

Silversands Cloud Services

Terms and Conditions

V2.2

Effective 9th February 2022

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) The 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 the Cloud Services Terms and Conditions shall prevail over any inconsistent terms or conditions contained , 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 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 Silversands is 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 the client 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, Statement of Work 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

“Software” means Software Silversands provide for installation on a client device as part of a client Subscription or to use the Online Service.

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

“Term” means the length of time of an Online Service subscription, these are typically monthly or annual.

RELATIONSHIP WITH MICROSOFT

1. Silversands is 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 Silversands is therefore independent contractors.
2. Our ability to grant the client the right to use the Products is subject to the client's acceptance of the Microsoft Customer Agreement. By entering into this Agreement, the client is confirming that they have read, understood and agree to the terms of the Microsoft Customer Agreement.
3. The client acknowledges and accepts that Silversands is the administrator for the purposes of the subscription.

PRODUCTS

4. Silversands agrees to grant the client 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 the client's own internal business purposes.
6. The client may not reverse engineer, decompile, disassemble, or work around technical limitation in the Product, except to the extent permitted by law.
7. The client must not disable or circumvent any billing mechanism that meters their use of the Products. The client 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. The client further accepts that all licenses are subject to any further restrictions imposed pursuant to the terms of the Microsoft Customer Agreement.

FEES AND PAYMENT

9. The estimated Fees for each Product are detailed in the Proposal.
10. The pricing for Microsoft Azure Services (also known as Pay-As-You-Go) and Microsoft Online Service will vary automatically as a result of Microsoft changing the US dollar conversion rate.
11. Silversands reserve the right to vary the prices in respect of Microsoft Online Service subscriptions with 7 days' notice.
12. On the expiry of each Subscription contract, services will auto renew for a further 12 months or 1 month, depending on the type of contract purchased, unless notice of cancellation has been received, in accordance with the cancellation clause of the Cloud Services Terms and Conditions. The client will automatically be invoiced for any renewals.
13. Invoices will be raised:

- a) for Subscription Products on a monthly subscription, 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 Subscription Products on an annual subscription, invoices are raised annually in advance and cleared funds are required before commencement of the the Online Services. Invoices are typically based on the number of user licenses or seats. If additional seats are purchased during the lifetime of the annual subscription, an invoice will be raised for the cost of those seats until the end of the subscription term on a pro-rata basis.
 - c) 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.
 - d) For Azure upfront commitments, such as Azure Reserved Instances, invoices will be raised in advance and cleared funds are required before commencement of the service.
14. Taxes. All charges provided under this Agreement are exclusive of VAT. VAT will be added at the standard prevailing rate at the date of invoice.
15. Invoices are payable no later than 30 days from date of invoice.

SERVICE LEVEL

16. Silversands will provide the Products in accordance with the terms of this Agreement and the Microsoft Customer Agreement. Silversands do not guarantee that the Products will be continuously available or free from service failures.
17. The Microsoft SLA makes certain commitments with respect to the delivery and/or performance of the Online Services. In the event of a service failure, the client is entitled to log a claim with Microsoft.
18. The Client acknowledges and accepts that the Previews are not subject to the terms of Microsoft's SLA with regard to the applicable service levels. Further, Silversands is not obliged to provide support services in respect of any Preview.

SUPPORT

19. Silversands will provide the client with support services which include but are not limited to account set-up, sign up, accounts and billing, service and software updates.
20. For the avoidance of doubt, Silversands 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.
21. The client can find details of our online support services and contact details published on our web site www.silversands.co.uk/support.
22. The client acknowledges that where an undocumented scenario arises, it may be necessary for us to escalate an issue to Microsoft for resolution.

23. Notwithstanding the provisions of the Agreement, and with the knowledge that reasonable efforts will be made to diagnose and resolve faults that occur, Silversands makes no warranties that the support services will be successful in resolving all issues that arise.
24. Silversands accepts no responsibility or liability for hardware or software application problems.
25. 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 of (“AOBO”) role. This is set up, as default, by Microsoft when the Azure Services are established.

CANCELLATION

26. The costs for migrating licenses and services or transferring data will be borne by the Client.
27. Subscriptions should be cancelled to coincide with the end of their term.
28. Early termination of a subscription or service may incur charges and Silversands will invoice the Client for any charges incurred.
29. Decreases in the number of seats within a subscription may not be possible during a term or may incur charges. Silversands will invoice the Client for any charges incurred.
30. Following the 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 31.
31. Azure subscriptions will not be cancelled with Microsoft by Silversands until the Client has informed Silversands 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.
32. Services may be cancelled with 7 days' notice if our terms of payment are not met, Silversands will invoice the client for any cancellation charges Incurred as a result of termination.

WARRANTIES AND REPRESENTATIONS

33. The client acknowledges and accepts that the only warranties provided to the client in respect of the Products are those which are stated in the Microsoft Customer Agreement.
34. Silversands 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.
35. The client acknowledges and agrees that remedies in respect of any breach of warranty are limited to those detailed in the Microsoft Customer Agreement.
36. In order to make a claim for breach of warranty, the client must first lodge this with Silversands to escalate to Microsoft for validation in accordance with Microsoft's SLA.
37. Under no circumstances will Silversands be liable for any loss of or damage to Customer Data unless such a specific service is defined in a service offering. The client accepts responsibility for backing up its Data.

LIMITATION OF LIABILITY

38. The aggregate liability of each party for claims under the Agreement is limited to direct damages up to a maximum of the amount paid under the Agreement for the Products during the 12 months before the cause of action arose.
39. The client agrees that Silversands shall have no liability whatsoever in respect of the use of any Preview.

INTELLECTUAL PROPERTY

40. Except for the client license to use the Products as expressly granted under the Agreement, the client 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.