

# Microsoft Cloud Reseller Agreement for US Government Cloud

This Microsoft Cloud Reseller Agreement (“Agreement”) is between Microsoft and Company. If you are an individual accepting these terms on behalf of an entity, you represent that (i) you have the legal authority to enter into this Agreement on that entity’s behalf, (ii) you have read and understand the terms of this Agreement and (iii) you agree, on behalf of the entity that you represent, to the terms of this Agreement. This Agreement consists of the following terms and conditions and the Program Guide.

## 1. **Definitions.**

“Affiliate” means any legal entity that owns, is owned by, or that is under common ownership with Company or Microsoft. Ownership means control of more than a 50% interest.

“Company” means the company that meets the qualifications to participate in the Microsoft Cloud Solution Provider program, and that accepts the terms of this Agreement with Microsoft.

“Customer” means any legal entity (other than Company or its Affiliates) within the Territory that acquires Products for use as an end user, and not for distribution or resale.

“Customer Agreement” means the Microsoft agreement with a Customer that is used to grant a right to the applicable Products to that Customer under this program. Microsoft may revise Customer Agreements for future Customers on not less than thirty (30) days’ notice to Company. Company may not revise the Customer Agreement in any way.

“Customer Data” has the meaning assigned to it in the Customer Agreement.

“Marks” means (i) either party’s names, word marks, logos, logotypes, trade dress, designs or other trademarks; (ii) the trademark and trade name “Microsoft,” and all trademarks and trade names derived from it, and the trademarks owned by Microsoft and used in association with all Products or which are set out at <http://www.microsoft.com/en-us/legal/intellectualproperty>, or any successor site, as Microsoft may amend; and (iii) any and all copyrights either party owns.

“Microsoft” means Microsoft Corporation.

“Non-Microsoft Product” means any third-party (or third-party branded) software, data, service, website or other product available through the Microsoft Azure Marketplace, Virtual Machine Gallery, or other feature of Microsoft online services.

“Portal” means the Partner Center, Partner Administration Center or an alternate site identified by Microsoft. The Portal will communicate the Program Guide, updates and other information relating to this Agreement.

“Product” means the rights to Microsoft online services, which may include Microsoft software technology, on the then current price list for the Microsoft Cloud Solution Provider program.

“Program Guide” means the information about the Microsoft Cloud Solution Provider program that is available on the Portal. The Program Guide may include several handbooks, including but not limited to, operations, support or other functions.

“SLA” means the service level agreement commitments Microsoft makes to its Customers regarding delivery and/or performance of the applicable Product.

“Subscription” means a right to the Microsoft online services for a defined term.

“Taxes” means any federal, state, provincial or local taxes, fees, charges, surcharges, or other similar fees or charges arising as a result of or in connection with the transactions contemplated under this Agreement and include, but are not limited to, sales and use taxes, value added, gross receipts taxes, utility user’s fees, municipal occupation and license taxes, excise taxes, business and occupations taxes, 911 taxes, franchise fees, universal service fund fees or taxes, regulatory cost recovery and other surcharges, taxes imposed or based on or with respect to or measured by any net or gross income or receipts (other than taxes based upon Microsoft’s net income and any gross receipts taxes imposed in lieu of taxes on the income or profits of Microsoft), franchise taxes, stamp taxes, taxes on doing business, duties, tariffs, levies, withholding taxes, and any taxes that arise on the distribution or provision of products or services by Company to its Affiliates or Customers.

“Territory” means either: 1) the country Company is located in and enabled for resale in the Portal or 2) if Company is located in EU/EFTA, the countries located in EU/EFTA.

2. **Microsoft Partner Network.** Company must maintain its status as a registered member of the Microsoft Partner Network. Registered member status is available to Company free of charge.

3. **Authorization, Customer Orders and Territory.**

a. **Authorization.** This Agreement gives Company the right to resell Products through the Microsoft Cloud Solution Provider program to Customers in the Territory. Microsoft may offer Company the right to participate in additional licensing programs, which may require Company to accept additional terms.

Company's failure to comply with the terms and conditions of this Agreement, including the Program Guide, will constitute a breach of the Agreement subject to Section 12(c).

b. **Orders and Territory.** Company is only authorized to resell, distribute, or market Products within its designated Territory. Company may not collect orders or receive payments for Products from any Customer located outside the Territory. Company's Affiliates are not authorized to perform under this Agreement, unless otherwise agreed to by Microsoft.

c. **Non-exclusive.** This Agreement is non-exclusive. Company is free to license, use, recommend, or support non-Microsoft software or services. Microsoft may provide any Products directly to Customers. Microsoft can also authorize other companies to do so.

d. **New Releases of Existing Products.** Company acknowledges and agrees that Microsoft may modify a Product, or may release a new version of a Product at any time and for any reason including, but not limited to, to address customer needs or otherwise address competitive demands, to respond to a government regulation, order, or law, or to advance innovation in its Product offerings. Microsoft reserves the right to add new features or functionality to, or remove existing features or functionality from, a Product.

e. **Product and Subscription Management.** Company will perform certain functions associated with the purchase, activation, support and management of Customer Subscriptions and Products. Those functions may be performed through the Portal or other processes or tools identified in the Program Guide. Any required functions may be further described in the Program Guide. Company acknowledges and agrees that from time to time Microsoft may update the processes and tools needed to perform those functions, as Microsoft in its sole reasonable discretion deems appropriate, and Company may be required to implement such updates or changes to continue to perform the functions.

f. **Academic, Charity and Government Products.** Microsoft may provide Products that are identified on the price list as academic, charity or government. Company must have Microsoft's approval to purchase such Products and Company may provide such Products only to Customers that meet Microsoft's qualification criteria.

g. **Non-Microsoft Products.** Microsoft may make Non-Microsoft Products available to Company in connection with Products. Microsoft assumes no responsibility or liability for a Non-Microsoft Product. Microsoft may change prices for Non-Microsoft Products and may add or remove Non-Microsoft Products from the price lists at any time on notice to Company.

4. **Customer Agreement Acceptance and Subscription Terms.**

a. **Customer Agreement Acceptance.** Each Customer must accept a Customer Agreement to order Products from Company. If Microsoft updates the Customer Agreement then Customer must accept the new Customer Agreement at or before renewal of their Subscription. By placing an order with Microsoft, Company (i) represents and warrants that Customer has accepted the Customer Agreement terms and (ii) agrees to pay Microsoft for all Customer orders it submits for Products. Microsoft may accept or reject any proposed Customer at Microsoft's discretion.

If Customer does not accept the terms of the Customer Agreement, Company shall be liable to Microsoft for any costs and damages incurred by Microsoft as a result of such failure.

b. **Fixed term.** Company may sell the Products for a term of any length as determined by Company, provided, however (i) certain Products will be sold by Microsoft to Company for a fixed term as set forth in the Program Guide, and (ii) Company's election to sell Products to Customers for a period longer than the fixed term set forth in the Program Guide will not alter or enlarge Microsoft's obligations under this Agreement.

c. **Auto-Renewal.** Subscriptions will automatically renew at the end of any term. Company may opt a Customer out of this automatic renewal system by updating the Subscription through the Portal. Each renewal term will be for the period specified in the Program Guide. Pricing for a renewal term will be Microsoft's pricing in the price list in effect as of the commencement of the renewal term.

d. **Disablement.** Company may disable a Customer's Subscription. Company will need to separately disable each active Subscription. Depending on the Product, Customer will have limited or no access to the Product. Microsoft will not be liable in any manner whatsoever to Customer arising out of Company's disablement of the Customer's

Subscriptions. Microsoft may disable a Customer's Subscription for legal or regulatory reasons or as otherwise permitted under this Agreement and Microsoft will notify Company of a disablement as soon as commercially reasonable. If Microsoft disables a Customer's Subscription, Microsoft also will suspend billing to Company for that Customer's Subscription until the Subscription is re-enabled.

- e. **Cancellation.** Company may cancel a Subscription for a Product for a Customer, however: 1) a refund will only be allowed if specified in the Program Guide and 2) an "Early Termination Charge", meaning fees due from Company in the event of cancellation of a Subscription before its term ends, may be applied as set forth in the Program Guide.

Upon cancellation, Customer will have ninety (90) days to migrate any Customer Data to either a new Subscription with Company, with Microsoft directly, or some other service. Upon request, Microsoft may assist Company with migration of its Customer's Data at an additional charge agreed to between Company and Microsoft.

- f. **Service Level Agreement Credits.** Microsoft makes certain service levels commitments to Customers in the SLA. If a Customer makes a claim on the SLA, Company must escalate the claim to Microsoft for review. Microsoft will review the claim according to the standard SLA review process. Microsoft will then apply any credit due on Company's next billing reconciliation report. Company must then credit the Customer that submitted the SLA claim at least the amount Microsoft has paid Company for the SLA credit. Customer is eligible for credits not to exceed the total monthly Subscription estimated retail price ("ERP"). Microsoft reserves the right to audit outages on a per Subscription or per service basis at any time.

Nothing in this section will preclude Company from proactively providing credits to Customers who make a claim on the SLA prior to submitting a claim to Microsoft; provided, however, that the claim will remain subject to validation by Microsoft according to the standard SLA review process and, in the event the claim is determined by Microsoft not to be valid, Company will be solely liable for any credits it advanced to Customers.

## 5. **Ordering, Reporting and Fulfillment.**

- a. **Pricing.** Microsoft's prices for Products are available at the Portal, or any other website designated by Microsoft that includes price lists. Microsoft may provide notice of price changes to Company through the Portal or electronic or physical mail or facsimile. For price increases, Microsoft will provide Company with not less than 30 days' notice.
- b. **Ordering.** Company will submit orders to Microsoft on a regular basis. Company should review the Program Guide for complete information about the ordering process. The Program Guide outlines how to order Products from Microsoft. Microsoft can only provide Products to Customers within specific geographic regions. As a result, Company must sign an Agreement with the appropriate Microsoft entity for the Territory in which Company's Customers are located.
- c. **Delivery of Products.** Microsoft will provision the Products based on the Customer information provided by Company. Company must provide Customers with the administrative log in credentials Microsoft provides for accessing the applicable Product. Upon receipt and acceptance of a valid order for Products, Microsoft will provision the Product for the benefit of the applicable Customer.

Microsoft may send direct communications to Customers related to the terms of the Customer Agreement or the operation or delivery of the Product. Company must provide Microsoft with accurate contact information for the administrator of each Customer domain. Company will use commercially reasonable efforts to provide information that is accurate and current.

- d. **Credit Worthiness and Collection Guidelines.** Company will decide whether to extend credit to its Customers. A Customer's failure to pay Company will not relieve Company of its payment obligations to Microsoft.

## 6. **Support.**

- a. **Support.** Company must provide support services to Customers for all Products it resells and will include this requirement in its agreements with its Customers. Company must provide Customer support for Products on a continuous basis. Company will be the point of contact for its Customers for all operational or technical support questions related to the Products. Company is responsible for informing Customer of Company support processes. If a Customer contacts Microsoft directly for support, Microsoft at its sole discretion may offer Customer support or redirect Customer to Company. Refer to the Program Guide for additional guidelines on Customer Support.

Examples of support services include, but are not limited to: account set-up; sign up, accounts and billing; "how to" articles and FAQs; service and software updates; software configuration; performance issues within Company's span of control; client connectivity and client desktop; and service availability issues within Company's span of control.

- b. **Escalation Support.** Microsoft will provide Company escalation support for undocumented scenarios and service impacting events. "Escalation Support" is defined as support that Company cannot reasonably provide to Company's Customers because it does not have the necessary training, documentation and/or support tools.

If Microsoft determines that Company is inappropriately escalating issues then, upon request by Microsoft, Company will meet to discuss a remediation plan. If Microsoft determines that remediation is necessary, Company will provide a report to Microsoft of Company's support capabilities and will perform any necessary additional training of its personnel to support the remediation plan. Refer to the Program Guide for additional guidelines on Escalation Support.

## **7. Privacy; Customer Data.**

- a. Privacy.** Company shall (i) comply with all applicable legal requirements regarding privacy and data protection; and (ii) provide sufficient notice to, and obtain sufficient consent and authorization from, Customers and any other party providing personal data to Company and Microsoft to permit the processing of the data by Company, Microsoft, and their respective Affiliates, subsidiaries, and service providers as contemplated by this Agreement. Microsoft may collect, use, transfer, disclose, and otherwise process each Customer's data, including personal data, as described in the Customer Agreement.
- b. Customer Data.**
  - (i)** The security, privacy and data protection commitments made by Microsoft in any Customer Agreement only apply to the Products purchased from Microsoft and not to any services or products provided by Company.
  - (ii)** Except as Company and Customer may otherwise agree, Company shall use Customer Data only to provide Customer with the Products and the support services specified in this Agreement and the Program Guide and to assist Customer in the proper administration of the Products. Additionally, Company shall only access and disclose to law enforcement or other government authorities to the extent required by law data from, about or related to Customer, including the content of communications (or to provide law enforcement or other government entities access to such data).
  - (iii)** If Company receives a request for Customer Data either directly from a law enforcement agency or as redirected to Company by Microsoft, then Company shall redirect the law enforcement agency to request that data directly from Customer. If compelled to disclose Customer Data to law enforcement, then Company shall promptly notify Customer and provide a copy of the demand, unless legally prohibited from doing so.
  - (iv)** Company shall require in its agreements with Customers that, as and to the extent required by law, Customer shall notify the individual users of the Products that their data may be processed for the purpose of disclosing it to law enforcement or other governmental authorities as directed by Company, and shall obtain the users' consent to the same.

## **8. Other Rights and Obligations.**

- a. Company's Representations and Warranties.** Company represents and warrants that it will: (i) have current access to all of Microsoft's online tools necessary to perform its obligations; (ii) use commercially reasonable efforts to service and support its Customers; (iii) inform Microsoft of any difficulties it encounters in servicing its Customers (iv) obtain a Customer's acceptance of the terms of the Customer Agreement before placing an order for such Customer; and; (v) promptly tell Microsoft about any known or suspected violations of the terms and conditions of a Customer Agreement by a Customer.
- b. Negotiation of Pricing and Payment Terms.** Company has complete discretion to negotiate and set pricing and payment terms and conditions with its Customers. Company's negotiation of those terms will not be subject to Microsoft's review or approval in any way.
- c. Product Warranties.** Company's instructions to Customers on the use of Products must be consistent with Microsoft's written warranty document, online services terms, Microsoft's end user documentation, and the Customer Agreement. Company must not make any representation, condition or warranty about the Products.
- d. Use Restrictions.** Company may not use Products acquired under this Agreement internally. Company may not distribute or otherwise transfer Products acquired under this Agreement to any of its Affiliates. These restrictions do not apply to Products that Company acquires through other licensing programs, such as the Enterprise Agreement program.
- e. Excluded License.** Company's rights to any of the Products do not include any license, right, power or authority to cause any part of the Products to become subject to the terms of an excluded license. An "excluded license" is any license, such as an open source software license, that requires as a condition of use, modification or distribution of software subject to the excluded license, that it or other software combined or distributed with it be: (i) disclosed or distributed in source code form; (ii) licensed for the purpose of making derivative works; or (iii) redistributable at no charge.

**f. Compliance with laws and Microsoft's Anti-Corruption Policy.**

- (i) Compliance with laws and Microsoft's Anti-Corruption Policy.** Company will comply with all applicable laws against bribery, corruption, inaccurate books & records, inadequate internal controls and money laundering, including the U.S. Foreign Corrupt Practices Act ("Anti-Corruption Laws"). Company certifies that it has reviewed and will comply with the Anti-Corruption Policy for Microsoft Representatives available at: <http://aka.ms/microsoftethics/representatives>.

Company also will provide annual training to its employees who resell, distribute, or market Microsoft products or services on compliance with Anti-Corruption Laws. Company certifies that this Anti-Corruption training has been provided to its employees and, if not, Company agrees to participate annually in online Anti-Corruption training made available free of charge by Microsoft and certify its completion, understanding, and compliance with the Anti-Corruption Policy for Microsoft Representatives. Company's record-keeping obligations, described in the Microsoft Audit Rights section below, apply to Company's certifications in this section and its compliance with Anti-Corruption Laws.

Company acknowledges that it is prohibited from paying expenses for travel, lodging, gifts, hospitality, or charitable contributions for government officials on Microsoft's behalf. Company also acknowledges that it is prohibited from using any funds provided by Microsoft, or any proceeds resulting from any Microsoft business, to pay expenses for travel, lodging, gifts, hospitality or charitable contributions for government officials.

- (ii) Microsoft Audit Rights.** During the term of this Agreement and for two years after the later of either (i) the termination of Microsoft's Agreement with Company, or (ii) the date of issuance of final payment between Microsoft and Company Microsoft or its audit-related agents shall have access to, and the Company shall maintain, any books, documents, records, papers, or other materials of the Company related to this Agreement (the "Relevant Records"). Company shall establish and maintain a reasonable accounting system that enables Microsoft and its audit-related agents to identify Company's assets, expenses, expenditures, costs of goods, margins, discounts, rebates or other payments and compensation received, and use of funds related to this Agreement. Company shall maintain a system of internal controls to prevent the payment of bribes and provide reasonable assurance that financial statements and reporting are accurate. Company shall not have undisclosed or unrecorded accounts for any purpose. False, misleading, incomplete, inaccurate, or artificial entries in the books and records are prohibited.

Microsoft will provide Company with at least ten-days written notice of Microsoft's intent to exercise its rights under this provision. The Relevant Records and, if requested, relevant employees, shall be made available to Microsoft or its audit-related agents during normal business hours at the Company's office or place of business. If no such location is available, then the Relevant Records, and if requested, relevant employees, shall be made available at a time and location that Microsoft will determine.

Microsoft may exercise its rights under this provision any time it has a good faith reason to believe that Company or its representatives are in violation of any Anti-Corruption Laws in connection with this Agreement or in any manner that may impact Microsoft or its relationship with Company. In addition, Microsoft may further exercise its rights under this provision for any other reason at any other time not to exceed once every 12-month period.

**9. Payment.**

- a. Payment Due Date.** The Program Guide specifies the reporting and payment requirements for the Products. Payments must be remitted to the account identified, and are due on the date and in the currency stated in the invoice. If Company does not receive an invoice within ten (10) days after its standard monthly invoice date, it must promptly notify Microsoft, and Microsoft will promptly send a new invoice. Company must manage its own credit risk. Company's payment to Microsoft is not dependent on receipt of payments from Customers even in the case of insolvency.

If Company fails to make any payments by the due date, Microsoft may take any of the following actions:

- (i)** Microsoft may hold all pending orders, suspend further shipments or Customer access to Products under any agreement between Microsoft and Company until Microsoft receives all payments due under this Agreement;
- (ii)** Microsoft may charge interest on the past due amount from the first day the amount is past due until the amount is paid in full. This includes any before or after judgment amounts. Interest will be charged at the rates set forth in the Program Guide. Company will pay Microsoft interest on demand.

If Microsoft chooses to take any of these actions, it does not waive any other right or remedy it may possess.

Company may not withhold payment or take deductions from any invoice amount (by offset, counterclaim, or otherwise) before Microsoft issues a credit. This includes returns, rebates, price adjustments, billing errors, shipping claims, handling fees, allowances, remittance costs and other charges.

**b. Financial Statements, Credit, Security.**

- (i) If not publicly available, Company will give Microsoft its audited financial statements annually within ninety (90) days of Company's fiscal year-end. Company also will provide unaudited quarterly financial statements upon request.
- (ii) If Company does not provide the financial statements, Microsoft can: (a) request advanced payment for any pending or future order; (b) suspend acceptance of orders until Microsoft receives the financial statements; or (c) place the account on hold or reduce the credit limit to levels deemed appropriate by Microsoft. Furthermore, in the event of contract renewal or extension, Microsoft may delay the renewal of the contract until the latest financial statements, requested guarantees or satisfactory answers to clarification(s) requested have been provided. The financial statement should not be older than 6 months after Company's financial year end, however, if there are specific circumstances Microsoft can allow an extension of this period.
- (iii) After Microsoft reviews Company's financial condition and overall credit worthiness, Microsoft may offer Company credit. Credit terms may vary by Territory or country. Microsoft may revise or withdraw Company's credit, starting when Microsoft notifies Company, if Company's financial conditions change. If Microsoft withdraws Company's credit, all outstanding amounts will become immediately due and payable. Payment will then be made when orders are placed, or otherwise as Microsoft directs.
- (iv) At any time during the term of this Agreement, Microsoft may require one or more bank guarantees or other forms of security, in amounts, in a form, and with a bank acceptable to Microsoft.
- (v) 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 in accordance with "GAAP", international financial representation standards, or other generally accepted accounting principles in Company's jurisdiction. Company must clearly note any departure in the quarterly statements from these principles. Company's authorized officer must sign the statements as being legitimately representative of Company's books and accounts.
- (vi) The Company should immediately notify Microsoft in case of any changes in the structure of its organization including: (a) significant changes in ownership; (b) changes in company name (both legal name and trade /business name); (c) mergers/amalgamations/divestments; (d) location changes; or (e) changes in the operational activities of the organization. Changes in relation to the legal name or registered address of the Company should be signed by an authorized signatory of the Company and should be supported by: (x) an excerpt from the company register or equivalent institution in the country; and (y) an updated tax certificate showing the tax/VAT registration numbers after the change.

**10. Warranty and Indemnity Obligations.**

- a. **Warranty.** Microsoft warrants its Products to Customers as described in the Customer Agreement.
- b. **No Warranty.** Unless required by applicable laws, Microsoft gives no other express warranties, representations or conditions. To the maximum extent permitted under applicable laws, Microsoft excludes all implied warranties and conditions, such as implied warranties of merchantability, non-infringement, and fitness for a particular purpose.
- c. **No Warranties for Other Items.** Microsoft makes no warranties or conditions as to items distributed under a third party name, copyright, trademark or trade name that may be offered with or incorporated with the Products. To the maximum extent permitted by applicable law, Microsoft will have no liability in connection with the third party items (such as any supply or failure to supply them).
- d. **Defense of Infringement Claims.**
  - (i) **Defense of Infringement Claims.** Microsoft will defend Company in a lawsuit in which a third party claims that a Product infringes its copyright, trademark or patent rights or misappropriates its trade secrets. If there is an adverse final judgment (or settlement to which Microsoft consents) from the lawsuit, Microsoft will pay it for Company. The third party may not be Company's Affiliate. The terms "misappropriation" and "trade secret" will have the meanings defined in the Uniform Trade Secret Act, except if this Agreement is governed by the laws of a jurisdiction outside the United States, in which case "misappropriation" will mean "intentionally unlawful use" and "trade secret" will mean "undisclosed information" as specified in Article 39.2 of the TRIPs agreement.

Microsoft's obligations are subject to the following conditions: (a) Company must promptly notify Microsoft in writing of the claim; (b) Microsoft will have sole control over defense and/or settlement of the claim; and (c) Company will provide Microsoft with reasonable assistance in the defense of the claim. Microsoft's obligations to defend and pay a patent claim will be limited to patent claims where the Product alone, without combination or modification, constitutes direct or contributory infringement of the patent.

(ii) **Limitations on Microsoft's Defense Obligation.** Microsoft will not be liable for any claim to the extent that the claim or adverse final judgment is based on Company's: (a) distribution or use of any Product or Mark after Microsoft notifies Company to stop distribution or use of the Product or Mark due to such a claim; (b) combination of a Product with any non-Microsoft product, data or business process; (c) damages attributable to the value of the use of a non-Microsoft product, data or business process; (d) alteration of any Product; (e) use of Microsoft's Mark(s) without Microsoft's written consent to do so; or (f) for any trade secret claim, Company's acquiring a trade secret (1) through improper means, (2) under circumstances giving rise to a duty to maintain its secrecy or limit its use, or (3) from a person who had a duty to maintain its secrecy or limit its use. Company will reimburse Microsoft for any costs or damages that result from these actions.

(iii) **Microsoft's Options.** If Microsoft receives information concerning an infringement claim relating to a Product, Microsoft may, at Microsoft's expense, but without obligation to do so: (a) procure for Company the right(s) or license(s) as may be necessary to address the claim; (b) replace the Product or Mark with a functional equivalent; or (c) modify the Product or Mark to make it non-infringing. With (b) or (c), Company must immediately stop distribution of the allegedly infringing Product or use of the allegedly infringing Mark. Company will work with Microsoft to recall all Products that are the subject of a claim and replace them with the non-infringing alternative. If any other type of third party claim is brought against Company regarding Microsoft's intellectual property, it must notify Microsoft promptly in writing. Microsoft may, at Microsoft's option, choose to treat these claims as being covered by this section. This section provides Company's only remedy for third party infringement and trade secret misappropriation claims.

e. **Company's Defense Obligations.** Company will defend Microsoft against any Third Party Claims. If there is an adverse final judgment (or settlement to which Company consents) resulting from any Third Party Claims, Company will pay it for Microsoft. Microsoft will promptly notify Company in writing of the Third Party Claim, specify the nature of the claim and the relief the third party seeks. Microsoft will give Company reasonable assistance in defending the Third Party Claim. At Microsoft's option and cost, Microsoft may participate in the selection of counsel, defense and settlement of any Third Party Claims covered by this section. If Microsoft decides to do this, Company and Microsoft will work together in good faith to reach decisions about which both parties agree. Company must have Microsoft's written consent before settling any Third Party Claim. Microsoft will not unreasonably withhold Microsoft's consent. "Third Party Claim" means any third party claims or allegations against Microsoft that arise out of or are connected with any default or breach or alleged default or breach of this Agreement by Company, Company's sale or distribution of any Product, or any other act or omission by Company, such as those claims identified in section 10(d)(ii).

#### 11. **Limitations on and Exclusions of Damages.**

a. **Limitation.** Unless applicable law requires otherwise, the only remedy that either party will have for anything related to this Agreement is to obtain direct damages from the liable party up to the amount actually paid by Company to Microsoft during the prior one-year period, minus any amounts paid by the liable party during that same period for any prior liability. Neither party can recover any other damages from the other, including loss of revenue or indirect, special, incidental, consequential, punitive, or exemplary damages, or damages for lost profits, revenues, business interruption, or loss of business information, even if the party knew they were possible.

The limitations in this section apply to: (i) anything related to the Products; and (ii) claims for breach of contract, breach of warranty, strict liability, negligence or other tort to the extent permitted by applicable law. It also applies even if Company is not fully compensated for any losses, or Microsoft knew or should have known about the possibility of damages.

The limitations do not apply to claims for non-payment, fraud, breach of confidentiality, defense of infringement claims (see section 10.d.), Company's violation of Microsoft's intellectual property rights, Third Party Claims (see section 10.e.) and failure to obtain acceptance of a Customer Agreement (see section 4.a). **Each party's liability for loss or damage of any kind (including loss or damage caused by negligence) is reduced to the extent that the other's agents caused or contributed to that loss or damage.**

b. **When These Exclusions May Not Apply.** The provisions of any local law which implies terms into this Agreement will not apply to the extent that local law permits the parties to contract out of the law. However, the limitations and exclusions in this Agreement do not change Company's rights if the laws of its state, province or country do not allow. For example, the limitations on liability may not apply to Company if applicable law does not allow it.

If applicable law gives Company any implied terms, despite the exclusions and limitations in this Agreement, then to the extent permitted by applicable law, Company's remedies are limited to repair or replacement of the Product and if Microsoft cannot repair or replace the Product, Microsoft will refund the amount Company paid for it.

## 12. Term and Termination.

- a. Term.** This Agreement will remain in effect until August 31, 2019, unless terminated earlier as set forth below. This Agreement will automatically renew for successive one (1) year terms unless either party gives the other thirty (30) days' written notice of its intent to not renew.
- b. Termination Without Cause.** Either party can terminate this Agreement at any time without cause and without intervention of the courts by giving the other party not less than thirty (30) days' written notice. Neither party will have to pay the other party any costs or damages resulting from termination of this Agreement without cause.
- c. Termination for Cause.** If a party breaches any term of this Agreement, the other party can terminate this Agreement for cause. The terminating party will give the breaching party not less than thirty (30) days' written notice and opportunity to cure the breach if the cause for termination is curable. A party will be allowed to cure a breach once, if a party breaches the Agreement for the same reason as a prior breach such as late payment, then the other party may terminate the Agreement immediately. If the cause for termination is not curable, termination is effective immediately upon written notice from the terminating party. Disclosure of confidential information including the disclosure of specially negotiated Customer terms, misappropriation of Microsoft's intellectual property, and insolvency, bankruptcy or other similar proceedings, are grounds for immediate termination.
- d. Effect of Expiration or Termination.**
- (i) When this Agreement ends or is terminated, Company must immediately stop using all rights granted by this Agreement. Company must also pay Microsoft any amounts due under this Agreement.
- (ii) Termination of this Agreement terminates all Program Guides under this Agreement, and any amendments or addenda.
- (iii) If this Agreement expires or is terminated for any reason other than a breach by Company:
1. Microsoft will, subject to the terms of this Agreement, continue to provide Products to Company in respect of Customers with an active Subscription for the shorter of 12 months or the minimum period of required performance by Company under its applicable customer agreement;
  2. Company may, subject to the terms of this Agreement, continue to provide Products to Customers with a binding Customer Agreement for the shorter of 12 months or the minimum period of required performance by Company under such customer agreement.
  3. Company and Microsoft will work in good faith to develop and specify options available to existing Customers at the end of such period and issue any necessary communication to such Customers describing such options. This will include, if available, an option to purchase Products directly from Microsoft or other Microsoft resellers.
- (iv) If this Agreement is terminated, Microsoft reserves the right to communicate with Customers and provide Customers with the option to purchase Products directly from Microsoft or other Microsoft resellers in order to maintain continuity of service for Customers.
- e. Waiver of Rights and Obligations.** Each party waives any right or obligation under any applicable law or regulation to request or obtain intervention of the courts to terminate this Agreement.
- f. Survival.** Sections 7 (Privacy; Customer Data), 8(c) (Product Warranties), 8(d) (Use Restrictions), 8(e) (Excluded License), 8(f) (Compliance with laws and Microsoft's Anti-Corruption Policy), 10 (Warranty and Indemnity Obligations), 11 (Limitations on and Exclusions of Damages), 12 (d) (Effect of Expiration or Termination), 12 (e) (Waiver of Rights and Obligations), 12(f) (Survival), 16 (Government Restrictions), 20 (General) and 21 (Applicable Law; Attorneys' Fees) of these terms and conditions will survive any termination or expiration of this Agreement.

## 13. Intellectual Property.

- a. Use of Marks.** The Agreement does not grant either party any right, title, interest, or license in or to any of the other party's Marks. Company may use Microsoft's corporate name, technology names and trademarks in plain text (but not logos, trade dress, designs or word marks in stylized form) to accurately identify and refer to Microsoft and its technology and services in accordance with the guidelines for Referential Use of Microsoft Trademarks located at <http://www.microsoft.com/en-us/legal/intellectualproperty>.
- b. Proprietary Notices.** Company must not remove any copyright, trademark or patent notices from any of the Products. Company must include Microsoft's copyright notice on any documentation for the Products, including online documentation. The first time Company mentions the name of Microsoft's Products in communications, it must use the appropriate trademark, Product descriptor and trademark symbol (either "™" or "®"), and clearly indicate Microsoft's (or Microsoft's suppliers') ownership of the trademark(s).



**c. Unsolicited Commercial Email.** Neither party may use the other party's Marks in connection with the transmission or distribution of unsolicited commercial email. Neither party may use the other party's Marks in any manner that would violate applicable law or local custom, or conflict with Microsoft's policies.

**14. Reservation of Rights.** At any time during the term of this Agreement, Microsoft may terminate any Customer's status as a Customer. Microsoft will promptly notify Company of the termination of any of its Customers. Following such a notice, Company will immediately stop collecting orders for Products from the terminated Customers. Company will also stop delivery of any program information and materials to the terminated Customer. Termination will not affect the Customer's obligation to file the next required order or report, if any. Termination will not affect Microsoft's right to invoice Company for the order, or Company's obligation to pay Microsoft. If Microsoft terminates a Customer, Company will not have any claim against Microsoft for damages or lost profits resulting from the termination. Company will be entitled to invoice the Customer for the Products that the Customer ordered before termination.

**15. Essential Element.** This Agreement is essential to any agreement Company enters into with a Customer. Company can only collect orders and payments for Products and purchase and deliver welcome kits and/or any additional program information and materials if this Agreement is in full force and effect.

**16. Government Restrictions.**

**a. Export Restrictions.** Microsoft Products, software, services and technology are subject to U.S. export jurisdiction.

All parties must comply with all applicable international and national laws, including the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, and end-user, end use and destination restrictions by U.S. and other governments. For additional information related to Microsoft compliance with export rules, see <http://www.microsoft.com/exporting>.

**b. Government Approvals.** Company (and its Affiliates) must obtain the government approvals (and demonstrate other compliance) that are necessary for Company to provide Products or otherwise perform under this Agreement. This is at Company's expense. Company may import and provide the Products in or to a country or Territory only if allowed by, and in compliance with, all applicable laws and regulations of the country or Territory, as well as this Agreement.

**c. Rebates, Fees and Other Concessions.** Company will disclose all rebates, fees or other concessions to a government Customer as required by law, regulations or the terms of the government solicitation.

**17. Taxation.** All amounts Company must pay Microsoft under this Agreement do not include any Taxes. Company must pay Taxes imposed on or with respect to its activities in connection with this Agreement, if any, and Microsoft will have no responsibility for the payments. Company must pay or reimburse Microsoft for all Taxes which are permitted to be collected by Microsoft under applicable law. Company may provide Microsoft with a valid exemption certificate in which case Microsoft will not charge the Taxes covered by such certificate, and further Microsoft will be under no obligation to apply credits for any periods for which Company had not timely submitted a valid exemption certificate. If Company is located in a jurisdiction that utilizes the VAT numbers for tax identification purpose, it will provide Microsoft with its VAT number together with its address details.

If income taxes are required to be withheld by any government on payments to Microsoft, Company may deduct such taxes from the amount owed to Microsoft and pay them to the appropriate taxing authority; provided however, that Company promptly secures and delivers an official receipt for those withholdings and other documents reasonably requested by Microsoft to claim a foreign tax credit or refund. Company will ensure that any taxes withheld are minimized to the extent possible under applicable law. Company remains obligated to pay Microsoft for the amount of tax withheld until Company provides to Microsoft the official receipt and other documents reasonably requested.

The withholding taxes referred to in this section apply to withholding taxes required by the taxing authorities on payments to Microsoft only and do not include any withholding taxes suffered by Company for payments made to Company by its Customers. Those withholding taxes will be Company's financial responsibility.

This tax section shall govern the treatment of all Taxes arising as a result of or in connection with this Agreement notwithstanding any other section or any other document included in this Agreement.

**18. No Unauthorized Special Offers; No Side Agreements.** Only the Microsoft entity that enter into this Agreement can agree with Company to amend the Agreement. Neither Company nor Microsoft will enter into any Side Agreement. "Side Agreement" means any arrangement between Microsoft and Company, written or oral, that purports to modify the Agreement and is not signed, or otherwise agreed to, by the Microsoft entity that signed this Agreement. Side Agreements do not include Microsoft offers of rebates, promotions, discounts or extensions of payment terms (collectively, "Special Offers") when the Special Offer is made pursuant to a separate written agreement generally available to Microsoft's partners.

**19. Financial Integrity and Accounting.** Company will not provide false, misleading or inaccurate financial information to Microsoft or Customers. Company must ensure that all orders, and the Agreement or any other documents it submits to

Microsoft are complete and accurate. In addition, Company agrees to submit orders to Microsoft only in quantities that Company can resell in the normal course of business.

**20. General.**

- a. Entire Agreement.** This Agreement is Microsoft’s entire agreement relating to Company’s resale of Products under the Microsoft Cloud Solution Provider program (or other licensing program that Microsoft has authorized Company to provide) and Program Guide. It supersedes any prior or contemporaneous communications. Except for the Program Guides, this Agreement can be changed only if both parties who entered into this Agreement sign an amendment. Microsoft may change the Program Guide from time to time without Company’s approval. If there are material changes in the Program Guide, Microsoft will give Company thirty (30) days’ prior written notice. In case of any inconsistency in determining the reseller relationship, this Agreement takes priority over the Program Guide.
- b. Notices.** All notices and requests required or permitted under this Agreement shall be in writing. Any notice or request provided for by this Agreement shall be given either by personal delivery; facsimile transmission; certified mail, return receipt requested; or recognized overnight express courier service. Notice or request shall be deemed to be effective:
  - (i) when it is given, in the case of notice or request by personal delivery or by facsimile transmission (provided that in the case of notice by facsimile transmission delivery is electronically confirmed by the sender’s telecopier);
  - (ii) three days after deposit in the mail, in the case of notice or request by certified mail, return receipt requested; and
  - (iii) one day after delivery to the courier service, in the case of notice or request by recognized overnight express courier service.

You must send notices by mail to the address below.

Notices should be sent to:	Copies should be sent to:
Microsoft Corporation 6100 Neil Road Suite 210 Reno, NV 89511 Attn: Channel Agreements	Microsoft Corporation One Microsoft Way Redmond, WA 98052 Attention: CELA – WWLP

A party may change its address for notification purposes by giving written notice of such change to the other party.

Notwithstanding the foregoing, communications in the ordinary course of business (which do not include any notices related to payment, any dispute under or alleged breach of this Agreement, any effort to enforce the terms of this Agreement, or any notice regarding termination or modification of this Agreement or the Products) may be sent via email to the appropriate contact.

- c. Assignment.** Without Microsoft’s prior written consent, Company may not assign or transfer this Agreement or its rights or obligations under it, whether by contract or by operation of law (such as merger or sale of Company’s stock). Company will provide Microsoft with no less than 30 days’ notice of any requested assignment and Microsoft’s consent will not be unreasonably withheld. Microsoft may transfer Microsoft’s rights and obligations under this Agreement without Company’s consent, but only to one of Microsoft’s Affiliates. Any prohibited assignment is void.
- d. Confidentiality.** The following terms and conditions apply to exchanges of information under this Agreement.
  - (i) “Confidential information” means: (a) nonpublic information that Company, Microsoft, or an Affiliate designates as being confidential; or (b) nonpublic information which, given the nature of the disclosure or the circumstances surrounding disclosure, the receiving party should treat as confidential. Customer Agreements are Confidential Information of Microsoft, however, Company may disclose the standard form of Customer Agreement to Customers or prospective Customers who: (1) have a need to know such Confidential Information in order fulfill the purposes of this Agreement; and (2) have been instructed that all such Confidential Information is to be handled in strict confidence
  - (ii) Generally, Company and Microsoft must not disclose any confidential information of the other for five years following the date of disclosure. However, there is no time limit on disclosure of confidential information that contains personal information (such as Customer contact information). The receiving party will not be liable for disclosure of information which: (a) it already knew without an obligation to maintain the information as confidential; (b) it received from a third party without breach of an obligation of confidentiality owed to the other party; (c) it independently developed; or (d) becomes publicly known through no wrongful act of the receiving party.

(iii) However, confidential information may be disclosed as required by a judicial or other governmental order, if the receiving party either: (a) gives reasonable notice of the order to allow the other party a reasonable opportunity to seek a protective order or otherwise prevent or restrict its disclosure; or (b) obtains written assurance from the entity issuing the order that it will protect the confidential information to the maximum level allowed under applicable law or regulation.

**e. Relationship Between Company and Microsoft.** Even though Company and Microsoft may call each other a 'partner', Company and Microsoft are independent contractors for all purposes regarding this Agreement. Company does not have the power to bind Microsoft. Company does not have the power to change any terms, conditions, warranties or covenants made by Microsoft. Company does not have the power to give any person any rights that Microsoft has not previously authorized in writing. Company and Microsoft are not a partnership (as the term is used in applicable partnership laws to refer to a legal partnership entity) or joint venture. Company and Microsoft do not have any agency, franchise or fiduciary relationship. For this section, "Microsoft" includes Microsoft's Affiliates.

**f. Language.** The English language version of this Agreement controls. If Company is in Canada, it is the express wish of both parties that this Agreement, and any associated documentation, be written and signed in English. C'est la volonté expresse des parties que la présente convention ainsi que les documents qui s'y rattachent soient rédigés en anglais.

**g. Waiver.** No waiver of any breach of this Agreement shall be a waiver of any other breach, and any waiver must be in writing and signed by an authorized representative of the waiving party.

**h. No Representations.** Microsoft has not made any representation to Company about any Products other than as specifically stated in this Agreement. Company has relied on its own skill and judgment (or that of its advisers) in deciding to enter into this Agreement. However, neither party limits or excludes liability for fraudulent misrepresentations.

**i. Microsoft Corporation and Affiliates - Third Party Beneficiaries.** Certain sections of this Agreement are for the benefit of Microsoft's Affiliates. As a result, Microsoft and Microsoft's Affiliates are entitled to enforce this Agreement. If the doctrine of third-party beneficiaries is not recognized in Company's jurisdiction, then the parties agree that while Microsoft's Affiliates are not parties to this Agreement and have no obligations under this Agreement, the Microsoft is a trustee of Microsoft's Affiliates for the limited purpose of holding in trust for Microsoft's Affiliates the covenants and rights in favor of Microsoft's Affiliates. Accordingly, the parties agree that Microsoft's Affiliates may enforce such rights and promises in its own right (without being required to add Microsoft as a party to any proceedings for such enforcement). Except for Microsoft's Affiliates, this Agreement does not create any enforceable rights by anyone other than Company and Microsoft. Any representation or agreement made by Microsoft's Affiliates that would change the terms of this Agreement must be in writing and signed by Microsoft's authorized representative.

**21. Applicable Law; Attorneys' Fees.** This Agreement is governed by and interpreted in accordance with the laws of the State of Washington and the federal laws of the United States. The parties consent to the exclusive jurisdiction and venue in the courts sitting in King County, Washington. Company waives all defenses of lack of personal jurisdiction and forum non conveniens. This choice of jurisdiction and venue does not prevent either party from seeking injunctive relief for: (i) violation of intellectual property rights; (ii) breach of confidentiality obligations; or (iii) enforcement or recognition of any award or order in any appropriate jurisdiction. If either party begins litigation in connection with this Agreement, the substantially prevailing party will be entitled to recover its reasonable attorneys' fees, costs and other expenses. The 1980 United Nations Convention on Contracts for the International Sale of Goods does not govern this Agreement.

# US Government Community Cloud Addendum

This addendum (“Addendum”) is entered into between Microsoft and Company. It amends the Microsoft Cloud Services Agreement identified above (“Agreement”). All terms used but not defined will have the same meanings as provided in the Agreement.

The purpose of this Addendum is to authorize Company to resell Products through the Microsoft Cloud Solution Provider program to Customers who are Government entities in the United States (“Government Customers”) or Customers who are members of the Community as defined below. This Addendum only applies when Company is reselling Products and/or Government Community Cloud Services to Government Customers or Customers who are members of the Community.

Italics are used to highlight additional terms and not intended as emphasis.

The Agreement is hereby amended as follows:

1. In Section 1 of the Agreement, entitled “Definitions,” the definition for “Customer Agreement” is amended and restated in its entirety as follows:

“Customer Agreement” means the Microsoft agreement with a Customer that is used to grant a right to use the applicable Products to that Customer under this program. Microsoft may revise Customer Agreements for future Customers on not less than thirty (30) days’ notice to Company. Company may not revise the Customer Agreement in any way *without Microsoft’s prior written consent*.

2. Section 1 of the Agreement, entitled “Definitions,” is amended to include the following new definitions:

“Azure Government Services” means one or more of the services or features Microsoft makes available to a Customer (or include in an Integrator-Provided Solutions) under this Agreement and identified at <http://azure.microsoft.com/en-us/regions/#services>, which are Government Community Cloud Services.

“CJI” means Criminal Justice Information, as defined in FBI CJIS Policy.

“CJIS Covered State” means a state, as shown at <https://www.microsoft.com/en-us/TrustCenter/Compliance/CJIS> or another site Microsoft may provide, with which Microsoft and the applicable state have entered into a CJIS State Agreement.

“CJIS Covered Service” means, for any state-specific CJIS Amendment, the Microsoft Online Services that are listed as such in that amendment, and for which Microsoft’s CJIS representations apply.

“CJIS State Agreement” means an agreement between Microsoft and a Covered State’s CSA (or another entity to which the CSA has delegated its duties) containing terms and conditions under which the Covered State and Microsoft will comply with the applicable requirements of the CJIS Policy. Each CJIS State Agreement is consistent with the applicable state-specific CJIS Amendment, and includes Microsoft CJIS Security Addendum Certifications. For clarity, a CJIS State Agreement may be titled “CJIS Information Agreement” or “CJIS Management Agreement.”

“Community” means the community consisting of one or more of the following: (1) a Government, (2) a Customer using eligible Government Community Cloud Services to provide solutions to a Government or a qualified member of the Community, or (3) a Customer with Customer Data that is subject to Government regulations for which the Customer determines, and Microsoft agrees, that the use of Government Community Cloud Services is appropriate to meet the Customer’s regulatory requirements. Membership in the Community is ultimately at Microsoft’s discretion, which may vary by Government Community Cloud Service.

“Compliance Trust Center Page” means the compliance page of the Microsoft Trust Center, published by Microsoft at <https://www.microsoft.com/en-us/TrustCenter/Compliance/default.aspx> or a successor site Microsoft later identifies.

“Covered Entity” means any State/Local Entity in a Covered State with which you maintain a contractual relationship whose use of CJIS Covered Services is subject to CJIS Policy.

“CSA” means, for each CJIS Covered State, that state’s CJIS Systems Agency, as defined in FBI CJIS Policy.

“Defense Article” has the meaning provided in 22 C.F.R. § 120.

“Defense Service” has the meaning provided in 22 C.F.R. § 120.

“End User” means any person you permit to access Customer Data hosted in the Online Services or otherwise use the Online Services, or any user of a Customer Solution. With respect to ITAR Covered Services, End User means

an individual that accesses the ITAR Covered Services. With respect to IRS 1075 Covered Services, End User means an individual that accesses the IRS 1075 Covered Services.

“Federal Agency” means a bureau, office, agency, department or other entity of the United States Government.

“FTI” is defined as in IRS Publication 1075.

“Government” means a Federal Agency, State/Local Entity, or Tribal Entity acting in its governmental capacity.

“Government Community Cloud Services” means Microsoft Online Services that are provisioned in Microsoft’s multi-tenant data centers for exclusive use by or for the Community and offered in accordance with the National Institute of Standards and Technology (NIST) Special Publication 800-145. Except for Azure Government Services, Products that are Government Community Cloud Services are designated as such in the Use Rights.

“IRS 1075 Covered Services” means Azure Government services listed as being in the scope for IRS 1075 at <http://azure.microsoft.com/en-us/support/trust-center/compliance/irs1075/> or its successor site. Without limitation, IRS 1075 Covered Services do not include any other separately branded Online Services.

“IRS Publication 1075” means the Internal Revenue Services (IRS) Publication 1075 effective September 30, 2016, including updates (if any) released by the IRS during the term of the Enrollment.

“ITAR” means the International Traffic in Arms Regulations, found at 22 C.F.R. §§ 120 - 130.

“ITAR-controlled data” means Customer Data that is regulated by the ITAR as Defense Articles or Defense Services.

“ITAR Covered Services” means, solely with respect to this agreement, the (i) Office 365 GCC High services; and (ii) Azure Government services, listed as being in the scope for the ITAR at <https://www.microsoft.com/en-us/TrustCenter/Compliance/itar> or its successor site.

“Office 365 Service Descriptions” means the Service Descriptions for Office 365 GCC High, published by Microsoft at <https://technet.microsoft.com/en-us/library/mt774581.aspx> (for the product superset, Office 365 US Government) and <https://technet.microsoft.com/en-us/library/mt774968.aspx> (for the product subset, Office 365 GCC High), or at successor sites Microsoft later identifies.

“Office 365 US Government” means the Government Community Cloud Service described by the Office 365 Service Descriptions, and purchased by Customer pursuant to the terms and conditions of the Enrollment.

“Office 365 GCC High” means the Government Community Cloud Service described by the Office 365 Service Descriptions, and purchased by Customer pursuant to the terms and conditions of the Enrollment.

“Online Services Terms” means the additional terms that apply to a Customer’s use of online services published on the Volume Licensing Site and updated from time to time.

“Product Terms” means the document that provides information about Microsoft Products and professional services available through volume licensing. The Product Terms document is published on the Volume Licensing Site.

“State/Local Entity” means (1) any agency of a state or local government in the United States, or (2) any United States county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality established by the laws of Customer’s state and located within Customer’s state’s jurisdiction and geographic boundaries.

“Technical Data” has the meaning provided in 22 C.F.R. § 120.

“Tribal Entity” means a federally-recognized tribal entity performing tribal governmental functions and eligible for funding and services from the U.S. Department of Interior by virtue of its status as an Indian tribe.

“Use Rights,” means the use rights or terms of service for each Product published on the Volume Licensing Site and updated from time to time. The Use Rights supersede the terms of any end user license agreement that accompanies a Product. The Use Rights for software are published by Microsoft in the Product Terms. The Use Rights for online services are published in the Online Services Terms.

“Volume Licensing Site” means <http://www.microsoft.com/licensing/contracts> or a successor site.

3. Subsection 4.a. of the Agreement, entitled “Customer Agreement Acceptance,” is hereby amended and restated as follows:

- a. **Customer Agreement Acceptance.**

- Except for Integrator-Provided Solutions, when the Customer is a Government Entity or other member of the Community for which Company purchases Government Community Cloud Services hereunder, Company must

include the terms and conditions provided in the Customer Agreement, attached as Exhibit A (Microsoft Cloud Agreement US Government Community Cloud), in all Customer Agreements.

If Company fails to comply with the foregoing, Company shall defend and indemnify Microsoft against, and hold Microsoft harmless from all claims, damages and expenses (including reasonable attorneys' fees and other costs of litigation) alleged by any party based upon or related to the Products ordered by Company under this Agreement, except to the extent that such claims are the result of Microsoft's gross negligence or willful misconduct.

Upon Microsoft's request, Company will provide Microsoft with a copy of the Customer Agreement between Company and Customer that relates to the order(s) for Product(s) placed subject to this Agreement, including the ordering document(s), purchase agreement(s) or other documents between Company and the Customer that collectively constitute the complete agreement between the Customer and Company related to the Product(s). Pricing information or any other information reasonably deemed confidential or proprietary in such documents may be removed prior to providing them to Microsoft because the copies Company provides Microsoft will not be considered confidential information.

If Customer does not accept the terms of the Customer Agreement, Company shall be liable to Microsoft for any costs and damages incurred by Microsoft as a result of such failure.

4. Section 7.a. is hereby amended by adding the following:

(v) Microsoft's representations as it relates to its IRS 1075 Covered Services' compliance with the Safeguarding Contract Language, are subject to the terms included as Section 9 of the Microsoft Cloud Agreement attached hereto as Exhibit A and the additional terms included as Attachment 1.

(vi) Microsoft's representations as it relates to its CJIS Covered Services' compliance with the FBI Criminal Justice Information Systems ("CJIS") Security Addendum (Appendix H of FBI CJIS Policy) are subject to the terms included as Section 10 of the Microsoft Cloud Agreement attached hereto as Exhibit A.

(vii) Company shall keep records of all Customers to which IRS 1075 Amendments and CJIS Covered Services are purchased and shall make such records available to Microsoft promptly upon request.

(viii) Microsoft's commitments in the IRS 1075 terms and conditions and state-specific CJIS terms apply only to Microsoft's role (and not Company's role) in providing IRS 1075 Covered Services and CJIS Covered Services applicable to each Customer. For example, a Customer in a CJIS Covered State can rely upon its state's CJIS Systems Agency having performed background screening on Key Microsoft Personnel, but not Company's personnel (if any) that are provided unencrypted access to CJIS. In the event that Company or its employees and/or subcontractor personnel (collectively, "Company Personnel") have potential unencrypted access to CJIS, then (1) Company shall disclose such to a Customer in its Customer Agreement as required by law, regulations or the terms of the government solicitation and (2) Company is solely responsible for compliance with obligations applicable to Company under the Internal Revenue Code and IRS Publication 1075 and FBI CJIS Policy, including CJIS background checks of Company Personnel and shall not misrepresent Microsoft's commitment to compliance with FBI CJIS Policy.

5. Section 21, "Applicable Law; Attorneys' Fees," is hereby amended by adding the following:

Notwithstanding the foregoing, if Company is a Federal Agency, federal law will apply; if Company is a State/Local Entity, (i) the terms of this Agreement will be governed by the laws of Company's state and (ii) disputes relating to this Agreement will be subject to the dispute resolution laws of Company's state without giving effect to its conflict-of-laws principles.

6. A new Section 22, entitled 'Government Community Cloud,' is hereby added to the Agreement as follows:

**22. Government Community Cloud.**

1. **Community requirements.** Company certifies that all Customers are members of the Community and represents that all Customers have agreed to use Government Community Cloud Services solely in their capacities as members of the Community and for the benefit of end users that are members of the Community. Company acknowledges that only Community members may use Government Community Cloud Services. Use of Government Community Cloud Services by an entity that is not a member of the Community or to provide services to non-Community members is strictly prohibited and could result in termination of this Agreement and/ or a Customer's license(s) for Government Community Cloud Services.

(i) All terms and conditions applicable to non-Government Community Cloud Services also apply to their corresponding Government Community Cloud Services, except as otherwise noted in the Use Rights.

- (ii) Customer may not deploy or use Government Community Cloud Services and corresponding non-Government Community Cloud Services in the same domain.
  - (iii) Any Customer that uses Government Community Cloud Services must maintain its status as a member of the Community. Maintaining status as a member of the Community is a material requirement for such services.
2. **Eligibility Verification for non-Government Entities.** To determine whether a Customer qualifies as an eligible member of the Community, Company should:
    - (i) For Customers that are Governments, verify eligibility according to the requirements listed at [www.aka.ms/governmenteligibility](http://www.aka.ms/governmenteligibility); and
    - (ii) For non-Government Customers, in accordance with the definition of "Community," submit eligibility verification request at <https://azuregov.microsoft.com/general>.
  3. **Use Rights for Government Community Cloud Services.** For Government Community Cloud Services, notwithstanding anything to the contrary in the Use Rights:
    - (i) Government Community Cloud Services will be offered only within the United States.
    - (ii) Additional European Terms, as set forth in the Use Rights, will not apply.
    - (iii) References to geographic areas in the Use Rights with respect to the location of Customer Data at rest, as set forth in the Use Rights, refer only to the United States.
  4. All terms and conditions applicable to non-Government Community Cloud Services also apply to their corresponding Government Community Cloud Services, except as otherwise noted herein.
  5. Customer may not deploy or use Government Community Cloud Services and corresponding non-Government Community Cloud Services in the same domain. Additionally, Office 365 US Government may not be deployed or used in the same domain as other Government Community Cloud Services.
  6. Notwithstanding the Data Processing Terms section of the Online Services Terms, Office 365 GCC High and Azure Government Services are not subject to the same control standards and frameworks as the Microsoft Azure Core Services. The Compliance Trust Center Page describes the control standards and frameworks with which Office 365 GCC High and Azure Government Services comply.
  7. **Operational and Ordering Consideration for Office 365 GCC High.**
    - (i) Customer (a) acknowledges that its Tenant administrator console (when available) will appear to include more licenses than it has ordered and is entitled to; and (b) agrees that it must order licenses for every User account it assigns. Notwithstanding anything to the contrary in the order and Product Terms, Licenses will be deemed "Reserved" for each user (and thereby subject to a True-Up Order requirement in accordance with the terms and conditions of the order), as of the day that User's account is reserved, unless a License for each such User is ordered in advance. Customer is solely responsible for keeping accurate records of the month each User is assigned to a User account, and will provide such records to Microsoft with its True-Up orders.
    - (ii) Customer acknowledges that (a) availability of its Office 365 GCC High tenant may follow several weeks after its initial order, and (a) the service components provided pursuant to its orders for "Suite" SKUs such as E1 and E3, as listed in the Office 365 GCC High, may differ from those components available in similar suites available in other forms of Office 365 Services.

7. A new Section 23, ITAR Covered Services is hereby added to the Agreement as follows;

**23. ITAR Covered Services.**

Microsoft's representations as it relates to its ITAR Covered Services' compliance with the ITAR are subject to the terms included as Section 9 of the Microsoft Cloud Agreement attached hereto as Exhibit A. Microsoft's obligations and responsibilities with respect to ITAR Covered Services and compliance with the ITAR only apply if Customer (or Company on Customer's behalf) provides express notice to Microsoft of Customer's intent to manage ITAR controlled data in the Customer Data during the eligibility validation phase of the online application process.

8. A new Section 24, entitled "Disputes with Customer," is hereby added to the Agreement as follows:

**24. Disputes with Customer.**

**a. Disputes with a Federal Agency Customer.** *In the event Microsoft, in Microsoft's sole discretion, decides to prosecute a claim against a U.S. Government Customer relating to orders placed in accordance with this*

*Agreement, a Customer Agreement applicable to the use of Product(s) ordered in accordance with this agreement, Company agrees to cooperate fully in the prosecution of such claim, including but not limited to the filing of the claim in Company's name on Microsoft's behalf and the filing of any appeals in a Board of Contract Appeals or Federal court. Microsoft agrees to be responsible for Company's reasonable and documented out of pocket expenses, and for the actual prosecution and settlement of all such claims, including the payment of any and all costs incurred by Microsoft in connection with such claim. Any recoveries awarded to Company as a result of the claim in excess of those owed to Company shall be paid to Microsoft.*

- b. Disputes with all other Government Customers.** *In the event Microsoft, in Microsoft's sole discretion, decides to prosecute a claim against a Government entity that is not a Federal Agency Customer relating to orders placed in accordance with this Agreement, a Customer Agreement applicable to the use of Product(s) ordered in accordance with this agreement, Company agrees to cooperate fully in the prosecution of such claim, including but not limited to the filing of the claim in Company's name on Microsoft's behalf in accordance with the dispute resolution laws of such Customer's state or tribal lands as may be applicable. Microsoft agrees to be responsible for Company's reasonable and documented out of pocket expenses, and for the actual prosecution and settlement of all such claims, including the payment of any and all costs incurred by Microsoft in connection with such claim. Any recoveries awarded to Company as a result of the claim in excess of those owed to Company shall be paid to Microsoft.*

Except for changes made by this Addendum, all terms of the Agreement remain unchanged. If there is any conflict between any provision in this Addendum and any provision in the Agreement, this Addendum shall control. This Addendum shall automatically terminate upon termination or expiration of the Agreement.



# EXHIBIT A

## Microsoft Cloud Agreement

### US Government Community Cloud

This Microsoft Cloud Agreement is incorporated into the Customer Agreement and entered into between the customer who is a Community member (“Customer”) and the person or entity who has entered into a prime contract with the Customer (“Contractor”) as an addendum and governs Customer’s use of the Microsoft Products. It consists of the terms and conditions below, Use Rights, SLA, and all documents referenced within those documents (together, the “agreement”). It is effective on the date that the Contractor provisions the Customer’s Subscription. Key terms are defined in Section 13.

#### 1. **Grants, rights and terms.**

All rights granted under this agreement are non-exclusive and non-transferable and apply as long as neither Customer nor any of its Affiliates is in material breach of this agreement.

- a. Software.** Upon acceptance of each order, Microsoft grants Customer a limited right to use the Software in the quantities ordered.
  - (i) Use Rights.** The Use Rights in effect when Customer orders Software will apply to Customer’s use of the version of the Software that is current at the time. For future versions and new Software, the Use Rights in effect when those versions and Software are first released will apply. Changes Microsoft makes to the Use Rights for a particular version will not apply unless Customer chooses to have those changes apply.
  - (ii) Temporary and perpetual licenses.** Licenses available on a subscription basis are temporary. For all other licenses, the right to use Software becomes perpetual upon payment in full.
- b. Online Services.** Customer may use the Online Services as provided in this agreement.
  - (i) Online Services Terms.** The Online Services Terms in effect when Customer orders or renews a Subscription to an Online Service will apply for the applicable Subscription term. For Online Services that are billed periodically based on consumption, the Online Services Terms current at the start of each billing period will apply to usage during that period.
  - (ii) Suspension.** Microsoft may suspend use of an Online Service during Customer’s violation of the Acceptable Use Policy or failure to respond to a claim of alleged infringement. Microsoft will give Customer notice before suspending an Online Service when reasonable.
  - (iii) End Users.** Customer controls access by End Users, and is responsible for their use of the Product in accordance with this agreement. For example, Customer will ensure End Users comply with the Acceptable Use Policy.
  - (iv) Customer Data.** Customer is solely responsible for the content of all Customer Data. Customer will secure and maintain all rights in Customer Data necessary for Microsoft to provide the Online Services to Customer without violating the rights of any third party or otherwise obligating Microsoft to Customer or to any third party. Microsoft does not and will not assume any obligations with respect to Customer Data or to Customer’s use of the Product other than as expressly set forth in this agreement or as required by applicable law.
  - (v) Responsibility for your accounts.** Customer is responsible for maintaining the confidentiality of any non-public authentication credentials associated with Customer’s use of the Online Services. Customer must promptly notify customer support about any possible misuse of Customer’s accounts or authentication credentials or any security incident related to the Online Services.
- c. License transfers.** License transfers are not permitted, except that Customer may transfer only fully-paid perpetual licenses to (1) an Affiliate or (2) a third party, solely in connection with the transfer of hardware or employees to whom the licenses have been assigned to the third party as part of (a) a divestiture of all or part of an Affiliate or (b) a merger involving Customer or an Affiliate. Upon such transfer, Customer and its Affiliates must uninstall and discontinue using the licensed Product and render any copies unusable. Attempted license transfers that do not comply with this agreement are void.
- d. Reservation of rights.** Products are protected by copyright and other intellectual property rights laws and international treaties. Microsoft reserves all rights not expressly granted in this agreement. No rights will be granted or implied by waiver or estoppel. Rights to access or use Software on a device do not give Customer any right to implement Microsoft patents or other Microsoft intellectual property in the device itself or in any other software or devices.

- e. **Restrictions.** Customer may use the Product only in accordance with this agreement. Customer may not (and is not licensed to): (1) reverse engineer, decompile or disassemble any Product or Fix, or attempt to do so; (2) install or use non-Microsoft software or technology in any way that would subject Microsoft's intellectual property or technology to any other license terms; or (3) work around any technical limitations in a Product or Fix or restrictions in Product documentation. Customer may not disable, tamper with, or otherwise attempt to circumvent any billing mechanism that meters Customer's use of the Online Services. Except as expressly permitted in this agreement or Product documentation, Customer may not distribute, sublicense, rent, lease, lend, resell or transfer and Products, in whole or in part, or use them to offer hosting services to a third party.
- f. **Preview releases.** Microsoft may make Previews available. **Previews are provided "as-is," "with all faults," and "as-available," and are excluded from the SLA and all limited warranties provided in this agreement.** Previews may not be covered by customer support. Previews may be subject to reduced or different security, compliance, and privacy commitments, as further explained in the Online Services Terms and any additional notices provided with the Preview. Microsoft may change or discontinue Previews at any time without notice. Microsoft also may choose not to release a Preview into "General Availability."
- g. **Verifying compliance for Products.**
  - (i) **Right to verify compliance.** Customer must keep records relating to all use and distribution of Products by Customer and its Affiliates. Microsoft has the right, at its expense, to verify compliance with the Products' license terms. Customer must promptly provide any information reasonably requested by the independent auditors retained by Microsoft in furtherance of the verification, including access to systems running the Products and evidence of licenses for Products that Customer hosts, sublicenses, or distributes to third parties. Customer agrees to complete Microsoft's self-audit process, which Microsoft may request as an alternative to a third party audit.
  - (ii) **Remedies for non-compliance.** If verification or self-audit reveals any unlicensed use of Products, then within 30 days Customer must order sufficient licenses to cover its use. If unlicensed use or distribution is 5% or more, the Customer may be completely responsible for the costs Microsoft has incurred in verification, to the extent permitted by 31 U.S.C. § 1341 (Anti-Deficiency Act) and other applicable Federal law or similar state law (as applicable). The unlicensed use percentage is based on the total number of licenses purchased compared to actual install base. Notwithstanding the foregoing, nothing in this section prevents the Customer from disputing any invoice in accordance with the Contract Disputes Act (41 U.S.C. §§7101-7109), if and as applicable. If there is no unlicensed use, Microsoft will not subject Customer to another verification for at least one year. By exercising the rights and procedures described above, Microsoft does not waive its rights to enforce this agreement or to protect its intellectual property by any other legal means.
  - (iii) **Verification process.** Microsoft will notify Customer at least 30 days in advance of its intent to verify Customers' compliance with the license terms for the Products Customer and its Affiliates use or distribute. Microsoft will engage an independent auditor, which will be subject to a confidentiality obligation. Any information collected in the self-audit will be used solely for purposes of determining compliance. This verification will take place during normal business hours and in a manner that does not unreasonably interfere with Customer's operations.

## 2. Subscriptions, ordering.

- a. **Available Subscription offers.** The Subscription offers available to Customer will be established by the Customer Agreement and generally can be categorized as one or a combination of the following:
  - (i) **Online Services Commitment Offering.** Customer commits in advance to purchase a specific quantity of Online Services for use during a Term and to pay upfront or on a periodic basis for continued use of the Online Service.
  - (ii) **Consumption Offering (also called Pay-As-You-Go).** Customer pays based on actual usage with no upfront commitment.
  - (iii) **Limited Offering.** Customer receives a limited quantity of Online Services for a limited term without charge (for example, a free trial) or as part of another Microsoft offering (for example, MSDN). Provisions in this agreement with respect to the SLA and data retention may not apply.
  - (iv) **Software Commitment Offering.** Customer commits in advance to purchase a specific quantity of Software for use during a Term and to pay upfront or on a periodic basis for continued use of the Software.
- b. **Ordering.**
  - (i) Orders must be placed through the Contractor. Customer may place orders for its Affiliates under this agreement and grant its Affiliates administrative rights to manage the Subscription, but, Affiliates may not place orders under this agreement. Customer also may assign the rights granted under Section 1.a and 1.b to a third party for use by that third party in Customer's internal business. If Customer grants any rights to Affiliates or third parties with

respect to Software or Customer's Subscription, such Affiliates or third parties will be bound by this agreement and Customer agrees to be jointly and severally liable for any actions of such Affiliates or third parties related to their use of the Products.

- (ii) The Contractor may permit Customer to modify the quantity of Online Services ordered during the Term of a Subscription. Additional quantities of Online Services added to a Subscription will expire at the end of that Subscription.
- c. **Pricing and payment.** Prices for each Product and any terms and conditions for invoicing and payment will be established by the Contractor.
- d. **Renewal.**
  - (i) Upon renewal of a Subscription, Customer may be required to sign a new agreement, a supplemental agreement or an amendment to this agreement.
  - (ii) Customer's Subscription will automatically renew unless Customer provides the Contractor notice of its intent not to renew prior to the expiration of the Term.
- e. **Eligibility for Academic, Government and Nonprofit versions.** Customer agrees that if it is purchasing an academic, government or nonprofit offer, Customer meets the respective eligibility requirements listed at the following sites:
  - (i) For academic offers, the requirements for educational institutions (including administrative offices or boards of education, public libraries, or public museums) listed at [www.aka.ms/academiceligibility](http://www.aka.ms/academiceligibility);
  - (ii) For government offers, the requirements listed at [www.aka.ms/governmenteligibility](http://www.aka.ms/governmenteligibility); and
  - (iii) For nonprofit offers, the requirements listed at [www.aka.ms/nonprofiteligibility](http://www.aka.ms/nonprofiteligibility).

As an exception to the foregoing, if Customer is not a government entity but has been verified by Contractor to be an eligible member of the Community, then the requirements in (ii) above shall not apply. Microsoft reserves the right to verify eligibility at any time and suspend the Online Service if the eligibility requirements are not met.

- f. **Taxes.** The parties are not liable for any of the taxes of the other party that the other party is legally obligated to pay and which are incurred or arise in connection with or related to the transactions contemplated under this agreement, and all such taxes will be the financial responsibility of the party who is obligated by operation of law to pay such tax.
3. **Term, termination.**
- a. **Agreement term and termination.** This agreement will remain in effect until the expiration or termination of the Customer Agreement Contract, whichever is earliest.
  - b. **Cancel a Subscription.** The Customer Agreement will establish the terms and conditions, if any, upon which Customer may cancel a Subscription.
4. **Security, privacy, and data protection.**

- a. **Reseller Administrator Access and Customer Data.** Customer acknowledges and agrees that (i) the Contractor will be the primary administrator of the Online Services for the Term and will have administrative privileges and access to Customer Data, however, Customer may request additional administrator privileges from its Contractor; (ii) Customer can, at its sole discretion and at any time during the Term, terminate its Contractor's administrative privileges; (iii) the Contractor's privacy practices with respect to Customer Data or any services provided by the Contractor are subject to the terms of the Customer Agreement and may differ from Microsoft's privacy practices; and (iv) the Contractor may collect, use, transfer, disclose, and otherwise process Customer Data, including personal data. Customer consents to Microsoft providing the Contractor with Customer Data and information that Customer provides to Microsoft for purposes of ordering, provisioning and administering the Online Services.
- b. If Customer plans to include criminal justice information or federal tax information with its Customer Data, it is Customer's responsibility to ensure compliance with FBI CJIS Policy, including ensuring that all of Customer's and/or Contractor's employees that will have unencrypted access to Customer Data meet the FBI background check. Customer must contact Contractor to obtain an applicable amendment to this Government Agreement for that purpose.
- c. 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 your 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 laws before providing personal information to Microsoft.

- d. Additional privacy and security details are in the Online Services Terms. The commitments made in the Online Services Terms only apply to the Online Services purchased under this agreement and not to any services or products provided by the Contractor. If Customer uses software or services that are hosted by a Reseller, that use will be subject to Reseller's privacy practices, which may differ from Microsoft's.
- e. As and to the extent required by law, Customer shall notify the individual users of the Online Services that their data may be processed for the purpose of disclosing it to law enforcement or other governmental authorities as directed by the Contractor or as required by law, and Customer shall obtain the users' consent to the same.
- f. Customer appoints the Contractor as its agent for purposes of interfacing with and providing instructions to Microsoft for purposes of this Section 4.

## 5. Warranties.

### a. Limited warranty.

- (i) **Software.** Microsoft warrants that each version of the Software will perform substantially as described in the applicable Product documentation for one year from the date Customer is first licensed for that version. If it does not, and Customer notifies Microsoft within the warranty term, then Microsoft will, at its option, (1) return the price Customer paid for the Software license or (2) repair or replace the Software.
- (ii) **Online Services.** Microsoft warrants that each Online Service will perform in accordance with the applicable SLA during Customer's use. Customer's remedies for breach of this warranty are in the SLA. The remedies above are Customer's sole remedies for breach of the warranties in this section. Customer waives any breach of warranty claims not made during the warranty period.

- b. **Exclusions.** The warranties in this agreement do not apply to problems caused by accident, abuse or use inconsistent with this agreement, including failure to meet minimum system requirements. These warranties do not apply to free or trial products, Previews, Limited Offerings, or to components of Products that Customer is permitted to redistribute.

- c. **Disclaimer.** Except for the limited warranties above, to the extent not prohibited by applicable law, Microsoft provides no warranties or conditions for Products and disclaims any other express, implied, or statutory warranties for Products, including warranties of quality, title, non-infringement, merchantability and fitness for a particular purpose.

## 6. Defense of third party claims.

- a. **By Microsoft.** Microsoft will defend Customer against any third-party claim to the extent it alleges that a Product or Fix made available by Microsoft for a fee and used within the scope of the license granted under this agreement (unmodified from the form provided by Microsoft and not combined with anything else), misappropriates a trade secret or directly infringes a patent, copyright, trademark or other proprietary right of a third party. If Microsoft is unable to resolve a claim of infringement under commercially reasonable terms, it may, as its option, either: (1) modify or replace the Product or fix with a functional equivalent; or (2) terminate Customer's license and refund any prepaid license fees (less depreciation on a five-year, straight-line basis) for perpetual licenses and any amount paid for Online Services for any usage period after the termination date.

Microsoft will not be liable for any claims or damages due to Customer's continued use of a Product or Fix after being notified to stop due to a third-party claim.

- b. **Customer's agreement.** Customer agrees that use of Customer Data or non-Microsoft software Microsoft provides or otherwise makes available on Customer's behalf will not infringe any third party's patent, copyright or trademark or make unlawful use of any third party's trade secret. In addition, Customer will not use an Online Service to gain unauthorized access to or disrupt any service, data, account or network in connection with the use of the Online Services.
- c. **Rights and remedies in case of possible infringement or misappropriation.** If Microsoft reasonably believes that a claim under this section may result in a legal bar prohibiting Customer's use of the Product or Fix, Microsoft will seek to obtain the right for Customer to keep using it or modify or replace it with a functional equivalent, in which case Customer must discontinue use of the prior version immediately. If these options are not commercially reasonable, Microsoft may terminate Customer's right to the Product or Fix and refund any amounts Customer has paid for those rights to Software and Fixes and, for Online Services, any amount paid for a usage period after the termination date.
- d. **Other terms.** Customer must notify Microsoft promptly in writing of a claim subject to this section; give Microsoft sole control over the defense and settlement (provided that for any Federal Agency Customers, the control of the defense and settlement is subject to 28 U.S.C. 516); and provide reasonable assistance in defending the claim. Microsoft will

reimburse Customer for reasonable out of pocket expenses that it incurs in helping. The remedies provided in this section are the exclusive remedies for the claims described in this section.

Notwithstanding the foregoing, and solely with respect to Federal Agency Customers, Microsoft's rights set forth in this section (and the rights of the third party claiming infringement) shall be governed by the provisions of 28 U.S.C. § 1498.

- 7. Limitation of liability.** For each Product, each party's maximum, aggregate liability to the other under this agreement is limited to direct damages finally awarded in an amount not to exceed the amounts Customer was required to pay for the applicable Products during the term of this agreement, subject to the following:
- a. Online Services.** For Online Services, Microsoft's maximum liability to Customer for any incident giving rise to a claim will not exceed the amount Customer paid for the Online Service during the 12 months before the incident; provided that in no event will Microsoft's aggregate liability for any Online Service exceed the amount paid for that Online Service during the Subscription.
  - b. Free Products and distributable code.** For Products provided free of charge and code that Customer is authorized to redistribute to third parties without separate payment to Microsoft, Microsoft's liability is limited to direct damages finally awarded up to US\$5,000.
  - c. Exclusions.** In no event will either party be liable for loss of revenue or indirect, special, incidental, consequential, punitive, or exemplary damages, or damages for loss of use, lost profits, revenues, business interruption, or loss of business information, however caused or on any theory of liability.
  - d. Exceptions.** The limits of liability in this section apply to the fullest extent permitted by applicable law, but do not apply to: (1) the parties' obligations under section 6; or (2) violation of the other's intellectual property rights.

For Customers that are Federal Agencies, this Section shall not impair the Customer's right to recover for fraud or crimes arising out of or related to this agreement under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733.

- 8. ITAR Covered Services.** This section applies to only the ITAR Covered Services, defined below, Customer buys subject to this Agreement. These terms **only apply if** Customer provides express notice to Microsoft of Customer's intent to manage ITAR controlled data in the Customer Data during the eligibility validation phase of the online application process.
- a. Customer Prerequisites:**
    - (i)** Customer is responsible for ensuring that the prerequisites established or required by the ITAR are fulfilled prior to introducing ITAR-controlled data into the ITAR Covered Services.
    - (ii)** Customer acknowledges that the ITAR Covered Services ordered by Customer under this Agreement enable End Users optionally to access and use a variety of additional resources, applications, or services that are (a) provided by third parties, or (b) provided by Microsoft subject to their own terms of use or privacy policies (collectively, for convenience, "add-ons"), as described in services documentation and/or in the portal through which Customer's administrator(s) will manage and configure the ITAR Covered Services.
    - (iii)** Customer is responsible for reviewing Online Services documentation, configuring the ITAR Covered Services, and adopting and implementing such policies and practices for Customer's End Users' use of ITAR Covered Services, together with any add-ons, as Customer determines are appropriate to comply with the ITAR or other legal or regulatory requirements applicable to Customer and not generally applicable to Microsoft as an IT service provider.
    - (iv)** Customer acknowledges that only ITAR Covered Services will be delivered subject to the terms of this Section. Processing and storage of ITAR-controlled data in other services, including without limitation add-ons, is not supported. Without limiting the foregoing, data that Customer elects to provide to the Microsoft technical support organization, if any, or data provided by or on Customer's behalf to Microsoft's billing or commerce systems in connection with purchasing or ordering ITAR Covered Services, if any, is not subject to the provisions of this Section. Customer is solely responsible for ensuring that ITAR-controlled data is not included in support information or support case artifacts.
  - b. Special Terms.**
    - (i)** ITAR Covered Services. The ITAR Covered Services are cloud services operated in a standardized manner with features and processes common across multiple customers. As part of Customer's preparation to use the ITAR Covered Services for the storage, processing, or transmission of ITAR-controlled data, Customer should review applicable services documentation. Customer's compliance with the ITAR will be dependent, in part, on Customer's configuration of the services and adoption and implementation of policies and practices for

Customer's End Users' use of ITAR Covered Services. Customer is solely responsible for determining the appropriate policies and practices needed for compliance with the ITAR.

- c. Personnel.** Microsoft personnel and contractors authorized by Microsoft to access Customer Data (that may include ITAR-controlled data) in the ITAR Covered Services, will be limited to U.S. persons, as that term is defined in the ITAR. Customer may also authorize Microsoft personnel and contractors to access its Customer Data. Customer is solely responsible for ensuring any such authorization is permissible under the ITAR.
  - d. Use of Subcontractors.** As set forth in the OST, Microsoft may hire subcontractors to provide services on its behalf. Any such subcontractors used in delivery of the ITAR Covered Services will be permitted to obtain Customer Data (that may include ITAR-controlled data) only to deliver the ITAR Covered Services Microsoft has retained them to provide and will be prohibited from using Customer Data for any other purpose. Storage and processing of Customer Data in the ITAR Covered Services is subject to Microsoft security controls at all times and, to the extent subcontractor personnel perform services in connection with ITAR Covered Services, they are obligated to follow Microsoft's policies, including without limitation the geographic restrictions and controls selected by you in the configuration of the ITAR Covered Services. Microsoft remains responsible for its subcontractors' compliance with Microsoft's obligations.
  - e. Notification.** The Security Incident handling process defined in the OST will apply to the ITAR Covered Services. In addition, the parties agree to the following:

    - (i)** Customer acknowledges that effective investigation or mitigation of a Security Incident involving ITAR-controlled data may be dependent upon information or services configurations within Customer's control. Accordingly, proper treatment of ITAR-controlled data will be a joint obligation between Microsoft and Customer. If Customer becomes aware of any unauthorized release of ITAR-controlled data to Microsoft or the use of a service other than the ITAR Covered Service to store, process, or transmit ITAR-controlled data, Customer will promptly notify Microsoft of such event and provide reasonable assistance and information necessary for Microsoft to investigate and report such event.
    - (ii)** If, subsequent to notification of a Security Incident by Microsoft, Customer determines that ITAR-controlled data may have been subject to unauthorized inspection or disclosure, it is Customer's responsibility to notify the appropriate authorities of such event, or to notify impacted individuals, if Customer determines such notification is required under applicable law or regulation or your internal policies.
    - (iii)** If either party determines it is necessary or prudent to make a voluntary disclosure to the Directorate of Defense Trade Controls regarding the treatment of ITAR-controlled data in the Online Services, such party will work in good faith to notify the other party of such voluntary disclosure prior to providing such voluntary disclosure. The parties will work together in good faith in the development and reporting of any such voluntary disclosure.
  - f. Conflicts.** If there is any conflict between any provision in this Section and any provision in the agreement, this Section shall control.
- 9. IRS 1075 Covered Services.** This section applies to only the IRS 1075 Covered Services, defined below, Customer buys under the Subscription. These terms only apply if Customer provides express notice to Microsoft of its intent to purchase IRS 1075 Covered Services.
- a. Customer Prerequisites.**

    - (i)** Customer is responsible to ensure that the prerequisites established or required by IRS Publication 1075 are fulfilled prior to introducing FTI into the IRS 1075 Covered Services.
    - (ii)** Customer acknowledges that the IRS 1075 Covered Services ordered by Customer under the Subscription enable End Users optionally to access and use a variety of additional resources, applications, or services that are (a) provided by third parties, or (b) provided by Microsoft subject to their own terms of use or privacy policies (collectively, for convenience, "add-ons"), as described in services documentation and/or in the portal through which your administrator(s) will manage and configure the IRS 1075 Covered Services.
    - (iii)** Customer is responsible for reviewing Online Services documentation, configuring the services, and adopting and implementing such policies and practices for your End Users' use of IRS 1075 Covered Services, together with any add-ons, as Customer determines are appropriate in order for Customer to comply with IRS Publication 1075 or other legal or regulatory requirements applicable to Customer and not generally applicable to Microsoft as an IT service provider.
    - (iv)** Customer acknowledges that only IRS 1075 Covered Services will be delivered subject to the terms of this section. No other services are supported by the terms of this section. Without limiting the foregoing, data that Customer elects to provide to the Microsoft technical support organization ("Support Data"), if any, or data provided by or on Customer's behalf to Microsoft's billing or commerce systems in connection with

purchasing/ordering IRS 1075 Covered Services (“Billing Data”), if any, is not subject to the provisions of this section. Customer is solely responsible for ensuring that FTI is not provided as Support Data or Billing Data.

**b. IRS Publication 1075 Special Terms.**

IRS 1075 Covered Services. The IRS 1075 Covered Services are cloud services operated in a standardized manner with features and processes common across multiple customers. As part of your preparation to use the services for FTI, Customer should review applicable services documentation. Customer’s compliance with IRS Publication 1075 will be dependent, in part, on Customer’s configuration of the services and adoption and implementation of policies and practices for Customer’s End Users’ use of IRS 1075 Covered Services. Customer is solely responsible for determining the appropriate policies and practices needed for compliance with IRS Publication 1075.

- (i) Attachment 1 contains the Safeguarding Contract Language for Technology Services specified by IRS Publication 1075. Microsoft and Customer has agreed that certain requirements of the Safeguarding Contract Language and IRS Publication 1075 will be fulfilled as set forth in the remainder of this section.
- (ii) **Background Checks.** Notwithstanding anything to the contrary in Attachment 1, all screened personnel authorized to have logical access to Customer Data (that may include FTI) in the IRS 1075 Covered Services will meet background check requirements equivalent to those defined in IRS Publication 1075.
- (iii) **Personnel Records and Training.** Microsoft will maintain a list of screened personnel authorized to access Customer Data (that may include FTI) in the IRS 1075 Covered Services, which will be available to Customer or to the IRS upon written request. Customer will treat Microsoft personnel personally identifiable information (PII) as Microsoft trade secret or security-sensitive information exempt from public disclosure to the maximum extent permitted by applicable law, and, if required to provide such Microsoft personnel PII to the IRS, will require the IRS to treat such personnel PII the same.
- (iv) **Training Records.** Microsoft will maintain security and disclosure awareness training records as required by IRS Publication 1075, which will be available to Customer upon written request.
- (v) **Confidentiality Statement.** Microsoft will maintain a signed confidentiality statement, and will provide a copy for inspection upon request.
- (vi) **Cloud Computing Environment Requirements.** The IRS 1075 Covered Services are provided in accordance with the FedRAMP System Security Plan for the applicable services. Microsoft’s compliance with controls required by IRS Publication 1075, including without limitation encryption and media sanitization controls, can be found in the applicable FedRAMP System Security Plan.
- (vii) **Use of Subcontractors.** Notwithstanding anything to the contrary in Attachment 1, as set forth in the OST, Microsoft may use subcontractors to provide services on its behalf. Any such subcontractors used in delivery of the IRS 1075 Covered Services will be permitted to obtain Customer Data (that may include FTI) only to deliver the services Microsoft has retained them to provide and will be prohibited from using Customer Data for any other purpose. Storage and processing of Customer Data in the IRS 1075 Covered Services is subject to Microsoft security controls at all times and, to the extent subcontractor personnel perform services in connection with IRS 1075 Covered Services, they are obligated to follow Microsoft’s policies. Microsoft remains responsible for its subcontractors’ compliance with Microsoft’s obligations. Subject to the preceding, Microsoft may employ subcontractor personnel in the capacity of augmenting existing staff, and understands IRS Publication 1075 reference to employees to include employees and subcontractors acting in the manner specified herein. It is the responsibility of the Customer to gain approval of the IRS for the use of all subcontractors.
- (viii) Microsoft maintains a list of subcontractor companies who may potentially provide personnel authorized to access Customer Data in the Online Services, published for Azure branded services at <http://azure.microsoft.com/en-us/support/trust-center/>, or successor locations identified by Microsoft. Microsoft will update these websites at least 14 days before authorizing any new subcontractor to access Customer Data, Microsoft will update the website and provide Customer with a mechanism to obtain notice of that update.
- (ix) **Security Incident Notification.** The Security Incident handling process defined in the OST will apply to the IRS 1075 Covered Services. In addition, the parties agree to the following:
  - 1. Customer acknowledges that effective investigation or mitigation of a Security Incident may be dependent upon information or services configurations within Customer’s control. Accordingly, compliance with IRS Publication 1075 Incident Response requirements will be a joint obligation between Microsoft and Customer.
  - 2. If, subsequent to notification from Microsoft of a Security Incident, Customer determines that FTI may have been subject to unauthorized inspection or disclosure, it is Customer responsibility to notify the appropriate Agent-in-Charge, TIGTA (Treasury Inspector General for Tax Administration) and/or the IRS of a Security Incident, or to notify impacted individuals, if Customer determines this is required under IRS Publication 1075, other applicable law or regulation, or Customer internal policies.

**c. Customer Right to Inspect.**

- (i) Audit by Customer.** Customer will, (i) be provided quarterly access to information generated by Microsoft's regular monitoring of security, privacy, and operational controls in place to afford you an ongoing view into the effectiveness of such controls, (ii) be provided a report mapping compliance of the IRS 1075 Covered Services with NIST 800-53 or successor controls, (iii) upon request, be afforded the opportunity to communicate with Microsoft's subject matter experts for clarification of the reports identified above, and (iv) upon request, and at Customer's expense, be permitted to communicate with Microsoft's independent third party auditors involved in the preparation of audit reports. Notwithstanding anything to the contrary in Attachment 1, Customer will use this information above to satisfy any inspection requirements under IRS Publication 1075 and agrees that the audit rights described in this section are the sole rights to be provided in full satisfaction of any audit that may otherwise be requested by the IRS or the Customer. Notwithstanding anything to the contrary in Attachment 1, Microsoft will not grant any inspection rights to the IRS or access to Microsoft data centers or other facilities that may cause Microsoft to be non-compliant with its contractual obligations under FedRAMP, ISO 27001/27018, other US Government security related operations, or its internal security policies.
- (ii) Confidentiality of Audit Materials.** Audit information provided by Microsoft to Customer will consist of highly confidential proprietary or trade secret information of Microsoft. Microsoft may request reasonable assurances, written or otherwise, that information will be maintained as confidential and/or trade secret information subject to this agreement prior to providing such information to Customer, and Customer will ensure Microsoft's audit information is afforded the highest level of confidentiality available under applicable law. Notwithstanding the foregoing, upon request and pursuant to appropriate confidentiality protections, Customer shall be permitted to provide Microsoft's audit information described in Section 9.c(i) to the IRS to satisfy the IRS inspection requirements under IRS Publication 1075.
- (iii)** This Section, 9.c, is in addition to compliance information available to Customer under the OST.

**10. Criminal Justice Information Services (CJIS).** This section applies only to the Government CJIS Covered Services, defined below, you buy under the Subscription. These terms only apply if Customer provides express notice to Microsoft of its intent to purchase CJIS Covered Services.

**a. Customer Prerequisites.**

- (i)** Microsoft's representations as it relates to its CJIS Covered Services' compliance with the FBI Criminal Justice Information Systems ("CJIS") Security Addendum (Appendix H of FBI CJIS Policy) are subject to Customer's incorporation of applicable state-specific CJIS Amendment terms and conditions into Customer's order with the Contractor. They are also subject to Customer's incorporation and flow down of such terms in Customer's contracts with a Covered Entity.
- (ii)** Please visit <https://www.microsoft.com/en-us/TrustCenter/Compliance/CJIS> for additional information about CJIS Covered States and CJIS Covered Services. Note that not all states are CJIS Covered States and that different CJIS Covered Services may apply in different CJIS Covered States. For more information about how to sign up for CJIS Covered Services through an Enterprise Agreement, please visit <https://azure.microsoft.com/en-us/pricing/enterprise-agreement/>. For purposes of this section, if Customer is not in a CJIS Covered State, then Microsoft is unable to provide CJIS-related representations at this time, and no CJIS Amendment will apply.
- (iii)** Customer can access the terms and conditions of Microsoft's adherence to the FBI CJIS Policy by contacting the CSA in a CJIS Covered State. The Security Addendum for Private Contractors (Cloud Providers) referenced in the FBI CJIS Policy and CSA-provided terms and conditions is incorporated herein by reference, and you acknowledge that Microsoft's support for CJIS will be in accordance with those terms agreed to and/or signed by the applicable state CSA. Customer also acknowledges that it is Customer's responsibility to contact the applicable state CSA for this and any additional information. Customer is required to, and acknowledge it will, work directly with the applicable state CSA for any CJIS-related documentation and audit requirements.
- (iv)** Customer is responsible to ensure that the CJIS Security Addendum has been signed by the CSA, that the CSA has approved Customer's use of the Covered Services to store or process CJI, and that any other prerequisites established or required by either the FBI, state CSA, or Customer is fulfilled prior to introducing CJI into the Covered Services.
- (v)** Customer acknowledges that it will keep records of any Covered Entity to which it provides CJIS State Agreements or other CJIS-related documentation Customer obtains from the state CSA and shall make such records available to Microsoft promptly upon request.

**b.** If there is any conflict between any provision in this section and any provision in the agreement, this section shall control.



**11. Government Community requirements.** Customer certifies that it is a member of the Community and agrees to use Government Community Cloud Services solely in its capacities as a member of the Community and for the benefit of end users that are members of the Community. Use of Government Community Cloud Services by an entity that is not a member of the Community or to provide services to non-Community members is strictly prohibited. Customer acknowledges that only Community members may use Government Community Cloud Services.

- a.** All terms and conditions applicable to non-Government Community Cloud Services also apply to their corresponding Government Community Cloud Services, except as otherwise noted in the Use Rights and this Agreement.
- b.** Customer may not deploy or use Government Community Cloud Services and corresponding non-Government Community Cloud Services in the same domain.
- c.** Any Customer that uses Government Community Cloud Services must maintain its status as a member of the Community. Maintaining status as a member of the Community is a material requirement for such services.
- d. Use Rights for Government Community Cloud Services.** For Government Community Cloud Services, notwithstanding anything to the contrary in the Use Rights:
  - (i)** Government Community Cloud Services will be offered only within the United States.
  - (ii)** Additional European Terms, as set forth in the Use Rights, will not apply.
  - (iii)** References to geographic areas in the Use Rights with respect to the location of Customer Data at rest, as set forth in the Use Rights, refer only to the United States.
- e.** All terms and conditions applicable to non-Government Community Cloud Services also apply to their corresponding Government Community Cloud Services, except as otherwise noted herein.
- f.** Customer may not deploy or use Government Community Cloud Services and corresponding non-Government Community Cloud Services in the same domain. Additionally, Office 365 US Government may not be deployed or used in the same domain as other Government Community Cloud Services.
- g.** Notwithstanding the Data Processing Terms section of the Online Services Terms, Office 365 GCC High and Azure Government Services are not subject to the same control standards and frameworks as the Microsoft Azure Core Services. The Compliance Trust Center Page describes the control standards and frameworks with which Office 365 GCC High and Azure Government Services comply.
- h. Operational and Ordering Consideration for GCC High:**
  - (i)** Customer (a) acknowledges that its Tenant administrator console (when available) will appear to include more licenses than it has ordered and is entitled to; and (ii) agrees that it must order licenses for every User account it assigns. Notwithstanding anything to the contrary in the order and Product Terms, Licenses will be deemed "Reserved" for each user (and thereby subject to a True-Up Order requirement in accordance with the terms and conditions of the order), as of the day that User's account is reserved, unless a License for each such User is ordered in advance. Customer is solely responsible for keeping accurate records of the month each User is assigned to a User account, and will provide such records to Microsoft with its True-Up orders.
  - (ii)** Customer acknowledges that (a) availability of its Office 365 GCC High tenant may follow several weeks after its initial order, and (b) the service components provided pursuant to its orders for "Suite" SKUs such as E1 and E3, as listed in the Office 365 GCC High, may differ from those components available in similar suites available in other forms of Office 365 Services.

**12. Miscellaneous.**

- a. Notices.** You must send notices by mail, return receipt requested, to the address below.

**Notices should be sent to:**

Microsoft Corporation  
Volume Licensing Group  
One Microsoft Way  
Redmond, WA 98052  
USA

Customer agrees to receive electronic notices from us, which will be sent by email to the account administrator(s) named for your Subscription. Notices are effective on the date on the return receipt or, for email, when sent. You are responsible for ensuring that the email address for the account administrator(s) named for your Subscription is accurate and current. Any email notice that we send to that email address will be effective when sent, whether or not Customer actually receives the email.

- b. Assignment.** Customer may not assign this agreement either in whole or in part. Microsoft may transfer this agreement without Customer's consent, but only to one of Microsoft's Affiliates. Any prohibited assignment is void.
- c. Severability.** If any part of this agreement is held unenforceable, the rest remains in full force and effect.
- d. Waiver.** Failure to enforce any provision of this agreement will not constitute a waiver.
- e. No agency.** This agreement does not create an agency, partnership, or joint venture.
- f. No third-party beneficiaries.** There are no third-party beneficiaries to this agreement.
- g. Use of contractors.** Microsoft may use contractors to perform services, but will be responsible for their performance, subject to the terms of this agreement.
- h. Microsoft as an independent contractor.** The parties are independent contractors. Customer and Microsoft each may develop products independently without using the other's confidential information.
- i. Agreement not exclusive.** Customer is free to enter into agreements to license, use or promote non-Microsoft products or services.
- j. Entire agreement.** This agreement is the entire agreement concerning its subject matter and supersedes any prior or concurrent communications. In the case of a conflict between any documents in this agreement that is not expressly resolved in those documents, their terms will control in the following order of descending priority: (1) this agreement, (2) the Product Terms, (3) the Online Services Terms, and (4) any other documents in this agreement.
- k. Survival.** All provisions survive termination of this agreement except that requiring performance only during the term of the agreement.
- l. U.S. export jurisdiction.** Products are subject to U.S. export jurisdiction. Customer must comply with all applicable international and national laws, including the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, and end-user, end-use and destination restrictions issued by U.S. and other governments related to Microsoft products, services, and technologies.
- m. Force majeure.** Neither party will be liable for any failure in performance due to causes beyond that party's reasonable control (such as fire, explosion, power blackout, earthquake, flood, severe storms, strike, embargo, labor disputes, acts of civil or military authority, war, terrorism (including cyber terrorism), acts of God, acts or omissions of Internet traffic carriers, actions or omissions of regulatory or governmental bodies (including the passage of laws or regulations or other acts of government that impact the delivery of Online Services). This Section will not, however, apply to your payment obligations under this agreement.
- n. Contracting authority.** If you are an individual accepting these terms on behalf of an entity, you represent that you have the legal authority to enter into this agreement on that entity's behalf.
- o. Additional Terms Applicable when the Customer is a U.S. Federal Agency.**
  - (i)** No provisions of any shrink-wrap or any click-through agreement (or other similar form of agreement) that may be provided in conjunction with any Product(s) acquired under this agreement shall apply in place of, or serve to modify any provision of this agreement, even if a user or authorized officer of Customer purports to have affirmatively accepted such shrink-wrap or click through provisions. For the avoid of doubt and without limiting the foregoing, in the event of a conflict between any such shrink-wrap or click-through provisions (irrespective of the products or services that such provisions attach to) and any term or condition of this agreement, then the relevant term or condition of this agreement shall govern and supersede the purchase of such Product(s) to the extent of any such conflict. All acceptance of agreements and renewals shall be executed in writing.
  - (ii)** If any document incorporated by reference into this agreement, including the Product Terms and Online Service Terms included and/or referenced or incorporated herein and/or therein, contains a provision (1) allowing for the automatic termination of your license rights or Online Services; (2) allowing for the automatic renewal of services and/or fees; (3) requiring the governing law to be anything other than Federal law; and/or (4) otherwise violates applicable Federal law, then, such terms shall not apply with respect to the Federal Government. If any document incorporated by reference into this agreement, including the Product Terms and Online Service Terms included and/or referenced or incorporated herein and/or therein contains an indemnification provision, such provision shall not apply as to the United States indemnifying Microsoft or any other party.

### 13. Definitions.

Any reference in this agreement to "day" will be a calendar day.

"Acceptable Use Policy" is set forth in the Online Services Terms.

"Affiliate" means any legal entity that a party owns, that owns a party, or that is under common ownership with a party.

“Ownership” means, for purposes of this definition, control of more than a 50% interest in an entity.

“Azure Government Services” means one or more of the services or features Microsoft makes available to Customer under this Enrollment and identified at <http://azure.microsoft.com/en-us/regions/#services>, which are Government Community Cloud Services.

“CJI” means Criminal Justice Information, as defined in FBI CJIS Policy.

“CJIS Covered State” means a state, as shown at <https://www.microsoft.com/en-us/TrustCenter/Compliance/CJIS> or another site Microsoft may provide, with which Microsoft and the applicable state have entered into a CJIS State Agreement.

“CJIS Covered Service” means, for any state-specific CJIS Amendment, the Microsoft Online Services that are listed as such in that amendment, and for which Microsoft’s CJIS representations apply.

“CJIS State Agreement” means an agreement between Microsoft and a Covered State’s CSA (or another entity to which the CSA has delegated its duties) containing terms and conditions under which the Covered State and Microsoft will comply with the applicable requirements of the CJIS Policy. Each CJIS State Agreement is consistent with the applicable state-specific CJIS Amendment, and includes Microsoft CJIS Security Addendum Certifications. For clarity, a CJIS State Agreement may be titled “CJIS Information Agreement” or “CJIS Management Agreement.”

“Community” means the community consisting of one or more of the following: (1) a Government, (2) a Customer using eligible Government Community Cloud Services to provide solutions to a Government or a qualified member of the Community, or (3) a Customer with Customer Data that is subject to Government regulations for which the Customer determines, and Microsoft agrees, that the use of Government Community Cloud Services is appropriate to meet the Customer’s regulatory requirements. Membership in the Community is ultimately at Microsoft’s discretion, which may vary by Government Community Cloud Service.

“Compliance Trust Center Page” means the compliance page of the Microsoft Trust Center, published by Microsoft at <https://www.microsoft.com/en-us/TrustCenter/Compliance/default.aspx> or a successor site Microsoft later identifies.

“Consumption Offering”, “Commitment Offering”, or “Limited Offering” describe categories of Subscription offers and are defined in Section 2.

“Covered Entity” means any State/Local Entity in a Covered State with which you maintain a contractual relationship whose use of CJIS Covered Services is subject to CJIS Policy.

“CSA” means, for each CJIS Covered State, that state’s CJIS Systems Agency, as defined in FBI CJIS Policy.

“Customer Agreement” means the binding agreement between the Contractor and Customer under which Customer orders Products from the Contractor and the Contractor binds Customer to the terms of the this agreement.

“Customer Data” is defined in the Online Services Terms.

“End User” means any person you permit to access Customer Data hosted in the Online Services or otherwise use the Online Services. With respect to ITAR Covered Services, End User means an individual that accesses the ITAR Covered Services. With respect to IRS 1075 Covered Services, End User means an individual that accesses the IRS 1075 Covered Services.

“Federal Agency” means a bureau, office, agency, department or other entity of the United States Government.

“Fix” means a Product fix, modifications or enhancements, or their derivatives, that Microsoft either releases generally (such as Product service packs) or provides to Customer to address a specific issue.

“FTI” is defined as in IRS Publication 1075.

“Government” means a Federal Agency, State/Local Entity, or Tribal Entity acting in its governmental capacity.

“Government Community Cloud Services” means Microsoft Online Services that are provisioned in Microsoft’s multi-tenant data centers for exclusive use by or for the Community and offered in accordance with the National Institute of Standards and Technology (NIST) Special Publication 800-145. Microsoft Online Services that are Government Community Cloud Services are designated as such in the Use Rights and Product Terms.

“IRS 1075 Covered Services” means Azure Government services listed as being in the scope for IRS 1075 at <http://azure.microsoft.com/en-us/support/trust-center/compliance/irs1075/> or its successor site. Without limitation, IRS 1075 Covered Services do not include any other separately branded Online Services.

“IRS Publication 1075” means the Internal Revenue Services (IRS) Publication 1075 effective September 30, 2016, including updates (if any) released by the IRS during the term of the Enrollment.

“ITAR” means the International Traffic in Arms Regulations, found at 22 C.F.R. §§ 120 - 130.

“ITAR-controlled data” means Customer Data that is regulated by the ITAR as Defense Articles or Defense Services.

“ITAR Covered Services” means, solely with respect to this Amendment, the (i) Office 365 GCC High services; and (ii) Azure Government services, listed as being in the scope for the ITAR at <https://www.microsoft.com/en-us/TrustCenter/Compliance/itar> or its successor site.

“Microsoft Trust Center Compliance Page” is Microsoft’s website accessible at <https://www.microsoft.com/en-us/TrustCenter/Compliance/> or a successor upon which Microsoft provides information about how each of its Online Services complies with, and/or is certified under, various government and industry control standards.

“Licensing Site” means <http://www.microsoft.com/licensing/contracts> or a successor site.

“Non-Microsoft Product” is defined in the Online Services Terms.

“Office 365 Service Descriptions” means, collectively and solely for this Amendment, the Service Descriptions for Office 365 High, published by Microsoft at <https://technet.microsoft.com/en-us/library/mt774581.aspx> (for the product superset, Office 365 US Government) and <https://technet.microsoft.com/en-us/library/mt774968.aspx> (for the product subset, Office 365 GCC High), or at successor sites Microsoft later identifies.

“Office 365 US Government” means the Government Community Cloud Service described by the Office 365 Service Descriptions

“Office 365 GCC High” means the Government Community Cloud Service described by the Office 365 Service Descriptions.

“Online Services” means any of the Microsoft-hosted online services subscribed to by Customer under this agreement, including Government Community Cloud Services, Microsoft Dynamics Online Services, Office 365 Services, Microsoft Azure Services, or Microsoft Intune Online Services.

“Online Services Terms” means the additional terms that apply to Customer’s use of Online Services published on the Licensing Site and updated from time to time.

“Previews” means preview, beta, or other pre-release version or feature of the Online Services or Software offered by Microsoft to obtain customer feedback.

“Product” means all products identified in the Product Terms, such as all Software, Online Services and other web-based services, including Previews.

“Product Terms” means the document that provides information about Microsoft Products and Professional Services available through volume licensing. The Product Terms document is published on the Licensing Site and is updated from time to time.

“SLA” means Service Level Agreement, which specifies the minimum service level for the Online Services and is published on the Licensing Site.

“State/Local Entity” means (1) any agency of a state or local government in the United States, or (2) any United States county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality established by the laws of Customer’s state and located within Customer’s state’ jurisdiction and geographic boundaries.

“Software” means licensed copies of Microsoft software identified on the Product Terms. Software does not include Online Services, but Software may be a part of an Online Service.

“Subscription” means an enrollment for Online Services for a defined Term as established by your Reseller.

“Technical Data” has the meaning provided in 22 C.F.R. § 120.

“Term” means the duration of a Subscription (e.g., 30 days or 12 months).

“Tribal Entity” means a federally-recognized tribal entity performing tribal governmental functions and eligible for funding and services from the U.S. Department of Interior by virtue of its status as an Indian tribe.

“Use Rights” means the use rights or terms of service for each Product published on the Licensing Site and updated from time to time. The Use Rights supersede the terms of any end user license agreement that accompanies a Product. The Use Rights for Software are published by Microsoft in the Product Terms. The Use Rights for Online Services are published in the Online Services Terms.

# ATTACHMENT 1

## Internal Revenue Services

### Federal Tax Information

### Safeguarding Addendum

In performance of its obligations to deliver the IRS 1075 Covered Services under the Agreement, Microsoft agrees to comply with the requirements contained in Exhibit 7 (Safeguarding Contract Language for Technology Services) from IRS Publication 1075, as set forth below. For purposes of this Attachment 1, "contractor" refers to Microsoft, "agency" refers to Customer, "contract" refers to the Customer Agreement, inclusive of the Amendment, "Exhibit" refers to IRS Publication 1075 exhibit, and "Section" refers to IRS Publication 1075 section.

#### **I. PERFORMANCE.**

In performance of this contract, the contractor agrees to comply with and assume responsibility for compliance by his or her employees with the following requirements:

- (1) All work will be performed under the supervision of contractor or the contractor's responsible employees.
- (2) The contractor and the contractor's employees with access to or who use FTI must meet the background check requirements defined in IRS Publication 1075.
- (3) Any return or return information made available shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material will be treated as confidential and will not be divulged or made known in any manner to any person except as may be necessary in the performance of this Addendum. Disclosure to anyone other than an officer or employee of the contractor will be prohibited.
- (4) All returns and return information will be accounted for upon receipt and properly stored before, during, and after processing. In addition, all related output will be given the same level of protection as required for the source material.
- (5) The contractor certifies that the data processed during the performance of this contract will be completely purged from all data storage components of their computer facility, and no output will be retained by contractor at the time the work is completed. If immediate purging of all data storage components is not possible, contractor certifies that any IRS data remaining in any storage component will be safeguarded to prevent unauthorized disclosures.
- (6) Any spoilage or any intermediate hard copy printout that may result during the processing of IRS data will be given to the agency or his or her designee. When this is not possible, contractor will be responsible for the destruction of the spoilage or any intermediate hard copy printouts, and will provide the agency or his or her designee with a statement containing the date of destruction, description of material destroyed, and the method used.
- (7) All computer systems receiving, processing, storing, or transmitting FTI must meet the requirements defined in IRS Publication 1075. To meet functional and assurance requirements, the security features of the environment must provide for the managerial, operational, and technical controls. All security features must be available and activated to protect against unauthorized use of and access to Federal Tax Information.
- (8) No work involving Federal Tax Information furnished under this contract will be subcontracted without prior written approval of the IRS.
- (9) The contractor will maintain a list of employees authorized access. Such list will be provided to the Company and, upon request, to the IRS reviewing office.
- (10) The agency will have the right to void the contract if the contractor fails to provide the safeguards described above.

#### **II. CRIMINAL/CIVIL SANCTIONS.**

- (1) Each officer or employee of any person to whom returns or return information is or may be disclosed will be notified in writing by such person that returns or return information disclosed to such officer or employee can be used only for a purpose and to the extent authorized herein, and that further disclosure of any such returns or return information for a purpose or to an extent unauthorized herein constitutes a felony punishable upon conviction by a fine of as much as \$5,000 or imprisonment for as long as 5 years, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized further disclosure of returns or return information may also result in an award of civil damages against the officer or employee in an amount not less than \$1,000 with respect to each instance of unauthorized disclosure. These penalties are prescribed by IRCs 7213 and 7431 and set forth at 26 CFR 301.6103(n)-1.

- (2) Each officer or employee of any person to whom returns or return information is or may be disclosed shall be notified in writing by such person that any return or return information made available in any format shall be used only for the purpose of carrying out the provisions of this contract. Information contained in such material shall be treated as confidential and shall not be divulged or made known in any manner to any person except as may be necessary in the performance of the contract. Inspection by or disclosure to anyone without an official need to know constitutes a criminal misdemeanor punishable upon conviction by a fine of as much as \$1,000 or imprisonment for as long as 1 year, or both, together with the costs of prosecution. Such person shall also notify each such officer and employee that any such unauthorized inspection or disclosure of returns or return information may also result in an award of civil damages against the officer or employee [United States for Federal employees] in an amount equal to the sum of the greater of \$1,000 for each act of unauthorized inspection or disclosure with respect to which such defendant is found liable or the sum of the actual damages sustained by the plaintiff as a result of such unauthorized inspection or disclosure plus in the case of a willful inspection or disclosure which is the result of gross negligence, punitive damages, plus the costs of the action. These penalties are prescribed by IRC section 7213A and 7431 and set forth at 26 CFR 301.6103(n)-1.
- (3) Additionally, it is incumbent upon the contractor to inform its officers and employees of the penalties for improper disclosure imposed by the Privacy Act of 1974, 5 U.S.C. 552a. Specifically, 5 U.S.C. 552a(i)(1), which is made applicable to contractors by 5 U.S.C. 552a(m)(1), provides that any officer or employee of a contractor, who by virtue of his/her employment or official position, has possession of or access to agency records which contain individually identifiable information, the disclosure of which is prohibited by the Privacy Act or regulations established thereunder, and who knowing that disclosure of the specific material is prohibited, willfully discloses the material in any manner to any person or agency not entitled to receive it, shall be guilty of a misdemeanor and fined not more than \$5,000.
- (4) Granting a contractor access to FTI must be preceded by certifying that each individual understands the agency's security policy and procedures for safeguarding IRS information. Contractors must maintain their authorization to access FTI through annual recertification. The initial certification and recertification must be documented and placed in the agency's files for review. As part of the certification and at least annually afterwards, contractors must be advised of the provisions of IRCs 7431, 7213, and 7213A (see Exhibit 4, Sanctions for Unauthorized Disclosure, and Exhibit 5, Civil Damages for Unauthorized Disclosure). The training provided before the initial certification and annually thereafter must also cover the incident response policy and procedure for reporting unauthorized disclosures and data breaches. (See Section 10) For both the initial certification and the annual certification, the contractor must sign, either with ink or electronic signature, a confidentiality statement certifying their understanding of the security requirements.

### **III. INSPECTION.**

The IRS and the Agency, with 24 hour notice, shall have the right to send its inspectors into the offices and plants of the contractor to inspect facilities and operations performing any work with FTI under this contract for compliance with requirements defined in IRS Publication 1075. The IRS' right of inspection shall include the use of manual and/or automated scanning tools to perform compliance and vulnerability assessments of information technology (IT) assets that access, store, process or transmit FTI. On the basis of such inspection, corrective actions may be required in cases where the contractor is found to be noncompliant with contract safeguards.