

Business and Services Agreement

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This Microsoft Business and Services Agreement is entered into between the entities identified on the signature form.

If Customer licenses software or contracts for services from Microsoft under this agreement, the specific terms of those transactions will be contained in a separate License Agreement or Statement of Services that will incorporate the terms of this agreement. Nothing in this agreement obligates either party to enter into any License Agreement or Statement of Services.

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

Terms and Conditions

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

1. Definitions.

In this agreement, the following definitions apply:

“Affiliate” means (1) with regard to Customer, any legal entity that Customer owns, which owns Customer, or which is under common ownership with Customer, and (2) with regard to Microsoft, any legal entity that Microsoft owns, which owns Microsoft, or which is under common ownership with Microsoft. “Ownership” means, for purposes of this definition, more than 50% ownership either directly or indirectly;

“available” means Microsoft has made licenses for that Product, or Services, available on the Product List, or Services list, for ordering under a particular licensing program or Services transaction;

“Commercial Product” means any Product Microsoft makes available for license for a fee;

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

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

“Fixes” means Product fixes, modifications or enhancements, or their derivatives, that Microsoft either releases generally (such as Commercial Product service packs), or that Microsoft provides to Customer when performing Services (such as workarounds, patches, bug fixes, beta fixes and beta builds);

“Free Product” means any Product Microsoft makes available for license without charge;

“License Agreement” means any license agreement expressly incorporating the terms of this agreement.

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

“Pre-release” or “Beta” Products are Products provided prior to commercial release;

“Product” means all Commercial Products, Free Products, Pre-release Products and Beta Products, including any online services and other web-based services identified on the Product List;

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

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

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

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

“Services” means all support, consulting and other services or advice, including any resulting deliverables provided to Customer under this agreement;

“Statement of Services” means any work orders, services descriptions, or other statements of services referencing this agreement, and any parts of an enrollment that relate to the delivery of Services. However, for sections entitled “Term and Termination,” “Fees and expenses in Statements of Services,” “Assignment,” and “Applicable law,” references to Statement of Services shall not be deemed to apply to enrollments.

2. Use, ownership, and license rights.

Microsoft’s Products and Fixes are licensed to Customer, not sold. The specific use rights for Products are contained in Microsoft’s published Product Use Rights. Ownership and license rights in any Services Deliverables are addressed in this section.

- a. **Products.** Unless otherwise specified in a License Agreement, use of any Product that Customer licenses from Microsoft is governed by Product Use Rights specific to each Product and version and by the terms of the License Agreement under which Customer licensed the Product.
- b. **Fixes and Services Deliverables.**
 - (i) **Fixes.** Fixes are licensed according to the license terms applicable to the Product to which those Fixes relate. If the Fixes are not provided for a specific Product, any other use terms Microsoft provides with the Fixes will apply, and if no use terms are provided, Customer shall have a non-exclusive, perpetual, fully paid-up license to use and reproduce the Fixes solely for its internal use. Customer may not modify, change the file

name of or combine any Fixes with any non-Microsoft computer code, except as expressly permitted in a License Agreement or Statement of Services.

- (ii) **Pre-Existing Work.** All rights in any computer code or non-code based written materials developed or otherwise obtained by or for the parties or their Affiliates independent of this agreement (“Pre-existing Work”) shall remain the sole property of the party providing the Pre-existing Work. During the performance of the Services, each party grants to the other party (and Microsoft’s contractors as necessary) a temporary, non-exclusive license to use, reproduce and modify any of its Pre-existing Work provided to the other party, solely as needed to perform its obligations in connection with the Services.

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

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

- (iii) **Developments.** Except as may be otherwise explicitly agreed to in a Statement of Services, upon payment in full Microsoft grants Customer joint ownership in any computer code or non-code written materials (other than Products, Fixes or Pre-existing Work) developed by Microsoft or in collaboration with Customer and left with Customer at the conclusion of a Services engagement (“Developments”). Each party shall be the sole owner of any modifications that it makes based upon Developments. Customer agrees to exercise its rights in any Developments solely for Customer’s internal business operations, and not to resell or distribute any Developments to any third party.

- (iv) **Open Source License restrictions.** Because certain third party license terms require that computer code be generally (i) disclosed in source code form to third parties; (ii) licensed to third parties for the purpose of making derivative works; or (iii) redistributable to third parties at no charge (collectively, “Open Source License Terms”), the license rights that each party has granted to any computer code (or any intellectual property associated therewith) do not include any license, right, power or authority to incorporate, modify, combine and/or distribute that computer code with any other computer code in a manner which would subject the other’s computer code to Open Source License Terms. Furthermore, each party warrants that it will not provide or give to the other party computer code that is governed by Open Source License Terms.

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

- c. **Reservation of rights.** All rights not expressly granted are reserved.

3. Restrictions on use.

This section describes several restrictions that apply generally to Customer’s use of any software Microsoft provides to Customer (e.g., prohibitions on renting or hosting the software, or reverse engineering it).

a. Customer must not:

- (i) separate and use the components of a Product on two or more computers, upgrade or downgrade components at different times, or transfer components separately, except as provided in the Product Use Rights;
- (ii) reverse engineer, decompile or disassemble any Product, Fix, or Services Deliverable, except where applicable law permits it despite this limitation; or

(iii) rent, lease, lend or host to or for third parties any Product, Fix, or Services Deliverable except where Microsoft agrees in the applicable License Agreement or Statement of Services, or in a separate written agreement.

b. **U.S. export jurisdiction.** Products, Fixes, and Services Deliverables are subject to U.S. export jurisdiction. For additional information, see <http://www.microsoft.com/exporting>.

4. Confidentiality.

Each party agrees not to use or disclose the other's Confidential Information except as necessary to further the purposes of the agreement. Each party agrees to take reasonable steps to protect that information, to return it or destroy it upon request, and to cooperate with one another if a disclosure occurs. Each party also agrees that if either party gives the other party feedback about the other's products or services, that feedback is not confidential.

a. **What is included.** "Confidential information" is non-public information, know-how and trade secrets in any form that:

- (i) are designated as "confidential"; or
- (ii) a reasonable person knows or reasonably should understand to be confidential;

and includes non-public information regarding either party's products or customers, marketing and promotions, and the negotiated terms of Microsoft agreements.

b. **What is not included.** The following types of information, however marked, are not confidential information. Information that:

- (i) is, or becomes, publicly available without a breach of this agreement;
- (ii) was lawfully known to the receiver of the information without an obligation to keep it confidential;
- (iii) is received from another source who can disclose it lawfully and without an obligation to keep it confidential;
- (iv) is independently developed; or
- (v) is a comment or suggestion one party volunteers about the other's business, products or services.

c. Treatment of confidential information.

(i) **In general.** Subject to the other terms of this agreement, each party agrees:

- it will not disclose the other's confidential information to third parties; and
- it will use and disclose the other's confidential information only for purposes of the parties' business relationship with each other.

(ii) **Security precautions.** Each party agrees:

- to take reasonable steps to protect the other's confidential information -- these steps must be at least as protective as those the party takes to protect its own confidential information;
- to notify the other promptly upon discovery of any unauthorized use or disclosure of confidential information; and
- to cooperate with the other to help regain control of the confidential information and prevent further unauthorized use or disclosure of it.

(iii) **Sharing confidential information with Affiliates and representatives.**

- A "representative" is an employee, contractor, advisor or consultant of one of the parties or of one of the parties' Affiliates.

- Each party may disclose the other's confidential information to its representatives (who may then disclose that confidential information to other of that party's representatives) only if those representatives have a need to know about it for purposes of the parties' business relationship with each other. Before doing so, each party must:
 1. ensure that Affiliates and representatives are required to protect the confidential information on terms consistent with this agreement; and
 2. accept responsibility for each representative's use of confidential information.
- Neither party is required to restrict work assignments of representatives who have had access to confidential information. Neither party can control the incoming information the other will disclose to it in the course of working together, or what that party's representatives will remember, even without notes or other aids. Each party agrees that use of information in representatives' unaided memories in the development or deployment of the parties' respective products or services does not create liability under this agreement or trade secret law, and each party agrees to limit what it discloses to the other accordingly.

(iv) Disclosing confidential information if required to by law. Each party may disclose the other's confidential information if required to comply with a court order or other government demand that has the force of law. Before doing so, each party must seek the highest level of protection available and, when possible, give the other enough prior notice to provide a reasonable chance to seek a protective order.

d. Length of confidential information obligations. Except as permitted above, neither of us will use or disclose the other's confidential information for five (5) years after we receive it. The five-year time period does not apply if applicable law requires a longer period.

e. Right to use feedback. If one party provides suggestions for changes or improvements, or other feedback, to the other party about the other party's products or services, the party receiving the feedback may use it for any purpose without obligation of any kind, except that the receiving party will not disclose the source of feedback without the consent of the party providing it.

5. Warranties.

Microsoft warrants that its Commercial Products will work substantially as described in the accompanying documentation, subject to certain limitations. If not, Microsoft will provide replacement Commercial Product or a refund. Microsoft warrants that Services will be performed with professional care and skill. Microsoft disclaims all other warranties.

a. Limited Product warranty. Microsoft warrants that each version of a Commercial Product licensed by Customer will perform substantially as described in the applicable Microsoft user documentation. This warranty is subject to the following limitations:

- (i) the warranty applies for one year from the date Customer first runs a copy of the Product;
- (ii) any implied warranties, guarantees or conditions last only during the term of the limited warranty, except where applicable law does not permit such a limitation;
- (iii) the warranty does not cover problems caused by accident, abuse or use of the Products in a manner inconsistent with this agreement or the Product Use Rights, or resulting from events beyond Microsoft's reasonable control;
- (iv) the warranty does not apply to components of Products that Customer is permitted to redistribute; and
- (v) the warranty does not apply to problems caused by the failure to meet minimum system requirements.

b. Remedies for breach of limited Product warranty. If Customer notifies Microsoft within the warranty period that a Commercial Product does not meet the limited warranty, then Microsoft

will, at its option, either (a) return the price paid for the Product, or (b) repair or replace the Product. These are Customer's only remedies for breach of the limited warranty, unless other remedies are required to be provided under applicable law.

- c. **No warranty on Free and Beta Products.** To the maximum extent permitted by law, Free Products and Beta Products are provided "as-is," without any warranties. Customer acknowledges that the provisions of this paragraph with regard to pre-release and Beta Products are reasonable, among other things as these Products are being provided to Customer prior to commercial release and before Microsoft has fully tested them.
- d. **Services.** Microsoft warrants that all Services will be performed with professional care and skill.
- e. **DISCLAIMER OF OTHER WARRANTIES. OTHER THAN THIS LIMITED WARRANTY, MICROSOFT PROVIDES NO OTHER EXPRESS OR IMPLIED WARRANTIES. MICROSOFT DISCLAIMS ANY IMPLIED REPRESENTATIONS, WARRANTIES OR CONDITIONS, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE OR NON-INFRINGEMENT. THESE DISCLAIMERS WILL APPLY UNLESS APPLICABLE LAW DOES NOT PERMIT THEM.**

6. Defense of infringement and misappropriation claims.

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

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

- a. **Agreement to protect.** Microsoft will defend Customer against any claims made by an unaffiliated third party that any Commercial Product, Fix, or Services Deliverable infringes that party's patent, copyright or trademark or makes intentional unlawful use of its trade secret or undisclosed information. Microsoft will also pay the amount of any resulting adverse final judgment (or settlement to which Microsoft consents). This section provides Customer's exclusive remedy for these claims. The term "undisclosed information" is used in accordance with Article 39.2 of the TRIPs agreement.
- b. **What the Customer must do.** Customer must notify Microsoft promptly in writing of the claim and give Microsoft sole control over its defense or settlement. Customer must also provide Microsoft with reasonable assistance in defending the claim. Microsoft will reimburse Customer for reasonable out of pocket expenses that it incurs in providing that assistance.
- c. **Limitations on defense obligation.** Microsoft's obligations will not apply to the extent that the claim or award is based on:
 - (i) specifications Customer provides to Microsoft for the Services Deliverables;
 - (ii) code or materials provided by Customer as part of Services Deliverables;
 - (iii) Customer's use of the Product, Fix or Services Deliverables after Microsoft notifies it to discontinue that use due to a third party claim;
 - (iv) Customer's combination of the Product, Fix or Services Deliverables with a non-Microsoft product, data or business process;
 - (v) damages attributable to the value of the use of a non-Microsoft product, data or business process;
 - (vi) modifications that Customer makes to the Product, Fix or Services Deliverables;

- (vii) Customer's redistribution of the Product, Fix or Services Deliverables to, or its use for the benefit of, any unaffiliated third party;
- (viii) Customer's use of Microsoft's trademark(s) without express written consent to do so; or
- (ix) any trade secret or undisclosed information claim, where Customer acquires the trade secret or undisclosed information (a) through improper means; or (b) under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (c) from a person (other than Microsoft or Microsoft's Affiliates) who owed to the party asserting the claim a duty to maintain the secrecy or limit the use of the trade secret or undisclosed information.

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

d. Specific rights and remedies in case of infringement.

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

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

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

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

7. Limitation of liability.

Microsoft limits its liability to Customer to the amount of money Customer has paid Microsoft for the Product or Services giving rise to the claim. This limit does not apply, however, to Microsoft's obligations under the section entitled "Defense of infringement and misappropriation claims," or to damages Customer incurs because of Microsoft's breach of its confidentiality obligations or because of Microsoft's gross negligence or willful misconduct.

Each party agrees that it will not be liable to each other for consequential, indirect, punitive or special damages, except those that result from a breach of confidentiality or from one party violating the other's intellectual property rights.

- a. **Limitation on liability.** Except as otherwise provided in this section, to the extent permitted by applicable law, the liability of Microsoft and of Microsoft's contractors to Customer arising under this agreement is limited to direct damages up to the amount Customer paid for the Product or Services giving rise to that liability. In the case of Free Product, Services provided free of charge, or code that Customer is authorized to redistribute to third parties without separate payment to Microsoft, Microsoft's liability is limited to U.S. \$5,000. These limitations apply regardless of whether the liability is based on breach of contract, tort (including negligence), strict liability, breach of warranties, or any other legal theory. However, these monetary limitations will not apply to:

- (i) Microsoft's obligations under the section titled "Defense of infringement and misappropriation claims"; or
 - (ii) liability for damages caused by Microsoft's gross negligence or willful misconduct, or that of its employees or its agents, and awarded by a court of final adjudication (provided that, in any cases where the laws of the Republic of Ireland (or any jurisdiction that does not recognize a legal distinction between "gross negligence" and "negligence") apply to this provision, "gross negligence" as used in this subsection shall mean "recklessness"); or
 - (iii) liabilities arising out of any breach by Microsoft of its obligations under the section entitled "Confidentiality"; or
 - (iv) liability for personal injury or death caused by Microsoft's negligence or that of its employees or agents or for fraudulent misrepresentation.
- b. **EXCLUSION OF CERTAIN DAMAGES. TO THE EXTENT PERMITTED BY APPLICABLE LAW, WHATEVER THE LEGAL BASIS FOR THE CLAIM, NEITHER PARTY, NOR ANY OF ITS AFFILIATES OR SUPPLIERS, WILL BE LIABLE FOR ANY INDIRECT DAMAGES (INCLUDING, WITHOUT LIMITATION, CONSEQUENTIAL, SPECIAL OR INCIDENTAL DAMAGES, DAMAGES FOR LOST PROFITS OR REVENUES, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION) ARISING IN CONNECTION WITH THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH POSSIBILITY WAS REASONABLY FORESEEABLE. HOWEVER, THIS EXCLUSION DOES NOT APPLY TO EITHER PARTY'S LIABILITY TO THE OTHER FOR VIOLATION OF ITS CONFIDENTIALITY OBLIGATIONS OR OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS.**

8. Verifying compliance.

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

- a. **Right to verify compliance.** Customer must keep records relating to the Products it and its Affiliates use under any License Agreement. Microsoft has the right to verify compliance with the License Agreement, at Microsoft's expense, during the term of the applicable enrollment (or, if the License Agreement does not have enrollments, then during the term of that License Agreement, and for a period of one year thereafter.
- b. **Verification process and limitations.** To verify compliance, Microsoft will engage an independent accountant from an internationally recognized public accounting firm, which will be subject to a confidentiality obligation. Verification will take place upon not fewer than 30 days notice, during normal business hours and in a manner that does not interfere unreasonably with Customer's operations. As an alternative, Microsoft can require Customer to complete Microsoft's self-audit questionnaire relating to the Products Customer and any of its Affiliates use under this agreement, but reserves the right to use a verification process as set out above.

If Microsoft undertakes verification and does not find material unlicensed use (license shortage of 5% or more), Microsoft will not undertake another verification of the same entity for at least one year. Microsoft and Microsoft's auditors will use the information obtained in compliance verification only to enforce Microsoft's rights and to determine whether Customer is in compliance with the terms of this agreement. By invoking the rights and procedures described above, Microsoft does not waive its rights to enforce this agreement or to protect its intellectual property by any other means permitted by law.

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

9. Term and Termination.

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

Customer can terminate a Statement of Services upon notice, and either party can terminate it for an uncured material breach. When a Statement of Services is terminated, Customer must make any outstanding payments.

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

The sole effect of terminating this agreement will be to terminate the ability of either party to enter into subsequent License Agreements or Statements of Services under this agreement. Termination of this agreement will not, by itself, result in the termination of any License Agreement or Statement of Services previously entered into under this agreement. Any terms of this agreement incorporated by reference into any License Agreement or Statement of Services will continue in effect unless that License Agreement or Statement of Services itself is terminated or expires.

The term and termination rights for any License Agreement will be set forth in that License Agreement.

The term of any Statement of Services will be set forth in the Statement of Services. Unless otherwise provided in a Statement of Services, Customer's Affiliate that signed the Statement of Services may terminate it at any time by giving the Microsoft Affiliate that signed the Statement of Services 30 calendar days prior written notice. Either party to the Statement of Services may terminate it if the other party is (i) in material breach or default of any obligation that is not cured within 30 calendar days notice of such breach or (ii) fails to pay any invoice that is more than 60 calendar days outstanding. Customer agrees to pay all fees for services performed and expenses incurred prior to termination and any additional amounts that may be specified in a Statement of Services.

10. Fees and expenses in Statements of Services.

Customer agrees to pay Microsoft within 30 days of invoice. Fees exclude taxes, duties, tariffs, levies or other government charges or expenses. Microsoft may assess a finance charge for past due amounts.

Customer agrees to pay Microsoft (or its designees) the fees described in each Statement of Services. The fees do not include fees for Products. Unless otherwise stated in a Statement of Services, (i) Customer agrees to pay within 30 calendar days of the date of Microsoft's invoice and (ii) Microsoft will not change its hourly rates identified in a Statement of Services during its term, but Microsoft may adjust its hourly rates prior to entering any new Statement of Services. Microsoft's fees exclude any taxes, duties, tariffs, levies or other governmental charges or expenses (including, without limitation, any value added taxes), which will be billed to and paid by Customer. Microsoft is responsible for taxes based upon its personal property ownership and net income. Microsoft may, at its option, assess a finance charge of the lesser of 18% per annum, accrued, calculated and payable monthly, or the highest amount allowed by law, on all past due amounts. Microsoft will have no obligation to continue to provide Services if Customer fails to make timely payment.

11. Supportability of Products.

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

This section applies if Customer is entitled to Product support under a Statement of Services or License Agreement.

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

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

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

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

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

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

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

- a. Commercial General Liability covering bodily injury and tangible property damage liability with a limit of not less than U.S. \$2,000,000 each occurrence;
- b. Workers' Compensation (or maintenance of a legally permitted and governmentally-approved program of self-insurance) covering Microsoft employees pursuant to applicable state workers' compensation laws for work-related injuries suffered by Microsoft's employees;
- c. Employer's Liability with limits of not less than U.S. \$1,000,000 per accident;
- d. Professional Liability/Errors & Omissions Liability covering damages arising out of negligent acts, errors, or omissions committed by Microsoft or its employees in the performance of Services, with a limit of liability of not less than U.S. \$2,000,000 per claim; and
- e. Automobile Liability (if vehicles are brought on Customer's premises or used in the performance of the Services) with U.S. \$2,000,000 combined limit per occurrence, for bodily injury and property damage combined covering owned, non-owned and hired vehicles.

Microsoft will provide Customer with evidence of coverage on request.

13. Miscellaneous.

- a. **Notices to Microsoft.** Notices, authorizations, and requests in connection with this agreement must be sent by regular or overnight mail, express courier, fax, or email to the addresses and numbers listed in this agreement. Notices will be treated as delivered on the date shown on the return receipt or on the courier, fax or email confirmation of delivery.
- b. **Assignment.** Either party may assign this agreement to an Affiliate only. Assignment will not relieve the assigning party of its obligations under the assigned agreement. If either party assigns this agreement, it must notify the other party of the assignment in writing. Neither party may assign any Statement of Services without the written consent of the other.

Microsoft may use contractors to perform Services and Microsoft will be responsible for their performance subject to the terms of this agreement.

- c. **Severability.** If a court holds any provision of this agreement to be illegal, invalid or unenforceable, the rest of the document will remain in effect and this agreement will be amended to give effect to the eliminated provision to the maximum extent possible.
- d. **Waiver.** A waiver of any breach of this agreement is not a waiver of any other breach. Any waiver must be in writing and signed by an authorized representative of the waiving party.
- e. **Dispute resolution.** When bringing an action to enforce this agreement, (including any License Agreement or Statement of Services incorporating these terms), the parties agree to the following jurisdictions:
 - (i) If Microsoft brings the action, the jurisdiction will be where Customer's contracting Affiliate has its headquarters;
 - (ii) If Customer brings the action with any Microsoft Affiliate located outside of Europe, the jurisdiction will be the State of Washington, USA;
 - (iii) If Customer brings the action with any Microsoft Affiliate located in Europe, the jurisdiction will be the Republic of Ireland; and
 - (iv) If Customer brings the action to enforce a Statement of Services, the jurisdiction will be where the Microsoft Affiliate delivering the services has its headquarters.

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

- f. **Survival.** Provisions regarding ownership and license rights, fees, Product Use Rights, restrictions on use, evidence of perpetual licenses, transfer of licenses, warranties, defense of infringement and misappropriation claims, limitations of liability, confidentiality, compliance verification, obligations on termination or expiration and the other provisions in this section entitled "Miscellaneous" will survive termination or expiration of this agreement and of any License Agreement or Statement of Services in which they are incorporated.
- g. **This agreement is not exclusive.** Customer is free to enter into agreements to license, use or promote non-Microsoft software or services.
- h. **Applicable law.** The terms of any License Agreement entered into with any Microsoft Affiliate located outside of Europe will be governed by and construed in accordance with the laws of the State of Washington and federal laws of the United States. The terms of any License Agreement entered into with any Microsoft Affiliate located in Europe will be governed by and construed in accordance with the laws of the Republic of Ireland. Unless otherwise agreed in writing, the terms of any Statement of Services will be governed by the law of the jurisdiction where the Microsoft Affiliate delivering the Services is organized. The 1980 United Nations Convention on Contracts for the International Sale of Goods and its related instruments will not apply to this agreement or any License Agreement or Statement of Services entered into with any Microsoft Affiliate that incorporates these terms. The Products are protected by copyright and other intellectual property rights laws and international treaties.
- i. **Microsoft as independent contractor.** Microsoft provides its Services as an independent contractor, and will be responsible for any and all social security, unemployment, workers' compensation and other withholding taxes for all of Microsoft's employees. Customer and Microsoft are free to develop products independently without the use of the other's Confidential Information.
- j. **Amending the agreement.** This agreement (except the Product List and the Product Use Rights) can be changed only by an amendment or other agreement signed by both parties.
- k. **No transfer of ownership.** Microsoft does not transfer any ownership rights in any licensed Product.
- l. **Customer's rights to privacy.** Microsoft and Customer will comply with all applicable privacy and data protection laws and regulations. Customer may choose to provide personal

information to Microsoft on behalf of third parties (including, Customer's contacts, resellers, distributors, and administrators) as part of this agreement. Customer represents and warrants that it has and will comply with any applicable laws to provide notices to or obtain permissions from any such individuals to allow sharing of their personal information with Microsoft for the purpose of allowing Microsoft or its agents to facilitate Customer's agreements and related services. Customer consents to Microsoft's and its agents use of the contact information provided by Customer for purposes of administering its agreements, the business relationship and related services and with Microsoft's sharing of Customer's information with Customer's designated representatives, resellers, distributors, and administrators for such purposes, including allowing such individuals to update Customer's contact information on Customer's behalf. The personal information Customer provides in connection with this agreement will be used and protected according to the privacy statement available at <https://licensing.microsoft.com>.

- m. **Natural Disaster.** In the event of a natural disaster, Microsoft may post information or provide additional assistance or rights on <http://www.microsoft.com>.

14. Country-specific provisions.

In any case where the law of any of the jurisdictions cited below applies, the following country-specific provisions will replace or supplement the equivalent provisions above:

Albania

Supplement Terms and Conditions section 7 titled "Limitation of liability" with the following:

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

Supplement Terms and Conditions section 10 titled "Fees and Expenses in Statements of Services" with the following:

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

Australia

Replace subsection 2(a) titled "Products," first sentence of the first paragraph, with the following:

Unless otherwise specified in a License Agreement, use of any Product that Customer licenses from Microsoft is governed by Product Use Rights specific to each Product and version and by the terms of the License Agreement under which Customer licensed the Product *and these are the only rights that Customer has to run any Product*.

Supplement Terms and Conditions section 5 titled "Warranties" with the following:

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

goods, and in the case of Services to either (i) resupply of the Services or (ii) the cost of the resupply of the Services.

Supplement Terms and Conditions section 7 titled “Limitation of liability” with the following:

- c. Affiliates, suppliers and contractors.** Each party undertakes that it shall not bring any action against the other party's affiliates, suppliers or contractors in respect of any matter which is disclaimed on their behalf in this section entitled “Limitation of liability” of the agreement and that each party indemnifies the other party for all costs, expenses and damages suffered by an affiliate, supplier or contractor in the event of any breach of this undertaking.

For Statements of Services entered into with an Affiliate of Microsoft's located in Australia, replace Terms and Conditions subsection 13(h) titled “Applicable law” with the following:

- h. Applicable law.** The terms of any License Agreement entered into with any Microsoft Affiliate located outside of Europe will be governed by and construed in accordance with the laws of the State of Washington and federal laws of the United States. The terms of any License Agreement entered into with any Microsoft Affiliate located in Europe will be governed by and construed in accordance with the laws of the Republic of Ireland. The terms of any Statement of Services will be governed by the laws of New South Wales. The 1980 United Nations Convention on Contracts for the International Sale of Goods and its related instruments will not apply to this agreement or any agreement entered into with any Microsoft Affiliate that incorporate these terms. The Products are protected by copyright and other intellectual property rights laws and international treaties.

Replace Terms and Conditions subsection 13(l) titled “Customer's rights to privacy” with the following:

- l.** Microsoft and Customer will comply with all applicable privacy and data protection laws and regulations. Customer may choose to provide personal information to Microsoft on behalf of third parties (including, Customer's contacts, resellers, distributors, and administrators) as part of this agreement. Customer represents and warrants that it has and will comply with any applicable laws to provide notices to or obtain permissions from any such individuals to allow sharing of their personal information with Microsoft for the purpose of allowing Microsoft or its agents to facilitate Customer's agreements and related services. Customer *represents that it has obtained consent from an individual to allow Microsoft's and its agents use of the individual's contact information provided by Customer for purposes of administering its agreements, the business relationship and related services and with Microsoft's sharing of Customer's information with Customer's designated representatives, resellers, distributors, and administrators for such purposes, including allowing such individuals to update Customer's contact information on Customer's behalf.* The personal information Customer provides in connection with this agreement will be used and protected according to the privacy statement available at <https://licensing.microsoft.com>.

Supplement Terms and Conditions section 13 titled “Miscellaneous” with the following:

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

Austria

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

(iii) **Developments.** All rights in and to developments are owned by Microsoft. Accordingly, Microsoft is entitled to exploit any computer code or non-code written materials (other than Products, Fixes or Pre-existing Work) developed by Microsoft or in collaboration with Customer and left with Customer at the conclusion of a Services engagement (“Developments”) in all ways of use (also future ways of use) without separate permission and without any obligation of payment of royalties. Microsoft is especially entitled to use, reproduce, modify and distribute the Developments. Except as may be otherwise explicitly agreed to in a Statement of Services, upon payment in full Microsoft grants Customer the non-exclusive right to exploit such Developments in all ways of use (also future ways of use) without separate permission and without any obligation of payment of royalties. Customer is especially entitled to use, reproduce and modify the Developments. Customer may, however, use the Developments only for Customer's internal business operations and Customer may not resell or distribute the Developments to any third party. These use restrictions shall survive termination and expiration of a Statement of Services or this agreement. Each party shall be the sole owner of any rights to modifications that it makes based upon the Developments.

Replace Terms and Conditions section 5 titled “Warranties” with the following:

5. Warranties

- a. Limited Product warranty.** Microsoft warrants that each version of a Commercial Product licensed by Customer will perform substantially as described in the applicable Microsoft user documentation. This warranty is subject to the following limitations b. to j. of this section. All representations and warranties going beyond the scope of this section are excluded to the extent permitted by applicable law.
- b. Agreed Characteristics; Claims due to Defects in quality and Defects in title.** To the extent that Microsoft should be required to supply a yet to be produced moveable thing (herzustellende, bewegliche Sache) or to the extent Microsoft's Services are, exceptionally, considered work performances (Werkleistungen), the following provisions c. to j. of this section will apply to claims due to defects in quality or defects in title (collectively referred to as “Defects”) but will not apply where the claims are for damages or reimbursement of expenses. The provisions contained in section entitled “Limitation of Liability” shall apply to claims for damages or expenses resulting from Defects.
- c. Warranty in case of malicious non-disclosure of a Defect.** Customer's rights and their expiry will be exclusively determined in accordance with applicable statutory law in the event of malicious non-disclosure of a Defect (arglistiges Verschweigen).
- d. Specified Software Characteristics.** Microsoft gives Customer express notice that, based on the current state of technology, it is not possible to develop complex software products that are entirely free of technical defects. The contractually specified characteristics (vertragliche Beschaffenheit) of the software to be provided by Microsoft does not require that the software be completely free of programming errors but merely that the software be free of programming errors that materially impair its use.
- e. Other Limitations.** Microsoft's obligations will not apply to the extent that a claim is based on
- (i) specifications, code, or materials Customer provided;
 - (ii) use of, or access to, Services Deliverables by any person or entity other than Customer or Customer's Affiliates as permitted by the applicable Statement of Services;
 - (iii) Customer's use of Services Deliverables after Microsoft notifies Customer to discontinue his use due to such a claim;
 - (iv) Customer's combining Services Deliverables with non-Microsoft products, data or business processes;
 - (v) problems caused by accident, abuse or use of the Products in a manner inconsistent with this agreement or the Product Use Rights, or resulting from events beyond Microsoft's reasonable control;

(vi) problems caused by Customer's failure to meet minimum system requirements.

- f. **Obligation to give written notice of any Defect.** To the extent Microsoft is required to supply a yet to be produced moveable thing, Customer may only make a claim against Microsoft if Customer has properly complied with his obligation to notify Microsoft of all Defects in accordance with § 377 of the Austrian Commercial Code (UGB). Customer must provide Microsoft with a written notice of any apparent Defect found by Customer during Customer's examination according to § 377 of the Austrian Commercial Code (UGB) immediately, but no later than within two weeks after delivery. Customer must provide Microsoft with a written notice of any hidden Defects immediately after discovery.
- g. **Remedies for breach of limited Product warranty.** To the exclusion of Customer's rights of price reduction and rescission, Defects will be remedied by Microsoft at its option, whereby two attempts of remedy have to be accepted by Customer. Microsoft may also freely choose to grant a price reduction instead of attempting to remedy the Defect. Customer will support Microsoft's efforts by providing any required information and documentation and in any other reasonable manner.
- h. **Reimbursement for Defects not covered by limited Product warranty.** In the event Microsoft proves that there was no Defect for which Microsoft was responsible based on this section, Microsoft will be entitled to require reimbursement of its expenses, based on Microsoft's standard rates, incurred for its remedy efforts.
- i. **No warranty for Defects caused by alteration.** Customer may not make a claim under this section if Customer or a third party have altered the supplied, yet to be produced moveable thing or the work performance without Microsoft's consent, unless Customer is able to prove that the Defect in question was not caused by that alteration.
- j. **Warranty period.** All claims to which Customer is entitled pursuant to this section expire within one year. For a supplied, yet to be produced, moveable thing, the limitation period will start on the delivery date; in cases of work performances, the limitation period will start on the date of acceptance (Abnahme).

Replace Terms and Conditions section 7 titled "Limitation of liability" with the following:

7. *Limitation of liability*

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

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

In case of "simple" gross negligence Microsoft shall under no circumstances be liable for incidental loss and consequential damages (including but not limited to loss of anticipated profits, loss of goodwill, loss of data, loss as a result of the interruption of business or similar losses) arising out of or in connection with any Statement of Services, Services Deliverables, Fixes, Products or any other materials or information.

- c. Proof of intent or gross negligence. Customer will have to prove the existence of intent or gross negligence.
- d. Limitation in case of slight negligence. Microsoft's liability for slight negligence is excluded.
- e. Liability for the loss of data and costs of recovery. Customer is obliged to secure any and all data and programs prior to Microsoft's engagement. Microsoft shall under no circumstances

be liable for the loss of data or programs or for costs of the recovery of data or programs, insofar as this could have been avoided by fulfilling this obligation. Furthermore, Microsoft acts on the assumption that standard software has not been altered or modified, unless Customer has indicated such alterations or modifications in detail in writing prior to Microsoft's engagement.

- f. Limited period for liability claims. Any claim for damages resulting from Defects will expire within one year. For a supplied, yet to be produced, moveable thing, the limitation period will start on the delivery date; in cases of work performances, the limitation period will start on the date of acceptance (Abnahme).

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

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

Azerbaijan

In Terms and Conditions section 6 titled "Defense of infringement and misappropriation claims" replace the last sentence of paragraph (a) as follows:

The term "intentional unlawful use" is used as envisaged by the Law of the Republic of Azerbaijan "On Commercial Secrets" and the term "undisclosed information" shall have the meaning of the term "trade secret" as defined in article 2.0.1 of the Law of the Republic of Azerbaijan "On Commercial Secrets".

Bangladesh

Replace Terms and Conditions subsection 13(e) titled "Dispute resolution" with the following:

- e. **Dispute resolution.** Any dispute arising out of or in connection with this agreement (including any License Agreement or Statement of Services incorporating these terms), including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in Singapore in accordance with the International Arbitration Rules of the Singapore International Arbitration Centre ("SIAC") (and not the SIAC Domestic Arbitration Rules), which rules are deemed to be incorporated by reference into this section. The Tribunal shall consist of one arbitrator to be appointed by the Chairman of SIAC. The language of the arbitration shall be English. The decision of the arbitrator shall be final, binding and incontestable and may be used as a basis for judgment thereon in Bangladesh or elsewhere. To the fullest extent permitted by applicable law, the parties waive their right to any form of appeal or other similar recourse to a court of law. This choice of venue does not prevent either party from seeking injunctive relief with respect to a violation of intellectual property rights or confidentiality obligations in any appropriate jurisdiction.

Replace Terms and Conditions subsection 13(h) titled "Applicable law," third sentence of the paragraph, with the following

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

Brazil

Replace Terms and Conditions subsection 5(d) titled "Services" with the following:

- d. **Services.** Microsoft warrants that all Services will be performed using generally accepted industry standards and practices. Microsoft will use commercially reasonable efforts in providing Product support services. This warranty is valid for a period of 90 days from the date of the respective work order or Service description. If Customer notifies Microsoft within the warranty period that a Service does not meet this warranty and Microsoft is not able to re-perform it accordingly to this warranty within the term established by law, currently 30 days, then Microsoft will, at Customer's option, either (i) return the price paid for the Service; (ii) re-perform the Service, if feasible; or (iii) offer Customer a discount in an amount equivalent to partial non-performance of the Service, if applicable. This is Customer's exclusive remedy for any failure of any Services Deliverables to function as described in this paragraph.

Replace Terms and Conditions subsection 5(b) titled "Remedies for breach of limited Product warranty" with the following:

- b. **Remedies for breach of limited Product warranty.** If Customer notifies Microsoft within the warranty period that a Commercial Product does not meet the limited warranty, then Microsoft will either (a) return the price paid for the Product or (b) repair or replace the Product. These are Customer's only remedies for breach of the limited warranty, unless other remedies are required to be provided under applicable law.

Replace Terms and Conditions subsection 13(l) titled "Customer's rights to privacy" with the following:

- i. **Customer's rights to privacy.** Microsoft and Customer will comply with all applicable privacy and data protection laws and regulations. Customer may choose to provide personal information to Microsoft on behalf of third parties (including, Customer's contacts, resellers, distributors, and administrators) as part of this agreement. Customer represents and warrants that it has and will comply with any applicable laws to provide notices to or obtain permissions from any such individuals to allow sharing of their personal information with Microsoft for the purpose of allowing Microsoft or its agents to facilitate Customer's agreements and related services. Customer consents to Microsoft's and its agents use of the contact information provided by Customer for purposes of administering its agreements, the business relationship and related services and with Microsoft's sharing of Customer's information with Customer's designated representatives, resellers, distributors, and administrators for such purposes, including allowing such individuals to update Customer's contact information on Customer's behalf. The personal information Customer provides in connection with this agreement will be used and protected according to the privacy statement available at <https://licensing.microsoft.com>, to the maximum extent permitted by applicable law.

Canada

Replace Terms and Conditions subsection 5(e) titled "DISCLAIMER OF OTHER WARRANTIES" with the following:

- e. **DISCLAIMER OF OTHER WARRANTIES. OTHER THAN THIS LIMITED WARRANTY, MICROSOFT PROVIDES NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS. MICROSOFT DISCLAIMS ANY IMPLIED REPRESENTATIONS, WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE OR NON-INFRINGEMENT. THESE DISCLAIMERS WILL APPLY UNLESS APPLICABLE LAW DOES NOT PERMIT THEM.**

For Statements of Services governed under the laws of Canada, replace Terms and Conditions subsection 13(h) titled "Applicable law" with the following:

- h. **Applicable law.** The terms of any License Agreement entered into with any Microsoft Affiliate located outside of Europe will be governed by and construed in accordance with the laws of the State of Washington and federal laws of the United States. The terms of any License Agreement entered into with any Microsoft Affiliate located in Europe will be governed by and construed in accordance with the laws of the Republic of Ireland. The terms of any Statement of Services will be governed by the laws of the *Province of Ontario and the federal laws of Canada applicable therein*. The 1980 United Nations Convention on Contracts for the International Sale of Goods and its related instruments will not apply to this agreement or any agreement entered into with any Microsoft Affiliate that incorporate these terms.

Supplement Terms and Conditions section 13 titled “Miscellaneous” with the following:

- n. **Language.** It is the express wish of the parties that this agreement and/or any related documents have been drawn up in a language other than French. French translation: Il est de la volonté expresse des parties que le présent contrat et/ou tous les documents qui s’y rattachent soient rédigés dans une langue autre que le français.
- o. **Crown Copyright.** Customer agrees that provisions relating to Crown copyright in section 12 of the Canadian *Copyright Act* shall not apply in respect of any Developments. Customer will execute all documents and provide all reasonable assistance that Microsoft may require to give full effect to the foregoing sentence.

Croatia

Supplement Terms and Conditions subsection 7(a) titled “Limitation on liability” with the following sentence:

The parties hereby exclude liability for ordinary negligence.

Czech Republic

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

- (ii) **Pre-existing Work.** All rights in any computer code or non-code based written materials developed or otherwise obtained by or for the parties or their Affiliates independent of this agreement (“Pre-existing Work”) shall remain the sole property of the party providing the Pre-existing Work. During the performance of Services, each party grants to the other (and Microsoft’s contractors as necessary) a temporary, non-exclusive license to use, reproduce and *consent to modify* any of its Pre-existing Work provided to the other party, solely as needed to perform its obligations in connection with the Services. *Customer represents that the author has granted relevant approvals to modify Customer’s pre-existing work.*

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

Any violation of conditions of this agreement or any Statement of Services by Customer will be a condition subsequent for obtaining the perpetual license to Microsoft’s Pre-existing Work that Microsoft leaves to Customer at the conclusion of Microsoft’s performance of the Service.

Supplement Terms and Conditions subsection 5(d) titled “Services” with the following:

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

Supplement Terms and Conditions subsection 5(e) titled "DISCLAIMER OF OTHER WARRANTIES" with the following:

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

Supplement Terms and Conditions subsection 7(a) titled "Limitation on liability" with the following sentence:

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

Supplement Terms and Conditions section 7 titled "Limitation of liability" with the following:

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

England and Wales

Replace Terms and Conditions subsection 7(b) titled "EXCLUSION OF CERTAIN DAMAGES" with the following:

- b. No liability for certain damages.** To the maximum extent permitted by applicable law, neither party nor any of its affiliates or suppliers will be liable for any consequential or special damage, loss of profit or revenue or any indirect damages (including, without limitation business interruption, or loss of business information) arising in connection with any agreement, product or service, even if advised of the possibility of such damages or if such possibility was reasonably foreseeable. This exclusion of liability does not apply to either party's liability to the other for violation of its confidentiality obligation or of the other party's intellectual property rights.

Supplement Terms and Conditions section 7 titled "Limitation of liability," with the following:

- c. 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.

Finland

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

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

France

Replace Terms and Conditions subsection 2(b)(iii) titled "Developments" with the following:

(iii) **Developments.** Except as may be otherwise explicitly agreed to in a Statement of Services, upon payment in full Microsoft grants Customer for the duration of intellectual property rights a non-exclusive license to the any computer code or non-code written materials (other than Products, Fixes or Pre-existing Work) developed by Microsoft or in collaboration with Customer and left with Customer at the conclusion of a Services engagement ("Developments"). This license gives Customer the right to use, reproduce, modify and distribute the Developments for any purpose, without the need for further authorization to exercise any such rights or any obligation of accounting or payment of royalties. Customer agrees to exercise its rights in any Developments solely for Customer's internal business operations and not to resell or distribute any Developments to any third party. Each party shall be the sole owner of any modifications that it makes based upon Developments.

Germany

Replace Terms and Conditions subsection 2(b)(iii) titled "Developments" with the following:

(iii) **Developments.** All rights in and to any computer code or non-code written materials (other than Products, Fixes or Pre-existing Work) developed by Microsoft or in collaboration with Customer and left with Customer at the conclusion of a Services engagement ("Developments") are owned by Microsoft. Accordingly, Microsoft is entitled to exploit the Developments in all ways of use (also future ways of use) without separate permission and without any obligation of payment of royalties. Microsoft is especially entitled to use, reproduce, modify and distribute the Developments. Except as may be otherwise explicitly agreed to in a Statement of Services, upon payment in full Microsoft grants Customer the non exclusive right to exploit such Developments in all ways of use (also future ways of use) without separate permission and without any obligation of payment of royalties. Customer is especially entitled to use, reproduce and modify the Developments. Customer may, however, use the Developments only for Customer's internal business operations and Customer will not resell or distribute any Developments to any third party. These use restrictions shall survive termination and expiration of a Statement of Services or this agreement. Each party shall be the sole owner of any rights to modifications that it makes based upon Developments.

Replace Terms and Conditions section 5 titled "Warranties" with the following:

5. *Agreed Characteristics; Claims due to Defects in quality and Defects in title.*

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

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

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

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

Amend Terms and Conditions subsection 6(a) titled "Agreement to protect," as follows:

The third sentence "This section provides Customer's exclusive remedy for these claims." shall be deleted.

Replace Terms and Conditions section 7 titled "Limitation of liability" with the following:

7. Limitation of liability.

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

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

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

The provision contained in this subsection 7(f) shall not apply to the cases governed by subsection 7(a) above or in case of grossly negligent behaviour on Microsoft's part. In such cases statutory law shall apply.

Hungary

Replace Terms and Conditions subsection 2(b)(iii) titled "Developments" with the following:

- (iii) **Developments.** Except as may be otherwise explicitly agreed to in a Statement of Services, upon payment in full Microsoft grants Customer a non-exclusive, perpetual right to use, reproduce and modify any computer code or materials (except for fixes or pre-existing work) developed by Microsoft or in collaboration with Customer that Microsoft leaves with Customer at the conclusion of performance of the services ("Developments"), but Developments are not for resale or distribution to unaffiliated third parties. Each party shall be the sole owner of any modifications that it makes based upon the Developments. Customer agrees to exercise its rights in any Developments for Customer's internal business operations only.

Supplement Terms and Conditions section 7 titled "Limitation of liability" with the

following:

- c. **Negotiated terms.** The parties acknowledge that this agreement was entered into with terms individually negotiated between the parties and that the parties had the opportunity to offer amendment proposals to the drafts. Customer acknowledges that Microsoft has expressly raised its attention to the terms and conditions set out in the sections entitled “Warranties,” “Defense of infringement and misappropriation claims,” and “Limitation of liability” of this agreement and Customer expressly acknowledges the acceptance of those terms.
- d. **Acknowledgement of limited liability and warranty.** Customer agrees that provisions of this agreement limiting or excluding the liability and/or warranty obligations of Microsoft were agreed by the parties with respect to the price level offered by Microsoft to Customer and to the usual terms and conditions applied in the information technology industry. Customer acknowledges that Microsoft has stipulated its price levels and license terms on the assumption that the liability and warranty limitations and exclusions of this agreement are valid contractual terms. Customer also acknowledges that it is acquainted with the provisions limiting and excluding Microsoft’s liability and/or warranty obligations and, by signing this agreement, Customer expressly accepts to be bound by those provisions. Customer specifically accepts and agrees that it will not claim the invalidity of the provisions of this agreement limiting or excluding Microsoft’s liability and/or warranty obligations. While entering into this agreement, the parties have specifically taken into consideration Section 314 Paragraph (2) of the Hungarian Civil Code, and accept that the contractual terms in their entirety adequately equalize the liability and warranty limitations and exclusions of the agreement. Notwithstanding anything to the contrary in subsection entitled “Severability” of this agreement, should any of the liability and warranty limitations and exclusions provisions prove to be invalid or unenforceable, the parties unanimously declare that they had not entered into this agreement without such provisions in place, and should the invalidity of any such term be established by the competent court, the parties agree to elect the invalidity of the entire agreement.

India

Supplement Terms and Conditions section 7 titled “Limitation of liability” with the following:

- c. **Affiliates, suppliers and contractors.** Each party undertakes that it shall not bring any action against the other party’s affiliates, suppliers or contractors in respect of any matter which is disclaimed on their behalf in this section of the agreement and that each party indemnifies the other party for all costs, expenses and damages suffered by an affiliate, supplier or contractor in the event of any breach of this undertaking.

Replace Terms and Conditions subsection 13(e) titled “Dispute resolution” with the following:

- e. **Dispute resolution.** Any dispute arising out of or in connection with this agreement (including any License Agreement or Statement of Services incorporating these terms), including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in Singapore in accordance with the International Arbitration Rules of the Singapore International Arbitration Centre (“SIAC”) (and not the SIAC Domestic Arbitration Rules), which rules are deemed to be incorporated by reference into this section. The Tribunal shall consist of one arbitrator to be appointed by the Chairman of SIAC. The language of the arbitration shall be English. The decision of the arbitrator shall be final, binding and incontestable and may be used as a basis for judgment thereon in India or elsewhere. To the fullest extent permitted by applicable law, the parties waive their right to any form of appeal or other similar recourse to a court of law. This choice of venue does not prevent either party from seeking injunctive relief with respect to a violation of intellectual property rights or confidentiality obligations in any appropriate jurisdiction.

Indonesia

Replace Terms and Conditions subsection 13(e) titled “Dispute resolution” with the following:

- e. **Dispute resolution.** Any dispute arising out of or in connection with this agreement (including any License Agreement or Statement of Services incorporating these terms), including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in Singapore in accordance with the International Arbitration Rules of the Singapore International Arbitration Centre (“SIAC”) (and not the SIAC Domestic Arbitration Rules), which rules are deemed to be incorporated by reference into this section. The Tribunal shall consist of one arbitrator to be appointed by the Chairman of SIAC. The language of the arbitration shall be English. The decision of the arbitrator shall be final, binding and incontestable and may be used as a basis for judgment thereon in Indonesia or elsewhere. To the fullest extent permitted by applicable law, the parties waive their right to any form of appeal or other similar recourse to a court of law. This choice of venue does not prevent either party from seeking injunctive relief with respect to a violation of intellectual property rights or confidentiality obligations in any appropriate jurisdiction.

Replace Terms and Conditions subsection 13(h) titled “Applicable law,” third sentence of the paragraph, with the following

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

Kazakhstan

Supplement Terms and Conditions section 13 titled “Miscellaneous” with the following:

Languages. This Agreement may be executed in English and Kazakh languages. In case of discrepancy between language versions, the English language version shall prevail.

Replace the fourth sentence of Terms and Conditions section 10 titled “Fees and expenses in Statements of Services” with the following:

Microsoft’s fees exclude any duties, tariffs, levies or other governmental charges or expenses, which will be billed to and paid by Customer. Value added tax will be charged as established by Kazakhstan law.

Replace the first sentence of Terms and Conditions subsection 7(a) titled “Limitation on liability” with the following:

Except as otherwise provided in this section, to the extent permitted by applicable law, the liability of Microsoft and of Microsoft’s contractors to Customer arising out of any *breach by Microsoft of its obligations* under this Agreement is limited to direct damages up to the amount Customer paid for the Product or Services giving rise to that liability.

Latin America, including countries in South and Central America and the Caribbean (except Brazil and territories of France, Netherlands, U.K., and U.S.)

Replace Terms and Conditions section 10 titled “Fees and expenses in Statements of Services” with the following:

Customer agrees to pay Microsoft (or its designees) the fees described in each Statement of Services. The fees do not include fees for Products. Unless otherwise stated in a Statement of Services, (i) Customer agrees to pay within 30 calendar days of the date of Microsoft’s invoice and

(ii) Microsoft will not change its hourly rates identified in a Statement of Services during its term, but Microsoft may adjust its hourly rates prior to entering any new Statement of Services. *Customer agrees to pay the fees in U.S. dollars, or instead, to pay it in local currency at the exchange rate in effect as of the date of payment.* Microsoft's fees exclude any taxes, duties, tariffs, levies or other governmental charges or expenses (including, without limitation, any value added taxes), which will be billed to and paid by Customer. Microsoft is responsible for taxes based upon its personal property ownership and net income. Microsoft may, at its option, assess a finance charge of the lesser of 18% per annum *over Microsoft's fees in U.S. dollars*, accrued, calculated and payable monthly or the highest amount allowed by law on all past due amounts. Microsoft will have no obligation to continue to provide Services if Customer fails to make timely payment.

Replace Terms and Conditions subsection 13(l) titled "Customer's rights to privacy" with the following:

- i. Customer's rights to privacy.** Microsoft and Customer will comply with all applicable privacy and data protection laws and regulations. Customer may choose to provide personal information to Microsoft on behalf of third parties (including, Customer's contacts, resellers, distributors, and administrators) as part of this agreement. Customer represents and warrants that it has and will comply with any applicable laws to provide notices to or obtain permissions from any such individuals to allow sharing of their personal information with Microsoft for the purpose of allowing Microsoft or its agents to facilitate Customer's agreements and related services. Customer consents to Microsoft's and its agents use of the contact information provided by Customer for purposes of administering its agreements, the business relationship and related services and with Microsoft's sharing of Customer's information with Customer's designated representatives, resellers, distributors, and administrators for such purposes, including allowing such individuals to update Customer's contact information on Customer's behalf. The personal information Customer provides in connection with this agreement will be used and protected according to the privacy statement available at <https://licensing.microsoft.com>, to the maximum extent permitted by applicable law.

Supplement Terms and Conditions section 13 titled "Miscellaneous" with the following:

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

Malaysia

Supplement Terms and Conditions section 5 titled "Warranties" with the following:

- f. Consumer Remedies.** Notwithstanding anything in this agreement (*or any License Agreement or Statement of Services incorporating these terms*), consumers may have the benefit of certain rights or remedies pursuant to the Consumer Protection Act in Malaysia in respect of which liability cannot be excluded or restricted. If permitted by law and to the maximum extent permitted by law, such liability is limited, at Microsoft's option, in the case of goods to either (i) replacement of the goods or (ii) correction of defects in the goods, and in the case of Services to either (i) re-supply of the Services or (ii) the cost of the re-supply of the Services.

Supplement Terms and Conditions section 7 titled "Limitation of liability" with the following:

- c. Affiliates, suppliers and contractors.** Each party undertakes that it shall not bring any action against the other party's affiliates, suppliers or contractors in respect of any matter

which is disclaimed on their behalf in this section of the agreement and that each party indemnifies the other party for all costs, expenses and damages suffered by an affiliate, supplier or contractor in the event of any breach of this undertaking.

New Zealand

Supplement Terms and Conditions section 7 titled “Limitation of liability” with the following:

- c. Affiliates, suppliers and contractors.** Each party undertakes that it shall not bring any action against the other party’s affiliates, suppliers or contractors in respect of any matter which is disclaimed on their behalf in this section of the agreement and that each party indemnifies the other party for all costs, expenses and damages suffered by an affiliate, supplier or contractor in the event of any breach of this undertaking.

Replace Terms and Conditions subsection 13(l) titled “Customer’s rights to privacy” with the following:

- l.** Microsoft and Customer will comply with all applicable privacy and data protection laws and regulations. Customer may choose to provide personal information to Microsoft on behalf of third parties (including, Customer’s contacts, resellers, distributors, and administrators) as part of this agreement. Customer represents and warrants that it has and will comply with any applicable laws to provide notices to or obtain permissions from any such individuals to allow sharing of their personal information with Microsoft for the purpose of allowing Microsoft or its agents to facilitate Customer’s agreements and related services. Customer *represents that it has obtained consent from an individual to allow* Microsoft’s and its agents use of the *individual’s* contact information provided by Customer for purposes of administering its agreements, the business relationship and related services and with Microsoft’s sharing of Customer’s information with Customer’s designated representatives, resellers, distributors, and administrators for such purposes, including allowing such individuals to update Customer’s contact information on Customer’s behalf. The personal information Customer provides in connection with this agreement will be used and protected according to the privacy statement available at <https://licensing.microsoft.com>.

Supplement Terms and Conditions section 13 titled “Miscellaneous” with the following:

n. Statutory liability.

- (i) Business.** Where Microsoft is a supplier (as that term is defined in the Consumer Guarantees Act 1993 (“CGA”)) of the Products or other goods or Services, Customer confirms that the Products or other goods or Services provided by Microsoft under a License Agreement or Statement of Services are acquired for the purposes of a business (as that term is defined in the CGA) and Customer agrees that the CGA does not apply to the Products or other goods or Services supplied by Microsoft.
- (ii) Consumers.** Subject to subsection (i) above, nothing in this agreement (or any license or Statement of Services incorporating these terms) is otherwise intended to limit the rights of a “consumer” under the CGA where that Act applies, and the terms of this agreement are to be modified to the extent necessary to give effect to this intention.
- (iii) On-Supply.** If Customer on-supplies to any person Customer must include the following clause in the terms of all agreements for the on-supply of products: “Where you are acquiring products or services for the purposes of a business, you acknowledge and agree that Microsoft Corporation and its affiliates have no liability or obligation to you under the Consumer Guarantees Act 1993 and where you on-supply the products or services you must include all of this clause in the terms of that on-supply”.
- (iv) Failure to comply.** Customer must indemnify and keep Microsoft and Microsoft’s affiliates indemnified and hold Microsoft and Microsoft’s affiliates free and harmless from any costs, expenses, loss or damages incurred by Microsoft or Microsoft’s affiliates as a

result of Customer's or any purchaser or acquirer from Customer failing to comply with the obligations contained in this section.

Supplement Terms and Conditions section 13 titled "Miscellaneous" with the following:

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

Poland

Replace Terms and Conditions subsection 2(b)(iii) titled "Developments" with the following:

- (iii) Developments.** Except as may be otherwise explicitly agreed to in the Statement of Services, upon payment in full Microsoft grants Customer a non-exclusive license to any computer code or non-code written materials (other than Products, Fixes or Pre-existing Work) developed by Microsoft or in collaboration with Customer and left with Customer at the conclusion of a Services engagement ("Developments") on the following fields of exploitation: use, reproduction and modification of the Developments for Customer's internal business operations only. The license is granted for an unspecified time and for the territory of the whole world. Customer agrees that it will not resale or distribute the Developments to unaffiliated third parties. Each party shall be the sole owner of any modifications that it makes based upon the Developments. The Customer confirms that Microsoft is entitled to exploit the Developments and any modifications thereof in all ways of use without any obligations vis-à-vis the Customer.

Replace Terms and Conditions subsection 5(e) titled "DISCLAIMER OF OTHER WARRANTIES" with the following:

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

Supplement Terms and Conditions section 7 titled "Limitation of liability" with the following:

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

People's Republic of China (PRC) (not including Hong Kong SAR, Macao SAR and Taiwan)

Replace Terms and Conditions subsection 13(e) titled "Dispute resolution" with the

following:

- e. **Dispute resolution.** If Microsoft brings an action to enforce a License Agreement or a Statement of Services, Microsoft will bring it in the jurisdiction where Customer's contracting Affiliate has its headquarters. If in this case Customer's contracting Affiliate has its headquarters in the PRC, any action by Microsoft to enforce a License Agreement or a Statement of Services will be submitted to binding arbitration at the China International Economic and Trade Arbitration Commission in Beijing (CIETAC) in accordance with its rules in effect from time to time. If Customer brings an action to enforce a License Agreement entered into with any Microsoft Affiliate located outside of Europe, Customer will bring it in the courts of the State of Washington. If Customer brings an action to enforce a License Agreement entered into with any Microsoft Affiliate located in Europe, Customer will bring it in the Republic of Ireland. If Customer brings an action to enforce a Statement of Services, Customer will bring it in the jurisdiction where Microsoft Affiliate delivering the Services has its headquarters. If in this case Microsoft Affiliate delivering Services has its headquarters in the PRC, any action by Customer to enforce a Statement of Services will be submitted to binding arbitration at CIETAC in accordance with its rules in effect from time to time. This choice of jurisdiction does not prevent either party from seeking injunctive relief with respect to a violation of intellectual property rights or confidentiality obligations in any appropriate jurisdiction.

Russia

Replace Terms and Conditions subsection 5(e) titled "DISCLAIMER OF OTHER WARRANTIES" with the following:

- e. **DISCLAIMER OF OTHER WARRANTIES.** OTHER THAN THIS LIMITED WARRANTY, MICROSOFT PROVIDES NO OTHER EXPRESS OR IMPLIED WARRANTIES. MICROSOFT DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT. THESE DISCLAIMERS WILL APPLY UNLESS APPLICABLE LAW DOES NOT PERMIT THEM.

Slovak Republic

Replace Terms and Conditions subsection 2(b)(ii) titled "Pre-existing Work" with the following:

- (ii) **Pre-existing Work.** All rights in any computer code or non-code based written materials developed or otherwise obtained by or for the parties or their Affiliates independent of this agreement ("Pre-existing Work") shall remain the sole property of the party providing the Pre-existing Work. During the performance of Services, each party grants to the other (and Microsoft's contractors as necessary) a temporary, non-exclusive license to use, reproduce and *consent to modify* any of its Pre-existing Work provided to the other party, solely as needed to perform its obligations in connection with the Services. *Customer represents that the author has granted relevant approvals to modify Customer's Pre-existing Work.*

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

Any violation of conditions of this agreement or any Statement of Services by Customer will be a condition subsequent for obtaining the perpetual license to Microsoft's Pre-existing Work that Microsoft leaves to Customer at the conclusion of Microsoft's performance of the Service.

Supplement Terms and Conditions subsection 5(d) titled “Services” with the following:

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

Supplement Terms and Conditions subsection 5(e) titled “DISCLAIMER OF OTHER WARRANTIES,” with the following:

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

Supplement Terms and Conditions subsection 7(a) titled “Limitation on liability” with the following sentence:

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

Supplement Terms and Conditions section 7 titled “Limitation of liability” with the following:

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

Spain

Replace Terms and Conditions subsection 7(a) titled “Limitation on liability” first paragraph, with the following:

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

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

- b. **EXCLUSION OF CERTAIN DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY NOR ANY OF ITS AFFILIATES OR SUPPLIERS WILL BE LIABLE (i) FOR ANY DAMAGES OTHER THAN ACTUAL DAMAGES (DAMNUM EMERGENS) (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS**

OR REVENUES, OR BUSINESS INTERRUPTION), OR (ii) FOR LOSS OF BUSINESS INFORMATION, ARISING IN CONNECTION WITH ANY AGREEMENT, PRODUCT, FIX OR SERVICE. THIS EXCLUSION OF LIABILITY DOES NOT APPLY TO EITHER PARTY'S LIABILITY TO THE OTHER FOR VIOLATION OF ITS CONFIDENTIALITY OBLIGATION OR OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS.

Sri Lanka

Replace Terms and Conditions subsection 13(e) titled "Dispute resolution" with the following:

- e. **Dispute resolution.** Any dispute arising out of or in connection with this agreement (including any License Agreement or Statement of Services incorporating these terms), including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in Singapore in accordance with the International Arbitration Rules of the Singapore International Arbitration Centre ("SIAC") (and not the SIAC Domestic Arbitration Rules), which rules are deemed to be incorporated by reference into this section. The Tribunal shall consist of one arbitrator to be appointed by the Chairman of SIAC. The language of the arbitration shall be English. The decision of the arbitrator shall be final, binding and incontestable and may be used as a basis for judgment thereon in Sri Lanka or elsewhere. To the fullest extent permitted by applicable law, the parties waive their right to any form of appeal or other similar recourse to a court of law. This choice of venue does not prevent either party from seeking injunctive relief with respect to a violation of intellectual property rights or confidentiality obligations in any appropriate jurisdiction.

Replace Terms and Conditions subsection 13(h) titled "Applicable law," third sentence of the paragraph, with the following

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

Switzerland

Replace Terms and Conditions subsection 2(b)(iii) titled "Developments" with the following:

- (iii) **Developments.** Except as may be otherwise explicitly agreed to in a Statement of Services, upon payment in full, Microsoft assigns the Customer joint ownership in any computer code or non-code written materials (other than Products, Fixes or Pre-existing Work) developed by Microsoft or in collaboration with Customer and left with Customer at the conclusion of a Services engagement ("Developments") under such Statement of Services. "Joint ownership" means, with the exceptions as set out in the following paragraphs, that each party has the right to independently exercise any and all rights of ownership now known or hereafter created or recognized, including without limitation the rights to use, reproduce, modify and distribute the specific Developments for any purpose whatsoever, without the need for further authorization to exercise any such rights or any obligation of accounting or payment of royalties. Each party shall be the sole owner of any modifications that it makes based upon the specific Developments.

Customer agrees to exercise its ownership rights in any Developments for Customer's internal business operations only and not for resale or distribution to unaffiliated third parties.

The parties are aware of the fact that in some jurisdictions, ownership in Developments may not be transferred and that joint ownership may not be acknowledged. For such jurisdictions, Customer is granted a perpetual, non-transferable, worldwide and royalty-free non-exclusive license to use such Developments. This license gives Customer the right to use, reproduce, modify and distribute the Developments for any purpose, without

the need for further authorization to exercise any such rights or any obligations of accounting or payment of royalties with the following restrictions: Customer is only allowed to exercise its rights for its internal business operations only and he will not resell or distribute the Developments to any unaffiliated third party. Each party shall be the sole owner of any modifications that it makes based upon the Developments.

Replace Terms and Conditions subsection 5(d) titled “Services” with the following:

- d. Services.** All Services are rendered under a contract of mandate in the sense of para. 394 et seq. of the Swiss Code of Obligations. Microsoft warrants that all Services will be performed with professional care and skill.

Thailand

Replace Terms and Conditions subsection 3(a)(ii) with the following:

- (ii) For the purpose of protecting Microsoft commercially valuable trade secrets, reverse engineer, de-compile or disassemble Products, Fixes or Services Deliverables, except to the extent expressly permitted by applicable law despite this limitation.

Replace Terms and Conditions subsection 13(e) titled “Dispute resolution” with the following:

- e. Dispute resolution.** Any dispute arising out of or in connection with this agreement (including any License Agreement or Statement of Services incorporating these terms), including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in Singapore in accordance with the International Arbitration Rules of the Singapore International Arbitration Centre (“SIAC”) (and not the SIAC Domestic Arbitration Rules), which rules are deemed to be incorporated by reference into this section. The Tribunal shall consist of one arbitrator to be appointed by the Chairman of SIAC. The language of the arbitration shall be English. The decision of the arbitrator shall be final, binding and incontestable and may be used as a basis for judgment thereon in Thailand or elsewhere. To the fullest extent permitted by applicable law, the parties waive their right to any form of appeal or other similar recourse to a court of law. This choice of venue does not prevent either party from seeking injunctive relief with respect to a violation of intellectual property rights or confidentiality obligations in any appropriate jurisdiction

The Philippines

Supplement Terms and Conditions section 7 titled “Limitation of liability” with the following:

- c. Affiliates, suppliers and contractors.** Each party undertakes that it shall not bring any action against the other party’s affiliates, suppliers or contractors in respect of any matter which is disclaimed on their behalf in this section of the agreement and that each party indemnifies the other party for all costs, expenses and damages suffered by an affiliate, supplier or contractor in the event of any breach of this undertaking.

Replace Terms and Conditions section 10 titled “Fees and expenses in Statements of Services” with the following:

Customer agrees to pay Microsoft (or Microsoft’s designees) the fees described in each Statement of Services. The fees do not include fees for Products. Unless otherwise stated in a Statement of Services, (i) Customer agrees to pay within 30 calendar days of the date of Microsoft’s invoice and (ii) Microsoft will not change Microsoft’s hourly rates identified in a Statement of Services during its term, but Microsoft may adjust its hourly rates prior to entering any new Statement of Services.

Microsoft will pay all Philippine taxes on all payments under each Statement of Services. If Customer fails to pay Microsoft's fees by the due date, Customer will be in default and must on demand pay to Microsoft default interest on the amount due from the due date of payment until the date of actual payment at 18% per annum, accrued, calculated and payable monthly or, if applicable laws require the amount of such default interest to be a lesser amount, then the highest amount allowed by law on all past due amounts. Microsoft will have no obligation to continue to provide Services if Customer fails to make timely payment.

Replace Terms and Conditions subsection 13(e) titled "Dispute resolution" with the following:

e. Dispute resolution.

- (i) This agreement and License Agreements.** Any dispute arising out of or in connection with this agreement or any License Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved in arbitration in Singapore in accordance with the International Arbitration Rules of the Singapore International Arbitration Centre ("SIAC") (and not the SIAC Domestic Arbitration Rules), which rules are deemed to be incorporated by reference into this section. The Tribunal shall consist of one arbitrator to be appointed by the Chairman of SIAC. The language of the arbitration shall be English. The decision of the arbitrator shall be final, binding and incontestable and may be used as a basis for judgment thereon in The Philippines or elsewhere. To the fullest extent permitted by applicable law, the parties waive their right to any form of appeal or other similar recourse to a court of law.
- (ii) Statement of Services.** Any dispute arising out of or in connection with any Statement of Services, including any question regarding its existence, validity or termination, will be settled by arbitration in accordance with the UNCITRAL Arbitration Rules in force as at the date of the dispute. Where the Rules do not deal with any issue arising in connection with the conduct or procedure of the arbitration that issue will be resolved in accordance with the law of the place in which the arbitration is held. The place of arbitration will be Singapore and the language of the arbitration will be English. The parties agree that any arbitration award will be final and binding upon the parties and, to the fullest extent permitted by applicable law, the parties waive their right to any form of appeal or other similar recourse to a court of law.
- (iii) This agreement, license and Statement of Services.** The choice of venue in subsections (i) and (ii) above does not prevent either party from seeking injunctive relief with respect to a violation of intellectual property rights or confidentiality obligations in any appropriate jurisdiction.

Supplement Terms and Conditions section 13 titled "Miscellaneous" with the following:

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

Ukraine

Replace Terms and Conditions subsection 2(b)(iii) titled "Developments" with the following text:

- (iii) Developments.** The Parties acknowledge and agree that all exclusive proprietary rights in and to any and all Developments shall belong to Microsoft without limitations of the forms, manners and the term of their use in the territory of the whole world from the moment of the creation of an appropriate object. Except as may be otherwise explicitly agreed to in a Statement of Services, upon payment in full Microsoft grants Customer a non-exclusive limited license to use the Developments. Each party shall be the sole owner of any modifications that it makes based upon the Developments. Customer

agrees to exercise its rights in any computer code or materials (except for Fixes or Pre-existing Work) developed by Microsoft or in collaboration with Customer that Microsoft leaves with Customer at the conclusion of performance of the Services ("Developments") for Customer's internal business operations only. Microsoft grants Customer a non-exclusive, perpetual right to use, reproduce and modify Developments, but Developments are not for resale or distribution to unaffiliated third parties.

Supplement Terms and Conditions section 7 titled "Limitation of liability" with the following:

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

Vietnam

Supplement Terms and Conditions 9 titled "Term and termination" with the following:

Without any liability to Customer, Microsoft reserves the right to either terminate or vary this agreement or any License Agreement or Statement of Services, if Microsoft is required to use a statutory form. If Microsoft chooses to terminate any such agreement for this reason, all Customer's rights granted under it will terminate.

Replace Terms and Conditions subsection 13(e) titled "Dispute resolution" with the following:

- e. Dispute resolution.** Any dispute arising out of or in connection with this agreement (including any License Agreement or Statement of Services incorporating these terms), including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in Singapore in accordance with the International Arbitration Rules of the Singapore International Arbitration Centre ("SIAC") (and not the SIAC Domestic Arbitration Rules), which rules are deemed to be incorporated by reference into this section. The Tribunal shall consist of one arbitrator to be appointed by the Chairman of SIAC. The language of the arbitration shall be English. The decision of the arbitrator shall be final, binding and incontestable and may be used as a basis for judgment thereon in Vietnam or elsewhere. To the fullest extent permitted by applicable law, the parties waive their right to any form of appeal or other similar recourse to a court of law. This choice of venue does not prevent either party from seeking administrative action or initiating court action (including for injunctive relief) with respect to a violation of intellectual property rights or confidentiality obligations in any appropriate jurisdiction.