

# 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 Ireland Operations Limited (“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. 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.
- d. 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.
- e. 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."
- f. 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 authorized 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 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.
- 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 nonprofit 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.

### **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.
- 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.

## 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, 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.**

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 defense 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 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.

## 8. **Support.**

Customer's Reseller will provide details on support services available for Products purchased under this agreement.

## 9. **Miscellaneous.**

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

**Notices should be sent to:**

Microsoft Ireland Operations Limited  
Atrium Block B  
Carmenhall Road  
Sandyford Industrial Estate  
Dublin 18, Ireland

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 the laws of Ireland. 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 Ireland. This choice of jurisdiction does not prevent either party from seeking injunctive relief in any appropriate jurisdiction with respect to violation of intellectual property rights.
- 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, end-use 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, 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.
- 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. Waiver of right to void online purchases.** To the maximum extent permitted by applicable law, Customer waives its rights to void purchases under this agreement pursuant to any law governing distance selling or electronic or online agreements, as well as any right or obligation regarding prior information, subsequent confirmation, rights of withdrawal, or cooling-off periods.

## **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.

“Reseller” means an entity authorized 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 enrollment 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.



# Microsoft Cloud Agreement

## Supplement to the Online Services Terms for German Online Services

This amendment (“Amendment”) is entered into between the customer entity (“Customer”) and the Microsoft entity (“Microsoft”) who are party to the Microsoft Cloud Agreement (the “Agreement”). The parties agree that it amends the Agreement. This Amendment applies only to the German Online Services (as defined below).

The terms and conditions in this Amendment supersede any conflicting terms and conditions in Customer’s Agreement and supersede and replace any previous Agreement amendments related to the subject matter of this Amendment. The Parties amend and supplement the Agreement with the following:

### **1. Definitions.**

Except as otherwise defined in this Amendment, any and all capitalized terms shall have the definitions set forth in Customer’s Agreement.

“Customer Data” means, for the purposes of German Online Services, all data, including all text, sound, video, or image files, and software, that are provided to Microsoft and/or Data Trustee by, or on behalf of, Customer through use of the German Online Services.

“Data Trustee” means the German entity designated by Microsoft for controlling and supervising access to Customer Data in the German Online Services.

“German Online Services” means Microsoft Azure Germany, Microsoft Office 365 Germany, and Microsoft Dynamics 365 Germany as detailed and including any other Microsoft online services identified at [https://aka.ms/german\\_terms](https://aka.ms/german_terms) for which Customer Data is hosted in German Data Centers.

“German Data Centers” means the data centers located in Germany from which the German Online Services are hosted and where access to equipment containing Customer Data is controlled and supervised by Data Trustee. For additional information on the location and operation of German Data Centers, see the Trust Center.

“Microsoft Personnel” means Microsoft and its Affiliates’ employees and contractors, excluding Data Trustee (and any successor to Data Trustee).

### **2. German Online Services Supplemental Terms.**

- a. **Amendment to the Online Services Terms.** This Amendment amends the Online Services Terms (“OST”) in Customer’s Agreement. This Amendment applies only to the German Online Services.

Solely with respect to the German Online Services, the definition of “Online Services” in the OST, including in the Data Processing Terms (“DPT”), shall mean the German Online Services, but in the DPT shall continue to exclude Previews. This Amendment will remain in full force and effect until all of the Customer Data for each Subscription is deleted in accordance with the Agreement terms.

- b. **Location of Customer Data.** Customer Data will be stored solely within German Data Centers.

German Online Services do not control or limit the regions from which Customer or Customer’s end users may access or move Customer Data.

- c. **Microsoft Personnel Access to Customer Data.** Data Trustee alone controls access to Customer Data other than access initiated by Customer or Customer’s end users. Microsoft Personnel will not have access to Customer Data except:

(1) When such access is granted by Data Trustee for the limited purpose of Microsoft resolving a customer support incident or problem with the German Online Services or where such access is required for Microsoft Personnel to perform maintenance or improvements to the German Online Services. In those limited circumstances, Data Trustee will grant such access only for the duration necessary to resolve the issue. Data Trustee will monitor the access given and terminate the access when the issue is resolved.

or

(2) When such access is granted by Customer directly to Microsoft Personnel (for example, Customer sharing desktop with a Microsoft support engineer or e-mailing a Microsoft support engineer a file). Data Trustee has no obligation to control or monitor such access.

**d. Reseller Access to Customer Data.** As detailed in the Agreement, Reseller will have administrative access to your Customer Data. Reseller's access to Customer Data will not be controlled or monitored by Microsoft or the Data Trustee. Reseller's privacy and data processing 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 or the Data Trustee's privacy practices. Customer acknowledges that its Reseller may be subject to laws outside of Germany.

**e. Disclosure of Customer Data.** Because Microsoft Personnel will have no access to Customer Data except when such access is granted and monitored by Data Trustee or granted by Customer as described herein, Microsoft cannot and will not disclose Customer Data to any third party (including law enforcement) without approval by Data Trustee or Customer.

If Microsoft receives a request from a third party for Customer Data, Microsoft will inform the third party that Microsoft does not have access to Customer Data and will ask the third party to contact Data Trustee, Reseller and/or Customer. In connection with the above, Microsoft may provide Customer's basic contact information to the third party.

**f. Data Processing by Data Trustee.** Data Trustee is a data processor (or where Customer is itself the data processor, a sub-processor) acting on Customer's behalf for the limited purpose of performing or supervising tasks that require Microsoft Personnel to access Customer Data or the infrastructure in which Customer Data resides. Such tasks will be performed or supervised by the Data Trustee, or else directly by Customer. Data Trustee's obligations to Customer are set forth in a separate agreement between Customer and Data Trustee ("Data Trustee Agreement"), attached hereto as Attachment 1. Any modification to the Data Trustee Agreement must be approved in writing by Microsoft and the parties to the Data Trustee Agreement; failure to obtain such approval shall be a material breach of this Amendment.

Subject to the Data Trustee's data processor role, Microsoft is the data processor (or where Customer is itself the data processor, the sub-processor) acting on Customer's behalf in all other respects to provide the German Online Services as detailed in the Agreement and this Amendment. For clarity, neither Data Trustee nor Microsoft is a data sub-processor to the other party.

**g. Change in Data Trustee.** If the Data Trustee is replaced with a new entity (other than a German affiliate of the existing Data Trustee), Customer will be provided with 90 days' notice prior to the change. Any new Data Trustee must be approved by Microsoft and will: (1) make all the commitments set forth in the Data Trustee Agreement, (2) commit to operate in accordance with German law, (3) be incorporated and headquartered in Germany with controlling ownership also incorporated and headquartered in Germany, and (4) be financially independent from Microsoft. If Customer objects to the new Data Trustee, Customer may terminate its Subscriptions for German Online Services by providing Microsoft with a notice of termination before the end of the 90-day period. If Customer does not terminate before the end

of the 90-day period in accordance with the above terms, Customer shall be deemed to have accepted the new Data Trustee.

During the transition, the existing Data Trustee may grant limited, supervised access to Customer Data to the replacement Data Trustee as necessary for training the replacement Data Trustee in preparation for its assumption of the obligations under the Data Trustee Agreement.

Except for changes made by this Amendment, the Agreement remains unchanged and in full force and effect. If there is a conflict between any provision in this Amendment and any provision in the Agreement, this Amendment shall control.



# Attachment 1

## Customer – Data Trustee Agreement

*Note: The Customer-Data Trustee Agreement is a legally separate contract between Customer and Data Trustee, attached hereto for the convenience of the parties. Microsoft is not a party to this agreement.*

This agreement (“Data Trustee Agreement” or “Agreement”) is entered into between **Data Trustee** (defined below) and **Customer** for the limited purpose of memorializing Data Trustee’s obligations for the German Online Services.

### **Definitions**

“**Customer Data**” means all data, including all text, sound, video, or image files, and software, that are provided to Microsoft and/or Data Trustee by, or on behalf of, Customer through use of the German Online Service.

“**Data Trustee**” is T-Systems International GmbH, Hahnstr. 43, 60528 Frankfurt, a subsidiary of Deutsche Telekom AG and headquartered in Frankfurt. Further details available at <http://www.t-systems.com/compulsory-statement>.

“**German Online Services**” means Microsoft Azure Germany, Microsoft Office 365 Germany, and Microsoft Dynamics 365 Germany, as detailed and including any other Microsoft online services identified at [https://aka.ms/german\\_terms](https://aka.ms/german_terms) for which Customer Data is hosted in German Data Centers.

“**German Data Centers**” means the data centers located in Germany from which the German Online Services are hosted and where access to equipment containing Customer Data is controlled and supervised by Data Trustee.

“**Microsoft**” means the Microsoft entity identified in the Microsoft Agreement and its affiliates.

“**Microsoft Personnel**” means Microsoft and its employees and contractors, excluding Data Trustee (and any successor to Data Trustee).

“**Microsoft Agreement**” means Customer’s volume licensing agreement with Microsoft, including the Online Services Terms (“OST”) and Supplement to the Online Services Terms for German Online Services (“OST Supplement”).

### **Object, Scope, and Purpose of Data Processing by Data Trustee; Online Services Terms**

Data Trustee is a data processor (or where Customer is itself the data processor, a sub-processor) acting on Customer’s behalf for the limited purpose of performing or supervising tasks that require personnel to access Customer Data or the infrastructure in which Customer Data resides. Such tasks will be performed or supervised by the Data Trustee, or else directly by Customer. Subject to the Data Trustee’s data processor role, Microsoft is the data processor (or where Customer is itself the data processor, the sub-processor) acting on Customer’s behalf in all other respects to provide the German Online Services as detailed in the Microsoft Agreement (which include Microsoft’s Service Level Agreements). For clarity, neither Data Trustee nor Microsoft is a data sub-processor to the other party.

Data subjects include the Customer’s representatives and end-users including employees, contractors, and customers of the Customer. Data subjects may also include individuals attempting to communicate or transfer personal information to users of the Online Services provided by Microsoft.

**Use of Customer Data.** Customer Data will be used only to provide Customer the German Online Services including purposes compatible with providing those services. Data Trustee will not use Customer Data or derive information from it for any advertising or similar commercial purposes. As between the parties, Customer retains all right, title and interest in and to Customer Data. Data Trustee acquires no rights in Customer Data, other than the right to use the Customer Data as necessary to perform its obligations under this Agreement.

**Security Incident Notification.** If in the performance of its obligations under this Agreement, Data Trustee becomes aware of any unlawful access to any Customer Data stored on equipment under the control of Data Trustee, or unauthorized access to such equipment or facilities resulting in loss, disclosure, or alteration of Customer Data (each a "Security Incident"), Data Trustee will coordinate with Microsoft to promptly (1) notify Customer of the Security Incident; (2) investigate the Security Incident and provide Customer with detailed information about the Security Incident; and (3) take reasonable steps to mitigate the effects and to minimize any damage resulting from the Security Incident. Notification(s) of Security Incidents will be delivered to one or more of Customer's administrators by any means Data Trustee selects, including via email. It is Customer's sole responsibility to ensure Customer's administrators maintain accurate contact information on each applicable German Online Services portal. Data Trustee's obligation to report or respond to a Security Incident under this section is not an acknowledgement by Data Trustee of any fault or liability with respect to the Security Incident.

Customer must notify Data Trustee promptly about any possible misuse of its accounts or authentication credentials or any security incident related to a German Online Service under the control of Data Trustee.

**Customer Data Deletion.** No more than 180 days after expiration or termination of Customer's use of German Online Services, any Customer Data in Data Trustee's possession will be deleted.

**Customer Data Access.** For the term of this Agreement, Data Trustee will, at its election and as necessary under applicable law implementing Article 12(b) of the EU Data Protection Directive, either: (1) provide Customer with the ability to correct, delete, or block Customer Data, or (2) make such corrections, deletions, or blockages on Customer's behalf.

**Certifications and Audits.** Data Trustee will coordinate with Microsoft to provide that Data Trustee's handling of Customer Data is subject to the data security policy, ISO standards and audits (including Customer's rights with respect to such audits) applicable to the German Online Services.

**Security.** Data Trustee is committed to helping protect the security of Customer's information. Therefore Data Trustee has implemented and will maintain and follow appropriate technical and organizational measures, internal controls and information security procedures established by Microsoft. These measures, including the applicable standards on which the controls and information security procedures are based, are detailed in Microsoft's Online Services Terms and intended to protect Customer Data against accidental, unauthorized or unlawful access, disclosure, alteration, loss, or destruction. Additionally, Data Trustee will control access to Customer Data as detailed in this Agreement.

**Instructions.** As data processor (or sub-processor), Data Trustee will only act upon Customer's instructions. The Data Trustee Agreement is Customer's complete and final instructions to Data Trustee for the processing of Customer Data. Any additional or alternate instructions must be agreed to in writing and is subject to approval by Microsoft and Data Trustee.

### **Access to Customer Data**

Data Trustee alone controls access to Customer Data other than access initiated by Customer or Customer's end users. Microsoft Personnel will not have access to Customer Data except:

- (1) When such access is granted by Data Trustee for the limited purpose of Microsoft Personnel resolving a customer support incident or problem with the German Online Services or where such access is required for Microsoft to perform maintenance or improvements to the German Online Services. In those limited circumstances, Data Trustee will grant such access only for the duration necessary to resolve the issue. Data Trustee will monitor the access given and terminate the access when the issue is resolved.

or

- (2) When such access is granted by Customer directly to Microsoft Personnel (for example, Customer sharing desktop with Microsoft support engineer or e-mailing Microsoft support engineer a file). Data Trustee has no obligation to control or monitor such access.

### **Other Access**

In the event of an emergency that gives rise to imminent danger to persons or property at the data centers housing Customer Data, Data Trustee may grant access to emergency responders (e.g., police, ambulance personnel, fire fighters) solely as and for the time period reasonably necessary to respond to the emergency situation. Data Trustee will supervise the access by such responders to ensure it does not include access to Customer Data.

Microsoft may deploy anti-spam and anti-malware updates to the German Online Services without supervision of the Data Trustee, provided such updates do not provide Microsoft with access to Customer Data.

### **Disclosure of Customer Data**

Data Trustee will not disclose Customer Data to third parties except (1) as Customer directs, (2) as described in this Data Trustee Agreement, or (3) as required by German law.

Data Trustee will not disclose Customer Data to law enforcement unless required by German law. If compelled to disclose Customer Data to law enforcement, then Data Trustee will promptly notify Customer and provide a copy of the demand unless legally prohibited from doing so.

Upon receipt of any other third party request for Customer Data (such as requests from Customer's end users), Data Trustee will promptly notify Customer unless prohibited by German law. If Data Trustee is not required by law to disclose the Customer Data, Data Trustee will reject the request. If the request is valid and Data Trustee could be compelled to disclose the requested information, Data Trustee will ask the third party to request the Customer Data from Customer. If a data subject requests access to its data, Data Trustee will forward such request to the Customer.

Subject to the above, Data Trustee will not provide any third party: (1) direct, indirect, blanket or unfettered access to Customer Data; (2) the platform encryption keys used to secure Customer Data or the ability to break such encryption; or (3) any kind of access to Customer Data if Data Trustee is aware that such data is used for purposes other than those stated in the request.

In support of the above, Data Trustee may provide Customer's basic contact information to the third party.

### **Location of Data Processing**

All processing of Customer Data performed by Data Trustee shall take place within Germany.

### **Subcontractors and Affiliates**

Data Trustee may not subcontract any portion of its processing of Customer Data without written approval by Customer.

Data Trustee may use the affiliates listed below for certain data processing tasks to which Customer hereby consents:

Deutsche Telekom Regional Services and Solutions GmbH (RSS)  
Address: Lübecker Strasse 2, 39124 Magdeburg, Germany

T-Systems on site services GmbH (OS)  
Address: Holzhauser Straße 4 – 8, 13509 Berlin, Germany

I.T.E.N.O.S. International Telecom Network Operation Services GmbH (ITENOS)  
Address: Lievelingsweg 125, 53119 Bonn, Germany

T-Systems Multimedia Solutions GmbH (MMS)  
Address: Riesaer Str. 5, 01129 Dresden, Germany

Deutsche Telekom Technischer Service GmbH (DTTS)  
Address: Friedrich-Ebert-Allee 71-77, 53113 Bonn, Germany

Telekom Deutschland GmbH  
Address: Landgrabenweg 151, 53227 Bonn, Germany

Deutsche Telekom AG  
Address: Friedrich-Ebert-Allee 140, 53113 Bonn, Germany

Data Trustee remains responsible for the performance of such affiliates under this Agreement and will ensure such affiliates comply with all requirements herein, including processing Customer Data solely within Germany and subject to German law.

### **Compliance with Laws**

Data Trustee personnel are obligated to maintain the security and secrecy of any Customer Data as provided in this Agreement, and this obligation continues even after their engagement ends.

Data Trustee will comply with all laws and regulations applicable to its part of the provision of the German Online Services. However, Data Trustee is not responsible for compliance with any laws or regulations applicable to Customer or Customer's industry that are not generally applicable to Data Trustee. Data Trustee does not determine whether Customer Data includes information subject to any specific law or regulation.

Customer must comply with all laws and regulations applicable to its use of German Online Services, including laws related to privacy, data protection and other statutory confidentiality obligations. Customer is responsible for implementing and maintaining privacy protections and security measures for components that Customer provides or controls (such as within a Microsoft Azure customer's virtual machine or application), and for determining whether the German Online Services are appropriate for storage and processing of information subject to any specific law or regulation.

### **Privacy Contact**

The privacy representative for Data Trustee can be reached at the following address:

Deutsche Telekom AG  
Konzerndatenschutz / Group Privacy  
Konzernbeauftragter für den Datenschutz / CPO  
Friedrich-Ebert-Allee 140  
D-53113 Bonn, Germany

### **Term & Termination; Duration of Data Processing; Survival of Terms**

This Data Trustee Agreement shall automatically terminate upon (1) any termination or expiration of Customer's Microsoft Agreement or enrollment for German Online Services thereunder or (2) if Customer objects to the assignment to a replacement data trustee as specified in the Assignment provision below. Additionally, Data Trustee may terminate this Data Trustee Agreement with a notice period of 90 days if Data Trustee's agreement with Microsoft is terminated and Data Trustee is no longer acting as Data Trustee.

Data Trustee's obligations with respect to Customer Data in its possession shall remain in force until such Customer Data has been deleted.

### **Assignment; Change in Data Trustee**

Customer may assign this Data Trustee Agreement to its affiliate only if (1) such assignment would be permitted by the assignment provision of its Microsoft Agreement, (2) Customer simultaneously assigns its Microsoft Agreement to the same affiliate, and (3) Customer provides notice in writing of the assignment.



Any other assignment by Customer must be approved by Data Trustee and Microsoft in writing and is void if no such approval is obtained.

Data Trustee may assign this Agreement to a replacement Data Trustee by providing Customer with 90 days' written notice of such assignment. If Customer objects to such assignment, Customer's only remedy is to terminate this Data Trustee Agreement by providing written notice before the end of the 90-day period, in which event this Agreement will be deemed terminated upon receipt by Data Trustee of such written notice. If Customer does not object to the assignment before the end of the 90-day period in accordance with the above terms, the assignment shall be deemed accepted and the Data Trustee Agreement shall remain in full force and effect with the replacement data trustee.

During the transition phase, the existing Data Trustee may grant limited, supervised access to the replacement Data Trustee as necessary for training the replacement Data Trustee in preparation for its assumption of the obligations under this Agreement.

### **Liability**

- (1) Data Trustee shall be liable to Customer solely in accordance with statutory laws:
  - a) for any damage caused by willful intent or gross negligence on the part of Data Trustee, its legal or vicarious agents;
  - b) in accordance with the Product Liability Act,;
  - c) for damages arising from loss of life, bodily injury or damage to health caused by the Data Trustee, its legal or vicarious agents; and
  - d) in case Data Trustee is liable on grounds of a guarantee within the meaning of sections 434 and 443 of the German Civil Code ("Bürgerliches Gesetzbuch").
  
- (2) Data Trustee shall not be liable in the event of slight negligence unless a significant contractual obligation has been violated whose fulfillment is a prerequisite for the proper performance of the Agreement or the infringement of which jeopardizes the achievement of the purpose of the Agreement, and upon whose compliance the customer can normally rely (*Kardinalpflichten*).

If Data Trustee is liable as set forth in this subsection (2), any property or pecuniary damage shall be limited to foreseeable damage that is typical for the Agreement. This shall also apply to lost profit and unachieved savings.

The liability as described in this Subsection (2) for property damage and pecuniary damage shall be limited to the lesser of (a) 250,000 EUR per damage event and 500,000 EUR for all damage arising from this Agreement and (b) the limitation of liability set forth in the Microsoft Agreement.

Liability as stipulated under Subsection (1) above shall remain unaffected by this subsection (2).

- (3) Subsections (1) through (2) shall apply accordingly to claims for the reimbursement of expenses and any other liability and indemnification claims asserted by the customer against Data Trustee.

### **Applicable Law & Venue**

The terms of this Data Trustee Agreement shall be governed by and construed in accordance with the laws of Germany. Any action to enforce this Data Trustee Agreement must be brought in Germany.

### **Notices**

Notices will be treated as delivered on the date shown on the return receipt or on the courier confirmation of delivery. Notices, authorizations, and requests in connection with this Data Trustee Agreement must be sent by regular or overnight mail or express courier to the Data Trustee at:

T-Systems International GmbH  
Digital Division  
CPPE / Microsoft – Postfach 29  
Fasanenweg 5  
70771 Leinfelden-Echterdingen  
Germany

Copies of all notices must also be sent to:

Microsoft Corporation  
Legal and Corporate Affairs  
Volume Licensing Group  
One Microsoft Way  
Redmond, WA 98052  
USA

**Entire Agreement; Modifications**

This Data Trustee Agreement is the entire agreement concerning its subject matter and supersedes any prior or concurrent communications. Any modification to this Data Trustee Agreement must be approved in writing by Microsoft, Data Trustee, and Customer.

**Signature of this Data Trustee Agreement**

This Data Trustee Agreement is executed between:

**Customer**, as identified below

and

**T-Systems International GmbH**

Hahnstraße 43d  
60528 Frankfurt a.M.  
Germany

Customer is responsible and should determine whether the data protection law or other laws applicable to Customer (e.g., German data protection law) requires the written form of this Data Trustee Agreement.

Where it does, Customer should print a copy of this Agreement and without making modifications, sign it below, and return to:

Microsoft Deutschland GmbH  
Attention: Microsoft Cloud Germany  
Walter-Gropius-Straße 5  
80807 München  
Germany

Alternatively, where permitted, the parties (or their authorized representatives) may execute via a separate signature form or through electronic consent.

<b><i>Optional signature on behalf of Customer</i></b>
Customer Signature:
Name of Entity (Legal Entity Name):
Printed First and Last Name:
Printed Date:
Signature Date:

Customer Phone Number:
Customer E-Mail Address:
Customer Mailing Address:

<b><i>Completed by Customer</i></b>
Name of Reseller:
Reseller Phone Number:
Reseller E-Mail Address:

<b><i>Optional signature on behalf of Data Trustee</i></b>
Signature on behalf of Data Trustee:
Printed First and Last Name:
Company*:
Printed Title:
Signature Date:

*\*where company other than Data Trustee is authorized to sign on Data Trustee's behalf*

