



ADDITIONAL TERMS AND CONDITIONS

Cloud and Managed Services



Thrive Operations Limited

ADDITIONAL TERMS 3: CLOUD AND MANAGED SERVICES

VERSION 220322

These Additional terms will apply where You are buying Cloud and/or Managed Services from Thrive. It will apply in addition to the terms set out in the General Terms and Conditions.

1 INTERPRETATION

1.1 In this Schedule, capitalised words shall have the meaning given to them in the General Terms and Conditions. In addition, the following definitions apply to this Schedule:

“Cloud and Managed Services” or “C&MS” means the Nimbus-as-a-service, offerings and other managed services as described in more detail in the Scope of Works and the relevant Service Description

“Customer Data” means the data inputted by You, Authorised Users, or Us on Your behalf for the purpose of using the Services or facilitating Your use of the Services.

“Location” means the physical premises from which the Cloud and Managed Services are provided.

“Thrive Orchestration Portal” means the web portal through which customers can control the deployment and configuration of Thrive’s Nimbus Virtual cloud computing services to scale the cloud infrastructure up or down based on the needs of their business or applications.

“Our Equipment” means any equipment, systems, cabling or facilities which are owned by Us or licensed to Us and used directly or indirectly in the supply of the Cloud and Managed Services

“Resource Allocation” means any of the following resources allocated by the Customer using the Thrive Orchestration Portal: Compute, Storage, RAM, Internet Bandwidth or Microsoft SPLA licencing

“Service Levels” means the service levels set out in the relevant Service Description or Scope of Works

1.2 Unless otherwise specified in this Schedule, all clause references shall be to clauses contained in this Schedule.

2 THE SERVICES

2.1 Throughout the Term We will provide the C&MS to You.

2.2 You warrant, represent and undertake that You will not:

2.2.1 except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and, except to the extent expressly permitted under the Contract, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the **C&MS** in any form or media or by any means;

2.2.2 access all or any part of the **C&MS** in order to build a product or service which competes with the **C&MS**;

2.2.3 other than where we agree that you can act as an approved Thrive service reseller use the **C&MS** to provide services to third parties;

2.2.4 other than where we agree that you can act as an approved Thrive service reseller license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the **C&MS** available to any third party; or

2.2.5 other than where we agree that you can act as an approved Thrive service reseller attempt to obtain, or assist third parties in obtaining, access to the **C&MS**, other than as provided under this clause 2.

2.3 You shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the **C&MS** and, in the event of any such unauthorised access or use, promptly notify Us.

2.4 The rights provided under this clause 2 are granted to You only, and shall not be considered granted to any of Your subsidiaries or holding companies. A reference to a holding company or a subsidiary means a holding company or a subsidiary (as the case may be) as defined in section 1159 of the Companies Act 2006.

3 YOUR OBLIGATIONS

3.1 You shall:

3.1.1 provide Us with such information and materials as We may reasonably require to supply the **C&MS**, and ensure that such information is accurate in all material respects; and

- 3.1.2 grant to Thrive a royalty free, non exclusive, non transferrable licence to use the Customer Data but solely to the extent necessary for the provision of the C&MS.
- 3.1.3 grant to Thrive Administer On Behalf Of rights for third party cloud services.
- 3.2 You agree that You will not use the **C&MS** in a way which would breach Our instructions to You from time to time relating to health and safety.
- 3.3 If the C&MS includes Resource Allocation You will appoint one or more Administration Users for the Thrive Orchestration Portal. You agree that such Administration Users will have the authority to commit You to the Resource Allocation and to the appropriate charges for the allocated resources.
- 3.4 If We are unable to perform any of Our obligations in respect of the Contract due to any act or omission by You then We shall have the right to suspend performance of the **C&MS** until such time as the said issues are resolved to Our reasonable satisfaction.
- 3.5 You acknowledge that We have no control over, or responsibility for, any data and material being transmitted or uploaded and We do not purport to monitor such data and/or material. Notwithstanding the foregoing, We reserve the right (at Our option) to suspend remote access to and withdraw access to the C&MS where We have reason to believe that any data and/or material are or may be associated with any unauthorised act, or where We are required to do so by a court or administrative authority.
- 3.6 You grant to Us a non-exclusive, worldwide, royalty-free licence to use any Intellectual Property Rights and/or other proprietary rights belonging to or licensed to You to the extent reasonably necessary for the purpose of Our performance of Our obligation under the Contract.
- 3.7 Where we resell a third party's (for example CISCO or Microsoft cloud services, use by You of the services will be subject to the third party's end user terms and conditions (for example the CISCO End User License Agreement or Microsoft Customer Agreement). These terms will also form part of the Contract between You and Us.

4 DATA BACKUP

- 4.1 You are responsible for the security of Customer Data and Your use of the **C&MS**. You shall take all reasonable steps to prevent:
 - 4.1.1 any loss of data or damage to data; and/or
 - 4.1.2 any unauthorised access to the **C&MS** or use of the **C&MS**.

- 4.2 The obligation under clause 4.1 includes, without limitation:
- 4.2.1 ensuring all passwords are in an appropriately secure format and properly protected against loss or unauthorised access;
 - 4.2.2 taking regular back-ups of all of Your data used with or stored as part of the **C&MS**;
 - 4.2.3 employing appropriate security devices including virus checking software; and
 - 4.2.4 having appropriate disaster recovery processes in place.
- 4.3 Clause 4.2.2 shall not apply where We have agreed to provide data back up services to You as stipulated in an Order Confirmation in which case we will take regular back-ups of your data at the intervals agreed in the Scope of Work or relevant Service Description.

5 CHARGES AND PAYMENT

- 5.1 The charges for the Managed Services shall be as set out in the Quotation or Order Confirmation. An illustration of current charges for cloud services will be set out in the Estimate. The provisions regarding charges set out in the General Terms and Conditions shall apply to the C&MS.
- 5.2 If the C&MS includes Resource Allocation, You can vary the resources allocated to a minimum of 80% and a maximum of 200% of the resources specified in the Project Scope, Quotation or Order Confirmation. Any variation in charges as a result of Resource Allocation will be applied from the time the changes are made.
- 5.3 Any initial charges will be invoiced on acceptance of the order. Regular recurring charges will be invoiced quarterly in advance. Any variable charges will be invoiced monthly in arrears. All charges for resources provisioned through the Thrive Orchestration Portal will be invoiced monthly in arrears.
- 5.4 Charges for third party cloud services will be billed monthly in arrears and will be based on Your actual usage in the month. The monthly charges will vary to reflect changes in actual prices imposed by the third party and changes in exchange rates from month to month.
- 5.5 If, at any time whilst using the **C&MS**, You exceed the amount of resources specified in the Documentation, We will charge You, and You shall pay, Our then current excess resource fees in place. If You exceed any other thresholds set out in the Scope of Work, We will notify You in writing about this issue and Our additional charges (as in force from time to time) that You shall pay.

6 LIABILITY

- 6.1 Subject to clauses 5.3 and 5.4 of Part 1 in the General Terms and Conditions, Our total liability for all claims arising in contract, tort (including negligence), breach of statutory duty, misrepresentation, restitution or otherwise, in connection with the performance or contemplated performance of the C&MS giving rise to the claim shall be limited to 200% of the Annualised Charges.
- 6.2 We have no knowledge of the nature or value of the Customer Data and give no warranty or representation regarding security facilities or access save as referred to in this Contract. Our liability is limited in accordance with the terms of the Contract and if You require greater protection then it is Your responsibility to notify Us of this; where We agree to provide enhanced security there may be additional charges to reflect Our increased liability.
- 6.3 All of clause 5 of the General Terms and Conditions shall apply to the provision of the C&MS except for clause 5.5.

7 INDEMNITIES

- 7.1 You shall indemnify Us against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) that we suffer or incur arising out of or in connection with Your use of the C&MS.

8 TERM

- 8.1 Clause 7.1 of Part 3 in the General Terms and Conditions shall apply to the supply of C&MS.

9 OUR EQUIPMENT

- 9.1 Where a Scope of Works states that We shall provide Our Equipment to You on loan as part of the C&MS, We shall deliver Our Equipment to Your premises as soon as reasonably practicable after the Effective Date (unless agreed otherwise). Unless We agree otherwise in writing, You will be responsible for installation of Our Equipment.
- 9.2 Our Equipment remains Our property (or the property of Our suppliers) at all times. You do not acquire any rights to or in Our Equipment.
- 9.3 You shall at all times:
- 9.3.1 use Our Equipment only in connection with the C&MS;
 - 9.3.2 use Your reasonable endeavours to keep Our Equipment free from any loss or damage;

- 9.3.3 notify Us promptly of any malfunction, defect, loss or damage to Our Equipment, and return Our Equipment to Us promptly for repair or replacement at Our sole discretion;
 - 9.3.4 not sell or loan Our Equipment to any person or create any charge, lien or other encumbrance over Our Equipment; and
 - 9.3.5 insure Our Equipment against loss and damage with a reputable insurance firm to its full replacement value.
- 9.4 You shall allow Us and Our (or Our provider's) employees or subcontractors access to Your premises at any time (during normal business hours) on reasonable notice to install (if We have agreed to do so), inspect, test, maintain or otherwise deal with Our Equipment.
- 9.5 If You fail to comply with Your obligations in this clause 9 or if You become subject to an event described in clause 11.2.2 of Part 1 in the General Terms and Conditions then We may at Our absolute discretion recover Our Equipment from You and You grant Us permission to enter Your premises or any premises where Our Equipment are located in order to recover them.