

ONLINE SERVICES SUBSCRIPTION AGREEMENT

IMPORTANT – READ THIS ONLINE SERVICES SUBSCRIPTION AGREEMENT (THIS “**AGREEMENT**”) CAREFULLY. THIS AGREEMENT IS INCORPORATED BY REFERENCE INTO EVERY ORDERING DOCUMENT (THE “**PURCHASE AGREEMENT**”) BETWEEN EASTBAY CLOUD SERVICES INC. (“**EASTBAY**”) AND THE CLIENT SPECIFIED IN THE PURCHASE AGREEMENT (“**CLIENT**”). CLIENT’S EXECUTION OF A PURCHASE AGREEMENT REFERENCING THIS AGREEMENT SHALL BE DEEMED CLIENT’S AGREEMENT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT.

THIS AGREEMENT is for the subscription of Microsoft Corporation (“**Microsoft**”) online services (“**Online Services**”) between Eastbay and the Client.

WHEREAS:

- (i) Eastbay is authorized by Microsoft to resell Online Services to end users;
- (ii) The Client wishes to subscribe for Online Services as an end user; and
- (iii) The parties have agreed that Eastbay will sell and the Client will purchase the Online Services on the terms set out in this Agreement and the Purchase Agreement.

FOR VALUE RECEIVED:

1. SUBSCRIPTION

- (1) **Subscription.** The Client agrees and commits to the type of subscription for the Online Services set out in the attached Purchase Agreement (the “**Subscription**”).
- (2) **Term.** Unless terminated earlier as set forth below in Section 10, this Agreement and the Subscription shall continue in effect for the period of time set out in the attached Purchase Agreement (the “**Initial Term**”). At the end of the Initial Term, this Agreement and the Subscription shall automatically renew on an annual basis unless terminated by either party after providing the other party thirty (30) days' prior written notice (each such renewal is a “**Renewal Term**”).
- (3) **Microsoft Cloud Agreement.** The Client acknowledges and agrees that the Microsoft cloud agreement attached hereto as Schedule “A” and the agreements referenced therein are hereby incorporated by reference into, and form an integral part of, this Agreement.

2. ORDERING, FEES AND PAYMENT

- (1) **Ordering Procedure.** The following procedures shall be followed by the parties to this Agreement in order to initiate or change the Subscription:
 - (i) The Subscription for the Initial Term shall be set out in the attached Purchase Agreement.
 - (ii) At any time prior to the end of the Initial Term or any Renewal Term, the Client may submit a request in writing to Eastbay containing a full description of any changes to the Subscription order required for the next Renewal Term (the “**Subscription Change Request**”).

(iii) Upon receipt of a Subscription Change Request from the Client, Eastbay will prepare an ordering document for the changes to the Subscription (the “**Purchase Agreement**”) under the Subscription Change Request and shall submit the Purchase Agreement, together with all related attachments and schedules, to the Client for authorization.

(2) **Subscription Fee.** Client shall pay a “**Subscription Fee**” on a monthly basis during the Initial Term and any Renewal Term as described in the Purchase Agreement.

(3) **Payment.** Payment of the Subscription Fee is payable when invoiced and shall be deemed overdue if they remain unpaid for thirty (30) days. Client is responsible for goods and services tax, harmonized sales tax, value added tax, sales tax, and all other taxes associated with the Subscription Fee, however designated. Interest on any late payments shall accrue at the rate of (2%) per month or the highest rate permitted by applicable law, whichever is less, from the date such amount is due until finally paid. Client shall reimburse Eastbay for all reasonable costs incurred (including solicitor’s fees) in collecting past due amounts.

3. SUPPORT

Client shall have the option of purchasing support services from Eastbay, wherein Eastbay will provide online, telephone, email and onsite support to Client during the Initial Term and/or any Renewal Term.

4. CLIENT PRIMARY CONTACT

Client shall identify, and name, an appropriate individual, with corresponding contact information, including electronic mail address, as the “**Primary Contact**” with whom Eastbay should communicate matters regarding the Subscription and the Online Services and who has the authority to make Subscription Change Requests and other configuration changes. By default, the individual who signs the Purchase Agreement becomes the Primary Contact.

5. CLIENT’S OBLIGATIONS

Client is responsible for maintaining its hardware and network, as well as providing its users with network access to the Online Services. Client is also responsible for ensuring that its users comply with this Agreement. Client shall provide connectivity and security to the Internet for its location(s) for purposes of providing adequate access to the Online Services. Client shall provide accurate input information in the manner reasonably prescribed by Eastbay in connection with the Online Services. Client shall advise Eastbay of any changes to Client's operations, Primary Contact, or other information that would require a change in the support, operation or configuration of the Online Services. Client shall configure necessary user accounts via the administrator account provided by Eastbay. Client shall be responsible for ensuring that any Client Content is accurate, not corrupt in any way, and does not contain any viruses.

6. RESTRICTIONS

Use of the Online Services is restricted to use by the Client only, and only for Client's internal business purposes. Client may not use the Online Services for the benefit of any third parties or provide other access or use of the Online Services to third parties. Client may not, directly or indirectly, sublicense, assign, transfer, sell, rent, lend, lease or otherwise provide the Online Services (or any portion thereof, including without limitation any capacity) to any third party, and any attempt to do so is null and void. Client may not reverse engineer, disassemble, decompile or make any attempt to ascertain, derive or obtain the source code for the Online Services. Client will not use the Online Services to take any actions that: (a) infringe on any third party's copyright, patent, trademark, trade secret or other proprietary rights or rights of publicity or privacy; (b) violate any applicable law, statute, ordinance or regulation (including those regarding export control); (c) are defamatory, trade libelous, threatening, harassing or obscene; or (d) constitute unauthorized entry to any machine accessible via the network.

7. AUDIT RIGHTS

Eastbay shall have the right to audit Client's use of the Online Services and compliance with this Agreement at Client's premises from time to time in Eastbay's sole discretion. Client agrees to permit Eastbay to have access to its facilities and personnel during normal business hours for the purpose of conducting such audits. In the event such audit reveals Client is exceeding the scope of use permitted by this Agreement, then Client shall pay Eastbay's additional fees for such use (at the then-current list price) and reimburse Eastbay for the costs of the audit.

8. CONFIDENTIAL INFORMATION

- (1) **Definition.** The term “**Confidential Information**” shall mean: (a) any and all information which is disclosed by either party (“**Owner**”) to the other (“**Recipient**”) verbally, electronically, visually, or in a written or other tangible form which is either identified or should be reasonably understood to be confidential or proprietary; and (b) the terms, including without limitation, the pricing of the Online Services including the Subscription Fee and any proposals or other documents that preceded this Agreement. Confidential Information may include, but not be limited to, trade secrets, computer programs, software, documentation, formulas, data, inventions, techniques, marketing plans, strategies, forecasts, client lists, employee information, financial information, confidential information concerning any of Owner's past, current or possible future programs, and confidential information concerning Owner's business or organization, as Owner has conducted it or as Owner may conduct it in the future. In addition, Confidential Information may include information concerning any of Owner's past, current, or possible future products or methods, including information about Owner's research, development, engineering, purchasing, manufacturing, accounting, marketing, selling, leasing and/or software (including third party software).
- (2) **Treatment of Confidential Information.** Owner's Confidential Information shall be treated as strictly confidential by Recipient and shall not be disclosed by Recipient to any third party, except as authorized by the Owner. This Agreement imposes no obligation upon the parties with respect to Confidential Information which either party can establish by legally sufficient evidence: (a) was in the possession of, or was rightfully known by the Recipient without an obligation to maintain its confidentiality prior to receipt from Owner; (b) is or becomes generally known to the public without violation of this Agreement; (c) is obtained by Recipient in good faith from a third party having the right to disclose it without an obligation of confidentiality; (d) is independently developed by

Recipient without the participation of individuals who have had access to the Confidential Information; or (e) is required to be disclosed by court order or applicable law, provided notice is promptly given to the Owner and provided further that diligent efforts are undertaken to limit disclosure.

- (3) **Rights and Duties.** The Recipient shall not obtain, by virtue of this Agreement, any rights, title or interest in any Confidential Information of the Owner. Within fifteen (15) days after termination of this Agreement, each party shall certify in writing to the other that all copies of Confidential Information in any form, including partial copies, have been destroyed, returned or used solely as the Owner so directs.
- (4) **Survival.** The terms of this Section 8 shall survive termination of this Agreement. If the parties have executed a separate agreement that contains confidentiality terms prior to or contemporaneously with entering into the Purchase Agreement (and thereby, this Agreement), those separate confidentiality terms shall remain in full force to the extent they do not conflict with this Agreement.

9. EVENTS OF DEFAULT

- (1) For the purposes of this Agreement, any one of the following shall be considered to be an event of default (an “**Event of Default**”) by the Client:
- (i) material breach of any term or condition of this Agreement or any Purchase Agreement;
 - (ii) an assignment in contravention of this Agreement;
 - (iii) a change of corporate control, whether by transfer, issue, sale, assignment, bequest or other disposition of shares in, or merger or amalgamation of, the Client or any parent or subsidiary of the Client, or the entering into of any agreement, or by any other means, without the prior written consent of Eastbay in each instance, which consent may be unreasonably or arbitrarily withheld; or
 - (iv) if Client becomes insolvent or bankrupt or subject to the provisions of the Winding-up Act (Canada) or the Bankruptcy and Insolvency Act (Canada), or goes into liquidation, either voluntarily or under an order of a court of competent jurisdiction, or makes a general assignment for the benefit of its creditors, or otherwise acknowledges its insolvency.

10. TERMINATION

- (1) In the event that Client commits an Event of Default which is not cured within a period of thirty (30) days (except for a breach regarding failure to pay amounts due, in which case the period to cure shall be ten (10) days), Eastbay may terminate this Agreement.
- (2) In the event that Eastbay materially breaches any term or condition of this Agreement or any Purchase Agreement, and such breach continues for a period of thirty (30) days after notice from Client, Client may terminate this Agreement.
- (3) In the event of termination of this Agreement pursuant to Section 10(1), the Subscription shall be immediately cancelled and the following amounts shall become immediately due and payable to

Eastbay as liquidated damages:

- (i) any amounts owed to Eastbay under this Agreement or any Purchase Agreement before such termination; and
 - (ii) the monthly Subscription Fee multiplied by the remaining months in the Initial Term or Renewal Term, as applicable, which Subscription Fee, if not a fixed monthly amount, shall be calculated using Client's average monthly usage for the greater of the previous twelve (12) months or the number of completed months since the start of the Initial Term.
- (4) In the event of termination of this Agreement pursuant to Section 10(2), the Subscription shall be immediately cancelled and any amounts owed to Eastbay under this Agreement or any Purchase Agreement before such termination will be immediately due and payable.
- (5) Termination of this Agreement shall not limit either party from pursuing any other remedies available to it, including injunctive relief, nor shall such termination relieve Client's obligation to pay all fees that accrued prior to such termination. Sections 1(3), 2(2), 2(3), 5, 6, 8, 10, 11, 12, 13 and 14 shall survive termination of the Agreement.

11. NO WARRANTY

- (1) **Disclaimer.** THE SUBSCRIPTION AND THE ONLINE SERVICES ARE PROVIDED "AS IS" WITHOUT ANY WARRANTY WHATSOEVER. CLIENT RECOGNIZES THAT THE "AS IS" CLAUSE OF THIS AGREEMENT IS AN IMPORTANT PART OF THE BASIS OF THIS AGREEMENT, WITHOUT WHICH EASTBAY WOULD NOT HAVE AGREED TO ENTER INTO THIS AGREEMENT. EASTBAY DOES NOT AND CANNOT WARRANT THE PERFORMANCE OR RESULTS OBTAINED BY CLIENT IN USING THE SUBSCRIPTION AND THE ONLINE SERVICES, OR THAT THE SUBSCRIPTION AND THE ONLINE SERVICES WILL MEET CLIENT'S REQUIREMENTS OR THAT THE DELIVERY OF THE SUBSCRIPTION AND THE ONLINE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE. EASTBAY EXPRESSLY DISCLAIMS ALL REPRESENTATIONS, WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY, REGARDING THE SUBSCRIPTION AND THE ONLINE SERVICES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE AND INFRINGEMENT. NO REPRESENTATION OR OTHER AFFIRMATION OF FACT, REGARDING THE SUBSCRIPTION AND THE ONLINE SERVICES SHALL BE DEEMED A WARRANTY FOR ANY PURPOSE OR GIVE RISE TO ANY LIABILITY OF EASTBAY WHATSOEVER. CLIENT ACKNOWLEDGES THAT IT HAS RELIED ON NO WARRANTIES.

12. INDEMNITY

- (1) **By Client.** Client shall indemnify and defend Eastbay against any third party claims: (a) resulting from Client's use of the Online Services; (b) that any Client Content infringes or violates any rights of third parties, including without limitation, rights of publicity, rights of privacy, intellectual property, trade secrets or licences; or (c) arising from or relating to Client's or its users' failure to comply with this Agreement.
- (2) **Mutual Indemnity.** Each party ("**Indemnifying Party**") shall indemnify and hold the other party ("**Indemnified Party**") harmless against any third party claim, including costs and reasonable lawyer's fees, in which the Indemnified Party is named as a result of the negligent or the intentional acts or omissions by the Indemnifying Party, its employees or agents, while performing its

obligations under this Agreement. This indemnification obligation is contingent upon the Indemnified Party providing the Indemnifying Party with prompt written notice of such claim, information, all reasonable assistance in the defence of such action, and sole authority to defend or settle such claim.

13. LIMITATION OF LIABILITY

EXCEPT FOR THE INDEMNIFICATION FOR THIRD PARTY CLAIMS PROVIDED IN SECTION 12, EASTBAY'S MAXIMUM LIABILITY FOR ANY ACTION ARISING UNDER THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION AND WHETHER IN TORT, CONTRACT OR OTHER FORM OF LIABILITY, SHALL IN NO EVENT EXCEED THE FEES PAID BY CLIENT DURING THE ONE-YEAR PERIOD PRECEDING NOTICE TO EASTBAY OF CLIENT'S LOSS. IN NO EVENT SHALL EASTBAY BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION, LOST DATA, LOST PROFITS, OPPORTUNITIES OR CONTRIBUTIONS, LOSS OF USE, GOODWILL, BUSINESS INTERRUPTION, OR OTHER PECUNIARY OR NON-PECUNIARY LOSS, HOWEVER ARISING, EVEN IF EASTBAY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE PARTIES AGREE TO THE ALLOCATION OF RISK SET FORTH HEREIN. CLIENT ACKNOWLEDGES THAT THE FEES PAID BY IT REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT EASTBAY WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS ON ITS LIABILITY.

14. GENERAL

- (1) **Notices.** Any notice or other communication required or permitted to be given in this Agreement shall be in writing and shall be delivered in person, transmitted by electronic mail or sent by registered mail, charges prepaid, to the addresses contained in the Purchase Agreement. Any such notice or other communication shall be deemed to have been given and received on the day on which it was delivered or transmitted or, if mailed, on the third business Day following the date of mailing; provided, however, that if at the time of mailing or within three business days thereafter there is or occurs a labour dispute or other event that might reasonably be expected to disrupt the delivery of documents by mail, any notice or other communication hereunder shall be delivered or transmitted by means of electronic mail as described. Any party may at any time change its address for service from time to time by giving notice to the other parties in accordance with this Section 14(1).
- (2) **Assignment.** Neither party shall assign this Agreement without the prior written consent of the other party, which consent may be unreasonably withheld. Any purported assignment in contravention of this Section 14(2) is null and void. Subject to the foregoing, this Agreement will bind and enure to the benefit of any permitted successors or assigns.
- (3) **Entire Agreement.** This Agreement together with the Purchase Agreement (including any reference to such other agreements, documents, and/or policies incorporated herein or therein) constitutes the entire agreement between the parties with respect to all of the matters herein and that this Agreement supersedes all prior agreement or contemporaneous agreements or representations, written or oral, regarding such matters.
- (4) **Amendments.** Except as expressly provided in this Agreement, no amendment, supplement, restatement, replacement or termination of any provision of this Agreement is binding unless it is in writing and signed the parties.

- (5) **Waiver.** No waiver of any provision of this Agreement is binding unless it is in writing and signed by all the parties to this Agreement entitled to grant the waiver. No failure to exercise and no delay in exercising, any right or remedy, under this Agreement will be deemed to be a waiver of that right or remedy. No waiver of any breach of any provision of this Agreement will be deemed to be a waiver of any subsequent breach of that provision.
- (6) **Severability.** If any Section or any portion of any Section of this Agreement is determined to be unenforceable or invalid for any reason whatsoever that unenforceability or invalidity shall not affect the enforceability or validity of the remaining portions of this Agreement and such unenforceable or invalid Section or portion thereof shall be severed from the remainder of this Agreement.
- (7) **Governing Law.** All questions concerning the validity, interpretation and performance of this Agreement and each of the documents contemplated by or delivered under or in connection with this Agreement shall be governed by and decided in accordance with the laws of the Province of Ontario, as such laws are applied to contracts between Ontario residents that are entered into and performed entirely within the Province of Ontario.
- (8) **Jurisdiction and Venue.** The parties hereby submit and consent to the exclusive jurisdiction of any court located within the Province of Ontario and irrevocably agree that all actions or proceedings relating to this Agreement, shall be litigated in such courts, and each of the parties waives any objection which it may have based on improper venue or *forum non conveniens* to the conduct of any such action or proceeding in such court.
- (9) **Headings for Convenience Only.** The division of this Agreement into sections, subsections, paragraphs, subparagraphs and clauses and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.
- (10) **Number and Gender.** Unless otherwise specified, words importing the singular include the plural and vice versa and words importing gender include all genders.

Schedule A

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| Client's Initials |

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.
- 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.

By signing this form you acknowledge these terms : _____ Date: _____

