

Microsoft Purchase Order Terms & Conditions ("PO Terms")

1. **Acceptance and Effect.** These PO Terms are between the Microsoft entity issuing the Purchase Order ("Microsoft") and the supplier identified in the applicable SOW ("Supplier") and cover:
 - a. "Cloud Services": the services, websites (including hosting), solutions, platforms, and products that Supplier makes available under or in relation to these PO Terms, including the software, mobile apps, equipment, technology, and services necessary for Supplier to provide the foregoing.
 - b. "Deliverables": all work product developed by Supplier (or Supplier's approved subcontractor) specifically for Microsoft as part of the delivery of Goods, Services or Cloud Services, including intellectual property ("IP") in connection with these PO Terms. Deliverables are "work made for hire" for Microsoft as that term is defined under copyright law.
 - c. "Goods": software and/or tangible goods licensed or purchased by Microsoft under these PO Terms.
 - d. "Services": professional services, advertising, consulting services, and support and maintenance services purchased by Microsoft under these PO Terms.
 - e. "SOW" means any of the following: (1) Microsoft purchase orders; (2) statements of work or other order forms signed by both parties' authorized representatives; or (3) written agreements signed by both parties' authorized representatives referencing, and subject to, these PO Terms.

These PO Terms are effective upon Supplier's commencement of performance or the date of Supplier's signature on the applicable SOW, whichever is earlier. Except as set forth in Section 2 below, Supplier's acceptance of these PO Terms is expressly limited to these terms and conditions without counterproposal.

2. **Relationship to Other Agreements.** The terms and conditions of these PO Terms are the complete and binding agreement between Microsoft and Supplier except:
 - a. If the parties mutually executed an agreement, such as a Master Supplier Services Agreement, which is effective on the date of these PO Terms and applies to the Goods, Services, or Cloud Services ordered with these PO Terms, and that agreement applies to the relationship of the parties governed by these PO Terms, then the provisions of such agreement are incorporated. If a conflict arises between these PO Terms and such agreement, to the extent of that conflict, the terms of such agreement will apply. For the purposes of these PO Terms, online terms or agreements that Microsoft accepts to login or access Services or Cloud Services, such as a software as a service or platform, are not an agreement that has been "mutually executed" and will not replace, supplement or amend the terms in these PO Terms in any way.
 - b. If multiple agreements with similar or contradictory provisions could apply to these PO Terms, the parties agree the terms most favorable to Microsoft will apply, unless the result would be unreasonable, unconscionable, or prohibited by law.
 - c. Except as stated above in this Section 2, and other than changes described in Section 9 and the Termination provisions in Section 13, additional or different terms (for example, online terms or agreements) will not supersede these PO Terms unless the parties mutually execute a written document.
3. **Packing, Shipment and Returns of Goods or Deliverables.** Unless specifically provided in these PO Terms:
 - a. **Packing.**
 - (1) Price based on weight will include net weight only.

- (2) Supplier will not charge Microsoft for packaging or pre-shipping costs, such as boxing, crating, handling damage, drayage, or storage.

b. Shipping.

- (1) Supplier will mark all containers with necessary handling and shipping information, PO number(s), date of shipment, and names of the consignee and consignor.
- (2) An itemized invoice and packing list, and other documentation required for domestic or international transit, regulatory clearance or identification of the Goods or Deliverables will accompany each shipment.
- (3) Microsoft will only pay for the quantity received, not to exceed the maximum quantity ordered.
- (4) Microsoft or its agent will hold over-shipments at Supplier's risk and expense for a reasonable time awaiting Supplier's shipping instructions.
- (5) Microsoft will not be charged for shipping or delivery costs.
- (6) Unless otherwise agreed, Goods and Deliverables will be delivered on the 10th day after the purchase order date:
 - (i) FOB to the Microsoft designated delivery location if the Goods and Deliverables originate in the same jurisdiction as the Microsoft designated delivery location; or
 - (ii) DDP (Incoterms 2010) to the Microsoft designated delivery location for cross border delivery of Goods and Deliverables to the Microsoft designated delivery location.
- (7) Supplier will bear all risk of loss, damage, or destruction to the Goods or Deliverables, in whole or in part, occurring before final acceptance by Microsoft at the designated delivery location. Microsoft is responsible for any loss caused by the gross negligence of its employees before acceptance.

- c. Returns.** Supplier will bear the expense of return shipping charges for over-shipped quantities or rejected items.

4. Invoices.

- a.** To the extent that electronic invoice submission is available, Supplier will follow that process. MS Invoice (<https://einvoice.microsoft.com>) is a web-based application, provided by Microsoft to its payees, which allows payees to submit electronic invoices directly to Microsoft. The MS Invoice tool supports electronic invoice submissions on a one-on-one basis or via mass upload if there are multiple invoices. Payee should contact the Microsoft Accounts Payable Help Desk at <https://www.microsoft.com/en-us/procurement/contracting-apsupport.aspx> and provide a valid justification if unable to submit invoices via this process; as an exception, Microsoft will provide an alternative invoice submission process. Invoices must contain the following information: PO number, item number, description of item, quantities, unit prices, extended totals, packing slip number, shipping, ship to city and state, taxes, and any other information reasonably required by Microsoft. Supplier will not charge Microsoft for researching, reporting on, or correcting any errors relating to its invoices. Microsoft may provide electronic invoicing functionality to Supplier through the use of a third party invoicing service provider. In those circumstances, Supplier authorizes the electronic invoicing provider to receive Supplier's invoice data not yet constituting an original invoice and subsequently to apply an electronic signature to the invoice data to issue electronic invoices "in the name and on behalf of" Supplier.

- b.** Microsoft may dispute any invoice by providing written notice or partial payment. Microsoft will make commercially reasonable efforts to notify Supplier in writing of any disputed amount within 60 days of receiving the applicable invoice. Neither failing to provide notice nor payment of an invoice is a waiver of any claim or right.

5. Payment Terms, Cash Discounts, Offset, and Expenses.

- a.** After Microsoft accepts the Goods, Services or Cloud Services and receives a correct and undisputed invoice (the "Create Date"), Microsoft will release payment by net 10 days less a 2% discount on the invoiced amount or by net 60 days with no discount, following the Create Date.
 - b.** Microsoft is not obligated to pay any invoice received from Supplier more than 120 days after Microsoft accepts the Goods, Services or Cloud Services.
 - c.** Payment of an invoice will not constitute acceptance under these PO Terms, and is subject to adjustment for errors, shortages, defects, or other failure of Supplier to meet the requirements of these PO Terms.
 - d.** Microsoft may set-off amounts owed to Microsoft against an amount Microsoft owes Supplier or Supplier's affiliated companies. Microsoft will provide notice to Supplier within a reasonable time after the set-off.
 - e.** Unless otherwise agreed, Supplier is responsible for all expenses incurred providing the Goods, Services or Cloud Services and performing under these PO Terms.

6. Taxes.

- a.** Except as otherwise provided below, the amounts to be paid by Microsoft to Supplier do not include taxes. Microsoft is not liable for any taxes that Supplier is legally obligated to pay, including net income or gross receipts taxes, franchise taxes, and property taxes. Microsoft will pay Supplier any sales, use or value added taxes it owes due to these PO Terms and which the law requires Supplier to collect from Microsoft.
 - b.** Microsoft will not be involved in the importation of the Goods, Services, or Cloud Services, and import taxes are the responsibility of the Supplier unless otherwise agreed in a SOW.
 - c.** If Microsoft provides Supplier a valid exemption certificate, Supplier will not collect the taxes covered by such certificate.
 - d.** If the law requires Microsoft to withhold taxes from payments to Supplier, Microsoft may withhold those taxes and pay them to the appropriate taxing authority. Microsoft will deliver to Supplier an official receipt for such taxes. Microsoft will use reasonable efforts to minimize any taxes withheld to the extent allowed by law.

7. Inspection and Acceptance.

- a.** Microsoft may cancel these PO Terms or the applicable SOW if Supplier fails to comply with the standards and specifications in these PO Terms.
 - b.** All Goods and Services will be subject to Microsoft's inspection and testing, at any time and place, including the period of manufacture and before final acceptance. If Microsoft inspects or tests at Supplier's premises, Supplier, without additional charge, will provide all reasonable facilities and assistance for the safety and convenience of Microsoft's inspectors. No inspection or testing done or not done before final inspection and acceptance will relieve the Supplier from responsibility for defects or for other failure to meet the requirements of these PO Terms.
 - c.** If any item provided under these PO Terms is defective in materials or workmanship or not in conformity with the requirements, then Microsoft may reject it without correction, require its correction within a specified time, accept it with an adjustment in price, or return it to Supplier for

full credit. When Microsoft provides notice to Supplier, Supplier will promptly replace or correct, at their expense, any item rejected or requiring correction. If, after Microsoft's request, Supplier fails to promptly replace or correct a defective item within the delivery schedule, Microsoft may, at its sole option: (1) replace or correct such item and charge the cost to Supplier; (2) without further notice terminate these PO Terms or the applicable SOW for default, return the rejected item to Supplier at Supplier's expense and Supplier will promptly refund any amounts paid by Microsoft for the returned item; or (3) require a reduction in price.

- d. Notwithstanding any prior inspections or payments made, all Goods and Services will be subject to final inspection and acceptance at Microsoft's designated location within a reasonable time after delivery or performance. Records of all inspection work will be complete and available to Microsoft during performance of these PO Terms and for such further period as Microsoft determines.

8. Additional Cloud Services Requirements.

- a. **Service Levels.** Supplier will schedule any Cloud Services upgrades or maintenance during the Maintenance Window defined in the applicable SOW. Supplier will provide Cloud Services in accordance with the service levels and terms specified at https://aka.ms/CS_SLA (or any successor link), which is deemed part of documentation (e.g., specifications) and incorporated and made part of these PO Terms.
- b. **Business continuity.** Supplier will be responsible for establishing, implementing, testing, and maintaining an effective enterprise-wide business continuity program (including disaster recovery and crisis management procedures) to provide continuous access to, and support for, the Cloud Services to Microsoft. At a minimum, Supplier must, at all times: (1) back up, archive and maintain duplicate or redundant systems that: (i) are located at a secure physical location (other than the location of primary system(s) used to provide Cloud Services); (ii) are updated and tested at least annually; and (iii) can fully recover the Cloud Services and all Microsoft Materials on a daily basis; and (2) establish and follow procedures and frequency intervals for transmitting backup data and systems to Supplier's backup location. On request, Supplier will provide Microsoft with an overview of Supplier's enterprise business continuity program and will promptly and in good faith provide written responses to Microsoft's inquiries in connection with that program to enable Microsoft to review the adequacy of the program.
- c. **Transition.** If the applicable SOW terminates or expires, or if Microsoft requests in writing, Supplier will provide: (1) backup media to Microsoft (as reasonably requested by Microsoft) containing all Microsoft Materials (unless the Cloud Services provide this as a self-service function to Microsoft); and (2) all assistance Microsoft reasonably requires (at Microsoft's expense) to timely and smoothly transition from the Cloud Services.

- 9. **Changes.** Microsoft may suspend Supplier's performance, increase or decrease the ordered quantities, or make changes for Microsoft's reasonable business needs (each, a "Change Order"), by written notice to Supplier, including via e-mail, and without any notice to Supplier sureties, subcontractors, or assignees. Unless mutually agreed, a Change Order does not apply to change the Goods and Services timely and fully delivered before the date of the Change Order. If any change causes an increase or decrease in the cost of, or the time required for, Supplier's performance, an equitable adjustment may be made in the price or delivery schedule or both, if Microsoft agrees to such adjustment in writing.

- 10. **Tools and Equipment.** All tools, equipment or materials acquired by Supplier for use in providing the Goods and Services, which have been furnished to, paid for by or charged against Microsoft, including specifications, drawings, tools, dies, molds, fixtures, patterns, hobs, electrodes, punches, artwork, screens, tapes, templates, special test equipment, gauges, content, data, and software, will remain or become Microsoft's property, treated as Microsoft Confidential Information, and delivered in good condition, normal wear and tear excepted, by Supplier to Microsoft's designated delivery location per Section 3, immediately upon demand and without cost to Microsoft. Supplier warrants the item(s) and

information will not be used for any work or production of any materials or parts other than for Microsoft, without Microsoft's prior written permission. Supplier will identify for Microsoft all third-party IP or software used in conjunction with the Services.

11. Ownership and use of the parties' respective IP.

- a.** Each party will own and retain all rights to its pre-existing IP and any IP developed independently of the Goods, Services and Cloud Services under these PO Terms.
- b.** Microsoft will own all Deliverables, including all IP rights, all media in any format, hardware, and other tangible materials created by Supplier while delivering the Services. Any Supplier work which is a written or customized product or report related to, or to be used in, a Deliverable is regarded as IP.
- c.** If Deliverables do not qualify as a work made for hire, Supplier assigns to Microsoft all right, title, and interest in and to the Deliverables, including all IP rights. Supplier waives all moral rights in Deliverables.
- d.** If Supplier uses any Supplier or third-party IP in any Good or Service, Supplier will continue to own Supplier's IP. Supplier will grant Microsoft a worldwide, nonexclusive, perpetual, irrevocable, royalty-free, fully paid up right and license, under all current and future IP, to use Supplier's and third-party IP consistent with Microsoft's ownership interests under this Section 11.
- e.** Supplier grants to Microsoft and its affiliated companies (including their employees, contractors, consultants, outsourced workers, and interns engaged by Microsoft or any of its affiliated companies to perform services) a worldwide, irrevocable, nonexclusive, perpetual, paid-up and royalty free license for any Goods that include software or other IP not subject to a separate license (including installed applications). The license allows Microsoft to use such software and IP in connection with Goods. Microsoft may transfer this license to a Microsoft affiliated company, or a successor owner by sale or lease.
- f.** Supplier grants to Microsoft and its affiliated companies (including their employees, contractors, consultants, outsourced workers, and interns engaged by Microsoft or any of its affiliated companies to perform services) and their end users (if any), to the limited extent necessary to the performance of the Cloud Services, a worldwide, nonexclusive, unlimited, paid-up and royalty free right to access and use, during the term, Cloud Services, in each case for Microsoft's business purposes. Access to the Cloud Services is unlimited unless otherwise specified in a SOW.
- g.** **Pass through warranties and indemnities.** Supplier assigns and passes through to Microsoft all of the third-party manufacturers' and licensors' warranties and indemnities for the Goods.
- h.** Title to the Goods (other than licensed software) will pass from Supplier to Microsoft on final acceptance.
- i.** **Microsoft IP.**
 - (1) Supplier may use "Microsoft Materials," meaning any tangible or intangible materials, provided by or on behalf of Microsoft, any of its affiliated companies, or their respective end users, to Supplier to perform Services or Cloud Services, or obtained or collected by Supplier in connection with the Services or Cloud Services (*e.g.*, usage data) (including hardware, software, source code, documentation, methodologies, know how, processes, techniques, ideas, concepts, technologies, reports and data). Microsoft Materials may include any modifications to, or derivative works of, the foregoing materials, Personal Data, trademarks, and any data entered into any Supplier database as part of the Services or Cloud Services. Microsoft Materials do not include Microsoft products obtained by Supplier outside of and unrelated to these PO Terms.

- (2) Microsoft grants Supplier a nonexclusive, non-sublicensable (except to subcontractors approved by Microsoft in accordance with these PO Terms), revocable license (i) under Microsoft's IP in the Microsoft Materials to copy, use and distribute Microsoft Materials provided to it only as necessary to perform the Services in accordance with these PO Terms, and (ii) to use Microsoft Materials only as necessary to perform the Cloud Services in accordance with these PO Terms. Supplier will not Sell, license, or otherwise commercialize any Microsoft Materials.
- (3) Microsoft retains all other interest in Microsoft Materials and related IP. Supplier has no right to sublicense Microsoft Materials except to approved subcontractors as required to perform the delivery of Goods, Services and Cloud Services. If the Microsoft Materials come with a separate license, the terms of that license will apply and those terms control in the case of conflict with these PO Terms.
- (4) Supplier will take reasonable precautions to protect and ensure against loss or damage, theft, or disappearance of Microsoft Materials.
- (5) Microsoft may revoke the license to Microsoft Materials at any time for any reasonable business reason. The license will terminate automatically on the earlier of the expiration or termination of these PO Terms or an applicable SOW. Supplier will promptly return any Microsoft Materials on request or termination of Supplier's license.
- (6) Regarding Supplier's use of Microsoft Materials:
 - (i) Supplier will not modify, reverse engineer, decompile, or disassemble Microsoft Materials except as allowed by Microsoft;
 - (ii) Supplier will leave in place, and not alter or obscure proprietary notices and licenses contained in Microsoft Materials;
 - (iii) Microsoft is not obligated to provide technical support, maintenance, or updates for Microsoft Materials;
 - (iv) all Microsoft Materials are provided "as-is" without warranty; and
 - (v) Supplier assumes the risk of loss, damage, unauthorized access or use, or theft or disappearance of Microsoft Materials in Supplier's (or subcontractor's) care, custody, or control.

12. Representations and Warranties. Supplier represents and warrants that:

- a. it has full rights and authority to enter into, perform under, and grant the rights in according to these PO Terms and its performance will not violate any agreement or obligation between it and any third party;
- b. Services will be performed professionally and be at or above industry standard;
- c. Goods, Services, Cloud Services and Deliverables must meet the standards and specifications in these PO Terms and be suitable for the intended use;
- d. it will provide to Microsoft all Goods, Services and Deliverables free from: (1) any defects in design, workmanship, and materials; (2) any liability for royalties; and (3) any mechanic's liens or any other statutory lien or security interest or encumbrance;
- e. the Goods, Services, Cloud Services, Deliverables and any Supplier or third-party IP provided to Microsoft under these PO Terms:
 - (1) are not governed, in whole or in part, by an Excluded License. "Excluded License" means any software license that requires as a condition of use, modification and/or distribution, that the software or other software combined and/or distributed with it

- be: (i) disclosed or distributed in source code form; (ii) licensed to make derivative works; or (iii) redistributable at no charge; and
- (2) will not be subject to license terms that require any Microsoft IP, product, service, or any Supplier or third-party IP licensed to Microsoft, or documentation which incorporates or is derived from the Deliverables, to be licensed or shared with any third party;
- f. the Goods, Services, Cloud Services, Deliverables and any Supplier third-party IP provided to Microsoft under these PO Terms will not:
- (1) to the best of Supplier's knowledge, infringe any third-party patent, copyright, trademark, trade secret or other proprietary right of any third party; or
- (2) contain any viruses or other malicious code that will degrade or infect any Goods, Deliverables, products, services, or any other software or Microsoft's network or systems;
- g. Supplier will comply with all Laws, rules, and regulations, including Data Protection Law and Anti-Corruption Laws (i.e., all Laws against fraud, bribery, corruption, inaccurate books and records, inadequate internal controls, money-laundering, including the U.S. Foreign Corrupt Practices Act), whether local, state, federal or foreign. The Goods, Services, Cloud Services, parts, components, devices, software, technology, and other materials provided under these PO Terms (collectively, "Items") may be subject to U.S. and other countries' export jurisdiction. Each party will comply with all laws and regulations applicable to the import or export of the Items, including but not limited to trade laws such as the U.S. Export Administration Regulations and International Traffic in Arms Regulations, and sanctions regulations administered by the U.S. Office of Foreign Assets Control ("trade laws"). Supplier will not take any action that causes Microsoft to violate applicable trade laws. In the event that Supplier learns of a potential violation of trade laws relating to the performance of these PO Terms, or a potential violation of the terms in this subsection, it will alert Microsoft as soon as possible, but no later than 14 days after acquiring such knowledge. Microsoft may suspend or terminate these PO Terms or the applicable SOW to the extent that Microsoft reasonably concludes that performance would cause it to violate U.S. or other applicable trade laws, including those described above, or put it at risk of becoming the subject of economic sanctions under such laws. Supplier agrees to provide Microsoft with the import/export control classifications and information, including documentation, on the applicable import, export or re-export authorizations and all necessary information about the Items for any required import, export, or re-export procedures and/or licenses without additional cost to Microsoft. For additional information, see <https://www.microsoft.com/en-us/exporting>. "Law" means all applicable laws, rules, statutes, decrees, decisions, orders, regulations, judgments, codes, enactments, resolutions, and requirements of any government authority (federal, state, local, or international) having jurisdiction;
- h. Supplier will comply with applicable Anti-Corruption Laws. Supplier will provide training to its employees on compliance with Anti-Corruption Laws and complete any required training from Microsoft on compliance with Anti-Corruption laws while performing under these PO Terms. Supplier is prohibited from paying expenses for travel, lodging, gifts, hospitality, or charitable contributions for government officials on Microsoft's behalf; and
- i. Supplier will, at its expense: (1) implement and maintain appropriate technical and organizational measures to protect the Microsoft Materials, including Personal Data, and any other Microsoft Confidential Information against accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Microsoft Materials, including Personal Data, or any other Microsoft Confidential Information, transmitted, stored or otherwise processed; and (2) will comply with Supplier's confidentiality, privacy and data protection obligations under these PO Terms, including Section 14.

- 13. Termination.** Microsoft may terminate these PO Terms or the applicable SOW with or without cause. Termination is effective upon written notice. If Microsoft terminates for convenience, its only obligation is to pay for:
- a.** Deliverables or Goods it accepts before the effective date of termination; or
 - b.** Services performed, where Microsoft retains the benefit after the effective date of termination; or
 - c.** Cloud Services delivered before the effective date of termination (or any post termination transition requested by Microsoft). Supplier will (without prejudice to any other remedies Microsoft may have) provide a pro-rata refund to Microsoft for any prepaid unused fees.
- 14. Privacy and Data Protection.** Supplier will comply with the following, at its own cost and expense.
- a.** Without limiting Microsoft's audit rights in these PO Terms, Supplier will (1) participate in the Microsoft Supplier Security and Privacy Assurance ("SSPA") program, as required by Microsoft, including by attesting to Supplier's compliance status with respect to all applicable portions of Microsoft's then current Supplier Data Protection Requirements ("DPR") on an annual basis (or more frequently if additional portions of the DPR become available), and (2) comply with Microsoft's then current DPR. See <https://www.microsoft.com/en-us/procurement/supplier-contracting.aspx>, Supplier Security and Privacy Assurance (SSPA) (aka.ms), for SSPA program details, including the program requirements and current DPR.
 - b.** Supplier's security procedures must include risk assessment and controls for: (1) system access; (2) system and application development and maintenance; (3) change management; (4) asset classification and control; (5) incident response, physical and environmental security; (6) disaster recovery/business continuity; and (7) employee training. Those measures will be set forth in a Supplier security policy. Supplier will make that policy available to Microsoft, along with descriptions of the security controls in place for the Services and Cloud Services, upon Microsoft's request and other information reasonably requested by Microsoft regarding Supplier security practices and policies.
 - c.** When Supplier provides Cloud Services, Supplier will only use the cloud infrastructure provider ("CIP") identified in the applicable SOW in providing Cloud Services and will notify Microsoft at least 90 days before it changes, adds, or undertakes any plan to change, the CIP and at least 30 days before any change in location of Microsoft Materials. If Microsoft rejects the change, it may terminate the applicable SOW immediately, with no further obligations.
 - d. Privacy and Data Protection**
 - (1) Definitions. For purposes of this Section 14.d and these PO Terms, the following definitions apply:
 - (i) "Controller" means the natural or legal person, public authority, agency or any other body which alone or jointly with others determines the purposes and means of the Processing of Personal Data; where the purposes and means of Processing are determined by the European Union or Member State laws, the controller (or the criteria for nominating the controller) may be designated by those laws.
 - (ii) "Data Protection Law" means any Law, applicable to Supplier or Microsoft, relating to data security, data protection and/or privacy, including Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to processing of personal data and the free movement of that data ("GDPR"), and any implementing, derivative or related legislation, rule, regulation, and regulatory guidance, as amended, extended, repealed and replaced, or re-enacted.

- (iii) “Data Subject” means an identifiable natural person who can be identified, directly or indirectly, in particular by referencing an identifier such as a name, an identification number, location data, an online identifier, or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural, or social identity of that natural person.
 - (iv) “Personal Data” means any data or information that constitutes personal data or personal information under any applicable Data Protection Law, including any information relating to a Data Subject.
 - (v) “Processing” means any operation or set of operations that is performed on Personal Data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination, or otherwise making available, alignment or combination, restriction, erasure, or destruction. “Process” and “Processed” will have a corresponding meaning.
 - (vi) “Processor” means a natural or legal person, public authority, agency or other body which Processes Personal Data on behalf of the Controller.
 - (vii) “Sale” and its cognates means selling, renting, releasing, disclosing, disseminating, making available, transferring, or otherwise communicating orally, in writing, or by electronic or other means, an individual’s Personal Data to a third party for monetary or other valuable consideration.
 - (viii) “Security Incident” means any
 - (A) accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Confidential Information, including Personal Data, transmitted, stored, or otherwise processed by Supplier or its Subcontractors, or
 - (B) security vulnerability related to Supplier’s handling of Confidential Information, including Personal Data.
 - (ix) “Standard Contractual Clauses” means (A) the standard data protection clauses for the transfer of Personal Data to Processors established in third countries which do not ensure an adequate level of data protection, as described in Article 46 of the GDPR and approved by the European Commission decision 2010/87/EC, dated 5 February 2010; and (B) any and all successor standard data protection clauses for the transfer of Personal Data to Processors: (1) adopted by the European Commission pursuant to the GDPR; (2) adopted by the European Data Protection Supervisor and approved pursuant to the EUDPR; or (3) otherwise authorized by the European Data Protection Supervisor for data transfers to Microsoft entity(ies) pursuant to the EUDPR ((B) in this paragraph to be referred to as “Successor Standard Contractual Clauses”). “EUDPR” means Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No. 45/2001 and Decision No. 1247/2002/EC.
- (2) **Processor Requirements.** Without limiting Supplier’s obligations under Section 14.a, Supplier, in its capacity as a Processor, service provider, or subprocessor of Personal Data, will:
- (i) Process Personal Data only on documented instructions from Microsoft, including with regard to transfers of Personal Data to a third country or an

international organization, unless required to do so by European Union or Member State law to which Supplier is subject, and only for the specific purpose of performing Services or Cloud Services specified in these PO Terms. In such case, Supplier will inform Microsoft of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest. Supplier is prohibited from Selling Personal Data;

- (ii) ensure that persons authorized to Process the Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;
- (iii) take all measures required in accordance with good industry practice and by Data Protection Law relating to data security (including pursuant to Article 32 of the GDPR);
- (iv) not engage another party to Process the Personal Data without Microsoft's prior written authorization, and if such authorization is granted, take those measures required pursuant to paragraphs 2 and 4 of Article 28 of the GDPR;
- (v) take into account the nature of the Processing, assist Microsoft by appropriate technical and organizational measures, insofar as this is possible, for the fulfilment of Microsoft's obligation to respond to requests for exercising the Data Subject's rights laid down in Data Protection Law (including Chapter III of the GDPR) and, to the extent applicable, implementing the Data Subject's rights;
- (vi) assist Microsoft in ensuring compliance with data security, Security Incident, data protection impact assessments, and engaging in other consultations, pursuant to Data Protection Law (including Articles 32 to 36 of the GDPR taking into account the nature of processing and the information available to Supplier);
- (vii) without limiting Microsoft's rights under Section 24, make available to Microsoft all information necessary to demonstrate compliance with Data Protection Law (including the obligations laid down in Article 28 of the GDPR) and allow for and contribute to audits, including inspections, conducted by Microsoft or another auditor mandated by Microsoft;
- (viii) immediately inform Microsoft if, in its opinion, an instruction infringes Data Protection Law;
- (ix) without limiting its other obligations under these PO Terms, Supplier will not make any international transfer of Personal Data unless Microsoft provides prior written approval, and in any event, Supplier will comply with all Data Protection Laws, including the Standard Contractual Clauses, or, at Microsoft's discretion, other appropriate cross-border transfer mechanisms approved by an appropriate data protection authority or the European Commission, as applicable, and adopted or agreed to by Microsoft, including, for transfers from Switzerland, other appropriate cross-border transfer mechanisms approved by the Swiss Federal Data Protection and Information Commissioner (the FDPIC). Successor Standard Contractual Clauses will be incorporated and binding on Supplier as of the day of their adoption. Supplier will also ensure that any and all subprocessors (as defined in the Standard Contractual Clauses) also comply; and
- (x) the subject matter and duration of the Processing, the nature and purpose of the Processing, and the type of Personal Data and categories of data subjects will be described in a SOW, which forms an integral part of these PO Terms.

- (3) **Independent Controller Requirements.** If Supplier is a Controller of Personal Data that is collected, exchanged, or otherwise Processed in connection with Supplier's performance of these PO Terms, and Supplier's purpose and means of Processing that Personal Data is independent from Microsoft's (or any of its affiliate's) Processing of the same Personal Data, then: (i) the obligations in Section 14.d(2) will not apply to the Supplier with respect to those Processing activities; but (ii) Supplier acknowledges and agrees that Supplier is independently responsible for compliance and will comply with Data Protection Law (e.g., obligations of Controllers); and (iii) subject to a Data Subject's authorization or instruction to the contrary, Supplier will (A) only Process Personal Data protected by the California Consumer Privacy Act in connection with its direct business relationship with Microsoft and to perform under these PO Terms; (B) not transfer or sell the Personal Data to any third party except to contractually bound sub-processors operating on behalf of Supplier; and (iv) Supplier hereby certifies that it understands, and will comply with, the restrictions in Sections (iii)(A) and (B) above. In particular, Supplier agrees to be responsible for providing notice to data subjects as may be required by Data Protection Laws (e.g., GDPR Articles 13 and 14, as applicable), and responding to data subjects' requests to exercise their rights, as well as identifying a lawful basis of Processing (e.g., consent or legitimate interest).
- (4) **Other Requirements.** Where Microsoft faces an actual or potential claim arising out of or related to violation of any Data Protection Law (e.g., Article 82 of the GDPR) concerning Services or Cloud Services, Supplier will promptly provide all materials and information requested by Microsoft that is relevant to the defense of such claim and the underlying circumstances concerning the claim.

e. Notice. Without limiting Supplier's obligations under these PO Terms, including the DPR and this Section 14 with respect to Personal Data, on becoming aware of any Security Incident, Supplier will:

- (1) notify Microsoft without undue delay of the Security Incident (in any case no later than it notifies any similarly situated customers of Supplier and in all cases before Supplier makes any general public disclosure (e.g., a press release));
- (2) promptly investigate or perform required assistance in the investigation of the Security Incident and provide Microsoft with detailed information about the Security Incident; and
- (3) promptly take all commercially reasonable steps to mitigate the effects of the Security Incident, or assist Microsoft in doing so.

Supplier will comply with this Section 14.e at Supplier's cost unless the Security Incident arose from Microsoft's negligent or willful acts or Supplier's compliance with Microsoft's express written instructions.

Supplier must obtain Microsoft's written approval before notifying any governmental entity, individual, the press, or other third party of a Security Incident that affected or reasonably could affect Confidential Information that Supplier received from Microsoft or Processed on behalf of Microsoft. Notwithstanding anything to the contrary in this Agreement, Supplier may notify a third party about a Security Incident affecting Personal Data if it is under a legal obligation to do so, provided that Supplier must (i) make every effort to give Microsoft prior notification, as soon as possible, if it intends to disclose the Security Incident to a third party and (ii) if it is not possible to give Microsoft such prior notification, notify Microsoft immediately once it becomes possible to give notification. For any disclosure of a Security Incident to a third party, Supplier will, as part of its notification to Microsoft, disclose the identity of the third party and a copy of the notification (if the notification to the third party has not been sent, Supplier will provide a draft to Microsoft). Supplier will permit Microsoft to offer edits or updates to the notification.

- f. At the expiration or termination of these PO Terms or the applicable SOW, or upon request by Microsoft or Microsoft's affiliate, Supplier will, without undue delay, (1) return all Microsoft Confidential Information (including copies thereof) to Microsoft or the applicable Microsoft affiliate, or (2) upon request by Microsoft or its affiliate, destroy all Microsoft Confidential Information (including copies thereof), in each case unless the Law expressly requires otherwise or the parties otherwise expressly agree in writing. For any Microsoft Confidential Information Supplier retains after expiration or termination of Services or Cloud Services (for example, because Supplier is legally required to retain the information), Supplier will continue to comply with the data security and privacy provisions in these PO Terms and Supplier must de-identify or aggregate Microsoft Confidential Information that is Personal Data under its possession control, if any, to the extent feasible. Without limiting Supplier's other obligations agreed in writing by the parties, this Section does not apply to Personal Data that is Processed by Supplier as a "controller" (as defined under the General Data Protection Regulation).
15. **Supplier Code of Conduct.** Supplier will comply with the most current Supplier Code of Conduct at <https://www.microsoft.com/en-us/procurement/supplier-conduct.aspx> and the most current Anti-Corruption Policy for Microsoft Representatives at <http://aka.ms/microsoftethics/representatives>.
16. **Accessibility.** Any device, product, website, web-based application, cloud service, software, mobile applications, or content developed or provided by or on behalf of Supplier or Supplier's Affiliate under these PO Terms must comply with all legal and Microsoft-provided accessibility requirements, including Level A and AA Success Criteria of the latest published version of the Web Content Accessibility Guidelines ("WCAG"), available at https://www.w3.org/standards/techs/wcag#w3c_all. An overview of WCAG is available at <http://www.w3.org/WAI/intro/wcag>.
17. **No Waiver.** Microsoft's delay or failure to exercise any right or remedy will not result in a waiver of that or any other right or remedy.
18. **Insolvency; Limitations of Liability.**
- a. The insolvency or adjudication of bankruptcy, filing a voluntary petition in bankruptcy, or making an assignment for the benefit of creditors by either party will be a material breach of these PO Terms. For these PO Terms, "insolvency" means either (1) the party's liabilities exceed its assets, each fairly stated, or (2) the party's failure to pay its business obligations on a timely basis in the regular course of business.
- b. **Limitations of Liability.** EXCEPT FOR THE INDEMNIFICATION OBLIGATIONS STATED IN SECTION 20, A BREACH OF A PARTY'S CONFIDENTIALITY, PRIVACY, DATA PROTECTION, AND PUBLICITY OBLIGATIONS UNDER THESE PO TERMS, INFRINGEMENT, MISUSE, OR MISAPPROPRIATION OF IP RIGHTS IN CONNECTION WITH THESE PO TERMS, OR FRAUD, NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES (INCLUDING DAMAGES FOR LOSS OF DATA, REVENUE, AND/OR PROFITS), WHETHER FORESEEABLE OR UNFORESEEABLE, WHICH ARISE OUT OF THESE PO TERMS, REGARDLESS OF WHETHER THE LIABILITY IS BASED ON BREACH OF CONTRACT, TORT, STRICT LIABILITY, BREACH OF WARRANTIES OR OTHERWISE, AND EVEN IF THE PARTY IS ADVISED OF THE POSSIBILITY OF THOSE DAMAGES.
19. **Subcontracting.** Supplier will not subcontract with any third party to furnish any Goods, Services or Cloud Services without Microsoft's prior written consent. If Supplier subcontracts any Services or Cloud Services to any subcontractor, Supplier will be fully liable to Microsoft for any actions or inactions of subcontractor, remain subject to all obligations under these PO Terms, require the subcontractor to agree in writing that Microsoft is an intended third-party beneficiary of its agreement with Supplier and require the subcontractor to agree in writing to terms no less protective of Microsoft than the terms of these PO Terms applicable to the work performed by the subcontractor, including the privacy and data protection terms in Section 14.

20. Indemnification and Other Remedies.

- a.** Supplier will defend, indemnify and hold harmless Microsoft and Microsoft affiliates companies against all claims, demands, loss, costs, damages, and actions for: (1) actual or alleged infringements of any third-party IP or other proprietary rights, which arise from the Goods, Services or Cloud Services provided under these PO Terms; (2) any claim that, if true, would constitute a breach of Section 14 or any Supplier warranty contained herein; (3) any act or omission of or failure to comply with tax obligations or Law by Supplier or Supplier's agents, employees, or subcontractors; (4) any breach of confidentiality or privacy obligations; (5) the negligent or willful acts or omissions of Supplier or its subcontractors, which results in any bodily injury, including mental injury, or death to any person or loss, disappearance or damage to tangible or intangible property; and (6) any claims of its employees, affiliated companies or subcontractors regardless of the basis, including, but not limited to, the payment of settlements, judgments, and reasonable attorneys' fees.
- b.** In addition to all other remedies available to Microsoft, if use of the Goods, Services, or Cloud Services under these PO Terms are enjoined, injunction is threatened, or may violate applicable law, Supplier, at its expense will notify Microsoft and immediately replace or modify such Goods, Services and Cloud Services so they are non-infringing, compliant with applicable law, and useable to Microsoft's satisfaction. If Supplier does not comply with this Section 20(b), then in addition to any amounts reimbursed under this Section 20 (Indemnification and Other Remedies), Supplier will refund all amounts paid by Microsoft for infringing or non-compliant Goods, Services and Cloud Services and pay reasonable costs to transition Services and Cloud Services to a new supplier.

- 21. Insurance.** Supplier will maintain sufficient insurance coverage to meet obligations required by these PO Terms and by Law. Supplier's insurance must include the following coverage (or the local currency equivalent) to the extent these PO Terms or the applicable SOW creates risks generally covered by these insurance policies:

Table A1 – Required Insurance Coverage		
Coverage	Form	Limit ¹
Commercial general liability, including contractual and product liability ²	Occurrence	\$ 1,000,000 USD
Automobile liability	Occurrence	\$ 1,000,000 USD
Privacy and cybersecurity liability, as reasonably commercially available (including costs arising from data destruction, hacking or intentional breaches, crisis management activity related to data breaches, and legal claims for security breach, privacy violations, and notification costs)	Per claim	\$2,000,000 USD
Workers' compensation	Statutory	Statutory
Employer's liability	Occurrence	\$ 500,000 USD
Professional liability/E&O, covering third-party proprietary rights infringement (e.g., copyright and trademark) if reasonably commercially available	Per claim ³	\$2,000,000 USD
¹ All limits per claim or occurrence unless statutory requirements are otherwise may be converted to local currency.		
² Supplier will name Microsoft, its subsidiaries, and their respective directors, officers, and employees as additional insureds in the Commercial general liability policy, to the extent of contractual liability		

Table A1 – Required Insurance Coverage		
Coverage	Form	Limit ¹
<p>assumed by Supplier in Section 20.</p> <p>³With a retroactive coverage date no later than the effective date of these PO Terms or the applicable SOW. Supplier will maintain active policy coverage or an extended reporting period providing coverage for claims first made and reported to the insurer within 12 months after these PO Terms terminate or expire or the applicable SOW is terminated, expires or is fulfilled.</p>		

Supplier must obtain Microsoft's prior written approval for any deductible or retention in excess of \$100,000 USD per occurrence or accident. Supplier will deliver to Microsoft proof of the insurance coverage required under these PO Terms on request. Supplier will promptly buy additional coverage, and notify Microsoft in writing, if Microsoft reasonably determines Supplier's coverage is less than required to meet its obligations.

- 22. Non-Disclosure of Confidential Matters.** If the parties have entered into a standard Microsoft Non-Disclosure Agreement, the terms of such agreement will apply to and be incorporated in these PO Terms and the existence of and all terms and conditions of these PO Terms and Microsoft Materials will be deemed Microsoft Confidential Information. If the parties have not entered into a standard Microsoft Non-Disclosure Agreement, then Supplier agrees that during the term of these PO Terms and for 5 years thereafter, Supplier will hold in strictest confidence, and will not use or disclose to any third party (except to a Microsoft Affiliate), any Microsoft Confidential Information. The term "Microsoft Confidential Information" means all nonpublic information that Microsoft or an affiliated company designates in writing or orally as being confidential, or which, under the circumstances of disclosure would indicate to a reasonable person that it ought to be treated as confidential. Notwithstanding anything to the contrary in these PO Terms, all Personal Data shared with Supplier or a Supplier affiliate and in connection with these PO Terms is Microsoft Confidential Information. If Supplier has questions regarding what comprises Microsoft Confidential Information, Supplier will consult Microsoft. Microsoft Confidential Information will not include information known to Supplier before Microsoft's disclosure to Supplier, or information publicly available through no fault of Supplier.
- 23. Independent Development.** Nothing in these PO Terms restricts Microsoft's ability to, directly or indirectly, acquire, license, develop, manufacture, or distribute, same or similar technology or services to the Goods, Services or Cloud Services contemplated by these PO Terms. Microsoft may use, market, and distribute such similar technology or services in addition to, or in lieu of, the technology or services contemplated by these PO Terms, including any software or cloud services (in whole or in part).
- 24. Audit.** During the term of these PO Terms and for 4 years after, Supplier will keep usual and proper records and books of account and quality and performance reports related to Goods, Services or Cloud Services, the Processing of Personal Data, and as otherwise required for legal compliance ("Supplier Records"). During this period, Microsoft may audit and/or inspect the applicable records and facilities to verify Supplier's compliance with these PO Terms, including privacy, security, export compliance, accessibility, and taxes. Microsoft or its designated independent consultant or certified public accountant ("Auditor") will conduct audits and inspections. Microsoft will provide reasonable notice (15 days except in emergencies) to Supplier before the audit or inspection and will instruct the Auditor to avoid disrupting Supplier's operations, including consolidating audits where practical. Supplier agrees to provide Microsoft's designated audit or inspection team reasonable access to the Supplier records and facilities.
- If the auditors determine that Microsoft overpaid Supplier, Supplier will reimburse Microsoft for any such overpayment. If Supplier overcharged Microsoft 5% or more during an audited period, it will immediately refund Microsoft all overpayments plus pay interest at 0.5% per month on such overcharge. Microsoft will bear the expense of its auditors or inspection team. However, if the audit shows Supplier overcharged Microsoft by 5% or more during such audit period, Supplier will reimburse Microsoft for such expenses.

Nothing in this Section limits Microsoft's right to audit Supplier under any other Section of these PO Terms.

25. **Assignments.** No right or obligation under these PO Terms (including the right to receive monies due) will be assigned without the prior written consent of Microsoft. Any assignment without such consent will be void. Microsoft may assign its rights under these PO Terms.
26. **Notice of Labor Disputes.** Whenever an actual or potential labor dispute delays or threatens to delay the timely performance of these PO Terms, Supplier will immediately notify Microsoft in writing of such dispute and furnish all relevant details. Supplier will include a provision identical to the above in each subcontract and, immediately upon receipt of such notice, give written notice to Microsoft.
27. **Patent License.** Notwithstanding other conditions stated herein, if Supplier fails in performance according to the terms of these PO Terms, Supplier, as part of the consideration for these PO Terms and without further cost to Microsoft, automatically grants to Microsoft an irrevocable, non-exclusive, royalty-free right and license to use, sell, manufacture, and cause to be manufactured any and all products, which embody any and all inventions and discoveries made, conceived, or actually reduced to practice by or on behalf of Supplier in connection with a Deliverable under these PO Terms.
28. **Jurisdiction and Governing Law.** For Goods, Deliverables, Services and Cloud Services provided to Microsoft in the United States, these PO Terms are governed by Washington State Law (disregarding conflicts of law principles), and the parties consent to exclusive jurisdiction and venue in the state and federal courts in King County, Washington. All Cloud Services are deemed provided in the United States if any access or use of Cloud Services by Microsoft occurs in the United States. For all other Goods, Services and Cloud Services provided to Microsoft, the Laws, jurisdiction and venue of the country where Microsoft (i.e., the entity other than Supplier who is the contracting entity to this Agreement) is incorporated or otherwise formed will govern these PO Terms. Neither party will claim lack of personal jurisdiction or forum non conveniens in these courts. In any action or suit related to these PO Terms, the prevailing party is entitled to recover its costs including reasonable attorneys' fees.
29. **Publicity; Use of Trademarks.** Supplier will not issue press releases or other publicity related to Supplier's relationship with Microsoft or these PO Terms without prior written approval from Microsoft. If written approval is granted, Supplier may only use Trademarks for Services, Cloud Services and Deliverables in compliance with the guidelines at <https://www.microsoft.com/en-us/legal/intellectualproperty/Trademarks/Usage/General.aspx>.
30. **Severability, URLs.** If a court of competent jurisdiction determines that any provision of these PO Terms is illegal, invalid, or unenforceable, the remaining provisions will remain in full force and effect. URLs also refer to successors, localizations, and information or resources linked from within websites at those URLs. Neither party has entered into these PO Terms in reliance on anything not contained or incorporated in these PO Terms. These PO Terms will be interpreted according to their plain meaning without presuming that they should favor either party.
31. **Survival.** The provisions of these PO Terms which, by their terms, require performance after the termination or expiration or have application to events that may occur after the termination or expiration of these PO Terms or the applicable SOW, will survive the termination or expiration of these PO Terms and the applicable SOW. All indemnity obligations and indemnification procedures will survive the termination or expiration of these PO Terms and the applicable SOW.