Additional Terms and Conditions – Microsoft Licences

1. General

1.1. The terms and conditions set out in this Annex relate to Products and Professional Services acquired through Microsoft licensing, supplied directly to the customer by Teknicare Ltd. and are in addition to our standard terms.

1.2. All definitions used in the main body of the standard terms apply to this Annex.

1.3. Any reference to a "clause" is to a clause of the Main Body Terms. Any reference to a "paragraph" is to a paragraph of this Annex.

1.4. Other definitions that appear only in this Annex have the meanings set out below:

Any Microsoft Licences supplied by Teknicare Ltd, are between Customer and Microsoft and consists of these General Terms, the applicable Use Rights and SLAs, and any additional terms Microsoft presents when an order is placed.

These General Terms apply to all of Customer's orders under these Terms.

License to use Microsoft Products

a. License grant. Products are licensed and not sold. Upon Microsoft's acceptance of each order and subject to Customer's compliance with these terms, Microsoft grants Customer a nonexclusive and limited license to use the Products ordered as provided in the applicable Use Rights and these terms. These licenses are solely for Customer's own use and business purposes and are non-transferable except as expressly permitted under these terms or applicable law.

b. Duration of licenses. Licenses granted on an annual subscription basis and expire at the end of the applicable subscription period. All licences will automatically renew on each anniversary unless Teknicare have been informed, in writing, no less than 10 working days prior to the expiry of the current subscription period.

c. Applicable Use Rights in effect at the start of each subscription period will apply. Customers with subscriptions for Software may use new versions released during the subscription period subject to the Use Rights in effect when those versions are released.

d. End Users. Customer will control access to and use of the Products by End Users and is responsible for any use of the Products that does not comply with these terms.

e. Reservation of Rights. Microsoft reserves all rights not expressly granted in these Terms. Products are protected by copyright and other intellectual property laws and international treaties. No rights will be granted or implied by waiver or estoppel. Rights to access or use a product on a device do not give Customer any right to implement Microsoft patents or other Microsoft intellectual property in the device itself or in any other software or devices.

f. Restrictions. Except as expressly permitted in these Terms or Product documentation, Customer must not (and is not licensed to):

(1) reverse engineer, decompile, or disassemble any Product, or attempt to do so;

(2) install or use non-Microsoft software or technology in any way that would subject Microsoft's intellectual property or technology to any other license terms;

(3) work around any technical limitations in a Product or restrictions in Product documentation;

(4) separate and run parts of a Product on more than one device;

(5) upgrade or downgrade parts of a Product at different times;

(6) transfer parts of a Product separately; or

(7) distribute, sublicense, rent, lease, or lend any Products, in whole or in part, or use them to offer hosting services to a third party.

h. License transfers. Customer may not transfer and licence or subscription.

i. Customer Eligibility. Customer agrees that if it is purchasing academic, government or non-profit offers, Customer meets the respective eligibility requirements (https://aka.ms/eligiblitydefinition). Microsoft reserves the right to verify eligibility and suspend product use if requirements are not met.

Privacy.

a. Personal Data. Customer consents to the processing of Personal Data by Microsoft and its Affiliates, and their respective agents and subcontractors, as provided in these Terms. Before providing Personal Data to Microsoft, Customer will obtain all required consents from third parties (including Customer's contacts, Partners, distributors, administrators, and employees) under applicable privacy and data protection laws.

b. Location of Personal Data. To the extent permitted by applicable law, Personal Data collected may be transferred, stored and processed in the United States or any other country in which Microsoft or its Affiliates, or their respective agents and subcontractors, maintain facilities. Microsoft will abide by the requirements of European Economic Area and Swiss data protection law regarding the collection, use, transfer, retention, and other processing of Personal Data from the European Economic Area and Switzerland.

Confidentiality.

a. Confidential Information. "Confidential Information" is non-public information that is designated "confidential" or that a reasonable person should understand is confidential, including, but not limited to, Customer Data, these terms, and Customer's account authentication credentials. Confidential Information does not include information that (1) becomes publicly available without a breach of a confidentiality obligation; (2) the receiving party received lawfully from another source without a confidentiality obligation; (3) is independently developed; or (4) is a comment or suggestion volunteered about the other party's business, products or services.

b. Protection of Confidential Information. Each party will take reasonable steps to protect the other's Confidential Information and will use the other party's Confidential Information only for purposes of the parties' business relationship. Neither party will disclose Confidential Information to third parties, except to its Representatives, and then only on a need-to know basis under nondisclosure obligations at least as protective as these terms. Each party remains responsible for the use of Confidential Information by its Representatives and, in the event of discovery of any unauthorized use or disclosure, must promptly notify the other party. The Online Services Terms may provide additional terms regarding the disclosure and use of Customer Data.

c. Disclosure required by law. A party may disclose the other's Confidential Information if required by law, but only after it notifies the other party (if legally permissible) to enable the other party to seek a protective order.

d. Residual information. Neither party is required to restrict work assignments of its Representatives who have had access to Confidential Information. Each party agrees that the use of information retained in Representatives' unaided memories in the development or deployment of the parties' respective products or services does not create liability under these terms or trade secret law, and each party agrees to limit what it discloses to the other accordingly.

e. Duration of Confidentiality obligation. These obligations apply (1) for Customer Data, until it is deleted from the Online Services; and (2) for all other Confidential Information, for a period of five years after a party receives the Confidential Information.

Product warranties.

a. Limited warranties and remedies.

(1) Online Services. Microsoft warrants that each Online Service will perform in accordance with the applicable SLA during Customer's use. Customer's remedies for breach of this warranty are described in the SLA.

(2) Software. Microsoft warrants that the Software version that is current at the time will perform substantially as described in the applicable Product documentation for one year from the date Customer acquires a license for that version. If it does not, and Customer notifies Microsoft within the warranty term, Microsoft will, at its option, (a) return the price Customer paid for the Software license or (b) repair or replace the Software. The remedies above are Customer's sole remedies for breach of the warranties in this section. Customer waives any warranty claims not made during the warranty period.

b. Exclusions. The warranties in these terms do not apply to problems caused by accident, abuse, or use inconsistent with these terms, including failure to meet minimum system requirements. These warranties do not apply to free, trial, preview, or pre-release products, or to components of Products that Customer is permitted to redistribute.

c. Disclaimer. Except for the limited warranties above and subject to applicable law, Microsoft provides no other warranties or conditions for Products and disclaims any other express, implied or statutory warranties for Products, including warranties of quality, title, noninfringement, merchantability, and fitness for a particular purpose.

Defence of third-party claims.

The parties will defend each other against the third-party claims described in this section and will pay the amount of any resulting adverse final judgment or approved settlement, but only if the defending party is promptly notified in writing of the claim and has the right to control the defence and any settlement of it. The party being defended must provide the defending party with all requested assistance, information, and authority. The defending party will reimburse the other party for reasonable out-of-pocket expenses it incurs in providing assistance. This section describes the parties' sole remedies and entire liability for such claims.

a. By Microsoft. Microsoft will defend Customer against any third-party claim to the extent it alleges that a Product made available by Microsoft for a fee and used within the scope of the license granted under these Terms (unmodified from the form provided by Microsoft and not combined with anything else), misappropriates a trade secret or directly infringes a patent, copyright, trademark, or other proprietary right of a third party. If Microsoft is unable to resolve a claim of misappropriation or infringement, it may, at its option, either (1) modify or replace the Product with a functional equivalent or (2) terminate Customer's license and refund any license fees (less depreciation for perpetual licenses), including amounts paid in advance for unused consumption for any usage period after the termination date. Microsoft will not be liable for any claims or damages due to Customer's continued use of a Product after being notified to stop due to a third-party claim.

b. By Customer. To the extent permitted by applicable law, Customer will defend Microsoft and its Affiliates against any third-party claim to the extent it alleges that: (1) any Customer Data or Non-Microsoft Product hosted in an Online Service by Microsoft on Customer's behalf misappropriates a trade secret or directly infringes a patent, copyright, trademark, or other proprietary right of a third party; or (2) Customer's use of any Product, alone or in combination with anything else, violates the law or harms a third party. Limitation of liability. For each Product, each party's maximum, aggregate liability to the other under these Terms is limited to direct damages finally awarded in an amount not to exceed the amounts Customer was required to pay for the Products during the term of the applicable licenses, subject to the following:

a. Subscriptions. For Products ordered on a subscription basis, Microsoft's maximum liability to Customer for any incident giving rise to a claim will not exceed the amount Customer paid for the Product during the 12 months before the incident.

b. Free Products and distributable code. For Products provided free of charge and code that Customer is authorized to redistribute to third parties without separate payment to Microsoft, Microsoft's liability is limited to direct damages finally awarded up to US$5,000.

c. Exclusions. In no event will either party be liable for loss of revenue or loss of anticipated savings (in either case whether direct or indirect), indirect, incidental, special, punitive, or consequential damages, loss of use, loss of business information, or interruption of business, however caused or on any theory of liability.

d. Exceptions. No limitation or exclusions will apply to liability arising out of either party's (1) confidentiality obligations (except for liability related to Customer Data, which will remain subject to the limitations and exclusions above); (2) defence obligations; or (3) violation of the other party's intellectual property rights.

Liability for death or personal injury. In any case where the law of England and Wales applies per the terms of the Agreement or the determination of a court, nothing in these terms shall exclude liability for death or personal injury caused by negligence or liability for fraudulent misrepresentation.

Authorisation.

a. Customer authorises Teknicare to place orders on Customer's behalf and manage Customer's purchases by associating Teknicare with its account. If Teknicare' s distribution right is terminated, Customer must select an authorised replacement Partner or purchase directly from Microsoft. Teknicare, and other third parties, are not agents of Microsoft and are not authorized to enter into any agreement with Customer on behalf of Microsoft.

b. Teknicare' s Administrator privileges and access to Customer Data. If Customer purchases Online Services from Teknicare or chooses to provide Teknicare with administrator privileges, Teknicare will be the primary administrator of the Online Services and will have administrative privileges and access to Customer Data and Administrator Data. Customer consents to Microsoft and its Affiliates providing Teknicare with Customer Data and Administrator Data for purposes of provisioning, administering and supporting (as applicable) the Online Services. Customer appoints Teknicare as its agent for purposes of providing and receiving notices and other communications to and from Microsoft.

c. Support and Professional Services. Teknicare will provide details on support services available for Products purchased under any service agreement. Support services may be performed by Teknicare or its designee, which in some cases may be Microsoft.

Pricing and payment.

Teknicare will set Customer's pricing and payment terms and Customer will pay the amount due to the Teknicare.

a. Payment method. Customer must provide a payment method or, if eligible, choose to be invoiced for purchases made on its account. Teknicare require a DD mandate in place during the life of any Microsoft Licence.

b. Payment terms. Each invoice will identify the amounts payable by Customer to Microsoft for the period corresponding to the invoice. Customer will pay all amounts due within fifteen (15) calendar days following the invoice date.

c. Cancellation fee. If a subscription permits early termination and Customer cancels the subscription before the end of the subscription or billing period, Customer will be charged a cancellation fee, in addition to any remaining subscription fees due.

d. Recurring Payments. For subscriptions that renew automatically, Customer authorises Teknicare to charge Customer's payment method periodically for each subscription or billing period until the subscription is terminated. By authorizing recurring payments, Customer authorizes Teknicare to process such payments. If any payment is returned unpaid or if any transaction is rejected or denied, Teknicare reserve the right to collect any applicable return item, rejection or insufficient funds fee to the maximum extent permitted by applicable law and to process any such fees and invoice Customer for the amount due.

e. Taxes. All prices exclude applicable taxes unless identified as tax inclusive.

Term and termination.

a. Term. All licences and subscriptions are provided on an annual basis. All licences and subscriptions will automatically renew on each anniversary unless Teknicare have been informed, in writing, no less than 30 working days prior to the expiry of the current subscription period.

b. Termination without cause. Either party may terminate a subscription or licence without cause on 60 days' notice. Licences or subscriptions terminated without cause will continue for the duration of the subscription period(s). Upon such termination, the following will apply:

(1) All licenses supplied will terminate immediately.

(2) All amounts due under any unpaid invoices shall become due and payable immediately.

(3) Suspension. Teknicare may suspend use of an Online Service without terminating the Agreement during any period of material breach. Teknicare will give Customer notice before suspending an Online Service when reasonable.

c. Termination for regulatory reasons. Microsoft may modify, discontinue, or terminate a Product in any country or jurisdiction where there is any current or future government regulation, obligation, or other requirement, that (1) is not generally applicable to businesses operating there; (2) presents a hardship for Microsoft to continue offering the Product without modification; or (3) causes Microsoft to believe these terms or the Product may conflict with any such regulation, obligation, or requirement. If Microsoft terminates a subscription for regulatory reasons, Customer will receive, as its sole remedy, a credit for any subscription fees, including amounts paid in advance for unused consumption for any usage period after the termination date.