.1 Our Obligations

We will notify you to confirm receipt of your order. We will send a second email to confirm that your service has been provided.

3 SERVICE AVAILABILITY

3.1 Our Obligations

We will use all reasonable endeavours to provide the Services 24 hours a day throughout the year. 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.

Failure to meet the Service Availability standard may entitle you to claim compensation in accordance with Section 6 of this Service Standard.

3.2 Restrictions

(a) 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 at least 24 hours prior notice of all planned maintenance via the Status Page on the portal

(b) Customer Responsible Faults

Outages which are the result of Customer Responsible Faults 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.

4 FAULT MANAGEMENT

In the event that you become aware of any Fault or a breakdown in the operation of the Services, you should notify us immediately by contacting the Technical Support Centre.

Faults can be reported to us either:

- on-line, 24 hours a day, throughout the year; or
- telephone the Technical Support Centre on 0345 1224 333, 08:00 to 20:00 weekdays and 09:00 to 17:00 Saturdays.

Please ensure when contacting the Technical Support Centre you have the following relevant details to hand.

1. Organisation name & address.
2. Details of the Services provided to you by us.
3. Contact name and relevant security details.
4. The nature of the fault.

4.1 Faults Procedure

1. The following outlines the procedure for Faults reported by you.
2. You raise a call with the Technical Support Centre to report a fault.
3. The Technical Support Centre staff will log details of the fault on our faults system and issue you with Fault Reference Number.
4. The Technical Support Centre's service engineers will raise a Fault record and will use reasonable endeavours to diagnose and resolve the Fault.
5. If necessary the Fault will be escalated by us as we consider necessary, in order to rectify the Fault as speedily as possible.
6. We will regularly update you on how the Fault is being progressed, and all action taken in resolving the Fault, including contacts with yourself, technical escalations etc will be recorded in the Fault ticket report.
7. When the Fault is resolved, we will confirm to you that the Fault has been resolved and obtain your agreement to close the Fault.

4.2 Fault Escalation

Fault escalation procedures can be invoked in the following situations:

- If a reported Fault exceeds the TTRF
- Where an individual Fault condition is particularly sensitive and is deemed to be business affecting and a quicker resolution may be necessary.

You may at any time during the Fault request immediate escalation. Escalation may be via the appropriate KCOM Group contact or on a direct peer to peer level. All requests are to clearly state the reason for escalation and any subsequent actions will be recorded on the KCOM Group Fault management system. We will use our best endeavours to respond as promptly and quickly as possible.

5 CHANGE MANAGEMENT

In the event that you wish for a change to be made to the Service, and provided that it is within the scope of this contract, you should use the Customer Control Panel on the portal.

5.1 Our Obligations

The Time To Resolve Faults obligations for the Services are shown in Table 2:

Table 2

	TTRF
Service Affecting Faults	4 hours

Failure to meet the TTRF obligation for Service Affecting Faults may entitle you to claim compensation in accordance with Section 6 of this Service Standard.

5.2 Restrictions

The TTRF period shall begin once you notify the Technical Support Centre of the fault and a Fault Reference Number is provided to you. The TTRF period shall cease upon notice to you by the Technical Support Centre of resolution of the fault. We will record the duration of the TTRF period in order to be able to comply with our obligations under Section 5.

For Non-Service Affecting Faults, we ensure that there is an effective management of faults.

If you require an update on the status of the fault, you should contact the Technical Support Centre.

6 SERVICE CREDITS

Where we fail to comply with these Service Standards, you shall be entitled to the following service credits.

6.1 Service Availability

In the event that we fail to meet the Service Availability, except for Restrictions stated above, you have the right to claim service credits as detailed in Table 3.

Table 3 – Service Credits

Service Availability	**99.89 - 99.0 (< 7 hours)**	**98.99 - 98.5 (< 10 hours)**	**98.49 - 98.0 (< 14 hours)**	**97.99 - 97.5 (< 18 hours)**	**97.49 or less (> 18 hours)**
Service Credit Available	5% of monthly Charges	7.5% of monthly Charges	10% of monthly Charges	12.5% of monthly Charges	25% of monthly Charges

Claims in a calendar month are limited to a maximum aggregate amount of 25% of the total monthly charge in any calendar month and shall not be paid unless the value of the claim for all Service Credits in any month exceeds £5.

The figures in brackets are provided for reference only and represent the approximate amount of downtime to the nearest hour for which the relevant Service Credit is payable.

6.2 Fault Management

In the event that we fail to meet the TTRF for Service Affecting Faults, except for Restrictions mentioned above, you have the right to claim service credits as detailed in Table 4.

Table 4 – Service Credits

Hours past TTRF	**Service Affecting Faults**
0 - 4	5% of monthly charges
4+	15% of monthly charges

Claims are limited to a maximum aggregate amount of 5% of the total monthly charge in any 24-hour period and 10% of the total monthly charge in any calendar month and shall not be paid unless the value of the claim for all Service Credits in any month exceeds £5.

6.3 Payment of Service Credits

All claims must be submitted via the Customer Control Panel on the portal within 30 working days (dependent on the type of claim), from either:

- the end of the month (Service Availability)
- the date the fault was notified to us (fault management).

Credit notes will be issued which can only be used to offset future Charges

7 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.

Non-Service Affecting Fault

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

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 via the Status Page on the portal All maintenance operations are controlled by internal procedures. All notifications will be notified to you via the Status Page on the portal. Any planned downtime shall not be included in fault or Service reliability measurements.

Service Affecting Fault (SAF)

Any failure of the Service, the KCOM Group equipment or network, which materially affects your Use of the Service. For the avoidance of doubt, temporary inability to access individual Exchange mailboxes will not normally constitute a Service Affecting Fault, however significant or global outage of a proportion of 10% or more of an organizations active mailboxes (excluding archiving mailboxes) will normally qualify. In such cases the length of downtime will be recorded by Us from when the Fault is registered either by You or Us.

Service Measurement Period

Service Availability for the purpose of this contract shall be measured as the availability of the Service over a 30 day month or 720 hours in a month.

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.

The following formula shall be used to calculate the Service Availability figure:

$$\text{Availability \%} = \frac{H - zh}{H} \times 100$$

Where: H is the number of hours in a month, being 720 hours on the basis of a 30 day month; and

zh is the number of hours (or part hours) during which the Service is unavailable.

Downtime commences when the Fault has been logged and time stamped on the fault tracking system and the unique ticket number has been given to the customer and concludes when both parties agree that the fault has been cleared (see Restrictions).

Time To Resolve Fault (TTRF)

The length of time from the issue of the Fault Reference Number to restoration of the Service.

Third Party Attributable Faults

In the event that a Service Affecting Fault is identified as being attributable to a third party (i.e. neither you nor us) downtime shall not be included in Service Availability Measurements. Such faults do not qualify for service credits. We will try to rectify such Third Party Attributable Faults as soon as reasonably practicable.