Subscription Service

1   Scope of agreement

The purpose of this Agreement is to formalise the agreement between the Supplier and the Customer for the provision by the Supplier of the Subscription Services requested by the Customer under the terms of this Agreement.

The Customer acknowledges and accepts that as a Microsoft Reseller, the Supplier is providing the Services in accordance with the terms of use in the applicable Microsoft Agreement and, except as may be otherwise provided in this Agreement, the Customer agrees to the delivery of the Services on those terms.

2   Agreement Terms

2.1   Priority of Contract Terms

2.1.1   Customer understands and agrees that the following terms are necessary for the delivery of the Services under this Agreement. For the purposes of interpretation of this Agreement the following priority of terms shall apply:

2.1.2   Specifically in relation to the Microsoft Subscription Services referred to in Section 2.3 below the applicable Microsoft Terms and Conditions shall apply to the provisioning and delivery of all such Microsoft licensing during the Term of this Agreement ("the Subscription Terms);

2.1.3   In all other respects and for all other Services, the Supplier's General Terms and Conditions ("the Supplier Terms") shall apply.

2.1.4   In the event of any inconsistency arising between the Subscription Terms and the Supplier Terms, then the Subscription Terms shall apply to the extent of any inconsistency.

2.2   Supplier General Terms and Conditions

The Supplier Terms are published on the Supplier's website **https://nexon.com.au/** and the Supplier reserves the right to publish changes to the Supplier Terms at any time. By continuing to place orders for Products or Services, the Customer will be deemed to have accepted the revised Terms.

2.3 Microsoft Subscription Terms & Conditions

Microsoft Subscription Services stated in the Supplier's itemised Quotation to be delivered under the terms of this Agreement will be subject to the applicable Microsoft Terms and Conditions published on the Microsoft website currently available via **Microsoft Customer Agreement**; **Microsoft 365 Licensing**; **Microsoft Azure Agreement**. In particular, the Customer is required and will ensure that it enters into and complies with the terms of the Microsoft Customer Agreement. Customer acknowledges Microsoft has the right to amend those Agreements and/or Product Licensing Subscription Terms at any time. By continuing to use and place orders for Products or Services, the Customer will be deemed to have accepted the revised Terms.

3 Terms of agreement

This Agreement will commence on the provisioning date of the initial Subscriptions and shall continue for the duration of the Contractual Term for all Services delivered under the terms of this Agreement.
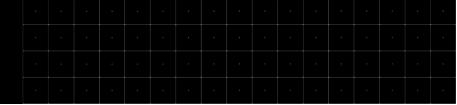
4 Provision of Services

4.1 Subscriptions and Fees

4.1.1 The Microsoft Licensed Subscriptions and associated quantities selected by the Customer will be those recorded as deployed in the Customer's Microsoft Licensing portal from time to time during the Contractual Term of the License referred to in this Agreement, as applicable.

4.1.2 Requests by the Customer for additional Subscription selections and/or quantities will be deemed to be added under the terms of this Agreement.

4.1.3 All Fees for the Microsoft Licensed Subscriptions will be charged on the basis of the quantities deployed and will be subject to any change in Microsoft's recommended retail price and licensing provisions for the region in which licenses are purchased. The Supplier will invoice the Customer in accordance with that structure.

4.1.4 Invoices will be payable in accordance with Customer's established terms of trade with the Supplier.

4.2 Supplier Management Fees

If applicable to this Agreement, the Supplier's Quotation will specify the Supplier Management Fees selected by the Customer for the initial deployment of Products. Requests by the Customer for Management of additional Product selections and/or quantities will be deemed to be added under the terms of this Agreement subject to the Customer's signed acceptance of the Supplier's Quotation confirming the current Fees and provisioning my means of a Supplier Change Request.

4.3 Professional Services Rates

There may be occasions when the Customer requires ad-hoc Professional Services for tasks not included in the Contractual scope of work. These ad-hoc Professional Services will be provided on a "time and materials" basis as required and will be chargeable in accordance with the Supplier's then current Rates during the Term of this Agreement.

4.4 Delegated Admin Privileges

Customer must always grant Supplier (and Supplier's nominated Distributor, if applicable) Delegated Admin Privilege (DAP) to Customer's relevant Microsoft Subscriptions and Tenancies. DAP is necessary for Supplier to manage the services or Subscriptions, and to raise any support case with Microsoft on Customer's behalf. Should the DAP be removed directly or indirectly, knowingly or unknowingly, Customer acknowledges that Supplier may, at its sole discretion and without notice to Customer, vary pricing or charge additional Fees.

5 Intellectual property

Specifically in relation to the Subscriptions provided under this Service, the Customer hereby acknowledges that the Subscriptions supplied by the Supplier are in the nature of Subscriptions to use Microsoft services and are supplied subject to any and all terms and conditions stipulated by Microsoft for the use of the services, which may change from time to time. The Customer acknowledges that all title and intellectual property in the services are owned by Microsoft. The Customer acknowledges that the supply of the Subscriptions by the Supplier to the Customer does not transfer any ownership of the services or any intellectual property to the Customer or its Customers.

The Customer agrees that at all times it shall indemnify and hold the Supplier harmless from all claims of whatever nature and howsoever arising from any breach of these terms and conditions or any agreement or licence entered between the Customer and Microsoft or any improper, unlawful or unauthorised use or dealing by the Customer with the Subscriptions.

6 Collection of Information

Subject to the following paragraph, any information that the Supplier collects regarding the Customer and its business is solely for the purpose of providing the Subscriptions. To the extent permitted by existing privacy laws, the Customer agrees that the Supplier may collect personal information for this purpose ("this information").

Customer understands and agrees that in delivering the Service the Supplier is required by Microsoft through its designated Reseller to pass this information on to Microsoft and/or its designated Reseller. Except as required by this clause and by law, The Supplier will not make this information available to any third parties other than Microsoft and/or its designated Reseller, or use the information itself for marketing purposes.

7 Microsoft CSP Subscriptions

7.1 Term

7.1.1 All Subscriptions are for the non-cancellable term as specified in the Supplier's itemised Quotation ("the Contractual Term").

7.2 Auto Renewal

7.2.1 All Subscriptions will automatically renew for an additional Term equal to the Contractual Term.

7.2.2 Customer can request auto renew be disabled by providing written notice to the Supplier at least (30) days before the end of the current Contractual Term. If auto-renew is disabled, the Subscription will move into a disabled status at the end of the Contractual Term unless an alternate renewal is received prior to the expiry.

7.3 Cancellation

7.3.1 In the event of Subscription cancellation, Customer is responsible for the retention and/or migration of any data.

7.4 Quantity Adjustment

7.4.1 The Customer can increase the quantity of licenses at any time during the Contractual Term and will be charged pro-rata for the increased quantity and will continue to be charged until the end of the Contractual Term.

7.4.2 If the Customer decreases the quantity of licences during the Contractual Term, they will be charged for the Contractual quantity of licences ordered. The Customer will not receive any refund.

7.4.3 The Customer may decrease the quantity of licences at the end of the Contractual Term.

7.4.4 The Customer may upgrade licenses within a Subscription, based upon Microsoft's upgrade rules that apply to the current and requested licenses at that time.

7.4.5 The Customer may not downgrade licenses within the Contractual Term. Downgrades may only be performed at the end of the Contractual Term.by providing Supplier with at least (30) days prior notice.

7.5   Fees

7.5.1   Fees for the Subscriptions will be invoiced monthly in advance for all Contracted licences provisioned as at the 1st day of that month plus any adjustments for actual usage in the preceding month. .

7.5.2   Fees for the Subscriptions are fixed for the initial Contractual Term of each Subscription. Additions to an existing Subscription will be at the same Fee during the Contractual Term of that Subscription.

7.5.3   New Subscriptions will be established at the prevailing price.

7.5.4   All Fees will be subject to change at the commencement date of the Subscription Renewal.

8   Microsoft Azure Plan Subscriptions

8.1   Azure Plan - Consumption

8.1.1   There is no fixed Term for Azure Plan Subscriptions which are based on a monthly consumption "Pay-As-You-Go" model.

8.1.2   The Subscription will automatically renew at the end of every month until the Subscription is terminated by written notice by either party on thirty (30) days prior notice.

8.1.3   Customer shall pay the Supplier for all Subscription Fees based on the consumption at all times up to the date of any termination of the Subscription.

8.1.4   Fees for the Subscriptions will be invoiced monthly in arrears as at the 1st day of each month based on actual usage in the preceding month.

8.1.5   Supplier's monthly invoice will provide summarised details of the Customer's consumption. If requested by the Customer, the Supplier can provide granular details of the consumption as recorded by Microsoft.

8.1.6   Fees will be calculated monthly using Microsoft's then-current rates for each consumed service, using USD to local currency foreign exchange rates as published by Microsoft.

8.1.7   The Customer can estimate current Fees using the Azure Pricing Calculator.

8.2   Azure Plan - Reservations

8.2.1   Upon Customer's request, Supplier may provide Customer with Reservations under the Customer's Azure Plan Subscription.

8.2.2   Reservations are for fixed twelve (12) or thirty-six (36) month terms ("Reservation Term). The Reservation will not be automatically renewed. Once the Reservation Term expires, any usage will be automatically charged Pay-as-you-Go rates as per Section 8.1 Azure Plan – Consumption.

8.2.3   The Reservation Term will commence immediately upon Supplier provisioning the Reservation within its portal. A Reservation cannot not be purchased to start at a later date.

8.2.4   Reservations will be ordered with the Azure Hybrid Benefit. Customer must utilise an existing compatible license or subscription where required (e.g., Microsoft Windows Server, Microsoft SQL Server). If the Customer cannot supply a compatible license, Supplier can quote for the supply a compatible license subscription as per Section 7 Microsoft CSP Subscriptions of this Agreement.

8.2.5   Customer must provision the correct resource with the right category/instance series/instance, region, type, quantity, and duration to align with the Reservation.

8.2.6   Customer will be able to request for cancellation or exchange of a Reservation:

    8.2.6.1   For cancellation with refund, a 15% penalty will be incurred. Refunds will be subject to any refund cap imposed by Microsoft – currently USD$50,000.00 per calendar year.

    8.2.6.2   For exchange, the replacement Reservation must be for a higher dollar value than the remaining value of the existing Reservation.

8.2.7   Fees will be calculated at the initiation of each Reservation using Microsoft's then-current rates for each Reservation, using USD to local currency foreign exchange rates as published by Microsoft. Fees will be subject to change at the commencement date of any future Reservation renewal.

8.2.8   Azure Reservations invoicing can be either annual or monthly in advance. Customer to advise invoicing selection prior to provisioning. Third party products will be invoiced annually in advance.

8.2.9   The Customer can estimate current Fees using the Azure Pricing Calculator.