

You should read and print in its entirety for your records.

Agreement for Microsoft Services

BY PURCHASING OR USING THE SERVICES, YOU ACCEPT AND AGREE TO BE BOUND BY THIS AGREEMENT, THE WEB SITE TERMS OF USE AND PRIVACY STATEMENT AND THE POLICIES PROVIDED ON THE SERVICES WEB SITE, ALL OF WHICH ARE INCORPORATED INTO AND FORM PART OF THIS AGREEMENT.

YOU ALSO REPRESENT THAT YOU HAVE READ AND UNDERSTAND ALL OF THE PROVISIONS OF THIS AGREEMENT. IN THE EVENT OF A CONFLICT BETWEEN THIS AGREEMENT AND YOUR CURRENT SERVICES AGREEMENT WITH MICROSOFT (IF ANY), THE TERMS AND CONDITIONS OF YOUR CURRENT SERVICES AGREEMENT WITH MICROSOFT CONTROLS. IF YOU DO NOT AGREE TO BE BOUND BY THESE TERMS, CONTACT US FOR A REFUND WITHIN 72 HOURS OF PURCHASE AND DO NOT USE THE SERVICES.

This Agreement for Microsoft Services (the “**agreement**”) is entered into by and between the entity ordering the services (“**you**” or “**your**”) and the closest Microsoft affiliate located in your country or region, unless we designate otherwise in Section 9 below (“**we**,” “**us**,” or “**our**”). “**Affiliate**” means any legal entity that you or we own, which owns you or us, or which is under common ownership with you or us. “**Ownership**” means more than 50% ownership.

Terms and Conditions

1. SERVICES. We agree to use commercially reasonable efforts to provide the services you purchase as described on the services Web site (otherwise known as the “**services guide**”). The Web site URL for the services guide is:

https://mbs.microsoft.com/customersource/serviceplans/customerserviceplans/services_guidebook.htm. If the URL changes for any reason, we will provide the new URL to you upon your request.

Your use of the services is governed by this agreement and the services guide, which is hereby incorporated by reference into this agreement. In the event of a conflict between this agreement and the services guide, this agreement will apply.

Our ability to deliver the services depends upon your full and timely cooperation, as well as the accuracy and completeness of any information you provide.

2. OWNERSHIP AND LICENSE.

- a. **Fixes.** We grant you a non-exclusive, perpetual, fully paid-up license to use and reproduce the fix we or our designee deliver to you for your internal use only. Fixes are not for resale or distribution to unaffiliated third parties. Except as otherwise provided herein, the license rights granted to fixes are governed by the license agreement for the affected product or, if the fix is not provided for a specific product, any other use terms we provide. Your use of the product is governed by the license agreement for the product. You are responsible for paying any product licensing fees. “**Product(s)**” means any computer code, web-based services or materials comprising commercially released, pre-release or beta products (whether licensed for a fee or no charge) and any derivatives of the foregoing we or our designee make available to you for license which is published by us, our affiliates or a third-party. “**Fixes**” means product fixes that we either release generally (such as commercial product service packs) or that we or our designee provide to you when performing services (such as workarounds, patches, hot-fixes, updates, bug fixes, beta fixes and beta builds) and any derivatives of the foregoing. You may not modify, reverse engineer, decompile, disassemble, change the file name of or combine with any non-Microsoft computer code any fixes delivered to you.
- b. **Pre-Existing Work.** All rights in any computer code or non-code based written materials (“**materials**”) developed or otherwise obtained by or for us or our affiliates, or you or your affiliates independent of this agreement (“**pre-existing work**”) shall remain the sole property of the party providing the pre-existing work. During the performance of the services, each party grants to the other party (and our contractors as necessary) a temporary, non-exclusive license to use, reproduce and modify any of its pre-existing work provided solely for the performance of services. We grant you a non-exclusive, perpetual, fully paid-up license to use, reproduce and modify (if applicable) our pre-existing work, excluding products, in the form delivered to you that we leave with you at the conclusion of our performance of services for use with any developments (if applicable). The license rights granted to our pre-existing work are limited to your internal use only and are not for resale or distribution to unaffiliated third-parties.

- c. **Developments.** We grant you a non-exclusive, perpetual right to use, reproduce and modify any computer code or materials (except for fixes or pre-existing work) that we leave with you at the conclusion of our performance of the services ("**developments**") for your internal use only. Developments are not for resale or distribution to unaffiliated third parties.
- d. **Sample Code.** In addition to the rights set out in the Developments section above, you are also granted a non-exclusive, perpetual right to reproduce and distribute the object code form of any computer code, provided by us for the purpose of illustration ("**sample code**") provided that you agree: (i) not to use our name, logo, or trademarks to market your computer product in which the sample code is embedded; (ii) to include a valid copyright notice on your computer product in which the sample code is embedded; and (iii) to indemnify, hold harmless, and defend us and our suppliers from and against any claims or lawsuits, including attorneys' fees, that arise or result from the use or distribution of the sample code.
- e. **Open Source License Restrictions.** Because certain third party license terms require that computer code be generally (i) disclosed in source code form to third parties; (ii) licensed to third parties for the purpose of making derivative works; or (iii) redistributable to third parties at no charge (collectively, "open source license terms"), the license rights that each party has granted to any computer code (or any intellectual property associated therewith) do not include any license, right, power or authority to incorporate, modify, combine and/or distribute that computer code with any other computer code in a manner which would subject the other's computer code to open source license terms.

Furthermore, each party warrants that it will not provide or give to the other party computer code that is governed by open source license terms.
- f. **Affiliates Rights.** You may sublicense the rights contained in this section to your affiliates, but your affiliates may not sub-license these rights and your affiliates' use must be consistent with these license terms contained herein.
- g. **Reservation of rights.** All rights not expressly granted in this section are reserved.

3. CONFIDENTIALITY. The terms and conditions of this agreement are confidential, and any and all information identified by either party as "confidential" and/or "proprietary", or which, under all of the circumstances, ought reasonably to be treated as confidential and/or proprietary ("**confidential information**"), will not be disclosed by the receiving party to any third person without the express consent of the other party except under the terms of this agreement for five (5) years following the date of its disclosure. These confidentiality obligations shall not apply to any information which, (i) became known to receiving party from a source other than disclosing party other than by the breach of an obligation of confidentiality owed to disclosing party, (ii) is, or becomes, available to the general public other than through a breach by the receiving party, or (iii) is developed through the independent efforts of the receiving party. We may use any technical information we derive from providing services related to our products for problem resolution, troubleshooting, product functionality enhancements and fixes, and for our knowledge base. We agree not to identify you or disclose any of your confidential information in any item in the knowledge base.

4. WARRANTIES, DISCLAIMER.

- a. **NO WARRANTY.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE DISCLAIM AND EXCLUDE ALL REPRESENTATIONS, WARRANTIES, AND CONDITIONS WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO REPRESENTATIONS, WARRANTIES, OR CONDITIONS OF TITLE, NON-INFRINGEMENT, SATISFACTORY CONDITION OR QUALITY, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO ANY SERVICES, OR OTHER MATERIALS OR INFORMATION PROVIDED BY US.
- b. **Application of local laws.** If applicable law gives you any implied terms, despite the exclusions and limitations in this agreement, then to the extent permitted by applicable law, your remedies are limited, in the case of services to either (i) re-supply of the services or (ii) the cost of the re-supply of the services (if any), and in the case of goods to either (i) replacement of the goods or (ii) correction of defects in the goods. The order in which these limited remedies are provided will be determined by us.

5. LIMITATION OF LIABILITY, EXCLUSIONS. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW: 1) OUR TOTAL LIABILITY IS LIMITED TO THE AMOUNT YOU HAVE PAID FOR THE SERVICES REGARDLESS OF THE REASON FOR YOUR CLAIM; 2) NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, SPECIAL, INDIRECT OR INCIDENTAL DAMAGES LOSS OF PROFITS OR LOSS OF BUSINESS, FOR ANY MATTER RELATED TO THIS AGREEMENT, ANY SERVICES, OR ANY OTHER MATERIALS OR INFORMATION WE PROVIDE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH POSSIBILITY WAS REASONABLY FORESEEABLE, AND 3) IN THE EVENT SERVICES OR ANY SERVICES ARE PROVIDED TO YOU FREE OF CHARGE, OUR TOTAL LIABILITY TO YOU WILL NOT EXCEED US\$5.00 OR ITS EQUIVALENT IN LOCAL CURRENCY. THIS EXCLUSION OF LIABILITY DOES NOT APPLY TO EITHER PARTY'S LIABILITY TO THE OTHER FOR VIOLATION OF ITS CONFIDENTIALITY

OBLIGATION, THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, OR IN THE EVENT OF FRAUD, GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OR FOR DEATH OR PERSONAL INJURY CAUSED BY THAT PARTY'S NEGLIGENCE. BECAUSE SOME STATES AND JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY.

6. TAXES. The amounts to be paid to us under this agreement do not include any foreign, U.S. federal, state, provincial, local, municipal or other governmental taxes (including without limitation any applicable value added, or sales or use taxes) that are owed by you solely as a result of entering into this agreement. We are not liable for any taxes that you are legally obligated to pay. All such taxes (including but not limited to net income or gross receipts taxes, franchise taxes, and/or property taxes) shall be your financial responsibility.

7. TERMINATION. Either party may terminate this agreement if the other party is (i) in material breach or default of any obligation that is not cured within 30 calendar days notice of such breach or (ii) fails to pay any invoice that is more than 60 calendar days outstanding. You agree to pay all fees for services performed and expenses incurred.

8. MISCELLANEOUS. This agreement constitutes the parties' entire agreement concerning the subject matter hereof, and supersedes any other prior and contemporaneous communications. All notices, authorizations, and requests given or made in connection with this agreement must be sent by post, express courier, or facsimile to the addresses indicated by both parties. Notices will be deemed delivered on the date shown on the postal return receipt or on the courier, or facsimile confirmation of delivery. You may not assign this agreement without our written consent, which consent will not be unreasonably withheld. You and we agree to comply with all international and national laws that apply to this agreement. This agreement is governed by the laws of the State of Washington if the services were purchased in the United States, the laws of Ireland if purchased in any country or region in Europe, Middle East or Africa ("**EMEA**"), or the laws of the jurisdiction where the affiliate delivering the services is located if purchased outside the United States or EMEA. Any action brought under this agreement shall be brought in federal or state court in the State of Washington if the services were purchased in the United States, the courts of Ireland if the services were purchased in any country or region in EMEA, or the courts of the jurisdiction where the affiliate delivering the services is located if purchased outside the United States or EMEA. Notwithstanding, this does not prevent either party from seeking injunctive relief with respect to a violation of intellectual property rights or confidentiality obligations in any appropriate jurisdiction. The sections regarding restrictions on use, fees, confidentiality, ownership and license, no warranties, limitations of liability, termination, and miscellaneous of this agreement, will survive any termination or expiration of this agreement. If a court holds any provision of this agreement to be illegal, invalid or unenforceable, the remaining provisions will remain in full force and effect and the parties will amend the agreement to give effect to the stricken clause to the maximum extent possible. No waiver of any breach of this agreement will be a waiver of any other breach, and no waiver will be effective unless made in writing and signed by an authorized representative of the waiving party. Apart from the payment of any amounts due, neither party shall be liable for performance delays or for non-performance due to causes beyond its reasonable control. It is the express wish of the parties that this agreement be drawn up in English. C'est la volonté expresse des parties que la présente convention ainsi que les documents qui s'y rattachent soient rédigés en anglais.

9. MICROSOFT CONTRACTING ENTITY. The Microsoft contracting entity for this agreement is Microsoft Regional Sales Corporation if you are located in the following countries: Australia, Bangladesh, Hong Kong, India, Indonesia, Korea, Malaysia, New Zealand, Philippines, Singapore, Sri-Lanka, Taiwan, Thailand, and Vietnam. The Microsoft contracting entity for this agreement is Microsoft Ireland Operations, Limited if you are located in any country in Europe, Middle East or Africa.

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