

MICROSOFT CLOUD PRODUCTS - SERVICE SCHEDULE

(Version: April 2020)

1. BACKGROUND

- 1.1 Words that are capitalised but have not been defined in this Service Schedule have the meanings given to them in the Standard Terms.
- 1.2 In case of any conflict between any of the terms in this Service Schedule and the terms in the Standard Terms, the terms of this Service Schedule will take priority.
- 1.3 In order to satisfy Microsoft's Product resale requirements, we each have agreed to enter into this Service Schedule and you must separately agree to and sign a Customer Agreement with Microsoft.

2. MICROSOFT TERMS

- 2.1 We may assist you to specify or choose Products but the assessment and selection of your chosen Products for your purposes remain your ultimate responsibility. We do not warrant or represent that the performance of the Products will be adequate for you and shall not be liable for any inaccuracies in any element of any service specification supplied in connection with any Product. We only undertake that in giving assistance we have acted in good faith and have not been wilfully misleading.
- 2.2 You acknowledge that Microsoft is a third party, which we do not control. We make no representation, guarantee or warranty about Microsoft's delivery of any Products or their reliability, credit rating or solvency.
- 2.3 You shall use, and shall procure that your end user use, the Products in compliance with Applicable Laws and any fair usage policy (as amended from time to time) notified to you by us or Microsoft.
- 2.4 **Your warranties.** You warrant and represent to us:
 - 2.4.1 that you are incorporated and established in the Territory and shall not make any payments to us for the Products from outside the Territory;
 - 2.4.2 that you accept the terms of the Customer Agreement with Microsoft and the person signing it is authorised to do so on your behalf;
 - 2.4.3 by accepting the terms of the Customer Agreement, you agree to observe and comply with it; and
 - 2.4.4 except where we have otherwise agreed in writing to act on your behalf in respect of a certain matter, you will deal with Microsoft with respect to any loss or damage suffered by you under the Customer Agreement and any loss or damage will not be enforceable against us.
- 2.5 **Microsoft's discretion.** Microsoft may accept or reject your order for Product's at Microsoft's discretion. Accordingly, if Microsoft reject your Order, we may cancel your Order for Products (in whole or in part) on giving you written notice (even if we have previously accepted the Order in accordance with the Standard Terms).
- 2.6 **New Releases of Existing Products.** You acknowledge and agree that Microsoft may modify a Product, or may release a new version of a Product at any time and for any reason including, but not limited to, to address customer needs or otherwise address competitive demands, to respond to a government regulation, order, or law, or to advance innovation in its Product offerings. Microsoft reserves the right to add new features or functionality to, or remove existing features or functionality from, a Product.
- 2.7 **Auto-Renewal.** Your Subscriptions will automatically renew at the end of the Initial Term and each Additional Term. You may opt out of this automatic renewal system by giving us not less than three months' written notice prior to the end of the then current term. Each renewal term will be for a period of 12 months. Pricing for a renewal term will be our pricing in effect as of the commencement of the renewal term.
- 2.8 **Disablement.** Microsoft may disable your Subscription for legal or regulatory reasons or as otherwise permitted under this Service Schedule and we will notify you of a disablement as soon as commercially reasonable.
- 2.9 **Service Level Agreement Credits.** Microsoft makes certain service levels commitments to you in Microsoft's SLA provided in the Customer Agreement. If you wish to make a claim on the Microsoft's SLA, you must escalate the claim to us and we will pass it on to Microsoft for review. The claim will be reviewed according to Microsoft's SLA review process. If applicable, we will then apply any credit due on next billing reconciliation report. Microsoft reserve the right to audit outages on a per Subscription or per service basis at any time.

- 2.10 **Microsoft communications.** Microsoft may send direct communications to you related to the terms of the Customer Agreement or the operation or delivery of the Product. You must provide accurate contact information for the administrator of each of your domains.
- 2.11 **Digital Partner of Record.** We will provide you with standard support Services for your Product. We will notify you on what those standard support Services cover separately in writing. Those standard support Services can be enhanced and will be subject to separate terms. As a result of the provision of any of those support Services, you agree to attach us as your digital partner of record (**DPOR**) to your Product at our request. DPOR benefits you, us and Microsoft and helps us optimise your usage of the Product. You can add us as your DPOR through your Product account administration page (we can show you how to do this on request) or by following a link we generate for you.
- 2.12 **Academic, Charity and Government Products.** Microsoft may offer Products that are identified on the price list as academic, charity or government. You must have Microsoft's approval to purchase such Products and you may use those Products only if you meet Microsoft's qualification criteria.
- 2.13 **Customer Data.** The security, privacy and data protection commitments made by Microsoft in the Customer Agreement only apply to the Products purchased from Microsoft.
- 2.14 **Cloud-Based Products.** You shall ensure that if you save or in any way process personal data via a cloud-based Product, you acknowledge and:
- 2.14.1 agree to select the cloud-based Product in compliance with your legal obligations in view of the intended use of the Product;
 - 2.14.2 agree to fulfil and procure for all other legal and technical provisions and requirements (e.g. consent of users, data processing agreements, encryption) to comply with applicable data protection requirements (including the Data Protection Laws); and
 - 2.14.3 accept the scope of the respective cloud-based Product, as well as the risks that may exist depending on the type of Products in view to the intended use of that Product.
- 2.15 **Notification to end users.** To the extent required by Applicable Law, you shall notify the individual users of the Products that their data may be processed for the purpose of disclosing it to law enforcement or other governmental authorities, and shall obtain the users' consent to the same.
- 2.16 **Excluded License.** Your rights to any of the Products do not include any license, right, power or authority to cause any part of the Products to become subject to the terms of an excluded license. An **excluded license** is any license, such as an open source software license, that requires as a condition of use, modification or distribution of software subject to the excluded license, that it or other software combined or distributed with it be:
- 2.16.1 disclosed or distributed in source code form;
 - 2.16.2 licensed for the purpose of making derivative works; or
 - 2.16.3 redistributable at no charge.
- 2.17 **Warranty.** Microsoft warrants its Products to you as described in the Customer Agreement.
- 2.18 **No Warranty.** Unless required by Applicable Law, neither Microsoft or SBL gives any other express warranties, representations or conditions concerning the Products. To the maximum extent permitted under Applicable Law, Microsoft and SBL disclaim all implied warranties and conditions relating to the Products.
- 2.19 **No Warranties for Other Items.** Neither Microsoft or SBL makes any warranties or conditions as to the items that distributed under a third party name, copyright, trade mark or trade name that may be offered with or incorporated with any Product. To the maximum extent permitted by Applicable Law, neither Microsoft or SBL will have an liability in connection with any of those third party items.
- 2.20 **Indemnification.** You shall defend, indemnify and hold us and Microsoft harmless from and against any third party claims and any damages, liability, costs and expenses that arise out of your:
- 2.20.1 negligence or misconduct in your performance under this Service Schedule or the Customer Agreement; and/or
 - 2.20.2 failure to abide by the terms of this Service Schedule.
- 2.21 **Proprietary notices.** You must not remove any copyright, trademark or patent notices from any of the Products.
- 2.22 **Reservation of Rights.** At any time during the term of the Agreement, Microsoft may terminate your status as its customer. We will then terminate your right to use any Product immediately upon written notice to

you at Microsoft's request. We will promptly notify you of the termination. Termination will not affect our right to invoice you for a Product order, or your obligation to pay us. If Microsoft terminates your status as its customer, you will not have any claim against us or Microsoft for damages or lost profits resulting from the termination.

2.23 **Export Restriction.** The Products, software, services and technology supplied pursuant to this Service Schedule are subject to U.S., European and national export jurisdiction. You must comply with all applicable international and national laws, including the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, and end-user, end use and destination restrictions by U.S. and other governments.

3. DEFINED TERMS

In addition to the defined terms in the Standard Terms, capitalised terms in this Service Schedule will have the below meanings (and in the case of conflict between these defined terms and the defined terms in the Standard Terms, these defined terms will take precedence for the purposes of this Service Schedule).

Customer Agreement means the agreement that Microsoft uses to convey or provide Products to you, as set out in the Annex to this Service Schedule (and as updated by Microsoft from time to time).

Microsoft means Microsoft Corporation.

Microsoft's SLA means the service level agreement commitments Microsoft makes directly to you regarding delivery and/or performance of the applicable Product, as detailed in the Customer Agreement.

Product means the Microsoft online services, which may include Microsoft software technology, provided to you under a Customer Agreement.

Service Schedule means the terms set out in this document.

Standard Terms means our standard terms and conditions of supply which can be found at [LINK](#) and that form part of the Agreement.

Subscription means an order for a quantity of Product for a defined term (e.g., 30 days or 12 months).

Territory means the United Kingdom.

ANNEX 1

MICROSOFT CUSTOMER AGREEMENT

This Microsoft Cloud Agreement is entered into between the entity you represent, or, if you do not designate an entity in connection with a Subscription purchase or renewal, you individually (**Customer**), and Microsoft Ireland Operations Limited (**Microsoft**). It consists of the terms and conditions below, Use Rights, SLA, and all documents referenced within those documents (together, the **agreement**). It is effective on the date that your Reseller provisions your Subscription. Key terms are defined in Section 10.

1. Grants, rights and terms.

All rights granted under this agreement are non-exclusive and non-transferable and apply as long as neither Customer nor any of its Affiliates is in material breach of this agreement.

- 1.1 **Software.** Upon acceptance of each order, Microsoft grants Customer a limited right to use the Software in the quantities ordered.
 - 1.1.1 **Use Rights.** The Use Rights in effect when Customer orders Software will apply to Customer's use of the version of the Software that is current at the time. For future versions and new Software, the Use Rights in effect when those versions and Software are first released will apply. Changes Microsoft makes to the Use Rights for a particular version will not apply unless Customer chooses to have those changes apply.
 - 1.1.2 **Temporary and perpetual licenses.** Licenses available on a subscription basis are temporary. For all other licenses, the right to use Software becomes perpetual upon payment in full.
- 1.2 **Online Services.** Customer may use the Online Services as provided in this agreement.
 - 1.2.1 **Online Services Terms.** The Online Services Terms in effect when Customer orders or renews a subscription to an Online Service will apply for the applicable subscription term. For Online Services that are billed periodically based on consumption, the Online Services Terms current at the start of each billing period will apply to usage during that period.
 - 1.2.2 **Suspension.** Microsoft may suspend use of an Online Service during Customer's violation of the Acceptable Use Policy or failure to respond to a claim of alleged infringement. Microsoft will give Customer notice before suspending an Online Service when reasonable.
 - 1.2.3 **End Users.** Customer controls access by End Users, and is responsible for their use of the Product in accordance with this agreement. For example, Customer will ensure End Users comply with the Acceptable Use Policy.
 - 1.2.4 **Customer Data.** Customer is solely responsible for the content of all Customer Data. Customer will secure and maintain all rights in Customer Data necessary for Microsoft to provide the Online Services to Customer without violating the rights of any third party or otherwise obligating Microsoft to Customer or to any third party. Microsoft does not and will not assume any obligations with respect to Customer Data or to Customer's use of the Product other than as expressly set forth in this agreement or as required by applicable law.
 - 1.2.5 **Responsibility for your accounts.** Customer is responsible for maintaining the confidentiality of any non-public authentication credentials associated with Customer's use of the Online Services. Customer must promptly notify customer support about any possible misuse of Customer's accounts or authentication credentials or any security incident related to the Online Services.
- 1.3 **License transfers.** License transfers are not permitted, except that Customer may transfer only fully-paid perpetual licenses to (1) an Affiliate or (2) a third party, solely in connection with the transfer of hardware or employees to whom the licenses have been assigned to the third party 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 and its Affiliates must uninstall and discontinue using the licensed Product and render any copies unusable. Nothing in this agreement prohibits the transfer of Software to the extent allowed under applicable law if the distribution right has been exhausted.
- 1.4 **Reservation of rights.** Products are protected by copyright and other intellectual property rights laws and international treaties. Microsoft reserves all rights not expressly granted in this agreement. No rights will be granted or implied by waiver or estoppel. Rights to access or use Software 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.
- 1.5 **Restrictions.** Customer may use the Product only in accordance with this agreement. Customer may not (and is not licensed to): (1) reverse engineer, decompile or disassemble any Product or Fix, or attempt to

do so; (2) 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; or (3) work around any technical limitations in a Product or Fix or restrictions in Product documentation. Customer may not disable, tamper with, or otherwise attempt to circumvent any billing mechanism that meters Customer's use of the Online Services. Except as expressly permitted in this agreement or Product documentation, Customer may not distribute, sublicense, rent, lease, lend, resell or transfer and Products, in whole or in part, or use them to offer hosting services to a third party.

1.6 **Preview releases.** Microsoft may make Previews available. Previews are provided "as-is," "with all faults," and "as-available," and are excluded from the SLA and all limited warranties provided in this agreement. Previews may not be covered by customer support. Previews may be subject to reduced or different security, compliance, and privacy commitments, as further explained in the Online Services Terms and any additional notices provided with the Preview. Microsoft may change or discontinue Previews at any time without notice. Microsoft also may choose not to release a Preview into "General Availability."

1.7 **Verifying compliance for Products.**

1.7.1 **Right to verify compliance.** Customer must keep records relating to all use and distribution of Products by Customer and its Affiliates. Microsoft has the right, at its expense, to verify compliance with the Products' license terms. Customer must promptly provide any information reasonably requested by the independent auditors retained by Microsoft in furtherance of the verification, including access to systems running the Products and evidence of licenses for Products that Customer hosts, sublicenses, or distributes to third parties. Customer agrees to complete Microsoft's self-audit process, which Microsoft may request as an alternative to a third party audit.

1.7.2 **Remedies for non-compliance.** If verification or self-audit reveals any unlicensed use of Products, then within 30 days (1) Customer must order sufficient licenses to cover its use, and (2) if unlicensed use is 5% or more, Customer must reimburse Microsoft for the costs Microsoft incurred in verification and acquire the necessary additional licenses at 125% of the price, based on the then current price list and customer price level. The unlicensed use percentage is based on the total number of licenses purchased for current use compared to the actual installed base. If there is no unlicensed use, Microsoft will not subject Customer to another verification for at least one year. By exercising the rights and procedures described above, Microsoft does not waive its rights to enforce this agreement or to protect its intellectual property by any other legal means.

1.7.3 **Verification process.** Microsoft will notify Customer at least 30 days in advance of its intent to verify Customers' compliance with the license terms for the Products Customer and its Affiliates use or distribute. Microsoft will engage an independent auditor, which will be subject to a confidentiality obligation. Any information collected in the self-audit will be used solely for purposes of determining compliance. This verification will take place during normal business hours and in a manner that does not unreasonably interfere with Customer's operations.

2. **Subscriptions, ordering.**

2.1 **Choosing a Reseller.** Customer must choose and maintain a Reseller authorized within its region. If Microsoft or Reseller chooses to discontinue doing business with each other, Customer must choose a replacement Reseller or purchase a Subscription directly from Microsoft, which may require Customer to accept different terms.

2.2 **Available Subscription offers.** The Subscription offers available to Customer will be established by its Reseller and generally can be categorized as one or a combination of the following:

2.2.1 **Online Services Commitment Offering.** Customer commits in advance to purchase a specific quantity of Online Services for use during a Term and to pay upfront or on a periodic basis for continued use of the Online Service.

2.2.2 **Consumption Offering (also called Pay-As-You-Go).** Customer pays based on actual usage with no upfront commitment.

2.2.3 **Limited Offering.** Customer receives a limited quantity of Online Services for a limited term without charge (for example, a free trial) or as part of another Microsoft offering (for example, MSDN). Provisions in this agreement with respect to the SLA and data retention may not apply.

2.2.4 **Software Commitment Offering.** Customer commits in advance to purchase a specific quantity of Software for use during a Term and to pay upfront or on a periodic basis for continued use of the Software.

2.3 **Ordering.**

- 2.3.1 Orders must be placed through Customer's designated Reseller. Customer may place orders for its Affiliates under this agreement and grant its Affiliates administrative rights to manage the Subscription, but, Affiliates may not place orders under this agreement. Customer also may assign the rights granted under Section 1.1 and 1.2 to a third party for use by that third party in Customer's internal business. If Customer grants any rights to Affiliates or third parties with respect to Software or Customer's Subscription, such Affiliates or third parties will be bound by this agreement and Customer agrees to be jointly and severally liable for any actions of such Affiliates or third parties related to their use of the Products.
- 2.3.2 Customer's Reseller may permit Customer to modify the quantity of Online Services ordered during the Term of a Subscription. Additional quantities of Online Services added to a Subscription will expire at the end of that Subscription.
- 2.4 **Pricing and payment.** Prices for each Product and any terms and conditions for invoicing and payment will be established by Customer's Reseller.
- 2.5 **Renewal.**
- 2.5.1 Upon renewal of a Subscription, Customer may be required to sign a new agreement, a supplemental agreement or an amendment to this agreement.
- 2.5.2 Customer's Subscription will automatically renew unless Customer provides its Reseller with notice of its intent not to renew prior to the expiration of the Term.
- 2.6 **Eligibility for Academic, Government and Non-profit versions.** Customer agrees that if it is purchasing an academic, government or non-profit offer, Customer meets the respective eligibility requirements listed at the following sites:
- 2.6.1 For academic offers, the requirements for educational institutions (including administrative offices or boards of education, public libraries, or public museums) listed at <http://go.microsoft.com/academic>;
- 2.6.2 For government offers, the requirements listed at <http://go.microsoft.com/government>; and
- 2.6.3 For non-profit offers, the requirements listed at <http://go.microsoft.com/nonprofit>.
- Microsoft reserves the right to verify eligibility at any time and suspend the Online Service if the eligibility requirements are not met.
- 2.7 **Taxes.** The parties are not liable for any of the taxes of the other party that the other party is legally obligated to pay and which are incurred or arise in connection with or related to the transactions contemplated under this agreement, and all such taxes will be the financial responsibility of the party who is obligated by operation of law to pay such tax.
- 3. Term, termination.**
- 3.1 **Agreement term and termination.** This agreement will remain in effect until the expiration or termination of Customer's Subscription, whichever is earliest. Customer may terminate this agreement at any time by contacting its Reseller. The expiration or termination of this agreement will only terminate Customer's right to place new orders for additional Products under this agreement.
- 3.2 **Termination for cause.** If either party breaches this Agreement, the other party may terminate the breached agreement (in whole or in part, including orders) upon notice. If the breach is curable within 30 days, then the terminating party must provide 30 days' notice to the breaching party and an opportunity to cure the breach.
- 3.3 **Cancel a Subscription.** Customer's Reseller will establish the terms and conditions, if any, upon which Customer may cancel a Subscription.
- 4. Security, privacy, and data protection.**
- 4.1 **Reseller Administrator Access and Customer Data.** Customer acknowledges and agrees that (i) once Customer has chosen a Reseller, that Reseller will be the primary administrator of the Online Services for the Term and will have administrative privileges and access to Customer Data, however, Customer may request additional administrator privileges from its Reseller; (ii) Customer can, at its sole discretion and at any time during the Term, terminate its Reseller's administrative privileges; (iii) Reseller's privacy practices with respect to Customer Data or any services provided by Reseller are subject to the terms of Customer's agreement with its Reseller and may differ from Microsoft's privacy practices; and (iv) Reseller may collect, use, transfer, disclose, and otherwise process Customer Data, including personal data. Customer consents to Microsoft providing Reseller with Customer Data and information that Customer provides to Microsoft for purposes of ordering, provisioning and administering the Online Services.

- 4.2 Customer consents to the processing of personal information by Microsoft and its agents to facilitate the subject matter of this agreement. Customer may choose to provide personal information to Microsoft on behalf of third parties (including your contacts, resellers, distributors, administrators, and employees) as part of this agreement. Customer will obtain all required consents from third parties under applicable privacy and data protection laws before providing personal information to Microsoft.
- 4.3 Additional privacy and security details are in the Online Services Terms. The commitments made in the Online Services Terms only apply to the Online Services purchased under this agreement and not to any services or products provided by a Reseller. If Customer uses software or services that are hosted by a Reseller, that use will be subject to Reseller's privacy practices, which may differ from Microsoft's.
- 4.4 As and to the extent required by law, Customer shall notify the individual users of the Online Services that their data may be processed for the purpose of disclosing it to law enforcement or other governmental authorities as directed by Reseller or as required by law, and Customer shall obtain the users' consent to the same.
- 4.5 Customer appoints Reseller as its agent for purposes of interfacing with and providing instructions to Microsoft for purposes of this Section 4.

5. Warranties.

5.1 Limited warranty.

- 5.1.1 **Software.** Microsoft warrants that each version of the Software will perform substantially as described in the applicable Product documentation for one year from the date Customer is first licensed for that version. If it does not, and Customer notifies Microsoft within the warranty term, then Microsoft will, at its option, (1) return the price Customer paid for the Software license or (2) repair or replace the Software.
- 5.1.2 **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 in the SLA.
- 5.1.3 The remedies above are Customer's sole remedies for breach of the warranties in this section.
- 5.1.4 Customer waives any breach of warranty claims not made during the warranty period.

5.2 **Exclusions.** The warranties in this agreement do not apply to problems caused by accident, abuse or use inconsistent with this agreement, including failure to meet minimum system requirements. These warranties do not apply to free or trial products, Previews, Limited Offerings, or to components of Products that Customer is permitted to redistribute.

5.3 **Disclaimer.** Except for the limited warranties above, Microsoft provides no warranties or conditions for Products and disclaims any other express, implied, or statutory warranties for Products, including warranties of quality, title, noninfringement, merchantability and fitness for a particular purpose.

6. Defence of third party claims.

- 6.1 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 defence and any settlement of it.
- 6.2 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.
- 6.3 **By Microsoft.** Microsoft will defend Customer against any third-party claim to the extent it alleges that a Product or Fix 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 infringement under commercially reasonable terms, it may, as its option, either: (1) modify or replace the Product or fix with a functional equivalent; or (2) terminate Customer's license and refund any prepaid license fees (less depreciation on a five-year, straight-line basis) for perpetual licenses and any amount paid for Online Services 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 Fix after being notified to stop due to a third party claim.
- 6.4 **By Customer.** To the extent permitted by applicable law, Customer will defend Microsoft against any third-party claim to the extent it alleges that: (1) any Customer Data or non- Microsoft software 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 Fix, alone or in combination with anything else, violates the law or harms a third party.

7. Limitation of liability.

For each Product, each party's maximum, aggregate liability to the other under this agreement is limited to direct damages finally awarded in an amount not to exceed the amounts Customer was required to pay for the applicable Products during the term of this agreement, subject to the following:

- 7.1 **Online Services.** For Online Services, Microsoft's maximum liability to Customer for any incident giving rise to a claim will not exceed the amount Customer paid for the Online Service during the 12 months before the incident; provided that in no event will Microsoft's aggregate liability for any Online Service exceed the amount paid for that Online Service during the Subscription.
- 7.2 **Free Products and distributable code.** For Products 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.
- 7.3 **Exclusions.** In no event will either party be liable for loss of revenue or indirect, special, incidental, consequential, punitive, or exemplary damages, or damages for loss of use, lost profits, revenues, business interruption, or loss of business information, however caused or on any theory of liability.
- 7.4 **Exceptions.** The limits of liability in this section apply to the fullest extent permitted by applicable law, but do not apply to: (1) the parties' obligations under section 6; or (2) violation of the other's intellectual property rights.

8. Support and Professional Services.

- 8.1 Customer's Reseller will provide details on support services available for Products purchased under this agreement. Support services may be performed by Reseller or its designee, which in some cases may be Microsoft. If Customer purchases Professional Services under this agreement, the performance of those Professional Services will be subject to the terms and conditions in the Use Rights.

9. Miscellaneous.

9.1 Notices.

- 9.1.1 You must send notices by mail, return receipt requested, to the address below.

Microsoft Ireland Operations Limited

South County Business Park

Leopardstown

Dublin 18

- 9.1.2 You agree to receive electronic notices from us, which will be sent by email to the account administrator(s) named for your Subscription. Notices are effective on the date on the return receipt or, for email, when sent. You are responsible for ensuring that the email address for the account administrator(s) named for your Subscription is accurate and current. Any email notice that we send to that email address will be effective when sent, whether or not you actually receive the email.

- 9.2 **Assignment.** You may not assign this agreement either in whole or in part. Microsoft may transfer this agreement without your consent, but only to one of Microsoft's Affiliates. Any prohibited assignment is void.
- 9.3 **Severability.** If any part of this agreement is held unenforceable, the rest remains in full force and effect.
- 9.4 **Waiver.** Failure to enforce any provision of this agreement will not constitute a waiver.
- 9.5 **No agency.** This agreement does not create an agency, partnership, or joint venture.
- 9.6 **No third-party beneficiaries.** There are no third-party beneficiaries to this agreement.
- 9.7 **Use of contractors.** Microsoft may use contractors to perform services, but will be responsible for their performance, subject to the terms of this agreement.
- 9.8 **Microsoft as an independent contractor.** The parties are independent contractors. Customer and Microsoft each may develop products independently without using the other's confidential information.
- 9.9 **Agreement not exclusive.** Customer is free to enter into agreements to license, use or promote non-Microsoft products or services.

- 9.10 **Applicable law and venue.** This agreement is governed by the laws of Ireland. If Microsoft brings an action to enforce this agreement, Microsoft will bring it in the jurisdiction where Customer has its headquarters. If Customer brings an action to enforce this agreement, Customer will bring it in Ireland. This choice of jurisdiction does not prevent either party from seeking injunctive relief in any appropriate jurisdiction with respect to violation of intellectual property rights.
- 9.11 **Entire agreement.** This agreement is the entire agreement concerning its subject matter and supersedes any prior or concurrent communications. In the case of a conflict between any documents in this agreement that is not expressly resolved in those documents, their terms will control in the following order of descending priority: (1) this agreement, (2) the Product Terms, (3) the Online Services Terms, and (4) any other documents in this agreement.
- 9.12 **Survival.** All provisions survive termination of this agreement except those requiring performance only during the term of the agreement.
- 9.13 **U.S. export jurisdiction.** Products are subject to U.S. export jurisdiction. Customer must comply with all applicable international and national laws, including the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, and end-user, end-use and destination restrictions issued by U.S. and other governments related to Microsoft products, services, and technologies.
- 9.14 **Force majeure.** Neither party will be liable for any failure in performance due to causes beyond that party's reasonable control (such as fire, explosion, power blackout, earthquake, flood, severe storms, strike, embargo, labour disputes, acts of civil or military authority, war, terrorism (including cyber terrorism), acts of God, acts or omissions of Internet traffic carriers, actions or omissions of regulatory or governmental bodies (including the passage of laws or regulations or other acts of government that impact the delivery of Online Services)). This Section will not, however, apply to your payment obligations under this agreement.
- 9.15 **Contracting authority.** If you are an individual accepting these terms on behalf of an entity, you represent that you have the legal authority to enter into this agreement on that entity's behalf.
- 9.16 **Waiver of right to void online purchases.** To the maximum extent permitted by applicable law, Customer waives its rights to void purchases under this agreement pursuant to any law governing distance selling or electronic or online agreements, as well as any right or obligation regarding prior information, subsequent confirmation, rights of withdrawal, or cooling-off periods.

10. Definitions.

Any reference in this agreement to **day** will be a calendar day.

Acceptable Use Policy is set forth in the Online Services Terms.

Affiliate means any legal entity that a party owns, that owns a party, or that is under common ownership with a party. Ownership means, for purposes of this definition, control of more than a 50% interest in an entity.

Consumption Offering, Commitment Offering, or Limited Offering describe categories of Subscription offers and are defined in Section 2.

Customer Data is defined in the Online Services Terms.

End User means any person you permit to access Customer Data hosted in the Online Services or otherwise use the Online Services.

Fix means a Product fix, 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/contracts> or a successor site.

Non-Microsoft Product is defined in the Online Services Terms.

Online Services means any of the Microsoft-hosted online services subscribed to by Customer under this agreement, including Microsoft Dynamics Online Services, Office 365 Services, Microsoft Azure Services, or Microsoft Intune Online Services.

Online Services Terms means the additional terms that apply to Customer's use of Online Services published on the Licensing Site and updated from time to time.

Previews means preview, beta, or other pre-release version or feature of the Online Services or Software offered by Microsoft to obtain customer feedback.

Product means all products identified in the Product Terms, such as all Software, Online Services and other web-based services, including Previews.

Product Terms means the document that provides information about Microsoft Products and Professional Services available through volume licensing. The Product Terms document is published on the Licensing Site and is updated from time to time.

Professional Services means Product support services and Microsoft consulting services provided to Customer under this agreement. Professional Services does not include Online Services.

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