

Online Services Terms

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Introduction

The parties agree that these Online Services Terms govern Customer's use of the Online Services and set forth their obligations with respect to the processing and security of Customer Data and Personal Data by the Online Services. The parties also agree that, unless a separate Professional Services agreement exists, these Online Services Terms govern the provision of Professional Services and the processing and security of Support Data and Personal Data in connection with that provision. Separate terms, including different privacy and security terms, govern Customer's use of Non-Microsoft Products (as defined below).

Service Level Agreements

Most Online Services offer a Service Level Agreement (SLA). For more information regarding the Online Services SLAs, please refer to <http://microsoft.com/licensing/contracts>.

Applicable Online Services Terms and Updates

When Customer renews or purchases a new subscription to an Online Service, the then-current Online Services Terms will apply and will not change during Customer's subscription for that Online Service. When Microsoft introduces features, supplements or related software that are new (i.e., that were not previously included with the subscription), Microsoft may provide terms or make updates to the Online Services Terms that apply to Customer's use of those new features, supplements or related software.

Electronic Notices

Microsoft may provide Customer with information and notices about Online Services electronically, including via email, through the portal for the Online Service, or through a web site that Microsoft identifies. Notice is given as of the date it is made available by Microsoft.

Prior Versions

The Online Services Terms provides terms for Online Services that are currently available. For earlier versions of the Online Services Terms, Customer may refer to <http://go.microsoft.com/?linkid=9840733> or contact its reseller or Microsoft Account Manager.

Clarifications and Summary of Changes

Additions	Deletions
Azure Maps	

Online Service Specific Terms

[Office 365 Applications](#): Added terms providing commercial use rights of Office Mobile Apps to licensed users of Office 365 Business Essentials, Office 365 F1, Microsoft 365 F1 and Office 365 E1. Such use is limited to devices with integrated screen sizes of 10.1" diagonally or less.

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Definitions

If any of the terms below are not defined in Customer's volume licensing agreement, they have the definitions below.

"Core Online Services" means those Online Services listed in [Appendix A](#) to the Data Protection Terms.

"Customer Data" means all data, including all text, sound, video, or image files, and software, that are provided to Microsoft by, or on behalf of, Customer through use of the Online Service. Customer Data does not include Support Data.

"External User" means a user of an Online Service that is not an employee, onsite contractor, or onsite agent of Customer or its Affiliates.

"General Data Protection Regulation" or "GDPR" means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.

"GDPR Terms" means the terms in Attachment 4, under which Microsoft makes binding commitments regarding its processing of Personal Data as required by Article 28 of the General Data Protection Regulation.

"Instance" means an image of software that is created by executing the software's setup or install procedure or by duplicating such an image.

"Licensed Device" means the single physical hardware system to which a license is assigned. For purposes of this definition, a hardware partition or blade is considered to be a separate device.

"Non-Microsoft Product" means any third-party-branded software, data, service, website or product, unless incorporated by Microsoft in an Online Service.

"Online Service" means a Microsoft-hosted service to which Customer subscribes under a Microsoft volume licensing agreement, including any service identified in the Online Services section of the Product Terms. It does not include software and services provided under separate license terms (such as via gallery, marketplace, console, or dialog). The Product Terms is located at <http://go.microsoft.com/?linkid=9839207>.

"Operating System Environment" (OSE) means all or part of an operating system Instance, or all or part of a virtual (or otherwise emulated) operating system Instance, that enables separate machine identity (primary computer name or similar unique identifier) or separate administrative rights, and Instances of applications, if any, configured to run on all or part of that operating system Instance. There are two types of OSEs, physical and virtual. A physical hardware system can have one physical OSE and/or one or more virtual OSEs. The operating system Instance used to run hardware virtualization software or to provide hardware virtualization services is considered part of the physical OSE.

"OST" means these Online Services Terms.

"Personal Data" means any information relating to an identified or identifiable natural person. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

"Previews" means preview, beta or other pre-release features, data center locations, and services offered by Microsoft for optional evaluation.

"Professional Services" means Microsoft technical support and consulting services (e.g., for data migration) related to any Online Service.

"SL" means subscription license.

"Standard Contractual Clauses" means the standard data protection clauses for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection, as described in Article 46 of the GDPR. The Standard Contractual Clauses are in [Attachment 3](#).

"Subprocessor" means other processors used by Microsoft to process data.

"Support Data" means all data, including all text, sound, video, image files, or software, that are provided to Microsoft by or on behalf of Customer (or that Customer authorizes Microsoft to obtain from an Online Service) through an engagement with Microsoft to obtain technical support for Online Services covered under this agreement.

The terms "data subject", "processing", "processor", and "supervisory authority" as used herein have the meanings given in the GDPR and the terms "data importer" and "data exporter" have the meanings given in the Standard Contractual Clauses.

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General Terms

Licensing the Online Services

Customer must acquire and assign the appropriate subscription licenses required for its use of each Online Service. Each user that accesses the Online Service must be assigned a User SL or access the Online Service only through a device that has been assigned a Device SL, unless specified otherwise in the [Online Service-specific Terms](#). [Attachment 2](#) describes SL Suites that also fulfill requirements for User SLs. Customer has no right to use an Online Service after the SL for that Online Service ends.

License Reassignment

Most, but not all, SLs may be reassigned. Except as permitted in this paragraph or in the [Online Service-specific Terms](#), Customer may not reassign an SL on a short-term basis (i.e., within 90 days of the last assignment). Customer may reassign an SL on a short-term basis to cover a user's absence or the unavailability of a device that is out of service. Reassignment of an SL for any other purpose must be permanent. When Customer reassigns an SL from one device or user to another, Customer must block access and remove any related software from the former device or from the former user's device.

Multiplexing

Hardware or software that Customer uses to pool connections; reroute information; reduce the number of devices or users that directly access or use the Online Service (or related software); or reduce the number of OSEs, devices or users the Online Service directly manages (sometimes referred to as "multiplexing" or "pooling") does not reduce the number of licenses of any type (including SLs) that Customer needs.

Using the Online Services

Customer may use the Online Services and related software as expressly permitted in Customer's volume licensing agreement. Microsoft reserves all other rights.

Acceptable Use Policy

Neither Customer, nor those that access an Online Service through Customer, may use an Online Service:

- in a way prohibited by law, regulation, governmental order or decree;
- to violate the rights of others;
- to try to gain unauthorized access to or disrupt any service, device, data, account or network;
- to spam or distribute malware;
- in a way that could harm the Online Service or impair anyone else's use of it; or
- in any application or situation where failure of the Online Service could lead to the death or serious bodily injury of any person, or to severe physical or environmental damage.

Violation of the terms in this section may result in suspension of the Online Service. Microsoft will suspend the Online Service only to the extent reasonably necessary. Unless Microsoft believes an immediate suspension is required, Microsoft will provide reasonable notice before suspending an Online Service.

Use of Software with the Online Service

Customer may need to install certain Microsoft software to use the Online Service. If so, the following terms apply:

Microsoft Software License Terms

Customer may install and use the software only for use with the Online Service. The [Online Service-specific Terms](#) may limit the number of copies of the software Customer may use or the number of devices on which Customer may use it. Customer's right to use the software begins when the Online Service is activated and ends when Customer's right to use the Online Service ends. Customer must uninstall the software when Customer's right to use it ends. Microsoft may disable it at that time.

Validation, Automatic Updates, and Collection for Software

Microsoft may automatically check the version of any of its software. Devices on which the software is installed may periodically provide information to enable Microsoft to verify that the software is properly licensed. This information includes the software version, the end user's user account, product ID information, a machine ID, and the internet protocol address of the device. If the software is not properly licensed, its functionality will be affected. Customer may only obtain updates or upgrades for the software from Microsoft or authorized sources. By using the software, Customer consents to the transmission of the information described in this section. Microsoft may recommend or download to Customer's devices updates or supplements to this software, with or without notice. Some Online Services may require, or may be enhanced by, the installation of local software (e.g., agents, device management applications) ("Apps"). The Apps may collect data about the use and performance of the Apps, which may be transmitted to Microsoft and used for the purposes described in this OST for Customer Data.

Third-party Software Components

The software may contain third party software components. Unless otherwise disclosed in that software, Microsoft, not the third party, licenses these components to Customer under Microsoft's license terms and notices.

Technical Limitations

Customer must comply with, and may not work around, any technical limitations in an Online Service that only allow Customer to use it in certain ways. Customer may not download or otherwise remove copies of software or source code from an Online Service except as explicitly authorized.

Import/Export Services

Customer's use of any Import/Export Service is conditioned upon its compliance with all instructions provided by Microsoft regarding the preparation, treatment and shipment of physical media containing its data ("storage media"). Customer is solely responsible for ensuring the storage media and data are provided in compliance with all laws and regulations. Microsoft has no duty with respect to the storage media and no liability for lost, damaged or destroyed storage media. All storage media shipped to Microsoft must be shipped DAP Microsoft DCS Data Center (INCOTERMS 2010). Storage media shipped to Customer will be shipped DAP Customer Dock (INCOTERMS 2010).

Font Components

While Customer uses an Online Service, Customer may use the fonts installed by that Online Service to display and print content. Customer may only embed fonts in content as permitted by the embedding restrictions in the fonts and temporarily download them to a printer or other output device to print content.

Changes to and Availability of the Online Services

Microsoft may make commercially reasonable changes to each Online Service from time to time. Microsoft may modify or terminate an Online Service in any country where Microsoft is subject to a government regulation, obligation or other requirement that (1) is not generally applicable to businesses operating there, (2) presents a hardship for Microsoft to continue operating the Online Service without modification, and/or (3) causes Microsoft to believe these terms or the Online Service may conflict with any such requirement or obligation. If Microsoft terminates an Online Service for regulatory reasons, Customers will receive a credit for any amount paid in advance for the period after termination.

Availability, functionality, and language versions for each Online Service may vary by country. For information on availability, Customer may refer to <https://go.microsoft.com/fwlink/?linkid=870295>.

Compliance with Laws

Microsoft will comply with all laws and regulations applicable to its provision of the Online Services, including security breach notification law. However, Microsoft is not responsible for compliance with any laws or regulations applicable to Customer or Customer's industry that are not generally applicable to information technology service providers. Microsoft does not determine whether Customer Data includes information subject to any specific law or regulation. All Security Incidents are subject to the Security Incident Notification terms below.

Customer must comply with all laws and regulations applicable to its use of Online Services, including laws related to privacy, Personal Data, biometric data, data protection and confidentiality of communications. Customer is responsible for determining whether the Online Services are appropriate for storage and processing of information subject to any specific law or regulation and for using the Online Services in a manner consistent with Customer's legal and regulatory obligations. Customer is responsible for responding to any request from a third party regarding Customer's use of an Online Service, such as a request to take down content under the U.S. Digital Millennium Copyright Act or other applicable laws.

Other

Non-Microsoft Products

Microsoft may make Non-Microsoft Products available to Customer through Customer's use of the Online Services (such as through a store or gallery, or as search results) or a Microsoft online store (such as the Microsoft Store for Business or Microsoft Store for Education). If Customer installs or uses any Non-Microsoft Product with an Online Service, Customer may not do so in any way that would subject Microsoft's intellectual property or technology to obligations beyond those expressly included in Customer's volume licensing agreement. For Customer's convenience, Microsoft may include charges for certain Non-Microsoft Product as part of Customer's bill for Online Services. Microsoft, however, assumes no responsibility or liability whatsoever for any Non-Microsoft Product. Customer is solely responsible for any Non-Microsoft Product that it installs or uses with an Online Service or acquires or manages through a Microsoft online store. Customer's use of any Non-Microsoft Product shall be governed by the license, service, and/or privacy terms between Customer and the publisher of the Non-Microsoft Product (if any).

Competitive Benchmarking

If Customer offers a service competitive to an Online Service, by using the Online Service, Customer agrees to waive any restrictions on competitive use and benchmark testing in the terms governing its competitive service. If Customer does not intend to waive such restrictions in its terms of use, Customer is not allowed to use the Online Service.

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Data Protection Terms

This section of the Online Services Terms includes the following subsections:

- Scope
- Processing of Customer Data; Ownership
- Disclosure of Customer Data
- Processing of Personal Data; GDPR
- Data Security
- Security Incident Notification
- Data Transfers and Location
- Data Retention and Deletion
- Processor Confidentiality Commitment
- Notice and Controls on Use of Subprocessors
- Educational Institutions
- HIPAA Business Associate
- How to Contact Microsoft
- Appendix A – Core Online Services
- Appendix B – Security Measures

Scope

The terms in this section (“Data Protection Terms”) apply to all Online Services except Bing Maps Enterprise Platform, Bing Maps Mobile Asset Management Platform, Bing Search Services, LinkedIn Sales Navigator, Microsoft Azure Stack, Microsoft Genomics, and Visual Studio Mobile Center, which are governed by the privacy and security terms in the applicable [Online Service-specific Terms](#).

Previews may employ lesser or different privacy and security measures than those typically present in the Online Services. Unless otherwise noted, Previews are not included in the SLA for the corresponding Online Service, and Customer should not use Previews to process Personal Data or other data that is subject to legal or regulatory compliance requirements. The following terms in this section (“Data Protection Terms”) do not apply to Previews: Processing of Personal Data; GDPR, Data Security, and HIPAA Business Associate.

Attachment 1 includes the terms that apply to Professional Services, including privacy and security of Support Data and Personal Data in connection with the provision of those services. Therefore, unless expressly made applicable in Attachment 1, the terms in this section (“Data Protection Terms”) do not apply to the provision of Professional Services.

Processing of Customer Data; Ownership

Customer Data will be used or otherwise processed only to provide Customer the Online Services including purposes compatible with providing those services. Microsoft will not use or otherwise process Customer Data or derive information from it for any advertising or similar commercial purposes. As between the parties, Customer retains all right, title and interest in and to Customer Data. Microsoft acquires no rights in Customer Data, other than the rights Customer grants to Microsoft to provide the Online Services to Customer. This paragraph does not affect Microsoft’s rights in software or services Microsoft licenses to Customer.

Disclosure of Customer Data

Microsoft will not disclose Customer Data outside of Microsoft or its controlled subsidiaries and affiliates except (1) as Customer directs, (2) as described in the OST, or (3) as required by law.

Microsoft will not disclose Customer Data to law enforcement unless required by law. If law enforcement contacts Microsoft with a demand for Customer Data, Microsoft will attempt to redirect the law enforcement agency to request that data directly from Customer. If compelled to disclose Customer Data to law enforcement, Microsoft will promptly notify Customer and provide a copy of the demand unless legally prohibited from doing so.

Upon receipt of any other third-party request for Customer Data, Microsoft will promptly notify Customer unless prohibited by law. Microsoft will reject the request unless required by law to comply. If the request is valid, Microsoft will attempt to redirect the third party to request the data directly from Customer.

Microsoft will not provide any third party: (a) direct, indirect, blanket or unfettered access to Customer Data; (b) platform encryption keys used to secure Customer Data or the ability to break such encryption; or (c) access to Customer Data if Microsoft is aware that the data is to be used for purposes other than those stated in the third party’s request.

In support of the above, Microsoft may provide Customer’s basic contact information to the third party.

Processing of Personal Data; GDPR

Personal Data provided to Microsoft by, or on behalf of, Customer through use of the Online Service is also Customer Data. Pseudonymized identifiers may also be generated through Customer’s use of the Online Services and are also Personal Data. To the extent Microsoft is a processor or subprocessor of Personal Data subject to the GDPR, the GDPR Terms in Attachment 4 govern that processing and the parties also agree to the following terms in this sub-section (“Processing of Personal Data; GDPR”):

Processor and Controller Roles and Responsibilities

Customer and Microsoft agree that Customer is the controller of Personal Data and Microsoft is the processor of such data, except when (a) Customer acts as a processor of Personal Data, in which case Microsoft is a subprocessor or (b) stated otherwise in the Online Service-specific terms. Microsoft will process Personal Data only on documented instructions from Customer. Customer agrees that its volume licensing agreement (including the OST) along with Customer's use and configuration of features in the Online Services are Customer's complete and final documented instructions to Microsoft for the processing of Personal Data. Any additional or alternate instructions must be agreed to according to the process for amending Customer's volume licensing agreement. In any instance where the GDPR applies and Customer is a processor, Customer warrants to Microsoft that Customer's instructions, including appointment of Microsoft as a processor or subprocessor, have been authorized by the relevant controller.

Processing Details

The parties acknowledge and agree that:

- The subject-matter of the processing is limited to Personal Data within the scope of the GDPR;
- The duration of the processing shall be for the duration of the Customer's right to use the Online Service and until all Personal Data is deleted or returned in accordance with Customer instructions or the terms of the OST;
- The nature and purpose of the processing shall be to provide the Online Service pursuant to Customer's volume licensing agreement;
- The types of Personal Data processed by the Online Service include those expressly identified in Article 4 of the GDPR; and
- The categories of data subjects are Customer's representatives and end users, such as employees, contractors, collaborators, and customers.

Data Subject Rights; Assistance with Requests

Microsoft will make available to Customer in a manner consistent with the functionality of the Online Service and Microsoft's role as a processor Personal Data of data subjects and the ability to fulfill data subject requests to exercise their rights under the GDPR. Microsoft shall comply with reasonable requests by Customer to assist with Customer's response to such a data subject request. If Microsoft receives a request from Customer's data subject to exercise one or more of its rights under the GDPR in connection with an Online Service for which Microsoft is a data processor or subprocessor, Microsoft will redirect the data subject to make its request directly to Customer. Customer will be responsible for responding to any such request including, where necessary, by using the functionality of the Online Service. Microsoft shall comply with reasonable requests by Customer to assist with Customer's response to such a data subject request.

Records of Processing Activities

Microsoft shall maintain all records required by Article 30(2) of the GDPR and, to the extent applicable to the processing of Personal Data on behalf of Customer, make them available to Customer upon request.

Data Security

Security Practices and Policies

Microsoft will implement and maintain appropriate technical and organizational measures to protect Customer Data and Personal Data. Those measures shall be set forth in a Microsoft Security Policy. Microsoft will make that policy available to Customer, along with descriptions of the security controls in place for the Online Service and other information reasonably requested by Customer regarding Microsoft security practices and policies.

In addition, those measures shall comply with the requirements set forth in ISO 27001, ISO 27002, and ISO 27018. Each Core Online Service also complies with the control standards and frameworks shown in the table below and implements and maintains the security measures set forth in [Appendix B](#) for the protection of Customer Data.

Online Service	SSAE 18 SOC 1 Type II	SSAE 18 SOC 2 Type II
Office 365 Services	Yes	Yes
Microsoft Dynamics 365 Core Services	Yes*	Yes*
Microsoft Azure Core Services	Varies**	Varies**
Microsoft Cloud App Security	Yes	Yes
Microsoft Intune Online Services	Yes	Yes
Microsoft Business Application Platform Core Services	Yes	Yes

*Does not include Microsoft Dynamics 365 for Marketing, Microsoft Dynamics 365 for Sales Professional, Microsoft Social Engagement, Microsoft Dynamics 365 for Talent, Microsoft Dynamics 365 for Talent: Attract, and Microsoft Dynamics 365 for Talent: Onboard.

**Current scope is detailed in the audit report and summarized in the Microsoft Azure Trust Center.

Microsoft may add industry or government standards at any time. Microsoft will not eliminate ISO 27001, ISO 27002, ISO 27018 or the standards or frameworks in the table above, unless it is no longer used in the industry and it is replaced with a successor (if any).

Customer Responsibilities

Customer is solely responsible for making an independent determination as to whether the technical and organizational measures for an Online Service meets Customer's requirements, including any of its security obligations under the GDPR or other applicable data protection laws and regulations. Customer acknowledges and agrees that (taking into account the state of the art, the costs of implementation, and the nature, scope, context and purposes of the processing of its Personal Data as well as the risks to individuals) the security practices and policies implemented and maintained by Microsoft provide a level of security appropriate to the risk with respect to its Personal Data. Customer is responsible for implementing and maintaining privacy protections and security measures for components that Customer provides or controls (such as devices enrolled with Microsoft Intune or within a Microsoft Azure customer's virtual machine or application).

Auditing Compliance

Microsoft will conduct audits of the security of the computers, computing environment and physical data centers that it uses in processing Customer Data and Personal Data, as follows:

- Where a standard or framework provides for audits, an audit of such control standard or framework will be initiated at least annually.
- Each audit will be performed according to the standards and rules of the regulatory or accreditation body for each applicable control standard or framework.
- Each audit will be performed by qualified, independent, third party security auditors at Microsoft's selection and expense.

Each audit will result in the generation of an audit report ("Microsoft Audit Report"), which Microsoft will make available at <https://servicetrust.microsoft.com/> or another location identified by Microsoft. The Microsoft Audit Report will be Microsoft's Confidential Information and will clearly disclose any material findings by the auditor. Microsoft will promptly remediate issues raised in any Microsoft Audit Report to the satisfaction of the auditor.

If Customer requests, Microsoft will provide Customer with each Microsoft Audit Report. The Microsoft Audit Report will be subject to non-disclosure and distribution limitations of Microsoft and the auditor.

If Customer has entered into the Standard Contractual Clauses with Microsoft or if the GDPR Terms apply, then Customer agrees to exercise its audit right by instructing Microsoft to execute the audit as described in this section of the OST. If Customer desires to change this instruction, then Customer has the right to do so as set forth in the Standard Contractual Clauses and GDPR Terms, which change shall be requested in writing.

If the Standard Contractual Clauses apply, then this section is in addition to Clause 5 paragraph f and Clause 12 paragraph 2 of the Standard Contractual Clauses.

Nothing in this section of the OST varies or modifies the Standard Contractual Clauses or the GDPR Terms or affects any supervisory authority's or data subject's rights under the Standard Contractual Clauses or GDPR. Microsoft Corporation is an intended third-party beneficiary of this section.

Security Incident Notification

If Microsoft becomes aware of a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Customer Data or Personal Data while processed by Microsoft (each a "Security Incident"), Microsoft will promptly and without undue delay (1) notify Customer of the Security Incident; (2) investigate the Security Incident and provide Customer with detailed information about the Security Incident; (3) take reasonable steps to mitigate the effects and to minimize any damage resulting from the Security Incident.

Notification(s) of Security Incidents will be delivered to one or more of Customer's administrators by any means Microsoft selects, including via email. It is Customer's sole responsibility to ensure Customer's administrators maintain accurate contact information on each applicable Online Services portal. Customer is solely responsible for complying with its obligations under incident notification laws applicable to Customer and fulfilling any third-party notification obligations related to any Security Incident.

Microsoft shall make reasonable efforts to assist Customer in fulfilling Customer's obligation under GDPR Article 33 or other applicable law or regulation to notify the relevant supervisory authority and data subjects about such Security Incident.

Microsoft's obligation to report or respond to a Security Incident under this section is not an acknowledgement by Microsoft of any fault or liability with respect to the Security Incident.

Customer must notify Microsoft promptly about any possible misuse of its accounts or authentication credentials or any security incident related to an Online Service.

Data Transfers and Location

Data Transfers

Except as described elsewhere in the OST, Customer Data and Personal Data that Microsoft processes on Customer's behalf may be transferred to, and stored and processed in, the United States or any other country in which Microsoft or its Subprocessors operate. Customer appoints Microsoft to perform any such transfer of Customer Data and Personal Data to any such country and to store and process Customer Data and Personal Data to provide the Online Services.

All transfers of Customer Data out of the European Union, European Economic Area, and Switzerland by the Core Online Services shall be governed by the Standard Contractual Clauses in Attachment 3, unless the Customer has opted out of those clauses.

Microsoft will abide by the requirements of European Economic Area and Swiss data protection law regarding the collection, use, transfer, retention, and other processing of Personal Data from the European Economic Area and Switzerland. All transfers of Personal Data to a third country or an international organization will be subject to appropriate safeguards as described in Article 46 of the GDPR and such transfers and safeguards will be documented according to Article 30(2) of the GDPR.

In addition, Microsoft is certified to the EU-U.S. and Swiss-U.S. Privacy Shield Frameworks and the commitments they entail. Microsoft agrees to notify Customer in the event that it makes a determination that it can no longer meet its obligation to provide the same level of protection as is required by the Privacy Shield principles.

Location of Customer Data at Rest

For the Core Online Services, Microsoft will store Customer Data at rest within certain major geographic areas (each, a Geo) as follows:

- **Office 365 Services.** If Customer provisions its tenant in Australia, Canada, the European Union, France, India, Japan, South Korea, the United Kingdom, or the United States, Microsoft will store the following Customer Data at rest only within that Geo: (1) Exchange Online mailbox content (e-mail body, calendar entries, and the content of e-mail attachments), (2) SharePoint Online site content and the files stored within that site, (3) files uploaded to OneDrive for Business, and (4) project content uploaded to Project Online.
- **Microsoft Intune Online Services.** When Customer provisions a tenant account, Customer selects an available Geo where Customer Data at rest will be stored. Microsoft will not transfer the Customer Data outside of Customer's selected Geo except as noted in the "Data Location" section of the Microsoft Intune Trust Center.
- **Microsoft Business Application Platform Core Services.** If Customer provisions its tenant in Australia, Canada, Asia Pacific, India, Japan, the European Union, United Kingdom (Power BI only), or the United States, Microsoft will store Customer Data at rest only within that Geo, except as noted in the data location section of the Microsoft Business Application Platform Trust Center.
- **Microsoft Azure Core Services.** If Customer configures a particular service to be deployed within a Geo then, for that service, Microsoft will store Customer Data at rest within the specified Geo. Certain services may not enable Customer to configure deployment in a particular Geo or outside the United States and may store backups in other locations, as detailed in the Microsoft Azure Trust Center (which Microsoft may update from time to time, but Microsoft will not add exceptions for existing Services in general release).
- **Microsoft Cloud App Security.** If Customer provisions its tenant in the European Union or the United States, Microsoft will store Customer Data at rest only within that Geo.
- **Microsoft Dynamics 365 Core Services.** When Customer provisions a Dynamics 365 Core Service to be deployed within an available Geo, then, for that service, Microsoft will store Customer Data at rest within that specified Geo, except as described in the Microsoft Dynamics 365 Trust Center (which Microsoft may update from time to time).

Microsoft does not control or limit the regions from which Customer or Customer's end users may access or move Customer Data.

Data Retention and Deletion

At all times during the term of Customer's subscription, Customer will have the ability to access, extract and delete Customer Data stored in each Online Service.

Except for free trials and LinkedIn services, Microsoft will retain Customer Data that remains stored in Online Services in a limited function account for 90 days after expiration or termination of Customer's subscription so that Customer may extract the data. After the 90-day retention period ends, Microsoft will disable Customer's account and delete the Customer Data and Personal Data within an additional 90 days, unless Microsoft is permitted or required by applicable law to retain such data or authorized in this agreement.

The Online Service may not support retention or extraction of software provided by Customer. Microsoft has no liability for the deletion of Customer Data or Personal Data as described in this section.

Processor Confidentiality Commitment

Microsoft will ensure that its personnel engaged in the processing of Customer Data and Personal Data (i) will process such data only on instructions from Customer, and (ii) will be obligated to maintain the confidentiality and security of such data even after their engagement ends.

Notice and Controls on use of Subprocessors

Microsoft may hire third parties to provide certain limited or ancillary services on its behalf. Customer consents to the engagement of these third parties and Microsoft Affiliates as Subprocessors. The above authorizations will constitute Customer's prior written consent to the subcontracting by Microsoft of the processing of Customer Data and Personal Data if such consent is required under the Standard Contractual Clauses or the GDPR Terms.

Microsoft is responsible for its Subprocessor's compliance with Microsoft's obligations in the OST. Microsoft makes available information about Subprocessors on a Microsoft website. When engaging any Subprocessor, Microsoft will ensure via a written contract that the Subprocessor may access and use Customer Data or Personal Data only to deliver the services Microsoft has retained them to provide and is prohibited from using Customer Data or Personal Data for any other purpose. Microsoft will ensure that Subprocessors are bound by written agreements that require them to provide at least the level of data protection required of Microsoft by the OST.

From time to time, Microsoft may engage new Subprocessors. Microsoft will give Customer notice (by updating the website and provide Customer with a mechanism to obtain notice of that update) of any new Subprocessor at least 14-days in advance of providing that Subprocessor with access to Customer Data or Personal Data. However, with respect to Core Online Services, Microsoft will give Customer notice (by updating the website and provide Customer with a mechanism to obtain notice of that update) of any new Subprocessor at least 6-months in advance of providing that Subprocessor with access to Customer Data.

If Customer does not approve of a new Subprocessor, then Customer may terminate any subscription for the affected Online Service without penalty by providing, before the end of the relevant notice period, written notice of termination that includes an explanation of the grounds for non-approval. If the affected Online Service is part of a suite (or similar single purchase of services), then any termination will apply to the entire suite. After termination, Microsoft will remove payment obligations for any subscriptions for the terminated Online Service from subsequent invoices to Customer or its reseller.

Educational Institutions

If Customer is an educational agency or institution to which regulations under the Family Educational Rights and Privacy Act, 20 U.S.C. § 1232g (FERPA) apply, Microsoft acknowledges that for the purposes of the OST, Microsoft is a "school official" with "legitimate educational interests" in the Customer Data, as those terms have been defined under FERPA and its implementing regulations, and Microsoft agrees to abide by the limitations and requirements imposed by 34 CFR 99.33(a) on school officials.

Customer understands that Microsoft may possess limited or no contact information for Customer's students and students' parents. Consequently, Customer will be responsible for obtaining any parental consent for any end user's use of the Online Service that may be required by applicable law and to convey notification on behalf of Microsoft to students (or, with respect to a student under 18 years of age and not in attendance at a postsecondary institution, to the student's parent) of any judicial order or lawfully-issued subpoena requiring the disclosure of Customer Data in Microsoft's possession as may be required under applicable law.

HIPAA Business Associate

If Customer is a "covered entity" or a "business associate" and includes "protected health information" in Customer Data as those terms are defined in 45 CFR § 160.103, execution of Customer's volume licensing agreement includes execution of the HIPAA Business Associate Agreement ("BAA"), the full text of which identifies the Online Services to which it applies and is available at <http://aka.ms/BAA>. Customer may opt out of the BAA by sending the following information to Microsoft in a written notice (under the terms of the Customer's volume licensing agreement):

- the full legal name of the Customer and any Affiliate that is opting out;
- if Customer has multiple volume licensing agreements, the volume licensing agreement to which the opt out applies.

How to Contact Microsoft

If Customer believes that Microsoft is not adhering to its privacy or security commitments, Customer may contact customer support or use Microsoft's Privacy web form, located at <http://go.microsoft.com/?linkid=9846224>. Microsoft's mailing address is:

Microsoft Enterprise Service Privacy

Microsoft Corporation
One Microsoft Way
Redmond, Washington 98052 USA

Microsoft Ireland Operations Limited is Microsoft's data protection representative for the European Economic Area and Switzerland. The privacy representative of Microsoft Ireland Operations Limited can be reached at the following address:

Microsoft Ireland Operations, Ltd.

Attn: Data Protection
One Microsoft Place
South County Business Park
Leopardstown
Dublin 18
D18 P521

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Appendix A – Core Online Services

The term “Core Online Services” applies only to the services in the table below, excluding any Previews.

Online Services	
Microsoft Dynamics 365 Core Services	The following services, each as a standalone service or as included in a Dynamics 365 branded plan or application: Microsoft Dynamics 365 for Customer Service, Microsoft Dynamics 365 for Field Service, Microsoft Dynamics 365 Business Central, Microsoft Dynamics 365 for Finance and Operations, Enterprise edition, Microsoft Dynamics 365 for Marketing, Microsoft Dynamics 365 for Project Service Automation, Microsoft Dynamics 365 for Retail, Microsoft Dynamics 365 for Talent, Microsoft Dynamics 365 for Talent: Attract, Microsoft Dynamics 365 for Talent: Onboard, Microsoft Dynamics 365 for Sales, Microsoft Dynamics 365 for Sales Professional, and Microsoft Social Engagement. Microsoft Dynamics 365 Core Services do not include (1) Microsoft Dynamics 365 Services for supported devices or software, which includes but is not limited to Microsoft Dynamics 365 for apps, tablets, phones, or any of these; (2) LinkedIn Sales Navigator; or (3) except as expressly defined in the licensing terms for the corresponding service, any other separately-branded service made available with or connected to Microsoft Dynamics 365 Core Services.
Office 365 Services	The following services, each as a standalone service or as included in an Office 365-branded plan or suite: Compliance Manager, Customer Lockbox, Exchange Online Archiving, Exchange Online Protection, Exchange Online, Microsoft Bookings, Microsoft MyAnalytics, Microsoft Planner, Microsoft StaffHub, Microsoft Teams, Microsoft To-Do, Office 365 Advanced Threat Protection, Office 365 Video, Office Online, OneDrive for Business, Outlook Customer Manager, Project Online, SharePoint Online, Skype for Business Online, Sway, and Yammer Enterprise. Office 365 Services do not include Office 365 ProPlus, any portion of PSTN Services that operate outside of Microsoft’s control, any client software, or any separately branded service made available with an Office 365-branded plan or suite, such as a Bing or a service branded “for Office 365.”
Microsoft Azure Core Services	API Management, App Service (API Apps, Logic Apps, Mobile Apps, Web Apps), Application Gateway, Application Insights, Automation, Azure Active Directory, Azure Container Service, Azure Cosmos DB (formerly DocumentDB), Azure DevTest Labs, Azure DNS, Azure Information Protection (including Azure Rights Management), Azure Resource Manager, Backup, Batch, BizTalk Services, Cloud Services, Data Catalog, Data Factory, Data Lake Analytics, Data Lake Store, Event Hubs, Express Route, Functions, HDInsight, Import/Export, IoT Hub, Key Vault, Load Balancer, Log Analytics (formerly Operational Insights), Azure Machine Learning Studio, Media Services, Microsoft Azure Portal, Multi-Factor Authentication, Notification Hubs, Power BI Embedded, Redis Cache, Scheduler, Security Center, Service Bus, Service Fabric, Site Recovery, SQL Data Warehouse, SQL Database, SQL Server Stretch Database, Storage, StorSimple, Stream Analytics, Traffic Manager, Virtual Machines, Virtual Machine Scale Sets, Virtual Network, Visual Studio Team Services, and VPN Gateway
Microsoft Cloud App Security	The cloud service portion of Microsoft Cloud App Security.
Microsoft Intune Online Services	The cloud service portion of Microsoft Intune such as the Microsoft Intune Add-on Product or a management service provided by Microsoft Intune such as Mobile Device Management for Office 365.
Microsoft Business Application Platform Core Services	The following services, each as a standalone service or as included in an Office 365 or Microsoft Dynamics 365 branded plan or suite: Microsoft Power BI, Microsoft PowerApps, and Microsoft Flow. Microsoft Business Application Platform Core Services do not include any client software, including but not limited to Power BI Report Server, the Power BI, PowerApps or Microsoft Flow mobile applications, Power BI Desktop, or PowerApps Studio.

Appendix B – Security Measures

Microsoft has implemented and will maintain for Customer Data in the Core Online Services the following security measures, which, in conjunction with the security commitments in the OST (including the GDPR Terms), are Microsoft’s only responsibility with respect to the security of that data.

Domain	Practices
Organization of Information Security	<p>Security Ownership. Microsoft has appointed one or more security officers responsible for coordinating and monitoring the security rules and procedures.</p> <p>Security Roles and Responsibilities. Microsoft personnel with access to Customer Data are subject to confidentiality obligations.</p> <p>Risk Management Program. Microsoft performed a risk assessment before processing the Customer Data or launching the Online Services service.</p> <p>Microsoft retains its security documents pursuant to its retention requirements after they are no longer in effect.</p>
Asset Management	<p>Asset Inventory. Microsoft maintains an inventory of all media on which Customer Data is stored. Access to the inventories of such media is restricted to Microsoft personnel authorized in writing to have such access.</p>

Domain	Practices
	Asset Handling <ul style="list-style-type: none"> - Microsoft classifies Customer Data to help identify it and to allow for access to it to be appropriately restricted. - Microsoft imposes restrictions on printing Customer Data and has procedures for disposing of printed materials that contain Customer Data. - Microsoft personnel must obtain Microsoft authorization prior to storing Customer Data on portable devices, remotely accessing Customer Data, or processing Customer Data outside Microsoft's facilities.
Human Resources Security	Security Training. Microsoft informs its personnel about relevant security procedures and their respective roles. Microsoft also informs its personnel of possible consequences of breaching the security rules and procedures. Microsoft will only use anonymous data in training.
Physical and Environmental Security	Physical Access to Facilities. Microsoft limits access to facilities where information systems that process Customer Data are located to identified authorized individuals. Physical Access to Components. Microsoft maintains records of the incoming and outgoing media containing Customer Data, including the kind of media, the authorized sender/recipients, date and time, the number of media and the types of Customer Data they contain. Protection from Disruptions. Microsoft uses a variety of industry standard systems to protect against loss of data due to power supply failure or line interference. Component Disposal. Microsoft uses industry standard processes to delete Customer Data when it is no longer needed.
Communications and Operations Management	Operational Policy. Microsoft maintains security documents describing its security measures and the relevant procedures and responsibilities of its personnel who have access to Customer Data. Data Recovery Procedures <ul style="list-style-type: none"> - On an ongoing basis, but in no case less frequently than once a week (unless no Customer Data has been updated during that period), Microsoft maintains multiple copies of Customer Data from which Customer Data can be recovered. - Microsoft stores copies of Customer Data and data recovery procedures in a different place from where the primary computer equipment processing the Customer Data is located. - Microsoft has specific procedures in place governing access to copies of Customer Data. - Microsoft reviews data recovery procedures at least every six months, except for data recovery procedures for Azure Government Services, which are reviewed every twelve months. - Microsoft logs data restoration efforts, including the person responsible, the description of the restored data and where applicable, the person responsible and which data (if any) had to be input manually in the data recovery process. Malicious Software. Microsoft has anti-malware controls to help avoid malicious software gaining unauthorized access to Customer Data, including malicious software originating from public networks. Data Beyond Boundaries <ul style="list-style-type: none"> - Microsoft encrypts, or enables Customer to encrypt, Customer Data that is transmitted over public networks. - Microsoft restricts access to Customer Data in media leaving its facilities. Event Logging. Microsoft logs, or enables Customer to log, access and use of information systems containing Customer Data, registering the access ID, time, authorization granted or denied, and relevant activity.
Access Control	Access Policy. Microsoft maintains a record of security privileges of individuals having access to Customer Data. Access Authorization <ul style="list-style-type: none"> - Microsoft maintains and updates a record of personnel authorized to access Microsoft systems that contain Customer Data. - Microsoft deactivates authentication credentials that have not been used for a period of time not to exceed six months. - Microsoft identifies those personnel who may grant, alter or cancel authorized access to data and resources. - Microsoft ensures that where more than one individual has access to systems containing Customer Data, the individuals have separate identifiers/log-ins. Least Privilege <ul style="list-style-type: none"> - Technical support personnel are only permitted to have access to Customer Data when needed. - Microsoft restricts access to Customer Data to only those individuals who require such access to perform their job function. Integrity and Confidentiality <ul style="list-style-type: none"> - Microsoft instructs Microsoft personnel to disable administrative sessions when leaving premises Microsoft controls or when computers are otherwise left unattended. - Microsoft stores passwords in a way that makes them unintelligible while they are in force. Authentication <ul style="list-style-type: none"> - Microsoft uses industry standard practices to identify and authenticate users who attempt to access information systems. - Where authentication mechanisms are based on passwords, Microsoft requires that the passwords are renewed regularly. - Where authentication mechanisms are based on passwords, Microsoft requires the password to be at least eight characters long.

Domain	Practices
	<ul style="list-style-type: none"> - Microsoft ensures that de-activated or expired identifiers are not granted to other individuals. - Microsoft monitors, or enables Customer to monitor, repeated attempts to gain access to the information system using an invalid password. - Microsoft maintains industry standard procedures to deactivate passwords that have been corrupted or inadvertently disclosed. - Microsoft uses industry standard password protection practices, including practices designed to maintain the confidentiality and integrity of passwords when they are assigned and distributed, and during storage. <p>Network Design. Microsoft has controls to avoid individuals assuming access rights they have not been assigned to gain access to Customer Data they are not authorized to access.</p>
Information Security Incident Management	<p>Incident Response Process</p> <ul style="list-style-type: none"> - Microsoft maintains a record of security breaches with a description of the breach, the time period, the consequences of the breach, the name of the reporter, and to whom the breach was reported, and the procedure for recovering data. - For each security breach that is a Security Incident, notification by Microsoft (as described in the “Security Incident Notification” section above) will be made without undue delay and, in any event, within 72 hours. - Microsoft tracks, or enables Customer to track, disclosures of Customer Data, including what data has been disclosed, to whom, and at what time. <p>Service Monitoring. Microsoft security personnel verify logs at least every six months to propose remediation efforts if necessary.</p>
Business Continuity Management	<ul style="list-style-type: none"> - Microsoft maintains emergency and contingency plans for the facilities in which Microsoft information systems that process Customer Data are located. - Microsoft’s redundant storage and its procedures for recovering data are designed to attempt to reconstruct Customer Data in its original or last-replicated state from before the time it was lost or destroyed.

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Online Service Specific Terms

If an Online Service is not listed below, it does not have any Online Service-specific terms.

Microsoft Azure Services

Notices

The Bing Maps, Professional Services, Azure Media Services H.265/HEV Encoding, Adobe Flash Player, H.264/AVC Visual Standard, VC-1 Video Standard, and MPEG-4 Part 2 Visual Standard and MPEG-2 Video Standard Notices in [Attachment 1](#) apply.

Service Level Agreement

Refer to <http://azure.microsoft.com/support/legal/sla/>.

Definitions

“Azure Government Services” means one or more of the services or features Microsoft makes available to Customer as Government Community Cloud Services in the “US Gov” regions identified at <http://azure.microsoft.com/en-us/regions/#services>.

“Bing Search Services” means the Bing Custom Search, Entity Search, Image Search, Image Intelligence, News Search, Video Search, Web Search, Spell Check, and Autosuggest APIs, and any other APIs identified at <https://aka.ms/r1j7iq>.

“Bing Search Services Data” means Customer Data that are provided to Microsoft by, or on behalf of, Customer through use of the Bing Search Services.

“Customer Solution” means an application or any set of applications that adds primary and significant functionality to the Microsoft Azure Services and that is not primarily a substitute for the Microsoft Azure Services.

“Microsoft Azure Services” means the Microsoft services and features identified at <http://azure.microsoft.com/services/>, except those licensed separately. “Microsoft Azure Services” includes any open source components incorporated by Microsoft in those services and features.

“Microsoft Translator” means Translator Text API and/or Translator Speech API offered by Microsoft as a cloud based machine translation service.

Limitations

Customer may not

- resell or redistribute the Microsoft Azure Services, or
- allow multiple users to directly or indirectly access any Microsoft Azure Service feature that is made available on a per user basis (e.g., Active Directory Premium). Specific reassignment terms applicable to a Microsoft Azure Service feature may be provided in supplemental documentation for that feature.

Retirement of Services or Features

Microsoft will provide Customer with 12 months’ notice before removing any material feature or functionality or discontinuing a service, unless security, legal or system performance considerations require an expedited removal. This does not apply to Previews

Data Retention after Expiration or Termination

The expiration or termination of Customer’s Online Service subscription will not change Customer’s obligation to pay for hosting of Customer Data during any Extended Term.

Hosting Exception

Customer may create and maintain a Customer Solution and, despite anything to the contrary in Customer’s volume licensing agreement, combine Microsoft Azure Services with Customer Data owned or licensed by Customer or a third party, to create a Customer Solution using the Microsoft Azure Service and the Customer Data together. Customer may permit third parties to access and use the Microsoft Azure Services in connection with the use of that Customer Solution. Customer is responsible for that use and for ensuring that these terms and the terms and conditions of Customer’s volume licensing agreement are met by that use.

Use of Software within Microsoft Azure

For Microsoft software available within a Microsoft Azure Service, Microsoft grants Customer a limited license to use the software only within the Microsoft Azure Service.

Data Center Availability

Usage of data centers in certain regions may be restricted to Customers located in or near that region. For information on service availability by region, please refer to <http://azure.microsoft.com/en-us/regions>.

Sharing

The Microsoft Azure Services may provide the ability to share a Customer Solution and/or Customer Data with other Azure users and communities, or other third parties. If Customer chooses to engage in such sharing, Customer agrees that it is giving a license to all authorized users, including the rights to use, modify, and repost its Customer Solution and/or the Customer Data, and Customer is allowing Microsoft to make them available to such users in a manner and location of its choosing.

Marketplace

Microsoft Azure enables Customer to access or purchase Non-Microsoft Products through features such as the Microsoft Azure Marketplace and the Virtual Machine Gallery, subject to separate terms available at <http://azure.microsoft.com/en-us/support/legal/store-terms>.

Azure Maps

Navigation restrictions

You may not use Azure Maps to enable turn-by-turn navigation functionality in any application.

Database restrictions

You may not use Azure Maps or any part thereof to create a competing database or service, or a derived database populated wholly or partially with your data and/or data supplied or created by any third party.

You will not use the data delivered by the Azure Maps in combination with any other third-party database, except that you may layer onto the data of a type not already included within the Service (such as your proprietary content) or of which Microsoft otherwise licenses.

API Results

You may not cache or store information delivered by the Azure Maps API including but not limited to geocodes and reverse geocodes, map data tiles and route information (the "Results") for the purpose of scaling such Results to serve multiple users.

Caching Results on a device or client browser is permitted where the purpose of such caching is to reduce latency times of the service used by you on such device or client browser. Results may not be stored for longer than: (i) than the validity period indicated in returned headers; or (ii) 30 days, whichever is the shortest.

You may not display any Results on any third-party content or geographical map database.

Map Data

Use of content displaying the TomTom copyright notice must be in accordance with restrictions set forth in the TomTom Licensing Third Party Product Terms and EULA (https://www.tomtom.com/en_GB/thirdpartyproductterms/).

No warranty for accuracy

Microsoft and its suppliers make no warranty that the maps, images, data or any content delivered by Azure Maps will be accurate or complete.

Copyright

You may not remove, obscure, mask or change any logo and/or copyright notice placed on or automatically generated by Azure Maps.

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Microsoft Azure Stack

Microsoft Azure Stack is a Microsoft Azure Service.

Microsoft Azure Stack Privacy

The Enterprise and Developer Privacy Statement located at <https://www.microsoft.com/en-us/privacystatement/EnterpriseDev> applies to Customer's use of Microsoft Azure Stack. If a Microsoft Cloud Agreement Customer uses Microsoft Azure Stack software or services that are hosted by a Reseller, such use will be subject to Reseller's privacy practices, which may differ from Microsoft's.

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Use of Microsoft Azure Stack

Customer may use Microsoft Azure Stack only on the hardware on which it is preinstalled. Microsoft Azure Stack includes Windows Server, Windows Software Components and SQL Server Technology, each of which are subject to the Included Technologies section of the Product Terms and may not be used outside of Microsoft Azure Stack.

Use of the Default Provider Subscription

The subscription created for the system administrator during the Azure Stack deployment process (the default provider subscription) may be used solely to deploy and manage the Azure Stack infrastructure; it may not be used to run any workload that does not deploy or manage Azure Stack infrastructure (e.g. it may not be used to run any application workloads).

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Bing Search Services

Bing Search Services Use and Display Requirements

Customer must comply with use and display requirements for the Bing Search Services which are available at <https://aka.ms/r1j7iq>. Customer must use results it obtains through the Bing Search Services only in Internet Search Experiences (as defined in the use and display requirements) and must not cache or copy results. The results Customer obtains through the Bing Search Services are not Products, Fixes, or Services Deliverables.

Bing Search Services Privacy

The Microsoft Privacy Statement located at <https://go.microsoft.com/fwlink/?LinkId=521839> applies to Customer's use of Bing Search Services, except that this Bing Search Services section of the Online Services Terms controls to the extent it conflicts with the Microsoft Privacy Statement.

Use of Bing Search Services Data

Customer is solely responsible for the content of all Bing Search Services Data.

Microsoft may process Bing Search Services Data solely to: (i) provide Cognitive Services to Customer; and (ii) improve Microsoft products and services. Solely for such processing, Microsoft may collect, retain, use, reproduce, and create derivative works of, Bing Search Services Data and Customer grants Microsoft a limited nonexclusive irrevocable worldwide license to do so. Customer will secure and maintain all rights necessary for Microsoft to process Bing Search Services Data as described in this paragraph without violating the rights of any third party or otherwise obligating Microsoft to Customer or to any third party.

This Use of Bing Search Services Data section of the Online Services Terms will survive termination or expiration of Customer's volume licensing agreement. As between the parties, Customer retains all right, title and interest in and to Bing Search Services Data. Microsoft acquires no rights in Bing Search Services Data, other than the rights Customer grants to Microsoft in this Use of Bing Search Services Data section. This paragraph does not affect Microsoft's rights in software or services Microsoft licenses to Customer.

Application of Data Protection Terms to Bing Search Services

Only the following sections of the Data Protection Terms apply to the Bing Search Services: Data Transfers, Use of Subcontractors, and How to Contact Microsoft. These sections do not apply to Previews of the listed services.

GDPR Terms do not apply to Bing Search Services:

The GDPR Terms do not apply to the Bing Search Services.

Precedence:

This Bing Search Services section controls to the extent there is any conflict with other parts of the OST.

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Microsoft Cognitive Services

Microsoft Translator and Bing Search Services Limit on Customer use of service output

Customer may not use any data from the Bing Search Services or Microsoft Translator for the purpose of developing or offering any comparable machine-learning based service.

Microsoft Translator Attribution

When displaying automatic translations performed by Microsoft Translator, Customer will provide reasonably prominent notice that the text has been automatically translated by Microsoft Translator.

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Inactive Cognitive Services Configurations and Custom Models

For the purposes of data retention and deletion, a Cognitive Services configuration or custom model that has been inactive may at Microsoft's discretion be treated as an Online Service for which the Customer's subscription has expired. A configuration or custom model is inactive if for 90 days (1) no calls are made to it; (2) it has not been modified and does not have a current key assigned to it and; (3) Customer has not signed in to it.

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Microsoft Genomics

Microsoft Genomics Privacy

The Microsoft Privacy Statement located at <https://go.microsoft.com/fwlink/?LinkId=521839> applies to Customer's use of Microsoft Genomics, except that this Microsoft Genomics section controls to the extent it conflicts with the Microsoft Privacy Statement.

Broad License Terms

Microsoft Genomics includes access to the Genetic Analysis Toolkit (GATK) from the Broad Institute, Inc. ("Broad"). Use of the GATK and any related documentation as part of Microsoft Genomics is also subject to Broad's GATK End User License Agreement ("Broad EULA").

Microsoft may collect and share with Broad certain statistical and technical information regarding Customer's usage of the GATK. Customer authorizes Microsoft to report to Broad Customer's status as a user of the GATK in Microsoft Genomics.

No Medical Use

Microsoft Genomics is not a medical device and outputs generated from its use are not intended to be statements of fact, nor are they to be used as a substitute for medical judgment, advice, diagnosis or treatment of any disease or condition.

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Visual Studio App Center

Visual Studio App Center Test Privacy and Security Terms

The privacy statement located at <https://aka.ms/mctestprivacypolicy> applies to Customer's use of Visual Studio App Center Test. Customer may not use Visual Studio App Center Test to store or process Personal Data. Please refer to the Product documentation for more information.

Use for Development and Testing

Customer may only access and use Visual Studio App Center to develop and test Customer's application(s). Only one Licensed User may access a virtual machine provided by Visual Studio App Center at any time.

Authorized Developer

Customer appoints Microsoft as its authorized developer with respect to Apple software included in Visual Studio App Center. Microsoft is responsible for complying with the terms for any such software included in Visual Studio App Center and will keep confidential any confidential information of Apple accessed as part of Visual Studio App Center.

Third Party Repository Service Access

If Customer grants Microsoft access to its third-party repository service account(s), Customer authorizes Microsoft to scan the account(s), including the contents of Customer's public and private repositories. Microsoft will only use such data to provide Customer the Visual Studio App Center service, including purposes compatible with providing the service.

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Microsoft Azure Plans

Notices

The Bing Maps Notices in [Attachment 1](#) apply.

Subscription License Suites

In addition to User SLs, refer to [Attachment 2](#) for other SLs that fulfill requirements for Azure Active Directory Premium, Azure Advanced Threat Protection for Users, Azure Information Protection, and Microsoft Intune.

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Azure Active Directory Basic

Customer may, using Single Sign-On, pre-integrate up to 10 SAAS Applications/Custom Applications per User SL. All Microsoft as well as third party applications count towards this application limit.

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Azure Active Directory Premium

Customer may, using Single Sign-On, pre-integrate SaaS Applications/Custom Applications. Customer may not copy or distribute any data set (or any portion of a data set) included in the Microsoft Identity Manager software that is included with a Microsoft Azure Active Directory Premium (P1 and P2) User SL.

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Azure Information Protection Premium

Notices

The Bing Maps Notices in [Attachment 1](#) applies. Any deployment services provided to Customer are subject to the Professional Services Notice in [Attachment 1](#).

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Microsoft Dynamics 365 Services

Microsoft Dynamics 365 for Case Management, Enterprise edition
 Microsoft Dynamics 365 for Customer Service, Enterprise edition
 Microsoft Dynamics 365 for Field Services, Enterprise edition
 Microsoft Dynamics 365 Business Central Essentials
 Microsoft Dynamics 365 Business Central Premium
 Microsoft Dynamics 365 Business Central Team Member
 Microsoft Dynamics 365 for Marketing
 Microsoft Dynamics 365 for Operations Activity, Enterprise edition
 Microsoft Dynamics 365 for Operations Device, Enterprise edition
 Microsoft Dynamics 365 for Project Service Automation, Enterprise edition

Microsoft Dynamics 365 for Retail, Enterprise edition
 Microsoft Dynamics 365 for Sales, Enterprise edition
 Microsoft Dynamics 365 for Sales Professional
 Microsoft Dynamics 365 for Talent, Enterprise edition
 Microsoft Dynamics 365 for Talent: Attract, Enterprise edition
 Microsoft Dynamics 365 for Talent: Onboard, Enterprise edition
 Microsoft Dynamics 365 for Team Members, Business edition
 Microsoft Dynamics 365 for Team Members, Enterprise edition
 Microsoft Relationship Sales solution

Notices

The Bing Maps and Professional Services Notices in [Attachment 1](#) apply. Any onboarding, migration, or deployment services provided to Customer as subject to the Professional Services Notice in [Attachment 1](#).

Subscription License Suites

In addition to User SLs, refer to [Attachment 2](#) for other offerings that fulfill SL requirements.

External Users

External Users of Microsoft Dynamics 365 Services do not need a SL to access the Online Service. This exemption does not apply to (1) contractors or agents of Customer or its Affiliates, or (2) External Users using Microsoft Dynamics 365 client software with Microsoft Dynamics 365 Services other than services or components included in the Microsoft Dynamics 365 Unified Operations Plan, Microsoft Dynamics 365 for Retail, Microsoft Dynamics 365 for Talent, Microsoft Dynamics 365 for Talent: Attract, or Microsoft Dynamics 365 for Talent: Onboard.

Administration Portal

Microsoft Dynamics 365 for Finance and Operations, Microsoft Dynamics 365 for Retail, and Microsoft Dynamics 365 for Talent enable Customers to deploy and manage the Online Service through Microsoft Dynamics Lifecycle Services (or its successor), which is subject to separate terms.

Mixed deployments of Microsoft Dynamics 365 services

Customers who wish to mix (i) Microsoft Dynamics 365 for Sales Professional and Microsoft Dynamics 365 for Sales Enterprise or (ii) Microsoft Dynamics 365 Business Central and Microsoft Dynamics 365 for Unified Operations may do so if:

- Each Online Service is deployed under a separate instance,
- All users accessing the instance are licensed with the single choice of Online Service, and
- No users have direct or indirect access to instances deployed with the other Online Service

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Microsoft Dynamics 365 for Marketing

Service Level Agreement

There is no SLA for Microsoft Dynamics 365 for Marketing.

Promotional Laws, Regulations, and Industry Standards

Microsoft bears no responsibility for Customer's compliance with any applicable law, regulation, or industry standard governing the Customer's transmittal of promotional communications.

Microsoft Dynamics 365 Unified Operations Plan

Customer may modify for its internal use the application source code for Microsoft Dynamics 365 Finance and Operations and Microsoft Dynamics 365 for Retail

Microsoft Dynamics 365 for Talent, Microsoft Dynamics 365 for Talent: Attract, and Microsoft Dynamics 365 Talent: Onboard

Users accessing the Online Service who are (1) candidates in the attract module or (2) new hires in the onboard module do not need a SL.

Server Use Rights for Dynamics 365 User SLs, From SA User SLs and Add-on User SLs

The server use rights provisions below do not apply to Customers licensed for Microsoft Dynamics 365 for Sales Professional, Microsoft Dynamics 365 for Marketing, Microsoft Dynamics 365 Business Central, Microsoft Dynamics 365 for Talent: Attract, Microsoft Dynamics 365 for Talent: Onboard, or Customers licensed for Dynamics 365 online services in Open License, Open Value and Open Value Subscription.

Microsoft Dynamics 365 for Operations On-premises Server

Customer's with active subscriptions for (1) Microsoft Dynamics 365 Plan or (2) Microsoft Dynamics 365 Unified Operations Plan (or any separately licensed component of the Plan) may:

- install any number of copies of the Microsoft Dynamics 365 for Operations Server software on a network server or shared servers;
- install and use Microsoft Dynamics AX 2012 R3 Server software in lieu of Microsoft Dynamic 365 for Operations Server;
- allow access to the server software only to users and devices assigned a qualifying SL;
- receive and use updates related to government tax and regulatory requirements on the server software; and
- modify or create derivative works of plug-ins, runtime, and other components identified in printed or online documentation and use those derivative works, but only with the server software and only for Customer's internal purposes.

Microsoft Dynamics 365 On-premises Server

Customer with active subscriptions for (1) Microsoft Dynamics 365 Plan or (2) Microsoft Dynamics 365 Customer Engagement Plan (or any separately licensed component of the Plan) may:

- install any number of copies of Microsoft Dynamics 365 server (on-premises) software on a network server or shared servers;
- install Microsoft Dynamics CRM 2016 Server software in lieu of Microsoft Dynamic 365 On-Premise Server;
- allow access to the server software to users and devices assigned a qualifying SL; and
- allow users and devices assigned one of the following CALs to access the version of the server software that is current as of the subscription start date: Microsoft Dynamics 365 On-premises for Sales, Customer Service or Team Members CALs; or Microsoft Dynamics CRM CAL. Users and devices assigned CALs with active Software Assurance may access new versions of the server software.

Microsoft Relationship Sales solution

Microsoft Relationship Sales solution includes Microsoft Dynamics 365 for Sales, Enterprise edition and LinkedIn Sales Navigator, Enterprise edition. LinkedIn Sales Navigator, Enterprise edition is for the sole use of the Microsoft Relationship Sales solution Licensed User for the duration of the subscription.

LinkedIn Sales Navigator

LinkedIn Sales Navigator is provided by LinkedIn Corporation. Customer may use the LinkedIn Sales Navigator Service only to generate sales leads. Each user of LinkedIn Sales Navigator must be a member of LinkedIn and agree to be bound by the LinkedIn User Agreement available at <https://www.linkedin.com/legal/preview/user-agreement>. Despite anything to the contrary in Customer's volume licensing agreement (including these Online Services Terms), the LinkedIn Privacy Policy available at <https://www.linkedin.com/legal/privacy-policy> will apply to Customer's use of the LinkedIn Sales Navigator service. LinkedIn Corporation (as data importer) and Customer (as data exporter) will comply with the applicable standard contractual clauses located at: <https://business.linkedin.com/c/15/10/eu-scc>.

Service Level Agreement

There is no SLA for LinkedIn Sales Navigator, Enterprise Edition.

Microsoft Social Engagement

Service Level Agreement

There is no SLA for Microsoft Social Engagement.

Social Content Obtained through Microsoft Social Engagement

Social Content is content provided by social media networks (such as Twitter, Facebook and YouTube) and data indexing or data aggregation services in response to Customer's search queries executed in Microsoft Social Engagement. Social Content is not Customer Data. Customer Data used in configuring or initiating search queries executed on Customer's behalf may be shared with third parties for purposes of retrieving Social Content. Customer may use Social Content for its internal business purposes only. Customer may not use Social Content to conduct surveillance. Public sector Customers may have limited access to Social Content. Microsoft reserves the right to:

- store Social Content in a database commingled with content aggregated from other sources by other licensees;
- access, edit or delete Social Content for any purpose;
- instruct Customer to edit or delete Social Content; limit Customer's ability to export or transfer Social Content; and delete or restrict further access to Social Content after the Online Service has been terminated or expires.

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Office 365 Services

Notices

The Bing Maps Notices in [Attachment 1](#) apply. Any onboarding, migration, or deployment services provided to Customer are subject to the Professional Services Notice in [Attachment 1](#).

Core Features for Office 365 Services

During the term of Customer's subscription, the Office 365 Services will substantially conform to the Core Features description provided (if any) in the Office 365 service-specific sections below, subject to Product restrictions or external factors (such as the recipient, message rate, message size and mailbox size limits for e-mail; default or Customer-imposed data retention policies; search limits; storage limits; Customer or end user configurations; and meeting capacity limits). Microsoft may permanently eliminate a functionality specified below only if it provides Customer a reasonable alternative functionality.

Administration Portal

Customer will be able to add and remove end users and domains, manage licenses, and create groups through the Microsoft Online Services Portal or its successor site.

Service Encryption with Customer Key

Customer assumes all risks of data deletion, inaccessibility, and service outages that result from any unavailability of an encryption key caused by Customer.

Subscription License Suites

In addition to User SLs, refer to [Attachment 2](#) for other SLs that fulfill requirements for Office 365 Services.

Microsoft Teams

Notice: The H.264/MPEG-4 AVC Notice in [Attachment 1](#) applies to all Office 365 Services that include Microsoft Teams.

Yammer

For Office 365 Services that include Yammer, External Users invited to Yammer via external network functionality do not need User SLs.

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Exchange Online

Office 365 Advanced Threat Protection
Office 365 Threat Intelligence
Data Loss Prevention
Exchange Online Archiving for Exchange Online

Exchange Online Archiving for Exchange Server
Exchange Online F1
Exchange Online (Plan 1 and Plan 2)

Core Features for Office 365 Services – Exchange Online

Exchange Online or its successor service will have the following [Core Features](#) capabilities:

Emails

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An end user will be able to send email messages, receive email messages that originate from within and outside of Customer's organization, and access the end user's mailbox.

Mobile and Web Browser Access

Through the Microsoft Exchange ActiveSync protocol or a successor protocol or technology, Exchange Online will enable an end user to send and receive emails and update and view calendars from a mobile device that adequately supports such a protocol or technology. An end user will be able to send email messages, receive email messages that originate from within and outside of Customer's organization, and access the end user's mailbox, all from within a compatible web browser.

Retention Policies

Customer will be able to establish archive and deletion policies for email messages.

Deleted Item and Mailbox Recovery

Customer will be able to recover the contents of a deleted non-shared mailbox and an end user will be able to recover an item that has been deleted from one of the end user's email folders.

Multi-Mailbox Search

Customer will be able to search for content across multiple mailboxes within its organization.

Calendar

An end user will be able to view a calendar and schedule appointments, meetings, and automatic replies to incoming email messages.

Contacts

Through an Exchange Online-provided user interface, Customer will be able to create and manage distribution groups and an organization-wide directory of mail-enabled end users, distribution groups, and external contacts.

Core Features for Office 365 Services – Exchange Online Archiving

Exchange Online Archiving or its successor service will have the following [Core Features](#) capabilities:

Storage

Customer will be able to allow an end user to store email messages.

Retention Policies

Customer will be able to establish archive and deletion policies for email messages distinct from policies that an end user can apply to the end user's own mailbox.

Deleted Item and Mailbox Recovery

Customer, through Office 365 support services, will be able to recover a deleted archive mailbox, and an end user will be able to recover an item that has been deleted from one of the end user's email folders in the end user's archive.

Multi-Mailbox Search

Customer will be able to search for content across multiple mailboxes within its organization.

Legal Hold

Customer will be able to place a "legal hold" on an end user's primary mailbox and archive mailbox to preserve the content of those mailboxes.

Archiving

Archiving may be used for messaging storage only with Exchange Online Plans 1 and 2.

Archiving for Exchange Server

Users licensed for Exchange Server 2013 Standard Client Access License may access the Exchange Server 2013 Enterprise Client Access License features necessary to support use of Exchange Online Archiving for Exchange Server.

Exchange Online Plan 2 from Exchange Hosted Archive Migration

Exchange Online Plan 2 is a successor Online Service to Exchange Hosted Archive. If Customer renews from Exchange Hosted Archive into Exchange Online Plan 2 and has not yet migrated to Exchange Online Plan 2, Customer's licensed users may continue to use the Exchange Hosted Archive service subject to the terms of the March 2011 Product Use Rights until the earlier of Customer's migration to Exchange Online Plan 2 or the expiration of Customer's Exchange Online Plan 2 User SLs. The Product Use Rights is located at <http://go.microsoft.com/?linkid=9839206>.

Data Loss Prevention Device License

If Customer is licensed for Data Loss Prevention by Device, all users of the Licensed Device are licensed for the Online Service.

Service Level Agreement

There is no SLA for Office 365 Advanced Threat Protection or Office 365 Threat Intelligence.

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Office 365 Applications

Office 365 Business
Office 365 ProPlus

Visio Online (Plan 1 and Plan 2)

Service Level Agreement

There is no SLA for Visio Online.

Installation and Use Rights

Each user to whom Customer assigns a User SL must have a work or school account in order to use the software provided with the subscription.

These users:

- may activate the software provided with the SL on up to five concurrent OSEs for local or remote use;
- may also install and use the software, and use shared computer activation, on a shared device, a network server, or on shared servers on Microsoft Azure or with a Qualified Multitenant Hosting Partner. A list of Qualified Multitenant Hosting Partners and additional deployment requirements are available at www.office.com/sca. For the purpose of this use right “network server” means a physical hardware server solely dedicated to Customer use. This shared computer activation provision does not apply to Customers licensed for Office 365 Business; and
- must connect each device upon which user has installed the software to the Internet at least once every 30 days or the functionality of the software may be affected.
- may use Internet-connected Online Services provided as part of ProPlus. Additionally, if permitted by Customer, users may elect to use connected services subject to terms of use other than this OST and with respect to which Microsoft is a data controller, as identified in product documentation.

Smartphone and Tablet Devices

Each user to whom Customer assigns a User SL may also activate Microsoft Office Mobile software to use on up to five smartphones and five tablets. For users of F1, E1, and Business Essentials versions of Office 365 or Microsoft 365 this right to activate Microsoft Office Mobile software is limited to devices with integrated screens 10.1” diagonally or less.

The following terms apply only to Office 365 ProPlus

Office Home & Student 2013 RT Commercial Use

Each User SL for Office 365 ProPlus modifies the user’s right to use the software under a separately acquired Office Home & Student 2013 RT license by waiving the prohibition against commercial use. Except for this allowance for commercial use of the software, all use is subject to the terms and use rights provided with the Office Home & Student 2013 RT License.

Office Online Server

For each Office 365 ProPlus subscription, Customer may install any number of copies of Office Online Server on any Server dedicated to Customer’s use. Each Office 365 ProPlus user may use the Office Online Server software. This provision does not apply to Customers that license this Product under the Microsoft Online Subscription Agreement or other Microsoft agreement that cover Online Services only.

Subscription License Suites

In addition to Office 365 ProPlus User SLs, Customer may fulfill the SL requirement for this Product by purchasing a Suite SL (refer [Attachment 2](#)).

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Microsoft MyAnalytics

Service Level Agreement

There is no SLA for Microsoft MyAnalytics.

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Office Online

Core Features for Office 365 Services

Office Online or its successor service will have the following [Core Features](#) capabilities:

An end user will be able to create, view, and edit documents in Microsoft Word, Excel, PowerPoint, and OneNote file types that are supported by Office Online or its successor service.

External Users

External Users invited to site collections via Share-by-Mail functionality do not need User SLs with Office Online.

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OneDrive for Business

External Users

External Users invited to site collections via Share-by-Mail functionality do not need User SLs with OneDrive for Business.

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Project Online

Project Online Essentials
Project Online Professional

Project Online Premium

Installation and Use Rights for Project application

Each user to whom Customer assigns a Project Online Professional or Project Online Premium User SL must have a Microsoft Account in order to use the software provided with the subscription. These users:

- may activate the software provided with the SL on up to five concurrent OSEs for local or remote use;
- may also install and use the software, with shared computer activation, on a shared device, a network server, or on shared servers with a qualified cloud partner. A list of qualified cloud partners and additional deployment requirements is available at www.office.com/sca. For the purpose of this use right “network server” means a physical hardware server solely dedicated to Customer use; and
- must connect each device upon which user has installed the software to the Internet at least once every 30 days or the functionality of the software may be affected.

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SharePoint Online

Duet Enterprise Online for Microsoft SharePoint and SAP
SharePoint Online F1

SharePoint Online (Plan 1 and Plan 2)

Core Features for Office 365 Services

SharePoint Online or its successor service will have the following [Core Features](#) capabilities:

Collaboration Sites

An end user will be able to create a web browser-accessible site through which the end user can upload and share content and manage who has permission to access that site.

Storage

Customer will be able to set storage capacity limits for a site created by an end user.

External Users

External Users invited to site collections via Share-by-Mail functionality do not need User SLs with SharePoint Online F1, Plan 1 and Plan 2.

Storage Add-on SLs

Office 365 Extra File Storage is required for each gigabyte of storage in excess of the storage provided with User SLs for SharePoint Online Plans 1 and 2.

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Skype for Business Online

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Skype for Business Online (Plan 1 and Plan 2)
Audio Conferencing
Calling Plan

Common Area Phone
Communication Credits
Phone System

Notices

The H.264/MPEG-4 AVC and/or VC-1 Notices in [Attachment 1](#) apply.

Core Features for Office 365 Services

Skype for Business Online Plan 1 and Plan 2 or their successor services will have the following [Core Features](#) capabilities:

Instant Messaging

An end user will be able to transfer a text message to another end user in real time over an Internet Protocol network.

Presence

An end user will be able to set and display the end user's availability and view another end user's availability.

Online Meetings

An end user will be able to conduct an Internet-based meeting that has audio and video conferencing functionality with other end users.

External Users and users not authenticated by Skype for Business Online

User SLs are not required for External Users and users not authenticated by the Skype for Business Online service.

Common Area Phones

A Common Area Phone is a device that makes and receives only voice calls and is shared by multiple users who do not log into the device with their Office 365 credentials. Microsoft's Common Area Phone offering is a Device SL. Each Common Area Phone Licensed Device may be accessed and used by any number of users.

Calling Plan and Audio Conferencing Services (Calling/Conferencing Services)

Calling and Conferencing services enable users to communicate with others via the worldwide voice telephone network known generally as the Public Switched Telephone Network. Calling and Conferencing services are provided by the Microsoft Affiliate authorized to provide them. Pricing for Calling and Conferencing services may include applicable taxes and fees. The terms of use for Calling and Conferencing services may vary from country to country. All included taxes, fees and country-specific terms of use are disclosed on the Volume Licensing site (<http://go.microsoft.com/fwlink/?LinkId=690247>).

Exceeding the usage limitations for the applicable Calling and Conferencing service subscription plan as described in the terms of use may result in suspension of the services. Microsoft will provide reasonable notice before suspending Calling or Conferencing services, and customer will be able to make emergency calls during any period of suspension.

Important Information About Emergency Services

Customer must notify each user of a Calling Plan that Emergency Services operate differently than on traditional telephone services in the following ways: (i) Office 365 may not know the actual location of an Emergency Services caller, which could result in the call being routed to the wrong Emergency Services call center and/or emergency services being dispatched to the wrong location; (ii) if the user's device has no power, is experiencing a power outage or, for any reason, cannot otherwise access the Internet, the user cannot make an Emergency Services call through a Calling Plan service; and (iii) although Calling Plan services can be used anywhere in the world where an Internet connection is available, users should not make an Emergency Services call from a location outside their home country because the call likely will not be routed to the appropriate call center in that location.

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Other Online Services

Bing Maps Enterprise Platform and Mobile Asset Management Platform

Service SLs

A Service SL is required to access the services via the Bing Maps Enterprise Platform or Mobile Asset Management Platform. Each Service SL must be purchased with at least one of the following qualifying Add-On SLs:

- For the Bing Maps Enterprise Platform Service SL, either:
 - Bing Maps Public Website Usage Add-on SL, which is available for a specified number of billable transactions for use on a website that is available publicly without restriction,

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- Bing Maps Internal Website Usage Add-on SL, which is available for a specified number of billable transactions for use on an internal website (e.g., intranet) on a private network,
- Bing Maps Known User Add-on SL, or
- Bing Maps Light Known User Add-on SL.
- For the Mobile Asset Management Platform Service SL; for each Asset either:
 - Mobile Asset Management for North America Add-on SL (routing or without routing)
 - Mobile Asset Management for Europe Add-on SL routing or without routing), or
 - Mobile Asset Management for Rest of World Add-on SL (routing or without routing)

Qualifying Mobile Asset Management Platform Service SL Add-on SLs

For the Mobile Asset Management Platform, an Add-on SL is required for each tracked Asset whose GPS or other sensor based position can be monitored, displayed, reverse geocoded or used to perform calculations using Mobile Asset Management Platform. “Asset” is defined as any vehicle, device or other mobile object. These Add-on SLs are for a specified number of tracked Assets.

Authenticated Users

Users that are authenticated by Customer’s programs that access Bing Maps Enterprise Platform and Mobile Asset Management Platform must have a SL.

Bing Maps APIs

Customer may use all Bing Maps APIs in accordance with the Microsoft Bing Maps Platform API Terms of Use and Bing Maps Platform SDKs, including any successors thereto, located at <https://aka.ms/bingmapsplatformapistou> and <https://aka.ms/bingmapsplatformsdks/>.

Bing Maps Privacy

The Bing Privacy Statement and privacy terms in the Microsoft Bing Maps Platform API Terms of Use located at: <https://go.microsoft.com/fwlink/?LinkId=521839> apply to Customer’s use of the Bing Maps Services.

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Business Application Platform

Microsoft Flow
Microsoft PowerApps
Microsoft Power BI Pro

Microsoft Power BI Premium
Microsoft Stream

Notices

The Bing Maps, H.264/AVC Visual Standard, VC-1 Video Standard, MPEG-4 Part 2 Visual Standard, and MPEG-2 Video Standard Notices in [Attachment 1](#) apply.

Microsoft Power BI

Definitions

“Customer Application” means an application or any set of applications that adds primary and significant functionality to the Embedded Capabilities and that is not primarily a substitute for any portion of Microsoft Power BI services.

“Embedded Capabilities” means the Power BI APIs and embedded views for use by an application.

Hosting Exception for Embedded Capabilities

Customer may create and maintain a Customer Application and, despite anything to the contrary in Customer’s volume licensing agreement, combine Embedded Capabilities with Customer Data owned or licensed by Customer or a third party, to create a Customer Application using the Embedded Capabilities and the Customer Data together. Any Power BI content accessed by the Customer Application or its end users must be stored in Microsoft Power BI Premium capacity. Customer may permit third parties to access and use the Embedded Capabilities in connection with the use of that Customer Application. Customer is responsible for that use and for ensuring that these terms and the terms and conditions of Customer’s volume licensing agreement are met by that use.

Limitations

Customer may not

- resell or redistribute the Microsoft Power BI services, or
- allow multiple users to directly or indirectly access any Microsoft Power BI feature that is made available on a per user basis.

Access without a User SL

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A User SL is not required to view content in Power BI Premium capacity that is shared through the embed APIs or embedded views functionality. With Power BI Premium P series only, a User SL is also not required to view content in Power BI Premium capacity that is shared through the apps or email subscription features, or through Power BI Report Server.

Publish to Web

Customer may use the publish to web functionality to share content only on a publicly available website. Customer may not use this functionality to share content internally. Microsoft may display content published through the publish to web functionality on a public website or gallery.

Microsoft PowerApps

Restricted Entities

Customer may not create, modify, or delete any data from entities of the type designated as “restricted” in product documentation at <https://go.microsoft.com/fwlink/?linkid=868812>. Customer has read-only access to such restricted entities.

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Microsoft Cloud App Security

Notices

The Bing Maps and Professional Services notices in [Attachment 1](#) apply.

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Microsoft Intune

Microsoft Intune (per user, per device)

Microsoft Intune for EDU (per user, per device)

Microsoft Intune Add-on for System Center Configuration

Microsoft Intune Add-on for System Center Configuration Manager and System Center Endpoint Protection (per user, per device) (“Microsoft Intune Add-On”)

Notices

Any deployment services provided to Customer are subject to the Professional Services Notice in [Attachment 1](#).

Manage Devices and Applications

Each User to whom Customer assigns a User SL may access and use the Online Services and related software (including System Center software) to manage applications and up to fifteen devices. Each device to which customer assigns an SL may access and use the Online Services and related software (including System Center software) for use by any number of users. Management of a device accessed by more than one user requires a Device SL or a User SL for each user.

Storage Add-on SL

A Storage Add-on SL is required for each gigabyte of storage in excess of the storage provided with the base subscription.

Windows Software Components in System Center Software

The System Center software includes one or more of the following Windows Software Components: Microsoft .NET Framework, Microsoft Data Access Components, PowerShell software and certain .dlls related to Microsoft Build, Windows Identity Foundation, Windows Library for JavaScript, Dbghelp.dll, and Web Deploy technologies. The license terms governing use of the Windows Software Components are in the Windows 8.1 Pro and Enterprise section of the Product Terms. The Product Terms is located at <http://go.microsoft.com/?linkid=9839206>.

SQL Server Technology and Benchmarking

The Software included with the Online Service includes SQL Server-branded components other than a SQL Server Database. Those components are licensed to Customer under the terms of their respective licenses, which can be found in the installation directory or unified installer of the software. Customer must obtain Microsoft’s prior written approval to disclose to a third party the results of any benchmark test of these components or the software that includes them.

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Microsoft Kaizala Pro

Service Level Agreement

There is no SLA for Microsoft Kaizala Pro.

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Microsoft Learning

Microsoft Learning E-Reference Library

Any person that has valid access to Customer's computer or internal network may copy and use the documentation for Customer's internal reference purposes. Documentation does not include electronic books.

Microsoft Learning Imagine Academy Service SL

A Service SL is required for each Location that accesses or uses any Microsoft Imagine Academy service or benefit. Location is defined as a physical site with staff under the same administrator, such as a principal, in a single building or group of buildings located on the same campus.

Microsoft Learning Imagine Academy Program Guidelines

The Imagine Academy program guidelines, located at <http://www.microsoft.com/itacademy>, apply to Customer's use of the Microsoft Learning Imagine Academy and its benefits.

Microsoft Learning Imagine Academy Program Benefits Provided by Third-Party

Program benefits may only be used by a licensed institution's faculty, staff and students currently enrolled in the licensed institution.

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Minecraft: Education Edition

Notices

The Bing Maps Notices in [Attachment 1](#) apply.

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Office 365 Developer

No Production Use of Office 365 Developer

Each user to whom Customer assigns a User SL may use the Online Service to design, develop, and test Customer's applications to make them available for Customer's Office 365 Online Services, on-premises deployments or for the Microsoft Office Store. The Online Service is not licensed for production use.

Office 365 Developer End Users

Customer's end users do not need a SL to access Office 365 Developer to perform acceptance tests or provide feedback on Customer programs.

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Windows Desktop Operating System

Data Retention

The Windows Defender Advanced Threat Protection and Windows Analytics portion of the product does not contain extractable Customer Data therefore the Customer Data extraction terms in the OST do not apply.

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Attachment 1 – Notices

Bing Maps

The Online Service or its included software includes use of Bing Maps. Any content provided through Bing Maps, including geocodes, can only be used within the product through which the content is provided. Customer's use of Bing Maps is governed by the Bing Maps End User Terms of Use available at go.microsoft.com/fwlink/?linkid=9710837 and the Bing Maps Privacy Statement available at go.microsoft.com/fwlink/?LinkID=248686.

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Professional Services

Professional Services are provided subject to the "Professional Services Terms" below. If, however, Professional Services are included in a separate agreement, then the terms of that separate agreement will apply.

The Professional Services to which this Notice applies are not Online Services, and the rest of the Online Services Terms, as well as any data processing amendment or HIPAA Business Associated Agreement signed by the parties, do not apply unless expressly made applicable by the Professional Services Terms below.

Support Data

Processing of Support Data

Support Data will be used and otherwise processed only to provide Customer with technical support, including purposes compatible with providing technical support. Microsoft will not use or otherwise process Support Data or derive information from it for advertising or similar commercial purposes without Customer's permission. As between the parties, Customer retains all right, title and interest in and to Support Data. Microsoft acquires no rights in Support Data, other than the rights Customer grants to Microsoft to provide support to Customer. This paragraph does not affect Microsoft's rights in software or services Microsoft licenses to Customer.

Processing of Personal Data included in Support Data; GDPR

Personal Data provided to Microsoft by, or on behalf of, Customer in connection with the provision of technical support is also Support Data. To the extent Microsoft is a processor or subprocessor of Personal Data subject to the GDPR, the GDPR Terms in Attachment 4 govern that processing and the parties also agree to the following terms in this sub-section ("Processing of Personal Data included in Support Data; GDPR"):

Processor and Controller Roles and Responsibilities

Customer and Microsoft agree that Customer is the controller of Personal Data included in Support Data and Microsoft is the processor of such data, except when Customer acts as a processor of Personal Data, in which case Microsoft is a subprocessor. However, Microsoft and Customer agree that Microsoft is the data controller for business contact information or other Personal Data that may be collected at the same time as Support Data but is needed to maintain the business relationship with the Customer. Microsoft will process Personal Data only on documented instructions from Customer. Customer agrees that its volume licensing agreement (including the OST) along with Customer's use of Professional Services are Customer's complete and final documented instructions to Microsoft for the processing of Personal Data. Any additional or alternate instructions must be agreed to according to the process for amending Customer's volume licensing agreement. In any instance where the GDPR applies and Customer is a processor, Customer warrants to Microsoft that Customer's instructions, including appointment of Microsoft as a processor or subprocessor, have been authorized by the relevant controller.

Processing of Personal Data included in Support Data

The parties acknowledge and agree that:

- The subject-matter of the processing is limited to Personal Data within the scope of the GDPR;
- The duration of the processing shall be for the duration of the Customer's right to receive technical support and until all Personal Data is deleted or returned in accordance with Customer instructions or the terms of the OST;
- The nature and purpose of the processing shall be to provide technical support pursuant to Customer's volume licensing agreement;
- The types of Personal Data processed in connection with the provision of technical support include those expressly identified in Article 4 of the GDPR; and
- The categories of data subjects are Customer's representatives and end users, such as employees, contractors, collaborators, and customers.

For data subject requests and records of processing activities related to Support Data, and Personal Data included therein, Microsoft will abide by the applicable obligations set forth in the “Data Subject Rights; Assistance with Requests” and “Records of Processing Activities” provisions in the Data Protection Terms section of the OST.

Security of Support Data

Microsoft will implement and maintain technical and organizational measures to protect Support Data. Those measures shall comply with the requirements set forth in ISO 27001, ISO 27002, and ISO 27018. If Microsoft becomes aware of a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Support Data while processed by Microsoft, Microsoft will abide by the obligations set forth in the “Security Incident Notification” provision in the Data Protection Terms section of the OST.

Data Location and Transfer

Support Data that Microsoft processes on Customer’s behalf may be transferred to, and stored and processed in, the United States or any other country in which Microsoft or its Affiliates or Subprocessors operate. Customer appoints Microsoft to perform any such transfer of Support Data to any such country and to store and process that data to provide technical support. Microsoft is certified to the EU-U.S. and Swiss-U.S. Privacy Shield Frameworks and the commitments they entail. Microsoft agrees to notify Customer in the event that it makes a determination that it can no longer meet its obligation to provide the same level of protection as is required by the Privacy Shield principles.

Other Support Data Commitments

Disclosure

The disclosure of Support Data by Microsoft to third parties is governed by the same restrictions and procedures that govern Customer Data set forth in the “Disclosure of Customer Data” provision in the Data Protection Terms section of the OST.

Deletion or Return

Microsoft will delete or return all copies of Support Data, and Personal Data included therein, after the business purposes for which the Support Data was collected or transferred have been fulfilled or earlier upon Customer’s request.

Use of Subprocessors

Microsoft’s use of Subprocessors in connection with the provision of technical support for Online Services is governed by the same restrictions and procedures that govern its use of Subprocessors in connection with the Online Services set forth in the “Use of Subprocessors” provision in the Data Protections Terms section of the OST.

Educational Institutions

Microsoft’s acknowledgements and agreements and Customer’s responsibilities to obtain parental consent and convey notification set out in the “Educational Institutions” provision in the Data Protection Terms section of the OST also apply with respect to Support Data.

Other Professional Services Terms

Processing of Personal Data

To the extent Microsoft is a processor or subprocessor of Personal Data, not included within Support Data, in connection with the provision of Professional Services, Microsoft makes the commitments in the GDPR Terms in Attachment 4 to all customers effective May 25, 2018.

Obligations of the Parties

Microsoft warrants that all Professional Services will be performed with professional care and skill. If Microsoft fails to do so and Customer notifies Microsoft within 90 days of the date of performance, then Microsoft will either re-perform the Professional Services or return the price paid for them as Customer’s sole remedy for breach of the Professional Services warranty.

Customer will perform its applicable responsibilities and obligations to support Microsoft’s performance of the Professional Services, as specified in the description of each Professional Service.

Limitation of Liability

To the extent permitted by applicable law, each party’s total liability for all claims relating to Professional Services will be limited to the amounts Customer was required to pay for the Professional Services or the limitation of liability for the Online Service with which the Professional Services are offered, whichever is greater. **In no event will either party be liable for indirect, incidental, special, punitive, or consequential damages, including loss of use, loss of profits, or interruption of business, however caused or on any theory of liability in relation to the Professional Services. No limitation or exclusions will apply to liability arising out of either party’s (1) confidentiality obligations; or (2) violation of the other party’s intellectual property rights.**

Fixes

"Fixes" are Product fixes, modifications or enhancements, or their derivatives, that Microsoft either releases generally (such as service packs) or that Microsoft provides to Customer to address a specific issue. Each Fix, is licensed under the same terms as the Product to which it applies. If a Fix is not provided for a specific Product, any use terms Microsoft provides with the Fix will apply.

Pre-Existing Work

"Pre-Existing Work" means any computer code or non-code based written materials developed or otherwise obtained independent of Customer's volume licensing agreement. All rights in Pre-Existing Work shall remain the sole property of the party providing the Pre-Existing Work. Each party may use, reproduce and modify the other party's Pre-Existing Work only as needed to perform obligations related to Professional Services.

Services Deliverables

"Services Deliverables" means any computer code or materials other than Products or Fixes that Microsoft leaves with Customer at the conclusion of Microsoft's performance of Professional Services. Microsoft grants Customer a non-exclusive, non-transferable, perpetual license to reproduce, use, and modify the Services Deliverables solely for Customer's internal business purposes, subject to the terms and conditions in Customer's volume licensing agreement.

Non-Microsoft Technology

Customer is solely responsible for any non-Microsoft software or technology that it installs or uses with the Online Services, Fixes, or Services Deliverables.

Affiliates' Rights

Customer may sublicense the rights to use Services Deliverables to its Affiliates, but Customer's Affiliates may not sublicense these rights. Customer is liable for ensuring its Affiliates' compliance with the terms of this Notice and Customer's volume licensing agreement.

Government Customers

If Customer is a government entity, then the following terms apply to any Professional Services provided at no charge to Customer. Microsoft waives any and all entitlement to compensation from Customer for the Professional Services. In compliance with applicable laws and regulations, Microsoft and Customer acknowledge that the Professional Services are for the sole benefit and use of Customer and not provided for the personal use or benefit of any individual government employee.

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Notice about Azure Media Services H.265/HEVC Encoding

Customer must obtain its own patent license(s) from any third party H.265/HEVC patent pools or rights holders before using Azure Media Services to encode or decode H.265/HEVC media.

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Notice about Adobe Flash Player

The software may include a version of Adobe Flash Player. Customer agrees that its use of the Adobe Flash Player is governed by the license terms for Adobe Systems Incorporated at <http://go.microsoft.com/fwlink/?linkid=248532>. Adobe and Flash are either registered trademarks or trademarks of Adobe Systems Incorporated in the United States and/or other countries.

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Notice about H.264/AVC Visual Standard, VC-1 Video Standard, MPEG-4 Part 2 Visual Standard and MPEG-2 Video Standard

This software may include H.264/AVC, VC-1, MPEG-4 Part 2, and MPEG-2 visual compression technology. MPEG LA, L.L.C. requires this notice: THIS PRODUCT IS LICENSED UNDER THE AVC, THE VC-1, THE MPEG-4 PART 2 AND MPEG-2 VISUAL PATENT PORTFOLIO LICENSES FOR THE PERSONAL AND NON-COMMERCIAL USE OF A CONSUMER TO (i) ENCODE VIDEO IN COMPLIANCE WITH THE ABOVE (VIDEO STANDARDS) AND/OR (ii) DECODE AVC, VC-1, MPEG-4 PART 2 AND MPEG-2 VIDEO THAT WAS ENCODED BY A CONSUMER ENGAGED IN A PERSONAL AND NON-COMMERCIAL ACTIVITY AND/OR WAS OBTAINED FROM A VIDEO PROVIDER LICENSED TO PROVIDE SUCH VIDEO. NO LICENSE IS GRANTED OR SHALL BE IMPLIED FOR ANY OTHER USE. ADDITIONAL INFORMATION MAY BE OBTAINED FROM MPEG LA, L.L.C. REFER TO www.mpegla.com.

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For clarification purposes, this notice does not limit or inhibit the use of the software for normal business uses that are personal to that business which do not include (i) redistribution of the software to third parties, or (ii) creation of content compliant with the VIDEO STANDARDS technologies for distribution to third parties.

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Attachment 2 – Subscription License Suites

Online Services may be available for purchase as Suites of Online Services. If, in the tables below, a cell is shaded blue in an Online Service's row, the Suite SL for the column the cell is in fulfills the SL requirements for the cell's Online Services. For Education and Government offers, see the Public Sector table below.

Online Service	Office 365 Enterprise ^{1, 3}				Office 365 Business Essentials	Office 365 Business Premium	Enterprise Mobility + Security		Microsoft 365 ²			Microsoft 365 Business	Dynamics 365 Enterprise Edition		
	F1	E1	E3	E5			E3	E5	F1	E3	E5		Cust Eng ⁴	Uni Ops ⁴	Plan
Exchange Online															
Exchange Online K1															
Exchange Online Plan 1															
Exchange Online Plan 2															
SharePoint Online															
SharePoint Online K1															
SharePoint Online Plan 1															
SharePoint Online Plan 2															
Skype for Business Online Plan 1															
Skype for Business Online Plan 2															
Phone System															
Audio Conferencing															
Office Online															
Office 365 Business															
Office 365 ProPlus															
Microsoft MyAnalytics															
Office 365 Advanced Compliance															
Office 365 Cloud App Security															
Office 365 Threat Intelligence															
Microsoft Power BI Pro															
Office 365 Advanced Threat Protection															
Microsoft Intune															
Azure Info Protection Premium Plan 1															
Azure Info Protection Premium Plan 2															
Azure Active Directory Premium Plan 1															
Azure Active Directory Premium Plan 2															
Azure Advanced Threat Protection for Users															
Microsoft Cloud App Security															
Microsoft Dynamics 365 for Customer Service															
Microsoft Dynamics 365 for Field Service															
Microsoft Dynamics 365 for Project Service Automation															
Microsoft Dynamics 365 for Retail															
Microsoft Dynamics 365 for Sales Enterprise															
Microsoft Dynamics 365 for Talent															
Microsoft Flow Plan 1															
Microsoft PowerApps Plan 1															
Microsoft PowerApps Plan 2															
Microsoft Stream Plan 1															
Microsoft Stream Plan 2															

¹ Add-on Suite SLs that include "without ProPlus" in the title do not include rights to Office 365 ProPlus.

² In addition to the Online Services identified above, the Microsoft 365 fulfills the SL requirement for Windows SA per User as described in the Product Terms.

³ Inclusion of Skype for Business Online Audio Conferencing with Office 365 Enterprise E5 is dependent on regional availability.

⁴ In addition to the Online Services identified above, Dynamics 365 Unified Operations Plan includes finance and operations functionality as described in Appendix C of the Dynamics 365 Enterprise edition Licensing Guide <https://www.microsoft.com/en-us/dynamics365/pricing>.

Public Sector

Online Service	Office 365 Government ^{1,3}					Office 365 Education ³			Microsoft 365 Education ²		
	F1	E1	E3	E4	E5	A1	A3	A5	A1	A3 ⁵	A5
Exchange Online K1											
Exchange Online Plan 1											
Exchange Online Plan 2											
SharePoint Online K1											
SharePoint Online Plan 1											
SharePoint Online Plan 2											
Skype for Business Online Plan 1											
Skype for Business Online Plan 2											
Phone System											
Audio Conferencing											
Office Online											
Office 365 ProPlus											
Microsoft MyAnalytics											
Office 365 Advanced Compliance											
Office 365 Cloud App Security											
Office 365 Threat Intelligence											
Microsoft Power BI Pro											
Office 365 Advanced Threat Protection											
Microsoft Intune											
Azure Info Protection Premium Plan 1											
Azure Info Protection Premium Plan 2											
Azure Active Directory Premium Plan 1											
Azure Active Directory Premium Plan 2											
Azure Advanced Threat Protection for Users											
Microsoft Cloud App Security											
Microsoft Stream Plan 1											
Microsoft Stream Plan 2											
Minecraft: Education Edition											

¹ Add-on Suite SLs that include "without ProPlus" in the title do not include rights to Office 365 ProPlus.

² In addition to the Online Services identified above, the Microsoft 365 Education fulfills the SL requirement for Windows SA per User as described in the Product Terms.

³ Inclusion of Skype for Business Online Audio Conferencing with Office 365 Government/Education E5/A5 is dependent on regional availability.

⁵ Includes Microsoft 365 Education A3 with Core CAL.

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Attachment 3 – The Standard Contractual Clauses (Processors)

Execution of the volume licensing agreement by Customer includes execution of this Attachment 3, which is countersigned by Microsoft Corporation. To opt out of the “Standard Contractual Clauses”, Customer must send the following information to Microsoft in a written notice (under terms of the Customer’s volume licensing agreement):

- the full legal name of the Customer and any Affiliate that is opting out;
- if Customer has multiple volume licensing agreements, the volume licensing agreement to which the Opt Out applies; and
- a statement that Customer (or Affiliate) opts out of the Standard Contractual Clauses.

In countries where regulatory approval is required for use of the Standard Contractual Clauses, the Standard Contractual Clauses cannot be relied upon under European Commission 2010/87/EU (of February 2010) to legitimize export of data from the country, unless Customer has the required regulatory approval.

Beginning May 25, 2018 and thereafter, references to various Articles from the Directive 95/46/EC in the Standard Contractual Clauses below will be treated as references to the relevant and appropriate Articles in the GDPR.

For the purposes of Article 26(2) of Directive 95/46/EC for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection, Customer (as data exporter) and Microsoft Corporation (as data importer, whose signature appears below), each a “party,” together “the parties,” have agreed on the following Contractual Clauses (the “Clauses” or “Standard Contractual Clauses”) in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the data exporter to the data importer of the personal data specified in Appendix 1.

Clause 1: Definitions

(a) 'personal data', 'special categories of data', 'process/processing', 'controller', 'processor', 'data subject' and 'supervisory authority' shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;

(b) 'the data exporter' means the controller who transfers the personal data;

(c) 'the data importer' means the processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC;

(d) 'the subprocessor' means any processor engaged by the data importer or by any other subprocessor of the data importer who agrees to receive from the data importer or from any other subprocessor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;

(e) 'the applicable data protection law' means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;

(f) 'technical and organisational security measures' means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

Clause 2: Details of the transfer

The details of the transfer and in particular the special categories of personal data where applicable are specified in Appendix 1 below which forms an integral part of the Clauses.

Clause 3: Third-party beneficiary clause

1. The data subject can enforce against the data exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.

2. The data subject can enforce against the data importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.

3. The data subject can enforce against the subprocessor this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.

4. The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

Clause 4: Obligations of the data exporter

The data exporter agrees and warrants:

(a) that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;

(b) that it has instructed and throughout the duration of the personal data processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;

(c) that the data importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in Appendix 2 below;

(d) that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;

(e) that it will ensure compliance with the security measures;

(f) that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;

(g) to forward any notification received from the data importer or any subprocessor pursuant to Clause 5(b) and Clause 8(3) to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;

(h) to make available to the data subjects upon request a copy of the Clauses, with the exception of Appendix 2, and a summary description of the security measures, as well as a copy of any contract for subprocessing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;

(i) that, in the event of subprocessing, the processing activity is carried out in accordance with Clause 11 by a subprocessor providing at least the same level of protection for the personal data and the rights of data subject as the data importer under the Clauses; and

(j) that it will ensure compliance with Clause 4(a) to (i).

Clause 5: Obligations of the data importer

The data importer agrees and warrants:

(a) to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;

(b) that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;

- (c) that it has implemented the technical and organisational security measures specified in Appendix 2 before processing the personal data transferred;
- (d) that it will promptly notify the data exporter about:
 - (i) any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation,
 - (ii) any accidental or unauthorised access, and
 - (iii) any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;
- (e) to deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;
- (f) at the request of the data exporter to submit its data processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the data exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority;
- (g) to make available to the data subject upon request a copy of the Clauses, or any existing contract for subprocessing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of Appendix 2 which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the data exporter;
- (h) that, in the event of subprocessing, it has previously informed the data exporter and obtained its prior written consent;
- (i) that the processing services by the subprocessor will be carried out in accordance with Clause 11; and
- (j) to send promptly a copy of any subprocessor agreement it concludes under the Clauses to the data exporter.

Clause 6: Liability

1. The parties agree that any data subject who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any party or subprocessor is entitled to receive compensation from the data exporter for the damage suffered.
2. If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the data exporter, arising out of a breach by the data importer or his subprocessor of any of their obligations referred to in Clause 3 or in Clause 11, because the data exporter has factually disappeared or ceased to exist in law or has become insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, in which case the data subject can enforce its rights against such entity.

The data importer may not rely on a breach by a subprocessor of its obligations in order to avoid its own liabilities.

3. If a data subject is not able to bring a claim against the data exporter or the data importer referred to in paragraphs 1 and 2, arising out of a breach by the subprocessor of any of their obligations referred to in Clause 3 or in Clause 11 because both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the subprocessor agrees that the data subject may issue a claim against the data subprocessor with regard to its own processing operations under the Clauses as if it were the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the subprocessor shall be limited to its own processing operations under the Clauses.

Clause 7: Mediation and jurisdiction

1. The data importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the data importer will accept the decision of the data subject:
 - (a) to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority;
 - (b) to refer the dispute to the courts in the Member State in which the data exporter is established.
2. The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

Clause 8: Cooperation with supervisory authorities

1. The data exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.

2. The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any subprocessor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law.
3. The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any subprocessor preventing the conduct of an audit of the data importer, or any subprocessor, pursuant to paragraph 2. In such a case the data exporter shall be entitled to take the measures foreseen in Clause 5 (b).

Clause 9: Governing Law.

The Clauses shall be governed by the law of the Member State in which the data exporter is established.

Clause 10: Variation of the contract

The parties undertake not to vary or modify the Clauses. This does not preclude the parties from adding clauses on business related issues where required as long as they do not contradict the Clause.

Clause 11: Subprocessing

1. The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the subprocessor which imposes the same obligations on the subprocessor as are imposed on the data importer under the Clauses. Where the subprocessor fails to fulfil its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the subprocessor's obligations under such agreement.
2. The prior written contract between the data importer and the subprocessor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.
3. The provisions relating to data protection aspects for subprocessing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the data exporter is established.
4. The data exporter shall keep a list of subprocessing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5 (j), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.

Clause 12: Obligation after the termination of personal data processing services

1. The parties agree that on the termination of the provision of data processing services, the data importer and the subprocessor shall, at the choice of the data exporter, return all the personal data transferred and the copies thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.
2. The data importer and the subprocessor warrant that upon request of the data exporter and/or of the supervisory authority, it will submit its data processing facilities for an audit of the measures referred to in paragraph 1.

Appendix 1 to the Standard Contractual Clauses

Data exporter: Customer is the data exporter. The data exporter is a user of Online Services as defined in the section of the OST entitled "Data Protection Terms."

Data importer: The data importer is MICROSOFT CORPORATION, a global producer of software and services.

Data subjects: Data subjects include the data exporter's representatives and end-users including employees, contractors, collaborators, and customers of the data exporter. Data subjects may also include individuals attempting to communicate or transfer personal information to users of the services provided by data importer.

Categories of data: The personal data transferred includes e-mail, documents and other data in an electronic form in the context of the Online Services.

Processing operations: The personal data transferred will be subject to the following basic processing activities:

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a. Duration and Object of Data Processing. The duration of data processing shall be for the term designated under the applicable volume licensing agreement between data exporter and the Microsoft entity to which these Standard Contractual Clauses are annexed ("Microsoft"). The objective of the data processing is the performance of Online Services.

b. Scope and Purpose of Data Processing. The scope and purpose of processing personal data is described in the Security Practices and Policies section of the OST. The data importer operates a global network of data centers and management/support facilities, and processing may take place in any jurisdiction where data importer or its sub-processors operate such facilities.

c. Customer Data Access. For the term designated under the applicable volume licensing agreement data importer will at its election and as necessary under applicable law implementing Article 12(b) of the EU Data Protection Directive, either: (1) provide data exporter with the ability to correct, delete, or block Customer Data, or (2) make such corrections, deletions, or blockages on its behalf.

d. Data Exporter's Instructions. For Online Services, data importer will only act upon data exporter's instructions as conveyed by Microsoft.

e. Customer Data Deletion or Return. Upon expiration or termination of data exporter's use of Online Services, it may extract Customer Data and data importer will delete Customer Data, each in accordance with the OST applicable to the agreement.

Subcontractors: The data importer may hire other companies to provide limited services on data importer's behalf, such as providing customer support. Any such subcontractors will be permitted to obtain Customer Data only to deliver the services the data importer has retained them to provide, and they are prohibited from using Customer Data for any other purpose.

Appendix 2 to the Standard Contractual Clauses

Description of the technical and organizational security measures implemented by the data importer in accordance with Clauses 4(d) and 5(c):

1. Personnel. Data importer's personnel will not process Customer Data without authorization. Personnel are obligated to maintain the confidentiality of any Customer Data and this obligation continues even after their engagement ends.

2. Data Privacy Contact. The data privacy officer of the data importer can be reached at the following address:

Microsoft Corporation

Attn: Chief Privacy Officer

1 Microsoft Way

Redmond, WA 98052 USA

3. Technical and Organization Measures. The data importer has implemented and will maintain appropriate technical and organizational measures, internal controls, and information security routines intended to protect Customer Data, as defined in the Security Practices and Policies section of the OST, against accidental loss, destruction, or alteration; unauthorized disclosure or access; or unlawful destruction as follows: The technical and organizational measures, internal controls, and information security routines set forth in the Security Practices and Policies section of the OST are hereby incorporated into this Appendix 2 by this reference and are binding on the data importer as if they were set forth in this Appendix 2 in their entirety.

Signature of Microsoft Corporation appears on the following page.

Signing the Standard Contractual Clauses, Appendix 1 and Appendix 2 on behalf of the data importer:

Signature  Rajesh Jha, Corporate Vice President
Microsoft Corporation
One Microsoft Way, Redmond WA, USA 98052

Attachment 4 – European Union General Data Protection Regulation Terms

Microsoft makes the commitments in these GDPR Terms, to all customers effective May 25, 2018. These commitments are binding upon Microsoft with regard to Customer regardless of (1) the version of the OST that is otherwise applicable to any given Online Services subscription or (2) any other agreement that references this attachment.

For purposes of these GDPR Terms, Customer and Microsoft agree that Customer is the controller of Personal Data and Microsoft is the processor of such data, except when Customer acts as a processor of Personal Data, in which case Microsoft is a subprocessor. These GDPR Terms apply to the processing of Personal Data, within the scope of the GDPR, by Microsoft on behalf of Customer. These GDPR Terms do not limit or reduce any data protection commitments Microsoft makes to Customer in the Online Services Terms or other agreement between Microsoft and Customer. These GDPR Terms do not apply where Microsoft is a controller of Personal Data.

Relevant GDPR Obligations: Articles 28, 32, and 33

1. Microsoft shall not engage another processor without prior specific or general written authorisation of Customer. In the case of general written authorisation, Microsoft shall inform Customer of any intended changes concerning the addition or replacement of other processors, thereby giving Customer the opportunity to object to such changes. (Article 28(2))
2. Processing by Microsoft shall be governed by these GDPR Terms under European Union (hereafter “Union”) or Member State law and are binding on Microsoft with regard to Customer. The subject-matter and duration of the processing, the nature and purpose of the processing, the type of Personal Data, the categories of data subjects and the obligations and rights of the Customer are set forth in the Customer’s licensing agreement, including these GDPR Terms. In particular, Microsoft shall:
 - (a) process the Personal Data only on documented instructions from Customer, including with regard to transfers of Personal Data to a third country or an international organisation, unless required to do so by Union or Member State law to which Microsoft is subject; in such a case, Microsoft shall inform Customer of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest;
 - (b) ensure that persons authorised to process the Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
 - (c) take all measures required pursuant to Article 32 of the GDPR;
 - (d) respect the conditions referred to in paragraphs 1 and 3 for engaging another processor;
 - (e) taking into account the nature of the processing, assist Customer by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Customer’s obligation to respond to requests for exercising the data subject’s rights laid down in Chapter III of the GDPR;
 - (f) assist Customer in ensuring compliance with the obligations pursuant to Articles 32 to 36 of the GDPR, taking into account the nature of processing and the information available to Microsoft;
 - (g) at the choice of Customer, delete or return all the Personal Data to Customer after the end of the provision of services relating to processing, and delete existing copies unless Union or Member State law requires storage of the Personal Data;
 - (h) make available to Customer all information necessary to demonstrate compliance with the obligations laid down in Article 28 of the GDPR and allow for and contribute to audits, including inspections, conducted by Customer or another auditor mandated by Customer.

Microsoft shall immediately inform Customer if, in its opinion, an instruction infringes the GDPR or other Union or Member State data protection provisions. (Article 28(3))

3. Where Microsoft engages another processor for carrying out specific processing activities on behalf of Customer, the same data protection obligations as set out in these GDPR Terms shall be imposed on that other processor by way of a contract or other legal act under Union or Member State law, in particular providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the processing will meet the requirements of the GDPR. Where that other processor fails to fulfil its data protection obligations, Microsoft shall remain fully liable to the Customer for the performance of that other processor’s obligations. (Article 28(4))

4. Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, Customer and Microsoft shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk, including inter alia as appropriate:

- (a)** the pseudonymisation and encryption of Personal Data;
- (b)** the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
- (c)** the ability to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident; and
- (d)** a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing. (Article 32(1))

5. In assessing the appropriate level of security, account shall be taken of the risks that are presented by processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data transmitted, stored or otherwise processed. (Article 32(2))

6. Customer and Microsoft shall take steps to ensure that any natural person acting under the authority of Customer or Microsoft who has access to Personal Data does not process them except on instructions from Customer, unless he or she is required to do so by Union or Member State law. (Article 32(4))

7. Microsoft shall notify Customer without undue delay after becoming aware of a personal data breach. (Article 33(2)). Such notification will include that information a processor must provide to a controller under Article 33(3) to the extent such information is reasonably available to Microsoft.

TERMS & CONDITIONS

(v4.0, February 2018)

The following terms and conditions (**Terms**) apply to all transactions with Softcat plc to the exclusion of all other terms and conditions, irrespective of the date of any alternative terms and conditions which may be sent to Softcat. These Terms shall become binding on the Customer on the earlier of: (i) a Contract is accepted by Softcat; (ii) the Customer signing or agreeing in writing to a Contract, or placing an order via eCat; (iii) the Customer agreeing these Terms in writing (which may include email or acceptance through electronic method); (iv) the Customer paying any amount towards any item specified in the Customer Schedule; or (v) Softcat delivering, installing, using or accessing (where applicable) any Product or Service.

1 Definitions and Interpretation

1.1 In these Terms, the following expressions shall have the meanings set out here:

Defined term	Definition
Annuity Services	The Services to be supplied by Softcat to the Customer on an ongoing, renewable basis pursuant to a Contract, including software-as-a-service, support, managed, cloud and connectivity services etc.
Contract	The transaction-specific agreement, written or oral, between the Customer and Softcat, comprising the Customer Schedule and these Terms
Customer	The person, company or other body purchasing the Products and/or Services from Softcat pursuant to a Contract

Customer Schedule	The document setting out the agreed Products and/or Services, the Fees and all other information relevant to the Contract (including any Specification of any Products and/or service description/scope of works for any Services), which may include the Quote or such other document(s) which contain that information as were provided to the Customer pre-Contract, or a subsequently-signed document
Data Controller	As defined in the Data Protection Laws
Data Processing Agreement	The document required by Article 28(3) (and equivalent provisions) of the General Data Protection Regulation (Regulation (EU) 2016/679, with effect from 25 May 2018 (please note that obligations in these Terms relating to Data Processing Agreements are not applicable until that time)
Data Processor	As defined in the Data Protection Laws
Data Protection Laws	The Data Protection Act 1998 and, with effect from 25 May 2018, the General Data Protection Regulation (Regulation (EU) 2016/679), and any amendment, re-enactment and replacement enforceable in the UK from time to time
Data Subject	As defined in the Data Protection Laws
Due Date	The date 30 calendar days after the date of the relevant invoice
eCat	Softcat's e-business platform, which a Customer may be authorised by Softcat to access, in which case that Customer may, subject to these Terms, enter into Contracts for Products and/or Services with Softcat through this platform, and may undertake certain administrative activities (reporting, order tracking etc)
EEA	The European Economic Area
EULA	The end user licence agreement applicable to the relevant Product, as stipulated by the Manufacturer of that Product
Fees	The sums payable by the Customer to Softcat pursuant to a Contract
Good Industry Practice	The degree of skill and care which it is reasonable to expect of a typical provider of services similar to the Services being provided under the relevant Contract
Hardware	Any information technology and/or computer and communications hardware to be supplied to the Customer by Softcat pursuant to a Contract

Intellectual Property Rights	Rights of any nature whatsoever, whether registered or unregistered, including any patent, right in a design, copyright, trade mark, utility model, design right, service mark, database right and other intellectual property right whether or not capable of registration as may exist anywhere in the world, now or in the future
Manufacturer	The manufacturer, developer, distributor or licensor of the relevant Product, as applicable
Particular Losses	Without limitation, pure economic loss, loss of profit, loss of revenue, loss of data, loss of business and/or depletion of goodwill or anticipated savings, legal costs and any indirect, consequential, special or punitive loss
Party	Either of Softcat or the Customer, together the Parties
Personal Data	The 'personal data' (as defined in the Data Protection Laws) over which the Customer is the Data Controller
Processing	As defined in the Data Protection Laws (and Process & Processed shall be interpreted accordingly)
Product	Any Hardware, Software or other goods supplied by Softcat to the Customer pursuant to a Contract
Quote	The written statement provided by Softcat to the Customer prior to concluding a Contract, setting out the Specification, scope, Fees and any other relevant details in respect of, and summarising any specific terms for, any Products and/or Services to be provided
Services	The services to be supplied by Softcat to the Customer pursuant to a Contract, being (a) services provided on a case-by-case basis (including consultancy, advice, design, installation, implementation, configuration etc.) and (b) Annuity Services
Softcat	Softcat plc, a company registered in England and Wales with registered number 02174990, whose registered address is Solar House, Fieldhouse Lane, Marlow, Buckinghamshire, United Kingdom SL7 1LW
Software	The pre-packaged software or electronic licence supplied to the Customer by Softcat pursuant to a Contract
Specification	The summary of the technical abilities, functionality and limitations of the Product and/or Service (for a Service, this document may be in the form of a 'service description' or 'scope of works') (https://www.softcat.com/)
Working Day	Monday to Friday excluding public holidays in England and Wales (and, if the supply of Products and/or Services is to a country other than England and Wales, also excluding the public holidays in the country to which the supply is made)

Working Hours	The hours of 9.00 a.m. to 5.00 p.m. during a Working Day
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1.2 Clause, schedule and paragraph headings shall not affect the interpretation of these Terms. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision. Any phrase introduced by the words "including", "includes", "in particular" or "for example", or any similar phrase, shall be construed as illustrative and shall not limit the generality of the related general words. Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular. A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors or permitted assigns. Any obligation on a Party not to do something includes an obligation not to allow that thing to be done.

2 Ordering Products and Services

2.1 No Contract which has been accepted by Softcat may be cancelled by the Customer unless written agreement is obtained from an authorised representative of Softcat; however, the Customer shall remain liable for and shall indemnify Softcat in full for any costs, damages, losses, charges and expenses incurred by Softcat as a result of any cancellation of a Contract.

2.2 Softcat may make any changes to the Specifications of Products or Services to conform to any applicable health and safety or legal requirement, or which do not materially negatively affect their quality or performance.

2.3 Softcat's policy is to supply Products and Services only to business customers (i.e. those who are not private consumers). In accepting these Terms, the Customer warrants that it is not purchasing the Products or Services as a private consumer.

2.4 All descriptions, Specifications, photographs, weights, dimensions, capacities, prices, performance ratings and other information quoted (whether online or in hard copy format) or otherwise provided by Softcat or included in any sales literature, Quote, price list, acknowledgement of order, invoice or other document are to be deemed approximate only (except where stated in writing to be exact) and shall not form part of the Contract other than as approximations. Any typographical, clerical or other error or omission in any sales literature, Quote, Fees, price list, acknowledgement of order, invoice or other document (whether hard or electronic copy) or any other information issued by Softcat shall be subject to correction by Softcat without liability.

2.5 Quotes cease to have effect on the acceptance by Softcat of a Contract, unless that Quote forms the Customer Schedule at that time (which shall not be the case where an alternate Customer Schedule is provided). Quotes will automatically lapse at the end of the calendar month in which they are issued, unless expressly stated to the contrary on that Quote. See clause 6.8 in respect of Quotes relating to Products or Services which are billed on a use/consumption basis.



2.6 In the event of any discrepancy or conflict between the EULA, Customer Schedule (including any matter-specific documents and general Specifications), other parts of a Contract, these Terms or a Quote, the conflict shall be resolved with the earlier-listed document taking precedence over those documents listed later.

3 Delivery of Products

3.1 Softcat shall use its reasonable endeavours to deliver the Products to the premises stated in the Contract (and/or, in the case of electronic delivery of Products, to the email address or other electronic location as agreed) and/or to supply the Services by any delivery date estimated by Softcat. For the avoidance of doubt, the Customer acknowledges that such delivery date is not guaranteed or of the essence, and Softcat shall in no circumstances be liable to the Customer for any losses, damages or charges (including Particular Losses) incurred by the Customer due to the late delivery of Products and/or Services.

3.2 The Customer agrees that it will inspect the Products immediately upon delivery or collection and in all cases shall:

3.2.1 not sign to accept the Products if the types/quantities of Products are incorrect or the Products and/or their packaging are damaged in any way; and/or

3.2.2 inform Softcat in writing within 48 hours of delivery of any damage, shortages, defects or non-delivery of the Products which was not apparent at the time of delivery/collection,

and, where the Customer fails to do so, they shall be deemed to have accepted the Products.

3.3 If the Customer fails to take delivery of or, where agreed, collect the Products or fails to give Softcat adequate delivery instructions at the time stated for delivery (save for circumstances beyond the Customer's reasonable control or by reason of Softcat's fault) then without prejudice to any other rights or remedies available to it Softcat may at its sole discretion:

3.3.1 store the Products until actual delivery and charge the Customer for the reasonable costs (including insurance) of storage; and/or

3.3.2 sell the Products at the best price readily available and charge the Customer any shortfall below the Fees under the Contract.

4 Risk and Title

4.1 Risk of damage to, or loss of, Products shall pass to the Customer at the earlier of:

4.1.1 the time at which Products are delivered to the Customer or the Customer collects the Products; or

4.1.2 the time when Softcat has attempted to deliver the Products to the Customer and have been unable to complete delivery due to the actions or omissions of the Customer.

4.2 Notwithstanding when risk in the Products passes to the Customer, title in the Products shall not pass to the Customer until the earlier of: (i) Softcat has received cleared and full payment of the Fees for the Products and all other Products and Services (if applicable) supplied to the Customer for which payment is then due; (ii) on the Customer's resale of those Products, in which case title passes to the Customer immediately prior to such resale; or (iii) in the event that the Customer fails to meet the terms of payment for those Products, immediately prior to Softcat bringing legal action for payment of the Fees.

4.3 Until such time as title in the Products pass to the Customer:

4.3.1 the Customer shall keep the Products separate from other goods and properly stored, protected, insured & identified as Softcat's property; and

4.3.2 after the Due Date, Softcat shall be entitled to require the Customer to deliver up the Products to Softcat and if the Customer fails to do so immediately the Customer shall allow (or procure permission for) Softcat or its agents or representatives to enter upon the Customer's premises (or any other premises where the Products are stored) and repossess the goods.

5 Services

5.1 Where Softcat agrees to provide Services, any estimate or indication by Softcat as to the number of man days or man hours required by Softcat to undertake a specific task shall be construed as being an estimate only. Softcat shall in no circumstances be liable for a delay or for any other loss, damage or other cost of whatsoever nature (including without limitation Particular Losses) suffered or incurred by the Customer where such estimate or indication is incorrect.

5.2 Unless stated otherwise, the Fees agreed for the Services do not include travel, accommodation and subsistence expenses, nor the cost of time spent travelling incurred in the provision of the Services for which Softcat shall charge the Customer at its or its sub-contractors' (as applicable) then current rates, available on request.

5.3 Softcat will normally carry out the Services during Working Hours but may, on reasonable notice, require the Customer to provide access to the Customer's premises at other times. This does not apply to Annuity Services, which will generally be available at any time, subject to any applicable service levels and anticipated downtime (for maintenance etc).

5.4 At the Customer's request, Softcat may agree to provide Services outside Working Hours. However, this shall be subject to any reasonable additional Fees that may be made by Softcat for complying with such request. Such Fees shall be agreed in writing prior to commencement of any work outside of Working Hours.

5.5 Softcat expects that the Customer has adequate inspection, testing and approval processes and, on completion of any Services provided by Softcat, the sign off by the Customer of such services shall be considered the Customer's absolute acceptance of the satisfactory completion of such Services. In the event that the Customer has not confirmed their acceptance of the Services, nor raised any concerns about them, within 7 days of Softcat notifying the Customer that the Services are complete, the Customer agrees it is reasonable for Softcat to infer their acceptance and, where relevant, invoice for those Services.

5.6 Should the Customer become dissatisfied with the performance of any personnel assigned by Softcat to perform the Services, the Customer shall notify Softcat in writing with details of the unsatisfactory performance and, provided that Softcat is satisfied that the Customer's dissatisfaction is reasonable, Softcat shall re-assign personnel as soon as reasonably practicable.

5.7 No liability shall accrue to Softcat as a result of any defects in the delivery of the Services unless:

5.7.1 a reasonably detailed inspection and testing procedure has been undertaken by the Customer to ascertain that the Services had been undertaken correctly and in full, and

5.7.2 such inspection would not have been expected to identify the defect-causing loss (due to the latent and uncheckable nature of such defect).

5.8 Where Softcat agrees to provide support and/or maintenance Services in respect of Products supplied to the Customer, unless otherwise set out in the relevant Customer Schedule this will generally comprise reasonable assistance in the resolution of queries via a telephone call originated by the

Customer's licensed users of such Products during Working Hours for the agreed period (limited to first line support only). If Softcat is unable to resolve the query during a telephone call, the Customer may be required to contact the Manufacturer of the Product directly.

5.9 The Customer may from time to time wish to vary the scope of a Service. Softcat will use reasonable commercial endeavours to accommodate that variation. Any changes in the Fees and/or timescales as a result of that variation shall be negotiated between the Customer and Softcat, and where such negotiation has not concluded at the time the Customer confirms the variation is required, the Customer accepts any increase in work required pursuant to the variation shall be provided on a time and materials basis at Softcat's or its sub-contractors' (as applicable) then current rates for the same, available on request.

5.10 Although Services are undertaken with reasonable skill and care, Softcat cannot guarantee the accuracy of any advice, design or report.

6 Fees and Payment

6.1 The Fees payable by the Customer for the supply of Product(s) or Services shall be that which is set out and agreed between the Customer and Softcat each time Softcat accepts a Contract placed by the Customer and as specified in the Customer Schedule or Quote as appropriate (unless varied by the Contract and Softcat's acceptance). All Fees quoted are deemed exclusive of value added tax, unless expressly stated to the contrary.

6.2 Any increase in Fees for the Annuity Services shall be applied no more often than once per year at or around each anniversary of the commencement of those Services, and shall not exceed the increase in the UK Retail Price Index or Consumer Price Index (whichever is lower) calculated over the preceding 12 months unless Softcat can demonstrate that its costs in providing such Service have unavoidably increased by a sum exceeding that figure. Softcat shall notify the Customer in writing (a) at least 90 days in advance of any increase in the Fees for the Services, or (b) if Softcat is notified of such increase less than 90 days in advance of it becoming effective, at soon as is reasonably practicable thereafter.

6.3 Unless otherwise agreed between the Parties, invoices will be raised and dated by Softcat on or after the date of dispatch of the Products, or on or after commencement of the Services. Where both Products and Services are supplied against the same Contract, a separate invoice may be raised for each of those two elements.

6.4 The Customer shall pay each invoice in full (subject to a bona fide dispute), together with any VAT at the appropriate rate and other expenses, by the Due Date. The time of payment shall be of the essence.

6.5 If the Customer fails to pay any sums due by the Due Date or does not comply with an obligation under the Contract, then without prejudice to any other right or remedy available to Softcat, Softcat shall be entitled to withhold or suspend the supply of any Products and/or Services to the Customer until such payment is made or the Customer complies with its obligations to Softcat's reasonable satisfaction.

6.6 Without prejudice to Softcat's other rights and remedies, Softcat reserves the right to charge interest to the Customer on any Fees which are not paid by the Due Date, at a rate of four per cent per annum above the Bank of England base rate from time to time.

6.7 Where the Fees for a Contract are not all invoiced at the same time (e.g. where the Fees for each year of a multi-year Contract are invoiced at the start of that year) the Customer is committing to continue to make those payments over the entire period agreed in the Contract. Whilst Softcat will

make reasonable endeavours to meet the reasonable administrative requests of the Customer, the Customer accepts that they have committed to the entire duration agreed and Softcat will invoice the Customer for each period in line with the Contract, regardless of whether a purchase order is received from the Customer for a specific period.

6.8 Where the Fees for a Contract are stated in the Customer Schedule to be based on consumption (e.g. where the Fees are based on the volume of storage used in gigabytes, or number of concurrent users etc.):

6.8.1 the Customer is committing to pay Softcat the Fees on that periodic basis for all retrospective consumption under that Contract, regardless of whether the relevant Quote was based on a different level of consumption anticipated at that time or purchase orders are received for a different specific consumption/period than actually occurred (and if purchase orders are incorrect or not received, Softcat shall rely on the Customer's initial commitment to purchase pursuant to the Contract, and will automatically invoice the Fees related to actual consumption in line with the Contract); and

6.8.2 the Customer understands that the Fees stated in a Quote are based on an estimate of expected consumption (which Softcat has calculated based on information provided by the Customer) but the Customer will be invoiced for the quantity and duration of actual consumption (subject in each case to any minimum commitment in respect of both factors, as set out in the Contract) according to their nature, and any reductions or increases in consumption will be payable in line with the Contract as invoiced.

6.9 If the Customer Schedule provides that the Fees or any part of the Fees shall be split across the duration of a Service or the lifecycle of a Product, or are payable in arrears, then Softcat may withdraw or vary such arrangements, and issue an invoice for any Fees which have yet to be invoiced under the Contract, if:

6.9.1 Softcat serves a notice of termination of the Contract;

6.9.2 there is (in the opinion of Softcat) a material adverse change in the creditworthiness of the Customer; or

6.9.3 the Customer fails to pay any amount which is due and payable.

6.10 Softcat or its agent shall deliver the Products to any premises (whether in the United Kingdom or in any country) agreed in the Contract and for the avoidance of doubt the Customer shall be liable for any costs incurred by Softcat in relation to carriage, postage and packing and any other applicable taxes and duties. If any deduction or withholding from the Fees is required by way of tax, excise, customs or otherwise from a jurisdiction other than the United Kingdom, the Customer agrees to pay as Fees to Softcat any additional amounts necessary to ensure that the net amount that Softcat receives, after any deduction and withholding, equals the amount Softcat would have received if no deduction or withholding had been required.

6.11 The Customer acknowledges that Softcat sources Products from outside the United Kingdom, and may purchase in a currency other than pounds sterling. Where this occurs, the Fees proposed to the Customer in a Quote are based on Softcat's currency exchange rates (including any applicable commissions for currency conversion) on the day of that Quote (available on request). Fees stated in such a Quote are given by way of convenience only and are subject to currency fluctuation. The Fees to be paid by the Customer in pounds sterling will be calculated on the Working Day in the UK on which the Contract is concluded, based on the currency exchange rates applicable that day (with any relevant commissions for currency conversion to be added), and that Fees calculated will become automatically binding at that time.

6.12 The Customer shall not be entitled to make a set-off or counter-claim or claim a lien in respect of any amounts owed by Softcat and shall pay all amounts due without making a deduction of any kind. Softcat shall be entitled to set-off any amounts owed to it by the Customer against any sums Softcat owes to the Customer.

6.13 The Customer acknowledges that Softcat is not a finance provider and, where Products and/or Services are paid for by way of a lease or other financial product, it is likely the agreement for the purchase of those Products and/or Services exists directly between the Customer and the finance provider; Softcat is not a party to such agreement and neither Softcat nor the Customer shall have any rights or obligations to each other in respect of Products and/or Services transacted in this manner.

7 Returns Policy

7.1 Where returns are permitted by our supply chain, Softcat allows Customers to return unopened Products within 30 days of delivery; however, all returns are at Softcat's sole and absolute discretion, will depend on our suppliers' returns policies and may be subject to reasonable restocking fees or other conditions. Other than in line with the relevant Manufacturer's 'dead on arrival' (**DOA**) policies or warranties, Softcat will not accept returns with a value below £50.

7.2 Under no circumstances will Softcat accept returns of opened Products unless those Products are faulty and the provisions of the remainder of this clause 7 are met. For the avoidance of doubt, no Software on which the seals have been broken can be returned. Software licences provided electronically (i.e. other than in physical format) are non-refundable.

7.3 In circumstances where return of Product(s) is permitted by Softcat, it will issue a credit note to the Customer so the invoice for the relevant Product is deemed cancelled and, in the event a Customer has already paid for those Products, a refund will be granted.

7.4 The refund or replacement of faulty or defective Products is subject strictly to individual Manufacturer's DOA policies or warranty, available on request.

7.5 The Customer must observe the requirements of the Manufacturer's DOA policy and/or warranty, including notifying Softcat of a defect in the Products within the required time limit.

7.6 Although Softcat may make reasonable endeavours to troubleshoot any problems the Customer experiences with the Products, the Customer acknowledges that Softcat is not the Manufacturer of the Products and that Softcat may be contractually limited by that Manufacturer as to the extent of the assistance they are permitted to provide. Accordingly, the Customer may be required to contact the Manufacturer's technical department to troubleshoot and/or to obtain DOA authorisation (which shall be retained by the Customer, along with any call/case reference numbers, and presented to Softcat upon request).

7.7 In the case where it is established that Products are faulty or defective within the relevant Manufacturer warranty or DOA period, Softcat's customer service department will arrange with the Customer to have the Products collected or returned. In some instances, the Manufacturer's warranties require the Customer to contact a repair agent directly. If this is the case, the Customer will be informed by Softcat's customer service department and provided with the contact details for the relevant Manufacturer to discuss such collection or return.

7.8 Where Softcat has indicated to the Customer that the return of a Product is permitted, the Customer is responsible for ensuring that the Products are returned to Softcat (or the relevant third party) in their original packaging together with all disks, manuals, cables and any other peripherals, accessories, consumables and other parts or items with which they were boxed or inseparably supplied

so as to ensure satisfaction of the Manufacturer's DOA policy and/or warranty stipulations (as appropriate), safe transit and ease of identification. The external packaging must not be damaged or defaced so it is recommended the goods are re-boxed for transport.

7.9 The Products will be tested on receipt. If no fault is found the Products shall be returned to the Customer at the Customer's cost. If a fault is found and the applicable Manufacturer's DOA period is exceeded, then the Products will be repaired and/or replaced under the terms of the Manufacturer's warranty, to the extent that such warranty remains in force at that time.

7.10 In the event that the Manufacturer's DOA cover and/or warranty have lapsed, expired, been invalidated or did not apply, Softcat shall have no liability to the Customer for such Product(s).

8 Customer's Obligations and Warranties

8.1 In order to enable the fulfilment by Softcat of its obligations under a Contract, the Customer shall, at its own expense:

8.1.1 comply with, and use the Products and Services in accordance with these Terms and all applicable laws, and observe the requirements of Softcat's Acceptable Use Policy, available at https://www.softcat.com/assets/uploads/pdfs/assets/uploads/Softcat_Acceptable_Use_Policy_1.pdf (https://www.softcat.com/assets/uploads/pdfs/assets/uploads/Softcat_Acceptable_Use_Policy_1.pdf), as may be updated from time-to-time, and shall ensure users of the Products and Services are adequately trained to use them;

8.1.2 where reasonably requested, or where it is reasonable for the Customer to anticipate such requirement, promptly furnish Softcat with co-operation, assistance and/or accurate & complete responses to requests for information (which shall include sufficient detail in that information);

8.1.3 allow Softcat or its subcontractors (as applicable) to exercise such right of entry as required over any relevant premises to deliver the Products and/or Services, provide Softcat with any relevant policies and procedures in relation to such premises (and, where such policies and procedures require time and/or materials over and above what would be normally expected to permit entry to the average business premises, provide these to Softcat before the Quote is prepared, or make payment or reasonable additional costs and expenses which arise in meeting the requirements of such policies and procedures), and take all reasonable precautions to protect the health and safety of those personnel whilst at that/those premises;

8.1.4 unless otherwise provided by Softcat, implement effective and appropriate backup and other procedures for the protection of its data;

8.1.5 observe any other obligations or requirements set out in the relevant Customer Schedule;
and

8.1.6 otherwise respond to and comply with Softcat's reasonable requests.

8.2 The Customer warrants that:

8.2.1 any of its representatives who commit the Customer to these Terms and any Contract with Softcat have the Customer's authority to do so and that the Customer will take responsibility for any employee, ex-employee or other person who holds themselves out to be the authorised representative of the Customer;

8.2.2 it will comply with and use the Products and Services in accordance with the Contract and all applicable laws;

8.2.3 it has and shall maintain all necessary licences, permits, rights, consents, registrations, approvals and titles necessary for Softcat to use or host any software, hardware, documentation or other materials provided by the Customer for use in the provision of the Products or Services to the Customer; and

8.2.4 any information and materials supplied by the Customer in connection with a Quote or Contract shall be accurate and complete, and Softcat's use of such shall not cause Softcat to infringe the rights, including any Intellectual Property Rights, of any third party.

9 Intellectual Property Rights and Software Licences

9.1 The title to and the Intellectual Property Rights in the Product(s) and in the media containing such Product(s) does not pass to the Customer. The Customer is licensed to use such Product(s) in accordance with these Terms and the EULA applicable to those Product(s), and by entering into these Terms and any Contract pursuant to them, the Customer agrees to enter into and comply with the terms of such EULA(s).

9.2 Each Party grants to the other a non-exclusive, limited, revocable licence to use its Intellectual Property Rights solely to the extent necessary for the other Party to perform its obligations under the Contract. The Parties agree that all Intellectual Property Rights which existed prior to the date of the Contract in relation to any items used in the performance of any Services shall remain the property of the existing owner of those Intellectual Property Rights.

9.3 Softcat (and/or their supply chain and subcontractors) shall own and be fully entitled to use in any way it deems fit any Intellectual Property Rights, including skills, techniques, materials, concepts or know-how acquired, developed or used in the course of performing any Services and any improvements made or developed during the course of Services. For the avoidance of any doubt, this shall include any improvements or modifications to Products during the duration of the Contract. Nothing herein shall be construed or shall give effect to any transfer of right, title or interest in the Customer's or Softcat's Intellectual Property Rights.

9.4 Save where the relevant EULA permits such copying, the Customer shall not, without Softcat's prior written consent, copy or reproduce in any way the whole or a part of the user manual or any other documentation which has been supplied to the Customer relating to any Products or Services.

10 Warranties

10.1 To the maximum extent permissible in law, all conditions and warranties which are to be implied by statute or general law into these Terms or relating to the Products or the Services are excluded. Notwithstanding this, any Products supplied under these Terms will conform substantively to any Specifications given in relation to them and any Services provided under these Terms will be provided in a diligent and professional manner, with reasonable skill and care and in accordance with Good Industry Practice.

10.2 Softcat warrants it has the right to provide or procure the provision of the Products and Services.

10.3 Softcat does not warrant that the Customer's use of any Products or Services will be uninterrupted and error-free.

10.4 The only additional warranties which the Customer may receive are those which are given by the Manufacturer of such Products to the Customer and are subject to any relevant limitations and exclusions imposed by such Manufacturer. Softcat will provide the Customer with details of such warranties upon request.

11 General Exclusions and Limitations of Liability

11.1 Nothing in these Terms shall limit Softcat's liability to the Customer for liabilities which cannot be limited or excluded as a matter of law including death or personal injury (where resulting from the negligence of Softcat, its employees, agents or subcontractors), fraud, fraudulent misrepresentation and statutorily-imposed terms regarding title of goods.

11.2 Softcat shall not in any circumstances be liable for Particular Losses, whether direct, indirect or consequential, even if a Party has been advised of the possibility of such losses.

11.3 The Customer agrees that the limitations on liability in these Terms are reasonable, given the Parties' respective commercial positions and the Customer's option to purchase appropriate insurance in respect of arising risks. The total liability which Softcat shall owe to the Customer in respect of all claims under all Contracts shall not exceed 125% of the Fees paid by the Customer in the last 12 months in respect of the Products or Services to which the claim(s) relate.

11.4 The Customer shall indemnify and keep Softcat indemnified in respect of any losses, costs, damages, claims and/or expenses incurred by Softcat due to any claims by any third party arising out of any use of, access to or modification of the Customer's computer systems by Softcat on the Customer's instructions and/or use of any materials supplied to Softcat by the Customer (including, but not limited to, actions in line with clause 8.2.4). This indemnity shall survive termination or expiry of a Contract to which it relates.

11.5 If delivery of Products and/or Services is delayed other than through Softcat's fault, including delay as a result of the Customer's agents or subcontractors, the Customer shall indemnify Softcat for any sums incurred by them as a result of that delay. Any agreed time schedules shall be deferred to a reasonable period of time (no less than the resulting period of the delay).

11.6 In the event that the Customer fails for any reason to meet their obligations under a Contract, including the obligations set out in clause 8 above, the Customer shall indemnify Softcat against any loss, damage or other cost of whatsoever nature suffered or incurred by Softcat reasonably relating to that failure on the part of the Customer.

11.7 Unless Softcat undertakes Services with an expressly stated outcome of advising a Customer in writing on the Products and/or Services which it recommends to meet a particular requirement, the Customer acknowledges that it is relying solely upon its own skill and judgement, and not that of Softcat, in determining the suitability of any Products and/or Services and their fitness for any general or specific purpose.

11.8 The Customer accepts that they are best placed to know what information may be relevant in respect of their existing and anticipated infrastructure/circumstances. Where Softcat suggests potential Products, or undertakes Services, Softcat shall not be liable for any advice, conclusions or reports which are erroneous or incomplete as a result of the Customer's (or their agent's) failure to supply complete and correct information, including any information which may be relevant but which has not been specifically requested by Softcat (or their subcontractors).

12 Force Majeure

Neither Party shall be liable to the other Party in any manner whatsoever for any failure or any delay or for the consequences of any delay in performing its obligations under a Contract (save in respect of any obligation to pay money) due to any cause beyond the reasonable control of the Party in question, which for the avoidance of doubt (and without prejudice to the generality of the foregoing) shall include governmental actions, war, riots, civil commotion, fire, flood, epidemic, labour disputes including labour disputes involving the work force or any part thereof of the Party in question, restraints or delays

affecting shipping or carriers, inability or delay in obtaining supplies of adequate or suitable materials, currency restrictions and acts of God. Neither non-payment of Fees by the Customer, nor non-payment of the Customer by their customers, shall be considered a force majeure event for the purposes of this clause 12.

13 Termination

13.1 Softcat shall be entitled to terminate any Contract and suspend all or any work on current or future deliveries and instalments of Products or the provision of any Services and on written notice to the Customer shall be entitled to cancel the undelivered or unperformed portion of the Contract between Softcat and the Customer and deem that the whole of the Fees payable under the Contract or any other agreement shall be payable immediately in the event of:

13.1.1 any distress, execution or other legal process being levied upon any of the Customer's assets;

13.1.2 the Customer entering into any arrangement or composition with its creditors, committing any act of bankruptcy or (being a corporation) an order being made or an effective resolution being passed for its winding up, except for the purposes of amalgamation or reconstruction as a solvent company, or a receiver, manager receiver, administrative receiver or administrator being appointed in respect of the whole or any part of its undertaking or assets;

13.1.3 the Customer ceasing or threatening to cease to carry on business;

13.1.4 any material breach of the Contract by the Customer (including a failure to pay any Fees due by the relevant Due Date) which is not capable of remedy or which it fails to remedy within 14 calendar days (or as otherwise agreed by Softcat), or other repeated breaches of the Contract by the Customer; or

13.1.5 Softcat reasonably anticipating that any of the events mentioned above is about to occur.

13.2 In the event of termination pursuant to clause 13.1 above Softcat shall, for the avoidance of doubt, be entitled to:

13.2.1 recover as damages from the Customer all reasonable costs which Softcat sustains due to such termination; and

13.2.2 where the Customer is being provided with ongoing Services (including Managed Services), Softcat shall be entitled to cease provision of those Services and invoice any Fees which would have been payable over the anticipated period of delivery of those Services.

13.3 In the event of such termination, should the Customer have failed to make payment in full for any Software, then the Customer shall immediately cease use of all Software (and any updates of same) and, at its own expense, remove from all computers, communications systems and other electronic devices under its control all copies of the Software (and updates) and return or destroy them (certifying in writing to Softcat that such destruction has taken place).

13.4 For a period of six months following termination of the Contract the Customer shall, on not less than two days' notice, permit authorised representatives of Softcat to enter its premises during normal business hours for the purposes of confirming that the Customer has complied with its post termination obligations.

13.5 The exercise of the rights conferred by this clause 13 shall be without prejudice to any other right enjoyed by Softcat pursuant to these Terms or by law.

14 Assignment

14.1 The Customer will not be entitled to subcontract, assign the benefit or delegate the burden of the Contract without the prior written consent of Softcat which it may in its absolute discretion refuse.

14.2 Softcat shall be free to subcontract any or all of its rights and obligations under a Contract or these Terms as it sees fit, and may assign the benefit or delegate the burden of any Contract.

15 Confidentiality and Data Protection

15.1 For the purposes of these Terms, **Confidential Information** means all information, technical data or know-how, (whether written, oral or by another means and whether directly or indirectly) relating to and/or provided by one of the Parties whether created before or after these Terms come into force including Personal Data, research, products, services, customers markets, software, developments, inventions, processes, designs, drawings, engineering, marketing or finances, which is reasonably deemed to be confidential or proprietary. Confidential Information includes the information of a third party that is in the possession of one of the Parties and is disclosed to the other Party in confidence. Confidential Information does not include information, technical data or know-how which: (i) is in the possession of the receiving Party at the time of disclosure, as shown by the receiving Party's files and records immediately prior to the time of disclosure; or (ii) prior to or after the time the disclosure becomes part of the public knowledge or literature, not as a result of any inaction or action of the receiving Party, or (iii) is expressly approved in writing for release by the disclosing Party or (iv) had been independently developed by the receiving Party without the use of any Confidential Information of the other Party.

15.2 Each Party agrees with the other in respect of all Confidential Information:

15.2.1 to keep the Confidential Information in strict confidence and secrecy;

15.2.2 not to use the Confidential Information save for complying with its obligations under these Terms;

15.2.3 not to disclose the Confidential Information to a third party (except to the extent compelled to by law); and

15.2.4 to restrict the disclosure of the relevant and necessary parts of the Confidential Information to such of its employees, agents, subcontractors and others who of necessity need it in the performance of their duties as envisaged by the Contract, and in those circumstances to ensure that those employees and others are aware of the confidential nature of the Confidential Information; provided however that where a part of the Confidential Information is already or becomes commonly known in the trade (except through a breach of the obligations imposed under these Terms) then the foregoing obligations of confidentiality in respect of such part shall not apply or shall cease to apply (as the case may be).

15.3 Each Party warrants that it shall comply with the Data Protection Laws when performing its respective obligations under the Contract. Softcat further commits to observe the requirements of their Privacy Policy (available for review at <https://www.softcat.com/privacy-policy> (<https://www.softcat.com/assets/components/tinymce/privacy-policy>)) as required.

15.4 Softcat will:

15.4.1 operate safety and security measures and procedures consistent with Good Industry Practice for the prevention of unauthorised access or damage to any and all locations in which Personal Data is stored and/or Processed by Softcat; and

15.4.2 take appropriate technical and organisational measures to protect Personal Data Processed by Softcat against unauthorised or unlawful Processing and accidental loss, destruction, alteration or disclosure and ensure that, having regard to the state of technological development and their cost of implementation, those measures ensure a level of security appropriate to (a) the harm that might result from such Processing, loss, destruction or damage; and (b) the nature of such Personal Data.

15.5 Where the Customer intends to, or might, include Personal Data in their use of the Products and/or Services purchased from Softcat, they will inform Softcat at the time a Quote is requested. Where so informed, Softcat will identify whether Softcat or a third party is the Data Processor for the purposes of the Processing, communicate that to the Customer at the point of Quote, and;

15.5.1 to the extent that Softcat itself Processes Personal Data on behalf of the Customer, Softcat will:

1. enter into a Data Processing Agreement with the Customer where required by the Data Protection Laws;
2. Process such Personal Data only in accordance with the Customer's instructions in that Data Processing Agreement, or as required by law or regulation; and
3. promptly inform the Customer if it receives a request or notice from a Data Subject seeking to exercise their rights under the Data Protection Laws in respect of such Personal Data, and (at the Customer's cost) comply with the Customer's reasonable instructions with respect to that request or notice; or

15.5.2 to the extent that a third party performs Processing activities as the result of a purchase by the Customer from Softcat of the Products or Services of that third party, Softcat will:

1. require that third party to meet the obligations set out in clause 15.4; and
2. facilitate the conclusion of a Data Processing Agreement between those parties, on the basis that the Processing relationship exists between the Customer and the third party (so that the third party is the direct Data Processor to the Customer's Data Controller).

15.6 In order to meet its obligations under a Contract (and, prior to that, to be able to obtain relevant information to enable a Quote to be prepared), Softcat will need to provide certain of the Customer's Personal Data to their supply chain, specifically the names and contacts details of the individuals at the Customer who are responsible for the subject matter of that Contract (or Quote). Where the Customer is purchasing certain Products or Services, it may also be necessary to provide the names and contacts details of the individual users of those Products or Services. Unless stated otherwise in a Data Processing Agreement between Softcat and the Customer, this will be the extent of Softcat's Processing of Personal Data on behalf of the Customer. Where required, the Customer confirms that it has obtained the necessary consents to share this Personal Data, and authorises Softcat to undertake the activities set out in this clause 15 to enable to creation or performance of a Contract.

15.7 The Customer authorises and instructs Softcat to take the steps in this clause 15 (and any additional steps set out in a Customer Schedule, but not any actions required by the Data Processing Agreement, for which authority is contained therein) in the Processing of Personal Data on its behalf as Softcat reasonably considers necessary to the performance of its obligations under the Contract (or with the intention of creating such a Contract), and authorises Softcat to give equivalent instructions to any relevant subcontractor on its behalf, warrants that it is and will remain entitled to give the instruction and authorisation in this clause 15, and confirms it will advise Softcat if that position changes in respect of any of the Personal Data.

15.8 Each Party will promptly inform the other if:

15.8.1 it has reason to believe that the activities of the other Party are in breach of the Data Protection Laws; and/or

15.8.2 it suspects or uncovers any breach of security in any respect which could impact the Personal Data or Confidential Information of the other Party, and the Party which has been breached will use all commercially reasonable endeavours to verify and, if verified, promptly remedy such breach.

15.9 The obligations in this clause 15 shall survive the termination of any Contract.

16 General Terms

16.1 Any demand, notice or other communication shall be in writing and may be served by hand or prepaid first-class post to the registered address of the intended recipient.

16.2 No amendment of these Terms during the period of a Contract shall be binding in respect of that Contract unless executed in writing and signed by authorised representatives of Softcat and the Customer. Notwithstanding the foregoing, Softcat reserves the right to alter these Terms at such time and in such manner as it sees fit and shall publish the then-current version of the Terms at www.softcat.com/terms-and-conditions (<https://www.softcat.com/terms-and-conditions>). The version of the Terms which is current at the time of the commencement of a Contract shall apply to that Contract, unless otherwise agreed in writing. Softcat will supply a hard copy of these Terms on Customer request.

16.3 The failure of Softcat at any time to enforce a provision of these Terms shall not be deemed a waiver of such provision or of any other provision of these Terms or of Softcat's right thereafter to enforce any such provision(s).

16.4 The Customer will not solicit, induce to terminate employment, or otherwise entice away whether directly or indirectly through another firm or company, any employee of Softcat professionally or otherwise directly associated with Softcat during the term of the Contract or for 12 months thereafter. For the avoidance of doubt, there is no restriction on the Customer employing any person who is employed or acting for Softcat where that person responds to a bone fide public advertisement for employees.

16.5 No third party may enforce any provision of these Terms by virtue of the Contracts (Rights of Third Parties) Act 1999 or any other method.

16.6 Together with the Customer Schedule and any EULA, these Terms are the complete and exclusive agreement between the Parties with respect to the subject matter of a Contract, and supersede any previous or contemporaneous agreement, proposal, commitment, representation, or other communication whether oral or written between the Parties regarding the subject matter of that Contract. These Terms prevail over any conflicting or additional terms of any purchase order, ordering document, acknowledgement or confirmation or other document issued by Customer, even if signed and returned.

16.7 Nothing in this agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the Parties, constitute any Party the agent of another Party (and on any resale of a Product by the Customer, such resale shall be made by the Customer as principal), or authorise any Party to make or enter into any commitments for or on behalf of any other Party.

16.8 If a provision in these Terms is held by any competent authority to be invalid or wholly or partly unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of these Terms or any Contract.

16.9 The formation, construction, performance, validity and all aspects whatsoever of these Terms shall be governed by English Law and the Parties hereby submit to the exclusive jurisdiction of the English courts.


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(http://www.softcat.com/contact-us/) (http://www.softcat.com/contact-us/)

View all offices ➤ (<https://www.softcat.com/contact-us/>)

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Legal bits

General Terms and Policies (<https://www.softcat.com/general-terms-and-policies/>)

Corporate Responsibility (<https://www.softcat.com/corporate-responsibility/>)

Privacy policy (<https://www.softcat.com/privacy-policy/>)

Website terms of use (<https://www.softcat.com/website-terms-of-use/>)

Modern Slavery Statement (<https://www.softcat.com/corporate-responsibility/modern-slavery-statement/>)

Sitemap (<https://www.softcat.com/sitemap>)

Investors (<https://www.softcat.com/investors/investor-centre/>)

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<https://twitter.com/Softcat>)

<https://www.linkedin.com/company/softcat>)

<https://www.facebook.com/softcatuk/>)

<https://www.instagram.com/softcatuk/>)

<https://www.youtube.com/user/SoftcatProductions>)

Master Services Agreement

For Softcat Managed Services

Version: 1.3

Private & Confidential



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Document Control

Prepared By

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Change History

Version	Date	Revision Notes

Associated Documents:

Version	Document Name	Notes
2.1	SLA	
1.0	Work Order form	
1.0	Change Control Policy	
1.0	Service Catalogue	

1. Definitions and Interpretation

1.1 In this master services agreement for Softcat managed services (this “MSA”), the following definitions shall apply.

Term	Definition
Acceptable Use Policy	Softcat’s acceptable use policy in respect of Managed Services, as notified to the Customer and as Softcat may update it from time to time in accordance with its terms.
Activation Date	The date from which Softcat considers that the Managed Services are ready for activation.
Business Day	Monday to Friday excluding public holidays in England and Wales.
Business Hours	9.00 a.m. to 6.00 p.m. on Business Days.
Cancellation Charge	An amount equal to: (i) if the cancellation takes effect after the later of the Contract Start Date and the Activation Date, the Fees that would otherwise have been payable from the date the Managed Service is cancelled to the the date such Managed Service was scheduled to expire in accordance with the Contract; and (ii) if the cancellation takes effect before the later of the Contract Start Date and the Activation Date, any non-recurring charges payable pursuant to clause 9.6 plus 50 per cent. of the other Fees payable during the Initial Term, plus in each case any other amounts specified as payable as part of the Cancellation Charge in the Work Order.
Change Control Procedure	The procedures for changing the Managed Service Specification as set out in clause 10.
Confidential Information	Confidential Information means any information, technical data or know-how, in any medium, which is marked “confidential”, which the receiving party knows or reasonably ought to know is confidential, or which is by its nature confidential, except information, technical data or know-how which: (iii) is in the possession of the receiving party at the time of disclosure, is not subject to an obligation of confidentiality and can be demonstrated beyond doubt as being in the receiving party’s files and/or records immediately prior to the time of disclosure; (iv) prior to or after the time of disclosure becomes public knowledge, other than as a result of breach by the receiving party of its obligations under the Contract; (v) is approved for release by the disclosing party; or (vi) is independently developed by the receiving party without the use of any Confidential Information of the disclosing party.
Contract	The agreement between Softcat and the Customer comprising this MSA and the Work Order.
Contract Start Date	The date specified as such in the Work Order.
Customer	The person identified as such in the Work Order.
Customer Data	Any data uploaded to, stored on or processed using the Managed Services by the Customer.
Customer’s Operating Environment	The Customer’s computing environment (consisting of hardware, software and telecommunications networks) that is to be used by the Customer in connection with its use of the Managed Services and which interfaces with Softcat’s System in order for the Customer to receive the Managed Services, but excluding the Customer Site Equipment.
Customer Representative	The contact defined in the Work Order or such other person notified in writing by Customer to Softcat who shall be the Customer’s main technical contact.

Customer Site	Any premises occupied by the Customer at which it receives the Managed Services, as detailed in the Work Order.
Customer Site Equipment	Any equipment located or to be located on a Customer Site but controlled or to be controlled exclusively by Softcat as part of the Managed Services.
Data Controller	Has the meaning given to it in the DPA.
Data Processor	Has the meaning given to it in the DPA.
DPA	The Data Protection Act 1998.
Documentation	The solution documentation made available to the Customer by Softcat from time to time which may set out any additional description of the Managed Services and/or contain the user instructions for the Managed Services.
Excused Outage	Any outage, unavailability, delay or other degradation of Service related to, associated with or caused by: Planned Maintenance events; any Service not supported by a Softcat traversing Hardware component; any third party plugin or ancillary equipment not supplied by Softcat; a Customer application running on a server (virtual or physical) which is not supported by Softcat; the Customer actions or inactions or those of any third party excluding any sub-contractor or IT Partner of Softcat directly involved in the performance, operation or maintenance of the Customer's Managed Service.
Fees	All of the fees payable to Softcat by the Customer in respect of the Managed Services, whether one-off or recurring, as set out in the Work Order in respect of the Initial Term, and thereafter as revised by Softcat prior to each Renewal Term in accordance with clause 13.3.
Good Industry Practice	The degree of skill and care which it is reasonable to expect of a provider of managed services similar to the Managed Services.
Hardware	All physical telecommunications, networking and computer equipment (including switches, routers, cables, servers, racks, cabinets and peripheral accessories) provided and used by Softcat to deliver the Managed Services to the Customer.
Initial Term	The initial term of the Contract specified in the Work Order, measured from the later of the Contract Start Date and the Activation Date.
Initial Work Order	The first document entitled "Work Order" issued by Softcat in response to the Customer's request for Managed Services, setting out at least a high level description of the Managed Services to be provided by Softcat, and the corresponding Fees payable by the Customer.
Intellectual Property Rights	Any and all intellectual property rights of any nature, whether registered, registerable or otherwise, including patents, utility models, trade marks, registered designs and domain names, applications for any of the foregoing, trade or business names, goodwill, copyright and rights in the nature of copyright, design rights, rights in databases, moral rights, know-how and any other intellectual property rights that subsist in computer software, computer programs, websites, documents, information, techniques, business methods, drawings, logos, instruction manuals, lists and procedures and particulars of customers, marketing methods and procedures and advertising literature, including the "look and feel" of any websites, and in each case all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these that may subsist anywhere in the world, in each case for their full term, together with any future rights and renewals or extensions.
IT Partner	A third party used by either party in the provision of a Managed Service.
Maintenance Contract	Hardware or Software support contracts held on supported devices and supplied by the manufacturer or recognised vendor support partner.
Managed Services	The managed services to be provided to the Customer by Softcat, as set out in the Work Order.
Managed Service Specification	The specification of the Managed Services as set out in the Work Order and the Documentation.
Personal Data	Has the meaning given to it in the DPA.
Renewal Term	A period of 12 months from the expiry of the Initial Term or the previous

	Renewal Term, as the case may be.
Replacement Supplier	Has the meaning given to it in clause 16.2.3.
Service Credit	Any credits payable to the Customer in accordance with the Service Level Arrangements.
Service Level Arrangement or SLA	The service level arrangements applicable to the Managed Services, if any, as attached to the Work Order.
Service Levels	The metrics for measuring the performance of the Managed Services as set out in the SLA.
Softcat	Softcat plc (Company number 02174990) and any successor or assignee thereof.
Softcat's System	The information and communications technology system to be used by Softcat in performing the Managed Services, including the Hardware, the Software, the Customer Site Equipment and communications links between the Hardware and the Customer Site Equipment and the Customer's Operating Environment.
Software	Any software used by Softcat to provide the Managed Services to the Customer.
Supplementary Work Order	Any document issued by Softcat and entitled "Work Order" which, notwithstanding that it may be a separate document and/or delivered at a later date, supplements an Initial Work Order and, once accepted by the Customer in accordance with clause 2.2, forms part of the Work Order.
Term	The Initial Term and each Renewal Term.
TUPE	The Transfer of Undertakings (Protection of Employment) Regulations 2006 as amended by the Collective Redundancies and Transfer of Undertakings (Protection of Employment) (Amendment) Regulations 2014.
Transition Assistance Period	Has the meaning given to it in clause 16.2.3.
Work Order	Collectively, the Initial Work Order and any Supplementary Work Order, and all documents scheduled or attached to them.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this MSA.
- 1.3 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.4 Any phrase introduced by the words "including", "includes", "in particular" or "for example", or any similar phrase, shall be construed as illustrative and shall not limit the generality of the related general words.
- 1.5 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors or permitted assigns.
- 1.6 If there is a conflict between this MSA and the Work Order, the latter shall prevail.
- 2. Ordering Services**
- 2.1 In response to a request by the Customer, Softcat will prepare and send to the Customer an Initial Work Order. If the Customer wishes to contract with Softcat to provide the Managed Services set out in that Initial Work Order, it will indicate its acceptance of the Initial Work Order by signing it and returning a signed copy to Softcat, whereupon the Contract will come into existence.
- 2.2 Depending on the nature of the Managed Services, the Customer recognises that it may be necessary for Softcat to perform additional preparatory design or specification work before proceeding to installation, provisioning and/or "go live", in which case Softcat will provide to the Customer upon completion of that additional preparatory work a Supplementary Work Order setting out further detail on how the Managed Services will be provided. The Customer may request reasonable changes to the Supplementary Work Order, and Softcat will use reasonable efforts to accommodate such changes within the scope of the Fees set out in the Initial Work Order, failing which Softcat and the Customer, each acting reasonably, will agree such changes to the Managed Services and the corresponding Fees as may be required to give effect to the Customer's request. The Customer can accept a Supplementary Work Order in writing, by email, or by requesting through any medium that Softcat proceed with providing the Managed Services, and in the absence of a written indication to the contrary will be deemed to have accepted a Supplementary Work Order 7 days after Softcat sends it to the Customer. Once accepted, a Supplementary Work Order forms part of the Work Order (and, therefore, part of the Contract) in respect of the relevant Managed Services.
- 2.3 Following acceptance of the Work Order (including, where applicable, any Supplementary Work Order), Softcat

will provide the Customer with a provisional Activation Date for each of the ordered Managed Services. Softcat will use reasonable efforts to begin delivering the relevant Managed Services by such provisional Activation Date, subject to payment by the Customer of any Fees which are payable in advance and the Customer's compliance with the terms of the Contract (and in particular its obligations in clause 6), but time shall not be of the essence in this regard and the Customer acknowledges that the actual Activation Date may differ.

- 2.4 If Softcat has agreed with the Customer that any Fees will be payable in arrears, the delivery of the Managed Services is subject to credit approval at the beginning of the Term.
- 2.5 Softcat does not expect that any of the Customer's workers or employees, or those of its other current or former suppliers, will transfer to Softcat under TUPE by virtue of the Contract. The Customer must disclose to Softcat, before Softcat becomes obliged to provide the Managed Services (and as a condition to such provision), sufficient information about any such workers or employees who will so transfer so as to enable Softcat to assess the likely costs of making such workers or employees redundant. If any such worker or employee who the Customer has not disclosed to Softcat as transferring nevertheless is able to show that his or her contract of employment has transferred to Softcat under TUPE as a result of the Contract, the Customer will indemnify Softcat for its actual losses resulting from a claim brought by such undisclosed workers or employees, including reasonable legal fees, provided that Softcat must not settle or otherwise dispose of such a claim without the Customer's prior written consent.
- 2.6 The Customer acknowledges that Softcat provides, and prices, Managed Services only on the basis of this MSA and agreed Work Orders. No other terms will apply, regardless of the form or timing of delivery.

3. Service Provision

- 3.1 Any applicable Service Level Arrangements shall apply with effect from the start of the first complete month occurring after the Activation Date.
- 3.2 The Customer is responsible for the use to which it puts the Managed Services under its control, including any use by third parties (whether fraudulent or invited by the Customer). In particular, the Customer acknowledges that the Managed Services are not designed to be used in circumstances in which errors or failures in the Managed Services could lead to death, personal injury or severe physical or environmental damage. Therefore, unless expressly agreed otherwise in the Work Order, the Customer will not use the Managed Services for such purposes.
- 3.3 The Customer Site Equipment is at the Customer's risk from the point of installation.
- 3.4 The Customer shall not provide the Managed Services to third parties or permit any third party to access or benefit from the Managed Services, nor to access the Customer Site Equipment, unless otherwise expressly agreed to in writing by Softcat.
- 3.5 Softcat reserves the right to:
 - 3.5.1. modify Softcat's System, its network, system configurations or routing configuration; or
 - 3.5.2. modify or replace any Hardware or Software in its network or in equipment used to deliver any Managed Service over its network,provided that so doing will have no material adverse effect on either party's ability to perform its obligations under the Contract. If such changes will have such a material adverse effect, the affected party will notify the other and the parties will follow the Change Control Procedure.
- 3.6 If a Managed Service to be delivered by Softcat is no longer readily available or is in short supply at the agreed time of delivery, Softcat may substitute another product or service in its place. The substituted product will have equivalent or better performance and function and will be provided at no additional cost to the Customer.
- 3.7 If the Customer uses a Managed Service, or requires Softcat to implement or configure a Managed Service, in a manner contrary to the Documentation or Softcat's reasonable recommendations, Softcat's obligation to provide that Managed Service will be limited to reasonable endeavours.
- 3.8 Time shall not be of the essence in respect of the delivery of the Managed Services.

4. Disaster Recovery, Customer Data and Data Protection

- 4.1 The Customer acknowledges that certain risks, such as data loss, are an inherent part of using services such as the Managed Services. Softcat can, where agreed with the Customer, provide backup and restore services as part of the Managed Services, which can form part of a Customer's wider business continuity and recovery strategy. However, Softcat does not provide general business continuity planning and execution services. Business continuity planning, and the execution and testing of such plans, is the responsibility of the Customer, and the Customer acknowledges that Softcat's backup and restore services are not a complete substitute for

such arrangements. Therefore, if backup and restore services are not included in the Managed Services, Softcat will have no liability for any loss of or damage to Customer Data, however caused. If backup and restore services are included in the Managed Services, Softcat will perform such backup and restore services as are set out in the Work Order to the appropriate Service Level and in accordance with Good Industry Practice. However, the Customer acknowledges that:

- 4.1.1. Softcat is not in a position to develop, evaluate or test the Customer's wider business continuity or disaster recovery arrangements, and can only provide such backup and recovery services as form part of the contracted Managed Services, and the selection and testing of appropriate backup and recovery solutions and strategies is therefore the Customer's responsibility; and
- 4.1.2. Softcat is not in a position to verify the accuracy, completeness or integrity of the Customer Data, and can only back up the Customer Data as of its then-current state. Therefore, Softcat will not be liable if any Customer Data backed up or restored by Softcat is inaccurate, incomplete or corrupted, provided that the restore and corresponding backup job completed without error.
- 4.2. Notwithstanding clause 4.1, Softcat will not itself delete any Customer Data unless specifically permitted to do so by the Contract or instructed to do so by the Customer.
- 4.3. The Customer acknowledges that Softcat is not an insurer. Therefore, where Customer Site Equipment must be replaced in the course of a disaster recovery, Softcat can provide assistance in doing so, and will provide break/fix services to the extent that such services are within the scope of the Managed Services, but all replacement, relocation and/or reinstallation costs in respect of Customer Site Equipment will otherwise be borne by the Customer.
- 4.4. Each party warrants that it shall comply with the DPA when performing its respective obligations under the Contract.
- 4.5. To the extent that Softcat (as Data Processor) processes Personal Data on behalf of the Customer (as Data Controller), Softcat will:
 - 4.5.1. process such Personal Data only in accordance with the Customer's instructions or as required by law or regulation;
 - 4.5.2. take appropriate technical and organisational measures to protect such Personal Data against unauthorised or unlawful processing and accidental loss, destruction, alteration or disclosure;
 - 4.5.3. ensure that, having regard to the state of technological development and their cost of implementation, those measures ensure a level of security appropriate to (1) the harm that might result from such processing, loss, destruction or damage; and (2) the nature of such Personal Data; and
 - 4.5.4. promptly inform the Customer if it receives a request or notice from a data subject seeking to exercising his or her rights under the DPA in respect of such Personal Data, and (at the Customer's cost) comply with the Customer's reasonable instructions with respect to that request or notice.
- 4.6. The Customer instructs Softcat to take such steps in the processing of Personal Data on its behalf as Softcat reasonably considers necessary to the performance of its obligations under the Contract, irrevocably authorises Softcat to give equivalent instructions to any relevant subcontractor on its behalf, and warrants that it is and will remain entitled to give the instruction and authorisation in this clause 4.6.
- 4.7. Softcat will ensure that any subcontractor to which it delegates the processing of Personal Data on behalf of the Customer is bound by a written agreement imposing on the subcontractor obligations equivalent to those set out in clause 4.5.

5. Security

- 5.1. Softcat will operate safety and security measures and procedures consistent with Good Industry Practice for the prevention of unauthorised access or damage to any and all Managed Services.
- 5.2. Each of Softcat and the Customer will promptly inform the other if it suspects or uncovers any breach of security in respect of the Managed Services, and Softcat will use all commercially reasonable endeavours to verify and, if verified, promptly remedy such breach.

6. Customer Obligations

- 6.1. To assist Softcat to fulfil its obligations under the Contract, the Customer will:
 - 6.1.1. provide Softcat promptly with any information and assistance it may reasonably require from time to time;
 - 6.1.2. afford Softcat full and safe access to the Customer Site(s) and the Customer Site Equipment during normal working hours;
 - 6.1.3. provide at the relevant Customer Site(s) all suitable computer hardware, software and

- telecommunications equipment (other than those specified to be provided by Softcat in the Work Order);
- 6.1.4. where applicable, install the correct management agents for the Customer's Operating Environment, or if Softcat installs management agents as part of the Managed Services, not interfere with such management agents;
 - 6.1.5. provide Softcat with copies of all policies that Softcat is expected to observe at the Customer Sites;
 - 6.1.6. appoint a Customer Representative who will be Softcat's primary contact at the Customer and who must have or promptly be able to obtain sufficient authority to make all necessary decisions in relation to the Contract. The Customer will use reasonable endeavours to ensure continuity of the Customer's Representative.
 - 6.1.7. comply with all applicable laws and regulations with respect to its activities under the Contract;
 - 6.1.8. carry out its responsibilities to Softcat in a timely and efficient manner. In default of such obligation, Softcat may adjust any timetable or delivery schedule as reasonably necessary;
 - 6.1.9. use, and procure that its officers, employees, workers and subcontractors use, the Managed Services only in accordance with the Acceptable Use Policy;
 - 6.1.10. ensure that the Managed Services are not used to receive, transmit, host or otherwise process any material and/or communication (other than entirely unsolicited inbound communications) that is menacing, of a junk-mail or spam-like nature, illegal, obscene, threatening, defamatory, discriminatory, actionable, or in violation of (or which would place Softcat in violation of) any rules, regulations or laws to which the use of the Managed Services are subject, or infringe the Intellectual Property Rights of Softcat or any third party;
 - 6.1.11. inform Softcat of any new applications and or services brought onto the Managed Services and ensure that such applications or services are licensed and compliant;
 - 6.1.12. where relevant, properly train, supervise and manage its personnel in the use and application of the Managed Services; and
 - 6.1.13. implement effective and appropriate backup and other procedures for the protection of its data where backup and restore services are not part of the Managed Services.
- 6.2. Additionally, and notwithstanding the above, Softcat will not be responsible for any failure to provide the Managed Services unless the Customer has met or observed the following requirements:
- 6.2.1. all Customer hardware and software configurations to be supported by Softcat have been installed by Softcat or have been reviewed by both parties and agreed that the solution presented is both suitable for purpose and within the ability of both parties to sustain;
 - 6.2.2. the Customer has assumed responsibility for the purchase of associated hardware and software Maintenance Contracts. Where any related Maintenance Contract has been arranged directly with an IT Partner by the Customer, the Customer shall be responsible for advising that IT Partner that Softcat will be managing the Customer's systems from the applicable start date and, to the extent required, procuring for Softcat a right to use the services provided under such Maintenance Contract;
 - 6.2.3. the Customer has ensured that the performance or operation of any Customer installed applications have no direct impact upon Softcat's ability to deliver the agreed Service Levels; and
 - 6.2.4. the Customer has advised Softcat of its internal procedures of internal escalation and systems maintenance.
- 6.3. If the Customer wishes to make any alterations, additions, or maintenance that will or may impact upon Softcat's ability to deliver the Managed Services, then the Customer will inform Softcat in writing of such works prior to their commencement.
- 6.4. In the event that the Customer, or any third party who is not a sub-contractor of Softcat, omits or commits anything that prevents or delays Softcat from undertaking or complying with any of its obligations under the Contract, then Softcat shall notify the Customer as soon as possible and Softcat will have no liability in respect to any delay in the provision of the Managed Service that results from such act or omission.
- 6.5. Softcat may charge the Customer for any additional reasonable costs and expenses properly incurred by Softcat caused by variation in the Customer's instructions, any failure on the part of the Customer to provide instructions in a reasonable and timely manner, or other failure to comply with this Clause 6.

7. Warranties

7.1 Softcat warrants that:

- 7.1.1. it will provide the Managed Services in accordance with Good Industry Practice and substantially in accordance with the Managed Service Specification and the Contract;

- 7.1.2. it has the full capacity and authority to enter into and perform the Contract and that the Contract is executed by a duly authorised representative of Softcat;
- 7.1.3. it will comply with all applicable laws in performing its obligations under the Contract; and
- 7.1.4. all personnel and sub-contractors used by Softcat in the performance of the Contract are adequately skilled and experienced for the activities they are required to perform.
- 7.2 The warranties in clause 7.1 shall not apply to the extent of any non-conformance caused by use of the Managed Services contrary to Softcat's instructions.
- 7.3 If the Managed Services do not conform with any of the warranties in clause 7.1 as a result of a breach by Softcat of such warranty, Softcat will use reasonable commercial endeavours to correct such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the warranties in clause 7.1.
- 7.4 Softcat does not warrant that the Customer's use of the Managed Services will be uninterrupted or error-free.
- 7.5 The Customer warrants that:
 - 7.5.1. it has the full capacity and authority to enter into and perform the Contract and that the Contract is executed by a duly authorised representative of the Customer;
 - 7.5.2. it has the authority to grant any rights granted to Softcat under the Contract;
 - 7.5.3. it will comply with and use the Managed Services in accordance with the Contract and all applicable laws;
 - 7.5.4. it has and shall maintain all necessary licences, permits, rights, consents, registrations, approvals and titles necessary for Softcat to use or host any software, hardware, documentation or other materials provided by the Customer for use in the provision of the Managed Services to the Customer; and
 - 7.5.5. Softcat's use of any third-party materials supplied by the Customer in connection with the Contract, shall not cause Softcat to infringe the rights, including any Intellectual Property Rights, of any third party.

8. IT Partners, EULAs and other Third Party Agreements

- 8.1 The Customer may contract directly with an IT Partner for provision of software or services related to the Managed Services. Unless managing such contracts falls within the scope of the Managed Services, the Customer will (as against Softcat) be solely responsible for all matters arising out of such contracts.
- 8.2 Where Softcat provides to the Customer access to or use of third party Software in the course of providing the Managed Services, the Customer agrees to comply with the terms of the relevant end user licence agreements applicable to such Software. Where required by an upstream supplier of such Software, the Customer agrees to provide to such upstream supplier sufficient access to relevant systems and records to allow such upstream supplier to verify compliance with such end user licence agreements.
- 8.3 The Customer shall licence or procure a licence for the use of any software, programs and/or applications used by the Customer and not supplied by Softcat (including the Customer's Operating Environment). These may or may not be indirectly related to the Managed Services.

9. Invoicing and Payment

- 9.1 Until the Contract comes into existence, all Fees are subject to change without prior notice. Softcat will notify the Customer of any changes to Fees set out in a draft Work Order before such Work Order comes into effect.
- 9.2 The Customer acknowledges that the Fees chargeable in respect of certain Managed Services (for example, AWS, Azure, VCHS, cloud backup and SIP per-minute billing) are based on the Customer's actual usage, and that the level of usage of such Managed Services is controlled by the Customer. The Customer therefore agrees in respect of such Managed Services to pay such Fees as the Customer may incur as a result of its actual usage, without the requirement for any additional purchase order. The Customer further acknowledges that fees charged by the upstream suppliers of certain Managed Services will vary from time to time during the Term. The Customer therefore agrees that Softcat may vary the Fees to reflect such changes in upstream fees. Softcat will use reasonable endeavours to provide reasonable notice of such variations.
- 9.3 Softcat will invoice the Customer for its Fees for the Managed Services either monthly or quarterly in advance as specified in the Work Order and unless the Work Order specifies otherwise, provided that in respect of the Managed Services of the type referred to in clause 9.2 Softcat will invoice monthly in arrears. The Customer will pay Softcat in full within thirty (30) calendar days from receipt of invoice unless otherwise specified in the Work Order.
- 9.4 If the Work Order provides that the Fees or any part of the Fees are payable in arrears, then Softcat may

withdraw or vary such arrangements at any time if:

- 9.4.1. Softcat serves a notice of termination of the Contract;
- 9.4.2. there is (in the sole opinion of Softcat) a material adverse change in the creditworthiness of the Customer; or
- 9.4.3. the Customer fails to pay any amount which is due and payable.

9.5 Applicable third-party support and licensing Fees will be payable at initial purchase and any subsequent renewal dates.

9.6 When the Customer first orders a Managed Service not previously supplied, or it is agreed by the parties as being either an addition to, or change to an existing Managed Service being supplied, then a non-recurring charge may be specified as part of the Fees. This non-recurring charge is for installation of additional network infrastructure, cabling, electronics or other materials or consultancy. Non-recurring charges are payable by the Customer after delivery of the relevant Managed Service and will be billed in arrears. If the Customer fails to pay such non-recurring charges within thirty (30) calendar days following Softcat's invoice for such non-recurring charges then:

- 9.6.1. such failure to pay shall be an Excused Outage for the purposes of provisioning and/or installation of the Managed Services;
- 9.6.2. Softcat may issue a revised Contract Start Date and/or Activation Date; and
- 9.6.3. Softcat may suspend installation of the Managed Service until receipt of such non-recurring charges.

9.7 If the Customer reasonably disputes any portion of an invoice, the Customer must submit a written claim for the disputed amount within thirty (30) calendar days after delivery of the relevant invoice and shall at all times remain liable for the payment of all items not disputed or not validly disputed as reasonably determined by Softcat. Where such dispute turns upon level of usage of the Managed Services, Softcat's records of such usage shall be presumed to be accurate unless proved otherwise by an independent expert appointed by Softcat or appears to be contrary to Customer's written purchase order for such Services.

9.8 The Customer waives the right to dispute any Fees not disputed within thirty (30) days of receipt of the relevant invoice.

9.9 When a dispute regarding amounts payable under the Contract is resolved to the Customer's reasonable satisfaction, the Customer will immediately pay any amounts that were the subject of such dispute.

9.10 Softcat reserves the right to charge interest to the Customer on any sums, fees or other charges which are not paid on the due date and that interest may be charged from the date such payment falls due at the statutory rate of two per cent (2%) per annum above the Bank of England base rate from time to time. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The Customer shall pay the interest together with the overdue amount.

9.11 On expiry or termination of the Contract for any reason, any Fees incurred but unpaid shall become immediately due and payable and shall represent a debt due from the Customer to Softcat.

9.12 All charges for Managed Service are net of VAT and other taxes. Except for taxes based upon Softcat's net income, the Customer will be responsible for payment of all applicable taxes that arise in any jurisdiction, including but not limited to, VAT, sales, use, excise, access, bypass, franchise or other taxes, fees, charges or surcharges, however designated, imposed on or based on the provision, sale or use of the Managed Services.

10. Change Control Procedure

10.1 The Customer acknowledges that changes to services such as the Managed Services must be carefully managed. Therefore, if either party wishes to change the scope of any of the Managed Services (including Customer requests for additional services), it shall submit a change request to the other party and the parties will then proceed according to Softcat's change control procedure as it may be amended from time to time (the "Change Control Procedure").

11. Intellectual Property

11.1 Nothing in the Contract will change the ownership of any of the Intellectual Property Rights of either party.

11.2 Each party grants to the other a non-exclusive, limited, revocable licence to use its Intellectual Property Rights solely to the extent necessary for that party to perform its obligations under the Contract.

11.3 The Customer will indemnify Softcat against any claim brought against Softcat by a third party that the Customer Data or the Customer's use of the Managed Services infringes such third party's Intellectual Property Rights or other rights, provided that Softcat will provide reasonable assistance in the defence and/or settlement of such claims, and provided that the Customer will have on request sole authority to defend or settle any such claim.

- 11.4 Softcat will indemnify the Customer against any claim brought against the Customer by a third party that the Managed Services infringe such third party's Intellectual Property Rights or other rights, provided that the Customer will provide reasonable assistance in the defence and/or settlement of such claims, and provided that Softcat will have on request sole authority to defend or settle any such claim

12. Confidentiality

- 12.1 Each party undertakes to the other that, except as provided by clause 12.4 or as authorised in writing by the other, it shall, at all times:
- 12.1.1. keep confidential all Confidential Information disclosed to it by the other party;
 - 12.1.2. not disclose any such Confidential Information to any other person;
 - 12.1.3. not use any such Confidential Information for any purpose other than as contemplated by the Contract; and
 - 12.1.4. ensure that none of its directors, officers, employees, agents or advisers does any act which, if done by that party, would be a breach of this clause 12.1.
- 12.2 The Customer acknowledges that Softcat's Confidential Information includes any designs, plans, software or other materials created by Softcat in connection with the Managed Services.
- 12.3 Softcat acknowledges that the Customer's Confidential Information includes the Customer Data.
- 12.4 Notwithstanding clause 12.1, either party may disclose the Confidential Information of the other to:
- 12.4.1. any sub-contractor, supplier or professional adviser of that party;
 - 12.4.2. any governmental or other authority or regulatory body; or
 - 12.4.3. any employee or officer of that party, or of any of the aforementioned persons,
- in each case only to such extent as is necessary for the purposes of performing or enforcing the Contract, or as required by law, and in each case (unless prohibited by applicable law) subject to that party first informing the person in question that the Confidential Information is confidential and (except where the disclosure is to any such body as is mentioned in clause 12.4.2 above or any employee or officer of any such body) obtaining and submitting to the other party a written undertaking from the person in question, as nearly as practicable in the terms of this clause, to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made.
- 12.5 The provisions of this clause 12 shall continue notwithstanding the termination of the Contract for any reason.

13. Term, Renewal and Cancellation Charges

- 13.1 The Contract will continue for the Initial Term and will thereafter automatically renew for successive Renewal Terms unless:
- 13.1.1. either party notifies the other party of termination, in writing, at least 30 days before the end of the Initial Term or the then-current Renewal Term, in which case the Contract will terminate upon the expiry of the Initial Term or then-current Renewal Term, as the case may be; or
 - 13.1.2. otherwise terminated in accordance with its terms.
- 13.2 Certain Managed Services are subject to longer cancellation periods imposed by the upstream supplier. The cancellation period for such Managed Services will be as set out in the Work Order, and in respect of such Managed Services clause 13.1.1 will be deemed to be amended accordingly.
- 13.3 The Customer acknowledges that the Fees are subject to variations caused by, among other things, increases in upstream supplier charges and general inflation, and that Softcat may therefore vary the Fees payable by the Customer in respect of Renewal Terms. 45 days before the expiry of the Initial Term and each Renewal Term, Softcat will notify the Customer of any adjustment in the Fees payable for the subsequent Renewal Term and, unless the Customer terminates the Contract in accordance with clause 13.1.1, such adjusted Fees will apply from the start of such Renewal Term.
- 13.4 The Customer may additionally terminate the Contract at any time during the Term if it pays to Softcat the Cancellation Charge.

14. Suspension

- 14.1 Softcat may suspend all or any part of any Managed Service without liability to the Customer if:
- 14.1.1. Softcat reasonably believes that the Managed Services have, are or will be used in breach of the Contract;
 - 14.1.2. Softcat discover that the Customer is affiliated in any manner with a person who has used similar services abusively in the past;
 - 14.1.3. the Customer does not co-operate with Softcat's investigation of any suspected breach of the Contract;

- 14.1.4. Softcat reasonably believes that the Customer has permitted the Managed Services to be accessed or manipulated by a third party without its consent;
- 14.1.5. Softcat reasonably believes that Customer applications, databases or operating systems hosted on the Managed Services have been hacked or compromised, except where such hack or compromise is reasonably attributable to Softcat's failure to perform its obligations under the Contract;
- 14.1.6. Softcat reasonably believes that suspension of the Managed Services is necessary to protect Softcat's System or Softcat's other customers;
- 14.1.7. any Fee or other amount due under the Contract is overdue or is at risk of non-payment in the opinion of Softcat; or
- 14.1.8. Softcat is required to do so by law or a regulatory or government body.
- 14.2. Softcat will give the Customer advance notice of a suspension under this clause of at least twelve (12) Business Hours unless Softcat determines in its reasonable commercial judgment that a suspension on shorter or contemporaneous notice is necessary to protect Softcat or its other customers from imminent and significant operational, legal, or security risk, or non-payment of its Fees. If Softcat suspends any Managed Services pursuant to any of clauses 14.1.1, 14.1.3 or 14.1.7, then Softcat may continue to charge the Customer the Fees for the Managed Services during the period of suspension, and may charge the Customer a reasonable reinstatement fee upon reinstatement of the Managed Services. If Softcat suspends any Managed Services pursuant to clause 14.1.5, then the Customer must address the underlying vulnerability prior to Softcat placing the Managed Services back in service. If the Customer requests, Softcat may be able to perform this work for the Customer as a supplementary service on a time and materials basis at Softcat's standard hourly rates.
- 15. Termination**
 - 15.1. Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
 - 15.1.1. the other party fails to pay any amount due under the Contract on the due date for payment and remains in default not less than 14 days after being notified in writing to make such payment;
 - 15.1.2. the other party commits a material breach of any terms of the Contract which is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 14 days after being notified in writing to do so;
 - 15.1.3. the other party repeatedly breaches the Contract in such a manner as to reasonably justify the opinion that its conduct is inconsistent with it having the intention or ability to give effect to the Contract;
 - 15.1.4. the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
 - 15.1.5. the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - 15.1.6. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
 - 15.1.7. an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
 - 15.1.8. the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
 - 15.1.9. a person appoints or becomes entitled to appoint a receiver over the assets of the other party;
 - 15.1.10. a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days; or
 - 15.1.11. the other party suspends, ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
 - 15.2. If clause 15.1 applies then without prejudice to any other right or remedy available to Softcat it shall be

entitled to cancel the supply of Managed Services without any liability to the Customer and any unpaid Managed Services shall become immediately due and payable notwithstanding any previous agreement or arrangement to the contrary.

15.3 On termination or expiry of the Contract:

15.3.1. each party shall return and make no further use of any equipment, property, materials and other items (and all copies of them) belonging to the other party; and

15.3.2. any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

15.4 Upon expiration or termination of the Contract, the Customer must discontinue use of the Managed Services and relinquish use of the IP addresses and server names assigned to the Customer by Softcat in connection with Services, including pointing its domain name(s) away from Managed Services. The Customer agrees that Softcat may, as it determines necessary, make modifications to DNS records and zones on Softcat managed or operated DNS servers and services.

16. Exit Assistance, Return of Customer Data and Transfer of Employees and Assets

16.1 Reasonably promptly following expiry or termination of the Contract for any reason, Softcat will provide the Customer with one electronic copy of the Customer Data, in the format it is then in and on an "as-is" basis. Thereafter, subject to clause 16.3, Softcat may delete the Customer Data at its discretion.

16.2 Reasonably promptly following expiry or termination of the Contract for reasons other than those set out in clause 15.1, Softcat will:

16.2.1. provide to the Customer copies of existing technical documentation of the Managed Services;

16.2.2. hand over to the Customer all relevant passwords specific to the Managed Services provided to the Customer; and

16.2.3. provide the Customer with such reasonable assistance and information in transitioning the Managed Services to a replacement supplier ("Replacement Supplier") as the Customer may request, free of charge for a period of up to 30 days following such expiry or termination, and thereafter chargeable to the Customer on a time and materials basis at Softcat's then-current rates for a further period of no more than 90 days following such expiry or termination (together, the "Transition Assistance Period").

16.3 If requested to do so by the Customer, upon expiry or termination of the Contract for reasons other than those set out in clause 15.1 and subject to continuing payment by the Customer of the applicable Fees, Softcat will use reasonable endeavours to continue to provide such of the Managed Services as the Customer may require for up to 30 days following such termination or expiry so as to allow the Customer to transition to a Replacement Supplier. The Customer acknowledges that certain upstream suppliers may not permit such transitional provision, and therefore agrees that this clause 16.3 will not apply in respect of Managed Services which are dependent upon such upstream suppliers.

16.4 As soon as practicable after the commencement of the Transition Assistance Period, Softcat will disclose to the Customer whether any of its workers or employees will transfer to the Customer or the Replacement Supplier by operation of TUPE, and if so will provide the Customer with sufficient information about such workers or employees to enable the Customer to assess the likely cost of making such workers or employees redundant. If any worker or employee of Softcat who Softcat has not disclosed to the Customer as transferring nevertheless is able to show that his or her contract of employment has transferred to the Customer or the Replacement Supplier under TUPE as a result of transitioning the Managed Services to the Customer or the Replacement Supplier, Softcat will indemnify the Customer for its actual losses resulting from a claim brought by such undisclosed workers or employees, including reasonable legal fees, provided that the Customer must not settle or otherwise dispose of such a claim without Softcat's prior written consent.

16.5 If applicable, on expiry or termination of the Contract Softcat shall sell to the Customer, and the Customer shall buy, the Customer Site Equipment for net book value, calculated in accordance with Softcat's reasonable then-current depreciation policy. Title to such Customer Site Equipment shall pass to the Customer on payment.

17. Force Majeure

17.1 Neither party shall be liable, nor will Service Credits be applied, for any failure of any equipment, facilities or delivery of Managed Services due to causes beyond such party's reasonable control.

18. Liability

- 18.1 Except as expressly and specifically provided in the Contract:
- 18.1.1. the Customer assumes sole responsibility for results obtained from the use of the Managed Services, and for conclusions drawn from such use. Softcat shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Softcat by the Customer in connection with the Managed Services, or any actions taken by Softcat at the Customer's direction; and
 - 18.1.2. all warranties, conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.
- 18.2 Nothing in the Contract is intended to or shall be interpreted to exclude or limit the liability of either party for:
- 18.2.1. the indemnities expressly given in the Contract; or
 - 18.2.2. any liability which cannot lawfully be excluded or limited.
- 18.3 Softcat will have no liability to the Customer arising out of or in connection with the Contract for any loss of profits, account of profits, loss of business, loss of revenue, loss or reputation or goodwill, loss of opportunity, loss of data or interference with business (unless and solely to the extent that Softcat provides backup and restore services as part of the Managed Services), or any indirect or consequential loss of any kind.
- 18.4 In particular and without prejudice to the provisions of clause 18.3, Softcat will not be liable for any loss or damage arising to the Customer's systems, data, information, equipment (including the Customer's Operating Environment) or any Intellectual Property Rights if such loss is in any way attributable to any of the following:
- 18.4.1. any failure of the Customer's applications, databases or operating systems, including loss or corruption of data or (unless and to the extent that backup and restore services are part of the Managed Services) failure to implement back-up procedures;
 - 18.4.2. any failure of any applicable Service Level if in the reasonable opinion of Softcat (based on its knowledge of the industry) the solution/systems have been tampered with by the Customer or any third party authorised by the Customer with or without Softcat's knowledge;
 - 18.4.3. any failure of any Customer-managed IT Partner to provide its services in accordance with the relevant agreements;
 - 18.4.4. any Internet failure outside the control of Softcat; or
 - 18.4.5. any latent defect in any third party equipment or Software, or failure of such equipment or Software to perform in accordance with the manufacturer's specification.
- 18.5 Subject to the other provisions of this clause 18, Softcat's maximum aggregate liability to the Customer arising out of or in connection with the Contract is, in relation to each event and all events preceding that event (taken together), limited to an amount equal to the Fees paid by the Customer to Softcat in the 12 months preceding such event.
- 19. Non-Solicitation**
- 19.1 Both parties agree that during the period of the Agreement and for a period of twelve (12) months after its termination or expiry, save for where such action is a result of a bona fide public recruitment process, neither party shall entice or seek to employ or engage directly or indirectly (without the other party's prior written agreement, such consent not to be unreasonably withheld or delayed) or make or seek to make any offer of employment or engagement to any of the other party's officers, employees or workers, including those of any of its sub-contractors who have been involved in the course of the negotiation, conclusion and performance of the Contract;
- 19.2 If any officer, employee or worker of a party leaves the employment of that party as a result of a breach of this clause 19 and commences employment with, or provides services to, the other party, it shall pay the non-breaching party 50% of the higher of:-
- 19.2.1. the annual salary (including any benefits-in-kind, bonus payments, commissions and other benefits) of the employee at the date that they ceased to be an employee of the non-breaching party; or
 - 19.2.2. the annual salary of the employee at the time they commence employment by the breaching party.
- 19.3 Each party acknowledges that any such payment is by way of liquidated damages and is a reasonable and genuine pre-estimate of the non-breaching party's losses.
- 20. No Waiver**
- 20.1 No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it preclude or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall preclude or restrict

the further exercise of that or any other right or remedy.

21. Insurance

21.1 Each party shall at all times maintain appropriate policies of insurances with a reputable insurance company to cover their separate risks and liabilities under this agreement (such policies to include but not be limited to public liability insurance in an amount of not less than GBP 5,000,000 for any event, unless the parties agree otherwise in writing).

22. Severance

22.1 If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause 22 shall not affect the validity and enforceability of the rest of the Contract.

23. Assignment

23.1 The Customer shall not, without the prior written consent of Softcat, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under the Contract.

23.2 The Customer accepts that Softcat may, in its sole discretion, sub-contract, outsource or resell all or parts of the delivery of a Managed Service to any of Softcat's IT Partners, provided that Softcat remains responsible for any act or omission of its IT Partners and other sub-contractors.

24. No Partnership or Agency

24.1 Nothing in the Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorise any party to make or enter into any commitments for or on behalf of any other party.

24.2 Each party confirms it is acting on its own behalf and not for the benefit of any other person.

25. Third-Party Rights

25.1 Nothing in the Contract will confer any rights on any third parties.

26. Notices

26.1 Any notice or other communication required to be given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand, by email to the Customer Representative at the address specified in the Work Order, or sent by pre-paid first class post or other next working day delivery service, at its registered office (if a company) or (in any other case) its principal place of business.

26.2 Any notice or communication shall be deemed to have been received if delivered by hand, on signature of a delivery receipt or at the time the notice is left at the proper address, or if sent by email, at 9.00 am on the next Business Day after sending, or otherwise at 9.00 am on the second Business Day after posting.

26.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

27. Anti-Bribery

27.1 Neither party will commit, or do or omit to do any act or thing which would result in the other party committing, an offence under sections 1, 2 or 6 of the Bribery Act 2010.

28. Entire Agreement and Amendment

28.1 The Contract constitutes the entire agreement between the parties and supersedes all previous discussions, correspondence, negotiations, arrangements, understandings and agreements between them relating to its subject matter.

28.2 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that is not set out in the Contract.

28.3 Nothing in this clause shall limit or exclude any liability for fraud.

28.4 No alteration to or variation of the Contract shall take effect unless and until the same is in writing and signed on behalf of each of the parties by a duly authorised representative.

29. Law And Jurisdiction

- 29.1 The Contract and all non-contractual obligations arising out of or connected with it will be governed by English law and subject to the exclusive jurisdiction of the English courts.

