

SPECIFIC CONDITIONS I1 – MICROSOFT CLOUD SERVICES AND SUBSCRIPTION SUPPORT SERVICES

These Specific Conditions govern the Microsoft Cloud Services and Subscription Support Services that may be facilitated by the Company under an Order Form, together with any other document or terms and conditions referred to in the Order Form including but not limited to the General Terms & Conditions for the Supply of Products and/or Services (the "Conditions"), which shall be deemed to be incorporated into the Contact for the performance of any Microsoft Cloud Services and Subscription Support Services performed under these Specific Conditions.

1 DEFINITIONS

1.1 Capitalised terms used in these Specific Conditions shall have the following meanings for the purposes of these Specific Conditions only:

"Active Price List"	means one or more active price lists containing the pricing details for the Subscriptions, as published by Microsoft from time to time and as applicable at the date specified by Microsoft;
"Add-On"	means any Microsoft service taken as an additional option to a Subscription;
"Error"	means an unplanned or unexpected interruption in the operation of the Subscription;
"Licence Based"	means a Subscription that is billed according to the requested number of licences, regardless of actual product usage;
"Microsoft"	means Microsoft Corporation and its affiliates;
"Microsoft Auto Renew Period"	means the relevant term as specified in the Microsoft Program Guide for the relevant Subscription;
"Microsoft Customer Agreement"	means as defined in paragraph 4;
"Microsoft Cloud Services"	means the Subscriptions facilitated by the Company for the Customer under these Specific Conditions;
"Microsoft CSP Program"	means Microsoft's cloud solution provider program, through which it authorises resellers, including the Company, to resell Subscriptions to customers in accordance with the Microsoft Customer Agreement and the Microsoft Program Guide;
"Microsoft Program Guide"	means a Microsoft published document from time to time in force containing relevant information about the Microsoft CSP Program, that may include several handbooks, including but not limited to operations, support or other functions relevant to Subscriptions;
"New Commerce Experience"	means Microsoft's new commerce experience, through which it authorises resellers, including the Company, to resell Subscriptions to customers in accordance with the Microsoft Customer Agreement and the Microsoft Program Guide;
"Query"	means a request for information or advice related to the operation of the Subscription;
"Renewal Date"	means the first day of each subsequent Microsoft Auto Renew Period for a Subscription in accordance with paragraph 3.4;
"Standard Query"	means any Query which is not an Urgent Query;
"Subscription"	means any product, subscription, service or bundle offered by Microsoft comprising a right to the Customer to use the Microsoft online services for a defined term, which may include Microsoft software technology, as made available by the Company to the Customer on a "software as a service" basis and as set out on the Order Form;
"Subscription Support Request"	means a request from the Customer for assistance in relation to an Error or Query;
"Subscription Support Request Times"	means as defined in Table 1 (Subscription Support Request Times) in paragraph 5.4; "Subscription Support Services" means those Services provided by the Company in connection with a Subscription in accordance with paragraph 5; and
"Urgent Query"	means any Query assessed as urgent by the Company (acting reasonably) based on the relevant information provided;
"Usage Based"	means a Subscription that is billed according to the Customer's actual usage.

1.2 All other capitalised terms which are not defined in paragraph 1.1 shall have the meaning stated in the Conditions or other applicable Specific Conditions.

2 COMMENCEMENT DATE

- 2.1 The Commencement Date will be the date that the Subscription is first created and activated by the Company within the Microsoft environment.
- 2.2 The Company will not facilitate any Microsoft Cloud Services or provide any Subscription Support Services as described in these Specific Conditions until such time as it has received and accepted an Order Form signed by the Customer and processed the details as required by Microsoft to satisfy the acceptance of a Microsoft Customer Agreement by the Customer.
- 2.3 Each purchase of a new Subscription will be an agreed Change for the purposes of this Contract and will have its own Commencement Date, which will be the date that the new Subscription is created and activated by the Company within the Microsoft environment.
- 2.4 The accompanying Subscription Support Services will commence on the Commencement Date of the connected Subscription.

3 MINIMUM TERM AND MICROSOFT AUTO RENEW PERIOD

- 3.1 The Minimum Term for Microsoft Cloud Services and Subscription Support Services shall be as set out in the Order Form, or if no Minimum Term is specified, twelve (12) calendar months from the Commencement Date for the relevant Subscription.
- 3.2 During the Term Subscriptions and Subscription Support Services will automatically renew at the end of the relevant Microsoft Auto Renew Period for the Subscription, unless cancelled by the Customer in accordance with paragraphs 3.5 and/or 3.6 or unless otherwise agreed in writing between the parties. Each renewal of a Subscription will be for a further Microsoft Auto Renew Period, as applicable to that Subscription. Upon receipt of the Customer's request in writing under paragraph 3.5.1 for any cancellation, the Company will process the cancellation of the renewal for the relevant Subscription by updating the Subscription through its Microsoft CSP Program portal to take effect at the end of the current relevant Microsoft Auto Renew Period, unless otherwise agreed in writing with the Customer.



- Where the Customer submits its request for a cancellation under paragraph 3.5.2, the Customer's cancellation will become effective at the time that the relevant submission is accepted through the portal.
- 3.3 Subject to paragraphs 3.4 and 3.5, a Licence Based Subscription purchased via the Microsoft CSP Program may be changed from time to time by increasing or decreasing the number of licences relevant to that Subscription and/or by adding or removing any Add-On services. Any such Changes to the relevant number of licences under a Licence Based Subscription and any Changes to Add-Ons will commence on the date of activation of the relevant Change within the Microsoft environment and will expire at the end of the relevant Microsoft Auto Renew Period for the relevant Subscription. Where the Customer submits its request for a Change under paragraph 3.5.1, the Company will process the Change promptly and in any event within 14 (fourteen) days of such request. Where the Customer submits its request for a Change under paragraph 3.5.2, the relevant Change will become effective at the time that the relevant submission is accepted through the portal.
 - 3.4 The Customer may cancel a Subscription or reduce the number of licences applicable to a Subscription at any time after the Minimum Term for the relevant Subscription, during the Microsoft Auto Renew Period, provided that:
 - 3.4.1 a refund will only be provided to the extent expressly provided for in the Program Guide for the relevant Subscription; and
 - 3.4.2 an "early termination charge", meaning fees due from Customer in the event of cancellation of a Subscription before the end of the relevant Microsoft Auto Renew Period, may be applied as set out in the Program Guide from time to time.
 - 3.5 All requests for Changes to Subscriptions and/or for cancellation of any Subscriptions under paragraph 3.2 or 3.3 during the relevant Microsoft Auto Renew Period for that Subscription must be:
 - 3.5.1 submitted in writing by the Customer to the Company, which in the case of a request for cancellation under paragraph 3.2 shall be not less than 14 (fourteen) days before the end of the current relevant Microsoft Auto Renew Period; or
 - 3.5.2 where made available by the Company from time to time, submitted through a relevant online portal; and are subject to approval by the Company (such approval not to be unreasonably withheld or delayed) and Microsoft.
 - 3.6 The Customer may cancel a Subscription or reduce the number of licences applicable to a Subscription within the first 72 (seventy two) hours of purchase through the New Commerce Experience and receive a pro-rated refund. After 72 (seventy two) hours of purchase of the Subscription or licences applicable to a Subscription, no cancellation or refund is available and the Customer will be liable for the Charges for the remainder of the Minimum Term.
 - 3.7 The Customer may increase the licences applicable to a Subscription through the New Commerce Experience at any time during the Minimum Term with billing adjustments reflected on the next invoice. If the Customer does increase the licences during the Minimum Term, then it can only cancel or reduce these licences within the first 72 (seventy two) hours of purchase through the New Commerce Experience, and obtain a pro-rated refund. After 72 (seventy two) hours of purchase, no cancellation or refund is available and the Customer will be liable for the Charges for the remainder of the Minimum Term.
 - 3.8 Any requests to increase or decrease the licences applicable to a Subscription or to cancel a Subscription that has been purchased through the New Commerce Experience shall be logged via the Company's service desk during Normal Working Hours.

4 MICROSOFT CUSTOMER AGREEMENTS

- 4.1 The Customer acknowledges and agrees that the Customer's purchase and use of the Microsoft Cloud Services are subject to the Customer agreeing to comply with the Microsoft Customer Agreement relevant to the Subscription and relevant to the country where the Microsoft Cloud Services are provided. By entering into this Contract, the Customer is deemed to have accepted and be bound by the Microsoft Customer Agreement and that Microsoft shall be entitled to enforce the Microsoft Customer Agreement directly against the Customer and to rely upon this Contract pursuant to The Contracts (Rights of Third Parties) Act 1999 notwithstanding any provision to the contrary in the Conditions. The Customer further acknowledges and agrees that Microsoft (and not the Company) is liable to the Customer for the provision of the Microsoft Cloud Services. The Microsoft Customer Agreement in force on the Commencement Date or Renewal Date (as applicable) will remain in force for the period of that Subscription. The Microsoft Customer Agreements can be found at: <https://www.microsoft.com/licensing/docs/customeragreement>. If Microsoft updates the Microsoft Customer Agreement then the Customer accepts the new Microsoft Customer Agreement as applicable on the relevant renewal of the Subscription.
- 4.2 The Customer acknowledges and agrees that any personal data (in accordance with the Microsoft Privacy Statement) provided to Microsoft in connection with the Microsoft Cloud Services (or otherwise processed as part of the Microsoft Cloud Services) will be processed by Microsoft in accordance with the Microsoft Privacy Statement in force on the Commencement Date or Renewal Date (as applicable). This statement can be found at: <https://privacy.microsoft.com/en-gb/privacystatement>.

5 SUBSCRIPTION SUPPORT SERVICES

- 5.1 The Company will perform relevant Subscription Support Services associated with the purchase, activation and support of Subscriptions. Those Services may be performed by the Company through a Microsoft CSP program portal or New Commerce Experience or such other processes or tools identified by Microsoft in the Microsoft Program Guide or as otherwise agreed between the Company and Microsoft from time to time. The Subscription Support Services will include basic account set-up, accounts and billing services, and triage prior to escalation to the Vendor.
- 5.2 Where requested by the Customer in accordance with paragraph 3.2 and/or 3.3, the Company will request any Subscription Changes to Microsoft on behalf of the Customer. There is no guarantee that Microsoft will approve any such changes or additions. The Company does not commit to any additional Subscriptions or Changes to Subscriptions requested by the Customer but not approved by Microsoft.
- 5.3 The Company will investigate errors reported by the Customer where the standard method of performing an administrative or user function in respect of a Subscription does not operate as expected or produces an error which cannot be resolved by the Customer. For the avoidance of doubt the Microsoft Cloud Services and Subscription Support Services do not include requests for basic product training or technical consulting.
- 5.4 **Subscription Support Requests**
The Company will respond to a Subscription Support Request within the Subscription Support Request Times below, unless otherwise set out in the Order Form.

Table 1: Subscription Support Request Times

Request Type	Response Time
Errors	2 Normal Working Hours
Urgent Query	1 Business Day
Standard Query	2 Business Day

- 5.5 Where assistance from Microsoft is deemed by the Company to be required, the Company will raise and manage a support ticket with Microsoft on behalf of the Customer.

- 5.6 The Company is not liable and has no control over or obligations in respect of Microsoft's performance in investigating or resolving any errors or issues raised in respect of the Subscriptions.
- 5.7 To the extent that Microsoft passes to the Company any compensation or damages due to the Customer under the Microsoft Customer Agreements, the Company will promptly pass such amount to the Customer.

6 CUSTOMER OBLIGATIONS AND SERVICE DEPENDENCIES

- 6.1 The Customer is responsible for accepting and complying with the Microsoft Customer Agreements in accordance with paragraph 4.
- 6.2 The Customer shall ensure that the Subscriptions (and the relevant Microsoft online services applicable to such Subscriptions) are not used in any way that may breach the Microsoft Customer Agreement or infringe the rights of any person whether in statute or common law.
- 6.3 The Customer will provide suitably qualified and/or experienced personnel with whom the Company can liaise for the purposes of facilitating the Microsoft Cloud Services and providing the Subscription Support Services.
- 6.4 Unless otherwise expressly provided for in this Contract as a Company responsibility in respect of any managed Services the Company is providing to the Customer relevant to the Subscriptions or other Services, the Customer remains responsible for all management of the online services, including but not limited to any design, configuration and management of such services (managing changes, events, problems and/or incidents) and the security and firewalls of the Customer's communications links, equipment, software, services and processes.
- 6.5 The Customer is solely responsible for the content of all Customer data and such data remains the responsibility of the Customer at all times. The Company does not and will not assume any obligations with respect to Customer data or to the Customer's use of the Subscriptions other than as expressly provided for in this Contract or as required by Relevant Law.

7 EXCLUSIONS AND LIMITATIONS

- 7.1 The Microsoft Cloud Services and Subscription Support Services in these Specific Conditions do not include any Services required due to problems caused by accident, abuse or use of the Microsoft Cloud Services by the Customer in a manner that is inconsistent with these Specific Conditions.
- 7.2 In no event will the Company be liable for loss of revenue or indirect, special, incidental, consequential, punitive, or exemplary damages, or damages for loss of use, lost profits, revenues, business interruption, or loss of business information, however caused or on any theory of liability arising from the Customer's use of the Microsoft Cloud Services and Subscription Support Services.
- 7.3 The Company shall not be obligated to facilitate or to continue to facilitate any Microsoft Cloud Services or provide any Subscription Support Services during the Term if Microsoft, in its sole discretion, has discontinued or otherwise removed any such services from the services it offers.
- 7.4 Unless applicable law requires otherwise and without prejudice to paragraph 4, the only remedy that the Company will have against Microsoft and therefore that the Customer will have against the Company for anything related to the Microsoft Cloud Services is to obtain direct damages from Microsoft up to the amount actually paid by Company to Microsoft during the prior one-year period for the relevant Microsoft Cloud Services, minus any amounts paid by Microsoft during that same period for any prior liability to the Customer. The Customer may not recover any other damages from the Company or Microsoft, including loss of revenue or indirect, special, incidental, consequential, punitive, or exemplary damages, or damages for lost profits, revenues, business interruption, or loss of business information, even if the Company and/or Microsoft knew they were possible. The limitations in this paragraph 7.4 apply to: (i) anything related to the Subscriptions; and (ii) claims for breach of contract, breach of warranty, strict liability, negligence or other tort to the extent permitted by applicable law. It also applies even if Customer is not fully compensated for any losses, or the Company and/or Microsoft knew or should have known about the possibility of damages. The limitations in this paragraph 7.4, do not apply to claims for non-payment, fraud, breach of confidentiality, defence of infringement claims or third party claims. The Company's (and Microsoft's) liability for loss or damage of any kind (including loss or damage caused by negligence) is reduced to the extent that the Customer (or its agents) caused or contributed to that loss or damage.

8 CHARGES

- 8.1 The initial Charges for the Microsoft Cloud Services are as identified in the Order Form.
- 8.2 Subject to paragraphs 8.1 and 8.3, the Company shall charge the Customer for the Microsoft Cloud Services in accordance with the Active Price List. The Charges for the Subscriptions may be changed by Microsoft without notice notwithstanding anything in this Contract or the Microsoft Customer Agreement to the contrary.
- 8.3 Where any percentage discount or other percentage adjustment to the Active Price List has been agreed between the parties and is identified on the Order Form, such percentage adjustment shall be applied by the Company to the Charges accordingly (either as a one-off adjustment or a continuing percentage adjustment, as applicable).
- 8.4 The Charges for each renewal of Subscriptions will be in accordance with the Active Price List in effect on the relevant Renewal Date.
- 8.5 The Charges for the Licence Based Subscriptions are invoiced by the Company monthly in advance, with the first invoice issued by the Company on or around the Commencement Date and monthly thereafter.
- 8.6 The Charges for Licence Based Subscriptions will be increased in the event of any increase in the number of licences applicable to a relevant Subscription agreed in accordance with paragraph 3.3 according to the price valid on the Active Price List as at the Commencement Date or the Renewal Date of the relevant Subscription. The Charges for Licence based Subscriptions may be reduced in the event of any decrease in the number of licences applicable to a relevant Subscription being agreed in accordance with paragraph 3.4, subject always to paragraph 3.4.
- 8.7 The Charges for Usage Based Subscriptions are invoiced monthly in arrears.
- 8.8 Any additional or remedial Services necessary as a result of any failure of the Customer to provide the relevant Customer Obligations, including but not limited to those obligations set out in paragraph 6, will be regarded as additional Services and subject to additional Charges to be invoiced in accordance with the Company's published Rate Card.