Master Supplier Services Agreement

This Master Supplier Services Agreement ("*Agreement*") is between Microsoft Corporation, a Washington corporation ("*Microsoft*"), and [insert Supplier name], a [insert place of organization and entity type] ("*Supplier*"). This Agreement will be effective on the date noted below ("*Effective Date*").

This Agreement consists of

- the following terms and conditions, including exhibits and attachments,
- applicable addenda and SOWs,
- the nondisclosure agreement between the parties dated [insert date] ("*NDA*"), and
- Policies.

Addresses and contact details

Microsoft		Supplier	
Address:	One Microsoft Way, Redmond, WA 98052, USA	Address:	
Attention:		Attention:	
Phone Number:		Phone Number:	
E-Mail Address:		E-Mail Address:	
		Supplier Number:	

Term

Effective Date:	[insert date]
Term:	**5 years** from the Effective Date

Agreed and accepted

Microsoft	Supplier
Signature:	Signature:
Name:	Name:
Title:	Title:
Date:	Date:

SECTION 1   Definitions

(a)   *"Affiliate(s)"* means any legal entity that directly or indirectly owns, is owned by, or is commonly owned with a party. "*Own*" means having more than 50% ownership or the right to direct the management of the entity.

(b)   *"Anti-Corruption Laws"* means all Laws against fraud, bribery, corruption, inaccurate books and records, inadequate internal controls, money laundering, including the U.S. Foreign Corrupt Practices Act.

(c)   *"Claim(s)"* means any and all (1) third-party claims, actions, demands, lawsuits, or proceedings and (2) damages, costs (including reasonable fees of attorneys and other professionals), or liabilities of any kind (including any fine, penalty, judgement, or order issued by a governmental, regulatory, or judicial body), in each case arising out of or relating to that third-party claim, action, demand, lawsuit, or proceeding.

(d)   "*Confidential Information*" means all non-public information a party 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.

(e)   "*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.

(f)   *"Deliverables"* means all work product developed by Supplier (or a Subcontractor) specifically for Microsoft under a SOW or as part of Services, including IP therein.

(g)   *"Excluded License"* means any software license requiring, as a condition of use, modification, or distribution that the software or other software combined or distributed with it be (1) disclosed or distributed in source code form, (2) licensed to make derivative works, or (3) redistributable at no charge.

(h)   "*Intellectual Property*" or "*IP*" means all intellectual property rights, existing under statute or at common law or equity, in force or recognized now or in the future in any jurisdiction, including

   (1)   copyrights (and any neighboring/ancillary right), trade secrets, trademarks, service marks, patents, inventions, designs, logos, trade dress, moral rights, mask works, publicity rights, and database rights, and

   (2)   any application or right to apply for any of the foregoing rights, and all renewals, extensions, and restorations.

(i)   "*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.

(j)   "*Microsoft Materials*" means any tangible or intangible materials provided by or on behalf of Microsoft, or any of its Affiliates, to Supplier to perform Services, or obtained or collected by Supplier in connection with the Services (including hardware, software, source code, documentation, methodologies, know how, processes, techniques, ideas, concepts, technologies, reports, and data). Microsoft Materials include modifications to, or derivative

works of, the foregoing materials, Personal Data, Trademarks, and any data entered into any Supplier database as part of Services. Microsoft Materials do not include Microsoft products obtained by Supplier outside of and unrelated to this Agreement.

(k) *"Microsoft Project"* means any engagement where Supplier requires access to Microsoft's corporate network or facilities.

(l) "*Policies*" means policies, standards, procedures, requirements, and guidelines identified in this Agreement or made available to Supplier by Microsoft.

(m) "*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.

(n) "*Security Incident*" means any

    (1)   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

    (2)   security vulnerability related to Supplier's handling of Confidential Information, including Personal Data.

(o) "*Services*" means all services identified in a SOW or otherwise performed by Supplier under this Agreement.

(p) "*SOW(s)*" means any of the following,

    (1)   Microsoft purchase orders,

    (2)   electronic statements of work transmitted by Microsoft and signed by both parties, or

    (3)   written agreements signed by the parties' authorized representatives referencing, and subject to, this Agreement.

(q) "*Subcontractor(s)*" means a third party to whom Supplier delegates its obligations in connection with this Agreement, including a Supplier Affiliate not contracting directly with Microsoft.

(r) "*Supplier IP*" means (1) Supplier's pre-existing or independently developed IP and (2) any third-party IP with respect to which Supplier has sufficient rights to grant to Microsoft the license and sublicense rights contemplated in this Agreement.

(s) "*Supplier Materials*" means any technology created by a Supplier or third party prior to or outside of the course of any SOW, but which may be necessary or useful for achieving the requirements of a SOW (including hardware, software, source code, documentation, methodologies, know how, processes, techniques, ideas, concepts, technologies, and data).

(t) "*Trademarks*" means trademarks, servicemarks, and logos identified and provided by Microsoft under a SOW.

SECTION 2   Services

(a) **SOW.** The parties will describe Services in one or more SOW. This Agreement applies to each SOW. Microsoft (or any Microsoft Affiliate) may enter into a SOW with Supplier (or any Supplier Affiliate) for Services under this Agreement. Local legal requirements will be documented separately in writing and agreed by the parties. Supplier will, at its own expense,

(1)   obtain and maintain approvals, licenses, filings, or registrations necessary to perform Services, and

(2)   comply with all Laws, including those specified in this Agreement.

(b)   Delivery. If Supplier delivers Services via a web-based portal (e.g., website) or mobile app ("*Services Portal")*, then Supplier grants Microsoft and its Affiliates a non-exclusive, worldwide, unlimited, fully paid, right to access and use such Services Portal for its and their business purposes during the term stated in the applicable SOW. This right extends to employees, contractors, consultants, outsourced workers, and interns engaged by Microsoft or its Affiliates to perform services. Unless otherwise agreed in writing by the parties, Supplier will provide the Services Portal in accordance with the service levels and related credit commitments applicable to its customers generally. If Supplier provides a Services Portal or other cloud service that is not incidental to delivery of the Services (i.e., if the Services Portal is made available by Supplier as a standalone product or service or otherwise not for purposes of facilitating Microsoft's receipt of the Services), the parties will enter into an addendum to this Agreement containing additional terms applicable to such Services. All terms applicable to Services apply to Services Portals, but a Services Portal is not a Deliverable unless expressly agreed by the parties in the SOW.

(c)   Compliance with Trade Laws. The Services, parts, components, devices, software, technology and other materials provided under this Agreement (collectively, "*Items*") may be subject to U.S. and other countries' export jurisdiction. Each party will comply with 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 this Agreement, 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 this Agreement 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 trade 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.

(d)   Anti-Corruption Laws. Supplier will comply with all 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 this Agreement. Supplier is prohibited from paying expenses for travel, lodging, gifts, hospitality, or charitable contributions for government officials on Microsoft's behalf.

(e)   Workplace safety and health. Supplier will comply with (and will require, through contract, all Subcontractors to comply with) Laws related to workplace safety and health, including the Occupational Safety and Health Act of 1970 (OSHA) and parallel state laws approved under OSHA Section 18. Supplier will promptly notify Microsoft Employee Safety and Health Team at employeesafety@microsoft.com and Microsoft Global Security at (425) 706-0000 if Supplier encounters unsafe conditions or workplace hazards in a Microsoft-provided or controlled facility. Supplier will take appropriate safety measures until Microsoft is able to correct the

hazard.

(f) Affirmative Action Clause for Microsoft Suppliers on Covered Subcontracts for the United States government

(1) Contractors and suppliers doing business with Microsoft on a covered contract in the United States will comply with all Federal, State and local labor and employment laws.

(2) **This contractor and subcontractor will abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a), 60-741.5(a) and 29 CFR 471, Appendix A to Subpart A and incorporate the requirements of these regulations if applicable. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. These regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.**

(g) Acceptance of Deliverables. Unless otherwise agreed, Microsoft may evaluate each Deliverable and accept or reject it within 15 business days after receipt. If Microsoft does not accept or reject within that time period, the Deliverable is deemed accepted. Supplier will fix rejected Deliverable within 10 business days after notice of rejection from Microsoft ("*Correction Period*"). If Supplier does not fix the Deliverable within the Correction Period, Microsoft will have no obligation with respect to that Deliverable and Supplier will promptly refund Microsoft Fees paid for that Deliverable within 15 days following the end of the Correction Period.

(h) Supplier to comply with Microsoft Policies. Supplier will comply, at its own cost and expense, with the following as applicable to the Services provided.

(1) 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.

(2) 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.

(3) Without limiting Microsoft's rights in Section 11, Supplier will 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 (the "*DPR*") on an annual basis (or more frequently if additional portions of the DPR become applicable). See https://www.microsoft.com/en-us/procurement/supplier-contracting.aspx, Supplier Security & Privacy Assurance (SSPA) (aka.ms), for SSPA program details, including the program requirements and current DPR. Supplier will comply with the most recent DPR attestation that has been accepted by Microsoft in writing (which may be via email or through an online portal made available by Microsoft). If Microsoft has not provided written approval of Supplier's attestation to all applicable portions of the DPR, Supplier will comply with all applicable portions of the DPR (provided in the link above). Supplier's current SSPA attestation is available upon request from SSPAHelp (sspahelp@microsoft.com).

(4)   Supplier will comply with physical and information security Policies identified in a SOW or provided to Supplier by Microsoft.

(5)   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 Agreement 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.

(6)   Supplier will comply with all other Policies or training requirements provided by Microsoft during the Term.

(7)   Microsoft may change or promulgate new Policies. Supplier is bound by each new or changed Policy 30 days after Microsoft makes them available to Supplier unless Supplier notifies Microsoft during this period that the new or changed Policy will materially affect Supplier's performance. On Microsoft's receipt of such notice, the parties will discuss how to mitigate the effect on Supplier, and any mutually agreed mitigation will be set forth in an amendment. If the parties cannot agree, and the new or changed Policy is not required to comply with new or changed Law, Supplier may terminate this Agreement for convenience after delivering all remaining Services under all existing SOWs, and Supplier's compliance with the new or changed Policy will be deemed waived.

(i)   Supplier's personnel and subcontracting

(1)   Supplier will recruit, select, and train its personnel according to the applicable SOW. If required by Microsoft, Supplier personnel who develop or test Microsoft software or access Microsoft source code will receive training on Microsoft's security development lifecycle. At Microsoft's request, Supplier will promptly remove or replace any individual performing Services.

(2)   Supplier is responsible for all wages, fringe benefits, social security and other payroll taxes, healthcare benefits reporting, unemployment insurance, workers' compensation insurance payments and disability benefits (including, where applicable, medical coverage compliant with the Affordable Care Act), work schedules, work conditions, and similar matters of its employees, contractors, or other personnel performing Services.

(3)   Before assignment of a Supplier employee to provide Services, Supplier will be compliant with the immigration Law in the jurisdiction in which the Supplier employee will provide Services. For assignments in the United States, Supplier will ensure the Supplier employee has the proper work authorization and visa to perform a specific job at a particular work location, and proper postings have been made at worksites for applicable Labor Conditions Applications pursuant to 20 C.F.R. Section 655, Subpart H. If necessary, Supplier will coordinate with Microsoft through the approved Microsoft process to obtain supporting documents for personnel requiring verification letters from Microsoft in support of an immigration filing.

(4)   For personnel performing Services on a Microsoft Project, Supplier will

(i)   ensure that any of its personnel receiving compensation that is taxable as U.S. source income under Sections 861 to 863 of the Internal Revenue Code of 1986,

as amended, will be an employee of Supplier,

> (ii) ensure that its personnel use Microsoft sites or facilities only for business purposes within the scope of Service, and

> (iii) be responsible for loss, damage, theft, or disappearance of personal property belonging to its personnel.

(5) Supplier will not subcontract Services to third parties without Microsoft's prior written consent. If Supplier subcontracts any Services to any Subcontractor, Supplier will

> (i) be fully liable to Microsoft for any actions or inactions of Subcontractor,

> (ii) remain subject to all obligations under this Agreement,

> (iii) require the Subcontractor to agree in writing to terms no less protective of Microsoft than the terms of this Agreement applicable to the work performed by the Subcontractor, including the privacy and data protection terms in Section 6,

> (iv) require the Subcontractor to agree in writing that Microsoft is an intended third-party beneficiary of its agreement with Supplier,

> (v) require the Subcontractor, while performing Services, to be compliant with all immigration Laws in the jurisdiction in which the Subcontractor employee(s) will provide Services, and

> (vi) unless otherwise agreed, if Supplier fails to pay the Subcontractor, Microsoft may pay the Subcontractor and offset those amounts against amounts owed to Supplier.

(j) **Supplier equipment and technology**. Unless otherwise agreed in an applicable SOW, Supplier will provide the equipment, technology, and infrastructure necessary to perform Services at its expense. Supplier will ensure such items are compatible with Microsoft's equipment, technology, and infrastructure as necessary to perform Services. Supplier will identify for Microsoft all third-party software used in conjunction with the Services.

SECTION 3 **Ownership and use of the parties' respective IP**

(a) **Ownership of pre-existing IP.** Each party will own and retain all rights to its pre-existing IP and any IP developed independently of Services performed under this Agreement.

(b) **Supplier's use of Microsoft Materials**

(1) License to use Microsoft Materials

> (i) Microsoft grants Supplier a nonexclusive, revocable license under Microsoft's IP in the Microsoft Materials to copy, use, and distribute Microsoft Materials provided to it only as necessary to perform Services in accordance with this Agreement. Microsoft retains all other interest in Microsoft Materials and related IP. The license is not sublicensable to Subcontractors unless approved by Microsoft in accordance with this Agreement. Supplier will not Sell, license or otherwise commercialize any Microsoft Materials.

> (ii) If Microsoft Materials come with a separate license, the terms of that license will apply and those terms, including any applicable source code license form, control in the case of conflict with this Agreement.

    (iii) Supplier will take reasonable precautions to protect and ensure against loss or damage, theft, or disappearance of Microsoft Materials.

  (2) 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 Agreement or an applicable SOW. Supplier will promptly return any Microsoft Materials on request or termination of Supplier's license.

  (3) Additional provisions

    (i) Supplier will not modify, reverse engineer, decompile, or disassemble Microsoft Materials except as allowed by Microsoft to perform Services.

    (ii) Supplier will leave in place and not alter or obscure proprietary notices and licenses contained in Microsoft Materials.

    (iii) Unless otherwise specified in an applicable SOW, Supplier will maintain and use Microsoft Materials according to the manufacturer's specifications and instructions.

    (iv) Microsoft is not obligated to provide technical support, maintenance, or updates for Microsoft Materials.

    (v) Microsoft Materials are provided as-is without warranty.

    (vi) Supplier assumes the risk of loss, damage, unauthorized access or use, or theft or disappearance of Microsoft Materials in Supplier's (or its Subcontractors') care, custody, or control.

    (vii) Supplier will take no action affecting Microsoft's, or the owner of Microsoft Materials if not Microsoft, title or interest in Microsoft Materials.

(c) Supplier's use of non-Microsoft IP

  (1) Supplier will obtain Microsoft's written consent before using Supplier Materials in a manner that would

    (i) cause them to be included in Deliverables,

    (ii) alter or affect Microsoft's ownership interests in Deliverables, or

    (iii) require a license under Supplier IP or third-party IP for the Deliverables to be used, modified, or distributed by Microsoft.

  (2) If Supplier Materials are incorporated into Deliverables or are necessary for the use, modification, or distribution of Deliverables or derivatives thereof, by Microsoft or any third party, then (i) Supplier will continue to own the Supplier Materials, including any Supplier IP therein ("*Retained IP*"), and (ii) Supplier grants Microsoft and its Affiliates a worldwide, nonexclusive, perpetual, irrevocable, royalty-free, fully paid-up right and license, under all current and future Retained IP, to

    (i) make, use, reproduce, format, modify, and create derivative works of the applicable Supplier Materials,

    (ii) publicly perform or display, import, broadcast, transmit, distribute, license, offer to sell and sell, rent, lease, or lend copies of the applicable Supplier Materials and derivative works thereof,

(iii)   combine the Supplier Materials and derivative works thereof with any software, firmware, hardware, or services, and

(iv)   sublicense to third parties the foregoing rights, including the right to sublicense to further third parties.

(3)   In no event will Supplier use any Supplier Materials in any manner that implicates third-party IP under which Supplier does not have the rights necessary to grant Microsoft the license and sublicense set forth in Section 3(c)(2) above.

(d)   Ownership of Deliverables

(1)   Subject to Supplier's Retained IP rights, Deliverables are "work made for hire" under copyright Law. 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 therein. Supplier waives all moral rights in Deliverables.

(2)   Supplier will promptly disclose to Microsoft in writing any inventions, works of authorship, improvements, developments or discoveries conceived, authored, made, or reduced to practice by Supplier or its Subcontractors, either solely or in collaboration with others, in the performance of Services. At Microsoft's request and expense, Supplier will execute documents and take any other action reasonably necessary to evidence, perfect, or protect Microsoft's rights in the Deliverables. Supplier will cooperate with Microsoft in the filing and prosecution of copyright, trademark, or patent applications Microsoft elects to file on Deliverables or related inventions and designs. Supplier will not challenge, oppose, or interfere with Microsoft's applications prepared according to Microsoft's rights under this Agreement relating to the Deliverables, or file applications on its own behalf.

SECTION 4   Supplier compensation

(a)   Microsoft's payment of Fees

(1)   Microsoft will pay Supplier fees stated in each SOW ("*Fees*"). A Supplier rate card, if one is attached to this Agreement, will provide ceiling rates for Microsoft. Supplier is responsible for expenses it incurs unless agreed otherwise in a SOW. Supplier will not markup expenses Microsoft agrees to pay. Supplier will not offset against amounts Microsoft owes unless agreed otherwise in a SOW.

(2)   Unless agreed otherwise in a SOW, after Microsoft accepts Services and receives a proper and undisputed invoice, it will pay Fees and approved expenses

(i)   net 10 days less a 2% discount on the invoiced amount, or

(ii)   net 60 days with no discount.

(3)   Microsoft will pay Supplier according to Microsoft's then-current payment policies.

(b)   MS Invoice. Supplier will invoice Microsoft using MS Invoice according to https://einvoice.microsoft.com. Supplier will not charge Microsoft for researching, reporting on, or correcting invoice-related errors. Supplier will not date its invoices earlier than the date Supplier may be paid under an applicable SOW. If a date is not specified in a SOW, Supplier may issue invoices monthly in arrears.

(c)   Disputed amounts. Microsoft may dispute any invoice amount (each, a "*Disputed Amount*") by providing written notice to Supplier. Partial payment is notice from Microsoft of a Disputed

Amount. Microsoft will make commercially reasonable efforts to notify Supplier in writing of any Disputed Amount within 60 days of receiving the invoice. Microsoft's failure to provide notice or payment of an invoice does not waive any of its claims or rights. Microsoft will pay Supplier within 60 days from the date of dispute resolution.

(d) **Late invoices.** Microsoft is not obligated to pay any invoice received 120 days or more after the date Supplier was required to invoice Microsoft under this Agreement or an applicable SOW. This does not apply to

    (1)   amounts paid after a dispute,

    (2)   rejected invoices that are first received timely and then corrected,

    (3)   invoices delayed due to Microsoft's actions or omissions, or

    (4)   delays the parties have agreed to in writing.

(e) **Taxes.** 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 Supplier is legally obligated to pay, including net income or gross receipts taxes, franchise taxes, and property taxes. Microsoft will pay Supplier sales, use, or value added taxes it owes due to this Agreement that the Law requires Supplier to collect from Microsoft.

    (1)   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.

    (2)   If Microsoft provides Supplier a valid exemption certification, Supplier will not collect the taxes covered by such certificate.

    (3)   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 taxes withheld to the extent allowed by Law.

    (4)   Despite any other provision of this Agreement, this section governs the treatment of all taxes related to this Agreement.

SECTION 5   **Term and termination**

(a)   **Term.** This Agreement commences on the Effective Date and will continue for the term on the first page of this Agreement ("*Term*") unless it is

    (1)   terminated earlier according to its terms, or

    (2)   extended by a written and signed amendment.

(b)   **Termination for convenience.** Without prejudice to any other remedies, Microsoft may terminate this Agreement, any source code license form subject to this Agreement, or any SOW at any time without cause by giving 30 days written notice. If Microsoft terminates for convenience, its only obligation is to pay for

    (1)   Services or Deliverables it accepts before the effective date of termination, and

    (2)   Services performed where Microsoft retains the benefit after the effective date of termination.

(c)   Termination for cause

    (1)   Either party may terminate this Agreement, any source code license form subject to this Agreement, or any SOW on the other party's material breach of this Agreement or a SOW. The non-breaching party must give 30 calendar days written notice and the opportunity to cure its breach. Either party may immediately terminate this Agreement on written notice of a breach of Section 6 (Confidentiality, security, privacy and data protection, and publicity).

    (2)   Microsoft may terminate this Agreement, any source code license form subject to this Agreement, or any SOW effective immediately upon written notice if Supplier breaches Sections 2(a) (SOW), 2(g) (Acceptance of Deliverables) through 2(j) (Supplier equipment and technology), 3 (Ownership and use of the parties' respective IP), 7 (Representations and warranties, disclaimer), 10 (Insurance), or 12(d) (Assignment) or if Supplier sells a substantial part of Supplier's assets to a third party.

(d)   Effect of termination. Supplier will deliver to Microsoft any affected Deliverables in progress and all related data and materials. Supplier will assist Microsoft with a post-termination transition at Microsoft's request. Supplier's assistance will not exceed 60 calendar days. Microsoft will pay Supplier for its assistance at a rate no greater than the rate set forth in any SOW for comparable services. On termination or expiration of this Agreement, any SOWs signed when this Agreement is in effect continue under the terms of this Agreement until such SOWs are terminated or expire on the terms of the applicable SOW, however, no new SOWs or extensions of existing SOWs are permitted.

(e)   Survival. The provisions of this Agreement, including the applicable SOW, which by their terms require performance after the termination or expiration of this Agreement or have application to events that may occur after the termination or expiration of this Agreement, will survive such termination or expiration. All indemnity obligations and indemnification procedures will survive the termination or expiration of this Agreement.

SECTION 6   Confidentiality, security, privacy and data protection, and publicity

(a)   Confidentiality

    (1)   Information shared under this Agreement is Confidential Information and subject to the NDA. Section 6(a)(2) applies if information related to Services was shared before execution of the NDA, no NDA exists, or the NDA terminates or ceases to be in effect.

    (2)   During the Term plus 5 years, the parties will hold in strictest confidence and not use or disclose to any third party (except to a Microsoft Affiliate) any Confidential Information of the other party.

    (3)   A party will consult with the other if it questions what comprises Confidential Information. Confidential Information excludes information known to a party before the disclosing party's disclosure to the receiving party, or information publicly available through no fault of the receiving party.

    (4)   Notwithstanding anything to the contrary in this Section 6(a), all Personal Data shared in connection with this Agreement is Confidential Information.

(b)   Security. Supplier will, at its expense, implement and maintain appropriate technical and organizational measures to protect Confidential Information, including Personal Data, against accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to,

Confidential Information, including Personal Data, transmitted, stored or otherwise processed. 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, upon Microsoft's request and other information reasonably requested by Microsoft regarding Supplier security practices and policies.

(c)   Privacy and data protection

(1)   For purposes of this Section 6(c) and this Agreement, 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 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.

(iii)   "*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.

(iv)   "*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.

(v)   "*Processor*" means a natural or legal person, public authority, agency or other body which Processes Personal Data on behalf of the Controller.

(vi)   "*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)   Without limiting Supplier's obligations under Section 2(h)(3), 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 specified in this Agreement. 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 11, 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, and

(ix)   without limiting its other obligations under this Agreement, 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.

(3)   If Supplier is a Controller of Personal Data that is collected, exchanged, or otherwise Processed in connection with Supplier's performance of the Agreement, 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 6(c)2 will not apply to the Supplier with respect to those Processing activities, (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 the Personal Data protected by the California Consumer Privacy Act in connection with its direct business relationship with Microsoft and to perform under the Agreement, and (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 (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, as required by Data Protection Laws such as Chapter III of GDPR, to data subjects' requests to exercise their rights, as well as identifying a lawful basis of Processing (e.g., consent or legitimate interest).

(4)   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 Agreement.

(5)   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.

(d)   **Notice.** Without limiting Supplier's obligations under this Agreement, including the DPR and this Section 6 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 6(d) 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.

(e) **Return or destroy Confidential Information**. At the expiration or termination of Services, 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 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 (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 Agreement (including Section 2(h)(3) and Section 6) and Supplier must de-identify or aggregate Personal Data, if any, to the extent feasible. Without limiting Supplier's other obligations agreed in writing by the parties, this Section 6(e) does not apply to Personal Data that is Processed by Supplier as a Controller under the GDPR.

(f) **Publicity.** Supplier will not issue press releases or other publicity related to Supplier's relationship with Microsoft or this Agreement without prior written approval from the Microsoft representative executing this Agreement.

SECTION 7   Representations and warranties, disclaimer

Supplier continuously represents and warrants that

(a) it has full rights and authority to enter into, perform under, and grant the rights in, this Agreement,

(b) its performance will not violate any agreement or obligation between it and any third party,

(c) Deliverables and Supplier IP or third-party IP provided to Microsoft under this Agreement

(1) are not governed, in whole or in part, by an Excluded License, and

(2) will not be subject to license terms requiring Microsoft products, services, or documentation incorporating or derived from such Deliverables, Supplier Materials, or Microsoft IP, to be licensed or shared with any third party,

(d) Services will be performed professionally and be at or above industry standard,

(e) Services, Deliverables, and Supplier Materials provided to Microsoft under this Agreement will not

(1) to the best of Supplier's knowledge, infringe any third-party patent, copyright, trademark, trade secret, or other proprietary right, or

(2) contain viruses or other malicious code that will degrade or infect any Deliverables, products, services, software, or Microsoft's network or systems, and

(f) Supplier will comply with Law, including Data Protection Law and Anti-Corruption Laws.

EXCEPT AS SET FORTH IN THIS AGREEMENT, SERVICES ARE PROVIDED AS-IS. TO THE MAXIMUM EXTENT PERMITTED BY LAW, SUPPLIER DISCLAIMS ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, WHETHER ARISING BY A COURSE OF DEALING, USAGE OR TRADE PRACTICE OR COURSE OF PERFORMANCE.

SECTION 8   Indemnification and other remedies

(a) Indemnification by Supplier. Supplier will defend, indemnify, and hold Microsoft, its Affiliates, and their respective successors, directors, officers, employees, and agents (each a "*Microsoft Indemnified Party*") harmless from and against all Claims to the extent such Claims arise out of or relate to

(1) Supplier's or its Subcontractors' breach of Sections 7(a) or 7(b),

(2) Supplier's or its Subcontractors' negligent or willful acts or omissions resulting in bodily injury, including mental injury, or death to any person or loss, disappearance, or damage to tangible or intangible property,

(3) Supplier's or its Subcontractors' infringement, misuse, or misappropriation of third-party IP rights or Microsoft IP,

(4) Supplier's or its Subcontractors' breach of any confidentiality, privacy, data protection or publicity obligations under this Agreement, including Section 6 (Confidentiality, security, privacy and data protection, and publicity),

(5) Supplier's or its Subcontractors' tax obligations or non-compliance with Law, or

(6) actions by Supplier personnel against Microsoft for wages, fringe benefits, other compensation, or similar claims, and claims challenging Supplier's right to dismiss its personnel.

Supplier will not be liable under this Section 8(a) (Indemnification by Supplier) to the comparative extent that Claims result from,

(i) a Microsoft Indemnified Party's negligent or willful acts or omissions, or

(ii) Supplier's strict compliance with Microsoft's express instructions that could not be reasonably performed in a non-infringing manner.

(b) **Indemnification by Microsoft.** Microsoft will defend, indemnify, and hold Supplier, its Affiliates, and their respective successors, directors, officers, employees, and agents (each a "*Supplier Indemnified Party*") harmless from and against all Claims to the extent that such Claims arise out of or relate to

    (1)   Microsoft's negligent or willful acts or omissions resulting in bodily injury, including mental injury, or death to any person or loss, disappearance, or damage to tangible or intangible property, violation of Supplier's IP rights, or

    (2)   Microsoft's non-compliance with Law.

Microsoft will not be liable under this Section 8(b) (Indemnification by Microsoft) to the comparative extent that Claims result from a Supplier Indemnified Party's negligent or willful acts or omissions.

(c) **Indemnification procedures.** The indemnified party will

    (1)   provide the indemnifying party with reasonably prompt notice of Claims,

    (2)   permit the indemnifying party through mutually acceptable counsel to answer and defend Claims, and

    (3)   provide the indemnifying party with reasonable information and assistance to help the indemnifying party defend Claims at the indemnifying party's expense.

An indemnified party may employ separate counsel and participate in the defense of a Claim at its own expense.

(d) **Acknowledgment of fault and settling Claims.** Neither party will stipulate, admit, or acknowledge fault or liability by the other without their prior written consent. The indemnifying party will not settle any Claim or publicize any settlement without the other party's prior written consent.

(e) **Industrial insurance immunity.** Supplier waives immunity under industrial insurance Law, such as Title 51 of the Revised Code of the State of Washington, U.S., except to the extent prohibited by Law and solely regarding bodily injury or death Claims.

(f) **Other remedies.** In addition to all other remedies available to Microsoft,

    (1)   if use of Services or Deliverables under this Agreement is enjoined or injunction is threatened, Supplier, at its expense, will notify Microsoft and immediately

        (i)   procure for Microsoft the right to continue using such Services and Deliverables, or

        (ii)   replace or modify such Services and Deliverables so they are non-infringing and useable to Microsoft's satisfaction.

    If Supplier does not comply with this Section 8(f)(1), then in addition to any amounts reimbursed under this Section 8 (Indemnification and other remedies), Supplier will refund all amounts paid by Microsoft for infringing Services and Deliverables and pay reasonable costs to transition Services to a new supplier.

    (2)   Supplier will pay Microsoft the fair market value of Microsoft Materials or property if Supplier misappropriates or fails to return such items according to this Agreement.

SECTION 9   Limitations of liability

(a)   AS PERMITTED BY LAW AND SUBJECT TO SECTION 9(b) BELOW, NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES (INCLUDING DAMAGES FOR LOSS OF DATA, REVENUE, OR PROFITS), WHETHER FORESEEABLE OR UNFORESEEABLE, ARISING OUT OF THIS AGREEMENT REGARDLESS OF WHETHER THE LIABILITY IS BASED ON BREACH OF CONTRACT, TORT, STRICT LIABILITY, BREACH OF WARRANTIES, OR OTHERWISE, AND EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES. ADDITIONALLY, NEITHER PARTY'S TOTAL AGGREGATE LIABILITY TO THE OTHER PARTY WILL EXCEED THE GREATER OF

    (1) $2,000,000 USD OR THE EQUIVALENT IN LOCAL CURRENCY, OR

    (2)   THE ACTUAL FEES PAID BY MICROSOFT IN THE 12-MONTH PERIOD PRIOR TO THE DATE THE CLAIM AROSE**.**

(b)   THE LIMITATIONS ON LIABILITY IN SECTION 9(a) DO NOT APPLY TO LIABILITY ARISING FROM

    (1)   A PARTY'S DUTY TO INDEMNIFY THE OTHER UNDER THIS AGREEMENT,

    (2)   A BREACH OF A PARTY'S CONFIDENTIALITY, PRIVACY, DATA PROTECTION, AND PUBLICITY OBLIGATIONS UNDER THIS AGREEMENT,

    (3)   INFRINGEMENT, MISUSE, OR MISAPPROPRIATION OF IP RIGHTS IN CONNECTION WITH THIS AGREEMENT, OR

    (4)   WILLFUL MISCONDUCT OR FRAUD.

SECTION 10   Insurance

Supplier will maintain sufficient insurance coverage to meet obligations required by this Agreement and by Law. Supplier's insurance must include the following coverage (or the local currency equivalent) to the extent the Agreement 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	$2,000,000 USD
Automobile liability	Occurrence	$2,000,000 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.

Table A1 – Required Insurance Coverage
[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 assumed by Supplier in Section 8 (Indemnification and other remedies).
[3] With a retroactive coverage date no later than the effective date of this Agreement 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 this Agreement terminates or expires or the applicable SOW is fulfilled.

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 this Agreement 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.

SECTION 11   Reports, audits, and inspections

(a)   **Reports.** Reports Supplier provides to Microsoft will be accurate, complete, and timely. Supplier will correct errors or omissions in any report within 5 days after becoming aware of the error or omission.

(b)   **Financial statements.** If not publicly available, upon Microsoft's request, Supplier will provide Microsoft with its most recent financial statements. A "*financial statement*" means a balance sheet as of the last day of the calendar quarter or fiscal year, an income statement, statement of cash flows, and any related notes for the quarter and year-to-date, prepared under GAAP, international financial representation standards, or other generally accepted accounting principles in Supplier's jurisdiction. Supplier must note any departure in the quarterly financial statements from these principles. Supplier's authorized officer will acknowledge the financial statements' completeness and accuracy by signature.

(c)   **Audits, inspections, and refunds**

(1)   For the Term plus 4 years, Supplier will keep usual and proper records and books of account relating to compliance with and performance under this Agreement, quality and performance reports related to Services, the Processing of Personal Data, and as otherwise required for legal compliance ("*Supplier Records").* During this period, Microsoft may audit Supplier and inspect Supplier facilities to verify its records and Agreement compliance, 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 will provide reasonable access to Microsoft or its Auditor to facilitate the audit, including access to Microsoft contracts, Supplier Records and facilities. Supplier will permit Microsoft or its Auditor to copy records for evidence.

(2)   Supplier will reimburse Microsoft for overpayments discovered by auditors. 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.

(3)   For audits related to Anti-Corruption Laws, in addition to the obligations above, Supplier

will maintain books, documents, records, papers, and other materials related to this Agreement (*"Relevant Records"*), and internal controls to prevent bribes and assure accurate financial statements and reporting. Supplier will not have undisclosed or unrecorded accounts, or false, misleading, incomplete, inaccurate, or artificial entries in the Relevant Records. Relevant Records and relevant employees will be available to Microsoft or its Auditor. Microsoft may exercise its rights under this provision at any time if it in good faith believes Supplier or its representatives violated this Agreement's Anti-Corruption Laws obligations.

(4)   Nothing in this Section 11(c) limits Microsoft's right to audit Supplier under Section 6(c)(2)(vii).

SECTION 12   Miscellaneous

(a)   **Relationship.** The parties are independent contractors. Supplier's employees and Subcontractors are not Microsoft employees. Supplier will provide Microsoft with satisfactory proof of independent contractor status upon request. This Agreement does not create an exclusive relationship between the parties and Microsoft does not commit to acquiring any minimum amount of Services from Supplier. There are no third-party beneficiaries under this Agreement unless provided otherwise.

(b)   **Jurisdiction and governing Law.** This Agreement is 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. Neither party will claim lack of personal jurisdiction or forum non conveniens in these courts. In any action or suit related to this Agreement, the prevailing party is entitled to recover its costs including reasonable attorneys' fees.

(c)   **No waiver.** A party's delay or failure to exercise any right or remedy is not a waiver of that or any other right or remedy.

(d)   **Assignment.** Supplier will not sell, assign, transfer, pledge, or encumber this Agreement or any right, or delegate any duty or obligation under this Agreement, by assignment or operation of Law, without Microsoft's prior written consent. Microsoft will not unreasonably withhold such consent. Supplier will be deemed to have assigned this Agreement if Supplier engages in a change of control transaction. Microsoft may assign this Agreement to any of its Affiliates. This Agreement will inure to the benefit of and bind all permitted successors, assigns, receivers, and trustees of each party. Any attempted assignment that violates this provision is a material breach and is void.

(e)   **Force majeure.** Except for business continuity (i.e., disaster recovery) obligations under this Agreement, neither party is liable for failing to perform its obligations under this Agreement due to acts of God, natural disasters, war, civil disturbance, or government action where the cause is beyond the party's reasonable control ("*Force Majeure Event*"). A Force Majeure Event does not include difficulty in obtaining labor, materials, or transport, or a strike, lock-out, trade dispute, or labor disturbance where Supplier is a direct party. The party affected by a Force Majeure Event will provide written notice to the other party within a commercially reasonable time and use best efforts to resume performance as soon as reasonably possible. If Supplier does not complete Services due to a Force Majeure Event within 3 weeks after the start of the Force Majeure Event, or an alternate date specified in an applicable SOW or this Agreement, whichever is earlier, then (1) Microsoft may choose not to purchase or pay for those Services, and (2) Supplier will promptly refund any pre-paid Fees.

(f)   **Severability.** If a court of competent jurisdiction determines that any Agreement provision is illegal, invalid, or unenforceable, the remaining provisions will remain in full force and effect.

(g)   **Insolvency.** The insolvency or adjudication of bankruptcy, the filing of a voluntary petition in bankruptcy, or the making of an assignment for the benefit of creditors by either party will be a material breach of this Agreement. "*Insolvency*" means either (1) the party's liabilities exceed its assets, each fairly stated, or (2) the party's failure to timely pay its business obligations in the regular course of business.

(h)   **Entire agreement, precedence, and amendment.** This Agreement supersedes all prior and contemporaneous communications, whether written or oral, regarding the subject matter covered in this Agreement. Any preceding master agreement, listed in an exhibit to this Agreement, if any, previously executed between the parties (each a "*Prior Agreement*") is terminated, except that any SOWs signed when the Prior Agreement was in effect continue until such SOWs are terminated or expire under the terms of the applicable SOW, however no new SOWs or extensions to existing SOWs are permitted under the Prior Agreement. If there is a conflict between any parts of this Agreement not resolved by its terms, the following order of precedence will apply

  (1)   this Agreement, including any addenda, exhibits and Microsoft Policies referenced herein,

  (2)   a signed SOW, except if this Agreement or the SOW provides that a particular section of the SOW takes precedence over a particular section of this Agreement, and

  (3)   Microsoft purchase order terms and conditions.

This Agreement may be modified only by a written agreement signed by authorized representatives of both parties. However, Microsoft may unilaterally modify the Policies identified in Section 2(h) (Supplier to comply with Microsoft Policies). This Agreement does not replace any separate written license agreement between Microsoft and Supplier, and any conflicts with licensing of Microsoft Materials will be resolved as provided in Section 3(b)(1)(ii). Neither Microsoft nor any Microsoft Affiliate is bound in any way by any online terms or agreements accepted in connection with login or access to the Services or any Services Portal, no such terms will amend this Agreement.

(i)   **Notices**. All notices under this Agreement will be in writing, deemed given when received (unless otherwise specified), and sent by electronic mail or physical mail (*e.g.*, registered or certified mail) to the person and address provided on the first page of this Agreement (or as the recipient has otherwise designated through a previous notice given in accordance with this Section).

(j)   **Counterparts**. The parties may execute this Agreement in any number of counterparts. Each counterpart is an original and all counterparts constitute one agreement binding both parties. Facsimile and electronic signatures will be binding for all purposes.

(k)   **Construction.** Neither party has entered this Agreement in reliance on any promise, representation, or warranty not contained herein. This Agreement will be interpreted according to its plain meaning without presuming that it should favor either party. Lists of examples following "including," "e.g.," "for example," or the like are interpreted to include "without limitation," unless qualified by words such as "only" or "solely." URLs are understood to also refer to successors, localizations, and information or resources linked from within websites at those URLs.