

Kascade Azure terms and conditions

1 INTERPRETATION

The following definitions and rules of interpretation apply in this Contract.

1.1 Definitions:

Affiliates means any person controlling, controlled by, or under common control with another person.

Business Day a day other than a Saturday, Sunday or public holiday in England, when banks in London are open for business.

Claims all claims, Losses (excluding punitive and exemplary damages), causes of action, costs, judgements and awards whether arising under contract, tort or other law.

Commencement Date the date specified in the Quotation.

Conditions these terms and conditions as amended from time to time in accordance with clause 16.2.

Confidential Information all confidential information (however recorded or preserved) disclosed by a party or its Representatives to the other party or that party's Representatives which information is either labelled as such or should reasonably be considered as confidential because of its nature and the manner of its disclosure.

Consumption Offering (or Pay-As-You-Go) Contract where the Customer purchases the Microsoft Azure Services on a monthly, pay-as-you-go basis with no upfront commitment, as specified in the Quotation.
the Contract between the Supplier and the Customer for the supply of the Microsoft Azure Services in accordance with the Quotation and these Conditions.

control has the meaning given in section 1124 of the Corporation Tax Act 2010, and the expression **change of control** shall be construed accordingly and the terms **controlled** and **controlling** shall be construed accordingly.

CPI the Consumer Prices Index published by the Office for National Statistics.

Customer the person or firm who purchases the Microsoft Azure Services from the Supplier, as specified in the Quotation.

Customer's Project Manager the person nominated by the Customer to act as the Customer's project manager from time to time.

Data Protection Legislation all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (and regulations made thereunder) and the Privacy and Electronic Communications Regulations 2003 (SI 2003/2426) as amended and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications). The terms **controller**, **personal data** and **processing** shall be as defined in the Data Protection Legislation.

Designated Representative has the meaning given to it in clause 13.

Dispute Fees the fees payable to the Supplier for the Microsoft Azure Services, as described in the Quotation and as may be adjusted from time to time in accordance with the terms of this Contract.

Forex Initial Term the foreign exchange market.
shall be the initial term for the Reserved Instances Offering, which shall be set out in the Quotation.

Intellectual Property Rights patents, rights to inventions, copyright and neighbouring and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets), and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Losses losses, liabilities, damages, costs, charges, awards, compensation, fines, losses, orders, penalties, disbursements, payments and expenses.

Microsoft Microsoft Corporation or any of its Affiliates with whom the Customer enters into the Microsoft Terms.

Microsoft Azure Services the Microsoft Azure products and/or services purchased by the Customer, as further detailed in the Quotation.

Microsoft Terms any licence agreement, data processing agreement, service level agreement and/or other agreement, terms and/or policies that apply to the Customer's use of the Microsoft Azure Services, including (but not limited to) any such terms set out or referred to in the Quotation, as may be amended or updated by Microsoft from time to time.

Partner a person who is not the Supplier or Microsoft who provides, or facilitates the provision of, the Microsoft Azure Services (or any part of them) on behalf of the Supplier or Microsoft (whether as a reseller, partner or otherwise), including, without limitation, any such third parties set out or referred to in the Quotation.

Quotation the Quotation to which these Conditions are attached.

Representative shall have the meaning given to it in clause 15.2.1.

Reserved Instances Offering where the Customer commits to purchasing the Microsoft Azure Services for a minimum period, as specified in the Quotation.

Successive Term Supplier shall have the meaning given to it in clause 3.1.2.
KASCADE is a trading name of ComputerWorld (Systems) Limited whose registered number is 04625112 and whose registered office is at Apex House, Turner Drive, Westerleigh Business Park, Bristol, BS37 5YX.
Throughout this Agreement, references to Kascade shall also include Computerworld (Systems) Limited. Computerworld (Systems) Limited and Kascade are used interchangeably to represent our business and services.

Term Threshold Number the duration of the Contract, as specified in clause 3.
shall have the meaning given to it in clause 4.4.

1.2 Interpretation:

1.2.1 A reference to a statute or statutory provision is a reference to it as amended or re-enacted. A reference to a statute or statutory provision includes all subordinate legislation made under that statute or statutory provision.

1.2.2 Any words following the terms **including**, **include**, **in particular**, **for example** or any similar expression, shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

1.2.3 A reference to writing or written includes email.

1.2.4 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).

1.2.5 In the event of any inconsistency or conflict between the Microsoft Terms and the Contract in relation to the provision by Microsoft and the Customer's use of the Microsoft Azure Services, the Microsoft Terms shall prevail.

2 BASIS OF CONTRACT

2.1 The Quotation constitutes an irrevocable offer by the Customer to purchase the Microsoft Azure Services in accordance with this Contract.

2.2 The Quotation shall only be deemed to be accepted when the Supplier issues written acceptance of the Quotation at which point and on which date the Contract shall come into existence.

2.3 Any samples, drawings, descriptive matter or advertising issued by the Supplier, and any descriptions or illustrations contained in the Supplier's catalogues or brochures, are issued or published for the sole purpose of giving an approximate idea of the Microsoft Azure Services described in them. They shall not form part of the Contract or have any contractual force.

2.4 The:

2.4.1 Microsoft Terms shall apply to the provision of the Microsoft Azure Services and the receipt by the Customer of the Microsoft Azure Services;

2.4.2 subject to clause 2.4.1, the Conditions shall apply to the Contract, in each case to the exclusion of any other terms that the Customer seeks to impose or incorporate, or which are implied by law, trade custom, practice or course of dealing. For the avoidance of doubt, the Supplier shall not be party to the Microsoft Terms, nor shall it be subject to any rights or obligations under the Microsoft Terms.

2.5 Any quotation given by the Supplier shall not constitute an offer, and is only valid, unless otherwise agreed by the Supplier for a period of 15 Business Days from its date of issue.

3 TERM

3.1 This Contract shall commence on the Commencement Date and shall continue, unless terminated earlier in accordance with its terms as follows:

3.1.1 where the Customer purchases the Microsoft Azure Services under the Consumption Offering, the Contract shall continue on a rolling monthly basis unless and until terminated by the Customer at any time on 45 days' written notice;

3.1.2 where the Customer purchases the Microsoft Azure Services under the Reserved Instances Offering, the Contract shall continue for the Initial Term. Thereafter it shall renew automatically for successive terms equal to the duration of the Initial Term (each a **Successive Term**), commencing on the day after the expiry of the Initial Term or relevant Successive Term (as the case may be) unless:

3.1.2.1 the Customer gives to the Supplier 60 days' advance notice to terminate the Contract;

3.1.2.2 the Supplier gives to the Customer 15 days' advance notice to terminate the Contract,

such that the Contract shall terminate on the final day of the then current Initial Term or Successive Term (as the case may be).

4 MICROSOFT AZURE SERVICES

4.1 Subject to payment by the Customer of all Fees and the Customer's compliance with the terms of the Contract and the Microsoft Terms, the Supplier shall procure the provision of the Microsoft Azure Services to the Customer.

4.2 The Microsoft Azure Services shall either be purchased by the Customer under the Consumption Offering or the Reserved Instances Offering, as specified in the Quotation.

4.3 Where the Microsoft Azure Services are purchased under the Consumption Offering, the Customer shall pay for its actual usage of the Microsoft Azure Services in the preceding month without any minimum commitment in accordance with clause 7.2.

4.4 Where the Microsoft Azure Services are purchased by the Customer under the Reserved Instances Offering, the Customer commits to purchasing a minimum quantity of the Microsoft Azure Services for use during the Term, as specified in the Quotation (**Threshold Number**). Subject to clause 7.3, the Customer may increase or decrease the quantity of Microsoft Azure Services used by the Customer above or below the Threshold Number at any time during the Term.

4.5 The Microsoft Azure Services shall be supplied to the Customer under the Microsoft Terms and the Customer agrees to be bound directly to Microsoft by the Microsoft Terms and agrees to comply at all times with the Microsoft Terms when using the Microsoft Azure Services.

4.6 Subject to clause 10.3, the Supplier shall have no liability whatsoever to the Customer for any Claims arising from or in connection with the Microsoft Azure Services and/or the Microsoft Terms.

4.7 The Supplier gives no warranty in relation to the Microsoft Azure Services and any warranty which may otherwise be implied to have been given by the Supplier by law, trade custom, practice or course of dealing is hereby expressly excluded.

4.8 Microsoft shall be solely responsible for the provision of the Microsoft Azure Services.

4.9 The Microsoft Terms include all warranties to be provided by Microsoft in relation to the Microsoft Azure Services.

4.10 The Customer shall indemnify, defend and hold harmless the Supplier, the Supplier's Affiliates and their respective directors, officers, employees, shareholders and agents against any and all Losses that the Supplier may incur (including (without limitation) any Losses incurred by the Supplier as a result of any Claim issued against it by Microsoft or a Partner) in connection with any breach or non-compliance with the Microsoft Terms by the Customer, the Customer's Affiliates and/or their Representatives.

4.11 Any ancillary or additional services (other than the Microsoft Azure Services) to be provided by the Supplier to the Customer (including, without limitation, any support, training and/or consultancy services) (**Additional Services**) shall be provided by the Supplier to the Customer in accordance with the Supplier's

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- standard terms and conditions applicable to the provision of such Additional services, as notified by the Supplier to the Customer from time to time. For the avoidance of doubt, this Contract shall not apply to any such Additional Services.
- 5 CUSTOMER'S OBLIGATIONS**
- 5.1 The Customer shall:
- 5.1.1 co-operate with the Supplier in all matters relating to the Microsoft Azure Services;
- 5.1.2 provide, for the Supplier, Microsoft, any Partner and/or their Representatives, in a timely manner and at no charge, access to the Customer's premises, office accommodation, data, information and other facilities as reasonably required by the Supplier or any of them;
- 5.1.3 provide, in a timely manner, such information as the Supplier may reasonably require in connection with the Microsoft Azure Services, and ensure that it is accurate and complete in all material respects;
- 5.1.4 provide such personnel, assistance, and other Customer personnel, as may be reasonably requested by the Supplier from time to time in connection with the Microsoft Azure Services; and
- 5.1.5 appoint the Customer's Project Manager, who shall have the authority to contractually bind the Customer on all matters relating to these Conditions. The Customer shall use reasonable endeavours to ensure continuity of the Customer's Project Manager, but has the right to replace him from time to time where reasonably necessary in the interests of the Customer's business.
- 5.1.6 not access, store, distribute or transmit through the Microsoft Azure Services any material that:
- 5.1.6.1 is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
- 5.1.6.2 facilitates illegal activity;
- 5.1.6.3 depicts sexually explicit images; and/or
- 5.1.6.4 promotes unlawful violence;
- 5.1.6.5 is discriminatory based on race, gender, age, disability, sexual orientation, religion, belief or gender reassignment;
- 5.1.6.6 is otherwise illegal or causes damage or injury to any person or property; or
- 5.1.6.7 contains (whether knowingly, deliberately, reasonably suspected to or otherwise) any viruses,
- and the Customer acknowledges and agrees that the Supplier reserves the right, without liability or prejudice to its other rights and remedies, to disable the Customer's access to any material that breaches the provisions of this clause.
- 5.2 The Supplier, Microsoft, any Partner and/or their Representatives shall have the right to audit the books and records of the Customer at the Supplier's reasonable expense in order to review the Customer's compliance with its obligations under this Contract, such audit shall be at reasonable intervals and upon at least twenty-four (24) hours' prior notice, either by means of a site visit by the Supplier, Microsoft, any Partner and/or their Representatives or by means of requests for supporting documents. The Customer shall cooperate fully with the Supplier, Microsoft and/or any Partner's exercise of the audit rights set forth in this clause.
- 6 WARRANTIES**
- 6.1 The Customer warrants and undertakes that:
- 6.1.1 it has the full capacity and authority to enter into and perform this Contract and that this Contract is executed by a duly authorised representative of the Customer;
- 6.1.2 it has the authority to grant any rights to be granted to the Supplier under this Contract;
- 6.1.3 it shall comply with and use the Microsoft Azure Services in accordance with the terms of this Contract, the Microsoft Terms and all applicable laws, and shall not do any act that shall infringe the rights of any third party; and
- 6.1.4 it owns or has obtained valid licences, consents, permissions and rights to use any materials reasonably necessary for the fulfilment of all its obligations under this Contract.
- 6.2 The Supplier warrants and undertakes that:
- 6.2.1 it has the full capacity and authority to enter into and perform this Contract and that this Contract is executed by a duly authorised representative of the Supplier;
- 6.2.2 it owns, or has obtained valid licences, consents, permissions and rights to enable the Supplier to comply with this Contract and to use any of the Intellectual Property Rights necessary for the fulfilment of all its obligations under this Contract including for the Customer's use and receipt of the Microsoft Azure Services, and the Supplier shall not breach the provisions of any such necessary licences, consents, permissions and rights or cause the same to be breached; and
- 6.2.3 it shall comply with all applicable laws and regulations in performing its obligations under this Contract.
- 7 FEES AND PAYMENT**
- 7.1 The Customer shall pay the Fees in accordance with the terms set out in the Quotation.
- 7.2 Where the Microsoft Azure Services are purchased under the Consumption Offering, the Fees shall be calculated based on the Customer's actual usage of the Microsoft Azure Services in the preceding month and shall be payable monthly in arrears.
- 7.3 Where the Microsoft Azure Services are purchased under the Reserved Instances Offering, the Fees payable by the Customer shall be calculated based on the Threshold Number and shall be payable in full on the Commencement Date or monthly in advance, as specified in the Quotation. In accordance with clause 4.4, in the event that the quantity of Microsoft Azure Services used by the Customer from time to time during the Term:
- 7.3.1 exceeds the Threshold Number, the Customer shall pay the additional Fees payable in respect of such excess usage at the rates specified in the Quotation or as otherwise notified by the Supplier to the Customer from time to time. Such additional Fees shall be payable at the end of the month in which such additional Microsoft Azure Services are used; or
- 7.3.2 is less than the Threshold Number, no refund of the Fees shall be due and payable by the Supplier to the Customer in respect of any unused quantity of the Microsoft Azure Services.
- 7.4 Unless otherwise agreed between the parties in writing, in the event that the Customer purchases any products and/or services from the Supplier which are ancillary or complementary to the Microsoft Azure Services, the Customer shall pay the Supplier for such additional products and/or services at the rates notified by the Supplier from time to time. Such additional fees shall be payable at the end of the month in which such additional products and/or services are purchased.
- 7.5 The Supplier shall be entitled to charge the Customer for any expenses reasonably incurred by the individuals whom the Supplier engages in connection with the Microsoft Azure Services including for the cost of services provided by third parties and required by the Supplier for the supply of the Microsoft Azure Services (which may include Microsoft and/or a Partner), and for the cost of any materials.
- 7.6 The Supplier reserves the right to increase the Fees:
- 7.6.1 on an annual basis with effect from each anniversary of the Commencement Date (**Review Date**) by the higher of 3% and the percentage increase in the CPI over the twelve months prior to the relevant Review Date; and/or
- 7.6.2 at any time during the Term to reflect any increase in the fees, costs or charges payable by the Supplier to Microsoft and/or any Partner in respect of the Microsoft Azure Services.
- 7.7 Without prejudice to clause 7.6 above, the Supplier may adjust the Fees on a monthly basis during the Term to reflect any changes in the Forex from US Dollars to GB Pounds Sterling as set by Microsoft at the beginning of each month during the Term.
- 7.8 Unless otherwise set out in the Quotation, the Customer shall pay each invoice submitted by the Supplier:
- 7.8.1 within 30 days of the date of the invoice; and
- 7.8.2 in full and in cleared funds to a bank account nominated in writing by the Supplier, and
- time for payment shall be of the essence of the Contract.
- 7.9 All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable from time to time (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Microsoft Azure Services at the same time as payment is due for the supply of the Microsoft Azure Services.
- 7.10 If the Customer fails to make a payment due to the Supplier under the Contract by the due date, then, without limiting the Supplier's remedies under clause 11 the Customer shall pay:
- 7.10.1 interest on the overdue sum from the due date until payment of the overdue sum, whether before or after judgment. Interest under this clause 7.10 will accrue each day at 10% a year above the Bank of England's base rate from time to time but at 10% a year for any period when that base rate is below 0%; and
- 7.10.2 the Supplier for its reasonable and necessary costs of collection incurred, including, without limitation, reasonable legal fees and the Supplier's costs of disconnecting and reconnecting Customers for non-payment.
- 7.11 All amounts due under the Contract shall be paid in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).
- 8 CHANGE CONTROL**
- 8.1 Subject to clause 8.5.1 below, if either party wishes to change the scope of the Microsoft Azure Services (including Customer requests for additional services or quantities), it shall submit details of the requested change to the other in writing.
- 8.2 If either party requests a change to the scope or execution of the Microsoft Azure Services, the Supplier shall, within a reasonable time, provide a written estimate to the Customer of:
- 8.2.1 the likely time required to implement the change;
- 8.2.2 any variations to the Fees arising from the change;
- 8.2.3 the likely effect of the change on the Microsoft Azure Services; and
- 8.2.4 any other impact of the change on this Contract.
- 8.3 If either party wishes the other party to proceed with the relevant change referred to in clause 8, the Supplier has no obligation to do so unless and until the parties have agreed in writing the necessary variations to the Fees, the Microsoft Azure Services and any other relevant terms of this Contract to take account of the change.
- 8.4 Once changes have been agreed by the parties, the parties shall sign a written agreement confirming their agreement to any changes agreed pursuant to this clause.
- 8.5 Notwithstanding the foregoing provisions of this clause 8:
- 8.5.1 the Supplier shall be entitled to change the Microsoft Azure Services from time to time provided that such changes do not have a material adverse effect on the Microsoft Azure Services (as those Microsoft Azure Services were provided immediately prior to the change);
- 8.5.2 any request by the Customer to change the Microsoft Azure Services will be subject to the Supplier's consent in writing and where such consent has been given, the parties having entered into a written agreement (in the form determined by the Supplier) setting out the terms and conditions which apply to such change;
- 8.5.3 in the event that the Supplier and the Customer agree any changes to the Microsoft Azure Services during the Term, unless otherwise agreed by the Supplier the Microsoft Azure Services as amended by such change:
- 8.5.3.1 shall continue until the expiry of the Term; or
- 8.5.3.2 if agreed, by the Supplier the then current Initial Term or Successive Term.
- 8.6 For the avoidance of doubt, the Supplier shall be under no obligation to accept or agree to any changes to the scope or execution of the Microsoft Azure Services requested by the Customer pursuant to this clause 8 and any such decision shall be entirely at the Supplier's discretion.
- 9 DATA PROTECTION**
- 9.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 9 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 9.2 The parties have determined that, for the purposes of the Data Protection Legislation, the Supplier shall act as controller of any personal data of the Customer which the Supplier processes in connection with this Contract.
- 9.3 By entering into this Contract, the Customer consents to all actions taken by the Supplier in connection with the processing of any personal data, provided these are in compliance with the then-current version of the Supplier's privacy policy available at <https://www.kascade.co.uk/terms/privacy-policy>. In the event of any inconsistency or conflict between the terms of the Privacy Policy and this Contract, the Privacy Policy will take precedence.
- 10 LIMITATION OF LIABILITY**
- 10.1 Subject to clause 4.6 and clause 4.7, this clause 10 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its Representatives) to the Customer in respect of any and all claims which relate to or which may arise in relation to a contract, including without limitation, any claim for:

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- 10.1.1 any breach of Contract;
- 10.1.2 any use made by the Customer of the Microsoft Azure Services; and
- 10.1.3 any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including negligence) arising under or in connection with this Contract.
- 10.2 Except as expressly provided in this Contract all warranties, conditions and other terms implied by statute, common law or otherwise are, to the fullest extent permitted by law, excluded from this Contract.
- 10.3 Nothing in this Contract excludes or limits the liability of the Supplier for:
- 10.3.1 death or personal injury caused by the Supplier's negligence;
- 10.3.2 fraud or fraudulent misrepresentation; or
- 10.3.3 any other liability which cannot lawfully be excluded or limited.
- 10.4 Subject to clause 4.6 and clause 10.3:
- 10.4.1 the Supplier shall not be liable whether in contract, tort (including for negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise for any loss of profits, loss of business, depletion of goodwill, loss of use or loss of data, interruption of business, loss of revenue or similar losses, or for any indirect or consequential loss, costs, damages, charges or expenses however arising; and
- 10.4.2 the Supplier's total aggregate liability in contract, tort (including negligence or breach of statutory duty), misrepresentation (whether innocent or negligent), restitution or otherwise, arising in connection with the Contract shall be limited to the lower of:
- 10.4.2.1 the amounts paid by the Customer to the Supplier under this Contract;
- 10.4.2.2 the aggregate of the Fees paid by the Customer to the Supplier over the Term; and
- 10.4.2.3 the Fees payable by the Customer to the Supplier in the first year of the Term.
- 11 TERMINATION**
- 11.1 Without affecting any other right or remedy available to it, either party may terminate the Contract with immediate effect by giving written notice to the other party if:
- 11.1.1 the other party commits a material breach of any term of the Contract and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing to do so;
- 11.1.2 the other party fails to pay any amount due under this Contract on the due date for payment and remains in default not less than 15 days after being notified to make such payment;
- 11.1.3 the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or 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 (IA 1986) or (being an individual) is deemed either unable to pay its debts or as having no reasonable prospect of so doing, in either case, within the meaning of section 268 of the IA 1986 (being a partnership) has any partner to whom any of the foregoing apply;
- 11.1.4 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 any of its creditors other than (being a company) 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;
- 11.1.5 the other party applies to court for, or obtains, a moratorium under Part A1 of the Insolvency Act 1986;
- 11.1.6 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 the other party (being a company, limited liability partnership or partnership) 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;
- 11.1.7 an application is made to court, or an order is made, for the appointment of an administrator, or a notice of intention to appoint an administrator is given or an administrator is appointed, over the other party (being a company, partnership or limited liability partnership);
- 11.1.8 the holder of a qualifying floating charge over the assets of that other party (being a company or limited liability partnership) has become entitled to appoint or has appointed an administrative receiver;
- 11.1.9 a person becomes entitled to appoint a receiver over all or any of the assets of the other party or a receiver is appointed over all or any of the assets of the other party;
- 11.1.10 the other party (being an individual) is the subject of a bankruptcy petition, application or order;
- 11.1.11 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;
- 11.1.12 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 in clause 11.1.3 to clause 11.1.11 (inclusive);
- 11.1.13 the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.
- 11.2 Without prejudice to clause 11.1, the Supplier may terminate the Contract:
- 11.2.1 with immediate effect by giving written notice to the Customer if there is a change of control of the Customer;
- 11.2.2 with immediate effect by giving written notice to the Customer if the Microsoft Terms, and/or any agreement with a Partner and/or Microsoft granting the Supplier the right to resell the Microsoft Azure Services to the Customer, expires or is terminated for any reason;
- 11.2.3 on giving 30 days' prior notice to the Customer.
- 11.3 Without affecting any other right or remedy available to it, the Supplier may suspend the supply of the Microsoft Azure Services under the Contract or any other contract between the Customer and the Supplier if:
- 11.3.1 the Customer fails to pay any amount due under the Contract on the due date for payment;
- 11.3.2 the Customer commits a material breach of any term of the Contract;
- 11.3.3 the Supplier reasonably believes that the Customer is about to become subject to any of the events listed in clause 11.1.3 to clause 11.1.11 (inclusive).
- 11.4 A request to terminate this agreement must be made in writing to cancellations@kascade.co.uk.
- 12 CONSEQUENCES OF TERMINATION**
- 12.1 On termination or expiry of the Contract:
- 12.1.1 the Customer shall immediately pay to the Supplier all of the Supplier's outstanding unpaid invoices and interest and, in respect of Microsoft Azure Services supplied but for which no invoice has been submitted, the Supplier shall submit an invoice, which shall be payable by the Customer immediately on receipt;
- 12.1.2 all licences granted under the Contract shall immediately cease and the Customer shall immediately discontinue all use of the Microsoft Azure Services;
- 12.1.3 the Customer shall, prior to the effective date of termination, back up any data held within the Microsoft Azure Services that the Customer wishes to retain. Any data held within the Microsoft Azure Services after the effective date of termination may not be recoverable.
- 12.2 Unless otherwise agreed, on termination of the Contract by the Customer otherwise than as a result of the Supplier's breach of this Contract and/or the expiry of the Term, (if and to the extent not already paid) the Customer shall pay to the Supplier an amount equal to Fees that would have been payable over the period commencing on the date that the Contract is terminated and ending on the date that the Term would have expired if it were not for such termination.
- 12.3 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.
- 12.4 Any provision of the Contract that expressly or by implication is intended to come into or continue in force on or after termination or expiry of the Contract shall remain in full force and effect.
- 13 DISPUTE RESOLUTION**
- 13.1 If a dispute arises under or in connection with this Contract (**Dispute**), including any Dispute arising out of any amount due to a party, then before bringing any legal proceedings or commencing any other alternative dispute resolution procedure in connection with such Dispute, a party must first give written notice (**Dispute Notice**) of the Dispute to the other party describing the Dispute and requesting that it is resolved under the dispute resolution procedure described in this clause 13.
- 13.2 If the parties are unable to resolve the Dispute within 30 days of delivery of the Dispute Notice, each party shall promptly (and in any event within five Business Days):
- 13.2.1 appoint a representative who has authority to settle the Dispute and is at a higher management level than the person with direct responsibility for the administration of this Contract (**Designated Representative**); and
- 13.2.2 notify the other party of the name and contact information of its Designated Representative.
- 13.3 Acting reasonably and in good faith the Designated Representatives shall discuss and negotiate to resolve the Dispute, including agreeing the format and frequency for such discussions and negotiations, provided that all reasonable requests for relevant information relating to the Dispute made by one party to the other party shall be complied with as soon as reasonably practicable).
- 13.4 If the parties are unable to resolve the Dispute within 30 days after the appointment of both Designated Representatives, either party may proceed with any other available remedy.
- 13.5 Notwithstanding any other provision of this Contract a party may seek interim or other equitable relief necessary (including an injunction) where damages would be an inadequate remedy.
- 14 ASSIGNMENT AND OTHER DEALINGS**
- 14.1 The Supplier may at any time assign, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any or all of its rights and obligations under the Contract.
- 14.2 The Customer shall not assign, transfer, mortgage, charge, subcontract, delegate, declare a trust over or deal in any other manner with any of its rights and obligations under the Contract.
- 15 CONFIDENTIALITY**
- 15.1 Each party undertakes that it shall not at any time during the Contract, and for a period of two years after termination or expiry of the Contract, disclose to any person any Confidential Information concerning the business, affairs, customers, clients or suppliers of the other party, except as permitted by clause 15.2.
- 15.2 Each party may disclose the other party's Confidential Information:
- 15.2.1 to its employees, officers, representatives, contractors, subcontractors or advisers who need to know such information for the purposes of carrying out the party's obligations under the Contract. Each party shall ensure that its employees, officers, representatives, contractors, subcontractors or advisers to whom it discloses the other party's confidential information comply with this clause 15 (**Representatives**); and
- 15.2.2 as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 15.3 The provisions of this clause shall not apply to any Confidential Information that:
- 15.3.1 is or becomes generally available to the public (other than as a result of its disclosure by the receiving party or its Representatives in breach of this clause);
- 15.3.2 was available to the receiving party on a non-confidential basis before disclosure by the disclosing party;
- 15.3.3 was, is or becomes available to the receiving party on a non-confidential basis from a person who, to the receiving party's knowledge, is not bound by a confidentiality agreement with the disclosing party or otherwise prohibited from disclosing the information to the receiving party; or
- 15.3.4 the parties agree in writing is not confidential or may be disclosed; or
- 15.3.5 is developed by or for the receiving party independently of the information disclosed by the disclosing party.
- 15.4 Neither party shall use the other party's Confidential Information for any purpose other than to perform its obligations under the Contract.
- 16 GENERAL**
- 16.1 **Entire Agreement.** The Contract constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter.
- 16.1.1 Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract. Each party agrees that it

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- shall have no claim for innocent or negligent misrepresentation or negligent misstatement based on any statement in the Contract.
- 16.1.2 Nothing in this clause shall limit or exclude any liability for fraud.
- 16.2 **Variation.** The Supplier may vary this Contract on giving notice to the Customer. Where the Customer proposes to vary this Contract, no such variation shall be effective unless it is in writing and signed by the parties (or their authorised representatives).
- 16.3 **Waiver.** A waiver of any right or remedy under the Contract or by law is only effective if given in writing and shall not be deemed a waiver of any subsequent right or remedy. A failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall not constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict any further exercise of that or any other right or remedy. No single or partial exercise of any right or remedy provided under the Contract or by law shall prevent or restrict the further exercise of that or any other right or remedy.
- 16.4 **Severance.** If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed deleted, but that shall not affect the validity and enforceability of the rest of this Agreement. If any provision or part-provision of this Contract deleted under this clause 16.4 the parties shall negotiate in good faith to agree a replacement provision that, to the greatest extent possible, achieves the intended commercial result of the original provision.
- 16.5 **Notices.**
- 16.5.1 Any notice given to a party under or in connection with the Contract shall be in writing and shall be delivered by hand or by pre-paid first-class post or other next working day delivery service at its registered office (if a company) or its principal place of business (in any other case); or sent by email to the address specified in the Quotation
- 16.5.2 Any notice shall be deemed to have been received:
- 16.5.2.1 if delivered by hand, at the time the notice is left at the proper address;
- 16.5.2.2 if sent by pre-paid first-class post or other next working day delivery service, at 9.00 am on the second Business Day after posting; or
- 16.5.2.3 if sent by email at the time of transmission, or, if this time falls outside business hours in the place of receipt, when business hours resume. In this clause 16.5.2.3, business hours means 9.00am to 5.00pm Monday to Friday on a day that is not a public holiday in the place of receipt.
- 16.5.3 This clause 16.5 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any other method of dispute resolution.
- 16.6 **No Partnership or Agency** Nothing in this Contract is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, or constitute any party the agent of another party nor authorise any party to make or enter into any commitments for or on behalf of any other party. Each party confirms it is acting on its own behalf and not for the benefit of any other person.
- 16.7 **Third party rights.** Unless it expressly states otherwise, the Contract does not give rise to any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of the Contract.
- 16.8 **Governing law.** The Contract, 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.
- 16.9 **Jurisdiction.** Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with the Contract or its subject matter.