

This Managed Cloud for Azure Services Schedule (“**Managed Cloud for Azure Services Schedule**”) provides additional terms and conditions under which Client has elected to purchase Managed Cloud for Azure Services from Datapipe as more particularly defined in the Order Form(s) and Section 6 herein. The SLA governing the Managed Cloud for Azure Services is set forth as Exhibit “A” to this Managed Cloud for Azure Services Schedule.

### **ADDITIONAL GENERAL TERMS AND CONDITIONS:**

#### **1. DEFINITIONS.**

“**Azure**” means Microsoft Azure.

“**Azure Policies**” means the Azure legal terms and conditions found at <http://azure.microsoft.com/en-us/support/legal/> or such other URL(s) as Microsoft may designate in the future. Azure Policies include the Microsoft Online Services Agreement, which incorporates the Microsoft Online Services Terms, and the Microsoft Online Services Privacy Statement. Azure Policies does not include the Azure AUP, which is included in the definition of AUP, or the Azure Service Level Agreements, which is defined as the Azure SLA.

“**Azure Portals**” means the Microsoft portals related to Azure found at <https://manage.windowsazure.com>, <https://portal.azure.com> and <https://ea.azure.com> or such other URLs as Microsoft may designate in the future.

“**Azure Services**” means the then-current list of web services made available from time to time by Microsoft and found at <http://azure.microsoft.com/en-us/services/> or such other URL as Microsoft may designate in the future.

“**Azure SLA**” means those certain Azure Service Level Agreements associated with the Azure Services selected by the Client, as same may be modified by Microsoft from time to time and are found at <http://azure.microsoft.com/en-us/support/legal/sla/> or such other URL as Microsoft may designate in the future.

“**Azure Usage Fee**” means the fee incurred by Client during the previous calendar month in connection with its utilization of the Azure Services.

“**Managed Cloud for Azure Managed Services Fee**” means the fee determined and invoiced monthly in arrears in accordance with the Pricing Document, and shall be calculated based on the total monthly Azure Usage Fee and Vendor Fees.

“**Microsoft**” means Microsoft Corporation.

“**Minimum Managed Cloud for Azure Services Monthly Recurring Fee**” means the minimum Monthly Recurring Fee for Managed Cloud for Azure Services in any given month as set forth in the Order Form, regardless of the actual Managed Cloud for Azure Services usage by Client.

“**Vendor Fees**” means those then-prevailing rates for any independent software vendor service fees related to Client’s utilization of those services in conjunction with the Azure Services, which fees shall be borne by Client.

#### **2. SUSPENSION.**

Datapipe, in addition to its suspension rights described in the Call Off Agreement also reserves the right to immediately suspend the provision of the Azure Services without liability, if (a) Datapipe has a good faith and reasonable belief that the Azure Services are being used in violation of the Azure Policies or Datapipe receives notice from Microsoft of such a violation by virtue of Client’s use of the Azure Services or (b) Microsoft terminates the Azure Services for Client or Datapipe. Client acknowledges that the Azure Policies are legal obligations of both Datapipe and Client, that the Azure Policies are subject to change without notice, and that violations of the Azure Policies may result in Client’s access to the Azure Services being suspended as a result of the actions of Client or Third Parties. Datapipe will make commercially reasonable efforts, circumstances permitting, to provide Client with advance written notice of any such suspension or termination. Datapipe shall have no liability for any damage, liabilities, losses (including any loss of data or profits) or any other consequences that Client may incur as a result of any such suspension.

**3. LIMITATION OF LIABILITY.**

NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES OR ANY THEORY OF LIABILITY INCLUDING, WITHOUT LIMITATION, LOSS OF DATA, CONTENT OR BUSINESS INFORMATION, LOSS OF TECHNOLOGY, RIGHTS OR SERVICE, ANTICIPATED OR LOST REVENUE OR SAVINGS, LOSS OF CUSTOMERS OR CLIENTS, LOST PROFITS, LOST GOODWILL, LOST BUSINESS OR REPLACEMENT GOODS OR INTERRUPTION OR LOSS OF USE OF SERVICE OR EQUIPMENT OR ANY LOSS THAT COULD HAVE BEEN AVOIDED BY SUCH PARTY'S USE OF REASONABLE PRECAUTIONS OR DILIGENCE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES WHETHER ARISING UNDER ANY THEORY OF LIABILITY, INCLUDING BUT NOT LIMITED TO CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR BREACH OF WARRANTIES.

UNLESS OTHERWISE SPECIFIED IN THE CALL OFF AGREEMENT, THE MAXIMUM CUMULATIVE LIABILITY OF EITHER PARTY OR ITS SUPPLIERS, CONTRACTORS AND SUBCONTRACTORS ARISING OUT OF OR RELATING TO THE SERVICES FOR ANY REASON WHATSOEVER (INCLUDING WITHOUT LIMITATION ANY PERFORMANCE OR NON-PERFORMANCE HEREUNDER, REGARDLESS OF THE FORM OF THE CAUSE OF ACTION, WHETHER IN CONTRACT, TORT, STATUTE OR OTHERWISE, SHALL IN NO EVENT EXCEED THE GREATER OF THE FOLLOWING:

- THE PRODUCT OBTAINED BY MULTIPLYING SIX (6) TIMES THE INITIAL MONTHLY SERVICE FEE PAYABLE (WHETHER PAID OR PAYABLE) BY CLIENT TO DATAPIPE; OR
- THE TOTAL AMOUNT PAID BY CLIENT TO DATAPIPE UNDER THE CALL OFF AGREEMENT DURING THE TWELVE MONTH PERIOD PRIOR TO THE EVENT GIVING RISE TO SUCH CLAIM.

THE ABOVE LIMITATION OF LIABILITY SHALL APPLY REGARDLESS OF WHEN THE CLAIM OR CLAIMS GIVING RISE TO SUCH LIABILITY OR LIABILITIES SHOULD OCCUR. THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER INCIDENT.

THE ABOVE LIMITATION OF LIABILITY SHALL NOT APPLY TO EITHER PARTY'S CONFIDENTIALITY AND INDEMNIFICATION OBLIGATIONS UNDER THE CALL OFF AGREEMENT. RATHER, THE MAXIMUM CUMULATIVE LIABILITY OF EITHER PARTY ARISING OUT OF OR RELATING TO ITS CONFIDENTIALITY AND INDEMNIFICATION OBLIGATIONS SHALL IN NO EVENT EXCEED THE TOTAL AMOUNT PAID OR TO BE PAID BY CLIENT TO DATAPIPE UNDER THE CALL OFF AGREEMENT DURING THE THREE (3) YEAR PERIOD PRIOR TO THE EVENT GIVING RISE TO SUCH CLAIM;

DESPITE ANY LIMITATIONS SET FORTH IN THIS SECTION, CLIENT SHALL BE LIABLE FOR ALL SUMS DUE OR PAYABLE UNDER THE CALL OFF AGREEMENT FOR THE SERVICE PROVIDED, REGARDLESS OF AMOUNT, TOGETHER WITH ANY ADDITIONAL FEES, ATTORNEY FEES AND/OR COSTS THAT MAY BE INCURRED BY DATAPIPE.

**4. AZURE MASTER CREDENTIALS.**

Datapipe will maintain federated account access to Azure subscriptions created for Client through Datapipe's membership in the Microsoft Cloud Solution Provider Program and Azure Portal. Client may request access to these subscriptions through the use of a similar federation with Azure Active Directory or a Microsoft account.

In the event Client does not provide Datapipe the required Azure access, Datapipe shall not be responsible for delivering any Managed Cloud for Azure Services which require Datapipe's shared access to the Azure subscriptions.

Client may have access to certain billing information via the Azure Portal. Any usage rates visible via the Azure Portal may not apply to Client, as such pricing may represent specially negotiated Datapipe rates.

For the avoidance of doubt, Client shall always remit payment in accordance with Datapipe's billing rates, as described in this Managed Cloud for Azure Services Schedule.

### **4.1. AZURE DIGITAL PARTNER OF RECORD**

Azure Digital Partner of Record (POR) is an automated, online capability to attach a partner to a customer's Azure Services subscription in order to help the customer design, build, deploy or manage their solution. Client understands and agrees that, pursuant to this Managed Cloud for Azure Services Schedule, Datapipe may require Datapipe be designated as Client's POR with respect to Client's Azure Services subscription. Client agrees to exclusively utilize Datapipe as Client's POR for all Azure Services consumed by Client worldwide during the Term of this Managed Cloud for Azure Services Schedule, including all applicable Order Forms.

### **5. MICROSOFT TERMS.**

In addition to its obligations under the Call Off Agreement, Client agrees to comply with the Azure Policies and the Microsoft Cloud Agreement as if Client was a direct customer of Microsoft. No free trials or other pricing promotions that may be offered from time to time by Microsoft shall apply to any fees specified unless same is confirmed in writing by Datapipe.

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## **1. INCIDENT MANAGEMENT.**

### **1.1. MANAGED CLOUD FOR AZURE SEVERITY LEVEL DEFINITIONS**

**“Severity Level 1”** means the total lack of availability of the Azure Services such that Client cannot continue its business due to the severity of the outage.

**“Severity Level 2”** means a material degradation of availability of the Azure Services such that Client can continue operating its business, but in a negatively impacted and degraded mode.

**“Immediate Support Request”** means a ticket created by Client in the Client Portal with respect to a Severity Level 1 or Severity Level 2 event, which ticket creation is followed by Client initiating and participating in a telephone conversation with Datapipe Support with respect to that ticket.

**“Service Request”** means a ticket created by Client in the Client Portal not meeting the definition of Severity Level 1, Severity Level 2, or an Immediate Support Request.

### **1.2. COMMUNICATION DURING INCIDENT MANAGEMENT.**

Communication is a key element in reporting and resolving service incidents. Unless otherwise noted, Datapipe and Client will communicate via the Client Portal during the incident management process.

- All communications shall include:
- Support ticket reference number
- Time and date of transaction in question
- Description of incident
- List of actions taken to verify and isolate the problem

### **1.3. OPENING/REPORTING AN INCIDENT.**

Datapipe will send Client a notification in accordance with the Client’s SEAP, advising that the Azure Services are unavailable. Regardless of whether Datapipe or Client reported the incident, Client will be responsible for tracking the ticket for the incident and assisting Datapipe as may be reasonably requested until such time as the incident is resolved.

### **1.4. WORKING THE INCIDENT.**

Once an incident has been reported and a support ticket created, Datapipe and Client will work together to address the incident. This process involves:

- An initial response to the incident report
- Status updates
- Escalation
- Communication and resolution times for working the incident

#### **1.4.1. Initial Response.**

Upon receiving the notification for an opened incident, Datapipe will respond to Client via the Client Portal. Response intervals vary depending on incident severity, as indicated in Section 2, “Datapipe Performance Standards.”

#### **1.4.2. Status Updates.**

Update intervals will vary depending on the incident severity as indicated in Section 2. While an Immediate Support Request or a Severity Level 1 event is being resolved, Datapipe will send periodic resolution updates.

**2. DATAPIPE PERFORMANCE STANDARDS.**

Event Type	Description	Datapipe Performance Standard
<i>Severity Level 1 Event</i>	Initial response to event reported by Datapipe's monitoring system or Client	10 minutes
	Datapipe will start to work on the resolution	10 minutes
	Status update	Every 60 minutes
<i>Severity Level 2 Event</i>	Initial response to event reported by the monitoring system or Client	10 minutes
	Datapipe will start to work on the resolution	30 minutes
	Status update	Every 2 hours
<i>Immediate Support Request</i>	Initial response	5 minutes
	Datapipe will start to work on the resolution	5 minutes
	Status update	Every 60 minutes
<i>Service Request</i>	Initial response	30 minutes
<i>Microsoft-initiated scheduled maintenance or outage</i>	Notification via e-mail	No more than 24 hours from Microsoft notification to Datapipe
<i>Azure unplanned outage</i>	Incident report via e-mail	Within 48 hours of incident

**2.1. CREDITS.**

If Datapipe fails to meet the service levels described in this Section 2 (the "**Incident Management Service Level**") in any given calendar month, Datapipe will credit Client in accordance with the following schedule (the "**Standard Service Credit for Incident Management**"):

Monthly Cumulative Incident Management Failures	Service Credits (% of Managed Services Fee)
3-5	5%
6-10	15%
11+	50%

*\*Based on a 30-day billing cycle.*

In no event shall any single ticket result in more than one Incident Management failure, for purposes of calculating Client credits pursuant to this Section 2.1.

**3. AZURE SLA**

Client's sole and exclusive remedy in connection with its use of and/or any failure of the Azure Services under this Managed Cloud for Azure Services Schedule shall be pursuant to and as limited by the Azure SLA. Upon written request, Datapipe will assist Client as may be reasonably required in asserting an SLA credit claim with Microsoft.

**4. EXCEPTIONS TO THE CREDIT PROCESS:**

A credit will not be issued due to failures that are, as determined by Datapipe, in its good faith reasonable judgment, a result of:

- Client-initiated work independently generated by Client or Azure Services interruptions requested by Client;
- Client-required operating system software revisions and hardware/software configurations that are not Datapipe tested/approved;
- Client Content or Client Software;
- The acts or omissions of Client, its employees, agents, third-party contractors or vendors, or anyone gaining access to the Azure Services, the Datapipe Software, or the Client Software at the request of Client;
- Violations of the AUP or Azure Policies;
- Reasons of Force Majeure;
- DNS issues outside the direct control of Datapipe;
- Patches or Antivirus updates deployed in production environments which contain code faults, flaws or other errors attributable to the third-party vendors that created such code;
- Actions by Third Party service providers;
- Any suspension of Azure Services pursuant to the terms of the Call Off Agreement and this Managed Cloud for Azure Services Schedule; or
- A denial-of-service attack (DoS Attack) or distributed denial-of-service attack (DDoS Attack), wherein one or more compromised systems attack a single target, designed to make resources unavailable to its intended users.

**5. LIMITED REMEDY AND MAXIMUM CREDITS AVAILABLE.**

The sole and exclusive remedy for the failure to meet the Incident Management Service Level shall be the receipt of service credits as provided in Section 2.1 above. In addition, the total credit available to Client in any calendar month for failure to meet the Incident Management Service Level shall not exceed the Managed Cloud for Azure Service Fee for that month.

**[END OF EXHIBIT A]**