

Online Services Terms and Conditions

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Nexus Open System

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Nexus Open Systems

1. Introduction

These Online Services Terms and Conditions have been produced to enable Nexus Open Systems Ltd (Nexus) to provide Microsoft Online Services to their Customers. These Online Service Terms and Conditions should be considered alongside the previously supplied Quotation which provides pricing for the proposed service. These terms are supplemental to Nexus' Terms and Conditions of Sale and apply to Microsoft Online Services only.

This Agreement consists of the following documents:

- I. these Online Services Terms and Conditions;
- II. the Quotation; and
- III. the Terms and Conditions of Sale.

In the event of any inconsistency between the terms, priority shall be given to the terms in the order set out above.

The terms of these Online Services Terms and Conditions shall prevail over any inconsistent terms or conditions contained in, or referred to, in the Customer's purchase order, confirmation of order or outline specification.

Nexus Open Systems

2. Definitions

The following defined terms have the following meanings:

Agreement	means the agreement between the parties reflected in the documents set out in section 1.
Customer Data:	means all data, including all text, sound, video or image files, and software that are provided to us or Microsoft through use of the Online Service.
Microsoft:	means Microsoft Ireland Operations Limited.
Microsoft Cloud Agreement:	means the Microsoft Cloud Agreement as published at www.nexusos.co.uk/terms-conditions
Microsoft Online Service Terms	means the terms that apply to your use of the Products available https://www.microsoft.com/licensing/onlineuserights . These include terms governing your use of the Products.
Microsoft SLA:	means the commitments which Microsoft makes regarding delivery and/or performance of the Online Services, as published at https://www.microsoft.com/en-gb/Licensing/product-licensing/products.aspx or at an alternative site identified by Microsoft from time to time.
Minimum Term:	means 12 months or as otherwise stated in the Quotation.
Online Services:	means any of the Microsoft hosted Online Services which you have subscribed to under this Agreement, including but not limited to Office 365 Services, Microsoft Azure Services, Microsoft Azure Plans, Microsoft Dynamics 365 and other Microsoft Online Services.
Online Services Terms and Conditions	means this schedule for the provision of Online Services.
Previews:	means preview, beta or other pre-release version or feature of the Online Services or Software offered by Microsoft to obtain customer feedback.
Product:	means any Online Service (including any Software).
Quotation:	means the Quotation set out in the document of that name which Nexus has provided to the Customer prior to execution of these Online Service Terms and Conditions.
Software:	means Software we provide for installation on your device as part of your Subscription or to use the Online Service.
Subscription:	means an enrolment for Online Services as provided under this Agreement.
Terms and Conditions of Sale	means the terms set out in the document of that name which Nexus has provided to the Customer prior to execution of these Online Service Terms and Conditions.

Any further defined terms shall have the meaning given to them in the Terms and Conditions of Sale.

3. Relationship with Microsoft

- 3.1 We are authorised under a Microsoft Cloud Reseller Agreement to licence and grant the right to use the Products.
- 3.2 Our relationship with Microsoft is that of a reseller, and we are therefore independent contractors.
- 3.3 Our ability to grant you the right to use the Products is subject to your acceptance of the Microsoft Cloud Agreement. By entering into this Agreement you are confirming that you have read, understood and agree to the terms of the Microsoft Cloud Agreement.
- 3.4 You acknowledge and accept that we are the administrator for the purposes of the Subscription.

4. Products

- 4.1 We agree to grant you the right to use the Products which are detailed in the Quotation in accordance with the terms of this Agreement.
- 4.2 All licenses provided pursuant to this Agreement are non-exclusive, non-sub licensable and may only be used in connection with your own internal business purposes.
- 4.3 You may not reverse engineer, decompile, disassemble, or work around technical limitation in the Product, except to the extent permitted by law.
- 4.4 You must not disable or circumvent any billing mechanism that meters your use of the Products. You may not rent, lease, lend, resell, transfer or host the Product, or any portion thereof, to or for third parties except as expressly permitted in the Microsoft Online Service Terms.
- 4.5 You further accept that all licenses are subject to any further restrictions imposed pursuant to the terms of the Microsoft Cloud Agreement.

5. Pricing and Payment

- 5.1 The prices for each Product are as detailed in the Quotation.
- 5.2 We reserve the right to vary the prices in respect of any Consumption offering (also known as Pay-As-You-Go) Products at any time upon giving you at least 7 days' notice.
- 5.3 We reserve the right to vary prices in respect of any Subscription upon expiry of its term, being 12 months from the date of an order being placed.
- 5.4 Invoices will be raised:
 - 5.4.1 For Pay-As-You-Go Products monthly and in relation to your actual usage in the preceding month based on the applicable charges from time to time; and
 - 5.4.2 For Subscription Products monthly and in advance and for the applicable Subscription price from time to time.
- 5.5 All invoices are payable within 30 days of receipt.

6. Service Level

- 6.1 We will provide the Products in accordance with the terms of this Agreement and the Microsoft Cloud Agreement. We do not guarantee that the Products will be continuously available or free from service failures.
- 6.2 The Microsoft SLA makes certain commitments as to the Products. In the event of a service failure, you are entitled to lodge a claim with us pursuant to the Microsoft SLA.
- 6.3 In accordance with the Microsoft SLA we will escalate your claim pursuant to the Microsoft SLA, we may at our sole discretion provide you with a service credit.
- 6.4 In the event that Microsoft does not accept your claim pursuant to the Microsoft SLA, we will not provide you with a service credit.
- 6.5 Our liability to pay you service credits as detailed at this clause 6 shall be your sole remedy for service failures.
- 6.6 You acknowledge and accept that the Previews are not subject to the terms of Microsoft's SLA with regard to the applicable service levels. Further, we are not obliged to provide support services in respect of any Preview.

7. Support

- 7.1 We will provide you with support services which include but are not limited to account set-up, sign up, accounts and billing, service and software updates.
- 7.2 For the avoidance of doubt, we will not provide support services in relation to any customisation or configuration of the Products under this Agreement.
- 7.3 You can find details of our support services and contact information on our website at <https://www.nexusos.co.uk/support/>
<https://www.nexusos.co.uk/contact-us/>
- 7.4 You acknowledge that where an undocumented scenario arises it may be necessary for us to escalate an issue to Microsoft for resolution.
- 7.5 Notwithstanding the provisions of the Agreement, and with the knowledge that reasonable efforts will be made to diagnose and resolve faults that occur, we make no warranties that the support services will be successful in resolving all issues that arise.
- 7.6 We accept no responsibility or liability for hardware or software application problems.

8. Cancellation

- 8.1 Following cancellation of a Product or termination of the Agreement by either party, you have a period of 90 days in which to migrate any Customer Data to either a new Subscription with us, with Microsoft directly, or some other service.

- 8.2 Following cancellation of a Product or termination of the Agreement by either party, if Customer Data is not migrated within 90 days you agree that we may immediately delete all your Customer Data.
- 8.3 We may cancel a Subscription for a Product for you, however an early termination charge, meaning fees due from you in the event of cancellation of a Subscription before its term ends, may be applied.
- 8.4 Upon request, Microsoft may assist us with migration of your Customer Data at an additional charge agreed between you and us.
- 8.5 Under no circumstances will we be liable for any loss of or damage to Customer Data. You accept responsibility for backing up Customer Data and shall ensure that your processes in this respect are adequate.

9. Warranties and Representations

- 9.1 You acknowledge and accept that the only warranties provided to you in respect of the Products are those which are stated in clause 5 of the Microsoft Cloud Agreement.
- 9.2 Other than those warranties referred to in clause 9.1, we provide no warranties whether implied, statutory or otherwise, including warranties of merchantability or fitness for a particular purpose. These disclaimers apply except to the extent applicable law does not permit them.
- 9.3 You acknowledge and agree that your remedies in respect of any breach of warranty are limited to those detailed in clause 5 of the Microsoft Cloud Agreement.
- 9.4 In order to make a claim for breach of warranty, you must first lodge this with us to escalate to Microsoft for validation in accordance with Microsoft's SLA.

10. Limitation of Liability

- 10.1 The aggregate liability of each party for claims under the Agreement is limited to direct damages up to the amount paid under the Agreement for the Products during the 12 months before the cause of action arose; provided that in no event will a party's aggregate liability for any Product exceed the amount paid for that Product during the Subscription.
- 10.2 You agree that we shall have no liability whatsoever in respect of the use of any Preview.

11. Intellectual Property

- 11.1 Except for your license to use the Products as expressly granted under the Agreement, you shall not acquire in any way, any title, rights of ownership, or Intellectual Property Rights of whatever nature in the Products or in any copies of it and no Intellectual Property Rights of either party are transferred or licensed as a result of the Agreement.