



an NTT company

Microsoft New Commerce Experience Terms and Conditions

These terms and conditions (the 'Terms') together with the Customer's Order make up the contract that is formed between Customer and Dimension Data when Dimension Data accepts an Order (the 'Agreement').

The Customer's use of the Software shall be subject to the terms and conditions of the Microsoft Customer Agreement which is deemed to have been accepted by the Customer, and the Customer agrees to be bound by and to comply with all terms of the Microsoft Customer Agreement.

Recitals

- A. The Customer wishes to purchase certain Microsoft software and services for its internal business purposes.
- B. Dimension Data is an entity authorised by Microsoft to resell certain Microsoft software and services and agrees to sell certain software and services to Customer pursuant to these Terms.

Now it is hereby agreed as follows:

1. Definitions and Interpretation

1.1 In this Agreement, references to:

'Charges' means the fees payable by Customer to Dimension Data for the Microsoft Products, as detailed in the Order.

'Confidential Information' means any information (whether written, oral, in electronic form or in any other media) disclosed by or on behalf of the Disclosing Party to the Receiving Party in connection with this Agreement that is clearly identified in writing at the time of disclosure as being confidential, or a reasonable person at the time of disclosure would assume under the circumstances to be confidential, including its business and financial information, trade secrets and know-how, customers, suppliers, plans or strategy.

'Disclosing Party' means any party [or its affiliate] disclosing Confidential Information under this Agreement.

'Force Majeure' means an event or sequence of events beyond a party's reasonable control (which could not reasonably have been anticipated and avoided by a party) preventing or delaying it from

performing its obligations hereunder, including war, revolution, terrorism, riot or civil commotion; blockage or embargo; acts of or restrictions imposed by government or public authority; explosion, fire; flood, natural disaster, or adverse weather conditions. Force Majeure does not include, without limitation, inability to pay, mechanical difficulties, shortage or increase of price of raw materials, over-commitment or market or other circumstances which may make the terms of this Agreement unattractive to a party.

'Microsoft' means the licensor or proprietary owner of the Software, namely Microsoft Ireland Operations Limited.

'Microsoft Customer Agreement' means the Microsoft Customer Agreement available at <https://aka.ms/customeragreement>.

'Microsoft Products' means the Microsoft products as specified in the relevant Order.

'Order' means an order for Microsoft Products submitted by the Customer and accepted by Dimension Data.

'Receiving Party' means any party or its affiliate receiving Confidential Information disclosed under this Agreement.

'Software' means licensed copies of Microsoft software identified in the Order, made available to the Customer under this Agreement, and the Microsoft Customer Agreement.

'Subscription' means an enrolment for Microsoft Products for a defined Term, as recorded in the Order.

'Term' means the duration of a Subscription (e.g., 30 days or 12 months) as set out in the relevant Order.

'Usage' means Customer's monthly usage or consumption of Microsoft Products.

2. Commencement and Term

- 2.1 This Agreement shall take effect when Dimension Data accepts an Order and shall, unless terminated earlier in accordance with this Agreement, remain in effect until the expiration or termination of Customer's Subscription (or the last of the Subscriptions if there are more than one), whichever is earliest.

3. Subscription Management

- 3.1 Once the Customer purchases a Subscription on the New Commerce Experience the below policies for subscriptions are enforced.

3.1.1 Auto-renew.

- a. On: Subscription renews at the end of the term. 72-hour cancellation period restarts.
- b. Off: Subscription does not renew at the end of the term Subscription enters 'Disabled' status.

3.1.2 Pause.

- a. Customer continues to be billed while Subscription immediately enters 'Disabled' status.
- b. Users can't access services or files, but Admins can access data until the end of the Subscription term.
- c. Subscription can be made 'Active' again.

3.1.3 Cancellation.

- a. Customer can cancel a Subscription within the first 72 hours of any term (new order or renewal) with prorated refund (proration calculated daily). After that initial 72 hours, no cancellation available and no refund. Subscription immediately enters 'Disabled' status: Users can't access services or files, but Admins can access data for 90 days. Cancellation cannot be reversed.

3.1.4 Upgrades.

New Commerce paid upgrades allow the Customer to immediately upgrade from its current SKU to one with added services. Upgrades can be of two types: Full Upgrade and Partial Upgrade.

- a. **Full upgrade:** A full upgrade is an in-place upgrade, which means that all the seats are being upgraded. The subscription ID remains the same, and the seats are automatically assigned.
- b. **Partial upgrade:** A partial upgrade is defined as going from a paid SKU to a different SKU where only some of the seats are being upgraded. In this case, a new subscription ID get generated, and seats need to be manually assigned.

4. Charges And Payment

- 4.1 The Charges payable to Dimension Data by the Customer for the Microsoft Products are as set out in the relevant Order.
- 4.2 Dimension Data's invoices will be expressed and paid in South African Rand. Dimension Data's Charges that contain a currency component other than South African Rand, will be converted to South African Rand using the applicable currency exchange rate on the date of invoice.
- 4.3 The Customer shall pay Dimension Data within 30 days of the date of receipt of the invoice.
- 4.4 Dimension Data may charge Customer additional charges on a time and materials basis at Dimension Data's then-current rates ('Additional Charges') for any of the following:
 - 4.4.1 re-establishment or other assistance requested by Customer outside the scope of this Agreement;
 - 4.4.2 re-establishment of the Services following suspension pursuant to the provisions of the Microsoft Customer Agreement; and
 - 4.4.3 services required or requested for post-termination data retention.

These Additional Charges will be invoiced to Customer in the month following the month in which they accrue.

- 4.5 All non-disputed amounts due must be paid by the Customer to Dimension Data in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law, in which event the Customer shall gross-up the amounts paid to ensure that Dimension Data receives the full amount invoiced).
- 4.6 If any non-disputed payments are overdue, the Customer must pay an additional financial sum on the overdue amount at the rate of 2% per annum above the prime interest rate set from time to time by the Reserve Bank of South Africa. The interest will accrue on a daily basis from the due date until date of payment of the overdue amount.

5. Warranties

- 5.1 Each Party represents, warrants and undertakes that:
 - 5.1.1 it has been duly incorporated, organised and/or established and is validly existing under the laws of the jurisdiction of its incorporation, organisation or establishment (as the case may be);
 - 5.1.2 it shall maintain all applicable licences, consents and permissions necessary to perform its obligations under this Agreement.
- 5.2 All Microsoft Products sold under this Agreement are subject to the limited warranties provided by Microsoft, as set out in the Microsoft Customer Agreement.

5.3 Dimension Data is not the manufacturer or developer of the Microsoft Products and disclaims all representations and warranties (whether express, implied, arising under statute or otherwise) with respect to the Software sold under this Agreement. This disclaimer includes any express or implied warranties of merchantability and fitness for a particular purpose and non-infringement of title or any third party rights, to the extent permitted by law.

6. Confidentiality

6.1 The Receiving Party shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the Receiving Party by the Disclosing Party or its agents, and any other confidential information concerning the Disclosing Party's business or its products which the Receiving Party may obtain. The Receiving Party may disclose Confidential Information only to its employees, professional advisors, consultants, independent contractors, subcontractors, vendors, suppliers, and business process outsourcing service providers ('Permitted Recipients') and then only such Permitted Recipients to whom such disclosure is reasonably necessary, provided that such Permitted Recipients agree in writing to be bound by similar terms and conditions of this clause 6 prior to such disclosure.

6.2 These obligations do not apply to any Confidential Information that:

- 6.2.1 was lawfully in the public domain at the time of disclosure or lawfully becomes available to the general public afterwards;
- 6.2.2 was lawfully known by the Receiving Party at the time it was received;
- 6.2.3 was independently developed by the Receiving Party before the time it was received;
- 6.2.4 was lawfully given to the Receiving Party by a third party; or
- 6.2.5 was disclosed in order to comply with a court order or other legal duty, provided that:
 - a. the Receiving Party must only disclose the minimum Confidential Information required to comply with the court order or other legal duty;
 - b. and after having provided as much notice to the other party as is reasonably practical in the circumstances.

6.3 Each party must use the same degree of care that it uses to protect its own Confidential Information of a similar nature and value, but in no event less than a reasonable standard of care.

6.4 In the event of a breach by the Receiving Party of any confidentiality obligation, the Receiving Party acknowledges that damages may be inadequate compensation and, subject to the court's discretion, the Disclosing Party may restrain, by an injunction or similar remedy, any conduct or threatened conduct which is or will constitute such a breach.

6.5 These confidentiality obligations will remain valid for a period of 3 years after the expiry or termination of the Agreement, provided that such obligations will continue in perpetuity in respect of any Confidential Information constituting a trade secret.

7. Limitation of Liability

The Customer acknowledges and agrees that Dimension Data is reselling the Microsoft Products and accordingly Dimension Data shall not be liable under any circumstances for any loss or any damages, direct or indirect, consequential or otherwise, sustained by the Customer as a result of non-delivery or non-performance of the Software or support services or late delivery or late performance of the Software or support services, or due to any other cause whatsoever, howsoever arising, including with respect to claims arising from the Customer's use of the Software or support services or the Customer's breach of any terms of the Microsoft Customer Agreement .

8. Termination

8.1 Either party may terminate this Agreement if the other party commits a material breach of any term of this Agreement, which in the case of the Customer includes non-payment of non-disputed amounts due, which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of 30 days after being notified in writing to do so.

9. Waiver

No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

10. Rights and Remedies

Except as expressly provided in this Agreement, the rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

11. Assignment

Neither party may, without the prior written consent of the other party, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

12. Third Party Rights

No one other than a party to this Agreement, their successors and permitted assignees, shall have any right to enforce any of its terms.

13. Notices

- 13.1 Except as otherwise expressly provided, no communication from one party to another party shall have any validity under this Agreement unless made in writing by or on behalf of the party giving notice.
- 13.2 Any notice or other communication whatsoever which a party hereto is required or authorised by this Agreement to give or make to the other party shall be given or made by courier service and that notice or communication shall be deemed for the purposes of this Agreement to have been given or made on the date of delivery.
- 13.3 For the purposes of clause 13.2 above the address of each party shall be:
- 13.3.1 for Client: Address as recorded on the Order
- 13.3.2 for Dimension Data:
- Executive: Intelligent Workplace Go-To-Market
Wanderers Building
The Campus, 57 Sloane Street
Bryanston, 2191, South Africa
- with a copy to:**
- The Dimension Data Head of Legal Services
Wanderers Building
The Campus, 57 Sloane Street
Bryanston, 2191, South Africa
Email: MEALegal@dimensiondata.com
- 13.4 Either party may change its address for such service by notice as provided in this clause 13.

14. Entire Agreement

This Agreement supersedes any and all earlier agreements or contracts, letters or negotiated whether verbal or in writing relating to this Agreement and represents the entire agreement between the Parties as to the subject matter of this Agreement. No variation or amendment to this Agreement is valid unless in writing and signed by both parties.

15. Governing Law and Jurisdiction

- 15.1 This Agreement shall be governed by and construed in accordance with the laws of the Republic of South Africa.
- 15.2 All disputes arising out of or in connection with this Agreement shall be finally settled by arbitration in accordance with the Commercial Arbitration Rules of the Arbitration Foundation of Southern Africa ('AFSA') without recourse to the ordinary courts of law, except as explicitly provided for in clause 15.6.
- 15.3 The parties to the dispute shall agree on the arbitrator who shall be a senior advocate or retired judge (with at least 20 years' experience in commercial legal practice) on the panel of arbitrators of AFSA. If agreement is not reached within 10 Business Days after any party calls in writing for such agreement, the arbitrator shall be a senior advocate or retired judge (with at least 20 years' experience in commercial legal practice) nominated by the Registrar of AFSA for the time being.
- 15.4 The seat of the arbitration shall be South Africa and the language of the arbitration shall be English.
- 15.5 The arbitration, including documents and evidence produced in the arbitration, and the content of any award shall be confidential to the parties.
- 15.6 The parties may apply to any competent judicial authority for interim relief on an urgent basis or conservatory measures at any time. In respect of such proceedings, each of the parties specifically consents to the non-exclusive jurisdiction of the High Court of South Africa (Gauteng Local Division, Johannesburg).