



Eclipse Internet

Standard Terms and Conditions of KCOM Group PLC for the provision of PC and Server Backup Services

1 TERM

- 1.1 If You have requested a free trial, We agree to provide the Services to You for a period of 30 days without any charge (the "Trial Period"). The terms of this Contract, as applicable, shall apply to You during the Trial Period. Following the expiry of the Trial Period, this Contract will come to an end and You shall cease to use the Service, Software and/or documentation, if any.
- 1.2 The Contract will come into effect on the Commencement Date and continue until the expiry of the Initial Term. Following the expiry of the Initial Term the Contract will 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. In the event that We fail to meet the Service Standard, You agree that Your sole remedy is under the Service Credit regime.
- 2.2 We shall use all reasonable endeavours to make the Service available for use by You from the Proposed Start Date unless otherwise expressly agreed in writing or unless We are unable to do so as the result of a failure by You to fulfil Your obligations in clause 3 of the Contract.
- 2.3 In the event that We are unable to provide the Service by the Proposed Start Date as the result of a failure by You to fulfil Your obligations in clause 3 You will pay the Charges specified in the Contract for that Service from the Proposed Start Date as if We had commenced providing the Service to You on that date.
- 2.4 We shall be entitled to:
- (a) change the technical specification of the Service where necessary for technical regulatory or operational reasons (provided that such changes do not materially affect the performance of the Service);
 - (b) modify the Service (at no cost to You) provided that such changes do not materially affect the performance of the Service;
 - (c) amend Our Acceptable Use Policy from time to time. If We change Our Acceptable Use policy We will place Our current Acceptable Use Policy on Our internet site at www.kcom.com; and
 - (d) give You instructions which We reasonably believe to be necessary for health and safety or security reasons or for maintaining the quality of the Service.
- 2.5 Suspension of Service
- We shall be entitled to suspend Service:
- (a) with Your prior agreement or in the absence of Your agreement upon reasonable notice for planned maintenance to Our Internet Network, and/or the KCOM Equipment,
 - (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 6.1 and 6.2 of the Contract; and

- (h) if You fail to pay an amount when due and You still do not pay the amount due within 10 days after You receive a written notice from Us that an amount is due.

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

3 YOUR OBLIGATIONS

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

- (a) co-operate with all reasonable instructions We may provide from time to time in order to enable Us to provide the Service or otherwise perform Our obligations under the Contract;
- (b) at all time have suitable computer hardware, software and telecommunications services and equipment installed on the Customer Equipment;
- (c) change Your encryption password 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) change Your default settings for the Service, as soon as reasonably possible following the Service Start Date. If You fail to do so, We shall be entitled to change Your default settings for You in accordance with clause 7;
- (e) take appropriate security precautions and maintenance to maintain and safeguard Your Data for example (but not limited to) by regularly backing-up Your Data, regularly ensuring that Your Data has been backed up successfully and by using current up to date firewall and anti-virus software with appropriate security updates. If You discover that Your Data has not been backed-up successfully, then You must inform Us immediately;
- (f) take appropriate security measures to safeguard the use of or access to the Service by any unauthorised person. You are responsible for any person who has access to the Service and You must ensure that they comply with the Contract;
- (g) adhere at all time with Our current Acceptable Use Policy;
- (h) comply with all applicable Legislation relating to Your use of the Service; and
- (i) provide Us with full, accurate and up to date information on any matter which We reasonably believe is relevant to Our provision of the Services to You and provide such information within a reasonable time of being requested by Us to do so.

- 3.2 Prior to providing the Services to You, We may request You to provide Us with a physical copy of the Data from the Customer Equipment. If We do so, We will supply the Vault to You, to enable You to take a copy of the Data. You shall pay for any postage costs associated with the delivery of the Vault to You and the return to Us.

- 3.3 You shall inform Us in writing prior to modifying, updating, upgrading or installing any Software or system which may affect the KCOM Equipment and/or Our ability to deliver the Service to You. If We are unable to continue to supply the Services to You as a consequence of any such modification, update or upgrade or installation, We shall not be liable to You as a consequence.

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

4 KCOM EQUIPMENT

- 4.1 We will provide the KCOM Equipment at Our Site.
- 4.2 Upon successful set-up of the Services for You, We will send notice to You to confirm the details of the Service.
- 4.3 Title to the KCOM Equipment will remain with Us at all times and nothing will operate to transfer ownership of or rights in the KCOM Equipment to You.

5 OUR OBLIGATIONS

- 5.1 You accept and agree that the Service that We provide to You is based on Your requirements as agreed and described in the Contract and that if the information You gave Us is incomplete, incorrect or inaccurate:
- (a) We will not be responsible for providing a Service that fails to meet Your needs;
 - (b) We may review the Service and suggest changes which may have a price impact; and
 - (c) We may revise or replace the Service provided pursuant to the Contract.
- 5.2 We shall be entitled to modify and/or replace any KCOM Equipment from time to time if We consider such modification and/or replacement is reasonably necessary for the continued provision of the Service.

6 USE

- 6.1 Under the terms of the Contract You will not use or permit any User or third party to use the Service for the purposes of sending, posting, publishing, distributing, disseminating or transmitting, storing, or in any way in connection with, any message communication or material which is offensive, abusive, indecent, obscene, harassing or menacing or which does, or is intended to, cause annoyance, inconvenience or worry or which is fraudulent or defamatory or contains or breaches another party's proprietary information (including trademarks or other copyright material) or is otherwise unlawful or which (in Our reasonable opinion) brings the name of any company within the KCOM Group into disrepute or in any way which intentionally causes damage or disruption to the Service or which damages, or may damage, Our brand and/or Our reputation.
- 6.2 Both parties agree to fully co-operate with the Police and any other relevant authorities (the "Regulatory Authorities") in connection with any misuse or suspected misuse of the Service and You consent to Our co-operating with any Regulatory Authorities in connection with any suspected illegal and/or fraudulent activity related to or connected with the Service and You agree that We may divulge such information as the Regulatory Authorities may reasonably require in relation to the Contract.

7 STORAGE, RETENTION AND RESTORE

- 7.1 The amount of storage space available to You is detailed in the Contract. You may increase the amount of storage space, through the Portal, as further described in clause 8. However, if You use more storage space than that allocated to You, We shall be entitled to charge You for such increased storage space at the same storage rate as We have agreed to supply the Services to You and detailed in the Contract.
- 7.2 The default retention period for the Service is set at seven (7) days. The default scheduling of the Service is

- set at one (1) backup per day, commencing at 9pm GMT/BST.
- 7.3 Following provision of the Service, You shall be able to change the default provisions of the Services, as detailed in the Service Schedule, as further described in clause 8.
- 7.4 For the avoidance of doubt, We shall be entitled at any time and for any reason, to change the default scheduling of the Service. Prior to doing so, We will use Our reasonable endeavours to inform You in advance and request You to make the change. If You fail to comply with Our request, We will change the scheduling on Your behalf and inform You that We have done so.
- 7.5 You shall be entitled to perform a restore of Your Data on-line via the Services at any time. You will need Your encryption password in order to do so.
- 7.6 You may request a physical copy of the Data from Us, at any time to enable You to perform a Data restore. If You do so, We will send the Data to You by post on the Vault, to enable You to perform a Data restore. You shall pay the Charges for this Service including any postage costs associated with the delivery of the Vault to You and the return to Us.
- 8 SERVICE REGRADES**
- 8.1 Following provision of the Service, You shall be provided access to the Eclipse 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".
- 8.2 We shall either accept or reject Your request by email as soon as reasonably possible following Our receipt of Your request for a Service Regrade. There may be limitations with the Services that may require Us to reject Your Service Regrade request. In such circumstances, We may suggest a Service Regrade that We are able to supply to You. Once We have reached agreement regarding the Service Regrade, We commit to make available to You the Service Regrade required, subject to the terms of the Contract.
- 8.3 The Charges shall be in accordance with the Service Regrade You chose and You shall be liable for the payment of such Charges from the date of the implementation of the Service Regrade.
- 8.4 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.
- 8.5 If You have selected a Service or a Service Regrade which is insufficient for Your purposes and You continuously use more storage space, accounts or any other Service Elements, than that provided pursuant to the Contract or any Service Regrade, We shall be entitled to recommend that You perform a Service Regrade, in accordance with the Contract.
- 8.6 If You do not perform a Service Regrade and You continually exceed the Service Elements:
- (a) You shall immediately pay Us on demand an amount equal to the difference between the Charges paid by You to date and the amount which would have been paid had the Charges applicable to the Service Elements actually being used by You applied from the Service Start Date; and
- (b) We shall at Our option (without prejudice to any of its other rights) be entitled to suspend the Service until We receive payment from You in accordance with clause 8.6(a).
- 8.7 You acknowledge that despite the provisions of this clause 8, You will be charged at the storage rate detailed in the Contract for any storage space used in excess of the storage space agreed with You, as detailed in the Contract, or as amended pursuant to a Service Regrade.
- 9 SUPPORT SERVICES AND MONITORING AND REPORTING SERVICES**
- 9.1 Support Services**
- (a) In case of any difficulties, Our technical team will use its reasonable endeavours to provide support during the hours posted on the Web Site. Unfortunately We cannot guarantee that We will be able to resolve or give advice on all issues. We cannot accept liability for any issues arising from Your failure to follow our advice and recommendations or non-compliance with the Contract.
- (b) You will be required to give a username and password for the purposes of using the Services. You will also be required to provide an additional password which encrypts Your Data, in order to provide You with additional security, as further detailed in clause 3. You shall have sole responsibility for ensuring the safety of the password. We shall not be able to provide any support services to You if You forget Your encryption password.
- (c) The support service does not cover maintenance of hardware or software purchased from other vendors or software generated by You, or support outside the usual hours of support (as advertised on the Web Site).
- (d) You agree to co-operate with Us or Our suppliers in diagnosing faults including but not limited to carrying out any diagnostic and test routines yourself and allowing remote diagnostic tests if required.
- 10 DATA SECURITY**
- 10.1 You acknowledge that You have sole responsibility for ensuring that the encryption password that You use in connection with the Service is kept safe and secure and is not compromised in any way. We shall not be liable to You for any damages, losses or liabilities arising as a consequence of:
- (i) Your failure to retain your encryption password safely and securely;
- (ii) any disclosure of Your Data as a result (which may include confidential information or personal data); or
- (iii) Your inability to perform a Data restore as a result.
- 10.2 You are responsible for:
- (i) ensuring that You log off from the Service when You have finished using it, in order to prevent third parties from viewing Your Data; and
- (ii) taking appropriate steps to maintain and safeguard Your Data. You should ensure that the Services are operating fully pursuant to the Contract and ensure that regular backups of Your Data are made, pursuant to clause 3.1(e). You should ensure that You are running up to date virus software and adopting other appropriate security and maintenance procedures.
- 10.3 We will use our reasonable endeavours to maintain the confidentiality of Your Data. We will not conduct any cryptographic analysis of Your Data nor will We sell Your Data to a third party.
- 11 CHANGES TO THE SERVICE**
- 11.1 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 the Contract upon 30 days notice. It is agreed that if You terminate the Contract pursuant to this clause 11.1, You shall not be liable to pay an Early Termination Charge.
- 12 CHARGES AND PAYMENT TERMS**
- 12.1 The Charges in relation to each Service shall comprise a set-up charge (for all new and upgrade installations) and an ongoing monthly service charge.
- 12.2 You will pay Us all appropriate Charges at the rates, times and frequencies as set out in this clause 12 and in the Contract.
- (a) The set-up Charges will be payable on or prior to the Service Start Date for the applicable Service.
- (b) The monthly Charges payable in relation to each Service will be payable monthly in advance commencing on the Service Start Date, unless otherwise stated in the Contract.
- (c) Any other Charges shall be payable monthly in arrears.
- 12.3 We may charge such additional fees for any technical assistance that You may require at Our standard hourly rate (or such pro-rated amount thereof), for the provision of any technical support over and above that which We deem reasonable, in Our sole discretion.
- 12.4 We will issue invoices to You for the Service electronically via the Portal. We will notify You that Your invoice is available by email to the email address stated in the Contract. You must ensure that the email address is correct and shall notify Us immediately if Your email address changes. The invoice shall be deemed received by You, 2 days after We send notice to You (to the email address provided by You), that Your invoice is available. We reserve the right to issue a paper invoice to You should We deem it appropriate in Our sole discretion.
- 12.5 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 the Contract on 30 days written notice if You do not want to pay the increased Charges.
- 12.6 All Charges due under the Contract will be payable within 30 days of the date of the relevant invoice (the "Due Date") and will be paid in full without any set-off, deduction or withholding of any kind. If You have chosen to make payment of the Charges by Direct Debit, We will give You 14 days prior notice of Our intention to request payment from Your bank account. We reserve the right to charge daily interest on any outstanding amounts from the Due Date until payment is received in full at a rate equal to 2% per cent per annum above the base rate of National Westminster Bank Plc as current from time to time whether before or after judgment. In addition We may suspend the Service until all Charges have been paid in full pursuant to clause 2.5(h).
- 12.7 All Charges are exclusive of value added tax and any other applicable taxes.
- 12.8 Where any Charges or other monies properly due to Us or any member of the KCOM Group under the Contract or any other agreement are outstanding We will be entitled to offset such payments against any payments due from Us or any member of the KCOM Group to You under the Contract or any other agreements under which We or any member of the KCOM Group provides You with telecommunications or data services.
- 12.9 If, at any time during the Contract, in Our reasonable opinion Your financial standing changes adversely or You persistently default in paying the Charges then We may request a reasonable security deposit against non-payment. If You fail to provide such security deposit within 10 Working Days then We may suspend and/or terminate the Contract with immediate effect by giving written notice.
- 13 SOFTWARE LICENCE**
- 13.1 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.
- 13.2 We grant to You a non-exclusive licence for the duration of the Initial Term to use the Software in object code form for Your personal use only, on the Customer Equipment as follows:
- (a) If We are supplying PC Backup Services to You – on one personal computer or laptop; or
- (b) If We are supplying Server Backup Services to You – on the a server which may be used in conjunction with a number of personal computers or laptops,
- for the purpose of backing up on-line, retrieving and restoring Your Data.
- 13.3 You:
- (a) will install and use the software on the Customer Equipment, as detailed in clause 13.2 above, and only as permitted for the Service taken. Please note that if the software is installed on a multiple user laptop or PC then each User will be able to browse Your Data;
- (b) will not make any modifications to such software or documentation;
- (c) shall not (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the software in whole or in part except as permitted by law;
- (d) shall not resell, sub-licence or assign the benefit or burden of the Contract in whole or in part, or to allow the software to become the subject of any charge, lien or encumbrance,
- You will indemnify and keep Us indemnified against any costs, losses, damages, or liability that We may incur due to You amending or in any way, altering such software or documentation, or using it for a purpose not permitted by the Contract.
- 13.4 You may make such number of back-up copies of the software as may be necessary for its lawful use. You shall record the number and location of all copies of the software and take steps to prevent unauthorised copying.
- 13.5 If the Service is materially impaired due to a problem with the software then We shall, at Our option, do one of the following:
- (a) repair the Software; or
- (b) replace the Software; or
- (c) terminate this Service immediately by notice in writing to You and refund any of the Charges paid by You as at the date of termination (less a reasonable sum in respect of Your use of the Service to the date of termination) on return of the software (and all copies), provided that You provide all the information that may be necessary to assist Us in resolving the defect or fault, including sufficient information to enable Us to re-create the defect or fault.
- 13.6 Upon termination of the Contract, each party shall immediately cease to use the others software and/or documentation supplied under the Contract and (at the others absolute discretion) shall return or destroy the same.
- 13.7 Any software contained on the KCOM Equipment and any software or documentation provided by Us in connection with the provision of the Service is, and will remain, Our property or that of Our licensors.
- 14 TERMINATION**
- 14.1 If either party is:
- (a) in breach of any provision of the Contract and fails to remedy such breach within 30 days' of written notice to do so;
- (b) unable to pay its debts as they fall due or threaten to suffer any resolution to wind up the business or enter into involuntary or compulsory liquidation or have an administrator, administrative receiver, receiver or any analogous officer appointed over all or part of its assets;

then the other may immediately upon notice in writing (without prejudice to any other rights and remedies it may have) terminate (either in whole or in part) the Contract.

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

- (a) You are in breach of clause 6.1 or 6.2 as breach may be a criminal offence and/or cause serious harm to Our reputation; and/or
- (b) Our authorisations to provide the Services are altered in a way that is material to the Service.

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

- (a) You are late in making any due payment, or
- (b) We become entitled to terminate the Contract early for any reason, or
- (c) You break any material term of another contract with Us or another company in the KCOM Group,

then We may partially or completely suspend the Services without limiting Our ability to enforce other remedies that may be available. While the Services are suspended You must continue to pay the Charges.

14.4 If You choose to terminate the Contract prior to the end of the Initial Term, other than pursuant to clause 14.1, 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 Charge multiplied by the number of remaining months of the Initial Term.

14.5 You acknowledge that Our Charges have been calculated on the basis that the Contract will continue until the end of the Initial Term as We may have spent money on set up costs and accordingly agree that it is reasonable for Us to require the payment of the Termination Payment as calculated above.

14.6 Upon termination of the Contract:

- (a) We will not provide any further Services in respect of Your Data;
- (b) You will use the Service to obtain a full restore of Your Data within thirty (30) days of the date of termination;
- (c) Subject to clause 14.6(b), You will cease to use the Service and will pay to Us all outstanding Charges due up to and including the date of termination; and

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

14.8 The expiry or termination of the Contract will be without prejudice to any other rights either party may be entitled to and will not affect any accrued rights or liabilities of either party.

15 LIMITATION OF LIABILITY

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

15.2 We warrant that We will provide the Service to You in accordance with the terms of the Contract. All other conditions, warranties, terms, undertakings and obligations express or implied by statute (including, without limitation, those of satisfactory quality or of fitness for a particular purpose (even if that purpose is made known expressly or by implication to Us), common law, custom, trade usage or otherwise and all liabilities (if any) are excluded.

15.3 We will in no circumstances be liable to You in contract, tort (including negligence) or otherwise for any loss of business; loss of data; loss of profits; loss of goodwill; loss of anticipated savings even when advised of the possibility; loss of revenue or; any indirect or consequential losses, liabilities or costs.

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

15.5 Other than in respect of clause 15.1 and 15.4 and subject to clause 15.3 Our maximum aggregate liability in contract, tort, negligence or otherwise arising out of, or in connection with the Contract will be limited in aggregate to the greater of:

- (a) £250,000; and
- (b) the value of the Charges paid by You in the preceding Contract Year (the "Liability Sum").

In the event that a Contract Year has not elapsed from the Service Start Date, the Liability Sum will be calculated by multiplying the monthly Charges incurred over the elapsed period by 12.

15.6 We will not be liable to You in any circumstances for or in connection with any merchandise, information, and/or products provided or accessed via the internet.

16 FORCE MAJEURE

Neither party will be liable to the other for any loss or damage caused to or suffered by the other as a direct or indirect result of the supply of the Services being

prevented, restricted, hindered or delayed by reason of any circumstance outside of the first party's control. If either party is prevented from performance of its obligations for a continuous period of 3 months either party may terminate the Contract by giving written notice.

17 GENERAL

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

17.2 Each of the parties acknowledges and agrees that in entering into the Contract it does not rely on, and will have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to the Contract or not) other than as set out in the Contract. Nothing will operate to limit or exclude any liability for fraud.

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

17.4 No forbearance, delay or indulgence by either party in enforcing the provision of the Contract will prejudice or restrict the rights of that party nor will any waiver of its rights operate as a waiver of any past or subsequent breach.

17.5 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.

17.6 Members of KCOM Group may enforce their rights under 12.8 but no other person or body who is not a party to the Contract has any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any terms of the Contract (but this does not affect any rights or remedies of a third party which exist or are available apart from that Act).

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

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

17.9 Subject to clause 17.8, We may not assign the Contract to any other third party without Your prior written consent such consent not to be unreasonably withheld.

17.10 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.

17.11 Any notice under or in connection with the Contract shall unless otherwise agreed be in writing and may be delivered by hand to or sent by first class post or by facsimile (confirmed by post) to the company secretary at the address of the party concerned set out in the Contract or any other address notified from time to time.

17.12 Any notice addressed as provided in clause 17.11 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.

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

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

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

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

18 DATA PROTECTION

18.1 It is agreed that You are the Data Controller and We are the Data Processor with those expressions having the meaning given to them in the Data Protection Act 1998 (the "Act").

18.2 The parties acknowledge that in providing Services to You, We may process Personal Data including without limit transferring it outside the European Economic Area and/or disclosing it to third parties.

18.3 We shall:

- (a) put and in place adequate, technical and organisational security measures so that the confidentiality of this processing complies with the Act; and
- (b) only act in accordance with Your instructions as reasonably necessary for the provision of the Service when processing Personal Data.

18.4 You shall:

- (a) comply fully with all of Your obligations under the Act and not cause Us to be in breach of the Act;
- (b) obtain adequate consents from Your customers and/or employees for any transfer of Personal Data; and
- (c) be responsible for the instructions You may give Us regarding the processing of Personal Data.

19 DEFINITIONS

19.1 Except where the Contract otherwise requires the following terms shall have the following meanings the singular shall include the plural and one gender shall include all genders:

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

"Charges" any set up charges for new and Service Regrade installations, any monthly charges, additional usage charges, ad hoc charges or other charges payable by the Customer as detailed in the Contract;

"Commencement Date" means the date of the Contract;

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

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

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

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

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

"Early Termination Charge" has the meaning given in clause 14.4;

"Force Majeure Event" an event of force majeure as that term is described in clause 16.

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

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

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

"KCOM Equipment" the equipment located at the Site that We provide and use to deliver the Service to You but which We shall also use to provide services to Our other customers;

"KCOM Group" means Our holding company, Our subsidiaries and any subsidiaries of our holding company. The terms "subsidiary" and "holding company" have the meanings ascribed to them by Section 736 and 736A of the Companies Act 1985 (as amended);

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

"Personal Data" and "Sensitive Personal Data" have the meaning given to those terms under the Data Protection Act 1998;

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

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

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

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

"Service Regrade" means changes to certain elements of the Services, as agreed by Us, pursuant to clause 7;

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

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

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

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

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

"Vault" the equipment We send to You to enable You to make a physical copy of Your Data from the Customer Equipment or restore a physical copy of the Data onto the Customer Equipment. We shall only be able to assist You with the Services in this manner if You are using the Server Back-up Services;

"We/Us" KCOM Group PLC, trading under the name Eclipse Internet (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.

PC and Server Backup Services

Service Standard

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 DETAILS

2.1 PC Backup

2.1.1 Features:

- Backup Reminder helps the user to remember to perform a backup
- Incremental Backup - Backs up only the changes you've made to a file since your last backup
- Back up status can be monitored via a progress bar in the system tray
- Display of backup size, space requirement, remaining disk space
- Point-in-time Restore - The Backup Archive holds different versions of backed up files
- Complete reporting on backup job status by email reports

2.1.2 Applications Compatibilities / System Requirements

Application Compatibilities

| | |
|---------------------------|-----------------------------|
| Outlook / Outlook Express | i.e. *.pst, *.dbx and *.wab |
|---------------------------|-----------------------------|

| | |
|--------------------|-------------------|
| Other common files | e.g. *.doc, *.xls |
|--------------------|-------------------|

Also supports backing up of Windows NTFS access privileges

System Requirements

| | |
|---------------------|--|
| Supported Platforms | <ul style="list-style-type: none"> • Windows 95 / 98 / ME / NT / 2000(SP2)¹ / XP(SP2)¹ / 2003 / Vista |
|---------------------|--|

| | |
|----------|--|
| Hardware | <ul style="list-style-type: none"> • Memory: 128MB (minimum), 256MB (recommended) • Disk Space: at least 126MB |
|----------|--|

| | |
|------------------|---|
| Network Protocol | <ul style="list-style-type: none"> • TCP/IP (HTTP / HTTPS) |
|------------------|---|

¹ Download [WindowsXP-KB926255-x86-ENU.exe](http://www.microsoft.com/windowsxp/updates/default.aspx?l=en&xp=2003) to update SP2

2.1.3 Use of the Software

Following our acceptance of your order, we will send you an e-mail including instructions on how to download the software from the Internet. You must download the software in accordance with the instructions.

The software must only be installed and used on a laptop or PC with a single user with Administrator rights (Admin User). If the software is installed on a multiple user laptop or PC then each user will be able to browse your data.

2.2 Server Backup

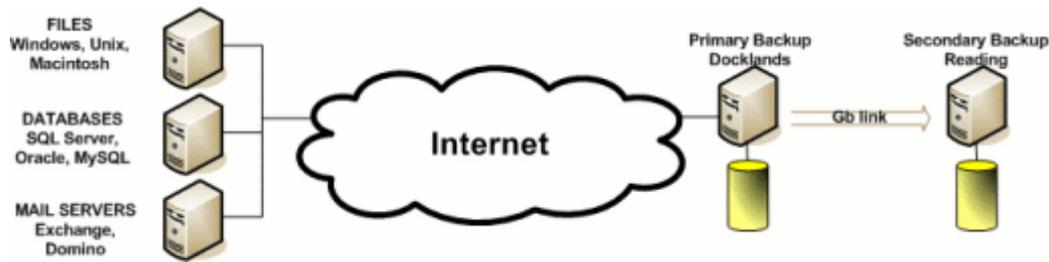
2.2.1 Features:

As PC Backup above, plus:

- Portable vault requests for local back-up and restore¹
- Windows systemstate backup
- Support for Exchange, SQL Server, Lotus Domino and MySQL databases
- Customisable retention periods

¹ Subject to additional charges.

2.2.2 Illustration



2.2.3 Applications Compatibilities / System Requirements

Application Compatibilities

| | |
|---------------------------|--------------------|
| Microsoft Exchange Server | 2000 / 2003 / 2007 |
| Microsoft SQL Server | 7.0 / 2000 / 2005 |
| Domino / Lotus Notes | 5.0 or above |

| | |
|---------------------------|-----------------------------|
| MySQL | 3.2.4 or above |
| Outlook / Outlook Express | i.e. *.pst, *.dbx and *.wab |
| Other common files | e.g. *.doc, *.xls |

Also supports backing up of:

- Windows System State (all platforms except Vista)
- Windows NTFS access privileges
- Linux access privileges and modes
- Mac OS X metadata and resource forks

System Requirements

| | |
|---------------------|--|
| Supported Platforms | <ul style="list-style-type: none"> • Windows 2000(SP2)¹ / XP(SP2)¹ / 2003 / Vista • Linux kernel 2.2 or above² • UNIX • Mac OS X 10.2 or above • |
| Hardware | <ul style="list-style-type: none"> • Memory: 128MB (minimum), 256MB (recommended) • Disk Space: 110MB |
| Network Protocol | <ul style="list-style-type: none"> • TCP/IP (HTTP / HTTPS) |

¹ Download [WindowsXP-KB926255-x86-ENU.exe](#) to update SP2

² RedHat Linux 6.x or above, though the use of Linux kernel 2.6.9-34 or above is recommended

3 SERVICE COMPARISONS

Server Backup is a multi-platform, robust and secure client software for backing up servers in business environments, while PC Backup is a light version of Server Backup featuring simple settings and clean user interface for backing up desktops and laptops of individual users or businesses.

| | Server Backup | PC Backup |
|--|---------------|-----------------|
| No. of Backup Sets | Unlimited | 1 |
| Backup Schedule | | |
| ▪ Daily | ✓ | ✓ |
| ▪ Weekly | ✓ | ✓ |
| ▪ Monthly | ✓ | ✗ |
| ▪ Yearly | ✓ | ✗ |
| ▪ Multiple schedules | ✓ | ✗ |
| Encryption Algorithm | | |
| ▪ Configurable by end-user | ✓ | ✗ |
| ▪ TwoFish | ✓ | ✗ |
| ▪ Triple DES | ✓ | ✗ |
| ▪ AES | ✓ | ✓ |
| Add-On Modules | | |
| ▪ MS Exchange | ✓ | ✗ |
| ▪ Brick Level Mail Backup for MS Exchange | ✓ | ✗ |
| ▪ MS SQL | ✓ | ✗ |
| ▪ Lotus Domino / Notes | ✓ | ✗ |
| ▪ Oracle | ✓ | ✗ |
| ▪ MySQL | ✓ | ✗ |
| ▪ In-File Delta (simple) | ✓ | ✓ |
| ▪ In-File Delta (advanced) | ✓ | ✗ |
| ▪ Volume Shadow Copy | ✓ | ✓ |
| Applicable O.S. Platforms | | |
| ▪ Windows (all server / workstation editions) - 95 / 98 / ME / NT / 2000 / XP / 2003 / Vista | ✓ | ✓ |
| ▪ Redhat Linux - 6.0 or above | ✓ | ✗ |
| ▪ Mac OS X- v10.2 or above | ✓ | ✓ |
| ▪ UNIX - Solaris, AIX, HP-UX, FreeBSD | ✓ | ✗ |
| Retention Policy | | |
| ▪ Simple by days / jobs | ✓ | by days only |
| ▪ Advanced by weeks, months, quarters and years | ✓ | ✗ |
| Customization (for service providers only) | | |

| | Server Backup | PC Backup |
|---|---------------|-----------|
| ▪ Text | ✓ | ✓ |
| ▪ Colour | ✗ | ✓ |
| Others | | |
| ▪ Run custom OS commands before / after a backup Job | ✓ | ✗ |
| ▪ Filter files by extensions | ✓ | ✓ |
| ▪ Filter files / folders by any user defined patterns | ✓ | ✗ |
| ▪ Logout reminder | ✓ | ✓ |
| ▪ Offline backup reminder | ✓ | ✓ |
| ▪ Local copy | ✓ | ✗ |
| ▪ Web restoration | ✓ | ✓ |
| ▪ No. of languages supported | 23 | 23 |
| ▪ Progress bar during backup | ✗ | ✓ |

4 FAULT MANAGEMENT

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

4.1 PC Back-up Faults

Faults can be reported to us either:

- (i) on-line, 24 hours a day, throughout the year; or
- (ii) through our Technical Support Centre, 08:00 to 20:00 weekdays and 09:00 to 17:00 Saturdays. The telephone number for the Technical Support Centre is 0845 120 0030.

4.2 Server Back-up Faults

Faults can be reported to us either:

- (i) on-line, 24 hours a day, throughout the year; or
- (ii) through our Technical Support Centre, The telephone numbers for the Technical Support Centre are as follows:
 - 08:00 to 20:00 weekdays and 09:00 to 17:00 Saturdays - 0845 1224 333; or
 - Any other time - 0870 493 6310.

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

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

Unfortunately We cannot guarantee that We will be able to resolve or give advice on all issues. We cannot accept liability for any issues arising from Your failure to follow our advice and recommendations or non-compliance with these Terms.

4.3 Faults Procedure

1. The following outlines the procedure for Faults reported by you.
2. You call the Technical Support Centre to report a fault.
3. The Technical Support Centre staff will log details of the fault on our faults system and issue you with Fault Reference Number.
4. The Technical Support Centre's service engineers will raise a Fault record and will use reasonable endeavours to diagnose and resolve the Fault.
5. If necessary the Fault will be escalated by us as we consider necessary, in order to rectify the Fault as speedily as possible.

6. We will regularly update you on how the Fault is being progressed, and all action taken in resolving the Fault, including contacts with yourself, technical escalations etc will be recorded in the Fault ticket report.

7. When the Fault is resolved, we will confirm to you that the Fault has been resolved and close the Fault.

4.4 Fault Escalation

Fault escalation procedures can be invoked in the following situations:

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

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

5 SERVICE DELIVERY

5.1 Service Provision

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

5.2 Change Management

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

5.3 Planned Outages

Planned outages may occasionally be necessary for us to carry out essential Maintenance work or network upgrades, these will be kept to a minimum.

Except in an emergency or when circumstances are beyond our reasonable control, we will give you at least 24 hours prior notice of all planned maintenance via the Status Page on the portal.