

Viatel Cloud Services - Terms and Conditions

1 BACKGROUND

1.1 Viatel offers Cloud Solutions and Services that wrap around various Microsoft Cloud services. This document defines Viatel's Terms and Conditions in reselling the Microsoft Cloud services.

2 AGREEMENT

2.1 By purchasing Microsoft CSP (Cloud Solution Provider) Services from Viatel you agree to abide by these Terms and Conditions relevant to the service Viatel is supplying to you.

2.2 Microsoft CSP Services include but are not limited to: Azure, Azure Plan, Microsoft/Office 365 subscription licensing and associated add-ons, Microsoft Dynamics 365 & Power Platform licensing, Windows Server Perpetual & Subscription and Windows SQL Licensing Perpetual & Subscription, Reserved Instances etc.

2.3 Due to changes to Microsoft CSP rules, these Terms and Conditions are subject to variations from time to time.

3 CSP – CLOUD SOLUTION PROVIDER

3.1 Viatel are a Gold Microsoft Partner and are authorised to provide Microsoft Cloud and licensing through Microsoft's Indirect Reseller Program.

4 MICROSOFT MCA

4.1 By signing up to use Microsoft Cloud services with Viatel pursuant to these terms and conditions, you are also agreeing to Microsoft's Customer Agreement (MCA) which all customers of the Microsoft Cloud platform agree to regardless of licensing program. MCA is available [here](#).

5 AZURE/AZURE PLAN BILLING

5.1 Azure/Azure Plan usage is provided in one of 2 ways depending on the service provided by Viatel:-

1. Bundled Service. This is where you pay a fixed fee each month.
2. Consumption based service. Where you pay a variable fee each month.

5.1.1 Bundled Services are paid in advance each month based on the definition of the service sold. Where additional service elements are required, the fee will be adjusted and agreed in advance of billing.

5.1.2 Consumption based services are billed at the end of each month as follows:

5.1.2.1 At the end of each month you will receive an Invoice with an estimated consumption level (Estimated Usage) for that same calendar month. This is based on the most recent usage data available from Microsoft at that point in time.

5.1.2.2 The Actual Usage for the month is not known until Microsoft provide Viatel with a

full and final usage report by the middle of the following month.

5.1.2.3 At that point Viatel will calculate the difference between your Estimated Usage and your Actual Usage. A Credit/Debit will be placed on your account as appropriate.

5.1.2.4 At the end of the next month in addition to your normal estimated invoice the calculated credit or debit relating to the balance from the previous month will be included.

6 AZURE PRICING/RATE CARD

6.1 Azure pricing is based on a global pricing rate provided by Microsoft. This pricing is standard across all Microsoft licensing programs. Pricing is based on a Global USD rate and is invoiced to Viatel on a monthly EUR or GBP conversion rate. Any fluctuations in the currency exchange rate will be reflected automatically in your monthly invoice for all consumption-based products. Where currency fluctuations have an impact on a fixed service you will be advised in advance of any changes to the service.

7 ACCESS LEVELS

7.1 In order to transact and bill your Azure/Azure Plan correctly and in line with Microsoft's Indirect CSP Reseller guidance Viatel must have access to your system and your data and maintain "Admin on Behalf of Privileges" to all your subscriptions at all times to ensure effective billing. Any removal of this privilege will result in a breach of service notification and Viatel will automatically add a 15% surcharge to your Azure billing.

7.2 Action Point only uses the Customer's personal information in accordance with our Data Protection Policy.

8 AZURE MARKETPLACE

8.1 Some Azure Marketplace services are available through Microsoft Azure/Azure Plan. To use any Azure Marketplace based service on your Azure Tenant you must contact your account manager in advance.

8.2 You are liable for all charges in full associated with Azure Marketplace items, this may include third party licensing costs and Azure Consumption costs.

9 AZURE RESERVED INSTANCES

9.1 When you agree to Viatel activating Reserved Instances on your Azure subscription, you also agree to a minimum commitment period of either 1 or 3 years. These Reserved Instances will be charged on a monthly basis.

9.2 Any cancellation or change of a reserved instance will be liable for penalty charges. As of September 2021, this penalty stands at 12% and is subject to change. Full details [here](#).

10 LICENSE BASED SERVICES

10.1 Cloud Licensing: Microsoft New Commerce Experience

From January 2022 Microsoft will introduce 2 ways to license cloud services

1. Annual Commitment
2. Monthly Commitment

As a customer you can have both annual commitment and monthly commitment licensing in operation at the same time.

10.1.1 For Annual Commitment licensing the following applies:

10.1.1.1 On agreement to procure annual commitment licensing through Viatel you agree that you will pay for all services in full for the contracted period. Services are billed monthly and the minimum contracted period is 12 months. In some circumstances services can be paid for in advance in full for the 12 month period.

10.1.1.2 Should you wish to cancel any licenses this can only be done within 72 hours of license activation and can only be processed on a normal working day (Monday-Friday) between the hours of 9am and 4.30pm and via phone – email notification only is not accepted. Any cancellation request outside of this timeframe cannot be actioned and you will be liable for all licenses for the commitment period. Should you choose to cancel within the agreed timeframe of 48 hours then you will be liable for any costs of the licenses during that 72 hour period.

10.1.1.3 During the period of your licensing contract you cannot step down to a lower licensing plan or reduce the licensing commitment.

10.1.1.4 During the period of your licensing contract you can step up your licensing plan and increase the quantity of licensing. Any increase in licensing is subject to the same terms as the existing licensing subscription and the commitment will expire at the same date as the original subscription.

10.1.1.5 Pricing from Microsoft is locked in for the duration of your license contract i.e. the price per license remains the same for the duration of the commitment.

10.1.2 For Monthly Contract licensing the following applies:

10.1.2.1 On agreement to procure monthly commitment licensing through Viatel you agree that you will pay for all services in full for the contracted period. Services are billed monthly and the minimum contracted period is 1 month.

10.1.2.2 Should you wish to cancel any licenses this can only be done within 72 hours of license activation and can only be processed on a weekday between the hours of 9am and 4.30pm. Any cancellation request outside of this timeframe cannot be actioned and you will be liable for all licenses. Should you choose to cancel within the agreed timeframe of 48 hours then you will be liable for any costs of the licenses during that 72 hour period.

10.1.2.3 During the period of your licensing contract you cannot step down to a lower licensing plan or reduce the licensing commitment.

10.1.2.4 During the period of your licensing contract you can step up your licensing plan and increase the quantity of licensing. Any increase in licensing is subject to the same terms as the existing licensing subscription.

10.1.2.5 Pricing from Microsoft is locked in for the duration of your license contract (i.e. 1 month) and can change on a monthly basis depending on Microsoft rates.

10.1.2.6 Monthly contract subscriptions incur a 20% price premium and will auto renew automatically. Should you wish to cancel a monthly contracted license plan you must contact Viatel no less than 14 days in advance of the renewal date. For monthly commitment licensing the renewal date is the end of each calendar month.

11 COMMITMENT RENEWALS

11.1 All of your licensing commitments will automatically renew for the same commitment duration at the end of their respective term. The quantity of licenses renewed is the quantity

on the day of renewal. Viatel will notify you via e-mail at least 45 days before your renewal with the license type, quantity and commitment period to be renewed i.e., you purchase 100 Microsoft 365 Business Premium Licenses on 1st January in an annual commitment and add 20 licenses on 1st May. On the 31st December you will be automatically renewed for 120 Microsoft 365 Business premium licenses for a further 12 month commitment.

11.2 Should you wish to cancel or de-activate your auto renewal, you must notify Viatel via e-mail (support@actoinpoint.ie) at least 30 days in advance of the annual termination date. Receipt of the notice to terminate must be confirmed by Viatel to the Customer.

11.3 Should you wish to amend your licensing quantities before your renewal date, you must notify Viatel via e-mail at least 30 days in advance of the annual termination. The receipt of the notice to amend your licensing quantities must be confirmed by Viatel.

12 SERVICE SUSPENSION

12.1 All cloud based licensing can be suspended which will result in reduced or loss of functionality. However this does not cancel or pause the billing commitment.

12.2 Service suspension can be activated in one of two ways.

1. Customer request: Service is suspended by Viatel but billing will continue for the duration of the commitment period.

2. Finance Request due to Non-Payment or service violation: Service is suspended by Viatel but billing will continue for the duration of the commitment period.

12.3 In both of the above cases Viatel reserve the right to issue a final invoice for the balance of all charges due in the commitment period.

12.4 As the customer, you are liable for all charges during your contracted period. Service suspension by either party has no impact on billing.

13 SOFTWARE SUBSCRIPTIONS

13.1 Software subscriptions are available through the CSP program this includes but is not limited to licenses for Windows Server and SQL Server.

13.2 Software subscriptions are available in commitments of 1 or 3 years.

13.3 You must pay for your software subscription in full for the period of commitment in advance.

13.4 At the end of the subscription you can no longer legally use the software and should either remove the software or re-subscribe for another 1 – 3 years.

14 PERPETUAL SOFTWARE

14.1 Perpetual software can be purchased through Viatel via CSP. This includes but is not limited to Windows Server and SQL Server licensing. Perpetual software is a once off payment and is paid in advance.

14.2 Once paid you own the software in full and are responsible for maintaining your software license keys. Viatel does not guarantee it will be able to retrieve your license keys in the future.

14.3 You must retain proof of purchase along with your license keys should these be required in a software audit or to re-install your software.

15 FORCE MAJEURE

15.1 Neither party will be liable for any delay in performing or failure to perform any of its obligations under these Terms and Conditions caused by events beyond its reasonable control ("Force Majeure Event").

15.2 The party claiming the Force Majeure Event will promptly notify the other in writing of the reasons for the delay or stoppage (and the likely duration) and will take all reasonable steps to overcome the delay or stoppage.

16 LIABILITY

16.1 Nothing in these Terms and Conditions excludes the liability of either party:

16.1.1 for death or personal injury caused by such party's negligence; and/or

16.1.2 for fraud or fraudulent misrepresentation.

16.2 In no event shall Action Point, its affiliates, officers or other representatives be liable for any loss or damages arising out of or in connection with any products and/or services provided by third parties, including those offered pursuant to these Terms and Conditions.

16.3 The Service is provided "as is." To the fullest extent permitted by applicable law, Action Point hereby expressly excludes and disclaims all conditions, warranties, guarantees and other terms which might otherwise be implied by statute, common law or the law of equity including, without limitation, the warranties of merchantability, fitness for a particular purpose, quiet enjoyment, use of reasonable care and skill and non-infringement of proprietary rights, and any warranties arising out of course of dealing or usage of trade. Without limiting the generality of the foregoing, Action Point does not warrant that the Service is free from errors or that defects will be corrected. Action Point does not represent or warrant, expressly or impliedly, the quality, accuracy, completeness, timeliness, or reliability of the Cloud Services.

16.4 Action Point shall not be liable in respect of any delay in providing or failure to provide the Service or its breach of this Terms and Conditions where such a failure is due to circumstances beyond the reasonable control of Action Point, including but not limited to if such delay is due to actions of the Customer or a third party.

16.5 Subject to the provisions of this clause 16, Action Point's total aggregate liability to the Customer (whether for breach of contract, tort, including negligence or otherwise howsoever arising) shall not in any circumstances exceed the aggregate of the fees in the previous six months, which have discharged, for the relevant element of the service that is the subject of this Contract.

16.6 The Customer is required to maintain adequate insurance to provide for all potential losses.

16.7 Action Point has no liability to the Customer in respect of any loss of data howsoever arising.

17 GOVERNING LAW AND JURISDICTION

17.1 This Terms and Conditions and the relationship between the Parties shall be governed by, and interpreted in accordance with the laws of Ireland.

17.2 Each of the Parties agree that the courts of Ireland are to have exclusive jurisdiction to settle any dispute (including claims for set off and counterclaims) which may arise in connection with the creation, validity, effect, interpretation or performance of, or the legal relationships established by, this Terms and Conditions or otherwise arising in connection with this Terms and Conditions and for such purposes irrevocably submit to the jurisdiction of the courts of Ireland.

18 OTHER IMPORTANT TERMS

18.1 Action Point may transfer its rights and obligations to another organisation, but this will not affect the Customer's rights or our obligations under these Terms.

18.2 Each of the paragraphs of this Terms operates separately. If any court or relevant authority decides that any of them are unlawful or unenforceable, the remaining paragraphs will remain in full force and effect.

18.3 Nothing expressed or mentioned in or implied from this Terms is intended or shall be construed to give to any person other than the parties hereto any legal or equitable right, remedy or claim under or in respect to this Terms and Conditions. This Terms and all of the representations, warranties, covenants, conditions and provisions hereof are intended to be and are for the sole and exclusive benefit of Action Point, its affiliates and the Customer.

18.4 If Viatel fails to insist that the Customer performs any of their obligations under this Terms, or if Viatel do not enforce their rights against the Customer, or if Viatel delay in doing so, that will not mean that Viatel has waived its rights against the Customer and will not mean that the Customer will not have to comply with those obligations.