

Microsoft Customer Agreement

This Microsoft Customer Agreement (the "Agreement") is between Customer and Microsoft and consists of these General Terms, the DPA, the applicable Product Terms and SLAs, and any additional terms Microsoft presents when an order is placed. This Agreement takes effect when the Customer accepts it, applies to any order under this Agreement, and supersedes any end user license agreement that accompanies a Product. The individual who accepts the Agreement represents that they are authorized to enter into this Agreement on behalf of Customer. Capitalized terms have the meanings given under "Definitions."

General Terms

License to use Microsoft Products

- a. Licenses for Products.** Products are licensed and not sold. Upon Microsoft's acceptance of each order and subject to Customer's compliance with this Agreement, Microsoft grants Customer a nonexclusive and limited license to use the Products ordered as provided in this Agreement. These licenses are solely for Customer's own use and business purposes and are nontransferable except as expressly permitted under this Agreement or applicable law.
- b. Duration of licenses.** Online Services and some Software are licensed on a subscription basis for a specified period of time. Subscriptions expire at the end of the applicable subscription period unless renewed. Some Subscriptions renew automatically until canceled. The Subscription term for Online Services that are billed in arrears based on usage is the same as the billing period unless otherwise specified in the Product Terms. Perpetual Software licenses become perpetual upon payment in full.
- c. End Users.** Customer will control access to, and use of, the Products by End Users and is responsible for any use of the Products that does not comply with this Agreement.
- d. Affiliates.** Customer may order Products for use by its Affiliates. If it does, the licenses granted to Customer under this Agreement will apply to such Affiliates, but Customer will have the sole right to enforce this Agreement against Microsoft. Customer will remain responsible for all obligations under this Agreement and for its Affiliates' compliance with this Agreement.
- e. Reservation of Rights.** Microsoft reserves all rights not expressly granted in this Agreement. Products and Services Deliverables are protected by copyright and other intellectual property laws and international treaties. No rights will be granted or implied by waiver or estoppel. Rights to access or use a Product on a device do not give Customer any right to implement Microsoft patents or other Microsoft intellectual property in the device itself or in any other software or devices.
- f. Restrictions.** Except as expressly permitted in this Agreement or Product documentation, Customer must not (and is not licensed to):
 - (i)** reverse engineer, decompile, or disassemble any Product or Services Deliverable, or attempt to do so (except where applicable law permits despite this limitation);
 - (ii)** install or use non-Microsoft software or technology in any way that would subject Microsoft's intellectual property or technology to any other license terms;
 - (iii)** work around any technical limitations in a Product or Services Deliverable or restrictions in Product documentation;
 - (iv)** separate and run parts of a Product or Services Deliverable on more than one device;
 - (v)** upgrade or downgrade parts of a Product at different times;
 - (vi)** transfer parts of a Product separately; or

and documents that Microsoft or the auditor reasonably requests related to the verification and visual access to systems running the Products. All information and reports related to the verification process will be Confidential Information and used solely to verify compliance.

- b. Remedies for non-compliance.** If verification reveals any unlicensed use, Customer must, within 30 days, order sufficient licenses to cover the period of its unlicensed use. Without limiting Microsoft's other remedies, if unlicensed use is 5% or more of Customer's total use of all Products, Customer must reimburse Microsoft for its costs incurred in verification and acquire sufficient licenses to cover its unlicensed use at 125% of the then-current Customer price or the maximum allowed under applicable law, if less.

Data Protection and Processing

Microsoft and its Affiliates, and their respective agents and subcontractors, will process Customer Data, Personal Data, and Professional Services Data as provided in this Agreement and the DPA, which is incorporated by reference. Before providing Personal Data to Microsoft, Customer will obtain all required consents from third parties (including Customer's contacts, Partners, distributors, administrators, and employees) under applicable privacy and data protection laws.

Confidentiality

- a. Confidential Information.** "Confidential Information" is non-public information that is designated "confidential" or that a reasonable person should understand is confidential, including, but not limited to, Customer Data, Professional Services Data, the terms of this Agreement, and Customer's account authentication credentials. Confidential Information does not include information that (1) becomes publicly available without a breach of a confidentiality obligation; (2) the receiving party received lawfully from another source without a confidentiality obligation; (3) is independently developed; or (4) is a comment or suggestion volunteered about the other party's business, products, or services.
- b. Protection of Confidential Information.** Each party will take reasonable steps to protect the other's Confidential Information and will use the other party's Confidential Information only for purposes of the parties' business relationship. Neither party will disclose Confidential Information to third parties, except to its Representatives, and then only on a need-to-know basis under nondisclosure obligations at least as protective as this Agreement. Each party remains responsible for the use of Confidential Information by its Representatives and, in the event of discovery of any unauthorized use or disclosure, must promptly notify the other party. The Product Terms and DPA provide additional terms regarding the disclosure and use of Customer Data.
- c. Disclosure required by law.** A party may disclose the other's Confidential Information if required by law, but only after it notifies the other party (if legally permissible) to enable the other party to seek a protective order.
- d. Residual information.** Neither party is required to restrict work assignments of its Representatives who have had access to Confidential Information. Each party agrees that the use of information retained in Representatives' unaided memories in the development or deployment of the parties' respective products or services does not create liability under this Agreement or trade secret law, and each party agrees to limit what it discloses to the other accordingly.
- e. Duration of Confidentiality obligation.** These obligations apply: (1) for Customer Data, until it is deleted from the Online Services; and (2) for all other Confidential Information, for a period of five years after a party receives the Confidential Information.

Warranties

- a. Limited warranties and remedies.** To the extent permitted by applicable law, the remedies below are Customer's sole remedies for breach of the warranties provided in this section, and Customer waives any warranty claims not made during the applicable warranty period.

Limitation of liability

Subject to the Exclusions, Exceptions and Applicability provisions in subsections e, f, and g, each party's liability to the other party for each Product or Professional Service provided under this Agreement is limited to direct damages finally awarded, not to exceed an amount determined as follows:

- a. Perpetual Licenses.** For each Product licensed on a perpetual basis, each party's maximum, aggregate liability is the amount Customer paid for the applicable licenses.
- b. Subscriptions.** For each Product licensed on a subscription basis, each party's maximum, aggregate liability is the total amount of subscription fees Customer paid to use the Product during the 12 months preceding the most recent incident giving rise to the claim(s).
- c. Professional Services.** For Professional Services, each party's maximum, aggregate liability is the amount Customer paid for the applicable Professional Services.
- d. Free offers and distributable code.** For Products or Professional Services provided free of charge, and code that Customer is authorized to redistribute to third parties without separate payment to Microsoft, Microsoft's liability is limited to direct damages finally awarded up to US\$5,000.
- e. Exclusions.** In no event will either party be liable for indirect, incidental, special, punitive, or consequential damages; loss of revenue, profits, or anticipated savings (whether direct or indirect); or loss of use, loss of business information, or interruption of business, however caused or on any theory of liability.
- f. Exceptions.** No limitation or exclusions under this Agreement will apply to liability arising out of either party's (1) confidentiality obligations (except for all liability related to Customer Data and Professional Service Data, which will remain subject to the limitations and exclusions above); (2) obligations under the section entitled Defense of Third-Party Claims; or (3) violation of the other party's intellectual property rights; or (4) willful misconduct or gross negligence.
- g. Applicability.** To the extent permitted by applicable law, the limitations, exclusions, and exceptions set forth in this Limitation of Liability section apply to all claims and damages under or relating to this Agreement or the Products or Professional Services provided under this Agreement, including, without limitation, breach of contract, breach of warranty, strict liability, and negligence and other torts, even if the parties knew or should have known about the possibility of the damages.
- h. Liability for death or personal injury.** Nothing in this Agreement shall exclude liability for death or personal injury caused by negligence or liability for fraudulent misrepresentation.

Partners

- a. Selecting a Partner.** Customer may authorize a Partner to place orders on Customer's behalf and manage Customer's purchases by associating the Partner with its account. If the Partner's distribution right is terminated, Customer must select an authorized replacement Partner or purchase directly from Microsoft. Partners and other third parties are not agents of Microsoft and are not authorized to enter into any agreement with Customer on behalf of Microsoft.
- b. Partner Administrator privileges and access to Customer Data.** If Customer purchases Online Services from a Partner, Customer may choose to provide that Partner with administrator privileges. Customer consents to Microsoft and its Affiliates providing that Partner with Customer Data and Administrator Data for purposes of provisioning, administering, and supporting (as applicable) the Online Services. Partner may process such data according to the terms of Partner's agreement with Customer, and its privacy commitments may differ from Microsoft's. Customer appoints Partner as its agent for purposes of providing and receiving notices and other communications to and from Microsoft. Customer may terminate the Partner's administrative privileges at any time.

- g. Taxes.** Microsoft prices exclude applicable taxes unless identified as tax inclusive. If any amounts are to be paid to Microsoft, Customer will also pay any applicable value added, goods and services, sales, gross receipts, or other transaction taxes, fees, charges, or surcharges, or any regulatory cost recovery surcharges or similar amounts that are owed under this Agreement and that Microsoft is permitted to collect from Customer. Customer will be responsible for any applicable stamp taxes and for all other taxes that it is legally obligated to pay including any taxes that arise on the distribution or provision of Products or Professional Services by Customer to its Affiliates. Microsoft will be responsible for all taxes based upon its net income, gross receipts taxes imposed in lieu of taxes on income or profits, and taxes on its property ownership.

If any taxes are required to be withheld on payments invoiced by Microsoft, Customer may deduct such taxes from the amount owed and pay them to the appropriate taxing authority, but only if Customer promptly provides Microsoft an official receipt for those withholdings and other documents reasonably requested to allow Microsoft to claim a foreign tax credit or refund. Customer will ensure that any taxes withheld are minimized to the extent possible under applicable law.

Term and termination

- a. Term.** This Agreement is effective until terminated by a party, as described below.
- b. Termination without cause.** Either party may terminate this Agreement without cause on 60 days' notice. Termination without cause will not affect Customer's perpetual licenses. Licenses granted on a subscription basis and access to Online Services and Microsoft Support Services will continue for the remainder of the then-current subscription period(s) or support term, subject to the terms of this Agreement.
- c. Termination for cause.** Without limiting other remedies it may have, either party may terminate this Agreement on 30 days' notice for material breach if the other party fails to cure the breach within the 30-day notice period. Upon such termination, the following will apply:
- (i)** All licenses granted under this Agreement will terminate immediately except for fully paid, perpetual licenses.
 - (ii)** All amounts due under any unpaid invoices shall become due and payable immediately. For Subscriptions billed in arrears based on usage, Customer must pay for all unpaid usage as of the termination date immediately upon receipt of an invoice.
 - (iii)** If Microsoft is in breach, Customer will receive a credit for any Subscription fees, including amounts paid in advance for unused consumption for any usage period after the termination date.
 - (iv)** Customer must pay for all Professional Services provided as of the termination date immediately upon receipt of an invoice.
- d. Suspension.** During any period of material breach by Customer, Microsoft may suspend a Subscription or Statement of Services without terminating this Agreement. Microsoft will give Customer 30 days' notice before such suspension unless Microsoft's charge against Customer's payment method is declined or Microsoft reasonably believes immediate suspension is required to prevent unauthorized access to Customer Data or to ensure the ongoing confidentiality, integrity, availability, or resilience of Microsoft's systems and services.
- e. Termination to comply with laws.** Microsoft may modify or discontinue offering a Product or Professional Service and/or terminate a Subscription or Statement of Services for that Product or Professional Service in any country or jurisdiction where there is any current or future government requirement or obligation that (1) subjects Microsoft to any regulation or requirement that is not generally applicable to businesses operating there; (2) presents a hardship for Microsoft to continue offering the Product or Professional Service without modification; or (3) causes Microsoft to believe this Agreement or the Product or Professional Services offering may conflict with any such requirement or

- g. Survival.** All provisions survive termination of this Agreement except those requiring performance only during the term of the Agreement.
- h. Notices.** All notices must be in writing. Except for notices relating to arbitration (as provided in certain supplemental terms for individual users), notices to Microsoft must be sent to the following address and will be deemed received on the date received at that address:

Microsoft Ireland Operations Limited
One Microsoft Place
South County Business Park
Leopardstown
Dublin 18
D18 P521
Ireland

Microsoft may provide Customer with information and notices electronically, including via email, through the portal for an Online Service, or through a web site that Microsoft identifies. Notice is given as of the date it is made available by Microsoft.

- i. Applicable law.** This Agreement will be governed by and construed in accordance with the laws of Ireland. The 1980 United Nations Convention on Contracts for the International Sale of Goods and its related instruments will not apply to this Agreement.
- j. Dispute resolution.** When bringing any action arising under this Agreement, the parties agree to the following exclusive venues:
- (i)** If Microsoft brings the action, the venue will be where Customer has its headquarters.
 - (ii)** If Customer brings the action against Microsoft or any Microsoft Affiliate located outside of Europe, the venue will be the state or federal courts in King County, State of Washington, USA.
 - (iii)** If Customer brings the action against Microsoft or any Microsoft Affiliate located in Europe, and not also against Microsoft or a Microsoft Affiliate located outside of Europe, the venue will be Ireland.
 - (iv)** The parties consent to personal jurisdiction in the agreed venues. This choice of venue does not prevent either party from seeking injunctive relief in any jurisdiction with respect to a violation of intellectual property rights or confidentiality obligations.
- k. Order of precedence.** If there is a conflict between any documents in this Agreement that is not expressly resolved in those documents, their terms will control in the following order, from highest to lowest priority: (1) DPA; (2) these General Terms; (3) Product Terms; (4) SLA; and (5) any additional terms presented when an order is placed. Terms in an amendment control over the amended document and any prior amendments concerning the same subject matter.
- l. Microsoft Affiliates and subcontractors.** Microsoft may perform its obligations under this Agreement through its Affiliates and use subcontractors to provide certain services. Microsoft remains responsible for their performance.
- m. Government procurement rules.** If Customer is a government entity or is otherwise subject to government procurement requirements, Customer represents and warrants that (1) it has complied and will comply with all applicable government procurement laws and regulations; (2) it is authorized to enter into this Agreement; and (3) this Agreement satisfies all applicable procurement requirements.
- n. Compliance with Trade Laws.** Products and Services Deliverables may be subject to U.S. and other countries' export jurisdictions. Each party will comply with all laws and regulations applicable to the import or export of the Products and Services Deliverables, including, without limitation, trade laws such as the U.S. Export Administration Regulations and International Traffic in Arms Regulations and sanctions regulations administered by the U.S. Office of Foreign Assets Control ("OFAC") ("Trade Laws"). Customer will not take any action that causes Microsoft to violate U.S. or other applicable Trade Laws.



"Professional Services" means Microsoft Support Services and consulting services provided by Microsoft to Customer under this Agreement. "Professional Services" do not include Online Services.

"Professional Services Data" means all data, including all text, sound, video, image files, or software, that are provided to Microsoft or its Affiliates by, or on behalf of, Customer and its Affiliates (or that Customer or an Affiliate authorizes Microsoft to obtain from an Online Service) or otherwise obtained or processed by or on behalf of Microsoft or its Affiliates through an engagement with Microsoft to obtain Professional Services.

"Publisher" means a provider of a Non-Microsoft Product.

"Representatives" means a party's employees, Affiliates, contractors, advisors, and consultants.

"SLA" means Service Level Agreement, which specifies the minimum service level for the Online Services and is published on the Licensing Site.

"Services Deliverables" means any computer code or materials (including without limitation proofs of concept, documentation and design recommendations, sample code, software libraries, algorithms, and machine learning models), other than Products or Fixes, that Microsoft leaves with Customer at the conclusion of Microsoft's performance of Professional Services.

"Software" means licensed copies of Microsoft software identified in the Product Terms. Software does not include Online Services, but Software may be part of an Online Service.

"Statement of Services" means any order under this Agreement that includes or describes Professional Services.

"Subscription" means a license for Customer to use or access a Product during a defined period of time.

"use" means to copy, download, install, run, access, display, or otherwise interact with.

"Use Rights" means the following sections of the Product Terms, as applicable to each Product offering: Use Rights, License Model terms, General Service Terms, Service Specific Terms, Add-ons, Universal License Terms, and Other Legal Terms.

Purchase Agreement with the "Microsoft Sales Affiliate" ()

Certain Products and Professional Services are offered by a local Microsoft Sales Affiliate that Microsoft has authorized to distribute and supply such Products and Professional Services. If Customer orders those Products directly from Microsoft, the Microsoft Sales Affiliate will be the seller. By submitting the order, Customer is deemed to have accepted the terms offered by the Microsoft Sales Affiliate identified above, forming a separate agreement with such Microsoft Sales Affiliate to purchase the Products and Professional Services (the "Purchase Agreement"). The Purchase Agreement consists of all applicable terms of this Agreement, modified as follows:

- a. Licensing terms excluded.** All terms pertaining solely to the licensing of such Products, Fixes, and Services Deliverables are deemed excluded. Microsoft is the licensor of all Products, Fixes, and Services Deliverables, and the Agreement with Microsoft will continue to apply to any Products and Professional Services ordered from a Microsoft Sales Affiliate. Microsoft Sales Affiliate does not have authority to bind or impose any obligation or liability on any other Microsoft entity.
- b. Pricing and payment.** Microsoft Sales Affiliate will determine pricing for the applicable Products. All terms pertaining to pricing and payment apply to the Purchase Agreement. If Customer is eligible for invoicing, Microsoft Sales Affiliate will send invoices to the billing contact identified on Customer's account (with taxes added where applicable), and Customer must pay the amount due to Microsoft Sales Affiliate according to the payment instructions on the invoice. Customer's failure to make any payment due to Microsoft Sales Affiliate by the required date will constitute a material breach of both the Purchase Agreement and the Agreement with Microsoft. In the event Microsoft terminates the