# Appendix 9: Terms for the Customer's access and use of third-party deliveries

## Clause 2.2 of the Agreement Supplier's responsibility for third-party deliveries

To the extent that third party deliveries are included in the services of the Supplier, copies of the terms and conditions for the Customer's access and use of the third party deliveries shall be attached herein. Alternatively, the Supplier may provide a link to the terms here. The Terms are binding on the Customer. In a procurement, the terms and conditions may be subject to evaluation.

Example of table of third-party deliverables

|  |  |  |
| --- | --- | --- |
| **Third party** | **Briefb escription of The Service provided by third parties** | **Reference to terms that are binding on the customer *(can be a link)*** |
| Microsoft | Necessary Azure services for operation of the Supplier SaaS solution. | See below. |
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|  |  |  |

Here, as far as can be expected of a professional supplier, the Supplier shall describe the obligations imposed on the Customer by the Terms and the limitations of liability third parties reserve. This shall not be unreasonably burdensome for the Supplier and must be adapted to the complexity of the individual delivery. It must also be adapted to the individual third-party delivery and how critical/risky this is in the delivery. In particular, the supplier shall point out to what extent and in what situations the third party will perform error correction, as well as which guarantees and SLA requirements apply. It is also important to point out any unusual or burdensome regulations.

**Option 1 (delete the option that is not suitable), The provider is itself a customer of Microsoft, and relies on the "Hosting Exception" as a contractual basis for being able to sell the SaaS service, including operations in Azure, to its own customers:**

The Supplier's SaaS services is based on operation of the solution in Microsoft Azure. In the Supplier's agreement with Microsoft, the Supplier is required to ensure that end customers comply with Microsoft's terms and conditions as well as laws and regulations. See how Microsoft requires this here:

<https://www.microsoft.com/licensing/terms/productoffering/MicrosoftAzure/MCA> and search for "Azure Customer Solution".

Therefore, Customer accepts that Microsoft's standard terms apply to Customer. Microsoft's standard terms and conditions can be found here: <https://www.microsoft.com/licensing/docs/customeragreement>.

These standard terms do not create a direct agreement between Microsoft and Customer. The standard terms consist of the "Microsoft Customer Agreement", which contains general terms for use of the Azure Services. Said agreement document also refers to other documents that are part of the contractual relationship, such as:

- Product Terms

-SLA

- Microsoft Online Services Data Protection Addendum (DPA) (DPA).

The current version of the above documents can be found here: <https://www.microsoft.com/licensing/docs/view/Licensing-Use-Rights>

Please note that the standard terms allow Microsoft to change these during the term of this agreement, primarily when renewing a subscription term or ordering new services. Updated terms may therefore apply during the term of the agreement and we will notify you of important changes.

The Customer accepts that the Supplier may share information about persons at the Customer with Microsoft in support matters, such as telephone number, email and web address. Customer also accepts, by entering into a direct agreement with Microsoft, that Microsoft has the right to process Customer Personal Data, including collecting, using, transferring, and processing such data. The Customer is responsible for notifying applicable individuals/data subjects of the processing as required by law.

**Overview of obligations Customer will be subject to upon acceptance of the standard terms and which limitations of liability that apply to Microsoft:**

Although Microsoft's standard terms apply to the Azure services included in Supplier's SaaS service, Customer will not need to actively manage the terms of the agreement or send orders or reduction in volume directly to Microsoft. This is handled by the Supplier, including all support inquiries which will be followed up by the Supplier.

Our assessment of the terms and conditions is that the most important obligations that Customer must comply with is:

* Microsoft's "Acceptable Use Policy" (which prohibits storing illegal information in Azure, storing content that infringes third-party rights, using the services to hack others, spreading spam, etc.),
* license restrictions (e.g. prohibition on decompiling Microsoft source code, violating technical limitations, reselling to third parties, etc.)
* export control rules (i.e. not using the services in countries such as Iran, North Korea etc.).
* and comply with the confidentiality provisions of the standard terms and conditions

Regarding rights/limitations of liability, the main principles are as follows:

* In the event of errors and/or downtime in SaaS services from the Supplier due to error and/or downtime etc. in Azure, you will not get any claim for damages against Microsoft. Microsoft only warrants that the Azure Services will be provided in accordance with specified SLAs, and in the event of deviations, Supplier will only receive the compensation provided by the relevant SLA. Compared to SSA-L, this means limited or no right to claim compensation for direct losses in the event of SLA deviations, but that the Supplier receives the SLA compensation that appears in the relevant SLA. As a result, there will be limited opportunity for a customer to claim material breach of contract due to SLA deviations (or errors and deficiencies in the services in general).
* In the event of infringement claims, Microsoft can choose between rectifying/modifying its service so that it does not violate third party rights or discontinuing the service. The latter deviates significantly from SSA's starting point. In addition, a customer will not be able to claim compensation for direct losses suffered by it or for third party claims payable by the Customer.
* Customer will otherwise be liable if the Customer breaches Microsoft's standard terms and conditions, and the Supplier receives a claim for damages from Microsoft as a result of such breach and will indemnify the Supplier for the same amount as the Supplier will be liable for towards Microsoft.

**Option 2 (delete the option that is not suitable), the provider is CSP, and establishes the Customer with its own tenant in Azure.**

The provider's SaaS services are based on the operation of the solution in Microsoft Azure. A separate account (tenant) will be created for the Customer at Microsoft, where the software will be installed and operated (single tenant).

Customer's newly created Azure account is subject to the Microsoft Standard Terms and Conditions. Microsoft's standard terms and conditions can be found here: <https://www.microsoft.com/licensing/docs/customeragreement>. These terms and conditions are deemed accepted by the Customer.

The standard terms establish a direct agreement between Microsoft and Customer and mean that Customer acquires rights and obligations directly against Microsoft under such standard terms, and similarly, Microsoft will obtain rights and obligations against Customer. Before a direct agreement is established and SaaS Services can be provided, Microsoft must confirm acceptance of Customer as a Customer. The duration of the direct agreement between Microsoft and Customer is the same as the agreement between Customer and Supplier, however the direct agreement may terminate if Microsoft terminates the services against Customer in accordance with the terms of the Microsoft Customer Agreement, or if Microsoft terminates or otherwise terminates Supplier's rights to resell Microsoft Online Services.

The Standard Terms consist of the "Microsoft Customer Agreement", which contains general terms for the use of the Azure Services. The said agreement document also refers to other documents that are part of the contractual relationship:

|  |
| --- |
| Name: |
| Microsoft Customer Agrement |
| Product Terms |
| SLA |
| Microsoft Online Services Data Protection Addendum (DPA) |
| Financial addendum |

The current version of the above documents can be found here: <https://www.microsoft.com/licensing/docs/view/Licensing-Use-Rights>

It is recommended that you download current versions and print for archival purposes. This is not possible for Product Terms, but Microsoft has archives here for these documents here: <https://www.microsoft.com/en-us/licensing/product-licensing/products>

Although Microsoft's standard terms establish a direct contractual relationship between Customer and Microsoft, Customer will not need to actively manage the customer relationship or direct orders or reduction in volume directly to Microsoft. Orders (such as increased storage, CPU, etc.) from the Customer shall be sent in writing to the Supplier by authorized personnel listed in Appendix 6, and the Supplier will forward such orders to Microsoft. Please note that Microsoft reserves the right to accept all orders, and Microsoft does not guarantee that all Online Services are available to order or in desired volumes.

However, all prices and payment terms follow from Appendix 7 of this Agreement between Customer and Supplier (i.e. no direct payment from Customer to Microsoft).

Please note that the standard terms allow Microsoft to change these during the term, primarily when renewing a subscription term or ordering new services. Updated terms may therefore apply during the agreement period, and the Customer must keep track of the above URLs to check if new versions of the agreement documents apply. Our experience is that the Microsoft Customer Agreement is not updated as often (less than once a year), while SLA, DPA and Product Terms often can quickly change monthly. Our assessment is that the most important thing to comply with is Microsoft's "Acceptable Use Policy" (which prohibits storing illegal information in Azure, storing content that infringes third-party rights, etc.), license restrictions (e.g. prohibits decompiling Microsoft source code, etc.) as well as export control rules (i.e. not using the services in countries such as Iran, North Korea, etc.). And it is important to keep an eye on the DPA to ensure that the data processing agreement ensures compliance with privacy legislation.

2) Microsoft Partner Agreement, with underlying contractual terms:

This is our agreement with Microsoft, which gives the Supplier the right to resell subscriptions to Microsoft online services. This agreement requires us to mirror the Microsoft Customer Agreement with you and other customers we resell to (see point 1 above) and obliges us to also mirror a number of other terms. As a result, the following additional terms and conditions also apply to the Customer:

* The Customer will be able to submit support incidents (report error situations) related to the Microsoft Azure Services, but these should only be directed to us as the Supplier. We will pass these on to Microsoft, where we cannot resolve the inquiry ourselves.
* The same applies to any claims by the Customer for SLA refunds in accordance with Microsoft's SLA provisions, which the Supplier will follow up against Microsoft. If Microsoft accept the Customer's claim, the Supplier will, after receiving settlement from Microsoft, ensure that the same is deducted on future invoices to the Customer.
* If Microsoft, upon signing this Agreement or subsequently amending the standard terms during the term of the Agreement, requires documentation or active confirmation from Supplier that Customer has accepted Microsoft's standard terms or subsequent updates, as well as orders made, Customer is obliged to assist Supplier in submitting necessary documentation or providing necessary confirmations to Microsoft.
* Customer understands that the Customer accepts that the Supplier may share information about individual at the Customer with Microsoft in support matters, such as telephone number, email and website address. Customer also accept, by entering into a direct agreement with Microsoft, that Microsoft has the right to process Customer personal data, including collecting, using, transferring, and processing such data. The Customer is responsible for notifying applicable individuals/data subjects of the processing as required by law.
* Customer also understands that Microsoft must approve you as a Customer and that Microsoft may also cancel you as a Customer where you do not meet eligibility requirements to receive the online services.
* In principle, it is possible to cancel services with 30 days' notice as stated in the Microsoft Customer Agreement, but for some services there are fixed subscription/minimum periods, or there may be limitation for the possibility to extend the term. This is stated in the order confirmations from Microsoft that we will share.
* Upon receipt of an invoice from Supplier for Microsoft Online Services, Customer understands that Supplier must notify Microsoft of any discrepancies between actual consumption and the consumption shown on the invoice within 25 days of the Suppliers receipt of invoice from Microsoft. The Customer therefore undertakes to notify the same to the Supplier within 15 days, so that the Supplier manages to communicate any objections within the deadline that applies. Until Microsoft agrees to adjust the invoice basis/make credits, the Customer must pay the nominal amount in the invoice received.
* The terms of the Microsoft Partner Agreement, and underlying agreement documents, are subject to change with 180 days' notice as a general rule, and with only 30 days' notice in some cases. If such changes affect the obligations that we must reflect towards you as an end customer, we may make corresponding updates to the terms in this section 2.