

NCE SUBSCRIPTION TERMS (LINKED TO MASTER SERVICES AGREEMENT)

1. NCE CSP Subscription

- 1.1 Where the Services referred to in the Supplier's Statement of Work include the provision of NCE ("NCE Subscription Services"), the NCE Subscription Services shall be provided in accordance with and governed by the Statement of Work and these terms (which are hereinafter referred to as the "NCE Subscription Terms").

2. Interpretation

- 2.1 The following definitions in this paragraph 2.1 apply in these NCE Subscription Terms.

Cap: is the total monthly volume of Microsoft services which the Client is permitted to use.

Consumption Subscriptions: refers to the licences that are billed based on actual usage in the preceding month.

Minimum Users: the minimum users as provisioned from time to time.

Online Service: any of the Microsoft-hosted online services subscribed to by Client.

Subscription(s): the purchase of a Subscription Service.

Third Party Distributor: the third party who sells the Product(s) to the Client or the Supplier (as the case may be).

- 2.2 Except as defined in these NCE Subscription Terms, capitalised terms shall have the meanings given to them in the Master Services Agreement found [here](#) ("Agreement").
- 2.3 To the extent applicable to the NCE Subscription Services, in the event of conflict with the terms of these NCE Subscription Terms and the Agreement, the provisions in these NCE Subscription Terms shall take precedence and in the event of a conflict with the terms of these NCE Subscription Terms and a Statement of Work, the provisions of the Statement of Work shall take precedence over these NCE Subscription Terms.

3. Service Provision

- 3.1 By submitting an order for NCE Subscription Services, the Client (i) represents that any subscription commitments and requirements disclosed are complete and accurate in all respects; (ii) agrees to pay the Supplier for all orders it submits for Products and the Subscription Services; (iii) agrees to the terms of the Agreement and the Statement of Work.
- 3.2 By placing an order with the Supplier, the Client represents and warrants that the Client has accepted the Customer Agreement.
- 3.3 Once an order for a Subscription Services has been accepted by the Supplier:
- (a) Subscriptions shall continue for the duration of the Term unless terminated in compliance with the Statement of Work or Clause 16 of the Agreement; and/or
 - (b) adjustments may only be made to increase the Minimum Commitment and not decrease below any current Minimum Commitment provisioned as more fully set out in the Agreement, these NCE Subscription Terms and the Statement of Work (as applicable to the NCE Subscription Services).

4. Client's obligations

- 4.1 The Client agrees and acknowledges to adhere to the terms of the Customer Agreement which govern the use of the Subscription Services and the Online Services.

5. Fees

- 5.1 Fixed Term Subscriptions.
- (a) Products sold under fixed term Subscriptions are sold for a term as specified in the Statement of Work. The Statement of Work shall specify if such Subscriptions are to be billed in advance on a monthly or annual basis.

- (b) Any subsequent adjustments to annual Subscriptions (e.g. adding users) made mid-billing cycle will be invoiced on the 1st of the following calendar month, and shall include such subsequent adjustments being payable in arrears for the previous month and in advance on a pro-rata basis for the remainder of the Fixed Term Subscription.
 - (c) Any subsequent adjustments to monthly Subscriptions (e.g. adding users) made mid-billing cycle will be calculated and post-billed at the subsequent invoice.
- 5.2 For all Consumption Subscriptions, the Client agrees and acknowledges that:
- (a) Consumption Subscriptions do not expire unless cancelled. Consumption Subscriptions can be cancelled in accordance with the Customer Agreement and any usage before a transfer to another provider is in effect will be billed in the next scheduled invoice date;
 - (b) Consumption Subscriptions will be billed at the next billing cycle and will include all usage from the prior month. Pricing will be based on the pricing effective during the current billing cycle except when prices decrease or increase. The unit price for an Online Service sold on a consumption basis may change during the subscription period;
 - (c) it shall pay all such usage and is responsible for monitoring its consumption needs;
 - (d) the Client further acknowledges and accepts that the Supplier may establish or install a technical lock or barrier (the "**Barrier**"), which prevents the Client from utilisation of a Product in excess of the Cap;
 - (e) for the avoidance of doubt, if, in spite of paragraph (d), the Client utilises a Product in excess of the Cap, the Client shall pay to the Supplier fees and other expenses in accordance with its actual use. Any dysfunction or non-use of the Barrier shall not release the Client from paying fees and costs in accordance with its actual utilisation of a Product. The Supplier has no responsibilities with regards to preventing the Client from utilisation in excess of the Cap.
- 5.3 For the avoidance of doubt, the Supplier may increase any fees related to the Subscription Services in line with any increases imposed upon the Supplier by Microsoft or Third Party Distributor upon thirty (30) days' notice and/or in line with the terms of the Customer Agreement. Notwithstanding the foregoing: (i) the prices for Products may change without notice; and (ii) the Supplier will not be required to provide any prior notice before the effectiveness of a decrease or increase in Product Fees that relates to a currency fluctuation event.
- 5.4 The Supplier may change credit or payment terms for unfilled orders if, in the Supplier's reasonable opinion, the Client's financial condition, previous payment record, or relationship with the Supplier merits such change.
- 6. Intellectual Property**
- 6.1 The Client acquires only such limited rights to use the Products as is explicitly described in the Customer Agreement. Any use by the Client of these rights beyond the scope permitted by the Customer Agreement shall constitute a material breach hereof.
- 6.2 The Supplier is not liable for defects in, or delays related to the Products.
- 6.3 For the avoidance of doubt, if a claim for infringement concerns the Product, the separate terms and conditions of the Customer Agreement shall apply and is a separate action between the Client and Microsoft.
- 7. Cancellation**
- 7.1 Subject to paragraph 6.2, where the Client has procured Products or Online Services from the Supplier, the Client may cancel the applicable order in line with the terms set out by Microsoft if the Client notifies the Supplier within seventy two hours (72) of placing the initial order for the applicable Microsoft Products or Online Services. For such notice to cancel to be effective, it must be received by the Supplier within the hours of 9am – 4pm (GMT) on a Business Day.
- 7.2 The Client acknowledges and accepts that any cancellation pursuant to paragraph 7.1 will only be accepted if submitted by the Supplier within Microsoft's designated cancellation period for the applicable Online Service or Product and is approved by Microsoft and/or the Third Party Distributor (if

applicable) and is in accordance with any other requirements of Microsoft and/or Third Party Distributor (if applicable) at the time of cancellation. If cancellation is approved by Microsoft and/or Third Party Distributor, then the order will be cancelled.

- 7.3 Depending on the service or product being cancelled, if and to the extent any credit of the purchase price (in full or pro-rata) is issued by Microsoft or the Third Party Distributor (if applicable) to the Supplier, on receipt of the same, the Supplier will pass on any such credit to the Client less any Microsoft and/or Third Party Distributor handling fee as a proportion of the value of any order submitted and approved after the designated period for the relevant Product or Online Service. The Supplier is not liable to the Client if Microsoft and/or Third Party Distributor do not issue a credit.

8. Limitation of liability

- 8.1 For the avoidance of doubt, the terms set out in the Customer Agreement govern the rights and responsibilities of the Client and Microsoft in relation to the use of the Subscription Services and Online Services and the Supplier excludes any and all liability in relation to the use of the Products. All other services which falls outside the Subscription Services and Online Services are governed by the terms of the Agreement and shall take precedence over the terms of the Customer Agreement should any conflict arise over the use of such services.

- 8.2 Notwithstanding anything, to the contrary in the Agreement, the Client shall indemnify the Supplier from and against any claims, including but not limited to claim for licence fees that directly or indirectly arises from the Client's use of the Subscription Services or reporting under the Agreement.

9. Term & Termination

- 9.1 The Client's perpetual licences and licences granted on a subscription basis will continue for the duration of the subscription period(s) notwithstanding termination of the Agreement, subject to the terms of these NCE Subscription Terms and the Master Service Agreement (as applicable). Unless otherwise specified in the applicable Statement of Work (as applicable to the NCE Subscription Services), the Client shall remain liable for any and all payments due in respect of the licences until the end of the respective subscription period.

- 9.2 Termination of the licences will not affect any other Services provided under these NCE Subscription Terms or the Agreement.

- 9.3 The Supplier shall not be liable whatsoever to the Client following any termination or suspension of the Subscription Services for legal, regulatory or any other reason reasons by Microsoft or the Third Party Distributor.

- 9.4 The Supplier may terminate the NCE Subscription Services immediately on giving written notice to the Client if:

- (a) payment of any amount due from the Client under these NCE Subscription Terms is overdue by ten (10) Business Days or more provided that the Supplier has given the Client ten (10) days' written notice of such failure to pay;
- (b) upon termination by Microsoft or the Third Party Distributor of the licence(s); and/or
- (c) in accordance with the Customer Agreement.

- 9.5 On termination of the Agreement for any reason:

- (a) subject to paragraph 9.1, all licences granted under the Agreement will terminate immediately except for fully-paid, perpetual licences;
- (b) for metered Products billed periodically based on usage, the Client must immediately pay for unpaid usage as of the termination date; and
- (c) if Microsoft is in breach, and the Client is entitled, the Client will receive a credit for any Subscription Services fees, including amounts paid in advance for unused consumption for any usage period after the termination date.