

**FORESHORE LIMITED
SOFTWARE TERMS
FOR CUSTOMERS USING SOFTWARE SERVICES INVOLVING MICROSOFT
SOFTWARE**

1. APPLICABILITY OF THESE TERMS

- 1.1 When Foreshore makes any Microsoft Product available to the Customer as part of a Software Service, that is as part of Foreshore's Hosted Exchange, VCloud, Desktop as a Service or Recovery as a Service services or any other Software Services supplied by Foreshore to the Customer from time to time, Foreshore is obliged by Microsoft to include certain terms and conditions in its agreement with the Customer (**the Customer Agreement**).
- 1.2 When the Customer enters into the Customer Agreement with Foreshore for any Service which includes the provision of a Microsoft Product as, or as part of, a Software Service, the Customer is agreeing to the terms and conditions in this document (**these Terms**), and these Terms form part of the Customer Agreement.
- 1.3 These Terms do **not** apply where the Customer uses MS Client Software or Redistribution Software. In those cases the Microsoft End User License Terms apply to the Customer.

2. DEFINITIONS

- 2.1 Expressions defined in the Customer Agreement have the same meaning when they are used in these Terms.

In addition, the following expressions have the meanings opposite when they are used in these Terms:

Microsoft the Microsoft company which licenses the Microsoft Product to Foreshore, and that Microsoft company's affiliates;

Microsoft Client Software software which is installed on the Customer's device and which allows that device to access or use a Microsoft Product;

the Microsoft End User License Terms the Microsoft document entitled 'End User License Terms' applicable to a Microsoft Product, as amended by Microsoft from time to time;

Microsoft Redistribution Software software which may be installed on the Customer's device and which may be used, modified, reproduced and/or redistributed by the Customer without separate payment, for example, sample, redistributable, and/or software development (SDK) software code and tools;

the Microsoft Software Documentation any documents included with a Microsoft Product;

a Microsoft Product

Microsoft software made available from time to time to the Customer by Foreshore as part of a Software Service; and

a Software Service

a service which Foreshore provides to the Customer from time to time and which makes available, displays, runs, accesses, or otherwise interacts, directly or indirectly, with a Microsoft Product, but excluding any services which involve installing a Microsoft Product directly on any Customer device to enable the Customer to interact with the Microsoft Product.

3. THE CUSTOMER'S OBLIGATIONS

3.1 In addition to its obligations in the other parts of the Customer Agreement, the Customer agrees, in relation to each Microsoft Product, that the Customer will, and will, ensure that End Users will:

3.1.1 not remove, modify or obscure any copyright, trademark, patent or other proprietary rights notices that are contained in or on the Microsoft Product or any Microsoft Software Documentation;

3.1.2 not reverse engineer, decompile, or disassemble the Microsoft Product, except to the extent that such activity is expressly permitted by applicable law;

3.1.3 not engage in the manufacture, use distribution or transfer of counterfeit, pirated or illegal software; and

3.1.4 comply with any technical limitations in the Microsoft Product which allow it only to be used in certain ways, and will not work around them.

3.2 The Customer may use the Microsoft Product and the Microsoft Software Documentation only for its internal purposes and may not share their use with any third party.

4. LIABILITY

4.1 To the extent permitted by applicable law, Microsoft does not give any warranty or representation in relation to and Microsoft and its suppliers will have no any liability for any damages, whether direct, indirect, or consequential, arising from the Software Services.

4.2 Neither Microsoft nor any of its suppliers is under any obligation to provide any technical support for the Software Services; to the extent that the Services include technical support, the obligation to provide technical support to the Customer will be Foreshore's.

4.3 If the Customer or any End User links to third party Internet site through the use of any of the Microsoft Products:

4.3.1 neither Microsoft nor Foreshore controls that third party site;

- 4.3.2 neither Microsoft nor Foreshore is responsible for the contents of that third party site, any links contained in any third party site, or any changes to any third party site;
 - 4.3.3 any link to third party Internet site through the use of any of the Microsoft Products is are provided only as a convenience; and
 - 4.3.4 the inclusion of any such link does not imply an endorsement by Microsoft or Foreshore of any third party site.
- 4.4 The Customer will indemnify and hold harmless Foreshore, and keep Foreshore indemnified, against all and any damages, losses, costs, and expenses (including, without limitation, reasonable legal and professional fees) incurred by Foreshore and against any and all liability to Microsoft which arises, in each case, in connection with any unauthorised installation, use, access, copying, reproduction, and distribution (or any of the above) of the Microsoft Products or the Microsoft Software Documentation (or both), in whole or in part, by the Customer, by any End User and by any third party which provides services to the Customer (or by any of the above).

5. INTELLECTUAL PROPERTY RIGHTS

- 5.1 Microsoft does not transfer any ownership rights in any Microsoft Product or any Microsoft Software Documentation. The Microsoft Products and the Microsoft Software Documentation are protected by copyright and other Intellectual Property Rights laws and international treaties. All Intellectual Property Rights in the Microsoft Products and in the Microsoft Software Documentation and rights not expressly granted are reserved to Microsoft or its licensors.
- 5.2 The Customer will not use any Microsoft logos in any manner whatsoever nor undertake any action which interferes with, or diminishes, Microsoft's (or Microsoft's suppliers') right, title and/or interest in any trademark(s) or trade name(s).

6. NO HIGH RISK USE

- 6.1 The Microsoft Products are not fault-tolerant and are not guaranteed to be error free or to operate uninterrupted. The Customer is not granted any right to use any Microsoft Product in any application or situation where the Microsoft Product's failure could lead to death or serious bodily injury of any person, or to severe physical or environmental damage (**High Risk Use**) and the Microsoft Products are not licensed for High Risk Uses.
- 6.2 Examples of High Risk Use include, but are not limited to: aircraft or other modes of human mass transportation, nuclear or chemical facilities, life support systems, implantable medical equipment, motor vehicles, or weaponry systems. High Risk Use does not include utilization of Microsoft Products for administrative purposes, to store configuration data, engineering and/or configuration tools, or other non-control applications, the failure of which would not result in death, personal injury, or severe physical or environmental damage. These non-controlling applications may communicate with the applications that perform the control, but must not be directly or indirectly responsible for the control function.
- 6.3 The Customer agrees to indemnify and hold harmless Microsoft and Foreshore from any third-party claim arising out of the Customer's use of any Microsoft Product in connection with any High Risk Use.

7. REPORTS AND VARIATIONS

- 7.1 Despite any other provision of the Customer Agreement, Foreshore may report to Microsoft the Customer's use of each Microsoft Product and may include in any such report:
- 7.1.1 the fact Customer is using the Microsoft Product(s);
 - 7.1.2 the country in which the Customer is located;
 - 7.1.3 the name and address of the Customer; and
 - 7.1.4 any other information about the Customer, End Users and its and their use of each Microsoft Product required by Microsoft from time to time.
- 7.2 Foreshore reserves the right (but is not obliged to) to supply any updated or new version or release of any Microsoft Product to the Customer instead of the original version of that Microsoft Product or any earlier updated or new version or release of that Microsoft Product.
- 7.3 These Terms may be amended by Foreshore posting an amended version of these Terms on its website at any time if Microsoft amends the terms under which Foreshore is entitled to make any of the Microsoft Products available to its customers as, or as part of, a Software Service.

8. TERMINATION

- 8.1 The Customer will cease using the Microsoft Products and the Microsoft Software Documentation immediately on the termination (for any reason) of the Customer Agreement.
- 8.2 Foreshore reserves the right to withdraw any Microsoft Product from the Service(s) if (for any reason) its agreement with Microsoft is terminated or Foreshore no longer has the right to make that Microsoft Product available to the Customer.
- 8.3 The provisions of clauses 2, 4, 5, 6, 7 and 8.1 above and this clause 8.3 will survive the termination of the Customer Agreement and continue in full force and effect indefinitely.

These Terms were last updated on 25th November 2013.