

Silversands Cloud Services

Terms and Conditions

V2.1

Effective 22<sup>nd</sup> June 2020

## Introduction

“**SILVERSANDS**” means Silversands Limited, company registration 2141393, of 3-5 Albany Park, Poole, BH17 7BX and any subsidiary, group member or partner of Silversands Limited.

“**CLIENT**” means the person or body (of whatever legal nature)] contracting with Silversands for the supply by Silversands of Microsoft Cloud Services.

These Cloud Services Terms and Conditions allow Silversands Limited (**Silversands**) to provide Microsoft Online Services to its Clients. These Cloud Services Terms and Conditions should be considered in conjunction with any previously supplied Proposal which provides pricing for the proposed service and are also supplemental to Silversands Professional Services Agreement (PSA), or any other agreement between Silversands and the Client, and apply to Microsoft Online Services only.

This agreement consists of the following documents:

- a) These Cloud Services Terms and Conditions
- b) The Proposal
- c) The Silversands Professional Services Agreement (PSA) or other terms and conditions agreed between Silversands and the Client.

In the event of any inconsistency between the terms, priority shall be given to the terms in the order set out above.

The terms of these Online Services Terms and Conditions shall prevail over any inconsistent terms or conditions contained in, or referred to, in the Customer's purchase order, confirmation of order or outline specification.

## ARTICLE I - DEFINITIONS

**“Agreement”** means the agreement between Silversands and the Client as set out in the Introduction.

**“AOBO”** means Admin on behalf of. When transacting with Azure Plan, Silversands will be assigned, by default, privileged admin rights in Azure. A level of admin privileges needs to be maintained to for Silversands to continue to support the Client both technically and commercially.

**“Customer Data”** means all data, including all text, sound, video or image files, and software that are provided to Silversands or Microsoft through use of the Online Service.

**“Microsoft”** means Microsoft or relevant subsidiary.

**“Microsoft Customer Agreement”** means the Microsoft Customer Agreement as published at <https://www.microsoft.com/licensing/docs/customeragreement>

**“Microsoft Partner Agreement”** This is an agreement signed by Silversands and is dynamically created agreement with terms based on the partner type and the offers we are qualified to sell and transact.

**“Microsoft SLA”** means the commitments which Microsoft makes regarding delivery and/or performance of the Online Services published at <https://www.microsoft.com/en-us/Licensing/product-licensing/products> or at an alternative site identified by Microsoft from time to time.

**“Minimum Term”** means 12 months or as otherwise stated in the Proposal

**“Online Services”** means any of the Microsoft hosted Online Services which you have subscribed to under this Agreement, including but not limited to Office 365 Services, Microsoft Dynamics 365 and other Microsoft Online Services.

**“Pay as you Go”** a service provided by Microsoft directly or indirectly where the services are billed on a variable basis depending on the Client usage i.e. Microsoft Azure Services and Microsoft Azure Plans.

**“Preview(s)”** means preview, beta or other pre-release version or feature of the Online Services or Software offered by Microsoft to obtain customer feedback.

**“Proposal”** means a Proposal or Quotation supplied by Silversands to the Client setting out the Cloud Services to be supplied.

**“Product”** means any Online Service including any software.

**“Professional Services Agreement (PSA)”** means Silversands standard terms and conditions which are published at [www.silversands.co.uk/legal](http://www.silversands.co.uk/legal)

**“Software”** means Software we provide for installation on your device as part of your Subscription or to use the Online Service.

**“Subscription”** means an enrolment for Online Services as provided under this Agreement.

## RELATIONSHIP WITH MICROSOFT

1. We are authorised under a Microsoft Partner Agreement to licence and grant the right to use the products. Our relationship with Microsoft is that of a reseller, and we are therefore independent contractors.
2. Our ability to grant you the right to use the Products is subject to your acceptance of the Microsoft Customer Agreement. By entering into this Agreement, you are confirming that you have read, understood and agree to the terms of the Microsoft Customer Agreement.
3. You acknowledge and accept that we are the administrator for the purposes of the subscription.

## PRODUCTS

4. We agree to grant you the right to use the Products which are detailed in the Proposal in accordance with the terms of this Agreement.
5. All licenses provided pursuant to this Agreement are non-exclusive, non-sub licensable and may only be used in connection with your own internal business purposes.
6. You may not reverse engineer, decompile, disassemble, or work around technical limitation in the Product, except to the extent permitted by law.
7. You must not disable or circumvent any billing mechanism that meters your use of the Products. You may not rent, lease, lend, resell, transfer or host the Product, or any portion thereof, to or for third parties except as expressly permitted in the Microsoft Customer Agreement.
8. You further accept that all licenses are subject to any further restrictions imposed pursuant to the terms of the Microsoft Customer Agreement.

## FEES AND PAYMENT

9. The Fees for each Product are detailed in the Proposal.
10. The pricing for Microsoft Azure Services (also known as Pay-As-You-Go) will vary automatically as a result of Microsoft changing the US dollar conversion rate on a monthly basis.
11. We reserve the right to vary the price in respect of Microsoft Azure Services (also known as Pay-As-You-Go) with 7 days notice.
12. We reserve the right to vary the prices in respect of Microsoft Online Service subscriptions with 7 days notice.
13. On the expiry of each 12 month Subscription contract, services will auto renew for a further 12 months, unless notice of cancellation has been received.
14. Invoices will be raised:
  - a) for Subscription Products, invoices are raised monthly in advance for the applicable Online Services. Invoices are typically based on the number of user licenses or seats.

- b) for Azure services (Pay-As-You-Go), invoices are raised monthly in arrears. Invoices are based on consumption for the previous month. If the Client cancels the Azure service, invoices will continue to be raised until no further charges are incurred.
15. Taxes. All charges provided under this Agreement are exclusive of VAT which will be added to each invoice value.
16. Invoices are payable no later than 30 days from date of invoice.

## SERVICE LEVEL

17. We will provide the Products in accordance with the terms of this Agreement and the Microsoft Customer Agreement. We do not guarantee that the Products will be continuously available or free from service failures.
18. The Microsoft SLA makes certain commitments as to the Products. In the event of a service failure, you are entitled to lodge a claim with us pursuant to the Microsoft SLA.
19. In accordance with the Microsoft SLA we will escalate your claim pursuant to the Microsoft SLA, we may at our sole discretion provide you with a service credit but in the event that Microsoft does not accept your claim pursuant to the Microsoft SLA, we will not provide you with a service credit. Our liability to pay you service credits as detailed in this clause shall be your sole remedy for service failures
20. You acknowledge and accept that the Previews are not subject to the terms of Microsoft's SLA with regard to the applicable service levels. Further, we are not obliged to provide support services in respect of any Preview.

## SUPPORT

21. We will provide you with support services which include but are not limited to account set-up, sign up, accounts and billing, service and software updates.
22. For the avoidance of doubt, we will not provide support services in relation to any customisation or configuration of the Products under this Agreement unless this is specifically set out in a Proposal.
23. You can find details of our online support services and contact details published on our web site [www.silversands.co.uk/support](http://www.silversands.co.uk/support)
24. You acknowledge that where an undocumented scenario arises it may be necessary for us to escalate an issue to Microsoft for resolution
25. Notwithstanding the provisions of the Agreement, and with the knowledge that reasonable efforts will be made to diagnose and resolve faults that occur, we make no warranties that the support services will be successful in resolving all issues that arise.
26. We accept no responsibility or liability for hardware or software application problems.
27. To continue to provide both technical and commercial support of Azure Services (Pay-As-You-Go), the Client will need to continue to grant Silversands an appropriate Admin on Behalf (AOBO) of role. This is setup, as default, by Microsoft when the Azure Services are established.

## **CANCELLATION**

28. Following cancellation of a Product or termination of the Agreement by either party the Client has a period of 30 days in which to migrate any Customer Data to either a new subscription with us, with Microsoft directly, or some other service. After this period any remaining data may be deleted, with the exception of azure subscriptions, see clause 30.
29. Early termination of a subscription may incur charges.
30. Azure subscriptions will not be cancelled with Microsoft by Silversands until the Client has informed us in writing that all Customer Data has been transferred. Fees and charges will continue to accrue until all data has been transferred and the subscription terminated.
31. Services may be cancelled with 7 days notice if our terms of payment are not met.

## **WARRANTIES AND REPRESENTATIONS**

32. You acknowledge and accept that the only warranties provided to you in respect of the Products are those which are stated in Microsoft Customer Agreement.
33. We provide no warranties whether implied, statutory or otherwise, including warranties of merchantability or fitness for a particular purpose. These disclaimers apply except to the extent applicable law does not permit them.
34. You acknowledge and agree that your remedies in respect of any breach of warranty are limited to those detailed in in Microsoft Customer Agreement.
35. In order to make a claim for breach of warranty, you must first lodge this with us to escalate to Microsoft for validation in accordance with Microsoft's SLA.
36. Under no circumstances will we be liable for any loss of or damage to Customer Data unless such a specific service is defined in a service offering otherwise you accept responsibility for backing up your Data and shall ensure that your processes in this respect are adequate.

## LIMITATION OF LIABILITY

37. The aggregate liability of each party for claims under the Agreement is limited to direct damages up to the amount paid under the Agreement for the Products during the 12 months before the cause of action arose; provided that in no event will a party's aggregate liability for any Product exceed the amount paid for that Product during the Subscription.
38. You agree that we shall have no liability whatsoever in respect of the use of any Preview.

## INTELLECTUAL PROPERTY

39. Except for your license to use the Products as expressly granted under the Agreement, you shall not acquire in any way, any title, rights of ownership, or Intellectual Property Rights of whatever nature in the Products or in any copies of it and no Intellectual Property Rights of either party are transferred or licensed as a result of the Agreement.

*End.*