

Online Subscription Agreement

This Microsoft Online Subscription Agreement is between the entity that accepts this agreement ("you") and Microsoft Ireland Operations Limited ("we" , "us" , "our"). This agreement consists of: (1) the below terms and conditions; (2) the Online Services Use Rights; (3) the Service Level Agreements; and (4) the pricing and payment terms available via the Portal. This agreement is effective on the date we provide you with a confirmation for your first Order. You enter into this agreement for business purposes only.

Terms and Conditions

1. Definitions.

"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.

"Committed Offering" means the Subscription option for a Product as described below in Section 3a.

"Communities" means one or more forums that we or an Affiliate of ours may establish for customers or the general public to obtain information or collaborate regarding the use of the Product(s), as may be accessible via the Portal or at an alternate website we identify.

"Consumption Offering" means the Subscription option for a Product as described below in Section 3a.

"Customer Data" means all data, including all text, sound, or image files that you provided, or are provided on your behalf, to us through your use of the Online Services.

"License" means the right to copy, install, use, access, display, run and/or otherwise interact with a Product, as applicable, and as may be further described in the Online Services Use Rights.

"Licensed Software" means any software product as available on the Portal. Licensed Software is offered on a standalone basis or as a component of an Online Service.

"Online Service" means any online service as available on the Portal. An Online Service may include Supplemental Software and/or Licensed Software.

"Online Services Use Rights" means the use rights for each Product published at <http://www.microsoft.com/licensing/onlineuserights/english> or at an alternate site that we identify.

"Order" means an order for a Product on the Portal. An Order may include multiple Subscriptions to a Product.

"Portal" means the Microsoft Online Services Portal at <http://www.microsoft.com/online> or at an alternate website we identify.

"Product" means any Online Service and any Licensed Software as described on the Portal.

"Service Level Agreement" means an agreement representing commitments we make regarding delivery and/or performance of an Online Service.

"Subscription" means the part of the Order identifying the specific Product being ordered and may include the quantity, ship-to address, or other information.

"Supplemental Software" means software provided to you as part of an Online Service and which is used with the Online Service to enable certain functions of the Online Service.

"Term" means the duration of a Subscription.

2. Your use of our Products.

- a. **General.** This agreement governs your use of the Products. You may need to activate an Online Service prior to use. We

grant you a License to Products you ordered provided you pay for them and comply with this agreement. Your License is non-exclusive, non-perpetual, and, unless specifically allowed, non-transferable. Minimum system requirements or other factors may affect your ability to use Products. We reserve all rights not expressly granted in this agreement.

- b. **Service Level Agreement.** We will provide Online Services according to the Service Level Agreement(s) located at <http://www.microsoft.com/licensing/contracts> or at an alternate site that we identify.
- c. **Privacy, Use and Security of Customer Data.** We will handle your Customer Data according to the privacy, use and security terms set forth in the Online Services Use Rights.
- d. **Supplemental Software.** To enable optimal access and use of certain Online Services, you may need to install Supplemental Software, including upgrades and/or updates. This agreement governs your use of Supplemental Software, and any upgrades/updates, unless we present separate license terms to you upon installation. Any separate license terms are between us and you, not your users. You may use Supplemental Software only to support the applicable Online Service. Copies you make must be complete copies (including copyright and trademark notices) and made from Microsoft-approved media or a network source. You may use a third party to make and install these copies, but you agree to be responsible for that third party's actions. You agree to use reasonable efforts to inform anyone you allow to use the Supplemental Software that it is licensed from us and subject to the terms of this agreement.

We may check the version of the Supplemental Software you are using and recommend or download updates, with or without notice, to your devices. Your right to use the Supplemental Software ends when your right to use the Online Service ends or when we update the Online Service and it no longer supports the Supplemental Software, whichever comes first. You must uninstall the Supplemental Software when your right to use it ends. We may also disable it at that time.

- e. **Licensed Software.** We grant you Licenses for the number of copies of Licensed Software you ordered. We also grant you the right to use a prior (older) version in place of a Licensed Software version you license if we specify such use in the Online Services Use Rights.
 - i. **Qualifying desktop operating system License.** Licenses for desktop operating system software available under this agreement are upgrade Licenses only ("OS Upgrade Licenses"), not full Licenses. All your computers that will run OS Upgrade Licenses must be licensed to run one of the full qualifying desktop operating systems identified in the Online Services Use Rights.

You may internally reassign OS Upgrade Licenses from the original computer to a replacement computer within your enterprise, so long as (1) the replacement computer is licensed to run a full qualifying operating system identified in the Online Services Use Rights, (2) you remove any OS Upgrade License software from the original computer, and (3) that reassignment is not within 90 days of the last reassignment.
 - ii. **When Licenses become perpetual.** Unless you obtain perpetual Licenses under a buy-out option indicated on the Portal, a License to Licensed Software you obtained under this agreement lasts only for the Subscription Term. Any references in the Online Services Use Rights to running Licensed Software on a perpetual basis apply only if you obtained perpetual Licenses.
 - iii. **License confirmation.** Proof of your Licenses consists of: (1) this agreement, (2) any Order confirmation, (3) documentation evidencing License transfers (for any permitted transfers), and, if applicable, (4) proof of payment.
 - iv. **License rights are not related to fulfillment of software media.** Your acquisition of software media does not affect your License to Licensed Software obtained under this agreement. We license Licensed Software to you, we do not sell it.
 - v. **Copies.** You may make as many copies of the Licensed Software as you need to distribute them throughout your organization provided you have a valid License for each such copy. Copies you make must be complete copies (including copyright and trademark notices). You must make copies from Microsoft-approved media or a network source acquired from or made available by a Microsoft-approved fulfillment source. You may use a third party to make and install these copies, but you agree to be responsible for that third party's actions. You must use reasonable efforts to inform anyone you allow to use the Licensed Software that it is licensed from us and subject to the terms of this agreement.
 - vi. **Right to re-image.** In certain cases, you may re-image a software product on a device by using the Licensed Software media. If you acquired the software product (1) from an original equipment manufacturer (OEM), (2) as a full packaged software product through a retail source, or (3) under another Microsoft program, you may use the media provided to you under this agreement to create images for use in place of copies provided through that separate source. You have this right provided that:

1. You have a valid license from the separate source for each copy of the software product that is re-imaged;
2. The Licensed Software, language, version, and components of the copies is identical to the software product, language, version, and all components of the copies they replace and the number of copies or instances of the re-imaged software product permitted remains the same;
3. Except for copies of an operating system and copies of software product licensed under another Microsoft program, the Licensed Software type (e.g., upgrade or full License) is identical to the software product type from the separate source;
4. You comply with any specific requirements for re-imaging identified in the Online Services Use Rights; and
5. You agree that re-images made under this subsection remain subject to the terms and use rights provided with the software product from the separate source.

This subsection does not create or extend any warranty or support obligation.

vii. **Transferring and assigning Licenses.**

1. **License Transfers.** License transfers are not permitted, except as explicitly set forth in the Perpetual License Transfer Form. The resale of Licenses is prohibited, including any transfer by you or your Affiliate(s) for the purpose of transferring those Licenses to an unaffiliated third party.
 2. **Internal Assignment of Licenses.** Licenses must be assigned to a single user or device. Licenses may be reassigned as described in the Online Services Use Rights.
- f. **Limitations on use.** The Online Services Use Rights identify limitations on your use of Products in addition to those specified in this agreement. You may not reverse engineer, decompile or disassemble any Product, except where applicable law permits it despite this limitation. You may not rent, lease, lend, resell, or host to or for third parties any Product, except as expressly permitted for a given Product in the Online Services Use Rights. You may not separate and use the components of a Product on two or more computers, upgrade or downgrade components at different times, or transfer components separately, except as provided in the Online Services Use Rights.
- g. **Responsibility for your IDs and accounts.** You are responsible for protecting the confidentiality of any Microsoft Live IDs and Microsoft Online Services IDs associated with this agreement. In addition, you are responsible for your passwords, if any, and all activity with your Online Service accounts including that of users you provision and dealings with third parties that take place through your account or associated accounts. You must keep your accounts and passwords confidential. You must tell us right away about any possible misuse of your accounts or any security incident related to the Online Service.
- h. **Your responsibility for use of Communities.** You are responsible for your users' use of any Community, including ensuring compliance with the terms governing the Community located at the Community's website. We specifically disclaim any liability arising from or related to your or your users' use of or inability to use a Community's website.

3. Ordering, pricing, payments, renewals, and taxes.

- a. The Portal provides the available Subscription options for each Product and they can generally be categorized as follows:
 - i. **Committed Offerings:** You commit in advance to purchase a specific quantity of Products for use during a Term. You pay on a periodic basis during the Term in advance.
 - ii. **Consumption Offerings:** You pay based on actual usage in the preceding month with no upfront commitment. Payment is on a periodic basis in arrears.
 - iii. **Combination Offerings:** You may have a Subscription that is a combination of a Committed Offering and a Consumption Offering.

With respect to any offerings available free of charge, provisions in this agreement with respect to pricing, cancellation fees and payment do not apply.

- b. **Ordering.** You can place an Order on the Portal.

- i. For Committed Offerings, you may increase or decrease the quantity of Product Licenses during the Term. Licenses added to a Subscription will expire at the end of the original Term. If you decrease the quantity during a Term, we may charge you a cancellation fee for the decrease in quantity as described below in the section titled "Cancellation of a Subscription." A Subscription for a Product that is supplemental requires a Subscription for the underlying Product. A Subscription for a supplemental Product may end when the Subscription for the underlying Product ends. Each Subscription shall be for a defined Term (e.g., 30 days or 12 months) as specified on the Portal.
 - ii. You may place Orders for your Affiliates under this agreement and grant your Affiliates administrative rights to manage their Product. Affiliates may not place Orders under this agreement. If you grant any rights to your Affiliates, such Affiliates shall be bound by this agreement. You also may assign a third party a License to a Product if the third party needs such a License as part of your internal business needs. You agree to be jointly and severally liable for any Product ordered for or other actions taken by any of your Affiliates or any third party to which you provide rights under this agreement.
- c. **Prices and invoices.** Pricing and payment terms for Products are available on or through the Portal. Payments are due and must be made according to the payment option you selected for each Product on the Portal. You consent to the electronic transmittal of the Microsoft sales invoice to yourself.
- i. For Committed Offerings, the price level may be based on your Order quantity for a given Product. Your price level may be adjusted if the number of Licenses in the Subscription is increased or decreased during the Term and you qualify for a different price level. Price level changes are not retroactive. Any resulting change in the payment due for that Subscription will be pro-rated. Prices for each price level are fixed at the time the Order is first placed and shall apply throughout the Term. Prices and price levels are subject to change at the beginning of any Subscription renewal.
 - ii. For Consumption Offerings, the pricing and rate schedules will be based on actual usage and subject to change at any time upon notice.
- d. **Subscription renewal.**
- i. For Committed Offerings, you may choose to have a Subscription (1) automatically renew or (2) not renew upon expiration of the Term. You can change this selection at any time during the Term on the Portal. If you elect to have the Subscription automatically renew and the existing Term is longer than one calendar month, we will provide you with written notice of the automatic renewal prior to the expiration of the Term. If you elect to automatically renew a Subscription, the quantity of Licenses in each Subscription at the time of renewal, including any Licenses added during the Term, is automatically renewed.
 - ii. For Consumption Offerings, renewal is unnecessary because your ability to use the Product will continue until the applicable Product is discontinued.
 - iii. Trial Subscriptions cannot be renewed.
- e. **New agreement.** Before you place new Orders or renew any Subscriptions, we may require you to enter into an updated agreement that will govern your new Orders and renewal Subscriptions from that date forward.
- f. **Taxes.** Any amounts owed to us are exclusive of any taxes. You shall pay any applicable value added, goods and services, sales, or like taxes that are owed with respect to any Order placed under the agreement and which we are permitted to collect from you under applicable law. You shall be responsible for any applicable stamp taxes and for all other taxes that you are legally obligated to pay including any taxes that arise on the distribution or provision of Products to your Affiliates. We shall be responsible for all taxes based upon our net income or on our property ownership. If any taxes are required to be withheld on payments you make to us, you may deduct such taxes from the amount owed to us and pay them to the appropriate taxing authority, provided however that you promptly secure and deliver an official receipt for those withholdings and other documents we reasonably request to claim a foreign tax credit or refund. You will make certain that any taxes withheld are minimized to the extent possible under applicable law.

4. Term, suspension, and termination.

- a. **Agreement term and termination.** This agreement will remain in effect unless you terminate it subject to the terms of this Section. For Committed Offerings, termination will only terminate your right to renew Subscriptions under an existing Order or place new Orders for additional Products under this agreement. Termination will not affect any Subscription not otherwise terminated and this agreement shall remain in effect for such Subscription for the remainder of the Term. For Consumption Offerings, termination will end Customer's right to use the Product.

- b. **Termination of a Subscription.** You may terminate a Subscription at any time during its Term. A termination will be effective at the end of the monthly Subscription cycle during which you terminate the Subscription. You must pay for the period prior to the termination effective date.

For Committed Offerings the following applies:

- i. **One month (month-to-month) Subscription.** A one month Subscription may be terminated anytime without any fee.
- ii. **One year Subscription (including prepaid).** If you terminate a one year Subscription within 30 days of the date on which the Subscription became effective or was renewed, you must pay for the initial 30 days of the Subscription. No payments will be due for the remainder of the Subscription. If you terminate a Subscription at any other time during the Term, you must pay 25% of the Subscription fee otherwise due for the remainder of the one year Term.
- c. **How to terminate the agreement or a Subscription.** You must follow the process, if available, on the Portal or otherwise contact Microsoft customer service (see contact information on the Portal) to terminate the agreement or a Subscription.
- d. **Effect of termination or expiration on Licensed Software.** If the agreement or a Subscription is terminated or expires, and you do not exercise an available buy-out option, then you must delete all copies of Supplemental Software and Licensed Software licensed under this agreement and destroy any associated media. We may ask you to provide written certification of the deletion and destruction.
- e. **Expiration or termination: Customer Data.** Upon expiration or termination of each Subscription, you must tell us whether to:
- i. retain Customer Data in your paid account upon conversion from a trial account; or
 - ii. disable your account and then delete your Customer Data; or
 - iii. retain your Customer Data in a limited function account for at least 90 days after expiration or termination of your Subscription (the retention period) so that you may extract your Customer Data.
 1. If you indicate (ii), you will not be able to extract your Customer Data from your account. If you indicate (iii), you will be able to extract your Customer Data via our standard processes and tools, and you will reimburse us if there are any applicable costs. If you do not indicate (ii) or (iii), we will retain your Customer Data in accordance with (iii).
 2. Following the expiration of the retention period, we will disable your account and then delete your Customer Data.

You agree that, other than as described above, we have no obligation to continue to hold, export or return your Customer Data. You agree that we have no liability whatsoever for deletion of your Customer Data pursuant to these terms.
- f. **Regulatory environment: modification or termination.** We may modify or terminate an Online Service in any country where there is any current or future government requirement or obligation that subjects us to any regulation or requirement not generally applicable to businesses operating there, presents a hardship for us to continue operating the Online Service without modification, and/or causes us to believe these terms or the Online Service may be in conflict with any such requirement or obligation. For example, we may modify or terminate the Online Service in connection with a government requirement that would cause us to be regulated as a telecommunications provider.

5. Confidentiality.

You agree that you shall treat the design and performance of the Online Services that are accessible to you only via password protected access and any documentation or materials we make available to you under this agreement as confidential and shall not disclose them to any third party except in the furtherance of the parties' business relationship with each other. Neither party shall make any public statement concerning the terms or our business relationship as provided in this agreement without the other party's prior written consent.

6. Warranties.

- a. **Limited warranty.** We warrant that:
- i. Online Services will perform in accordance with the Service Level Agreement; and
 - ii. Licensed Software will perform substantially as described in the applicable Microsoft user documentation.
- b. **Limited warranty term.** The limited warranty for:
- i. Online Services is for the duration of your use of the Online Service; and
 - ii. Licensed Software is one year from the date you first use it.
- c. **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 the Online Services Use Rights, or resulting from events beyond our reasonable control;
 - iii. this limited warranty does not apply to problems caused by the failure to meet minimum system requirements; and
 - iv. this limited warranty does not apply to free, trial, pre-release or beta Products.
- d. **Remedies for breach of limited warranty.** If we fail to meet any of the above limited warranties and you notify us within the warranty period that a Product does not meet the limited warranty, then we will:
- i. for Online Services, provide the remedies identified in the Service Level Agreement for the affected Online Service; and
 - ii. for Licensed Software, at our option either (1) return the price paid or (2) repair or replace the Licensed Software.
- These are your only remedies for breach of the limited warranty, unless other remedies are required to be provided under applicable law.
- e. **DISCLAIMER OF OTHER WARRANTIES. OTHER THAN THIS LIMITED WARRANTY, WE PROVIDE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS. WE DISCLAIM ANY IMPLIED REPRESENTATIONS, WARRANTIES OR CONDITIONS, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE OR NON-INFRINGEMENT. THESE DISCLAIMERS WILL APPLY UNLESS APPLICABLE LAW DOES NOT PERMIT THEM.**

7. Defense of infringement, misappropriation, and third party claims.

- a. **Our agreement to protect.** We will defend you against any claims made by an unaffiliated third party that any Product infringes that party's patent, copyright or trademark or makes intentional unlawful use of its trade secret. We will also pay the amount of any resulting adverse final judgment (or settlement to which we consent). This Section provides your exclusive remedy for these claims.
- b. **Limitations on defense obligation.** Our obligations will not apply to the extent that the claim or award is based on:
- i. Customer Data, code, or materials you provided as part of the use of an Online Service;
 - ii. your use of the Product after we notify you to discontinue that use due to a third party claim;
 - iii. your combination of the Product with a non-Microsoft product, data or business process;
 - iv. damages attributable to the value of the use of a non-Microsoft product, data or business process;
 - v. modifications you make to the Product;

- vi. your redistribution of the Product to, or use for the benefit of, any unaffiliated third party;
- vii. your use of Microsoft's trademark(s) without express written consent to do so; or
- viii. any trade secret claim, where you acquire the trade secret or undisclosed information (1) through improper means; (2) under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (3) from a person (other than us or one of our Affiliates) who owed to the party asserting the claim a duty to maintain the secrecy or limit the use of the trade secret.

You will reimburse us for any costs or damages that result from any of the above actions.

c. Specific rights and remedies in case of infringement.

- i. **Our rights in addressing possible infringement.** If we receive information concerning an infringement claim related to a Product, we may, at our expense and without obligation to do so: (1) procure for you the right to continue to use the allegedly infringing Product; (2) modify the Product; (3) replace the Product with a functional equivalent, to make it non-infringing, in which case you will immediately stop using the allegedly infringing Product after receiving notice from us; or (4) terminate any applicable Subscriptions if the Product was provided free of charge.
 - ii. **Your specific remedy in case of injunction.** If, as a result of an infringement claim, your use of a Product is enjoined by a court of competent jurisdiction, we will, at our option, either: (1) procure the right to continue its use; (2) replace it with a functional equivalent; (3) modify it to make it non-infringing; (4) terminate the License for the infringing Product and refund any amounts you paid in advance for unused Product; or (5) terminate any applicable Subscriptions if the Product was provided free of charge.
- d. **Your agreement to protect.** You will defend us and our Affiliates against any claims made by an unaffiliated third party (1) that any Customer Data or non-Microsoft software we host on your behalf infringes the third party's patent, copyright, or trademark or makes intentional unlawful use of its Trade Secret, or (2) related to your use of the Product in violation of this agreement. You must pay the amount of any resulting adverse final judgment (or settlement to which you consent). This section provides our exclusive remedy for these claims.
- e. **Obligations of protected party.** You must notify us promptly in writing of a claim subject to the subsection titled "Our agreement to protect" and we must notify you promptly in writing of a claim subject to the subsection titled "Your agreement to protect." The party invoking its right to protection must (1) give the other party sole control over the defense or settlement; and (2) provide reasonable assistance in defending the claim. The party providing the protection will reimburse the other party for reasonable out of pocket expenses that it incurs in providing assistance.

8. Limitation of liability.

- a. **Limitation on liability.** Except as otherwise provided in this Section, to the extent permitted by applicable law, our and our Affiliates' and contractors' liability to you arising under this agreement is limited to direct damages up to the amount you paid us for the Product giving rise to that liability during the (1) Term or (2) twelve months prior to the filing of the claim, whichever is less. In the case of Products provided free of charge, or any code that you are authorized to redistribute to third parties without separate payment to Microsoft, our and our Affiliates' and contractors' liability to you arising under this agreement is limited to five United States dollars (\$5.00 USD). These limitations apply regardless of whether the liability is based on breach of contract, tort (including negligence), strict liability, breach of warranties, or any other legal theory. However, these monetary limitations will not apply to:
- i. Our obligations under the Section titled "Defense of infringement, misappropriation, and third party claims";
 - ii. liability for damages awarded by a court of final adjudication for our or our employees' or agents' gross negligence or willful misconduct;
 - iii. liabilities arising out of any breach of our obligations under the Section entitled "Confidentiality", except that our and our Affiliates' and contractors' liability arising out of or in relation to Customer Data shall in all cases be limited to the amount you paid for the Online Service giving rise to that liability during the (1) Term or (2) twelve months prior to the filing of the claim, whichever is less; and
 - iv. liability for personal injury or death caused by our negligence or that of our employees or agents or for fraudulent misrepresentation.

- b. **EXCLUSION OF CERTAIN DAMAGES.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, WHATEVER THE LEGAL BASIS FOR THE CLAIM, NEITHER PARTY, NOR ANY OF ITS AFFILIATES OR SUPPLIERS, WILL BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL OR INCIDENTAL DAMAGES, DAMAGES FOR LOST PROFITS OR REVENUES, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION ARISING IN CONNECTION WITH THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH POSSIBILITY WAS REASONABLY FORESEEABLE. HOWEVER, THIS EXCLUSION DOES NOT APPLY TO EITHER PARTY’S LIABILITY TO THE OTHER FOR VIOLATION OF ITS CONFIDENTIALITY OBLIGATIONS (EXCEPT TO THE EXTENT THAT SUCH VIOLATION RELATES TO CUSTOMER DATA), THE OTHER PARTY’S INTELLECTUAL PROPERTY RIGHTS, OR THE PARTIES’ RESPECTIVE OBLIGATIONS IN THE SECTION TITLED “DEFENSE OF INFRINGEMENT, MISAPPROPRIATION, AND THIRD PARTY CLAIMS.”

9. Verifying compliance.

During the Term of any Subscription and for three years thereafter, you must keep all usual and proper records relating to the Subscription(s) and your use of Products under this agreement. We may request that you conduct an internal audit of all Products in use throughout your organization, comparing the number of Licenses in use to the number of Licenses issued to and/or paid for by you. By requesting an audit, we do not waive our rights to enforce this agreement or to protect Microsoft intellectual property by any other means permitted by law.

If verification or self-audit reveals any unlicensed use, you must promptly order sufficient Licenses to cover your past and present use. If material unlicensed use is found, you must reimburse us for the costs we incurred in verification and acquire the necessary additional Licenses at retail license cost within 30 days.

10. Miscellaneous.

- a. **Notices to us.** You must send notices, authorizations, and requests in connection with this agreement by regular or overnight mail, express courier, or fax to the addresses listed below. We will treat notices as delivered on the date shown on the return receipt or on the courier or fax confirmation of delivery.

Notices should be sent to:	Copies should be sent to:
Microsoft Ireland Operations Limited Atrium Block B Carmenhall Road Sandyford Industrial Estate Dublin 18, Ireland	Microsoft Corporation Legal and Corporate Affairs Volume Licensing Group One Microsoft Way Redmond, WA 98052 USA Via Facsimile: (425) 936-7329

- b. **Electronic notices to you.** We may provide you with information about the Online Service in electronic form. It may be via email to the address you provide when you sign up for the Online Service (as you may update via the Portal) or through a web site that we identify. Notice via email is given as of the transmission date. As long as you use the Online Service, you have the software and hardware needed to receive these notices. You may not use the Online Service if you do not agree to receive these electronic notices. In addition, various service communications may be sent via email to account administrators you identify and may update via the Portal.
- c. **Assignment.** You may not assign this agreement. We may assign this agreement to our Affiliates.
- d. **Severability.** If a court holds any provision(s) of this agreement to be illegal, invalid or unenforceable, the rest of the document will remain in effect and this agreement will be amended to give effect to the eliminated provision to the maximum extent possible.
- e. **Waiver.** A waiver of any breach of this agreement is not a waiver of any other breach. Any waiver must be in writing and signed by an authorized representative of the waiving party.
- f. **Applicable law.** This agreement is governed by 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. The Products are protected by copyright and other intellectual property rights laws and international treaties.

- g. **Dispute resolution.** If we bring an action to enforce this agreement, we will bring it in the jurisdiction where you have your headquarters. If you bring an action to enforce this agreement (including any other agreement incorporating these terms), you will bring it in Ireland. This choice of jurisdiction does not prevent either party from seeking injunctive relief with respect to a violation of intellectual property rights or confidentiality obligations in any appropriate jurisdiction.
- h. **This agreement is not exclusive.** You are free to enter into agreements to license, use or promote non-Microsoft software or services.
- i. **Entire agreement.** This agreement constitutes the entire agreement concerning the subject matter and supersedes any prior or contemporaneous communications.
- j. **Survival.** Provisions regarding fees, Online Services Use Rights, restrictions on use, transfer of Licenses, export restrictions, defense of infringement, misappropriation, and third party claims, limitations of liability, confidentiality, compliance verification, obligations on termination and the provisions in this Section entitled "Miscellaneous" will survive termination or expiration of this agreement.
- k. **Customer consent to partner fees.** When you place an Order for certain Products, you may identify a "Partner of Record" associated with your Subscriptions. By identifying a Partner of Record, directly or by authorizing a third party to do so, you consent to us paying certain fees to the Partner of Record. The fees are for pre-sales support and may also include post-sales support. The fees are based on, and increase with the size of, your Order. Your prices for Products are the same whether or not you identify a Partner of Record.
- l. **No transfer of ownership.** We do not transfer any ownership rights in any Products. We reserve all rights not specifically granted in this agreement. Products are protected by copyright and other intellectual property rights laws and international treaties.
- m. **Force majeure.** Neither party will be liable for any failure in performance due to causes beyond either 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.
- n. **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, as well as end-user, end-use and destination restrictions issued by U.S. and other governments. For additional information, see <http://www.microsoft.com/exporting/>.
- o. **Waiver of right to void online purchases.** To the maximum extent permitted by applicable law, you waive your rights to void purchases under this agreement pursuant to any law governing distance selling or electronic or online agreements, as well as any right or obligation regarding prior information, subsequent confirmation, rights of withdrawal, or cooling-off periods.
- p. **Natural disaster.** In the event of a natural disaster, we may post information or provide additional assistance or rights on <http://www.microsoft.com>.

Appendix to the Microsoft Online Subscription Agreement

Online Services Data Processing Agreement

This Online Services Data Processing Agreement ("DPA") supplements the terms of the Microsoft Online Subscription Agreement.

1. Definitions.

In this DPA, "Customer Data" means all data, including all text, sound, or image files that are provided to Microsoft by, or on behalf of, Customer through Customer's use of the Online Services, "Microsoft" means Microsoft Ireland Operations Limited, and "Customer" means the entity that entered into the Microsoft Online Subscription Agreement with Microsoft. Capitalized terms used in this DPA, but not defined, will have the definition in the Microsoft Online Subscription Agreement and any documents that expressly amend or supplement those terms (collectively, the "Agreement"). Terms not defined in this DPA or the Agreement will have the meaning given in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ("Data Protection Directive").

2. Roles of the parties.

For the Online Services, Customer is the data controller and Microsoft is a data processor acting on Customer's behalf. As data processor, Microsoft will only act upon Customer's instructions. The Agreement constitutes Customer's complete and final instructions to Microsoft for its use of Customer Data under the Agreement.

3. Duration of data processing.

Microsoft will process Customer Data during the term of its provision of the Online Services to Customer. Upon expiration or termination of Customer's use of the Online Services, Customer may extract Customer Data, and Microsoft will delete Customer Data, each as set forth in the Agreement.

4. Scope and purpose of data processing.

The scope and purpose of processing of the Customer Data that Customer provides to Microsoft through the use of the Online Services is described in the Agreement. Microsoft will only process such Customer Data for the purpose of providing the Online Services and performing its obligations in accordance with the Agreement.

5. Technical and organizational security measures.

Microsoft will take technical and organizational measures to help protect Customer Data from unauthorized access, use, or disclosure.

6. Correction, deletion and blocking of Customer Data.

For the duration of Microsoft's provision of the Online Services to Customer, Microsoft will, at its election and as necessary under applicable law implementing Article 12(b) of the Data Protection Directive, either: (1) provide Customer with the ability to correct, delete, or block Customer Data it provides to Microsoft through the use of the Online Services, or (2) make such corrections, deletions, or blockages on Customer's behalf.

7. Microsoft personnel.

Microsoft personnel will not process Customer Data without authorization. Such personnel shall be obligated when taking up their duties to maintain confidentiality. The obligation of confidentiality shall continue after their engagement ends.

8. Transfer of Customer Data; Subcontractors.

Customer appoints Microsoft to transfer, store and process Customer Data that Microsoft processes on Customer's behalf in the United States or any other country in which Microsoft or its affiliates maintain facilities in order to provide the Online Services. Microsoft may also hire other companies to provide limited services on its behalf, such as providing customer support. Any such subcontractors are prohibited from using personal data for any purpose other than to deliver the services Microsoft has retained them to provide. Microsoft is responsible for its subcontractors' compliance with the obligations of this DPA. Customer consents to Microsoft's transfer of Customer Data to subcontractors in the United States or any other country in which they maintain facilities as described herein. Except as set forth above, as agreed by Microsoft and Customer, or as required by law, Microsoft will not transfer to any third party (not even for storage purposes) personal data that Customer provides to Microsoft through the use of the Online Services.

9. Safe Harbor.

Microsoft Corporation and its controlled U.S. subsidiaries (1) abide by the EU Safe Harbor and the Swiss Safe Harbor frameworks as set forth by the U.S. Department of Commerce regarding the collection, use, and retention of data from the European Union, the European Economic Area, and Switzerland ("Safe Harbor Principles"), and (2) will, during the term designated under the Agreement, remain certified under the EU and Swiss Safe Harbor programs so long as they are maintained by the United States government. Any subcontractors to whom Microsoft Corporation transfers personal data will first enter into written agreements requiring that the subcontractor provide at least the same level of privacy protection with respect to personal data it receives from Microsoft Corporation as is required by the relevant Safe Harbor Principles.

10. Data Protection Officer.

Microsoft's data protection officer is:

Attn: Data Protection Officer

c/o Microsoft Ireland Operations Ltd.

Carmenhall Road

Sandyford, Dublin 18, Ireland

11. Term.

This DPA is coterminous with the Microsoft Online Subscription Agreement to which this DPA is appended.