

## Managed Services Terms (Linked to MSA)

### 1. Definitions & Interpretation

#### 1.1. The following definition in this paragraph 1 applies in these Managed Services Terms.

Local System Components: means equipment supplied by the Client such as routers, switches, PCs, thin client devices, smart phones, wireless controllers and access points.

#### 1.2. Except as defined in these Managed Services Terms, capitalised terms shall have the meanings given to them in the [Master Services Agreement found here](#) ("Agreement").

#### 1.3. 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 insofar as it relates to the supply of Managed Services and in the event of a conflict with the terms of these 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 will provide the Managed Services in accordance with the Statement of Work and the terms of the Agreement with all due care, skill and ability during the Term and a Subsequent Term (if applicable) unless earlier terminated for any reason.

#### 2.2. The Supplier shall provide the Managed Services in accordance with any Service Level Arrangements as stated in the Statement of Work.

#### 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 procedure.
- 2.8. 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.
- 2.9. 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. The Supplier shall be available for general questions via telephone, e-mail and/or chat through the designated channel (communicated separately and may be charged) in regard to the Products and Managed Services.
- 2.10. 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 fails to take such actions within a reasonable time, the Supplier may terminate the applicable Managed Service.
- 2.11. The Supplier is entitled to amend the terms of the Agreement and these Managed Services Terms in order to reflect any changes and updates received from its third party suppliers or otherwise if the Supplier has reasonable grounds for such amendment. The Supplier may also make reasonable change to prices, contents of the Managed Services, service hours or service levels.
- 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 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) use commercially reasonable endeavours to 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) undertake a regular account review if requested by the Client, 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.

##### 4.2. The Client shall not knowingly store, distribute or transmit any material through the Managed Services that:

- (a) is unlawful, harmful, threatening, defamatory, obscene, harassing or racially or ethnically offensive;
- (b) facilitates illegal activity;
- (c) depicts sexually explicit images; and/or
- (d) promotes unlawful violence, discrimination based on race, gender, age, disability, sexual orientation, religion and belief, gender reassignment, or any other illegal activities.

#### 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 all applicable laws, 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. The Supplier does not warrant uninterrupted or error-free operation of the Managed Services and Products. 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 the Products are provided by Microsoft, and that any representations or warranties regarding the use of the Products is set out in the Customer Agreement. The Supplier has no responsibility for the suitability, availability, functionality or otherwise regarding the Managed Services and Products.
- 6.5. The Supplier warrants that it shall perform the Managed Services in a professional manner. As the Client's sole and exclusive remedy for breach of the foregoing warranty, the Supplier shall either correct the non-conforming Managed Service at no additional charge to the Client, or, in the event the Supplier is unable to correct after good-faith efforts, refund the Client a pro rata amount for the non-conforming Managed Service. To receive such remedy, the Client must promptly report deficiencies in writing to the Supplier, but no later than thirty (30) days after the first date the deficiency is identified, or should have been identified, by the Client.
- 6.6. The warranties provided in these Managed Services Terms are the exclusive warranties from the Supplier in relation to the Managed Services.
- 7. SelectCare
  - 7.1 For the purposes of this paragraph 7, "SelectCare" means pre-paid services to be supplied by Supplier to the Client, which may be used for any technical task within Supplier's skill-set, not covered by a support contract.
  - 7.2 Any Services relating to SelectCare are subject to the following:

- (a) the Supplier shall invoice the Client in advance of the supply of the Services. Cleared payment in full of pre-paid hours must be received by Supplier at least one (1) week prior to first use of any pre-paid hours;
  - (b) the Supplier shall supply the Client with a priority service upon notification to Supplier of a support ticket and/or a request for consultancy;
  - (c) the Supplier shall supply the Client with the Services until the number of pre-paid hours has been reduced to zero, at which point the Client may purchase further pre-paid hours;
  - (d) the Supplier shall, at the request of the Client, provide the Client with details as to the number of pre-paid hours remaining (if any);
  - (e) the Supplier shall reduce the number of pre-paid hours remaining:
    - (i) on a real-time basis when a support engineer is actively working on a support ticket remotely; and
    - (ii) on a quarter-hourly basis (minimum of one (1) hour) when an engineer is actively working on a support ticket that requires on-site assistance.
- 7.3 Any pre-paid hours are subject to a twenty-four (24) month expiry, from date of purchase.
- 7.4 Pre-paid hours are non-refundable once purchased.
- (a) The Supplier shall assume that any request for Supplier to carry out work which is not covered by a support contract will be deducted from existing SelectCare pre-paid hours, unless otherwise notified in advance by the Client.
  - (b) The Client may use any SelectCare pre-paid hours for Services supplied by Supplier provided that such Services are within Supplier's capabilities. In the event that the Client requests Supplier to carry out Services that are outside Supplier's capabilities, Supplier reserves the right to reject the Client's support ticket or request for consultancy.
8. User Level Support (inc. Select Prestige)
- 8.1 Where applicable, user level support billing is conducted against Active Directory user object quantities.
- (a) The Supplier reserves the right to increase the billed quantities if additional users are identified that require support over the billing period.
  - (b) Inactive users can be removed, and billing reduced, at the next contract review anniversary.
  - (c) Changes to supported Authorised User numbers for monthly billed agreements can be amended at the next billing cycle.
- 8.2 User support onsite visits shall be provided to the Client's registered office address as set out on the Main Agreement unless agreed otherwise by the Parties in writing.
- 8.3 Smart Devices are defined as handheld mobile devices, which will be supported for business email setup related issues.

- 8.4 The support of applications, or devices, outside Microsoft based architectures will be conducted on a vendor management basis with the relevant supplier and/or manufacturer.
- 8.5 Exchange Online mailboxes are offered for each physical Authorised User supported by the Agreement, on a one mailbox per user basis.
- (a) Migration to the offered mailboxes will be charged as a project cost, dependent on the number of users/mailboxes and the required labour.
  - (b) Whilst conducting the migration, management of the Clients DNS Zone will be transferred to the Microsoft Portal.
  - (c) It is the Client's responsibility to arrange for migration away from the included mailboxes, should agreement cancellation be requested, before the final supported day of the cancellation notice period.
- 8.6 Changes to user devices provided for business use must be communicated to Supplier immediately.
- (a) The Supplier reserves the right to refuse support if a change or addition to a supported Authorised Users business devices has not been communicated, and agreed, in advance of support being sought.
  - (b) The Supplier will not accept any liability for devices outside the corporate network that have not been preagreed.
- 8.7 The testing of patches deployed in accordance with Supplier's Patch Management service will be for Microsoft Windows operating systems only.
- (a) Patches will be tested on the day following the release (normally a Tuesday) before they are approved.
  - (b) Once testing is complete workstations will be patched and rebooted in the early hours of the Wednesday morning.
  - (c) Servers will be patched and rebooted in the early hours of the Sunday morning.
  - (d) Laptops will be patched any time after they are approved, with the reboot suppressed.
  - (e) Core applications will also be patched, however the onus of responsibility for compatibility and stability will be with the individual vendor.
9. Changes to Managed Services
- 9.1 Managed Services are subject to the following:
- (a) if there is any increase or decrease in the number of computer systems and/or devices to be covered by the Managed Service, the Supplier shall vary the Statement of Work in accordance with the Agreement. For the avoidance of doubt, any increase or decrease in the number of computer systems and/or devices shall be subject to an invoice to be submitted by Supplier to the Client.
  - (b) If there is any increase or decrease the usage of a service or application (which may be provided by a Third Party) that is outside of a Client's on-premises infrastructure which is typically accessed via the Internet by the Client ("Cloud



Services”), the Supplier will vary the Statement of Work in accordance with the Agreement. For the avoidance of doubt, any increase or decrease in the usage of Cloud Services by the Client, shall be subject to an invoice to be submitted by Supplier to the Client.

- (c) Upon notification by Supplier of any hardware and/or software belonging to the Client that has exceeded its reasonable lifespan and accordingly become a source of unreliability, the Client shall replace such hardware and/or software at its own expense and within one (1) week of Supplier’s notification. In the event that the Client does not replace such hardware and/or software within one (1) week, Supplier shall have the right to suspend supply of the Managed Services under the Agreement until such hardware and/or software has been replaced.
- (d) In the event that hardware and/or software has been added to the Client’s computer systems and/or devices that would conflict with any hardware and/or software as set out in the applicable Statement of Work, or in the event that the Client has reconfigured any hardware and/or software that may affect the operation of the hardware and/or software as set out in the Statement of Work, Supplier shall have the right to suspend supply of the Services under the Agreement or terminate the Agreement in accordance with Clause 16.2(b) of the Agreement;
- (e) In the event that Supplier advises the Client that any hardware and/or software needs to be upgraded or replaced in order for Supplier to provide the Services effectively, and the Client subsequently refuses to upgrade or replace such hardware and/or software, Supplier shall have the right to terminate the Agreement by giving thirty (30) days’ written notice to the Client.

## 10. Limitation of Liability

- 10.1. Subject to Clause 13.3 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.
- 10.2. 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.