

PATENT COVENANT AGREEMENT
MICROSOFT SHAREPOINT SERVER 2016 PROTOCOLS

This **Patent Covenant Agreement** (the “**Agreement**”) is entered into between Microsoft Corporation, a Washington corporation having a primary place of business at One Microsoft Way, Redmond, Washington, USA 98052 (“**Microsoft**”), and the person or company identified below (“**Company**”), effective as of the date it has been signed on behalf of both parties (the “**Effective Date**”).

Company Full Legal Name: Type of Legal Entity (corporation, partnership, sole proprietorship or other): State/Province Organized: Street Address: City, State & Country: Company Contact Name: Phone Number: Fax Number:

LICENSEE

MICROSOFT CORORATION

BY

BY

NAME, TITLE

NAME, TITLE

DATE

DATE

1. **Definitions.** Capitalized terms used in this Agreement are defined in this **Section 1** or elsewhere in this Agreement.
- 1.1. “**Affiliate**” means, with respect to any party, any entity that directly or indirectly Controls, is Controlled by or is under common Control with such party. For purposes of this definition and the definition of Subsidiary, "Control" means direct or indirect (through any number of successive tiers) ownership of:
(a) more than fifty percent (50%) of the outstanding shares having the right to vote for the election of directors or other managing authority of the subject entity; or (b) in the case of an entity which does not have outstanding shares (e.g. a partnership, joint venture or unincorporated association), more than fifty percent (50%) of the ownership interests having the right to make decisions for the subject entity.
- 1.2. “**Compatible Software**” means software that is capable of interoperating with the applicable SharePoint Product(s) without breaking compatibility with the SharePoint Product(s).
- 1.3. “**Copy**” means each individual copy of the Product, including, without limitation, all copies that a Customer or Provider is authorized to make under the terms of the agreement under which that Product is Provided, and in the case of a Product Provided under a subscription agreement where the license governing the Product imposes no substantial restriction on use or copying of the software contained in the Product, each individual copy that is supported by Company under such subscription agreement, and further including any concurrently running instances of the Product that the Customer is authorized to deploy.

- 1.4. **“Customer”** means a third party customer (whether an individual or an entity) to which a Copy of or access to a Product is Provided.
- 1.5. **“Implementation(s)”** means only those portion(s) of software, Provided by Company or its Subsidiaries that implement Protocols in accordance with the Technical Documentation in order to interoperate with SharePoint Product(s) or Compatible Software.
- 1.6. **“Microsoft Client Software Products”** means Microsoft’s client software products released in 2013 or later that are sold or otherwise distributed or provided to end users, and their successors, together with Updates thereto.
- 1.7. **“Microsoft Server Software Products”** means Microsoft’s server software products released in 2013 or later that are sold or otherwise distributed or provided to end users, and their successors, together with Updates thereto.
- 1.8. **“Necessary Claims”** means the claims of a patent or patent application that Microsoft owns or has the right to sublicense without a fee and that are necessarily infringed by implementing the Protocols in accordance with the Technical Documentation in order to interoperate with SharePoint Product(s). Necessary Claims do not include any claims directed to any technology other than an Implementation; without limiting the foregoing, Necessary Claims do not include any claims directed to (a) underlying or enabling technology that may be used or Provided in connection with a Protocol or an Implementation, (b) any portions of a Product other than the Implementation; or (c) any implementation of technical documentation, specifications or technologies that are merely referred to in the body of the Technical Documentation.
- 1.9. **“Net Revenues”** means, for each Product: (a) all revenues actually recognized by Company in the normal course of business from (1) the Provision of the Product, and (2) any installation, support, maintenance, subscription or similar agreements for services that are contractually required in connection with the Provision of the Product, including in each such case the fair market value of any non-monetary consideration; less (b) any Credits. **“Credits”** means (i) freight, postage, insurance and shipping and handling expenses applicable to the Product (but only, in each instance, if separately priced and identified in the applicable invoices or other agreements); (ii) credits, rebates or refunds actually allowed for returns or recalls of the Product; and (iii) sales, value-added, excise taxes, tariffs and duties, and other taxes directly related to the Provision of the Product, to the extent that the items described in (i), (ii) and (iii) are included in the gross invoice price and actually incurred by Company. Credits do not include taxes assessed against the income derived from Provision of Products or against Company’s business operations.
- 1.10. **“Product”** means a product or service that includes an Implementation and is Provided by the Company or its Subsidiaries.
- 1.11. **“Protocols”** means the software communications protocols that are implemented in SharePoint Product(s) and used to exchange information with other Microsoft Server Software Products and Microsoft Client Software Products and mutually to use the information which has been exchanged as defined by the **Technical Documentation**.
- 1.12. **“Provide” or “Provision”** means selling, offering for sale, importing, licensing, distributing, providing online access to (including under subscriptions or user-based connection fees), hosting, or otherwise making available in any manner to a third party. **“Provider”** means any entity that Company or its Subsidiaries authorize to Provide a Product in accordance with the terms of this Agreement.
- 1.13. **“Royalties”** means the royalties owed under this Agreement, as described in **Section 3** below.
- 1.14. **“SharePoint Product(s)”** means the software marketed, distributed, and licensed by Microsoft as: (a) Windows SharePoint Services 3.0 functionality in Windows Server 2008 and Windows Server 2013 and SharePoint Foundation 2010 and SharePoint Foundation 2013; (b) Microsoft Office SharePoint Server 2007, Microsoft Office SharePoint Server 2010, Microsoft Office SharePoint Server 2013, and Microsoft Office SharePoint Server 2016; (c) Microsoft SQL Server 2005, and its

successors, in so far as the products in (a) and (b) rely on them as a database back-end; and (d) Updates to all of the foregoing.

- 1.15. **“Subsidiary”** means, with respect to a party, any entity that is Controlled directly or indirectly by such party.
- 1.16. **“Technical Documentation”** means the Microsoft technical specifications and documents set forth on **Exhibit A**.
- 1.17. **“Update”** means any update that Microsoft makes commercially available as a “service pack” to the applicable Microsoft product, under the applicable end user license agreement for such product, or any critical fix or recommended modification to, or updated component for, the applicable Microsoft product that Microsoft develops and makes generally available (e.g., through its website or any other general distribution means) for the product to which the update applies, under the applicable end user license agreement for such product.
- 1.18. **“User”** means an individual human being that is authorized to access a Product or to otherwise make use of a Product.
- 1.19. **Undertaking** means the public undertaking published at <http://go.microsoft.com/fwlink/?LinkId=179741>.

2. **Covenant**

- 2.1. Covenant. Conditioned on Company’s compliance with the terms of this Agreement, including without limitation, payment of the Royalties in **Section 3**, Microsoft agrees that it will, by the act of posting the Company-elected terms set forth in **Exhibit B** to its website within ten (10) days from the Effective Date, provide a covenant not to sue, as Company so elects, to either Company and/or Customers of Company, pursuant to the terms set forth therein (**“Covenant”**). Company acknowledges and agrees that it is solely responsible for the election referenced above, that such election has been made in its sole discretion, that Microsoft has not directed or counseled Company with respect to such election, and that such election does not impose any additional terms, conditions, obligations or liabilities upon Microsoft or its Subsidiaries. Furthermore, Company agrees and acknowledges that nothing in this Agreement requires Microsoft or its Subsidiaries to “convey” or to “propagate by procuring conveyance” of a “covered work” (as such terms are used in or defined by the GNU General Public License version 3), and that nothing in this Agreement shall be deemed to constitute such conveyance or propagation by procuring conveyance of a covered work.
- 2.2. Reservation of Rights. All rights not expressly granted in this Agreement are reserved by Microsoft and its Subsidiaries. No additional rights and no licenses whatsoever are granted by implication, exhaustion, estoppel or otherwise. Without limiting the generality of the foregoing, the Covenant does not include, and neither Microsoft nor its Subsidiaries grant or make any promise with respect to, any right under any patent or intellectual property other than the Necessary Claims. Company will not claim licenses or other rights under any patents or applications of Microsoft or its Affiliates as a result of entering into this Agreement or making, using, or Providing any Implementation under this Agreement. Microsoft acknowledges that Company is not waiving its right to contest the validity or applicability of any of Microsoft’s patents.

- 2.3. Most Favored Terms. If any other third party enters into a patent agreement specifically for the Protocols that contains terms that are more advantageous to that third party than the terms of this Agreement, Company will have the opportunity to enter into the same agreement as that third party. If that third party agreement provides for lower Royalties than this Agreement, Company will receive a credit against future Royalties owed under this Agreement, consisting of the difference between the amount that Company paid under this Agreement for the relevant time period and the amount that Company would have owed under the other agreement for that time period.

3. **Royalties**

- 3.1. Prepaid Royalties. Company will pay Microsoft \$10,000 in non-refundable prepaid royalties, to be credited against Royalties.
- 3.2. Royalties. Company will pay Royalties for each Copy of a Product Provided by Company or its Subsidiaries during the Term, consisting of the Net Revenue for each Copy multiplied by the Royalty Rate set forth below, provided that the Royalty for each Copy (or in the case of a Service as described in "Product Type" below, for each User) will not be less than the Minimum Royalty set forth below for the applicable Product Type:

<u>Product Type</u>	<u>Royalty Rate</u>	<u>Minimum Royalty</u>
Client – Software Product that runs on a desktop, laptop, netbook, tablet, slate or e-reader or similar computer and is designed and used to provide computing or data services to a single User or computer	1.0%	\$1.59 per Copy of the Product
Server – Software Product that is designed or used to provide computing or data services to multiple Users or software programs running on multiple other computers	1.0%	\$42.27 per Copy of the Product
Service – Product that is Provided to Customers only in the form of a service, i.e., no software or hardware is transferred to the Customer	1.0%	\$0.13 per unique User of the Service per Quarter
Device – Products that consist of combinations of hardware and software intended for use by a single User, in mobile phones and personal digital assistants or similar devices, but shall not include any servers, desktop, laptop, netbook, tablet, slate, e-reader or other similar computer	1.0%	\$0.34 per Copy of the Product
Device Application – Software Product that is implemented in a third party Device.	1.0%	\$0.34 per Copy of the Product
Other – any Product not specifically described above	1.0%	\$84.54 per Copy of the Product

- (a) Evaluation Copy Pricing. No Royalties are owed for Copies of a Product that Company permits to be used under a written agreement only for a reasonably limited time period and only for testing and evaluation purposes.
- (b) Locked Copies. If Company Provides a Copy of a Product using a commercially reasonable form of anti-piracy activation technology such that the Copy cannot be used or installed by a Customer without the use of an associated authorized digital license key, and Provides the Copy under an agreement that permits initial use or installation of the Copy only by means of the key,

then Company will not be required to treat the Copy as having been "Provided" until Company or a Provider first makes the key available to the Customer.

3.3. Reporting and Payments.

- (a) Company will pay Royalties on a quarterly basis for Provision in the prior full or partial calendar quarter ("**Quarter**"). Company will submit Royalty Reports within 30 days after the end of each Quarter to the address specified in **Section 8.1**, with a copy by e-mail to ipnotice@microsoft.com, using a form to be provided by Microsoft. Microsoft will in no event be entitled to obtain any information concerning: (a) the identity of any Provider or Customer of Company; or (b) the quantity of Implementations or Products Provided to any particular Provider or Customer of Company, except as may be required to determine the total quantity of Copies of Products subject to Royalties under this **Section 3**.
- (b) Microsoft will invoice Company for the Royalties owed based on Company's Royalty Reports. Company will pay all invoices issued by Microsoft under this Agreement within 30 days to an account specified by Microsoft. All payments due under this Agreement are payable in United States Dollars. If Company receives or makes payments of any amounts that are part of Net Revenues in a currency other than U.S. Dollars, Company will calculate Royalties as if such payments were converted to U.S. Dollars at the end of the Quarter in which the payments were received or paid. Company will use the applicable currency exchange rate quoted in the *Wall Street Journal* as of 3 pm EST for currency trading among banks in amounts of \$1,000,000 or more on the last day of the applicable Quarter. Microsoft may assess and Company will then pay the lesser of (a) a one and one-half percent (1.5%) monthly charge, and (b) the highest amount permitted by applicable law with respect to late charges, on all amounts that are past due from the date due through and including the date Microsoft receives payment in full.

3.4. Taxes. This **Section 3.4** governs the treatment of all taxes arising as a result of or in connection with this Agreement, notwithstanding any other provision of this Agreement.

- (a) Company is responsible for the billing, collecting and remitting of sales, use, value added, and other comparable taxes due with respect to the collection of any revenues by Company, or any portion thereof. Microsoft is not liable for any taxes (including any penalties or interest thereon), that Company is legally obligated to pay and that are incurred by Company in connection with this Agreement or any Company revenues related to the Provision of any Implementation or Product, and Company takes full responsibility for all such taxes. Company is not liable for any income taxes that Microsoft is legally obligated to pay with respect to any amounts paid to Microsoft by Company under this Agreement.
- (b) Amounts payable to Microsoft under this Agreement exclude any taxes, duties, levies, fees, excises or tariffs imposed on any of Company's activities in connection with this Agreement. Company will pay to Microsoft any applicable taxes that are owed by Company solely as a result of entering into this Agreement and which are permitted to be collected from Company by Microsoft under applicable law, except to the extent Company provides to Microsoft a valid exemption certificate for such taxes. Company agrees to indemnify, defend and hold Microsoft harmless from any taxes (including without limitation sales or use taxes paid by Company to Microsoft) or claims, causes of action, costs (including without limitation reasonable attorneys' fees) and any other liabilities of any nature whatsoever related to such taxes.
- (c) If, after a determination by foreign tax authorities, any taxes are required to be withheld on payments made by Company to Microsoft, Company may deduct such taxes from the amount owed Microsoft and pay them to the appropriate taxing authority; provided however, that Company will promptly secure and deliver to Microsoft an official receipt for any such taxes withheld or other documents necessary to enable Microsoft to claim a U.S. Foreign Tax Credit. Company will make certain that any taxes withheld are minimized to the extent possible under applicable law.

3.5. Recordkeeping and Audits.

- (a) Recordkeeping. Company will maintain accurate and adequate books and records related to its compliance with all terms and conditions of this Agreement (collectively, “**Audit Information**”) until the date that is two years from the end of the last Quarter in which Company Provides Products.
- (b) Audits. At the request of Microsoft or one of its Affiliates, Company will provide access to Audit Information to a nationally recognized independent certified public accountant (“**Auditor**”) selected by Microsoft (or the requesting Affiliate, if applicable) and approved by Company (such approval not to be unreasonably delayed or withheld), for purposes of conducting an audit of Company’s compliance with the terms and conditions of this Agreement. Company must be given at least 30 days’ notice of any audit and the access will be limited to those portions of the Audit Information necessary to verify Company’s compliance with this Agreement. The Auditor will use reasonable and customary care to protect the confidentiality of Audit Information. Audits will be conducted during regular business hours at Company’s facilities. The Auditor may be escorted by Company personnel when on Company premises, and will not unreasonably interfere with Company’s normal course of business. Following conclusion of the audit, the Auditor will provide both Microsoft and Company with a report of the results of the audit.
- (c) Frequency and Costs. Audits will not be performed more than once every 12 months, unless an audit discloses a Material Discrepancy, in which case follow-up audits may be conducted until the Material Discrepancy has been resolved. Company will promptly pay the costs of any audit(s) that reveal a Material Discrepancy; otherwise, Microsoft will be responsible for the costs. “**Material Discrepancy**” means, with respect to Royalties, the greater of 5% or \$10,000 when compared to the amount that was reported during the period subject to audit; and/or with respect to other terms of this Agreement, material non-compliance with any other material terms.

- 4. **Confidentiality.** Royalty Reports, Audit Information, and audit reports are Company’s confidential information. Microsoft will not disclose them except as may be required by applicable law or as may be required by judicial or governmental order. If possible under the terms of the order, Microsoft will either give Company prior notice of the disclosure to enable it to seek a protective order or obtain written assurance that the confidential information will receive the highest level of applicable protection.

5. **Representations and Warranties**

- 5.1. Mutual. Each party represents and warrants that (a) the person executing this Agreement on its behalf has all necessary power and authority to do so, and that upon such signature this Agreement is a legal, valid and binding obligation enforceable against such party, and (b) it is entering into this Agreement in good faith.
- 5.2. DISCLAIMER. EXCEPT AS PROVIDED IN **SECTION 5.1**, EACH PARTY DISCLAIMS ALL WARRANTIES, GUARANTEES, AND CONDITIONS, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OR MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT.
- 6. **LIMITATIONS OF REMEDIES & LIABILITY.** EXCEPT WITH RESPECT TO ANY INFRINGEMENT OR MISAPPROPRIATION OF EITHER PARTY’S INTELLECTUAL PROPERTY RIGHTS, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY IS LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES WHATSOEVER ARISING OUT OF OR IN CONNECTION WITH ANY PROVISION OF THIS AGREEMENT, REGARDLESS OF THE LEGAL THEORY UPON WHICH ANY CLAIM FOR SUCH DAMAGES IS BASED. THE FOREGOING EXCLUSION APPLIES EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE AND EVEN IF ANY AVAILABLE REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

7. **Term & Termination**

- 7.1. Term. The terms of this Agreement commence upon Microsoft’s receipt of the Prepaid Royalties and continue in effect until the earlier of (i) the date on which all of Microsoft’s rights under the Necessary

Claims expire or (ii) the date on which this Agreement is terminated pursuant to **Section 7.2** (“**Term**”), at which time the Covenants and other rights with respect to Necessary Claims shall survive only as to Copies of Products Provided during the Term for which the Royalties were paid.

- 7.2. Termination. Company may terminate this Agreement at any time, in its sole discretion and without cause, by providing written notice to Microsoft. Microsoft may terminate this Agreement by giving Company written notice of termination: (i) at any time if Company is in material breach of any term or condition of this Agreement and fails to remedy that breach within 60 days after written notice thereof; or (ii) immediately and at any time, pursuant to **Section 8.3**. As used in this **Section 7.2**, “Protocol Licensee” means an entity that has executed a Patent Covenant Agreement or a Patent License Agreement, including such entity’s Subsidiaries and Customers.
- 7.3. Effect of Expiration or Termination. If this Agreement is terminated, Company will have no further rights under this Agreement, and the following Sections will survive any expiration or termination of the Agreement: **Sections 2.1** (but only with respect to Copies of Products Provided during the Term for which Royalties were timely paid); **2.3** (Reservation of Rights); **3.2 – 3.4** (Royalties; Payments; and Taxes), with respect to Royalty obligations accrued prior to expiration or termination; **3.5** (Recordkeeping and Audits), for a period of 2 years following expiration or termination; **5** (Representations and Warranties), **6** (Limitation of Remedies & Liability), **7.3** (Effect of Expiration or Termination) and **8** (Miscellaneous). Any expiration or termination of this Agreement is without prejudice to any right or remedy of either party arising out of any breach of this Agreement, including without limitation recovery of any monies due or claimed due under this Agreement.

8. Miscellaneous

- 8.1. Notices. All notices and requests between the parties in connection with this Agreement are deemed given on the day they are received either by messenger, delivery service, or in the United States of America mails, postage prepaid, certified or registered, return receipt requested, and addressed using the contact information indicated on the first page of this Agreement for Company, the contact information indicated below for Microsoft, or to such other address as the party to receive the notice or request so designates per this notice provision:

Microsoft Corporation Attn: Special Agreements Dept. 551, Volume Licensing 6100 Neil Road, Suite 210 Reno, Nevada 89511-1137	Copies To: Microsoft Corporation Attn: Director of IP Licensing Legal and Corporate Affairs One Microsoft Way Redmond, WA 98052-6399 and IPNotice@Microsoft.com
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- 8.2. Governing Law; Jurisdiction; Attorneys' Fees. This Agreement shall be governed by and construed in accordance with English law and U.S. Federal law:

By marking a box below, Company elects the indicated option:

☐ Each party hereby submits to the exclusive jurisdiction of the Chancery Division of the High Court of England and Wales in London or in a court of competent jurisdiction in Seattle Washington, USA or New York, NY, USA. Process may be served on either party in the manner authorized by applicable law or court rule. In any formal action or suit to enforce any right or remedy under this Agreement or to interpret any provision of this Agreement, the prevailing party is entitled to recover its costs, including reasonable attorneys' fees, costs and other expenses. The Parties acknowledge and agree that any formal action or suit to enforce any right or remedy under this Agreement or to interpret any provision of this Agreement constitutes an issue relating to the application of Article 82 of the Treaty within the meaning of Article 15 of Regulation 1/2003. The Parties acknowledge and agree that this Agreement shall be interpreted in conformity with the Undertaking.

OR

☐ Any dispute, disagreement or claim arising out of or relating in any way to this Agreement or the parties' obligations under this Agreement, including the breach, termination or validity of this Agreement, will be resolved by binding confidential arbitration conducted in London England or in Seattle Washington, USA or New York, NY, USA, in accordance with the International Chamber of Commerce (ICC) Rules of Arbitration in effect on the date of this Agreement with such modifications or adaptations as foreseen herein or necessary under the circumstances (the "**Rules**"). The Parties acknowledge and agree that this Agreement shall be interpreted in conformity with the Undertaking. Judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction. The parties will keep the arbitration proceedings, any related discovery, and the arbitration tribunal's decisions confidential to the full extent permitted by the Rules. The requirements of this **Section 8.2** will not be deemed a waiver of any right of termination under this Agreement.

- 8.3. Assignment. Microsoft may assign this Agreement to an Affiliate. Otherwise, neither party may assign or otherwise transfer this agreement or any of its rights or obligations under this Agreement, whether by operation of contract, law, insolvency, bankruptcy, or otherwise without the consent of the other party, which will not be unreasonably withheld. Any attempted assignment or transfer in violation of this **Section 8.3** is null and void and has no force or effect. Any acquisition of Licensee or other change of Control of Licensee without such consent shall be deemed an attempted assignment for which Microsoft shall have the right to terminate this Agreement.
- 8.4. Entire Agreement and Modifications. This Agreement (including its Exhibits) constitutes the entire agreement between the parties with respect to its subject matter and merges all prior and contemporaneous communications on such subject matter. No modifications of this Agreement are effective unless contained in a subsequent written agreement that expressly references this Agreement and its intent to modify its terms, and is signed by duly authorized representatives of Company and Microsoft.

PATENT COVENANT AGREEMENT
MICROSOFT SHAREPOINT SERVER 2016 PROTOCOLS

Exhibit A – Technical Documentation

In connection with the execution of this Agreement, Microsoft will provide a complete list of the Technical Documentation. In the interim, the list of documentation is available by searching the Patent and Program Map available at https://docs.microsoft.com/en-us/openspecs/dev_center/ms-devcentp/13571077-e344-4e6f-a477-369894979798.

PATENT COVENANT AGREEMENT
MICROSOFT SHAREPOINT 2013 PROTOCOLS

Exhibit B -- Covenant Election Form

Microsoft, on behalf of itself and its Subsidiaries (collectively "**Microsoft**"), hereby covenants, at Company's election exercised by marking only one of the boxes below:

☐ not to sue Company and Company's Subsidiaries for infringement under Necessary Claims on account of the Provision, development, or use of an Implementation in specific Copies of a Product as Provided during the Term by Company or its Subsidiaries for which the applicable Royalty has been paid; or

☐ not to sue Customers of Company and Customers of Company's Subsidiaries for infringement under Necessary Claims on account of such Customers' use of Implementations in specific Copies of a Product as Provided during the Term by Company or its Subsidiaries for which the applicable Royalty has been paid; or

☐ not to sue Company and Company's Subsidiaries for infringement under Necessary Claims on account of the Provision, development, or use of an Implementation in specific Copies of a Product as Provided during the Term by Company or its Subsidiaries for which the applicable Royalty has been paid and not to sue Customers of Company and Customers of Company's Subsidiaries for infringement under Necessary Claims on account of such Customers' use of Implementations in specific Copies of a Product as Provided during the Term by Company or its Subsidiaries for which the applicable Royalty has been paid.

For the avoidance of doubt, nothing in these covenants applies to, and no license or other rights are provided under such covenant for: (i) any portion of the Product other than the Implementation, including any enabling technologies that may be required to use the Implementation or Product, or (ii) Customers to Provide or sublicense the Implementation.

The above covenants are personal to their respective beneficiaries and non-transferable. The covenanting party reserves the right to update (including discontinue) the above covenant pursuant to the terms of the Patent Covenant Agreement between the parties; however, any covenant provided with respect to Implementations in specific Copies shall survive under its initial terms and conditions.

Microsoft covenants that it will ensure that any third party to which it transfers rights to Necessary Claims will be bound by the above covenant to the same extent that Microsoft was bound prior to such transfer.

Definitions of capitalized terms used above may be found in the Definitions section above.