



Microsoft Azure Digital Partner of Record Statement of Work **Terms and Conditions**

These Terms and Conditions are an integral part of the BCM One Statement of Work (“SOW”) by and between BCM One and the Client and shall be deemed accepted by, and binding upon, Client in accordance with the terms of the SOW. These Terms and Conditions are subject to change upon written notice to Client.

1. **SERVICES.** BCM One shall provide to Client the Services set forth in the SOW.
2. **PARTNER OF RECORD.** Partner of Record (“PoR”) is the official way that Microsoft describes the partner chosen by a client to guide them through the selling and implementation process. Selecting a partner of record does not change the monthly subscription fee you pay to Microsoft to access your services, nor does it limit the support you receive from Microsoft.
3. **TERM.** The term of each Service shall be governed by the SOW.
4. **RATES AND CHARGES.** Client agrees to pay the rates and charges set forth in the SOW using the calculations set forth in the SOW or these Terms and Conditions, as applicable.
5. **TAXES.** All charges are exclusive of applicable taxes, tax-like charges and surcharges, which Client agrees to pay.
6. **PAYMENT.** Unless otherwise stated in the SOW Client must remit payment to BCM One for the full amount indicated in the invoice on or before the due date printed thereon (“Due Date”). Payments must be made at the address designated on the invoice or such other place as BCM One may designate. Client must not place any condition or restrictive legend, such as “Paid in Full,” on any check or instrument used to make a payment. The negotiation of any such check or instrument so inscribed shall not constitute an accord and satisfaction or novation, and Client waives its right to assert any such defense. Client shall be liable for the payment of all fees and expenses, including reasonable attorney’s fees, incurred by BCM One in collecting, or attempting to collect, any charges owed hereunder.
 - a. Client shall reimburse BCM One for all agreed upon expenses as invoiced by BCM One.
 - b. Any amount not paid on or before the Due Date, shall be considered to be past due and subject to a late payment charge equal to the lesser of: (i) one and one-half percent (1.5%) per month, compounded, or (ii) the maximum amount allowed by law, as applied against the past due amounts.
7. **BILLING DISPUTES.**
 - a. If Client disputes charges or application of taxes, Client must give BCM One written notice of such dispute within thirty (30) days of the date of the invoice. If notice of a dispute is not received by BCM One within the foregoing thirty (30) day period, such invoice shall be deemed to be correct and binding on Client. Notwithstanding the foregoing, if any charges are reasonably disputed by Client, such charges (along with late fees attributable to such charges) shall not be due and payable for a period of thirty (30) days following the Due Date, provided Client: (i) pays all undisputed charges on or before the respective Due Date, (ii) presents to BCM One on or before the respective Due Date a detailed written statement disputing such charges which statement shall include but is not limited to, documents concerning the disputed billing discrepancies, and (iii) negotiates in good faith with BCM One for the purpose of resolving such dispute within said thirty (30) day period. If Client does not pay any or all of the undisputed charges, BCM One shall have the right to exercise its remedies as described in Section 9 below. Nothing contained herein shall limit Client’s right to dispute amounts at any time following the applicable Due Date, however, BCM One shall not be obligated to consider any notice of disputed charges that it receives more than thirty (30) days following the Due Date of the respective invoice.
 - b. Each party agrees to negotiate in good faith for the purpose of resolving any properly raised dispute(s) relating to the Client’s invoice, subject to the following:

- i. if the dispute is mutually agreed upon and resolved in favor of BCM One, Client agrees to pay BCM One the disputed charges together with any applicable late fees within ten (10) days of resolution;
 - ii. if the dispute is mutually agreed upon and resolved in favor of Client, Client will receive a credit for the disputed charges and the applicable late fees on its next invoice; and
 - iii. if BCM One has responded to Client's dispute in writing and the parties fail to mutually resolve or settle the dispute within the prescribed thirty (30) day period (unless BCM One has agreed in writing to extend such period), all disputed amounts together with late fees shall be immediately due and payable.
8. **TERMINATION FOR CAUSE.** Either party may terminate the SOW for Cause. Except for failure to pay as specifically provided in Section 9 below, "Cause" shall mean a material breach by the other party of any material provision of the SOW, provided that written notice of the breach has been given to the breaching party and the breach has not been cured within thirty (30) days after delivery of such notice.
9. **TERMINATION BY BCM ONE.** In the event Client fails to pay an invoice by the Due Date, BCM One may issue a notice of default. If Client has not fully paid all undisputed invoices within ten (10) days of the default notice, such nonpayment shall be considered "Cause" for termination, and BCM One may terminate the SOW. In addition, BCM One may terminate the SOW immediately upon notice to Client if, as determined by BCM One in good faith, Client provides false information to BCM One regarding the Client's identity, creditworthiness or its planned use of the Services.
10. **CLIENT DATA.** Client's data ("Client Data", which shall also be known and treated by BCM One as Confidential Information of Client) shall include Client's data collected, used, processed, stored or generated as the result of the use of the Services.
11. **CONFIDENTIAL INFORMATION.**
 - a. Commencing on the Effective Date, and continuing for a period of three (3) years from the termination or expiration of the SOW or applicable Addendum, each party shall protect as confidential, and shall not disclose to any third party, any confidential information received from the disclosing party or otherwise discovered by the receiving party during the Term of the SOW, including, but not limited to, Client's Data, the pricing and terms of the SOW and any information relating to the disclosing party's technology, business affairs, and marketing or sales plans (collectively the "Confidential Information").
 - b. The parties shall use Confidential Information only for the purpose of the SOW. The foregoing restrictions on use and disclosure of Confidential Information do not apply to information that: (i) is in the possession of the receiving party at the time of its disclosure and is not otherwise subject to obligations of confidentiality; (ii) is or becomes publicly known through no wrongful act or omission of the receiving party; (iii) is received, without restriction, from a third party free to disclose it without obligation to the disclosing party; (iv) is developed, independently, by the receiving party without reference to the Confidential Information, or (v) is required to be disclosed by law, regulation, or court or governmental order.
 - c. Each party shall use the same standards it uses to protect its own confidential information to protect the Confidential Information and to prevent the disclosure of the Confidential Information of the other party, including protection against unauthorized use, access, disclosure by third parties or by the employees or agents of a party who did not have a need to have access to the Confidential Information of the other party.
 - d. If requested by the disclosing party, upon termination of the SOW or any Addendum thereto, the receiving party shall deliver to the disclosing party all notes, drawings, memoranda, correspondence, documents, records, notebooks, and similar repositories, whether electronic or hard copy, of Confidential Information of the disclosing party, including all copies thereof, then in the receiving party's possession or under the receiving party's control, whether prepared by the receiving party or by employees or agents of the receiving party.
12. **DISCLAIMER OF WARRANTIES.** EXCEPT AS SPECIFICALLY SET FORTH IN THE SOW, BCM ONE MAKES NO WARRANTIES, EXPRESS OR IMPLIED, AS TO ANY SERVICES, RELATED PRODUCTS, EQUIPMENT, SOFTWARE OR DOCUMENTATION. BCM ONE SPECIFICALLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION ANY

IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR TITLE OR NONINFRINGEMENT OF THIRD PARTY RIGHTS.

13. **DISCLAIMER OF CERTAIN DAMAGES.** NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR TO ANY THIRD PARTY FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL OR PUNITIVE DAMAGES, INCLUDING WITHOUT LIMITATION LOSS OF USE OR LOST BUSINESS, REVENUE, PROFITS OR GOODWILL, ARISING IN CONNECTION WITH THE SOW, UNDER ANY THEORY OR TORT, CONTRACT, INDEMNITY, WARRANTY, STRICT LIABILITY OR NEGLIGENCE, EVEN IF THE PARTY KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES.
14. **LIMITATION OF LIABILITY.** THE TOTAL LIABILITY OF EITHER PARTY TO THE OTHER IN CONNECTION WITH THE SOW, FOR ANY AND ALL CAUSES OF ACTIONS AND CLAIMS, INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATION AND OTHER TORTS, SHALL BE LIMITED TO THE AMOUNT PAID BY CLIENT TO BCM ONE OR DUE TO BCM ONE BY CLIENT PURSUANT TO ANY SOW. FURTHER IN NO EVENT SHALL BCM ONE BE LIABLE FOR CLIENT'S DATA OR FOR ANY DAMAGES THAT MAY OCCUR TO CLIENT'S DATA, BUSINESS, OR BUSINESS RELATIONSHIPS DUE TO THE MALFUNCTIONING OR UNAVAILABILITY OF THIRD PARTY SOFTWARE OR HARDWARE. THE FOREGOING LIMITATIONS OF LIABILITY SHALL NOT APPLY TO A PARTY'S LIABILITY FOR PERSONAL INJURY OR DAMAGE TO PHYSICAL PROPERTY CAUSED BY THE GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF SUCH PARTY.
15. **RELATIONSHIP OF THE PARTIES.** This SOW does not create a relationship between the parties as one of employer and employee, franchisor and franchisee, partners, or a joint venture. Neither party will have the right, power or authority (whether expressed or implied) to enter into or assume any duty or obligation on behalf of the other party. Further nothing in this SOW shall preclude or limit BCM One from independently acquiring or developing competitive products or services for itself or its clients, or from providing competitive products or services to its clients, so long as BCM One does not breach the obligations (including the obligations of confidentiality) it has assumed under this SOW.
16. **INDEMNIFICATION.**
 - a. Each party shall indemnify and hold harmless the other and its officers, directors, employees, agents, parent, affiliates, successors and assigns from and against all claims for damages, liabilities, or expenses, including reasonable attorney's fees (i) caused solely by the negligence of such party and (ii) from any and all claims and liability and related costs and expenses, including court costs and reasonable attorney fees, resulting from a material breach of the SOW.
 - b. Client shall indemnify and hold harmless BCM One and its officers, directors, employees, agents, parent, affiliates, successors and assigns from and against all claims for damages, liabilities, or expenses, including reasonable attorney's fees related to Client's modification of the Services delivered to Client, or any violation of BCM One's Acceptable Use Policy or Privacy Policy.
17. **NON-SOLICITATION.** During the term of this SOW and for a period of twelve (12) months after completion of all Services under the SOW, neither party shall directly or indirectly solicit for employment or hire or engage as a consultant, agent or independent contractor, any employee of the other party to this SOW who was working in connection with the SOW, without prior written consent from other party. For purposes of the foregoing, a person is deemed to be an employee during the term of employment and for ninety (90) days thereafter. This Section 17 shall not be deemed to prohibit: (a) any general solicitation for employment not specifically directed at any consultant, agent or independent contractor, any employee of the other party to this SOW who was working in connection with any SOW hereunder, (b) the employment of any person who has been terminated by the other party prior to commencement of the SOW, or (c) the employment of any individual with whom either party has not had any contact in connection with the SOW contemplated hereunder, or who did not participate in the SOW. Notwithstanding the foregoing, nothing in this paragraph shall relieve either party's employee of any duty or obligation arising under a non-compete agreement.
18. **ASSIGNMENT.** Neither party may assign the SOW or any of its rights thereunder without the prior written consent of the other party, which consent shall not be unreasonably withheld, except that (a) BCM One may assign its rights

and/or obligations under the SOW, (i) to any parent, affiliate or subsidiary, (ii) pursuant to any merger, acquisition, reorganization, sale or transfer of all or substantially all of its assets, or (iii) for purposes of financing; and (b) Client may assign its rights and/or obligations under the SOW, (i) to its parent, affiliates or subsidiaries, or (ii) pursuant to any merger, acquisition, reorganization, sale or transfer of all or substantially all of its assets, provided that any assignment by Client pursuant to this exception is subject to the following conditions: (a) the proposed assignee satisfies BCM One's then current credit and deposit standards; (b) Client has fully paid for all Services through the date of the assignment; and (c) the proposed assignee agrees in writing to be bound by all provisions of the SOW. Any assignment in violation of this Section is null and void.

19. **TERMS OF USE.** Client's use of the Services is subject to the terms of acceptable use and the privacy policy available at www.bcmone.com/legal/. These policies may be updated from time to time by BCM One upon notice to all Client's by posting to the BCM One website.
20. **PUBLICITY.** BCM One shall have the right to disclose its retention by Client, or the successful completion of its Services thereunder, and use any service mark or trademark of the Client in connection with any advertising, promotion, press release or publication, at its own expense.
21. **FORCE MAJEURE.** If either party's performance under the SOW or any obligation thereunder (excluding Client's obligation to pay for Services rendered by BCM One) is prevented, restricted or interfered with by causes beyond its reasonable control including, but not limited to, acts of God, fire, explosion, vandalism, cable cut by a third party, storm or other similar occurrence, any law, order, regulation, direction, action or request of the United States government, or state or local governments, or of any department, agency, commission, court, bureau, corporation or other instrumentality of anyone or more such governments, or of any civil or military authority, or by national emergency, insurrection, riot, war, strike, lockout or work stoppage or other labor difficulties, or supplier failure, shortage, breach or delay, then the affected party shall be excused from such performance on a day-to-day basis to the extent of such restriction or interference. The affected party shall use reasonable efforts under the circumstances to avoid or remove such causes of nonperformance and shall proceed to perform with reasonable dispatch whenever such causes are removed or cease.
22. **THIRD PARTY BENEFICIARIES.** Unless otherwise agreed, this SOW does not create any third-party beneficiary rights in any individual or entity that is not a party to the SOW.
23. **COMPLIANCE WITH LAWS.** Each party agrees to comply with all applicable laws in connection with the Agreement, including all applicable import, re-import, export, and re-export control laws and regulations, including the Export Administration Regulations, the International Traffic in Arms Regulations, and country-specific economic sanctions programs implemented by the Office of Foreign Assets Control. For clarity, Client is solely responsible for compliance related to the manner in which chooses to use the SOW and Services delivered hereunder, including transfer and processing of content and the provision of content to any users.
24. **GOVERNING LAW.** The SOW (including these Terms and Conditions) shall be governed by the laws of the State of New York without regard to its choice of law principles. The parties consent to the jurisdiction of the federal and state courts located in the county of New York and the state of New York, waiving any objection to forum nonconveniens and personal jurisdiction.

25. NOTICE. All notices, requests, or other communications (excluding invoices) hereunder shall be in writing and either transmitted via overnight courier, electronic mail, hand delivery or certified or registered mail, postage prepaid and return receipt requested to the parties at the following addresses. Notices will be deemed to have been given when received (or delivery refused).

To BCM One:

BCM One, Inc.
521 Fifth Avenue, 14th Floor
New York, NY 10175
Attn: General Counsel

To Client:

At the address provided on the SOW.

Either party may change its address by providing notice of such address change to the other party in the manner set forth above.

26. NO WAIVER. The failure to enforce any provision or term of the SOW or any other document that becomes part of the SOW including these Terms and Conditions, shall not be construed as a future or continuing waiver of any provision or term of any of the above.

27. SEVERABILITY. If any provision under the SOW or any other document that becomes part of the SOW including these Terms and Conditions are declared or held to be invalid, illegal or unenforceable, all of the foregoing shall be revised only to the extent necessary to make such provision(s) legal and enforceable, or if impossible, the unaffected portions of either or both shall remain in full force and effect, provided that the modification is consistent with the original intent.

28. ENTIRE AGREEMENT. These Terms and Conditions, and the SOW (and any attachments and other documents incorporated therein by reference) constitute the entire agreement between the parties with respect to the services provided under the SOW and supersedes all other representations, understandings or agreements that are not expressed therein, whether oral or written. Except as otherwise set forth in the SOW, no amendment to the SOW shall be valid unless in writing and signed by both parties.