Volume Licensing

Open License Agreement

This Microsoft Open License Agreement is between Customer and Microsoft Licensing, GP and consists of: (1) these terms; (2) the Product List; and (3) the Product use rights. If Customer's organization type is not of a business, then the qualifying government entity form is incorporated by reference and may be found at http://www.microsoft.com/licensing/contracts.

1. Definitions.

The following definitions apply to this agreement:

"Affiliate" means (1) any legal entity that a party owns, that owns a party, or that is under its common ownership with a party within the "Defined Region"; or (2) with regard to Customer if it is a government entity, any entity that meets the qualifying government criteria located at http://www.microsoft.com/licensing/contracts and is located in the same country as Customer or (3) with regard to Customer if it is a charitable organization, any entity that meets the qualifying charity eligibility criteria located at http://www.microsoft.com/licensing/contracts and is located in the same country as Customer. For purposes of this definition, "ownership" means more than 50% ownership and "control" means the right granted by law to exercise decision power over the administration, finances and operations. An entity that does not qualify as an Affiliate and desires to license Products must enter into a separate license agreement.

"Authorization Number" means the unique number reflected in the Online Records that allows the Originating Customer and its eligible Affiliates to place one or more purchase orders under the Microsoft Open License program for 24 full calendar months following the issuance date of the Authorization Number;

"Customer" means the entity that has entered into this agreement, or its Affiliates.

"Customer Data" means all data, including all text, sound, software, or image files that are provided to Microsoft by, or on behalf of, Customer through Customer's use of the Online Services.

"Defined Region" means (1) the geographical region as defined on http://www.microsoft.com/licensing/licensing-options/open-regional.aspx or (2) the geographical boundaries of the country where the government agency is located.

"Fix(es)" means Product fixes, modifications, enhancements or their derivatives that Microsoft either releases (such as commercial Product service packs) or provides to end users when performing services to address a specific issue.

"License" means the right to run the version of the Product ordered, for any one of the Products identified in the Product List (including standard Licenses and upgrades for desktop operating systems).

"Microsoft" means the Microsoft Affiliate that has entered into this agreement and its Affiliates.

"Online Records" means Microsoft's records as reflected at https://www.microsoft.com/licensing/servicecenter (or a successor site Microsoft identifies) with respect to any particular purchase order Microsoft processes, adjusted to reflect any agreed License transfers, returns, and other adjustments;

"Online Services" means the Microsoft-hosted services identified in the Online Services section of the Product List.

"Product" means all products identified on the Product List, such as all software, Online Services and other web-based services, including pre-release or beta versions, identified on the Product List;

"Product List" means the statement published on the World Wide Web at http://www.microsoft.com/licensing/contracts, that identifies Products that are available under different licensing programs (Product availability may vary by region) and any Product-specific conditions or limitations on the acquisition of Licenses for those Products.

"Product use rights" means the use rights for each Product and version published for that licensing program at http://www.microsoft.com/licensing/contracts.

"run" or "use" means to copy, install, use, access, display, run, or otherwise interact with.

"Service Level Agreement" means the document specifying the standards Microsoft agrees to adhere to and by which it measures the level of service for an Online Service.

"Software Assurance" means an offering that provides new version rights and other benefits for Products as described in the Product List. It's not a full license by itself.

"Trade Secret" means information that is not generally known or readily ascertainable to the public, has economic value as a result, and has been subject to reasonable steps under the circumstances to maintain its secrecy.

2. *License grant.*

a. **General.** Microsoft grants Customer a non-exclusive, non-transferable, worldwide and limited right to install and use the Software and to access and use the Online Services. These rights are conditional on Customer's and its Affiliates continued compliance with the terms of this agreement, including payment for the Products.

b. **Prior version or different language version.** Customer may run a prior version or different language version (so long as the License, L&SA, or Software Assurance for that different language version is available at the same or a lower price than the price paid for the corresponding License type for the version ordered) of the same Product.

c. **Perpetual and non-perpetual Rights.** Subscription licenses, rights to access and use Online Services, and most Software Assurance rights are temporary. For all other licenses, the right to use Software becomes perpetual only when all license, Software Assurance, or license and Software Assurance payments for that Software have been made and the applicable Software Assurance term has expired. Perpetual licenses obtained via Software Assurance replace any perpetual licenses to the prior version. Software Assurance is not a full "License" by itself. It requires underlying "License" to be valid. Any perpetual Licenses received through Software Assurance supersede and replace the underlying perpetual Licenses for which that Software Assurance coverage was ordered. All perpetual Licenses acquired under this agreement remain subject to the terms of this agreement and the applicable Product Use Rights.

d. **License confirmation.** The Online Records and this agreement are Customer's confirmation and evidence of the Licenses granted under this agreement.

e. **Restrictions on use.** Customer shall not reverse engineer, decompile, or disassemble any Product or Fix. Customer may not distribute, sublicense, rent, lease, lend or host to or for third parties any Product or Fix except as permitted in this agreement, a separate written agreement, or as otherwise provided by the applicable Product use rights.

f. **Qualifying system Licenses.** All operating system Licenses provided under this program are upgrade Licenses only. If Customer selects the Windows Desktop Operating System Upgrade, all qualified desktops on which Customer will run the Windows Desktop Operating System Upgrade must be licensed to run one of the qualifying operating systems identified in the Product List at http://www.microsoft.com/licensing.

g. **Product support.** Product support is not included with Licenses granted under this agreement.

h. **Online services.** Online services are provided as subscription services and are subject to the unique terms set forth in the Product use rights and the Product List.

i. **Non-Microsoft software and technology.**

    (i) Customer is solely responsible for any non-Microsoft software or technology that it installs or uses with the Products or Fixes. Microsoft is not a party to and is not bound by any terms governing Customer's use of non-Microsoft software or technology. Without limiting the foregoing, non-Microsoft software or scripts linked to or referenced from any Product website, are licensed to Customer under the open source licenses used by the third parties that own such code, not by Microsoft;

    (ii) If Customer installs or uses any non-Microsoft software or technology with the Products or Fixes, it directs and controls the installation in and use of such software or technology in the Products or Fixes through its actions (e.g., through Customer's use of application programming interfaces and other technical means that are part of the Online Services). Microsoft will not run or make any copies of such non-Microsoft software or technology outside of its relationship with Customer.

    (iii) If Customer installs or uses any non-Microsoft software or technology with the Products or Fixes, it may not do so in any way that would subject Microsoft's intellectual property or technology to obligations beyond those included in this agreement.

3. Orders, term, and termination.

Customer or any Affiliate located in the same Defined Region may order upgrade Licenses or Online Services using the authorization number provided by Microsoft. Microsoft may reject an order if it has a business reason to do so. The validity of the authorization number and the term of this agreement is twenty four calendar months from the effective date. Upon expiration of the authorization number and/or termination of the agreement Customer must order copies of Products it has run and not previously submitted an order. Customer's right to upgrades under this agreement ends if it does not renew Software Assurance for all copies of all Products renewed within the time period specified in the Product List.

Open Charity Licensing and Pricing is not available in all countries. Where Charity licensing and pricing is not available, Charitable organizations must buy under Open License commercial pricing.

If Customer loses its status as a government or charitable organization subsequent to licensing products under this agreement, Customer may continue to use copies for which Customer is licensed, but Customer may not submit any new order for Licenses under the Microsoft Government or Charity Open License programs.

4. Copying and re-imaging rights.

a. **Copying.** Customer may make and distribute copies of Licensed Products for use by its end users as outlined in this agreement. Copies must be true and complete copies (including copyright and trademark notices) and be made from media or a network source acquired from or made available by a Microsoft approved fulfillment source for that Product. Customer may use a third party to make and install these copies, but agrees to be responsible for that third party's actions. Customer agrees to use reasonable efforts to ensure that its employees, agents, and other individuals understand that the Products are licensed from Microsoft and subject to the terms of this agreement. Customer must place an order for each copy of Products it used and not previously submitted an order.

b. **Re-imaging.** Customer must acquire at least one License for the Product it wants to re-image. The media provided under this agreement, including the online product download from https://www.microsoft.com/licensing/servicecenter may be used to create images for use, in place of copies, if the re-imaged Microsoft Product is licensed (1) from an original equipment manufacturer (OEM), (2) as full packaged Product through a retail source, or (3) under another Microsoft program. This right is conditioned on the following:

   (i) Customer owning separate Licenses from the source for each Product that is re-imaged;

   (ii) the Product, language, version, and components of the copies being identical to the Product, language, version, and all components of the copies they replace and the number of copies or instances of the re-imaged Product permitted remaining the same;

   (iii) the Product type (e.g., upgrade or full License) being identical to the Product type from the separate source, except for copies of an operating system and copies of Products licensed under another Microsoft program;

   (iv) Customer complying with any Product-specific requirements for re-imaging identified in the Product use rights or Product List; and;

   (v) re-images made under this subsection remaining subject to the terms and use rights provided with the License from the separate source.

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

5. License transfer and reassignment.

a. **License Transfers.** License transfers are not permitted, except that Customer may transfer fully-paid perpetual licenses to:

   (i) an Affiliate, or

   (ii) a third party solely in connection with the transfer of hardware or employees to whom the licenses have been assigned as part of (1) a divestiture of an Affiliate or a division of an Affiliate or (2) a merger involving Customer or an Affiliate.

Customer must notify Microsoft of a transfer of license by completing a transfer notice form, which can be obtained from http://www.microsoft.com/licensing/contracts and send the completed form to Microsoft before the license transfer. No License transfer will be valid unless Customer provides to the transferee, and the transferee accepts in writing, the applicable Product use rights, use restrictions, limitations of liability (including exclusions and warranty provisions), and the transfer restrictions described in this section. Any license transfer not made in compliance with this section will be void.

b. **Internal Assignment of Licenses and Software Assurance.** Licenses and Software Assurance must be assigned to a single user or device within its organization. Licenses may be reassigned as described in the Product use rights.

6. *Confidentiality.*

To the extent permitted by applicable law, the terms and conditions of this agreement are confidential. Unless agreed upon in a separate agreement neither party will disclose such these terms and conditions, or the substance of any discussions that led to them, to any third party other than Affiliates (in the case of end user Customers) or agents, or to designated or prospective resellers who: (1) have a need to know such information in order to assist in carrying out this agreement; and (2) have been instructed that all such information is to be handled in strict confidence.

7. *Warranties.*

Microsoft warrants that Products other than Online Services will perform substantially as described in the applicable user documentation and Online Services will perform substantially as described in the applicable Microsoft user documentation. This warranty is subject to the following limitations: (1) the warranty for Products other than Online Services applies for one year from the date Customer first runs a copy of the Product and; (2) the warranty for Online services is one year from the date Customer first uses the product; (3) except where applicable law does not allow any limitations implied warranties, guarantees, or conditions last only during the term of the limited warranty; (4) the warranty does not cover problems caused by accident, abuse or use of the Products in a manner inconsistent with this agreement or the Product use rights, or resulting from events beyond Microsoft's reasonable control; (5) the warranty does not apply to components of Products that end user Customer is permitted to redistribute; and (6) the warranty does not apply to problems caused by the failure to meet minimum system requirements. If Microsoft fails to meet any of the above warranties and Customer notifies Microsoft within the warranty term, Microsoft will, at its option, either (1) return the price paid for Products that are not Online Services or in the case of Online Services provide the remedies identified in the Service Level Agreement or (2) repair or replace the Product. These are Customer's only remedies for breach of the limited warranty, unless other remedies are required to be provided under applicable law.

DISCLAIMER OF OTHER WARRANTIES. OTHER THAN THIS LIMITED WARRANTY, MICROSOFT PROVIDES NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS. MICROSOFT DISCLAIMS ANY IMPLIED REPRESENTATIONS, WARRANTIES, OR CONDITIONS, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE OR NON-INFRINGEMENT. THESE DISCLAIMERS WILL APPLY UNLESS APPLICABLE LAW DOES NOT PERMIT THEM.

8. *Defense of infringement, misappropriation, and third party claims.*

a. **Microsoft's Agreement to protect.** Microsoft will defend Customer against claims made by an unaffiliated third party that any Product or Fix infringes that party's patent, copyright, trademark, or makes intentional unlawful use of its Trade Secret. Microsoft will also pay the amount of any resulting adverse final judgment (or settlement to which Microsoft consents). This section provides Customer's exclusive remedy for these claims.

b. **Limitations on defense obligation.** Microsoft's obligations will not apply to the extent that the claim or award is based on: (1) Customer Data non-Microsoft software, modifications Customer makes to, or any specifications or materials Customer provides or makes available for, a Product or Fix, (2) Customer's use of the Product or Fix after Microsoft notifies it to discontinue that use due to a third party claim; (3) Customer's combination of the Product or Fix with a non-Microsoft product, data, or business process; (4) damages based on the use of a non-Microsoft product, data, or business process; or (5) Customer's use of Microsoft's trademarks or the use or redistribution of a Product or Fix in violation of this agreement or any agreement incorporating its terms. Customer will reimburse Microsoft for any costs or damages that result from any of these actions.

c. **Customer's agreement to protect**. Customer will defend Microsoft against any claims made by an unaffiliated third party that: (1) any Customer Data or non-Microsoft software Microsoft hosts on Customer's behalf infringes the third party's patent, copyright, or trademark or makes unlawful use of its Trade Secret; or (2) arises from violation of the Acceptable Use Policy, which is described in the Product use rights. Customer must pay the amount of any resulting adverse final judgment (or settlement to which Customer consents). This section provides Microsoft's exclusive remedy for these claims.

d. **Rights and remedies in case of possible infringement or misappropriation.**

   (i) If Microsoft reasonably believes that a Product or Fix may infringe or misappropriate a third-party's intellectual property rights, Microsoft will seek to: (1) procure for Customer the right to continue to use the Product or Fix; or (2) modify or replace it with a functional equivalent to make it non-infringing and notify Customer to discontinue use of the prior version, which Customer must do immediately. If the foregoing options are not commercially reasonable for Microsoft, or if required by a valid judicial or government order, Microsoft may terminate Customer's license or access rights in the Product or Fix. In such a case, Microsoft will provide Customer with notice and refund any amounts Customer has paid for those rights to the Product or Fix (or for Online Services, any amount Customer has paid in advance for unused Online Services).

   (ii) Customer Data or use of non-Microsoft software with Online Services. If an unaffiliated third party asserts that Customer Data or non-Microsoft software or technology used by Customer with the Online Services violates their intellectual property rights, Microsoft may ask Customer to remove the allegedly infringing item. If Customer fails to do so within a reasonable period of time, Microsoft may suspend or terminate the Online Service to which the Customer Data or non-Microsoft software relates.

e. Customer must notify Microsoft promptly in writing of a claim subject to the Subsection titled "Microsoft's agreement to protect" and Microsoft must notify Customer promptly in writing of a claim subject to the Subsection titled "Customer's agreement to protect." The party invoking its right to protection must (1) give the other party sole control over the defense or settlement; and (2) provide reasonable assistance in defending the claim. The party providing the protection will reimburse the other party for reasonable out of pocket expenses that it incurs in providing assistance.

9. *Limitation of liability.*

To the extent permitted by applicable law, the liability of each party, its Affiliates, and its contractors arising under this agreement is limited to direct damages up to (1) for Products other than Online Services, the amount Customer was required to pay for the Product giving rise to that liability and (2) for Online Services, the amount Customer paid for the Online Service giving rise to that liability during the prior 12 months. In the case of software code that Customer is authorized to redistribute to third parties without separate payment to Microsoft, Microsoft's liability is limited to U.S. $500. These limitations apply regardless of the legal basis for the claim. However, these monetary limitations will not apply to: (1) Obligations under the section titled "Defense of infringement, misappropriation, and third party claims"; (2) liabilities arising out of any breach by either party of its obligations under section titled "Confidentiality"; except that Microsoft's liability arising out of or in relation to Customer Data shall in all cases be limited to the amount Customer paid for the Online Service giving rise to that liability during the prior 12 months; or (3) violation by either party of the other party's intellectual property rights.

a. **EXCLUSION OF CERTAIN DAMAGES. TO THE EXTENT PERMITTED BY APPLICABLE LAW, WHATEVER THE LEGAL BASIS FOR THE CLAIM, NEITHER PARTY, NOR ANY OF ITS AFFILIATES OR CONTRACTORS, WILL BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, OR INCIDENTAL DAMAGES, OR DAMAGES FOR LOST PROFITS, REVENUES, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION ARISING IN CONNECTION WITH THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH POSSIBILITY WAS REASONABLY FORESEEABLE. HOWEVER, THIS EXCLUSION DOES NOT APPLY TO EITHER PARTY'S LIABILITY TO THE OTHER FOR VIOLATION OF ITS CONFIDENTIALITY OBLIGATIONS OR OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS.**

b. **Affiliates and contractors.** Neither Microsoft nor Customer shall bring any action against the other's Affiliates or contractors in respect of any matter which is disclaimed on their behalf in this Section. Each party will indemnify the other in the event of any breach of this provision.

10. Verifying compliance.

Customer must keep all usual and proper records relating to the Products Customer runs. Microsoft may request that Customer conduct an internal audit of all Microsoft Products in use throughout Customer's organization, comparing the number of Products in use to the number of effective Licenses issued in Customer's name. Following any audit, Customer agrees to deliver to Microsoft a written statement signed by its authorized representative, certifying that either (1) Customer has sufficient Licenses to permit all usage disclosed by the audit, or (2) Customer has ordered sufficient Licenses to permit all usage disclosed by the audit. By requesting an audit, Microsoft does not waive its rights to enforce this agreement or to protect Microsoft's intellectual property by any other means permitted by law, including conducting an onsite audit.

11. Privacy and security.

Microsoft and Customer will each comply with all applicable privacy and data protection laws and regulations (including applicable security breach notification law). However, Microsoft is not responsible for compliance with any laws applicable to Customer or Customer's industry that are not also generally applicable to information technology services providers. Customer consents to the processing of personal information by Microsoft and its agents to facilitate the subject matter of this agreement. Customer may choose to provide personal information to Microsoft on behalf of third parties (including Customer's contacts, resellers, distributors, administrators, and employees) as part of this agreement. Customer will obtain all required consents from third parties under applicable privacy and data protection law before providing personal information to Microsoft. The personal information Customer provides in connection with this agreement will be processed according to the privacy statement available at https://www.microsoft.com/licensing/servicecenter (see footer), except that Product-specific privacy statements are in the Product use rights. Personal data collected through Products may be transferred, stored and processed in the United States or any other country in which Microsoft or its service providers maintain facilities. By using the Products, Customer consents to the foregoing. Microsoft abides by the EU Safe Harbor and the Swiss Safe Harbor frameworks as set forth by the U.S. Department of Commerce regarding the collection, use, and retention of data from the European Union, the European Economic Area, and Switzerland. For Online Services, additional privacy and security details are in the Product use rights.

12. Miscellaneous.

a. Applicable law. If the terms of this agreement are entered into with any Microsoft Affiliate located outside of Europe, this agreement will be governed by and construed in accordance with the laws of the State of Washington and federal laws of the United States. If the terms of this agreement are entered into with any Microsoft Affiliate located in Europe, this agreement will be governed by and construed in accordance with the laws of the Republic of Ireland. The 1980 United Nations Convention on Contracts for the International Sale of Goods and its related instruments will not apply to this agreement. The Products are protected by copyright and other intellectual property rights laws and international treaties.

b. Dispute resolution. When bringing an action to enforce this agreement, (including any agreement incorporating these terms), the parties agree to the following jurisdictions: (1) if Microsoft brings the action, the jurisdiction will be where Customer has its headquarters; (2) if Customer brings the action with any Affiliate of Microsoft located outside of Europe, the jurisdiction will be the State of Washington, USA; (3) if Customer brings the action with any Affiliate of Microsoft located in Europe, the jurisdiction will be the Republic of Ireland; (4) this choice of law does not prevent either party from seeking injunctive relief with respect to a violation of intellectual property rights or confidentiality obligations in any appropriate jurisdiction.

c. Advisor fee. Microsoft or its Affiliates, sometimes pay fees to software advisors or other third parties authorized by Microsoft or one of its Affiliates. The fees are in exchange for their advisory services. The payment of fees depends upon several factors, including the type of agreement under which Licenses are ordered, which Licenses are ordered, and whether Customer chooses to use an advisor. The fee amounts increase with the size of the orders placed under this agreement.

d. No transfer of ownership. Microsoft does not transfer any ownership rights in any licensed Product. Microsoft reserves all rights not specifically granted. The Products are protected by copyright and other intellectual property rights laws and international treaties.

e. Severability. If a court holds any provision of this agreement to be illegal, invalid, or unenforceable, the rest of the document will remain in effect and this agreement will be amended to give effect to the eliminated provision to the maximum extent possible.

f. **Subcontractors.** Microsoft may use contractors to support Online Services. Microsoft will be responsible for their performance subject to the terms of this agreement.

g. **U.S. export jurisdiction.** Products and Fixes are subject to U.S. export jurisdiction. Customer must comply with all applicable laws including the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by U.S. and other governments applicable to this agreement. For additional information, see http://www.microsoft.com/exporting/.