

# Core BTS, Inc.

## MICROSOFT ONLINE SERVICES CUSTOMER AGREEMENT

---

This **MICROSOFT ONLINE SERVICES CUSTOMER AGREEMENT** (this "Agreement"), is made and entered into as of the date the last party executes the Microsoft Online Services Ordering Document (the "Ordering Document") (such date, the "Effective Date"), thereby indicating acceptance of the terms of this Agreement between Core BTS, Inc., a Delaware corporation, with offices at 5875 Castle Creek Parkway North Drive, Suite 320, Indianapolis, IN 46250 ("CORE BTS, INC."), and the customer identified in the Ordering Document ("Customer").

**IT IS RECOMMENDED THAT YOU PRINT A COPY OF THIS AGREEMENT FOR FUTURE REFERENCE.**

### 1. PRODUCTS AND TERMS OF SERVICE

**1.1 Products.** This Agreement establishes the terms under which CORE BTS, INC., as an authorized reseller of Microsoft Corporation ("Microsoft"), will provide Customer with a subscription-based license to access the Microsoft online services set forth in the Ordering Document (the "Product(s)"). Customer acknowledges and agrees that this Agreement governs Customer's use of the Products, but does not govern implementation and deployment services performed by CORE BTS, INC., if any, which will be performed under a separate Master Professional Services Agreement between CORE BTS, INC. and Customer.

**1.2 Support.** CORE BTS, INC. will receive initial calls to provide front-line technical support directly to Customer's technology administrators on a continuous basis (24 hours per day, 365 days per year) with respect to questions, complaints and other support issues that Customer cannot resolve. CORE BTS, INC. will be the point of contact for Customer for all operational or technical support questions related to the Products, and CORE BTS, INC. is hereby authorized by Customer to submit Customer support issues requiring escalation to Microsoft on behalf of Customer. If Customer contacts Microsoft directly for support, Microsoft at its sole discretion may redirect Customer to CORE BTS, INC.

**1.3 Microsoft Cloud Agreement.** Before CORE BTS, INC. can provide Customer with any license to the Products, Customer must agree to the terms of the Microsoft Cloud Agreement, including the Online Services Terms and other URL terms included therein, attached to this Agreement as Exhibit A (the "Microsoft Terms"). The term "Reseller," as used in the Microsoft Terms, refers to CORE BTS, INC., and CORE BTS, INC. will stand behind all obligations of Microsoft to Customer included in the Microsoft Terms. By entering into this Agreement, Customer acknowledges and agrees to the Microsoft Terms, all of which are incorporated by reference into this Agreement in their entirety. Capitalized terms used but not defined in this Agreement will have the meanings assigned to such terms in the Microsoft Terms. The Microsoft Terms are confidential information of Microsoft and Customer agrees to handle such terms in strict confidence.

**1.4 Service Level Agreements.** If Customer has a claim relating to a Microsoft SLA, Customer will promptly notify CORE BTS, INC. and CORE BTS, INC. will escalate the claim to Microsoft for review in accordance with its standard SLA review process. CORE BTS, INC. will credit Customer any and all amounts determined to be due Customer by Microsoft with respect to an SLA claim. Microsoft reserves the right to audit outages at any time.

**1.5 Eligibility.** If Customer is purchasing one or more of the services or features identified at <http://azure.microsoft.com/en-us/> (the "Azure Government Services"), Customer represents and warrants that it meets the eligibility criteria set forth at <http://www.microsoft.com/licensing/contracts> under "Qualifying Government Eligibility Definitions" (also attached as Exhibit B) and agrees to use Azure Government Services solely for the benefit of entities that meet such criteria. Exhibit C includes a qualification questionnaire that Customer must complete if Customer is purchasing Azure Government Services.

## **2. CHARGES AND PAYMENT**

**2.1 Fees.** Customer's use of the Products is subject to payment of the fee(s) set forth in the Ordering Document in accordance with Section 2.3.

**(A)** The unit price for any fixed term Commitment Offering will not change during the term of the Subscription (e.g., the price of the Product as of the Subscription start date will apply for all 12 months of the fixed term). CORE BTS, INC. will have the right to change the fee once each year, effective with the next Subscription renewal date. CORE BTS, INC. will notify Customer of any fee increase at least 30 days prior to the expiration of the then-current Subscription term.

**(B)** Consumption Offerings (also called Pay-As-You-Go) will be billed based on actual usage in the preceding month with no upfront commitment. The unit price for a Product sold on a consumption basis may change during the Subscription period.

**2.2 Support Charges.** Any support to be provided by CORE BTS, INC. under Section 1.2 of this Agreement will be performed on business days between the hours of 6:00 a.m. to 6:00 p.m. Pacific Time, at no additional cost. Any support services requested by Customer which requires either (a) on-site assistance by CORE BTS, INC. personnel or (b) escalation to Microsoft will be billed to Customer at an hourly rate of \$295.00, EXCEPT "P1" support issues related to (a) a defect or outage causing the software or product to be unusable, and/or (b) the unavailability of a major function, for which CORE BTS, INC. is unable to determine an acceptable bypass/ workaround; in such cases, CORE BTS, INC. shall also render support services to Customer at no additional cost.

### **2.3 Payments.**

**(A)** Unless otherwise provided in the Ordering Document, Customer will pay for Commitment Offering licenses on a full-prepaid basis for the Initial Subscription Term and each succeeding 12-month Subscription Renewal Term (both as defined in Section 3.1(A)), to the extent applicable. Fees for prepaid orders where CORE BTS, INC. issues an invoice are due upon Customer's receipt of the invoice, and are considered delinquent 30 days after the date of the applicable invoice.

**(B)** Customer will pay for any Consumption Offerings licenses on a monthly basis in arrears. Consumption Offerings will be billed at CORE BTS, INC.'s next billing cycle, and will include all usage from the prior month. Payments are considered delinquent 30 days after the date of the applicable invoice.

**2.4 Taxes.** Customer is responsible for any taxes associated with Customer's purchase and receipt of the Products (except for any taxes assessable against CORE BTS, INC. based on its income, property or employees) and Customer will pay CORE BTS, INC. without any reduction for such amounts. If CORE BTS, INC. is obligated to collect or pay taxes, the taxes will be invoiced to Customer, unless Customer provides CORE BTS, INC. with a valid tax exemption certificate authorized by the appropriate taxing authority. If Customer is required by law to withhold any taxes from its payments to CORE BTS, INC., Customer must provide CORE BTS, INC. with an official tax receipt or other appropriate documentation to support such payments and will increase the payment to CORE BTS, INC. so that the amount received by CORE BTS, INC. is the same as it would have been if no taxes were withheld.

**2.5 Delinquent Payments.** Customer is responsible for all reasonable expenses (including legal fees) incurred by CORE BTS, INC. in collecting unpaid or delinquent amounts, except where these unpaid or delinquent amounts are due to billing inaccuracies attributable to CORE BTS, INC..

## **3. TERM, TERMINATION AND ADDITIONAL END USER ACCOUNTS**

**3.1 Term of Agreement; Term of Subscription.** The term of this Agreement will begin on the Effective Date and will continue until terminated in accordance with the terms of this Section.

- (A) Each fixed term Subscription will continue for a period of 12 months from the date such Product is provided to Customer by CORE BTS, INC. (such period, the “Initial Subscription Term”). At the end of the Initial Subscription Term, each Subscription will be renewed automatically for consecutive 12-month renewal terms (each, a “Renewal Subscription Term”), unless Customer (effective as of the end of the then-current Subscription Term) cancels its Subscription by notifying CORE BTS, INC. at least 10 business days prior to the expiration of the then-current term. The terms and conditions of this Agreement shall apply during each Renewal Subscription Term, provided that (i) upon renewal of a Subscription, Customer may be required to agree to new, supplemented, or amended Microsoft Terms, as such terms are updated by Microsoft from time to time; (ii) in the case of Online Services, the Online Services Terms in effect at the time of such renewal will apply for the applicable Renewal Subscription Term; and (iii) the fee for each Renewal Subscription Term will be the rates then in effect as described in Section 2.1. CORE BTS, INC. will invoice Customer, and Customer agrees to pay, for the renewal of its Subscription as set forth in the Ordering Document and Article 2 above.
- (B) Consumption Offerings do not expire until cancelled by Customer upon at least 10 business days’ prior notice to CORE BTS, INC. Subscriptions for Consumption Offerings can be cancelled at any time, and any usage by Customer prior to such cancellation will be billed by CORE BTS, INC. to Customer at CORE BTS, INC.’s next scheduled invoice date. For Online Services that are billed periodically based on consumption, the Online Services Terms current at the start of each billing period will apply to usage during that period.

**3.2 Termination.** This Agreement will terminate upon expiration or cancellation of all Product licenses subject to this Agreement in accordance with the terms of Section 3.1. Customer may cancel a Subscription for a Product, provided that no refund will be provided for any prepaid fees. In addition, either party may terminate this Agreement for cause upon written notice if the other party fails to cure any material breach of this Agreement within 30 days after receiving written notice of such breach; provided, however, that the period to cure a breach with respect to payment shall be ten days and termination is effective immediately upon notice if the cause for termination is not curable. Other than as may be provided elsewhere in this Agreement, such termination will be Customer’s sole and exclusive remedy in the case of a material breach of this Agreement by CORE BTS, INC.

**3.3 Effect of Termination.** If this Agreement terminates or expires, then the rights granted hereunder by either party to the other will cease immediately and Customer’s access to the Products will cease. Unless this Agreement is terminated due to breach by CORE BTS, INC., all payments owed by Customer under this Agreement are immediately due. Upon any expiration, termination or cancellation of a Subscription, Customer will have 90 days to migrate any Customer Data to either a new Subscription with CORE BTS, INC., with Microsoft directly, or some other service. Customer may incur a charge for CORE BTS, INC.’s assistance in migrating its Customer Data.

**3.4 Disablement.** Microsoft may disable a Customer’s Subscription for legal or regulatory reasons. Depending on the Product, Customer will have limited or no access to the Product in such case. If a Customer’s Subscription is disabled, CORE BTS, INC. will suspend or refund any fees to Customer associated with the suspended period for that Subscription until the Subscription is re-enabled.

**3.5 Additional End User Accounts.** Customer may alter the number of end user accounts associated with a Product at any time. The fees associated with end user accounts added mid-term will be pro-rated, beginning on the date of the applicable order and ending on the expiration of the then-current Subscription Term. For each purchase of additional end user accounts, CORE BTS, INC. will issue a quote to Customer.

## **4. PRIVACY; CUSTOMER DATA**

**4.1 Customer Consent and Agreement.** Consistent with Section 4 of the Microsoft Terms, Customer consents to the collection, use, transfer, disclosure and processing of Customer Data, including personal information, by CORE BTS, INC. and Microsoft, and their respective Affiliates, subsidiaries, and service providers, as for the purposes of ordering, provisioning and administering the Online Services, as

contemplated by this Agreement and the Microsoft Terms. Customer is responsible for obtaining all required consents from third parties under applicable privacy and data protection laws before providing personal information to CORE BTS, INC. or Microsoft on behalf of third parties. As and to the extent required by law, Customer will notify the individual users of the Products that their data may be processed for the purpose of disclosing it to law enforcement or other governmental authorities as directed by CORE BTS, INC., and will obtain the users' consent to the same.

**4.2 Customer Acknowledgment.** Customer acknowledges and agrees that Microsoft may collect, use, transfer, disclose and otherwise process Customer Data, including personal data, as described in the Microsoft Terms. Microsoft may send direct communications to Customer related to the Microsoft Terms or the operation or delivery of the Products.

**4.3 Customer Data.**

(A) CORE BTS, INC. will use Customer Data only to provide Customer with the Products and the support services specified in this Agreement and to assist Customer in the proper administration of the Products.

(B) If CORE BTS, INC. receives a request for Customer Data either directly from a law enforcement agency or as redirected to CORE BTS, INC. by Microsoft, CORE BTS, INC. will redirect the law enforcement agency to request that data directly from Customer. If compelled to disclose Customer Data to law enforcement, CORE BTS, INC. will promptly notify Customer and provide a copy of the demand, unless legally prohibited from doing so. CORE BTS, INC. will only access and disclose to law enforcement or other government authorities, to the extent required by law, data from, about or related to Customer, including the content of communications (or to provide law enforcement or other government entities access to such data).

**5. INTELLECTUAL PROPERTY RIGHTS.** Except as expressly set forth herein, this Agreement does not grant either party any rights, implied or otherwise, to the other's data or content. As between the parties, Customer owns all intellectual property rights in Customer Data. The parties acknowledge and agree that Microsoft owns all intellectual property rights in the Products.

**6. WARRANTY, DISCLAIMER OF WARRANTIES.** Microsoft warrants its Products as described in the Microsoft Terms. Neither CORE BTS, INC. nor Microsoft provide any other warranties, representations or conditions. **To the maximum extent permitted under applicable laws, CORE BTS, INC. disclaims all implied or statutory warranties for Products, including warranties of quality, title, non-infringement, merchantability and fitness for a particular purpose.**

**7. LIMITATION OF LIABILITY.**

(A) Unless applicable law requires otherwise, the only remedy either party will have for anything related to this Agreement or the Products is to obtain direct damages from the liable party up to the amount actually paid by Customer to CORE BTS, INC. for its Subscription during the prior one-year period, minus any amounts paid by the liable party during that same period for any prior liability. **In no event will either party be liable for loss of revenue or indirect, special, incidental, consequential, punitive, or exemplary damages, or damages for loss of use, lost profits, revenues, business interruption, or loss of business information, however caused or on any theory of liability.**

(B) The limitations in paragraph (A) of this Section do not apply to claims for non-payment, fraud, defense of infringement claims (as set forth in the Microsoft Terms), or Customer's violation of Microsoft's intellectual property rights. Each party's liability for loss or damage of any kind (including loss or damage caused by negligence) is reduced to the extent that the other party's agents caused or contributed to that loss or damage.

- (C) If applicable law gives Customer any implied terms not set forth in this Agreement, despite the exclusions and limitations in this Agreement, then to the extent permitted by applicable law, Customer's remedies are limited to repair or replacement of the Product and if CORE BTS, INC. cannot repair or replace the Product, CORE BTS, INC. will refund the amount Customer paid for it.

## 8. GENERAL PROVISIONS

**8.1 Notices.** All notices, consents, approvals, acknowledgements and waivers under this Agreement must be in writing and delivered to the applicable party, sent to Customer's address set forth in the Ordering Document in the case of Customer, and in the case of CORE BTS, INC., sent to the attention of CORE BTS, INC.'s Chief Financial Officer at the address set forth in the preamble to this Agreement. CORE BTS, INC. and Customer each agree that notices and other communications under this Agreement may be received by email, unless otherwise required by law. Notice will be deemed given: (A) when verified by written receipt if sent by personal courier, overnight courier, or when received if sent by mail without verification of receipt; or (B) when verified by automated receipt or electronic logs if sent by email. A party may change its address or designee for notification purposes by giving the other party written notice of the new address or designee and the date upon which it will become effective.

**8.2 Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the state of California, without regard to its choice of law principles except that (A) if Customer is a U.S. government entity, this Agreement is governed by the laws of the United States, and (B) if Customer is a state or local government entity in the United States, this Agreement is governed by the laws of that state. For any litigation that may arise under this Agreement, the parties consent to personal jurisdiction in and the venue (and waive any claim of *forum non conveniens*) of the state and federal courts located in Los Angeles County, California. Notwithstanding the foregoing, if the parties have entered into a Master Professional Services Agreement, the parties consent to the personal jurisdiction and venue set forth in the Master Professional Services Agreement with respect to any litigation that may arise under this Agreement.

**8.3 Authorization; Binding Nature and Assignment.** Each party represents and warrants to the other that: (A) it has the requisite corporate power and authority to enter into this Agreement and to carry out the transactions contemplated by this Agreement; and (B) the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement have been duly authorized by the requisite corporate action on the part of such party. This Agreement will be binding upon the parties and their respective successors and assigns. CORE BTS, INC. may assign this Agreement in its entirety, but not in parts, in connection with a merger, consolidation, change of control, or sale or other disposition of all or substantially all of its assets. Any other assignment will be null and void, except with the other party's prior written consent.

**8.4 Publicity.** Customer hereby consents to CORE BTS, INC.'s inclusion of Customer in a customer list (together with any identifying Customer trade name, trademark, and/or logo), but only if Customer is not the only customer appearing on the list. Other than this, neither party may make any public statement regarding the relationships contemplated by this Agreement without the consent of the applicable party.

**8.5 Third Party Beneficiary.** The parties agree that Microsoft is a third party beneficiary of this Agreement and certain sections of this Agreement are for the benefit of Microsoft. As a result, Microsoft is entitled to enforce this Agreement. There are no other third party beneficiaries to this Agreement.

**8.6 Reseller Status.** Customer acknowledges that CORE BTS, INC. is not an agent of Microsoft and has no power or authority to bind Microsoft or to change any terms, conditions, warranties or covenants made by Microsoft. Microsoft may accept or reject any proposed Customer at Microsoft's discretion, in which case this Agreement will automatically terminate. CORE BTS, INC. has no control over the features or functionality of Products and Microsoft reserves the right to add new features or functionality to, or remove existing features or functionality from, a Product.

**8.7 No Agency.** The parties are independent contractors, and this Agreement does not create an agency, partnership or joint venture

**8.8 Waiver of Default.** Failure to enforce any provision of this Agreement will not constitute a waiver.

**8.9 Survival.** The provisions of Section 2.4, Article 4, Article 5, Article 6, Article 7, and this Article, as well as any other provision of this Agreement that contemplates performance or observance subsequent to termination or expiration of this Agreement will survive expiration or termination of this Agreement.

**8.10 Force Majeure.** Neither party will be liable for any failure in performance due to causes beyond that party's reasonable control. This Section will not, however, apply to Customer's payment obligations under this Agreement.

**8.11 Severability.** If any provision of this Agreement is found to be illegal or otherwise unenforceable in any respect, that provision will be deemed to be restated to reflect as nearly as possible the original intent of the parties in accordance with applicable law. The remainder of this Agreement will remain in full force and effect.

**8.12 Entire Agreement; Incorporation; Amendment and Waiver.** This Agreement, the Ordering Document, and the Exhibits to this Agreement, each of which is incorporated herein for all purposes, constitute the entire agreement of the parties with respect to the subject matter hereof and supersede any prior or contemporaneous agreements on that subject. The terms located at a URL and referenced in this Agreement or its Exhibits are hereby incorporated by this reference. Any amendment must be agreed upon in writing and expressly state that it is amending this Agreement. No change, waiver or discharge hereof will be valid unless made in writing and signed by an authorized representative of the party against which such change, waiver or discharge is sought to be enforced.

**8.13 Counterparts; Electronic Signature.** The parties may enter into this Agreement in counterparts, each of which shall be deemed an original and, which taken together, will constitute one instrument. Any signature delivered by facsimile transmission or by e-mail delivery of a ".pdf" format document or other e-Signature will create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile, ".pdf" or e-Signature were an original thereof.

**CUSTOMER ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE LEGALLY BOUND BY IT.**

# EXHIBIT A

## MICROSOFT CLOUD AGREEMENT



Volume Licensing

### Microsoft Cloud Agreement

This Microsoft Cloud Agreement is entered into between the entity you represent, or, if you do not designate an entity in connection with a Subscription purchase or renewal, you individually ("Customer"), and Microsoft Corporation ("Microsoft"). It consists of the terms and conditions below, Use Rights, SLA, and all documents referenced within those documents (together, the "agreement"). It is effective on the date that your Reseller provisions your Subscription. Key terms are defined in Section 10.

#### 1. *Grants, rights and terms.*

All rights granted under this agreement are non-exclusive and non-transferable and apply as long as neither Customer nor any of its Affiliates is in material breach of this agreement.

- a. **Software.** Upon acceptance of each order, Microsoft grants Customer a limited right to use the Software in the quantities ordered.
  - (i) **Use Rights.** The Use Rights in effect when Customer orders Software will apply to Customer's use of the version of the Software that is current at the time. For future versions and new Software, the Use Rights in effect when those versions and Software are first released will apply. Changes Microsoft makes to the Use Rights for a particular version will not apply unless Customer chooses to have those changes apply.
  - (ii) **Temporary and perpetual licenses.** Licenses available on a subscription basis are temporary. For all other licenses, the right to use Software becomes perpetual upon payment in full.
  - (iii) **Downgrade rights.** Customer may use an earlier version of Software than the version that is current on the date Customer orders the Software. In that case, the Use Rights for the current version apply to the use of the earlier version. If the earlier Software version includes features that are not in the new version, then the Use Rights applicable to the earlier version apply with respect to those features.
- b. **Online Services.** Customer may use the Online Services as provided in this agreement.
  - (i) **Online Services Terms.** The Online Services Terms in effect when Customer orders or renews a subscription to an Online Service will apply for the applicable subscription term. For Online Services that are billed periodically based on consumption, the Online Services Terms current at the start of each billing period will apply to usage during that period.
  - (ii) **Suspension.** Microsoft may suspend use of an Online Service during Customer's violation of the Acceptable Use Policy or failure to respond to a claim of alleged infringement. Microsoft will give Customer notice before suspending an Online Service when reasonable.
  - (iii) **End Users.** Customer controls access by End Users, and is responsible for their use of the Product in accordance with this agreement. For example, Customer will ensure End Users comply with the Acceptable Use Policy.
  - (iv) **Customer Data.** Customer is solely responsible for the content of all Customer Data. Customer will secure and maintain all rights in Customer Data necessary for Microsoft to provide the Online Services to Customer without violating the rights of any third party or otherwise obligating Microsoft to Customer or to any third party. Microsoft does not and will not assume any obligations with respect to Customer Data or to Customer's use of the Product other than as expressly set forth in this agreement or as required by applicable law.

- (v) **Responsibility for your accounts.** Customer is responsible for maintaining the confidentiality of any non-public authentication credentials associated with Customer's use of the Online Services. Customer must promptly notify customer support about any possible misuse of Customer's accounts or authentication credentials or any security incident related to the Online Services.
- c. **License transfers.** License transfers are not permitted, except that Customer may transfer only fully-paid perpetual licenses to (1) an Affiliate or (2) a third party, solely in connection with the transfer of hardware or employees to whom the licenses have been assigned to the third party as part of (a) a divestiture of all or part of an Affiliate or (b) a merger involving Customer or an Affiliate. Upon such transfer, Customer and its Affiliates must uninstall and discontinue using the licensed Product and render any copies unusable. Attempted license transfers that do not comply with this agreement are void.
- d. **Reservation of rights.** Products are protected by copyright and other intellectual property rights laws and international treaties. Microsoft reserves all rights not expressly granted in this agreement. No rights will be granted or implied by waiver or estoppel. Rights to access or use Software on a device do not give Customer any right to implement Microsoft patents or other Microsoft intellectual property in the device itself or in any other software or devices.
- e. **Restrictions.** Customer may use the Product only in accordance with this agreement. Customer may not (and is not licensed to): (1) reverse engineer, decompile or disassemble any Product or Fix, or attempt to do so; (2) install or use non-Microsoft software or technology in any way that would subject Microsoft's intellectual property or technology to any other license terms; or (3) work around any technical limitations in a Product or Fix or restrictions in Product documentation. Customer may not disable, tamper with, or otherwise attempt to circumvent any billing mechanism that meters Customer's use of the Online Services. Except as expressly permitted in this agreement or Product documentation, Customer may not distribute, sublicense, rent, lease, lend, resell or transfer and Products, in whole or in part, or use them to offer hosting services to a third party.
- f. **Preview releases.** Microsoft may make Previews available. Previews are provided "as-is," "with all faults," and "as-available," and are excluded from the SLA and all limited warranties provided in this agreement. Previews may not be covered by customer support. Previews may be subject to reduced or different security, compliance, and privacy commitments, as further explained in the Online Services Terms and any additional notices provided with the Preview. Microsoft may change or discontinue Previews at any time without notice. Microsoft also may choose not to release a Preview into "General Availability."
- g. **Verifying compliance for Products.**
- (i) **Right to verify compliance.** Customer must keep records relating to all use and distribution of Products by Customer and its Affiliates. Microsoft has the right, at its expense, to verify compliance with the Products' license terms. Customer must promptly provide any information reasonably requested by the independent auditors retained by Microsoft in furtherance of the verification, including access to systems running the Products and evidence of licenses for Products that Customer hosts, sublicenses, or distributes to third parties. Customer agrees to complete Microsoft's self-audit process, which Microsoft may request as an alternative to a third party audit.
- (ii) **Remedies for non-compliance.** If verification or self-audit reveals any unlicensed use of Products, then within 30 days (1) Customer must order sufficient licenses to cover its use, and (2) if unlicensed use is 5% or more, Customer must reimburse Microsoft for the costs Microsoft incurred in verification and acquire the necessary additional licenses at 125% of the price, based on the then-current price last and customer price level. The unlicensed use percentage is based on the total number of licenses purchased for current use compared to the actual installed base. If there is no unlicensed use, Microsoft will not



subject Customer to another verification for at least one year. By exercising 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 legal means.

- (iii) **Verification process.** Microsoft will notify Customer at least 30 days in advance of its intent to verify Customers' compliance with the license terms for the Products Customer and its Affiliates use or distribute. Microsoft will engage an independent auditor, which will be subject to a confidentiality obligation. Any information collected in the self-audit will be used solely for purposes of determining compliance. This verification will take place during normal business hours and in a manner that does not unreasonably interfere with Customer's operations.

## **2. Subscriptions, ordering.**

- a. **Choosing a Reseller.** Customer must choose and maintain a Reseller authorized within its region. If Microsoft or Reseller chooses to discontinue doing business with each other, Customer must choose a replacement Reseller or purchase a Subscription directly from Microsoft, which may require Customer to accept different terms.
- b. **Available Subscription offers.** The Subscription offers available to Customer will be established by its Reseller and generally can be categorized as one or a combination of the following:
  - (i) **Online Services Commitment Offering.** Customer commits in advance to purchase a specific quantity of Online Services for use during a Term and to pay upfront or on a periodic basis for continued use of the Online Service.
  - (ii) **Consumption Offering (also called Pay-As-You-Go).** Customer pays based on actual usage with no upfront commitment.
  - (iii) **Limited Offering.** Customer receives a limited quantity of Online Services for a limited term without charge (for example, a free trial) or as part of another Microsoft offering (for example, MSDN). Provisions in this agreement with respect to the SLA and data retention may not apply.
  - (iv) **Software Commitment Offering.** Customer commits in advance to purchase a specific quantity of Software for use during a Term and to pay upfront or on a periodic basis for continued use of the Software.
- c. **Ordering.**
  - (i) Orders must be placed through Customer's designated Reseller. Customer may place orders for its Affiliates under this agreement and grant its Affiliates administrative rights to manage the Subscription, but, Affiliates may not place orders under this agreement. Customer also may assign the rights granted under Section 1.a and 1.b to a third party for use by that third party in Customer's internal business. If Customer grants any rights to Affiliates or third parties with respect to Software or Customer's Subscription, such Affiliates or third parties will be bound by this agreement and Customer agrees to be jointly and severally liable for any actions of such Affiliates or third parties related to their use of the Products.
  - (ii) Customer's Reseller may permit Customer to modify the quantity of Online Services ordered during the Term of a Subscription. Additional quantities of Online Services added to a Subscription will expire at the end of that Subscription.
- d. **Pricing and payment.** Prices for each Product and any terms and conditions for invoicing and payment will be established by Customer's Reseller.
- e. **Renewal.**

- (i) Upon renewal of a Subscription, Customer may be required to sign a new agreement, a supplemental agreement or an amendment to this agreement.
  - (ii) Customer's Subscription will automatically renew unless Customer provides its Reseller with notice of its intent not to renew prior to the expiration of the Term.
- f. **Eligibility for Academic, Government and Nonprofit versions.** Customer agrees that if it is purchasing an academic, government or nonprofit offer, Customer meets the respective eligibility requirements listed at the following sites:
- (i) For academic offers, the requirements for educational institutions (including administrative offices or boards of education, public libraries, or public museums) listed at <http://go.microsoft.com/academic>;
  - (ii) For government offers, the requirements listed at <http://go.microsoft.com/government>; and
  - (iii) For nonprofit offers, the requirements listed at <http://go.microsoft.com/nonprofit>.

Microsoft reserves the right to verify eligibility at any time and suspend the Online Service if the eligibility requirements are not met.

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

### **3. *Term, termination.***

- a. **Agreement term and termination.** This agreement will remain in effect until the expiration or termination of Customer's Subscription, whichever is earliest. Customer may terminate this agreement at any time by contacting its Reseller. The expiration or termination of this agreement will only terminate Customer's right to place new orders for additional Products under this agreement.
- b. **Termination for cause.** If either party breaches this Agreement, the other party may terminate the breached agreement (in whole or in part, including orders) upon notice. If the breach is curable within 30 days, then the terminating party must provide 30 days' notice to the breaching party and an opportunity to cure the breach.
- c. **Cancel a Subscription.** Customer's Reseller will establish the terms and conditions, if any, upon which Customer may cancel a Subscription.

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

- a. **Reseller Administrator Access and Customer Data.** Customer acknowledges and agrees that (i) once Customer has chosen a Reseller, that Reseller will be the primary administrator of the Online Services for the Term and will have administrative privileges and access to Customer Data, however, Customer may request additional administrator privileges from its Reseller; (ii) Customer can, at its sole discretion and at any time during the Term, terminate its Reseller's administrative privileges; (iii) Reseller's privacy practices with respect to Customer Data or any services provided by Reseller are subject to the terms of Customer's agreement with its Reseller and may differ from Microsoft's privacy practices; and (iv) Reseller may collect, use, transfer, disclose, and otherwise process Customer Data, including personal data. Customer consents to Microsoft providing Reseller with Customer Data and information that Customer provides to Microsoft for purposes of ordering, provisioning and administering the Online Services.

- b. Customer consents to the processing of personal information by Microsoft and its agents to facilitate the subject matter of this agreement. Customer may choose to provide personal information to Microsoft on behalf of third parties (including your contacts, resellers, distributors, administrators, and employees) as part of this agreement. Customer will obtain all required consents from third parties under applicable privacy and data protection laws before providing personal information to Microsoft.
- c. Additional privacy and security details are in the Online Services Terms. The commitments made in the Online Services Terms only apply to the Online Services purchased under this agreement and not to any services or products provided by a Reseller. If Customer uses software or services that are hosted by a Reseller, that use will be subject to Reseller's privacy practices, which may differ from Microsoft's.
- d. As and to the extent required by law, Customer shall notify the individual users of the Online Services that their data may be processed for the purpose of disclosing it to law enforcement or other governmental authorities as directed by Reseller or as required by law, and Customer shall obtain the users' consent to the same.
- e. Customer appoints Reseller as its agent for purposes of interfacing with and providing instructions to Microsoft for purposes of this Section 4.

## **5. Warranties.**

- a. **Limited warranty.**
  - (i) **Software.** Microsoft warrants that each version of the Software will perform substantially as described in the applicable Product documentation for one year from the date Customer is first licensed for that version. If it does not, and Customer notifies Microsoft within the warranty term, then Microsoft will, at its option, (1) return the price Customer paid for the Software license or (2) repair or replace the Software.
  - (ii) **Online Services.** Microsoft warrants that each Online Service will perform in accordance with the applicable SLA during Customer's use. Customer's remedies for breach of this warranty are in the SLA.

The remedies above are Customer's sole remedies for breach of the warranties in this section. Customer waives any breach of warranty claims not made during the warranty period.

- b. **Exclusions.** The warranties in this agreement do not apply to problems caused by accident, abuse or use inconsistent with this agreement, including failure to meet minimum system requirements. These warranties do not apply to free or trial products, Previews, Limited Offerings, or to components of Products that Customer is permitted to redistribute.
- c. **Disclaimer.** Except for the limited warranties above, Microsoft provides no warranties or conditions for Products and disclaims any other express, implied, or statutory warranties for Products, including warranties of quality, title, non-infringement, merchantability and fitness for a particular purpose.

## **6. Defense of third party claims.**

The parties will defend each other against the third-party claims described in this section and will pay the amount of any resulting adverse final judgment or approved settlement, but only if the defending party is promptly notified in writing of the claim and has the right to control the defense and any settlement of it. The party being defended must provide the defending party with all requested assistance, information, and authority. The defending party will reimburse the other party for reasonable out-of-pocket expenses it incurs in providing assistance. This section describes the parties' sole remedies and entire liability for such claims.

- a. **By Microsoft.** Microsoft will defend Customer against any third-party claim to the extent it alleges that a Product or Fix made available by Microsoft for a fee and used within the scope of the license granted under this agreement (unmodified from the form provided by Microsoft and not combined with anything else), misappropriates a trade secret or directly infringes a patent, copyright, trademark or other proprietary right of a third party. If Microsoft is unable to resolve a claim of infringement under commercially reasonable terms, it may, as its option, either: (1) modify or replace the Product or fix with a functional equivalent; or (2) terminate Customer's license and refund any prepaid license fees (less depreciation on a five-year, straight-line basis) for perpetual licenses and any amount paid for Online Services for any usage period after the termination date. Microsoft will not be liable for any claims or damages due to Customer's continued use of a Product or Fix after being notified to stop due to a third-party claim.
- b. **By Customer.** To the extent permitted by applicable law, Customer will defend Microsoft against any third-party claim to the extent it alleges that: (1) any Customer Data or non-Microsoft software hosted in an Online Service by Microsoft on Customer's behalf misappropriates a trade secret or directly infringes a patent, copyright, trademark, or other proprietary right of a third party; or (2) Customer's use of any Product or Fix, alone or in combination with anything else, violates the law or harms a third party.

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

For each Product, each party's maximum, aggregate liability to the other under this agreement is limited to direct damages finally awarded in an amount not to exceed the amounts Customer was required to pay for the applicable Products during the term of this agreement, subject to the following:

- a. **Online Services.** For Online Services, Microsoft's maximum liability to Customer for any incident giving rise to a claim will not exceed the amount Customer paid for the Online Service during the 12 months before the incident; provided that in no event will Microsoft's aggregate liability for any Online Service exceed the amount paid for that Online Service during the Subscription.
- b. **Free Products and distributable code.** For Products provided free of charge and code that Customer is authorized to redistribute to third parties without separate payment to Microsoft, Microsoft's liability is limited to direct damages finally awarded up to US\$5,000.
- c. **Exclusions.** In no event will either party be liable for loss of revenue or indirect, special, incidental, consequential, punitive, or exemplary damages, or damages for loss of use, lost profits, revenues, business interruption, or loss of business information, however caused or on any theory of liability.
- d. **Exceptions.** The limits of liability in this section apply to the fullest extent permitted by applicable law, but do not apply to: (1) the parties' obligations under section 6; or (2) violation of the other's intellectual property rights.

## **8. *Support and Professional Services.***

Customer's Reseller will provide details on support services available for Products purchased under this agreement. Support services may be performed by Reseller or its designee, which in some cases may be Microsoft. If Customer purchases Professional Services under this agreement, the performance of those Professional Services will be subject to the terms and conditions in the Use Rights.

## **9. *Miscellaneous.***

- a. **Notices.** You must send notices by mail, return receipt requested, to the address below.

**Notices should be sent to:**

Microsoft Corporation  
Volume Licensing Group  
One Microsoft Way  
Redmond, WA 98052  
USA  
  
Via Facsimile: (425) 936-7329

You agree to receive electronic notices from us, which will be sent by email to the account administrator(s) named for your Subscription. Notices are effective on the date on the return receipt or, for email, when sent. You are responsible for ensuring that the email address for the account administrator(s) named for your Subscription is accurate and current. Any email notice that we send to that email address will be effective when sent, whether or not you actually receive the email.

- b. **Assignment.** You may not assign this agreement either in whole or in part. Microsoft may transfer this agreement without your consent, but only to one of Microsoft's Affiliates. Any prohibited assignment is void.
- c. **Severability.** If any part of this agreement is held unenforceable, the rest remains in full force and effect.
- d. **Waiver.** Failure to enforce any provision of this agreement will not constitute a waiver.
- e. **No agency.** This agreement does not create an agency, partnership, or joint venture.
- f. **No third-party beneficiaries.** There are no third-party beneficiaries to this agreement.
- g. **Use of contractors.** Microsoft may use contractors to perform services, but will be responsible for their performance, subject to the terms of this agreement.
- h. **Microsoft as an independent contractor.** The parties are independent contractors. Customer and Microsoft each may develop products independently without using the other's confidential information.
- i. **Agreement not exclusive.** Customer is free to enter into agreements to license, use or promote non-Microsoft products or services.
- j. **Applicable law and venue.** This agreement is governed by Washington law, without regard to its conflict of laws principles, except that (i) if you are a U.S. Government entity, this agreement is governed by the laws of the United States, and (ii) if you are a state or local government entity in the United States, this agreement is governed by the laws of that state. Any action to enforce this agreement must be brought in the State of Washington. This choice of jurisdiction does not prevent either party from seeking injunctive relief in any appropriate jurisdiction with respect to violation of intellectual property rights.
- k. **Entire agreement.** This agreement is the entire agreement concerning its subject matter and supersedes any prior or concurrent communications. In the case of a conflict between any documents in this agreement that is not expressly resolved in those documents, their terms will control in the following order of descending priority: (1) this agreement, (2) the Product Terms, (3) the Online Services Terms, and (4) any other documents in this agreement.
- l. **Survival.** All provisions survive termination of this agreement except those requiring performance only during the term of the agreement.

- m. **U.S. export jurisdiction.** Products are subject to U.S. export jurisdiction. Customer must comply with all applicable international and national laws, including the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, and end-user, end-use and destination restrictions issued by U.S. and other governments related to Microsoft products, services, and technologies.
- n. **Force majeure.** Neither party will be liable for any failure in performance due to causes beyond that party's reasonable control (such as fire, explosion, power blackout, earthquake, flood, severe storms, strike, embargo, labor disputes, acts of civil or military authority, war, terrorism (including cyber terrorism), acts of God, acts or omissions of Internet traffic carriers, actions or omissions of regulatory or governmental bodies (including the passage of laws or regulations or other acts of government that impact the delivery of Online Services)). This Section will not, however, apply to your payment obligations under this agreement.
- o. **Contracting authority.** If you are an individual accepting these terms on behalf of an entity, you represent that you have the legal authority to enter into this agreement on that entity's behalf.

## 10. **Definitions.**

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

"Acceptable Use Policy" is set forth in the Online Services Terms.

"Affiliate" means any legal entity that a party owns, that owns a party, or that is under common ownership with a party. "Ownership" means, for purposes of this definition, control of more than a 50% interest in an entity.

"Consumption Offering", "Commitment Offering", or "Limited Offering" describe categories of Subscription offers and are defined in Section 2.

"Customer Data" is defined in the Online Services Terms.

"End User" means any person you permit to access Customer Data hosted in the Online Services or otherwise use the Online Services.

"Fix" means a Product fix, modifications or enhancements, or their derivatives, that Microsoft either releases generally (such as Product service packs) or provides to Customer to address a specific issue.

"Licensing Site" means <http://www.microsoft.com/licensing/contracts> or a successor site.

"Non-Microsoft Product" is defined in the Online Services Terms.

"Online Services" means any of the Microsoft-hosted online services subscribed to by Customer under this agreement, including Microsoft Dynamics Online Services, Office 365 Services, Microsoft Azure Services, or Microsoft Intune Online Services.

"Online Services Terms" means the additional terms that apply to Customer's use of Online Services published on the Licensing Site and updated from time to time.

"Previews" means preview, beta, or other pre-release version or feature of the Online Services or Software offered by Microsoft to obtain customer feedback.

"Product" means all products identified in the Product Terms, such as all Software, Online Services and other web-based services, including Previews.

"Product Terms" means the document that provides information about Microsoft Products and Professional Services available through volume licensing. The Product Terms document is published on the Licensing Site and is updated from time to time.

"Professional Services" means Product support services and Microsoft consulting services provided to Customer under this agreement. "Professional Services" does not include Online Services.

"Reseller" means an entity authorized by Microsoft to resell Software licenses and Online Service Subscriptions under this program and engaged by you to provide assistance with your Subscription.

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

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

"Subscription" means an enrollment for Online Services for a defined Term as established by your Reseller.

"Term" means the duration of a Subscription (e.g., 30 days or 12 months).

"Use Rights" means the use rights or terms of service for each Product published on the Licensing Site and updated from time to time. The Use Rights supersede the terms of any end user license agreement that accompanies a Product. The Use Rights for Software are published by Microsoft in the Product Terms. The Use Rights for Online Services are published in the Online Services Terms.



# EXHIBIT B

## FINANCIAL SERVICES AMENDMENT

---



### Microsoft Cloud Agreement Financial Services Amendment

This Financial Services Amendment ("Amendment") is entered into between Customer and the Microsoft Affiliate who are parties to the Microsoft Cloud Agreement (the "Agreement"), and the parties agree that this Amendment supplements the Agreement.

Customer is subject to oversight by a Regulator (defined below). In the event that Customer has separately entered into an amendment with Microsoft to help Customer meet its privacy, security and regulatory requirements as an entity subject to oversight by a Regulator, the parties agree that the rights and obligations included in such amendment apply when Customer purchases Online Services (defined below) from a reseller through the Cloud Solution Provider Program and supplement the Agreement. For avoidance of doubt, this extension of rights is for the sole benefit of Customer and applies only to Customer's use of the Online Services.

If Customer does not have a separate amendment with Microsoft that addresses Customer's requirements as an entity subject to oversight by a Regulator, the parties agree that the Agreement is amended as follows:

#### 1. Defined Terms

Capitalized terms used but not defined in this Amendment will have the same meanings as provided in the Agreement or the Online Services Terms ("OST"). The following definitions are used in this Amendment:

"Customer" means, for purposes of this Amendment, any Affiliates that are subject to oversight by a Regulator and are consuming Online Services.

"Microsoft Online Services FSI Customer Compliance Program" or "FSI Customer Compliance Program" means an optional, fee-based program available to Microsoft customers or affiliates of those customers that are subject to oversight by a Regulator.

"Online Services" means, for purposes of this Amendment, the Microsoft Dynamics 365 Core Services, Office 365 Services, Microsoft Azure Core Services, Microsoft Intune Online Services and Microsoft Power BI Services, each as defined in the "Data Processing Terms" section of the OST.

"Regulator" means any financial services regulator that has examination or supervisory rights over Customer or Microsoft as the provider of Online Services to Customer.

#### 2. Enabling Customer Compliance

**a. Effective Access to Data and Business Premises.** As set forth in this Amendment and for clarity and to be consistent with applicable regulations, Microsoft will provide Customer, Customer's internal and external auditors (both of which are defined as "Customer Auditor" herein) and Customer's Regulator, with effective access to data related to the activities outsourced to Microsoft, as well as reasonable access to Microsoft's business premises (see Section 2(b)(ii) and Section 2(c)(iii)). Customer will at all times have direct access to Customer Data, including Customer's virtual machines and applications deployed in the Online Services. This includes the ability for Customer to conduct vulnerability and penetration testing of Customer's deployments in the Online Services or other similar testing as applicable to a specific Online Service that Customer is using. For avoidance of doubt, Customer must conduct any testing in accordance with Microsoft's terms and conditions, which may require, among other things, Customer to provide Microsoft with advance notice of any tests and prohibit Customer from targeting any other Microsoft customer.

#### b. Regulator Right to Examine.

(i) In the event that Customer's Regulator requests information relating to Customer's use of the Online Services, Customer will, in the first instance, use the standard features of the Online Services and the information provided to Customer to respond to such request.

(ii) In the event that the Regulator requests to examine the Online Services operations and controls in order to meet the Regulator's supervisory obligations of Microsoft as a service provider of Customer, Microsoft will provide the Regulator with a direct right to examine the Online Services, including the ability to conduct an on-premises examination; to meet with Microsoft personnel and Microsoft's external auditors; and to access any related information, records, reports and documents. Such activities may take place at



Microsoft's offices, at other locations where activities relating to the Online Services provided to Customer and its Affiliates are performed, and as otherwise requested by the Regulator.

(iii) Microsoft will not disclose Customer Data to the Regulator except as described in the General Privacy and Security Terms in the OST, and the Regulator will not be allowed access to data belonging to any other Microsoft customer.

(iv) Customer will at all times have access to Customer Data using the standard features of the Online Services and may delegate its access to Customer Data to representatives of the Regulator.

(v) Customer and Microsoft will be responsible for their own costs associated with any of the activities described in this Section 2(b).

(vi) For clarity, Microsoft and Customer will work together to resolve each Regulator request through discussion and interaction between Customer, Microsoft and the Regulator. Microsoft and Customer acknowledge that the provisions relating to the Regulator right to examine are not intended to contravene or interfere with any applicable laws or regulations, and nothing in this section should be construed as an impediment to the Regulator's ability to examine the Online Services.

**c. Customer Examination, Monitoring and Audits Rights.** To enable Customer to meet its examination, oversight and control, and audit requirements, Microsoft has developed specific rights and processes that provide Customer, and other customers that are subject to oversight by a Regulator, with access to information, Microsoft personnel and Microsoft's external auditors. Such rights and processes are designed to provide Customer with effectively the same access to information and personnel that Microsoft would provide to a Regulator, while preserving Microsoft's ability to operate the Online Services and protect the privacy and confidentiality of other customers' data. Specifically, Microsoft will provide Customer, including Customer Auditor, with the rights described below. The activities described in Section 2(c)(iii) below may occur onsite in Microsoft's offices or at other locations where activities relating to the Online Services are performed.

(i) **Online Services Information Security Policy.** As set forth in the OST, each Online Service follows a written data security policy ("Information Security Policy") that complies with certain control standards and frameworks. Microsoft will make each Information Security Policy available to Customer, along with descriptions of the security controls in place for the applicable Online Service and other information reasonably requested by Customer regarding Microsoft security practices and policies.

(ii) **Audits of Online Services.** On behalf of customers including Customer and Customer's Auditor, as well as any Regulator, Microsoft will cause the performance of audits of the security of the computers, computing environment and physical data centers that it uses in processing Customer Data (including personal data) for each Online Service. Each audit will result in the generation of an audit report ("Audit Report"), as set forth in the OST. Pursuant to the terms set forth in the OST, if Customer requests, Microsoft will provide Customer with each Audit Report.

(iii) **FSI Customer Compliance Program.** Customer may participate in the optional FSI Customer Compliance Program at any time under this Agreement, which enables Customer to have additional monitoring, supervisory and audit rights and additional controls over the Online Services as described in Sections 2(c)(iii)(1) - (2) below.

**1) Supervisory Access to Online Services Information and Microsoft Personnel.**

**A. Additional Microsoft Support.** Through Customer's Premier Support Services engagement, Customer will have access to Microsoft personnel for raising questions and escalations relating to the Online Services.

**B. Audit Webcasts.** Subsequent to Microsoft receiving an Online Services Audit Report, Microsoft will invite all FSI Customer Compliance Program members ("Members") to participate in a webcast, hosted by Microsoft, for Members to discuss the results of the audit. Each webcast will include an assessment of whether: (1) the control procedures were suitably designed to provide reasonable assurance that the stated internal control objectives would be achieved if the procedures operated as designed, and (2) the control procedures operated effectively during the reporting period. Upon request from Members that attend the audit webcast, Microsoft will provide detailed information regarding planned remediation of any deficiencies identified by the audit.

**C. Significant Events.** Microsoft will provide communications to all Members regarding (1) the nature, common causes, and resolutions of security incidents and other circumstances that can reasonably be expected to have a material service impact on

Members' use of the Online Services; (2) Microsoft risk-threat evaluations; and (3) significant changes to Microsoft's business resumption and contingency plans, or other circumstances, that might have a serious impact on Members' use of the Online Services.

**D. Penetration Testing.** At least annually, Microsoft will conduct third party penetration testing against the Online Services, including evidence of data isolation among tenants in the multi-tenant Online Services. Upon request, Microsoft will provide Members with a summary report of the results of such penetration testing.

**E. Transparency of Online Services Through Program Events.** Microsoft will make subject matter experts for the Online Services available to all Members through group events such as webcasts or in-person meetings, including an annual summit event. Such events will include a roadmap of planned developments, an opportunity for Members to provide structured feedback and/or suggestions regarding the FSI Customer Compliance Program and its desired future evolution, and reports of significant events (as described in this section). These events will also provide an opportunity for Members to discuss common issues with each other and raise them with Microsoft. The format and frequency of community events may vary over time; provided, that the objectives set forth in this paragraph will be accomplished not less than annually.

**F. Additional Member Requests for Information.** For Online Services that have been audited pursuant to SSAE 16 SOC 1 Type II and SSAE 16 SOC 2 Type II, as reflected in the OST, Members may request additional information from Microsoft subject matter experts not addressed through the standard features of the Online Services, the provisions in Section 2 or other available resources, on a fee-based per diem basis. In order to respond to any such request, Microsoft will prepare a statement of work with estimated fees, based on a per diem rate of US\$4,000 per day for each Microsoft employee, plus reasonable travel expenses. Members will not be charged the full per diem fee for a Microsoft engineering resource who is needed for only a portion of a single day. Microsoft will only charge fees for work performed on a pro rata basis. Further, Microsoft will not charge fees for any Microsoft employee performing administrative tasks, such as meeting coordination, escorting visitors or document copying. The statement of work must be executed by both parties before work can commence. Invoicing, payment and tax terms will be the same as for Professional Services under the Microsoft Premier Support Services Agreement.

If a Member is not reasonably satisfied by the sufficiency of the information provided by Microsoft employees, the Member may submit a written request to meet with one of Microsoft's external auditors. Microsoft will request that the external auditor that has audited the relevant Online Service meet with the Member to discuss any questions. Any such discussion will be subject to the agreement of the external auditor, will be at the Member's expense, and will be subject to the Member signing confidentiality documentation in form and content satisfactory to the external auditor.

2) **Ability to Influence the Online Services and Programs – Suggestions for Additional Testing.**

Microsoft will provide each Member with advanced details on existing and future certifications, audit plans and scope and will solicit feedback on any potential changes to current certifications. For each Microsoft audit, 100% of the existing controls in scope for that audit type will be subject to testing by the auditor, and the expectation is that all controls for each audit scope will be tested within a 3-year audit cycle. As part of the FSI Customer Compliance Program, each Member may suggest additional controls to be included in a future audit scope. Microsoft will consider each such suggestion and, if not accepted, will provide a reasoned basis for refusal. For any given audit cycle, across all suggestions from all Members, Microsoft will include a minimum of five Member-specified controls (from the existing control set) in the audit instructions and will inform the auditor that these controls were selected by the Members. Compliance with these controls will be validated using tests that are consistent with the type of audit (e.g., ISO or SSAE) undertaken.

If the total number of Members in the FSI Customer Compliance Program exceeds 15, Microsoft will establish an executive committee ("Executive Committee"). For a given audit cycle, the Executive Committee will determine the five controls described above on behalf of all Members. Microsoft may, at its discretion, include additional controls requested by Members.

The Executive Committee will be comprised of at least one representative from each key regulated market with a participant in the FSI Customer Compliance Program. If there are multiple Members from a given market, the Executive Committee member for that market will be determined by (1) majority agreement among the Members from that market that have more than 10,000 active seats in the Office 365 Services or more than US\$500,000.00 annual commitment of Microsoft Azure Core Services, or (2) a regulator having authority over all Members from that market. The key regulated markets shall, at a minimum, include Canada, United States, United Kingdom, France, Germany, Japan and Italy. Microsoft may add key regulated markets or increase the number of Members on the Executive Committee only in consultation with all Members.

For clarity, nothing in this section precludes Members from requesting that new controls or additional details for a given product, feature or Online Service be included in the roadmap for future audits. Microsoft will consider each such request and, if not accepted, will provide a reasoned basis for refusal.

### 3) FSI Customer Compliance Program Conditions and Processes.

**A. Conditions.** Customer's participation in the FSI Customer Compliance Program is conditioned on Customer (a) being regulated by a Regulator; (b) maintaining an active, paid subscription to one or more Online Services through the Agreement; and (c) maintaining an active, paid Microsoft Premier Support Services agreement. Customer also must pay a US\$50,000 annual fee for each year Customer participates.

**B. Onboarding.** If Customer decides to join the FSI Customer Compliance Program, an authorized Customer representative shall notify Microsoft by sending Customer contact information and purchase order details for the annual fee to the following Microsoft email address: [fsicomppro@service.microsoft.com](mailto:fsicomppro@service.microsoft.com).

**C. Termination.** Customer may terminate its membership in the FSI Customer Compliance Program at any time by notifying Microsoft. Microsoft may terminate Customer's membership in the FSI Customer Compliance Program if Customer fails to satisfy any of the conditions set forth in Section 2(c)(iii)(3)(A) above.

### 3. Security Incident: Limited Reimbursement for Certain Costs

To the extent that a Security Incident (as defined in the OST) results from Microsoft's failure to comply with its obligations under the Agreement, and subject to the limitations of liability applicable to each Online Service, Microsoft will reimburse Customer for reasonable out-of-pocket remediation costs incurred by Customer in connection with that Security Incident. "Reasonable out-of-pocket remediation costs" consist of (a) actual costs of payments, fines, penalties, sanctions, attorneys' fees, court costs or fees, or other remedies or liabilities, and any interest thereon, imposed by a court, tribunal, arbitration panel, government body or regulatory agency for a Microsoft-caused Security Incident; (b) additional commercially-reasonable out-of-pocket expenses incurred by Customer or its Affiliates to manage or remedy the Microsoft-caused Security Incident including, without limitation, costs associated with restoring, correcting, or repairing the affected Online Service; (c) commercially-reasonable out-of-pocket expenses for legally-required notifications of Customer's end users of the Microsoft-caused Security Incident (but not the costs of any professional third-party services, including those relating to crisis management, public relations or media relations services, which are indirect and consequential damages under the Agreement). Customer must document all such expenditures and, upon Microsoft's request, those expenditures must be validated by an independent, internationally-recognized third party financial services industry expert chosen by both parties. For avoidance of doubt, the costs reimbursed by Microsoft under this paragraph will be characterized as direct damages subject to the limitation on liability in the Agreement, and not as indirect, consequential, special or incidental damages excluded in the Agreement.

### 4. Customer Termination Rights

**a. Termination at the Direction of Regulator.** Customer may terminate an Online Service at the express direction of a Regulator with reasonable notice.

**b. Termination for Regulatory Compliance.** In the event Customer becomes subject to a new government law, regulation, requirement, decision, order or other ruling that Customer determines it cannot comply with because Customer is using the Online Service(s), Microsoft will discuss with Customer how to accommodate Customer's requirements. The parties may contemplate adding additional products or services, procuring those products or services from a third-party provider, or adding other solutions, each at Customer's expense. If the parties are not able to satisfy Customer's new regulatory requirements, Customer may terminate the applicable Online Service without cause by giving 60 days' prior written notice to Microsoft.

## 5. Business Continuity of Online Services

Microsoft acknowledges that Customer may be required by its Regulator to ensure that it is able to continue to carry on its business in the event of (1) regulatory or other legal action impacting Customer or one of its Affiliates; or (2) termination of the Agreement. Microsoft and Customer agree as follows:

### a. Continuity after Customer Transfer of Rights.

- 1) In the event of the insolvency, reorganization, liquidation or some other action impacting Customer or one of its Affiliates, as provided by applicable law or regulation for the financial industry (e.g., "too big to fail", "recovery and resolution", "special administration", and similar regulations and actions), and to the extent required to maintain continuity of Microsoft's provision of the Online Services purchased by Customer under the Agreement, Microsoft will consent to Customer assigning, sublicensing or transferring its rights under the Agreement to (A) one or more of its Affiliates, or (B) a third party that purchases or otherwise succeeds to any or all of the business or assets or equity of Customer. In each case, the entity to which rights are transferred is the "Transferee," and Transferee will have access to Customer Data through Microsoft's standard processes and tools.
- 2) Microsoft will neither terminate the Agreement nor suspend or delay the performance of its obligations under the Agreement, subject to the following conditions:
  - A. The Transferee must pay all fees and charges payable by Customer to Microsoft under the terms of the Agreement for services provided before the transfer and through the renewal or replacement of the Agreement.
  - B. The Transferee and Microsoft will work in good faith to renew the Agreement or, as appropriate, to replace the Agreement with appropriate terms for Microsoft to provide the Online Services to the Transferee.
  - C. If Microsoft and the Transferee cannot agree on terms, as described in clause B, within 12 months after the transfer of rights to Transferee, then Microsoft may terminate the Agreement by providing notice to Transferee.
  - D. The aggregate liability of Microsoft and its Affiliates to Customer, Customer's Affiliates and the Transferee will not exceed the aggregate liability of Microsoft and its Affiliates under the Agreement.
- 3) In the event the Transferee would like to enter into a new Agreement, the parties will work in good faith to put in place terms that are appropriate in light of the transfer under this Section 5(a).

**b. Continuity after Termination of Agreement.** If the Agreement terminates for any reason, then Customer may elect to extend the Online Services on a month-to-month basis for up to twelve months from the date of termination by providing notice of such election to Microsoft. During such period, Microsoft will continue to provide, and Customer will continue to receive and pay for, the Online Services pursuant to the terms and conditions of the Agreement. In addition, during such period Customer will be able to retrieve its Customer Data through Microsoft's standard processes and tools. Customer may cancel the extended service by providing a notice of cancellation to Microsoft. Cancellation will be effective at the end of the month following thirty days after Microsoft receives the notice of cancellation.

**c. Reversibility.** In the event of a termination of the Agreement as described in Section 4 and this Section 5 and Customer chooses to migrate to a different online service, Customer may request that Microsoft provide assistance in such transition through Microsoft's Professional Services Organization at the then-current rates for such services.

Customer may request migration or transition assistance and support from Microsoft's Professional Services Organization at any time during the extended service period described in Sections 5(a) and 5(b).

## 6. Miscellaneous

**a. Confidentiality.** This Amendment, the Information Security Policy, the Audit Reports, and all information regarding and provided through the FSI Customer Compliance Program are Microsoft Confidential Information. Customer may disclose these items to a Customer Auditor or consultant or a Regulator, provided that (1) Customer first redacts all terms that are unrelated to regulatory oversight and approval, including pricing information and order quantities; and (2) other than disclosures to a Regulator, Customer must comply

with the Confidentiality terms of the Agreement as if the disclosure was a disclosure of Microsoft Confidential Information by Customer to a Customer Representative.

**b. Term and termination.** Subject to Section 4 and Section 5 above, this Amendment will terminate automatically upon any termination of the Agreement.

Except for changes made by this Amendment, the Agreement identified above remains unchanged and in full force and effect. If there is any conflict between any provision in this Amendment and any provision in the Agreement identified above and any provision in the OST, this Amendment shall control.



## EXHIBIT C

### Microsoft Government Eligibility Definition (United States)

Organizations that fall into one or more of the categories or criteria set forth below are eligible to participate in Microsoft volume licensing programs specifically designed for government organizations.

An “eligible entity” means any organization that does not operate for profit and that falls into one of the following categories:

Categories	
<b>A. Federal</b>	<ul style="list-style-type: none"> <li>• A bureau, office, agency, department or other entity of the United States government (including executive, legislative, and judicial branches).</li> </ul>
<b>B. State and Local</b>	<ul style="list-style-type: none"> <li>• Any executive, legislative or judicial government agency, bureau, department, office, instrumentality, division, or other entity of a state or local government.</li> <li>• Any county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality established by the laws of a state and located within the state jurisdiction and geographic boundaries.</li> <li>• Any other entity in a state expressly authorized by the laws of the state to purchase under state contracts.</li> </ul>
<b>C. Tribal Entity</b>	<ul style="list-style-type: none"> <li>• A federally-recognized tribal entity performing governmental functions eligible for funding and services from the U.S. Department of Interior by virtue of its status as an Indian tribe, or, in Alaska, a Native village or Alaska Regional Native Corporation.</li> </ul>

If an organization fits into one of the categories above but operates for profit, the following criteria applies to determine whether the organization is an eligible entity:

1. Do the revenues/profits go solely to the government (or do they also go to private shareholders)?
2. Is the organization in question exempt from corporation tax?
3. Is the organization financed more than 50% by the government (i.e., does it derive less than 50% of its funding from commercial activities)?

If the answer to all of these questions is “yes,” then the organization is an eligible entity. If the answer to any of the questions above is “no,” then the organization is not an eligible entity. Generally, government-owned corporations, state-owned enterprises and government-owned organizations (whether incorporated or not) undertaking commercial activities (e.g., telecommunications, banking, transportation, etc.) do not qualify as eligible entities.

If an organization loses its status as an eligible entity after entering into a volume licensing agreement with Microsoft that requires it to be an eligible entity, the organization may continue to use the products and services for which it is licensed under its agreement with Microsoft, but it may not submit a new order for products or services under such agreement.

Microsoft offers government pricing to eligible public sector organizations (as defined and described above). Subject to such additional eligibility requirements as may be set forth in a particular volume licensing agreement, eligible organizations qualify to receive (1) price level D under the Enterprise, Enterprise Subscription, Select, or Select Plus volume licensing programs or (2) other discounts that may be available under other Microsoft volume licensing programs.

# EXHIBIT C

## MICROSOFT AZURE CUSTOMER QUALIFICATION QUESTIONNAIRE

---

### Use of this Questionnaire

In order to be eligible to purchase Azure Government or become an end customer of a solution built by a qualified Microsoft partner on Azure Government, a customer must be pre-qualified according to criteria set by Microsoft. The following questionnaire is intended to collect the information necessary for pre-qualification.

### Instructions

*Section A* to be filled out by all potential customers.

*Section B* to be filled out by a customer seeking to qualify as a Government Entity.

*Section C* - INTENTIONALLY DELETED.

*Section D* to be filled out by a non-government customer who is seeking to qualify on the basis that the customer has qualifying data that requires the use of Azure Government.

If none of Sections B, C or D apply to you, please explore options for purchasing commercial Microsoft Azure.

*Section E* to be filled out by all potential customers.

### Section A:

Name:

Address:

Domain name:

Organization website:

Main organization address and contact info:

Name, address and contact info of representative:

### Section B: To be filled out by potential customer seeking to qualify on the basis that it is a government entity

Are you a U.S. government entity<sup>1</sup>?

Please check one:

- United States Federal government
- State government
- Local government
- Tribal government
- Non-U.S. government

List the name and address of all Parent Organizations, as applicable:

List name and address of all Affiliate Agencies, as applicable:

If your entity was created or authorized by a statute or regulation, please cite the statute or regulation here:

Does any foreign government have a formal role in managing or operating your entity or appointing leaders of your organization?

- Yes
- No

---

<sup>1</sup> Federal Agency, State/Local Entity, or Tribal Entity acting in its governmental capacity as defined by the Azure Government qualifying criteria

Are you an Educational Institution/Entity?

- Yes
- No

If yes, please see Azure in Education offers

Does a substantial purpose of your organization consist of any of the following:

- Conducting gambling
  - Providing alcohol, marijuana or any controlled substance
  - Providing products or services related to the sex industry
  - Any activity prohibited by federal law or the law of the state in which the entity is located.
- Yes
  - No

Are you a federally funded research and development center (FFRDC)?

If yes, provide name:

### Section C: INTENTIONALLY DELETED

### Section D: Customer seeking to qualify on the basis of the type of data for which it will use Azure Government

Is your entity a U.S. person<sup>2</sup>?

- Yes
- No

Does your organization hold any of the following types of data? Please check all that apply:

- Controlled Unclassified Information (CUI)<sup>3</sup>
- International Traffic in Arms Regulation (ITAR)<sup>4</sup>  
If ITAR, please provide a copy of the DS-2032 Statement of Registration, DSP-5 / technical assistance agreement (TAA), or other appropriate and signed documentation from the Directorate of Defense Trade Controls establishing that the entity has been granted a license for transfer of ITAR data (temporary licenses include DSP-73 and DSP-61).
- Department of Defense (DoD) Unclassified Controlled Nuclear Information (UCNI)<sup>5</sup>
- Department of Energy (DoE) UCNI<sup>6</sup>
- Criminal Justice Information (CJI)<sup>7</sup>
- Other, please specify \_\_\_\_\_

---

<sup>2</sup> As defined by ITAR Regulations, Sec. 120.15, U.S. person means a person who is a lawful permanent resident or who is a protected individual. It also means any corporation, business association, partnership, society, trust, or any other entity, organization or group that is incorporated to do business in the United States. It also includes any governmental (federal, state or local) entity. It does not include any foreign person. See the Azure Government Qualification Criteria for additional information.

<sup>3</sup>As defined by DoD Directives 5230.25 and 5400.7

<sup>4</sup> As defined by 22 U.S.C. 2778 of the Arms Export Control Act ("AECA")

<sup>5</sup> As defined by 32 CFR 223.6

<sup>6</sup> As defined by DOE Order 5635.4

<sup>7</sup> As defined by 28 CFR CH I Sec. 20.33 and CJIS Security Policy



Section E: Signature of Authorized Representative

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date