

This Product Schedule (the “**Schedule**”), between Intermedia Technologies Company Limited (“**Intermedia**”) and the customer entity purchasing any of the Microsoft 365 Services (as defined below) (“**You**”) is effective immediately and is issued pursuant to and incorporates by reference the terms and conditions of the Master Service Agreement (the “**MSA**”) by and between Intermedia and You.

All capitalized terms in this Schedule shall have the same meaning as set forth in the MSA, unless defined herein. In the event of a conflict or inconsistency between the terms of the MSA and the terms of this Schedule, the latter shall supersede and govern.

#### 1. Products Covered

The terms of this Schedule apply to all Microsoft 365 (formerly Office 365) services, including without limitation Microsoft 365 email and productivity applications such as Microsoft 365 Apps (collectively, the “**Microsoft 365 Services**”) purchased by You from Intermedia.

#### 2. Transition to Microsoft New Commerce Experience (“NCE”) Platform

Beginning in early 2022, Microsoft is transitioning all Microsoft 365 Services to its New Commerce Experience (NCE) platform.

Legacy Subscriptions:

- Subscriptions to Microsoft 365 Services created on Microsoft’s legacy platform (i.e., not on the NCE platform) before March 1, 2022 are defined as “**Legacy Subscriptions**.” The subscription type for each of Your Microsoft 365 Service subscriptions is displayed in Intermedia’s HostPilot® control panel, partner portal or other Intermedia-provided web portal.
- Legacy Subscriptions have a twelve (12) month term, billed monthly.
- Legacy Subscriptions with a renewal date on or after July 1, 2022 must be transitioned to NCE Subscriptions (as defined below) on or before their renewal date.
- Subscription renewal dates are displayed in Intermedia’s HostPilot® control panel, partner portal or other Intermedia-provided web portal.

NCE Subscriptions:

- Subscriptions to Microsoft 365 Services created on Microsoft’s NCE platform are “**NCE Subscriptions**” (as defined below). The subscription type for each of Your Microsoft 365 Service subscriptions is displayed in Intermedia’s HostPilot® control panel, partner portal or other Intermedia-provided web portal.
- All new subscriptions to Microsoft 365 Services created on or after March 1, 2022, and all renewals subscriptions to Microsoft 365 Services on or after July 1, 2022 (in each case unless otherwise labeled and displayed in Intermedia’s HostPilot® control panel, partner portal or other Intermedia-provided web portal), must be created on the NCE platform and will be subject to the terms and conditions applicable to NCE Subscriptions.
- NCE Subscriptions are available as either monthly or annual term commitments, billed monthly. Longer terms may be available in the future.
- NCE Subscriptions cannot be cancelled after the first 72 hours following purchase (i.e., the purchaser is committed to pay the service fees for the Microsoft 365 Services for the full duration of the NCE Subscription).
- Subscription renewal dates are displayed in Intermedia’s HostPilot control panel, partner portal or other Intermedia-provided web portal.

Below is a summary of the differences in certain key terms between Legacy Subscriptions and NCE Subscriptions:

	LEGACY SUBSCRIPTIONS	NCE SUBSCRIPTIONS
<b>Subscription Terms</b>	Annual (paid monthly)	Available in month-to-month or annual (paid monthly) subscriptions
<b>Cancellations</b>	Cancel at anytime	Cannot cancel after the first 72 hours following purchase. Customer is responsible for all fees for the term of the subscription. According to Microsoft, there are no exceptions to this rule.
<b>Changes to Seats</b>	Decrease or increase seats with no cancellation fees <sup>1</sup>	<ul style="list-style-type: none"> <li>• Can increase seats at any time</li> <li>• Cannot decrease seats</li> <li>• Plan upgrades within product families supported</li> <li>• Plan downgrades not allowed</li> </ul>
<b>Pricing</b>	Annual price locked for length of 12-month term	<ul style="list-style-type: none"> <li>• Annual price locked for length of 12-month term</li> <li>• Monthly subscriptions priced at 20% premium over annual subscription (and price is not locked beyond current month of service)</li> </ul>

### 3. Available Plans and Effect of Termination

#### Legacy Subscriptions:

Section 2.2(b) of the MSA does not apply to Legacy Subscriptions of Microsoft 365 Services and is replaced by the following terms:

Legacy Subscriptions are all structured as Annual Plans with a single term of twelve (12) months. Legacy Subscriptions that are terminated during such twelve (12) month term will not incur an early termination charge<sup>1</sup>. Legacy Subscriptions will not renew on the same terms upon expiration of such twelve (12) month term. Rather, upon expiration of such twelve (12) month term, each Legacy Subscription must be converted into either an Annual NCE Subscription or a Monthly NCE Subscription (each as defined below), at Your option. If, at the time of such expiration of such twelve (12) month term, You fail to select a specific NCE Subscription type, Your Legacy Subscription will automatically be renewed as a Monthly NCE Subscription.

Alternatively, You may select, at any time before the expiration of the twelve (12) month term of a Legacy Subscription, to migrate Your subscription into an NCE Subscription at such time. You may wish to do so prior to February 28, 2022, for example, to preserve

<sup>1</sup> Based on Microsoft's current practice, as of the date of this Schedule, of not charging early termination fees to Intermedia for the termination or cancellation of a Legacy Subscription. Microsoft's practice may be changed at any time with little or no notice, and Intermedia reserves the right to charge early termination fees in connection with any Legacy Subscriptions that are cancelled prior to their expiration, including Your subscription described by this Schedule. To the extent practical, Intermedia will use commercially reasonable efforts to provide You with advance notice of any change in Intermedia's policy with respect to charging early termination fees in connection with the cancellation of any Legacy Subscriptions.

current service pricing for a longer period than Your current license term, before pricing increases take effect for Your applicable Microsoft 365 Services.

### NCE Subscriptions

**Effective on March 1, 2022**, all new subscriptions to a Microsoft 365 Service must be licensed under the Microsoft NCE platform. **Effective on July 1, 2022**, all Legacy Subscriptions, on their renewal date, must be licensed under the Microsoft NCE platform. All such subscriptions on the NCE platform will be available as either an annual plan (i.e., an initial term of twelve (12) months, renewing for twelve (12) month periods thereafter) (an “**Annual NCE Subscription**”) or a monthly plan (i.e., an initial term of one (1) month, renewing for one (1) month periods thereafter) (a “**Monthly NCE Subscription**”; Annual NCE Subscriptions and Monthly NCE Subscriptions are collectively referred to as “**NCE Subscriptions**”). You will have the option of selecting whether You desire Annual NCE Subscriptions or Monthly NCE Subscriptions at the time of purchase (or at the time of renewal). Section 2.2(b) of the MSA does not apply to NCE Subscriptions to Microsoft 365 Services and is replaced by the following terms:

- Annual NCE Subscriptions:

Annual NCE Subscriptions for Microsoft 365 Services constitute a one-year commitment by You to purchase and pay for the applicable Microsoft 365 Service licenses and may not be terminated by You until the applicable license expiration date. You are responsible for all fees and charges under an Annual NCE Subscription through the full duration of the then-current twelve (12) month term (i.e., until the license expiration date) of Your Annual NCE Subscriptions to Microsoft 365 Services (“**Full Contract Fees**”). If You choose to terminate an Annual NCE Subscription for a Microsoft 365 Service prior to its expiration, Intermedia reserves the right to immediately collect from You all Full Contract Fees under the then-current Annual NCE Subscription not previously paid by You to Intermedia. Once You select an Annual NCE Subscription for a Microsoft 365 Service license, such license will thereafter automatically renew as an Annual NCE Subscription for twelve (12) month renewal periods until terminated or modified in accordance with the terms of Your agreement with Intermedia, including without limitation this Schedule.

- Monthly NCE Subscriptions:

Monthly NCE Subscriptions are available for Microsoft 365 Services at a higher monthly price than Annual NCE Subscriptions. Monthly NCE Subscriptions for Microsoft 365 Services constitute a month-to-month arrangement to purchase and pay for the applicable Microsoft 365 Service licenses, and You may terminate any Monthly NCE Subscription for Microsoft 365 Services for any reason by following the termination procedure located within the Account section of the administrative control panel at any time. In the event of any such termination, (a) the termination will be effective as of the license expiration date of the then-current Monthly NCE Subscription for the applicable Microsoft 365 Service; (b) You will be responsible for all fees and charges for such Monthly NCE Subscriptions through and including the license expiration date of such subscriptions; and (c) You will not be entitled to any refund for fees that have previously been paid. A Monthly NCE Subscription for a Microsoft 365 Service license will automatically renew as a Monthly NCE Subscription for one (1) month renewal periods until terminated or modified in accordance with the terms of Your agreement with Intermedia, including without limitation this Schedule.

#### 4. Additional User Licenses and Plan Upgrades/Downgrades

##### Additional User Licenses

If You purchase additional user licenses of a Microsoft 365 Service for which You have an existing subscription (at the time of such additional purchase), the additional licenses being purchased will be structured to be coterminous with (i.e., have the same license expiration date as) Your existing Annual NCE Subscriptions or Monthly NCE Subscriptions (as applicable) for such Microsoft 365 Service.

##### Plan Upgrades During the Term of a Subscription

The Microsoft NCE platform provides an upgrade path allowing You to upgrade from your current Microsoft 365 Service subscription to a more advanced Microsoft 365 Service subscription. Microsoft, in its sole and absolute discretion, will determine what Microsoft 365 Service subscriptions are eligible to be upgraded and what Microsoft 365 Service subscription changes qualify as an upgrade.

For requested Microsoft 365 Service subscription upgrades, You must contact Intermedia to determine Your eligibility for an upgrade and to properly implement such upgrade. You may not incur any early termination fees in connection with a qualified upgrade, subject to Microsoft's policies in effect at the time of such upgrade. For a valid Microsoft 365 Service subscription upgrade, the new Annual NCE Subscription for the upgraded Microsoft 365 Service will be coterminous with the previous subscription from which it was upgraded and subject the terms and conditions of Annual NCE Subscriptions set forth herein.

##### Plan Downgrades During the Term of a Subscription

If You downgrade an Annual NCE Subscription for a Microsoft 365 Service to an Annual NCE Subscription for a lesser plan for the same Microsoft 365 Service, such downgrade will constitute a cancellation of the existing Annual NCE Subscription, and You will incur early termination fees in connection with such downgrade in accordance with the terms and conditions of Annual NCE Subscriptions set forth herein. Microsoft, in its sole and absolute discretion, will determine what Microsoft 365 Service subscription changes constitute a downgrade.

#### 5. Restrictions

You shall not, for yourself or through any affiliate, agent, or other third party, extract, remove or reuse images, software, or commercial licenses of Intermedia without Intermedia's specific prior written consent. You shall regularly and accurately report the number of users of the Microsoft 365 Services under your subscription described hereby.

Intermedia has the right to sell Microsoft 365 Services to purchasers only in certain countries (the "**Territory**") (note: as of the date of this Schedule, with respect to the United Kingdom and the European Union, Intermedia only has the right to sell Microsoft 365 Services to direct customers). By purchasing the Services, You represent, warrant and covenant that (a) You are providing complete and accurate data to Intermedia regarding the location of Your business and, as applicable, end customers for the Services; and (b) You are not placing orders or submitting payments with respect to Microsoft 365 Services for customers located outside of the Territory.

Intermedia will have the right during the term of the MSA, at its own expense and not more than once each calendar year, to audit Your processes, procedures, records, and other documentation relevant to establish Your compliance with the restrictions in this Section 5; provided, however, that: (a) any such inspection and audit will be conducted at Your place of business during regular business hours with reasonable notice of the audit, in such a manner as not to interfere with Your normal business activities, and (b) if any audit should disclose a noncompliance by You, then You shall promptly take

such actions as necessary to comply with this Section 5, pay all fees and charges associated with such noncompliance and reimburse Intermedia for the reasonable costs associated with the performance of such audit, and Intermedia reserves the right to terminate the MSA or this Schedule immediately due to Your material breach.

## **6. Microsoft Terms**

By purchasing a subscription to Microsoft 365 Services, and continuing to use such Services, You (i) acknowledge that Intermedia's ability to provide Microsoft 365 Services to You is contingent upon your continued compliance with certain Microsoft terms and conditions and (ii) agree to the Microsoft Customer Agreement (the version of the Microsoft Customer Agreement for the United Kingdom as of the date of this Schedule is attached hereto as Appendix A; current versions applicable to all countries can be found at: <https://www.microsoft.com/licensing/docs/customeragreement>) and all other policies, terms and agreements referenced therein, which are generally available on Microsoft's website at: <http://www.microsoftvolumelicensing.com/> .

## **7. Service Level Agreement**

The Intermedia SLA does not cover Microsoft 365 Services. Intermedia does not offer a separate Service Level Agreement for Microsoft 365 Services. The "SLA" or "Service Level Agreement," as those terms are used in the MSA, refers to the Service Level Agreement offered by Microsoft with respect to Microsoft 365 Services, as it may be in effect from time to time. Please refer to <http://www.microsoftvolumelicensing.com/> for the current Microsoft SLA for Microsoft 365 Services.

## **8. Pricing**

Details of service-specific pricing available to You for Microsoft 365 Services can be accessed via the HostPilot control panel, partner portal or other Intermedia-provided web portal.

## **9. Applicable to Microsoft 365 Email Only: Administrative Access to Microsoft Online Services account (including Your Microsoft 365 account)**

In order for Intermedia to administer Your Microsoft 365 email services, You must grant administrative access to Intermedia to Your Microsoft Online Services account (including your Microsoft 365 account). This provides Intermedia with broad rights to access Your account. You will be required to acknowledge and agree to Microsoft's terms, conditions and disclaimers in connection with approving Intermedia's request to be granted administrative access rights with respect to Your account, including without limitation the applicable terms set forth in the Microsoft Customer Agreement. Further, You agree that Intermedia will not be held responsible or made liable for any loss of personal data and/or damages caused in connection with or as a result of Intermedia's status as an administrator of Your Microsoft Online Services account or any actions performed by Intermedia in such role, unless such loss or damages are the direct result of Intermedia's gross negligence or willful misconduct. You may disable Intermedia's administrative access rights at any time through the Microsoft portal; however, Intermedia will be unable to administer Your Microsoft 365 email services at any time that Intermedia does not hold administrative access rights to Your Microsoft Online Services account.

*HostPilot and The Business Cloud are either trademarks or registered trademarks of Intermedia.net, Inc. in the United States and/or other countries. Microsoft and Microsoft 365 are either trademarks or registered trademarks of Microsoft Corporation in the United States and/or other countries.*

## APPENDIX A. MICROSOFT CUSTOMER AGREEMENT

# Microsoft Customer Agreement

This Microsoft Customer Agreement (the “Agreement”) is between Customer and Microsoft and consists of these General Terms, the applicable Use Rights and SLAs, and any additional terms Microsoft presents when an order is placed. This Agreement takes effect when the Customer accepts these General Terms. The individual who accepts these General Terms represents that he or she is authorized to enter into this Agreement on behalf of the Customer.

## General Terms

These General Terms apply to all of Customer’s orders under this Agreement. Capitalized terms have the meanings given under “Definitions.”

### ***License to use Microsoft Products***

- a. License grant.** Products are licensed and not sold. Upon Microsoft’s acceptance of each order and subject to Customer’s compliance with this Agreement, Microsoft grants Customer a nonexclusive and limited license to use the Products ordered as provided in the applicable Use Rights and this Agreement. These licenses are solely for Customer’s own use and business purposes and are nontransferable except as expressly permitted under this Agreement or applicable law.
- b. Duration of licenses.** Licenses granted on a subscription basis expire at the end of the applicable subscription period unless renewed. Licenses granted for metered Products billed periodically based on usage continue as long as Customer continues to pay for its usage of the Product. All other licenses become perpetual upon payment in full.
- c. Applicable Use Rights.** For perpetual licenses, the Use Rights in effect when Customer orders a Product will apply. For subscriptions, the Use Rights in effect at the start of each subscription period will apply. Customers with subscriptions for Software may use new versions released during the subscription period subject to the Use Rights in effect when those versions are released. For metered Products billed periodically based on usage, the Use Rights in effect at the start of each billing period will apply during that period. Microsoft may update the Use Rights periodically, but material adverse changes for a particular version will not apply during the applicable license, subscription, or billing period.
- d. End Users.** Customer will control access to and use of the Products by End Users and is responsible for any use of the Products that does not comply with this Agreement.
- e. Affiliates.** Customer may order Products for use by its Affiliates. If it does, the licenses granted to Customer under this Agreement will apply to such Affiliates, but Customer will have the sole right to enforce this Agreement against Microsoft. Customer will remain responsible for all obligations under this Agreement and for its Affiliates’ compliance with this Agreement.
- f. Reservation of Rights.** Microsoft reserves all rights not expressly granted in this Agreement. Products are protected by copyright and other intellectual property laws and international treaties. No rights will be granted or implied by waiver or estoppel. Rights to access or use a Product on a device do not give Customer any right to implement Microsoft patents or other Microsoft intellectual property in the device itself or in any other software or devices.
- g. Restrictions.** Except as expressly permitted in this Agreement or Product documentation, Customer must not (and is not licensed to):
  - (1) reverse engineer, decompile, or disassemble any Product, 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;
- (3) work around any technical limitations in a Product or restrictions in Product documentation;
- (4) separate and run parts of a Product on more than one device;
- (5) upgrade or downgrade parts of a Product at different times;
- (6) transfer parts of a Product separately; or
- (7) distribute, sublicense, rent, lease, or lend any Products, in whole or in part, or use them to offer hosting services to a third party.

- h. License transfers.** Customer may only transfer fully-paid, perpetual licenses under this Agreement to (1) an Affiliate or (2) a third party solely in connection with the transfer of hardware to which, or employees to whom, the licenses have been assigned 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 must uninstall and discontinue using the licensed Product and render any copies unusable. Customer must notify Microsoft of a license transfer and provide the transferee a copy of these General Terms, the applicable Use Rights and any other documents necessary to show the scope, purpose and limitations of the licenses transferred. Nothing in this Agreement prohibits the transfer of Software to the extent allowed under applicable law if the distribution right has been exhausted.
- i. Customer Eligibility.** Customer agrees that if it is purchasing academic, government or nonprofit offers, Customer meets the respective eligibility requirements (<https://aka.ms/eligibilitydefinition>). Microsoft reserves the right to verify eligibility and suspend product use if requirements are not met.

### ***Non-Microsoft Products.***

Non-Microsoft Products are provided under separate terms by the Publishers of such products. Customer will have an opportunity to review those terms prior to placing an order for a Non-Microsoft Product through a Microsoft online store or Online Service. Microsoft is not a party to the terms between Customer and the Publisher. Microsoft may provide Customer's contact information and transaction details to the Publisher. Microsoft makes no warranties and assumes no responsibility or liability whatsoever for Non-Microsoft Products. Customer is solely responsible for its use of any Non-Microsoft Product.

### ***Verifying compliance.***

Customer must keep records relating to Products it and its Affiliates use or distribute. At Microsoft's expense, Microsoft may verify Customer's and its Affiliates' compliance with this Agreement at any time upon 30 days' notice. To do so, Microsoft may engage an independent auditor (under nondisclosure obligations) or ask Customer to complete a self-audit process. Customer must promptly provide any information and documents that Microsoft or the auditor reasonably requests related to the verification and access to systems running the Products. If verification or self-audit reveals any unlicensed use, Customer must, within 30 days, order sufficient licenses to cover the period of its unlicensed use. Without limiting Microsoft's other remedies, if unlicensed use is 5% or more of Customer's total use of all Products, Customer must reimburse Microsoft for its costs incurred in verification and acquire sufficient licenses to cover its unlicensed use at 125% of the then-current Customer price or the maximum allowed under applicable law, if less. All information and reports related to the verification process will be Confidential Information and used solely to verify compliance.

### ***Privacy.***

- a. Personal Data.** Customer consents to the processing of Personal Data by Microsoft and its Affiliates, and their respective agents and subcontractors, as provided in this Agreement. Before providing

Personal Data to Microsoft, Customer will obtain all required consents from third parties (including Customer's contacts, Partners, distributors, administrators, and employees) under applicable privacy and data protection laws.

- b. Location of Personal Data.** To the extent permitted by applicable law, Personal Data collected under this Agreement may be transferred, stored and processed in the United States or any other country in which Microsoft or its Affiliates, or their respective agents and subcontractors, maintain facilities. Microsoft will abide by the requirements of European Economic Area and Swiss data protection law regarding the collection, use, transfer, retention, and other processing of Personal Data from the European Economic Area and Switzerland.

## ***Confidentiality.***

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

## ***Product warranties.***

- a. Limited warranties and remedies.**

- (1) 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 described in the SLA.
- (2) Software.** Microsoft warrants that the Software version that is current at the time will perform substantially as described in the applicable Product documentation for one year from the date Customer acquires a license for that version. If it does not, and Customer notifies Microsoft within the warranty term, Microsoft will, at its option, (a) return the price Customer paid for the Software license or (b) repair or replace the Software.



The remedies above are Customer's sole remedies for breach of the warranties in this section. Customer waives any 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, trial, preview, or prerelease products, or to components of Products that Customer is permitted to redistribute.
- c. Disclaimer.** **Except for the limited warranties above and subject to applicable law, Microsoft provides no other 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.**

### ***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 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 misappropriation or infringement, it may, at its option, either (1) modify or replace the Product with a functional equivalent or (2) terminate Customer's license and refund any license fees (less depreciation for perpetual licenses), including amounts paid in advance for unused consumption 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 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 and its Affiliates against any third-party claim to the extent it alleges that: (1) any Customer Data or Non-Microsoft Product 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, alone or in combination with anything else, violates the law or harms a third party.

### ***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 Products during the term of the applicable licenses, subject to the following:

- a. Subscriptions.** For Products ordered on a subscription basis, Microsoft's maximum liability to Customer for any incident giving rise to a claim will not exceed the amount Customer paid for the Product during the 12 months before the incident.
- 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 loss of anticipated savings (in either case whether direct or indirect), indirect, incidental, special, punitive, or consequential damages,

loss of use, loss of business information, or interruption of business, however caused or on any theory of liability.

- d. **Exceptions.** No limitation or exclusions will apply to liability arising out of either party's (1) confidentiality obligations (except for liability related to Customer Data, which will remain subject to the limitations and exclusions above); (2) defense obligations; or (3) violation of the other party's intellectual property rights.

**Liability for death or personal injury.** In any case where the law of England and Wales applies per the terms of the Agreement or the determination of a court, nothing in this Agreement shall exclude liability for death or personal injury caused by negligence or liability for fraudulent misrepresentation

## ***Partners.***

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

## ***Pricing and payment.***

If Customer orders from a Partner, the Partner will set Customer's pricing and payment terms for that order, and Customer will pay the amount due to the Partner. Pricing and payment terms related to orders placed by Customer directly with Microsoft are set by Microsoft, and Customer will pay the amount due as described in this section.

- a. **Payment method.** Customer must provide a payment method or, if eligible, choose to be invoiced for purchases made on its account. By providing Microsoft with a payment method, Customer (1) consents to Microsoft's use of account information regarding the selected payment method provided by the issuing bank or applicable payment network; (2) represents that it is authorized to use that payment method and that any payment information it provides is true and accurate; (3) represents that the payment method was established and is used primarily for commercial purposes and not for personal, family or household use; and (4) authorizes Microsoft to charge Customer using that payment method for orders under this Agreement.
- b. **Invoices.** Microsoft may invoice eligible Customers. Customer's ability to elect payment by invoice is subject to Microsoft's approval of Customer's financial condition. Customer authorizes Microsoft to obtain information about Customer's financial condition, which may include credit reports, to assess Customer's eligibility for invoicing. Unless the Customer's financial statements are publicly available, Customer may be required to provide their balance sheet, profit and loss and cash flow statements to Microsoft. Customer may be required to provide security in a form acceptable to Microsoft to be

eligible for invoicing. Microsoft may withdraw Customer's eligibility at any time and for any reason. Customer must promptly notify Microsoft of any changes in its company name or location and of any significant changes in the ownership, structure, or operational activities of the organization.

- c. **Invoice Payment terms.** Each invoice will identify the amounts payable by Customer to Microsoft for the period corresponding to the invoice. Customer will pay all amounts due within thirty (30) calendar days following the invoice date.
- d. **Late Payment.** Microsoft may, at its option, assess a late fee on any payments to Microsoft that are more than fifteen (15) calendar days past due at a rate of two percent (2%) of the total amount payable, calculated and payable monthly, or the highest amount allowed by law, if less.
- e. **Cancellation fee.** If a subscription permits early termination and Customer cancels the subscription before the end of the subscription or billing period, Customer may be charged a cancellation fee.
- f. **Recurring Payments.** For subscriptions that renew automatically, Customer authorizes Microsoft to charge Customer's payment method periodically for each subscription or billing period until the subscription is terminated. By authorizing recurring payments, Customer authorizes Microsoft to process such payments as either electronic debits or fund transfers, or as electronic drafts from the designated bank account (in the case of Automated Clearing House or similar debits), as charges to the designated card account (in the case of credit card or similar payments) (collectively, "Electronic Payments"). If any payment is returned unpaid or if any credit card or similar transaction is rejected or denied, Microsoft or its service providers reserve the right to collect any applicable return item, rejection or insufficient funds fee to the maximum extent permitted by applicable law and to process any such fees as an Electronic Payment or to invoice Customer for the amount due.
- g. **Taxes.** Microsoft prices exclude applicable taxes unless identified as tax inclusive. If any amounts are to be paid to Microsoft, Customer shall also pay any applicable value added, goods and services, sales, gross receipts, or other transaction taxes, fees, charges, or surcharges, or any regulatory cost recovery surcharges or similar amounts that are owed under this Agreement and that Microsoft is permitted to collect from Customer. Customer shall be responsible for any applicable stamp taxes and for all other taxes that it is legally obligated to pay including any taxes that arise on the distribution or provision of Products by Customer to its Affiliates. Microsoft shall be responsible for all taxes based upon its net income, gross receipts taxes imposed in lieu of taxes on income or profits, and taxes on its property ownership.

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

### ***Term and termination.***

- a. **Term.** This Agreement is effective until terminated by a party, as described below.
- b. **Termination without cause.** Either party may terminate this Agreement without cause on 60 days' notice. Termination without cause will not affect Customer's perpetual licenses, and licenses granted on a subscription basis will continue for the duration of the subscription period(s), subject to the terms of this Agreement.

- c. Termination for cause.** Without limiting other remedies it may have, either party may terminate this Agreement on 30 days' notice for material breach if the other party fails to cure the breach within the 30-day notice period. Upon such termination, the following will apply:
- (1) All licenses granted under this Agreement will terminate immediately except for fully-paid, perpetual licenses.
  - (2) All amounts due under any unpaid invoices shall become due and payable immediately. For metered Products billed periodically based on usage, Customer must immediately pay for unpaid usage as of the termination date.
  - (3) If Microsoft is in breach, Customer will receive a credit for any subscription fees, including amounts paid in advance for unused consumption for any usage period after the termination date.
- d. Suspension.** Microsoft may suspend use of an Online Service without terminating this Agreement during any period of material breach. Microsoft will give Customer notice before suspending an Online Service when reasonable.
- e. Termination for regulatory reasons.** Microsoft may modify, discontinue, or terminate a Product in any country or jurisdiction where there is any current or future government regulation, obligation, or other requirement, that (1) is not generally applicable to businesses operating there; (2) presents a hardship for Microsoft to continue offering the Product without modification; or (3) causes Microsoft to believe these terms or the Product may conflict with any such regulation, obligation, or requirement. If Microsoft terminates a subscription for regulatory reasons, Customer will receive, as its sole remedy, a credit for any subscription fees, including amounts paid in advance for unused consumption for any usage period after the termination date.

### ***Miscellaneous.***

- a. Independent contractors.** The parties are independent contractors. Customer and Microsoft each may develop products independently without using the other's Confidential Information.
- b. Agreement not exclusive.** Customer is free to enter into agreements to license, use, and promote the products and services of others.
- c. Amendments.** Microsoft may modify this Agreement from time to time. Changes to the Use Rights will apply as provided in this Agreement. Changes to other terms will not apply until Customer accepts them. Microsoft may require Customer to accept revised or additional terms before processing a new order. Any additional or conflicting terms and conditions contained in a purchase order or otherwise presented by Customer are expressly rejected and will not apply.
- d. Assignment.** Either party may assign this Agreement to an Affiliate, but it must notify the other party in writing of the assignment. Customer consents to the assignment to an Affiliate or third party, without prior notice, of any rights Microsoft may have under this Agreement to receive payment and enforce Customer's payment obligations, and all assignees may further assign such rights without further consent. Any other proposed assignment of this Agreement must be approved by the non-assigning party in writing. Assignment will not relieve the assigning party of its obligations under the assigned Agreement. Any attempted assignment without required approval will be void.
- e. U.S. export.** 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 by U.S. and other governments related to Microsoft products, services, and technologies.
- f. Severability.** If any part of this Agreement is held to be unenforceable, the rest of the Agreement will remain in full force and effect.
- g. Waiver.** Failure to enforce any provision of this Agreement will not constitute a waiver. Any waiver must be in writing and signed by the waiving party.

- h. No third-party beneficiaries.** This Agreement does not create any third-party beneficiary rights except as expressly provided by its terms.
- i. Survival.** All provisions survive termination of this Agreement except those requiring performance only during the term of the Agreement.
- j. Notices.** Notices must be in writing and will be treated as delivered on the date received at the address, date shown on the return receipt, email transmission date, or date on the courier or fax confirmation of delivery. Notices to Microsoft must be sent to the following address:

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

Notices to Customer will be sent to the individual at the address Customer identifies on its account as its contact for notices. Microsoft may send notices and other information to Customer by email or other electronic form.

- k. Applicable law.** This Agreement will be governed by and construed in accordance with the laws of Ireland. The 1980 United Nations Convention on Contracts for the International Sale of Goods and its related instruments will not apply to this Agreement.
- l. Dispute resolution.** When bringing any action arising under this Agreement, the parties agree to the following exclusive venues:
  - (1)** If Microsoft brings the action, the venue will be where Customer has its headquarters.
  - (2)** If Customer brings the action against Microsoft or any Microsoft Affiliate located outside of Europe, the venue will be the state or federal courts in King County, State of Washington, USA.
  - (3)** If Customer brings the action against Microsoft or any Microsoft Affiliate located in Europe, and not also against Microsoft or a Microsoft Affiliate located outside of Europe, the venue will be the Republic of Ireland.

The parties consent to personal jurisdiction in the agreed venue. This choice of venue does not prevent either party from seeking injunctive relief in any jurisdiction with respect to a violation of intellectual property rights or confidentiality obligations.

- m. Order of precedence.** These General Terms will take precedence over any conflicting terms in other documents that are part of this Agreement that are not expressly resolved in those documents, except that conflicting terms in the Use Rights take precedence over these General Terms as to the applicable Products. Terms in the Online Services Terms take precedence over conflicting terms in the Product Terms. Terms in an amendment control over the amended document and any prior amendments concerning the same subject matter.
- n. Microsoft Affiliates and contractors.** Microsoft may perform its obligations under this Agreement through its Affiliates and use contractors to provide certain services. Microsoft remains responsible for their performance.
- o. Government procurement rules.** By accepting this agreement, Customer represents and warrants that (i) it has complied and will comply with all applicable government procurement laws and regulations; (ii) it is authorized to enter into this Agreement; and (iii) this Agreement satisfies all applicable procurement requirements.

## ***Definitions.***

"Administrator Data" means the information provided to Microsoft or its Affiliates during sign-up, purchase, or administration of Products.

"Affiliate" means any legal entity that controls, is controlled by, or is under common control with a party. "Control" means ownership of more than a 50% interest of voting securities in an entity or the power to direct the management and policies of an entity.

"Confidential Information" is defined in the "Confidentiality" section.

"Customer" means the entity identified as such on the account associated with this Agreement.

"Customer Data" means all data, including all text, sound, software, image or video files that are provided to Microsoft or its Affiliates by, or on behalf of, Customer and its Affiliates through use of Online Services.

"End User" means any person Customer permits to use a Product or access Customer Data.

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

"Microsoft" means Microsoft Ireland Operations Limited.

"Non-Microsoft Product" means any third-party-branded software, data, service, website or product, unless incorporated by Microsoft in a Product.

"Online Services" means Microsoft-hosted services to which Customer subscribes under this Agreement. It does not include software and services provided under separate license terms.

"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.

"Partner" means a company Microsoft has authorized to distribute Products to Customer.

"Personal Data" means any information relating to an identified or identifiable natural person.

"Product" means all Software and Online Services identified in the Product Terms that Microsoft offers under this Agreement, including previews, prerelease versions, updates, patches and bug fixes from Microsoft. Product availability may vary by region. "Product" does not include Non-Microsoft Products.

"Product Terms" means the document that provides information about Products available under this Agreement. The Product Terms document is published on the Licensing Site and is updated from time to time.

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

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

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

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

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

"Use Rights" means the license terms and 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. License terms for all Products are published in the Product Terms. Terms of service for Online Services are published in the Online Services Terms.

## **Purchase Agreement with the "Microsoft Sales Affiliate" ( )**

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

- a. **Licensing terms excluded.** All terms pertaining solely to licensing and support of such Products are deemed excluded. Microsoft is the licensor of all Products, and the Agreement with Microsoft will continue to apply to any Products ordered from a Microsoft Sales Affiliate. Microsoft Sales Affiliate does not have authority to bind or impose any obligation or liability on any other Microsoft entity.
- b. **Pricing and payment.** Microsoft Sales Affiliate will determine pricing for the applicable Products. All terms pertaining to pricing and payment apply to the Purchase Agreement. If Customer is eligible for invoicing, Microsoft Sales Affiliate will send invoices to the billing contact identified on Customer's account (with taxes added where applicable), and Customer must pay the amount due to Microsoft Sales Affiliate according to the payment instructions on the invoice. Customer's failure to make any payment due to Microsoft Sales Affiliate by the required date will constitute a material breach of both the Purchase Agreement and the Agreement with Microsoft. In the event Microsoft terminates the Agreement for cause, all amounts due under any unpaid invoices shall become due and payable to Microsoft Sales Affiliate immediately.
- c. **Warranties, defense, and limitations of liability.** All warranties, obligations to defend against third-party claims and limitations of liability shall also apply to claims under the Purchase Agreement. Microsoft, as licensor, is solely responsible for claims relating to the performance of Products and defense of third-party claims (including claims of intellectual property infringement). **Microsoft Sales Affiliate is not liable for such claims and, to the maximum extent permitted by applicable law, expressly disclaims all express, implied and statutory warranties and liability for such claims, including, without limitation, warranties of quality, title, non-infringement, merchantability, and fitness for a particular purpose.**
- d. **Applicable law.** The applicable law will be that of the jurisdiction where the Microsoft Sales Affiliate has its headquarters.
- e. **Additional terms.** Any additional terms that Microsoft Sales Affiliate presents in connection with an order are deemed included. Any additional or conflicting terms and conditions contained in a purchase order or otherwise presented by Customer are expressly rejected and will not apply.