

Standard Terms and Conditions of KCOM Group Limited for the provision of KCOM Backup

1 TERM

1.1 The 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 the Contract will renew for consecutive 30 day periods (each 30 day period being a "Renewal Period") unless and until terminated by either party giving the other no less than 15 calendar days' written notice prior to the expiry of (i) the Initial Term or (ii) any Renewal Period.

2 PROVISION OF THE SERVICE

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

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

2.3 In the event that We are unable to provide the Service by the Proposed Start Date as the result of a failure by You to fulfil Your obligations in clause 3 You will pay the Charges specified in the Contract 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 internet site at www.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 5.1 and 5.2 of the 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 the 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 the 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 the Contract;
- (b) at all time have suitable computer hardware, software and telecommunications services and equipment installed on the Customer Equipment;
- (c) take appropriate security precautions and maintenance to maintain and safeguard Your Data for example (but not limited to) by regularly backing-up Your Data, regularly ensuring that Your Data has been backed up successfully and by using current up to date firewall and anti-virus software with appropriate security updates. If You discover that Your Data has not been backed-up successfully, then You must inform Us immediately;
- (d) 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 the Contract;
- (e) adhere at all time with Our current Acceptable Use Policy;
- (f) comply with all applicable Legislation relating to Your use of the Service; and
- (g) 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 Where you select the Data Shuttle Service as part of the Services, You will be supplied with a Data Shuttle (or drive) as part of the Services. You must copy your physical data onto the Data Shuttle and return it to the address We provide to You.

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 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 the Contract. We will not be liable to You where We are unable to carry out Our obligations under the Contract as a result of a breach by You of the provisions of clause 3.

4 OUR OBLIGATIONS

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

- (a) We will not be responsible for providing a Service that fails to meet Your needs;
- (b) We may review the Service and suggest changes which may have a price impact; and
- (c) We may revise or replace the Service provided pursuant to the Contract.

5 USE

5.1 Under the terms of the Contract You will not use or permit any User or third party to use the Service for the purposes of sending, posting, publishing, distributing, disseminating or transmitting, storing, or in any way in connection with, any message communication or material which is offensive, abusive, indecent, obscene, harassing or menacing or which does, or is intended to, cause annoyance, inconvenience or worry or which is fraudulent or defamatory or contains or breaches another party's proprietary information (including trademarks or other copyright material) or is otherwise unlawful or which (in Our reasonable opinion) brings the name of any company within the KCOM Group 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.

5.2 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 the Contract.

6 STORAGE, RETENTION AND RESTORE

6.1 The amount of storage space available to You is detailed in the Contract. You may increase the amount of storage space, through the Portal, as further described in clause 7. However, if You use more storage space than that allocated to You, We shall be entitled to charge You for such increased storage space at the same storage rate as We have agreed to supply the Services to You and detailed in the Contract.

6.2 The default retention period for the Service is set at thirty (30) days. The default scheduling of the Service is set to back-up data automatically when You make any changes to files selected by You.

6.3 Following provision of the Service, You shall be able to change the default provisions of the Services, as detailed in the Service Schedule, as further described in clause 7.

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

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

6.6 You may request a physical copy of the Data from Us, at any time to enable You to perform a Data restore. If You do so, We will send the Data to You by post on a CD or DVD, to enable You to perform a Data restore. You shall pay the Charges for this Service including any postage costs associated with the delivery of the CD or DVD to You.

7 SERVICE REGRADES

7.1 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".

7.2 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 the Contract.

7.3 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 where Your Service Regrade has the effect of increasing the Service Elements. For the avoidance of doubt, where you select a Service Regrade which has the effect of reducing any of the Service Elements, You shall continue to be liable to pay Your existing Charges until such time as Your next monthly Charge is payable.

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

7.5 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 its other rights) be entitled to suspend the Service until We receive payment from You in accordance with clause 7.5(a).

7.6 You acknowledge that despite the provisions of this clause 7, You will be charged at the storage rate detailed in the Contract for any storage space used in excess of the storage space agreed with You, as detailed in the Contract, or as amended pursuant to a Service Regrade.

8 SUPPORT SERVICES AND MONITORING AND REPORTING SERVICES

8.1 Support Services

- (a) In case of any difficulties, Our technical team will use its reasonable endeavours to provide support during the hours posted on the Web Site. Unfortunately We cannot guarantee that We will be able to resolve or give advice on all issues. We cannot accept liability for any issues arising from Your failure to follow our advice and recommendations or non-compliance with the Contract.
- (b) 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. We shall not be able to provide any support services to You if You forget Your password.
- (c) The support service does not cover maintenance of hardware or software purchased from other vendors or software generated by You, or support outside the usual hours of support (as advertised on the Web Site).
- (d) You agree to co-operate with Us or Our suppliers in diagnosing faults including but not limited to carrying out any diagnostic and test routines yourself and allowing remote diagnostic tests if required.

9 DATA SECURITY

9.1 You acknowledge that You have sole responsibility for ensuring that the password that You use in connection with the Service is kept safe and secure and is not compromised in any way. We shall not be liable to You for any damages, losses or liabilities arising as a consequence of:

- (i) Your failure to retain Your password safely and securely;
- (ii) any disclosure of Your Data as a result (which may include confidential information or personal data); or
- (iii) Your inability to perform a Data restore as a result.

9.2 You are responsible for:

- (i) ensuring that You log off from the portal You use to access the Service when You have finished using it, in order to prevent third parties from viewing Your Data; and
- (ii) taking appropriate steps to maintain and safeguard Your Data. You should ensure that the Services are operating fully pursuant to the Contract and ensure that regular backups of Your Data are made, pursuant to clause 3.1(c). You should ensure that You are running up to date virus software and adopting other appropriate security and maintenance procedures.

9.3 We will use our reasonable endeavours to maintain the confidentiality of Your Data. We will not conduct any cryptographic analysis of Your Data nor will We sell Your Data to a third party.

10 CHANGES TO THE SERVICE

10.1 We may from time to time make changes to the specifications in the Services. 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 the Contract upon 30 days' notice. It is agreed that if You terminate the Contract pursuant to this clause 10.1, You shall not be liable to pay an Early Termination Charge.

11 CHARGES AND PAYMENT TERMS

11.1 You will pay Us all appropriate Charges at the rates, times and frequencies as set out in this clause 11 and in the Contract.

(a) The monthly Charges payable in relation to each Service will be payable monthly in advance commencing on the Service Start Date, unless otherwise stated in the Contract.

(b) Any other Charges shall be payable monthly in arrears.

11.2 We may charge such additional fees for any technical assistance that You may require at Our standard hourly rate (or such pro-rated amount thereof), for the provision of any technical support over and above that which We deem reasonable, in Our sole discretion.

11.3 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 in the Contract. You must ensure that the email address is correct and shall notify Us immediately if Your email address changes. The invoice shall be deemed received by You, 2 days after We send notice to You (to the email address provided by You), that Your invoice is available. We reserve the right to issue a paper invoice to You should We deem it appropriate in Our sole discretion.

11.4 Following the expiry of the Initial Term, We may increase the Charges by giving You 30 days prior notice.

You may terminate the Contract on 30 days written notice if You do not want to pay the increased Charges.

11.5 All Charges due under the 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).

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

11.7 Where any Charges or other monies properly due to Us or any member of the KCOM Group under the 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 the Contract or any other agreements under which We or any member of the KCOM Group provides You with telecommunications or data services.

11.8 If, at any time during the 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 the Contract with immediate effect by giving written notice.

12 SOFTWARE LICENCE

12.1 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.

12.2 We grant to You a non-exclusive licence for the duration of the Initial Term to use the Software in object code form for Your personal use only, on the Customer Equipment as follows:

(a) If We are supplying PC Backup Services to You – on one personal computer or laptop; or

(b) If We are supplying Server Backup Services to You – on a server which may be used in conjunction with a number of personal computers or laptops, for the purpose of backing up on-line, retrieving and restoring Your Data.

12.3 You:

(a) will install and use the software on the Customer Equipment, as detailed in clause 12.2 above, and only as permitted for the Service taken. Please note that if the software is installed on a multiple user laptop or PC then each User will be able to browse Your Data;

(b) will not make any modifications to such software or documentation;

(c) 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;

(d) shall not resell, sub-license or assign the benefit or burden of the Contract in whole or in part, or to allow the software to become the subject of any charge, lien or encumbrance,

You will indemnify and keep Us indemnified against any costs, losses, damages, or liability that We may incur due to You amending or in any way, altering such software or documentation, or using it for a purpose not permitted by the Contract.

12.4 You may make such number of back-up copies of the software as may be necessary for its lawful use. You shall record the number and location of all copies of the software and take steps to prevent unauthorised copying.

12.5 You agree to comply with the terms and conditions of Mozy International's End User Licence Agreement as published at <http://www.business.kcom.com> from time to time.

12.6 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),

provided that You provide all the information that may be necessary to assist Us in resolving the defect or fault,

including sufficient information to enable Us to re-create the defect or fault.

12.7 Upon termination of the Contract, each party shall immediately cease to use the others software and/or documentation supplied under the Contract and (at the others absolute discretion) shall return or destroy the same.

12.8 Any software and any software or documentation provided by Us in connection with the provision of the Service is, and will remain, Our property or that of Our licensors.

13 TERMINATION

13.1 If either party is:

(a) in breach of any provision of the 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) the Contract.

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

(a) You are in breach of clause 5.1 or 5.2 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.

13.3 We will continue to provide the Services in accordance with Clause 2 until termination of the Contract but if:

(a) You are late in making any due payment, or

(b) We become entitled to terminate the 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.

13.4 Upon termination of the Contract:

(a) We will not provide any further Services in respect of Your Data;

(b) You will use the Service to obtain a full restore of Your Data within thirty (30) days of the date of termination;

(c) Subject to clause 13.4(b), You will cease to use the Service and will pay to Us all outstanding Charges due up to and including the date of termination; and

13.5 Following the expiry of thirty (30) days from the date of termination of the Contract, We will delete Your Data, without any liability for loss or damage.

13.6 The expiry or termination of the 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.

14 LIMITATION OF LIABILITY

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

14.2 We warrant that We will provide the Service to You in accordance with the terms of the 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.

14.3 We will in no 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.

14.4 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).

14.5 Other than in respect of clause 14.1 and 14.4 and subject to clause 14.3 Our maximum aggregate liability in contract, tort, negligence or otherwise arising out of, or in connection with the 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.

- 14.6 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.

15 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. If either party is prevented from performance of its obligations for a continuous period of 3 months either party may terminate the Contract by giving written notice.

16 GENERAL

- 16.1 The Contract constitutes the entire agreement and understanding of the parties and supersedes any previous agreement between the parties relating to the subject matter of the Contract.

- 16.2 Each of the parties acknowledges and agrees that in entering into the 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 the Contract or not) other than as set out in the Contract. Nothing will operate to limit or exclude any liability for fraud.

- 16.3 Should any provision of the Contract be held to be void or voidable the remaining provisions of the Contract will continue in full force and effect.

- 16.4 No forbearance, delay or indulgence by either party in enforcing the provision of the 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.

- 16.5 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.

- 16.6 Members of KCOM Group may enforce their rights under 11.7 but no other person or body who is not a party to the Contract has any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of the Contract (but this does not affect any rights or remedies of a third party which exist or are available apart from that Act).

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

- 16.8 We may assign the Contract to any company in the KCOM Group.

- 16.9 Subject to clause 16.8, We may not assign the Contract to any other third party without Your prior written consent such consent not to be unreasonably withheld.

- 16.10 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.

- 16.11 Any notice under or in connection with the 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 the Contract or any other address notified from time to time.

- 16.12 Any notice addressed as provided in clause 16.11 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.

- 16.13 Notwithstanding anything to the contrary, You acknowledge and agree that We may use Your information (which may include Your or Your suppliers', customers', affiliates' or contractors' personal data and/or personal data relating to Your or Your suppliers', customers', affiliates' or contractors' employees or staff) ("**Customer Information**") for the purpose of supplying the Services to You, administering this Contract including handling orders, billing, processing payments, payment collection and communicating with You regarding the Services and You further acknowledge and agree that We may pass this Customer Information on to third parties (including, without limitation, transferring and processing Customer Information outside of the European Economic Area) or other members of the KCOM Group: (a) to undertake these functions on Our behalf; or (b) if required by law. You will ensure that all necessary consents are obtained for the use of Customer Information in accordance with this clause.

We may also contact Your organisation (including individuals within Your organisation) by letter, telephone or e-mail with details of Our services that may be of interest. If an individual does not wish to receive marketing material from Us then please notify us by 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

- 16.14 The Contract will be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

17 DATA PROTECTION

- 17.1 Where We are processing data on Your behalf We shall only process such data in accordance with the Data Protection Laws and Our Data Processing Commitment.

18 DEFINITIONS

- 18.1 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;

"Charges" any monthly charges, additional usage charges, ad hoc charges or other charges payable by the Customer as detailed in the Contract;

"Commencement Date" means the date of the Contract;

"Contract" means these Terms and Conditions, the Data Processing Commitment and the electronic order form for placing an order for the Services by You and Our email acceptance of Your order, and any of the same as may be amended from time to time;

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

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

"Data Processing Commitment" means the Data Processing Commitment contained in this Contract below;

"Data Protection Laws" means all applicable laws and regulations relating to the processing of Personal Data and privacy including the Data Protection Act 1998, the General Data Protection Regulation 2016/679 and any statutory instrument, order, rule or regulation made thereunder, as from time to time amended, extended, re-enacted or consolidated and the terms "Data Controller", "Data Processor", "Data Subject", "Data Subject Access Request", "Supervisory Authorities", "process" and "Personal Data" shall have the meanings given to those terms in such data protection laws and regulations;

"Data Shuttle" a portable hard-drive provided by Us or Our third party supplier, on which You agree to store Your initial data back-up;

"Data Shuttle Service" a service which enables You to transfer Your initial backup directly from Your servers to Our or Our third party supplier's, Data centers using the Data Shuttle.

"Force Majeure Event" an event of force majeure as that term is described in clause 15.

"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, as stated in the Contract which commences on the Service Start Date and "Term" means the Initial Term together with any further period during which We provide Service to You pursuant to clause 1.1;

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

"KCOM Group" means Us, Our holding company, Our subsidiaries, and any subsidiary of Our holding company. The terms "subsidiary" and "holding company" have the meanings given to them by section 1159 and Schedule 6 of the Companies Act 2006 (as amended);

"Legislation" all Acts of Parliament and statutory regulations, instruments or orders and codes of practice and all applicable European Union laws, treaties, directives and other legislation as any of the same may be amended or replaced from time to time;

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

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

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

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

"Service Regrade" means changes to certain elements of the Services, as agreed by Us, pursuant to clause 6;

"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 the Contract;

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

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

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

"We/Us" KCOM Group Limited, 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.

Data Processing Commitment

This Schedule represents Our commitment to You in regard to processing of Personal Data. It forms part of the Contract and should be read in conjunction with the Contract and any associated documentation.

1 DEFINITIONS

1.1 In this Data Processing Commitment Schedule, unless the context otherwise requires:

“**Data Subject**” has the meaning given to it in the Data Protection Laws;

“**Data Subject Access Request**” has the meaning given to it in the Data Protection Laws;

“**Personal Data**” has the meaning given to it in the Data Protection Laws;

“**Permitted Sub-Processor**” means any third party supplier or other sub-processor appointed by Us for the provision of Services to You pursuant to the Contract, as such third party supplier or sub-processor is expressly identified to You or as otherwise agreed between the parties.

1.2 Any other definitions used in this Data Processing Commitment Schedule shall have the meaning ascribed to it in the Contract.

2 DATA PROTECTION

2.1 Both Parties hereby warrant, represent and agree that in relation to the performance of the Services during the term of the Contract each Party will comply with the Data Protection Laws.

2.2 Both Parties acknowledge and agree that in relation to Your Personal Data, You are the Data Controller and We are the Data Processor. We agree and accept that We will process the Personal Data pursuant to and in accordance with the Contract, as applicable, and the Data Protection Laws.

2.3 Annex A sets out the information regarding Our processing of Your Personal Data as required by article 28(3) of the General Data Protection Regulation 2016/679. We may make reasonable amendments to Annex A by written notice to You from time to time as We reasonably consider necessary to meet those requirements. Nothing in Annex A (including as amended pursuant to this section 2.3 of this Data Processing Commitment) confers any right or imposes any obligation on either You or Us.

2.4 We shall:

- (a) only process the Personal Data for the purposes of performing its obligations under the Contract, as applicable, and in accordance with Your documented instructions;
- (b) not transfer the Personal Data outside of the United Kingdom or the EEA, unless permitted to do so as follows:
 - (i) in provision of the Services to the relevant Permitted Sub-Processor, subject to ensuring that either: (a) such Permitted Sub-

Processor implements appropriate technical and organisational measures to safeguard against unauthorised and unlawful processing of Personal Data and to ensure a level of security appropriate to the risk; or (b) the Sub-Processor enters into the Standard Contractual Clauses for the Processing and transfer of Personal Data outside of the United Kingdom or the EEA with You; or

- (ii) with Your prior written consent; and/or
- (iii) if required to do so by any legislation or regulation, in which case We shall inform You of such requirement if it is able to do so;
- (c) ensure that all of Our employees who process the Personal Data are subject to an obligation of confidentiality in relation to the Personal Data;
- (d) implement appropriate technical and organisational measures to safeguard against unauthorised and unlawful processing of Personal Data and to ensure a level of security appropriate to the risk, including but not limited to:
 - (i) pseudonymising and encrypting Personal Data, as appropriate;
 - (ii) ensuring the ongoing confidentiality, integrity, availability and resilience of its processing systems and services;
 - (iii) enabling the restoration, availability and access to Personal Data in a timely manner in the event of a physical or technical incident and, without prejudice to the foregoing, in accordance with any service level agreement between Us and You;
 - (iv) regularly testing, assessing and evaluating the effectiveness of the technical and organisational measures for ensuring the security of the processing; and
 - (v) taking steps to ensure that any of Our employees who have access to Personal Data does so in accordance with Our rights and obligations as expressly detailed in this Data Processing Commitment or otherwise on Your express written instructions unless otherwise required by legislation or other applicable regulation;
- (e) inform You of any new sub-processor and/or change of a Permitted Sub-Processor. You shall inform Us within five (5) Business Days of any objection to such appointment or change. If You do not raise any such objection, We shall ensure that such sub-processors shall comply with the provisions of this Schedule or terms which are substantially similar;

- (f) assist You in the timely response to requests from Data Subjects exercising their rights, including but not limited to:
 - (i) where We are required to assist You with a Data Subject Access Request You have received, responding to such request for assistance within twenty (20) days of receiving notice of such request from You;
 - (ii) where We receive a Data Subject Access Request directly from the Data Subject, We shall notify You within one (1) Business Day after receipt and shall respond to the Data Subject within the time limits specified within the Data Protection Laws and where You are required to assist Us with such Data Subject Access Request, You shall respond to Us within twenty (20) days of receiving notice of such request from Us;
 - (iii) assisting You, as applicable, with a request for access, rectification and/or erasure by a Data Subject; and
 - (iv) enabling You to comply with a request for data portability of a Data Subject;
 - (g) assist You in complying with its obligations relating to security of Personal Data as set out in the Contract, as applicable, or as otherwise may be reasonably requested by You, including but not limited to:
 - (i) notifying You of any Personal Data breach as soon as reasonably practicable and no later than twenty four (24) hours after We become aware of the breach (such notice by email and/or telephone and followed up by email), and including all relevant detail. We agree and accept that You may use any detail included in the notification of a Personal Data breach, or otherwise given in its communication to Data Subjects, to the extent that such information does not breach the rights of any other individual;
 - (ii) at Your request and expense assisting with the communication to the Supervisory Authorities, any of Your customers and/or Data Subjects following a Personal Data breach and/or implementing any measures required as a result of such breach;
 - (iii) at Your request and expense, consulting with the Supervisory Authorities and/or assisting You to consult with the Supervisory Authorities, including providing You with any information relating to Our processing of Personal Data and/or Our compliance with the Data Protection Laws as You may be reasonably request.
 - (h) upon the expiry or termination of the Contract, delete or return all Personal Data to You (as requested by You), unless otherwise required or permitted by Data Protection Laws and provide written confirmation You in this respect;
- (i) make available to You all information reasonably necessary to enable You to demonstrate compliance with Your obligations under the Data Protection Laws, including such records of all categories of processing carried out on Your behalf, as such is requested by You;
- (j) co-operate with any request of the Supervisory Authority;
- (k) allow You to undertake audits of Us on 30 days' notice and at Our expense, subject to any reasonable requests We may have regarding the timing and conduct of such audit (including, without limitation, such audits to be conducted during Our Business Hours and allowing Us to supervise such audit), to ensure Our compliance with this Schedule;
- (l) contribute to any audits or inspections carried out on You by any Supervisory Authority or any of Your suppliers or customers, as such contribution and/or inspection is reasonably necessary to demonstrate compliance with Your and/or Our obligations in this Data Processing Commitment, subject always to the provisions in Section 2.3(k) above;
- (m) at Your expense, implement any reasonable recommendations and/or remedial actions necessary to ensure compliance with the provisions of this Schedule and/or the Data Protection Laws, as such recommendations and/or remedial actions are deemed necessary by You (acting reasonably) or any Supervisory Authority, as applicable, following an audit or inspection in accordance with Section 2.3(l) above, or otherwise as You deem reasonably necessary.
- (n) Subject to clause 14, each Party shall indemnify the other Party in the event of any claim by a third party arising as a consequence of the other Party's breach of this Data Processing Commitment and/or Data Protection Laws.

3 GENERAL

- 3.1 We shall be entitled to amend this Data Processing Commitment either: (i) immediately to ensure Our commitment is in compliance with Data Protection Laws; or (ii) upon giving You 30 days' prior written notice of such change, provided that such change shall not (in Our reasonable opinion) cause a material detrimental effect to You).

DATA Processing Details

Annex A

Description	Details
Subject matter of the processing	Provisions of Services pursuant to the Contract between Us and You
Duration of the processing	During the Term of the Contract and for up to 7 years after the expiry or termination of the Contract
Nature and purposes of the processing	Collecting Storing Processing (organising, structuring, adaptation or alteration, retrieval consultation, use) Releasing (transmission, dissemination or otherwise making available) To facilitate the fulfilment of Our obligations arising under the Contract including <ol style="list-style-type: none"> i. Ensuring effective communication between Us and You; ii. Maintaining full and accurate records of all Services arising under the Contract; iii. Dealing with any rights, actions, incidents or disputes arising under the Contract;
Type of Personal Data	Name Date of Birth Age IP Address National Insurance Number Gender Telephone Number Address Email Address Unique Identifier Racial or Ethnic Origin Sexual Orientation Physical or Mental Health or Condition Proceedings in relation to any offence Religious Belief Trade Union Membership Political opinion
Categories of Data Subject	Includes: <ol style="list-style-type: none"> i. Your directors, employees and/or staff concerned with the delivery of the Service ii. The directors, employees and/or staff of Your group and/or associated companies concerned with the delivery of the Service iii. The directors, employees and/or staff of Your sub-contractors and/or other third parties concerned with either the fulfilment of Your obligations arising from Contract or the receipt of Your rights under the Contract
Permitted Sub-Processors	Mozy