

# ***Microsoft Cloud Reseller Agreement***

This Microsoft Cloud Reseller Agreement (“Agreement”) is between Microsoft and Company. If you are an individual accepting these terms on behalf of an entity, you represent that (i) you have the legal authority to enter into this Agreement on that entity’s behalf, (ii) you have read and understand the terms of this Agreement and (iii) you agree, on behalf of the entity that you represent, to the terms of this Agreement. This Agreement consists of the following terms and conditions and the Program Guide.

## **1. Definitions.**

“Affiliate” means any legal entity that owns, is owned by, or that is under common ownership with Company or Microsoft. Ownership means control of more than a 50% interest.

“Company” means the company that meets the qualifications to participate in the Microsoft Cloud Agreement Program, and that accepts the terms of this Agreement with Microsoft.

“Customer” means any legal entity (other than Company or its Affiliates) within the Territory that acquires Products for use as an end user, and not for distribution or resale.

“Customer Agreement” means the agreement that Microsoft uses to convey or provide Products to Customers. Microsoft may revise Customer Agreements for future Customers on not less than thirty (30) days’ notice to Company. Company may not revise the Customer Agreement in any way.

“Customer Data” has the meaning assigned to it in the Customer Agreement.

“Marks” means (i) either party’s names, word marks, logos, logotypes, trade dress, designs or other trademarks; (ii) the trademark and trade name “Microsoft,” and all trademarks and trade names derived from it, and the trademarks owned by Microsoft and used in association with all Products or which are set out at <http://www.microsoft.com/en-us/legal/intellectualproperty/Trademarks/default.aspx>, or any successor site, as Microsoft may amend; and (iii) any and all copyrights either party owns.

“Microsoft” means Microsoft Corporation.

“Portal” means the Partner Administration Center or an alternate site identified by Microsoft. The Portal will communicate the Program Guide, updates and other information relating to this Agreement.

“Product” means the Microsoft online services, which may include Microsoft software technology, on the then-current price list for the Microsoft Cloud Agreement Program.

“Program Guide” means the information about the Microsoft Cloud Agreement Program that is available on the Portal.

“SLA” means the service level agreement commitments Microsoft makes to its Customers regarding delivery and/or performance of the applicable Product.

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

“Taxes” means any federal, state, provincial or local taxes, fees, charges, surcharges, or other similar fees or charges arising as a result of or in connection with the transactions contemplated under this Agreement and include, but are not limited to, sales and use taxes, value added, gross receipts taxes, utility user’s fees, municipal occupation and license taxes, excise taxes, business and occupations taxes, 911 taxes, franchise fees, universal service fund fees or taxes, regulatory cost recovery and other surcharges, taxes imposed or based on or with respect to or measured by any net or gross income or receipts (other than taxes based upon Microsoft’s net income and any gross receipts taxes imposed in lieu of taxes on the income or profits of Microsoft), franchise taxes, stamp taxes, taxes on doing business, duties, tariffs, levies, withholding taxes, and any taxes that arise on the distribution or provision of products or services by Company to its Affiliates or Customers.

“Territory” means either: 1) the country Company is located in and enabled for resale in the Portal or 2) if Company is located in EU/EFTA, the countries located in EU/EFTA.

**2. Microsoft Partner Network.** Company must maintain its status as a registered member of the Microsoft Partner Network. Registered member status is available to Company free of charge.

**3. Authorization, Customer Orders and Territory.**

- a. **Authorization.** This Agreement gives Company the right to participate in the Microsoft Cloud Agreement Program and provide certain Products to Customers in the Territory. Microsoft may give Company the right to participate in additional licensing programs, which may require Company to accept additional terms.
- b. **Orders and Territory.** Company is only authorized to resell, distribute, market or otherwise dispose of Products within its designated Territory. Company may not collect orders or receive payments for Products from any Customer located outside the Territory. Company's Affiliates are not authorized to perform under this Agreement, unless otherwise agreed to by Microsoft.
- c. **Non-exclusive.** This Agreement is non-exclusive. Company is free to license, use, recommend, or support non-Microsoft software or services. Microsoft may provide any Products directly to Customers. Microsoft can also authorize other companies to do so.
- d. **New Releases of Existing Products.** Company acknowledges and agrees that Microsoft may modify a Product, or may release a new version of a Product at any time and for any reason including, but not limited to, to address customer needs or otherwise address competitive demands, to respond to a government regulation, order, or law, or to advance innovation in its Product offerings. Microsoft reserves the right to add new features or functionality to, or remove existing features or functionality from, a Product.
- e. **Product and Subscription Management.** Company will perform certain functions associated with the purchase, activation, support and management of Customer Subscriptions and Products. Those functions may be performed through the Portal or other processes or tools identified in the Program Guide. Any required functions may be further described in the Program Guide. Company acknowledges and agrees that from time to time Microsoft may update the processes and tools needed to perform those functions, as Microsoft in its sole reasonable discretion deems appropriate, and Company may be required to implement such updates or changes to continue to perform the functions.
- f. **Academic, Charity and Government Products.** Microsoft may provide Products that are identified on the price list as academic, charity or government. Company must have Microsoft's approval to purchase such Products and Company may provide such Products only to Customers that meet Microsoft's qualification criteria.

#### 4. **Customer Agreement Acceptance and Subscription Terms.**

- a. **Customer Agreement Acceptance.** Each Customer must accept a Customer Agreement to order Products from Company. By placing an order with Microsoft, Company (i) represents and warrants that Customer has accepted the Customer Agreement terms and (ii) agrees to pay Microsoft for all Customer it submits for Products. Microsoft may accept or reject any proposed Customer at Microsoft's discretion.

If Customer does not accept the terms of the Customer Agreement, Company shall be liable to Microsoft for any costs and damages incurred by Microsoft as a result of such failure.

- b. **Fixed term.** Company may sell the Products for a term of any length as determined by Company, provided, however (i) certain Products will be sold by Microsoft to Company for a fixed term as set forth in the Program Guide, and (ii) Company's election to sell Products to Customers for a period longer than the fixed term set forth in the Program Guide will not alter or enlarge Microsoft's obligations under this Agreement.
- c. **Auto-Renewal.** Subscriptions will automatically renew at the end of any term. Company may opt a Customer out of this automatic renewal system by updating the Subscription through the Portal. Each renewal term will be for the period specified in the Program Guide. Pricing for a renewal term will be Microsoft's pricing in the price list in effect as of the commencement of the renewal term.
- d. **Disablement.** Company may disable a Customer's Subscription. Company will need to separately disable each active Subscription. Depending on the Product, Customer will have limited or no access to the Product. Microsoft will not be liable in any manner whatsoever to Customer arising out of Company's disablement of the Customer's Subscriptions. Microsoft may disable a Customer's Subscription for legal or regulatory reasons or as otherwise permitted under this Agreement and Microsoft will notify Company of a disablement as soon as commercially reasonable. If Microsoft disables a Customer's Subscription, Microsoft also will suspend billing to Company for that Customer's Subscription until the Subscription is re-enabled.
- e. **Cancellation.** Company may cancel a Subscription for a Product for a Customer, however: 1) no refund is allowed for fees that have been paid and 2) an "Early Termination Charge", meaning fees due from Company in the event of cancellation of a Subscription before its term ends, may be applied as set forth in the Program Guide.

Upon cancellation, Customer will have ninety (90) days to migrate any Customer Data to either a new Subscription with Company, with Microsoft directly, or some other service. Company may incur a charge for Microsoft's assistance in migrating its Customer's Data.

- f. **Service Level Agreement Credits.** Microsoft makes certain service levels commitments to Customers in the SLA. If a Customer makes a claim on the SLA, Company must escalate the claim to Microsoft for review. Microsoft will review the claim according to the standard SLA review process. Microsoft will then apply any credit due on Company's next billing reconciliation report. Company must then credit the Customer that submitted the SLA claim at least the amount Microsoft has paid Company for the SLA credit. Customer is eligible for credits not to exceed the total monthly Subscription estimated retail price ("ERP"). Microsoft reserves the right to audit outages on a per Subscription or per service basis at any time.

Nothing in this section will preclude Company from proactively providing credits to Customers who make a claim on the SLA prior to submitting a claim to Microsoft; provided, however, that the claim will remain subject to validation by Microsoft according to the standard SLA review process and, in the event the claim is determined by Microsoft not to be valid, Company will be solely liable for any credits it advanced to Customers.

## 5. **Ordering, Reporting and Fulfillment.**

- a. **Price List.** Microsoft's prices for Products are available at the Portal, or any other website designated by Microsoft that includes price lists. Microsoft may change the price lists by publishing an updated price list to the Portal not less than one (1) calendar month before the effective date of such price list. Microsoft may provide notice of price list changes by either electronic or physical mail or facsimile.
- b. **Ordering.** Company will submit orders to Microsoft on a regular basis. Company should review the Program Guide for complete information about the ordering process. The Program Guide outlines how to order Products from Microsoft. Microsoft can only provide Products to Customers within specific geographic regions. As a result, Company must sign an Agreement with the appropriate Microsoft entity for the Territory in which Company's Customers are located.
- c. **Delivery of Products.** Microsoft will provision the Products based on the Customer information provided by Company. Company must provide Customers with the administrative log in credentials Microsoft provides for accessing the applicable Product. Upon receipt and acceptance of a valid order for Products, Microsoft will provision the Product for the benefit of the applicable Customer.
- d. **Credit Worthiness and Collection Guidelines.** Company will decide whether or not to extend credit to its Customers. A Customer's failure to pay Company will not relieve Company of its payment obligations to Microsoft.

## 6. **Support**

- a. **Support.** Company must provide support services to Customers for all Products it resells and will include this requirement in its agreements with its Customers. Company must provide Customer support for Products on a continuous basis (24 hours per day, 365 days per year). Company will be the point of contact for its Customers for all operational or technical support questions related to the Products. Company is responsible for informing Customer of Company support processes. If a Customer contacts Microsoft directly for support, Microsoft at its sole discretion may offer Customer support or redirect Customer to Company.

Examples of support services include, but are not limited to: account set-up; sign up, accounts and billing; "how to" articles and FAQs; service and software updates; software configuration; performance issues within Company's span of control; client connectivity and client desktop; and service availability issues within Company's span of control.

- b. **Escalation Support.** Microsoft will provide Company escalation support for undocumented scenarios and service impacting events. "Escalation Support" is defined as support that Company cannot reasonably provide to Company's Customers because it does not have the necessary training, documentation and/or support tools.

During the term of this Agreement, Company must resolve the documented support incidents without escalation to Microsoft. If Microsoft determines that Company is inappropriately escalating issues then, upon request by Microsoft, Company will meet to discuss a remediation plan. If Microsoft determines that remediation is necessary, Company will provide a report to Microsoft of Company's support capabilities and will perform any necessary additional training of its personnel to support the remediation plan. Refer to the Program Guide for additional guidelines on Escalation Support.

## 7. **Privacy; Customer Data.**

- a. **Privacy.** Company shall (i) comply with all applicable legal requirements regarding privacy and data protection; and (ii) provide sufficient notice to, and obtain sufficient consent and authorization from, Customers and any other party providing personal data to Company and Microsoft to permit the processing of the data by Company, Microsoft, and their respective Affiliates, subsidiaries, and service providers as contemplated by this Agreement.

Microsoft may collect, use, transfer, disclose, and otherwise process each Customer's data, including personal data, as described in the Customer Agreement.

Microsoft may send direct communications to Customers related to the terms of the Customer Agreement or the operation or delivery of the Product. Company must provide Microsoft with accurate contact information for the administrator of each Customer domain.

**b. Customer Data.**

- (i) Company warrants that it is the data controller of the Customer Data or agent of the data controller of the Customer Data. The security, privacy and data protection commitments made by Microsoft in any Customer Agreement only apply to the Products purchased from Microsoft and not to any services or products provided by Company.
- (ii) Except as Company and Customer may otherwise agree, Company shall use Customer Data only to provide Customer with the Products and the support services specified in this Agreement and the Program Guide and to assist Customer in the proper administration of the Products. Additionally, Company shall only access and disclose to law enforcement or other government authorities to the extent required by law data from, about or related to Customer, including the content of communications (or to provide law enforcement or other government entities access to such data).
- (iii) If Company receives a request for Customer Data either directly from a law enforcement agency or as redirected to Company by Microsoft, then Company shall redirect the law enforcement agency to request that data directly from Customer. If compelled to disclose Customer Data to law enforcement, then Company shall promptly notify Customer and provide a copy of the demand, unless legally prohibited from doing so.
- (iv) Company consents and authorizes Microsoft (and its service providers and subcontractors) at Company's direction to access and disclose to law enforcement or other government authorities data from, about or related to Customer, including the content of communications (or to provide law enforcement or other government entities access to such data). Company shall require in its Customer Agreements that, as and to the extent required by law, Customer shall notify the individual users of the Products that their data may be processed for the purpose of disclosing it to law enforcement or other governmental authorities as directed by Company, and shall obtain the users' consent to the same.

**8. Other Rights and Obligations.**

- a. Company's Representations and Warranties.** Company represents and warrants that it will: (i) have current access to all of Microsoft's online tools necessary to perform its obligations; (ii) use commercially reasonable efforts to service and support its Customers; (iii) inform Microsoft of any difficulties it encounters in servicing its Customers (iv) obtain a Customer's acceptance of the terms of the Customer Agreement before placing an order for such Customer; and; (v) promptly tell Microsoft about any known or suspected violations of the terms and conditions of a Customer Agreement by a Customer.
- b. Negotiation of Pricing and Payment Terms.** Company has complete discretion to negotiate and set pricing and payment terms and conditions with its Customers. Company's negotiation of those terms will not be subject to Microsoft's review or approval in any way.
- c. Product Warranties.** Company's instructions to Customers on the use of Products must be consistent with Microsoft's written warranty document, online services terms, Microsoft's end user documentation, and the Customer Agreement. Company must not make any representation, condition or warranty about the Products.
- d. Use Restrictions.** Company may not use Products acquired under this Agreement internally. Company may not distribute or otherwise transfer Products acquired under this Agreement to any of its Affiliates. These restrictions do not apply to Products acquired under other licensing programs.
- e. Excluded License.** Company's rights to any of the Products do not include any license, right, power or authority to cause any part of the Products to become subject to the terms of an excluded license. An "excluded license" is any license, such as an open source software license, that requires as a condition of use, modification or distribution of software subject to the excluded license, that it or other software combined or distributed with it be: (i) disclosed or distributed in source code form; (ii) licensed for the purpose of making derivative works; or (iii) redistributable at no charge.
- f. Compliance with laws and Microsoft's Anti-Corruption Policy.**
  - (i) **Compliance with laws and Microsoft's Anti-Corruption Policy.** Company will comply with all applicable laws against bribery, corruption, inaccurate books & records, inadequate internal controls and money-laundering, including the U.S. Foreign Corrupt Practices Act ("Anti-Corruption Laws"). Company certifies that

it has reviewed and will comply with the Anti-Corruption Policy for Microsoft Representatives available at: <http://www.microsoft.com/en-us/Legal/Compliance/anticorruption/Default.aspx/>.

Company also will provide annual training to its employees who resell, distribute, or market Microsoft products or services on compliance with Anti-Corruption Laws. Company certifies that this Anti-Corruption training has been provided to its employees and, if not, Company agrees to participate annually in online Anti-Corruption training made available free of charge by Microsoft and certify its completion, understanding, and compliance with the Anti-Corruption Policy for Microsoft Representatives. Company's record-keeping obligations, described in the Microsoft Audit Rights section below, apply to Company's certifications in this section and its compliance with Anti-Corruption Laws.

Company acknowledges that it is prohibited from paying expenses for travel, lodging, gifts, hospitality, or charitable contributions for government officials on Microsoft's behalf. Company also acknowledges that it is prohibited from using any funds provided by Microsoft, or any proceeds resulting from any Microsoft business, to pay expenses for travel, lodging, gifts, hospitality or charitable contributions for government officials.

- (ii) **Microsoft Audit Rights.** During the term of this Agreement and for two years after the later of either (i) the termination of Microsoft's Agreement with Company, or (ii) the date of issuance of final payment between Microsoft and Company Microsoft or its audit-related agents shall have access to, and the Company shall maintain, any books, documents, records, papers, or other materials of the Company related to this Agreement (the "Relevant Records"). Company shall establish and maintain a reasonable accounting system that enables Microsoft and its audit-related agents to identify Company's assets, expenses, expenditures, costs of goods, margins, discounts, rebates or other payments and compensation received, and use of funds related to this Agreement. Company shall maintain a system of internal controls to prevent the payment of bribes and provide reasonable assurance that financial statements and reporting are accurate. Company shall not have undisclosed or unrecorded accounts for any purpose. False, misleading, incomplete, inaccurate, or artificial entries in the books and records are prohibited

Microsoft will provide Company with at least ten-days written notice of Microsoft's intent to exercise its rights under this provision. The Relevant Records and, if requested, relevant employees, shall be made available to Microsoft or its audit-related agents during normal business hours at the Company's office or place of business. If no such location is available, then the Relevant Records, and if requested, relevant employees, shall be made available at a time and location that Microsoft will determine.

Microsoft may exercise its rights under this provision any time it has a good faith reason to believe that Company or its representatives are in violation of any Anti-Corruption Laws in connection with this Agreement or in any manner that may impact Microsoft or its relationship with Company. In addition, Microsoft may further exercise its rights under this provision for any other reason at any other time not to exceed once every 12-month period.

## 9. **Payment.**

- a. **Payment Due Date.** The Program Guide specifies the reporting and payment requirements for the Products. Payments are due on the date and in the currency stated in the Program Guide. Payments must be remitted to the account identified in the Program Guide. If Company does not receive an invoice within ten (10) days after its standard monthly invoice date, it must promptly notify Microsoft, and Microsoft will promptly send a new invoice. Company must manage its own credit risk. Company's payment to Microsoft is not dependent on receipt of payments from Customers even in the case of insolvency.

If Company fails to make any payments by the due date, Microsoft may take any of the following actions:

- (i) Microsoft may hold all pending orders, suspend further shipments or Customer access to Products under any agreement between Microsoft and Company until Microsoft receives all payments due under this Agreement;
- (ii) Microsoft may charge interest on the past due amount from the first day the amount is past due until the amount is paid in full. This includes any before or after judgment amounts. Interest will be charged at the rates set forth in the Program Guide. Company will pay Microsoft interest on demand.

If Microsoft chooses to take any of these actions, it does not waive any other right or remedy it may possess.

Company may not withhold payment or take deductions from any invoice amount (by offset, counterclaim, or otherwise) before Microsoft issues a credit. This includes returns, rebates, price adjustments, billing errors, shipping claims, handling fees, allowances, remittance costs and other charges.

**b. Financial Statements, Credit, Security.**

- (i) If not publicly available, Company will give Microsoft its audited financial statements once a year. Company will provide them within ninety (90) days of Company's fiscal year-end. Company also will provide unaudited quarterly financial statements upon request.
- (ii) If Company does not provide the financial statements, Microsoft can: (a) request advanced payment for any pending or future order; (b) suspend acceptance of orders until Microsoft receives the financial statements; or (c) place the account on hold or reduce the credit limit to levels deemed appropriate by Microsoft. Furthermore, in the event of contract renewal or extension, Microsoft may delay the renewal of the contract until the latest financial statements, requested guarantees or satisfactory answers to clarification(s) requested have been provided. The financial statement should not be older than 6 months after Company's financial year end, however, if there are specific circumstances Microsoft can allow an extension of this period.
- (iii) After Microsoft reviews Company's financial condition and overall credit worthiness, Microsoft may offer Company credit. Credit terms may vary by Territory or country. Microsoft may revise or withdraw Company's credit, starting when Microsoft notifies Company, if Company's financial conditions change. If Microsoft withdraws Company's credit, all outstanding amounts will become immediately due and payable. Payment will then be made when orders are placed, or otherwise as Microsoft directs.
- (iv) At any time during the term of this Agreement, Microsoft may require one or more bank guarantees or other forms of security, in amounts, in a form, and with a bank acceptable to Microsoft.
- (v) 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 in accordance with "GAAP", international financial representation standards, or other generally accepted accounting principles in Company's jurisdiction. Company must clearly note any departure in the quarterly statements from these principles. Company's authorized officer must sign the statements as being legitimately representative of Company's books and accounts.
- (vi) The Company should immediately notify Microsoft in case of any changes in the structure of its organization including: (a) significant changes in ownership; (b) changes in company name (both legal name and trade /business name); (c) mergers/amalgamations/divestments; (d) location changes; or (e) changes in the operational activities of the organization. Changes in relation to the legal name or registered address of the Company should be signed by an authorized signatory of the Company and should be supported by: (x) an excerpt from the company register or equivalent institution in the country; and (y) an updated tax certificate showing the tax/VAT registration numbers after the change.

**10. Warranty and Indemnity Obligations.**

- a. **Warranty.** Microsoft warrants its Products to Customers as described in the Customer Agreement.
- b. **No Warranty.** Unless required by applicable laws, Microsoft gives no other express warranties, representations or conditions. To the maximum extent permitted under applicable laws, Microsoft excludes all implied warranties and conditions, such as implied warranties of merchantability, non-infringement, and fitness for a particular purpose.
- c. **No Warranties for Other Items.** Microsoft makes no warranties or conditions as to items distributed under a third party name, copyright, trademark or trade name that may be offered with or incorporated with the Products. To the maximum extent permitted by applicable law, Microsoft will have no liability in connection with the third party items (such as any supply or failure to supply them).
- d. **Defense of Infringement Claims.**
  - (i) **Defense of Infringement Claims.** Microsoft will defend Company in a lawsuit in which a third party claims that a Product infringes its copyright, trademark or patent rights or misappropriates its trade secrets. If there is an adverse final judgment (or settlement to which Microsoft consents) from the lawsuit, Microsoft will pay it for Company. The third party may not be Company's Affiliate. The terms "misappropriation" and "trade secret" will have the meanings defined in the Uniform Trade Secret Act, except if this Agreement is governed by the laws of a jurisdiction outside the United States, in which case "misappropriation" will mean "intentionally unlawful use" and "trade secret" will mean "undisclosed information" as specified in Article 39.2 of the TRIPs agreement.

Microsoft's obligations are subject to the following conditions: (a) Company must promptly notify Microsoft in writing of the claim; (b) Microsoft will have sole control over defense and/or settlement of the claim; and (c)

Company will provide Microsoft with reasonable assistance in the defense of the claim. Microsoft's obligations to defend and pay a patent claim will be limited to patent claims where the Product alone, without combination or modification, constitutes direct or contributory infringement of the patent.

**(ii) Limitations on Microsoft's Defense Obligation.** Microsoft will not be liable for any claim to the extent that the claim or adverse final judgment is based on Company's: (a) distribution or use of any Product or Mark after Microsoft notifies Company to stop distribution or use of the Product or Mark due to such a claim; (b) combination of a Product with any non-Microsoft product, data or business process; (c) damages attributable to the value of the use of a non-Microsoft product, data or business process; (d) alteration of any Product; (e) use of Microsoft's Mark(s) without Microsoft's written consent to do so; or (f) for any trade secret claim, Company's acquiring a 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 who had a duty to maintain its secrecy or limit its use. Company will reimburse Microsoft for any costs or damages that result from these actions.

**(iii) Microsoft's Options.** If Microsoft receives information concerning an infringement claim relating to a Product, Microsoft may, at Microsoft's expense, but without obligation to do so: (a) procure for Company the right(s) or license(s) as may be necessary to address the claim; (b) replace the Product or Mark with a functional equivalent; or (c) modify the Product or Mark to make it non-infringing. With (b) or (c), Company must immediately stop distribution of the allegedly infringing Product or use of the allegedly infringing Mark. Company will work with Microsoft to recall all Products that are the subject of a claim and replace them with the non-infringing alternative. If any other type of third party claim is brought against Company regarding Microsoft's intellectual property, it must notify Microsoft promptly in writing. Microsoft may, at Microsoft's option, choose to treat these claims as being covered by this section. This section provides Company's only remedy for third party infringement and trade secret misappropriation claims.

**e. Company's Defense Obligations.** Company will defend Microsoft against any Third Party Claims. If there is an adverse final judgment (or settlement to which Company consents) resulting from any Third Party Claims, Company will pay it for Microsoft. Microsoft will promptly notify Company in writing of the Third Party Claim, specify the nature of the claim and the relief the third party seeks. Microsoft will give Company reasonable assistance in defending the Third Party Claim. At Microsoft's option and cost, Microsoft may participate in the selection of counsel, defense and settlement of any Third Party Claims covered by this section. If Microsoft decides to do this, Company and Microsoft will work together in good faith to reach decisions about which both parties agree. Company must have Microsoft's written consent before settling any Third Party Claim. Microsoft will not unreasonably withhold Microsoft's consent. "Third Party Claim" means any third party claims or allegations against Microsoft that arise out of or are connected with any default or breach or alleged default or breach of this Agreement by Company, Company's sale or distribution of any Product, or any other act or omission by Company, such as those claims identified in section 10(d)(ii).

## **11. Limitations on and Exclusions of Damages.**

**a. Limitation.** Unless applicable law requires otherwise, the only remedy that either party will have for anything related to this Agreement is to obtain direct damages from the liable party up to the amount actually paid by Company to Microsoft during the prior one-year period, minus any amounts paid by the liable party during that same period for any prior liability. Neither party can recover any other damages from the other, including loss of revenue or indirect, special, incidental, consequential, punitive, or exemplary damages, or damages for lost profits, revenues, business interruption, or loss of business information, even if the party knew they were possible.

**The limitations in this section apply to: (i) anything related to the Products; and (ii) claims for breach of contract, breach of warranty, strict liability, negligence or other tort to the extent permitted by applicable law. It also applies even if Company is not fully compensated for any losses, or Microsoft knew or should have known about the possibility of damages.**

The limitations do not apply to claims for non-payment, fraud, breach of confidentiality, defense of infringement claims (see section 10.d.), Company's violation of Microsoft's intellectual property rights, Third Party Claims (see section 10.e.) and failure to obtain acceptance of a Customer Agreement (see section 4.a). **Each party's liability for loss or damage of any kind (including loss or damage caused by negligence) is reduced to the extent that the other's agents caused or contributed to that loss or damage.**

**b. When These Exclusions May Not Apply.** The provisions of any local law which implies terms into this Agreement will not apply to the extent that local law permits the parties to contract out of the law. However, the limitations and exclusions in this Agreement do not change Company's rights if the laws of its state, province or country do not allow. For example, the limitations on liability may not apply to Company if applicable law does not allow it.

If applicable law gives Company any implied terms, despite the exclusions and limitations in this Agreement, then to the extent permitted by applicable law, Company's remedies are limited to repair or replacement of the Product and if Microsoft cannot repair or replace the Product, Microsoft will refund the amount Company paid for it.

## 12. Term and Termination.

- a. **Term.** This Agreement will remain in effect until August 31, 2015, unless terminated earlier as set forth below. This Agreement will automatically renew for successive one (1) year terms unless either party gives the other thirty (30) days' written notice of its intent to not renew.
- b. **Termination Without Cause.** Either party can terminate this Agreement at any time without cause and without intervention of the courts by giving the other party not less than thirty (30) days' written notice. Neither party will have to pay the other party any costs or damages resulting from termination of this Agreement without cause.
- c. **Termination for Cause.** If a party breaches any term of this Agreement, the other party can terminate this Agreement for cause. The terminating party will give the breaching party not less than thirty (30) days' written notice and opportunity to cure the breach if the cause for termination is curable. A party will be allowed to cure a breach once, if a party breaches the Agreement for the same reason as a prior breach such as late payment, then the other party may terminate the Agreement immediately. If the cause for termination is not curable, termination is effective immediately upon written notice from the terminating party. Disclosure of confidential information including the disclosure of specially negotiated Customer terms, misappropriation of Microsoft's intellectual property, and insolvency, bankruptcy or other similar proceedings, are grounds for immediate termination.
- d. **Effect of Expiration or Termination.**
  - (i) When this Agreement ends or is terminated, Company must immediately stop using all rights granted by this Agreement. Company must also pay Microsoft any amounts due under this Agreement.
  - (ii) Termination of this Agreement terminates all Program Guides under this Agreement, and any amendments or addenda.
  - (iii) If this Agreement expires or is terminated for any reason other than a breach by Company:
    - 1. Microsoft will, subject to the terms of this Agreement, continue to provide Products to Company in respect of Customers with an active Subscription for the shorter of 12 months or the minimum period of required performance by Company under its applicable Customer Agreement;
    - 2. Company will, subject to the terms of this Agreement, continue to provide Products to Customers with a binding Customer Agreement for the shorter of 12 months or the minimum period of required performance by Company under such Customer Agreement.
- e. **Waiver of Rights and Obligations.** Each party waives any right or obligation under any applicable law or regulation to request or obtain intervention of the courts to terminate this Agreement.
- f. **Survival.** Sections 7 (Privacy; Customer Data), 8(c) (Product Warranties), 8(d) (Use Restrictions), 8(e) (Excluded License), 8(f) (Compliance with laws and Microsoft's Anti-Corruption Policy), 10 (Warranty and Indemnity Obligations), 11 (Limitations on and Exclusions of Damages), 12 (d) (Effect of Expiration or Termination), 12 (f) (Waiver of Rights and Obligations), 12(g) (Survival), 16 (Government Restrictions), 20 (General) and 21 (Applicable Law; Attorneys' Fees) of these terms and conditions will survive any termination or expiration of this Agreement.

## 13. Intellectual Property.

- a. **Use of Marks.** The Agreement does not grant either party any right, title, interest, or license in or to any of the other party's Marks. Company may use Microsoft's corporate name, technology names and trademarks in plain text (but not logos, trade dress, designs or word marks in stylized form) to accurately identify and refer to Microsoft and its technology and services in accordance with the guidelines for Referential Use of Microsoft Trademarks located at <http://www.microsoft.com/en-us/legal/intellectualproperty/Trademarks/default.aspx>.
- b. **Proprietary Notices.** Company must not remove any copyright, trademark or patent notices from any of the Products. Company must include Microsoft's copyright notice on any documentation for the Products, including online documentation. The first time Company mentions the name of Microsoft's Products in communications, it must use the appropriate trademark, Product descriptor and trademark symbol (either "™" or "®"), and clearly indicate Microsoft's (or Microsoft's suppliers') ownership of the trademark(s).
- c. **Unsolicited Commercial Email.** Neither party may use the other party's Marks in connection with the transmission or distribution of unsolicited commercial email. Neither party may use the other party's Marks in any manner that would violate applicable law or local custom, or conflict with Microsoft's policies.



- 14. Reservation of Rights.** At any time during the term of this Agreement, Microsoft may terminate any Customer's status as a Customer. Microsoft will promptly notify Company of the termination of any of its Customers. Following such a notice, Company will immediately stop collecting orders for Products from the terminated Customers. Company will also stop delivery of any program information and materials to the terminated Customer. Termination will not affect the Customer's obligation to file the next required order or report, if any. Termination will not affect Microsoft's right to invoice Company for the order, or Company's obligation to pay Microsoft. If Microsoft terminates a Customer, Company will not have any claim against Microsoft for damages or lost profits resulting from the termination. Company will be entitled to invoice the Customer for the Products that the Customer ordered before termination.
- 15. Essential Element.** This Agreement is essential to any agreement Company enters into with a Customer. Company can only collect orders and payments for Products and purchase and deliver welcome kits and/or any additional program information and materials if this Agreement is in full force and effect.
- 16. Government Restrictions.**
- a. Export Restrictions.** Microsoft Products, software, services and technology are subject to U.S. export jurisdiction. All parties must comply with all applicable international and national laws, including the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, and end-user, end use and destination restrictions by U.S. and other governments. For additional information related to Microsoft compliance with export rules, see [www.microsoft.com/exporting](http://www.microsoft.com/exporting).
  - b. Government Approvals.** Company (and its Affiliates) must obtain the government approvals (and demonstrate other compliance) that are necessary for Company to provide Products or otherwise perform under this Agreement. This is at Company's expense. Company may import and provide the Products in or to a country or Territory only if allowed by, and in compliance with, all applicable laws and regulations of the country or Territory, as well as this Agreement.
  - c. Rebates, Fees and Other Concessions.** Company will disclose all rebates, fees or other concessions to a government Customer as required by law, regulations or the terms of the government solicitation.
- 17. Taxation.** All amounts Company must pay Microsoft under this Agreement do not include any Taxes. Company must pay Taxes imposed on or with respect to its activities in connection with this Agreement, if any, and Microsoft will have no responsibility for the payments. Company must pay or reimburse Microsoft for all Taxes which are permitted to be collected by Microsoft under applicable law. Company may provide Microsoft with a valid exemption certificate in which case Microsoft will not charge the Taxes covered by such certificate, and further Microsoft will be under no obligation to apply credits for any periods for which Company had not timely submitted a valid exemption certificate. If Company is located in a jurisdiction that utilizes the VAT numbers for tax identification purpose, it will provide Microsoft with its VAT number together with its address details..
- If income taxes are required to be withheld by any government on payments to Microsoft, Company may deduct such taxes from the amount owed to Microsoft and pay them to the appropriate taxing authority; provided however, that Company promptly secures and delivers an official receipt for those withholdings and other documents reasonably requested by Microsoft to claim a foreign tax credit or refund. Company will ensure that any taxes withheld are minimized to the extent possible under applicable law. Company remains obligated to pay Microsoft for the amount of tax withheld until Company provides to Microsoft the official receipt and other documents reasonably requested.
- The withholding taxes referred to in this section apply to withholding taxes required by the taxing authorities on payments to Microsoft only and do not include any withholding taxes suffered by Company for payments made to Company by its Customers. Those withholding taxes will be Company's financial responsibility.
- This tax section shall govern the treatment of all Taxes arising as a result of or in connection with this Agreement notwithstanding any other section or any other document included in this Agreement.
- 18. No Unauthorized Special Offers; No Side Agreements.** Only the Microsoft entity that enter into this Agreement can agree with Company to amend the Agreement. Neither Company nor Microsoft will enter into any Side Agreement. "Side Agreement" means any arrangement between Microsoft and Company, written or oral, that purports to modify the Agreement and is not signed, or otherwise agreed to, by the Microsoft entity that signed this Agreement. Side Agreements do not include Microsoft offers of rebates, promotions, discounts or extensions of payment terms (collectively, "Special Offers") when the Special Offer is made pursuant to a separate written agreement generally available to Microsoft's partners.
- 19. Financial Integrity and Accounting.** Company will not provide false, misleading or inaccurate financial information to Microsoft or Customers. Company must ensure that all orders, and the Agreement or any other documents it submits

to Microsoft are complete and accurate. In addition, Company agrees to submit orders to Microsoft only in quantities that Company can resell in the normal course of business.

**20. General**

- a. Entire Agreement.** This Agreement is Microsoft’s entire agreement relating to Company’s provision of Products under the Microsoft Cloud Agreement Program (or other licensing program that Microsoft has authorized Company to provide) and Program Guide. It supersedes any prior or contemporaneous communications. Except for the Program Guides, this Agreement can be changed only if both parties who entered into this Agreement sign an amendment. Microsoft may change the Program Guide from time to time without Company’s approval. If there are material changes in the Program Guide, Microsoft will give Company thirty (30) days’ prior written notice. In case of any inconsistency in determining the reseller relationship, this Agreement takes priority over the Program Guide.
- b. Notices.** All notices and requests required or permitted under this Agreement shall be in writing. Any notice or request provided for by this Agreement shall be given either by personal delivery; facsimile transmission; certified mail, return receipt requested; or recognized overnight express courier service. Notice or request shall be deemed to be effective:
  - (i) when it is given, in the case of notice or request by personal delivery or by facsimile transmission (provided that in the case of notice by facsimile transmission delivery is electronically confirmed by the sender’s telecopier);
  - (ii) three days after deposit in the mail, in the case of notice or request by certified mail, return receipt requested; and
  - (iii) one day after delivery to the courier service, in the case of notice or request by recognized overnight express courier service.

You must send notices by mail to the address below.

<b>Notices should be sent to:</b>	<b>Copies should be sent to:</b>
Microsoft Corporation 6100 Neil Road Suite 210 Reno, NV 89511 Attn: Channel Agreements	Microsoft Corporation One Microsoft Way Redmond, WA 98052 Attention: LCA – WWLP

A party may change its address for notification purposes by giving written notice of such change to the other party. Notwithstanding the foregoing, communications in the ordinary course of business (which do not include any notices related to payment, any dispute under or alleged breach of this Agreement, any effort to enforce the terms of this Agreement, or any notice regarding termination or modification of this Agreement or the Products) may be sent via email to the appropriate contact.

- c. Assignment.** Without Microsoft’s prior written consent, Company may not assign or transfer this Agreement or its rights or obligations under it, whether by contract or by operation of law (such as merger or sale of Company’s stock). Company will provide Microsoft with no less than 30 days’ notice of any requested assignment and Microsoft’s consent will not be unreasonably withheld. Microsoft may transfer Microsoft’s rights and obligations under this Agreement without Company’s consent, but only to one of Microsoft’s Affiliates. Any prohibited assignment is void.
- d. Confidentiality.** The following terms and conditions apply to exchanges of information under this Agreement.
  - (i) “Confidential information” means: (a) nonpublic information that Company, Microsoft, or an Affiliate designates as being confidential; or (b) nonpublic information which, given the nature of the disclosure or the circumstances surrounding disclosure, the receiving party should treat as confidential. Customer Agreements are Confidential Information of Microsoft, however, Company may disclose the standard form of Customer Agreement to Customers or prospective Customers who: (1) have a need to know such Confidential Information in order fulfill the purposes of this Agreement; and (2) have been instructed that all such Confidential Information is to be handled in strict confidence
  - (ii) Generally, Company and Microsoft must not disclose any confidential information of the other for five years following the date of disclosure. However, there is no time limit on disclosure of confidential information that

contains personal information (such as Customer contact information). The receiving party will not be liable for disclosure of information which: (a) it already knew without an obligation to maintain the information as confidential; (b) it received from a third party without breach of an obligation of confidentiality owed to the other party; (c) it independently developed; or (d) becomes publicly known through no wrongful act of the receiving party.

(iii) However, confidential information may be disclosed as required by a judicial or other governmental order, if the receiving party either: (a) gives reasonable notice of the order to allow the other party a reasonable opportunity to seek a protective order or otherwise prevent or restrict its disclosure; or (b) obtains written assurance from the entity issuing the order that it will protect the confidential information to the maximum level allowed under applicable law or regulation.

**e. Relationship Between Company and Microsoft.** Even though Company and Microsoft may call each other a 'partner', Company and Microsoft are independent contractors for all purposes regarding this Agreement. Company does not have the power to bind Microsoft. Company does not have the power to change any terms, conditions, warranties or covenants made by Microsoft. Company does not have the power to give any person any rights that Microsoft has not previously authorized in writing. Company and Microsoft are not a partnership (as the term is used in applicable partnership laws to refer to a legal partnership entity) or joint venture. Company and Microsoft do not have any agency, franchise or fiduciary relationship. For this section, "Microsoft" includes Microsoft's Affiliates.

**f. Language.** The English language version of this Agreement controls. If Company is in Canada, it is the express wish of both parties that this Agreement, and any associated documentation, be written and signed in English. C'est la volonté expresse des parties que la présente convention ainsi que les documents qui s'y rattachent soient rédigés en anglais.

**g. Waiver.** No waiver of any breach of this Agreement shall be a waiver of any other breach, and any waiver must be in writing and signed by an authorized representative of the waiving party.

**h. No Representations.** Microsoft has not made any representation to Company about any Products other than as specifically stated in this Agreement. Company has relied on its own skill and judgment (or that of its advisers) in deciding to enter into this Agreement. However, neither party limits or excludes liability for fraudulent misrepresentations.

**i. Microsoft Corporation and Affiliates - Third Party Beneficiaries.** Certain sections of this Agreement are for the benefit of Microsoft's Affiliates. As a result, Microsoft and Microsoft's Affiliates are entitled to enforce this Agreement. If the doctrine of third-party beneficiaries is not recognized in Company's jurisdiction, then the parties agree that while Microsoft's Affiliates are not parties to this Agreement and have no obligations under this Agreement, the Microsoft is a trustee of Microsoft's Affiliates for the limited purpose of holding in trust for Microsoft's Affiliates the covenants and rights in favor of Microsoft's Affiliates. Accordingly, the parties agree that Microsoft's Affiliates may enforce such rights and promises in its own right (without being required to add Microsoft as a party to any proceedings for such enforcement). Except for Microsoft's Affiliates, this Agreement does not create any enforceable rights by anyone other than Company and Microsoft. Any representation or agreement made by Microsoft's Affiliates that would change the terms of this Agreement must be in writing and signed by Microsoft's authorized representative.

**21. Applicable Law; Attorneys' Fees.** This Agreement is governed by and interpreted in accordance with the laws of the State of Washington and the federal laws of the United States. The parties consent to the exclusive jurisdiction and venue in the courts sitting in King County, Washington. Company waives all defenses of lack of personal jurisdiction and forum non conveniens. This choice of jurisdiction and venue does not prevent either party from seeking injunctive relief for: (i) violation of intellectual property rights; (ii) breach of confidentiality obligations; or (iii) enforcement or recognition of any award or order in any appropriate jurisdiction. If either party begins litigation in connection with this Agreement, the substantially prevailing party will be entitled to recover its reasonable attorneys' fees, costs and other expenses. The 1980 United Nations Convention on Contracts for the International Sale of Goods does not govern this Agreement.