Microsoft Purchase Order Terms & Conditions ("PO")

1. Acceptance and Effect. This PO is between the Microsoft entity issuing the Purchase Order ("Microsoft") and the supplier identified herein ("Supplier") and covers:
   a. "Goods": software and/or tangible goods licensed or purchased by Microsoft under this PO
   b. "Services": professional services, advertising, consulting services, support and maintenance services, cloud services (e.g., SaaS), websites (including hosting), solutions, platforms, apps, and/or other services that are licensed or purchased by Microsoft under this PO, including the software, equipment, technology and services necessary for Supplier to provide the foregoing.
   c. "Deliverables": all work product developed by Supplier (or Supplier’s approved subcontractor) specifically for Microsoft as part of delivery of Goods or Services, including intellectual property ("IP") in connection with this PO. Deliverables are “work made for hire” for Microsoft as that term is defined under applicable copyright law.

This PO is effective upon Supplier’s commencement of performance or the date of Supplier’s signature below, whichever is earlier. Except as set forth in Section 2 below, Supplier’s acceptance of this PO is expressly limited to these terms and conditions without counterproposal.

2. Relationship to Other Agreements. The terms and conditions of this PO 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 this PO and applies to the Goods and/or Services ordered with this PO, and/or that agreement applies to the relationship of the parties governed by this PO, then the provisions of such agreement are incorporated. If conflict arises between this PO and such agreement, to the extent of that conflict, the terms of such agreement will apply. For purposes of this PO, online terms or agreements that Microsoft accepts to login or access Services, such as a software as a service or platform, is not an agreement that has been “mutually executed” and will not replace, supplement or amend the terms in this PO in any way.
   b. If multiple agreements with similar or contradictory provisions could apply to this PO, 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 8 and the Termination provisions in Section 12, additional or different terms (for example, online terms or agreements) will not supersede this PO unless the parties mutually execute a written document.

3. Packing, Shipment and Returns of Goods or Deliverables. Unless specifically provided in this PO:
   a. Packing.
      (1) Price based on weight will include net weight only; and
      (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 PO 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; and
      (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 invoicing 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 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. Invoice 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 30 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 / Expenses.
   a. After Microsoft accepts the Goods or Services and receives a correct and undisputed invoice (the “Create Date”), Microsoft will release payment by net 30, 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 or Services.
   c. Payment of an invoice will not constitute acceptance under this PO, and is subject to adjustment for errors, shortages, defects or other failure of Supplier to meet the requirements of this PO.
   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 or Services and performing under this PO.

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 this PO and which the law requires Supplier to collect from Microsoft.
   b. Microsoft will not be involved in the importation of the Goods/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 this PO if Supplier fails to comply with the PO standards and specifications.
   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 this PO.
   c. If any item provided under this PO 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 this PO 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 this PO and for such further period as Microsoft determines.

8. 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.

9. 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 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 information, and delivered in good condition, normal wear and tear excepted, by Supplier to 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 this PO and for such further period as Microsoft determines.

10. 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 and Services under this PO.

b. Solely as to Deliverables: 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 10.

e. Microsoft IP.

(1) Supplier may use “Microsoft Materials”, meaning any tangible or intangible materials, provided by or on behalf of Microsoft to Supplier to perform Services (including hardware, software, source code, documentation, methodologies, know how, processes, techniques, ideas, concepts, technologies, and data). Microsoft Materials may include any modifications to, or derivative works of, the foregoing materials, the trademarks and any data entered into any Supplier database as part of the Services. Microsoft Materials do not include Microsoft products obtained by Supplier outside of and unrelated to this PO.

(2) Microsoft grants Supplier a nonexclusive, non-sublicensable (except to subcontractors approved by Microsoft in accordance with this PO), revocable license under Microsoft’s IP to copy, use and distribute Microsoft Materials provided to it as necessary to perform the Services.

(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 and 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 this PO.

(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 this
PO 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.

f. Grant of Rights IP.
   (1) License, Access and Use. 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) (i) 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) and (ii) a worldwide, nonexclusive, unlimited, paid-up and royalty free right to access and use, during the term, Services (where applicable), in each case for Microsoft’s business purposes. The license allows Microsoft to use such software, IP and Services in connection with Goods or as standalone Services as applicable. Microsoft may transfer this license to a Microsoft affiliated company, or a successor owner by sale or lease.
   (2) 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.

g. Title to the Goods (other than licensed software) will pass from Supplier to Microsoft on final acceptance.

11. 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 this PO 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 and Deliverables must meet the standards and specifications in this PO and be suitable for the intended use;
   d. it will provide to Microsoft all Goods, Services and Deliverables free from (i) any defects in design, workmanship and materials, (ii) any liability for royalties, and (iii) any mechanic’s liens or any other statutory lien or security interest or encumbrance;
   e. The Goods, Services, Deliverables and any Supplier or third-party IP provided to Microsoft under this PO:
      (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, Deliverables and any Supplier third-party IP provided to Microsoft under this PO 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 applicable laws, rules and regulations, including Data Protection Law and Anti-Corruption Laws (i.e., all applicable 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, parts, components, devices, software, technology and other materials provided under this PO (collectively, "Items") may be subject to U.S. and other import/export jurisdiction. The parties must comply with all applicable international and national laws, including but not limited to the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, US
Department of Treasury's Office of Foreign Assets Control sanctions programs, and end-user, end use and destination restrictions by U.S. and other governments.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:

h. Supplier will comply with applicable Anti-Corruption laws and provide training to its employees on compliance with Anti-Corruption laws while performing under this PO. Supplier is prohibited from paying expenses for travel, lodging, gifts, hospitality, or charitable contributions for government officials on Microsoft’s behalf;

i. Supplier (1) has adopted and continuously implements, maintains and enforces, (at its expense) appropriate technical and organizational measures consistent with Supplier’s obligations under this PO, designed to (i) prevent unauthorized access to, and otherwise physically and electronically protect, the Services, and (ii) protect Microsoft Materials and any other Microsoft Confidential Information against accidental, unauthorized or unlawful access, disclosure, alteration, loss, or destruction, and (2) will comply with Supplier’s confidentiality, privacy and data protection obligations under this PO, including Section 13.

12. Termination. Microsoft may terminate this PO 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.

13. Privacy and Data Protection. If Supplier Processes any Microsoft Confidential Information (including Personal Data) as part of performing the Services or providing Goods, Supplier will comply with the following:

a. Supplier will participate in the Microsoft Supplier Security and Privacy Assurance ("SSPA") program and comply with the most current Supplier Data Protection Requirements ("DPR") available at https://www.microsoft.com/en-us/procurement/supplier-contracting.aspx

b. Privacy and Data Protection

(1) Definitions. For purposes of this Section 13.b and this PO, 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, rule, regulation, decree, statute, or other enactment, order, mandate or resolution, 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) “Personal Data Breach” means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Personal Data, whether transmitted, stored, or otherwise Processed.

(vi) “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.

(vii) “Processor” means a natural or legal person, public authority, agency or other body which Processes Personal Data on behalf of the Controller.
(2) Processor Requirements. Without limiting Supplier’s obligations under Section 13.a, Supplier, in its capacity as a Processor, service provider, or subprocessor of Personal Data, will

A. Process the 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 specified in this PO. 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,

B. ensure that persons authorized to Process the Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality,

C. 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),

D. 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,

E. 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,

F. assist Microsoft in ensuring compliance with data security, Personal Data Breach, 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),

G. without limiting Microsoft’s rights under Section 23, 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,

H. immediately inform Microsoft if, in its opinion, an instruction infringes Data Protection Law.

I. 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 this PO.

(3) Supplier will notify Microsoft without undue delay upon becoming aware of a data security breach involving Microsoft Confidential Information or Personal Data Breach.

(4) 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 the PO, 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 13.b(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), (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 this PO, (B) not transfer or sell the Personal Data to any third party except to contractually bound sub-processors operating on behalf of Supplier, and (C) Supplier hereby certifies that it understands, and will comply with, the restrictions in Sections 13.b(4)(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).

(5) 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, 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.

c. At the expiration or termination of this PO, 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 applicable 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 (for example, because Supplier is legally required to retain the information), Supplier will continue to comply with the data security and privacy provisions in this PO 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. 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 this PO 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.

16. 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.

17. Insolvency, Loss of Profits, Damages.
   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 this PO. For this PO, “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 19, A BREACH OF A PARTY’S CONFIDENTIALITY, PRIVACY, DATA PROTECTION, AND PUBLICITY OBLIGATIONS UNDER THIS PO, INFRINGEMENT, MISUSE, OR MISAPPROPRIATION OF IP RIGHTS IN CONNECTION WITH THIS PO, 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 THIS PO, 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.

18. Subcontracting. Supplier will not subcontract with any third party to furnish any Goods or Services without Microsoft’s prior written consent. If Supplier subcontracts any Services to any subcontractor, Supplier will be fully liable to Microsoft for any actions or inactions of subcontractor, remain subject to all obligations under this PO, and require the subcontractor to agree in writing to terms no less protective of Microsoft than the terms of this PO applicable to the work performed by the subcontractor, including the privacy and data protection terms in Section 13.

19. 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 and Services provided under this PO, (2) any claim that, if true, would constitute a breach of Section 13 or any Supplier warranty contained herein, (3) any act or omission of or failure to comply with tax obligations or applicable laws, rules or regulations 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 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 or Services under this PO are enjoined, injunction is threatened, or may violate applicable law, Supplier, at its expense will notify Microsoft and immediately replace or modify such Goods and Services so they are non-infringing, compliant with applicable law, and useable to Microsoft’s satisfaction. If Supplier does not comply with this Section 19(b), then in addition to any amounts reimbursed under this Section 19 (Indemnification and Other Remedies), Supplier will refund all amounts paid by Microsoft for infringing or non-compliant Goods and Services and pay reasonable costs to transition Services to a new supplier.
20. Insurance.

a. Supplier will maintain the following insurance and minimum limits (or the equivalent limits in applicable local currency): (1) commercial general liability insurance limits of $500,000 US per occurrence including contractual and product liability for personal injury and/or property damage (including Automobile Liability), (2) Employers Liability insurance with minimum limits of $100,000 US per occurrence, and (3) statutory limits for any claims under any applicable US Worker’s Compensation and Occupational Disease Acts or other similar laws or regulations that are applicable to acts of Supplier and/or its agents, employees, or subcontractors under this PO.

b. If the provision of Goods or Services under this PO creates (1) Professional liability/eros & omissions liability risk, Supplier will maintain insurance coverage for such liability with policy limits of not less than $2,000,000 US, each claim, or the equivalent limits in applicable local currency and (2) privacy or cybersecurity risk and if privacy and/or cybersecurity insurance is reasonably commercially available to Supplier, Supplier will maintain that insurance policy (including coverage for costs arising from data destruction, hacking or intentional breaches, crisis management activity related to breaches, and legal claims for security breach, privacy violations, and notification costs) of at least $2,000,000 US, per claim, or the equivalent limits in applicable local currency. As for (1) above, the insurance will include coverage for infringement of third-party proprietary rights (for example trademark and copyright) if such coverage is reasonably commercially available.

c. For any insurance policy requirements applicable to Supplier in this PO, Supplier will maintain either active policy coverage or an extended reporting period providing coverage for claims first made and reported to the insurance company within 12 months after termination or expiration of this PO.

d. Upon request, Supplier will provide Microsoft with proof of the required insurance coverage. If Microsoft reasonably determines that Supplier’s coverage is not adequate, Supplier will promptly buy additional coverage and notify Microsoft in writing.

21. 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 this PO and the existence of and all terms and conditions of this PO 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 this PO and for 5 years thereafter, Supplier will hold in strictest confidence, and will not use or disclose to any third party, any Microsoft Confidential Information. The term "Microsoft Confidential Information" means all non-public 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 this PO, all Personal Data shared with Supplier or a Supplier affiliate and in connection with this PO 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.

22. Independent Development. Nothing in this PO restricts Microsoft’s ability to, directly or indirectly, acquire, license, develop, manufacture, or distribute, same or similar technology or services to the Goods or Services contemplated by this PO. Microsoft may use, market, and distribute such similar technology or services in addition to, or in lieu of, the technology or services contemplated by this PO, including any software or cloud services (in whole or in part).

23. Audit. During the term of this PO and for 4 years after, Supplier agrees to keep all usual and proper records and books of account and all usual and proper entries related to its costs and expenses pertinent to this PO. During the above referenced period, Microsoft may audit and/or inspect the applicable records and facilities to verify statements or invoices issued by Supplier and confirm Supplier’s compliance with this PO. Any such audit will be conducted by Microsoft corporate internal audit personnel or by a certified public accountant firm selected by Microsoft. Microsoft will provide reasonable notice to Supplier before the audit or inspection. 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 this PO.

24. Assignments. No right or obligation under this PO (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 this PO.
25. Notice of Labor Disputes. Whenever an actual or potential labor dispute delays or threatens to delay the timely performance of this PO, 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.

26. Patent License. Notwithstanding other conditions stated herein, if Supplier fails in performance according to the terms of this PO, Supplier, as part of the consideration for this PO 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 this PO.

27. Jurisdiction and Governing Law. For Goods and Services provided to Microsoft in the United States, this PO will be governed by and construed under the laws of the State of Washington. The parties consent to exclusive jurisdiction and venue in a court in the State of Washington. For all other Goods and Services provided to Microsoft, the laws, jurisdiction and venue of Microsoft’s physical location will govern this PO.

28. Publicity; Use of Trademarks. Supplier will not issue press releases or other publicity related to Supplier’s relationship with Microsoft or this PO without prior written approval from Microsoft. If written approval is granted, Supplier may only use Trademarks for Services and Deliverables in compliance with the guidelines at https://www.microsoft.com/en-us/legal/intellectualproperty/Trademarks/Usage/General.aspx

29. Severability, URLs. If a court of competent jurisdiction determines that any PO provision 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.

30. Survival. The provisions of this PO 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 this PO, will survive the termination or expiration of this PO. All indemnity obligations and indemnification procedures will survive the termination or expiration of this PO.