

TERMS OF SERVICE AGREEMENT

The Agreement was last revised on July 25, 2007.

1. Your Acceptance. Your use of www.kace.com (the "Site") and all other websites owned or operated by KACE Networks, Inc., its affiliates, agents, or licensors (collectively "we," "us," or "KACE"), and the services provided through or in connection with the Site, are subject to this Terms of Service Agreement ("Agreement") and the current KACE Privacy Policy published at <http://www.kace.com/privacy/>

BY CHECKING THE BOX TO CONFIRM THAT YOU "READ AND AGREE TO THE TERMS OF SERVICE," YOU AGREE TO ALL OF THE TERMS OF THIS AGREEMENT AND THE PRIVACY POLICY. IF YOU DO NOT AGREE TO THIS AGREEMENT AND THE PRIVACY POLICY, YOU DO NOT HAVE PERMISSION TO USE THE SITE OR SERVICES UNDER THIS AGREEMENT.

KACE may revise or amend this Agreement, at its sole discretion, at any time by posting changes on this web page, which immediately become effective upon posting. Each time you use the Site, you agree to be bound by the current Agreement and Privacy Policy. If you do not agree to all of these conditions, then you must immediately stop using the Site. This Agreement applies to all visitors, users, and others who view the Site ("Users").

2. Links to Other Web Sites. The Site may contain links to third-party web sites that are not controlled by KACE, including links provided by Users. KACE has no control over, and assumes no responsibility for, the content, privacy policies, or practices of any third-party web sites. You expressly agree that KACE is not liable for any claims arising from your use of any third-party web site. Unless we expressly state otherwise, the fact that a link to a third-party web site is provided on the Site is not an endorsement or affiliation with respect to such web site or its owners or providers.

3. Information. The Site may contain certain product information and data, recommendations, and opinions provided by KACE ("Information") and User-provided information, such as their name, telephone number, street address, age, text, messages, feedback, images, suggestions, photos, birthday, icons, links to web sites, product information, information regarding bugs, other comments, or other content ("User Submissions"). All Information and User Submissions are provided "as is" and are intended solely as general information only and is not professional advice. Any use of the Information or User Submissions is at your sole risk. KACE shall not be liable in any way for the accuracy, completeness, or timeliness of the Information or User Submissions, or for any decision made or action taken by you relying upon the Information or User Submissions.

4. Use of the Site. KACE hereby grants you permission to use the Site as set forth in this Agreement provided that you comply with the Agreement. KACE reserves the right to terminate this Agreement with or without notice for any or no reason, or for your violation of any provision of the Agreement and to modify or discontinue, temporarily or permanently, all or any portion of the Site or services at any time without liability to KACE.

You agree not to use, copy, modify, reformat, create derivative works, publicly display, download, store, transmit, provide links to, post, or distribute any content on the Site, including without limitation, text, scripts, graphics, software, data, Information, photos, images, and the like ("Content") or use any Content for commercial purposes without obtaining prior written consent from KACE; provided, however, that business Users who are not competitors of KACE may use Content internally and to provide managed services and support to their customers. Notwithstanding the forgoing, you may not provide any Content or other KACE products or services to competitors of KACE or use Content to develop competitive products or services.

Only in accordance with the foregoing, you may download Content displayed on the Site; however, you must maintain all copyright and other proprietary notices contained on the Content.

To access some features of the Site, you may have to register on the Site. You may never use another user's registration or password without permission. When registering, you must provide accurate and complete information. You are solely responsible for all activity that occurs under your account username and password (whether or not such activity is authorized by you), and you must keep your password secure.

You may not use the Site in any manner that is illegal or harmful to the Site. Specifically, but not limited to, you must not:

- Use the Site through unauthorized interfaces or protocols;
- Submit, upload, post, email, transmit or otherwise make available ("post") material that infringes the rights of others (including but not limited to any intellectual property rights) or is illegal, harmful, abusive, pornographic, violent, racist, discriminatory, offensive, vulgar, obscene, abusive, inaccurate, hateful, sexually oriented, defamatory, invasive of personal privacy, harassing, threatening, violative of any law, regulation or order, or otherwise objectionable;
- Translate, reverse-engineer, decompile, disassemble, modify, or make derivative works from the Content (accept as applicable law expressly permits);
- Remove, obscure or alter any notices or indications of any Intellectual Property rights;
- Interfere with, or attempt to interfere with, compromise the system integrity or security, or decipher any transmissions to or from the Site servers;
- Take any action that imposes an unreasonable or large load on our infrastructure;
- Post any solicitations, advertisements, chain letters, pyramid schemes, spyware, or spam;
- Post invalid data, viruses, worms, or other harmful software to the Site;
- Post any User Submission that may create a risk of harm, loss, physical or mental injury, emotional distress, death, disability, disfigurement, or physical or mental illness to any other person, or that may create a risk of any other loss or damage to any person or property;
- collect or harvest any personally identifiable information, including account names, from the Site, nor to use the services provided by the Site for any commercial solicitation purposes;
- Use automated means, including spiders, robots, crawlers, data mining tools, or the like to download data from the Site, unless expressly permitted by us;
- Interfere or attempt to interfere with the proper working of the Site or use the Site in a way that disables it or prevents or inhibits anyone from using it; or
- Impersonate another person or otherwise misrepresent your affiliation with a person or entity, conduct fraud, hide or attempt to hide your identity.

5. Intellectual Property Rights. KACE or its licensors, have exclusive proprietary rights to its Content that is provided on this Site. Any of KACE's trademarks, service marks, trade names, icons, logos, patents, trade secrets and copyrights that are provided or embodied on the Site ("Intellectual Property") are the exclusive property of KACE or its licensors. KACE retains all rights in its Content and Intellectual Property that are not expressly granted in this Agreement. KACE's Content and Intellectual Property may not be used, copied, reproduced, distributed, transmitted, broadcast, displayed, sold, licensed, or otherwise exploited for any other purposes whatsoever without the prior written consent of KACE.

6. User Submissions. The Site permits Users to submit, upload, post, email, transmit or otherwise make available User Submissions (for example, when users create a profile or post information on our forums, blogs, on-line bulletin boards, or user community) and permits the hosting, sharing, and/or republishing of such User Submissions. You understand that KACE does not guarantee any confidentiality with respect to any User Submissions.

KACE reserves the right, but does not have the obligation, to review User Submissions. You shall be solely responsible for your own User Submissions and the consequences of posting or publishing them. KACE reserves the right to remove any User Submissions from the Site upon request of a User, for any reason, or for no reason. In connection with User Submissions, you affirm, represent, and/or warrant that you own or have the necessary licenses and rights to use, display, and authorize KACE to use and display your User Submissions.

By submitting the User Submissions to KACE, you hereby grant KACE and its Users a non-exclusive, royalty-free, irrevocable, sublicenseable, and fully transferable license to use, reproduce, distribute, prepare derivative works of, and display the User Submissions in connection with the Site. To the extent you do not have ownership rights to any of your User Submissions, you shall indemnify KACE for any claim regarding KACE's use of your User Submissions.

You understand and acknowledge that you may be exposed to User Submissions that are inaccurate, offensive, indecent, or objectionable, and you agree that the User, not KACE, shall be liable for any damages you allege to incur as a result of such User Submissions and agree to indemnify and hold KACE, its affiliates, and/or licensors, harmless to the fullest extent allowed by law regarding all matters related to your use of the Site.

7. Digital Millennium Copyright Act. If you are a copyright owner or an agent thereof and believe that any User Submission or other Content infringes upon your copyrights, you may submit a notification pursuant to the Digital Millennium Copyright Act ("DMCA") by providing our Copyright Agent with the following information in writing (see 17 U.S.C. 512(c)(3) for further detail):

- (i) A physical or electronic signature of a person authorized to act on behalf of the owner of an exclusive right that is allegedly infringed;
- (ii) Identification of the copyrighted work claimed to have been infringed, or, if multiple copyrighted works at a single online site are covered by a single notification, a representative list of such works;
- (iii) Identification of the material that is claimed to be infringing or to be the subject of infringing activity and that is to be removed or access to which is to be disabled and information reasonably sufficient to permit us to locate the material;
- (iv) Information reasonably sufficient to permit us to contact you, such as an address, telephone number, and, if available, an electronic mail address;

- (v) A statement that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law; and
- (vi) A statement that the information in the notification is accurate, and under penalty of perjury, that you are authorized to act on behalf of the owner of an exclusive right that is allegedly infringed.

KACE's designated Copyright Agent to receive notifications of claimed infringement is:

Rob Meinhardt
Attn: DMCA Notice
KACE Networks, Inc.
1616 North Shoreline Blvd., Suite B
Mountain View, California 94043
(888) 522-3638
(650) 649-1806 fax
email: support@KACE.com

You acknowledge that if you fail to comply with all of the requirements of this Section, your DMCA notice may not be valid.

8. Warranty Disclaimer. THE CONTENT PROVIDED THROUGH THE SITE IS PROVIDED "AS IS" AND "AS AVAILABLE." YOU AGREE THAT YOUR USE OF THE SITE SHALL BE AT YOUR SOLE RISK. TO THE FULLEST EXTENT PERMITTED BY LAW, PROVIDER, ITS OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, SUITABILITY, QUALITY, FITNESS FOR PARTICULAR PURPOSES AND NON-INFRINGEMENT. KACE MAKES NO WARRANTIES OR REPRESENTATIONS ABOUT THE ACCURACY, ACCESSIBILITY, AVAILABILITY, ADEQUACY, TIMELINESS, OR COMPLETENESS OF THE SITE OR ITS CONTENT, USER SUBMISSIONS, OR ANY WEB SITES LINKED TO THIS SITE. KACE PROVIDES NO GUARANTEE AGAINST THE POSSIBILITY OF DELETION, LOSS, MIS-DELIVERY OR FAILURE TO STORE COMMUNICATIONS, PERSONALIZED SETTINGS, OR OTHER DATA. KACE DOES NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY USER SUBMISSION, AND KACE WILL NOT BE A PARTY TO OR IN ANY WAY BE RESPONSIBLE FOR MONITORING USER SUBMISSIONS OR ANY TRANSACTION BETWEEN YOU AND ANY THIRD PARTY.

9. Limitation of Liability. IN NO EVENT SHALL KACE, ITS OFFICERS, DIRECTORS, EMPLOYEES, OR AGENTS, BE LIABLE TO YOU FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES WHATSOEVER RESULTING FROM ANY (I) ERRORS, MISTAKES, OR INACCURACIES OF CONTENT, (II) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR ACCESS TO AND USE OF THE SITE, (III) ANY UNAUTHORIZED ACCESS TO OR USE OF OUR SECURE SERVERS AND/OR ANY AND ALL PERSONAL INFORMATION STORED THEREIN, (IV) ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM THE SITE, (V) ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE, WHICH MAY BE TRANSMITTED TO OR THROUGH THE SITE BY ANY THIRD PARTY, (VI) USER SUBMISSIONS OR THE HARMFUL OR ILLEGAL CONDUCT OF ANY THIRD PARTY, (VII) YOUR USE, OR INABILITY TO USE, ANY PORTION OF THE SITE OR FOR ANY LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF YOUR USE OF ANY CONTENT OR USER SUBMISSIONS POSTED, EMAILED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE VIA THE SITE, WHETHER BASED ON WARRANTY, CONTRACT, TORT, OR ANY OTHER LEGAL THEORY, AND WHETHER OR NOT KACE IS ADVISED OF THE POSSIBILITY OF SUCH

DAMAGES. THE FOREGOING LIMITATION OF LIABILITY SHALL APPLY TO THE FULLEST EXTENT PERMITTED BY LAW IN THE APPLICABLE JURISDICTION.

10. Indemnity. You agree to indemnify and hold KACE and its affiliates, agents, directors, officers, employees, and licensors harmless from any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to attorney's fees) arising from: (i) your use of and access to the Site; (ii) your violation of any term of this Agreement; (iii) your violation of any third-party right, including without limitation any intellectual property or privacy right; or (iv) any claim regarding your User Submissions. This indemnification obligation will survive termination of this Agreement and discontinuance of your use of the Site.

11. Ability to Accept Agreement. By your use of the Site, you affirm that you are either are at least 18 years of age or possess legal parental or guardian consent, and are fully able and competent to enter into the terms, conditions, and obligations, set forth in this Agreement. In any case, you affirm that you are 13 years old or older, as the Site is not intended for children under the age of 13. If you are under 13 years of age, do not use the Site.

12. Assignment. This Agreement and any rights granted hereunder may not be transferred or assigned by you, but may be assigned by KACE without restriction, including without limitation, in the event that KACE, Inc., forms a partnership with, is merged with, is acquired by another company or goes into bankruptcy.

13. Term and Termination. Your permission to access the Site under this Agreement will immediately terminate if you violate with any term of this Agreement. You agree that KACE, in its sole discretion and with or without notice, may terminate this Agreement or your access to any or all of the Site. Your obligations shall survive termination of this Agreement.

14. Governing Law. You agree that this Agreement shall be governed and interpreted pursuant to the laws of the State of California, notwithstanding any principles of conflict of law or your actual state or country of residence. You agree to submit to the personal and exclusive jurisdiction of the federal and state courts located within Santa Clara, California.

15. Entire Agreement/Severability. This Agreement, together with the Privacy Policy and any other notices published by KACE on the Site, shall constitute the entire agreement between you and KACE concerning the Site. If any provision of this Agreement is deemed invalid by a court of competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of this Agreement, which shall remain in full force and effect.

16. No Waiver. No waiver of any provision of this Agreement shall be deemed a further or continuing waiver of such provision or any other provision, and KACE's failure to assert any right under this Agreement shall not constitute a waiver of such right.