

# Microsoft Products and Services Agreement

This Microsoft Products and Services Agreement (the “Agreement”) is entered into between Customer and Microsoft. It includes the General Terms, the Professional Services Terms (if any), the Purchasing Account registration (if any), Use Rights, Licensing Manual and all documents referenced within those documents.

## General Terms

These General Terms apply to all of Customer’s Purchasing Accounts. Capitalized terms have the meanings given in the “Definitions” section below.

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

All rights granted under this Agreement are non-exclusive and non-transferable (except as set forth in the “License transfers” section in the Purchasing Account registration) 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 that Software, even if Customer chooses to use an earlier version. If the Software is covered by Software Assurance, when a new version is released, Customer may, at its option, (1) install and use the new version under the Use Rights in effect when the new version is released; or (2) continue to use the earlier version under the Use Rights applicable to either the earlier version or the new version.
  - (ii) **Temporary and perpetual licenses.** Licenses available on a subscription basis, rights to Online Services, and most Software Assurance rights are temporary. For all other licenses, the right to use Software becomes perpetual only when all applicable payments for that Software have been made and any applicable Software Assurance term has expired. To obtain rights for a newer version of Software through Software Assurance, Customer must maintain continuous Software Assurance coverage for its licenses for that Software. Licenses for a new version of Software obtained through Software Assurance replace any licenses for the earlier version.
- 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 described in the Online Services Terms, failure to pay amounts due, or failure to respond to a claim of alleged infringement. Microsoft will give Customer notice before suspending an Online Service when reasonable, including 30 days’ notice of a suspension for non-payment. Microsoft may de-provision seats for Online Services that Customer has self-provisioned if Customer does not promptly submit a reconciliation order for those seats.
- c. **Fixes.** Each Fix is licensed under the same terms as the Product to which it applies. If a Fix is not provided for a specific Product, any use rights Microsoft provides with the Fix will apply.
- d. **Affiliates’ rights.** Customer may sublicense its rights to use Products to its Affiliates, but Customer’s Affiliates may not sublicense these rights. Customer is responsible for ensuring its Affiliates’

compliance with this Agreement. Customer must notify Microsoft promptly if any Affiliate ceases to be an Affiliate of the Agreement Administrator.

- e. **Restrictions.** Customer must 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. Except as expressly permitted in this Agreement, a Supplemental Agreement or Product documentation, Customer must not (and is not licensed to): (1) separate and run parts of a Product or Fix on more than one device, upgrade or downgrade parts of a Product or Fix at different times, or transfer parts of a Product or Fix separately; or (2) distribute, sublicense, rent, lease, lend any Products or Fixes, in whole or in part, or use them to offer hosting services to a third party.
- f. **Reservation of rights.** Products and Fixes 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.
- 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. Additional details about the process are included in the Licensing Manual.
- (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 list and customer price level. The unlicensed use percentage is based on the total number of licenses purchased for current use compared to 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 Customers operations.

## ***2. Privacy and compliance with Laws.***

- a. Customer consents to the processing of personal information by Microsoft and its agents to facilitate the subject matter of this Agreement and any Supplemental Agreement. Customer will obtain all required consents from third parties (including Customer's contacts, resellers, distributors, administrators, and employees) under applicable privacy and data protection laws before providing personal information to Microsoft.
- b. Personal information collected under this Agreement (1) may be transferred, stored and processed in the United States or any other country in which Microsoft or its service providers maintain

facilities and (2) will be subject to the privacy terms specified in the Use Rights. 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.

- c. **U.S. export.** Products and Fixes 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.

### ***3. Confidentiality.***

“Confidential Information” is non-public information that is designated “confidential” or that a reasonable person should understand is confidential, including Customer Data and the terms of Microsoft agreements. The Online Services Terms may provide additional obligations for, and limitations on disclosure and use of, Customer Data. Confidential Information does not include information that (1) becomes publicly available without a breach of this Agreement, (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.

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 that Confidential Information to third parties, except to its employees, Affiliates, contractors, advisors and consultants (“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 the Confidential Information by its Representatives and, in the event of discovery of any unauthorized use or disclosure, must promptly notify the other party.

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.

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.

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.

### ***4. Product warranties.***

#### **a. Limited warranties and remedies.**

- (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, trial, preview, pre-release or beta products, or to components of Products that Customer is permitted to redistribute.

- c. **Disclaimer.** Except for the limited warranties above, 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.

### ***5. 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, at 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.

### ***6. Limitation of liability.***

For each Product, each party's maximum, aggregate liability to the other under this Agreement and any Supplemental 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.
- 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 indirect, incidental, special, punitive, or consequential damages, or loss of use, loss of profits, 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 all 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.

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

- a. **Term.** This Agreement is effective until terminated by a party, as described below.
- b. **Termination without cause.** The Agreement Administrator or Microsoft may terminate this Agreement without cause on 60 days' notice. Termination without cause will not affect any existing orders or Supplemental Agreements, but Customer will no longer be able to place orders, register Purchasing Accounts, or enter into Supplemental Agreements after the effective date of termination.
- c. **Termination for cause.** If a party breaches this Agreement or any Supplemental 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. Microsoft may terminate a Customer's right to place orders if Customer ceases to be an Affiliate of the Agreement Administrator.
- d. **Effect of termination.** If Customer terminates this Agreement due to a breach by Microsoft, then
- (i) For subscription-based Products (including Online Services), Customer will receive a credit for any amount paid for a usage period after the termination date.
  - (ii) For consumption-based Products, Customer must (1) pay for Products consumed as of the termination date and (2) will receive a credit for any Product for which it has paid but not consumed.
  - (iii) For other Software, Customer may either (1) pay all remaining amounts due under the Agreement, in which case it will have perpetual rights for all such Software ordered, or (2) pay only the amounts due as of the termination date, in which case it will have perpetual licenses for all fully-paid Software licenses and a pro rata number of Software licenses for which partial payment has been made. In each case, if the Software licenses are covered by Software Assurance, the perpetual licenses will be for the latest version of the Software at termination.

## ***8. Ordering, pricing, and payment.***

- a. **Ordering Products.** To order Products under this Agreement, Customer must be a legal entity that is an Affiliate of the Agreement Administrator and establish one or more Purchasing Accounts by executing a Purchasing Account registration for each Purchasing Account.
- b. **Pricing and payment.** The Partner or Microsoft Affiliate that invoices Customer will set Customer's pricing and payment terms for that invoice. Microsoft annually reviews price levels used, as described in the Licensing Manual. Customer will pay the amount due according to the payment terms.
- c. **Payment terms for Microsoft invoices.** If a Microsoft Affiliate invoices Customer, Customer must pay Microsoft according to the terms, payment methods and in the currency stated on Microsoft's invoice. The terms of any extension of credit under this Agreement may be modified or withdrawn by Microsoft upon notice. Microsoft may assess a finance charge on all past due amounts, payable on demand and equal to the lesser of an annual rate of 24% and the highest amount allowed by law, applied from the first day the amount is past due until paid in full.
- d. **Taxes.** If any amounts are to be paid to Microsoft, the amounts owed are exclusive of any taxes, unless specified on the invoice as tax inclusive. Customer shall 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 or taxes on its property ownership.

If any taxes are required to be withheld on payments to 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.

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

- a. Partners.** Customer may authorize a Partner to place orders on Customer's behalf and manage Customer's purchases by associating the Partner with a Purchasing Account. 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. Microsoft may pay some Partners and other third parties for their services related to Customer purchases. The fees Microsoft pays depend upon several factors, including the number and types of licenses ordered.
- b. Use of contractors.** Microsoft may use contractors to perform services, but will be responsible for their performance, subject to the terms of this Agreement.
- c. Microsoft as independent contractor.** The parties are independent contractors. Customer and Microsoft each may develop products independently without using the other's Confidential Information.
- d. Notices.** Notices to Microsoft must be sent to the address listed on the applicable registration or Supplemental Agreement. Notices must be in writing and will be treated as delivered on the date shown on the return receipt or on the courier or fax confirmation of delivery. Microsoft may provide information to Customer about upcoming ordering deadlines, services and subscription information in electronic form, including by email, to contacts provided by Customer under the Purchasing Account registration or other documents or sites. Emails will be treated as delivered on the transmission date.
- e. Agreement not exclusive.** Customer is free to enter into agreements to license, use, or promote non-Microsoft products or services.
- f. Order of precedence.** 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) these General Terms, (2) any Professional Services Terms; (3) any Purchasing Account registration, (4) any Supplemental Agreement, (5) the Licensing Manual, (6) the Product Terms, (7) the Online Services Terms, (8) orders submitted under this Agreement, and (9) any other documents in this Agreement. Terms in an amendment control over the amended document and any prior amendments concerning the same subject matter.
- g. Amendments.** Any amendment to this Agreement or any Supplemental Agreement must be executed by both parties, except that Microsoft may change the Product Terms, Use Rights and Licensing Manual from time to time, subject to the terms of this Agreement. Any additional or conflicting terms and conditions contained in Customer's or a Partner's purchase order are expressly rejected and will not apply. Microsoft may require Customer to sign a new agreement or an amendment to an existing agreement before processing a new order or accepting a Purchasing Account registration.
- h. Assignment.** Either party may assign this Agreement to an Affiliate, but it must notify the other party in writing of the assignment. 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.

- i. **Applicable law.** Except as noted in any Professional Services Terms, this Agreement shall be governed by and construed in accordance with the laws specified in the Purchasing Account registration.
- j. **Dispute resolution.** When bringing any action arising under this Agreement or any Supplemental Agreement, the parties agree to the following exclusive venues:
- (i) If Microsoft brings the action, the venue will be where Customer has its headquarters.
  - (ii) If Customer brings the action against Microsoft or any Microsoft Affiliate located outside of Europe, the venue will be the state or federal courts in King County, State of Washington, U.S.A.
  - (iii) If Customer brings the action against a Microsoft Affiliate located in Europe, and not also against Microsoft or a Microsoft Affiliate located outside of Europe, the venue will be 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.
- k. **Severability.** If any provision in this Agreement is held to be unenforceable, the balance of the Agreement will remain in full force and effect.
- l. **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.
- m. **No third-party beneficiaries.** This Agreement does not create any third-party beneficiary rights.
- n. **Survival.** All provisions survive termination of this Agreement except those requiring performance only during the term of the Agreement.

## ***10. Country-specific provisions.***

The country-specific provisions available at the Licensing Site replace or supplement the relevant provisions of this Agreement based on the Customer's location and in any case where the law of the jurisdictions listed in the country-specific provisions gets applied.

## ***11. Definitions.***

"Affiliate," unless otherwise defined in the Purchasing Account type terms, means any legal entity that a party owns, or is owned by, or that is under common ownership with that party. "Ownership" means, for purposes of this definition, control of more than a 50% interest in an entity.

"Agreement Administrator," or a successor term, means the legal entity that manages this Agreement. By default, the first Customer to execute this Agreement is the Agreement Administrator.

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

"Customer" means a legal entity that enters into this Agreement by executing a Purchasing Account registration or Supplemental Agreement.

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

"day" means a calendar day.

"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 Manual" means the document that provides information about this Agreement, such as price levels and ordering rules. The Licensing Manual document is on the Licensing Site and is updated from time to time.

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

"Microsoft" means the Microsoft entity that counter-executed Customer's Purchasing Account registration or Supplemental Agreement and its Affiliates (as appropriate).

“Online Services” means the Microsoft–hosted services identified as Online Services in the Product 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 sell Products to Customer.

“Product” means all products identified in the Product Terms, such as all Software, Online Services and other web–based services, including pre–release or beta versions. Product availability may vary by region.

“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.

“Purchasing Account” means the account that Customer authorizes to manage orders and payment under this Agreement and is established by executing a Purchasing Account registration.

“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 part of an Online Service.

“Software Assurance” means an offering that provides new version rights for Products and other benefits, as further described in the Product Terms and the Licensing Manual.

“Supplemental Agreement” means any agreement that incorporates this Agreement.

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

“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.

## Professional Services Terms

These terms are part of the Agreement and apply to any consulting and support services Microsoft performs (“Professional Services”). Professional Services Microsoft performs will be described in a work order or other description of services that incorporates the Agreement (a “Statement of Services”). Any computer code or materials other than Products or Fixes that Microsoft leaves with Customer at the conclusion of Microsoft’s performance of Professional Services are considered “Services Deliverables.”

- a. **Pre–existing work.** All rights in any computer code or other written materials developed or otherwise obtained independent of this Agreement (“Pre–existing Work”) will remain the sole property of the party providing it. Each party may use, reproduce and modify the other party’s Pre–existing Work only as needed to perform obligations related to Professional Services.
- b. **Services Deliverables.** Upon payment in full for the Professional Services, Microsoft grants Customer a non–exclusive, non–transferable, perpetual license to reproduce, use and modify the Services Deliverables solely for Customer’s internal business purposes, subject to the terms and conditions in this Agreement.
- c. **Use of technical information from Professional Services.** Microsoft may use any technical information it derives from providing Professional Services for problem resolution, troubleshooting, product functionality enhancements, Fixes, and for Microsoft’s knowledge base. Microsoft agrees not to identify Customer or disclose any of Customer’s Confidential Information as part of such use.
- d. **Professional Services warranty.** Microsoft warrants that it will perform Professional Services with professional care and skill. If Microsoft fails to do so and Customer notifies Microsoft within 90 days of the date the Professional Services were performed, then Microsoft will, at its discretion and as Customer’s sole remedy for the breach of the warranty, either re–perform the Professional Services

or return the price Customer paid for them. **This warranty is subject to the “exclusions” and “disclaimer” terms of the Warranties section in the General Terms.**

- e. **Professional Services limitation of liability.** The total liability of each party for Professional Services under this Agreement and any Supplemental Agreement that incorporates its terms is limited to direct damages up to the amount Customer was required to pay under the applicable Statement of Services. In the case of services provided free of charge, or code Customer is authorized to redistribute to third parties without separate payment to Microsoft, Microsoft’s liability is limited to direct damages up to U.S. \$5,000. **This limitation of liability is subject to the “Exclusions” and “Exceptions” terms in the General Terms.**
- f. **Compliance with laws.** Microsoft and Customer will each comply with all applicable laws and regulations. However, Microsoft is not responsible for compliance with any laws or regulations applicable to Customer or Customer’s industry that are not also generally applicable to information technology services providers.
- g. **Professional Services termination.** If Customer terminates a Statement of Services as a result of a breach by Microsoft, Customer must pay all amounts due under the Statement of Services as of the termination date. Upon Microsoft’s receipt of payment for the Professional Services, Customer’s interests in the Services Deliverables will vest. Microsoft has no obligation to continue to provide Professional Services if Customer fails to make timely payment for the Professional Services.
- h. **Applicable law and dispute resolution for Professional Services.** The terms of each Statement of Services will be governed by and construed in accordance with the law of the jurisdiction where the Microsoft Affiliate delivering the Professional Services is organized. If Customer brings an action to enforce a Statement of Services, the venue will lie where the Microsoft Affiliate delivering the services has its headquarters.
- i. **Certain terms.** Services Deliverables are deemed “Products” for purposes of all rights and obligations in the sections of the General Terms titled “Affiliates’ rights,” “Restrictions,” “Reservation of rights,” “Privacy and Compliance with Laws,” “Defense of third party claims” and “Taxes.” The parties may agree to change any of the terms in this “Professional Services Terms” section in a Statement of Services.

# Microsoft Products & Services Agreement Registration

Microsoft Products & Services Agreement (MPSA) Number: 4100109406

Version: 2016May

Agreement Language: English

Agreement Administrator Purchasing Account Number: 0005631820

## Customer Legal Entity Name: Texas Facilities Commission

By executing this registration, Customer registers the following Purchasing Account(s) under the Agreement and accepts the terms of the Agreement. Capitalized terms used but not defined in this registration have the definitions in the Agreement. To register a Purchasing Account, Customer must be a legal entity and Affiliate of the Agreement Administrator.

By providing contact information, Customer consents to (1) the use of such information for purposes of administering purchases under the Agreement and any Supplemental Agreement by Microsoft, its Affiliates, and other parties that help administer the Agreement and (2) disclosure of information related to Customer's Agreement to the contact(s) identified. Each party will notify the other if any of the contact information changes.

## Purchasing Accounts

Customer registers a Purchasing Account to manage orders of Products under the Agreement. Customer can register itself as the Purchasing Account or identify a business unit within Customer's organization that will manage orders and payment for the Customer. In either case the Customer identified on the signature form for this registration is the legal entity for the Agreement.

**Purchasing Account name:** Texas Facilities Commission

Purchasing Account number:	0005631820
Purchasing Account type:	Government
Address:	1711 San Jacinto Blvd
City:	Austin
State/Province:	Texas
Postal code:	78711-3047
Country/Region:	United States
Within City Limits:	No

**Purchasing Account contact:** This is an individual within Customer's organization who will serve as the main contact and administrator for the Purchasing Account and who will receive contractual notices from Microsoft. Customer authorizes this individual to establish the Purchasing Account's electronic identity which is required for online administrator access to the Microsoft Business Center. This contact's access to the Microsoft Business Center is used for purposes of managing agreements and Products associated with this Purchasing Account, and granting online access and permissions to others as needed to support managing the Purchasing Account.

First and last name	Michael Williams
Email address	michael.williams@tfc.state.tx.us
Phone number	512-463-1819
Preferred language	English

**Anniversary month:** December

Customer may align the subscription term for a Product to this anniversary month.

**Software Assurance membership:** Each Purchasing Account may qualify for and receive additional benefits with Software Assurance membership. By electing Software Assurance membership below, Customer is committing to (a)

including Software Assurance with every eligible order and (b) maintaining Software Assurance for all Products licensed through the Purchasing Account for at least one Product pool for at least one year.

Pool	Choice
Applications	No
Systems	No
Servers	No

**Eligible for Government Community Cloud:** Yes

**Cloud Deployment Model:** Government Community Cloud

The Government Community Cloud (GCC) is a way to store government data in a segregated community cloud. Only Government customers in the United States are eligible to use Government Community Cloud Services (defined below), which store Customer Data in the GCC.

**Important:** By electing to store its data in the GCC and use Government Community Cloud Services, Customer certifies that it is a member of the Community (defined below) and agrees to use Government Community Cloud Services solely in its capacity as a member of the Community and, for eligible Government Community Cloud Services, for the benefit of end users that are members of the Community. If Customer is (1) not a member of the Community, (2) fails to maintain the conditions of membership in the Community, or (3) uses Government Community Cloud Services to provide services to non-Community members, Customer understands that Microsoft may terminate Customer’s license(s) to use the Government Community Cloud Services without notice. If Microsoft terminates Customer’s license(s) to use the Government Community Cloud Services, Microsoft will retain any Customer Data in accordance with the data retention policy described in the Online Services Terms. **Customer is solely responsible for ensuring that it is and remains eligible to store its data in the GCC and use Government Community Cloud Services.**

“Community” means the community consisting of one or more of the following: (1) a Government, (2) a Customer using eligible Government Community Cloud Services to provide solutions to a Government or a qualified member of the Community, or (3) a Customer with Customer Data that is subject to Government regulations for which Customer determines and Microsoft agrees that the use of Government Community Cloud Services is appropriate to meet Customer’s regulatory requirements. Membership in the Community is ultimately at Microsoft’s discretion, which may vary by Government Community Cloud Service.

“Federal Agency” means a bureau, office, agency, department or other entity of the United States Government.

“Government” means a Federal Agency, State/Local Entity, or Tribal Entity acting in its governmental capacity.

“Government Community Cloud Services” means Microsoft Online Services that are provisioned in Microsoft’s multi-tenant data centers for exclusive use by or for the Community and offered in accordance with the National Institute of Standards and Technology (NIST) Special Publication 800-145. Microsoft Online Services that are Government Community Cloud Services are designated as such in the Use Rights.

“State/Local Entity” means (1) any agency of a state or local government in the United States, or (2) any United States county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality established by the laws of Customer’s state and located within Customer’s state’s jurisdiction and geographic boundaries.

“Tribal Entity” means a federally-recognized tribal entity performing tribal governmental functions and eligible for funding and services from the U.S. Department of Interior by virtue of its status as an Indian tribe.

**Professional Services Included:** No

The section titled Professional Services Terms is excluded from this Agreement.

**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. The Licensing Manual describes the requirements for license transfers. Attempted license transfers that do not comply with this Agreement are void.

**Applicable Law:** This Agreement will be governed by and construed in accordance with the laws of Customer’s state, without regard to conflict of laws principles. The 1980 United Nations Convention on Contracts for the International Sale of Goods and its related instruments will not apply to this Agreement.

**Government Customer Affiliate Definition.** With regard to Customer, “Affiliate” means any eligible entity, as defined in the applicable Microsoft Government Eligibility Definition located at the Licensing Site, that:

- a. is a government agency, department, office, instrumentality, division, unit or other entity of the state or local government that is supervised by or is part of Customer, or that supervises Customer or of which Customer is a part, or that is under common supervision with Customer;
- b. is a county, borough, commonwealth, city, municipality, town, township, parish, special purpose district, or other similar type of governmental instrumentality established by the laws of Customer's state or local jurisdiction and is located within Customer's state or local jurisdiction and geographic boundaries;
- c. is in Customer's state or local jurisdiction that is expressly authorized by the laws of Customer's state or local jurisdiction to purchase under state or local government contracts; provided that a state and its Affiliates shall not, for purposes of this definition, be considered to be Affiliates of the federal government and its Affiliate; or d. has legislative authority to control or supervise Customer.

**Government Pricing.** In addition to the pricing terms above, Customer may qualify for government pricing. To qualify for government pricing, Customer and its Affiliates must satisfy the applicable Microsoft Government Eligibility Definition located at the Licensing Site. Microsoft reserves the right to verify Customer's and its Affiliates' eligibility for government pricing at any time and suspend the Agreement if such eligibility requirements are not met.

**Termination for non-appropriation of funds.** In addition to the rights granted in the "Term and Termination" section of this Agreement, Customer may terminate this Agreement without liability, penalty or further obligation to make payments (other than payments for outstanding invoices or for Products ordered but for which Customer has not yet been invoiced) if funds to make payments under the Agreement are not appropriated or allocated for such purpose. If Customer terminates the Agreement for non-appropriation of funds, or Microsoft terminates for non-payment due to non-appropriation of funds, then the following applies:

- a. For subscription-based Products (including Online Services), Customer may use the Products for the period for which Customer has paid, even if such period extends beyond the termination date.
- b. For other Software Products, Customer may either (1) pay all remaining amounts due under the Agreement, in which case it will have perpetual rights for all Products ordered or (2) pay only the amounts due as of the termination date, in which case it will have perpetual licenses for all fully-paid Products and a pro rata number of perpetual licenses for Products for which it has partially paid. In each case, if Software Assurance coverage applies, the perpetual licenses Customer receives will be for the version of Products ordered as of the date the Software Assurance coverage expires.

## Purchasing Account registration signature

By signing below, Customer acknowledges that it has received, read and understands all contract documents identified in the Purchasing Account registration, including the Microsoft Products and Services Agreement, any amendments, and all documents incorporated by reference (collectively, the "Agreement"), and accepts the terms and conditions set forth in all such documents. The Agreement will take effect upon acceptance by Microsoft. Customer must be a legal entity that is an Affiliate of the Agreement Administrator to execute a Purchasing Account registration.

The Agreement Administrator and Purchasing Account contacts will receive an acceptance notification from Microsoft confirming the effective date of this Agreement. When Customer is associating a Purchasing Account with an Affiliate's Microsoft Products and Services Agreement, it must obtain a copy of that agreement from its Affiliate if not presented as part of this registration.

### Customer

Customer Legal Entity Name: Texas Facilities Commission  
Country/Region: United States  
Address: 1711 San Jacinto Blvd  
City: Austin  
State/Province: Texas  
Postal Code: 78711-3047  
Phone number: 512-463-8695  
Within City Limits: No

### Customer Signatory

Printed first and last name: Mike Novak  
Job title:  
Phone number:  
Email address: Michael.novak@tfc.state.tx.us  
Preferred language: English

Authorized Customer Signature:

DocuSigned by:  
  
5A39126186994C4...

Authorized Customer Signature Date: 2020-04-30 | 07:57 PDT

### Microsoft Affiliate

Affiliate: Microsoft Corporation  
Printed first and last name: Joshua Farlow

Authorized Microsoft Affiliate signature: Joshua Farlow

Microsoft Affiliate signature date: 2020-04-29 | 14:24 PT

Effective date: This agreement is effective on date all signatories have signed the agreement.

When this agreement is executed by Microsoft, Customer will receive a copy.

### Microsoft Corporation

Dept. 551, Volume Licensing

6100 Neil Road, Suite 210

Reno, Nevada 89511-1137 United States

### Partner

Customer has selected the following Partner for the Purchasing Account(s) identified in this registration. Partner will assist Customer with managing the Agreement and place orders on behalf of Customer under the Agreement.

Entity Name: SoftwareONE, Inc.  
Account Number: 0005068673  
Street address: 20875 Crossroads Circle, Suite 1  
City: Waukesha  
State/Province: Wisconsin  
Postal Code: 53186-4093  
Country: United States  
Phone number: 262-317-5555

First and last name: NGVL Us  
Phone number:  
Email address: ngvl.us@softwareone.com  
Preferred language: English  
Job title:



**Certificate Of Completion**

Envelope Id: D12DED33E8324205861048BC4CE3CCE0	Status: Completed
Subject: Here is your Microsoft Products and Services Agreement (MPSA) to review and sign	
Microsoft Affiliate Signature IP Address: 40.114.13.25:	
Microsoft Affiliate Signature IP Address Location: United States:	
Source Envelope:	
Document Pages: 14	Signatures: 1
Certificate Pages: 1	Initials: 0
AutoNav: Enabled	Envelope Originator:
Envelopeld Stamping: Disabled	ECX Docusign Account
Time Zone: (UTC-08:00) Pacific Time (US & Canada)	DocuSign account address & Envelope Originator IP address
	One Microsoft Way
	Redmond, WA 98052
	ecxdoc@microsoft.com
	IP Address: 40.83.180.221

**Record Tracking**

Status: Original 4/29/2020 3:25:09 PM	Holder: ECX Docusign Account ecxdoc@microsoft.com	Location: DocuSign
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**Signer Events**

Mike Novak  
Michael.novak@tfc.state.tx.us  
Security Level: Email, Account Authentication (None)

**Signature**

DocuSigned by:  
  
5A39126186994C4...  
Signature Adoption: Pre-selected Style  
Using IP Address: 67.11.114.47

**Timestamp**

Sent: 4/29/2020 3:25:16 PM  
Viewed: 4/30/2020 7:56:55 AM  
Signed: 4/30/2020 7:57:19 AM

**Electronic Record and Signature Disclosure:**  
Not Offered via DocuSign

In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
<b>Envelope Summary Events</b>	<b>Status</b>	<b>Timestamps</b>
Envelope Sent	Hashed/Encrypted	4/29/2020 3:25:16 PM
Certified Delivered	Security Checked	4/30/2020 7:56:56 AM
Signing Complete	Security Checked	4/30/2020 7:57:19 AM
Completed	Security Checked	4/30/2020 7:57:19 AM
<b>Payment Events</b>	<b>Status</b>	<b>Timestamps</b>