

# Service Schedule 5 – Public Cloud Services

Further terms regarding Public Cloud Services that apply in addition to the Trading Terms and form part of our Agreement.

## 1. WHAT TERMS APPLY TO PUBLIC CLOUD SERVICES?

### 1.1 The Public Cloud Services include:

- (a) the Microsoft range of Microsoft-hosted services, including Microsoft Azure (**Microsoft Online Services**); and
- (b) any of the Services provided by us as specified in the Order or the Statement of Work (**Our Managed Services**). Our Managed Services may include Managed Azure Services, Professional Services and Value-Added Services.

### 1.2 You acknowledge and agree that your use of the Public Cloud Services is subject to the following conditions:

- (a) you are responsible for ensuring we have the necessary access required to provide you with the Public Cloud Services;
- (b) you are solely responsible for any and all consequences of using the Public Cloud Services, and also any access to, or loss or corruption of, Customer Content, or access to other content;
- (c) where we are responsible for operating system updates we will work with you to configure an appropriate update schedule. Where we are not responsible for updates, you are responsible for ensuring these updates. If you are responsible for any updates and do not ensure these are up to date, you indemnify us for any liability we incur to any Provider or third party as a result;
- (d) nothing in this Agreement gives you or any End Users ownership of, or any interest in, any of the products, tools, documentation, processes, software or collateral developed as part of Our Managed Services; and
- (e) there may be regions both inside and outside Australia where the Public Cloud Services may not be available.

### 1.3 We will provide you with the Public Cloud Services specified in the Order or Statement of Work, subject to the terms of this Agreement.

### 1.4 You must comply with our (and our Providers') policies, manuals, procedures and standards that apply to the Public Cloud Services as advised from time to time including in connection with any operational or security matters.

## 2. WHAT TERMS APPLY TO MICROSOFT ONLINE SERVICES?

### 2.1 If you order Microsoft Online Services through us:

- (a) you accept the Microsoft Customer Agreement;
- (b) you agree that your acceptance of the Microsoft Customer Agreement is a condition of the use of the Microsoft Online Services;
- (c) you acknowledge that the Microsoft Customer Agreement incorporates the Online Services Terms, Product Terms and SLAs (as each term is defined in the Microsoft Customer Agreement);
- (d) the Microsoft Customer Agreement is subject to amendment by Microsoft from time to time in accordance with its terms; and
- (e) we will be the "Partner" under your Microsoft Customer Agreement (as that term is defined in the relevant Microsoft Customer Agreement) in relation to the Microsoft Online Services.

### 2.2 You acknowledge and agree that Microsoft can refuse, in its discretion, to make the Microsoft Online Services available to you. In that event we will notify you and cancel your Order for Microsoft Online Services (together with any of Our Managed Services).

### 2.3 You acknowledge and agree that your use of the Microsoft Online Services is subject to the following conditions:

- (a) you release us from any liability arising out of, or in connection with, the Microsoft Online Services and any other Microsoft products or services, Microsoft's provision, management or operation of any of the products or services and Microsoft's exercise of its rights in the Microsoft Customer Agreement;
- (b) you indemnify and hold us harmless from any Liability we suffer or incur due to or arising out of your or your End User's breach of this Agreement or the Microsoft Customer Agreement, or conduct while using the Microsoft Online Services;
- (c) the Microsoft Online Services may include non-Microsoft products which are not provided by us and for which we are not liable. Additional terms may apply to the use of those products, and you must comply with those additional terms;
- (d) you are solely responsible for any non-Microsoft products that you install or use with the Microsoft Online Services;
- (e) you are responsible for your use of the Microsoft Online Services, including any applicable Charges arising from such use;
- (f) where required, you authorise us to subscribe to any required Microsoft Online Services or to provision other resources that are necessary to provide you with any Public Cloud Services and you agree you are liable for any associated Charges;
- (g) support for any Microsoft Online Services will be set out in the relevant Microsoft SLA;
- (h) the Microsoft Online Services are provided subject to technical requirements set out in the Microsoft Customer Agreement, and you must comply (and ensure your End Users comply) with all such technical requirements; and
- (i) nothing in this Agreement gives you or any End Users ownership of, or any interest in, the Microsoft Online Services.

### 2.4 In addition to our rights under **clause 4** of the Trading Terms, and without affecting our rights under **clause 5** of the Trading Terms or **clause 12** of this Service Schedule, we may suspend your access to the Microsoft Online Services in the following circumstances:

- (a) for maintenance of the Microsoft Online Services;

- (b) to comply with a legal requirement;
- (c) on request from Microsoft, in exercise of their rights under the Microsoft Customer Agreement;
- (d) where we reasonably believe you have breached the Microsoft Customer Agreement [or the Software Terms and Conditions]; or
- (e) where the particular version of the Microsoft Online Services used by you is no longer supported by Microsoft.

## 3. WHAT TERMS APPLY TO SOFTWARE AND CUSTOMER CONTENT?

### 3.1 Any Software we provide is subject to the following conditions:

- (a) you authorise us to accept the relevant Software Terms and Conditions on your behalf, and you agree to be bound by such terms;
- (b) the Software must be used on Our Equipment unless any applicable licence mobility has been approved by the Provider (e.g Microsoft), in which case you must provide the signed mobility form to us; and
- (c) you must not exceed the maximum number of end users set out in the Order, Statement of Work or Software Terms and Conditions. In the case of Microsoft Online Services this means you must not allow the number of unique users with remote access to exceed the maximum permitted number of unique users, as specified in the Order or Statement of Work and you must not reassign remote access rights from one user to another during a calendar month.

### 3.2 If you use software on Our Equipment (including Software we provide to you), you must ensure that:

- (a) you either own the software, or have the right to use it under a licence or other agreement with the software provider (or someone authorised by them);
- (b) you will comply at all times with the terms of that agreement; and
- (c) you will provide us, within 7 days of our request, with a copy of the agreement or any other relevant documentation that confirms your right to use the software, and any other information about your use of the software that we may require,

and you will be liable to us for any unpaid licensing fees or other amounts (including retrospectively) arising in connection with any breach of this **clause 3.2**.

### 3.3 We may notify you of our minimum acceptable versions of operating systems, devices, software or firmware. Any Service Level Guarantees and/or Microsoft SLA that applies to Public Cloud Services will only apply if the Services are operating on those versions or higher.

### 3.4 You retain sole responsibility and accept sole liability for all Customer Content even if you do not authorise its creation, storage, access or transmission (including any unauthorised on-line access). You warrant that:

- (a) to the best of your knowledge, the Customer Content is and will remain free from any form of malicious code; and
- (b) you or your licensors hold the necessary rights in the Customer Content to authorise you to use, publish, communicate, distribute and otherwise deal with the Customer Content, and for us to provide the Public Cloud Services to you.

### 3.5 If the Customer Content breaches our Acceptable Use Policy, we may, without notice to you, remove, alter or disable access to any Customer Content in accordance with our Acceptable Use Policy. We are not responsible for any Liabilities that you or anyone else may suffer or incur as a result of our actions under this **clause 3.5**.

### 3.6 You grant us a royalty-free non-exclusive licence to reproduce, display, distribute, communicate and store Customer Content to the extent necessary for us and our Providers to provide the Public Cloud Services.

### 3.7 You acknowledge and agree that:

- (a) after expiry or termination of your access to the Public Cloud Services the Customer Content associated with your account may be disabled and/or deleted;
- (b) otherwise than as contemplated by this Agreement, any backup or export of the Customer Content must be arranged by you; and
- (c) neither we nor our suppliers will have any liability to you for deletion of Customer Content as contemplated by paragraph (a) above.

### 3.8 You indemnify us and our Personnel against any Liabilities we may suffer or incur (including in connection with a third-party claim brought or threatened against us), in connection with your breach of this **clause 3**.

## 4. WHAT OTHER TERMS APPLY TO PUBLIC CLOUD SERVICES?

### 4.1 You acknowledge and agree that:

- (a) to the extent permitted by law and unless expressly stated, we do not make any representations or warranties that the Public Cloud Services will be free from fault, interruption or external intrusion;
- (b) we (and our Providers) are not responsible or Liable in relation to the content or security of any information or communications you receive, access or rely on using the Public Cloud Services and there is no guarantee of security or privacy on the Internet;
- (c) it is not a term of this Agreement, that the Public Cloud Services or any Customer Content will be secure or private. Notwithstanding any other term of this Agreement, we exclude all Liability to you arising in connection with any security incidents (including any form of hacking or denial of service attacks);
- (d) you are solely responsible for deciding whether or not to implement any advice or recommendation provided by us, or to rely on any estimate, opinion, conclusion or other information;
- (e) nothing in this Agreement gives you ownership of, or any interest in,

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- any IP addresses we allocate to you or Our Equipment. Title to Our Equipment stays with us or the relevant third-party owner at all times and you must not purport to transfer, sell, hire or give away Our Equipment, or any rights in relation to Our Equipment (including any mortgage, pledge, charge, lien or other encumbrance or security interest); and
- (f) you must allow us access to the environment or servers we manage (including by giving us any necessary passwords) and/or keys so we can maintain the Public Cloud Services.
- 4.2** You must:
- (a) comply with the Acceptable Use Policy and all applicable laws, and also maintain and comply with any licences, consents, permits or other authorisations required for you to use the Public Cloud Services;
- (b) control access to and use of the Services and protect any passwords, PINs or other access methods we provide to you. You are responsible for all consequences of the use (including unauthorised access or use by third parties) of the Public Cloud Services, including all Charges incurred and any Liabilities suffered by you or anyone else;
- (c) provide us (and any Providers) with any information or assistance we reasonably request, and with authorised and safe access to Customer Equipment or Rented Equipment, so we can perform our obligations under the Agreement; and
- (d) comply with any direction or request of a Regulator and provide us with any information or assistance we reasonably require to comply with a direction or request of, or investigation by, a Regulator.
- 4.3** If you do not comply with any of your obligations under this Agreement in a timely manner or within any timeframe reasonably requested by us, we are not responsible for any delays or Liabilities arising from your failure and we may charge you for any amounts we reasonably incur as a result.
- 4.4** We may provide you with access to Self Service Management Tools. If we do:
- (a) you are solely responsible for the consequences (including all associated Liabilities) of your use of the Self Service Management Tools, except to the extent caused by a failure of the Self Service Management Tools to perform in accordance with their published specifications (if applicable); and
- (b) we may charge you for work we undertake to restore or repair Services affected by your use of the Self Service Management Tools.
- 5. PRIVACY AND DATA PROTECTION**
- 5.1** You consent that we and/or our Providers may use and disclose Customer Content:
- (a) to ensure compliance by you and your End Users with this Agreement and any applicable Software Terms and Conditions;
- (b) as required or authorised by law;
- (c) to provide you with, support your use of, and to improve, the Public Cloud Services; and
- (d) as otherwise provided in this Agreement.
- 5.2** You consent that our Providers may collect, use, transfer, disclose, and otherwise process the Customer Content, including Personal Information, for the purpose of providing you with the Public Cloud Services, and in the case of Microsoft as further described in the Microsoft Customer Agreement.
- 5.3** You acknowledge and consent that the Customer Content (including Personal Information) collected through your use of the Public Cloud Services may be transferred, stored and processed outside Australia by our Providers, their service providers and subcontractors.
- 5.4** You agree that you will obtain the consent of each person (including an End User) who provides Customer Content (including Personal Information) to the use, disclosure, transfer, storage and processing of that Customer Content as contemplated under this Agreement.
- 5.5** You agree that, as and to the extent required by law, you will notify the End Users that their Personal Information may be processed for the purpose of disclosing it to law enforcement or other governmental authorities as determined by us, and will obtain their consent to same.
- 5.6** You are responsible for providing any necessary notices to individuals (including End Users) and for obtaining any legally required consent from them in relation to our provision of any Public Cloud Services to you or your processing of any Personal Information. You will not, by any act or omission, place us or any of our agents, Providers or representatives in breach of and Applicable Data Protection Law.
- 5.7** Where, in connection with the Services there has been (or there is a risk of) an incident that meets the definition of an eligible data breach under the Privacy Act 1988 (Cth), including where we have instructed you that this **clause 5.7** applies, you must comply with the obligations under the Privacy Act. This includes making any notifications required, in which case you must provide us as soon as practicable with all the information relevant to any proposed notifications and request our approval to the content and timing of the notifications. To the extent permitted under the Privacy Act, you must not make a notification unless you have received our approval to do so. Where under the terms of the Privacy Act there may be an obligation on us to make any notifications but no obligation on you, you must co-operate with us by providing all relevant information and assistance required by us immediately upon request.
- 6. WHAT CHARGES APPLY TO MICROSOFT ONLINE SERVICES AND OTHER SOFTWARE?**
- 6.1** Where you purchase access to Microsoft Online Services through us, you may purchase access as follows, or as otherwise set out in the Order or Statement of Work:
- (a) on a **"Azure pay as you go"** basis for Microsoft Azure resources as follows:
- (i) the Charges will be billed monthly in arrears, noting that we rely on Microsoft for billing information and so Charges for usage may not be billed in the month immediately following the relevant usage;
- (ii) the Charges will be based on your usage multiplied by Microsoft's pay-as-you-go pricing tables (which are subject to change); and
- (iii) you may cancel at any time, and Charges will be billed for any unbilled usage;
- (b) on an **"Azure Reservation"** basis or any other offers where you select a committed reservation term of 12 months or 36 months with associated pricing. Subject to clause 10.1, you may cancel the Azure Reservations at any time. Following the expiry of the reservation term, the deployed resources will continue to run and will be billed at the then current pay as you go rate unless you enter into a new Azure Reservation arrangement; or
- (c) on a **"subscription"** basis for Microsoft Online Services excluding Microsoft Azure, at Microsoft's recommended retail prices (adjusted for any pre-existing discounts) at the time of order. Unless you cancel your subscription on 30 days' notice prior to expiry of the subscription term, we will renew you for a further term, based on the number of licenses and Microsoft's recommended retail prices (adjusted for any pre-existing discounts) at the time of renewal;
- (d) on a **"subscription"** basis for software that runs on Azure resources purchased with the "Azure Reservation" model. You may select a pre-paid term of 12 months or 36 months with associated pricing. Following the expiry of the term, the software on the deployed resources will continue to run and will be billed at the then current pay as you go rate unless you enter into a new software subscription arrangement.
- 6.2** For Microsoft Online Services other than Microsoft Azure, you may purchase access through us. Subject to clause 6.5, Charges will be invoiced monthly in arrears.
- 6.3** Charges for Microsoft Online Services may be influenced by the following factors:
- (a) your usage (applicable to Azure pay-as-you-go model);
- (b) the subscription or license term;
- (c) the category of licence you are on e.g. student/educational licence etc. (applicable to Azure pay-as-you-go, Azure Reservation and subscription models); and
- 6.4** the USD-AUD exchange rate – where Microsoft prices in US dollars we will pass on the Australian dollar cost to you at the monthly exchange rate determined by Microsoft. We may vary the applicable Charges (including discounts) and terms for Microsoft Online Services and other Software to reflect any variations from Microsoft or Provider (as appropriate).
- 6.5** Your invoice for Microsoft Online Services is based on information provided to us by Microsoft, and so the Charges included in an invoice will depend on the information available to us at that time. To the extent that all relevant information is not available to us at the time the invoice is prepared, then we will seek to include the appropriate Charges in your next invoice.
- 6.6** In the event that Microsoft makes any corrections to an invoice previously issued to us for Microsoft Online Services used by you, then we may pass on such corrections in a future invoice to you.
- 6.7** You agree to nominate us as your Partner of Record for any subscription that is under our management.
- 6.8** In respect of Microsoft Online Services seat-based licences:
- (a) you may only decrease the subscription quantity or cancel a subscription within the first 7 days of a new or renewed subscription term;
- (b) you will be charged pro-rata for any Microsoft License Services seat-based licenses consumed within the initial 7 days of the subscription term; and
- (c) you will continue to be charged for any Microsoft License Services during the period of any suspension under clause 2.4.
- 7. WHAT CHARGES APPLY TO OUR MANAGED SERVICES?**
- 7.1** For Our Managed Services, the Macquarie Rates may comprise:
- (a) for Managed Azure Services – a monthly management fee which is the higher of:
- (i) the Minimum Committed Monthly Management Fee as specified in the Order (pro-rated where you have not reached the Minimum Committed Monthly Management Fee, and have only received Managed Azure Services for part of a month);
- (ii) a Charge based on:
- (A) your usage of all Microsoft Azure resources (i.e. resources under both the Azure pay-as-you-go and Azure Reservation models) and the headline recommended retail price under the Microsoft Azure Pricing Calculator; and
- (B) the recommended retail price for all software that runs on Azure resources purchased under the software subscription model referred to in clause 6.1(d) under the Microsoft Azure Pricing Calculator,

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- multiplied by the nominated Managed Azure Services percentage as specified in the Order, billed monthly in arrears;
- (b) for Professional Services – either a once off or monthly charge as set out in the Order or Statement of Work; and
- (c) for Value-Added Services – setup and fixed monthly charges billed monthly in advance or as otherwise specified in the Order or Statement of Work.
- 7.2** In addition to our rights under **clause 2** of the Trading Terms, we may vary the applicable Charges (including discounts) for Our Managed Services on 30 days' notice to you, or as otherwise specified in the Order or Statement of Work.
- 8. IS THERE A SERVICE LEVEL GUARANTEE FOR OUR MANAGED SERVICES?**
- 8.1** Our Managed Services may be supported by a Service Level Guarantee, which may entitle you to a rebate if we do not achieve the specified Service Levels. To claim a rebate under a Service Level Guarantee for Our Managed Services, you must notify within 7 days of the occurrence of the events giving rise to the claim.
- 8.2** The Service Level Guarantee does not apply, and no rebates are payable:
- (a) during any Planned Outage or for an interruption required in order to respond to, or deal with the consequences of, an Emergency;
- (b) in respect of an Outage that is caused or contributed to by: (i) any failure of, or malfunction in, any Customer Equipment; (ii) any act or omission of you, your Personnel or another person under your direction or control (unless we directed you to do that act or omission); (iii) an External Circumstances Event; (iv) any action taken by us or a Provider to comply with a requirement of a Regulator, or under any applicable law; or (v) any unauthorised or illegal access by any person to any part of the system providing the Services, including hacking, cracking, virus dissemination and denial of service attacks.
- 8.3** You acknowledge and agree that:
- (a) any rebates payable under a Service Level Guarantee are your sole and exclusive remedy for our failure to achieve the Service Levels or to otherwise provide the Services or to satisfy any other service levels (if any) and any such failure does not constitute a breach of the Agreement;
- (b) the maximum amount of rebates payable to you in respect of any Service in any calendar month will not exceed your total monthly recurring management fee in any calendar month. This amount may be pro-rated for periods of less than a full month;
- (c) only one rebate is payable in respect of any single incident or sequence of related incidents, even if they give rise to more than one rebate claim. If this occurs, we will determine the single rebate that applies;
- (d) any service levels not set out in a Service Level Guarantee (if any) are indicative targets only and any failure to satisfy those service levels does not constitute a breach of this Agreement. Other than your right to claim rebates under a Service Level Guarantee, we exclude all Liability to you for any failure to satisfy any service levels not expressly included in the Service Level Guarantee.
- 9. IS THERE A SERVICE LEVEL AGREEMENT FOR MICROSOFT ONLINE SERVICES?**
- 9.1** The Microsoft Customer Agreement provides a service level agreement from Microsoft to you in relation to Microsoft Online Services (**Microsoft SLA**).
- 9.2** You acknowledge and agree that the Microsoft SLA may be updated periodically by Microsoft.
- 9.3** If you have purchased Microsoft Online Services through us, then:
- (a) claims for service credits under the Microsoft SLA should be directed to us (and not Microsoft); and
- (b) we will pass on Microsoft SLA service credits as soon as reasonably practicable after Microsoft has provided a rebate to us.
- 10. WHAT ARE THE CONSEQUENCES OF EARLY CANCELLATION OF PUBLIC CLOUD SERVICES?**
- 10.1** For the purposes of **clause 6.3** of the Trading Terms the early cancellation charge for Microsoft Online Services is:
- (a) for all Microsoft Online Services - any outstanding, unbilled amounts;
- (b) for Microsoft Azure purchased on an "Azure Reservation" basis – we will refund you the amounts refunded to us by Microsoft. As at the date of this Service Schedule this refund is calculated as the remaining prorated balance for your reservation, less an early termination fee and subject to an annual refund limit as specified by Microsoft from time to time. The actual amount refunded to you will depend on the early termination fee and annual refund limit applied by Microsoft at the time of your cancellation; and
- (c) for software purchased in conjunction with resources on an "Azure Reservation" basis under clause 6.1(d) – subject to any early cancellation rights offered by Microsoft, 100% of the minimum Charges which would have been payable from the date of cancellation until the end of the reservation term.
- 10.2** For the purposes of **clause 6.3** of the Trading Terms, the early cancellation charge for Our Managed Services is the sum of the following:
- (a) for Managed Azure Services – an amount equal to 85% of the Minimum Committed Monthly Management Fee as specified in the Order for the remainder of the Minimum Period;
- (b) for Professional Services –
- (i) where we have agreed to charge you by way of monthly instalments – 100% of the remaining monthly instalments; and
- (ii) any outstanding, unbilled amounts;
- (c) for Value-Added Services –
- (i) an amount equal to 85% of the Minimum Charges; and
- (ii) any outstanding, unbilled amounts; and
- (d) the amount of any waived installation charges or discounts.
- 11. PROFESSIONAL SERVICES**
- 11.1** At your request, we may agree to provide Professional Services upon the terms applicable to those Professional Services located <http://macquariecloudservices.com/professional-services-terms>. By submitting an order for Professional Services, you are taken to have read and accepted these terms and conditions.
- 12. TERMINATION**
- 12.1** The termination rights in this **clause 12** are in addition to any termination rights set out in the Trading Terms.
- 12.2** Where Microsoft has terminated its agreement with us, then we may terminate your Agreement with us for the provision of the Microsoft Online Services upon thirty (30) days' prior written notice to you.
- 13. WHAT DO THE CAPITALISED TERMS MEAN?**
- 13.1** In this Service Schedule the terms in capital letters have the meaning set out in the Dictionary available at [www.macquarietelecomgroup.com](http://www.macquarietelecomgroup.com). Unless otherwise indicated, any reference in this Service Schedule to a "clause" is a reference to a clause of this Service Schedule.
- 14. ADDITIONAL DEFINITIONS**
- 14.1** In addition to the definitions in the Dictionary, the following are additional definitions for the Public Cloud Services:
- (a) **Application Data Protection Law** means all applicable laws, rules, regulations, orders, ordinances, regulatory guidance, and industry self-regulations in relation to data privacy, including but not limited to the EU General Data Protection Regulation ((EU) 2016/679).
- (b) **Managed Azure Services** means the Services as described in the Order or Statement of Work;
- (c) **Microsoft Azure** means the Microsoft cloud platform called Azure;
- (d) **Microsoft Azure Pricing Calculator** means the pricing calculator located at <https://azure.microsoft.com/en-au/pricing/calculator/> (which are subject to change);
- (e) **Microsoft Customer Agreement** means the Microsoft Customer Agreement with you which is effective without signature, a current copy of which is located at <http://aka.ms/customeragreement>;
- (f) **Microsoft Online Services** has the meaning given in **clause 1.1(a)**;
- (g) **Microsoft SLA** has the meaning in **clause 9**;
- (h) **Our Managed Services** has the meaning given in **clause 1.1(b)**;
- (i) **Partner of Record** is a record retained by Microsoft which associates a Microsoft partner with a Microsoft cloud subscription;
- (j) **Personal Information** means personally identifiable information as defined by the Applicable Data Protection Law;
- (k) **Professional Services** means any or all of the service supplied by us in the course of, or related to, the supply of Services to you, or any other services agreed between us from time to time and set out in the Order or Statement of Work;
- (l) **Software** means any software we provide to you as set out in the Order or Statement of Work;
- (m) **Software Terms and Conditions** means, for a given item of Software, the terms and conditions as issued by the relevant Provider; and
- (n) **Value-Added Services** means any of the Our Managed Services set out in the Order or Statement of Work that are not Managed Azure Services or Professional Services.