

MICROSOFT HOLOLENS COMMERCIAL SUITE ONLINE STORE TERMS OF USE AND SALE

Updated May 2018

Welcome to the Microsoft HoloLens Commercial Suite Online Store (the "Microsoft HoloLens Store" or "Website"). The Microsoft HoloLens Store is a website operated by Microsoft Pty Ltd (ABN: 29 002 589 460) of 1 Epping Rd, North Ryde NSW 2113, Australia ("Microsoft," "We," "Us" or "Our") ("Microsoft," "We," "Us" or "Our"). Through the Microsoft HoloLens Store, Microsoft provides you with access to a variety of resources, including the Website, and information about Microsoft HoloLens (collectively "Services"). The Services, including any updates, enhancements, new features, and the addition of any new web properties, are subject to these Terms of Use and Sale ("Terms of Use and Sale" or "Contract"). By using the Website, purchasing products and services from the Microsoft HoloLens Store, or using any Services, you accept and agree to these Terms of Use and Sale, Microsoft's Privacy Statement (see the PRIVACY AND PROTECTION OF PERSONAL INFORMATION section below), and applicable terms and conditions, policies or disclaimers found in the Microsoft HoloLens Store or referenced herein and accessible through the related hyperlinks (collectively the "Microsoft HoloLens Store Policies"). We encourage you to read the Microsoft HoloLens Store Policies carefully. YOU MAY NOT USE THE MICROSOFT HOLOLENS STORE OR SERVICES IF YOU DO NOT AGREE TO THE MICROSOFT HOLOLENS STORE POLICIES.

1. MICROSOFT HOLOLENS ENTERPRISE PURCHASE AGREEMENT

The products sold at the Microsoft HoloLens Commercial Suite Store (Microsoft HoloLens Commercial Suite devices and accessories, collectively "the devices") are sold subject to the terms of the Microsoft HoloLens Enterprise Purchase Agreement in **Appendix #1**, which are incorporated herein and agreed upon by you in their entirety.

2. NOTICE SPECIFIC TO DOCUMENTS AVAILABLE ON THE WEBSITE OR SERVICES

Permission to use documents (such as white papers, press releases, datasheets and FAQs) from the Microsoft HoloLens Store ("Documents") and Services is granted, but only if (1) the following copyright notice: "© 2016 Microsoft Corporation. All rights reserved." that may appear in any such Documents is not removed, modified, or obscured in any way, (2) use of such Documents from the Microsoft HoloLens Store or Services is for informational and non-commercial or personal use only and will not be copied or posted on any network computer or broadcast in any media, unless permitted by exemptions under applicable copyright laws, and (3) no modifications of any Documents are made. Accredited educational institutions, such as primary and secondary institutions, universities, private/public colleges, and community colleges, may download and reproduce the Documents for distribution in the classroom. Distribution outside the classroom requires Microsoft's express written permission. Use for any other purpose is expressly prohibited.

The Documents, related graphics published on the Microsoft HoloLens Store, or the Services could include technical inaccuracies or typographical errors. Changes are periodically added to the information in such Documents, graphics, and Services.

Microsoft or its respective suppliers may make improvements or changes in the product(s) or the program(s) described in this Contract or the Website at any time, without notice.

3. MEMBER ACCOUNT, PASSWORD, AND SECURITY

If the Microsoft HoloLens Store or any of the Services requires you to open an account, you must complete the registration process by providing us with current, complete, and accurate information as prompted by the applicable registration form. You also will choose a password and a user name. You may also be required to accept a service agreement or separate terms of use as a condition of opening the account. You are responsible for keeping your account information and password confidential and are responsible for all activity that occurs under your account. You agree to notify Microsoft without delay of any unauthorized use of your account or any other breach of security.

4. NO UNLAWFUL OR PROHIBITED USE

As a condition of your use of the Services, you will not, and have no right to, use the Services for any purpose that is unlawful or prohibited by these terms, conditions, and notices. You may not use the Services in any manner that could damage, disable, overburden, or impair any Microsoft server, or the network(s) connected to any Microsoft server, or interfere with any other party's use and enjoyment of any Services. You may not attempt to gain unauthorized access to any Services, other accounts, computer systems, or networks connected to any Microsoft server or to any of the Services, through hacking, password mining, or any other means. You may not obtain or attempt to obtain any materials or information through any means not intentionally made available through the Services. You may not use the Services in a way that infringes rights of third parties, including, but not limited to, willfully harming a person or entity, including Microsoft.

Microsoft reserves the right at all times to disclose any information, the disclosure of which is necessary to satisfy any applicable law, regulation, legal process, or governmental request, or to edit, refuse to post, or to remove any information or materials, in whole or in part, in Microsoft's sole discretion.

5. MATERIALS THAT YOU PROVIDE TO MICROSOFT HOLOLENS STORE OR POST ON THE WEBSITE

Microsoft does not claim ownership of the materials you provide to Microsoft (including feedback, ratings, and suggestions) or post, upload, input, or submit to any Services or associated services for review by the general public, or by the members of any public or private community (each a "Submission" and collectively "Submissions"). However, Microsoft shall be permitted to use your Submission, including your name, for the purpose for which it was submitted and may use any feedback or suggestions for any purpose, without regard to intellectual property rights or otherwise.

No compensation will be paid with respect to the use of your Submission. Microsoft is under no obligation to post or use any Submission you may provide, and Microsoft may remove any Submission at any time in its sole discretion.

You warrant and represent that you own or otherwise control all of the rights to your Submissions as described in these Terms of Use and Sale including, without limitation, all the rights necessary for you to provide, post, upload, input, or submit the Submissions.

6. LINKS TO THIRD-PARTY WEBSITES

The Microsoft HoloLens Store may include links to third-party websites that let you leave the Website. These linked sites are not under the control of Microsoft, and Microsoft is not responsible or liable in any way for the contents of any linked site or any link contained in a linked site, or any changes or updates to such sites. Microsoft is providing these links to you only as a convenience, and the inclusion of any link does not imply endorsement by Microsoft of the site. Your use of the third-party website is subject to that third party's terms and conditions, if any.

7. ACCURACY OF BILLING AND ACCOUNT INFORMATION

You agree to provide current, complete, and accurate purchase and account information for all purchases made at the Microsoft HoloLens Store. You agree to promptly update your account and other information, including your email address and credit card numbers and expiration dates, so that we can complete your transactions and contact you as needed in connection with your transactions.

8. PRODUCT AVAILABILITY AND QUANTITY AND ORDER LIMITS

Product prices and availability are subject to change at any time and without notice. Microsoft may place a limit on the quantities that may be purchased per order, per account, per credit card, per person, or per household.

Microsoft may refuse or reject any order at any time, refunding you any monies you have paid for the order, for reasons that include, but are not limited to, if you have not met the conditions specified at the time of the order, if your payment cannot be processed, if the ordered products or services are not available, or for obvious errors on the Website or made in connection with your order.

Credits or refunds will be made to the same method of payment and account used to place the order.

9. PRICE AND PAYMENT

Prices at the Microsoft HoloLens Store will be as stated on the Website.

Pricing is for individual purchasers. If you want to purchase for a commercial, educational, or government organization, please ask for information about our volume licensing programs.

The Microsoft HoloLens Store does not have a price match guarantee.

We may offer you the opportunity to pre-order a product from our Website before it is available for purchase. If you place such a pre-order, we may place a hold on your credit or debit card at the time of pre-order but will not charge your card until the product is available for download or we ship it. If the advertised price of the product decreases between the date you pre-ordered and the date the product is available for download or shipping, we will charge you the lower price. You may cancel your pre-order before the product is available for download or shipped by calling our customer support. Visit the [Microsoft Store Online Sales & Support page](#) for more information. Once your pre-order is downloaded or shipped, there are no refunds, except as required by applicable law. We will indicate on the Website if different pre-order terms apply to a specific product.

Prices shown on the Website are inclusive of applicable taxes, unless otherwise stated (“Taxes”) that may apply to your purchase. Prices shown on the Website exclude delivery costs. Delivery costs will be added to the amount of your purchase and shown on the check-out page. You will have an opportunity to review the delivery costs before you confirm your purchase. Each item in your shopping cart is shown at the current price.

The Microsoft HoloLens Store offers different payment options as identified on our Website. We reserve the right to change our payment options at any time and for any reason or no reason. If offers are made in your local currency and are payable in another currency with an international credit card, final price in your currency will depend on the foreign exchange rates, taxes, and fees applied by your bank or the issuer of your international credit card. These transactions may be subject to taxes and fees on international transactions not charged by the Microsoft HoloLens Store.

10. SALES FINAL

EXCEPT AS REQUIRED BY APPLICABLE LAW, ALL PURCHASES FROM THE MICROSOFT HOLOLENS STORE ARE FINAL, NON-CANCELABLE, AND NON-REFUNDABLE.

11. CUSTOMER SERVICE

Please visit our customer support page [<https://support.microsoft.com/>] for more information about customer service options. For avoidance of doubt, Microsoft has no obligation to provide any customer support, and any customer support Microsoft elects to provide is provided “as is” and without warranty of any kind.

12. CHANGING TERMS

Microsoft may change the Terms of Use and Sale at any time and without notice to you. The Terms of Use and Sale in force at the time you place an order, however, will govern your purchase and serve as the purchase contract between us as applicable to that order. Before your next purchase, Microsoft may have changed the Terms of Use and Sale without notice to you. Please be sure to review the current Terms of Use and Sale each time you visit the Microsoft HoloLens Store and, in any case, before you place a new order. We recommend that you save or print a copy of the Terms of Use and Sale for future reference when you place any order.

13. LIMITATIONS ON USE BY MINORS

You must have reached the age of majority in your state/province/territory of residence to purchase products from the Microsoft HoloLens Store.

14. PRIVACY AND PROTECTION OF PERSONAL INFORMATION

Your privacy is important to us. We use certain information that we collect from you to operate and provide the Microsoft HoloLens Store and the Services. Additionally, we may also automatically upload information about your machine, your use of the Services, and Service performance. Please read our Privacy Statement [<https://www.microsoft.com/en-us/privacystatement/default.aspx>] to learn about how we use and protect your information.

15. PRODUCT DISPLAY AND COLORS

Microsoft attempts to display product colors and images accurately but we cannot guarantee that the color you see on your monitor will exactly match the product's color.

16. ERRORS ON SITE

We work hard to publish information accurately, update the Website regularly, and correct errors when discovered. However, any of the content on our Website may be incorrect or out of date at any given time. We reserve the right to make changes to the Website at any time, including to product prices, specifications, offers, and availability.

17. TERMINATION OF SITE USE

Microsoft may terminate your account or use of the Microsoft HoloLens Store at any time for any reason, including, without limitation, if you are in breach of these Terms of Use and Sale or if the Microsoft HoloLens Store is no longer operated by Microsoft. By using the Microsoft HoloLens Store, you agree to be responsible for any orders you make or charges you incur prior to such termination (which are deemed to include without limitation any such orders or charges made using your account criteria). Microsoft may change, discontinue, or otherwise suspend the Microsoft HoloLens Store at any time, for any reason, and without prior notice to you.

18. NO WARRANTIES

EXCEPT AS REQUIRED BY APPLICABLE LAW, AND EXCEPT AS SPECIFICALLY PROVIDED IN THE MICROSOFT HOLOLENS ENTERPRISE PURCHASE AGREEMENT, MICROSOFT MAKES NO WARRANTIES, EXPRESS OR IMPLIED, GUARANTEES, OR CONDITIONS WITH RESPECT TO PRODUCTS OR SERVICES SOLD ON THE MICROSOFT HOLOLENS STORE. YOU UNDERSTAND THAT, SUBJECT TO APPLICABLE LAW, YOUR PURCHASE AND USE IS AT YOUR OWN RISK AND THAT WE PROVIDE PRODUCTS AND SERVICES ON AN “AS IS” BASIS “WITH ALL FAULTS” AND “AS AVAILABLE.” EXCEPT AS REQUIRED BY APPLICABLE LAW, YOU ASSUME THE ENTIRE RISK AS TO THEIR QUALITY AND PERFORMANCE. SHOULD THEY PROVE DEFECTIVE, YOU ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING OR REPAIR EXCEPT AS REQUIRED BY APPLICABLE LAW. MICROSOFT DOESN'T GUARANTEE THE ACCURACY OR TIMELINESS OF INFORMATION AVAILABLE FROM THE MICROSOFT HOLOLENS STORE OR SERVICES. TO THE EXTENT PERMITTED UNDER YOUR LOCAL LAW, WE EXCLUDE ANY IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION FOR MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, WORKMANLIKE EFFORT, TITLE, AND NON-INFRINGEMENT. YOU MAY HAVE CERTAIN RIGHTS UNDER YOUR LOCAL LAW. NOTHING IN THIS CONTRACT IS INTENDED TO AFFECT THOSE RIGHTS, IF THEY ARE APPLICABLE.

YOU ACKNOWLEDGE THAT COMPUTER AND TELECOMMUNICATIONS SYSTEMS ARE NOT FAULT-FREE AND OCCASIONAL PERIODS OF DOWNTIME OCCUR. WE DO NOT GUARANTEE THE MICROSOFT HOLOLENS STORE OR SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE OR THAT CONTENT LOSS WON'T OCCUR.

19. LIMITATION OF LIABILITY

Subject to applicable law, if, despite the other sections of this Contract, Microsoft is found liable to you for any loss or damage that arises out of or is in any way connected with your use of the Microsoft HoloLens Store, the Services, or any product or service offered under or in relation to any of the foregoing, you agree that your exclusive remedy is to recover from Microsoft or any affiliates, resellers, distributors, and vendors direct damages up to (1) an amount equal to the price or fee for one month of any service, subscription, or similar fee (not including the purchase price for hardware, software, support, or extended warranties), or (2) US \$100.00 if there was no service, subscription or similar fee.

If you have rights under the Australian Consumer Law consumer guarantees, you agree that the goods and services supplied from the Microsoft HoloLens Store are not used for personal, domestic or household purposes, and Microsoft, at its option, limits its liability and your remedies under the Australian Consumer Law consumer guarantees to: (a) replacing or repairing goods, or (b) reimbursing you for repairing or replacing the goods, or (c) re-supplying services, or (d) reimbursing you for paying someone else to supply the services. Please refer to the page at www.microsoft.com.au/acl for details of your rights under the Australian Consumer Law.

EXCEPT AS REQUIRED BY APPLICABLE LAW, YOU AGREE THAT YOU CAN'T RECOVER ANY OTHER DAMAGES OR LOSSES, INCLUDING, WITHOUT LIMITATION, CONSEQUENTIAL, LOST PROFITS, SPECIAL, INDIRECT, INCIDENTAL, OR PUNITIVE. THESE LIMITATIONS AND EXCLUSIONS APPLY EVEN IF YOU INCUR DAMAGES AND EVEN IF WE KNEW OR SHOULD HAVE KNOWN ABOUT THE POSSIBILITY OF THE DAMAGES. SOME STATES OR PROVINCES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THESE LIMITATIONS AND EXCLUSIONS APPLY TO ANYTHING RELATED TO **THE MICROSOFT HOLOLENS STORE, THE SERVICES, THIS CONTRACT, OR ANY PRODUCT OR SERVICE OFFERED UNDER OR IN RELATION TO ANY OF THE FOREGOING**, INCLUDING LOSS OF CONTENT; ANY VIRUS AFFECTING YOUR USE OF THE MICROSOFT HOLOLENS STORE OR SERVICES; DELAYS OR FAILURES IN STARTING OR COMPLETING TRANSMISSIONS OR TRANSACTIONS; CLAIMS FOR BREACH OF CONTRACT, WARRANTY, GUARANTEE, OR CONDITION; CONSUMER PROTECTION; DECEPTION; UNFAIR COMPETITION; STRICT LIABILITY, NEGLIGENCE, MISREPRESENTATION, OMISSION, TRESPASS OR OTHER TORT; VIOLATION OF STATUTE OR REGULATION; OR UNJUST ENRICHMENT.

20. GENERAL LEGAL TERMS

20.1. Interpreting the Contract

All parts of this Contract apply to the maximum extent permitted by the relevant law; you may have greater rights in your jurisdiction of residence. If it is determined that we can't enforce a part of this Contract as written, we may replace those terms with similar terms to the extent enforceable under the relevant law, but the rest of this Contract won't change. Section 20.1.8 says what happens if parts of Section 20.1 (arbitration and class action waiver) are found to be illegal or unenforceable, and prevails over this Section 20.2 if inconsistent with it. Other terms may apply if you purchase products or services from other Microsoft websites.

20.2. Assignment

We may assign, transfer, or otherwise dispose of our rights and obligations under this Contract, in whole or in part, at any time without notice to you. You may not assign this Contract or transfer any rights under it.

20.3. No Third-Party Beneficiaries

This Contract is solely for your and our benefit. It is not for the benefit of any other person, except for permitted successors and assigns.

20.4. Notices and Communication

For customer support inquiries, visit the [Microsoft Store Online Sales & Support page](#) for more information. Microsoft has no obligation, however, to provide any customer support, and any customer support Microsoft elects to provide is provided "as is" and without warranty of any kind.

20.5. Governing Law

This Contract is governed by and is to be construed in accordance with the laws applicable in New South Wales regardless of conflict of laws principles.

20.6. Other Terms

In addition to any License Agreement applicable to software, other products and services available for purchase or trial on the Microsoft HoloLens Store may also be offered to you subject to separate end user license agreements, terms of use, terms of service, or other terms and conditions. If you purchase or use those products, you may be required to also accept those terms as a condition of purchase, installation, or use.

20.7. Conflicts

If the terms in this Contract conflict with those in any Microsoft HoloLens Store Policies, the terms in this Contract will control.

21. NOTICES AND RESERVATION OF RIGHTS

Notifications of claimed copyright infringement should be sent to Microsoft's designated agent. For details and contact information, see Notice and Procedure for Making Claims of Copyright Infringement at: <https://www.microsoft.com/info/cpyrtlnfrg.html>. INQUIRIES THAT ARE SUBMITTED BUT ARE NOT RELEVANT TO THE PROCEDURE WILL RECEIVE NO RESPONSE.

Copyright and trademark notices

All contents of the Website and Services are Copyright ©2015 Microsoft Corporation or its suppliers, One Microsoft Way, Redmond, WA 98052, USA. All rights reserved. We or our suppliers own the title, copyright, and other intellectual property rights in the Website, Services, and (except as otherwise provided above) their content. Microsoft and the names, logos, and icons of all Microsoft products and services may be either trademarks or registered trademarks of Microsoft in the United States, Canada, or other countries.

A list of Microsoft trademarks can be found at: <http://www.microsoft.com/about/legal/en/us/IntellectualProperty/Trademarks/ENUS.aspx>. The names of actual companies and products may be the trademarks of their respective owners. Any rights not expressly granted in this Contract are reserved.

APPENDIX #1

Microsoft HoloLens Enterprise Purchase Agreement

This Microsoft HoloLens Enterprise Purchase Agreement (“**Agreement**”), which includes any other documents expressly incorporated into this Agreement, is the entire agreement under which Microsoft agrees to sell you the Devices (defined below) described on the attached **Order Quote Form**. If you are purchasing the Devices on behalf of an entity and its Affiliates (e.g., a company), you warrant that you have the authority to bind that entity and its Affiliates to this Agreement. Microsoft’s Order Quote Form

is an offer to sell you the Microsoft HoloLens Devices on the terms of this Agreement. You accept this Agreement by submitting your purchase order in relation to Microsoft's unmodified Order Quote Form, in which case this Agreement will apply to your purchase of the Devices.

1. NOTICES, ADDITIONAL TERMS, AND USAGE RIGHTS AND RESTRICTIONS

- 1.1. DEFINITIVE AGREEMENT.** You and Microsoft may have entered into a separate written agreement ("**Definitive Agreement**") for the development, marketing, and commercial deployment of applications or services (e.g., consulting, training, or software development) for Microsoft HoloLens. If this Agreement and the Definitive Agreement conflict, then, solely with regard to your rights and responsibilities in your usage of the Devices, this Agreement will apply.

EULA. Additional terms apply to Microsoft software and services installed on or offered for use in connection with the Devices ("**EULA**"). Nothing in this Agreement modifies or supersedes the EULA. By signing this Agreement, you acknowledge having already read, and are deemed to have accepted, the EULA, posted at https://www.microsoft.com/en-us/Useterms/OEM/Windows/10Mobile/UseTerms_OEM_Windows_10Mobile_English.htm.

- 1.2. . If prior to your use of a Device, you do not want to agree to the EULA, you may return the Device unused to Microsoft for a full refund.** This is your only refund opportunity under this Agreement.

- 1.3. PRERELEASE SOFTWARE UPDATES.** The Devices, along with Microsoft's automatic updates to the software and services provided with the Devices, may include **experimental and early prerelease software and firmware**. This means that **you may experience occasional crashes and data loss**. To recover, you may have to reinstall your applications, the operating system, or re-flash your Devices. In some instances, once updates are installed, you may not be able to go back to the prior version of the software or firmware. **By using these Devices, you agree to receive automatic updates from Microsoft and to frequently backup your data.**

Automatic software and services updates on your Devices may: (i) automatically collect and transmit data to Microsoft and its partners regarding usage on your Devices; (ii) not be stable or tested to the same level as commercially-released software; (iii) stop working, be updated, or removed from your device automatically without notice (for example, the Device software may update automatically through Windows Update or otherwise); and (iv) change before commercial release or may never be commercially released. Automatic updating cannot be turned off. Some features may be removed or may stop working after a predetermined time period or at the end of an evaluation cycle once enough data has been collected. Some third party applications installed on the device may also not work, may stop working, or may be automatically deleted by the Devices software updates).

- 1.4. Data Usage Charges.** Your use of the Devices may incur Internet and data usage charges. You are solely responsible for all such charges.

- 1.5. No Resale.** You will not resell, rent, lease, or otherwise transfer ownership of the Devices to any other entity or person without Microsoft's prior, express, written consent, in its sole discretion.
- 1.6. Use limitations.** Except as expressly provided in this Agreement or as permitted by law notwithstanding the terms of this Agreement, you will not, and will not authorize or instruct any Affiliate or third parties (or permit any of your or your Affiliates' personnel) to:
- 1.6.1.** Reproduce, modify, create derivative works of, decompile, disassemble, tear-down, or reverse engineer any Devices;
 - 1.6.2.** Sell, rent, or lease any Devices;
 - 1.6.3.** Transfer ownership of any of the Devices or your rights under this Agreement or any EULA to any third party; or
 - 1.6.4.** Create, incur, impose, assess, assume, or attach any lien, levy, claim, encumbrance, or security interest in or to the Devices (except for liens imposed in the ordinary course of your business that apply to all of your after-acquired goods and property).
- 1.7. Export Restrictions.** Microsoft is only making available for purchase the Devices in the Microsoft online store in certain countries, and the Devices will be certified to meet hardware compliance requirements for these countries only. Microsoft cannot effectively prevent you from after-purchase transport of Devices, but any such transport and use of Devices is done solely at your discretion, without approval by or consultation with Microsoft, and you are entirely responsible and liable for any legal compliance and export requirements associated with your use of the Devices.
- 1.8. Delivery.** Delivery of the Devices will be Ex Works Microsoft's shipping point (Incoterms 2010), unless otherwise mutually-agreed in writing in the applicable Purchase Order.

2. DEFINITIONS

- 2.1. "Affiliate"** means any legal entity that a party owns, that owns a party, or that is under its common ownership. "Ownership" means, for purposes of this definition, direct or indirect control of more than a 50% interest in an entity.
- 2.2. "Devices"** mean the following:
- 2.2.1.** The unit(s) of hardware described on the Order Quote Form attached to this Agreement, including the Windows operating system software included by Microsoft on such hardware and any associated software and online services offered by Microsoft (or its third-party providers, if any), and provided to you by or on behalf of Microsoft (or its third-party providers, if any);
 - 2.2.2.** Any third-party firmware and any third-party hardware included in or with such hardware;

2.2.3. Any updates to such hardware, software, or services, as well as any updates to any third-party firmware or third-party hardware made available to you to use on such hardware; and

2.2.4. Any documentation related to such hardware, software, services, third-party firmware, or third-party hardware.

2.3. "Fees" means the device fees and other charges set forth on the attached Order Quote Form.

3. RETURNS AND WARRANTY

3.1. All Sales Final. EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN **SECTION 1.2**, ALL PURCHASES UNDER THIS AGREEMENT ARE FINAL, NON-CANCELABLE, AND NONREFUNDABLE.

3.2. Product Warranty. The Devices are subject to the limited warranty attached as **Appendix A** to this Agreement.

3.3. Returned Devices. If you are returning any Devices to Microsoft pursuant to any applicable warranty provisions, you must, from and with regard to all to-be-returned Devices, back up and store any data you wish to keep, remove any personal or confidential information, remove any peripherals (e.g., memory cards and USB drives), and backup any software not pre-installed by Microsoft (or uninstall such software so that you can preserve any applicable installation count and reinstall on a replacement Device, if any) before you return the Devices to us in accordance with Microsoft's terms and policies. Microsoft is not responsible for any loss or inconvenience suffered by you due to your failure to comply with the terms in this **Section 3.3** or any other Microsoft warranty or replacement policies, including without limitation any loss of your data or transfer of your data to a third party.

4. FEEDBACK

If you give feedback to Microsoft about the Devices, software, or services Microsoft or its Affiliates provide to you under or in relation to this Agreement, you give to Microsoft, without charge, the right to use, share, and commercialize your feedback for any and all purposes, without regard to intellectual property rights or otherwise.

5. FEES AND PAYMENT

5.1. Fees. You agree to pay Microsoft all Fees set forth in the attached Order Quote Form.

5.2. Payment Terms. Payments to Microsoft must be made NET 30 days from the date of, and in the currency and according to the terms stated on, Microsoft's invoice. Microsoft may assess a finance charge on all past due amounts payable on demand and equal to the lesser of an annual rate of 1% per month and the highest amount allowed by law, applied from the first day the amount is past due until paid in full.

5.3. Taxes. Fees owed are exclusive of any taxes. You will pay all value added, goods and services, sales, gross receipts, or other transaction taxes, fees, charges, or surcharges or other similar taxes, charges or fees, or any regulatory cost recovery and other surcharges that are owed

under this Agreement and which Microsoft is permitted to collect from you as customer. You will also be responsible for any applicable stamp taxes and for all other taxes that you are legally obligated to pay. Microsoft will be responsible for payment of all taxes based upon its net income, gross receipts taxes imposed in lieu of taxes on income or profits, or taxes on property ownership.

6. DISCLAIMER OF WARRANTIES

THIS CLAUSE IS SUBJECT TO APPLICABLE LAWS. THE DEVICES AND ANY SOFTWARE OR SERVICES (INCLUDING UPDATES) PROVIDED WITH THE DEVICES ARE SOLD "AS IS." EXCEPT AS PROVIDED IN SECTION 3 AND APPENDIX A, MICROSOFT DOES NOT PROVIDE AND EXPRESSLY DISCLAIMS ANY AND ALL OTHER EXPRESS, IMPLIED, OR STATUTORY WARRANTIES. THIS INCLUDES DISCLAIMER OF WARRANTIES REGARDING NON-USE OF OPEN SOURCE SOFTWARE OR OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NONINFRINGEMENT, LACK OF VIRUSES OR ERRORS, SATISFACTORY CONDITION, SAFETY, COMFORT, OR QUALITY. FURTHER, MICROSOFT EXPRESSLY DISCLAIMS ANY REPRESENTATION, WARRANTY, OR LIABILITY FOR ANY THIRD-PARTY SOFTWARE OR ASSETS IN THE MICROSOFT DELIVERABLES, INCLUDING BUT NOT LIMITED TO ANY SOFTWARE, TOOLS OR ASSETS BY UNITY TECHNOLOGY.

7. EXCLUSION OF CERTAIN DAMAGES; LIMITATION ON LIABILITY.

NEITHER MICROSOFT, NOR ITS AFFILIATES NOR CONTRACTORS, WILL BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, OR INCIDENTAL DAMAGES, OR DAMAGES FOR LOST PROFITS, REVENUES, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION IN CONNECTION WITH THIS AGREEMENT OR YOUR PURCHASE OF OR ANYONE'S USE OF A DEVICE, EVEN IF MICROSOFT WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH POSSIBILITY WAS REASONABLY FORESEEABLE. THE MAXIMUM, AGGREGATE LIABILITY OF MICROSOFT OR ITS AFFILIATES FOR ALL CLAIMS ARISING UNDER OR RELATED TO THIS AGREEMENT IS LIMITED TO THE GREATER OF: (A) THE FEES THAT YOU PAID OR ARE PAYABLE BY YOU FOR DEVICES UNDER THIS AGREEMENT, OR (B) \$1,000, IN EACH CASE INCREASED BY THE FEES AND COSTS MICROSOFT WOULD BE OBLIGATED TO PAY IN ACCORDANCE WITH **SECTION 7 OF APPENDIX A**. IF YOU HAVE RIGHTS UNDER THE AUSTRALIAN CONSUMER LAW CONSUMER GUARANTEES, YOU AGREE THAT THE GOODS AND SERVICES SUPPLIED FROM THE MICROSOFT HOLOLENS STORE ARE NOT USED FOR PERSONAL, DOMESTIC OR HOUSEHOLD PURPOSES, AND MICROSOFT, AT ITS OPTION, LIMITS ITS LIABILITY AND YOUR REMEDIES UNDER THE AUSTRALIAN CONSUMER LAW CONSUMER GUARANTEES TO: (A) REPLACING OR REPAIRING GOODS, OR (B) REIMBURSING YOU FOR REPAIRING OR REPLACING THE GOODS, OR (C) RE-SUPPLYING SERVICES, OR (D) REIMBURSING YOU FOR PAYING SOMEONE ELSE TO SUPPLY THE SERVICES.

8. GENERAL TERMS

8.1. Relationship. This Agreement does not create a partnership, joint venture, or agency relationship between the parties or grant a franchise.

8.2. Jurisdiction and governing law. This Agreement will be construed and controlled by the laws of the State of Washington, United States of America, except that the FAA governs all provisions

relating to arbitration. Both parties choose exclusive jurisdiction and venue in the federal courts sitting in King County, Washington, unless no federal subject matter jurisdiction exists, in which case the parties consent to exclusive jurisdiction and venue in the Superior Court of King County, Washington, in each case for all disputes heard in court (not arbitration and not small claims court) in accordance with this Agreement. If you live in (or, if you are or represent a business, your principal place of business is in) Australia, you are contracting with Microsoft Pty Ltd, 1 Epping Road, North Ryde, NSW 2113. The laws of New South Wales, Australia govern the interpretation of this warranty, claims for breach of it, and all other claims (including consumer protection, unfair competition, and tort claims), regardless of conflict of law principles.

- 8.3. Assignment.** You may not assign this Agreement or your rights to the Devices. Without limiting the foregoing, and notwithstanding anything in the EULA to the contrary, your rights and obligations under the EULA are not assignable or delegable to anyone else, whether by operation of contract, law, or otherwise (including in connection with insolvency or bankruptcy or the merger or acquisition of a party), except with the express prior written consent of Microsoft.
- 8.4. Waiver.** A party's delay or failure to exercise any right or remedy will not result in a waiver of that or any other right or remedy.
- 8.5. Severability.** If any court of competent jurisdiction determines that any provision of this Agreement is illegal, invalid, or unenforceable, the remaining provisions will remain in full force and effect.
- 8.6. Termination and Survival.** Either party may terminate this Agreement immediately on notice if the other party breaches this Agreement (and fails to cure the breach within 10 (ten) calendar days after notice. If Microsoft terminates this Agreement as a result of your breach, then: (i) Microsoft's obligation to provide warranty service for Devices delivered under this Agreement will end as of the date of termination, (ii) Microsoft will not refund any portion of any payment made by you for physical Devices delivered under this Agreement, and (iii) you will remain liable for all outstanding payment obligations under this Agreement. **Sections 1, 2, and 4 through 8**, as well as **Section 5-10 of Appendix A** and all limitations and exclusions in other sections, will survive termination of this Agreement.
- 8.7. Entire agreement.** This Agreement (including its appendices and the EULA) is the entire agreement between the parties regarding its subject matter. It replaces all prior agreements, communications, and representations between the parties regarding its subject matter. Except as otherwise expressly stated in this Agreement, it does not modify or supersede the terms of the EULA.
- 8.8. Amendment.** This Agreement can be changed only by an amendment signed by both parties.

APPENDIX A

MICROSOFT HOLOLENS ENTERPRISE LIMITED WARRANTY

THE DEVICES ARE SUBJECT TO THE FOLLOWING ONE-YEAR LIMITED WARRANTY.

IF YOU LIVE IN (OR, IF YOU ARE OR REPRESENT A BUSINESS, YOUR PRINCIPAL PLACE OF BUSINESS IS IN) THE UNITED STATES, SECTION 7 CONTAINS A BINDING ARBITRATION CLAUSE AND CLASS ACTION WAIVER. IT AFFECTS YOUR RIGHTS ABOUT HOW TO RESOLVE ANY DISPUTE WITH MICROSOFT. PLEASE READ IT.

This warranty gives you specific legal rights. You may also have other rights that vary from State to State or Province to Province. If you live in Australia, you may have additional rights under the Australian Consumer Law. Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

1. **Warranty** - For one year from the date you purchased your Device from Microsoft (“**Warranty Period**”), Microsoft warrants, only to you, that the Device will not malfunction due to a defect in materials or workmanship under Normal Use Conditions. Except where prohibited by applicable law, this warranty is non-transferrable and is limited to you. This is the only warranty Microsoft gives for your Device. Microsoft gives no other guarantee, warranty, or condition. No one else may give any guarantee, warranty, or condition on Microsoft’s behalf.

If your State’s or Province’s law gives you any implied warranty, including an implied warranty of merchantability or fitness for a particular purpose, its duration is limited to the Warranty Period. Some States or Provinces do not allow limitations on how long an implied warranty lasts, so this limitation may not apply to you.

Other Definitions. “**You**” means the original end-user of the Device. “**Normal Use Conditions**” means ordinary consumer use under normal conditions according to the instruction manual. “**State**” means a State, the District of Columbia, and any other United States territory or possession. “**The United States of America**” includes all of the States. “**Province**” means a Canadian province or territory.

2. How to Request Warranty Service

Follow the online process at <https://support.microsoft.com>.

Preparing your Device. Before sending your Device to Microsoft, you must:

- 2.1. Obtain Microsoft's permission to return the device and an "RMA" number, all in accordance with the online process described at the link immediately above;
- 2.2. Back up your Device's hard disk drive and keep a copy of any data (including photographs, documents, video, music, etc.) or programs you want to save. **Microsoft is not responsible for your data or programs and will erase them. If Microsoft replaces your Device, you will receive a different hard disk drive without any of your data or programs on it; if you have not backed up your data and programs before you sent the Device to Microsoft, they will be gone forever, and Microsoft will have no way of retrieving them for you;**
- 2.3. Delete from the Device anything you consider confidential. **Microsoft is not responsible for your privacy if you leave confidential information on your Device;** and
- 2.4. Remove from the Device (and do not send to Microsoft) any peripheral items that may be plugged into ports on the Device (e.g., memory cards, USB drives, etc.); **Microsoft is not responsible for your peripherals, and there is no guarantee that anything you send to Microsoft in connection with warranty service will be returned.**

3. Microsoft's Responsibility

After you return Device to Microsoft, Microsoft will inspect it. If Microsoft determines that the Device malfunctioned due to a defect in materials or workmanship during the Warranty Period under Normal Use Conditions, Microsoft will (at its option) repair or replace it, or refund the purchase price to you. Repair may use new or refurbished parts. Replacement may be with a new or refurbished unit. After repair or replacement, your Device will be covered by this warranty for the longer of the remainder of your original Warranty Period, or 90 days after Microsoft ships it to you. Microsoft's responsibility to repair or replace your Device, or to refund the purchase price, is your exclusive remedy. If your Device malfunctions after the Warranty Period expires, there is no warranty of any kind. After the Warranty Period expires, Microsoft may charge you a fee for its efforts to diagnose and service any problems. IF MICROSOFT REPLACES YOUR DEVICE, THE REPLACEMENT DEVICE WILL INCLUDE SOLELY MICROSOFT'S THEN-CURRENT SOFTWARE IMAGE. YOUR DATA, PROGRAMS, AND ANYTHING ELSE YOU MAY HAVE STORED ON THE RETURNED DEVICE WILL NOT BE REINSTALLED OR REIMAGED ONTO THE REPLACEMENT DEVICE OR OTHERWISE RETURNED TO YOU, AND MICROSOFT WILL NOT BE ABLE TO RETRIEVE ANYTHING FROM THE REPLACED DEVICE. YOU MUST BACKUP ALL DATA AND PROGRAMS, AND REMOVE ALL PERIPHERALS, BEFORE RETURNING YOUR DEVICE TO MICROSOFT.

4. Warranty Exclusions

4.1. Microsoft is not responsible and this warranty does not apply if your Device is:

- 4.1.1.** damaged by use with products not sold or licensed by Microsoft;
- 4.1.2.** opened, modified, or tampered with (including, for example, any attempt to defeat or circumvent any Microsoft technical limitation or security mechanism, etc.), or its serial number is altered or removed;
- 4.1.3.** damaged by any external cause (including, for example, by being dropped, exposed to liquid, used with inadequate ventilation, etc., acts of God, power surge, misuse, abuse, negligence, accident, mishandling, misapplication, failure to follow instructions, or other causes unrelated to defects in the Device); s
- 4.1.4.** scratched, dented, etc. or shows other cosmetic damage (and Microsoft determines that your issues with the Device relate to such scratches, dents, or other cosmetic damage); or
- 4.1.5.** repaired, modified, or altered by anyone other than Microsoft.

4.2. Microsoft is not responsible and this warranty does not apply if your Device is used with an operating system other than the Windows operating system preinstalled in your Device, or any contemporaneous or later version of that operating system.

4.3. This warranty does not apply to consumable parts that are designed to diminish over time, including normal wear and tear, unless the failure has occurred due to a defect in materials or workmanship.

4.4. Microsoft does not guarantee that your use of the Device will be uninterrupted, timely, secure, or error-free, or that data loss will not occur.

5. EXCLUSION OF CERTAIN DAMAGES

TO THE EXTENT PERMITTED BY APPLICABLE LAW, MICROSOFT IS NOT RESPONSIBLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES; ANY LOSS OF DATA, PRIVACY, CONFIDENTIALITY, OR PROFITS; OR ANY INABILITY TO USE YOUR DEVICE. THESE EXCLUSIONS APPLY EVEN IF MICROSOFT HAS BEEN ADVISED OF THE POSSIBILITY OF THESE DAMAGES, AND EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. Some States or Provinces do not allow the exclusion or limitation of incidental or consequential damages, so this limitation or exclusion may not apply to you.

6. Additional Terms

If you attempt to defeat or circumvent any Device technical limitation or security system, you may cause your Device to stop working permanently. You will also void your warranty, and make your Device ineligible for authorized repair, even for a fee.

7. BINDING ARBITRATION AND CLASS ACTION WAIVER IF YOU LIVE IN (OR, IF YOU ARE OR REPRESENT A BUSINESS, YOUR PRINCIPAL PLACE OF BUSINESS IS IN) THE UNITED STATES

- 7.1. This section applies to any dispute EXCEPT DISPUTES RELATING TO THE ENFORCEMENT OR VALIDITY OF YOUR, YOUR LICENSORS', MICROSOFT'S, OR MICROSOFT'S LICENSORS' INTELLECTUAL PROPERTY RIGHTS.** The term "dispute" means any dispute, action, or other controversy between you and Microsoft concerning the Device (including its price), any related software or services, or this warranty, whether in contract, warranty, tort, statute, regulation, ordinance, or any other legal or equitable basis. The term "dispute" will be given the broadest possible meaning allowable under law.
- 7.2. Notice of Dispute.** In the event of a dispute, you or Microsoft must give the other a Notice of Dispute, which is a written statement that sets forth the name, address, and contact information of the party giving it, the facts giving rise to the dispute, and the relief requested. You must send any Notice of Dispute by U.S. Mail to Microsoft Corporation, ATTN: LCA ARBITRATION, One Microsoft Way, Redmond, WA 98052-6399, U.S.A. A form is available on the Corporate, External, and Legal Affairs (CELA) website (<http://go.microsoft.com/fwlink/?LinkId=245499>). Microsoft will send any Notice of Dispute to you by U.S. Mail to your physical address, if we have it, or otherwise to your email address. You and Microsoft will attempt to resolve any dispute through informal negotiation within 60 days from the date the Notice of Dispute is sent. After 60 days, you or Microsoft may commence arbitration.
- 7.3. Small Claims Court.** You may also litigate any dispute in small claims court in your county of residence (or, if you are or represent a business, your principal place of business) or King County, Washington, U.S.A., if the dispute meets all requirements to be heard in the small claims court. You may litigate in small claims court whether or not you negotiated informally first.
- 7.4. Binding Arbitration.** If you and Microsoft do not resolve any dispute by informal negotiation or in small claims court, any other effort to resolve the dispute will be conducted exclusively by individual binding arbitration governed by the Federal Arbitration Act ("FAA"). Class arbitrations are not permitted. You are giving up the right to litigate disputes in court before a judge or jury (or participate in court as a party or class member). Instead, all disputes will be resolved before a neutral arbitrator, whose decision will be final except for a limited right of appeal under the FAA. Any court with jurisdiction over the parties may enforce the arbitrator's award.
- 7.5. Class Action Waiver.** Any proceedings to resolve or litigate any dispute in any forum will be conducted solely on an individual basis. Neither you nor Microsoft will seek to have any dispute heard as a class action, private attorney general action, or in any other proceeding in which either party acts or proposes to act in a representative capacity. No arbitration or other proceeding will be combined with another without the prior written consent of all parties to all affected arbitrations or proceedings.
- 7.6. Arbitration Procedure.** Any arbitration will be conducted by the American Arbitration Association (the "AAA") under its Commercial Arbitration Rules. If the value of the dispute is \$75,000 or less whether or not you are an individual, its Supplementary Procedures for Consumer-Related Disputes will also apply. For more information, see www.adr.org or call 1-800-778-7879. To commence arbitration, submit the form available on the Corporate, External, and Legal Affairs (CELA) website (<http://go.microsoft.com/fwlink/?LinkId=245497>) to the AAA. You agree to commence arbitration only in your county of residence (or, if you are or represent a business, your principal place of business) or in King County, Washington, U.S.A. Microsoft

agrees to commence arbitration only in your county of residence (of, if you are or represent a business, your principal place of business). You may request a telephonic or in-person hearing by following the AAA rules. In a dispute involving \$10,000 or less, any hearing will be telephonic unless the arbitrator finds good cause to hold an in-person hearing instead. The arbitrator may award the same damages to you individually as a court could. The arbitrator may award declaratory or injunctive relief only to you individually, and only to the extent required to satisfy your individual claim.

7.7. Arbitration Fees and Payments

7.7.1. Disputes Involving \$75,000 or Less. Microsoft will promptly reimburse your filing fees and pay the AAA's and arbitrator's fees and expenses. If you reject Microsoft's last written settlement offer made before the arbitrator was appointed ("Microsoft's last written offer"), your dispute goes all the way to an arbitrator's decision (called an "award"), and the arbitrator awards you more than Microsoft's last written offer, Microsoft will: (1) pay the greater of the award or \$5,000; (2) pay your reasonable attorney's fees, if any; and (3) reimburse any expenses (including expert witness fees and costs) that your attorney reasonably accrues for investigating, preparing, and pursuing your claim in arbitration. The arbitrator will determine the amount of fees, costs, and expenses unless you and Microsoft agree on them.

7.7.2. 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.

7.7.3. Disputes Involving Any Amount. In any arbitration you commence, Microsoft will seek its AAA or arbitrator's fees and expenses, or your filing fees it reimbursed, only if the arbitrator finds the arbitration frivolous or brought for an improper purpose. In any arbitration Microsoft commences, Microsoft will pay all filing, AAA, and arbitrator's fees and expenses. Microsoft won't seek its attorney's fees or expenses from you in any arbitration. Fees and expenses are not counted in determining how much a dispute involves.

7.8. Conflict with AAA Rules. This warranty governs to the extent it conflicts with the AAA's Commercial Arbitration Rules and Supplementary Procedures for Consumer-Related Disputes.

7.9. Claims or Disputes Must Be Filed Within One Year. To the extent permitted by law, any claim or dispute to which this **Section 7** applies must be filed within one year in small claims court (**Section 7(c)**), or in arbitration (**Section 7(d)**), or in court, if **Section 7** permits the dispute to be filed in court instead of arbitration. The one-year period begins when the claim or Notice of Dispute first could be filed. If such a claim or dispute is not filed within one year, it is permanently barred.

7.10. Severability. If the class action waiver in **Section 7(e)** is found to be illegal or unenforceable as to all or some parts of a dispute, then **Section 7** won't apply to those parts. Instead, those parts will be severed and proceed in a court of law, with the remaining parts proceeding in arbitration. If any other provision of **Section 7** is found to be illegal or unenforceable, that provision will be severed with the remainder of **Section 7** remaining in full force and effect.

7.11. Contracting Party and Choice of Law

7.11.1. United States. If you live in (or, if you are or represent a business, your principal place of business is in) the United States, you are contracting with Microsoft Corporation, One Microsoft Way, Redmond, WA 98052, U.S.A. The laws of the State where you live (or, if you are or represent a business, where your principal place of business is located) govern the interpretation of this warranty, claims for breach of it, and all other claims (including consumer protection, unfair competition, and tort claims), regardless of conflict of law principles, except that the FAA governs all provisions relating to arbitration.

7.11.2. Canada. If you live in (or, if you are or represent a business, your principal place of business is in) Canada, you are contracting with Microsoft Corporation, One Microsoft Way, Redmond, WA 98052, U.S.A. The laws of the Province where you live (or, if you are or represent a business, where your principal place of business is located) govern the interpretation of this warranty, claims for breach of it, and all other claims (including consumer protection, unfair competition, and tort claims), regardless of conflict of law principles.

7.11.3. Australia. If you live in (or, if you are or represent a business, your principal place of business is in) Australia, you are contracting with Microsoft Pty Ltd, 1 Epping Road, North Ryde, NSW 2113. The laws of New South Wales, Australia govern the interpretation of this warranty, claims for breach of it, and all other claims (including consumer protection, unfair competition, and tort claims), regardless of conflict of law principles.

8. All parts of this warranty apply to the maximum extent permitted by law or unless prohibited by law (in which case the remainder of this warranty will remain in effect). You may have greater rights existing under legislation in your State or Province.
9. This warranty is valid only in the United States of America, Canada and Australia.

Microsoft's address in the United States: Microsoft Corporation, One Microsoft Way, Redmond, WA 98052.

Microsoft's address in Canada: Microsoft Canada Inc., 1950 Meadowvale Blvd., Mississauga, Ontario, L5N 8L9.

Microsoft's address in Australia: Microsoft Pty Limited, 1 Epping Rd North Ryde, NSW 2113.