

# Standard Terms and Conditions of KCOM Group Limited for the provision of KCOM Mail & Hosted Exchange Services

## 1 TERM

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

## 2 PROVISION OF THE SERVICE

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

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

2.3 In the event that We are unable to provide the Service by the Proposed Start Date as the result of a failure by You to fulfil Your obligations, You will pay the Charges 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) 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 9.1 and 9.2 of this Contract; and
- (h) if You fail to pay an amount when due and You still do not pay the amount due within 10 days after You receive a written notice from Us that an amount is due.

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

## 3 YOUR OBLIGATIONS

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

- (a) co-operate with all reasonable instructions We may provide from time to time in order to enable Us to

provide the Service or otherwise perform Our obligations under this Contract;

- (b) at all times have suitable computer hardware, software and telecommunications services and equipment installed on the Customer Equipment;
- (c) change Your password(s) for the Service, as soon as reasonably possible following the Service Start Date. If You fail to do so, We shall not be liable for any damage You or Your Data may suffer as a consequence;
- (d) take appropriate security precautions and maintenance to maintain and safeguard Your Data for example (but not limited to) by regularly backing-up Your Data and by using current up to date firewall and anti-virus software with appropriate security updates;
- (e) take appropriate security measures to safeguard the use of or access to the Service by any unauthorised person. You are responsible for any person who has access to the Service and You must ensure that they comply with this Contract;
- (f) adhere at all times with Our current Acceptable Use Policy and procure the same from any employees, directors and/or agents who use the Service;
- (g) comply with all applicable Legislation relating to Your use of the Service; and
- (h) provide Us with full, accurate and up to date information on any matter which We reasonably believe is relevant to Our provision of the Services to You and provide such information within a reasonable time of being requested by Us to do so.
- (i) ensure that you do not disclose to any third party any user name or passwords issued to allow You to use the Service.

3.2 You warrant that You have full capacity and authority to enter into and to perform this Contract and that this Contract has been accepted by and agreed to by a duly authorised representative of You.

3.3 In respect of Our interaction with You, You shall ensure that the Services and the Customer Equipment are managed in a proper manner by competent employees trained in the use of such Services and Customer Equipment.

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

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

## 4 SOFTWARE LICENCE

4.1 Any Software or Documentation provided by Us in connection with the provision of the Service is, and will remain, Our property or that of Our licensors.

4.2 You agree to be bound by and comply with the licensing terms of Our licensors as set out in clause 6, in respect of Microsoft software, and clause 7, in respect of the Blackberry services.

4.3 You agree to be bound by and comply with the licensing terms of Our licensors for other software that may be supplied when taking these services.

4.4 You are granted a non-exclusive, non-transferable, limited right to use the Software and Documentation during the term of this Contract and only for the purpose of using the Service.

4.5 You:

- (a) will not make any modifications to the Software or Documentation;
- (b) shall not (and shall not permit any third party to) copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Software in whole or in part except as permitted by law;
- (c) shall not rent, lease, lend make available or distribute the Software or the Documentation; assign the benefit or sub-contract the burden of this Contract in whole or in part; or allow the Software to become the subject of any charge, lien or encumbrance; and
- (d) shall not (and shall not permit any third party to) export the Software, Documentation or any hardware upon

which the Software is embedded, out of the UK without the prior written consent of Us or Our licensors.

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

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

4.8 You shall not modify, obscure or remove any copyright or proprietary notices on the Software or Documentation and shall reproduce such notices on any copies of the Software or Documentation or part thereof You may make in the format in which they appear on the original.

4.9 You will permit Us or the Software licensor, upon reasonable notice, to enter during normal working hours any premises owned or controlled by You in order to review Your use of the Software and/or the Documentation and to ensure that You are using the same in accordance with this Contract.

4.10 You will notify Us immediately upon becoming aware of any claim that the Software and/or the Documentation infringes (is likely, threatened or suspected to infringe) the intellectual property rights of any third party, and You shall take all such reasonable action as We may request.

4.11 You will indemnify and keep Us indemnified against any costs, losses, damages, or liability that We may incur due to (i) You amending or in any way, altering the Software or Documentation, or using it for a purpose not permitted by this Contract; (ii) Your breach of this clause 4 or any of the provisions of Our licensors as set out in clause 6, in respect of Microsoft software, and clause 7, in respect of the Blackberry services; or (iii) any other third party claim. We will not be liable to You where We are unable to carry out Our obligations under this Contract as a result of a breach by You of the provisions of clauses 4, 6 or 7.

4.12 Upon termination of this Contract, Your right to use the Software and/or the Documentation shall cease and You shall, at Our absolute discretion, return or destroy the same.

## 5 MAINTENANCE

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

- (a) repair the Software; or
- (b) replace the Software; or
- (c) terminate this Service immediately by notice in writing to You and refund any of the Charges paid by You as at the date of termination (less a reasonable sum in respect of Your use of the Service to the date of termination) on return of the Software (and all copies), subject to You providing all the information that may be necessary to assist Us in resolving the defect or fault, including sufficient information to enable Us to re-create the defect or fault.

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

- (a) You, or any third party's services, software or equipment not provided and/or developed by Us under or pursuant to this Contract;
- (b) any changes, modifications, updates, alterations or enhancements to the Software or Customer Equipment not provided by Us under or pursuant to this Contract or caused by the incorrect use, abuse or corruption of the Software or Customer Equipment, or by the use of the Software with other computer programs or on equipment with which it is incompatible;
- (c) any inaccuracies, delays, interruptions, or errors occurring as a result of incorrect data or data which does not conform to required input formats;
- (d) any changes, modifications, updates, alterations or enhancements to, and any inaccuracies, delays, interruptions or errors caused by, any software, equipment or services not provided and/or developed by Us under or pursuant to this Contract; and/or
- (e) the Software being used other than as permitted by this Contract.

5.3 If a fault or problem is found upon investigation by Us not to be Our responsibility under any provision in this Contract We may in Our sole discretion charge You on a time and materials basis at Our then current rates for all time spent and all costs and expenses reasonably and properly incurred by Us in the course of or in consequence of such investigation.

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

## 6 MICROSOFT LICENCE

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

### 6.1 Definitions

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

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

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

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

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

### 6.2 Ownership Of Licensed Products.

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

### 6.3 Use Of Client Software

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

### 6.4 Use Of Redistribution Software

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

### 6.5 Copies

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

### 6.6 Limitations On Reverse Engineering, Decompilation And Disassembly

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

### 6.7 No Rental

You may not rent, lease, lend, pledge, or directly or indirectly transfer or distribute the Licensed Products to any third party, and may not permit any third party to have access to and/or use the functionality of the Licensed Products except for the sole purpose of accessing the functionality of the Licensed Products in the form of software services in accordance with the terms of this clause 6 and any agreement between You and Us.

### 6.8 Termination

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

### 6.9 No Warranties, Liabilities Or Remedies By Microsoft.

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

### 6.10 Product Support

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

### 6.11 Not Fault Tolerant

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

### 6.12 Export Restrictions

The Licensed Products are of U.S. origin for purposes of U.S. export control laws. You agree to comply with all applicable international and U.S. laws that apply to the Licensed Products, including the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by the U.S. and other governments. For additional information, see <http://www.microsoft.com/exporting/>.

### 6.13 Liability For Breach

In addition to any liability you may have to Us, You agree that You will also be legally responsible directly to Microsoft for any breach of this clause 6.

## 7 BLACKBERRY SERVICES

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

(a) You shall enter into and agree to be bound by the Blackberry Solution License Agreement, available at: [http://na.blackberry.com/eng/legal/pdfs/BBSLA\\_Unit\\_dKingdom\\_English\\_UK.pdf](http://na.blackberry.com/eng/legal/pdfs/BBSLA_Unit_dKingdom_English_UK.pdf) and which may be amended from time to time, on behalf of Yourself and each User;

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

(c) You shall only permit such number of Users to use the Blackberry Services as We provide You with licence keys for use by You. In the event of breach of this clause 7.1(c), We shall be entitled to charge You for the actual number of licence keys required by You;

(d) Any warranties stated in this Contract are provided by Us and not Our licensors'. The liability of Our licensor is limited to You, in accordance with the provisions of clause 17; and

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

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

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

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

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

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

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

## 8 DELIVERY AND INSTALLATION

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

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

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

## 9 USE

9.1 Under the terms of the Contract You will not use or permit any User or third party to use the Service for the purposes of sending, posting, publishing, distributing, disseminating or transmitting, storing, or in any way in connection with, any message communication or material which is offensive, abusive, indecent, obscene, harassing or menacing or which does, or is intended to, cause annoyance, inconvenience or worry or which is fraudulent or defamatory or contains or breaches another party's proprietary information (including trademarks or other copyright material) or is otherwise unlawful or which (in Our reasonable opinion) brings Our name into disrepute or in any way which intentionally causes damage or disruption to the Service or which damages, or may damage, Our brand and/or Our reputation.

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

## 10 DOMAIN NAMES

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

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

10.3 In respect of any actions taken by Us pursuant to this clause 10, We may levy such additional charges on You, as may be agreed.

## 11 SERVICE REGRADES

11.1 Following provision of the Service, You shall be provided access to the management portal (the "Portal"). Through the Portal, You shall be able to allocate mailboxes and other services. You shall also be able to request changes to the Service Elements. Such amendments shall be called "Service Regrades".

11.2 To the extent that Service Regrades results in You requiring a greater number of Service Elements than stated in the Order, You agree to pay the applicable Charges for such additional Service Elements, at the same Unit Rate as applies to the Order. You shall be liable for the payment of such Charges from the date of the implementation of such Service Regrades in the portal.

- 11.3 We shall either accept or reject Your request as soon as reasonably possible following Our receipt of Your request for a Service Regrade. There may be limitations with the Services that may require Us to reject Your Service Regrade request. In such circumstances, We may suggest a Service Regrade that We are able to supply to You. Once We have reached agreement regarding the Service Regrade, We commit to make available to You the Service Regrade required, subject to the terms of this Contract.
- 11.4 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.
- 11.5 You will not be able to request a Service Regrade which has the effect of reducing any of the Service Elements or the Charges payable for the Service, during the Initial Term.
- 11.6 If You have selected a Service or a Service Regrade which is insufficient for Your purposes and You continuously use more storage space, accounts or any other Service Elements, than that provided pursuant to this Contract or any Service Regrade, We shall be entitled to recommend that You perform a Service Regrade, in accordance with this Contract.
- 11.7 If You do not perform a Service Regrade and You continually exceed the Service Elements:
- You shall immediately pay Us on demand an amount equal to the difference between the Charges paid by You to date and the amount which would have been paid had the Charges applicable to the Service Elements actually being used by You applied from the Service Start Date; and
  - We shall at Our option (without prejudice to any of its other rights) be entitled to suspend the Service until We receive payment from You in accordance with clause 11.7(a).
- 11.8 You acknowledge that despite the provisions of this clause 11, You will be charged at the storage rate applicable to the Order for any storage space used in excess of the storage space agreed with You under the Order, or as amended pursuant to a Service Regrade.
- ## 12 SUPPORT SERVICES
- 12.1 In case of any difficulties, Our technical team will use its reasonable endeavours to provide support during the hours posted on the web site. We cannot guarantee that We will be able to resolve or give advice on all issues. We cannot accept liability for any issues arising from Your failure to follow our advice and recommendations or non-compliance with this Contract.
- 12.2 You will be required to give a username and password for the purposes of using the Services. You shall have sole responsibility for ensuring the safety of the password.
- 12.3 The support service does not cover maintenance of Customer Equipment or software purchased from other vendors or software generated by You, or support outside the usual hours of support (as advertised on the web site).
- 12.4 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.
- 12.5 You agree to pay any charges imposed on Us by Our supplier as a result of the supplier responding to a fault and either (i) determining that such fault has not occurred as a consequence of Our supplier's equipment or network; or (ii) the visit being aborted for any reason.
- ## 13 CHANGES TO THE SERVICE
- 13.1 We may from time to time make changes to the specifications in the Service Standards. Such changes will be notified to You not less than 30 days prior to their taking effect and if any such changes are considered material adverse changes, the parties will endeavour to agree such changes. If the parties fail to agree such changes, You may terminate this Contract upon 30 days' notice. It is agreed that if You terminate the Contract pursuant to this clause 13.1, You shall not be liable to pay an Early Termination Charge.
- ## 14 CREDIT REFERENCE
- 14.1 We shall be entitled to carry out credit checks on You. We may use information that We hold about You from Our own records and/or We may request information from a credit reference agency. We accept no liability for the accuracy or otherwise of information provided to Us from credit reference agencies. If at any time before or during the term of this Contract You fail to meet the standard of creditworthiness deemed acceptable by Us, We shall be entitled to:
- 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 to 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.
- ## 15 CHARGES AND PAYMENT TERMS
- 15.1 The Charges in relation to each Service shall comprise a monthly rental service charge.
- 15.2 You will pay Us all appropriate Charges at the rates, times and frequencies as set out in this clause 15 and in the Order for all Services.
- The monthly rental service charge, payable in relation to the Services, will be payable monthly in advance commencing on the date that We provide access to the Portal to Your end users, unless otherwise stated in the Order.
  - Services specified in Service Regrades shall be payable monthly in arrears at the same Unit Rates as apply to the Order.
  - Any other Charges shall be payable upon demand.
- 15.3 Following the expiry of the Initial Term, We may increase the Charges by giving You 30 days' prior notice. Notwithstanding the provisions of clause 1.1, You may terminate this Contract on 30 days written notice if You do not want to pay the increased Charges.
- 15.4 All Charges due under this Contract will be payable within 30 days of the date of the relevant invoice (the "Due Date") and will be paid in full without any set-off, deduction or withholding of any kind. If You have chosen to make payment of the Charges by Direct Debit, We will give You 14 days prior notice of Our intention to request payment from Your bank account. We reserve the right to charge daily interest on any outstanding amounts from the Due Date until payment is received in full at a rate equal to 4% per cent per annum above the base rate of National Westminster Bank Plc as current from time to time whether before or after judgment. In addition We may suspend the Service until all Charges have been paid in full pursuant to clause 2.5(h).
- 15.5 All Charges are exclusive of value added tax and any other applicable taxes.
- 15.6 Where any Charges or other monies properly due to Us or any member of the KCOM Group under this Contract or any other agreement are outstanding We will be entitled to offset such payments against any payments due from Us or any member of the KCOM Group to You under this Contract or any other agreements under which We or any member of the KCOM Group provides You with telecommunications or data services.
- 15.7 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.
- ## 16 TERMINATION
- 16.1 If either party is:
- in breach of any provision of this Contract and fails to remedy such breach within 30 days' of written notice to do so;
  - unable to pay its debts as they fall due or threaten to suffer any resolution to wind up the business or enter into involuntary or compulsory liquidation or have an administrator, administrative receiver, receiver or any analogous officer appointed over all or part of its assets;
- then the other may immediately upon notice in writing (without prejudice to any other rights and remedies it may have) terminate (either in whole or in part) this Contract.
- 16.2 We may terminate this Contract (either in whole or in part) with immediate effect if:
- You are in breach of clause 9.1 or 9.2 as breach may be a criminal offence and/or cause serious harm to Our reputation; and/or
  - Our authorisations to provide the Services are altered in a way that is material to the Service.
- 16.3 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.
- 16.4 If You choose to terminate this Contract prior to the end of the Initial Term, other than pursuant to clause 16.1, You must give Us not less than 30 days written notice and pay Us an early termination charge ("**Early Termination Charge**"). The Early Termination Charge will be the monthly rental Charge multiplied by the number of remaining months of the Initial Term.
- 16.5 You acknowledge that Our Charges have been calculated on the basis that this Contract will continue until the end of the Initial Term as We may have spent money on set up costs and accordingly agree that it is reasonable for Us to require the payment of the Early Termination Charge as calculated above.
- 16.6 Upon termination of this Contract You 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; and
  - will pay to Us all outstanding Charges due up to and including the date of termination.
- 16.7 Following expiry of this Contract, You acknowledge that We will retain Your Data in accordance with Our obligations under any Legislation or pursuant to any Industry Agreement.
- 16.8 The expiry or termination of this Contract will be without prejudice to any other rights either party may be entitled to and will not affect any accrued rights or liabilities of either party.
- ## 17 LIMITATION OF LIABILITY
- 17.1 Nothing in this Contract shall exclude or limit either party's liability for:
- fraud or fraudulent misrepresentation; or
  - death or personal injury resulting from its own negligence or that of its employees, sub-contractors or agents; or
  - breach of the terms implied by s. 12 of the Sale of Goods Act 1979; or
  - the indemnity set out in clause 3.5 and 4.11.
- 17.2 Except as expressly provided in this Contract, all conditions, warranties, terms, representations, undertakings and obligations express or implied by statute (including, without limitation, those of satisfactory quality or of fitness for a particular purpose (even if that purpose is made known expressly or by implication to Us)), common law, custom, trade usage or otherwise and all liabilities (if any) are excluded to the fullest extent permitted by law.
- 17.3 Without prejudice to clause 17.1, neither Us or Our licensors shall, in any circumstances, be liable to You whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any:
- loss of business; or
  - loss or corruption of data or information; or
  - loss of profits; or
  - loss of goodwill; or
  - loss of business opportunity; or
  - loss of anticipated savings even when advised of the possibility, suffered by You under or in connection with this Contract.
- 17.4 Without prejudice to clause 17.1, We shall not be liable to You whether in contract, tort (including negligence) or restitution, or for breach of statutory duty or misrepresentation, or otherwise, for any special, indirect or consequential loss or damage (including legal and other professional fees and expenses) or expenses of any nature.
- 17.5 Subject to the provisions of this Contract, each party hereby accepts liability in respect of damage to the other party's tangible property resulting from its own or its employees' negligence up to an aggregate amount of £2,000,000 (two million pounds) during the term of this Contract.
- 17.6 Without prejudice to clauses 17.1 and 17.5, each party's maximum aggregate liability in connection with this Contract whether arising in contract, tort (including negligence) or restitution or for breach of statutory duty or misrepresentation or, otherwise, shall be limited in the aggregate in each Contract Year to the greater of:
- £250,000 (two hundred and fifty thousand pounds); and
  - the value of the Charges paid by You in the preceding Contract Year (the "**Liability Sum**").

- 17.7 With reference to clause 17.6, in the event that a Contract Year has not elapsed from the Service Start Date, the Liability Sum shall be calculated by multiplying the monthly Charges incurred over the elapsed period by 12.
- 17.8 We will not be liable to You in any circumstances for or in connection with any merchandise, information, and/or products provided or accessed via the internet.
- 17.9 The limitations of liability set out in this clause 17 shall not limit Your liability to pay any Charges that are properly due under this Contract. Further, Your liability to pay the Charges shall not be taken into account for the purposes of applying the limitations set out in this clause 17 to any other liabilities You may incur under or in connection with this Contract.
- 17.10 This clause sets out each party's entire financial liability (including any liability for the acts or omission of their respective employees, agents or subcontractors) to the other in respect of:
- any breach of this Contract; and
  - any use made or resale of the Equipment and/or Software, or of any product incorporating the said Equipment and/or Software; and
  - any representation, statement or tortious act or omission (including negligence) arising under or in connection with this Contract.
- 18 FORCE MAJEURE**
- Neither party will be liable to the other for any loss or damage caused to or suffered by the other as a direct or indirect result of the supply of the Services being prevented, restricted, hindered or delayed by reason of any circumstance outside of the first party's control (a "Force Majeure Event"). If either party is prevented from performance of its obligations due to a Force Majeure Event for a continuous period of 3 months, either party may terminate the Contract by giving written notice.
- 19 GENERAL**
- 19.1 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.
- 19.2 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.
- 19.3 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.
- 19.4 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.
- 19.5 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.
- 19.6 Members of KCOM Group may enforce their rights under 15.6 but (subject to any express rights or benefits granted to a third party against You in these terms and conditions (including without limitation in clause 6.13 and clause 7)) 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).
- 19.7 You may not assign the whole or part of this Contract without Our prior written consent such consent not to be unreasonably withheld.
- 19.8 We may assign this Contract to any company which from time to time is a member of the KCOM Group.
- 19.9 Subject to clause 19.8 We may not assign this Contract to any other third party without Your prior written consent such consent not to be unreasonably withheld.
- 19.10 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.
- 19.11 Any notice under or in connection with this Contract shall unless otherwise agreed be in writing and may be delivered by hand to or sent by first class post or by facsimile (confirmed by post) to the company secretary at the address of the party concerned set out in this

Contract or any other address notified from time to time.

- 19.12 Any notice addressed as provided in clause 19.11 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.
- 19.13 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 notify us by emailing [kcbusinessmarketing@kcom.com](mailto:kcbusinessmarketing@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

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

## 20 DATA PROTECTION

- 20.1 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.

## 21 DEFINITIONS

- 21.1 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:
- "Blackberry Services" means the provision of Our Services which are intended to integrate with and provide a consolidated link between one or more messaging platforms, other corporate application servers and Blackberry devices provisioned to operate with the Blackberry Services. The Blackberry Services are designed to communicate with Blackberry devices using push-based encrypted wireless data transmission, and are provided to You by Us, Our licensor and/or their distributors;
- "Charges" any set up charges for new and Service Regrade installations, any monthly charges, additional usage charges, ad hoc charges or other charges payable by the Customer;
- "Contract" means these Terms and Conditions, the Order and all other parts of this document and any of the same as may be amended from time to time;
- "Contract Date" the date that We accept Your Order and agree to enter into this Contract, which will be the date of Our email or letter to You that states that We agree to enter into this Contract;
- "Contract Year" a period of 12 months from and including the Service Start Date and each consecutive 12 month period thereafter (but additionally including the period between the Contract Date and the Service Start Date in respect of the first Contract Year);
- "Cure Period" has the meaning given in clause 2.5;
- "Customer Equipment" any equipment provided by You, including any Devices, to enable You to use the Service;
- "Data" the messages or other data that You obtain by using the Service;
- "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;

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

"Early Termination Charge" has the meaning given in clause 16.4;

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

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

"Initial Term" the period of time, which shall be no less than 1 month, as stated in the Order, and which commences on the Service Start Date and "Term" means the Initial Term together with any further period during which We provide Service to You pursuant to clause 1.1;

"Internet Network" Our infrastructure which is connected to the internet via Our high bandwidth fully meshed national IP network, and the servers attached to the infrastructure to provide the Service;

"KCOM Group" Us, Our holding company, Our subsidiaries and any subsidiaries of Our holding company. The terms "subsidiary" and "holding company" have the meanings ascribed to them by Section 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; "Personal Data" and "Sensitive Personal Data" have the meaning given to those terms under the Data Protection Act 1998;

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

"Portal" means a web application allowing You to access Your account details and allocate mailboxes and services;

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

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

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

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

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

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

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

"Unit Rate" shall mean the applicable rate for the Services, based on the quantity ordered in the Order;

"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 The Data Processing Details table below 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 the Data Processing Details by written notice to You from time to time as We reasonably consider necessary to meet those requirements. Nothing in the Data Processing Details (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 17, 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

Description	Details
<b>Subject matter of the processing</b>	Provisions of Services pursuant to the Contract between Us and You
<b>Duration of the processing</b>	During the Term of the Contract and for up to 7 years after the expiry or termination of the Contract
<b>e</b>	To facilitate the fulfilment of Our obligations arising under the Contract including: <ul style="list-style-type: none"> <li>i. Ensuring effective communication between Us and You;</li> <li>ii. Maintaining full and accurate records of all Services arising under the Contract;</li> <li>iii. Dealing with any rights, actions, incidents or disputes arising under the Contract.</li> </ul>
<b>Type of Personal Data</b>	Includes: <ul style="list-style-type: none"> <li>i. Contract details of, and communications with You, and Your employees, directors or contractors concerned with management of and/or receipt of Services pursuant to the Contract</li> <li>ii. Contact details of, and communications with Your associated or group companies, and such parties staff concerned with management of and/or receipt of Services pursuant to the Contract</li> <li>iii. Contact details of, and communications with Your sub-contractors and third parties and such parties staff concerned with either the fulfilment of Your obligations arising from the Contract or the receipt of Your rights under the Contract</li> </ul>
<b>e</b>	Includes: <ul style="list-style-type: none"> <li>i. Your directors, employees and/or staff concerned with the delivery of the Service</li> <li>ii. The directors, employees and/or staff of Your group and/or associated companies concerned with the delivery of the Service</li> <li>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</li> </ul>

## SERVICE STANDARDS

### 1 INTRODUCTION

These Service Standards define the commitments we make to you. Any changes, modifications, additions or deletions to these Service Standards will be provided to You in writing 30 days prior to such change coming into effect.

### 2 SERVICE DESCRIPTION

#### 2.1 General

Hosted Exchange allows an organisation to access a robust, secure and highly functional Microsoft Exchange based messaging system on a monthly basis. The service provides access to hosted email, calendars, contacts and to-do lists accessible using Microsoft Outlook client software or Outlook Web Access via a browser.

#### 2.2 Service Options

The Services are available with the following options:

Hosted exchange				
Mailbox	Mailbox Size per User	Microsoft Outlook Licence	Archiving	Blackberry BES
SMB <50 users	25GB	N/A	*	N/A
Standard	25GB	N/A	*	*
Standard Plus	25GB	Yes	*	*

\* Additional Service options available if required, subject to additional charge.

#### 2.3 Service Details

##### Site environment

Hosted Exchange Services are offered from any of Our Data Centres. Physical access to each of the Data Centres is strictly controlled. The Data Centres are continuously monitored using 24-hour security guard surveillance and closed-circuit television (CCTV). The Data Centres environment is rigorously controlled.

##### Hardware Maintenance

We are responsible for maintaining the equipment and the network at our Data Centres. Our Service includes repair and replacement of any defective hardware, in addition to the installation of any hardware upgrades that We deem necessary. Software maintenance includes upgrades to the operating system and other supporting system software.

##### Security Updates

##### Backup and Restore – Exchange

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

##### Service Access



To access the Hosted Exchange Services, you must provide at the very minimum: an Internet connection with sufficient bandwidth and quality; the network connection should not impede Microsoft Exchange functionality; Microsoft Internet Explorer 6.0 or above; Microsoft Outlook 2007 software or above (available from us, for an additional charge, for each Exchange user, if required) and Microsoft Windows 7 or Microsoft Windows XP with service patch 2.0 applied for each user who will connect directly to the Exchange server.

## Mail limits and delivery

Inbound and Outbound emails are limited to 25MB in size.

The Exchange server uses SMTP relay servers to deliver outbound messages. This protocol does not guarantee immediate delivery of email messages. By default, the mail servers make a delivery attempt immediately then after 5, 10, 20, 40, 80 and 160 minutes; after that the servers will attempt message delivery every 4 hours. If there is no successful delivery attempt within 5 days, the message will be returned to the sender.

## Mobile Wireless access

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

## Archiving

Archiving of email domains is available as a chargeable option. Accessed via a web browser or the Microsoft Outlook Client this allows policy-based archival of all email attachments and calendar items. Mailboxes archives are of unlimited size however the Mail Defender Archive Fair Usage Policy assumes that:

- a) No more than 30% of the users in an organisation are 'power users'.
- b) Standard users will increase their mailbox size by 2 GB in a 12 month period.
- c) Power users will increase their mailbox size by 5 GB in a 12 month period.

If usage exceeds this fair usage policy, we reserve the right to terminate Your archiving service.

## Data Retention

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

## Storage Limits

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

## Anti Spam / Virus

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

## Passwords

We have a strong password policy in place for the Hosted Exchange Services. All passwords must be at least 8 characters long and contain a mix of alphanumeric and symbol characters. We do not expire passwords. However, we strongly recommend that you regularly change your passwords in

order to protect the security of your information. We do not have the ability to retrieve your password if lost or stolen; but we can reset it in such circumstances.

## 3 SERVICE DELIVERY

### 3.1 Delivery Management

We will use our reasonable endeavours to ensure that the Hosted Exchange Service Portal is Ready for Use from the Proposed Start Date. Billing will commence once the portal and licences have been made available to you. You are responsible for provisioning of your email mailboxes and directing your domain mx records via the Hosted Exchange service.

### 3.2 Restrictions

If You cancel an order, or significantly modify it (e.g. changes in delivery date, or service type)

prior to the Proposed Start Date, We reserve the right to claim reasonable costs incurred as a result of such cancellation or modification. In addition We will not be bound by the original timescales.

## 4 SERVICE AVAILABILITY

### 4.1 Our Obligations

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

### 4.2 Restrictions

#### 4.2.1 Planned Outages

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

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

#### 4.2.2 Customer Responsible Faults

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

## 5 INCIDENT MANAGEMENT

### 5.1 Incident Reporting

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

- Email via [businesstechsupport@kcom.com](mailto:businesstechsupport@kcom.com); or

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

## 5.2 Our Obligations

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

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

## 6 DEFINITIONS

### Customer Responsible Faults

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

### Fault Reference Number

The unique number issued when logging a fault with us.

### Planned Outage

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

### Service Availability

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