

Business and Services Agreement

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This Microsoft Business and Services Agreement is entered into between the entities identified on the signature form. If Customer licenses software or contracts for Online Services or Services from Microsoft under this agreement, the specific terms of those transactions will be contained in a separate Supplemental Agreement or Statement of Services that will incorporate the terms of this agreement. Nothing in this agreement obligates either party to enter into any Supplemental Agreement or Statement of Services.

Effective date. If the first Supplemental Agreement or Statement of Services incorporating the terms of this agreement is given an effective date that is earlier than the date this agreement is signed by Microsoft, the effective date of this agreement will be that earlier date. Otherwise, this agreement is effective on the date it is signed by Microsoft.

Terms and Conditions

A Note on Section Summaries. Some sections of this agreement have a summary at the beginning. These summaries are intended for ease of reference, and are not part of the agreement. If any summary conflicts with the section it is summarizing, the section of the agreement, and not the summary, controls.

1. *Definitions.*

In this agreement, the following definitions apply:

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

“Contractor” means any third party supplier or other provider of computer technology or related services.

“Customer” means the entity that has entered into this agreement and its Affiliates.

“Customer Data” means all data, including all text, sound, or image files that are provided to Microsoft by, or on behalf of, Customer through Customer’s use of the Online Services.

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

“Microsoft” means the Microsoft Affiliate that has entered into this agreement and its Affiliates, as appropriate.

“Online Services” means the Microsoft-hosted services identified in the Online Services section of the Product List.

“Product” means all software, Online Services and other web-based services, including pre-release or beta versions, identified on the Product List.

“Product List” means the statement published by Microsoft from time to time on the World Wide Web at <http://www.microsoft.com/licensing/contracts> or at a successor site that Microsoft identifies, which identifies the Products that are or may be made available under a program (which availability may vary by region) and any Product-specific conditions or limitations on the acquisition of licenses for, or use of, those Products.

“Product Use Rights” means, with respect to any licensing program, the use rights or terms of service for each Product and version published for that licensing program at <http://www.microsoft.com/licensing/contracts> or at a successor site.

“Service Level Agreement” means the document specifying the standards Microsoft agrees to adhere to and by which it measures the level of service for an Online Service.

“Services Deliverables” means any computer code or materials, other than Products or Fixes, that Microsoft leaves with Customer at the conclusion of Microsoft’s performance of Services.

“Services” means all support, consulting and other services or advice, including any resulting deliverables provided to Customer under this agreement. Services do not include Online Services.

“Statement of Services” means any work orders, services descriptions, or other statements of services referencing this agreement, and any parts of an enrollment that relate to the delivery of Services.

“Supplemental Agreement” means any agreement expressly incorporating the terms of this agreement, other than a Statement of Services.

“Trade Secret” means information that is not generally known or readily ascertainable to the public, has economic value as a result, and has been subject to reasonable steps under the circumstances to maintain its secrecy.

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

2. Use, ownership, rights, and restrictions.

Summary: The specific use rights and terms of service for Products are contained in Microsoft’s published Product Use Rights. Ownership and license rights in any Services Deliverables are addressed in this section. General limitations on the use of Products are also addressed in this section.

- a. Products.** Unless otherwise specified in a Supplemental Agreement, use of any Product is governed by the Product Use Rights specific to each Product and version and by the terms of the applicable Supplemental Agreement.
- b. Fixes and Services Deliverables.**
 - (i) Fixes.** Fixes are licensed according to the license terms applicable to the Product to which those Fixes relate. If the Fixes are not provided for a specific Product, any other use terms Microsoft provides with the Fixes will apply, and if no use terms are provided, Customer shall have a non-exclusive, perpetual, fully paid-up license to use and reproduce the Fixes solely for its internal use. Customer may not modify, change the file name of, or combine any Fixes with any non-Microsoft computer code, except as expressly permitted in a Supplemental Agreement or Statement of Services.
 - (ii) Pre-Existing Work.** All rights in any computer code or non-code based written materials developed or otherwise obtained by or for the parties or their Affiliates independent of this agreement (“Pre-existing Work”) shall remain the sole property of the party providing the Pre-existing Work. During the performance of the Services, each party grants to the other party (and Microsoft’s contractors as necessary) a temporary, non-exclusive license to use, reproduce and modify any of its Pre-existing

Work provided to the other party, solely as needed to perform its obligations in connection with the Services.

Except as may be otherwise expressly agreed by the parties in writing, upon payment in full Microsoft grants Customer a non-exclusive, perpetual, fully paid-up license to use, reproduce and modify (if applicable) any Microsoft Pre-existing Work provided as part of a Services Deliverable, solely in the form delivered to Customer, and solely for Customer's internal business purposes.

The license to Microsoft's Pre-existing Work is conditioned upon Customer's compliance with the terms of this agreement.

- (iii) Developments.** Upon payment in full, Microsoft grants Customer Joint Ownership in any computer code or non-code written materials (other than Products, Fixes or Pre-existing Work) developed by Microsoft or in collaboration with Customer and left with Customer at the conclusion of a Services engagement ("Developments"), except as may be otherwise explicitly agreed to in a Statement of Services and subject to the terms of this agreement. "Joint Ownership" means each party has the right to independently exercise any and all rights of ownership now known or later created or recognized, including without limitation the rights to use, reproduce, modify and distribute the Developments for any purpose, without the need for further authorization to exercise any such rights or any obligation of accounting or payment of royalties. Each party shall be the sole owner of any modifications that it makes based upon Developments. Customer may exercise its rights in Developments solely for its internal business operations and may not resell or distribute them.

Notwithstanding the prior paragraph, if the laws of Austria, France, Germany, Hungary, Poland, Switzerland, or Ukraine apply to Services per the terms of this agreement or the determination of a court, all rights in Developments are owned by Microsoft, subject to the terms of this paragraph. Upon payment in full, Microsoft grants to Customer a non-exclusive license to Developments, except as may be explicitly agreed otherwise in a Statement of Services. Customer and Microsoft may use, reproduce, and modify the Developments in all ways of use (and all future ways of use) without any accounting or payment of royalties. Each party shall be the sole owner of any modifications that it makes based upon Developments. Customer may exercise its rights in Developments solely for its internal business operations and may not resell or distribute them.

- (iv) Affiliates' rights.** Customer may sublicense the rights contained in this subsection relating to Deliverables to its Affiliates, but Customer's Affiliates may not sublicense these rights and Customer's Affiliates' use must be consistent with the license terms contained in this agreement.

- c. Open Source License restrictions.** Certain third party license terms require that computer code be generally (1) disclosed in source code form to third parties; (2) licensed to third parties for the purpose of making derivative works; or (3) redistributable to third parties at no charge (collectively, "Open Source License Terms"). Neither party may use, incorporate, modify, distribute, provide access to, or combine the computer code of the other with any other computer code or intellectual property (collectively, "Provide") in a manner that would subject the other's computer code to Open Source License Terms. Microsoft is not responsible for Customer's upload, use or distribution of Customer's code from the Online Services. Customer may upload code to an Online Service and allow third parties access to use or download Customer's code on the Online Service, provided that (1) such use is not restricted by a Supplemental Agreement or the Product Use Rights and (2) any Open Source License Terms apply solely to Customer and their uploaded code, and not to any code or Products provided by Microsoft. Each party warrants that it will not provide the other party with, or give third parties access through the Online Services to, computer code that is governed by Open Source License Terms, except as described above.

- d. Restrictions on use.** Customer must not:

- (i) separate and use the components of a Product on two or more computers, upgrade or downgrade components at different times, or transfer components separately, except as provided in the Product Use Rights;
 - (ii) reverse engineer, decompile or disassemble any Product, Fix, or Services Deliverable, except where applicable law permits it despite this limitation; or
 - (iii) distribute, sublicense, rent, lease, lend, or host any Product, Fix, or Services Deliverable except as permitted in the applicable Supplemental Agreement, Statement of Services, the Product Use Rights, or in a separate written agreement.
- e. **Reservation of rights.** All rights not expressly granted are reserved to Microsoft.

3. **Confidentiality.**

Summary: Each party agrees not to use or disclose the other's Confidential Information except as necessary to further the purposes of the parties' agreement. Each party agrees to take reasonable steps to protect that information and to cooperate with each other if a disclosure occurs.

- a. **What is included.** "Confidential Information" is non-public information, know-how and Trade Secrets in any form that:
- (i) are designated as "confidential";
 - (ii) a reasonable person knows or reasonably should understand to be confidential; or
 - (iii) include non-public information regarding either party's products or customers, marketing and promotions, or the negotiated terms of Microsoft agreements.
- b. **What is not included.** The following types of information, however marked, are not Confidential Information. Information that:
- (i) is, or becomes, publicly available without a breach of this agreement;
 - (ii) was lawfully known to the receiver of the information without an obligation to keep it confidential;
 - (iii) is received from another source who can disclose it lawfully and without an obligation to keep it confidential;
 - (iv) is independently developed; or
 - (v) is a comment or suggestion one party volunteers about the other's business, products or services.
- c. **Treatment of Confidential Information.**
- (i) **In general.** Subject to the other terms of this agreement, each party agrees:
 - it will not disclose the other's Confidential Information to third parties; and
 - it will use and disclose the other's Confidential Information only for purposes of the parties' business relationship with each other.
 - (ii) **Security precautions.** Subject to the other terms of this agreement, each party agrees:
 - to take reasonable steps to protect the other's Confidential Information -- these steps must be at least as protective as those the party takes to protect its own Confidential Information;
 - to notify the other promptly upon discovery of any unauthorized use or disclosure of Confidential Information; and
 - to cooperate with the other to help regain control of the Confidential Information and prevent further unauthorized use or disclosure of it.
 - (iii) **Sharing Confidential Information with Affiliates and representatives.**

- A “Representative” is an employee, contractor, advisor, or consultant of one of the parties or of one of the parties’ Affiliates.
 - Each party may disclose the other’s confidential information to its Representatives (who may then disclose that Confidential Information to other of that party’s Representatives) only if those Representatives have a need to know about it for purposes of the parties’ business relationship with each other. Before doing so, each party must:
 - 1) ensure that Affiliates and Representatives are required to protect the Confidential Information on terms consistent with this agreement; and
 - 2) accept responsibility for each Representative’s use of Confidential Information.
 - Neither party is required to restrict work assignments of Representatives who have had access to Confidential Information. Neither party can control the incoming information the other will disclose to it in the course of working together, or what that party’s Representatives will remember, even without notes or other aids. Each party agrees that use of information 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.
- (iv) Disclosing Confidential Information if required to by law.** Each party may disclose the other’s Confidential Information if required to comply with a court order or other government demand that has the force of law. Before doing so, each party must seek the highest level of protection available and, when possible, give the other enough prior notice to provide a reasonable chance to seek a protective order.
- d. Length of Confidential Information obligations.** Except as permitted above, neither party will use or disclose the other’s Confidential Information for five years after it is received. The five-year time period does not apply if applicable law requires a longer period or the Product Use Rights provide a more specific requirement.

4. Warranties.

Summary: Microsoft warrants that Online Services will perform in accordance with the applicable Service Level Agreement and that Products other than Online Services will work substantially as described in the user documentation, subject to certain limitations. If not, Microsoft will provide the remedies described in the applicable Service Level Agreement for Online Services and for Products other than Online Services, provide a replacement or a refund. Microsoft warrants that Services will be performed with professional care and skill. Microsoft disclaims all other warranties.

- a. Limited warranty.** Microsoft warrants that:
- (i) Online Services will perform in accordance with the applicable Service Level Agreement;
 - (ii) Products other than Online Services will perform substantially as described in the applicable Microsoft user documentation; and
 - (iii) Services will be performed with professional care and skill.
- b. Limited warranty term.** The limited warranty for:
- (i) Online Services is for the duration of Customer’s use of the Online Service, subject to the notice requirements in the applicable Service Level Agreement;
 - (ii) Products other than Online Services is one year from the date Customer first uses the Product; and
 - (iii) Services is 30 days from delivery of a Services Deliverable, unless otherwise stated in a Statement of Services.

- c. Limited warranty exclusions.** This limited warranty is subject to the following limitations:
- (i) any implied warranties, guarantees or conditions not able to be disclaimed as a matter of law last for one year from the start of the limited warranty;
 - (ii) the limited warranty does not cover problems caused by accident, abuse or use in a manner inconsistent with this agreement or the Product Use Rights, or resulting from events beyond Microsoft's reasonable control;
 - (iii) the limited warranty does not apply to components of Products that Customer is permitted to redistribute;
 - (iv) the limited warranty does not apply to free, trial, pre-release, or beta products; and
 - (v) the limited warranty does not apply to problems caused by the failure to meet minimum system requirements.
- d. Remedies for breach of limited warranty.** If Microsoft fails to meet any of the above limited warranties and Customer notifies Microsoft within the warranty period, then Microsoft will:
- (i) for Online Services, provide the remedies identified in the Service Level Agreement for the affected Online Service;
 - (ii) for Products other than Online Services, at its option either (1) return the price paid or (2) repair or replace the Product; and
 - (iii) for Services, at its option either (1) return the price paid for the specific Service or (2) re-perform the specific Service.
- These are Customer's only remedies for breach of the limited warranty, unless other remedies are required to be provided under applicable law.
- e. DISCLAIMER OF OTHER WARRANTIES. OTHER THAN THIS LIMITED WARRANTY, MICROSOFT PROVIDES NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS. MICROSOFT DISCLAIMS ANY IMPLIED REPRESENTATIONS, WARRANTIES, OR CONDITIONS, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE, OR NON-INFRINGEMENT. THESE DISCLAIMERS WILL APPLY UNLESS APPLICABLE LAW DOES NOT PERMIT THEM.**

5. *Defense of infringement, misappropriation, and third party claims.*

Summary: Microsoft agrees to defend Customer against claims that Microsoft software infringes someone else's intellectual property rights, and pay any damages awarded by a court or in a settlement. There are several exceptions, which limit Microsoft's obligations in cases where Customer has contributed in some way to the claim. If something Customer has done caused the claim and Microsoft is damaged, Customer must reimburse Microsoft.

If Microsoft believes that it is necessary to avoid an infringement claim, Microsoft may replace or modify the Products Customer is using. If someone enjoins Customer use of a Product, Microsoft will, at its option, replace the Product, modify it to make it non-infringing, obtain the rights Customer needs to keep using it, or refund Customer's money, all as described below.

Customer must defend Microsoft from third party claims of infringement related to Customer Data or its failure to obtain third party licenses for software it asks Microsoft to host.

- a. Microsoft's agreement to protect.** Microsoft will defend Customer against any claims made by an unaffiliated third party that any Product, Fix, or Services Deliverable that is made available by Microsoft for a fee infringes that party's patent, copyright, or trademark or makes intentional unlawful use of its Trade Secret. Microsoft will also pay the amount of any resulting adverse final judgment (or settlement to which Microsoft consents). This section provides Customer's exclusive remedy for these claims.

b. Limitations on defense obligation. Microsoft's obligations will not apply to the extent that the claim or award is based on:

- (i) specifications Customer provides to Microsoft for Services Deliverables;
- (ii) Customer Data, code, or materials provided by Customer as part of Services Deliverables or as part of the use of an Online Service;
- (iii) Customer's use of the Product, Fix or Services Deliverables after Microsoft notifies it to discontinue that use due to a third party claim;
- (iv) Customer's combination of the Product, Fix or Services Deliverables with a non-Microsoft product, data or business process;
- (v) damages attributable to the value of the use of a non-Microsoft product, data or business process;
- (vi) modifications that Customer makes to the Product, Fix or Services Deliverables;
- (vii) Customer's redistribution of the Product, Fix or Services Deliverables to, or its use for the benefit of, any unaffiliated third party, except as expressly permitted by a Supplemental Agreement or the Product Use Rights;
- (viii) Customer's use of Microsoft's trademark(s) without express written consent to do so; or
- (ix) any Trade Secret claim, where Customer acquires the Trade Secret (1) through improper means; (2) under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (3) from a person (other than Microsoft or its Affiliates) who owed to the party asserting the claim a duty to maintain the secrecy or limit the use of the Trade Secret.

Customer will reimburse Microsoft for any costs or damages that result from any of these actions.

c. Specific rights and remedies in case of infringement.

(i) **Microsoft's rights in addressing possible infringement.** If Microsoft receives information concerning an infringement claim related to a Product, Fix or Services Deliverable, Microsoft may, at its expense and without obligation to do so, either:

- procure for Customer the right to continue to use the allegedly infringing Product, Fix or Services Deliverable; or
- modify the Product, Fix, or Services Deliverable, or replace it with a functional equivalent, to make it non-infringing, in which case Customer will immediately cease use of the allegedly infringing Product, Fix, or Services Deliverable after receiving notice from Microsoft.

(ii) **Customer's specific remedy in case of injunction.** If, as a result of an infringement claim, Customer's use of a Product, Fix or Services Deliverable that is made available by Microsoft for a fee is enjoined by a court of competent jurisdiction, Microsoft will, at its option:

- procure the right to continue its use;
- replace it with a functional equivalent;
- modify it to make it non-infringing; or
- refund the amount paid (or, for Online Services, refund any amounts paid in advance for unused Online Services) and terminate the license or right to access (and, as applicable to certain Services Deliverables, Customer's ownership rights in) the infringing Product, Fix or Services Deliverable.

d. Customer's agreement to protect. Customer will defend Microsoft against any claims made by an unaffiliated third party that:

- (i) any Customer Data or non-Microsoft software Microsoft hosts on Customer's behalf infringes the third party's patent, copyright, or trademark or makes intentional unlawful use of its Trade Secret; or
- (ii) arise from Customer's or its end user's violation of the terms of this agreement.

Customer must pay the amount of any resulting adverse final judgment (or settlement to which Customer consents). This section provides Microsoft's exclusive remedy for these claims.

- e. **Obligations of protected party.** Customer must notify Microsoft promptly in writing of a claim subject to the subsection titled "Microsoft's agreement to protect" and Microsoft must notify Customer promptly in writing of a claim subject to the subsection titled "Customer's agreement to protect." The party invoking its right to protection must (1) give the other party sole control over the defense or settlement; and (2) provide reasonable assistance in defending the claim. The party providing the protection will reimburse the other party for reasonable out of pocket expenses that it incurs in providing assistance.

6. **Limitation of liability.**

Summary: Microsoft and Customer limit their liability to each other under this agreement to the amount Customer was required to pay for the Product or Services. This limit does not apply, however, to the obligations under the section titled "Defense of infringement, misappropriation, and third party claims." Other exceptions are described below.

- a. **Limitation on liability.** To the extent permitted by applicable law, the liability of each party, its Affiliates, and its Contractors arising under this agreement is limited to direct damages up to (1) for Services and Products other than Online Services, the amount Customer was required to pay for the Product or Services giving rise to that liability and (2) for Online Services, the amount Customer was required to pay for the Online Service giving rise to that liability during the prior 12 months. In the case of Products or Services provided free of charge, or code that Customer is authorized to redistribute to third parties without separate payment to Microsoft, Microsoft's liability is limited to U.S. \$5,000. These limitations apply regardless of whether the liability is based on breach of contract, tort (including negligence), strict liability, breach of warranties, or any other legal theory. However, these monetary limitations will not apply to:
 - (i) Microsoft's and Customer's obligations under the section titled "Defense of infringement, misappropriation, and third party claims";
 - (ii) liability for damages caused by either party's gross negligence or willful misconduct, or that of its employees or its agents, and awarded by a court of final adjudication (provided that, in jurisdictions that do not recognize a legal distinction between "gross negligence" and "negligence," "gross negligence" as used in this subsection shall mean "recklessness");
 - (iii) liabilities arising out of any breach by either party of its obligations under the section entitled "Confidentiality", except that Microsoft's liability arising out of or in relation to Customer Data shall in all cases be limited to the amount Customer paid for the Online Service giving rise to that liability during the prior 12 months;
 - (iv) liability for personal injury or death caused by either party's negligence, or that of its employees or agents, or for fraudulent misrepresentation; and
 - (v) violation by either party of the other party's intellectual property rights.
- b. **EXCLUSION OF CERTAIN DAMAGES. TO THE EXTENT PERMITTED BY APPLICABLE LAW, WHATEVER THE LEGAL BASIS FOR THE CLAIM, NEITHER PARTY, NOR ANY OF ITS AFFILIATES, OR CONTRACTORS, WILL BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, OR INCIDENTAL DAMAGES, OR DAMAGES FOR LOST PROFITS, REVENUES, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION ARISING IN CONNECTION WITH THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH**

POSSIBILITY WAS REASONABLY FORESEEABLE. HOWEVER, THIS EXCLUSION DOES NOT APPLY TO EITHER PARTY'S LIABILITY TO THE OTHER FOR VIOLATION OF ITS CONFIDENTIALITY OBLIGATIONS (EXCEPT TO THE EXTENT THAT SUCH VIOLATION RELATES TO CUSTOMER DATA), THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, OR THE PARTIES' RESPECTIVE OBLIGATIONS IN THE SECTION TITLED "DEFENSE OF INFRINGEMENT, MISAPPROPRIATION, AND THIRD PARTY CLAIMS."

- c. **Affiliates and Contractors.** Neither Microsoft nor Customer shall bring any action against the other's Affiliates or Contractors in respect of any matter disclaimed on their behalf in this agreement. Each party will indemnify the other in the event of any breach of this provision.

7. *Verifying compliance.*

Summary: Microsoft has the right to review Customer's records or conduct an onsite audit through an independent auditor. Microsoft will pay for the costs of the audit unless it reveals a material noncompliance.

- a. **Right to verify compliance.** Customer must keep records relating to the Products it and its Affiliates use or distribute. Microsoft has the right to verify compliance with the license terms for the Products, at Microsoft's expense.
- b. **Verification process and limitations.** To verify compliance, Microsoft will engage an independent auditor, which will be subject to a confidentiality obligation. Verification will take place upon not fewer than 30 days notice, during normal business hours and in a manner that does not interfere unreasonably with Customer's operations. Customer must promptly provide the independent auditor with any information it reasonably requests in furtherance of the verification, including access to systems running the Products and evidence of licenses for Products Customer hosts, sublicenses, or distributes to third parties. As an alternative, Microsoft can require Customer to complete Microsoft's self-audit questionnaire relating to the Products Customer and any of its Affiliates use or distribute, but reserves the right to use a verification process as set out above.

If Microsoft undertakes verification and does not find material unlicensed use (license shortage of 5% or more per Product), Microsoft will not undertake another verification of the same entity for at least one year. Microsoft and the independent auditors will use the information obtained in compliance verification only to enforce Microsoft's rights and to determine whether Customer is in compliance with the license terms for the Products. By invoking 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 means permitted by law.

- c. **Remedies for non-compliance.** If verification or self-audit reveals any unlicensed use, Customer must promptly order sufficient licenses to cover its use. If material unlicensed use is found, Customer must reimburse Microsoft for the costs Microsoft has incurred in verification and acquire the necessary additional licenses at single retail license cost within 30 days.

8. *Term and Termination.*

Summary: This agreement continues until either party terminates it. Either party can terminate it on 60 days notice. Its termination will not affect any existing Supplemental Agreements or Statements of Services that incorporate its terms.

This agreement will remain in effect until terminated. Either party may terminate it at any time by giving at least 60 calendar days prior written notice.

The sole effect of terminating this agreement will be to terminate the ability of either party to enter into subsequent Supplemental Agreements or Statements of Services under this agreement. Termination of this agreement will not, by itself, result in the termination of any Supplemental Agreement or

Statement of Services previously entered into under this agreement. Any terms of this agreement incorporated by reference into any Supplemental Agreement or Statement of Services will continue in effect unless that Supplemental Agreement or Statement of Services itself is terminated or expires.

The term and termination rights for any Supplemental Agreement or Statement of Services will be set forth in that Supplemental Agreement or Statement of Services.

Unless otherwise provided in a Statement of Services, Customer's Affiliate that signed the Statement of Services may terminate it at any time by giving the Microsoft Affiliate that signed the Statement of Services 30 calendar days prior written notice. Either party to the Statement of Services may terminate it if the other party is (1) in material breach or default of any obligation that is not cured within 30 calendar days notice of such breach or (2) fails to pay any invoice that is more than 60 calendar days outstanding.

9. Supportability of Products.

Summary: This section describes limitations on Microsoft's obligations to provide technical support (for example, for discontinued or sold Products, or for unsupported implementations).

This section applies if Customer is entitled to Product support under a Statement of Services or Supplemental Agreement. This section does not apply to Online Services.

Microsoft may add support for new Products or discontinue support for existing Products from time to time. If Microsoft discontinues support for a Product, Microsoft will inform Customer six months in advance of the discontinuation by posting the information at <http://support.microsoft.com> or any successor site. If Microsoft sells a Product to another company, Microsoft will give Customer notice of the sale and at the time of notice Microsoft will either (1) arrange for the other company to continue the support; or (2) continue support itself for 90 days to give Customer time to make alternative arrangements.

There may be cases where Customer's implementation of Products cannot be effectively supported. As part of providing the support Services, Microsoft will notify Customer if Microsoft reaches that conclusion. If Customer does not modify the implementation to make it effectively supportable within 30 calendar days after the notice, Microsoft will not be obligated to provide additional support Services for that implementation; however, Microsoft will continue to provide support for Customer's other supportable implementations covered by the applicable Statement of Services or Supplemental Agreement.

For Statements of Services for support, Microsoft will use commercially reasonable efforts to provide the support services for those Products covered in the Statement of Services, provided they are validly licensed to Customer.

Microsoft may use any technical information Microsoft derives from providing Services related to its Products for problem resolution, troubleshooting, product functionality enhancements and Fixes, and for Microsoft's knowledge base. Microsoft agrees not to identify Customer or disclose any of Customer's Confidential Information in any item in the knowledge base.

10. Insurance while performing Services on Customer's premises.

Summary: This section describes the type and amount of insurance that Microsoft agrees to have in place for Customer's protection.

Microsoft will procure and maintain the following insurance coverage at all times when performing Services on Customer's premises under this agreement via commercial insurance, self-insurance, a combination of the two or any other similar risk financing alternative:

- a. Commercial General Liability covering bodily injury and tangible property damage liability with a limit of not less than U.S. \$2,000,000 each occurrence;
- b. Workers' Compensation (or maintenance of a legally permitted and governmentally-approved program of self-insurance) covering Microsoft employees pursuant to applicable

state workers' compensation laws for work-related injuries suffered by Microsoft's employees;

- c. Employer's Liability with limits of not less than U.S. \$1,000,000 per accident;
- d. Professional Liability/Errors & Omissions Liability covering damages arising out of negligent acts, errors, or omissions committed by Microsoft or its employees in the performance of Services, with a limit of liability of not less than U.S. \$2,000,000 per claim; and
- e. Automobile Liability (if vehicles are brought on Customer's premises or used in the performance of the Services) with U.S. \$2,000,000 combined limit per occurrence, for bodily injury and property damage combined covering owned, non-owned and hired vehicles.

Microsoft will provide Customer with evidence of coverage on request.

11. *Miscellaneous.*

- a. **Notices to Microsoft.** Notices, authorizations, and requests in connection with this agreement must be sent by regular or overnight mail, express courier, or fax to the addresses and numbers listed in this agreement. Notices will be treated as delivered on the date shown on the return receipt or on the courier or fax confirmation of delivery.

Copies should be sent to:

Microsoft Corporation
Legal and Corporate Affairs
Volume Licensing Group
One Microsoft Way
Redmond, WA 98052
USA

Via Facsimile (425) 936-7329

- b. **Assignment.** Either party may assign this agreement to an Affiliate only. Assignment will not relieve the assigning party of its obligations under the assigned agreement, including any additional costs or limitations on use that result from the assignment. If either party assigns this agreement, it must notify the other party of the assignment in writing. Neither party may assign any Statement of Services without the written consent of the other. Microsoft may use contractors to perform Services and Microsoft will be responsible for their performance subject to the terms of this agreement.
- c. **Severability.** If a court holds any provision of this agreement to be illegal, invalid, or unenforceable, the rest of the document will remain in effect and this agreement will be amended to give effect to the eliminated provision to the maximum extent possible.
- d. **Waiver.** A waiver of any breach of this agreement is not a waiver of any other breach. Any waiver must be in writing and signed by an authorized representative of the waiving party.
- e. **Dispute resolution.** When bringing an action to enforce this agreement, (including any agreement incorporating these terms), the parties agree to the following jurisdictions:
 - (i) If Microsoft brings the action, the jurisdiction will be where Customer's contracting Affiliate has its headquarters;
 - (ii) If Customer brings the action with any Microsoft Affiliate located outside of Europe, the jurisdiction will be the State of Washington, USA;
 - (iii) If Customer brings the action with any Microsoft Affiliate located in Europe, the jurisdiction will be Ireland; and
 - (iv) If Customer brings the action to enforce a Statement of Services, the jurisdiction will be where the Microsoft Affiliate delivering the services has its headquarters.

This choice of jurisdiction does not prevent either party from seeking injunctive relief with respect to a violation of intellectual property rights or confidentiality obligations in any appropriate jurisdiction.

- f. **Survival.** Provisions regarding ownership and license rights, fees, Product Use Rights, restrictions on use, evidence of perpetual licenses, transfer of licenses, warranties, defense of infringement and misappropriation claims, Microsoft's and Customer's obligations to protect each other, limitations of liability, confidentiality, compliance verification, obligations on termination or expiration and the other provisions in this section entitled "Miscellaneous" will survive termination or expiration of this agreement and of any agreement or Statement of Services in which they are incorporated.
- g. **This agreement is not exclusive.** Customer is free to enter into agreements to license, use, or promote non-Microsoft software or services.
- h. **Applicable law.** The terms of this agreement and/or any Supplemental Agreement entered into with any Microsoft Affiliate located outside of Europe will be governed by and construed in accordance with the laws of the State of Washington and federal laws of the United States. The terms of this agreement and/or any Supplemental Agreement entered into with any Microsoft Affiliate located in Europe will be governed by and construed in accordance with the laws of Ireland. Unless otherwise agreed in writing, any dispute arising out of or in relation to Services will be governed by the law of the jurisdiction where the Microsoft Affiliate delivering the Services is organized. The 1980 United Nations Convention on Contracts for the International Sale of Goods and its related instruments will not apply to this agreement or any Supplemental Agreement or Statement of Services entered into with any Microsoft Affiliate that incorporates these terms. The Products are protected by copyright and other intellectual property rights laws and international treaties.
- i. **Microsoft as independent contractor.** Microsoft provides its Services as an independent contractor, and will be responsible for any and all social security, unemployment, workers' compensation and other withholding taxes for all of Microsoft's employees. Customer and Microsoft are free to develop products independently without the use of the other's Confidential Information.
- j. **Amending the agreement.** This agreement and any Supplemental Agreement or Statement of Services incorporating its terms may be amended only by a formal written agreement signed by both parties. The Product List and Product Use Rights (including any documents referenced therein) may be changed by Microsoft in accordance with the terms of this agreement or a Supplemental Agreement. Any terms and conditions contained in a purchase order that contradict these terms and conditions will not apply.
- k. **No transfer of ownership.** Microsoft does not transfer any ownership rights in any Product.
- l. **Privacy.** Microsoft and Customer will comply with all applicable privacy and data protection laws and regulations. Customer may choose to provide personal information to Microsoft on behalf of third parties (including, Customer's contacts, resellers, distributors, and administrators) as part of this agreement. Customer represents and warrants that it has and will comply with any applicable laws to provide notices to or obtain permissions from any such individuals to allow sharing of their personal information with Microsoft for the purpose of allowing Microsoft or its agents to facilitate Customer's agreements and related services.

Customer consents to Microsoft's use of the contact information provided by Customer for purposes of administering its agreements, the business relationship and related services and with Microsoft's sharing of Customer's information with Customer's designated representatives, resellers, distributors, and administrators for such purposes, including allowing such individuals to update Customer's contact information on Customer's behalf. The personal information Customer provides in connection with this agreement will be used and protected according to the privacy statement available at <https://licensing.microsoft.com> to the maximum extent permitted by applicable law. Product-specific privacy commitments are described in the Product Use Rights

- m. **Services payment terms.** Customer agrees to pay all fees in a Statement of Services within 30 calendar days of the date of invoice, unless the Statement of Services provides otherwise. Microsoft's fees exclude any taxes, duties, tariffs, levies or other governmental charges or expenses (including, without limitation, any value added taxes), which will be billed to and paid by Customer. Microsoft is responsible for taxes based upon its personal property ownership and net income. Microsoft may, at its option, assess a finance charge of the lesser of 18% per annum, accrued, calculated and payable monthly, or the highest amount allowed by law, on all past due amounts due to Microsoft. Microsoft will have no obligation to continue to provide Services if Customer fails to make timely payment.
- n. **U.S. export jurisdiction.** Products, Fixes, and Services Deliverables are subject to U.S. export jurisdiction. Customer will comply with all U.S. Export Administration Regulations and International Traffic in Arms Regulation requirements as well as all end-user, end-use, and destination restrictions issued by the U.S. and other governments applicable to this agreement. For additional information, see <http://www.microsoft.com/exporting>.
- o. **Natural Disaster.** In the event of a natural disaster, Microsoft may provide additional assistance or rights by posting them on <http://www.microsoft.com> at such time.

12. *Country-specific provisions.*

For Customers located in any of the countries identified in this section 12, the following country-specific provisions replace or supplement the equivalent provisions as noted:

Bangladesh, India, Indonesia, Japan, the People's Republic of China, the Philippines, Sri Lanka, Thailand, Turkey, and Vietnam.

Replace Terms and Conditions subsection 11e titled "Dispute resolution" with the following:

- e. **Dispute resolution.** The decision of an arbitrator shall be final, binding, and incontestable and may be used as a basis for judgment thereon in the above-named countries or elsewhere. To the fullest extent permitted by applicable law, the parties waive their right to any form of appeal or other similar recourse to a court of law. These choices of venue do not prevent either party from seeking injunctive relief with respect to a violation of intellectual property rights or confidentiality obligations in any appropriate jurisdiction.

Bangladesh, Indonesia, Sri Lanka, Thailand, and Vietnam. Any dispute arising out of or in connection with this agreement (including any Supplemental Agreement or Statement of Services incorporating these terms), including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC"), which rules are deemed to be incorporated by reference into this section. The Tribunal shall consist of one arbitrator to be appointed by the Chairman of SIAC. Arbitration proceedings shall be conducted in English.

India. Any dispute arising out of or in connection with any Supplemental Agreement incorporating these terms), including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC"), which rules are deemed to be incorporated by reference into this section. The Tribunal shall consist of one arbitrator to be appointed by the Chairman of SIAC.

Any dispute arising out of or in connection with any Statement of Services, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the Arbitration and Conciliation Act, 1996, by three arbitrators. One arbitrator shall be appointed by each party and the third arbitrator shall be appointed by the arbitrators so appointed. The venue of arbitration shall be New Delhi. Arbitration proceedings shall be conducted in English.

Japan. Any dispute arising out of or in connection with this agreement (including any Supplemental Agreement or Statement of Services incorporating these terms), including any question regarding its existence, validity or termination, is subject to exclusive jurisdiction in Tokyo District Court.

The People's Republic of China ("PRC"). Any dispute arising out of or in connection with this agreement (including any Supplemental Agreement or Statement of Services incorporating these terms), including any question regarding its existence, validity or termination, will be submitted to binding arbitration at the China International Economic and Trade Arbitration Commission in Beijing (CIETAC) in accordance with its rules in effect from time to time.

The Philippines. Any dispute arising out of or in connection with this agreement or any Supplemental Agreement incorporating these terms, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC"), which rules are deemed to be incorporated by reference into this section. The Tribunal shall consist of one arbitrator to be appointed by the Chairman of SIAC.

Any dispute arising out of or in connection with any Statement of Services, including any question regarding its existence, validity or termination, will be settled by arbitration in accordance with the UNCITRAL Arbitration Rules in force as at the date of the dispute. The venue of arbitration will be Singapore. Arbitration proceedings shall be conducted in English.

Bangladesh, Indonesia, and Sri Lanka

Replace Terms and Conditions subsection 11h titled "Applicable law," third sentence of the paragraph, with the following:

The parties agree that the terms of any Statement of Services will be governed by the laws of Singapore.

Indonesia

Supplement Terms and Conditions section 11 titled "Miscellaneous" with the following:

- p. **English language controls.** The parties agree that these Master Terms and any agreement be written and executed in English and that, in the event these Master Terms or any agreement are translated into Bahasa Indonesia to comply with the implementing regulations of Indonesian Law No. 24/2009, the English language version of the Master Terms and any agreement controls.

Japan

Replace the URL identified in section 1 titled "Definitions" in the Product List definition with the following:

<http://www.microsoft.com/japan/licensing/product/pl.mspx>.

Replace the URL identified in section 1 titled "Definitions" in the Product Use Rights definition with the following:

<http://www.microsoft.com/japan/licensing/product/pur.mspx>.

Replace Terms and Conditions subsection 11h titled "Applicable law" with the following:

The terms of any Supplemental Agreement or Statement of Services will be governed by and construed in accordance with the laws of Japan.

Replace the URL identified in subsection 11n titled “U.S. export jurisdiction” in the with the following:

<http://www.microsoft.com/japan/exporting>.

Turkey

Replace section 10 titled “Insurance while performing Services on Customer’s premises” in its entirety with the following:

10. Insurance while performing Services on Customer’s premises.

Microsoft will procure and maintain the following insurance coverage at all times when performing Services on Customer’s premises. The insurance coverage will be via commercial insurance, self-insurance, a combination of the two or any other similar risk financing alternative:

- a. Commercial General Liability covering bodily injury and tangible property damage;
- b. Workers’ Compensation (or maintenance of a legally permitted and governmentally-approved program of self-insurance) covering Microsoft employees pursuant to applicable state workers’ compensation laws for work-related injuries suffered by Microsoft’s employees;
- c. Employer’s Liability;
- d. Professional Liability/Errors & Omissions Liability covering damages arising out of negligent acts, errors, or omissions committed by Microsoft or its employees in the performance of Services; and
- e. Automobile Liability (if vehicles are brought on Customer’s premises or used in the performance of the Services) for bodily injury and property damage covering owned, non-owned and hired vehicles.

Microsoft will provide Customer with evidence of coverage on request.

Supplement Terms and Conditions section 11 titled “Miscellaneous” with the following:

- p. **Stamp tax.** Microsoft will not be responsible for any stamp taxes that might be owed pursuant to this agreement or to any Supplemental Agreement or Statement of Services entered by Customer and/or Customer’s Affiliates. Upon Microsoft’s request, Customer and its Affiliates will provide to Microsoft evidence of payment of the appropriate stamp taxes to the appropriate authorities. Customer and its Affiliates will jointly and severally be liable to Microsoft for all damages and costs Microsoft may incur due to the failure of the Customer and/or Customer’s Affiliates to fulfill the stamp tax obligation.

13. Country-specific Services terms.

In any case where the law of any of the jurisdictions cited below is applied, the following country-specific provisions will replace or supplement the equivalent provisions as noted:

Albania

Supplement Terms and Conditions section 6 titled “Limitation of liability” with the following:

The Customer shall agree to the terms and conditions of any limitation of liability specified in this agreement, particularly in this section, and shall also approve that limitation of liability in a separate written statement of work.

Supplement Terms and Conditions subsection 11m titled “Services payment terms” with the following:

Microsoft undertakes to pay only applicable taxes on its income and on its property and also any withholding tax applicable on its income.

Australia

Supplement Terms and Conditions section 4 titled “Warranties” with the following:

- f. **Consumer remedies.** Notwithstanding anything in this agreement (or any Supplemental Agreement or Statement of Services incorporating these terms), consumers may have the benefit of certain rights or remedies pursuant to the Trade Practices Act 1974 (Cth) and similar state and territory laws in Australia in respect of which liability may not be excluded. If so, then to the maximum extent permitted by law, such liability is limited, at Microsoft's option, in the case of goods to either (1) replacement of the goods or (2) correction of defects in the goods, and in the case of Services to either (1) resupply of the Services or (2) the cost of the resupply of the Services.

Supplement Terms and Conditions section 11 titled “Miscellaneous” with the following:

- o. **GST.** If any GST is payable on any supplies made under a Supplemental Agreement or Statement of Services entered into by Customer or Customer's Affiliates under this agreement, an amount on account of this GST will also be payable by Customer as invoiced to Customer.

Austria

Supplement Terms and Conditions section 4 titled “Warranties” with the following:

- f. **Agreed Characteristics; Claims due to Defects in quality and Defects in title.** To the extent that Microsoft should be required to supply a yet to be produced moveable thing (herzustellende, bewegliche Sache) or to the extent Microsoft's Services are, exceptionally, considered work performances (Werkleistungen), the following provisions g. to k. of this section will apply to claims due to defects in quality or defects in title (collectively referred to as “Defects”) but will not apply where the claims are for damages or reimbursement of expenses. The provisions contained in section entitled “Limitation of Liability” shall apply to claims for damages or expenses resulting from Defects.
- g. **Warranty in case of malicious non-disclosure of a Defect.** Customer's rights and their expiry will be exclusively determined in accordance with applicable statutory law in the event of malicious non-disclosure of a Defect (arglistiges Verschweigen).
- h. **Specified Software Characteristics.** Microsoft gives Customer express notice that, based on the current state of technology, it is not possible to develop complex software products that are entirely free of technical defects. The contractually specified characteristics (vertragliche Beschaffenheit) of the software to be provided by Microsoft does not require that the software be completely free of programming errors but merely that the software be free of programming errors that materially impair its use.
- i. **Obligation to give written notice of any Defect.** To the extent Microsoft is required to supply a yet to be produced moveable thing, Customer may only make a claim against Microsoft if Customer has properly complied with his obligation to notify Microsoft of all Defects in accordance with § 377 of the Austrian Commercial Code (UGB). Customer must provide Microsoft with a written notice of any apparent Defect found by Customer during Customer's examination according to § 377 of the Austrian Commercial Code (UGB) immediately, but no later than within two weeks after delivery. Customer must provide Microsoft with a written notice of any hidden Defects immediately after discovery.

- j. **Reimbursement for Defects not covered by limited warranty.** In the event Microsoft proves that there was no Defect for which Microsoft was responsible based on this section, Microsoft will be entitled to require reimbursement of its expenses, based on Microsoft's standard rates, incurred for its remedy efforts.
- k. **No warranty for Defects caused by alteration.** Customer may not make a claim under this section if Customer or a third party has altered the supplied, yet to be produced moveable thing or the work performance without Microsoft's consent, unless Customer is able to prove that the Defect in question was not caused by that alteration.

For the purposes of Services, replace Terms and Conditions section 6, titled "Limitation of liability," with the following:

6. *Limitation of liability*

Microsoft's liability for any and all damages in relation to the performance of Services, irrespective whether caused by breach of contract, Defects or unlawful act, shall be limited as follows:

- a. **Liability in case of intent, product liability, malicious non-disclosure and claims based on damage to life, body, or health.** In cases of intentional acts, claims under the Product Liability Act, malicious non-disclosure of a Defect, as well as claims based on damage to life, body or health, Microsoft's liability shall be determined in accordance with statutory law.
- b. **Limitation in case of gross negligence.** In case of gross negligence, Microsoft's liability shall be limited to the reimbursement of typical foreseeable damages, but only up to the amount of Customer's consideration for the Services that were not properly performed, or, if several Services are concerned, up to their total amount. For Services provided to Customer free of charge, Microsoft's total liability to Customer will not exceed US\$5000, or its equivalent in local currency.

In case of "simple" gross negligence, Microsoft shall under no circumstances be liable for incidental loss or consequential damages (including but not limited to loss of anticipated profits, loss of goodwill, loss of data, loss as a result of the interruption of business or similar losses) arising out of or in connection with any Statement of Services, Services Deliverables, Fixes, Products or any other materials or information.
- c. **Proof of intent or gross negligence.** Customer will have to prove the existence of intent or gross negligence.
- d. **Limitation in case of slight negligence.** Microsoft's liability for slight negligence is excluded.
- e. **Liability for the loss of data and costs of recovery.** Customer is obliged to secure any and all data and programs prior to Microsoft's engagement. Microsoft shall under no circumstances be liable for the loss of data or programs or for costs of the recovery of data or programs, insofar as this could have been avoided by fulfilling this obligation. Furthermore, Microsoft acts on the assumption that standard software has not been altered or modified, unless Customer has indicated such alterations or modifications in detail in writing prior to Microsoft's engagement.
- f. **Limited period for liability claims.** Any claim for damages resulting from Defects will expire within one year. For a supplied, yet to be produced, moveable thing, the limitation period will start on the delivery date; in cases of work performances, the limitation period will start on the date of acceptance (Abnahme).

Any other claims against Microsoft for damages will expire within two years from the date the cause of action arises.

The provision contained in this subsection entitled "Limited period for liability claims" shall not apply to the cases governed by subsection above entitled "Liability in case of intent, product liability, malicious non-disclosure and claims based on damage to life, body, or health." In such cases, statutory law shall apply.

Microsoft's limitations on liability for Online Services and Products are addressed in Section 6.

Czech Republic

Supplement Terms and Conditions subsection 2b(ii) titled “Pre-existing Work” with the following:

Customer represents that the author has granted relevant approvals to modify Customer's pre-existing work. In addition to the other rights granted, Microsoft further consents to the modification (if applicable) of any of Microsoft's Pre-existing Work as part of a Services Deliverable, solely in the form delivered to Customer, and solely for Customer's internal business operations. Any violation of conditions of this agreement or any Statement of Services by Customer will be a condition subsequent for obtaining the perpetual license to Microsoft's Pre-existing Work that Microsoft leaves to Customer at the conclusion of Microsoft's performance of the Service.

Supplement Terms and Conditions subsection 4 titled “Warranties” with the following:

Services Deliverables. Microsoft's Services Deliverables are developed according to the most recent technical and scientific knowledge. Microsoft gives Customer an express notice that, based on the current state of technology, it is not possible to develop complex software that is completely free of technical defects, which may occur in the future. The software provided by Microsoft need not be completely free of programming errors but will perform substantially in accordance with Microsoft's user documentation or, if no user documentation exists in accordance with the relevant Statement of Services, industry standards.

Supplement Terms and Conditions subsection 4e titled “DISCLAIMER OF OTHER WARRANTIES” with the following:

SECTIONS 425 AND 560 OF THE CZECH COMMERCIAL CODE DO NOT APPLY TO SERVICES AND PRODUCTS PROVIDED UNDER THIS AGREEMENT.

Supplement Terms and Conditions subsection 6a titled “Limitation on liability” with the following sentence:

The limitations contained in this paragraph reflect the damage that the parties expressly agree can be foreseen at the time of conclusion of this agreement, taking into account all circumstances the parties now or should know while exercising due care, and that can arise from a breach of Microsoft's obligations under this agreement.

Supplement Terms and Conditions section 6 titled “Limitation of liability” with the following:

- e. **Specific provisions in the Statement of Services.** Where a Statement of Services provides for contractual penalties for breaches of Microsoft's obligations under the Statement of Services or this agreement, these contractual penalties will be applied instead of damages. Customer will not be entitled to damages resulting from Microsoft's breaches of a Statement of Services or this agreement for which contractual penalties were agreed.

Finland

Supplement Terms and Conditions subsection 2b(iii) titled “Developments” with the following:

The provisions of the Act on Joint Ownership (180/1958) are hereby excluded.

Supplement Terms and Conditions section 4 titled “Warranties” with the following:

To the extent that Microsoft should be required to supply a yet to be produced movable thing (herzustellende, bewegliche Sache) or to the extent Microsoft's Services are, exceptionally, considered work performances (Werkleistungen), the following provisions will apply to claims due to defects in quality or defects in title (collectively referred to as “Defects”) but will not apply where the claims are for damages or reimbursement of expenses.

The provisions contained in section entitled “Limitation of liability” shall apply to claims for damages or expenses resulting from Defects.

- f. Customer's rights and their expiry will be exclusively determined in accordance with applicable statutory law in the event of malicious non-disclosure of a Defect (arglistiges Verschweigen).
- g. Microsoft gives Customer express notice that, based on the current state of technology, it is not possible to develop complex software Products that are completely free of technical defects. The contractually-specified characteristics (vertragliche Beschaffenheit) for the software to be provided by Microsoft does not require that the software be completely free of programming errors but merely that the software be free of programming errors that materially impair its use.
- h. Microsoft's obligations will not apply to the extent that a claim is based on (1) specifications, code, or materials Customer provided; (2) use of, or access to, Services Deliverables by any person or entity other than Customer or its Affiliates as permitted by the applicable Statement of Services; (3) Customer's use of Services Deliverables after Microsoft notifies Customer to discontinue their use due to such a claim; (4) Customer's combining Services Deliverables with non-Microsoft products, data or business processes.
- i. To the extent Microsoft is required to supply a yet to be produced movable thing, Customer may only make a claim against Microsoft if Customer has properly complied with Customer's obligation to notify Microsoft of all Defects in accordance with § 377 of the German Commercial Code (HGB). Customer must provide Microsoft with written notification of any apparent Defect found by Customer during its examination according to § 377 of the German Commercial Code immediately, but no later than within two weeks after delivery. Customer must notify Microsoft in writing of any hidden Defects immediately after discovery.
- j. Microsoft will rectify Defects of which Customer has given Microsoft notice prior to the expiry of the limitation period stipulated in this section. To the extent Customer has made a claim against Microsoft for subsequent performance (Nacherfüllung) Microsoft will have the right, in its sole discretion, to either rectify the Defect, or to supply a new movable thing, or, if the defect is in a work performance, to create a new work free of Defects. Customer agrees to cooperate in Microsoft's subsequent performance by providing any required information and documentation and to provide all reasonable assistance.
- k. Customer may be entitled to rescind the respective Statement of Services — to the extent rescission is not excluded by statutory law — or to reduce payment only after an appropriate deadline set by Customer for subsequent performance of at least three weeks has expired, unless that deadline is not required by statutory law.
- l. In the event Microsoft proves that there was no Defect for which Microsoft was responsible based on this section, Microsoft will be entitled to require reimbursement of the expenses, based on Microsoft's standard rates, incurred for Microsoft's efforts to carry out subsequent performance.
- m. Customer may not make a claim under this section if Customer or a third party has altered the supplied, yet to be produced moveable thing or the work performance without Microsoft's consent, unless Customer is able to prove that the Defects in question were not caused by that alteration.
- n. All claims to which Customer is entitled pursuant to this section will expire within one year. For a supplied, yet to be produced, movable thing, the limitation period will start on the

delivery date; in cases of work performances, the limitation period will start on the date of acceptance (Abnahme).

The foregoing shall not affect the provision contained in § 438, paragraph 1 Nr. 1 a) of the German Civil Code.

For the purposes of Services, replace Terms and Conditions section 6 titled “Limitation of liability” with the following:

6. *Limitation of liability.*

There may be situations in which Customer has a right to claim damages or reimbursement of futile (Ersatz vergeblicher Aufwendungen) expenses from Microsoft. Whatever the legal basis for Customer's claim (breach of contract, Defects, tort or otherwise), Microsoft's liability for any and all resultant damages will be limited as follows:

- a. In cases of intentional acts, claims under the German Product Liability Act, malicious non-disclosure of a Defect, as well as claims based on damage to life, body or health, Microsoft's liability will be determined exclusively in accordance with statutory law.
- b. In cases of gross negligence, Microsoft's liability will be limited to typical foreseeable damages. This limitation does not apply to the extent damages have been caused by Microsoft's managing employees or legal representatives.
- c. In cases of slight negligence, Microsoft will only be liable if Microsoft is in breach of such contractual obligations, the fulfillment of which allows for the due performance of this agreement, the breach of which would endanger the purpose of this agreement and the compliance with which Customer may constantly trust in (so-called “cardinal obligations”). In such cases, Microsoft's liability will be limited to typical and foreseeable damages. In all other cases, Microsoft shall not be liable for slight negligence.
- d. In cases of liability without fault for an inability to perform during delayed performance, Microsoft's liability will also be limited to typical foreseeable damages.
- e. In cases where Microsoft is required to supply a yet to be produced movable thing, any claim for damages or expenses due to Defects is conditional upon Customer's compliance with Customer's obligations described in section 5d above to notify Microsoft of all Defects.
- f. Any claim for damages or expenses resulting from Defects will expire within one year. For a supplied, yet to be produced, movable thing, the limitation period will start on the delivery date; in cases of work performances, the limitation period will start on the date of acceptance (Abnahme). This provision does not affect § 438, paragraph 1 Nr. 1 a) of the German Civil Code.

Any other claims against Microsoft for damages or expenses will expire within two years from the date the cause of action arises.

The provision contained in this subsection shall not apply to intentional acts or grossly negligent behavior on Microsoft's part. In such cases, statutory law shall apply.

Hungary

Supplement Terms and Conditions section 6 titled “Limitation of liability” with the following:

- d. **Negotiated terms.** The parties acknowledge that this agreement was entered into with terms individually negotiated between the parties and that the parties had the opportunity to offer amendment proposals to the drafts. Customer acknowledges that Microsoft has expressly raised its attention to the terms and conditions set out in the sections entitled “Warranties,” “Defense of infringement, misappropriation, and third party claims,” “Customer's agreement to protect” and “Limitation of liability” of this agreement and Customer expressly acknowledges the acceptance of those terms.

- e. **Acknowledgement of limited liability and warranty.** Customer agrees that provisions of this agreement limiting or excluding the liability and/or warranty obligations of Microsoft were agreed by the parties with respect to the price level offered by Microsoft to Customer and to the usual terms and conditions applied in the information technology industry. Customer acknowledges that Microsoft has stipulated its price levels and license terms on the assumption that the liability and warranty limitations and exclusions of this agreement are valid contractual terms. Customer also acknowledges that it is acquainted with the provisions limiting and excluding Microsoft's liability and/or warranty obligations and, by signing this agreement, Customer expressly accepts to be bound by those provisions. Customer specifically accepts and agrees that it will not claim the invalidity of the provisions of this agreement limiting or excluding Microsoft's liability and/or warranty obligations. While entering into this agreement, the parties have specifically taken into consideration Section 314 Paragraph (2) of the Hungarian Civil Code, and accept that the contractual terms in their entirety adequately equalize the liability and warranty limitations and exclusions of the agreement. Notwithstanding anything to the contrary in subsection entitled "Severability" of this agreement, should any of the liability and warranty limitations and exclusions provisions prove to be invalid or unenforceable, the parties unanimously declare that they had not entered into this agreement without such provisions in place, and should the invalidity of any such term be established by the competent court, the parties agree to elect the invalidity of the entire agreement.

Supplement Terms and Conditions section 11 titled "Miscellaneous" with the following:

- p. **Stamp tax.** Microsoft will not be responsible for any stamp taxes that might be owed pursuant to this agreement or to any Supplemental Agreement or Statement of Services entered by Customer and/or Customer's Affiliates. Upon Microsoft's request, Customer and its Affiliates will provide to Microsoft evidence of payment of the appropriate stamp taxes to the appropriate authorities.

New Zealand

Supplement Terms and Conditions section 11 titled "Miscellaneous" with the following:

- p. **Statutory liability.**
- (i) **Business.** Where Microsoft is a supplier (as that term is defined in the Consumer Guarantees Act 1993 ("CGA")) of the Products or Services, Customer confirms that the Products or Services provided by Microsoft under a Supplemental Agreement or Statement of Services are acquired for the purposes of a business (as that term is defined in the CGA) and Customer agrees that the CGA does not apply to the Products or Services supplied by Microsoft.
- (ii) **Consumers.** Nothing in this agreement (or any Supplemental Agreement or Statement of Services incorporating these terms) is intended to limit the rights of a "consumer" under the CGA where that Act applies, except to the extent permitted by that Act, and the terms of this agreement are to be modified to the extent necessary to give effect to this intention.
- q. **GST.** If any GST is payable on any supplies made under a Supplemental Agreement or Statement of Services entered into by Customer or Customer's affiliates under this agreement, an amount on account of this GST will also be payable by Customer as invoiced to Customer.

The Philippines

Supplement Terms and Conditions section 11 titled "Miscellaneous" with the following:

- p. **Continued access to improvements.** Microsoft will make available to Customer, through appropriate Statements of Services, continued access to improvements in techniques and processes related to Products validly licensed to Customer.

Poland

Replace Terms and Conditions subsection 4e titled “DISCLAIMER OF OTHER WARRANTIES” with the following:

- e. **OTHER THAN THIS LIMITED WARRANTY, MICROSOFT PROVIDES NO OTHER EXPRESS OR IMPLIED WARRANTIES OR GUARANTEES. MICROSOFT DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE, OR NON-INFRINGEMENT. MOREOVER, MICROSOFT DISCLAIMS AND EXCLUDES ITS LIABILITY UNDER WARRANTIES FOR DEFECTS (REKOJMIA ZA WADY) OF SERVICES OR OTHER GOODS SUPPLIED OR PERFORMED FOR THE CUSTOMER ON THE BASIS OF THIS AGREEMENT OR ANY STATEMENT OF SERVICES. FOREGOING EXCLUSION OF LIABILITY UNDER WARRANTIES APPLIES ALSO TO THE RIGHTS, INCLUDING INTELLECTUAL PROPERTY RIGHTS, WITH RESPECT TO WHICH MICROSOFT GRANTED ITS CUSTOMER THE RIGHT TO USE. THESE DISCLAIMERS WILL APPLY UNLESS APPLICABLE LAW DOES NOT PERMIT THEM.**

Supplement Terms and Conditions section 6 titled “Limitation of liability” with the following:

- d. If the act or omission which caused the damage consisted in the non-performance or improper performance by Microsoft of this agreement or any Statement of Service and at the same time, constituted a base for the tort liability of Microsoft, the Customer will be entitled to claim that such damage be repaired exclusively on the basis of this section of the agreement and only within the scope set forth in subsection above entitled “Limitation on liability.”

Slovak Republic

Supplement Terms and Conditions subsection 2b(ii) titled “Pre-existing Work” with the following:

Customer represents that the author has granted relevant approvals to modify Customer's pre-existing work. In addition to the other rights granted, Microsoft further consents to the modification (if applicable) of any of Microsoft's Pre-existing Work as part of a Services Deliverable, solely in the form delivered to Customer, and solely for Customer's internal business operations. Any violation of conditions of this agreement or any Statement of Services by Customer will be a condition subsequent for obtaining the perpetual license to Microsoft's Pre-existing Work that Microsoft leaves to Customer at the conclusion of Microsoft's performance of the Service.

Supplement Terms and Conditions subsection 4 titled “Warranties” with the following:

Microsoft's Services Deliverables are developed according to the most recent technical and scientific knowledge. Microsoft gives Customer an express notice that, based on the current state of technology, it is not possible to develop complex software products that are completely free of technical defects, which may occur in future. The software provided by Microsoft need not be completely free of programming errors but will perform substantially in accordance with Microsoft's user documentation or if no user documentation exists in accordance with the relevant Statement of Services.

Supplement Terms and Conditions subsection 4e titled “DISCLAIMER OF OTHER

WARRANTIES,” with the following:

SECTIONS 425 AND 560 OF THE SLOVAK COMMERCIAL CODE DO NOT APPLY TO SERVICES AND PRODUCTS PROVIDED UNDER THIS AGREEMENT.

Supplement Terms and Conditions subsection 6a titled “Limitation on liability” with the following sentence:

The limitations contained in this paragraph reflect the damage that the parties expressly agree can be foreseen at the time of conclusion of this agreement, taking into account all circumstances the parties know or should know while exercising due care and that can arise from a breach of Microsoft’s obligations under this agreement.

Supplement Terms and Conditions section 6 titled “Limitation of liability” with the following:

- d. Specific provisions in the Statement of Services.** Where a Statement of Services provides for contractual penalties for breaches of Microsoft’s obligations under the Statement of Services or this agreement, these contractual penalties will be applied instead of damages. Customer will not be entitled to damages resulting from Microsoft’s breaches of a Statement of Services or this agreement for which contractual penalties were agreed.

Spain

Replace Terms and Conditions subsection 6a titled “Limitation on liability” first paragraph, with the following:

- a. Limitation on liability.** Except as otherwise specifically provided in this section, to the extent permitted by applicable law, the liability of Microsoft and of Microsoft’s contractors to Customer arising under this agreement is limited, to actual damages (damnum emergens) (excluding loss of business information) up to the amount Customer has paid for the Product or Services giving rise to the claims. In the case of Products or Services provided free of charge, or code that Customer is authorized to redistribute to third parties without separate payment to Microsoft, Microsoft’s total liability is limited to US\$5000. These limitations apply regardless of whether liability is based on breach of contract, tort (including negligence), strict liability, breach of warranties, or any other legal theory. However, these monetary limitations will not apply to:

Replace Terms and Conditions subsection 7b titled “EXCLUSION OF CERTAIN DAMAGES” with the following:

- b. EXCLUSION OF CERTAIN DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY NOR ANY OF ITS AFFILIATES OR CONTRACTORS WILL BE LIABLE (1) FOR ANY DAMAGES OTHER THAN ACTUAL DAMAGES (DAMNUM EMERGENS) (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS OR REVENUES, OR BUSINESS INTERRUPTION), OR (2) FOR LOSS OF BUSINESS INFORMATION, ARISING IN CONNECTION WITH ANY AGREEMENT, PRODUCT, FIX OR SERVICE. THIS EXCLUSION OF LIABILITY DOES NOT APPLY TO EITHER PARTY’S LIABILITY TO THE OTHER FOR VIOLATION OF ITS CONFIDENTIALITY OBLIGATION OR OF THE OTHER PARTY’S INTELLECTUAL PROPERTY RIGHTS.**

Switzerland

Supplement Terms and Conditions subsection 4a(iii) with the following:

All Services are rendered under a contract of mandate in the sense of para. 394 et seq. of the Swiss Code of Obligations.

Ukraine

Supplement Terms and Conditions section 6 titled “Limitation of liability” with the following:

- d. Application.** Except as specified expressly in this section, the limitations on and exclusions of liability for damages in this agreement (including any Supplemental Agreement or Statement of Services incorporating these terms) apply regardless of whether the liability is based on breach of contract, tort, breach of warranties, or any other legal theory.

