

## SECTION 1. DEFINITIONS

**“Azure Infrastructure Services”** or **“Azure Resources”** or **“Infrastructure Services”** or **“Microsoft Online Services”** refer to the applicable virtual infrastructure services selected under the Order which are provided by Microsoft, as detailed in the Microsoft Cloud Agreement.

**“Azure Managed Cloud Services”** or **“Azure Services”** is comprised of Provider’s access and ability to perform troubleshooting, request fulfilment and changes to Customer’s cloud environment on behalf of and at the request of Customer in accordance with the service levels identified on the Customer Order.

**“Azure Service Start Date”** is the date on which the first Azure subscription is established.

**“CDR”** or **“Customer Design Requirements”** form is supplied to Customer by Provider for the purposes of detailing Customer specific information or requirements relevant to the deployment of Provider Services.

Capitalized terms used herein and not otherwise defined shall have the meaning set forth in the Microsoft Cloud Agreement, including the Microsoft Online Service Terms.

## SECTION 2. AZURE INFRASTRUCTURE SERVICES

The following terms and conditions are applicable to each Order that includes Azure Infrastructure Services:

- a. Before any Microsoft Online Service can be provisioned, Customer must acknowledge, accept and agree to be bound by the terms of the Microsoft Cloud Agreement and Microsoft Online Service Terms;
- b. Provider must provide evidence to Microsoft of Customer’s acknowledgement, acceptance and agreement to be bound by the Microsoft Cloud Agreement and Microsoft Online Service Terms;
- c. Customer shall cooperate with Provider’s periodic efforts to recertify Customer’s acceptance of Microsoft’s Cloud Agreement and Online Service Terms;
- d. Customer shall provide and keep up to date the following information to Provider to facilitate provision of the Microsoft Online Services:
  - i. Customer name and contact information (including end-customer name, telephone number, email address, street, city, state/region, country and zip/postal code).

- ii. Customer consents to Provider's collection, use and disclosure of this information in accordance with Provider's Information Security Policy, a copy of which shall be provided on request (as such may be updated by Provider from time to time).
- iii. Provider will grant Customer access to the appropriate portals for administering the Services, including the addition or reduction of Service quantities that may affect billing.
- iv. Customer agrees to allow Provider to retain administrative access to all Services. If Provider provides an additional management Service, the portal access available to Customer may be reduced or restricted.

### SECTION 3. SUBSCRIPTIONS

#### 3.1. Microsoft Online Services:

Microsoft offers Online Services under several different Subscription offerings. These include, but are not limited to, Consumption Offering, Online Services Commitment Offering and Software Commitment Offering. Offerings may have differing terms, payment concepts and minimum periods. The types of offering and associated parameters are subject to change over time. Any changes will take effect upon commencement or renewal of each individual Subscription.

Customer may choose to deploy resources from Microsoft which involve a minimum commitment period, including, but not limited to, Microsoft 365 Subscriptions, Azure Reserved Instances, Software Subscriptions, SQL Server Subscription (together or individually these are "Subscriptions") on the terms offered by Microsoft:

- a. Each Subscription within Microsoft Online Services will have its own Commencement Date (as such term is defined in the Online Service Terms). This will be the date that the Subscription is created by Provider;
- b. Each Subscription Offer within Microsoft Online Services has a defined minimum term. This is controlled by Microsoft. The minimum term will be what is in effect on the Commencement Date of an individual Subscription;
- c. Any Service identified as an add-on service will co-terminate at the end of the parent minimum term. Additional quantities ordered within an existing Subscription will not affect the minimum term for that Subscription;
- d. Unless Customer has requested at least 30 days in advance via Provider service ticket, a cancellation or a change to any current Subscription, all Subscriptions will auto-renew at the end of the term for a new minimum term, which if shorter in term than the current Subscription, may result in a higher Subscription fee. The renewal date will become the new Commencement Date for that Subscription and all terms that are relevant on that date will come into effect.

ACCORDINGLY, CUSTOMER ACKNOWLEDGES THAT BY PROCURING ANY SUCH SUBSCRIPTIONS IT ENTERS INTO A BINDING COMMITMENT FOR THE APPLICABLE FIXED PERIODS RELATING THERETO (AS SPECIFIED BY MICROSOFT). THEREFORE, SHOULD CUSTOMER WISH TO TERMINATE THE ORDER EARLIER THAN THE EXPIRATION OF SUCH SUBSCRIPTIONS, PROVIDER SHALL CONTINUE TO BILL AND CUSTOMER SHALL CONTINUE TO BE LIABLE TO PROVIDER UNDER THE TERMS OF THE EXISTING ORDER FOR ANY FEES RELATING TO SUCH SUBSCRIPTIONS UP UNTIL THE EXPIRATION OF, OR EARLY BUYOUT OF THE APPLICABLE FIXED PERIOD(S) RELATING THERETO BY CUSTOMER.

## SECTION 4. MANAGED CLOUD FOR AZURE

### 4.1. Service Tiers

Provider offers several Managed Cloud for Azure service tiers as well as optional add-on features, with each being identified on the Order and further detailed in Provider Managed Cloud for Azure ("Service Guide").

### 4.2. Scope of Services

In accordance with a completed CDR form, the terms of the Order and any mutually agreed-to amendment to the same, Provider will provide the following managed services for all tiers of Managed Cloud for Azure in connection with services hosted by Microsoft:

- a. Creation and configuration of an environment on behalf of Customer.
- b. Roles-based user access based on a predefined list of roles and responsibilities.
- c. Configuration, implementation, general monitoring, incident management and problem resolution support for Azure Resources.

Customer should refer to the Service Guide for a list of additional services specific to each tier or add-in service that may be on Customer Order.

As part of its continuing commitment to improve and evolve its Services, Provider may periodically make changes in its reasonable commercial judgment, including, but not limited to, changes to the configuration or equipment comprising the Services.

## SECTION 5. CUSTOMER BILLING

Billing is monthly and is comprised of the Microsoft Online Services subscription fees plus Provider Services fees, where;

- a. The monthly Microsoft Online Services fee for each invoicing period is usage based, as determined by Customer's consumption of Azure Resources;
- b. The monthly Provider Services fees scale up or down as a fixed percentage of the Microsoft Online Services fee for the same invoicing period;
- c. Monthly fees are subject to a fixed minimum "Commit" or "Reserved" fee as identified on the Order and billed in advance, with the usage based "Burst" fees billed in arrears less the amount of the Reserved fee billed in advance;
- d. Should the combined usage based monthly Provider Management fee and Microsoft Online Services fee fall below the Commit Fee, the Commit Fee will still apply irrespective of actual usage;
- e. Should the quantity of virtual machines requested to be under management by Customer increase by five or more anytime during the term of the Agreement, Provider will adjust the Reserved fee for the post-change billing period to be equal to the new total monthly fee minus the pass-through fee (if greater);
- f. Individual in advance and in arrears fees, along with their associated billing period will be identified on the Provider invoice(s) and may be issued in either combined or separate invoices.
- g. The date on which the first Azure subscription is established may precede the date Customer is provided access credentials to its Services to begin inward-bound migration of assets for execution of work. Notwithstanding anything to the contrary in the Order, the billing start date and the Term of the applicable Order shall be the same as the Service Start Date.

## SECTION 6. USE OF SERVICES

### 6.1. Changes

Customer may order changes to Azure Resources via Provider service ticket as identified in the Service Guide. Changes to Azure Resources will be provided at the then-applicable rates. Any reductions in resources and fees are subject to any applicable minimum quantities or terms in effect for that resource.

For all Azure Managed Cloud Services, Customer may not go directly to Microsoft for any issues relating to the services, service-level questions or requests for remedies. Any queries or issues in relation to the same must be raised with Provider.

Where Customer does not use an automated portal to implement a change, Provider will create/amend any notified quota or subscription changes on behalf of Customer to Microsoft. Provider shall use reasonable efforts to make such changes in a reasonable time.

Changes to Customer's environment will be reflected in the billing from the date the change is completed successfully, which may also include any additional charges incurred by any associated changes to the Azure Managed Cloud Services.

### 6.2. General Usage

Provider will investigate any errors reported by Customer when the normal method to perform an administrative action on the Microsoft service by Customer does not function as expected. Provider will liaise with Microsoft on Customer's behalf on these issues, including raising support tickets as required.

### 6.3. Compliance

Customer is the primary processor and controller of all of its data and is solely responsible for the content of all Customer data and will secure and maintain all rights in Customer data necessary for Provider and Microsoft to provide the Services to Customer without violating the rights of any third party, or otherwise obligating Provider or Microsoft to Customer or to any third party.

For clarity, Customer is solely responsible for compliance related to the manner in which it chooses to access and use the Azure Infrastructure, including Customer's transfer and processing of its data and confidential information and the Azure region in which any of the foregoing occur. Customer represents and warrants that it and its financial institutions, or any party that owns or controls Customer or its financial institutions, are not subject to sanctions or otherwise designated on any list of prohibited or restricted parties, including, but not limited to, the lists maintained by the United Nations Security Council and the U.S. Government (e.g., the Specially Designated Nationals List and Foreign Sanctions Evaders List of the U.S. Department of Treasury, and the Entity List of the U.S. Department of Commerce).

Services provided pursuant to these terms are strictly subject to the availability of the same from Microsoft and that any Services and service level agreements relating thereto may be subject to change, suspension or cancellation by Microsoft. This includes the termination or suspension of the Order and Customer's Services immediately if Microsoft or Provider determines Customer is in breach of its obligations under these terms, the Agreement, or any Microsoft policies or terms referenced herein if such termination is necessary to comply with law, a security or intellectual property issue, or if Microsoft no longer permits resale of any service. Provider shall endeavor to give as much prior notice of any change or cancellation of Microsoft Service as is provided by Microsoft. Customer acknowledges and agrees that Provider shall have no liability for a failure to provide the Services or any part thereof where such failure relates to a change or discontinuance by Microsoft.

## **SECTION 7. MICROSOFT SERVICE CREDITS**

Customer is entitled to claim service credits from Microsoft via Provider, acting as agent for Customer in its capacity as Microsoft Reseller to Customer for failures of the applicable Online Services in accordance with the published service-level agreements for the applicable services detailed at Licensing Documents (microsoft.com). Customer must notify Provider of any service-level requests by the end of the next billing cycle after which the service incident occurred. Provider will make a claim on behalf of Customer and will notify Customer of any credits within 60 days of its request for such credits. Notwithstanding the standard treatment of any other service credits that Customer may receive from Provider, confirmed service credits shall be applied only against future purchases of Microsoft Online Services from Provider. Provider accepts no liability to Customer in the event that Microsoft rejects any such service-level request.

## **SECTION 8. UNMANAGED AZURE RESOURCES**

Under the Order, Customer may choose Azure Infrastructure Services that are not managed by Provider. In this case, Provider will provision new and separate Microsoft Online Services Subscription(s) and provide Customer with root-level access into such new Microsoft Online Services Subscription(s). By using Microsoft Online Services Subscription(s), Customer acknowledges and agrees that any services deployed in any such new Microsoft Online Services Subscription(s) are the sole responsibility of Customer and will not form part of the "Services" supplied under the Order. Provider will bill the Microsoft Online Services Subscription(s) list rate for all services consumed in the additional Microsoft Online Services Subscription(s) and will serve as a billing agent only.

Such new Microsoft Online Subscriptions shall remain subject to Section 2 – Azure Infrastructure Services. Should Customer terminate all Managed Cloud for Azure Service under the Order, Provider shall be entitled to terminate its obligations as billing agent for such unmanaged Microsoft Online Services Subscription(s) and transfer all responsibilities relating to the same to Customer.

For all Unmanaged Azure Services on the Order, Customer will be required to go directly to Microsoft for any issues relating to the Infrastructure Services, service-level inquiries or requests for remedies. Any queries or issues in relation to the same should also be raised with Microsoft.

## SECTION 9. ACKNOWLEDGEMENTS

BY ENTERING INTO THE ORDER, CUSTOMER ACKNOWLEDGES THAT PROVIDER IS SUBSCRIBING TO THE INFRASTRUCTURE SERVICES PURELY FOR AND ON BEHALF OF THE CUSTOMER, ACTING IN ITS CAPACITY AS RESELLER (AS SUCH IS DEFINED IN THE MICROSOFT CLOUD AGREEMENT) OF THE SAME. THE INFRASTRUCTURE SERVICES AND CUSTOMER'S USE THEREOF ARE STRICTLY SUBJECT TO THE MICROSOFT CLOUD AGREEMENT.

Customer represents and warrants that it and its financial institutions, or any party that owns or controls customer or its financial institutions, are not subject to sanctions or otherwise designated on any list of prohibited or restricted parties, including, but not limited to, the lists maintained by the United Nations Security Council and the U.S. government (e.g., the specially designated nationals list and foreign sanctions evaders list of the U.S. Department of Treasury, and the entity list of the U.S. Department of Commerce).

Customer is prohibited from reselling the infrastructure services, or from selling, transferring or sublicensing customer's provider or Microsoft account credentials to any other party, save to agents and subcontractors performing work on customer's behalf.

Notwithstanding anything stated to the contrary in the Agreement (or elsewhere in the Order) with respect to order of precedence, limitations of liabilities or warranties and their disclaimers, the parties agree that the following terms shall prevail and apply to the Services set out herein:

- a. Customer acknowledges and accepts that, other than those warranties and representations made by Microsoft in the Microsoft Cloud Agreement (and documents referred to therein) shall be the sole warranties or representations in relation to the Infrastructure Services;
- b. Customer's sole and exclusive remedy for any unavailability, non-performance or other failure by Microsoft to provide Infrastructure Services is the receipt of a credit pursuant to the terms of the relevant Microsoft SLAs;
- c. Provider makes no representations or warranties of any kind, whether express, implied, statutory or otherwise as to the Infrastructure Services, including any warranty that the Services will be uninterrupted or error free;
- d. To the maximum extent permitted by applicable law, provider will not be liable to Customer, and Customer releases provider from any liability for any direct, indirect, incidental, special, consequential or exemplary damages (including damages for loss of profits, goodwill, use or data) as a result of the use of the Infrastructure Services, Microsoft's provision, management or operation of the

Infrastructure Services or Microsoft's exercise of its rights in the Microsoft Cloud Agreement or Customer's breach thereof, even if a party has been advised of the possibility of such damages.