



# Terms & Conditions

## Terms & Conditions

Last updated: January 02, 2024

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## Disclaimer

THE SERVICES ARE PROVIDED "AS IS." WE AND OUR AFFILIATES AND LICENSORS MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE REGARDING THE SERVICE OFFERINGS OR THE THIRD-PARTY CONTENT, INCLUDING ANY WARRANTY THAT THE SERVICE OFFERINGS OR THIRD-PARTY CONTENT WILL BE UNINTERRUPTED, ERROR-FREE OR FREE OF HARMFUL COMPONENTS, OR THAT ANY CONTENT, INCLUDING YOUR CONTENT OR THIRD-PARTY CONTENT, WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED. EXCEPT TO THE EXTENT PROHIBITED BY LAW OR AS OTHERWISE SET FORTH HEREIN, WE AND OUR AFFILIATES AND LICENSORS DISCLAIM ALL WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR QUIET ENJOYMENT, AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE. IN ADDITION, SERVICES ARE LIMITED TO CURRENT PRODUCTION SUPPORTED PRODUCTS.

## Limitations of Liability

WE AND OUR AFFILIATES OR LICENSORS WILL NOT BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES (INCLUDING DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, OR DATA), EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, NEITHER WE NOR ANY OF OUR AFFILIATES OR LICENSORS WILL BE RESPONSIBLE FOR ANY COMPENSATION, REIMBURSEMENT, OR DAMAGES ARISING IN CONNECTION WITH: (a) YOUR INABILITY TO USE THE SERVICES, INCLUDING AS A RESULT OF ANY (i) TERMINATION OR SUSPENSION OF THIS AGREEMENT OR YOUR USE OF OR ACCESS TO THE SERVICES, (ii) OUR DISCONTINUATION OF ANY OR ALL OF THE SERVICES, OR, WITHOUT LIMITING ANY OBLIGATIONS UNDER THE SERVICE LEVEL AGREEMENT, ANY UNANTICIPATED OR UNSCHEDULED DOWNTIME OF ALL OR A PORTION OF THE SERVICES FOR ANY REASON, INCLUDING AS A RESULT OF POWER OUTAGES, SYSTEM FAILURES OR OTHER INTERRUPTIONS; (b) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; (c) ANY INVESTMENTS, EXPENDITURES, OR COMMITMENTS BY YOU IN CONNECTION WITH THIS AGREEMENT OR YOUR USE OF OR ACCESS TO THE SERVICES; OR (d) ANY UNAUTHORIZED ACCESS TO, ALTERATION

**Reseller Administrator Access and Customer Data:** Customer acknowledges and agrees that (i) once Customer has chosen a Reseller, that Reseller will be the primary administrator of the Online Services for the Term and will have administrative privileges and access to Customer Data, however, Customer may request additional administrator privileges from its Reseller; (ii) Customer can, at its sole discretion and at any time during the Term, terminate its Reseller's administrative privileges; (iii) Reseller's privacy practices with respect to Customer Data or any services provided by Reseller are subject to the terms of Customer's agreement with its Reseller and may differ from Microsoft's privacy practices; and (iv) Reseller may collect, use, transfer, disclose, and otherwise process Customer Data, including personal data. Customer consents to Microsoft providing Reseller with Customer Data and information that Customer provides to Microsoft for purposes of ordering, provisioning and administering the Online Services

Customer consents to the processing of personal information by Microsoft and its agents to facilitate the subject matter of this agreement.

Additional privacy and security details are in the Online Services Terms. The commitments made in the Online Services Terms only apply to the Online Services purchased under this agreement and not to any services or products provided by a Reseller. If Customer uses software or services that are hosted by a Reseller, that use will be subject to Reseller's privacy practices, which may differ from Microsoft's.

Customer appoints Reseller as its agent for purposes of interfacing with and providing instructions to Microsoft for purposes of license deliverance.

As and to the extent required by law, Customer shall notify the individual users of the Online Services that their data may be processed for the purpose of disclosing it to law enforcement or other governmental authorities as directed by Reseller or as required by law, and Customer shall obtain the users' consent to the same.

**Software:** Microsoft warrants that each version of the Software will perform substantially as described in the applicable Product documentation for one year from the date Customer is first licensed for that version. If it does not, and Customer notifies Microsoft within the warranty term, then Microsoft will, at its option, (1) return the price Customer paid for the Software license or (2) repair or replace the Software.

**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 in the SLA.

**Exclusions:** The warranties in this agreement do not apply to problems caused by accident, abuse or use inconsistent with this agreement, including failure to meet minimum system requirements. These warranties do not apply to free or trial products, Previews, Limited Offerings, or to components of Products that Customer is permitted to redistribute.

**Disclaimer:** Except for the limited warranties above, Microsoft provides no warranties or conditions for Products and disclaims any other express, implied, or statutory warranties for Products, including warranties of quality, title, non-infringement, merchantability and fitness for a particular purpose.



OF, OR THE DELETION, DESTRUCTION, DAMAGE, LOSS OR FAILURE TO STORE ANY OF YOUR CONTENT OR OTHER DATA. TO THE MAXIMUM EXTENT PERMITTED BY LAW, Glo IT'S TOTAL LIABILITY TO YOU FOR ACTUAL DAMAGES FOR ANY CAUSE WHATSOEVER WILL BE LIMITED TO THE AMOUNT PAID BY YOU TO Glo IT, OR Glo IT PARTNER IF PAID TO A Glo IT PARTNER, FOR THE SERVICES THAT CAUSED SUCH DAMAGE IN THE TWELVE MONTHS IMMEDIATELY PRIOR TO THE DATE THE CAUSE OF ACTION AROSE. The limitation of liability set forth above is a fundamental element of the basis of this Agreement between Glo IT and you. Glo IT would not be able to provide the Services on an economic basis without such limitations.

## Novation

**Background:** This Addendum to Contract is made to formally notify and document the change in the name of the Supplier, Orbital IT t/a GITG Holdings Limited, to Global IT Technologies Group Holdings Limited, effective January 01, 2023. The parties entered into the original contract on or before September 04, 2022, and this addendum is intended to ensure that all references to the Supplier's name in the contract are updated to reflect the new company name.

**Amendment: Contract References:** All references to the Supplier's name, Orbital IT t/a GITG Holdings Limited, in the original contract, including but not limited to clauses, headings, and contact details, are hereby amended to read Glo IT IT Technologies Group Holdings Limited.

**No Change in Rights or Obligations:** This addendum does not alter or affect any rights or obligations of either party under the original contract or any addendum to contract. It solely pertains to the change of the Supplier's name.

**Effective Date:**  
• This Addendum to Contract is effective as of January 01, 2023.

- This Novation to Contract is effective as of October 17, 2023.

**Entire Agreement:** This addendum constitutes the entire agreement between the parties concerning the change of the Supplier's name and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties.

## Business Support, Hosting Retainers

**Business Hosting Support Retainers:** As of, October 2023, our Legacy "Hosting" will become obsolete and will be in conversion to the new "Business Hosting Support Retainer" whilst in this transition we will be applying 1 Calendar Month Period Discount to all partner portfolio from January 2024.

**Business Support Retainers:** Customers Our Business Support Retainers are provided to offer flexibility and transparent support to all business needs whether small or large SMES. You can find more information here for [EMEA](#) or [AMERICAS](#) or [APAC](#)

As required, some of our support retainers do not include the scope of Engineer attendance to your desired sites, we list these below but also can be found on our website in the IT Support Packages.

- **Pluto (Pay & Go):** Out-of-Scope Engineer Attendance

for a particular purpose.

**Customer Data:** Customer is solely responsible for the content of all Customer Data. Customer will secure and maintain all rights in Customer Data necessary for Microsoft to provide the Online Services to Customer without violating the rights of any third party or otherwise obligating Microsoft to Customer or to any third party. Microsoft does not and will not assume any obligations with respect to Customer Data or to Customer's use of the Product other than as expressly set forth in this agreement or as required by applicable law.

**Responsibility for your accounts:** Customer is responsible for maintaining the confidentiality of any non-public authentication credentials associated with Customer's use of the Online Services. Customer must promptly notify customer support about any possible misuse of Customer's accounts or authentication credentials, or any security incident related to the Online Services.

**Reservation of rights:** Products are protected by copyright and other intellectual property rights laws and international treaties. Microsoft reserves all rights not expressly granted in this agreement. No rights will be granted or implied by waiver or estoppel. Rights to access or use Software 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.

**License transfers:** License transfers are not permitted, except that Customer may transfer only fully-paid perpetual licenses to (1) an Affiliate or (2) a third party, solely in connection with the transfer of hardware or employees to whom the licenses have been assigned to the third party as part of (a) a divestiture of all or part of an Affiliate or (b) a merger involving Customer or an Affiliate. Upon such transfer, Customer and its Affiliates must uninstall and discontinue using the licensed Product and render any copies unusable. Nothing in this agreement prohibits the transfer of Software to the extent allowed under applicable law if the distribution right has been exhausted.

**Right to verify compliance:** Customer must keep records relating to all use and distribution of Products by Customer and its Affiliates. Microsoft has the right, at its expense, to verify compliance with the Products' license terms. Customer must promptly provide any information reasonably requested by the independent auditors retained by Microsoft in furtherance of the verification, including access to systems running the Products and evidence of licenses for Products that Customer hosts, sublicenses, or distributes to third parties. Customer agrees to complete Microsoft's self-audit process, which Microsoft may request as an alternative to a third-party audit.

**Restrictions:** Customer may use the Product only in accordance with this agreement. Customer may not (and is not licensed to): (1) reverse engineer, decompile or disassemble any Product or Fix, 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; or (3) work around any technical limitations in a Product or Fix or restrictions in Product documentation. Customer may not disable, tamper with, or otherwise attempt to circumvent any billing mechanism that meters Customer's use of the Online Services. Except as expressly permitted in this agreement or Product documentation, Customer may not distribute, sublicense, rent, lease, lend, resell or transfer and Products, in whole or in part, or use them to offer hosting services to a third party.

**Use of contractors:** Glo IT may use contractors to perform services, but will be responsible for their performance, subject to the terms of this agreement.

**Glo IT as an independent contractor:** The parties are independent contractors. Customer and Microsoft each may develop products



- **Venus:** In-Scope Engineer Attendance (09:00-21:00) + Remote Engineer Attendance (Out of Hours)
- **Mars:** In-Scope Engineer Attendance (24/7)
- **Universe:** In-Scope Engineer Attendance (24/7) + Remote Engineer Attendance (24/7)

Any Partners out of scope of Engineer attendance in-hours or Out-of-Hours are subject to our call-out fees where applicable that are outlined on this document.

If Glo IT Technologies Group and its subsidiaries are instructed to attend site, or to fulfil instalment duties of hardware or other means call-out fees will be subject to apply whereas this will be applied to an Invoice on Terms 15. These will be collected by Direct Debit per payment structure.

- Jr Engineer I | £60.00 + VAT Per Hour
- Sr Engineer II | £75.00 + VAT Per Hour
- TS Manager | £100.00 + VAT Per Hour
- Director | £145.00 + VAT Per Hour
- Incident Response | £160.00 + VAT Per Hour

**Out of Hours:** Business Any out of hours scope fees are multiplied by 1.5 of the hours, for those that would fall out of scope of hour of hours support attendance.

**Other Means Engineer Support:** From time to time, we get requests for domesticated and personnel needs to support cabling, connectivity and network installations for homes and other locations out of scope of business support. We are more than happy to support those wishing to take advantage of IT for home use, although the engineer attendance costs are applicable to this effect. If you wish to take opportunity of this capacities, please be sure to inform your account manager how you wished to be billed if against the Business Entity or Personal Domesticated Entity.

As of October 31, 2023, our Legacy "IT Support Retainers" will become obsolete and will be in conversion to the new "Business Support Retainer" whilst in this transition we will be applying 1 Calendar Month Period Discount to all partner portfolio from January 2024.

**Amended Terms** The new terms set up in amendment are set out below in conjunction to the origins forming the new "Business Hosting Support Retainer", please note Glo IT reserves the right to amend clauses as required by law or as outlined by the opposing service in relation to inflation, conditions of third-party such as "Microsoft" or and tender processes in in line with the Public Procurement Policy.

**Pay & Go Retainers:** Our Pay & Go services such as "Pluto" are capped to provided flexibility of usage of your Support Service, these ideally benefit small Micro Businesses in headcount of 1-2. Pluto Business Support Retainer comes with a capped balance of 5.00 Hours (300 minutes) per month from the 1st of the Month to the Last day of the month period whereas it shall renew on a new cycle of >5.00 Hours.

Should a partner exceed <5.00 Hours within a period, a rate applies at 12.00 Per Hour, until your case is resolved, should they be we opened due to a continuation of an issue then the rate shall apply. Although from time to time it may be out of the scope of the partners fault, we will identify this factor and ensure that the rate is now applied there-fourth after reopening.

independently without using the other's confidential information.

**Applicable law and venue:** This agreement is governed by the laws of Ireland. If Microsoft brings an action to enforce this agreement, Microsoft will bring it in the jurisdiction where Customer has its headquarters. If Customer brings an action to enforce this agreement, Customer will bring it in Ireland. This choice of jurisdiction does not prevent either party from seeking injunctive relief in any appropriate jurisdiction with respect to violation of intellectual property rights.

**Entire agreement:** This agreement is the entire agreement concerning its subject matter and supersedes any prior or concurrent communications. In the case of a conflict between any documents in this agreement that is not expressly resolved in those documents, their terms will control in the following order of descending priority: (1) this agreement, (2) the Product Terms, (3) the Online Services Terms, and (4) any other documents in this agreement.

**Force majeure:** Neither party will be liable for any failure in performance due to causes beyond that party's reasonable control (such as fire, explosion, power blackout, earthquake, flood, severe storms, strike, embargo, labor disputes, acts of civil or military authority, war, terrorism (including cyber terrorism), acts of God, acts or omissions of Internet traffic carriers, actions or omissions of regulatory or governmental bodies (including the passage of laws or regulations or other acts of government that impact the delivery of Online Services)). This Section will not, however, apply to your payment obligations under this agreement.

**Contracting authority:** If you are an individual accepting these terms on behalf of an entity, you represent that you have the legal authority to enter into this agreement on that entity's behalf.

**Amended Terms:** The new terms set up in amendment are set out below in conjunction to the origins forming the new "Business Support Retainer", please note Glo IT reserves the right to amend clauses as required by law or as outlined by the opposing service in relation to inflation, conditions of third-party such as "Microsoft" or and tender processes in in line with the Public Procurement Policy.

**New Commerce Experience:** Terms are set out as outlined in the Terms and Conditions of New Commerce Experience found within the Knowledge Base Article.

**Formation of Payment Structure:** As of Quarter 2 2023 all payments for Retainers, New Commerce Experience and Adhoc scope i.e. Engineer Visits, Hardware and Software will be collected by Direct Debit Mandate which is protected by the Direct Debit Guarantee. No payments will be received manually by means of BACS, CHAPS or Standing Order proceedings.

**Termination Clause:** Our conditions of being serviced termination is now 3 Months (12 Calendar Weeks) of the Business Support Retainer Value Per Month, any Conditions in relation to New Commerce Experience will be calculated on variation vs. difference on the life of the contract.

**Inflation:** Our services at each fiscal year January of support shall be subject to inflation of 7.5% on to the new conditional price. This shall include Business Support Retainers, Hosting Retainers & Security Dev Retainers.

**Committed Retainers:** Our committed retainers are subject to the terms of the package which can be found in your Master Contract, or by visiting [our website here.](#)

**Suspension:** We reserve absolute right to suspend any services, for



If an issue has been caused by a member of the Glo IT operations team, the time used shall not be deducted from the > 5.00-hour balance neither excess charge costs "ECC".

**Cloudflare:** As Set out part of hosting for SSL Certificates and optimized Website speeds/ prevention, the applicable cost shall be inclusive of this service with an SSL Certificates at £25.00 Per Fiscal Year addition to.

**Website Hosting Platform:** Your Website shall be hosted with Microsoft Azure, whereas shall be delivered at 32GiB Ram and processing power. Websites hosted in this environment are held in a .wpres format and SQL format is accessible upon request for an additional cost of £25.00 + Engineer Scope Charges.

**Ad-hoc Fees:** Websites managed by us are subject to Dev Fees following closure of project. Changes, copy and design as outlined below.

- Graphics UI / UX | £95.00 Per Hour
- Amendments to (Adjustments) | *Starting from* £25.00 Per Hour
- Export of Content (SQL, .wpres) | £199.00 Flat Rate
- Domain Renewal | Subject to Fiscal ICANN Cost
- SSL Certificate | £25.00

**Deposit:** We May require a deposit for any project works or designing scope of works. This shall be determined at the risk factor and complexity. No work shall be performed until deposit is received in cleared funds.

**Cost:** For those partners already in scope of a Hosting services, will be automatically rolled into the Business Hosting Support Retainer at a Monthly associate cost of £65.00 + VAT Per Month, you will have 7 Business Working Days to contest to the change after the first Invoice generation for this particular product.

**Inflation:** Our services at each fiscal year January 2024 of support shall be subject to inflation of 5.5% on to the new conditional price. This shall include Business Hosting Support Retainers, Hosting Retainers & Security Dev Retainers.

**Termination:** Any termination requirements are subject to a 3 Month Termination condition; this will need to be settled prior.

## Financial Affairs

**Setting up a Direct Debit:** Setting up a Direct Debit Mandate with Glo IT Technologies has never been easier, it is a requirement for all Retainer scoped partners that have reoccurring subscription with us for Support Services, Microsoft New Commerce Experience, Google Workspace or Telecommunications to be setup with us on the Direct Debit Management Scheme in order for smooth operations to take place. Direct Debits can be setup [here](#)

**Administration Fee:** For any new Direct Debit Mandate setup, we charge a flat rate of Administration of £50.00 + VAT to set this up, this is charged within the first setup of services. Otherwise, should Glo IT Technologies receive notification of cancellation whilst in Retainer Scope, in order to reset this back up the partner will occur an addition £50.00 setup fee.

Business Support or other third-party packages such as Microsoft 365 subscription types should payment not be received >30 days. We will exercise all means to help the customer through these processes if there is business financial struggle or other means out of scope of fault. We will not be held liable for any cause of damage or business disruptions base on these factors.

**Deposit:** We may ask from time to time for this payment condition to be submitted to us in an advance deposit, this will be based on credit history/ payments, trading style with length of business operations to risk factoring. Please note that if requested in advance, this will be held for any excess adhoc costs, or pro-rata charges or even applied to any co-terminus proceedings.

**Termination:** Any termination notices served to us are subject to a termination surcharge per any contractual obligations, this shall be calculated on final invoicing with terms of immediate payment prior to transfer of services to customer or any on-boarding Managed Service Provider.

We may ask from time to time for this payment condition to be submitted to us in an advance deposit, this will be based on credit history/payments, trading style with length of business operations to risk factoring. Please note that if requested in advance, or at end of service this condition will be a liable condition to adhere to.

Any services due are calculated on usage approaches, obligations under the master contract commitments and variations that may have been added over the due course of the services provided through formal or informal requests from the customer.

Should payment not been received, we reserve the right to withhold transfer proceedings until settlement is met, this includes any Business Support and other means such as Microsoft NCE Subscription types. Us as an entity is not to be held under liability due to disruption caused through this process should delays occur from the customer.

We reserve the right to exercise legal proceedings in debt recovery, or tribunal services in a tier stage approachable format, although we always encourage this to be managed amicably in avoidance. Should any legal costs occur, these will be relayed to the customer as a cost associated part of the claim.

## Legal

**Data Protection Act 2018 (amended):** Documentation, Legal & Operations strategically are managed and contained within the Data Protection Act 2018 and regulations GDPR, we also expect the same in confidential information and documentation which is strictly for the recipient only and provider "us". These are not shared with any third party without consent sought from us.

Company acknowledges and agrees that Glo IT will operate in accordance with its published Privacy Policy (available at Glo IT.com or as Glo IT may otherwise indicate), which is incorporated herein by reference.

"Confidential Information" means a party's (or its affiliate's): inventions, discoveries, improvements, and copyrightable material not yet patented, published, or copyrighted; special processes and methods, whether for production purposes or otherwise, and special apparatus and equipment not generally available or known to the public; current engineering research, development, design projects, research and development data, technical specifications, plans, drawings and sketches; business information such as product costs, vendor and customer lists, lists of approved components and sources, price



**Late Payment Fee:** We charge a Late Payment Fee flat rate of £25.00 + VAT should ARRUDS report be received from the merchant services for unpaid services, this will be applied to the account as a separate charge invoice.

**Deposit:** We May require a deposit for any project works or designing scope of works. This shall be determined at the risk factor and complexity. No work shall be performed until deposit is received in cleared funds. *Please refer to the Direct Debit Conditions regards to our processes for collecting.*

**Please Note:** Glo IT Technologies use workflow services with all our platforms, which cross-integrate with services such as Microsoft, Google, RMM Agent and Monitoring Services. Should a cancellation be received the services are designed to "kick out" until a re-submission is completed, Glo IT Technologies will not be held liable for any action caused by the end user. Our support team will get all services restored, if reported including any resubmission's.

**Direct Credits:** Glo IT IT Technologies Group operate with a payment management system linked with Salesforce, ConnectWise & Paysuite when processing our reconciliation processes, credits & payment management. If you as a partner are due a Direct Credit from Glo IT IT Technologies Group for any reasons such as refunds, variation returns or collection in errors these are processed Monthly on Day 20 of that period, we ask that you refer to the section "BACs" to understand lead-times and processing with bank institutions.

**Direct Payments:** We collect all retainer costs, by Direct Debit such as IT Support, Development Retainers & any other contractual obligations such as Microsoft 365 New Commerce Experience Services. We do not offer any other options of payment services. Glo IT IT Technologies Group is not liable for any human error, or actions taken by our partners such as processing manual payments without notice or failure to pay.

**BACs:** BACs managed under the Bank Institution services, is a process of payment processing between banks, these payments can take up to 3 Business Working Days Monday to Friday (ex. public holidays) but sometimes can take up to 7 depending on who you bank with. Glo IT IT Technologies Group us unable to speed this process up, stop the process once submitted or be held responsible for this delay. We encourage to review the BACs website to find out more; <https://www.bacs.co.uk>.

**Setting up a Direct Debit:** Setting up a Direct Debit Mandate with Glo IT Technologies has never been easier, it is a requirement for all Retainer scoped partners that have reoccurring subscription with us for Support Services, Microsoft New Commerce Experience, Google Workspace or Telecommunications to be setup with us on the Direct Debit Management Scheme in order for smooth operations to take place. Direct Debits can be setup [here](#).

**Administration Fee:** For any new Direct Debit Mandate setup, we charge a flat rate of Administration of £50.00 + VAT to set this up, this is charged within the first setup of services. Otherwise, should Glo IT Technologies receive notification of cancellation whilst in Retainer Scope, in order to reset this back up the partner will occur an addition £50.00 setup fee.

**Late Payment Fee:** We charge a Late Payment Fee flat rate of £25.00 + VAT should ARRUDS report be received from the merchant services for unpaid services, this will be applied to the account as a separate charge invoice.

**Please Note:** Glo IT Technologies use workflow services with all our platforms, which cross-integrate with services such as Microsoft, Google, RMM Agent and Monitoring Services. Should a cancellation be received the services are designed to "kick out" until a re-submission is

lists, production schedules, business plans, and sales and profit or loss information not yet announced or not disclosed in any other way to the public; and any other information or knowledge not generally available to the public. "Confidential Information" does not include the Licensed Materials (which are subject to other restrictions under this Agreement). All business terms of this Agreement, including, but not limited to, pricing and access, shall be considered Confidential Information of Glo IT.

Each party shall keep in confidence all Confidential Information of the other party obtained prior to or during the Term of this Agreement and shall protect the confidentiality of such information in a manner consistent with the manner in which such party treats its own confidential material, but in no event with less than reasonable care. Without the prior written consent of the other party, a party shall not disclose or make available any portion of the other party's Confidential Information to any person, firm, association, or corporation, or use such Confidential Information, directly or indirectly, except for the performance of this Agreement. The foregoing restrictions shall not apply to Confidential Information that: (a) was known to such party (as evidenced by its written record) or was in the public domain prior to the time obtained by such party; (b) was lawfully disclosed to such party by a third party who did not receive it directly or indirectly from such party and who is under no obligation of secrecy with respect to the Confidential Information; or (c) became generally available to the public, by publication or otherwise, through no fault of such party. The parties shall take all necessary and appropriate steps in order to ensure that its employees and subcontractors adhere to the provisions of this section. All Confidential Information shall be returned to the disclosing party or destroyed upon receipt by the receiving party of a written request from the disclosing party.

**Personal Information.** To the extent that either party transmits or receives personal information under this Agreement, such party shall comply with all applicable laws, rules, and regulations regarding privacy and the lawful processing of personal information. To the extent that personal data obtained by Company under this Agreement is subject to the E.U. General Data Protection Regulation (the "GDPR"), each party agrees that it is a "controller" with respect to such data as defined in the GDPR and agrees to comply with all applicable provisions. Notwithstanding anything in this Agreement to the contrary, Company shall not use any information subject to the GDPR unless it is for a purpose that constitutes a "legitimate interest" (including direct marketing) as defined in the GDPR, or Company has another lawful basis to process such information.

**Intellectual Property:** Logos, Property of, Official Documentation, Official Imagery and Social Media content is strictly owned by Glo IT Technologies. Unauthorized usage in any kind of manner is strictly prohibited unless approval is sought from us.

**Content Rights:** Your use of this Arrow ECS website is subject to the following Terms of Use. By using this Site you signify your agreement to the Terms of Use. If you do not agree to use these Terms of Use, please do not use this Site. Arrow ECS reserves the right to change these Terms of Use from time to time, therefore please check the Terms of Use periodically for changes. Your continued use of the Site will constitute acceptance of any changes to these Terms of Use. All material in whatever form contained in the Site (save for any trademarks owned by third parties) are the property of Arrow ECS. In particular, your attention is drawn to the fact that Arrow ECS asserts its copyright ownership over all of the materials and provides no license or other rights to use any of its trademarks appearing on the Site. You are not permitted to copy any of the materials on the Site without first seeking and obtaining the prior written consent of Arrow ECS.

**Link to other Websites:** Arrow ECS is not responsible for any goods or



received the services are designed to “kick out” until a re-submission is completed, Glo IT Technologies will not be held liable for any action caused by the end user. Our support team will get all services restored, if reported including any resubmission’s.

**Administration Fees:** Our services are subject to Admin Fees, at a flat rate of £50.00 + VAT. These fees are subject but not excluded to.

- Direct Debit ARUDDs Report and Recreation of Direct Debit Mandate
- Underwriting of Documents, Contracts or Conditions (extra cost for underwriting) per customer
- Fail to Attend “No Show” for partner.
- Travel & Mileage Fees (Excess of 15 Miles)

**Technical Fees:** Our services are subject to tech fees, at a flat rate of £50.00 + VAT. These fees are subject but not excluded to.

- On-board/ Off-Boarding fees
- Porting Geographical Numbers “LOA”
- Ubiquiti Hosting Services “UDM Cloud”

**Inflation:** Our services at each fiscal year January of support shall be subject to inflation of 7.5% on to the new conditional price. This shall include Business Support Retainers, Hosting Retainers & Security Dev Retainers.

## Commitment, Liability & Terms

**Commitment:** Customers agree to the terms and conditions of the Microsoft New Commerce Experience Alongside Glo IT IT Technologies Group processes per retainer and deliverance of service. [More Info here](#)

Customers that have retainers with Microsoft Subscriptions assigned to them by Glo IT IT Technologies Group and its subsidiaries through appropriate channels of Quote and Invoicing are assigned to New Commerce Experience 12 Month Fixed.

Business to Business Cancellation and Life changes follow a 72-hour cool of period at point of acceptance of order with Glo IT IT Technologies Group and its subsidiaries. Any renew of orders at its 12 months of anniversary in line with your Support Retainer shall be applicable to the 72-Hour cool of period.

Business to Business Change of order: Life changes & Cancellation of orders are not applicable unless prior approval is sought from the management of Glo IT. Any termination costs will be subject to the duration vs. remainder of the service at a per user per month condition.

Increasing your licensing is applicable at any time throughout the duration of the Microsoft Terms, any depreciation of licensing is charged at the duration vs. remainder of that particular license.

If you are eligible to have the “Beat the Price Rise Offer”, make sure you place orders with us prior to November 15, 2023, to [revenue@glo-it.co.uk](mailto:revenue@glo-it.co.uk).

Microsoft Monthly subscriptions and add-on licensing for consumer base are liable to a 7.50% Increase to the 2022/2024 SKU Rate carried forward, and further incremental subject to the Business Inflation Rates for the particular fiscal year.

services advertised by third parties on the Site. The Site may also include hypertext links to third-party sites. Arrow ECS has no control over the content of those sites and does not accept any responsibility or liability in relation to those third-party sites, the owners of which do not necessarily have any commercial or other link with Arrow ECS. Arrow ECS provides no license or other rights to use any third party-owned trademarks appearing on the Site.

**The Information on the Website:** Whilst Arrow ECS tries to ensure the information on this Site is accurate, Arrow ECS is not always able to check the accuracy or completeness of that information and Arrow ECS does not accept any liability arising from any inaccuracy or omissions in the information on this Site. You are advised to verify the accuracy of any information before relying on it.

## Misc

**Cyber Essentials IASME:** As of October 31, 2023, our Cyber Essentials support, which is the United Kingdoms and United States backed Compliance body for getting Cyber Ready will be changing. Any existing customers that are currently scoped for Cyber Essentials will be delivered consultancy at a discounted £35.00 + VAT Per Hour\*

**Consultancy:** Dependent on factors of improvement strategies, changes to compliance processes and best practices of IT Governance, a fee of £65.00 + VAT per hour will be applicable for work performed. Glo IT will not charge continuous surcharges whilst not performing duties towards the project. Expected fulfilment depends on many factors i.e. size of businesses, current place-marker of IT etc but we anticipate the completion to be done within 4 weeks of total hours 22.5 capped hours which totals £1462.20 on average but may be less.

**Cyber Essentials Costs:** Cyber Essentials costs can be found at the IASME website, although if we are assigned to fulfil the certification process and getting “Cyber Ready” we will complete the process of cross-charging for certification to the business authorized supplier on your behalf.

**Cyber Essentials Renewals:** We will fulfil you renew processes with IASME whereas this is charged annually, should adjustments to business criteria be required the Consultancy fees shall apply.

**Cyber Essentials/Cyber Essentials Plus:** Our Team have the abilities to support you through your journey obtaining the Cyber Essentials certification for your businesses, including certifying. Please refer to our pricing for this applicable service.

**Security Operations Center Retainer:** As of, October 2023, our Security Operations Center Retainers will be scoped to cover a 12 Month Minimum Contractual Term. Any Pre-Exit Terminations will be subject to 60% of the value of the service remaining.

**Location of Security Operations Center:** We have two Security Operation Centers, one in the United Kingdom at 86-90 Paul Street, London, Greater London, EC2A 4NE and second is in Florida at 7901 4th St N, 14023, Saint Petersburg, 33702. Public or appointment visits are not applicable to these locations.

**Dark Web Scanning:** By using our services, you consent for your business data (or personnel) where applicable to be processed in accordance with the Data Protection Act 2018, GDPR and The Computer Misuse Act. This enables the features of Dark Web Scanning to be utilized to its full potential to capture vulnerabilities or exploitation.

**Vulnerability Scanning:** We Perform Vulnerability Scanning on customer network environments, machinery and remote devices under



Microsoft Annual subscriptions and add-on licensing for the consumer base are liable to a 0.00% Increase to 2022/2024 SKU Rate carried forward but are subject to review to the Business Inflation Rates for the particular fiscal year.

Any existing commitments and offers supplied from us shall become obsolete from 23:59 09 January 2022, this includes but is not subject to Subscription add-ons to existing licensing. Any add-ons to a base SKU license will be applicable to commitment terms per these terms.

We will serve and commit to our own MSP agreement in conjunction with our Microsoft Partnership status, this can be found at [www.GloIT.myportallogin.com.io/](http://www.GloIT.myportallogin.com.io/)

**Waiver:** In such circumstances where a waiver is applied in any negotiations of services under the New Commerce Experience, Glo IT affiliated with partners Microsoft shall consider such waivers or "buy-out of contracts for any customers wishing to consider Microsoft New Commerce Experience.

Waivers are subject to approval by the management of Glo IT and provisional approval by the CSP "Microsoft". We will consider supporting any contractual obligation waivers up to 60% of the life expectancy as an exit award meaning we will cover these costs to the supplier transaction directly.

Should the customer after a waiver is completed, wish to terminate within the first 6 months of terms to Glo IT or its affiliated companies such as partners Microsoft the waiver costs will be due liable in a return part of the commitment. Outside of these terms no costs related to the termination will be liable.

Licensing conditions and terms for services with Glo IT or Microsoft are subject to the NCE terms of commitment.

## Microsoft New Commerce Experience

**Microsoft Website:** Visit the official Microsoft website and navigate to the Microsoft NCE program section. Microsoft often provides detailed terms and conditions for their programs, which you can review and download.

**Authorized Reseller:** Glo IT IT Technologies Group Holdings Limited and its subsidiaries are an authorized Microsoft partner under our MPN Details as listed below.

- Glo IT IT Technologies Group Inter-Companies, Limited: **6692751**
- Glo IT IT Technologies Group, LLC: **6739507**

**Contact Microsoft: Reach** out to Glo IT Technologies directly through their service support or sales channels to request a copy of the terms and conditions for the NCE annual 12-month commitment.

**Legal Consultation:** If you require a comprehensive understanding of the terms and conditions and how they apply to your organization, it may be advisable to consult with legal professionals who can provide guidance and ensure that the contract aligns with your specific needs and legal requirements.

**Suspension:** We reserve the absolute right to suspend any services due to non-payment, misuse of services or containment issues which fall under the scope of the Microsoft 365 NCE Terms & Conditions.

**Termination:** Any formation of closure to any Microsoft 365 Services

customer network environments, machinery and remote devices under business entity ownership, this identifies risks, probes and weaknesses within your services and systems. These run daily over a period of 2 hourly.

**Cyber Essentials/Cyber Essentials Plus:** Our Team have the abilities to support you through your journey obtaining the Cyber Essentials certification for your businesses, including certifying. Please refer to our pricing for this applicable service.

**ISO:27001** Our Team has the abilities to support you through your journey obtaining the ISO:27001 certification for your businesses, including certifying. Please refer to our pricing for this applicable service.

**SOC Consultancy:** We provided consultancy services in and out of scope of the Security Operations Center Retainer, the price of this is £195.00 Per Hour for one our specialist engineers support capped for remote and on-site attendance. Customers in scope of the Security Operations Center Retainer, engineer services are inclusive. *Please refer to the Direct Debit Conditions regards to our processes for collecting.*

**Consent:** All customer basis in or out of scope of the Security Operations Center Retainer will be taken through an initial probe process to assess the security risks, liabilities and security in business. It shall be taken into consideration on scoring, which will then be signed by an authorized member of the business to accept/ acknowledge any improvements or suggestions and whether they wish to remedy any matters.

**SOC Cost:** Our Standard costs for the Security Operations Center enable starts from £500.00 Per Calendar Month, subject to a minimum term of 12 months. *Please refer to the Direct Debit Conditions regards to our processes for collecting.*

**Refusal:** Glo reserve the right to refuse a job regulated with Health & Safety, Contagious Diseases or outstanding financial affairs or other means that poses a risk.

Please note that these terms and conditions are subject to change and may vary based on your location, the specific products or services involved, and other factors. It's essential to obtain the most up-to-date and accurate terms and conditions from official Microsoft sources or authorized resellers.

## Definitions

**"End User"** means any individual or entity that directly or indirectly through another user accesses the services under your account.

**"Global Portal"** is the technology platform developed by Glo IT for ordering, invoicing, project management, service desk support.

**"Global Products"** are technology products and services sold by Glo IT is including third party partner schemes.

**"Service Descriptions"** means the description of the applicable professional services item set forth in the Global portal or exhibit in this agreement that describes the order services, plus any supplemental documentation prepared by Glo IT and agreed by the parties in writing.

**"Services"** means the professional services provided to you by Glo IT pursuant to this agreement and any applicable SOW.

**"Supported Products"** means the subset of Glo IT products for which



**Termination:** Any formation of closure to any Microsoft 365 Services such as but not limited to Teams Voice, Mail Services, Defender, Dynamics 365 & Microsoft 365 Core components etc that has an outstanding liability of payment due, will be cleared in full prior to any handover of services to the customer or on-boarding Managed Service Provider.

For Any Annual Commitment Monthly Instalment service types, the final invoice will be generated against the life of the fiscal year period remaining and be due with immediate clearance prior to handover proceedings will commence, this will be in line with any Business Support Retainer charges due, please refer to "Terms & Conditions - Business Support Retainers" for more information on this.

Please note, Glo IT Technologies will not be held liable for any delay or disruption caused due to a mishandling of settlement prior to transfer.

**Fraudulent Activity:** If Glo IT Technologies identifies misuse of services, intellectual issues or usage of services post termination or closure will be subject to being investigated, recovery proceedings sought, and reporting made to the relevant local authorities.

**Microsoft 365 Commitment:** Customers agree to the terms and conditions of the Microsoft 365 Azure Terms of Usage alongside Glo IT IT Technologies Group processes per retainer and deliverance of service. [More Info here](#)

Customers that have retainers with Microsoft Subscriptions assigned to them by Glo IT IT Technologies Group and its subsidiaries through appropriate channels of Quote and Invoicing are assigned to Azure Subscription types of either 12, 24 or 36 Month Fixed.

**Agreement term and termination:** This agreement will remain in effect until the expiration or termination of Customer's Subscription, whichever is earliest. Customer may terminate this agreement at any time by contacting its Reseller. The expiration or termination of this agreement will only terminate Customer's right to place new orders for additional Products under this agreement.

**Cancel a Subscription:** Customer's Reseller will establish the terms and conditions, if any, upon which Customer may cancel a Subscription.

**Termination for cause:** If either party breaches this Agreement, the other party may terminate the breached agreement (in whole or in part, including orders) upon notice. If the breach is curable within 30 days, then the terminating party must provide 30 days' notice to the breaching party and an opportunity to cure the breach.

**Container Storage:** Customers that use Azure Services for Storage facilities whether in storage blobs or Virtual Machines will have their own instance setup within their Partner Center. Any Backup services that are applicable for a customer in paid services, will be backed up between instances of your own and a secondary location of Cloud storage within Azure for best practices and security requirements. This will be stored for you comfortably by us under the commitments of our retainers and contracts with regular interval backup sequences.

**App Services:** Any App Services used by customers within Azure shall be setup in their own Partner Center within Microsoft.

**Termination:** If termination is received from the customer of Azure Subscription types, this shall be calculated based on the life of the remaining duration of months left in line with the commitment and issued a final invoice to be settled before any arrangement of transfer is made to the customer or on-boarding Managed Service Provider.

during the termination instance, Storage Pools or App Services are placed in a stale instance, which is no longer accessible to prevent

## Agreement

This Agreement, as well as any applicable Statement of Work ("SOW") sets forth the terms and conditions that govern your access to and use of the Glo IT Professional Services, as defined herein. This Agreement is between Global IT Technologies Group Holdings Limited. ("Glo IT," "we," "us," or "our") and you or the entity you represent and all of the End Users using the Services under your account ("you").

By accepting this Agreement, you agree to be legally bound by the terms and conditions of this Agreement. If you are entering into this Agreement on behalf of a company or other legal entity, you represent that you have the authority to bind that entity.

## Indemnification

General. You will defend, indemnify, and hold harmless Glo IT, our affiliates and licensors, and each of their respective employees, officers, directors, and representatives from and against any claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys' fees) arising out of or relating to any third-party claim concerning: (a) your use of the Services; or (b) breach of this Agreement or violation of applicable law by you. If we or our affiliates are obligated to respond to a third-party subpoena or other compulsory legal order or process described above, you will also reimburse us for reasonable attorneys' fees, as well as our employees' and contractors' time and materials spent responding to the third-party subpoena or other compulsory legal order or process at our then-current hourly rates.

Process. We will promptly notify you of any claim subject to Section 15.1, but our failure to promptly notify you will only affect your obligations under Section 15.1 to the extent that our failure prejudices your ability to defend the claim. You may: (a) use counsel of your choice with our written consent; and (b) settle any claim as you deem appropriate, provided that you obtain our written consent before entering into any settlement. We may also assume control of the defence and settlement of the claim at any time.

Each party (an "Indemnifying Party") shall indemnify, defend, and hold harmless the other party and its officers, directors, employees, shareholders, agents, partners, successors, and permitted assigns (each an "Indemnified Party") from and against any and all actual or threatened claims of third parties arising out of or in connection with (i) Company's access or use of the Licensed Materials in violation of any law; (ii) an allegation that the Licensed Materials or Services infringes upon or violates the intellectual property rights of any such third party; or (iii) either party's violation of any provision of this Agreement. As a condition to any right to indemnification under this agreement, the Indemnified Party must (a) promptly give the Indemnifying Party written notice of the claim or proceeding, (b) give the Indemnifying Party sole control of the defence and settlement of the claim or proceeding (except that the Indemnifying Party may not settle any claim or proceeding unless it unconditionally releases the Indemnified Party of all liability), and (c) give the Indemnifying Party all reasonable assistance, at the Indemnifying Party's expense. This section states the Indemnifying Party's sole liability to, and the Indemnified Party's exclusive remedy against, the other party for any claim or proceeding subject to indemnification hereunder.

## Mutual Confidentiality and Non-Disclosure

This Mutual Confidentiality and Non-Disclosure Agreement ("Agreement") is a binding contract between the entity or individual





reoccurring charges and access is relocated to the backup storage services until outbound transfer is completed.

Any damages caused or delay due to settlement issues are not to be held against or in responsibility to Glo IT Technologies, such as suspension or service disruption based on closure of services.

**Fraudulent Activity:** If Glo IT Technologies identifies misuse of services, intellectual issues or usage of services post termination or closure will be subject to being investigated, recovery proceedings sought, and reporting made to the relevant local authorities.

**Use Rights:** The Use Rights in effect when Customer orders Software will apply to Customer's use of the version of the Software that is current at the time. For future versions and new Software, the Use Rights in effect when those versions and Software are first released will apply. Changes Microsoft makes to the Use Rights for a particular version will not apply unless Customer chooses to have those changes apply.

**Temporary and perpetual licenses:** Licenses available on a subscription basis are temporary. For all other licenses, the right to use Software becomes perpetual upon payment in full.

**Online Services Terms:** The Online Services Terms in effect when Customer orders or renews a subscription to an Online Service will apply for the applicable subscription term. For Online Services that are billed periodically based on consumption, the Online Services Terms current at the start of each billing period will apply to usage during that period.

**Suspension:** Microsoft may suspend use of an Online Service during Customer's violation of the Acceptable Use Policy or failure to respond to a claim of alleged infringement. Microsoft will give Customer notice before suspending an Online Service when reasonable.

**End Users:** Customer controls access by End Users and is responsible for their use of the Product in accordance with this agreement. For example, Customer will ensure End Users comply with the Acceptable Use Policy.

**Remedies for non-compliance:** If verification or self-audit reveals any unlicensed use of Products, then within 30 days (1) Customer must order sufficient licenses to cover its use, and (2) if unlicensed use is 5% or more, Customer must reimburse Microsoft for the costs Microsoft incurred in verification and acquire the necessary additional licenses at 125% of the price, based on the then-current price last and customer price level. The unlicensed use percentage is based on the total number of licenses purchased for current use compared to the actual installed base. If there is no unlicensed use, Microsoft will not subject Customer to another verification for at least one year. By exercising the rights and procedures described above, Microsoft does not waive its rights to enforce this agreement or to protect its intellectual property by any other legal means.

**Online Services Commitment Offering:** Customer commits in advance to purchase a specific quantity of Online Services for use during a Term and to pay upfront or on a periodic basis for continued use of the Online Service.

**Misc:** You agree to receive electronic notices from us, which will be sent by email to the account administrator(s) named for your Subscription. Notices are effective on the date on the return receipt or, for email, when sent. You are responsible for ensuring that the email address for the account administrator(s) named for your Subscription is accurate and current. Any email notice that we send to that email address will be

entering into this Agreement ("You or "Your") and Global IT Technologies Group Holdings, Limited, a United Kingdom Limited entity ("Glo IT"), located at 86-90 Paul Street, London, Greater London, United Kingdom, EC2A 4NE.

**Scope.** Glo IT and You (each a "Party" and together, the "Parties") desire to disclose certain confidential information in connection with (a) an existing business relationship, or (b) the evaluation or undertaking of a possible business relationship between the Parties. (the "Business Purpose")

**Discloser and Recipient.** As to any Confidential Information (defined below), the "Discloser" is the Party disclosing this Confidential Information and the "Recipient" is the Party receiving the Confidential Information

**Ownership.** Each Party hereby retains its entire right, title, and interest, including all intellectual property rights, in and to all of its Confidential Information. Any disclosure of such Confidential Information hereunder shall not be construed as an assignment, grant, option, license, or other transfer of any such right, title, or interest whatsoever to Recipient or any of its Representatives.

**Disclosures Required by Law.** Notwithstanding anything herein to the contrary, Recipient will be allowed to disclose Discloser Confidential Information to the extent that such disclosure is required by law or by the order of a court or similar judicial or administrative body, in which case Recipient will, if permitted by law, notify Discloser of such required disclosure promptly and in writing and cooperate with Discloser in any lawful action to contest or limit the scope of such required disclosure. Recipient shall use at least the same degree (but no less than a reasonable degree) of care and protection to prevent the unauthorized use or disclosure of any Confidential Information as Recipient uses to protect its own confidential, proprietary or trade secret information.

**No Representations and Warranties.** Discloser specifically disclaims and makes no representation or warranty, express or implied, as to the quality, accuracy, completeness, usefulness or reliability of the Confidential Information or any portion thereof. The Parties acknowledge and agree that only the express representations and warranties relating to the quality, accuracy, completeness, usefulness or reliability of the Confidential Information as may be contained in a definitive agreement relating to any potential transaction relating to the Business Purposes shall be binding on the Parties, and then only if and when such an agreement has been duly authorized, executed and delivered by the Parties.

**Remedies.** Due to the unique nature of Confidential Information, there may be no adequate remedy at law for any breach or any unauthorized use or release of any Confidential Information because such breach or unauthorized use or release may allow Recipient or third parties to unfairly compete with Discloser, resulting in irreparable harm to Discloser. Upon any actual or threatened breach, unauthorized use or release, Discloser will be entitled to appropriate equitable relief in addition to whatever remedies Discloser might have at law. Any action brought for such relief may be brought by Discloser upon *ex parte* application and without notice or posting of any bond.

**Miscellaneous.** No failure, delay, or single or partial exercise of any right under this Agreement by either Party is a waiver of such right. This Agreement may be modified or waived only by a separate writing by the Parties expressly modifying or waiving any provision of this Agreement. Neither the provision of Confidential Information under this Agreement nor the execution of this Agreement binds or obligates either Party to any business relationship, and neither Party is bound or obligated to any such relationship with the other Party until the Parties execute a binding written agreement specifically describing such relationship.

**Attorneys' Fees.** If either Party engages legal counsel to enforce any



effective when sent, whether or not you actually receive the email.

**Assignment:** You may not assign this agreement either in whole or in part. Glo IT may transfer this agreement without your consent, but only to one of Microsoft's Affiliates. Any prohibited assignment is void.

**Severability:** If any part of this agreement is held unenforceable, the rest remains in full force and effect.

**Waiver:** Failure to enforce any provision of this agreement will not constitute a waiver.

**No agency:** This agreement does not create an agency, partnership, or joint venture.

**No third-party beneficiaries:** There are no third-party beneficiaries to this agreement.

**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.

- **By Microsoft:** Microsoft will defend Customer against any third-party claim to the extent it alleges that a Product or Fix made available by Microsoft for a fee and used within the scope of the license granted under this agreement (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 infringement under commercially reasonable terms, it may, as its option, either: (1) modify or replace the Product or fix with a functional equivalent; or (2) terminate Customer's license and refund any prepaid license fees (less depreciation on a five-year, straight-line basis) for perpetual licenses and any amount paid for Online Services 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 or Fix after being notified to stop due to a third-party claim.
- **By Customer:** To the extent permitted by applicable law, Customer will defend Microsoft against any third-party claim to the extent it alleges that: (1) any Customer Data or Non Microsoft software 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 or Fix, alone or in combination with anything else, violates the law or harms a third party.

rights arising out of or relating to this Agreement, the prevailing Party shall be entitled to recover reasonable attorney's fees and costs.

**Confidential Information.** "Confidential Information" includes all information, whether in oral, written, graphic or machine-readable form, or revealed by observation of facilities, equipment or devices, relating to any of the following: ideas (whether currently implemented or not); business plans and strategies; marketing plans and strategies; customer information and pricing; supplier information and pricing; standard operating procedures and operational methods; technology, technical data, calculations, specifications, software, developments, formulae, discoveries, inventions, and improvements; financial results, projections, and pro formas; trade secrets; know-how; or any other information that a reasonable person would deem to be confidential. Confidential Information will not include information that: (a) was already known to Recipient at the time that it was disclosed to Recipient; (b) is or becomes publicly known through no wrongful act of Recipient; (c) is received by Recipient from a third party not affiliated with Discloser and which third party has the right to disseminate the information without restriction on disclosure; (d) is approved for release by written authorization of Discloser; or (e) is independently developed by Recipient without access to, or use of, Discloser Confidential Information. No portion of Confidential Information will be construed as coming within exceptions (a) through (e) solely on the basis that more generalized information embracing such portion of Confidential Information falls within any of the exceptions or on the basis that elements of such portion of the Confidential Information are independently within any of the exceptions.

**Restrictions on Use of Confidential Information.** Except as otherwise expressly permitted in writing by an authorized representative of Discloser, Recipient may not:

- a. use the Confidential Information for any purpose other than the Business Purpose; or
- b. directly or indirectly disclose Confidential Information to any person or entity other than the Recipient's directors, members, officers, employees, lenders, agents, principals, financial advisors, financing sources, consultants, attorneys, accountants and other representatives of a Party "Representatives".

**Duties of Recipient.** Recipient will:

- a. hold the Confidential Information in confidence and take all necessary precautions to protect the Confidential Information from disclosure to any third party;
- b. treat all Confidential Information with at least the same degree of care as it treats its own Confidential Information, but in no case will the degree of care be less than reasonable care;
- c. not disclose or permit the disclosure of any Confidential Information or any information derived therefrom;
- d. not copy, create derivative works of, modify or reverse engineer, disassemble, or otherwise attempt to derive the composition or underlying information, structure or ideas, of any Discloser Confidential Information; and
- e. promptly notifies Discloser upon discovery of any loss or unauthorized disclosure of any Discloser Confidential Information.