

Microsoft Cloud Agreement

This Microsoft Cloud Agreement is between the entity you represent, or, if you do not designate an entity in connection with a Subscription purchase or renewal, you individually (“you” or “your”), and Microsoft Japan Co., Ltd. (“Microsoft”, “we”, “us”, or “our”). It consists of the terms and conditions below, as well as the Online Services Terms, and the SLA (together, the “agreement”). It is effective on the date that your Reseller provisions your Subscription. Key terms are defined in Section 11.

1. **Use of Online Services.**

- a. **Right to use.** We grant you the right to access and use the Online Services and to install and use the Software included with your Subscription, as further described in this agreement. We reserve all other rights.
- b. **Choosing a Reseller.** You must choose and maintain a Reseller authorized within your region. If Microsoft or Reseller chooses to discontinue doing business with each other, you must choose a replacement Reseller or purchase a Subscription directly from Microsoft, which may require you to accept different terms.
- c. **Reseller Administrator Access and Customer Data.** You acknowledge and agree that (i) once you have chosen a Reseller, that Reseller will be the primary administrator of the Online Services for the Term and will have administrative privileges and access to Customer Data, however, you may request additional administrator privileges from your Reseller; (ii) Reseller’s privacy practices with respect to Customer Data or any services provided by Reseller may differ from Microsoft’s privacy practices; and (iii) Reseller may collect, use, transfer, disclose, and otherwise process Customer Data, including personal data. You consent to Microsoft providing Reseller with Customer Data and information that you provide to Microsoft for purposes of ordering, provisioning and administering the Online Services.
- d. **Acceptable use.** You may use the Product only in accordance with this agreement. You may not reverse engineer, decompile, disassemble, or work around technical limitations in the Product, except to the extent applicable law permits it despite these limitations. You may not disable, tamper with, or otherwise attempt to circumvent any billing mechanism that meters your use of the Online Services. You may not rent, lease, lend, resell, transfer, or host the Product, or any portion thereof, to or for third parties except as expressly permitted in the Online Services Terms.
- e. **End Users.** You control access by End Users, and you are responsible for their use of the Product in accordance with this agreement. For example, you will ensure End Users comply with the Acceptable Use Policy.
- f. **Customer Data.** You are solely responsible for the content of all Customer Data. You will secure and maintain all rights in Customer Data necessary for us to provide the Online Services to you without violating the rights of any third party or otherwise obligating Microsoft to you or to any third party. Microsoft does not and will not assume any obligations with respect to Customer Data or to your use of the Product other than as expressly set forth in this agreement or as required by applicable law.
- g. **Responsibility for your accounts.** You are responsible for maintaining the confidentiality of any non-public authentication credentials associated with your use of the Online Services. You must promptly notify customer support about any possible misuse of your accounts or authentication credentials or any security incident related to the Online Services.
- h. **Eligibility for Academic, Government and Nonprofit versions.** You agree that if you are purchasing an academic, government or nonprofit offer, you meet the respective eligibility requirements listed at the following sites:
 - (i) For academic offers, the requirements for educational institutions (including administrative offices or boards of education, public libraries, or public museums) listed at <http://go.microsoft.com/academic>;

(ii) For government offers, the requirements listed at <http://go.microsoft.com/government>; and

(iii) For nonprofit offers, the requirements listed at <http://go.microsoft.com/nonprofit>.

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

- i. **Preview releases.** We may make Previews available. **Previews are provided “as-is,” “with all faults,” and “as-available,” and are excluded from the SLA and all limited warranties provided in this agreement.** Previews may not be covered by customer support. Previews may be subject to reduced or different security, compliance, and privacy commitments, as further explained in the Online Services Terms and any additional notices provided with the Preview. We may change or discontinue Previews at any time without notice. We also may choose not to release a Preview into “General Availability.”

2. **Subscriptions, ordering.**

- a. **Available Subscription offers.** The Subscription offers available to you will be established by your Reseller and generally can be categorized as one or a combination of the following:

(i) **Commitment Offering.** You commit in advance to purchase a specific quantity of Online Services for use during a Term and to pay upfront or on a periodic basis in advance of use.

(ii) **Consumption Offering (also called Pay-As-You-Go).** You pay based on actual usage with no upfront commitment.

(iii) **Limited Offering.** You receive a limited quantity of Online Services for a limited term without charge (for example, a free trial) or as part of another Microsoft offering (for example, MSDN). Provisions in this agreement with respect to the SLA and data retention may not apply.

- b. **Ordering.**

(i) Orders must be placed through your designated Reseller. You may place orders for your Affiliates under this agreement and grant your Affiliates administrative rights to manage the Subscription, but, Affiliates may not place orders under this agreement. You also may assign the rights granted under Section 1.a to a third party for use by that third party in your internal business. If you grant any rights to Affiliates or third parties with respect to Software or your Subscription, such Affiliates or third parties will be bound by this agreement and you agree to be jointly and severally liable for any actions of such Affiliates or third parties related to their use of the Products.

(ii) Your Reseller may permit you to modify the quantity of Online Services ordered during the Term of a Subscription. Additional quantities of Online Services added to a Subscription will expire at the end of that Subscription.

- c. **Pricing and payment.** Prices for each Product and any terms and conditions for invoicing and payment will be established by your Reseller.

- d. **Renewal.**

(i) Upon renewal of your Subscription, you may be required to sign a new agreement, a supplemental agreement or an amendment to this agreement.

(ii) Your Subscription will automatically renew unless you provide your Reseller with notice of your intent not to renew prior to the expiration of the Term.

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

3. Term, termination, and suspension.

- a. **Agreement term and termination.** This agreement will remain in effect until the expiration or termination of your Subscription, whichever is earliest. You may terminate this agreement at any time by contacting your Reseller. The expiration or termination of this agreement will only terminate your right to place new orders for additional Products under this agreement.
- b. **Cancellation or transfer of Subscription.** Your Reseller will establish the terms and conditions, if any, upon which you may cancel or transfer a Subscription.
- c. **Suspension.** We may suspend your use of the Online Services if: (1) it is reasonably needed to prevent unauthorized access to Customer Data; (2) you fail to respond to a claim of alleged infringement under Section 6 within a reasonable time; or (3) you do not abide by the Acceptable Use Policy or you violate other terms of this agreement. If one or more of these conditions occurs, then:
 - (i) For Limited Offerings, we may suspend your use of the Online Services or terminate your Subscription and your account immediately without notice.
 - (ii) For all other Subscriptions, a suspension will apply to the minimum necessary part of the Online Services and will be in effect only while the condition or need exists. We will give notice to the named administrators for your Subscription, which may be you and/or your Reseller, before we suspend, except where we reasonably believe we need to suspend immediately. If you do not fully address the reasons for the suspension within 60 days after we suspend, we may terminate your Subscription and delete your Customer Data without any retention period. We may also terminate your Subscription if your use of the Online Services is suspended more than twice in any 12-month period.

4. Security, privacy, and data protection.

- a. You consent to the processing of personal information by Microsoft and its agents to facilitate the subject matter of this agreement. You may choose to provide personal information to Microsoft on behalf of third parties (including your contacts, resellers, distributors, administrators, and employees) as part of this agreement. You will obtain all required consents from third parties under applicable privacy and data protection laws before providing personal information to Microsoft.
- b. Additional privacy and security details are in the Online Services Terms. The commitments made in the Online Services Terms only apply to the Online Services purchased under this agreement and not to any services or products provided by your Reseller.
- c. You consent and authorize Microsoft (and its service providers and subcontractors), at Reseller's direction or as required by law, to access and disclose to law enforcement or other government authorities data from, about or related to you, including the content of communications (or to provide law enforcement or other government entities access to such data).
- d. As and to the extent required by law, you shall notify the individual users of the Online Services that their data may be processed for the purpose of disclosing it to law enforcement or other governmental authorities as directed by Reseller or as required by law, and you shall obtain the users' consent to the same.
- e. You appoint Reseller as your agent for purposes of interfacing with and providing instructions to Microsoft for purposes of this Section 4.

5. Warranties.

- a. **Limited warranty.**
 - (i) **Online Services.** We warrant that the Online Services will meet the terms of the SLA during the Term. Your only remedies for breach of this warranty are those in the SLA.
 - (ii) **Software.** We warrant for one year from the date you first use the Software that it will

perform substantially as described in the applicable user documentation. If Software fails to meet this warranty we will, at our option and as your exclusive remedy, either (1) return the price paid for the Software or (2) repair or replace the Software.

- b. Limited warranty exclusions.** This limited warranty is subject to the following limitations:
- (i) any implied warranties, guarantees or conditions not able to be disclaimed as a matter of law will last one year from the start of the limited warranty;
 - (ii) this limited warranty does not cover problems caused by accident, abuse or use of the Products in a manner inconsistent with this agreement or our published documentation or guidance, or resulting from events beyond our reasonable control;
 - (iii) this limited warranty does not apply to problems caused by a failure to meet minimum system requirements; and
 - (iv) this limited warranty does not apply to Previews or Limited Offerings.
- c. DISCLAIMER. Other than this warranty, we provide no warranties, whether express, implied, statutory, or otherwise, including warranties of merchantability or fitness for a particular purpose. These disclaimers will apply except to the extent applicable law does not permit them.**

6. Defense of claims.

a. Defense.

- (i) We will defend you against any claims made by an unaffiliated third party that a Product infringes that third party's patent, copyright or trademark or makes unlawful use of its trade secret.
- (ii) You will defend us against any claims made by an unaffiliated third party that (1) any Customer Data, Customer Solution, or Non-Microsoft Products, or services you provide, directly or indirectly, in using a Product infringes the third party's patent, copyright, or trademark or makes unlawful use of its trade secret; or (2) arises from violation of the Acceptable Use Policy.

- b. Limitations.** Our obligations in Section 6.a won't apply to a claim or award based on: (i) any Customer Solution, Customer Data, Non-Microsoft Products, modifications you make to the Product, or services or materials you provide or make available as part of using the Product; (ii) your combination of the Product with, or damages based upon the value of, Customer Data, or a Non-Microsoft Product, data, or business process; (iii) your use of a Microsoft trademark without our express written consent, or your use of the Product after we notify you to stop due to a third-party claim; (iv) your redistribution of the Product to, or use for the benefit of, any unaffiliated third party; or (v) Products provided free of charge.

- c. Remedies.** If we reasonably believe that a claim under Section 6.a.(i) may bar your use of the Product, we will seek to: (i) obtain the right for you to keep using it; or (ii) modify or replace it with a functional equivalent and notify you to stop use of the prior version of the Product. If these options are not commercially reasonable, we may terminate your rights to use the Product and then refund any advance payments for unused Subscription rights.

- d. Obligations.** Each party must notify the other promptly of a claim under this Section 6. The party seeking protection must (i) give the other sole control over the defense and settlement of the claim; and (ii) give reasonable help in defending the claim. The party providing the protection will (1) reimburse the other for reasonable out-of-pocket expenses that it incurs in giving that help and (2) pay the amount of any resulting adverse final judgment or settlement. The parties' respective rights to defense and payment of judgments (or settlement the other consents to) under this Section 6 are in lieu of any common law or statutory indemnification rights or analogous rights, and each party waives such common law or statutory rights.

7. **Limitation of liability.**

- a. **Limitation.** The aggregate liability of each party for all claims under this agreement is limited to direct damages up to the amount paid under this agreement for the Online Service during the 12 months before the cause of action arose; provided, that in no event will a party's aggregate liability for any Online Service exceed the amount paid for that Online Service during the Subscription. For Products provided free of charge, Microsoft's liability is limited to direct damages up to \$5,000.00 USD.
- b. **EXCLUSION.** Neither party will be liable for loss of revenue or indirect, special, incidental, consequential, punitive, or exemplary damages, or damages for lost profits, revenues, business interruption, or loss of business information, even if the party knew they were possible or reasonably foreseeable.
- c. **Exceptions to limitations.** The limits of liability in this Section apply to the fullest extent permitted by applicable law, but do not apply to: (1) the parties' obligations under Section 6; or (2) violation of the other's intellectual property rights.

8. **Software.**

- a. **Additional Software for use with the Online Services.** To enable optimal access and use of certain Online Services, you may install and use certain Software in connection with your use of the Online Service. The number of copies of the Software you will be permitted to use or the number of devices on which you will be permitted to use the Software will be as described in the Online Services Terms in the product specific license terms for the Online Service. We may check the version of the Software you are using and recommend or download updates, with or without notice, to your devices. Failure to install updates may affect your ability to use certain functions of the Online Service. You must uninstall the Software when your right to use it ends. We may also disable it at that time. Your rights to access Software on any device do not give you any right to implement Microsoft patents or other Microsoft intellectual property in software or devices that access that device.
- b. **License confirmation.** Proof of your Software license is (1) this agreement, (2) any order confirmation, and (3) proof of payment.
- c. **License rights are not related to fulfillment of Software media.** Your acquisition of Software media or access to a network source does not affect your license to Software obtained under this agreement. We license Software to you, we do not sell it.
- d. **Transferring and assigning licenses.** License transfers are not permitted.

9. **Support.**

Support services for Products purchased under this agreement will be provided by your Reseller.

10. **Miscellaneous.**

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

Notices should be sent to:	Copies should be sent to:
Microsoft Japan Co., Ltd. Shinagawa Grand Central Tower 2-16-3 Konan Minato-ku, Tokyo 108-0075	Microsoft Corporation Legal and Corporate Affairs Volume Licensing Group One Microsoft Way Redmond, WA 98052 USA Via Facsimile: (425) 936-7329

You agree to receive electronic notices from us, which will be sent by email to the account administrator(s) named for your Subscription. Notices are effective on the date on the

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

- b. **Assignment.** You may not assign this agreement either in whole or in part. Microsoft may transfer this agreement without your consent, but only to one of Microsoft's Affiliates. Any prohibited assignment is void.
- c. **Severability.** If any part of this agreement is held unenforceable, the rest remains in full force and effect.
- d. **Waiver.** Failure to enforce any provision of this agreement will not constitute a waiver.
- e. **No agency.** This agreement does not create an agency, partnership, or joint venture.
- f. **No third-party beneficiaries.** There are no third-party beneficiaries to this agreement.
- g. **Applicable law and venue.** This agreement is governed by the laws of Japan. Any action to enforce this agreement must be brought in the Tokyo District Court. This choice of jurisdiction does not prevent either party from seeking injunctive relief in any appropriate jurisdiction with respect to violation of intellectual property rights.
- h. **Entire agreement.** This agreement is the entire agreement concerning its subject matter and supersedes any prior or concurrent communications. In the case of a conflict between any documents in this agreement that is not expressly resolved in those documents, their terms will control in the following order of descending priority: (1) this Microsoft Online Subscription Agreement, (2) the Online Services Terms, and (3) any other documents in this agreement.
- i. **Survival.** The terms in Sections 1, 2.e, 5, 6, 7, 10 and 11 will survive termination or expiration of this agreement.
- j. **U.S. export jurisdiction.** The Products are subject to U.S. export jurisdiction. You must comply with all applicable laws, including the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, and end-user, end-use and destination restrictions issued by U.S. and other governments. For additional information, see <http://www.microsoft.com/exporting/>.
- k. **Force majeure.** Neither party will be liable for any failure in performance due to causes beyond that party's reasonable control (such as fire, explosion, power blackout, earthquake, flood, severe storms, strike, embargo, labor disputes, acts of civil or military authority, war, terrorism (including cyber terrorism), acts of God, acts or omissions of Internet traffic carriers, actions or omissions of regulatory or governmental bodies (including the passage of laws or regulations or other acts of government that impact the delivery of Online Services)). This Section will not, however, apply to your payment obligations under this agreement.
- l. **Contracting authority.** If you are an individual accepting these terms on behalf of an entity, you represent that you have the legal authority to enter into this agreement on that entity's behalf.

11. **Definitions.**

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

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

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

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

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

“Customer Solution” is defined in the Online Services Terms.

“End User” means any person you permit to access Customer Data hosted in the Online Services or otherwise use the Online Services, or any user of a Customer Solution.

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

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

“Online Services Terms” means the terms that apply to your use of the Products available at <http://www.microsoft.com/licensing/onlineuserights>. The Online Services Terms include terms governing your use of Products that are in addition to the terms in this agreement.

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

“Product” means any Online Service (including any Software).

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

“SLA” means the commitments we make regarding delivery and/or performance of an Online Service, as published at <http://www.microsoftvolumelicensing.com/csla>, or at an alternate site that we identify.

“Software” means software we provide for installation on your device as part of your Subscription or to use with the Online Service to enable certain functionality.

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

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

