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# Managed Services Terms

Last Updated: 06/10/2023



## MANAGED SERVICES TERMS (LINKED TO MASTER SERVICES AGREEMENT)

### 1. Interpretation

- 1.1 Except as defined in these Managed Services Terms, capitalised terms shall have the meanings given to them in the Master Services Agreement (“**Agreement**”) found [here](#).
- 1.2 To the extent applicable to the Managed Services, in the event of conflict with the terms of these Managed Services Terms and the Agreement, the provisions in these Managed Services Terms shall take precedence and in the event of a conflict with the terms of Managed Services Terms and a Statement of Work, the provisions of the Statement of Work shall take precedence over these Managed Services Terms.

### 2. Managed Services

- 2.1 The Supplier shall provide the Managed Services in accordance with the Service Level Arrangements as stated in the Statement of Work.
- 2.2 Unless otherwise specified in the relevant Statement of Work or agreed in writing by the Supplier, the Supplier will provide the Managed Services remotely.
- 2.3 The Client shall remain responsible for the use of the Managed Services under its control including any use by third parties that Client has authorised to use the Managed Services.
- 2.4 The Client must take reasonable measures to ensure it does not jeopardise services supplied to third parties on the same shared access infrastructure as notified to the Client by the Supplier in writing. This includes informing the Supplier promptly in the case of a denial-of-service attack or distributed denial-of-service attack. In the event of any such incident, the Supplier will work with the Client to alleviate the situation as quickly as possible. The Parties shall discuss and agree appropriate action (including suspending the Managed Services).
- 2.5 The Client shall not provide the Managed Services to third parties unless otherwise indicated in the Statement of Work or as otherwise agreed by the Supplier in writing.
- 2.6 The Client acknowledges that certain conditions outside of the Supplier’s control may adversely impact the ability of the Supplier to perform functions of the Managed Services. Examples of such conditions are listed below:
  - (a) failure of Client Hardware, software or operating system;
  - (b) partial or full failure of Third Party Services;
  - (c) network connectivity issues between Local System Components and the Supplier’s platform;
  - (d) network connectivity issues between Local System Components and its third party’s servers.
- 2.7 The Supplier reserves the right to:
  - (a) modify the Supplier's System, its network, system configurations or routing configuration; or
  - (b) modify or replace any Hardware in its network or in equipment used to deliver any Managed Service over its network,

provided that this has no adverse effect on the Supplier's obligations or performance under the Agreement and its provision of the Managed Services or the Service Level Arrangements. If such changes will have an adverse effect, the Supplier shall notify the Client and the Parties shall follow the Change Request.

- 2.8 If required by the Supplier, the Client shall allow the Supplier to install monitoring software on the Client-side Equipment, Hardware and/or in the Client’s Operating Environment to enable the Supplier to conduct remote monitoring and diagnostics and shall ensure that such software remains installed throughout the Term.

- 2.9 If the Supplier breaches its obligations in paragraph 2.1 of these Managed Services Terms, the Supplier shall, at its expense, use commercially reasonable endeavours to correct any such non-conformance promptly, or provide the Client with an alternative means of accomplishing the desired performance.
- 2.10 The Managed Services acquired by the Client under the Agreement are solely for the Client's own internal use and not for resale or sub-licensing, unless otherwise agreed in writing.
- 2.11 The Supplier may suspend, revoke or limit use of the Managed Services, wholly or partly (i) in case of late payments, (ii) if the Supplier in its absolute discretion finds that a risk to the overall integrity of the Managed Services has occurred, or (iii) other reasonable grounds exist. If the cause of the suspension is reasonably capable of being remedied, the Supplier will provide the Client notice of what actions the Client must take to reinstate the Managed Services and/or Products. If the Client fail to take such actions within a reasonable time, the Supplier may terminate the applicable Managed Service.
- 3. Responsibilities of the Supplier**
- 3.1 Notwithstanding the foregoing, the Supplier does not warrant that the Client's use of the Managed Services will be:
- (a) free from faults, interruptions or errors;
  - (b) available one hundred percent (100%) of the time.
- 3.2 In relation to the Managed Services specifically and notwithstanding the Supplier's obligations under paragraph 2.1 of these Managed Services Terms, the Supplier shall:
- (a) staff the Supplier support desk with a team of skilled individuals (whether subcontracted or not);
  - (b) maintain a team skilled in the platform and with knowledge of the systems developed to deliver the solution;
  - (c) maintain a comprehensive IT service management solution, with integrated knowledge base and how-to guides to reduce the time to issue resolution;
  - (d) where agreed, following written request by the Client, undertake a regular account review, to discuss the Client's service needs and ensure that the Agreement is in alignment with its needs;
  - (e) use commercially reasonable endeavours to follow the instructions of the Client and will remain courteous during any communications with Client personnel; and
  - (f) provide the Client with reasonable co-operation in relation to the Agreement.
- 3.3 The Supplier shall be under no obligation to provide the Managed Services to the Client in the following circumstances (unless specified under the Statement of Work):
- (a) unauthorised use of the Services by the Client or use otherwise than in accordance with the Agreement;
  - (b) providing the Managed Services outside Normal Business Hours unless otherwise agreed between the Parties in writing;
  - (c) providing any other services not covered herein;
  - (d) training; and
  - (e) providing the Managed Services to the Client where such support would have been unnecessary if the Client had implemented update(s) and upgrade(s) supplied or offered to the Client.
- 3.4 The Supplier does not and cannot control the flow of data to or from its network and other portions of the internet. Such flow depends in large part on the performance of internet services provided or controlled by third parties. At times, actions or omissions of such third parties can impair or disrupt connections to the internet (or portions thereof). Whilst the Supplier will use reasonable efforts to take all actions it deems appropriate to remedy and avoid such events, the Supplier cannot guarantee that

such events will not occur. Accordingly, the Supplier disclaims any and all liability resulting from or related to such events.

#### **4. Responsibilities of the Client**

4.1 The Client shall (unless otherwise specified in the Statement of Work or as otherwise set out in the Agreement):

- (a) permit the Supplier to install the current version of software required to provide the Managed Services from time to time when upgrades or fixes occur and to provide a reasonable level of assistance in implementation and testing;
- (b) provide the Supplier at least seven (7) Business Days' notice in advance of any intention or move to change when applicable Client-side Equipment or Client's Operating Environment or data-feeds that will directly impact the Managed Services. If such notice has not been received on time, the Supplier will have to make additional effort to return the Client's systems to an acceptable state for continued support, and will charge accordingly at its then standard charging rate.

#### **5. Security**

5.1 The Supplier shall ensure that appropriate safety and security systems and procedures are maintained and enforced to prevent unauthorised access or damage to any and all Managed Services, the Supplier's System and related networks or resources and the Client Data, in accordance with Good Industry Practice.

5.2 Each Party shall promptly inform the other if it suspects or uncovers any breach of security, and shall use all commercially reasonable endeavours to promptly remedy such breach.

#### **6. Warranties**

6.1 The Client warrants:

- (a) that the Supplier's use in the provision of the Managed Services or otherwise in connection with the Agreement of any third party materials, including any Hardware supplied by the Client to the Supplier for use in the provision of the Managed Services or otherwise in connection with the Agreement, shall not cause the Supplier to infringe the rights, including any Intellectual Property Rights, of any third party;
- (b) it will comply with and use the Managed Services in accordance with the terms of the Agreement, and shall not do any act that shall infringe the rights of any third party including the publishing or transmission of any materials contrary to relevant laws or in breach of the Customer Agreement.

6.2 The Client is solely responsible for securing and backing up its data. The Supplier is not responsible or liable for the deletion of or failure to store any Client Data and other communications maintained or transmitted through the use of the Managed Services or Products.

6.3 Unless otherwise agreed in writing, the Managed Services and Products are designed, manufactured and intended for low-risk activities.

6.4 The Client acknowledges and accepts that where the Products are provided by Microsoft or a Third Party and that any representations or warranties regarding the use of the Products is set out in the Customer Agreement, applicable Licence Agreement or Third Party Terms (as applicable). The Supplier has no responsibility for the suitability, availability, functionality or otherwise regarding the Managed Services and Products.

6.5 The warranties provided in these Managed Services Terms are the exclusive warranties from the Supplier in relation to the Managed Services.

#### **7. Limitation of Liability**

7.1 Subject to Clause **Error! Reference source not found.** of the Agreement, the Service Level Arrangements state the Client's full and exclusive right and remedy, and the Supplier's only obligation

and liability, in respect of the performance and availability of the Managed Services, or their non-performance and non-availability.

- 7.2 Except as expressly and specifically provided in the Agreement, the Client assumes sole responsibility for results obtained from the use of the Managed Services, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Client in connection with the Managed Services, or any actions taken by the Supplier at the Client's direction.