Microsoft Customer Agreement

This Microsoft Customer Agreement (the "Agreement") is between Customer and Microsoft and consists of these General Terms, the DPA, the applicable Product Terms and SLAs, and any additional terms Microsoft presents when an order is placed. This Agreement takes effect when the Customer accepts it, applies to any order under this Agreement, and supersedes any end user license agreement that accompanies a Product. The individual who accepts the Agreement represents that they are authorized to enter into this Agreement on behalf of Customer. Capitalized terms have the meanings given under "Definitions."

General Terms

FOR INDIVIDUAL USERS, ADDITIONAL TERMS UNDER "SUPPLEMENTAL INDIVIDUAL USER TERMS" APPLY.

License to use Microsoft Products

a. **Licenses for Products.** 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 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.** Online Services and some Software are licensed on a subscription basis for a specified period of time. Subscriptions expire at the end of the applicable subscription period unless renewed. Some Subscriptions renew automatically until canceled. The Subscription term for Online Services that are billed in arrears based on usage is the same as the billing period unless otherwise specified in the Product Terms. Perpetual Software licenses become perpetual upon payment in full.

c. **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.

d. **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.

e. **Reservation of Rights.** Microsoft reserves all rights not expressly granted in this Agreement. Products and Services Deliverables 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.

f. **Restrictions.** Except as expressly permitted in this Agreement or Product documentation, Customer must not (and is not licensed to):

(i) reverse engineer, decompile, or disassemble any Product or Services Deliverable, or attempt to do so (except where applicable law permits despite this limitation);

(ii) 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;

(iii) work around any technical limitations in a Product or Services Deliverable or restrictions in Product documentation;

(iv) separate and run parts of a Product or Services Deliverable on more than one device;

(v) upgrade or downgrade parts of a Product at different times;

Microsoft Customer Agreement:

(vi) transfer parts of a Product separately; or

(vii) distribute, sublicense, rent, lease, or lend any Products or Services Deliverables, in whole or in part, or use them to offer hosting services to a third party.

g. **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 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.

h. **Customer Eligibility.** Customer agrees that if it is purchasing academic, government or nonprofit Products, Customer meets the respective eligibility requirements (https://aka.ms/eligiblitydefinition). Microsoft reserves the right to verify eligibility and suspend Product use if requirements are not met.

Professional Services

a. **Performance of Professional Services.** Upon Microsoft's acceptance of each Statement of Services and subject to Customer's compliance with this Agreement, Microsoft will perform the Professional Services ordered as provided in this Agreement and the applicable Statement of Services.

b. **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.

c. **Pre-existing Work.** All rights in any computer code or other written materials a party develops or obtains 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.

d. **Services Deliverables.** Subject to Customer's compliance with this Agreement, Microsoft grants Customer a non-exclusive, limited license to use and modify the Services Deliverables as provided in this Agreement, including, without limitation, the reservation of rights, restrictions, and license transfer provisions under the section entitled License to use Microsoft Products. These licenses are solely for Customer's own use and business purposes in connection with its use of Products and are nontransferable except as expressly permitted under this Agreement or applicable law.

e. **Affiliates' rights to Services Deliverables.** Customer may sublicense its rights in Services Deliverables to its Affiliates, but Customer's Affiliates may not sublicense these rights. Customer is liable for ensuring its Affiliates' compliance with this Agreement.

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 and liable for its use of any Non-Microsoft Product.

Verifying compliance

a. **Verification process.** 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. Microsoft may engage an independent auditor under

nondisclosure obligations to perform the verification. Customer must promptly provide any information and documents that Microsoft or the auditor reasonably requests related to the verification and visual access to systems running the Products. All information and reports related to the verification process will be Confidential Information and used solely to verify compliance.

b. **Remedies for non-compliance.** If verification 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.

Data Protection and Processing

Microsoft and its Affiliates, and their respective agents and subcontractors, will process Customer Data, Personal Data, and Professional Services Data as provided in this Agreement and the DPA, which is incorporated by reference. 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.

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, Professional Services 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 Product Terms and DPA 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.

Warranties

a. **Limited warranties and remedies.** To the extent permitted by applicable law, the remedies below are Customer's sole remedies for breach of the warranties provided in this section, and Customer waives any warranty claims not made during the applicable warranty period.

    (i) 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.

    (ii) Software. Microsoft warrants that the Software version that is current at the time Customer acquires it 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, (1) return the amount Customer paid for the Software license or a prorated portion of the applicable subscription fee or (2) repair or replace the Software.

    (iii) Professional Services. Microsoft warrants that it will perform Professional Services with the applicable professional standard of care and skill in the industry. If Microsoft fails to do so, and Customer notifies Microsoft within 90 days from the completion of the work giving rise to the warranty claim, then Microsoft will, at its discretion, either re-perform the Professional Services or return the amount Customer paid for them.

b. **Exclusions.** The warranties in this Agreement do not apply to problems caused by accident, abuse, or use inconsistent with this Agreement or applicable documentation, 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 or as required by applicable law, Microsoft provides no other warranties or conditions and disclaims any other express, implied, or statutory warranties and conditions, including warranties and conditions of quality, title, non-infringement, merchantability, and fitness for a particular purpose. Professional Services that are provided without charge are provided "AS IS," WITHOUT ANY WARRANTY OR CONDITION.

d. **Supplemental terms.** In any case where the law of Germany applies per the terms of the Agreement or the determination of a court, the following subsections will entirely replace the subsections a – c above:

    (i) Defects. The following subsections (1) – (5) will apply to claims due to defects in quality or defects in title (collectively referred to as "Defects").

        1) Customer's rights and their expiry will be exclusively determined in accordance with applicable statutory law in the event of malicious non-disclosure of a Defect (*arglistiges Verschweigen*).

        2) 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. However, Customer's statutory warranty rights shall remain unaffected hereby.

        3) Microsoft warrants that the Software will perform substantially as described in the applicable Product documentation. If it does not, and Customer notifies Microsoft within the warranty period, Microsoft will, at its option, rectify the Defect, or supply a new Product. Customer agrees to cooperate in Microsoft's subsequent performance by providing any required information and documentation and to provide all required reasonable assistance.

        4) Microsoft's obligations will 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.

5) All claims to which Customer is entitled pursuant to this section will expire within one year.

(ii) Leases. To the extent Microsoft's Online Services are considered a lease (*mietweise Überlassung*) and are subject to the statutory provisions of German tenancy law (*mietrechtliche Regelungen*), the limited warranty provisions stipulated above shall not exclude or limit Customer's statutory warranty rights; the relevant statutory warranty provisions shall apply to claims due to Defects, subject to the following subsections (1) – (2). Any additional warranty related remedies of Customer under this Agreement and its accompanying documents shall remain unaffected hereby.

(1) Customer waives (1) the right to set-off (*Recht zur Aufrechnung*), (2) the right to reduce the price (*Minderungsrecht*) and (3) the right of retention (*Zurückbehaltungsrecht*) to the utmost extent permitted by applicable statutory law, provided that the claim utilized for any of the aforementioned rights is neither undisputed (*unbestritten*) nor recognized by declaratory judgment (*rechtskräftig festgestellt*). For the avoidance of doubt, any claims of Customer for unjust enrichment (*ungerechtfertigte Bereicherung*) against Microsoft shall not be excluded hereby.

(2) Any Service Credits identified in the SLA and offset against Customer's applicable service fees for any performance or availability issues in accordance with this section and the applicable SLA shall be automatically offset (*verrechnet*) against any claim Customer may have for unjust enrichment or any claim for damages or expenses resulting from Defects based on the same incident that caused those performance or availability issues.

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 Services Deliverable 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 or Services Deliverable 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 or Services Deliverable 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 or Services Deliverable, alone or in combination with anything else, violates the law or harms a third party.

c. Supplemental terms. In any case where the law of Germany applies per the terms of the Agreement or the determination of a court, the following subsection shall additionally apply:

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Customer's obligation under subsection b to defend Microsoft against third-party claims shall not apply to the extent that Customer is not responsible for the respective third-party claim

Limitation of liability

Subject to the Exclusions, Exceptions and Applicability provisions in subsections e, f, and g, each party's liability to the other party for each Product or Professional Service provided under this Agreement is limited to direct damages finally awarded, not to exceed an amount determined as follows:

a. **Perpetual Licenses.** For each Product licensed on a perpetual basis, each party's maximum, aggregate liability is the amount Customer paid for the applicable licenses.

b. **Subscriptions.** For each Product licensed on a subscription basis, each party's maximum, aggregate liability is the total amount of subscription fees Customer paid to use the Product during the 12 months preceding the most recent incident giving rise to the claim(s).

c. **Professional Services.** For Professional Services, each party's maximum, aggregate liability is the amount Customer paid for the applicable Professional Services.

d. **Free offers and distributable code.** For Products or Professional Services 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.

e. **Exclusions.** In no event will either party be liable for indirect, incidental, special, punitive, or consequential damages; loss of revenue, profits, or anticipated savings (whether direct or indirect); or loss of use, loss of business information, or interruption of business, however caused or on any theory of liability.

f. **Exceptions.** No limitation or exclusions under this Agreement will apply to liability arising out of either party's (1) confidentiality obligations (except for all liability related to Customer Data and Professional Service Data, which will remain subject to the limitations and exclusions above); (2) obligations under the section entitled Defense of Third-Party Claims; or (3) violation of the other party's intellectual property rights; or (4) willful misconduct or gross negligence.

g. **Applicability.** To the extent permitted by applicable law, the limitations, exclusions, and exceptions set forth in this Limitation of Liability section apply to all claims and damages under or relating to this Agreement or the Products or Professional Services provided under this Agreement, including, without limitation, breach of contract, breach of warranty, strict liability, and negligence and other torts, even if the parties knew or should have known about the possibility of the damages.

h. **Liability for death or personal injury.** Nothing in this Agreement shall exclude liability for death or personal injury caused by negligence or liability for fraudulent misrepresentation.

i. **Supplemental terms.** In any case where the law of Germany applies per the terms of the Agreement or the determination of a court, the following subsections (i) – (ii) will entirely replace the above provisions under the title, "Limitation of Liability":

(i) **Applicability.** In cases of intentional acts, malicious non-disclosure of a Defect, claims under the German Product Liability Act (*Produkthaftungsgesetz*), and claims based on damage to life, body or health, Microsoft's liability will be determined exclusively in accordance with statutory law. In all other cases and whatever the legal basis (breach of contract, Defects, tort, or otherwise), Microsoft's liability under this Agreement for any and all resultant damages and futile expenses will be limited as laid down in the following subsection (ii).

(ii) **Limitations.**

1) In cases of gross negligence, Microsoft's liability will be limited to typical foreseeable damages. This limitation does not apply to the extent damages have been caused by Microsoft's managing employees or legal representatives.

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2) In cases of slight negligence, Microsoft will only be liable if Microsoft is in breach of such contractual obligations, the fulfillment of which allows for the due performance of this Agreement, the breach of which would endanger the purpose of this Agreement and the compliance with which Customer may constantly trust in (so-called "cardinal obligations" (*Kardinalpflichten*). In such cases, Microsoft's liability will be limited to typical and foreseeable damages. In all other cases, Microsoft shall not be liable for slight negligence.

3) In cases of liability without fault for an inability to perform during delayed performance, Microsoft's liability will also be limited to typical foreseeable damages.

4) In cases where Microsoft's Online Service are considered a lease (*mietweise Überlassung)* and are subject to the statutory provisions of German tenancy law (*mietrechtliche Regelungen*), Microsoft shall not be liable for damages based on Defects in the meaning of § 536 German Civil Code (*Bürgerliches Gesetzbuch*) that already exist when the lease agreement is entered into, provided that Microsoft acts or omits to act without fault. To that extent, § 536 a paragraph 1, 1st alt. German Civil Code shall not apply.

5) Any claim for damages or expenses resulting from Defects will expire within one year. This provision does not affect § 438, paragraph 1 Nr. 1 a) of the German Civil Code. Any other claims against Microsoft for damages or expenses will expire within two years from the date the cause of action arises.

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, Customer may choose to provide that Partner with administrator privileges. Customer consents to Microsoft and its Affiliates providing that 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. **Product Support.** Partners may provide support for Products and other value-added services, and Partner is responsible for the performance of any services it provides. If Customer purchases Microsoft Support Services through a Partner, Microsoft will be responsible for the performance of those services subject to the terms of this Agreement.

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,

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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 its 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 up to two percent (2%) of the total amount payable, calculated and payable monthly, or the highest amount allowed by law, if less.

e. **Cancelation fee.** If a Subscription or Statement of Services permits early termination and Customer cancels the Subscription or Statement of Service before the end of the Subscription or billing period, Customer may be charged a cancelation fee. More details about cancelation can be found in the Product Terms.

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 store Customer's payment details and 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 will 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 will 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 or Professional Services by Customer to its Affiliates. Microsoft will 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. Licenses granted on a subscription basis and access to Online Services and Microsoft Support Services will continue for the remainder of the then-current subscription period(s) or support term, 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:

   (i) All licenses granted under this Agreement will terminate immediately except for fully paid, perpetual licenses.

   (ii) All amounts due under any unpaid invoices shall become due and payable immediately. For Subscriptions billed in arrears based on usage, Customer must pay for all unpaid usage as of the termination date immediately upon receipt of an invoice.

   (iii) 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.

   (iv) Customer must pay for all Professional Services provided as of the termination date immediately upon receipt of an invoice.

d. **Suspension.** During any period of material breach by Customer, Microsoft may suspend a Subscription or Statement of Services without terminating this Agreement. Microsoft will give Customer 30 days' notice before such suspension unless Microsoft's charge against Customer's payment method is declined or Microsoft reasonably believes immediate suspension is required to prevent unauthorized access to Customer Data or to ensure the ongoing confidentiality, integrity, availability, or resilience of Microsoft's systems and services.

e. **Termination to comply with laws.** Microsoft may modify or discontinue offering a Product or Professional Service and/or terminate a Subscription or Statement of Services for that Product or Professional Service in any country or jurisdiction where there is any current or future government requirement or obligation that (1) subjects Microsoft to any regulation or requirement that is not generally applicable to businesses operating there; (2) presents a hardship for Microsoft to continue offering the Product or Professional Service without modification; or (3) causes Microsoft to believe this Agreement or the Product or Professional Services offering may conflict with any such requirement or obligation. If Microsoft terminates a Subscription or Statement of Services under this provision, Customer will receive, as its sole remedy, a refund for any amount paid in advance for any period after termination. Customer will pay for all services provided or used before termination.

Modifications to this Agreement

Microsoft may update this Agreement from time to time. No changes will apply to perpetual Software licenses previously acquired. Changes will apply to new orders and to existing Subscriptions and Statements of Services as follows:

a. **DPA and SLA.** Changes to the DPA and SLA will apply as provided in those documents.

b. **Product Terms.** Material Adverse Changes will not apply during the then-current Subscription term but will take effect upon renewal. All other changes will apply when they are published on the Product Terms site. In addition, for Software Subscriptions, if Customer chooses to update the Software to a new version before the end of the Subscription term, the terms in effect at the time of the update will apply to the use of that Software.

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c. **Other terms.** Customer may be required to accept revised or additional terms when placing a new order. For existing Subscriptions and Statements of Services, Customer will be notified at least 60 days before changes take effect to these General Terms or any other terms that are part of the Agreement except the DPA, SLA, and Product Terms, which have separate terms for updates. Such changes will take effect upon renewal unless Customer accepts them earlier in the manner specified in the notice and will not supersede or modify any amendments to this Agreement. Customer agrees that its continued use of the Products or Professional Services after renewal will constitute its acceptance of all changes. If Customer does not agree to the changes, it must stop using the Products and Professional Services by the end of the Subscription or support term and turn off recurring billing for any Subscriptions that are set to renew automatically.

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. **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.

d. **Severability.** If any part of this Agreement is held to be unenforceable, the rest of the Agreement will remain in full force and effect.

e. **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.

f. **No third-party beneficiaries.** This Agreement does not create any third-party beneficiary rights except as expressly provided by its terms.

g. **Survival.** All provisions survive termination of this Agreement except those requiring performance only during the term of the Agreement.

h. **Notices.** All notices must be in writing. Except for notices relating to arbitration (as provided in certain supplemental terms for individual users), notices to Microsoft must be sent to the following address and will be deemed received on the date received at that address:

> Microsoft Ireland Operations Limited
> One Microsoft Place
> South County Business Park
> Leopardstown
> Dublin 18
> D18 P521
> Ireland

Microsoft may provide Customer with information and notices electronically, including via email, through the portal for an Online Service, or through a web site that Microsoft identifies. Notice is given as of the date it is made available by Microsoft.

i. **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.

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j. **Dispute resolution.** When bringing any action arising under this 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, USA.

    (iii) 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 Ireland.

    (iv) The parties consent to personal jurisdiction in the agreed venues. 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. **Order of precedence.** If there is a conflict between any documents in this Agreement that is not expressly resolved in those documents, their terms will control in the following order, from highest to lowest priority: (1) DPA; (2) these General Terms; (3) Product Terms; (4) SLA; and (5) any additional terms presented when an order is placed. Terms in an amendment control over the amended document and any prior amendments concerning the same subject matter.

l. **Microsoft Affiliates and subcontractors.** Microsoft may perform its obligations under this Agreement through its Affiliates and use subcontractors to provide certain services. Microsoft remains responsible for their performance.

m. **Government procurement rules.** If Customer is a government entity or is otherwise subject to government procurement requirements, Customer represents and warrants that (1) it has complied and will comply with all applicable government procurement laws and regulations; (2) it is authorized to enter into this Agreement; and (3) this Agreement satisfies all applicable procurement requirements.

n. **Compliance with Trade Laws.** Products and Services Deliverables may be subject to U.S. and other countries' export jurisdictions. Each party will comply with all laws and regulations applicable to the import or export of the Products and Services Deliverables, including, without limitation, trade laws such as the U.S. Export Administration Regulations and International Traffic in Arms Regulations and sanctions regulations administered by the U.S. Office of Foreign Assets Control ("OFAC") ("Trade Laws"). Customer will not take any action that causes Microsoft to violate U.S. or other applicable Trade Laws. Microsoft may suspend or terminate this Agreement to the extent that Microsoft reasonably believes that performance would cause it to violate Trade Laws or put it at risk of becoming subject to sanctions and penalties under such laws.

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, video or image files, and software, that are provided to Microsoft or its Affiliates by, or on behalf of, Customer and its Affiliates through use of Online Services. Customer Data does not include Professional Services Data.

Microsoft Customer Agreement:

"DPA" means the Microsoft Products and Services Data Protection Addendum, as updated from time to time, published at https://aka.ms/DPA or a successor site and any additional data protection terms that Microsoft presents with this Agreement.

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

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

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

"Material Adverse Change" means any change to the Use Rights for a Product that could reasonably affect Customer's decision to purchase the Product and that would require Customer to purchase additional licenses, increase the cost to Customer of using the Product, remove an existing right, or place additional restrictions on the use of the Product.

"Microsoft" means Microsoft Ireland Operations Limited.

"Microsoft Support Services" means Product support services that Microsoft offers under this Agreement as described in the Product Terms.

"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.

"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.

"Pre-Existing Work" means any computer code or other written materials developed or otherwise obtained independent of this Agreement.

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

"Product Terms" means the Use Rights and other terms, as updated from time to time, which are published at https://www.microsoft.com/licensing/terms or a successor site.

"Professional Services" means Microsoft Support Services and consulting services provided by Microsoft to Customer under this Agreement. "Professional Services" do not include Online Services.

"Professional Services Data" means all data, including all text, sound, video, image files, or software, that are provided to Microsoft or its Affiliates by, or on behalf of, Customer and its Affiliates (or that Customer or an Affiliate authorizes Microsoft to obtain from an Online Service) or otherwise obtained or processed by or on behalf of Microsoft or its Affiliates through an engagement with Microsoft to obtain Professional Services.

"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.

"Services Deliverables" means any computer code or materials (including without limitation proofs of concept, documentation and design recommendations, sample code, software libraries, algorithms, and machine learning models), other than Products or Fixes, that Microsoft leaves with Customer at the conclusion of Microsoft's performance of Professional Services.

Microsoft Customer Agreement:

"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.

"Statement of Services" means any order under this Agreement that includes or describes Professional Services.

"Subscription" means a license for Customer to use or access a Product during a defined period of time.

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

"Use Rights" means the following sections of the Product Terms, as applicable to each Product offering: Use Rights, License Model terms, General Service Terms, Service Specific Terms, Add-ons, Universal License Terms, and Other Legal Terms.

Purchase Agreement with the "Microsoft Sales Affiliate" ( )

Certain Products and Professional Services are offered by a local Microsoft Sales Affiliate that Microsoft has authorized to distribute and supply such Products and Professional Services. If Customer orders those Products or Professional Services 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 identified above, forming a separate agreement with such Microsoft Sales Affiliate to purchase the Products and Professional Services (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 the licensing of such Products, Fixes, and Services Deliverables are deemed excluded. Microsoft is the licensor of all Products, Fixes, and Services Deliverables, and the Agreement with Microsoft will continue to apply to any Products and Professional Services 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 and Professional Services. 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). **Customer may not assert any warranty or third-party claim against Microsoft Sales Affiliate unless Customer is unsuccessful in enforcing that claim against Microsoft (the licensing entity) or is precluded from doing so.**

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.

Supplemental Individual User Purchase Terms

FOR INDIVIDUAL USERS (AS DEFINED BELOW), THE FOLLOWING ADDITIONAL TERMS BELOW ALSO APPLY.

IF INDIVIDUAL USER LIVES IN THE UNITED STATES, PLEASE READ THE "BINDING ARBITRATION AND CLASS ACTION WAIVER" CLAUSE IN THE "MISCELLANEOUS" SECTION. IT AFFECTS HOW DISPUTES CONCERNING THE MICROSOFT PRODUCT (INCLUDING ITS PRICE, ADVERTISING, MARKETING, OR COMMUNICATIONS), THE PURCHASE TRANSACTION, BILLING, OR THIS AGREEMENT ARE RESOLVED.

1. Definitions applicable to these Supplemental Individual User Purchase Terms:

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

   "**Customer Individual User**" means an Individual User who subscribes for or orders Products using an authentication identity (such as an email address) provided by the Individual User's organization (such as an employer or school).

   "**Individual User**" means any individual person (other than an Administrator) subscribing to Online Services for use by a member or members of the subscriber's organization, and if such Online Services require payment of a fee, providing a payment method for which Individual User is personally responsible.

2. The paragraph titled "**Affiliates**" in the "**License to use Microsoft Products**" section of this Agreement does not apply to Individual Users.

3. The "**License Transfer**" paragraph under the "**License to use Microsoft Products**" section is replaced as follows:

   For Individual User purchases, Customer may not assign this Agreement either in whole or in part or transfer licenses without Microsoft's consent, except in case of an Administrator assumption of control as permitted in this Agreement.

4. The below paragraphs are added under the "**License to use Microsoft Products**" section:

   a. **Individual User and Customer rights.** The following applies to Individual User purchases: To the extent Individual User is acting on behalf of its organization, the organization is the Customer and the owner of all rights and licenses to the Products that Individual User is purchasing hereunder, and Individual User's access and rights thereto are granted to Individual User in its capacity as an end-user within such organization. In such case, if there is another agreement in effect with Microsoft pursuant to which the same organization maintains active subscriptions to Online Services (a "Prior Agreement"), then the terms of that Prior Agreement shall also govern the Customer's use of and rights in and to the Online Services and control over any conflicting terms in the Agreement, but these Supplemental Terms shall continue to apply to Individual User.

   b. **Authorization to use Customer domain and acknowledgement of shared directory data.** For Customer Individual User purchases, Customer Individual User (1) represents that they have the authority to use that organization's domain to sign up for a subscription or order Products in their capacity as a member of that organization; and (2) acknowledges that they will be added to a directory of users that share the same domain, and that directory data (name, date of signup, and email address) may be visible to other users of the Online Services within the same organization's domain. All of the terms of the Agreement applicable to Customer (as amended and supplemented by these Individual User Purchase Terms) also apply to Customer Individual User.

c. Assignment and assumption of rights and responsibilities.

   (i) For Customer Individual User purchases, the organization within which Online Services are used, as the owner of the domain associated with the authentication identity used for the purchase, may assume control over and manage Customer Individual User's use of the Online Services. If it does, the organization's designated administrator (the "**Administrator**") may (1) control and administer Customer Individual User's account, including modifying and terminating Customer Individual User's access, and (2) access and process Customer Individual User's data, including the contents of Customer Individual User's communications and files. For other Individual User purchases, the Administrator has the rights described in (1) and (2) above from the time of purchase.

   (ii) For any Individual User purchase, the Administrator may assume responsibility for future subscription fees or renewal fees. In such case, the Individual User must cancel the original subscription prior to the next renewal to avoid incurring any further payment obligation with respect to such subscription.

   (iii) Effective upon any assumption of control or responsibility by the Administrator over the Online Services, the subscription or associated fees, Individual User hereby assigns to such Customer organization all of its right, title, and interest, if any, in the Products arising out of this Agreement. Microsoft may inform Individual User that Customer's organization has assumed control of the Online Services covered by Individual User's subscription or responsibility for the associated payment obligations, but Microsoft is under no obligation to provide such notice.

d. Data Subject Requests. Except where the Administrator has assumed control over the account, Customer Individual Users should direct data subject requests and privacy inquiries directly to Microsoft. For other Individual Users, since the organization is managing the account associated with Individual User's subscription and administering use of the Online Services, Individual User should direct data subject requests and privacy inquiries to its Administrator.

5. The "**Data Protection and Processing**" section is replaced as follows.

Individual User's privacy is important to Microsoft. Please read the Microsoft Privacy Statement (https://go.microsoft.com/fwlink/?LinkId=521839) as it describes the types of data Microsoft collects from Individual user and Individual User's devices ("Data"), how Microsoft uses that Data, and the legal bases Microsoft has to process that Data.

6. The sections entitled "**Confidentiality**" and "**Partners**" do not apply to Individual Users.

7. The first paragraph of the "**Pricing and Payment**" section is replaced as follows:

For Individual User purchases, pricing and payment terms for a given order are set by Microsoft, and Individual User will pay the amount due to Microsoft. In such case, Individual User remains solely responsible for timely payment of all amounts due to Microsoft in connection with the Products ordered by Individual User under this Agreement until they terminate the Agreement.

8. The "**Independent Contractors**," "**Agreement not exclusive**," and "**Assignment**" paragraphs included in the "**Miscellaneous**" section do not apply to Individual Users.

9. The below paragraph is added to the "**Severability**" paragraph of the **"Miscellaneous**" section:

For Individual User purchases, the "Binding arbitration and class action waiver" clause below describes what happens if parts of that "Binding arbitration and class action waiver" clause are found to be illegal or unenforceable. The "Binding arbitration and class action waiver" clause prevails over this section if inconsistent with it.

10. The "**No third-party beneficiary**" paragraph of the "**Miscellaneous**" section is replaced as follows:

For Individual User purchases, except for the "Binding arbitration and class action waiver" clause below, this Agreement does not create any third-party beneficiary rights except as expressly provided by its terms.

11. For Customers in the United States, the "**Applicable Law**" paragraph of the "**Miscellaneous**" section is replaced as follows:

For Individual User purchases, If Customer lives in (or if an organization has assumed the obligations of Customer under of the "License to Use Microsoft Products" section above, and has its principal place of business in) the United States, the laws of the state where Customer lives (or where the organization's principal place of business is located) govern all claims, regardless of conflict of laws principles, except that the Federal Arbitration Act governs all provisions relating to arbitration. **Customer and Microsoft irrevocably consent to the exclusive jurisdiction and venue of the state or federal courts in King County, Washington, for all disputes arising out of or relating to this Agreement or the Microsoft Product that are heard in court (excluding arbitration and small claims court).** The 1980 United Nations Convention on Contracts for the International Sale of Goods and its related instruments will not apply to this Agreement.

12. For Customers in the United States, the "**Dispute resolution**" paragraph of the "**Miscellaneous**" section is replaced as follows:

   a. **Binding arbitration and class action waiver.** For Individual User purchases, if you live in (or if an organization has assumed the obligations of Customer under the "License to Use Microsoft Products" section above and has its principal place of business in) the United States.

   Customer and Microsoft agree to try for 60 days to resolve any dispute informally. If no resolution is reached, Customer and Microsoft agree to **binding individual arbitration before the American Arbitration Association ("AAA") under the Federal Arbitration Act ("FAA"), and not to sue in court in front of a judge or jury**. Instead, a neutral arbitrator will decide, and the arbitrator's decision will be final except for a limited right of review under the FAA. **Class action lawsuits, class-wide arbitrations, private attorney-general actions, and any other proceeding where someone acts in a representative capacity are not allowed. Nor is combining individual proceedings without the consent of all parties.** For purposes of this "Binding arbitration and class action waiver" clause, "Microsoft" includes Microsoft and its affiliates, and "Customer" includes any organization that assumed Customer's obligations under the "License to Use Microsoft Products" section above.

   (i) Disputes covered – everything except IP. The term "dispute" is as broad as it can be. It includes any claim or controversy between Customer and Microsoft concerning the Product, its price, advertising, marketing, communications, the purchase transaction, billing, or this Agreement, under any legal theory including contract, warranty, tort, statute, or regulation, **except disputes relating to the enforcement or validity of Customer's, Customer's licensors,' Microsoft's, or Microsoft's licensors' intellectual property rights**.

   (ii) Mail a Notice of Dispute first. If Customer has a dispute and Microsoft's customer service representatives cannot resolve it, send a Notice of Dispute by U.S. Mail to Microsoft Corporation, ATTN: CELA Arbitration, One Microsoft Way, Redmond, WA 98052-6399. Include Customer's name and contact information, what the problem is, and what Customer wants. A form is available at http://go.microsoft.com/fwlink/?LinkId=245499. Microsoft will do the same if it has a dispute with Customer. After 60 days, Customer or Microsoft may start arbitration if the dispute is unresolved.

   (iii) Small claims court option. Instead of mailing a Notice of Dispute, Customer may sue Microsoft in small claims court in Customer's county of residence (or, if an organization

assumed Customer's obligations, its principal place of business) or King County, Washington, U.S.A. if the dispute meets the court's requirements.

(iv) Arbitration procedure. The AAA will conduct any arbitration under its Commercial Arbitration Rules (or its Consumer Arbitration Rules if Customer is an individual and Uses the Product for personal or household use, or if the value of the dispute is $75,000 or less, whether or not Customer is an individual and regardless of how Customer Uses the Product). For more information, see http://www.adr.org or call 1-800-778-7879. To start an arbitration, submit the form available at http://go.microsoft.com/fwlink/?LinkId=245497 to the AAA and mail a copy to Microsoft. In a dispute involving $25,000 or less, any hearing will be telephonic unless the arbitrator finds good cause to hold an in-person hearing instead. Any in-person hearing will take place in Customer's county of residence (or, if an organization assumed Customer's obligations, its principal place of business) or King County, Washington. Customer chooses. The arbitrator may award the same damages to Customer individually as a court could. The arbitrator may award declaratory or injunctive relief only to Customer individually to satisfy Customer's individual claim. Under AAA Rules, the arbitrator rules on his or her own jurisdiction, including the arbitrability of any claim. But a court has exclusive authority to enforce the prohibition on arbitration on a class-wide basis or in a representative capacity.

(v) Arbitration fees and payments.

1) **Disputes involving $75,000 or less.** Microsoft will promptly reimburse Customer's filing fees and pay the AAA's and arbitrator's fees and expenses. If Customer rejects Microsoft's last written settlement offer made before the arbitrator was appointed, Customer's dispute goes all the way to an arbitrator's decision (called an "award"), and the arbitrator awards Customer more than this last written offer, Microsoft will: (1) pay the greater of the award or $1,000; (2) pay Customer's reasonable attorney's fees, if any; and (3) reimburse any expenses (including expert witness fees and costs) that Customer's attorney reasonably accrues for investigating, preparing, and pursuing Customer's claim in arbitration.

2) **Disputes involving more than $75,000.** The AAA rules will govern payment of filing fees and the AAA's and arbitrator's fees and expenses.

(vi) Must file within one year. Customer and Microsoft must file in small claims court or arbitration any claim or dispute (except intellectual property disputes) within one year from when it first could be filed. Otherwise, it is permanently barred.

(vii) Severability. If any part of the "Binding arbitration and class action waiver" clause is found to be illegal or unenforceable, the remainder will remain in effect (with an arbitration award issued before any court proceeding begins), except that if a finding of partial illegality or unenforceability would allow class-wide or representative arbitration, the section will be unenforceable in its entirety.

(viii) Conflict with AAA rules. This Agreement governs to the extent it conflicts with the AAA's Commercial Arbitration Rules or Consumer Arbitration Rules.