

Partner Standard Terms and Conditions for the provision of KCOM Cloud Productivity Services

1 TERM

- 1.1 This Contract will come into effect on the Commencement Date. The Contract will continue on a 30 day rolling basis, the first 30 day rolling period being the 30 day period following the Service Start Date and each further 30 day rolling period being the 30 day period following the expiry of the last 30 day rolling period (each a "30 Day Period").
- 1.2 You may terminate this Contract by giving Us written notice at any time provided that You pay all Rental Charges for the terminated Services to the end of the then current 30 Day Period and any other outstanding Charges due and payable.
- 1.3 We may terminate this Contract by giving You 30 days' written notice at any time. If this Contract terminates as a result of such a notice part way through the then current 30 Day Period, You will not be required to pay the Rental Charges from the date of termination to the end of that 30 Day Period and We will issue a credit note for any Rental Charges paid in advance in respect of the period between the date of termination and the end of that 30 Day Period.

- 1.4 You acknowledge and agree that this Contract is conditional on Us carrying out a Survey between the Commencement Date and any Proposed Start Date and/or the Service Start Date (and/or after the Service Start Date in respect of any Migration Services). Where the outcome of the Survey is such that (in Our reasonable discretion) We would be unable to provide the Service to You, We may terminate this Contract (or any relevant part thereof) immediately on written notice to You (without any liability to You).

2 PROVISION OF THE SERVICE

- 2.1 We will provide the Service from the Service Start Date, subject to these terms and conditions and this Contract. We shall use Our reasonable endeavours to provide the Service in accordance with the relevant Product Schedule and the provision of the Service shall otherwise be subject to the relevant Product Schedule.

- 2.2 We will use Our reasonable skill and care in the provision of the Service and We will use Our reasonable endeavours to make the Service and Software operationally available to You throughout the duration of this Contract (subject to the terms of this Contract), however You acknowledge that the Service cannot be provided fault free and We do not warrant free or uninterrupted use of the Service nor guarantee the continued availability of the Service or any particular service level.

- 2.3 If You request the Migration Service, the Migration Terms shall apply. The Migration Service will run in parallel with the provision of the Service from the Service Start Date.

- 2.4 In the event that We are unable to provide the Service by any Proposed Start Date as the result of a failure by You to fulfil Your obligations, You will pay the Charges for that Service from the Proposed Start Date as if We had commenced providing the Service to You on that date. In such circumstances, the Service Start Date shall be deemed to be the Proposed Start Date.

- 2.5 We shall be entitled without Your consent to:

- (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 Policies from time to time. If We change Our Acceptable Use Policies We will place Our current Acceptable Use Policies on Our web site at www.business.kcom.com and
- (d) give You instructions (which You shall ensure that Your End User complies with) which We reasonably believe to be necessary for health and safety or security reasons or for maintaining the quality of the Service.

- 2.6 Suspension of Service

We shall be entitled to suspend the Service (without any liability to You):

- (a) with Your prior agreement, or in the absence of Your agreement upon at least 24 hours' prior notice or in accordance with clause 2.6(b), for planned maintenance to the Network, Service or

Software or to equipment used to provide the Service;

- (b) without notice when necessary for operational reasons, or in circumstances outside of Our reasonable control, or in case of emergency;
- (c) without notice to comply with any Legislation, court order or other governmental request or order requiring immediate action;
- (d) without notice to prevent interference with, damage to, or degradation of the Network;
- (e) without notice to eliminate a hazardous condition;
- (f) without notice if You use, or Your End User uses, the Service in a manner that will, does, or may expose Us to legal liability or that violates any applicable Legislation or Our then current Acceptable Use Policies and whether such use is by You or Your End User, 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 8.1 and/or 8.2 of this Contract; and/or
- (h) without notice if You fail to pay an amount when due and You still do not pay the amount due within 10 days after You receive a written notice from Us that an amount is due.

Without prejudice to Our other rights and remedies, if We suspend the affected Service for any of the reasons outlined in clauses 2.6(f), 2.6(g) or 2.6(h) and (if it is possible to cure) You cure the cause of the Service suspension within 10 days of receiving a notice from Us specifying the breach and the action required (the "Cure Period") We will resume the Service once You have paid Our reasonable charges associated with resuming the affected Service. We may terminate this Contract and/or the affected Service if You do not cure the cause of a Service suspension within the Cure Period or You do not pay the associated charges for Us resuming the Service. If such termination is effective prior to the expiry of the then current 30 Day Period, You will also pay Us the Rental Charges for the terminated Services to the end of the then current 30 Day Period and any other outstanding Charges due and payable.

3 YOUR OBLIGATIONS

- 3.1 You shall, and You shall ensure that Your End User shall, at Your own cost:

- (a) co-operate with all reasonable instructions that We may provide from time to time in order to enable Us to provide the Service or otherwise perform Our obligations under this Contract;
- (b) at all times have suitable computer hardware, software and telecommunications services and equipment for use with the Service;
- (c) take appropriate security precautions and maintenance to maintain and safeguard Your or Your End User's Data for example (but not limited to) by regularly backing-up such Data and by using current up to date firewall and anti-virus software with appropriate security updates;
- (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 (including the End User) and You must ensure that they comply with this Contract;
- (e) adhere at all times with Our Acceptable Use Policies and procure the same from any employees, directors and/or agents of the End User or You who use the Service;
- (f) comply with all applicable Legislation relating to Your and Your End User's use of the Services; 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 and provide such information within a reasonable time of being requested by Us to do so.

- 3.2 You shall, and You shall ensure that Your End User 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 may only use, and You shall ensure that Your End User will only use, the Service for business purposes and not for residential purposes.

- 3.4 You may permit Your End User (and only Your End User) to use the Services provided that You shall be responsible, and remain responsible, for ensuring that:

- (a) Your End User complies with Your obligations under this Contract (so far as applicable) including (without limitation) where You are required to ensure, procure, or otherwise require that Your End User complies with a particular clause in this Contract or performs, or refrains from performing, a certain act. Any breach of this Contract arising from an act or omission of Your End User shall be deemed to be a breach of this Contract arising from an act or omission of You; and
- (b) You maintain a signed contract with Your End User and (without prejudice to Your liability to Us for, and Our rights and remedies in respect of, any breach of, or failure by You to comply with, any of the terms of this Contract) You must ensure that the terms of Your contract with Your End User: (i) are not inconsistent with, or contradictory to, the terms of this Contract (so far as applicable); and (ii) without limitation, flow down (mutatis mutandis) to Your End User the Microsoft licensing terms and obligations in clause 6 and the general licensing terms and obligations in clause 4.

- 3.5 Our obligations under this Contract shall be solely to You and You agree to fully indemnify Us, defend Us and hold Us harmless against any and all liabilities, claims, losses and costs (including legal costs) arising from any and all claims by any third party or Your End User in connection with the Services regardless of cause of action.

- 3.6 You shall be liable to Us for any acts and omissions of third parties or Your End User relating to the use of the Services.

- 3.7 You will indemnify and keep Us indemnified from and against any and all costs, (including, without limitation, any legal costs and disbursements), expenses, damages, liabilities, losses, or actions suffered by Us, directly or indirectly and whether wholly or in part resulting from failure by You or Your End User to comply with the terms of clause 3 of this Contract.

- 3.8 We will not be liable to You where We are unable to carry out any or all of Our obligations under this Contract as a result of: (a) a breach by You of any of the provisions of this Contract; or (b) Your or Your End User's negligence or any other act or omission by You or Your End User or Your or Your End User's employees or agents; or (c) faults with, defects in, or problems with Customer Equipment; or (d) faults with, defects in, or problems with Your or Your End User's network, software or content; or (e) the acts or omissions of any other third party which are beyond Our reasonable control.

4 SOFTWARE LICENCE

- 4.1 Any Software or Documentation provided by Us in connection with the provision of the Services is, and will remain, Our property or that of Our licensors. All Intellectual Property Rights in the Software, Documentation and Services are owned by, and will remain vested in, Us or Our licensors. Nothing in this Contract shall operate to assign or otherwise transfer ownership of any such Intellectual Property Rights to You, Your End User or any third party.

- 4.2 You are granted a non-exclusive, non-transferable (subject to clause 4.5), limited right to use the Software and Documentation during the term of this Contract and only for the purpose of reselling and providing the Service to Your End User.

- 4.3 You agree to be bound by and comply with, and to ensure that Your End User is bound by and complies with, the licensing terms of Our licensors as set out in clause 6, in respect of Microsoft software and Licensed Products. Where any other Software or Documentation is owned, or licensed to Us, by another third party supplier who determines any terms upon which that Software or Documentation is licensed, We shall, if required by that third party supplier or Us, procure the grant of a licence encompassing those terms directly from such third party supplier to You and You shall comply (and You shall ensure that Your End User complies) with the terms of such licence.

- 4.4 You shall not, and You shall ensure that Your End User or any third party shall not:

- (a) make any modifications to the Software or Documentation or use the Software or Documentation in any manner not expressly authorised in this Contract;
 - (b) copy, adapt, reverse engineer, decompile, disassemble, modify or make error corrections to the Software in whole or in part except as permitted by law or clause 6.5;
 - (c) (subject to clause 4.5) rent, lease, lend, make available or distribute the Software or the Documentation; assign the benefit or sub-contract the burden of this Contract in whole or in part; or allow the Software or Documentation to become the subject of any charge, lien or encumbrance; and
 - (d) export the Software, Documentation or any hardware upon which the Software is embedded, out of the UK without the prior written consent of Us or Our licensors.
- 4.5 You may only resell and provide the Services solely to Your End User and You may only sublicense the Software or Documentation solely to Your End User on a non-exclusive, non-transferable, non-sublicensable basis and as a limited right for the End User to use the Software and Documentation during the term of this Contract and only for the purpose of the End User using the Service. You will not, and You will ensure that Your End User will not, resell or provide the Services or sublicense the Software or Documentation to any other reseller, service provider or distributor or any other third party.
- 4.6 You shall not, and You shall ensure that Your End User shall not, modify, obscure or remove any copyright or proprietary notices on the Software or Documentation and You shall, and You shall ensure that Your End User shall, reproduce such notices on any authorised copies of the Software or Documentation or part thereof You or Your End User may make in the format in which they appear on the original.
- 4.7 You will permit, and You will ensure that Your End User will permit, Us or the Software or Documentation licensor, upon reasonable notice, to enter during normal working hours any premises owned or controlled by You or Your End User in order to review Your or Your End User's use of the Software and/or the Documentation and to ensure that You and Your End User are using the same in accordance with this Contract and You will (as an additional obligation) provide (and You will ensure that Your End User will provide) all information requested by Us or Our software licensors in relation to Your or Your End User's use of the Software and Documentation (at Your own cost).
- 4.8 You will indemnify and keep Us indemnified against any and all costs, losses, damages, or liability that We may incur due to: (i) You or Your End User amending or in any way altering the Software or Documentation, or using it for a purpose not permitted by this Contract; (ii) Your or Your End User's breach of this clause 4 or any of the provisions of Our licensors as set out in clause 6, in respect of Microsoft software and Licensed Products; or (iii) any third party claim in relation to Your or Your End User's unlawful or improper use of the Software or Documentation (including where such a claim arises due to a breach by You of the terms of this Contract).
- 4.9 If You become aware of an IPR Claim, You will:
- (a) promptly and fully notify Us of the IPR Claim and You will ensure that Your End User promptly and fully notifies You of the IPR Claim;
 - (b) (and You will ensure that Your End User will) allow Us to conduct all negotiations and proceedings and to settle the IPR Claim if We require such;
 - (c) (and You will ensure that Your End User will) take such action as We may reasonably request to avoid, dispute, compromise or defend the IPR Claim;
 - (d) (and You will ensure that Your End User will) provide Us with any reasonable assistance regarding the IPR Claim as is required by Us, and
 - (e) (and You will ensure that Your End User will) not make any admission of liability, agreement or compromise in relation to the IPR Claim without Our prior written consent.
- 4.10 Upon termination of this Contract, Your and Your End User's right to use the Software and/or the Documentation shall cease and You shall, and You shall ensure that Your End User shall, at Our absolute discretion, return or destroy the same (if applicable) and otherwise cease use.
- 5 SERVICE FAILURE AND WARRANTIES**
- 5.1 If the Service is materially impaired due to a fault, defect or problem with the Software or Network, or if there is any other material Service failure, then We shall, at Our option, do one of the following:

- (a) use reasonable endeavours to repair the Software or Network, and where the Service is unavailable You will not be charged (and shall be refunded if applicable) for each full day that the Service is unavailable; or
 - (b) use reasonable endeavours to replace or modify, or otherwise remedy the failure of, the Software, Network or Service, and where the Service is unavailable You will not be charged (and shall be refunded if applicable) for each full day that the Service is unavailable; or
 - (c) (if We have failed to achieve either the repair of, or replacement / modification / remedy of, the Software, Network or Service (as applicable) in accordance with clauses 5.1(a) or 5.1(b) within 15 days of Us becoming aware of the issue) terminate, or allow You to terminate, the Service immediately by notice in writing (without You being required to pay the Rental Charges from the date of termination to the end of the then current 30 Day Period and We will issue a credit note for any Rental Charges paid in advance in respect of the period between the date of termination and the end of that 30 Day Period), subject to You providing, and ensuring that Your End User provides, all the information and assistance that may be necessary to assist Us in resolving the fault, defect or problem, or other failure, including sufficient information to enable Us to re-create the defect, fault or problem (if applicable).
- You acknowledge and agree that the refund or waiver of Charges from the date of termination to the end of the then current 30 Day Period on termination under clause 5.1(c) and/or any refund or waiver of Charges under clauses 5.1(a) or 5.1(b) shall constitute Your sole and exclusive financial remedies for any Service failure or disruption or Service unavailability.
- 5.2 We will not be responsible for, You shall have no claim or entitlement in relation to, and clause 5.1 shall not apply to, any fault, defect or problem with the Software or Network, or any other Service failure or disruption, if such is caused by or is attributable to:
- (a) a suspension of Service under the terms of this Contract;
 - (b) an error or act by or of You or Your End User;
 - (c) Your, or any third party's, or Your End User's, services, software, network, computer system, wiring, cabling, telecommunications lines, or equipment not provided by Us under or pursuant to this Contract;
 - (d) any changes, modifications, updates, alterations or enhancements to the Software, Documentation or Customer Equipment not provided by Us under or pursuant to this Contract or caused by the incorrect use, abuse or corruption of the Software, Documentation or Customer Equipment, or by the use of the Software or Service with other computer programs or on equipment with which it is incompatible;
 - (e) any inaccuracies, delays, interruptions, or errors occurring as a result of incorrect data or data which does not conform to required input formats;
 - (f) 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;
 - (g) faults or omissions of the internet;
 - (h) a virus introduced negligently or otherwise by You or Your End User on to Customer Equipment (such as where You fail or Your End User fails to abide by Our or Our third party providers' virus protection policy or Your or Your End User's failure to introduce virus scanning in accordance with Our reasonable recommendation);
 - (i) the Software, Service, or Network being used other than as permitted by this Contract; any breaches by You of the terms of this Contract or a breach of Our or Our third party providers' security policies; and/or
 - (j) without prejudice to any of the foregoing, where clause 3.8 or 17.1 applies.
- 5.3 If a Service fault, defect or problem is found upon investigation by Us not to be Our responsibility under this Contract We may (without prejudice to Our other rights and remedies) in Our sole discretion charge You on a time and materials basis at Our then current rates for all time spent and all costs and expenses reasonably and properly incurred by Us in the course of or in consequence of such investigation.
- 5.4 You warrant that You have full capacity and authority to enter into and to perform this Contract and that this Contract is accepted and/or executed by Your duly authorised representative.

- 5.5 You acknowledge that You have, and Your End User has, all responsibility for selecting the Software to meet Your and Your End User's 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

You must ensure that Your contract with Your End User includes the provisions of this clause 6 (mutatis mutandis) in relation to Your reselling and provision of the Services to Your End User and the End User's use of the Licensed Products (as defined below) and requires Your End User to consent to and comply with the following terms in relation to such use.

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

6.1 Definitions

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

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

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

6.2 Ownership of Licensed Products

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

6.3 Use Of Client Software

You and Your End User may use the Client Software installed on Your or Your End User's 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 or Your End User's use of the Client Software.

6.4 Use Of Redistribution Software

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

6.5 Copies

You may not, and Your End User may not, make any copies of the Licensed Products; provided, however, that You or Your End User may (a) make one copy of Client Software on Your or Your End User's Device as expressly authorized by Us; and (b) You or Your End User may make copies of certain Redistribution Software in accordance with clause 6.4 (Use of Redistribution Software). You and Your End User 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 or Your End User's Device to another person or entity, whichever occurs first. You may not, and Your End User may not, copy any printed materials accompanying the Licensed Products.
- 6.6 Limitations on Reverse Engineering, Decompilation and Disassembly**
You may not, and Your End User may not, reverse engineer, decompile, modify, or disassemble the Licensed Products, except and only to the extent that applicable law, notwithstanding this limitation, expressly permits such activity.
- 6.7 No Rental**
You may not, and Your End User may not, rent, lease, lend, pledge, or directly or indirectly transfer or distribute the Licensed Products to any third party, and You may not, and Your End User may not, permit any third party to have access to and/or use the functionality of the Licensed Products.
- 6.8 Termination**
Without prejudice to any other rights and remedies, We may terminate Your and Your End User's rights to use the Licensed Products if You fail to comply, or You fail to ensure that Your End User complies, with this clause 6. In the event of termination or cancellation of Your Contract with Us or Our agreement under which the Licensed Products are licensed to Us, You and Your End User must stop using and/or accessing the Licensed Products, and destroy all copies of the Licensed Products and all of its component parts and all Your and Your End User's rights to use the Licensed Products and the Services shall automatically terminate. Where Your contract with your End User terminates for any reason, You must ensure that Your End User stops using and/or accessing the Licensed Products and destroys all copies of the Licensed Products and all of its component parts and You must further ensure that all Your End User's rights to use the Licensed Products and the Services shall automatically terminate.
- 6.9 No Warranties, Liabilities Or Remedies By Microsoft**
ANY WARRANTIES, LIABILITY FOR DAMAGES AND REMEDIES, IF ANY, ARE PROVIDED SOLELY BY US TO YOU UNDER THIS CONTRACT AND BY YOU TO YOUR END USER UNDER YOUR CONTRACT WITH YOUR END USER 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 shall be provided to Your End User by You, 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, and to ensure that Your End User complies with, all applicable international and national laws that apply to the Licensed Products, including the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by the U.S. and other governments. For additional information, see <http://www.microsoft.com/exporting/>.
- 6.13 Verification**
In addition to, and notwithstanding anything to the contrary in, clause 4.7, You agree to, and You will ensure that Your End User agrees to, keep records relating to the licensing of the Licensed Products and relevant Microsoft Software and Documentation and agree to, and ensure that Your End User will agree to, Microsoft having the right to verify compliance with the license terms for the Licensed Products and relevant Microsoft Software and Documentation. To verify compliance Microsoft will engage an independent auditor which will be subject to a confidentiality obligation. Verification will take place upon not less than 30 days' notice, during normal business hours and in a manner that does not interfere unreasonably with Your or Your End User's operations. You agree to, and You will ensure that Your End User agrees to, promptly provide the independent auditor with any information it reasonably requests in furtherance of its verification, including access to systems running the Licensed Products and relevant Microsoft Software and Documentation and evidence of licenses for the Licensed Products and relevant Microsoft Software and Documentation. As an alternative You agree to, and You will ensure that Your End User agrees to, Microsoft or Us requesting the completion of a self-audit questionnaire in relation to licenses for, and use of, the Licensed Products and relevant Microsoft Software and Documentation.
- 6.14 Contact Details**
We may be required to provide Your or Your End User's contact details, including contact names and addresses, to Microsoft or Our third party licensor and You hereby irrevocably authorise Us to do so and You shall ensure that Your End User authorises Us to do so.
- 6.15 Liability For Breach**
In addition to any liability You may have to Us, You agree that You will also be legally responsible directly to Microsoft for any breach of this clause 6 or clause 4 so far as clause 4 relates to Microsoft software or documentation and Licensed Products. You will ensure that Microsoft is granted the same rights against Your End User in Your contract with Your End User in respect of Your End User's breach of Your contract with Your End User.
- 7 CUSTOMER EQUIPMENT**
- 7.1** You shall ensure that, and You shall ensure that Your End User shall ensure that, the Customer Equipment (or any Device used in relation to the Service) is in good working order.
- 7.2** You acknowledge and agree that You and Your End User shall be responsible for obtaining and maintaining Your and Your End User's own compatible computer system and all equipment, Customer Equipment, Devices, software and communications lines, including any public lines, required by You and Your End User to access the Services.
- 8 USE**
- 8.1** You will not use, and You will ensure that Your End User or any third party will not 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 or rights (including Intellectual Property Rights) 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.
- 8.2** Both parties agree to, and You will ensure that Your End User will, 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, and You shall ensure that Your End User consents 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, and You will ensure that Your End User agrees that, We may divulge such information as the Regulatory Authorities may reasonably require in relation to this Contract.
- 9 DOMAIN NAMES**
- 9.1** If You so request, We shall in Our discretion apply for domain names at an additional cost per domain name. Also, We will apply to transfer any domain names registered in Your End User's name from any other Internet Service Provider. All costs incurred in applying for domain names and all charges incurred from the managing organisation, in respect of the domain names shall be at Your cost and expense.
- 9.2** We have no control over the availability of domain names and accept no responsibility for the availability of any domain name.
- 9.3** In respect of any actions taken by Us pursuant to this clause 9, We may levy such additional charges on You, as may be agreed.
- 10 SERVICE REGRADES**
- 10.1** The Service Elements as at the Commencement Date shall be as agreed in the Order. Following provision of the Service, You shall be provided access to the KCOM Internet portal (the "Portal"). Through the Portal, You shall be able to request changes to the Service Elements. Such amendments shall be called "Service Regrades".
- 10.2** There may be limitations with the Services that may require Us to reject Your Service Regrade request. In such circumstances, We may suggest a Service Regrade that We are able to supply to You. Once We have reached agreement regarding the Service Regrade, We commit to make available to You the Service Regrade required, subject to the terms of this Contract.
- 10.3** The Charges shall be in accordance with the Service Regrade You chose and You shall be liable for the payment of such Charges in accordance with clause 14.
- 10.4** If You have selected a Service or a Service Regrade which is insufficient for Your or Your End User's purposes and You allow Your End User to allow more of its users to use the Service than agreed or continuously use, or allow the use of, more storage or any other Service Elements than that provided pursuant to this Contract or any Service Regrade, We shall be entitled to recommend that You perform a Service Regrade, in accordance with this Contract.
- 10.5** Following a recommendation pursuant to clause 10.4 if You do not perform a Service Regrade and You continually exceed, or allow the continual exceeding of, the Service Elements:
- You shall immediately pay Us on demand an amount equal to the difference between the Charges paid by You to date and the amount which would have been paid had the Charges applicable to the Service Elements actually being used applied from the Service Start Date; and
 - We shall at Our option (without prejudice to any of Our other rights) be entitled to suspend the Service until We receive payment from You in accordance with clause 10.5(a).
- 11 SUPPORT SERVICES**
- 11.1** In case of any difficulties, Our technical team will use its reasonable endeavours to provide support during the hours posted on the web site. We cannot guarantee that We will be able to resolve or give advice on all issues. We cannot accept liability for any issues arising from Your or Your End User's failure to follow our advice and recommendations or non-compliance with this Contract.
- 11.2** The support service does not cover maintenance of Customer Equipment or software purchased from other vendors rather than from Us or software generated by You or Your End User, or support outside the usual hours of support (as advertised on the web site).
- 11.3** You agree to co-operate with Us or Our suppliers in diagnosing faults including but not limited to the carrying out of any diagnostic and test routines yourself and allowing remote diagnostic tests if required.
- 11.4** You agree to pay any charges imposed on Us by Our supplier as a result of the supplier responding to a fault and either (i) determining that such fault has not occurred as a consequence of Our supplier's equipment or network; or (ii) the visit being aborted for any reason.
- 11.5** Nothing in this Contract shall require Us to provide any support services directly to your End User and You will, and will remain, solely responsible to Your End User for support services.
- 12 CHANGES**
- 12.1** We reserve the right to vary these terms and conditions and/or the Product Schedule(s) by giving You at least 14 days' written notice. The updated terms and conditions and/or Product Schedule(s) will be those that appear on Our website from time to time and You agree to be bound by such updated terms. If any variation would cause a material detriment to You, then You may terminate this Contract immediately by giving written notice to Us within 30 days of the date We give notice of the variation to You (without the requirement to pay Us the Rental Charges from the date of termination to the end of the then current 30 Day Period and We will issue a credit note for any such Rental Charges already paid from the date of termination to the expiry of the then current 30 Day Period). You will be deemed to accept the variations if you do not so terminate.
- 13 CREDIT REFERENCE**
- 13.1** 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:
- terminate this Contract, in whole or in part immediately on written notice to You;
 - 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;
 - impose credit limits on You in respect of Charges and suspend the Service at any time when such limits are reached until payment in full of such outstanding Charges has been made; and
 - impose such other measures on Your right to use any of the Services as We shall deem appropriate.
- 14 CHARGES AND PAYMENT TERMS**
- 14.1** The core Charges in relation to each Service shall comprise a Rental Charge.

- 14.2 You will pay Us all appropriate Charges at the rates, times and frequencies as set out in this clause 14 and on the Order.
- The Rental Charge payable in relation to the Services will be payable monthly in advance commencing on the Service Start Date, unless otherwise stated on the Order.
 - Where a Service Regrade that results in additions to the Service Elements takes effect part way through a 30 Day Period, You will pay the Rental Charges for the additional Service Elements as though the Service Regrade took effect at the start of that 30 Day Period. In such circumstances, at the start of the next 30 Day Period, You will be invoiced for: (i) the additional Rental Charges resulting from the Service Regrade for the entirety of the 30 Day Period in which the Service Regrade took effect; and (ii) the full Rental Charges for the Service (including the additions) for the new 30 Day Period. Thereafter, the Rental Charge for Service Regrades will be payable in accordance with clause 14.2(a).
 - Where a Service Regrade that results in a reduction to the Service Elements takes effect part way through a 30 Day Period, You will still be required to pay the invoice for the full Rental Charge for that 30 Day Period that would have applied without the Service Regrade. However, We will issue You with a credit note in the next invoice in relation to the period from the date the Service Regrade took effect to the expiry of the 30 Day Period in which the Service Regrade took effect. Thereafter, the Rental Charge for Service Regrades will be payable in accordance with clause 14.2(a).
 - Any other Charges shall be payable upon demand.
- 14.3 We will issue invoices to You for the Service electronically via the Portal. If You have opted in, We will notify You that Your invoice is available by email to the email address stated on the Order. Otherwise, it is Your responsibility to check the Portal for invoices. You must ensure that the email address is correct and shall notify Us immediately if Your email address changes. We reserve the right to issue a paper invoice to You should We deem it appropriate in Our sole discretion.
- 14.4 We may increase the Charges by giving You 30 days' prior written notice and the increase will apply to the next 30 Day Period onwards following the expiry of that notice. You may terminate this Contract on written notice to Us within the 30 day notice period if You do not want to pay the increased Charges (without the requirement to pay Us the Rental Charges from the date of termination to the end of the then current 30 Day Period and We will issue a credit note for any Rental Charges paid in advance in respect of the period between the date of termination and the end of that 30 Day Period). You will be deemed to accept the variations if you do not so terminate.
- 14.5 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 2.6(h).
- 14.6 All Charges are exclusive of value added tax and any other applicable taxes.
- 14.7 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.
- 14.8 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. If we terminate this Contract under this clause 14.8, You will pay all Rental Charges for the terminated Service to the end of the then current 30 Day Period and any other outstanding Charges due and payable.
- ## 15 TERMINATION
- 15.1 If either party is:
- in material breach of any provision of this Contract and (if capable of remedy) fails to remedy such breach within 30 days' of written notice to do so;
 - 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.
- 15.2 We may terminate this Contract (either in whole or in part) with immediate effect if:
- You are in breach of clause 8.1 or 8.2; and/or
 - You are in breach of clause 4 or 6; and/or
 - Our authorisations to provide the Services (including any agreement with Our suppliers) are altered in a way that is material to the Service or are terminated.
- 15.3 We will continue to provide the Services in accordance with clause 2 until termination of this Contract but if:
- You are late in making any due payment, or
 - We become entitled to terminate this Contract early for any reason, or
 - You break any material term of another contract with Us or another company in the KCOM Group,
- then We may partially or completely suspend the Services without limiting Our ability to enforce other remedies that may be available. While the Services are suspended You must continue to pay the Charges.
- 15.4 Where We terminate this Contract in accordance with this clause 15 (other than under clause 15.2(c)), You will pay all Rental Charges for the terminated Services to the end of the then current 30 Day Period and any other outstanding Charges due and payable. Where You terminate this Contract in accordance with clause 15.1 or We terminate under clause 15.2(c), You will not be required to pay the Rental Charges from the date of termination to the end of the then current 30 Day Period and We will issue a credit note for any Rental Charges paid in advance in respect of the period between the date of termination and the end of that 30 Day Period.
- 15.5 Upon termination of this Contract You will:
- (and You will ensure that Your End User will) cease to use the Service, Software and/or Documentation supplied under this Contract and (at Our absolute discretion) shall return or destroy the same (as applicable); and
 - pay to Us all outstanding Charges due up to and including the date of termination.
- 15.6 Following expiry of this Contract, You acknowledge that We may (subject to the relevant Product Schedule) retain Your and Your End User's Data in accordance with Our obligations under any Legislation or pursuant to any Industry Agreement.
- 15.7 The expiry or termination of this Contract will be without prejudice to any other rights either party may be entitled to and will not affect any accrued rights or liabilities of either party.
- 15.8 Any reference in these Terms and Conditions to You being required to pay Us the Rental Charges to the end of the then current 30 Day Period in the event of termination shall be without prejudice to Our other, and any additional, rights and remedies.
- ## 16 LIMITATION OF LIABILITY
- 16.1 Both parties accept liability for, and nothing in this Contract shall exclude or limit liability for, death or personal injury resulting from that party's own negligence or that of its employees, sub-contractors or agents.
- 16.2 Nothing in this Contract shall exclude or limit liability for: (a) fraud; or (b) any indemnity given under the express terms of this Contract; or (c) anything that cannot be excluded or limited by applicable law.
- 16.3 We warrant that We will provide the Service to You in accordance with the terms of this Contract. All other conditions, warranties, terms, undertakings and obligations express or implied by statute (including, without limitation, those of satisfactory quality or of fitness for a particular purpose (even if that purpose is made known expressly or by implication to Us), common law, custom, trade usage or otherwise and all liabilities (if any) are excluded.
- 16.4 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 (whether direct or indirect);
 - loss or corruption of data or information (whether direct or indirect);
 - loss of profits (whether direct or indirect);
 - loss of goodwill (whether direct or indirect);
 - loss of anticipated savings even when advised of the possibility (whether direct or indirect);
 - loss of revenue (whether direct or indirect); or
 - indirect, special or consequential losses, liabilities or costs.
- 16.5 Both parties accept liability in respect of damage to the other's tangible property resulting from its or its employees', agents' or subcontractors' negligence up to an aggregate of £2,000,000 (two million pounds).
- 16.6 Other than in respect of clauses 16.1, 16.2 and 16.5 and subject to clause 16.4 Our maximum aggregate liability in contract, tort, negligence or otherwise arising out of, or in connection with, this Contract will be limited in the aggregate in each Contract Year to the greater of:
- £10,000; and
 - the value of the Charges paid by You in the preceding Contract Year (the "Liability Sum").
- In the event that a Contract Year has not elapsed from the Commencement Date, the Liability Sum will be calculated by multiplying the average monthly Charges incurred over the elapsed period by 12.
- ## 17 FORCE MAJEURE
- 17.1 Neither party will be liable to the other for any loss or damage caused to or suffered by the other as a direct or indirect result of the supply of the Services being prevented, restricted, hindered or delayed by reason of any circumstance outside of the first party's reasonable control and which by its nature could not have been foreseen by such a party or if it could have been foreseen was unavoidable (a "Force Majeure Event"). If either party is prevented from performance of its obligations due to a Force Majeure Event, for a continuous period of 45 (forty five) days, either party may terminate the Contract (or the affected part) by giving written notice.
- ## 18 DATA PROTECTION
- 18.1 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.
- ## 19 CONFIDENTIAL INFORMATION
- 19.1 Each party shall:
- keep secret and not disclose any Confidential Information received or obtained from the other party to any third party for any purpose except with the prior written consent of the other party (except where such disclosure is required by law as confirmed by written legal advice);
 - only use any Confidential Information received or obtained from the other party for the purpose of performing its obligations under this Contract;
 - protect the Confidential Information received or obtained from the other party with the same standard of skill and care as it uses for its own confidential information (but, in any event, at least reasonable skill and care); and
 - limit dissemination of the Confidential Information received or obtained from the other party to those of its employees, agents or officers that need to know the information for compliance with clause 19.1(b).
- 19.2 The provisions of clause 19.1 shall apply for a period of 4 years from the Commencement Date.
- ## 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.
- 20.6 Members of KCOM Group may enforce their rights under clause 14.7 and Microsoft may enforce its rights under clause 6.15, but no other person or body who is not a party to this Contract has any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of this Contract (but this does not affect any rights or remedies of a third party which exist or are available apart from that Act). The consent of the KCOM Group or Microsoft is not required for variations to this Contract.
- 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 is a member of the KCOM Group.
- 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 may sub-contract the provision of the Services (in whole or in part) to a third party provider, or otherwise use third parties to provide the Services (in whole or in part), without Your consent.
- 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 other party at the address of the party concerned set out in this Contract, or its registered address, or any other address notified from time to time. Either party may also serve written notices to the other party by email: (a) to any email address provided by You in connection with the Service where We are serving such a notice; and (b) to mycare@kcom.com where You are serving such a notice on Us.
- 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. Any notice given by email shall be deemed sent and received simultaneously on the date and time that the email was sent by the sending party if such email is sent between 09.00 and 17.00 on a Working Day ("Working Times"). If such email notice is sent outside of Working Times, then the email notice shall be deemed given to and received by the receiving party at 09.00 on the Working Day immediately following the time that the email was sent. An email notice's sent time and date shall be the time and date displayed on the email, in accordance with the email software's standard function for such, as received by the receiving party.
- We may contact Your organisation (including individuals within Your organisation) by letter, telephone or e-mail with details of Our services that may be of interest. If an individual does not wish to receive marketing material from Us then please change Your settings accordingly on the Portal or notify us by email to marketing@kcom.com
- As We continue to develop our business, members of the KCOM Group may be sold and any relevant Customer Information may be transferred as part of the sale, subject to the terms of this clause.
- 20.13 The provisions of this Contract shall prevail over anything to the contrary in any other agreement between Us and You in relation to the Services.
- 20.14 This Contract will be governed by English law and the parties submit to the exclusive jurisdiction of the English courts.

21 DEFINITIONS AND INTERPRETATION

- 21.1 Words in the singular include the plural and in the plural include the singular.
- 21.2 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 21.3 Clause, schedule and appendix headings shall not affect the interpretation of this Contract.
- 21.4 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking into account of any amendment, extension or re-enactment and includes subordinate legislation for the time being in force made under it.
- 21.5 Unless a right or remedy of a party is expressed to be an exclusive right or remedy, the exercise of it by a party is without prejudice to that party's other rights and remedies.
- 21.6 Any phrase introduced by the words "including", "includes", "in particular" or "for example" or similar shall be construed as illustrative and shall not limit the generality of the related general words.
- 21.7 Save in relation to references to a third party or where the context requires otherwise, references to a "party" in this contract are references to You or Us (as applicable).
- 21.8 Except where the Contract otherwise requires the following terms shall have the following meanings:
- "30 Day Period" has the meaning given in clause 1.1;
- "Acceptable Use Policies" Our acceptable use policy and that of any of Our third party providers of the Services (each as amended from time to time) and which We will place on Our web site;
- "Charges" any set up charges for new and Service Regrade installations, any monthly charges, the Rental Charges, additional usage charges, ad hoc charges, other charges payable by You, each as detailed on the Order and/or Our website or otherwise in, or in accordance with, this Contract, or the Migration Charges (if applicable);
- "Confidential Information" means any information that ought reasonably to be regarded as confidential and/or which is marked or identified as confidential, but excluding information which is: (i) in the public domain at the time of disclosure by the disclosing party; or (ii) enters the public domain through no fault of the receiving party; or (iii) was in the receiving party's possession free of any obligation of confidence at the time of disclosure by the disclosing party; (iv) is developed by the receiving party independently of and without reference to the Confidential Information; or (v) is identified in writing by the disclosing party as no longer being Confidential Information.
- "Contract" means these terms and conditions and the Product Schedule(s), the Order, the Data Processing Commitment, the Migration Terms (if applicable) and all other parts of this document and any of the same as may be amended from time to time;
- "Commencement Date" means the date that We accept Your Order and agree to enter into this Contract, which will be the date of Our order confirmation email to You;
- "Contract Year" a period of 12 months from and including the Commencement Date and each consecutive 12 month period thereafter;
- "Cure Period" has the meaning given in clause 2.6;
- "Customer Equipment" any equipment provided or used by You or Your End User, including any Devices, to enable You or Your End User to use the Service;
- "Data" the messages or other data that You or Your End User obtain by using the Service and any other data provided or obtained in connection with Your or Your End User's use of 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 therefore, 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;
- "Device" means each of a computer, workstation, terminal, handheld PC, pager, telephone, personal digital assistant, "smart phone," server or other electronic device;
- "Documentation" the operating manuals, user instructions, technical literature, and other related materials in eye-readable form published or otherwise made available by Us relating to the use and application of the Software (including any Microsoft documentation);
- "End User" means Your customer who requires or receives cloud productivity services from You, the provision of which necessitates the taking of the Services from Us under the Order, and any individual authorised by the End User to use the Services;
- "Force Majeure Event" an event of force majeure as that term is described in clause 17. For the avoidance of doubt, a Force Majeure Event includes denial of service attacks, mail bombing and other flooding techniques;
- "Industry Agreements" any standard industry agreements or third party agreement which impact upon Our ability to provide the Service;

- "Intellectual Property Rights" patents, utility models, rights to inventions, copyright and neighbouring and related rights, moral rights, trademarks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including, without limitation, know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including, without limitation, all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world;
- "IPR Claim" a claim that Our provision of the Software, Documentation or Service infringes a third party's Intellectual Property Rights;
- "KCOM Group" Us, Our holding company, Our subsidiaries and any subsidiaries of Our holding company. The terms "subsidiary" and "holding company" have the meanings ascribed to them by Section 1159 and Schedule 6 of the Companies Act 2006 (each as amended from time to time);
- "Legislation" all Acts of Parliament and statutory regulations, instruments or orders and codes of practice and all applicable European Union laws, treaties, directives and other legislation as any of the same may be amended or replaced from time to time;
- "Licensed Products" has the meaning given to it in clause 6.
- "Migration Charges" the charges for the Migration Service (if applicable) in accordance with the Migration Terms;
- "Migration Service" the migration of Your End User's relevant data by Us in relation to Our Hosted Exchange products where We are providing such a product under this Contract;
- "Migration Terms" the terms and conditions for the Migration Service, attached;
- "Network" the infrastructure and the servers attached to the infrastructure used by Us to provide the Service;
- "Order" the order for the Service placed by You via Our website or by telephone in relation to this Contract;
- "Portal" means an area on Our web site through which You can access Your account details and make Service Regrades;
- "Product Schedule" the product schedule for each Service;
- "Proposed Start Date" the date specified by Us (if any) or as amended by Us on which the Service is due to be made available;
- "Rental Charge" means the monthly rental service charge for the Service;
- "Service(s)" the provision of KCOM cloud productivity services that are selected by You which We will provide to You as specified in the Order (including the Migration Service, if applicable and where the context requires);
- "Service Elements" means the technical aspects of the Services, including the number of mailboxes or users, the amount of storage or any other element of the Services (each as applicable);
- "Service Regrade" has the meaning given in clause 10.1;
- "Service Start Date" the date upon which the Service is made available for use in accordance with the terms of this Contract, being the date that We email You to confirm such;
- "Software" the computer program(s) provided or otherwise made available by Us to You (including any Licensed Products) to enable Your use of the Services and any modifications that are acquired by You from Us during the term of this Contract;
- "Survey" a survey by Us of Our ability to provide, and the requirements for the provision of, the Service and of any requirements of any of Our third party providers in relation to the provision of the Service;
- "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 KCOM reseller 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 the Personal Data, the End User is the Data Controller, You are the Data Processor and We are a Sub-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 the 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 Our 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 We are 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 received, by either You or the End User 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 or End User is required to assist Us with such Data Subject Access Request, You shall coordinate a response with the End User and 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, the End 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 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 in this respect;
- (i) make available to You all information reasonably necessary to enable You to demonstrate compliance with their obligations under the Data Protection Laws, including such records of all categories of processing carried out on Your behalf, as such is requested;
- (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 End User, as such contribution and/or inspection is reasonably necessary to demonstrate compliance with Your obligations 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 16, 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 Personal 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 and the End User's directors, employees and/or staff of the Customer 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 their rights under the Contract
Permitted Sub-Processors	Cobweb



Migration Terms

- 1.) These Migration Terms apply (in addition to the Partner Standard Terms and Conditions for the provision of KCOM Cloud Productivity Services) if You have requested the Migration Service.
- 2.) Defined terms in these Migration Terms have the same meanings given to them in the Partner Standard Terms and Conditions for the provision of KCOM Cloud Productivity Services. The following terms have the following meanings in respect of these Migration Terms:
 - a. "Discovery" the process during which We assess the scope of, and requirements for, the Migration Service;
 - b. "Proof of Concept" the testing by Us, carried out at Our discretion and with Your assistance, of the methods and procedures to be carried out for the Migration Service following agreement of the Scope of Work;
 - c. "Scope of Work" the document detailing the finalised scope of the Migration Service prepared and agreed in accordance with clause 3 of these Migration Terms.
- 3.) The parties will work together as soon as reasonably practicable following completion of the Discovery process to determine the Scope of Work. We will create and submit the Scope of Work for Your approval by email. We will only provide the Migration Service once You have confirmed that You agree to the Scope of Work by emailing Us at cloud@kcom.com directly in response to Our email attaching the Scope of Work. If the parties fail to agree the Scope of Work within 30 days following Our first submission of the Scope of Work by email for Your approval, then We reserve the right to refuse to provide the Migration Service whatsoever or to refuse to submit further versions of the Scope of Work for Your approval.
- 4.) It is Your responsibility to manage the Migration Service between You and Your End User and Our sole responsibility will be to You, as per clauses 3.4 to 3.7 (inclusive) of the Partner Standard Terms and Conditions for the provision of KCOM Cloud Productivity Services. You must ensure that Your End User complies with and consents to these Migration Terms.
- 5.) The Migration Services will be carried out in accordance with the agreed Scope of Work. The migration will not include operations outside of the agreed Scope of Work. Additional operations or changes required on Your part are at Our discretion, which may result in a delay to the schedule, or result in additional charges depending on the scale and complexity. Deviation from the agreed Scope of Work must be agreed by Us submitting the revision to You by email and You confirming Your approval to that revision in accordance with clause 3 of these Migration Terms.
- 6.) During a migration the following are prohibited:
 - Domain Transfers
 - Legacy Data Import, if the data sits outside of the mailboxes in PST archives either on a Server, or on a user's machine
- 7.) You will provide all reasonable assistance to Us, and will comply with all reasonable instructions given to You by Us, in relation to Our provision of the Migration Service (including, without limitation, in any Proof of Concept) and You will comply with Your obligations under the Scope of Work and respond fully and accurately to Our questions in the Discovery process.
- 8.) Any resource (admin) changes on Your part should be notified well in advance of their occurrence (i.e. holiday) since this may necessitate a handover, or a conference call to familiarise the individuals involved. In the event of a sudden change in circumstance (i.e. illness) a proxy should be available who understands the process outlined in the Discovery and Scope of Work and who has been involved in the Proof of Concept. In the event of no proxy on Your part, We reserve the right to suspend the migration until resource availability is resolved without any liability to You for such suspension.
- 9.) The migration will be subject to the timescale of 09:00 to 16:00 Monday to Thursday. Out of hours support can be made available at additional cost, which will be agreed by email and paid for in advance of the work being provided.
- 10.) If You or Your End User currently use Semantic Messagelabs ("Messagelabs"), then all timeframes are provisional and dependent on Messagelabs' authorisation of the movement of the account. Messagelabs require co-authorisation from both the new provider and the Primary Contact of the existing Messagelabs Account; whether this is You or Your End User or another Messagelabs Partner. Authorisation and movement of the account is usually standardised as 5 – 7 days but no warranty, undertaking or representation is given that this timescale will be achieved. An indicative timescale cannot be provided if co-authorisation is not given, nor if there is an existing contract with Messagelabs that remains contested. If there is a commercial dispute regarding the existing contract, this must be resolved between You/Your End User and Messagelabs before the migration is authorised.
- 11.) Proof of Concept is mandatory for all clients larger than 100 users in order to conform to best practices. Rejection by You of any Proof of Concept may result in Us delaying or cancelling the migration (without any liability to You for any such delay or cancellation).
- 12.) Charges for the Migration Service will be set out in the Scope of Work (subject to these Migration Terms) and will be payable in accordance with the Partner Standard Terms and Conditions for the provision of KCOM Cloud Productivity Services.
- 13.) All essential information required for the migration should be provided by You to Us to the best of Your knowledge and having undergone validation by You. Failure to supply the correct information, information which is omitted or emerges during the migration will be subject to review and may result in the delay or cancellation of the migration by Us (without any liability to You for any such delay or cancellation) and additional charges.
- 14.) Our provision of the Migration Service will be in accordance with and subject to the below:

Description

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

Supported Messaging Systems

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

Item and Folder Processing

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

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

System Folder Mapping

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

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

Items which are not migrated

The migration tool does not move the following objects

- Items that do not match folder types (I.e. Contact within a Mail Folder)
- Custom items that do not inherit from the core system types
- Distribution Lists
- Bounce notifications such as Non-Delivery Reports (NDR's) and Delivery Status Notifications (DSN)
- RSS Feeds
- Archives outside of the mailbox (I.e. PST's on the local machine)
- Outlook rules
- NK2 files

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

System Requirements and Recommendations

For the migration tool to function, it will require

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

It is also recommended that

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

15.) Declaration

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

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