

Master Supplier Services Agreement

This Master Supplier Services Agreement (“*Agreement*”) is between [insert Microsoft contracting entity name], a [insert place of incorporation] corporation (“*Microsoft*”), and [insert Supplier name], a [insert place of organization and entity type] (“*Supplier*”). This Agreement will be effective on the date noted below (“*Effective Date*”).

This Agreement consists of

- the following terms and conditions,
- applicable addenda, SOWs, and NDAs,
- Policies,
- any other exhibits, and
- the provisions in any documents or online resources referenced in other parts of this Agreement.

Addresses and contact details

Microsoft	Supplier
Address: One Microsoft Way Redmond, WA 98052	Address:
Attention:	Attention:
Phone Number:	Phone Number:
E-Mail Address:	E-Mail Address:
	Supplier Number:

Term

Effective Date:	
Term:	5 Years from the Effective Date

Agreed and accepted

Microsoft	Supplier
Signature:	Signature:
Name:	Name:
Title:	Title:
Date:	Date:

SECTION 1 Definitions

- (a) *"Affiliate(s)"* means any legal entity that directly or indirectly owns, is owned by, or is commonly owned with a party. *"Own"* means having more than 50% ownership or the right to direct the management of the entity.
- (b) *"Anti-Corruption Laws"* means all applicable laws against fraud, bribery, corruption, inaccurate books and records, inadequate internal controls, money-laundering, and illegal software, including the U.S. Foreign Corrupt Practices Act.
- (c) *"Claim(s)"* means any and all (1) third-party claims, actions, demands, lawsuits, or proceedings and (2) damages, costs (including reasonable fees of attorneys and other professionals), or liabilities of any kind (including any fine, penalty, judgement or order issued by a governmental, regulatory or judicial body), in each case arising out of that third party claim, action, demand, lawsuit, or proceeding.
- (d) *"Data Protection Law"* means any law, rule, regulation, decree, statute, or other enactment, order, mandate or resolution, applicable to Supplier or Microsoft, relating to data security, data protection and/or privacy, including Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to processing of personal data and the free movement of that data ("*GDPR*"), and any implementing, derivative or related legislation, rule, regulation, and regulatory guidance, as amended, extended, repealed and replaced, or re-enacted.
- (e) *"Deliverables"* means all IP or other work product developed by Supplier (or a Subcontractor) for Microsoft under a SOW or as part of Services.
- (f) *"Excluded License"* means any software license requiring, as a condition of use, modification, or distribution that the software or other software combined or distributed with it be (1) disclosed or distributed in source code form, (2) licensed to make derivative works, or (3) redistributable at no charge.
- (g) *"Intellectual Property"* or *"IP"* means all intellectual property rights, existing under statute or at common law or equity, in force or recognized now or in the future in any jurisdiction, including
 - (1) copyrights (and any neighboring/ancillary right), trade secrets, trademarks, service marks, patents, inventions, designs, logos, trade dress, moral rights, mask works, publicity rights, privacy rights, and database rights, and
 - (2) any application or right to apply for any of the foregoing rights, and all renewals, extensions, and restorations.
- (h) *"Microsoft Materials"* means tangible or intangible materials (including hardware, software, source code, documentation, methodologies, know how, processes, techniques, ideas, concepts, technologies, and data) provided by or on behalf of Microsoft to Supplier to perform Services. Microsoft Materials include modifications to, or derivative works of, the foregoing materials, Trademarks, and any data entered into any Supplier database as part of Services. Microsoft Materials do not include Microsoft products obtained by Supplier outside of and unrelated to this Agreement.
- (i) *"Policies"* means policies, procedures, requirements, and guidelines identified in this Agreement or made available to Supplier by Microsoft.

- (j) “*Services*” means all services identified in a SOW or otherwise performed by Supplier under this Agreement.
- (k) “*SOW(s)*” means any of the following:
 - (1) Microsoft purchase orders;
 - (2) Electronic statements of work transmitted by Microsoft and signed by both parties, or
 - (3) Written agreements signed by the parties’ authorized representatives referencing, and subject to, this Agreement.
- (l) “*Subcontractor(s)*” means a third party to whom Supplier delegates its obligations under this Agreement or a Supplier Affiliate not contracting directly with Microsoft.
- (m) “*Supplier IP*” means Supplier’s pre-existing or independently developed IP and any modifications to or derivative works of such IP, to the extent the modifications or derivative works have no functionality separate from such IP.
- (n) “*Trademarks*” means trademarks, servicemarks, and logos identified and provided by Microsoft under a SOW.

SECTION 2 Services

- (a) **SOW.** The parties will describe the Services in one or more SOWs. This Agreement applies to each SOW. Microsoft (or any Microsoft Affiliate) may enter into a SOW with Supplier (or any Supplier Affiliate existing at the time of the Effective Date) for Services under this Agreement. Local legal requirements will be documented separately in writing and agreed by the parties. Supplier will, at its own expense,
 - (1) obtain and maintain approvals, licenses, filings, or registrations necessary to perform Services, and
 - (2) comply with all applicable laws, including those specified in this Agreement.
- (b) **Export compliance.** Services and related technology are subject to U.S. and other countries’ export jurisdiction. Supplier must comply with all applicable international and national laws, including the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, Office of Foreign Assets Control sanctions programs, and end-user, end use and destination restrictions by U.S. and other governments. For additional information, see <http://www.microsoft.com/exporting>.
- (c) **Anti-Corruption Laws.** Supplier will comply with and provide training to its employees regarding Anti-Corruption Laws while performing under this Agreement.
- (d) **Workplace safety and health.** Supplier will comply with (and will require, through contract, all Subcontractors to comply with) applicable laws related to workplace safety and health, including the Occupational Safety and Health Act of 1970 (OSHA) and parallel state laws approved under OSHA Section 18. Supplier will promptly notify Microsoft Employee Safety and Health Team at employeesafety@microsoft.com and Microsoft Global Security at (425) 706-0000 if Supplier encounters unsafe conditions or workplace hazards in a Microsoft-provided or controlled facility. Supplier will take appropriate safety measures until Microsoft is able to correct the hazard.

(e) Affirmative Action Clause for Microsoft Suppliers on Covered Subcontracts for the United States government

- (1) Contractors and suppliers doing business with Microsoft on a covered contract in the United States will comply with all Federal, State, and local labor and employment laws.
- (2) **This contractor and subcontractor will abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a), 60-741.5(a) and 29 CFR 471, Appendix A to Subpart A and incorporate the requirements of these regulations if applicable. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. These regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.**

(f) Acceptance of Deliverables. Unless otherwise agreed, Microsoft will evaluate each Deliverable and accept or reject it within 15 business days after receipt. If Microsoft does not accept or reject within that time period, the Deliverable is deemed accepted. Supplier will fix rejected Deliverable within 10 business days after receiving notice of rejection from Microsoft (“*Correction Period*”). If Supplier does not fix the Deliverable within the Correction Period, Microsoft will have no obligation with respect to that Deliverable and Supplier will promptly refund Microsoft Fees paid for that Deliverable within 15 days following the end of the Correction Period.

(g) Supplier to comply with Microsoft Policies

- (1) Supplier will comply with the most current Supplier Guidelines and Supplier Code of Conduct at <http://www.microsoft.com/about/companyinformation/procurement/process/en/us/contracting.aspx>.
- (2) Supplier may only use Trademarks for Services and Deliverables in compliance with the guidelines at <http://www.microsoft.com/en-us/legal/intellectualproperty/Trademarks/Usage/default.aspx>.
- (3) Supplier will comply with the most current Supplier Data Protection Requirements (“*DPR*”) at <http://www.microsoft.com/about/companyinformation/procurement/process/en/us/contracting.aspx>.
- (4) Supplier will comply with physical and information security Policies identified in a SOW or provided to Supplier by Microsoft.
- (5) Devices, products, websites, web-based applications, or online content developed for or provided to Microsoft must comply with all legal and Microsoft-provided accessibility requirements. Supplier developed, provided, or maintained websites, web-based applications, or online content relevant to the Services will comply with Web Content Accessibility Guidelines 2.0 Level A and AA Success Criteria (“*WCAG 2.0 AA*”). WCAG 2.0, also codified as ISO/IEC 40500:2012, is available at <http://www.w3.org/TR/WCAG20/>. An overview of WCAG is available at <http://www.w3.org/WAI/intro/wcag>.
- (6) Supplier will comply with all other Policies or training requirements provided by Microsoft during the Term.

- (7) Microsoft may change or promulgate new Policies. Changes and new Policies will be effective 30 days after Microsoft makes them available to Supplier, unless otherwise agreed in writing. If new or changes to Policies cause a material impact to the delivery schedule, Fees or other costs for Services, or Supplier's ability to meet the quality or performance standards of service level agreements, Supplier will promptly notify Microsoft. The parties will discuss how to mitigate the impact to enable Supplier to comply.

(h) Supplier's personnel and subcontracting

- (1) Supplier will recruit, select, and train its personnel according to the applicable SOW. If required by Microsoft, Supplier personnel who develop or test Microsoft software or access Microsoft source code will receive training on Microsoft's security development lifecycle. At Microsoft's request, Supplier will promptly remove or replace any individual performing Services.
- (2) Supplier is responsible for all wages, fringe benefits, payroll taxes, insurance (including, where applicable, medical coverage compliant with the Affordable Care Act), work schedules, and work conditions of its employees, contractors, or other resources performing Services.
- (3) Before assignment of a Supplier employee to provide Services, Supplier will be compliant with the immigration rules and laws in the jurisdiction in which the Supplier employee will provide Services.
- (4) Supplier will not subcontract Services to third parties without Microsoft's prior written consent. If Supplier subcontracts any Services to any Subcontractor, Supplier will
- (i) be fully liable to Microsoft for Services performed by the Subcontractor,
 - (ii) remain obligated under this Agreement for performing subcontracted Services,
 - (iii) require the Subcontractor to agree in writing to terms no less protective of Microsoft than the terms of this Agreement applicable to the work performed by the Subcontractor;
 - (iv) require the Subcontractor to agree in writing that Microsoft is an intended third-party beneficiary of its agreement with Supplier,
 - (v) unless otherwise agreed, if Supplier fails to pay the Subcontractor, Microsoft may pay the Subcontractor and offset those amounts against amounts owed to Supplier, and
 - (vi) require the Subcontractor, while performing Services to be compliant all applicable immigration laws in the jurisdiction in which the Subcontractor employee(s) will provide Services.

- (i) Supplier equipment and technology.** Unless otherwise agreed in an applicable SOW, Supplier will provide the equipment, technology, and infrastructure necessary to perform Services at its expense. Supplier will ensure such items are compatible with Microsoft's equipment, technology, and infrastructure as necessary to perform Services.

SECTION 3 Ownership and use of the parties' respective IP

- (a) Ownership of pre-existing IP.** Each party will own and retain all rights to its pre-existing IP and any IP developed outside of Services performed under this Agreement.

(b) Supplier's use of Microsoft Materials

- (1) License to use Microsoft Materials
 - (i) Microsoft grants Supplier a nonexclusive, revocable license to copy, use, and distribute Microsoft Materials provided to it as necessary to perform Services. Microsoft retains all other interest in Microsoft Materials and related IP. Supplier has no right to sublicense the right to use Microsoft Materials except as necessary to approved Subcontractors.
 - (ii) If Microsoft Materials come with a separate license, the terms of that license will apply and those terms, including any applicable Source Code License Form, control in the case of conflict with this Agreement.
 - (iii) Supplier will take reasonable precautions to protect and ensure against loss or damage, theft, or disappearance of Microsoft Materials.
- (2) Microsoft may revoke the license to Microsoft Materials at any time for any reasonable business reason. The license will terminate automatically on the earlier of the expiration or termination of this Agreement or an applicable SOW. Supplier will promptly return any Microsoft Materials on request or termination of Supplier's license.
- (3) Additional provisions
 - (i) Supplier will not modify, reverse engineer, decompile, or disassemble Microsoft Materials except as allowed by Microsoft to perform Services.
 - (ii) Supplier will leave in place and not alter or obscure proprietary notices and licenses contained in Microsoft Materials.
 - (iii) Unless otherwise specified in an applicable SOW, Supplier will maintain and use Microsoft Materials according to the manufacturer's specifications and instructions.
 - (iv) Microsoft is not obligated to provide technical support, maintenance, or updates for Microsoft Materials.
 - (v) Microsoft Materials are provided as-is without warranty.
 - (vi) Supplier assumes the risk of loss, damage, unauthorized access or use, or theft or disappearance of Microsoft Materials in Supplier's (or its Subcontractors') care, custody, or control.
 - (vii) Supplier will take no action affecting Microsoft's, or the owner of Microsoft Materials if not Microsoft, title or interest in Microsoft Materials.

(c) Supplier's use of non-Microsoft IP

- (1) Supplier will obtain Microsoft's written consent before using Supplier IP or third party IP in a manner that would
 - (i) cause it to be included in Deliverables,
 - (ii) alter or affect Microsoft's ownership interests in Deliverables, or
 - (iii) be required for the Deliverables to be used, modified, or distributed by Microsoft.

- (2) If Supplier IP or third party IP is incorporated into Deliverables, or is necessary for the unrestricted use or distribution of Deliverables by Microsoft or any third party, then Supplier will continue to own the Supplier IP. Unless the parties agree on written license terms, Supplier grants Microsoft and its Affiliates a worldwide, nonexclusive, perpetual, irrevocable, royalty-free, fully paid-up right and license, under all current and future IP, to
- (i) make, use, reproduce, format, modify, and create derivative works of the applicable Supplier IP or third party IP,
 - (ii) publicly perform or display, import, broadcast, transmit, distribute, license, offer to sell and sell, rent, lease, or lend copies of the applicable Supplier IP and third party IP and derivative works,
 - (iii) combine the Supplier IP and third party IP and derivative works with any software, firmware, hardware, or services, and
 - (iv) sublicense to third parties the foregoing rights, including the right to sublicense to further third parties.

(d) Ownership of Deliverables

- (1) Subject to Supplier's retained IP rights, Deliverables are "work made for hire" under applicable copyright law. If Deliverables do not qualify as a work made for hire, Supplier assigns to Microsoft all right, title, and interest in and to the Deliverables, including all IP rights. Supplier waives all moral rights in Deliverables.
- (2) Supplier will promptly disclose to Microsoft in writing any inventions, works of authorship, improvements, developments or discoveries conceived, authored, made, or reduced to practice by Supplier or its Subcontractors, either solely or in collaboration with others, in the performance of Services. At Microsoft's request and expense, Supplier will execute documents and take any other action reasonably necessary to evidence, perfect, or protect Microsoft's rights in the Deliverables. Supplier will cooperate with Microsoft in the filing and prosecution of copyright, trademark, or patent applications Microsoft elects to file on Deliverables or related inventions and designs. Supplier will not challenge, oppose, or interfere with Microsoft's applications prepared according to Microsoft's rights under this Agreement relating to the Deliverables, or file applications on its own behalf.

SECTION 4 Supplier compensation

(a) Microsoft's payment of Fees

- (1) Microsoft will pay Supplier fees stated in each SOW ("Fees"). A Supplier rate card, if one is attached to this Agreement, will provide ceiling rates for Microsoft. Supplier is responsible for expenses it incurs unless agreed otherwise in a SOW. Supplier will not mark up expenses Microsoft agrees to pay. Supplier will not offset against amounts Microsoft owes.
- (2) Unless agreed otherwise in a SOW, after Microsoft accepts Services and receives a proper and undisputed invoice, it will pay Fees and approved expenses
 - (i) net 10 days less a 2% discount on the invoiced amount, or
 - (ii) net 60 days with no discount.

- (3) Microsoft will pay Supplier according to Microsoft's then-current payment policies.
- (b) **MS Invoice.** Supplier will invoice Microsoft using MS Invoice according to <https://einvoice.microsoft.com> and the Supplier Guidelines. Supplier will not charge Microsoft for researching, reporting on, or correcting invoice-related errors. Supplier will not date its invoices earlier than the date Supplier may be paid under an applicable SOW. If a date is not specified in a SOW, Supplier may issue invoices monthly in arrears.
- (c) **Disputed amounts.** Microsoft may dispute any invoice amount (each, a "*Disputed Amount*") by providing written notice to Supplier. Partial payment is notice from Microsoft of a Disputed Amount. Microsoft will make commercially reasonable efforts to notify Supplier in writing of any Disputed Amount within 60 days of receiving the invoice. Microsoft's failure to provide notice or payment of an invoice does not waive any of its claims or rights. Microsoft will pay Supplier within 60 days from the date of dispute resolution.
- (d) **Late invoices.** Microsoft is not obligated to pay any invoice received 120 days or more after the date Supplier was required to invoice Microsoft under this Agreement or an applicable SOW. This does not apply to
 - (1) amounts paid after a dispute,
 - (2) rejected invoices that are first received timely and then corrected,
 - (3) invoices delayed due to Microsoft's actions or omissions, or
 - (4) delays the parties have agreed to in writing.
- (e) **Taxes**
 - (1) Except as otherwise provided below, the amounts to be paid by Microsoft to Supplier do not include taxes. Microsoft is not liable for any taxes Supplier is legally obligated to pay, including net income or gross receipts taxes, franchise taxes, and property taxes. Microsoft will pay Supplier sales, use, or value added taxes it owes due to this Agreement that the law requires Supplier to collect from Microsoft. If Microsoft provides Supplier a valid exemption certificate, Supplier will not collect the taxes covered by such certificate. Supplier will indemnify and hold Microsoft harmless from any claims, costs (including reasonable attorneys' fees) and liabilities that relate to Supplier's taxes.
 - (2) If the law requires Microsoft to withhold taxes from payments to Supplier, Microsoft may withhold those taxes and pay them to the appropriate taxing authority. Microsoft will deliver to Supplier an official receipt for such taxes. Microsoft will use reasonable efforts to minimize taxes withheld to the extent allowed by law.
 - (3) Despite any other provision of this Agreement, this section governs the treatment of all taxes related to this Agreement.

SECTION 5 Term and termination

- (a) **Term.** This Agreement commences on the Effective Date and will continue for the term on the first page of this Agreement ("*Term*") unless it is
 - (1) terminated earlier according to its terms, or
 - (2) extended by a written and signed amendment.

- (b) **Termination for convenience.** Without prejudice to any other remedies, Microsoft may terminate this Agreement, any Source Code License Form subject to this Agreement, or any SOW at any time without cause by giving 30 days written notice. If Microsoft terminates for convenience, its only obligation is to pay for
- (1) Services or Deliverables it accepts before the effective date of termination, and
 - (2) Services performed where Microsoft retains the benefit after the effective date of termination.
- (c) **Termination for cause**
- (1) Either party may terminate this Agreement, any Source Code License Form subject to this Agreement, or any SOW on the other party's material breach of this Agreement or a SOW. The non-breaching party must give 30 calendar days written notice and the opportunity to cure its breach. Either party may immediately terminate this Agreement on written notice of a breach of Section 6 (Confidentiality, privacy and data protection, and publicity).
 - (2) Microsoft may terminate this Agreement, any Source Code License Form subject to this Agreement, or any SOW effective immediately upon written notice if Supplier breaches Sections 2(a) (SOW), 2(d) (Acceptance of Deliverables) through 2(g) (Supplier equipment and technology), 3 (Ownership and use of the parties' respective IP), 7 (Representations and warranties), 10 (Insurance), or 12(d) (Assignment) or if Supplier sells a substantial part of Supplier's assets to a third party.
- (d) **Effect of termination.** Subject to Section 6(b)(2)(vii) with respect to Personal Data, each party will return (or if requested by the disclosing party, destroy) Confidential Information and property of the other within 10 calendar days of the effective date of termination of this Agreement or any SOW unless otherwise instructed. Supplier will deliver to Microsoft any affected Deliverables in progress and all related data and materials. Supplier will assist Microsoft with a post-termination transition at Microsoft's request. Supplier's assistance will not exceed 60 calendar days. Microsoft will pay Supplier for its assistance at a rate no greater than the rate set forth in any SOW for comparable services.
- (e) **Survival.** The provisions of this Agreement which by their terms require performance after the termination or expiration of this Agreement, or have application to events that may occur after the termination or expiration of this Agreement, will survive such termination or expiration. All indemnity obligations and indemnification procedures will survive the termination or expiration of this Agreement.

SECTION 6 Confidentiality, privacy and data protection, and Publicity

(a) Confidentiality

- (1) Information shared under this Agreement is confidential information subject to the nondisclosure agreement ("NDA") between the parties dated _____. Section 6(a)(2) applies if information related to Services was shared before execution of the NDA, no NDA exists, or the NDA terminates or ceases to be in effect.
- (2) During the Term plus 5 years, the parties will hold in strictest confidence and not use or disclose to any third party any Confidential Information of the other party. "*Confidential Information*" means all non-public information a party designates in writing or orally as

being confidential, or which under the circumstances of disclosure ought to be treated as confidential. Confidential Information includes information relating to

- (i) a party's released or unreleased software or hardware products,
 - (ii) a party's source code,
 - (iii) a party's product marketing or promotion,
 - (iv) a party's business policies or practices,
 - (v) a party's customers or suppliers,
 - (vi) information received from others that a party must treat as confidential,
 - (vii) this Agreement's existence and terms, and
 - (viii) information provided by a party under this Agreement or obtained or created by Supplier while providing Services, including
 - information in reports provided to Microsoft,
 - the parties' electronic or written correspondence,
 - Microsoft customer lists and customer information, regardless of source,
 - Personal Data, and
 - Transactional, sales, and marketing information related to Services.
- (3) A party will consult with the other if it questions what comprises Confidential Information. Confidential Information excludes information known to a party before the disclosing party's disclosure to the receiving party, or information publicly available through no fault of the receiving party.
- (4) Supplier will employ security procedures to prevent disclosure of Microsoft Confidential Information to unauthorized third parties. Supplier's security procedures must include risk assessment and controls for
- (i) system access,
 - (ii) system and application development and maintenance,
 - (iii) change management,
 - (iv) asset classification and control,
 - (v) incident response, physical and environmental security,
 - (vi) disaster recovery/business continuity, and
 - (vii) employee training.

(b) Privacy and data protection

- (1) For purposes of this Section 6(b) and this Agreement, the following definitions apply:
- (i) *"Personal Data"* means any information relating to an identified or identifiable natural person (*"Data Subject"*). An identifiable natural person is one who can be identified, directly or indirectly, in particular by referencing an identifier such

as a name, an identification number, location data, an online identifier, or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural, or social identity of that natural person.

- (ii) *“Personal Data Breach”* means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Personal Data, whether transmitted, stored, or otherwise Processed.
 - (iii) *“Processing”* means any operation or set of operations that is performed on Personal Data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination, or otherwise making available, alignment or combination, restriction, erasure, or destruction. *“Process”* and *“Processed”* will have a corresponding meaning.
- (2) Without limiting Supplier’s obligations under SECTION 2(g)(3), Supplier, in its capacity as a Data Processor or subprocessor of Personal Data, will
- (i) Process the Personal Data only on documented instructions from Microsoft, including with regard to transfers of Personal Data to a third country or an international organization, unless required to do so by European Union or Member State law to which Supplier is subject. In such case, Supplier will inform Microsoft of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest,
 - (ii) ensure that persons authorized to Process the Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality,
 - (iii) take all measures required in accordance with good industry practice and by Data Protection Law relating to data security (including pursuant to Article 32 of the GDPR),
 - (iv) not-engage another party to Process the Personal Data unless approved by Microsoft in accordance with SECTION 2(h) of this Agreement,
 - (v) taking into account the nature of the Processing, assist Microsoft by appropriate technical and organizational measures, insofar as this is possible, for the fulfilment of Microsoft’s obligation to respond to requests for exercising the Data Subject’s rights laid down in Data Protection Law (including Chapter III of the GDPR),
 - (vi) assist Microsoft in ensuring compliance with data security, Personal Data Breach, data protection impact assessments, and engaging in other consultations, pursuant to Data Protection Law (including Articles 32 to 36 of the GDPR taking into account the nature of processing and the information available to Supplier),
 - (vii) at the choice of Microsoft, without undue delay delete or return all the Personal Data to Microsoft after the end of the provision of Services relating to Processing, and delete existing copies unless European Union or Member State law requires storage of Personal Data,

- (viii) without limiting Microsoft's rights under Section 11, make available to Microsoft all information necessary to demonstrate compliance with Data Protection Law (including the obligations laid down in Article 28 of the GDPR) and allow for and contribute to audits, including inspections, conducted by Microsoft or another auditor mandated by Microsoft; and
 - (ix) immediately inform Microsoft if, in its opinion, an instruction infringes Data Protection Law.
- (3) The subject matter of the Processing, including the Processing operations carried out by Supplier on behalf of Microsoft and Microsoft's Processing instructions for Supplier, will be described in a SOW, which forms an integral part of this Agreement.
- (4) Supplier will notify Microsoft promptly upon becoming aware of a Personal Data Breach.
- (5) Where Microsoft faces an actual or potential claim arising out of or related to violation of any Data Protection Law (e.g., Article 82 of the GDPR) concerning the Services, Supplier will promptly provide all materials and information requested by Microsoft that is relevant to the defense of such claim and the underlying circumstances concerning the claim.
- (c) **Publicity.** Supplier will not issue press releases or other publicity related to Supplier's relationship with Microsoft or this Agreement without prior written approval from the Microsoft representative executing this Agreement.

SECTION 7 Representations and warranties

Supplier continuously represents and warrants

- (a) it has full rights and authority to enter into, perform under, and grant the rights in, this Agreement,
- (b) its performance will not violate any agreement or obligation between it and any third party,
- (c) Deliverables and Supplier IP or third-party IP provided to Microsoft under this Agreement
 - (1) are not governed, in whole or in part, by an Excluded License, and
 - (2) will not be subject to license terms requiring Microsoft products, services, or documentation incorporating or derived from such Deliverables, Supplier IP, or third-party IP, or Microsoft IP, to be licensed or shared with any third party,
- (d) Services will be performed professionally and be of high grade, nature, and quality,
- (e) Services, Deliverables, and Supplier IP or third-party IP provided to Microsoft under this Agreement will not
 - (1) to the best of Supplier's knowledge, infringe any third party patent, copyright, trademark, trade secret, or other proprietary right, or
 - (2) contain viruses or other malicious code that will degrade or infect any Deliverables, products, services, software, or Microsoft's network or systems, and
- (f) Supplier will comply with all applicable laws, including Data Protection Law and Anti-Corruption Laws.

EXCEPT AS SET FORTH IN THIS SECTION 7 (REPRESENTATIONS AND WARRANTIES), SERVICES ARE PROVIDED AS-IS. TO THE MAXIMUM EXTENT PERMITTED BY LAW, SUPPLIER DISCLAIMS ANY AND ALL

OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, WHETHER ARISING BY A COURSE OF DEALING, USAGE OR TRADE PRACTICE OR COURSE OF PERFORMANCE.

SECTION 8 Indemnification and other remedies

- (a) **Indemnification by Supplier.** Supplier will defend, indemnify, and hold Microsoft, its Affiliates, and their respective successors, directors, officers, employees, and agents (each a “*Microsoft Indemnified Party*”) harmless from and against all Claims to the extent such Claims arise out of or relate to
- (1) Supplier’s or its Subcontractors’ breach of Sections 7(a) or 7(b),
 - (2) Supplier’s or its Subcontractors’ negligent or willful acts or omissions resulting in bodily injury or death to any person or loss, disappearance, or damage to tangible or intangible property,
 - (3) Supplier’s or its Subcontractors’ infringement, misuse, or misappropriation of third-party IP rights or Microsoft IP,
 - (4) Supplier’s or its Subcontractors’ breach of any confidentiality, privacy, data protection or publicity obligations under this Agreement, including Section 6 (Confidentiality, privacy and data protection, and publicity),
 - (5) Supplier’s or its Subcontractors’ non-compliance with applicable laws, rules, or regulations, or
 - (6) actions by Supplier personnel against Microsoft for wages, fringe benefits, other compensation, or similar claims, and claims challenging Supplier’s right to dismiss its personnel.

Supplier will not be liable under this Section 8(a) (Indemnification by Supplier) to the comparative extent that Claims result from

- (1) a Microsoft Indemnified Party’s negligent or willful acts, or
- (2) Supplier’s strict compliance with Microsoft’s express instructions that could not be reasonably performed in a non-infringing manner.

- (b) **Indemnification by Microsoft.** Microsoft will defend, indemnify, and hold Supplier, its Affiliates, and their respective successors, directors, officers, employees, and agents (each a “*Supplier Indemnified Party*”) harmless from and against all Claims to the extent that such Claims arise out of or relate to

- (1) Microsoft’s negligent or willful acts or omissions resulting in bodily injury or death to any person or loss, disappearance, or damage to tangible or intangible property, or
- (2) Microsoft’s non-compliance with applicable laws, rules, or regulations.

Microsoft will not be liable under this Section 8(b) (Indemnification by Microsoft) to the comparative extent that Claims result from the a Supplier Indemnified Party’s negligent or willful acts.

- (c) **Indemnification procedures.** The indemnified party will

- (1) provide the indemnifying party with reasonably prompt notice of Claims,

- (2) permit the indemnifying party through mutually acceptable counsel to answer and defend Claims, and
- (3) provide the indemnifying party with reasonable information and assistance to help the indemnifying party defend Claims at the indemnifying party's expense.

An indemnified party may employ separate counsel and participate in the defense of a Claim at its own expense.

- (d) **Acknowledgment of fault and settling Claims.** Neither party will stipulate, admit, or acknowledge fault or liability by the other without their prior written consent. The indemnifying party will not settle any Claim or publicize any settlement without the other party's prior written consent.
- (e) **Industrial insurance immunity.** Supplier waives immunity under industrial insurance laws such as Title 51 of the Revised Code of the State of Washington, U.S., except to the extent prohibited by law and solely regarding bodily injury or death Claims.
- (f) **Other remedies.** In addition to all other remedies available to Microsoft,
 - (1) if use of Services or Deliverables under this Agreement is enjoined or injunction is threatened, Supplier, at its expense, will notify Microsoft and immediately
 - (i) procure for Microsoft the right to continue using such Services and Deliverables, or
 - (ii) replace or modify such Services and Deliverables so that they are noninfringing and useable to Microsoft's satisfaction.

If Supplier does not comply with this Section 8(f)(1), then in addition to any amounts reimbursed under this Section 8 (Indemnification and other remedies), Supplier will refund all amounts paid by Microsoft for infringing Services and Deliverables and pay reasonable costs to transition Services to a new supplier.

- (2) Supplier will pay Microsoft the fair market value of Microsoft Materials or property if Supplier misappropriates or fails to return such items according to this Agreement.

SECTION 9 Limitations of liability

- (a) AS PERMITTED BY APPLICABLE LAW AND SUBJECT TO SECTION 9(b) BELOW, NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES (INCLUDING DAMAGES FOR LOSS OF DATA, REVENUE, OR PROFITS), WHETHER FORESEEABLE OR UNFORESEEABLE, ARISING OUT OF THIS AGREEMENT REGARDLESS OF WHETHER THE LIABILITY IS BASED ON BREACH OF CONTRACT, TORT, STRICT LIABILITY, BREACH OF WARRANTIES, OR OTHERWISE, AND EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES. ADDITIONALLY, NEITHER PARTY'S TOTAL AGGREGATE LIABILITY TO THE OTHER PARTY WILL EXCEED THE GREATER OF
 - (1) \$2,000,000 US OR THE EQUIVALENT IN LOCAL CURRENCY, OR
 - (2) THE ACTUAL FEES PAID BY MICROSOFT IN THE 12-MONTH PERIOD PRIOR TO THE DATE THE CLAIM AROSE.
- (b) THE LIMITATIONS ON LIABILITY IN SECTION 9(a) DO NOT APPLY TO LIABILITY ARISING FROM
 - (1) A PARTY'S DUTY TO INDEMNIFY THE OTHER UNDER THIS AGREEMENT,

- (2) A BREACH OF A PARTY'S CONFIDENTIALITY, PRIVACY, DATA PROTECTION, AND PUBLICITY OBLIGATIONS UNDER THIS AGREEMENT,
- (3) INFRINGEMENT, MISUSE, OR MISAPPROPRIATION OF IP RIGHTS, OR
- (4) FRAUD.

SECTION 10 Insurance

(a) General. Supplier will maintain sufficient insurance coverage to meet obligations required by this Agreement and by law. Supplier's insurance must include the following coverage (or the local currency equivalent) to the extent the Agreement creates risks generally covered by these insurance policies:

- (1) Commercial General Liability (occurrence form) including contractual and product liability with limits of at least \$2,000,000 US per occurrence;
- (2) Automobile liability with limits of at least \$2,000,000 US per occurrence;
- (3) Privacy and cybersecurity liability (including costs arising from data destruction, hacking or intentional breaches, crisis management activity related to data breaches, and legal claims for security breach, privacy violations, and notification costs) of at least \$2,000,000 US per occurrence;
- (4) Workers' compensation satisfying all statutory limits; and
- (5) Employer's liability with limits of at least \$500,000 US per occurrence.

Supplier will name Microsoft, its subsidiaries, and their respective directors, officers, and employees as additional insureds in the Commercial General Liability policy for contractual liability assumed by Supplier in Section 8 (Indemnification and other remedies).

(b) Professional liability/errors and omissions liability. Supplier will purchase and maintain professional liability/errors and omissions insurance if Services create exposures generally covered by such a policy. The policy will

- (1) have limits of at least \$2,000,000 US per claim (or the local currency equivalent),
- (2) cover infringement of third party proprietary rights (e.g., copyright, and trademark) if such coverage is reasonably commercially available, and
- (3) have a retroactive coverage date no later than the applicable SOW's effective date.

Supplier will maintain active policy coverage or an extended reporting period providing coverage for claims first made and reported to the insurance company within 12 months after this Agreement's termination or expiration or fulfillment of a SOW.

(c) Deductible. Unless agreed to otherwise in writing, Supplier will maintain a deductible or retention of no more than \$100,000 US (or the local currency equivalent) per occurrence or accident throughout the Term for all lines of coverage under Sections 10(a) (General) and 10(b) (Professional liability/errors and omissions liability).

(d) Proof of Coverage. Upon request, Supplier will provide Microsoft with proof of insurance coverage required under this Agreement. Supplier will promptly buy additional coverage, and notify Microsoft in writing, if Microsoft reasonably determines that Supplier's coverage is less than that required to meet its obligations.

SECTION 11 Reports, records, audits, and inspections

- (a) **Reports.** Reports Supplier provides to Microsoft must be accurate, complete, and timely. Supplier will correct errors or omissions in any report within 5 days after becoming aware of the error or omission.
- (b) **Records.** For the Term plus 4 years, Supplier will keep usual and proper records and books of account and quality and performance reports related to Services and the Processing of Personal Data ("*Supplier Records*"). Supplier will maintain additional documentation if directed to do so by Microsoft related to Microsoft's compliance with the U.S. Sarbanes-Oxley Act of 2002.
- (c) **Financial statements.** If not publicly available, upon Microsoft's request, Supplier will provide Microsoft with its most recent financial statements. A "*financial statement*" means a balance sheet as of the last day of the calendar quarter or fiscal year, an income statement, statement of cash flows, and any related notes for the quarter and year-to-date, prepared under GAAP, international financial representation standards, or other generally accepted accounting principles in Supplier's jurisdiction. Supplier must note any departure in the quarterly financial statements from these principles. Supplier's authorized officer will acknowledge the financial statements' completeness and accuracy by signature.
- (d) **Audits, inspections, and refunds**
- (1) For the Section 11(b) term, Microsoft may audit Supplier Records and inspect Supplier facilities to verify Supplier's compliance with this Agreement, including privacy, security and Microsoft software licensing requirements. Microsoft or a Microsoft-selected independent certified public accountant or consultant will conduct audits and inspections. Microsoft will provide reasonable notice to Supplier before the audit or inspection and will use best efforts to avoid disrupting Supplier's operations, including consolidating audits where practical. Supplier will provide reasonable access to Supplier Records and Microsoft contracts and facilities. Auditors may copy Supplier Records for evidence.
 - (2) Supplier will reimburse Microsoft for overpayments discovered by auditors. If Supplier overcharged Microsoft 5% or more during an audited period it will immediately refund Microsoft all overpayments plus pay interest at 0.5% per month on such overcharge.
 - (3) For audits related to Anti-Corruption Laws, in addition to the obligations above, Supplier will maintain books, documents, records, papers, and other materials related to this Agreement ("*Relevant Records*"), and internal controls to prevent bribes and assure accurate financial statements and reporting. Supplier will not have undisclosed or unrecorded accounts, or false, misleading, incomplete, inaccurate, or artificial entries in the Relevant Records. Relevant Records and relevant employees will be available to Microsoft or Microsoft-selected independent certified public accountant or consultant. Microsoft may exercise its rights under this provision at any time if it in good faith believes Supplier or its representatives violated this Agreement's Anti-Corruptions Laws obligations.
 - (4) Nothing in this Section 11(d) limits Microsoft's right to audit Supplier under Section 6(b)(2)(viii).

SECTION 12 Miscellaneous

- (a) **Relationship.** The parties are independent contractors. Supplier's employees and Subcontractors are not Microsoft employees. Supplier will provide Microsoft with satisfactory proof of independent contractor status upon request. This Agreement does not create an

exclusive relationship between the parties and Microsoft does not commit to acquiring any minimum amount of Services from Supplier. There are no third-party beneficiaries under this Agreement unless provided otherwise.

- (b) **Law.** The laws of the State of Washington govern this Agreement. If federal jurisdiction exists, the parties consent to exclusive jurisdiction and venue in the federal courts in King County, Washington. If not, the parties consent to exclusive jurisdiction and venue in the Superior Court of King County, Washington. If either Microsoft or Supplier employs attorneys to enforce any rights arising out of or relating to this Agreement, the prevailing party may recover its reasonable attorneys' fees, costs, and other expenses, including costs and fees incurred on appeal or in a bankruptcy or similar action.
- (c) **No waiver.** A party's delay or failure to exercise any right or remedy is not a waiver of that or any other right or remedy.
- (d) **Assignment.** Supplier will not sell, assign, transfer, pledge, or encumber this Agreement or any right, or delegate any duty or obligation under this Agreement, by assignment or operation of law, without Microsoft's prior written consent. Microsoft will not unreasonably withhold such consent. Supplier will be deemed to have assigned this Agreement if Supplier engages in a change of control transaction. Microsoft may assign this Agreement to any of its Affiliates. This Agreement will inure to the benefit of and bind all permitted successors, assigns, receivers, and trustees of each party.
- (e) **Force majeure.** Except for business continuity (i.e., disaster recovery) obligations under this Agreement, neither party is liable for failing to perform its obligations under this Agreement due to acts of God, natural disasters, war, civil disturbance, or government action where the cause is beyond the party's reasonable control ("*Force Majeure Event*"). A Force Majeure Event does not include difficulty in obtaining labor, materials, or transport, or a strike, lock-out, trade dispute, or labor disturbance where Supplier is a direct party. The party affected by a Force Majeure Event will provide written notice to the other party within a commercially reasonable time and use best efforts to resume performance as soon as reasonably possible. If Supplier does not complete Services due to a Force Majeure Event within 3 weeks after the start of the Force Majeure Event, or an alternate date specified in an applicable SOW or this Agreement, whichever is earlier, then (1) Microsoft may choose not to purchase or pay for those Services, and (2) Supplier will promptly refund any pre-paid Fees.
- (f) **Severability.** If a court of competent jurisdiction determines that any Agreement provision is illegal, invalid, or unenforceable, the remaining provisions will remain in full force and effect.
- (g) **Insolvency, loss of profits, damages.** The insolvency or adjudication of bankruptcy, the filing of a voluntary petition in bankruptcy, or the making of an assignment for the benefit of creditors by either party will be a material breach of this Agreement. "*Insolvency*" means either (1) the party's liabilities exceed its assets, each fairly stated, or (2) the party's failure to timely pay its business obligations in the regular course of business.
- (h) **Entire agreement, precedence, and amendment.** This Agreement supersedes all prior and contemporaneous communications, whether written or oral, regarding the subject matter covered in this Agreement. Any preceding master agreement, listed in an exhibit to this Agreement, if any, previously executed between the parties (each a "*Prior Agreement*") is terminated, except that any SOWs under the Prior Agreement that have not expired or been terminated will survive according to the terms of the Prior Agreement as if the Prior Agreement were still in effect, provided that the SOWs cannot be extended beyond the current term as of

the Effective Date of this Agreement. If there is a conflict between any parts of this Agreement not resolved by its terms, the following order of precedence will apply:

- (1) This Agreement (including Microsoft Policies referenced herein);
- (2) A signed SOW, except if this Agreement or the SOW provides that a particular section of the SOW takes precedence over a particular section of this Agreement; and
- (3) Microsoft purchase order terms and conditions.

This Agreement may be modified only by a written agreement signed by authorized representatives of both parties. However, Microsoft may unilaterally modify the Policies identified in SECTION 2(g) (Supplier to comply with Microsoft Policies). This Agreement does not replace any separate written license agreement between Microsoft and Supplier, and any conflicts with licensing of Microsoft Materials will be resolved as provided in Section 3(b)(1)(ii).

- (i) **Notices.** Notices may be given by electronic or physical mail. The person(s) identified on this Agreement's first page will receive notices on behalf of their respective company. A party may change the persons to whom notices will be sent by giving notice to the other.
- (j) **Counterparts.** The parties may execute this Agreement in any number of counterparts. Each counterpart is an original and all counterparts constitute one agreement binding both parties. Facsimile and electronic signatures will be binding for all purposes.
- (k) **Construction.** Neither party has entered this Agreement in reliance on any promise, representation, or warranty not contained herein. This Agreement will be interpreted according to its plain meaning without presuming that it should favor either party. Lists of examples following "including," "e.g.," "for example," or the like are interpreted to include "without limitation," unless qualified by words such as "only" or "solely." URLs are understood to also refer to successors, localizations, and information or resources linked from within websites at those URLs.

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