

# Microsoft Cloud Agreement

This Microsoft Cloud Agreement is between Microsoft Ireland Operations Limited (“Microsoft”, “we”, “us”, or “our”) and the entity you represent, or, if you do not designate an entity in connection with a Subscription, then this agreement is between Microsoft and you individually (in either case, “Customer” or “you”). This agreement consists of the terms and conditions below, the Acceptable Use Policy, the Online Services Terms, and the SLAs. It is effective on the date we provide you with confirmation of your first order (“Effective Date”). Key terms are defined in Section 11.

## 1. **General.**

- a. **Right to Use.** We grant you the right to access and use the Online Services and to install and use Software included with your Subscription, as further described in this agreement. We reserve all other rights.
- b. **Acceptable Use.** You will use the Product only per the Acceptable Use Policy. You may not reverse engineer, decompile, disassemble or work around technical limitations in the Product, except where applicable law permits it despite this limitation. You may not disable, tamper with or otherwise attempt to circumvent any billing mechanism that meters your use of the Product. You may not rent, lease, lend, resell, transfer, or host any Product to or for third parties.
- c. **Use Rights.** The Online Services Terms in effect on the Effective Date will apply to your use of the Product for the initial Term of the Subscription. For any renewal Term, the Online Services Terms in effect on the date of renewal will apply. The use rights and Microsoft’s process for updating them are detailed in the Online Services Terms.
- d. **Choosing a Reseller.** You must choose and maintain a Reseller authorized in your region.
- e. **Reseller Administrator Access and Customer Data.** You acknowledge and agree that (i) once you have chosen a Reseller, that Reseller will be an additional administrator of the Online Services for the Term, and you will be unable to choose another Reseller for the Online Services during the Term, unless otherwise permitted by Microsoft; (ii) Reseller will have the same administrative privileges and access to Customer Data as your own administrator; (iii) Reseller’s privacy practices with respect to Customer Data or any services provided by Reseller may differ from the privacy practices of Microsoft; and (iv) Reseller may collect, use, transfer, disclose, and otherwise process Customer Data, including personal data. You consent to Microsoft providing Reseller with information that you provide to Microsoft and Customer Data for purposes of ordering, provisioning and administering the Online Services.
- f. **Eligibility for Academic and Government Versions.** You agree that if you are purchasing an academic or government offer, you meet the respective eligibility requirements for a Qualified Educational User or Qualifying Government Entity published at <http://www.microsoftvolumelicensing.com>. Microsoft reserves the right to verify eligibility at any time and suspend the Online Service if such eligibility requirements are not met.

## 2. **Confidentiality.**

To the extent permitted by applicable law, the terms and conditions of this agreement are confidential. Unless otherwise agreed, you may not disclose these terms and conditions, or the substance of any discussions that led to them, to any third party other than your Affiliates or agents, or to designated or prospective Resellers who: (a) have a need to know such information in order to assist in carrying out this agreement; and (b) have been instructed that all such information is to be handled in strict confidence.

### **3. Orders, Prices, term, termination, and suspension.**

#### **a. Orders.**

- (i) Orders must be placed through your designated Reseller.
- (ii) You may increase the quantity of Product ordered during the Term of a Subscription. Additional quantities of Product added to a Subscription will expire at the end of that Subscription.

#### **b. Available Subscription Offers.**

- (i) **Commitment Offering.** You commit in advance to purchase a specific quantity of Services for use during a Term. With respect to Microsoft Azure Services, additional or other usage (for example, usage beyond your commitment quantity) may be treated as a Consumption Offering. Committed quantities not used during the Term will expire at the end of the Term.
- (ii) **Consumption Offering (also known as Pay-As-You-Go).** For Microsoft Azure Services only, your Reseller will bill you based on your actual usage of the Online Services.
- (iii) The Subscription offers available to you will be established by your Reseller.

#### **c. Pricing and Payment.** You acknowledge that your prices for each Product and terms and conditions for invoicing and payment will be established by your Reseller.

#### **d. Renewal.** The Term of your existing Subscription will automatically renew unless you provide your Reseller with notice of your intent not to renew prior to expiration of the Term of the Subscription. Microsoft may require you to sign a new agreement, a supplemental agreement or an amendment before processing a renewal.

#### **e. Taxes.** The parties are not liable for any of the taxes of the other party that the other party is legally obligated to pay and which are incurred or arise in connection with or related to the transactions contemplated under this Agreement, and all such taxes shall be the financial responsibility of the party who is obligated by operation of law to pay such tax.

#### **f. Duration of agreement and Termination.** This agreement will remain in effect for the Term of any Subscription purchased hereunder. You may terminate this agreement at any time by contacting your designated Reseller. The expiration or termination of this agreement will only terminate your right to place new orders for additional Products under this agreement.

#### **g. Termination for breach.** Either party may, on written notice to the other party, terminate this agreement if the other party materially breaches this agreement. Except where the breach is by its nature incapable of being cured within 30 days, the terminating party must give the other party 30 days' prior written notice and opportunity to cure.

### **4. Security, privacy, and data protection.**

- a.** You consent to the processing of personal information by Microsoft and its agents to facilitate the subject matter of this agreement. You may choose to provide personal information to Microsoft on behalf of third parties (including your contacts, resellers, distributors, administrators, and employees) as part of this agreement. You will obtain all required consents from third parties under applicable privacy and data protection law before providing personal information to Microsoft.
- b.** Additional privacy and security details are in the Online Services Terms. The commitments made in the Online Services Terms only apply to the Online Services purchased under this agreement and not to any services or products provided by your Reseller.
- c.** You consent and authorize Microsoft (and its service providers and subcontractors), at Reseller's direction or as required by law, to access and disclose to law enforcement or other government authorities data from, about or related to you, including the content of communications (or to provide law enforcement or other government entities access to such data).

- d. As and to the extent required by law, you shall notify the individual users of the Online Services that their data may be processed for the purpose of disclosing it to law enforcement or other governmental authorities as directed by Reseller or as required by law, and shall obtain the users' consent to the same.
- e. You appoint Reseller as its agent for purposes of interfacing with and providing instructions to Microsoft for the purposes of this Section 4.

## 5. **Warranties.**

### a. **Limited warranty.**

- (i) **Online Services.** We warrant that each Online Service will meet the terms of the applicable SLA during the applicable Term. Your only remedies for breach of this warranty are those in the SLA.
- (ii) **Software.** We warrant for one year from the date you first use the Software that it will perform substantially as described in the applicable user documentation. If Software fails to meet this warranty we will at our option (1) return the price paid for the Software or (2) repair or replace the Software.

### b. **Limited warranty exclusions.** This limited warranty is subject to the following limitations:

- (i) any implied warranties, guarantees or conditions not able to be disclaimed as a matter of law will last one year from the start of the limited warranty;
- (ii) this limited warranty does not cover problems caused by accident, abuse or use of the Products in a manner inconsistent with this agreement, or resulting from events beyond our reasonable control;
- (iii) this limited warranty does not apply to problems caused by the failure to meet minimum system requirements; and
- (iv) this limited warranty does not apply to free, trial, pre-release, preview or beta Products.

### c. **Disclaimer. Other than this warranty, we provide no warranties, whether express, implied, statutory, or otherwise, including warranties of merchantability or fitness for a particular purpose. These disclaimers will apply except to the extent applicable law does not permit them.**

## 6. **Defense of claims.**

- a. **Defense.** We will defend you against any claims made by an unaffiliated third party that a Product infringes its patent, copyright or trademark or makes unlawful use of its trade secret. You will defend us against any claims made by an unaffiliated third party that any Customer Data (i) infringes the third party's patent, copyright, or trademark or makes unlawful use of its trade secret or (ii) arises from violation of the Acceptable Use Policy.
- b. **Limitations.** Our obligations in Section 5a will not apply to a claim or award based on: (i) Customer Data, non-Microsoft software, modifications you make to the Product, or materials you provide or make available as part of using the Product; (ii) your combination of the Product with, or damages based upon the value of, a non-Microsoft product, Customer Data or business process; (iii) your use of a Microsoft trademark without our express written consent, or your use of the Product after we notify you to stop due to a third-party claim; or (iv) your redistribution of the Product to, or use for the benefit of, any unaffiliated third party.
- c. **Remedies.** If we reasonably believe that a claim under Section 5a may bar your use of the Product, we will seek to: (i) obtain the right for you to keep using it; or (ii) modify or replace it with a functional equivalent and notify you to stop use of the prior version of the Product. If these options are not commercially reasonable, we may terminate your rights to use the Product and then refund any advance payments for unused Subscription rights to your Reseller.

- d. **Obligations.** Each party must notify the other promptly of a claim under this Section 6. The party seeking protection must (i) give the other sole control over the defense and settlement of the claim; and (ii) give reasonable help in defending the claim. The party providing the protection will (1) reimburse the other for reasonable out-of-pocket expenses that it incurs in giving that help and (2) pay the amount of any resulting adverse final judgment (or settlement that the other consents to). The parties' respective rights to defense and payment of judgments or settlements under this Section 6 are in lieu of any common law or statutory indemnification rights or analogous rights, and each party waives such common law or statutory rights.

## 7. **Limitation of liability.**

- a. **Limitation.** The aggregate liability of each party for all claims under this agreement is limited to direct damages up to the amount paid for the Online Service during the 12 months before the cause of action arose; provided, that in no event will a party's aggregate liability for any Online Service exceed the amount paid for that Online Service. For Products provided free of charge, Microsoft's liability is limited to direct damages up to U.S. \$5,000.
- b. **Exclusion.** Neither party will be liable for 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 or reasonably foreseeable.
- c. **Exceptions to limitations.** The limits of liability in this Section apply to the fullest extent permitted by applicable law, but do not apply to: (i) the parties' obligations under Section 6; or (ii) violation of the other's intellectual property rights.

## 8. **Software.**

- a. **Licenses purchased.** We grant you licenses for the number of copies of Software you ordered.
- b. **License confirmation.** Proof of your Software license is (i) this agreement, (ii) any Order confirmation, (iii) documentation evidencing license transfers (for any permitted transfers), and (iv) proof of payment.
- c. **License rights are not related to fulfillment of Software media.** Your acquisition of Software media or access to a network source does not affect your license to Software obtained under this agreement. We license Software to you, we do not sell it.
- d. **Transferring and assigning licenses.** License transfers are not permitted.

## 9. **Support.**

Support services for Products purchased under this agreement will be provided by Reseller.

## 10. **Agreement mechanics.**

- a. **Notices.** You must send notices by mail to the address below.

Notices should be sent to:	Copies should be sent to:
Microsoft Ireland Operations Limited Atrium Block B Carmenhall Road Sandyford Industrial Estate Dublin 18, Ireland	Microsoft Corporation Legal and Corporate Affairs Volume Licensing Group One Microsoft Way Redmond, WA 98052 USA Via Facsimile: (425) 936-7329

We may email notices to account administrators you identify. Notices are effective on the date on the return receipt or, for email, when sent.

- b. **Assignment.** You may not assign this agreement either in whole or in part.
- c. **Severability.** If any part of this agreement is held unenforceable, the rest of the agreement will remain in full force and effect.
- d. **Waiver.** Failure to enforce any provision of this agreement will not constitute a waiver.
- e. **No third-party beneficiaries.** There are no third-party beneficiaries to this agreement.
- f. **Applicable law and venue.** This agreement is governed by the laws of Ireland. If we bring an action to enforce this agreement, we will bring it in the jurisdiction where you have your headquarters. If you bring an action to enforce this agreement, you will bring it in Ireland. This choice of jurisdiction does not prevent either party from seeking injunctive relief in any appropriate jurisdiction with respect to violation of intellectual property rights.
- g. **Entire agreement.** This agreement is the entire agreement concerning its subject matter and supersedes any prior or concurrent communications.
- h. **Survival.** The following provisions will survive this agreement's termination or expiration: 5 (Warranties), 6 (Defense of claims), 7 (Limitation of liability), 10f (Applicable law and venue), 10g (Entire agreement), 10h (Survival), 10i (U.S. export jurisdiction) and 11 (Definitions).
- i. **U.S. export jurisdiction.** The Product is subject to U.S. export jurisdiction. You must comply with all applicable laws, including the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, and end-user, end-use and destination restrictions issued by U.S. and other governments. For additional information, see <http://www.microsoft.com/exporting/>.
- j. **Force majeure.** Neither party will be liable for any failure in performance due to causes beyond that party's reasonable control (such as fire, explosion, power blackout, earthquake, flood, severe storms, strike, embargo, labor disputes, acts of civil or military authority, war, terrorism (including cyber terrorism), acts of God, acts or omissions of Internet traffic carriers, actions or omissions of regulatory or governmental bodies (including the passage of laws or regulations or other acts of government that impact the delivery of Online Services)). This section will not, however, apply to your payment obligations under this agreement.
- k. **Publicity.** Microsoft may publicly disclose (orally and in writing) that you are a customer of Microsoft and a purchaser of the Product(s), including in a list of Microsoft customers and other promotional materials.
- l. **Order of Precedence.** In the case of a conflict between any documents referred to in this agreement that are not expressly resolved in those documents, their terms will control in the following order of descending priority: (1) this agreement, (2) the SLAs, and (3) the Online Services Terms. Terms in an amendment control over the amended document and any prior amendments concerning the same subject matter.
- m. **Waiver of right to void online purchases.** To the maximum extent permitted by applicable law, you waive your rights to void purchases under this agreement pursuant to any law governing distance selling or electronic or online agreements, as well as any right or obligation regarding prior information, subsequent confirmation, rights of withdrawal, or cooling-off periods.

## 11. Definitions.

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

"Acceptable Use Policy" is set forth in the Online Services Terms or as otherwise made prominently available by Microsoft.

"Affiliate" means any legal entity that a party owns, or that owns a party, with a 50% or greater interest.

“Commitment Offering” and “Consumption Offering” describe categories of Subscription offers and are defined in Section 3.

“Customer Data” is defined in the Online Services Terms.

“Online Service” means any Microsoft online service subscribed to under this agreement.

“Online Services Terms” means the terms that apply to your use of the Products available at <http://www.microsoft.com/licensing/onlineuserights>. The Online Services Terms include terms governing your use of Products that are in addition to the terms in this agreement.

“Product” means any Online Service (including any Software).

“Reseller” means an entity authorized by Microsoft to resell Software licenses and Online Service Subscriptions under this program and engaged by you to provide pre- and post-transaction assistance.

“SLAs” means the service level agreement commitments we make regarding delivery and/or performance of the Online Service, as published at <http://www.microsoft.com/licensing/contracts>, <http://www.windowsazure.com/en-us/support/legal/sla/> or at an alternate site that we identify.

“Software” means software we provide for installation on your device as part of your Subscription or for use with the Online Service to enable certain functionality.

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

“Term” means the duration of a Subscription for a specific Product as established by your Reseller.

