

SCHEDULE 3.6(A) - MICROSOFT SERVICES

1. APPLICATION

- 1.1 This Schedule contains a description of the Microsoft Services, and forms part of the Agreement between the Parties for the provision of such Services together with the **General Conditions** and other documents listed at clause 1.4 of the **General Conditions**.
- 1.2 Definitions and interpretations that are specific to this Schedule are set out in **Annex 1** and apply in addition to the definitions and interpretations set out in **Schedule 1 (Definitions)** of the **General Conditions**.

2. SERVICE DESCRIPTION

- 2.1 The Supplier is a Gold Microsoft Partner and member of the Microsoft Partner Network. The Supplier is authorised to re-sell Microsoft products and services including but not limited to:
- 2.1.1 Office 365 Services;
 - 2.1.2 Microsoft Dynamics Microsoft Services;
 - 2.1.3 Microsoft Azure Services;
 - 2.1.4 Microsoft Intune Microsoft Service;
 - 2.1.5 Windows Server Services; or
 - 2.1.6 Windows SQL Services.
- hereinafter defined as "**Microsoft Services**".
- 2.2 By placing an Order with the Supplier for Microsoft Services, the Customer acknowledges it is entering into an agreement with the Supplier which is subject to the Supplier's terms and conditions as explained at paragraph 1.1 above.
- 2.3 The Customer acknowledges and accepts the terms of the **Microsoft Cloud Agreement** and applicable **Microsoft Product Terms** (as amended by Microsoft from time to time) represent an enforceable contract between Microsoft and the Customer in respect of the Microsoft Services.
- 2.4 The Supplier's relationship with Microsoft is that of a reseller. The Supplier is acting as an independent contractor for the purposes of this Agreement. The Supplier and Microsoft do not have any agency, franchise or fiduciary relationship. The Customer is a mutual customer of the Supplier and Microsoft.

3. COMMENCEMENT AND DURATION

- 3.1 This paragraph 3.1 supersedes clause 2.1 of the **General Conditions**. The Agreement shall commence on the date of the Order and shall continue in force for a minimum period as stated on the Order ("**Minimum Term**") from the Commencement Date. Save for Orders in respect of Software Subscriptions and Perpetual Software as further described in paragraphs 8 and 9 below, the Minimum Term of the Order thereafter shall be renewed automatically for successive periods equal to Minimum Term (each a "**Successive Term**") unless otherwise terminated:
- 3.1.1 by the Customer giving not less than thirty (30) days' written notice before the end of the Minimum Term or Successive Term; or

- 3.1.2 In accordance with clause 8 of the **General Conditions**.

- 3.2 Should the Customer wish to amend its licensing quantities for a Successive Term, it must notify the Supplier in writing not less than 30 days prior to the end of the then Minimum Term or Successive Term. Receipt of notice must be confirmed by the Supplier.

4. CUSTOMER OBLIGATIONS

- 4.1 The Customer must acquire and assign the appropriate SL required for its use of the Microsoft Services. Each user that accesses the Microsoft Services must be assigned a SL or access the Microsoft Services only through a Licensed Device that has been assigned a SL, unless specified otherwise in the Microsoft Services Terms.
- 4.2 Any SL provided pursuant to this Agreement are non-exclusive, may only be used in connection with the Customer's own internal business purposes and may not be reassigned, unless otherwise specifically agreed with the Supplier and/or Microsoft.
- 4.3 The Customer acknowledges and accepts that a SL are subject to any further restrictions imposed pursuant to the **Microsoft Cloud Agreement**.
- 4.4 Where the Supplier provides the Customer with an ability to request Services via a Third-Party Supplier portal or system, the Customer acknowledges that that shall constitute an Order and it shall be fully responsible for all Charges for Orders which are requested including but not limited to those associated with moves, adds and changes. The Supplier shall be entitled to invoice Charges in accordance with the Supplier's then applicable Tariff. The Supplier shall have no liability to the Customer in respect of any costs, losses or expenses howsoever arising incurred by the Customer using any Third-Party Supplier portal.

5. SERVICE CONDITIONS

- 5.1 The Customer may use the Microsoft Services and related Software which are detailed in the Order in accordance with this Agreement and the terms of its agreement with Microsoft as detailed at paragraph 2.3.
- 5.2 The Supplier and/or Microsoft shall have no obligation to accept orders or liability due to lack of product availability, product shortage or delay in fulfilment. Fulfilment times are estimates only.
- 5.3 The Supplier and/or Microsoft reserves the right to reject any order for legal or regulatory reasons or if Microsoft reasonably determines that the provisioning of such an order would create an additional risk to Microsoft.
- 5.4 The Customer may be required by the Supplier and/or Microsoft to install certain Microsoft Software to use the Microsoft Services, if so, the following terms apply:

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- 5.4.1 the Customer may install and use the Software only for use with the Microsoft Services;
- 5.4.2 the **Product Terms** may limit the number of copies of the Software the Customer may use or the number of Licensed Devices on which the Customer may use it;
- 5.4.3 the Customer's Use Rights begin when the Microsoft Service are activated and ends when the Customer's Use Rights for the Microsoft Services ends;
- 5.4.4 the Customer must uninstall the Software when the Customer's Use Rights ends; and
- 5.4.5 the Supplier and/or Microsoft may disable the Microsoft Services at any time.
- 5.5 Licenced Devices on which the Software is installed may periodically provide information to enable Microsoft to check the version and verify the Software is properly licensed.
- 5.6 The Customer may only obtain updates or upgrades for the Software from the Supplier or Microsoft and Microsoft may recommend or download to Licensed Devices updates or supplements to the Software, with or without notice to the Customer.
- 5.7 Where Microsoft introduces features, supplements or related software that are new (i.e. that were not previously included with the Subscription), Microsoft may provide terms or make updates to the Product Terms that apply to the Customer's use of those new features, supplements and related software.
- 5.8 Microsoft may update or otherwise modify, an existing Product to add new features or functionality at any time. Microsoft will provide no less than thirty (30) days' prior notice before discontinuing a Product or removing any existing features or functionality of a Product (or SKU of a Product), unless such discontinuance or removal relates to a currency fluctuation event.
- 5.9 The Supplier and Microsoft may provide the Customer with information and notices about the Microsoft Services electronically, including via email, through the portal for the Microsoft Services, or through a web site that the Supplier or Microsoft identifies.
- 5.10 The Software may contain third party software components and unless otherwise disclosed in that software, Microsoft, not the third party, licences these components to the Customer under Microsoft's licence terms and notices.
- 6. AZURE / AZURE PLAN SERVICES**
- 6.1 There are 2 options for Azure / Azure Plan usage depending on the Microsoft Service being provided as stated on the Order:
 - 6.1.1 Azure Bundled Service; or
 - 6.1.2 Azure Consumption-Based Service.
- 6.2 The Charges for each Product detailed in the Order shall be indicative and estimated. The actual prices may vary depending on usage, date of purchase, currency and inflation.
- 6.3 The Charges for the Azure Bundled Service are a Recurring Charge charged monthly in advance. Where additional service elements are required, the fee will be adjusted in the following months' invoice.
- 6.4 The Charges for the Consumption-Based Services are a Usage Charge charged monthly in arrears as follows:
 - 6.4.1 the Supplier will invoice the Customer an estimated usage consumption level ("**Estimated Usage**") for the calendar month. That will be based on the most recent usage data available from Microsoft as at the date of the invoice;
 - 6.4.2 the Actual Usage for the month is not known until Microsoft provides the Supplier will a full and final usage report the following month;
 - 6.4.3 the Supplier will calculate the difference between the Estimated Usage and the Actual Usage and a credit or debit will be placed on the Customer account; and
 - 6.4.4 at the end of the following month in addition to your next months Estimated Usage the calculated credit or debit from the previous month shall be included in the Charges invoiced by the Supplier.
- 6.5 Azure Charges are based on global pricing rates provided by Microsoft and is standard across licensing programs. Charges are based on global USD rate and invoiced to the Customer on a monthly GBP conversion rate. Any fluctuation in the currency exchange rate will be reflected automatically in your monthly invoice for all consumption-based products. Where currency fluctuations have an impact on a fixed service the Customer will be notified in advance.
- 6.6 To transact and invoice your Azure / Azure Plan in accordance with Microsoft Partner guidance, the Supplier must have access to the Customer's system and data and maintain "Admin on Behalf of Privileges" to all your Subscriptions at all times to ensure effective and accurate billing. Any removal of this privilege shall be deemed breach of contract and shall entitle the Supplier to invoice the Customer a 15% surcharge to the Charges for your Azure / Azure Plan.
- 6.7 Some Azure Marketplace services are available through Azure / Azure plan. To use any Azure Marketplace based service on your Microsoft Tenant the Customer must contact the Supplier in advance. The Customer shall be liable in full for any Charges associated with Azure Marketplace items which may include third party licensing costs and Azure consumption costs.
- 6.8 When the Customer agrees to the Supplier activating a Reserved Instance on the Azure Subscription, the Customer agrees to a Minimum Term which shall be stated on the Order. Charges will be invoiced monthly.

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7. LICENSING BASED SERVICES

- 7.1 Microsoft has 2 options to license cloud Microsoft Services. The Supplier will provide the Customer with the option as stated on the Order being either:
- 7.1.1 Annual Commitment Licensing; and
 - 7.1.2 Monthly Commitment Licensing.
- 7.2 The Customer may place an Order which includes Microsoft Services on an Annual Commitment and others on a Monthly Commitment.
- 7.3 For Annual Commitment Licensing, the following applies:
- 7.3.1 the Customer agrees to pay the Supplier Recurring Charges for all Microsoft Services for the annual period monthly. In some circumstances, the Customer may be required to pay in full in advance;
 - 7.3.2 during the Minimum Term and Successive Term, the Customer is not permitted to reduce its licensing commitment in relation to Microsoft Services or move to a lower licensing plan;
 - 7.3.3 should the Customer wish to amend or cancel an Order it may do so within 72 hours of license activation which can only be processed on a Working Day between 9:00 and 4:30. If a receipt cannot be actioned within the timeframe, the Customer will be liable for all licenses and associated Charges for the Minimum Term;
 - 7.3.4 during the Minimum Term and Successive Term, the Customer may increase the quantity of licensing. Any increase is subject to the same terms as the existing Annual Commitment Licensing Subscription and the Minimum Term or Successive Term will expire on the same date as the existing Annual Commitment Licensing Subscription; and
 - 7.3.5 Recurring Charges are fixed for the duration of the Minimum Term of the Order.
- 7.4 For Monthly Commitment Licensing, the following applies:
- 7.4.1 Recurring Charges are billed monthly and the Minimum Term is 1 month;
 - 7.4.2 should the Customer wish to cancel an Order it may do so within 72 hours of license activation which can only be processed on a Working Day between 9:00 and 4:30. If a receipt cannot be actioned within the timeframe, the Customer will be liable for the monthly License Fee; during the Monthly Commitment, the Customer is not permitted to reduce its licensing commitment in relation to Microsoft Services or move to a lower licensing plan;
 - 7.4.3 during the Monthly Commitment, the Customer may increase the quantity of licensing. Any increase is subject to the same terms as the existing Monthly Commitment Licensing Subscription and the Minimum Term or

Successive Term will expire on the same date as the existing Monthly Commitment Licensing Subscription;

- 7.4.4 Recurring Charges are fixed for the duration of the Monthly Commitment of the Order and can change monthly depending on Microsoft pricing; and
- 7.4.5 Monthly Commitment Subscriptions incur a 20% uplift to the Recurring Charges.

8. SOFTWARE SUBSCRIPTIONS

The Supplier offers Software Subscriptions including but not limited to licenses for Windows Server and SQL Server.

- 8.1 Software Subscriptions are available for Minimum Terms of either 12 months or 36 months and the applicable Minimum Term shall be as stated on the Order.
- 8.2 The Supplier shall invoice the Customer the Charges for the full Software Subscription period in advance.
- 8.3 The Software Subscription does not automatically renew at the end of the Subscription. You no longer have a legal right to use the Software upon expiry of the Subscription. The Customer must remove the Software or enter into a further Order to effectively renew its Software Subscription.

9. PERPETUAL SOFTWARE

- 9.1 The Supplier offers Perpetual software including but not limited to Windows Server and SQL Server.
- 9.2 The Charges payable in respect of Perpetual software is a one-off payment in full in advance.
- 9.3 Upon receipt of payment by the Supplier of the Charges for the Perpetual software, the Customer will have rights to use the software and will be responsible for maintaining the software license keys. The Supplier does not guarantee that it will be able to retrieve the Customer's software license keys in the future.
- 9.4 The Customer must retain proof of purchase of the Perpetual software in the event of a software audit or to re-install the software.

10. CHARGES AND PAYMENT

- 10.1 This paragraph 10 is supplemental to clause 6 of the **General Conditions**. In the event of express conflict this paragraph 10 shall take precedence.
- 10.2 The Supplier shall be entitled to invoice the Customer for Charges for the Microsoft Services in accordance with paragraphs 6 to 9 and 14 as follows (depending upon billing frequency):
 - 10.2.1 Installation Charges on or after the Commencement Date for work carried out;
 - 10.2.2 Recurring Charges except Usage Charges;
 - 10.2.3 Usage Charges calculated at the current Tariffs;
 - 10.2.4 Charges for Hardware which shall be invoiced from the date of delivery of the Hardware; and

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- 10.2.5 Termination Charges upon termination of the Microsoft Services.
- 11. MICROSOFT SERVICES SUPPORT AND SERVICE LEVELS**
- 11.1 The Supplier shall provide the Customer with Standard Support Services in respect of Priority 1 Critical incidents as defined in **Part A of Schedule 4.4 (Support Services)**;
- 11.2 For the avoidance of doubt, the Supplier will not provide support services for perpetual licenses or in relation to any customisation or configuration of the Products under this Agreement.
- 11.3 The Customer acknowledges and agrees that where an undocumented scenario arises it may be necessary for the Supplier to escalate an issue to Microsoft for resolution.
- 11.4 Notwithstanding the provisions of this Agreement, and with the knowledge that reasonable efforts will be made to diagnose and resolve faults that occur, the Supplier makes no warranties that the support services will be successful in resolving all issues that arise.
- 11.5 The Supplier does not guarantee that the Products will be continuously available or free from service failures, however the Microsoft SLA makes certain commitments as to the Products and in the event of a service failure, the Customer may be entitled to raise a claim with the Supplier pursuant to the Microsoft SLA.
- 11.6 In accordance with the Microsoft SLA, the Supplier will escalate a claim from the Customer to Microsoft for validation in accordance with the Microsoft standard SLA review process. Should Microsoft accept a claim, the Supplier will notify you and any credit issued by Microsoft will be provided to the Customer.
- 11.7 If Microsoft does not accept the claim pursuant to the Microsoft SLA, the Supplier may at its sole discretion provide the Customer with a service credit. The Supplier's liability to pay the Customer service credits under this Paragraph 11.7 shall be the Customer's sole remedy for service failures.
- 11.8 The Supplier accepts no responsibility or liability for hardware problems or software applications identified in the Order where they are subject to improper use, neglect or any modification by the Customer.
- 12. CUSTOMER DATA**
- 12.1 Following cancellation of a Product or termination of the Agreement, the Customer shall have a period of ninety (90) days in which to migrate Customer Data. However, where your Microsoft Services are suspended by the Supplier and subsequently terminated, the Customer agrees that the Supplier may delete the Customer Data immediately.
- 12.2 Under no circumstances shall the Supplier be liable for any loss or damage to Customer Data. The Customer accepts the responsibility for backing up Customer Data and shall ensure that the Customer's processes in this respect are adequate.
- 13. WARRANTIES AND REPRESENTATIONS**
- 13.1 The Customer acknowledges and accepts that:
- 13.1.1 the only warranties provided to the Customer in respect of the Products are those which are stated within the **Microsoft Cloud Agreement** and **Product Terms**; and
- 13.1.2 the remedies in respect of any breach of warranty is limited to those detailed within the **Microsoft Cloud Agreement** and **Product Terms**.
- 13.2 The Microsoft Services are provided "as is". Other than those warranties referred to at paragraph 13.1 above, the Supplier provides no warranties whether express, implied, statutory, or otherwise, including warranties of merchantability or fitness for a particular purpose. The Supplier does not warrant that the Microsoft Services are free from errors or that defects will be corrected, nor does the Supplier warrant the quality, accuracy, completeness, timeliness, or reliability of the Microsoft Services. These disclaimers apply except to the extent applicable law does not permit them.
- 13.3 In order to make a claim for breach of warranty, the Customer must first raise this with the Supplier to escalate to Microsoft for validation in accordance with the Microsoft standard review process.
- 14. TERMINATION**
- 14.1 This paragraph 14 is supplemental to clause 2 and 8 of the **General Conditions** and in the event of conflict, this paragraph 14 shall take precedence.
- 14.2 Microsoft may suspend or cancel a Customer Subscription in connection with the termination of a Subscription or as otherwise permitted under the Microsoft Cloud Agreement.
- 14.3 Where the Customer terminates the Agreement and/or the Services within its Minimum Term or Successive Term, the Supplier shall be entitled to invoice the Customer for Termination Charges in accordance with clause 8.7 of the **General Conditions**, or in alternative the Supplier shall be entitled to continue to invoice the Customer for the Charges in accordance with the Order for the remainder of the Minimum Term or Successive Term.
- 15. DATA PROTECTION**
- 15.1 This paragraph 15 is supplemental to clause 10 of the **General Conditions** and which relates to processing of Personal Data by the Supplier as its Customer. This paragraph 15 specifically relates to Personal Data which the Supplier shares with Microsoft in the context of the provision or receipt of Microsoft Services to the Customer.
- 15.2 The Supplier and Microsoft are both Controllers in respect of the Personal Data referred to in paragraph 15.1. The Supplier and Microsoft each Process Personal Data independently from one and other.

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15.3 Paragraph 15.2 shall not apply to any Personal Data which is also Customer Data. The Supplier and Microsoft are each Processors in respect of the Customer Data. The Customer acknowledges and accepts the terms of Microsoft's Privacy and Security Terms and Data Protection Addendum which can be found at <https://www.microsoft.com/licensing/terms/>.

15.4 The Customer shall (i) notify the individual users of the Products that their Personal Data may be Processed for the purpose of disclosing it to law enforcement or other governmental authorities when required by Applicable Law as determined by Supplier; and (ii) obtain individual users' consent to the same.

16. PROFESSIONAL SERVICES

16.1 Where the Customer purchases Professional Services, the performance of those Professional Services will be subject to terms and conditions in **Schedule 4.2 (Professional Services)**.

17. SELF-SERVE ONLINE PORTAL

17.1 The Supplier may, at its sole discretion, provide the Customer with access to an online portal whereby it can place Orders for Services and manage its License Subscriptions ("**Self-Serve Portal**").

17.2 Where the Customer places an Order via the Self-Serve Portal, it acknowledges and accepts that that shall constitute acceptance of the **Order** on behalf of the Customer in the same way a signing an Order provided by the Supplier would. The Customer further acknowledges and accepts that placing an Order shall also be deemed acceptance of the terms of this Schedule and the **General Conditions** to the exclusion of all others.

17.3 The Customer shall be liable for all Charges arising from Orders placed via the Self-Serve Portal whether placed by the Customer or by a third party.

17.4 The Customer shall be liable for all Charges and/or Termination Charges which arise due to it cancelling, terminating or removing License Subscriptions in the Self-Serve Portal.

17.5 Where an Order is placed via the Self-Serve Portal which the Customer wishes to cancel or amend, the Customer shall be responsible for cancelling and/or amending the Order via the Self-Serve Portal within the timescales stated in paragraphs 3 and 7 of this Schedule.

ANNEX 1 - DEFINITIONS

Commencement Date means the date the Microsoft Services were provisioned and/or activated for use;

Customer Data means all data, including text, sound, video, or image files, and software, that are provided to the Supplier and/or Microsoft by, or on behalf of, the Customer through use of the Microsoft Services.

Licensed Device means the single physical hardware system to which a license is assigned. For the purposes of this definition, a hardware partition or blade shall be considered a separate licence;

Licensing Site means <https://www.microsoft.com/licensing/docs/view/Licensing-Use-Rights>;

Microsoft means Microsoft Ireland Operations Limited;

Microsoft Cloud Agreement means the Microsoft Cloud Agreement as published at <https://www.microsoft.com/licensing/docs/customeragreement> together with the Microsoft Product Terms and SLA;

Microsoft Instance means a Microsoft 365 tenant is a dedicated instance of the services of Microsoft 365 and your data stored within a specific default location, such as United Kingdom;

Perpetual Software means a one-off purchase that provides use of the Microsoft product for its lifetime under Microsoft's product lifecycle schedule such as the Windows Server and SQL Server products;

Product means all products identified in the **Product Terms**, such as all Software, Microsoft Services and other web-based services;

Product Terms means the additional terms that apply to the Customer's use of Microsoft Services published on the Licensing Site at <https://www.microsoft.com/licensing/terms/> and updated from time to time;

Professional Services means Product support services and consulting services provided by the Supplier or Microsoft under the Professional Service Terms. "Professional Services" does not include Microsoft Services;

Professional Service Terms means the document that provides information about Professional Services which is published at <https://chessict.co.uk/legal> and is updated from time to time;

Recurring Charges means Charges for the Microsoft Services which are a fixed cost (subject to price increases) including but not limited to Charges for Monthly or Annual Commitment Licensing, Azure Bundled Services, Software and Perpetual Software;

Reserved Instance means the Azure compute capacity in a specific Azure region in exchange for a significant discount;

SL means Subscription licence(s);

SLA means the service level agreement, which specifies the minimum service level for Microsoft Services and is published on the Licensing Site at <https://www.microsoft.com/licensing/docs/view/Service-Level-Agreements-SLA-for-Online-Services>.

Software means licenced copies of Microsoft software identified in the **Product Terms**. Software does not include Microsoft Services, but Software may be a part of an Microsoft Services;

Software Subscription means access to a product based on a recurring subscription fee. Failure to pay this fee shall prevent access. Windows Server and SQL Server are available as a Software Subscription;

Subscription means an enrolment for Microsoft Services for a defined Term as provided under this Agreement;

Support Services means account set-up, sign-up, accounts and billing, service and software updates, client connectivity and desktop performance and service issues within the control of the Supplier;

Termination Charges means compensatory Charges payable by the Customer to the Supplier on termination of this Agreement and/or Services in whole or in part pursuant to clause 8.7 of the **General Conditions**, being an amount equal to 100% of the Recurring Charges, and/or Estimated Usage Charges, payable for all remaining months of the Minimum Term or Successive Term;

Usage Charges means the Charges for the Microsoft Services or part of a Service that are calculated by multiplying the number of units the Customer has used or incurred in a billing period with the applicable Charges in the Tariff, including but not limited to the Charges payable in respect of the Azure Consumption-Based Service as detailed in paragraph 5;

Use Rights means the use rights or terms of service for each Product published on the Licensing Site and updated from time to time. The Use Rights supersede the terms of any end user license agreement that accompanies a Product. The Use Rights for Software are published by Microsoft in the Product Terms.