

# Agreement for leasing or renting certain Microsoft Software Products

**IMPORTANT—READ CAREFULLY:** This agreement (“Agreement”) is between you, a legal entity (“COMPANY”), and Microsoft Corporation or one of its affiliates (“Microsoft”). This Agreement grants COMPANY limited rights to: (i) lease to third parties personal computers (“PCs”) that COMPANY acquires with the original equipment manufacturer (“OEM”) versions of the Windows 10 Pro/Pro for Workstations, Windows 8 Pro, or Windows 7 Professional desktop operating system, and, as applicable, Microsoft Office 2019, Microsoft Office 2016, Microsoft Office 2013, or Microsoft Office 2010 (“Microsoft Software Products”) preinstalled by a PC manufacturer (“OEM”), and (ii) rent the OEM and Volume Licensing versions of certain Microsoft Software Products. By exercising rights under this Agreement, COMPANY agrees to its terms. If COMPANY does not agree, COMPANY may not lease PCs with Microsoft Software Products preinstalled and may not rent Microsoft Software Products. COMPANY may not exercise rights under this Agreement if either (1) COMPANY has a valid OEM License Agreement with Microsoft or a Microsoft affiliate or (2) COMPANY qualifies as an OEM affiliate under an OEM License Agreement. For purposes of this Agreement, “qualifies as an OEM affiliate” means that COMPANY is controlled by, or is under common control with, an entity that has a valid OEM License, where control means direct or indirect majority ownership. COMPANY also agrees that it will not exercise rights as an end user under the Microsoft Software License Terms for the units of Microsoft Software Products leased or rented under this Agreement (“License Terms”).

## 1. Lease rights and obligations

### 1.1 License grant, limitations, and obligations

Notwithstanding anything to the contrary in the applicable License Terms for each Microsoft Software Product, Microsoft hereby grants to COMPANY the right to lease Microsoft Software Products on Leased PCs to its customers, each under a Lease (each as defined below). This grant is subject to COMPANY’s continuing compliance with the terms of this Agreement and all applicable license terms.

COMPANY must fully own the leased PCs (“Leased PCs”) and also must enter into a lease agreement (“Lease”) with each of its customers (“Lessees”). The Leased PCs must have Microsoft Software Products preinstalled and each Leased PC can be leased only to a single Lessee. Each Lease must (i) prohibit subleasing or sublicensing of the Leased PCs, (ii) have a term of at least three years, and (iii) automatically terminate upon transfer of ownership of the Leased PC to the Lessee.

Use of each Microsoft Software Product by the Lessee shall be governed by the applicable License Terms for that Microsoft Software Product. COMPANY shall instruct each Lessee to use each Microsoft Software Product in accordance with the applicable License Terms.

This Section 1 does not grant any right to COMPANY to (1) lease Microsoft Software Products on a stand-alone basis; (2) lease or otherwise provide shared access to software products that are accessed from a host device that provides resources, services, and/or information to multiple client computers/workstations; or (3) lease Microsoft Software Products other than under a Lease, except as allowed in Section 2 below.

### 1.2 Distribution of the Microsoft Software Products

COMPANY shall market and distribute Microsoft Software Products to Lessees only as installed on the Leased PCs as outlined in this Agreement and **not** as “standalone” products. If COMPANY acquires Leased PCs that include a copy of Microsoft Software Products on separate OEM branded media (for example, CD-ROM) for recovery purposes, such recovery media may be provided to Lessee with the Leased PCs.

### 1.3 Obligations upon expiration or termination of Leases

When a Lease ends, COMPANY shall keep records of whether ownership of the Leased PCs is transferred to Lessee or to a Microsoft Authorized Refurbisher, or whether the Leased PCs with all Microsoft Software Products and related

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materials are destroyed. COMPANY does not have the right to transfer the Leased PCs to a different party or to re-lease the Microsoft Software Products under this Agreement. Any further use or transfer is limited to the Lessee of the Microsoft Software Products and is governed solely by the applicable License Terms. COMPANY may re-lease Leased PCs at the end of a Lease provided COMPANY first properly acquires the right to do so.

### 2. Rental Rights

For each desktop or other personal computer on which COMPANY is licensed to run one of the qualifying applications identified in section 2.1 below (each, a "Qualifying Device"), Microsoft grants COMPANY the limited rental rights in this section 2.

#### 2.1 Qualifying applications for Rental Rights – Office and Windows

Qualifying applications are limited to certain applications acquired through specific Microsoft Programs. The qualifying applications (each, a "Qualifying Application") by program type are:

##### Office products

Qualifying versions of Office for Rental Rights	License Agreement that applies to COMPANY's license:				
	OEM	PIPC (Japan only)	Microsoft Products and Services Agreement <sup>1</sup>	Open License <sup>1</sup>	Select or Select Plus Agreement <sup>1</sup>
Office Standard 2019			X	X	X
Office Standard 2016			X	X	X
Office Standard 2013			X	X	X
Office Standard 2010			X	X	X
Office Professional Plus 2019			X	X	X
Office Professional Plus 2016			X	X	X
Office Professional Plus 2013			X	X	X
Office Professional Plus 2010			X	X	X
Office Personal 2019		X			
Office Personal 2016		X			
Office Personal 2013		X			
Office Home & Business 2019		X			
Office Home & Business 2016		X			
Office Home & Business 2013		X			
Office Professional 2019		X			
Office Professional 2016		X			
Office Professional 2013		X			
Office Mobile (Licensed for personal, noncommercial use, unless the end user has commercial use rights under a separate agreement)	X				

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## Windows products

Qualifying versions of Windows for Rental Rights	License Agreement that applies to COMPANY's license:			
	OEM	Microsoft Products and Services Agreement <sup>1</sup>	Open License <sup>1</sup>	Select or Select Plus Agreement <sup>1</sup>
Windows 10 Pro (N, KN) (32-bit or 64-bit)	X	X	X	X
Windows 10 IoT Enterprise, Pro for Workstations	X			
Windows 8 and Windows 8.1 (32-bit or 64-bit) – Pro (K, KN)	X	X	X	X
Windows 7 (32-bit or 64-bit) – Professional (K, KN)	X		X	X
Windows Mobile	X			

- <sup>1</sup> For Microsoft Software Products purchased under this type of agreement, the "License Terms" are the Volume Licensing Product Terms and the associated terms under which COMPANY licensed the Microsoft Software Products. Effective July 1, 2016, in markets where the Microsoft Products and Services Agreement (MPSA) is available, Microsoft will stop accepting new orders and Software Assurance renewals through existing commercial Select Plus agreements at your next agreement anniversary date. This retirement does not apply to government and academic Select Plus agreements. More information is at [www.microsoft.com/en-us/licensing/licensing-programs/select.aspx](http://www.microsoft.com/en-us/licensing/licensing-programs/select.aspx).

## 2.2 License grant for Rental Rights – Office and Windows

Notwithstanding anything to the contrary in the applicable License Terms for each Microsoft Software Product (Qualifying Application) identified in section 2.1, Microsoft hereby grants to COMPANY the right to exercise the rental rights allowed in Section 2.3 below. This grant is subject to COMPANY's continuing compliance with the terms of this Agreement and all applicable license terms.

## 2.3 Rental Rights

For each Qualifying Device, Microsoft waives the prohibition in the License Terms against renting or leasing the Qualifying Application(s) for Leases and rentals that comply with the terms of this Agreement.

Use of each Qualifying Application by each user will be governed by the License Terms for that Qualifying Application. COMPANY must (1) require each user to accept the License Terms for each Qualifying Application in writing or electronically and (2) notify each user that Microsoft offers no warranty for the Qualifying Application and that Microsoft will not defend the user against any third-party claims or be liable for any damages arising from use of the software.

## 2.4 Additional requirements for rentals

The Qualifying Application may not be used in a virtual environment.

The Qualifying Application may not be accessed remotely, or in any other manner that enables a user to use the software on a device other than the device for which it is licensed, except as required for technical support purposes using Remote Assistance or similar technologies.

Commercial use: The rights in this section 2 may be exercised for commercial use only.

COMPANY agrees to indemnify, defend, and hold Microsoft harmless, including attorneys' fees, for claims related to any use of a Qualifying Application under the rental rights granted in this section 2.

### 3. Additional obligations of COMPANY

#### 3.1 Acquisition of Microsoft Software Products

All Microsoft Software Products, including those on Leased PCs must be genuine Microsoft Software Products, properly acquired and, if an OEM version of a product, preinstalled by an OEM.

#### 3.2 Compliance with license requirements

COMPANY agrees to inform its employees and other individuals who have access to the Microsoft Software Products that the Microsoft Software Products: (i) are licensed by Microsoft and the OEMs, (ii) may be used only subject to the terms and conditions contained in this Agreement (including the applicable License Terms), and (iii) may not be copied, transferred, or otherwise used in violation of such terms and conditions. COMPANY agrees to use all commercially reasonable efforts to prevent any unauthorized distribution, use, duplication, or pirating of the Microsoft Software Products.

#### 3.3 Term and termination of Agreement

This Agreement shall take effect on the date on which COMPANY enters into its first Lease or first exercises the rental rights in section 2 (if earlier) and will remain in effect until terminated by Microsoft. If Microsoft provides notice of termination, then COMPANY's rights under this Agreement will terminate 90 days following the date of the notice; provided, however, that the rights granted by this Agreement with regard to Leases in effect at the time of termination shall survive for the entire length of those Leases. Microsoft also may terminate this Agreement immediately, upon notice, if COMPANY breaches this Agreement. If this Agreement is terminated, COMPANY and its affiliates may not enter into another version of this Agreement without Microsoft's prior written consent.

### 4. Limitation of liability

There may be situations in which COMPANY has the right to claim damages from Microsoft or its affiliates. Whatever the basis for COMPANY's claim (such as breach of contract or tort), liability of Microsoft and its affiliates will be limited to direct damages up to US\$50.00. This monetary limitation will not apply to (i) liability for damages caused by Microsoft's or its affiliates', or their employees' or agents', recklessness or willful misconduct and awarded by a court of final adjudication or (ii) liability for personal injury or death caused by Microsoft's or its affiliates', or their employees' or agents', negligence or for fraudulent misrepresentation.

**Neither Microsoft, its affiliates, nor anyone else who has been involved in the creation, production, or delivery of the Microsoft Software Products, shall be liable for any indirect, consequential, or incidental damages (including damages for loss of business profits, business interruption, loss of business information, and the like) arising out of the use or inability to use the Microsoft Software Products even if Microsoft has been advised of the possibility of such damages.**

**COMPANY, its affiliates, and its franchisees must not make to any Lessee, or any user of rental rights, any representation with respect to the Microsoft Software Products or the use thereof, except as is explicitly set forth in the License Terms. COMPANY agrees to defend, indemnify, and hold harmless Microsoft and its affiliates from and against any and all claims arising from or relating to COMPANY's breach of this Agreement or any negligent act or omission related to COMPANY's activities under this Agreement.**

### 5. Verifying compliance

#### 5.1 Right to verify compliance

COMPANY must keep records relating to the Leased PCs, its Leases, exercise of rental rights, and implementation of COMPANY's obligations under this Agreement. Microsoft has the right to verify compliance with the Agreement, at Microsoft's expense, during the term of the Agreement, and for a period of one year thereafter.

#### 5.2 Verification process and limitations

To verify compliance, Microsoft will engage an independent accountant from an internationally-recognized public accounting firm, which will be subject to a confidentiality obligation. Verification will take place upon not fewer than

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30-days' notice, during normal business hours and in a manner that does not interfere unreasonably with COMPANY's operations. COMPANY must promptly provide the accountant with any information the accountant reasonably requests in furtherance of the verification. As an alternative, Microsoft can require COMPANY to complete Microsoft's self-audit questionnaire relating to the Leased PCs COMPANY leased, and rental rights COMPANY exercised, under this Agreement, but Microsoft reserves the right to use a verification process as set out above.

If Microsoft undertakes verification and does not find material unauthorized leasing, rental, or failure to keep records required under this Agreement (unauthorized leasing or rental, or records deficiency of 5 percent or more), Microsoft will not undertake another verification of the same entity for at least one year. Microsoft and Microsoft's auditors will use the information obtained in compliance verification only to enforce Microsoft's rights and to determine whether COMPANY is in compliance with the terms of this Agreement. By exercising its rights under this section 5.2, Microsoft does not waive its rights to enforce this Agreement or to protect its intellectual property by any other means permitted by law.

### **5.3 Remedies for noncompliance**

If verification or self-audit reveals any unauthorized leasing or recording deficiencies, COMPANY must promptly acquire the necessary rights to reflect its leasing and rental activities. If material unauthorized leasing or failure to keep required records by COMPANY is found, COMPANY must reimburse Microsoft for the costs Microsoft has incurred in verification within 30 days of the finding.

## **6. General**

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, provided that COMPANY may not assign its rights or obligations under this Agreement in any way without the prior written consent of Microsoft.

If COMPANY is located in Europe, the Middle East, or Africa, this Agreement shall be construed under, and controlled by, the laws of Ireland, and COMPANY consents to jurisdiction and venue in the courts sitting in Ireland. Otherwise, this Agreement shall be construed under, and controlled by, the laws of the State of Washington, United States, exclusive of its choice of law rules, and COMPANY consents to jurisdiction and venue in the courts sitting in King County, State of Washington, United States. Process may be served on either party in the manner as is authorized by applicable law or court rule. Sections 1.3, 3.3, 4, 5, 6, and 7 of this Agreement, as well as the prohibition on exercising rights as an end user under the License Terms for the units of Microsoft Software Products leased under this Agreement, will survive termination or expiration of this Agreement. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remaining provisions shall remain in full force and effect.

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