

KeConnect Internet - Terms & Conditions for KeVault.

NOTICE TO USER: PLEASE READ THIS AGREEMENT CAREFULLY. BY USING AND/OR PAYING FOR THE SERVICE(S) SET OUT HEREIN YOU ACCEPT THE FOLLOWING TERMS. YOU AGREE TO BE BOUND BY ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT AND YOU AGREE THAT IT IS ENFORCEABLE AS IF IT WERE A WRITTEN NEGOTIATED AGREEMENT SIGNED BY KECONNECT SYSTEMS LTD (HEREAFTER "KECONNECT") AND YOU. IF YOU USE THE SERVICES ON BEHALF OF YOUR EMPLOYER, YOU WARRANT THAT YOU ARE AUTHORISED TO ENTER INTO LEGALLY BINDING CONTRACTS ON BEHALF OF YOUR EMPLOYER. THE SAME RIGHTS, LIMITATIONS AND RESTRICTIONS APPLY TO YOUR EMPLOYER. YOU AGREE THAT IT IS ENFORCEABLE AS IF IT WERE A WRITTEN NEGOTIATED AGREEMENT SIGNED BY YOUR EMPLOYER. IF YOU AND/OR YOUR EMPLOYER DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, OR IF YOU ARE NOT AUTHORISED TO ENTER INTO LEGALLY BINDING CONTRACTS ON BEHALF OF YOUR EMPLOYER, YOU MUST NOT USE THE SERVICE(S) OR MAKE ANY PAYMENT.

1. DEFINITIONS

- 1.1 "Effective Date" means the date which you commence using the Services.
- 1.2 "Services" means the provision of data storage and retrieval services by KeConnect, including the provision of storage space on a server.
- 1.3 "Appointed Agent" means the third party manager appointed by KeConnect for the provision of the Services to you, where relevant.
- 1.4 "Storage Limit" means the maximum amount of server storage space that is available for your use, as agreed between KeConnect or the Appointed Agent and you prior to commencement of the Subscription Period, as may be amended by agreement between KeConnect or the Appointed Agent from time to time.
- 1.5 "Subscription Fee" means the monthly fee payable by you by Direct Debit, in advance, in respect of the provision of the Services, calculated in accordance with the Storage Limit, as shown on the KeVault order form, completed by you.
- 1.6 "Subscription Period" means the period from the Effective Date until this Agreement is terminated in accordance with the provisions herein.

2. GRANT OF RIGHTS; RESTRICTIONS

- 2.1 Subject to all the terms and conditions of this Agreement, KeConnect shall supply the Services to you and grant you a personal, non-transferable, terminable licence to use the Services from the Effective Date for the Subscription Period.
- 2.2 Whenever you log into the KeVault system, the software displays the total amount of storage used and the percentage utilisation of the Storage Limit. If your use exceeds the Storage Limit, you may choose from the following options:
 - (a) Continue to use the KeVault storage space used, in which case we will automatically upgrade you to the appropriate package for the KeVault storage used. From this point you will be charged at the new subscription rate for the appropriate subscription package.

(b) Inform KeConnect in writing within ten (10) working days that you wish to remain in the original package and indicate which files or folders that you wish to have removed from the KeVault servers.

If you do not notify KeConnect within the time specified of your wish to be downgraded to the original subscription, you will incur the new subscription charge thereon in.

- 2.3 KeConnect shall use all reasonable endeavours to ensure that access to the Services is available at all times subject to planned and emergency downtime as set out at clause 2.6.
- 2.4 You hereby agree not to use the Services for any use that is:
- 2.4.1 obscene, libelous, blasphemous, defamatory, inciting hatred;
 - 2.4.2 unlawful or misleading;
 - 2.4.3 for any use that breaches third party copyright, including, without limitation, storing or sharing copyrighted music or other copyrighted material that has not been legally obtained;
 - 2.4.4 undertaken on behalf of third parties;
 - 2.4.5 in contravention of any applicable local, state, national and foreign laws, treaties and regulations.
- 2.5 Your use of the Service is subject to the Storage Limit.
- 2.6 KeConnect shall use all reasonable endeavours to notify you of planned downtime and unavailability of the Service however notwithstanding such obligation, KeConnect shall not be liable for any Service unavailability which arises as a result of emergency downtime and Service unavailability.
- 2.7 Unauthorized use of the Service, and/or the resale of the Services without KeConnect's prior written consent, is expressly prohibited.

3. PROPRIETARY RIGHTS

- 3.1 Datatrieve Limited has sole and exclusive ownership of all right, title, and interest in and to the Services and any software included in the Services, including all copyright and any other intellectual property rights therein. This Agreement conveys a limited right and license to use the Services and any software made available to you and shall not be construed to convey title to or ownership of the Services or the software contained therein to you. Specifically, and without limitation to the generality of the foregoing, the software shall only be used by you to the extent necessary to benefit from the use of the Services. Datatrieve reserves all rights in and to the Services and software not expressly granted to you.
- 3.2 The password, client certificate and log-on details provided to you are confidential to you and you hereby agree that you shall not share such information with any third parties. You shall notify KeConnect forthwith if you are aware of any third party having access to such information.

4. FEE

- 4.1 In consideration for the provision of the Services, you shall pay KeConnect or the Appointed Agent the non-refundable Subscription Fee.
- 4.2 KeConnect or the Appointed Agent shall collect the Subscription Fee in advance by Direct Debit. Both parties agree that no refunds shall be given in any circumstances.
- 4.3 The Subscription Fee is exclusive of VAT or other sales tax which, if applicable to you, shall be payable by you at the then prevailing rate.
- 4.4 In the event that the Subscription Fee, as appropriate, is not collected in accordance with the provisions herein, KeConnect may deny you access to the Services without notice.

5. TERM AND TERMINATION

- 5.1 This Agreement shall commence on the Effective Date and shall continue in effect for the Subscription Period. The initial Subscription Period will be for twelve (12) months and thereafter for a further period equal to the initial period as previously defined unless cancelled by either party in writing not less than thirty (30) days prior to the end of the agreed period.
- 5.2 If either party breaches this Agreement in any material respect, the other party may give written notice to the breaching party of its intent to terminate, and if such breach is not cured within thirty (30) days after the breaching party's receipt of such notice, this Agreement shall terminate without any further notice required. Without prejudice to the foregoing, in the event that you breach the provisions of clause 2, KeConnect may suspend and/or terminate the Services forthwith without notice.
- 5.3 You may terminate the Subscription Period at any time after the initial Subscription Period (stated in 5.1) on the provision of thirty (30) days notice to KeConnect or its agent.
- 5.4 Upon any termination of this Agreement:
 - (a) the rights and licenses granted to you herein shall terminate;
 - (b) you shall cease all use of the Services and software made available to you by KeConnect;
 - (c) KeConnect shall at its own discretion remove and/or purge your data and account from the system; and
 - (d) clauses 3, 6 and 7 shall survive.

6. WARRANTIES AND LIABILITY

- 6.1 KeConnect does not represent or warrant that: (i) the use of the Services will be timely, uninterrupted or error-free or operate in combination with any other hardware, software, system or data, (ii) the Services will meet your requirements or expectations, (iii) errors or defects will be corrected, (iv) the Services or the server(s) that make the Services available are free of viruses or other harmful components. The Services are provided to you strictly on an "as is" basis. All conditions, representations and warranties, whether express, implied, statutory or otherwise, including, without limitation, any implied warranty of merchantability,

fitness for a particular purpose, or non-infringement of third party rights, are hereby disclaimed to the maximum extent permitted by applicable law.

6.2 Your sole remedy with respect to any claims arising out of this Agreement shall be limited in the aggregate to the monies paid by you to KeConnect or the Appointed Agent under this Agreement during the twelve (12) month period preceding the event giving rise to such liability.

6.3 In no event shall KeConnect be liable for:

(a) any special, indirect, incidental or consequential damages, including loss of profits and goodwill, business or business benefit, or the cost of procurement of substitute products or services by you even if advised of the possibility of such damages;

(b) any delay or failure to provide the Services that is due to third parties, including, without limitation, internet service providers, data centres, server hosting companies and telecommunications companies whether such third parties are providing services to you or to KeConnect;

(c) fraud committed against you by any third party provider of internet payment services;

(d) data that was never transmitted to our servers, including open files skipped during the backup process. You are required to check backup log files on a regular basis to ensure that the required files have been transmitted, and that the automated backup system has been configured according to the instructions supplied by KeConnect. KeConnect is not responsible for monitoring your backup log files;

(e) data that has been removed from our servers due to incorrect configuration of the software included in the Services. In particular, you should ensure that the treatment of files that have been deleted or modified locally is correct;

(f) data produced by applications that the software included in the Services was not designed to work with, such as third party database applications. Examples of such applications can be found on the online help pages at <http://www.kevault.co.uk/help/> ;

(g) data corruption or inconsistencies introduced in data transmitted to our servers due to incorrect operation of the software included in the Services, or failure to follow the instructions supplied by KeConnect;

(h) incorrect operation of the software due to your use of an old version of the software. Bug fixes and enhancements are incorporated into the software from time to time, and it is your responsibility to ensure that you are running the latest version of the software for your system. The latest version is available for download from <http://www.kevault.co.uk/>.

7. GENERAL

7.1 You shall not assign this Agreement, in whole or in part, without the prior written consent of KeConnect.

7.2 You consent to the use by KeConnect of your name in customer lists and other publicity, including interviews, case studies, and conference discussions, provided that such publicity accurately describes the nature of the relationship between you and KeConnect.

- 7.3 This Agreement and its performance shall be governed by and construed in accordance with and the parties hereby submit to the exclusive jurisdiction of the laws of England and Wales.
- 7.4 You agree that because of the unique nature of the Services and KeConnect's proprietary rights therein, a demonstrated breach of this Agreement by you would irreparably harm KeConnect and monetary damages would be inadequate compensation. Therefore, you agree that KeConnect shall be entitled to preliminary and permanent injunctive relief, as determined by any court of competent jurisdiction to enforce the provisions of this Agreement.
- 7.5 If any provision of this Agreement or the Services thereof is declared void, illegal, or unenforceable, the remainder of this Agreement will be valid and enforceable to the extent permitted by applicable law. In such event, the parties agree to use their best efforts to replace the invalid or unenforceable provision by a provision that, to the extent permitted by the applicable law, achieves the purposes intended under the invalid or unenforceable provision.
- 7.6 Any failure by any party to this Agreement to enforce at any time any term or condition under this Agreement will not be considered a waiver of that party's right thereafter to enforce each and every term and condition of this Agreement.
- 7.7 Neither party will be responsible for delays resulting from circumstances beyond the reasonable control of such party, provided that the nonperforming party uses reasonable efforts to avoid or remove such causes of non-performance and continues performance hereunder with reasonable dispatch whenever such causes are removed.
- 7.8 This Agreement (i) constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof and supersedes all prior agreements, oral and written, made with respect to the subject matter hereof, and (ii) cannot be altered except by agreement in writing executed by an authorised representative of each party. No purchase order and/or standard terms of purchase provided by you shall supersede this Agreement.
- 7.9 Nothing in this Agreement shall give, directly or indirectly, any third party any enforceable benefit or any right of action against KeConnect and such third parties shall not be entitled to enforce any term of this Agreement against KeConnect.

If you have any questions regarding this Agreement or if you wish to discuss the terms and conditions contained herein please contact KeConnect Limited using the contact details at <http://www.keconnect.co.uk/>.

This document may be modified from time to time. The latest version can be viewed at <http://www.keconnect.co.uk/terms/>.