



MICROSOFT CLOUD AGREEMENT

between

Bytes Software Services Limited

(“Bytes”)

and

Insert Customer name

(“Customer”)

1. Definitions

“**Affiliate**” means any legal entity that owns, is owned by, or that is under common ownership with Customer, Bytes or Vendor (as relevant). Ownership means control of more than a 50% equity interests of, or the right to direct the management of, an entity for so long as such control exists;

“**Agreement**” means this agreement, made up of these terms and the Microsoft Customer Agreement;

“**Annual Term**” means the term from the commencement date for Seat Based Online Service offerings for a period of twelve (12) months;

“**Business Day**” means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;

“**Commitment Offering**” means an advance purchase of eligible offerings for a specified term and region (e.g. reserved software instances);

“**Consumption Based Services**” means any service that is consumed by the Customer and billed based on actual usage in arrears (e.g. Azure);

“**Customer Data**” means all data, including all text, sound, video, image files and software provided to Vendor by, or on behalf of, Customer through use of the Online Service;

“**Customer Information**” means the information that the Customer provides to Bytes in relation to the Products (including all relevant details which relate to the Customer’s requirement for the provision of the Products);

“**Designated Administrators**” means the Customer’s administrators who are appointed in accordance with to obtain and receive Support;

“**Developer Customer Agreement**” means the terms and conditions, and usage rights for the Customer associated with the applicable Third Party offered via the Marketplace;

“**Effective Date**” means the date Bytes’ authorised representative executes this Agreement;

“**Event of Default**” means any breach by a party of its contractual obligations arising under the Agreement (other than a breach arising from wilful default or recklessness), any misrepresentation by a party in connection with (whether or not contained in the Agreement) the party (other than a fraudulent misrepresentation), any tortious, act or omission, including negligence, arising in connection with the party’s performance under the Agreement (other than any act or omission which is fraudulent or dishonest) and/or any other act giving rise to a liability in respect of the Agreement;

“**Force Majeure**” means any act of God, war, riot, act of terrorism, strike or other industrial action of any kind, malicious damage, default of suppliers or sub-contractors, accident, failure or breakdown of plant or machinery, fire, flood, explosion, any act of local or national government or authority and any cause or circumstance whatsoever outside the reasonable control of the parties;

“**Insolvency Event**” means the other party suspends or threatens to suspend payment of its debts, is unable to pay its debts as they fall due, admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986, the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party, a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party, an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party, the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver, a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party, a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party’s assets and such attachment or process is not discharged within 14 days, any event occurs, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned, the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business;

“**Marketplace**” means the third-party offerings marketplace available on the Vendor online portal;

“**Microsoft Customer Agreement**” means the agreement that is used to govern the use of the Products, as made available at <https://www.microsoft.com/licensing/docs/customeragreement> or such other website address as may be notified to the Customer from time to time and including the Online Service Terms, Service Level Agreement and other documents referred to in such agreement and as varied from time to time by Vendor; “**Online Services**” means any Vendor-hosted services identified on the then-current Vendor price list for the CSP program and Microsoft Customer Agreement, excluding Software Perpetual Licences, Software Subscriptions and professional services provided under separate license terms.;

“**Order**” means the Customer’s order for a Subscription as set out in the Customer’s purchase order form or as ordered by Customer on the Bytes Cloud Dashboard;

“**Price**” means the current price available on the Bytes Cloud Dashboard;

“**Products**” means the Vendor’s Online Services purchased under Vendor’s cloud solution program;

“**Quotation**” means Bytes’ quotation related to these Terms containing details of the Products;

“**Relevant Records**” means all documents and information relating to the provision of Support, Online Services and Subscriptions in relation to this Agreement;

“**Renewal Term**” means the term for the relevant Annual Subscription renewal;

“**Seat-Based Online Service – New Commerce**” means a Subscription where the duration of the Subscription is for a fixed period of time and subject to the cancellation period in clause 4.3;

“**Seat-Based Online Service**” means a Subscription where the duration of the Subscription is for a fixed period of time;

“**Software**” means any software designated as a Server Subscription for Azure within the [Microsoft Product Terms](#) and any perpetual software licenses. For the avoidance of doubt this includes Windows 10 whether purchased individually or as part of Microsoft 365);

“**Software Perpetual License**” means any software designated with a right to use identified on the then-current Vendor price list as being available and licensable for a perpetual term;

“**Software Subscription**” means any software designated with a right to use identified on the then-current Vendor price list as being available and licensable for a defined and limited term;

“**Support**” means the base level support service described in Schedule 1 which is to be provided by Bytes to the Customer under clause 5 in relation to the Product;

“**Subscription**” means a quantity of Product for a defined term (e.g., 30 days or 12 months);

“**Tenant**” means a dedicated instance of Azure Active Directory for the Customer’s organisation (inclusive of all Affiliates);

“**Term**” means the duration of the Agreement in relation to a specific Product;

“**Third Party Offers**” means any third-party (or third-party branded) software, data, service, website or other products available through the Marketplace or other feature of the Vendor online services;

“**Trial Subscription**” means a free of charge trial offering by the Vendor for the Online Services which shall automatically convert into a paid-for Subscription unless properly terminated; and

“**Vendor**” means Microsoft Corporation.

1.1. Clause headings shall not affect the interpretation of the Agreement. References to clauses and the schedules are to the clauses and the Schedules of the Agreement.

1.2. A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time. A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.3. Any words following the terms **including, include** or any similar expression are illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. ORDER

- 2.1. This Agreement in conjunction with the terms and conditions contained in the [Microsoft Customer Agreement](#), shall apply to each order accepted and/or fulfilled by Bytes. Any terms or conditions appearing on any Customer purchase order, acknowledgement or confirmation that conflict with or are in addition to those contained hereunder are excluded and shall not be binding on the parties. Any variation to the terms is deemed invalid unless agreed between the parties, subject to clause 4.
- 2.2. For each Subscription and any renewal of a Subscription, the [Microsoft Customer Agreement](#) in force at the time the Order is accepted shall govern the use of the Products.
- 2.3. Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document issued by Bytes shall be subject to correction without liability to Bytes.
- 2.4. If an individual accepts these terms on behalf of an entity, the individual represents that they have the proper legal authority to enter into this Agreement on the entity's behalf, read and understood the terms and conditions contained herein and agree to the terms and conditions contained herein on behalf of the entity.

3. CUSTOMER ACKNOWLEDGEMENTS

- 3.1. Access to and use of the Products included with the Subscription is granted to the Customer by Bytes subject to the Customer's acceptance of and compliance with the [Microsoft Customer Agreement](#). The Customer warrants and represents it has read and accepted the [Microsoft Customer Agreement](#) and shall be bound by its terms.
- 3.2. The Customer acknowledges:
 - 3.2.1. Vendor may in its absolute discretion accept or reject the Customer's order and/or refuse to supply Products to the Customer;
 - 3.2.2. Bytes may perform certain functions associated with the purchase, activation, support and management of the Subscription and Products;
 - 3.2.3. Bytes may, from time to time, implement such updates or changes to continue to perform its functions which in its sole reasonable discretion deems appropriate; and
 - 3.2.4. Customer is solely responsible for providing complete and accurate Customer Information and Bytes shall rely on the Customer Information in determining and selecting the appropriate Products.
- 3.3. Customer warrants that each end-user of the Products will only use such Products from a device running a qualifying operating system (or such operating system when required and defined by the Vendor). For the avoidance of doubt, a qualifying operating system shall be any operating system which meets the requirements set out here: <https://www.microsoft.com/licensing/terms/productoffering/WindowsDesktopOperatingSystem/MCA>.

4. VARIATION AND CANCELLATION

- 4.1. The Customer may vary the Customer Information, the quantities of a Subscription or any part thereof by notifying Bytes. Subject to agreement by the Customer to pay any fees applicable required by the Vendor, Bytes will affect the variation where possible in a timely manner. Bytes cannot guarantee the Vendor will agree to such changes but will use best endeavours to achieve the variation.
- 4.2. Bytes may, from time to time, amend this Agreement to reflect changes in relevant laws and regulatory requirements and changes imposed by the Vendor. Bytes will provide no less than 30 days' notice of any variation to this Agreement. The variation shall apply to all Agreements on the expiry of the notice (unless otherwise agreed between the parties).
- 4.3. For Seat Based Online Services – New Commerce orders (as indicated in the Bytes Cloud Dashboard), the Customer shall have no more than twenty-four (24) hours to cancel such Order without penalty. Once this time has passed, Customer may not cancel the Order; the termination rights detailed in clause 10 shall apply and Customer will be liable for the Price.
- 4.4. For Seat Based Online Services orders, the Customer may request cancellation at any time during the term.
- 4.5. For Commitment Offering orders, the Customer may request cancellation within five (5) Business Days for a full refund. Cancellation or termination requested beyond this will result in a prorated credit to the Customer (capped at \$50,000 per Customer, per year) and an early termination fee.

5. SUPPORT

- 5.1. The Customer shall appoint a maximum of two Designated Administrators who will have authority to obtain and receive the Support for the Customer. The Customer shall notify Bytes as soon as reasonably practicable of the details of the Designated Administrators. The Designated Administrators may be replaced at any time on the provision of reasonable notice to Bytes. For the avoidance of doubt except as provided in this clause 5.1, Bytes will be under no obligation to provide Support to users of the Products.
- 5.2. Subject to clause 5.4, Bytes will, at no additional cost to the Customer, provide the Designated Administrators with Bytes' Support. Support shall be the provision of base level support to Designated Administrators in relation to the Products. Details of the Support provided are detailed within Schedule 1.
- 5.3. Bytes shall perform its obligations under this Agreement and provide the Support:
 - 5.3.1. With diligence, professionalism and with the degree of skill, care and practice which would ordinarily be expected of a skilled and experienced supplier of services similar to the Support;

- 5.3.2. With sufficient, suitably trained and qualified resources to provide the Support;
- 5.3.3. Within a reasonable timeframe; and
- 5.3.4. In accordance with applicable laws and regulations.
- 5.4. Bytes may, on prior notice to the Customer, make changes to the Support, provided such changes do not have a material adverse effect on the Customer's business operations.
- 5.5. Bytes shall have no obligation to provide the Support where the Customer is in breach of any term of the Agreement. In the event Customer requires Bytes to provide Support to a third party acting on behalf of the Customer, Customer shall notify Bytes in writing and provide authorisation to Bytes for any such third party to receive the Support on the Customer's behalf.
- 5.6. In the event the Customer makes a purchase from the Marketplace, the third-party vendor of the Third-Party Offer shall provide technical support and service level commitments to the Customer for the Reservation. Bytes shall only provide billing and payment support to Customers.
- 5.7. In the event the Customer purchases Software, Bytes will provide the first line of support for issues directly relating to the procurement, license key access / activation and product media / download fulfilment. No additional support shall apply to Software purchases.
- 5.8. In the event the Customer purchases a Commitment Offering, Bytes shall provide support and service level commitments to the Customer for the Commitment Offering

6. CUSTOMER DATA

- 6.1. References to Data Protection Legislation shall mean the Data Protection Act 2018 and the UK GDPR (as defined in the Data Protection Act 2018).
- 6.2. Capitalised terms in this clause 6 shall have the meaning set out in the Data Protection Legislation.
- 6.3. Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 6 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- 6.4. The Customer understands and accepts that:
 - 6.4.1. Microsoft may collect, use, transfer, disclose, and otherwise process the Customer's data, including personal data as described in the Microsoft Customer Agreement; Such processing includes granting Bytes administrator access to the Customer's systems for the purposes of providing the Products to the Customer;
 - 6.4.2. Microsoft may send direct communications to Customers related to the terms of the Microsoft Customer Agreement or the operation or delivery of the Product; and
 - 6.4.3. Bytes may provide Microsoft with contact information for the administrator of each Customer domain.
- 6.5. The parties acknowledge that for the purposes of the Data Protection Legislation, in respect of Personal Data processed by Bytes on behalf of the Customer as contemplated by the Agreement, the Customer is the Controller and Bytes is the Processor. Schedule 2 sets out the subject matter and duration of the processing, the nature and purpose of the processing, the types of Personal Data and categories of Data Subjects.
- 6.6. Without prejudice to the generality of clause 6.3, Bytes shall, in relation to any Personal Data processed in connection with the performance by Bytes of its obligations under this agreement:
 - 6.6.1. process that Personal Data only on the written instructions from the Customer, including with regard to transfers of personal data to a country outside the European Economic Area, unless Bytes is required to do so by the laws of any member of the European Union or by the laws of the European Union applicable to Bytes (**Applicable Laws**). Where Bytes is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, Bytes shall promptly notify the Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Bytes from so notifying the Customer;
 - 6.6.2. ensure that it has in place appropriate technical and organisational measures, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - 6.6.3. ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
 - 6.6.4. assist the Customer, at the Customer's cost, in responding to any request from a Data Subject and in ensuring compliance with the Customer's obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - 6.6.5. notify the Customer without undue delay on becoming aware of a Personal Data breach;
 - 6.6.6. at the written direction of the Customer, delete or return to the Customer on termination of the agreement personal data processed by Bytes as data processor on behalf of the Customer that is in Bytes' possession and control unless required by

Applicable Law to store the Personal Data. For the avoidance of doubt and notwithstanding anything to the contrary in this Agreement the Customer understands and agrees that Bytes shall not be under any obligation to return or delete any personal data that is processed by Microsoft as part of the Online Services and the Customer must make its own arrangements for the return or deletion of such personal data. Unless otherwise agreed by Bytes in writing the Customer shall pay Bytes' reasonable costs and expenses associated with returning any data to the Customer; and

- 6.6.7.** maintain all information necessary to demonstrate its compliance with this clause 6.6 and allow for audits by the Customer or the Customer's designated auditor. The Customer shall give Bytes not less than 5 Business Days written notice of its intention to conduct an inspection and audit and shall bear its own costs and expenses incurred in respect of conducting any inspection and audit under this clause 6.6.7
- 6.7.** The Customer gives Bytes general authorisation to appoint sub-processors of Personal Data under this agreement. Bytes will notify the Customer if it intends to add to or replace such sub-processors, thereby giving the Customer the opportunity to object to such changes. If the Customer does not notify any objection to Bytes within 5 days of receipt of a Change Notice, the Customer is deemed to have accepted the change.
- 6.8.** If, following receipt of a Change Notice, the Customer objects to the addition or replacement of the sub-contractor who is processing Personal Data the Customer must notify Bytes in writing within 5 days of receipt of the Change Notice outlining the reasons for its objection. Following receipt of an Objection the Customer and Bytes shall discuss a commercially reasonable alternative way of processing the Personal Data that is the subject of the Change Notice. At any time, following receipt of an Objection and where no alternative arrangement can be agreed Bytes may at its discretion either not appoint the subcontractor to process Personal Data or may by giving notice to the Customer suspend or terminate that part of the service that is affected by the Change Notice without liability to the Customer.
- 6.9.** Bytes confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are on no less onerous terms than those set out in this clause 6. As between the Customer and Bytes, Bytes shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 6.9.
- 6.10.** Without prejudice to the generality of clause 6.3, the Customer shall ensure that:
 - 6.10.1.** the Customer is entitled to transfer the relevant personal data to Bytes so that Bytes may lawfully use, process and transfer the personal data in accordance with the Agreement on the Customer's behalf; and
 - 6.10.2.** the Customer shall provide sufficient notice to, and, where consent is relied upon as a basis for lawful processing, obtain sufficient consent and authorisation from, its employees and any other party providing personal data to Bytes to permit the processing of the data by Bytes, Microsoft, and their respective Affiliates, subsidiaries, and service providers as contemplated by the Agreement.
- 6.11.** The Customer acknowledges that Bytes is reliant on the Customer for direction as to the extent to which Bytes is entitled to use and process the Personal Data. Consequently, Bytes will not be liable for any claim brought by a Data Subject arising from any action or omission by Bytes, to the extent that such action or omission results from the Customer's instructions.
- 6.12.** The Customer consents and authorises Bytes and Microsoft (and their service providers and subcontractors) at Bytes' direction to access and disclose to law enforcement (or other government authorities) data from, about or related to the Customer, including the content of communications (or to provide law enforcement or other government entities access to such data). As and to the extent required by law, Customer shall notify the individual users of the Products that their data may be processed for the purpose of disclosing it to law enforcement or other governmental authorities as directed by Bytes.

7. OTHER RIGHTS AND OBLIGATIONS

- 7.1.** The Customer consents to the disclosure of the Relevant Records to the Vendor or its audit-related agents if requested by Vendor.
- 7.2.** The Customer shall obtain and shall maintain all necessary consents and permissions necessary for Bytes to perform its obligations under the Agreement.
- 7.3.** The Customer must not remove any copyright, trademark or patent notices from any of the Products.
- 7.4.** Bytes will have Delegated Administration Permissions (DAP) by default to enable the provision of first line support to the Customer. In the event Customer does not provide Bytes with delegated administration rights or revokes such rights at any time, Bytes shall be under no obligation to provide Support to the Customer and the Customer shall be subject to the fee detailed in clause 8.11..
- 7.5.** In the event the Customer purchases a Third Party Offer via the Marketplace, the Customer agrees that the Microsoft Customer Agreement does not apply to such Third Party Offers. Third Party Offers shall be subject to the Developer Customer Agreement.

8. PRICE AND PAYMENT

- 8.1.** The Customer shall pay the Price for the Products as specified in the Quotation. Bytes reserves the right to correct any mistake, error or omission in the Price prior to an Order being accepted by Bytes.
- 8.2.** Bytes reserves the right, at any time before delivery of the Products, to withdraw any discount and/or to revise any Price quoted if there is a change in the cost to Bytes of supplying the Products whether by reason of exchange rate fluctuations, third party charges or otherwise. If a price is increased between the Order being placed and delivery of the Product, Bytes will inform the Customer as soon as possible and give the Customer the option of reconfirming the Order at the new price or cancelling the Order. Unless otherwise specified VAT and any other duties or taxes payable, and all costs and charges in relation to carriage, insurance or similar shall be payable in addition to the Price.
- 8.3.** The Price shall be determined as follows:

- 8.3.1.** Consumption Based Services are calculated based on actual usage by Vendor and the current pricing in effect, billed monthly in arrears. The unit price for Consumption Based Services may vary during the term (as determined by Vendor). Usage reported within 24 hours of the end of the billing period may appear on the following month's invoice;
- 8.3.2.** Seat Based Online Services shall be fixed for a period of 12 months and billed monthly or annually as agreed in the Order;
- 8.3.3.** Seat Based Online Services – New Commerce shall be fixed on a monthly, annual or 36-month (multi-year) basis as agreed at Order, billable as the following:
- 8.3.3.1. Monthly price commitment payable monthly upfront;
- 8.3.3.2. Annual price commitment payable monthly upfront (subject to Bytes written approval) or annually upfront;
- 8.3.3.3. 36-month (multi-year) price commitment payable monthly upfront (subject to Bytes written approval), or annual upfront (subject to Bytes written approval).
- In the event the Customer wishes to place an Order which requires Bytes written approval as detailed above, Customer must submit any such request through their designated Bytes Account Manger.
- 8.3.4.** Commitment Offering pricing is determined by Vendor and shall be payable in full upfront.
- 8.4.** In the event the Customer purchases more than 2399 licenses, the Price payable for such license shall be the recommended retail price ("RRP") as determined by the Vendor. Any such discounted pricing provided by Bytes to the Customer for licenses up to and including 2399 shall not apply. For the avoidance of doubt, the license limit detailed in this clause applies to the Customer's Tenant.
- 8.5.** For Consumption Based Services and Seat Based Online Services and Seat Based Online services New Commerce subscriptions, the Customer shall provide to Bytes a purchase order upon placing the Order. Such purchase order shall remain in effect until the Customer notifies Bytes, in writing, of a change to the purchase order information.
- 8.6.** For a Commitment Offering, the Customer shall provide to Bytes a purchase order for the full Price of the Order upon placing the Order.
- 8.7.** Unless otherwise agreed in writing by Bytes the Price shall be paid by direct debit (Direct Debit form attached). Payment of the Price is due in full in pounds sterling without deduction or set-off within thirty (30) days of the date of invoice (unless otherwise agreed). Time for payment is of the essence.
- 8.8.** At Bytes' sole discretion where the Customer fails to pay Bytes within seven (7) days of the due date, Bytes may charge interest at a rate of 2% per annum above the Bank of England base rate, or the highest amount allowed by law (if less).
- 8.9.** The Customer may not withhold payment or take deductions from any invoice amount (by offset, counterclaim, or otherwise) before Bytes issues a credit. This includes returns, rebates, price adjustments, billing errors, shipping claims, handling fees, allowances, remittance costs and other charges.
- 8.10.** In the event the Customer revokes Bytes' administrative access as per clause 7.4 during the Term, Bytes reserves the right to invoice the Customer for the Vendor standard pricing in effect at that time plus a 3% administrative fee.
- 8.11.** Without limiting its other rights or remedies, Bytes shall have the right to suspend the supply of Products under the Agreement if the Customer fails to pay any amount due under the Agreement within seven (7) days of the due date for payment or if the Customer becomes the subject of an Insolvency Event.

9. LIMITATION OF LIABILITY

- 9.1.** Nothing in this clause 9 shall exclude or limit each party's liability to the other for:
- 9.1.1. death or personal injury resulting from its own or its employees', agents' or sub-contractors' negligence;
- 9.1.2. any breach of its obligations implied by Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982; and/or
- 9.1.3. any fraud or fraudulent misrepresentation or fraudulent acts of its employees
- 9.2.** Bytes shall not be liable for any delay or failure to provide any Support agreed to be supplied under the Agreement and or any Event of Default caused by:
- 9.2.1. any act or omission of the Customer which is contrary to its obligations under the Agreement;
- 9.2.2. any failures of any third parties (if applicable) to provide the Support; and/or
- 9.2.3. any disruption to the Customer's system which occurs while any Support is being provided.
- 9.3.** Bytes shall not be liable for any delay or failure in the provision or performance of any Product agreed to be supplied under the Agreement or any Event of Default caused by the acts, omissions or failures by the Vendor in providing the Products to the Customer. All liability for the Products is contained in the [Microsoft Customer Agreement](#).
- 9.4.** Subject to clause 9.1 the Customer acknowledges that in the event that Bytes selects Products in accordance with the Customer's Information and the Customer Information is subsequently found to be inaccurate and/or not complete for any reason other than

Bytes' negligence then the Customer acknowledges that Bytes shall have no liability in respect of the suitability of the Products which have been selected by Bytes in accordance with such Customer Information.

- 9.5. Subject to clause 9.1 neither party shall be liable in respect of any Event of Default for loss of profits, loss of business, depletion of goodwill and/or similar losses, loss of anticipated savings, loss of goods, loss of agreement, loss of use or any special, indirect, consequential or pure economic loss, costs, damages, charges or expenses (including loss or damage suffered by the party as a result of an action brought by a third party) even if such loss was reasonably foreseeable or Bytes has been advised of the Customer incurring the same.
- 9.6. Subject to clause 9.1 each party's aggregate liability in respect of all Events of Default shall be limited to 100% of the aggregate fee paid by the Customer in accordance with the Agreement or (where the agreement operates for more than 12 months) the fee shall be deemed to be the average sum paid to Bytes in a 12-month period of the Agreement.
- 9.7. In the event that any advice provided to the Customer by Bytes was provided free of charge by Bytes then such advice is provided as is without warranty of any kind from Bytes and shall have no liability in relation thereto.
- 9.8. The Customer hereby agrees to afford Bytes not less than 60 days (following notification thereof by the Customer) in which to remedy any Event of Default hereunder.
- 9.9. Nothing in this clause 9 shall confer any right or remedy upon the Customer to which it would not otherwise be legally entitled.
- 9.10. Bytes shall not be liable for defects in Products resulting from abnormal conditions of use or any act, neglect or default of the Customer or any third party.
- 9.11. Except as expressly and specifically provided in the Agreement:
 - 9.11.1. The Customer assumes sole responsibility for results obtained from the use of the Product and/or Support by the Customer, and for conclusions drawn from such use. Bytes shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Bytes by the Customer in connection with the Products and/or Support, or any actions taken by Bytes at the Customer's direction;
 - 9.11.2. This Agreement sets out the full extent of Bytes' obligations and liabilities in respect of the supply of the Products and Support. All warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from the Agreement.

10. TERMINATION

- 10.1. Seat Based Online Services and Seat Based Online Services – New Commerce Subscriptions will automatically renew at the end of the relevant Annual Term for a Renewal Term of 12 months. Either party may give written notice not less than 30 days before the expiry of the Annual Term or the relevant Renewal Term, to terminate this agreement at the end of the relevant Term.
- 10.2. Consumption Based Services Subscriptions may be terminated at any time by either party giving not less than 30 days' written notice to the other party.
- 10.3. Commitment Offerings may be terminated by the Customer subject to Vendor consent.
- 10.4. Where the Customer has been provided a Trial Subscription, such Subscription shall automatically renew into a paid-for Subscription, which will be subject to the appropriate termination rights detailed in this clause 10.
- 10.5. Bytes may terminate the Agreement at any time without liability to the Customer by giving not less than 30 days prior written notice to the Customer and the Agreement will terminate on the expiry of the termination notice.
- 10.6. Without affecting any other right or remedy available to it, either party may terminate the Agreement with immediate effect by giving written notice to the other party if:
 - 10.6.1. the other party commits a material breach of any term of the Agreement which is irremediable or, if such breach is remediable, fails to remedy that breach within 15 days of being notified in writing to do so;
 - 10.6.2. the other party persistently breaches any term of the Agreement; or
 - 10.6.3. An Insolvency Event occurs by the non-terminating party.
- 10.7. Without affecting any other right or remedy available to it, Bytes may terminate the Agreement with immediate effect by giving written notice to the Customer if:
 - 10.7.1. the Customer fails to pay any amount due under the agreement on the due date for payment and remains in default not less than 15 days after being notified in writing to make such payment; and/or
 - 10.7.2. for any reason, Vendor terminates the Customer's status as a customer of Vendor.

11. CONSEQUENCES OF TERMINATION

- 11.1. On termination of the Agreement:
 - 11.1.1. For Seat Based Online Services and Seat Based Online Services – New Commerce Subscriptions, all licences shall terminate at the end of the Annual Term and all outstanding fees will be invoiced and payable in accordance with clause 8.1;
 - 11.1.2. For Consumption Based Services Subscriptions, all licences will terminate at the end of the notice period and all outstanding fees will be invoiced and payable in accordance with clause 8.1; and
 - 11.1.3. For Commitment Offerings, all licences shall terminate at the end of the notice period.

- 11.2.** In the event the Customer terminates the Commitment Offering, an early termination equal to 12% of the prorated credit shall apply..
- 11.3.** Any accrued rights, remedies, obligations or liabilities of the parties up to the date of termination, including the right to damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.
- 11.4.** Any provision of the Agreement that expressly or by implication is intended to come into or continue in force on or after termination of the agreement including clauses 6, 7, 9, 10 and 11 shall remain in full force and effect.
- 11.5.** If the Agreement is terminated by the Customer during the Annual Term or any relevant Renewal Period otherwise than pursuant to clause 10.5.1 or 10.5.2, without prejudice to any other rights or remedies that Bytes may have, the Customer shall pay Bytes all costs, expenses and liabilities incurred or paid by Bytes as a result of the termination of the Agreement, including but not limited to any outstanding amounts payable for the remainder of the Annual Term.
- 11.6.** Upon termination and/or cancellation of a Subscription, Customer must migrate Customer Data to a new Subscription, whether with Bytes or another service:
- 11.6.1.** within thirty (30) days of the effective date of termination or cancellation for annual Subscriptions; or
- 11.6.2.** Within seven (7) days of the effective date of termination or cancellation for monthly Subscriptions.

12. PROMOTIONS

- 12.1.** Bytes may, from time to time, make promotions available to the Customer for purchase via the Bytes Cloud Dashboard. Bytes may withdraw promotions from the Bytes Cloud Dashboard at any time.
- 12.2.** Each promotion will have its own eligibility criteria the Customer must meet in order to be able to access such promotion.
- 12.3.** A Subscription shall renew at the promotion discount price unless the promotion time has expired, in which case the renewal will revert to the non-promotion price.
- 12.4.** Any Order placed with a promotion applied shall have a maximum seat capacity of 2,400. In the event an Order is for more than 2,400 the promotion will not be applied.
- 12.5.** In the event the Customer chooses an upgraded (or different) Subscription with a different SKU during the Subscription term, the Customer understands and agrees that the promotional pricing will no longer apply.

13. EXPORT CONTROL

- 13.1.** Neither party shall export, directly or indirectly, any technical data acquired from the other party under this Agreement (or any products, including software, incorporating any such data) in breach of any applicable laws or regulations, including United States export laws and regulations, to any country for which the United States or any other government or any agency thereof at the time of export requires an export licence or other governmental approval without first obtaining such licence or approval.

14. CONFIDENTIALITY

- 14.1.** Each party undertakes that it shall keep any confidential information of the other party confidential and shall not at any time during the Agreement, and for a period of five years after termination of the Agreement, disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the other party or of any member of the group of companies to which the other party belongs.
- 14.2.** Each party may disclose the other party's confidential information:
- 14.2.1.** to its employees, officers, representatives or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with the Agreement. Each party shall ensure that its employees, officers, representatives or advisers to whom it discloses the other party's confidential information comply with this clause 13; and
- 14.2.2.** as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 14.3.** No party shall use any other party's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with the Agreement.

15. GENERAL

- 15.1.** Except for the Customer's obligation to make payment, neither party shall be liable for delay in performing or failure to perform obligations under this Agreement if the delay or failure results from Force Majeure. If any delay or failure under this Agreement resulting from Force Majeure continues for a period in excess of 90 consecutive days either party shall have the right to terminate the Agreement with immediate effect by giving notice in writing to the other party.
- 15.2.** This Agreement, together with any documents referred to in it (including Quotations), constitutes the entire and only agreement between the parties relating to its subject matter and supersede and extinguish any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature, whether in writing or oral, relating to such subject matter.
- 15.3.** Neither party shall assign, transfer or novate any of its rights and obligations under the Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld.

- 15.4.** Any notice given to a party under or in connection with the Agreement shall be in writing and will be treated as delivered on the date received at the address, date shown on the return receipt, email transmission date, or date on the courier or tax confirmation of delivery.
- 15.5.** Bytes may subcontract or delegate in any manner any or all of its obligations to provide the Support under the Agreement to any third party.
- 15.6.** Nothing in the Agreement is intended to or shall be deemed to, establish any partnership or joint venture between any of the parties. The parties are independent contractors.
- 15.7.** No failure or delay by a party to exercise any right or remedy provided under the Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.
- 15.8.** No one other than a party to the Agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.
- 15.9.** The Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales.

SCHEDULE 1: SUPPORT

The Support offering comprises a UK Business Hours helpdesk providing general on-boarding/account set up guidance and a UK-based technical, break-fix, support escalation where a Customer's IT team has been unable to resolve a problem.

UK-based technical, break-fix, support is also available outside of UK Business Hours for Urgent support requests.

Support is available for Online Services / Usage Based Services (examples of these include Microsoft 365, Office 365 and Azure).

This Support covers (but is not necessarily limited to) the following:

- Guidance on initial tenant creation and setup; “what is a tenant?”, “how does Azure AD (AAD) work?”, advice on tenant names and administrators
- Guidance on ongoing Office 365 management including a tour of the Admin Centre and best practise
- Non-technical support following purchase of O365 and other MS Online Services – “How do I?”, “Where is?”
- Support, assistance and best practice advice to ensure that the systems covered remain operational and in the event of failures are recovered with a minimum of disruption on any or all systems covered by the service

Support Requests of both a technical and non-technical nature will be prioritised based on the severity of the problem or question;

- Normal: The service is not seriously affected (e.g. the problem can be bypassed, or a reasonable work around exists).
- Urgent: There is limited use of the server or system. The server or application is considered unstable and subject to periodic interruptions. Business critical applications remain partially available.
- System Down: The server or system is completely unavailable or not operational. Business critical applications are severely impacted by the problem.

All support requests should be directed according to the following schedule:

| Type | Priority | SLA | Contact |
|--|----------|--|---|
| Non-technical / Account & administrative Guidance | Normal | Mon-Fri; 9am to 5.30pm 4-hour response | Email: cloudsupport@bytes.co.uk Or via Account Manager |
| | Urgent | Mon-Fri; 9am to 5.30pm Immediate response | Phone: +441372 418766 Or via Account Manager |
| Technical, break-fix | Normal | Mon-Fri; 9am to 5.30pm 4-hour response | Email: cloudsupport@bytes.co.uk Or via Account Manager |
| | Urgent | 24 x 7; 1-hour response | Phone: +441372 418766 |
| System Down | | 24 x 7; 30-minute response | As escalated by support escalation team |

Exclusions:

The intention of this service is to provide support for administrative and infrastructure related queries. Any queries relating to any of the following Azure service categories will be considered out of scope and will be referred to a more appropriate resource:

- AI + Machine Learning
- Analytics
- Containers
- Developer Tools
- DevOps
- Internet of Things
- Media
- Web

As the intended purpose of this service is to support the function of a customer's IT team, end user task support is excluded, and all contact must be made by the customer's designated contacts. Also, explicitly excluded from the service:

- On-site support, except and unless agreed as a separately provisioned service.
- Deployment advisory services, except and unless agreed as a separately provisioned service.

All reasonable endeavours will be made to complete a Customer's Support Request, but Bytes make no absolute guarantee of problem resolution.

Fair Usage Policy:

To ensure the consistently high level of support that Bytes aim to deliver, and that Bytes' customers expect, we have elected to introduce a Fair Usage Policy.

Bytes internal reporting mechanisms may identify situations where a customer is taking advantage of the service more than would be reasonably expected. In such cases steps may be taken, through the customer's Bytes Account Manager, to introduce other partners able to offer more in-depth training and deployment services in an effort to enhance the customers' experience of using Microsoft Cloud technologies.

At no point will this Fair Usage Policy be used to prevent a customer from logging a support request.

Service Escalation:

The customer has the right to escalate any concern with the level and nature of support received to the following contacts in strict order:

1. Bytes Account Manager (standard contact mechanisms)
2. Cloud Support Team Lead: Kristian Grapes (+44 1372 418564)
3. Group Chief Technology Officer: David Rawle (+44 1372 418710)

SCHEDULE 2: PROCESSING, PERSONAL DATA AND DATA SUBJECTS

1. Processing by Bytes

- 1.1 Scope: Personal data
- 1.2 Nature: Non-sensitive data/ Non-Special Category Data
- 1.3 Purpose of processing: To enable the provisioning of MS online services and products and Azure Services.
- 1.4 Duration of the processing: For the term of the contract

2. Types of Personal Data

- 2.1 Name, E mail address, Phone Numbers

3. Categories of data subject

- 3.1 Contractual and service contacts