

Lenovo Cloud Service Usage Agreement

THIS AGREEMENT GOVERNS YOUR SUBSCRIPTION TO AND USE OF CLOUD SERVICES

BY ACCEPTING THIS LENOVO CLOUD SERVICE USAGE AGREEMENT (“AGREEMENT”), EITHER BY CLICKING A BOX INDICATING YOUR ACCEPTANCE OR BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS “YOU” AND “YOUR” SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICES.

For good and valuable consideration, the receipt of which is hereby acknowledged, Lenovo **Technology Sdn. Bhd.** (sometimes referred to as “Lenovo” or “we”) and Customer (sometimes referred to as “you”) agree to comply with the following Terms and Conditions.

END USER TERMS AND CONDITIONS

We agree to provide you access and support for the use of certain software cloud services for the Service Period specified in an ordering document provided by Lenovo (the “Subscription Services”) and you desire to use the Subscription Services and agree that such use shall be according to these Terms and Conditions and any additional terms and conditions that you may be required to accept during activation of your Subscription Services from a third party cloud service provider. Service Period means the number of months that Lenovo will provide access to the Subscription Services.

1. Subscription

For the usage fees specified in your ordering document provided by Lenovo (the “Usage Fees”), you hereby agree to subscribe to access and use the Subscription Services during the Service Period set forth in your ordering document. The Usage Fees will not change during the Service Period. Lenovo reserves the right to change Usage Fees prior to renewal of Subscription Services for an additional Service Period upon not less than fourteen (14) days’ notice.

2. Your Responsibilities

You are solely responsible for the operation, maintenance, passwords and use of software, data, text, audio, video, images or other information (“Your Content”) that you: a) run on the Subscription Services; b) cause to interface with the Subscription Services; or c) upload to the Subscription Services under your account or otherwise transfer, process, use or store in connection with your account. You represent and warrant to Lenovo that: i) you or your licensors own all right, title, and interest in and to Your Content; ii) you have all rights in Your Content necessary to grant the rights contemplated by this Agreement; and iii) none of Your Content will violate applicable laws, government regulations, and any acceptable use policies of third party cloud service providers.

3. Payment, Taxes and Renewal

Charges for Subscription Services shall begin on the date of your order. Payment of Usage Fees is due in full and shall be paid upon receipt of your order. The Usage Fees include applicable **Sale and Service** tax (“SST”). If the rate of SST changes, Lenovo may adjust the Usage Fees to take into account any such change from the date the change becomes effective. You acknowledge that your subscription to the Subscription Services will autorenew for an additional Service

Period at the end of each Service Period (“Renewal Subscription Period”). You will be automatically charged and agree to pay the Usage Fees for the Renewal Subscription Period unless you terminate the Agreement under the terms of Section 6 (a) below. Usage Fees for the Renewal Subscription Period will be based on the then current Usage Fees and number of users at the time of renewal. You may increase the quantity of Subscription Services by placing another order. The type of subscription and Subscription Period that you purchase will be specified in your ordering document provided by Lenovo.

4. Support Services

Lenovo will provide support to resolve administrative and technical issues relating to the Subscription Services (“Support Service”). To the extent Lenovo is unable to resolve your administrative or technical problem, we will escalate it to the cloud services provider for resolution and communicate resolution status to you via the email ID provided during the activation of your Subscription Service. You may incur and agree to pay additional fees (at our applicable rates) for services performed by us due to requests for services other than those Support Services described herein.

5. Limitation of liability; warranties and guarantees

We are not responsible for

1. delays in delivery or use of the Subscription Services or in providing Support Services, no matter who caused the delay
2. damages from, or performance prevented by, any cause not within our reasonable control, or for losses resulting from negligence, intentional wrongdoing or other actions or omissions of you or your employees or agents; or
3. damages from Lenovo’s access, use, transmission, whether directly or indirectly, of your data, the loss of data, or the re-input of lost data for any reason, including failure of Subscription Services or Support Services. It is your responsibility to back-up your data on a daily basis and to provide offsite back-up storage.

To the extent permitted by law, Lenovo, its affiliates, and suppliers will not be liable for consequential, special, indirect, incidental or punitive damages, including lost profits, revenue, business, reputation, anticipated savings or lost data, even if Lenovo, its Affiliates and suppliers are informed of the possibility or likelihood of such damages occurring. The liability of Lenovo, its affiliates and suppliers will never collectively be more than the Subscription Service Usage Fees you have paid to Lenovo for the Service Period under the order giving rise to the liability. This applies under contract, tort, strict liability or other legal theory.

6. Term; Termination

The term of this Agreement begins on the date you accepted the terms of this Agreement and continues until:

- a) you terminate the Agreement by cancelling your Subscription Services
- b) we terminate the Agreement by providing written cancellation notice to you
- c) you are in Default (as defined below in Section 7)
- d) for reasons outside Lenovo’s reasonably control we can no longer make the Subscription Services available to you.

For Customer’s termination of the Agreement under items (a) and (c) above, any Usage Fees paid are non-refundable. For Lenovo’s termination of this Agreement under items (b) and (d), Lenovo will provide a pro-rated refund of Usage

Fees paid for the number of unused months in the Subscription Period. Subscription Services will be suspended in the event of non-payment of Usage Fees.

Upon termination, cancellation or expiration of this Agreement and your account, you will have access to remove Your Content and data for a period of ninety (90) days. After ninety (90) days, Your Content and data, if any, will be deleted. Except as provided herein, Lenovo will have no obligation to hold, export or return Your Content and data and will have no liability whatsoever for deletion of Your Content and data pursuant to these terms.

7. Default

We may do one or more of the following if you Default (as defined herein)

1. revoke your use of the Subscription Services and terminate the Agreement;
2. to the extent permitted by law, discontinue Support Services
3. obtain any remedies available at law or in equity

All unpaid amounts will become immediately due and payable, if you Default. Damages are not an adequate remedy for a breach of this Agreement, so we have the right to obtain equitable relief, without bond or security, in addition to our rights to obtain damages and other legal remedies. "Default" means:

1. your material breach of any of your obligations under this Agreement, and that breach is not capable of remedy;
2. your failure to comply with any of your obligations under this Agreement, which failure continues for fourteen (14) days after written notice of the breach from us to you;
3. your failure to pay Usage Fees;
4. your actual or suspected bankruptcy, insolvency, or if you cease to operate your business as a going concern.

8. Data Security

Subject to Section 5 and your obligations under Sections 2 and 9, we will implement appropriate safeguards for preventing access, use, modification or disclosure of Your Content by our personnel except

1. to provide the Subscription Services and prevent or address service or technical problems
2. as compelled by law
3. as you expressly permit in writing

To the extent required by law, you shall notify the individual users of Subscription Services that their data may be processed for the purposes of disclosing it to law enforcement or other governmental authorities as directed by us and you shall obtain your user's consent to the same.

9. Indemnification

You agree to indemnify and hold harmless Lenovo, its affiliates and its suppliers, and their respective officers, employees and agents, from and against any and all liability, loss, damage, cost and expense (including attorneys' fees) on account of any claim, suit or action brought against Lenovo, its affiliates or its suppliers arising from your breach of your obligations hereunder. If you fail to defend in a timely manner, then Lenovo and its suppliers shall have the right to defend or settle such action (which will not change these indemnification obligations). In this case you agree to pay all reasonable legal fees expended to defend these types of claims. You are responsible for any use of the Subscription Services or acts by you or your employees relating to the Subscription Services for purposes not intended or permitted by this Agreement or in violation of any law or any rights of third parties.

10. General

1. This Agreement contains the entire agreement between us regarding the subject matter herein and prevails over all oral and written communications or agreements between you and Lenovo. No prior statements (including any proposals) will be a part of the Agreement. You are not relying on any statements not contained in the Agreement. Any changes to the Agreement must be in writing and accepted by both parties, except as otherwise permitted herein. Lenovo's forbearance will not waive our rights under the Agreement or any other rights or remedies at law or equity.
2. Sections which by their nature are intended to survive termination of this Agreement shall survive termination of this Agreement.
3. Any notice required under this Agreement will be in writing and will be
 1. delivered by hand
 2. sent by fax or e-mail (with confirming receipt)
 3. mailed by registered, certified mail or other receipted delivery service, return receipt requested, to the address or fax number on record with each party.

For Lenovo, the address shall be: Lenovo Technology Sdn. Bhd., Attn: Account Receivable, Jalan SS 21/39, Damansara Utama, 47400 Petaling Jaya, Selangor, Malaysia.

4. The Agreement will bind and benefit you, Lenovo and allowed successors and assigns. Lenovo may delegate any of our obligations and assign this Agreement and any of our rights under this Agreement. Lenovo's assignee will have our rights and remedies involving any assigned rights, without right of setoff or counterclaim. You may not assign this Agreement or any rights hereunder (including your rights to use Subscription Services or delegate any of your responsibilities hereunder, either voluntarily or involuntarily), without our prior written consent. Without limitation, your sale of shares or assets of your business entity shall constitute an assignment for purposes of this section.
5. In consideration of the substantial investment of time and money made by Lenovo in the procurement, training, and development of our personnel, you will not solicit for employment or employ or use the services of, either directly or indirectly, any of Lenovo's employees while such employee is providing services to you, and for one year thereafter, without our prior written approval.
6. This Agreement and all orders issued hereunder will be governed under the laws of Malaysia, without regard to its conflict of law principles. Neither party may bring an action arising out of or related to this Agreement more than two years after the cause of action arose. **All claims or disputes arising out of or in connection with this Agreement shall be brought exclusively in a court located in Kuala Lumpur, Malaysia.**
7. If for any reason a court of competent jurisdiction finds any provision of this Agreement invalid or unenforceable, such decision shall not affect the validity or enforceability of the Agreement or any of the remaining provisions and this Agreement shall be construed by adding a valid provision which effectuates the intent of the invalid provision as nearly as lawfully possible.
8. If you are a governmental or quasi-governmental user, you acknowledge and agree that the Subscription Service may only be used subject to the terms and conditions of this Agreement.
9. Lenovo is hereby made a third-party beneficiary of this Agreement to protect its interests in and to the Subscription Services.
10. In relation to personal data disclosed by you to Lenovo, you may make inquiries or complaints, and access or correct such information or limit the processing of personal data by contacting the Data Privacy Officer via telephone at +603 7710 9012 or via e-mail at Lenovomy@lenovo.com. Note that it will be necessary for Lenovo and the enterprise of which it is a part to process such information in connection with this Agreement and the Subscription Services, without which Lenovo will not be able to carry out its performance of this Agreement. You represent and warrant that the consent of individuals whose information you have disclosed to Lenovo and the enterprise of which it is a part have been sufficiently obtained to allow Lenovo and the

enterprise of which it is a part to process the same for purposes relating to this Agreement and the Subscription Services.

Microsoft Cloud Agreement

This Microsoft Cloud Agreement is entered into between the entity you represent, or, if you do not designate an entity in connection with a Subscription purchase or renewal, you individually (“Customer”), and Microsoft Regional Sales Pte Ltd (“Microsoft”). 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 your Reseller provisions your Subscription. Key terms are defined in Section 10.

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 (1) Customer must order sufficient licenses to cover its use, and (2) if unlicensed use is 5% or more, Customer must reimburse Microsoft for the costs Microsoft incurred in verification and acquire the necessary additional licenses at 125% of the price, based on the then-current price last and customer price level. The unlicensed use percentage is based on the total number of licenses purchased for current use compared to the actual installed base. 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. **Choosing a Reseller.** Customer must choose and maintain a Reseller authorised within its region. If Microsoft or Reseller chooses to discontinue doing business with each other, Customer must choose a replacement Reseller or purchase a Subscription directly from Microsoft, which may require Customer to accept different terms.
- b. **Available Subscription offers.** The Subscription offers available to Customer will be established by its Reseller and generally can be categorised 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.

c. Ordering.

- i. Orders must be placed through Customer's designated Reseller. 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. Customer's Reseller 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.

- d. Pricing and payment.** Prices for each Product and any terms and conditions for invoicing and payment will be established by Customer's Reseller.

e. 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 its Reseller with notice of its intent not to renew prior to the expiration of the Term.

- f. 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 <http://go.microsoft.com/academic>;
- ii. For government offers, the requirements listed at <http://go.microsoft.com/government>; and
- iii. For non-profit offers, the requirements listed at <http://go.microsoft.com/nonprofit>.

Microsoft reserves the right to verify eligibility at any time and suspend the Online Service if the eligibility requirements are not met.

- g. 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 Customer's Subscription, whichever is earliest. Customer may terminate this agreement at any time by contacting its Reseller. The expiration or termination of this agreement will only terminate Customer's right to place new orders for additional Products under this agreement.
- b. Termination for cause.** If either party breaches this Agreement, the other party may terminate the breached agreement (in whole or in part, including orders) upon notice. If the breach is curable within 30 days, then the terminating party must provide 30 days' notice to the breaching party and an opportunity to cure the breach.
- c. Cancel a Subscription.** Customer's Reseller will establish the terms and conditions, if any, upon which Customer may cancel a Subscription.
- d.** To the extent necessary to implement the termination provisions of this agreement, both parties waive any rights they have, or obligation that they may have, now or in the future under any applicable law or regulation, to request or obtain the approval, order, decision or judgment of any court to terminate this agreement.

4. Security, privacy, and data protection.

- a. Reseller Administrator Access and Customer Data.** Customer acknowledges and agrees that (i) once Customer has chosen a Reseller, that Reseller 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 Reseller; (ii) Customer can, at its sole discretion and at any time during the Term, terminate its Reseller's administrative privileges; (iii) Reseller's privacy practices with respect to Customer Data or any services provided by Reseller are subject to the terms of Customer's agreement with its Reseller and may differ from Microsoft's privacy practices; and (iv) Reseller may collect, use, transfer, disclose, and otherwise process Customer Data, including personal data. Customer consents to Microsoft providing Reseller with Customer Data and information that Customer provides to Microsoft for purposes of ordering, provisioning and administering the Online Services.

- b. 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.
 - c. 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 a Reseller. 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.
 - d. 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 Reseller or as required by law, and Customer shall obtain the users' consent to the same.
 - e. Customer appoints Reseller as its agent for purposes of interfacing with and providing instructions to Microsoft for purposes of this Section 4.
- 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, 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. Defence of third party claims.

The parties will defend each other against the third-party claims described in this section and will pay the amount of any resulting adverse final judgment or approved settlement, but only if the defending party is promptly notified in writing of the claim and has the right to control the defence and any settlement of it. The party being defended must provide the defending party with all requested assistance, information, and authority. The defending party will reimburse the other party for reasonable out-of-pocket expenses it incurs in providing assistance. This section describes the parties' sole remedies and entire liability for such 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. **By Customer.** To the extent permitted by applicable law, Customer will defend Microsoft against any third-party claim to the extent it alleges that: (1) any Customer Data or Non-Microsoft software hosted in an Online Service by Microsoft on Customer's behalf misappropriates a trade secret or directly infringes a patent, copyright, trademark, or other proprietary right of a third party; or (2) Customer's use of any Product or Fix, alone or in combination with anything else, violates the law or harms a third party.

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 authorised 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.

Customer's Reseller will provide details on support services available for Products purchased under this agreement. Support services may be performed by Reseller or its designee, which in some cases may be Microsoft. If Customer purchases Professional Services under this agreement, the performance of those Professional Services will be subject to the terms and conditions in the Use Rights.

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

Notices should be sent to:

Microsoft Regional Sales Pte Ltd
Dept. 551, Volume Licensing
438B Alexandra Road, #04-09/12, Block B
Alexandra Technopark
Singapore 119968

You agree 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 you actually receive the email.

- b. **Assignment.** You may not assign this agreement either in whole or in part. Microsoft may transfer this agreement without your 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. **Applicable law and venue.** This agreement is governed by Washington law, without regard to its conflict of laws principles. Subject to sections (i) and (ii) below, if Microsoft brings an action to enforce this agreement, Microsoft will bring it in the jurisdiction where Customer has its headquarters. If Customer brings an action to enforce this agreement, Customer will bring it in the State of Washington, U.S.A. This choice of jurisdiction does not prevent either party from seeking injunctive relief with respect to a violation of intellectual property rights.
 - i. If Customer's principal place of business is in Brunei, Malaysia or Singapore, Customer consents to the non-exclusive jurisdiction of the Singapore courts.
 - ii. If Customer's principal place of business is in Bangladesh, Cambodia, India, Indonesia, Macau SAR, the People's Republic of China, Sri Lanka, Thailand, The Philippines, or Vietnam, any dispute arising out of or in connection with this agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in Singapore in accordance with the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC"), which rules are deemed to be incorporated by reference into this subsection. The Tribunal shall consist of one arbitrator to be appointed by the Chairman of SIAC. The language of the arbitration shall be English. The decision of the arbitrator shall be final, binding and incontestable and may be used as a basis for judgment thereon in the above-named countries or elsewhere. To the maximum extent permitted by applicable law, the parties waive their right to any form of appeal or other similar recourse to a court of law. For the purpose of this agreement only, the People's Republic of China does not include Hong Kong SAR, Macau SAR and Taiwan.
- k. **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.
- l. **Survival.** All provisions survive termination of this agreement except those requiring performance only during the term of the agreement.
- m. **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, enduse and destination restrictions issued by U.S. and other governments related to Microsoft products, services, and technologies.
- n. **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, labour 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.
- o. **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.
- p. **Government customers should consult with Microsoft.** Government customers should consult with Microsoft prior to acceptance. If Customer is a government customer, before accepting this agreement, Customer should consult with its Microsoft representative to assure full compliance with local laws and governmental procurement processes.
- q. **Consumer remedies.** The following provision is only applicable to customers in Australia: Notwithstanding anything in this agreement, consumers may have the benefit of certain, rights or remedies pursuant to the Competition and Consumer Act 2010 (Cth) and similar state and territory laws in Australia in respect of which liability may not be excluded. If so, then to the maximum extent permitted by law, such liability is limited, at Microsoft's option, in the

case of goods to either (1) replacement of the goods or (2) correction of defects in the goods, and in the case of services to either (1) resupply of the services or (2) the cost of the resupply of the services. Australian law requires Microsoft to notify consumer purchasers of Microsoft goods that: "Microsoft's goods come with guarantees that cannot be excluded under the Australian Consumer Law. Customer is entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. Customer is also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure."

r. **Statutory liability.** The following provision is only applicable to customers in New Zealand.

- i. **Business.** Where Microsoft acts as a "supplier" (as that term is defined in the Consumer Guarantees Act 1993 ("CGA")) of a Product, Customer confirms that the Product provided MCA2017Agr(Asia)ExJPN,KOR,TAI(ENG)(Mar2019) Page 9 of 10 by Microsoft under this agreement is acquired for the purposes of a business (as that term is defined in the CGA) and that the CGA does not apply to the Product supplied by Microsoft.
- ii. **Consumers.** Nothing in this agreement is intended to limit the rights of a "consumer" under the CGA where that Act applies, except to the extent permitted by that Act, and the terms of this agreement are to be modified to the extent necessary to give effect to this intention.

10. 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.

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

"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.

"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.

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

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

"Online Services" means any of the Microsoft-hosted online services subscribed to by Customer under this agreement, including 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.

“Professional Services” means Product support services and Microsoft consulting services provided to Customer under this agreement. “Professional Services” does not include Online Services.

“Reseller” means an entity authorised by Microsoft to resell Software licenses and Online Service Subscriptions under this program and engaged by you to provide assistance with your Subscription.

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

“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 enrolment for Online Services for a defined Term as established by your Reseller.

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

“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.