

This Product Schedule (the “**Schedule**”), between Intermedia Technologies Company Limited (“**Intermedia**”) and the customer entity purchasing any of the Microsoft 365 Services (as defined below) (“**You**”) is effective immediately and is issued pursuant to and incorporates by reference the terms and conditions of the Master Service Agreement (the “**MSA**”) by and between Intermedia and You.

All capitalized terms in this Schedule shall have the same meaning as set forth in the MSA, unless defined herein. In the event of a conflict or inconsistency between the terms of the MSA and the terms of this Schedule, the latter shall supersede and govern.

### 1. Products Covered

The terms of this Schedule apply to all Microsoft 365 (formerly Office 365) services, including without limitation Microsoft 365 email and productivity applications such as Microsoft 365 Apps (collectively, the “**Microsoft 365 Services**”) purchased by You from Intermedia.

The term “**Commercial Microsoft 365 License**” includes Microsoft 365 business and enterprise subscriptions, but excludes Public Sector Microsoft 365 Licenses (as defined below).

The term “**Public Sector Microsoft 365 License**” includes Microsoft 365 academic/education, government, and nonprofit subscriptions that, in each case, are contingent upon You obtaining approval from Microsoft for authorization to purchase such subscriptions.

### 2. Transition to Microsoft New Commerce Experience (“**NCE**”) Platform

Beginning in early 2022, Microsoft began to transition its Microsoft 365 Services to its New Commerce Experience (NCE) platform.

Legacy Subscriptions:

- Subscriptions to Microsoft 365 Services created on Microsoft’s legacy platform (i.e., not on the NCE platform) are defined as “**Legacy Subscriptions**.” The subscription type for each of Your Microsoft 365 Service subscriptions is displayed in Intermedia’s HostPilot® control panel, partner portal or other Intermedia-provided web portal.
- Legacy Subscriptions have a twelve (12) month term, billed monthly.
- Legacy Subscriptions with a renewal date before the applicable NCE Migration Date<sup>1</sup> will automatically be renewed on Microsoft’s legacy platform, unless You choose (in Intermedia’s HostPilot control panel, partner portal or other Intermedia-provided web portal) to renew on the NCE platform.
- Legacy Subscriptions with a renewal date on or after the applicable NCE Migration Date must be transitioned to NCE Subscriptions (as defined below) on or before their renewal date.
- Legacy Subscriptions with a renewal date on or after the applicable NCE Migration Date will automatically renew as an **annual** subscription on Microsoft’s NCE platform, unless You choose (in Intermedia’s HostPilot control panel, partner portal or other Intermedia-provided web portal) to renew as a monthly subscription on the NCE platform, subject to the terms and conditions applicable to NCE Subscriptions.
- Subscription renewal dates are displayed in Intermedia’s HostPilot control panel, partner portal or other Intermedia-provided web portal.

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<sup>1</sup> As of the date of this Schedule, Microsoft is requiring all Commercial Microsoft 365 License subscriptions to be renewed and licensed under (i.e., migrate to) the NCE platform, effective January 1, 2024 (the “Commercial NCE Migration Date”). The Commercial NCE Migration Date and the Public Sector NCE Migration Date (as defined below) are two different dates, and they are collectively referred to in this Schedule as “the applicable NCE Migration Date.”

#### NCE Subscriptions:

- Subscriptions to Microsoft 365 Services created on Microsoft's NCE platform are "NCE Subscriptions" (as defined below). The subscription type for each of Your Microsoft 365 Service subscriptions is displayed in Intermedia's HostPilot control panel, partner portal or other Intermedia-provided web portal.
- All new Commercial Microsoft 365 License subscriptions to Microsoft 365 Services created on or after March 10, 2022, and all Commercial Microsoft 365 License renewal subscriptions to Microsoft 365 Services on or after the Commercial NCE Migration Date (in each case unless otherwise labeled and displayed in Intermedia's HostPilot control panel, partner portal or other Intermedia-provided web portal), must be created on the NCE platform and will be subject to the terms and conditions applicable to NCE Subscriptions.
- All new Public Sector Microsoft 365 License subscriptions to Microsoft 365 Services created on or after January 1, 2024, and all Public Sector Microsoft 365 License renewal subscriptions to Microsoft 365 Services on or after the Public Sector NCE Migration Date<sup>2</sup> (in each case unless otherwise labeled and displayed in Intermedia's HostPilot control panel, partner portal or other Intermedia-provided web portal), must be created on the NCE platform and will be subject to the terms and conditions applicable to NCE Subscriptions.
- NCE Subscriptions are available as either monthly or annual term commitments, billed monthly. Longer terms may be available in the future.
- NCE Subscriptions can only be cancelled by You (whether through cancellation of the entire purchase or through a reduction in the number of seats) within the first seven (7) calendar days following the purchase/renewal date (i.e., if an NCE Subscription is not cancelled or seats are not reduced during that time period, the purchaser is committed to pay the service fees for the Microsoft 365 Services for the full duration of the NCE Subscription).
- NCE Subscriptions cannot be cancelled by You (whether through cancellation of the entire purchase or through a reduction in the number of seats) after the first seven (7) calendar days following the purchase/renewal date (i.e., if an NCE Subscription is not cancelled or seats are not reduced during that time period, the purchaser is committed to pay the service fees for the Microsoft 365 Services for the full duration of the NCE Subscription). NOTE: This cancellation window only applies to new NCE Subscriptions for an account or renewals of NCE Subscriptions; there is no cancellation window for seats added to existing subscriptions (i.e., additional seats of a service for which the purchasing account already has existing subscriptions).
- Subscription renewal dates are displayed in Intermedia's HostPilot control panel, partner portal or other Intermedia-provided web portal.

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<sup>2</sup> As of the date of this Schedule, Microsoft is requiring all Public Sector Microsoft 365 License subscriptions to Microsoft 365 to be renewed and licensed under (i.e., migrate to) the NCE platform, effective July 1, 2024 (the "Public Sector NCE Migration Date").

Below is a summary of the differences in certain key terms between Legacy Subscriptions and NCE Subscriptions:

	LEGACY SUBSCRIPTIONS	NCE SUBSCRIPTIONS
<b>Subscription Terms</b>	Annual (paid monthly)	Available in month-to-month or annual (paid monthly) subscriptions
<b>Cancellations</b>	Cancel at any time	Cannot cancel after the first seven calendar days <sup>3</sup> following the purchase/renewal date. Customer is responsible for all fees for the term of the subscription. According to Microsoft, there are no exceptions to this rule.
<b>Changes to Seats</b>	Decrease or increase seats with no cancellation fees <sup>4</sup>	<ul style="list-style-type: none"> <li>• Can increase seats at any time</li> <li>• Cannot decrease seats</li> <li>• Plan upgrades within product families supported</li> <li>• Plan downgrades not allowed</li> </ul>
<b>Pricing</b>	Annual price locked for length of 12-month term	<ul style="list-style-type: none"> <li>• Annual price locked for length of 12-month term</li> <li>• Monthly subscriptions priced at 20% premium over annual subscription (and price is not locked beyond current month of service)</li> </ul>

### 3. Available Plans and Effect of Termination

#### Legacy Subscriptions:

Section 2.2(b) of the MSA does not apply to Legacy Subscriptions of Microsoft 365 Services and is replaced by the following terms:

Legacy Subscriptions are all structured as Annual Plans with a single term of twelve (12) months. Legacy Subscriptions that are terminated during such twelve (12) month term will not incur an early termination charge\*. However, Commercial Microsoft 365 License Legacy Subscriptions that are terminated on or after March 10, 2022 and Public Sector Microsoft 365 License Legacy Subscriptions that are terminated on or after January 1, 2024, may not be repurchased on the Legacy Platform (i.e., if such subscriptions are repurchased, they must be repurchased on the NCE Platform and will be subject to the terms and conditions applicable to NCE Subscriptions). Commercial Microsoft 365 License Legacy Subscriptions will renew on the same terms upon expiration of such twelve (12) month term, until the Commercial NCE Migration Date\*. Public Sector Microsoft 365 License Legacy Subscriptions will renew on the same terms upon expiration of such twelve (12) month term, until the Public Sector NCE Migration Date^.

<sup>3</sup> This cancellation window only applies to new NCE Subscriptions for an account or renewals of NCE Subscriptions; there is no cancellation window for seats added to existing subscriptions (i.e., additional seats of a service for which the purchasing account already has existing subscriptions).

<sup>4</sup> Based on Microsoft's current practice, as of the date of this Schedule, of not charging early termination fees to Intermedia for the termination or cancellation of a Legacy Subscription. Microsoft's practice may be changed at any time with little or no notice, and Intermedia reserves the right to charge early termination fees in connection with any Legacy Subscriptions that are cancelled prior to their expiration, including Your subscription described by this Schedule. To the extent practical, Intermedia will use commercially reasonable efforts to provide You with advance notice of any change in Intermedia's policy with respect to charging early termination fees in connection with the cancellation of any Legacy Subscriptions.

Alternatively, You may select, at any time, to migrate a Legacy Subscription into an NCE Subscription at such time. Legacy Subscriptions that are terminated in order to migrate (i.e., be converted) to the NCE Platform will not incur an early termination charge\*. Please note, however, that any termination of a (a) Commercial Microsoft 365 License Legacy Subscription on or after March 10, 2022 or (b) Public Sector Microsoft 365 License Legacy Subscription on or after January 1, 2024 cannot be reversed.

- \* Based on Microsoft's current practice, as of the date of this Schedule, of not charging early termination fees to Intermedia for the termination or cancellation of a Legacy Subscription. Microsoft's practice may be changed at any time with little or no notice, and Intermedia reserves the right to charge early termination fees in connection with any Legacy Subscriptions that are cancelled prior to their expiration, including Your subscription described by this Schedule. To the extent practical, Intermedia will use commercially reasonable efforts to provide You with advance notice of any change in Intermedia's policy with respect to charging early termination fees in connection with the cancellation of any Legacy Subscriptions.
- + As of the date of this Schedule, Microsoft is requiring all Commercial Microsoft 365 License subscriptions to be renewed and licensed under (i.e., migrate to) the NCE platform, effective on the Commercial NCE Migration Date (see Footnote 1 in this Schedule for more information).
- ^ As of the date of this Schedule, Microsoft is requiring all Public Sector Microsoft 365 License subscriptions to be renewed and licensed under (i.e., migrate to) the NCE platform, effective on the Public Sector NCE Migration Date (see Footnote 2 in this Schedule for more information).

### NCE Subscriptions

All new Commercial Microsoft 365 License subscriptions, effective March 10, 2022, must be licensed under the Microsoft NCE platform. **Effective on and after the Commercial NCE Migration Date**, all Legacy Subscriptions for Commercial Microsoft 365 Licenses will need to be licensed under the Microsoft NCE platform.

All new Public Sector Microsoft 365 License subscriptions, effective January 1, 2024, must be licensed under the Microsoft NCE platform. **Effective on and after the Public Sector NCE Migration Date**, all Legacy Subscriptions for Public Sector Microsoft 365 Licenses will need to be licensed under the Microsoft NCE platform.

All such subscriptions on the NCE platform will be available as either an annual plan (i.e., an initial term of twelve (12) months, automatically renewing for twelve (12) month periods thereafter) (an "**Annual NCE Subscription**") or a monthly plan (i.e., an initial term of one (1) month, automatically renewing for one (1) month periods thereafter) (a "**Monthly NCE Subscription**"; Annual NCE Subscriptions and Monthly NCE Subscriptions are collectively referred to as "**NCE Subscriptions**"). You will have the option of selecting whether You desire Annual NCE Subscriptions or Monthly NCE Subscriptions at the time of purchase (or at the time of renewal). Section 2.2(b) of the MSA does not apply to NCE Subscriptions to Microsoft 365 Services and is replaced by the following terms:

- Annual NCE Subscriptions:

Annual NCE Subscriptions for Microsoft 365 Services constitute a one-year commitment by You to purchase and pay for the applicable Microsoft 365 Service licenses and may not be terminated by You until the applicable license expiration date. You are responsible for all fees and charges under an Annual NCE Subscription through the full duration of the then-current twelve (12) month term (i.e., until the license expiration date) of Your Annual NCE Subscriptions to Microsoft 365 Services ("**Full Contract Fees**"). You are not permitted to terminate an Annual NCE Subscription for a Microsoft 365

Service prior to its expiration. If, notwithstanding the foregoing, you seek to terminate an Annual NCE Subscription prior to its expiration, Intermedia reserves the right to immediately collect from You all Full Contract Fees under the then-current Annual NCE Subscription not previously paid by You to Intermedia. Once You select an Annual NCE Subscription for a Microsoft 365 Service license, such license will thereafter automatically renew as an Annual NCE Subscription for twelve (12) month renewal periods until terminated or modified in accordance with the terms of Your agreement with Intermedia, including without limitation, this Schedule.

- Monthly NCE Subscriptions:

Monthly NCE Subscriptions are available for Microsoft 365 Services at a higher monthly price than Annual NCE Subscriptions. Monthly NCE Subscriptions for Microsoft 365 Services constitute a month-to-month arrangement to purchase and pay for the applicable Microsoft 365 Service licenses, and You may terminate any Monthly NCE Subscription for Microsoft 365 Services for any reason by cancelling the Monthly NCE Subscription in Intermedia's HostPilot control panel, partner portal or other Intermedia-provided web portal. In the event of any such termination, (a) the termination will be effective as of the license expiration date of the then-current Monthly NCE Subscription for the applicable Microsoft 365 Service; (b) You will be responsible for all fees and charges for such Monthly NCE Subscriptions through and including the license expiration date of such subscriptions; and (c) You will not be entitled to any refund for fees that have previously been paid. A Monthly NCE Subscription for a Microsoft 365 Service license will automatically renew as a Monthly NCE Subscription for one (1) month renewal periods until terminated or modified in accordance with the terms of Your agreement with Intermedia, including, without limitation, this Schedule.

#### **4. Additional User Licenses and Plan Upgrades/Downgrades**

##### Additional User Licenses

If You purchase additional user licenses of a Microsoft 365 Service for which You have an existing subscription (at the time of such additional purchase), the additional licenses being purchased will be structured to be coterminous with (i.e., have the same license expiration date as), and will be subject to the same pricing as, Your existing Legacy Subscriptions, Annual NCE Subscriptions or Monthly NCE Subscriptions (as applicable) for such Microsoft 365 Service.

##### Plan Upgrades During the Term of a Subscription

The Microsoft NCE platform provides an upgrade path allowing You to upgrade from your current Microsoft 365 Service subscription to a more advanced Microsoft 365 Service subscription. Microsoft, in its sole and absolute discretion, will determine what Microsoft 365 Service subscriptions are eligible to be upgraded and what Microsoft 365 Service subscription changes qualify as an upgrade.

For requested Microsoft 365 Service subscription upgrades, You must contact Intermedia to determine Your eligibility for an upgrade and to properly implement such upgrade. You may not incur any early termination fees in connection with a qualified upgrade, subject to Microsoft's policies in effect at the time of such upgrade. For a valid Microsoft 365 Service subscription upgrade, the new NCE Subscription for the upgraded Microsoft 365 Service will be coterminous with (a) the previous subscription from which it was upgraded or (b) if You already have existing NCE Subscriptions for the upgraded Microsoft 365 Service in Your Account (and if You inform Intermedia of such request at the time of the upgrade), the existing NCE Subscription to which it was upgraded, in each case subject to the terms and conditions of NCE Subscriptions set forth herein. For clarity, You can only upgrade the following subscriptions: (i) Annual NCE Subscription to another Annual NCE Subscription or (ii) Monthly NCE Subscription to another Monthly NCE Subscription or Annual NCE Subscription;

however, You cannot upgrade an Annual NCE Subscription to a Monthly NCE Subscription. Legacy Subscriptions cannot be upgraded to Microsoft's NCE platform.

#### Plan Downgrades During the Term of a Subscription

If You downgrade NCE Subscriptions for a Microsoft 365 Service to NCE Subscriptions for a lesser plan for the same Microsoft 365 Service, such downgrade will be treated as if You were seeking to cancel Your existing NCE Subscriptions, and You will be responsible for paying the Full Contract Fees remaining under Your existing NCE Subscriptions, plus the service fees for the new subscriptions to the lesser plan). Microsoft, in its sole and absolute discretion, will determine what Microsoft 365 Service subscription changes constitute a downgrade.

### **5. Restrictions**

You shall not, for yourself or through any affiliate, agent, or other third party, extract, remove or reuse images, software, or commercial licenses of Intermedia without Intermedia's specific prior written consent. You shall regularly and accurately report the number of users of the Microsoft 365 Services under your subscription described hereby.

Intermedia has the right to sell Microsoft 365 Services to purchasers only in certain countries (the "**Territory**") (note: as of the date of this Schedule, with respect to resellers and direct customers in the United States, and to direct customers in the United Kingdom and the European Union, Intermedia only has the right to sell Microsoft 365 Services to direct customers). By purchasing the Services, You represent, warrant and covenant that (a) You are providing complete and accurate data to Intermedia regarding the location of Your business and, as applicable, end customers for the Services; and (b) You are not placing orders or submitting payments with respect to Microsoft 365 Services for customers located outside of the Territory.

Intermedia will have the right during the term of the MSA, at its own expense and not more than once each calendar year, to audit Your processes, procedures, records, and other documentation relevant to establish Your compliance with the restrictions in this Section 5; provided, however, that: (a) any such inspection and audit will be conducted at Your place of business during regular business hours with reasonable notice of the audit, in such a manner as not to interfere with Your normal business activities, and (b) if any audit should disclose a noncompliance by You, then You shall promptly take such actions as necessary to comply with this Section 5, pay all fees and charges associated with such noncompliance and reimburse Intermedia for the reasonable costs associated with the performance of such audit, and Intermedia reserves the right to terminate the MSA or this Schedule immediately due to Your material breach.

### **6. Microsoft Terms**

By purchasing a subscription to Microsoft 365 Services, and continuing to use such Services, You (i) acknowledge that Intermedia's ability to provide Microsoft 365 Services to You is contingent upon your continued compliance with certain Microsoft terms and conditions and (ii) agree to the Microsoft Customer Agreement (the version of the Microsoft Customer Agreement for the United Kingdom as of the date of this Schedule is attached hereto as Appendix A; current versions applicable to all countries can be found at: <https://www.microsoft.com/licensing/docs/customeragreement>) and all other policies, terms and agreements referenced therein, which are generally available on Microsoft's website at: <http://www.microsoftvolumelicensing.com>.

### **7. Special Terms Related to Microsoft's Government Community Cloud Environment**

The provision of Microsoft/Office 365 Government Services, delivered through Microsoft's Government Community Cloud environment, and the pricing for such Services are contingent upon Microsoft approval that You comply with Microsoft's requirements for eligibility, as described in the

following document: [Microsoft Government Eligibility Definition \(North America\)](#). Should You fail to meet or no longer comply with the eligibility requirements for the Microsoft/Office 365 Government Services, You agree that You will notify Intermedia immediately. Intermedia will use commercially reasonable efforts to assist You in obtaining Microsoft's approval; however, Microsoft in its sole and absolute discretion will determine if You are eligible for the applicable products and pricing ordered hereunder. Microsoft may contact You with further inquiries regarding Your eligibility.

Intermedia's add-on Services (including, without limitation, Email Archiving and Outlook Backup for Microsoft 365) (a) may not meet Microsoft's Microsoft/Office 365 Government Services program compliance and data protection commitments and (b) may not comply with all of the government regulations and requirements, or meet the applicable certifications and accreditations, in each case that may be offered by the Microsoft Services delivered under Microsoft's Microsoft/Office 365 Government Services program.

## **8. Special Terms Related to Microsoft Copilot for Microsoft 365**

By purchasing a subscription to Microsoft Copilot for Microsoft 365 ("Copilot"), You acknowledge and agree that You are subject to the Microsoft Universal Terms for Online Services in the Microsoft Product Terms (i.e., the Microsoft Customer Agreement version), which can be found at <https://www.microsoft.com/licensing/terms/product/ForOnlineServices/MCA>, as well as the policies, terms and agreements referenced therein, including without limitation the Microsoft Generative AI Services terms included in Microsoft's Universal Terms for Online Services.

## **9. Service Level Agreement**

The Intermedia SLA does not cover Microsoft 365 Services. Intermedia does not offer a separate Service Level Agreement for Microsoft 365 Services. The "SLA" or "Service Level Agreement," as those terms are used in the MSA, refers to the Service Level Agreement offered by Microsoft with respect to Microsoft 365 Services, as it may be in effect from time to time. Please refer to <http://www.microsoftvolumelicensing.com/> for the current Microsoft SLA for Microsoft 365 Services.

## **10. Pricing**

Details of service-specific pricing available to You for Microsoft 365 Services can be accessed via the HostPilot control panel, partner portal or other Intermedia-provided web portal.

## **11. Storage Limits**

All Microsoft 365 Services shall at all times be subject to Microsoft's mailbox storage limits ("Limits") based on mailbox type and the applicable user's subscription license. Such Limits are available on Microsoft's website and are subject to change, without notice, at the discretion of Microsoft: <https://learn.microsoft.com/en-us/office365/servicedescriptions/exchange-online-service-description/exchange-online-limits#mailbox-storage-limits>.

## **12. Applicable to Microsoft 365 Email Only: Administrative Access to Microsoft Online Services account (including Your Microsoft 365 account)**

In order for Intermedia to administer and provide support for Your Microsoft 365 email services, You must grant administrative access (i.e., Granular Delegated Admin Privileges (GDAP)) to Intermedia to Your Microsoft Online Services account (including your Microsoft 365 account). This provides Intermedia with broad rights to access Your account. You will be required to acknowledge and agree to Microsoft's terms, conditions and disclaimers in connection with approving Intermedia's request to be granted administrative access rights with respect to Your account, including without limitation the applicable terms set forth in the Microsoft Customer Agreement. Further, You agree that Intermedia will not be held responsible or made liable for any loss of personal data and/or damages caused in connection with or as a result of Intermedia's status as an administrator of Your Microsoft Online

Services account or any actions performed by Intermedia in such role, unless such loss or damages are the direct result of Intermedia's gross negligence or willful misconduct. You may disable Intermedia's administrative access rights at any time through the Microsoft portal; however, Intermedia will be unable to administer Your Microsoft 365 email services at any time that Intermedia does not hold administrative access rights to Your Microsoft Online Services account.

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## APPENDIX A. MICROSOFT CUSTOMER AGREEMENT

# Microsoft Customer Agreement

This Microsoft Customer Agreement (the “Agreement”) is between Customer and Microsoft and consists of these General Terms, the DPA, the applicable Product Terms and SLAs, and any additional terms Microsoft presents when an order is placed. This Agreement takes effect when the Customer accepts it, applies to any order under this Agreement, and supersedes any end user license agreement that accompanies a Product. The individual who accepts the Agreement represents that they are authorized to enter into this Agreement on behalf of Customer. Capitalized terms have the meanings given under “Definitions.”

## General Terms

### ***License to use Microsoft Products***

- a. Licenses for Products.** Products are licensed and not sold. Upon Microsoft’s acceptance of each order and subject to Customer’s compliance with this Agreement, Microsoft grants Customer a nonexclusive and limited license to use the Products ordered as provided in this Agreement. These licenses are solely for Customer’s own use and business purposes and are nontransferable except as expressly permitted under this Agreement or applicable law.
- b. Duration of licenses.** Online Services and some Software are licensed on a subscription basis for a specified period of time. Subscriptions expire at the end of the applicable subscription period unless renewed. Some Subscriptions renew automatically until canceled. The Subscription term for Online Services that are billed in arrears based on usage is the same as the billing period unless otherwise specified in the Product Terms. Perpetual Software licenses become perpetual upon payment in full.
- c. End Users.** Customer will control access to, and use of, the Products by End Users and is responsible for any use of the Products that does not comply with this Agreement.
- d. Affiliates.** Customer may order Products for use by its Affiliates. If it does, the licenses granted to Customer under this Agreement will apply to such Affiliates, but Customer will have the sole right to enforce this Agreement against Microsoft. Customer will remain responsible for all obligations under this Agreement and for its Affiliates’ compliance with this Agreement.
- e. Reservation of Rights.** Microsoft reserves all rights not expressly granted in this Agreement. Products and Services Deliverables are protected by copyright and other intellectual property laws and international treaties. No rights will be granted or implied by waiver or estoppel. Rights to access or use a Product on a device do not give Customer any right to implement Microsoft patents or other Microsoft intellectual property in the device itself or in any other software or devices.
- f. Restrictions.** Except as expressly permitted in this Agreement or Product documentation, Customer must not (and is not licensed to):
  - (i)** reverse engineer, decompile, or disassemble any Product or Services Deliverable, or attempt to do so (except where applicable law permits despite this limitation);
  - (ii)** install or use non-Microsoft software or technology in any way that would subject Microsoft’s intellectual property or technology to any other license terms;
  - (iii)** work around any technical limitations in a Product or Services Deliverable or restrictions in Product documentation;
  - (iv)** separate and run parts of a Product or Services Deliverable on more than one device;

- (v) upgrade or downgrade parts of a Product at different times;
- (vi) transfer parts of a Product separately; or
- (vii) distribute, sublicense, rent, lease, or lend any Products or Services Deliverables, in whole or in part, or use them to offer hosting services to a third party.

- g. License transfers.** Customer may only transfer fully-paid, perpetual licenses under this Agreement to (1) an Affiliate or (2) a third party solely in connection with the transfer of hardware to which, or employees to whom, the licenses have been assigned as part of (a) a divestiture of all or part of an Affiliate or (b) a merger involving Customer or an Affiliate. Upon such transfer, Customer must uninstall and discontinue using the licensed Product and render any copies unusable. Customer must provide the transferee a copy of these General Terms, the applicable Use Rights and any other documents necessary to show the scope, purpose and limitations of the licenses transferred. Nothing in this Agreement prohibits the transfer of Software to the extent allowed under applicable law if the distribution right has been exhausted.
- h. Customer Eligibility.** Customer agrees that if it is purchasing academic, government or nonprofit Products, Customer meets the respective eligibility requirements (<https://aka.ms/eligibilitydefinition>). Microsoft reserves the right to verify eligibility and suspend Product use if requirements are not met.

### ***Professional Services***

- a. Performance of Professional Services.** Upon Microsoft's acceptance of each Statement of Services and subject to Customer's compliance with this Agreement, Microsoft will perform the Professional Services ordered as provided in this Agreement and the applicable Statement of Services.
- b. Fixes.** Each Fix is licensed under the same terms as the Product to which it applies. If a Fix is not provided for a specific Product, any use rights Microsoft provides with the Fix will apply.
- c. Pre-existing Work.** All rights in any computer code or other written materials a party develops or obtains independent of this Agreement ("Pre-existing Work") will remain the sole property of the party providing it. Each party may use, reproduce, and modify the other party's Pre-existing Work only as needed to perform obligations related to Professional Services.
- d. Services Deliverables.** Subject to Customer's compliance with this Agreement, Microsoft grants Customer a non-exclusive, limited license to use and modify the Services Deliverables as provided in this Agreement, including, without limitation, the reservation of rights, restrictions, and license transfer provisions under the section entitled License to use Microsoft Products. These licenses are solely for Customer's own use and business purposes in connection with its use of Products and are nontransferable except as expressly permitted under this Agreement or applicable law.
- e. Affiliates' rights to Services Deliverables.** Customer may sublicense its rights in Services Deliverables to its Affiliates, but Customer's Affiliates may not sublicense these rights. Customer is liable for ensuring its Affiliates' compliance with this Agreement.

### ***Non-Microsoft Products***

Non-Microsoft Products are provided under separate terms by the Publishers of such products. Customer will have an opportunity to review those terms prior to placing an order for a Non-Microsoft Product through a Microsoft online store or Online Service. Microsoft is not a party to the terms between Customer and the Publisher. Microsoft may provide Customer's contact information and transaction details to the Publisher. Microsoft makes no warranties and assumes no responsibility or liability whatsoever for Non-Microsoft Products. Customer is solely responsible and liable for its use of any Non-Microsoft Product.

### ***Verifying compliance***

- a. Verification process.** Customer must keep records relating to Products it and its Affiliates use or distribute. At Microsoft's expense, Microsoft may verify Customer's and its Affiliates' compliance with this

Agreement at any time upon 30 days' notice. Microsoft may engage an independent auditor under nondisclosure obligations to perform the verification. Customer must promptly provide any information and documents that Microsoft or the auditor reasonably requests related to the verification and visual access to systems running the Products. All information and reports related to the verification process will be Confidential Information and used solely to verify compliance.

- b. Remedies for non-compliance.** If verification reveals any unlicensed use, Customer must, within 30 days, order sufficient licenses to cover the period of its unlicensed use. Without limiting Microsoft's other remedies, if unlicensed use is 5% or more of Customer's total use of all Products, Customer must reimburse Microsoft for its costs incurred in verification and acquire sufficient licenses to cover its unlicensed use at 125% of the then-current Customer price or the maximum allowed under applicable law, if less.

## ***Data Protection and Processing***

Microsoft and its Affiliates, and their respective agents and subcontractors, will process Customer Data, Personal Data, and Professional Services Data as provided in this Agreement and the DPA, which is incorporated by reference. Before providing Personal Data to Microsoft, Customer will obtain all required consents from third parties (including Customer's contacts, Partners, distributors, administrators, and employees) under applicable privacy and data protection laws.

## ***Confidentiality***

- a. Confidential Information.** "Confidential Information" is non-public information that is designated "confidential" or that a reasonable person should understand is confidential, including, but not limited to, Customer Data, Professional Services Data, the terms of this Agreement, and Customer's account authentication credentials. Confidential Information does not include information that (1) becomes publicly available without a breach of a confidentiality obligation; (2) the receiving party received lawfully from another source without a confidentiality obligation; (3) is independently developed; or (4) is a comment or suggestion volunteered about the other party's business, products, or services.
- b. Protection of Confidential Information.** Each party will take reasonable steps to protect the other's Confidential Information and will use the other party's Confidential Information only for purposes of the parties' business relationship. Neither party will disclose Confidential Information to third parties, except to its Representatives, and then only on a need-to-know basis under nondisclosure obligations at least as protective as this Agreement. Each party remains responsible for the use of Confidential Information by its Representatives and, in the event of discovery of any unauthorized use or disclosure, must promptly notify the other party. The Product Terms and DPA provide additional terms regarding the disclosure and use of Customer Data.
- c. Disclosure required by law.** A party may disclose the other's Confidential Information if required by law, but only after it notifies the other party (if legally permissible) to enable the other party to seek a protective order.
- d. Residual information.** Neither party is required to restrict work assignments of its Representatives who have had access to Confidential Information. Each party agrees that the use of information retained in Representatives' unaided memories in the development or deployment of the parties' respective products or services does not create liability under this Agreement or trade secret law, and each party agrees to limit what it discloses to the other accordingly.
- e. Duration of Confidentiality obligation.** These obligations apply: (1) for Customer Data, until it is deleted from the Online Services; and (2) for all other Confidential Information, for a period of five years after a party receives the Confidential Information.

## **Warranties**

- a. Limited warranties and remedies.** To the extent permitted by applicable law, the remedies below are Customer's sole remedies for breach of the warranties provided in this section, and Customer waives any warranty claims not made during the applicable warranty period.
  - (i) Online Services.** Microsoft warrants that each Online Service will perform in accordance with the applicable SLA during Customer's use. Customer's remedies for breach of this warranty are described in the SLA.
  - (ii) Software.** Microsoft warrants that the Software version that is current at the time Customer acquires it will perform substantially as described in the applicable Product documentation for one year from the date Customer acquires a license for that version. If it does not, and Customer notifies Microsoft within the warranty term, Microsoft will, at its option, (1) return the amount Customer paid for the Software license or a prorated portion of the applicable subscription fee or (2) repair or replace the Software.
  - (iii) Professional Services.** Microsoft warrants that it will perform Professional Services with the applicable professional standard of care and skill in the industry. If Microsoft fails to do so, and Customer notifies Microsoft within 90 days from the completion of the work giving rise to the warranty claim, then Microsoft will, at its discretion, either re-perform the Professional Services or return the amount Customer paid for them.
- b. Exclusions.** The warranties in this Agreement do not apply to problems caused by accident, abuse, or use inconsistent with this Agreement or applicable documentation, including failure to meet minimum system requirements. These warranties do not apply to free, trial, preview, or prerelease products, or to components of Products that Customer is permitted to redistribute.
- c. Disclaimer.** Except for the limited warranties above or as required by applicable law, Microsoft provides no other warranties or conditions and disclaims any other express, implied, or statutory warranties and conditions, including warranties and conditions of quality, title, non-infringement, merchantability, and fitness for a particular purpose. Professional Services that are provided without charge are provided "AS IS," WITHOUT ANY WARRANTY OR CONDITION.

## **Defense of third-party claims**

The parties will defend each other against the third-party claims described in this section and will pay the amount of any resulting adverse final judgment or approved settlement, but only if the defending party is promptly notified in writing of the claim and has the right to control the defense and any settlement of it. The party being defended must provide the defending party with all requested assistance, information, and authority. The defending party will reimburse the other party for reasonable out-of-pocket expenses it incurs in providing assistance. This section describes the parties' sole remedies and entire liability for such claims.

- a. By Microsoft.** Microsoft will defend Customer against any third-party claim to the extent it alleges that a Product or Services Deliverable made available by Microsoft for a fee and used within the scope of the license granted under this Agreement (unmodified from the form provided by Microsoft and not combined with anything else), misappropriates a trade secret or directly infringes a patent, copyright, trademark, or other proprietary right of a third party. If Microsoft is unable to resolve a claim of misappropriation or infringement, it may, at its option, either (1) modify or replace the Product or Services Deliverable with a functional equivalent or (2) terminate Customer's license and refund any license fees (less depreciation for perpetual licenses), including amounts paid in advance for unused consumption for any usage period after the termination date. Microsoft will not be liable for any claims or damages due to Customer's continued use of a Product or Services Deliverable after being notified to stop due to a third-party claim.

- b. By Customer.** To the extent permitted by applicable law, Customer will defend Microsoft and its Affiliates against any third-party claim to the extent it alleges that: (1) any Customer Data or Non-Microsoft Product hosted in an Online Service by Microsoft on Customer's behalf misappropriates a trade secret or directly infringes a patent, copyright, trademark, or other proprietary right of a third party; or (2) Customer's use of any Product or Services Deliverable, alone or in combination with anything else, violates the law or harms a third party.

### ***Limitation of liability***

Subject to the Exclusions, Exceptions and Applicability provisions in subsections e, f, and g, each party's liability to the other party for each Product or Professional Service provided under this Agreement is limited to direct damages finally awarded, not to exceed an amount determined as follows:

- a. Perpetual Licenses.** For each Product licensed on a perpetual basis, each party's maximum, aggregate liability is the amount Customer paid for the applicable licenses.
- b. Subscriptions.** For each Product licensed on a subscription basis, each party's maximum, aggregate liability is the total amount of subscription fees Customer paid to use the Product during the 12 months preceding the most recent incident giving rise to the claim(s).
- c. Professional Services.** For Professional Services, each party's maximum, aggregate liability is the amount Customer paid for the applicable Professional Services.
- d. Free offers and distributable code.** For Products or Professional Services provided free of charge, and code that Customer is authorized to redistribute to third parties without separate payment to Microsoft, Microsoft's liability is limited to direct damages finally awarded up to US\$5,000.
- e. Exclusions.** In no event will either party be liable for indirect, incidental, special, punitive, or consequential damages; loss of revenue, profits, or anticipated savings (whether direct or indirect); or loss of use, loss of business information, or interruption of business, however caused or on any theory of liability.
- f. Exceptions.** No limitation or exclusions under this Agreement will apply to liability arising out of either party's (1) confidentiality obligations (except for all liability related to Customer Data and Professional Service Data, which will remain subject to the limitations and exclusions above); (2) obligations under the section entitled Defense of Third-Party Claims; or (3) violation of the other party's intellectual property rights.
- g. Applicability.** To the extent permitted by applicable law, the limitations, exclusions, and exceptions set forth in this Limitation of Liability section apply to all claims and damages under or relating to this Agreement or the Products or Professional Services provided under this Agreement, including, without limitation, breach of contract, breach of warranty, strict liability, and negligence and other torts, even if the parties knew or should have known about the possibility of the damages.
- h. Liability for death or personal injury.** Nothing in this Agreement shall exclude liability for death or personal injury caused by negligence or liability for fraudulent misrepresentation.

### ***Partners***

- a. Selecting a Partner.** Customer may authorize a Partner to place orders on Customer's behalf and manage Customer's purchases by associating the Partner with its account. If the Partner's distribution right is terminated, Customer must select an authorized replacement Partner or purchase directly from Microsoft. Partners and other third parties are not agents of Microsoft and are not authorized to enter into any agreement with Customer on behalf of Microsoft.
- b. Partner Administrator privileges and access to Customer Data.** If Customer purchases Online Services from a Partner, Customer may choose to provide that Partner with administrator privileges. Customer consents to Microsoft and its Affiliates providing that Partner with Customer Data and

Administrator Data for purposes of provisioning, administering, and supporting (as applicable) the Online Services. Partner may process such data according to the terms of Partner's agreement with Customer, and its privacy commitments may differ from Microsoft's. Customer appoints Partner as its agent for purposes of providing and receiving notices and other communications to and from Microsoft. Customer may terminate the Partner's administrative privileges at any time.

- c. **Product Support.** Partners may provide support for Products and other value-added services, and Partner is responsible for the performance of any services it provides. If Customer purchases Microsoft Support Services through a Partner, Microsoft will be responsible for the performance of those services subject to the terms of this Agreement.

## ***Pricing and payment***

If Customer orders from a Partner, the Partner will set Customer's pricing and payment terms for that order, and Customer will pay the amount due to the Partner. Pricing and payment terms related to orders placed by Customer directly with Microsoft are set by Microsoft, and Customer will pay the amount due as described in this section.

- a. **Payment method.** Customer must provide a payment method or, if eligible, choose to be invoiced for purchases made on its account. By providing Microsoft with a payment method, Customer (1) consents to Microsoft's use of account information regarding the selected payment method provided by the issuing bank or applicable payment network; (2) represents that it is authorized to use that payment method and that any payment information it provides is true and accurate; (3) represents that the payment method was established and is used primarily for commercial purposes and not for personal, family or household use; and (4) authorizes Microsoft to charge Customer using that payment method for orders under this Agreement.
- b. **Invoices.** Microsoft may invoice eligible Customers. Customer's ability to elect payment by invoice is subject to Microsoft's approval of Customer's financial condition. Customer authorizes Microsoft to obtain information about Customer's financial condition, which may include credit reports, to assess Customer's eligibility for invoicing. Unless the Customer's financial statements are publicly available, Customer may be required to provide its balance sheet, profit and loss and cash flow statements to Microsoft. Customer may be required to provide security in a form acceptable to Microsoft to be eligible for invoicing. Microsoft may withdraw Customer's eligibility at any time and for any reason. Customer must promptly notify Microsoft of any changes in its company name or location and of any significant changes in the ownership, structure, or operational activities of the organization.
- c. **Invoice Payment terms.** Each invoice will identify the amounts payable by Customer to Microsoft for the period corresponding to the invoice. Customer will pay all amounts due within thirty (30) calendar days following the invoice date.
- d. **Late Payment.** Microsoft may, at its option, assess a late fee on any payments to Microsoft that are more than fifteen (15) calendar days past due at a rate of up to two percent (2%) of the total amount payable, calculated and payable monthly, or the highest amount allowed by law, if less.
- e. **Cancellation fee.** If a Subscription or Statement of Services permits early termination and Customer cancels the Subscription or Statement of Service before the end of the Subscription or billing period, Customer may be charged a cancellation fee. More details about cancellation can be found in the Product Terms.
- f. **Recurring Payments.** For subscriptions that renew automatically, Customer authorizes Microsoft to charge Customer's payment method periodically for each subscription or billing period until the subscription is terminated. By authorizing recurring payments, Customer authorizes Microsoft to store Customer's payment details and process such payments as either electronic debits or fund transfers, or as electronic drafts from the designated bank account (in the case of automated clearing house or similar debits), as charges to the designated card account (in the case of credit card or similar

payments) (collectively, "Electronic Payments"). If any payment is returned unpaid or if any credit card or similar transaction is rejected or denied, Microsoft or its service providers reserve the right to collect any applicable return item, rejection or insufficient funds fee to the maximum extent permitted by applicable law and to process any such fees as an Electronic Payment or to invoice Customer for the amount due.

- g. Taxes.** Microsoft prices exclude applicable taxes unless identified as tax inclusive. If any amounts are to be paid to Microsoft, Customer will also pay any applicable value added, goods and services, sales, gross receipts, or other transaction taxes, fees, charges, or surcharges, or any regulatory cost recovery surcharges or similar amounts that are owed under this Agreement and that Microsoft is permitted to collect from Customer. Customer will be responsible for any applicable stamp taxes and for all other taxes that it is legally obligated to pay including any taxes that arise on the distribution or provision of Products or Professional Services by Customer to its Affiliates. Microsoft will be responsible for all taxes based upon its net income, gross receipts taxes imposed in lieu of taxes on income or profits, and taxes on its property ownership.

If any taxes are required to be withheld on payments invoiced by Microsoft, Customer may deduct such taxes from the amount owed and pay them to the appropriate taxing authority, but only if Customer promptly provides Microsoft an official receipt for those withholdings and other documents reasonably requested to allow Microsoft to claim a foreign tax credit or refund. Customer will ensure that any taxes withheld are minimized to the extent possible under applicable law.

### ***Term and termination***

- a. Term.** This Agreement is effective until terminated by a party, as described below.
- b. Termination without cause.** Either party may terminate this Agreement without cause on 60 days' notice. Termination without cause will not affect Customer's perpetual licenses. Licenses granted on a subscription basis and access to Online Services and Microsoft Support Services will continue for the remainder of the then-current subscription period(s) or support term, subject to the terms of this Agreement.
- c. Termination for cause.** Without limiting other remedies it may have, either party may terminate this Agreement on 30 days' notice for material breach if the other party fails to cure the breach within the 30-day notice period. Upon such termination, the following will apply:
- (i)** All licenses granted under this Agreement will terminate immediately except for fully paid, perpetual licenses.
  - (ii)** All amounts due under any unpaid invoices shall become due and payable immediately. For Subscriptions billed in arrears based on usage, Customer must pay for all unpaid usage as of the termination date immediately upon receipt of an invoice.
  - (iii)** If Microsoft is in breach, Customer will receive a credit for any Subscription fees, including amounts paid in advance for unused consumption for any usage period after the termination date.
  - (iv)** Customer must pay for all Professional Services provided as of the termination date immediately upon receipt of an invoice.
- d. Suspension.** During any period of material breach by Customer, Microsoft may suspend a Subscription or Statement of Services without terminating this Agreement. Microsoft will give Customer 30 days' notice before such suspension unless Microsoft's charge against Customer's payment method is declined or Microsoft reasonably believes immediate suspension is required to prevent unauthorized access to Customer Data or to ensure the ongoing confidentiality, integrity, availability, or resilience of Microsoft's systems and services.

- e. Termination to comply with laws.** Microsoft may modify or discontinue offering a Product or Professional Service and/or terminate a Subscription or Statement of Services for that Product or Professional Service in any country or jurisdiction where there is any current or future government requirement or obligation that (1) subjects Microsoft to any regulation or requirement that is not generally applicable to businesses operating there; (2) presents a hardship for Microsoft to continue offering the Product or Professional Service without modification; or (3) causes Microsoft to believe this Agreement or the Product or Professional Services offering may conflict with any such requirement or obligation. If Microsoft terminates a Subscription or Statement of Services under this provision, Customer will receive, as its sole remedy, a refund for any amount paid in advance for any period after termination. Customer will pay for all services provided or used before termination.

### ***Modifications to this Agreement***

Microsoft may update this Agreement from time to time. No changes will apply to perpetual Software licenses previously acquired. Changes will apply to new orders and to existing Subscriptions and Statements of Services as follows:

- a. DPA and SLA.** Changes to the DPA and SLA will apply as provided in those documents.
- b. Product Terms.** Material Adverse Changes will not apply during the then-current Subscription term but will take effect upon renewal. All other changes will apply when they are published on the Product Terms site. In addition, for Software Subscriptions, if Customer chooses to update the Software to a new version before the end of the Subscription term, the terms in effect at the time of the update will apply to the use of that Software.
- c. Other terms.** Customer may be required to accept revised or additional terms when placing a new order. For existing Subscriptions and Statements of Services, Customer will be notified at least 60 days before changes take effect to these General Terms or any other terms that are part of the Agreement except the DPA, SLA, and Product Terms, which have separate terms for updates. Such changes will take effect upon renewal unless Customer accepts them earlier in the manner specified in the notice and will not supersede or modify any amendments to this Agreement. Customer agrees that its continued use of the Products or Professional Services after renewal will constitute its acceptance of all changes. If Customer does not agree to the changes, it must stop using the Products and Professional Services by the end of the Subscription or support term and turn off recurring billing for any Subscriptions that are set to renew automatically.
- d. Changes proposed by Customer.** Customer may not modify this Agreement. Any additional or conflicting terms contained in a purchase order or otherwise presented by Customer are expressly rejected and will not apply.

### ***Miscellaneous***

- a. Independent contractors.** The parties are independent contractors. Customer and Microsoft each may develop products independently without using the other's Confidential Information.
- b. Agreement not exclusive.** Customer is free to enter into agreements to license, use, and promote the products and services of others.
- c. Assignment.** Either party may assign this Agreement to an Affiliate, but it must notify the other party in writing of the assignment. Customer consents to the assignment to an Affiliate or third party, without prior notice, of any rights Microsoft may have under this Agreement to receive payment and enforce Customer's payment obligations, and all assignees may further assign such rights without further consent. Any other proposed assignment of this Agreement must be approved by the non-assigning party in writing. Assignment will not relieve the assigning party of its obligations under the assigned Agreement. Any attempted assignment without required approval will be void.



- d. Severability.** If any part of this Agreement is held to be unenforceable, the rest of the Agreement will remain in full force and effect.
- e. Waiver.** Failure to enforce any provision of this Agreement will not constitute a waiver. Any waiver must be in writing and signed by the waiving party.
- f. No third-party beneficiaries.** This Agreement does not create any third-party beneficiary rights except as expressly provided by its terms.
- g. Survival.** All provisions survive termination of this Agreement except those requiring performance only during the term of the Agreement.
- h. Notices.** All notices must be in writing. Except for notices relating to arbitration (as provided in certain supplemental terms for individual users), notices to Microsoft must be sent to the following address and will be deemed received on the date received at that address:

Microsoft Ireland Operations Limited  
One Microsoft Place  
South County Business Park  
Leopardstown  
Dublin 18  
D18 P521  
Ireland

Microsoft may provide Customer with information and notices electronically, including via email, through the portal for an Online Service, or through a web site that Microsoft identifies. Notice is given as of the date it is made available by Microsoft.

- i. Applicable law.** This Agreement will be governed by and construed in accordance with the laws of Ireland. The 1980 United Nations Convention on Contracts for the International Sale of Goods and its related instruments will not apply to this Agreement.
- j. Dispute resolution.** When bringing any action arising under this Agreement, the parties agree to the following exclusive venues:
  - (i)** If Microsoft brings the action, the venue will be where Customer has its headquarters.
  - (ii)** If Customer brings the action against Microsoft or any Microsoft Affiliate located outside of Europe, the venue will be the state or federal courts in King County, State of Washington, USA.
  - (iii)** If Customer brings the action against Microsoft or any Microsoft Affiliate located in Europe, and not also against Microsoft or a Microsoft Affiliate located outside of Europe, the venue will be Ireland.
  - (iv)** The parties consent to personal jurisdiction in the agreed venues. This choice of venue does not prevent either party from seeking injunctive relief in any jurisdiction with respect to a violation of intellectual property rights or confidentiality obligations.
- k. Order of precedence.** If there is a conflict between any documents in this Agreement that is not expressly resolved in those documents, their terms will control in the following order, from highest to lowest priority: (1) DPA; (2) these General Terms; (3) Product Terms; (4) SLA; and (5) any additional terms presented when an order is placed. Terms in an amendment control over the amended document and any prior amendments concerning the same subject matter.
- l. Microsoft Affiliates and subcontractors.** Microsoft may perform its obligations under this Agreement through its Affiliates and use subcontractors to provide certain services. Microsoft remains responsible for their performance.

- m. Government procurement rules.** If Customer is a government entity or is otherwise subject to government procurement requirements, Customer represents and warrants that (1) it has complied and will comply with all applicable government procurement laws and regulations; (2) it is authorized to enter into this Agreement; and (3) this Agreement satisfies all applicable procurement requirements.
- n. Compliance with Trade Laws.** Products and Services Deliverables may be subject to U.S. and other countries' export jurisdictions. Each party will comply with all laws and regulations applicable to the import or export of the Products and Services Deliverables, including, without limitation, trade laws such as the U.S. Export Administration Regulations and International Traffic in Arms Regulations and sanctions regulations administered by the U.S. Office of Foreign Assets Control ("OFAC") ("Trade Laws"). Customer will not take any action that causes Microsoft to violate U.S. or other applicable Trade Laws. Microsoft may suspend or terminate this Agreement to the extent that Microsoft reasonably believes that performance would cause it to violate Trade Laws or put it at risk of becoming subject to sanctions and penalties under such laws.

## **Definitions**

"Administrator Data" means the information provided to Microsoft or its Affiliates during sign-up, purchase, or administration of Products.

"Affiliate" means any legal entity that controls, is controlled by, or is under common control with a party.

"Control" means ownership of more than a 50% interest of voting securities in an entity or the power to direct the management and policies of an entity.

"Confidential Information" is defined in the "Confidentiality" section.

"Customer" means the entity identified as such on the account associated with this Agreement.

"Customer Data" means all data, including all text, sound, video or image files, and software, that are provided to Microsoft or its Affiliates by, or on behalf of, Customer and its Affiliates through use of Online Services. Customer Data does not include Professional Services Data.

"DPA" means the Microsoft Products and Services Data Protection Addendum, as updated from time to time, published at <https://aka.ms/DPA> or a successor site and any additional data protection terms that Microsoft presents with this Agreement.

"End User" means any person Customer permits to use a Product or access Customer Data.

"Fix" or "Fixes" means Product fixes, modifications or enhancements, or their derivatives, that Microsoft either releases generally (such as Product service packs) or provides to Customer to address a specific issue.

"Licensing Site" means <http://www.microsoft.com/licensing/docs> or a successor site.

"Material Adverse Change" means any change to the Use Rights for a Product that could reasonably affect Customer's decision to purchase the Product and that would require Customer to purchase additional licenses, increase the cost to Customer of using the Product, remove an existing right, or place additional restrictions on the use of the Product.

"Microsoft" means Microsoft Corporation.

"Microsoft Support Services" means Product support services that Microsoft offers under this Agreement as described in the Product Terms.

"Non-Microsoft Product" means any third party-branded software, data, service, website, or product, unless incorporated by Microsoft in a Product.

"Online Services" means Microsoft-hosted services to which Customer subscribes under this Agreement. It does not include software and services provided under separate license terms.

"Partner" means a company Microsoft has authorized to distribute Products to Customer.

“Personal Data” means any information relating to an identified or identifiable natural person.

“Pre-Existing Work” means any computer code or other written materials developed or otherwise obtained independent of this Agreement.

“Product” means all Software and Online Services that Microsoft offers under this Agreement as identified in the Product Terms, including previews, prerelease versions, updates, patches, and Fixes from Microsoft. Product availability may vary by region. “Product” does not include Non-Microsoft Products.

“Product Terms” means the Use Rights and other terms, as updated from time to time, which are published at <https://www.microsoft.com/licensing/terms> or a successor site.

“Professional Services” means Microsoft Support Services and consulting services provided by Microsoft to Customer under this Agreement. “Professional Services” do not include Online Services.

“Professional Services Data” means all data, including all text, sound, video, image files, or software, that are provided to Microsoft or its Affiliates by, or on behalf of, Customer and its Affiliates (or that Customer or an Affiliate authorizes Microsoft to obtain from an Online Service) or otherwise obtained or processed by or on behalf of Microsoft or its Affiliates through an engagement with Microsoft to obtain Professional Services.

“Publisher” means a provider of a Non-Microsoft Product.

“Representatives” means a party’s employees, Affiliates, contractors, advisors, and consultants.

“SLA” means Service Level Agreement, which specifies the minimum service level for the Online Services and is published on the Licensing Site.

“Services Deliverables” means any computer code or materials (including without limitation proofs of concept, documentation and design recommendations, sample code, software libraries, algorithms, and machine learning models), other than Products or Fixes, that Microsoft leaves with Customer at the conclusion of Microsoft’s performance of Professional Services.

“Software” means licensed copies of Microsoft software identified in the Product Terms. Software does not include Online Services, but Software may be part of an Online Service.

“Statement of Services” means any order under this Agreement that includes or describes Professional Services.

“Subscription” means a license for Customer to use or access a Product during a defined period of time.

“use” means to copy, download, install, run, access, display, or otherwise interact with.

“Use Rights” means the following sections of the Product Terms, as applicable to each Product offering: Use Rights, License Model terms, General Service Terms, Service Specific Terms, Add-ons, Universal License Terms, and Other Legal Terms.

## **Purchase Agreement with the “Microsoft Sales Affiliate” ( )**

Certain Products and Professional Services are offered by a local Microsoft Sales Affiliate that Microsoft has authorized to distribute and supply such Products and Professional Services. If Customer orders those Products directly from Microsoft, the Microsoft Sales Affiliate will be the seller. By submitting the order, Customer is deemed to have accepted the terms offered by the Microsoft Sales Affiliate identified above, forming a separate agreement with such Microsoft Sales Affiliate to purchase the Products and Professional Services (the “Purchase Agreement”). The Purchase Agreement consists of all applicable terms of this Agreement, modified as follows:

- a. Licensing terms excluded.** All terms pertaining solely to the licensing of such Products, Fixes, and Services Deliverables are deemed excluded. Microsoft is the licensor of all Products, Fixes, and Services Deliverables, and the Agreement with Microsoft will continue to apply to any Products and Professional Services ordered from a Microsoft Sales Affiliate. Microsoft Sales Affiliate does not have authority to bind or impose any obligation or liability on any other Microsoft entity.

- b. Pricing and payment.** Microsoft Sales Affiliate will determine pricing for the applicable Products. All terms pertaining to pricing and payment apply to the Purchase Agreement. If Customer is eligible for invoicing, Microsoft Sales Affiliate will send invoices to the billing contact identified on Customer's account (with taxes added where applicable), and Customer must pay the amount due to Microsoft Sales Affiliate according to the payment instructions on the invoice. Customer's failure to make any payment due to Microsoft Sales Affiliate by the required date will constitute a material breach of both the Purchase Agreement and the Agreement with Microsoft. In the event Microsoft terminates the Agreement for cause, all amounts due under any unpaid invoices shall become due and payable to Microsoft Sales Affiliate immediately.
- c. Warranties, defense, and limitations of liability.** All warranties, obligations to defend against third-party claims and limitations of liability shall also apply to claims under the Purchase Agreement. Microsoft, as licensor, is solely responsible for claims relating to the performance of Products and defense of third-party claims (including claims of intellectual property infringement). **Microsoft Sales Affiliate is not liable for such claims and, to the maximum extent permitted by applicable law, expressly disclaims all express, implied, and statutory warranties and liability for such claims, including, without limitation, warranties of quality, title, non-infringement, merchantability, and fitness for a particular purpose.**
- d. Applicable law.** The applicable law will be that of the jurisdiction where the Microsoft Sales Affiliate has its headquarters.
- e. Additional terms.** Any additional terms that Microsoft Sales Affiliate presents in connection with an order are deemed included. Any additional or conflicting terms and conditions contained in a purchase order or otherwise presented by Customer are expressly rejected and will not apply.