Services Provider License Agreement (Indirect)

|  |  |  |  |
| --- | --- | --- | --- |
| Microsoft Partner Network Member Number  *Customer to complete* |  | Previous agreement number, if any  *Customer to complete* |  |

|  |
| --- |
| **This agreement must be attached to a signature form to be valid.** |

**Contents**

[***1.******Contact information.***1](#_Toc353790475)

[***2.******Customer's Affiliates.***3](#_Toc353790476)

[***3.******How to qualify for this program.***3](#_Toc353790477)

[***4.******Definitions.***3](#_Toc353790478)

[***5.******Reseller.***4](#_Toc353790479)

[***6.******How Products may be used.***5](#_Toc353790480)

[***7.*** ***Requirements for Software Services Resellers, Data Center Provider and data center outsourcing.*** 6](#_Toc353790481)

[***8.******End User Agreement requirements.***8](#_Toc353790482)

[***9.******Additional requirements and obligations.***9](#_Toc353790483)

[***10.******How to know what Product use rights apply.***10](#_Toc353790484)

[***11.******Monthly use reports.***11](#_Toc353790485)

[***12.*** ***Pricing and Invoices.*** 12](#_Toc353790486)

[***13.******How compliance is verified.***12](#_Toc353790487)

[***14.******Technical support services.***12](#_Toc353790488)

[***15.******Term and termination.***12](#_Toc353790489)

[***16.******Miscellaneous.***13](#_Toc353790490)

This Microsoft Services Provider License Agreement (“SPLA”) is entered into between the entities and as of the effective date identified on the signature form.

This agreement consists of (1) this SPLA, (2) the signature form, (3) the terms of the Microsoft Business Agreement or Microsoft Business and Services Agreement, as applicable (“Master Agreement”), and (4) the Services Provider Use Rights, or a successor document identified by Microsoft ("SPUR").

***Terms and Conditions***

# 1. Contact information.

Each party will notify the other in writing if any of the following contact information changes. The asterisks (\*) indicate required fields. By providing contact information, Customer consents to its use for the purposes of administering this agreement by Microsoft, its Affiliates and other parties that help administer this agreement.

1. **Primary contact information.** Customer must identify an individual from inside the organization to serve as the primary contact. This contact is the online administrator for the Volume Licensing Service Center and may grant online access to others.

**Name of entity (must be legal entity name and match information on the Program Signature Form)\***

**Contact name\* First**       **Last**

**Contact email address\***

**Street address\***

**City\***       **Postal code\***

**Country\***

**Phone\***

1. **Notices contact and online administrator.** This individual receives the contractual notices. This contact is also an online administrator for the Volume Licensing Service Center and may grant online access to others.

Same as primary contact

**Name of entity\***

**Contact name\* First**       **Last**

**Contact email address\***

**Street address\***

**City\***       **Postal code\***

**Country\***

**Phone\***

This contact is a third party (not the Customer). Warning: This contact receives personally identifiable information of the Customer and its Affiliates.

1. **Additional electronic contractual notices contact information.** The electronic contractual notices contact will receive electronic contractual notices in addition to the copies provided to the notices contact. This contact is not required if Customer does not need a duplicate set of notices.

Same as primary contact

**Name of entity\***

**Contact name\* First**       **Last**

**Contact email address\***

**Street address\***

**City\***       **Postal code\***

**Country\***

**Phone\***

1. **Language preference.** Select the language for notices.
2. **Microsoft account manager.** Provide the Microsoft account manager contact for this Customer.

**Microsoft account manager name**

**Microsoft account manager email address**

1. **Reseller information.**

**Reseller company name\***

**Country\***

**Contact name\***

**Phone\***

**Contact email address\***

The undersigned confirms that the information is correct.

|  |
| --- |
| **Reseller Signature\***  **Printed name\***  **Printed title\***  **Date\*** |

# 2. Customer's Affiliates.

Customer must identify each of its Affiliates, as provided below, before such Affiliates have any rights under this agreement. In addition, for any such Affiliate, the following restrictions apply:

1. Affiliates must sign an Affiliate agreement in a form provided by Microsoft;
2. Customer shall be legally responsible and indemnify Microsoft for any Affiliate’s violation of the terms of this agreement; and
3. Affiliates must be entire legal entities, not partial entities such as departments, divisions or business units.

When an Affiliate ceases to be Customer’s Affiliate, Customer must immediately notify Microsoft of the change in status and the Affiliate must immediately stop exercising any rights under this agreement. If neither of the options below is chosen, “Customer only” option will be considered as default.

Customer only

Customer and all Affiliates are included (including future Affiliates).

Customer and the following Affiliates:

Customer and all Affiliates, with the following Affiliate(s) excluded:

# 3. How to qualify for this program.

To be eligible for this program, Customer must enroll and maintain its status as a member of the Microsoft Partner Network at any level (Community, Subscriber, or other applicable Competency level).

# 4. Definitions.

All capitalized terms used, but not defined herein shall have the meanings given to them in the Master Agreement. In addition, the following definitions apply:

“Client Software” means software that is installed on an End User’s device that allows the device to access or use the Products. Client Software for the SPLA program is listed in the SPUR.

“Customer” means, for the purpose of this SPLA, the entity that has entered into the SPLA and its Affiliates, as appropriate.

“Data Center Provider” means an entity that provides software services, usually infrastructure services to another Service Provider, using Products licensed from Microsoft through the entity’s own SPLA. Microsoft may also serve as a Data Center Provider through Microsoft Azure.

“End User” means an individual or legal entity that obtains Software Services directly from Customer, or indirectly through a Software Services Reseller.

“End User Agreement” means the agreement between Customer and an End User under which Customer provides Software Services to the End User. With regard to Software Services Resellers, “End User Agreement” means the agreement between the Software Services Reseller and the End User under which the Software Services Reseller provides Customer’s Software Services to the End User.

“Hyperscale Service Provider” means any entity, collectively with its Affiliates, that (1) has submitted use reports to Microsoft (or a Reseller, as applicable) over the previous 12 months that total at least Eighteen Million U.S. Dollars (or the equivalent in the applicable currency) in connection with the provision of Software Services, directly or indirectly, to End Users under one or more license agreements with Microsoft (such as a SPLA), or (2) owns at least 750,000 physical servers in datacenters worldwide.

“Outsourcing Company” means a third party that performs data center management services or installation services for Customer.

“Product(s)” means, for the purpose of this SPLA, (1) all products listed in the Product Index section in the SPUR and (2) Redistribution Software.

“Redistribution Software” means software that may be installed on an End User’s device that may be used, modified, reproduced and/or redistributed by an End User without separate payment.

“Reseller” means a Microsoft authorized reseller of Products and Client Software for the SPLA program.

“Service Provider” means an entity that provides software as a service through the Internet, a telephone or private network using software either (1) licensed from Microsoft through SPLA or a third party entity; or (2) software developed by the entity itself. In the event an entity acquires Software Services from Customer as a Data Center Provider, the entity must add primary and significant functionality to the Software Services provided by Customer to be considered a Service Provider, in addition to being a Software Services Reseller.

“Software Documentation” means any documents included with a Product or Client Software.

“Software Services” means services that Customer provides to End Users that make available, display, run, access, or otherwise interact, directly or indirectly, with the Products. Customer must provide these services from data center(s) through the Internet, a telephone network or a private network, on a rental, subscription or services basis, whether or not Customer receives a fee. Software Services exclude any services involving installation of a Product directly on any End User device to permit an End User to interact with the Product.

“Software Services Reseller” means a legal entity that resells a Service Provider’s software services to End Users.

“Zero Use” means Customer and its Software Services Resellers did not use any of the Products to provide Software Services during the applicable calendar month.

# 5. Reseller.

1. **Reseller.** Customer must designate a Reseller in Section 1 of this SPLA. Microsoft will make available to Customer a list of the Resellers on a Microsoft designated website. All Resellers:
2. are independent contractors who act in their own name and for their own account;
3. have complete discretion regarding pricing, distribution, invoicing and collections; and
4. have no authority to bind or impose any obligation or liability whatsoever upon Microsoft.

Microsoft makes no representations, warranties or guarantees of any kind regarding the services of any Reseller.

1. **Change of Reseller.** If Customer’s relationship with Reseller terminates, or if Microsoft terminates Customer’s Reseller:
2. Customer or Microsoft, as applicable, will use commercially reasonable efforts to provide as much notice as possible prior to such event;
3. Customer will designate a replacement Reseller within fourteen (14) days of termination of the Reseller; and
4. Customer will complete and sign a change of Reseller form or Channel Partner form. The change of Reseller or Channel Partner form is available on a Microsoft designated website. The change of Reseller or Channel Partner form must be sent to Customer’s new Reseller for written acknowledgement of its appointment.

# 6. How Products may be used.

1. **License grant to provide Products as Software Services.** Subject to the terms of this agreement, Microsoft grants Customer a non-perpetual, non-exclusive, terminable, non-transferable, worldwide and limited right to copy, install, access, display, run, distribute, make available or otherwise interact with the Products in order to provide Software Services. These rights extend to the latest version of any Product (or any prior version) as permitted in the SPUR. This agreement does not modify Customer’s use of products licensed solely for internal use under other agreements with Microsoft. Customer’s rights under this agreement will automatically terminate upon expiration or termination of this SPLA. Microsoft reserves all rights not expressly granted.
2. **Internal use.** Customer may use Products for its internal use, so long as:
3. Customer reports such use in its monthly use report and pays for this use;
4. Customer’s use is less than 50% of the total use of such Products by all of its End Users (calculated on a Product-by-Product basis) each month; and
5. the SPUR does not restrict internal use for the Product at issue.
6. **Copying and distribution of Products and Software Documentation.** Customer may not make any copies of the original media or software except as permitted in this SPLA. Customer may make one backup copy of the original media or software containing the Products for each of its data centers. Customer must include on any copies all copyright, trademark and proprietary notices contained in or on the Products.

Customer may distribute original media or software containing Products only to Outsourcing Company and Customer’s Affiliates. Customer may only distribute original media or software containing Client Software and/or Redistribution Software to its End Users.

1. **End User Facility installations.** Customer may locate servers containing Products (“Servers”) on an End User’s premises (“End User Facility”) solely to provide Software Services to the End User, provided that the Servers remain under the day to day management and control of the Customer. Upon request, Customer will promptly identify the number of Servers located at each End User Facility and the Products installed on such Servers. Customer shall not permit End User (or any third party providing services to the End User) to access, maintain, or otherwise use the Products, except for the sole purpose of accessing the functionality of the Products in the form of Software Services in accordance with the terms of this agreement. Customer is responsible for all of its obligations under this agreement regardless of the physical location of the servers involved in providing the Software Service. Customer will be responsible to Microsoft for any unauthorized installation, use, copying, access or distribution of the Products by the End User.
2. **Evaluation and testing of Products by Customer.** Customer may install and use the Products on servers connected to Customer’s internal networks for internal testing and evaluation for a period of ninety (90) consecutive days. This period will begin on the date Customer first acquires the original media or software for the Product being tested or evaluated.
3. **End User demonstrations.** Customer may demonstrate its Software Services to prospective End Users so long as such demonstration is consistent with the SPUR. Customer may have up to fifty (50) active user IDs for demonstration purposes. Customer must keep records of all demonstrations, including the name of the prospective End User and the number of user IDs used. Customer must make these records available to Microsoft when Microsoft verifies Customer’s compliance with this agreement.
4. **End User evaluations.** Customer may use the Products to provide Software Services on a trial basis to its End Users if the following conditions are met:
5. the sole purpose of the trial is for the End Users’ evaluation of the Software Services;
6. the trial is not longer than sixty (60) days for any given End User;
7. the SPUR does not restrict such use;
8. Customer has entered into End User Agreements with the End Users; and
9. Customer does not charge or receive any fee or benefit from the End Users from the trial.

Customer must keep records of all End User evaluations, including the name and address of the prospective End Users and the total number of user IDs used. Customer must make these records available to Microsoft when Microsoft verifies Customer’s compliance with this agreement.

1. **Server administration and maintenance.** Customer may authorize up to twenty (20) individuals at a time per data center (including employees of any Outsourcing Company performing services for Customer) to access and use the Products for the sole purpose of testing, maintenance and administration of the Products.
2. **No High Risk Use.** The Products are not fault-tolerant and are not guaranteed to be error free or to operate uninterrupted. Customer must not grant any End User the right to use the Products in any application or situation where the Product(s) failure could lead to death or serious bodily injury of any person, or to severe physical or environmental damage (“High Risk Use”). High Risk Use does not include utilization of Products for administrative purposes, to store configuration data, engineering and/or configuration tools, or other non-control applications, the failure of which would not result in death, personal injury, or severe physical or environmental damage. These non-controlling applications may communicate with the applications that perform the control, but they must not be directly or indirectly responsible for the control function.

# 7. Requirements for using Software Services Resellers, Data Center Provider and data center outsourcing.

1. **Terms for using Software Services Resellers.**
2. **Customer using Software Services Resellers.** Customer may provide its Software Services through Software Services Resellers. Customer must require Software Services Resellers to provide Customer’s Software Services directly to End Users.
3. **Customer as a Data Center Provider to other Service Providers.** In the event Customer acts as a Data Center Provider providing Software Services to other Service Providers, these Service Providers may also use a Software Services Reseller to sell to End Users. Customer will use commercially reasonable efforts to prevent any unauthorized installation, distribution, copying, use, or pirating of the Products and Client Software it licenses under this agreement.
4. **Distribution of Client Software and/or Redistribution Software.** Customer may authorize (1) its Software Services Resellers and/or (2) Software Services Resellers of Service Providers using Customer as Data Center Provider, if appropriate, to distribute original media or software containing only Client Software and/or Redistribution Software to End Users. Customer is legally responsible to Microsoft for any unauthorized installation, use, copying, access, or distribution of Client Software and/or Redistribution Software by any such entities.
5. **Software Services Reseller Agreement.** Customer must sign and maintain an agreement with each of its Software Services Resellers (each, a “Software Services Reseller Agreement”). The Software Services Reseller Agreement must:

* comply with the requirements of this subsection;
* permit, upon Microsoft’s request, disclosure of the Software Services Reseller’s name and address to Microsoft;
* require that the Software Services Reseller sign and maintain End User Agreements with End Users as described in the section of the SPLA entitled “End User Agreement requirements”;
* inform the Software Services Reseller that it may not modify or use the Client Software and/or Redistribution Software in any manner that is not expressly authorized in this Agreement;
* require the Software Services Reseller to inform individuals that have access to the Products and Client Software that they are licensed by Microsoft and may only be used in accordance with the terms and conditions of this agreement;
* include terms substantially similar to the section of the Master Agreement entitled “Verifying compliance” and provide Microsoft the right to verify the Software Services Reseller’s compliance with the Software Services Reseller Agreement;
* include Microsoft as a third party beneficiary of the Software Services Reseller Agreement; and
* provide that the termination or expiration of this SPLA automatically terminates all rights to use the Products under the Software Services Reseller Agreement.

Customer must require any Service Provider using Customer as a Data Center Provider to enter into an agreement with its Software Services Resellers that complies with the terms of this subsection 7(a)(iv).

1. **Terms for using Data Center Providers and Outsourcing Companies.** Customer may also use Data Center Providers and/or Outsourcing Companies in the delivery of its Software Services to End Users. Customer may install the Products on servers under the day-to-day management and control of Data Center Providers and Outsourcing Companies under terms that satisfy the requirements of this subsection and permit, upon Microsoft’s request, the disclosure of the Data Center Provider or Outsourcing Company’s name and address to Microsoft. Customer is responsible for all of its obligations under this agreement regardless of the physical location of the servers involved in providing the Software Services.
2. **Scope of use when consuming software services from Data Center Providers.**  In an effort to verify compliance with this agreement, Microsoft may conduct a reasonable inspection of all servers that contain the Products licensed under this agreement, during regular business hours, and with at least ten (10) business days’ prior notice. Customer will remove all copies of the Products on the Data Center Provider’s servers at the earlier of the termination of use of Data Center Provider’s software services or when this SPLA terminates or expires.
3. **Using Microsoft Azure.** In the event Customer uses Microsoft as a Data Center Provider through Microsoft Azure, use of the Products remains subject to the terms of this agreement; however, nothing in this agreement shall operate to waive or amend the terms and conditions of any separate agreement governing Customer’s use of Microsoft Azure.
4. **Permitted Software using a Data Center Provider.** If Customer is using a Data Center Provider, only those Products identified in the SPUR as Products “eligible for Software Services on Data Center Provider’s servers” may be used under this agreement in that manner.
5. **Scope of use when using Outsourcing Company.** Customer may permit the Outsourcing Company to use and install the Products licensed and reported under this agreement only to perform data center administration, testing and/or maintenance support services on servers for Customer’s behalf. Customer may distribute original media or software for the Products licensed under this agreement to Outsourcing Company for installation purposes in accordance with this agreement. When Customer’s agreement with Outsourcing Company expires or terminates, Customer must use commercially reasonable efforts to (1) remove all copies of the Products licensed under this SPLA that are on the Outsourcing Company’s servers or render the Products permanently unusable; and (2) ensure that the Outsourcing Company returns or destroys the media containing the Products it has received. In addition, termination or expiration of this SPLA will automatically terminate all rights to use the Products available under this agreement.
6. **Outsourcing Company Agreement.** Customer must sign and maintain an agreement with each Outsourcing Company (“Outsourcing Company Agreement”) that must, at minimum:

* comply with the requirements of this subsection;
* require the Outsourcing Company to inform individuals that have access to the Products that the Products are licensed by Microsoft and may only be used in accordance with the terms and conditions of this agreement; and
* provide Microsoft the right to verify the Outsourcing Company’s compliance with the terms and conditions of this agreement as follows:
  1. Microsoft will use an independent auditor to conduct a reasonable inspection of all servers at the Outsourcing Company’s facility that contain the Products licensed under this agreement;
  2. The inspection will be conducted during regular business hours from the Outsourcing Company’s facility, with at least ten (10) business days’ prior notice; and
  3. Microsoft will conduct this inspection in a manner that will not interfere unreasonably with the operations of the Outsourcing Company.

# 8. End User Agreement requirements.

1. **Minimum required terms.** Customer must maintain End User Agreements with all End Users. Customer must include terms that are substantially similar to, but no less restrictive than, the document titled “End User License Terms,” a form of which will be provided to Customer by Microsoft and ensure that the End User Agreements are effective and binding in all applicable jurisdictions.
2. **Client Software and Redistribution Software.** If Customer does not distribute Client Software or Redistribution Software (individually or collectively, “Supplemental Software”) in connection with its Software Service, Customer is not required to include terms applicable to Supplemental Software in the End User Agreement. If Customer subsequently begins distributing Supplemental Software, Customer must update its End User Agreements to include the applicable Supplemental Software terms and ensure that all End Users agree to those terms before using the Supplemental Software. Customer is responsible to Microsoft for any unauthorized installation, use, copying, access or distribution of Supplemental Software by an End User if Customer fails to comply with the terms of this section.
3. **Compliance.** If Microsoft reasonably believes that any End User is not complying with the End User Agreement terms required by this Section, Customer must cooperate in good faith with Microsoft to investigate and remedy the non-compliance.
4. **Copies of Supplemental Software.** Within thirty (30) days of the termination of an End User Agreement, Customer shall:
5. remove all copies of Supplemental Software from the End User’s devices or otherwise render the Supplemental Software permanently unusable; and
6. require that the End User return or destroy all copies of Supplemental Software that it received.

# 9. Additional requirements and obligations.

1. **Copyright, trademark, and patent notices.** Customer must not remove any copyright, trademark, or patent notices contained in or on Products or Client Software. Customer has no right under this agreement to use any Microsoft logos in any manner whatsoever. Whenever a Product is first referenced in any written or visual communication, Customer must use the appropriate trademark, Product descriptor and trademark symbol (either “™” or “®”), and clearly indicate Microsoft’s (or Microsoft’s suppliers’) ownership of such marks. For information on Microsoft trademarks, including a listing of current trademarks, see <http://www.microsoft.com/trademarks>. Customer must not undertake any action that will interfere with or diminish Microsoft’s (or Microsoft’s suppliers’) right, title and/or interest in the trademark(s) or trade name(s). At Microsoft’s request, Customer must provide Microsoft with samples of all of Customer’s written or visual materials that use the name of any Product or Client Software.
2. **Anti-piracy.** Customer must not engage in the manufacture, use, distribution or transfer of counterfeit, pirated or illegal software. Customer may not distribute or transfer Products or Client Software to any party that Customer knows is engaged in these activities. Customer must report to Microsoft any suspected counterfeiting, piracy or other intellectual property infringement as soon as Customer becomes aware of it. Customer will cooperate with Microsoft in the investigation of any party suspected of these activities and any related remedy.
3. **Government approvals.** Customer must exercise its rights under this Agreement with all necessary government approvals. Customer also must comply with all applicable laws and regulations.
4. **Defense of Third Party Claims.** Customer must defend Microsoft against any third party claim relating to (1) any software virus introduced by Customer; (2) Customer’s material violation of the terms of this agreement unrelated to reporting or payment; (3) unauthorized installation, use, access, copying, reproduction, and/or distribution of any portion of the Products by an End User (or any third party providing services to the End User); (4) Customer’s continued distribution of an allegedly infringing Product after Microsoft provided Customer with notice to stop; or (5) an End User’s use of the Products in connection with any High Risk Use. Customer will pay the amount of any adverse final judgment or approved settlement resulting from a claim covered by this section. The obligations under this section are not subject to the limitation of liability or exclusion of certain damages under the Master Agreement.
5. **Anti-corruption laws.**
6. **Customer Compliance with Anti-Corruption Laws.** Customer will comply with all applicable laws against bribery, corruption, inaccurate books and records, inadequate internal controls and money-laundering, including the United States Foreign Corrupt Practices Act (“Anti-Corruption Laws”). No Customer representative will, directly or indirectly, offer or pay anything of value (including gifts, travel, hospitality, charitable donations or employment) to any official or employee of any governmental entity (including elected officials or any private person acting on behalf of such entity), political party, or public international organization, or any candidate for political office (“Government Official”), to (1) improperly influence any act or decision of such Government Official for the purpose of promoting the business interests of the other party in any respect, or (2) otherwise improperly promote the business interests of the other party in any respect. Customer is prohibited from paying expenses for travel, lodging, gifts, hospitality, or charitable contributions for Government Officials on Microsoft’s behalf. Customer is also prohibited from using any funds provided by Microsoft, or any proceeds resulting from any Microsoft business, to pay expenses for travel, lodging, gifts, hospitality or charitable contributions for Government Officials. Microsoft prohibits bribes of any kind, including facilitating payments. A facilitating payment is a small payment to secure or expedite a routine government action by a Government Official. Customer will not retaliate against anyone who has, in good faith, reported a possible violation of this subsection or refused to participate in activities that violate this subsection. If Customer violates this subsection, Microsoft may refer Company to U.S. or foreign authorities for criminal prosecution or other enforcement action, or bring suit for damages.
7. **Accounting and recordkeeping.** Customer shall establish and maintain a reasonable accounting system that enables Microsoft and its audit-related agents to identify, to the extent related to this SPLA, Customer’s assets, expenses, expenditures, costs of goods, margins, discounts, rebates or other payments and compensation received, and use of funds.  Customer shall maintain a system of internal controls to prevent the payment of bribes and provide reasonable assurance that financial statements and reporting are accurate.  Customer shall not have undisclosed or unrecorded accounts for any purpose. False, misleading, incomplete, inaccurate, or artificial entries in the books and records are prohibited.
8. **Training.** Customer will provide annual training to applicable employees who resell, distribute, or market the Products licensed by this agreement on compliance with Anti-Corruption Laws.  Customer certifies that this Anti-Corruption training has been provided to its applicable employees and, if not, Customer agrees to participate annually in online Anti-Corruption training made available free of charge by Microsoft and certify its completion, understanding, and compliance with the Anti-Corruption Policy for Microsoft Representatives.  Customer’s record-keeping obligations under this agreement apply to Customer’s certifications in this section and its compliance with Anti-Corruption Laws.

# 10. How to know what Product use rights apply.

1. **SPUR availability.** The SPUR is published periodically on a Microsoft website.
2. **Applicable Use Rights.** The Product use rights in the SPUR when Customer first provides Software Services with a Product during the term of this SPLA remain in effect for the term of this SPLA, subject to the following:
3. if Microsoft introduces a new version of a Product and Customer uses the new version, Customer must abide by the use rights for the new version; and
4. if Customer provides Software Services with an earlier version of a Product (“Downgrade”) and the Downgrade contains components that are not part of the Product version identified in the applicable Product use rights, then the use rights specific to those components from the SPUR last associated with the Downgrade will apply to those components.

During the term of this agreement, Microsoft may revise the SPUR in order to (1) add use rights for new Products or new versions of Products, (2) to make non-substantive changes, and (3) to remove Products.

1. **Removal of Products from the SPUR.** Notwithstanding anything to the contrary, if Microsoft notifies Customer of the removal of a Product or Client Software from the SPUR due to an intellectual property infringement claim or in accordance with a court or other governmental order, Customer must immediately cease any use or distribution of the allegedly infringing Product or Client Software. If a Product or Client Software is removed from the SPUR for any other reason, Customer may continue to license the removed Product or Client Software for the term of the SPLA.
2. **End User License Agreement applicability.** This agreement supersedes any end user license agreement (“EULA”) that may accompany a Product. If a EULA accompanies a fix, the use rights contained in that EULA (but not any warranties from Microsoft) that do not conflict with the SPUR apply.

# 11. Monthly use reports.

Customer must submit either a monthly use report or Zero Use report to its Reseller within ten (10) days after the last day of each month or on a date agreed to by Customer and its Reseller. An authorized representative of Customer must certify that the monthly use report or Zero Use report is accurate and complete.

* + - * 1. **Monthly reporting.** Customer must provide to its Reseller monthly use reports based on Customer’s monthly usage. Customer’s Reseller must submit monthly use reports to Microsoft for the minimum amount of US$100 per month (or the equivalency in the applicable currency as of the effective date), starting no later than the 6th month following the SPLA effective date. Customer’s Reseller will provide Customer details on the format of and procedure for submitting the reports. Customer must provide all applicable information requested in the monthly use report. At a minimum, each monthly use report Customer’s Reseller submits to Microsoft must include the following information:

1. the total number of licenses required for each Product that Customer used during the preceding calendar month;
2. End User name and address if the End User generated more than US$1,000 per month (or the equivalency in the applicable currency as of the effective date); and
3. the country in which the End User is located.

Customer’s monthly use report must include and consolidate the use of the Products by its Affiliates and Software Services Resellers. Customer’s Affiliates and Software Services Resellers do not submit monthly use reports directly to Customer’s Reseller. Customer does not need to provide a monthly use report for End User demonstrations, End User evaluations, Customer’s evaluation and testing of Products, or server administration and maintenance.

* + - * 1. **Zero use.** Customer must submit a Zero Use report to its Reseller if Customer had Zero Use.
        2. **Report revisions.** Customer must submit to Reseller, within sixty (60) days from the original invoice date (or any other date Customer has otherwise agreed upon with its Reseller), any adjustments or revisions (e.g., ordering mistakes) to a monthly use report resulting in a reduction of license fees to Microsoft. Customer must provide a detailed explanation of the adjustment or revision with the revised monthly use report.
        3. **Final monthly use report.** Customer must submit, within thirty (30) days of termination or expiration of this SPLA, a final monthly use report or Zero Use report to its Reseller. The report must cover Customer’s use of the Products through the date of termination or expiration.
        4. **Obtaining Products and Software Documentation.** Software Documentation and original media or software containing the Products may be ordered from Customer’s Reseller. Microsoft may limit the number of copies of original media or software and Software Documentation that Customer’s Reseller may order from Microsoft. Microsoft will provide Customer with the necessary codes to permit installation, re-installation and copying of the Products, subject to the terms of this agreement.

# 12. Pricing and Invoices.

1. **Price changes.** Microsoft may decrease prices of existent part numbers it charges Resellers at any time, which may be reflected on the Resellers’ price list to Customer. Microsoft may increase prices of existent part numbers charged to Resellers only as follows:
2. once each calendar year effective January 1st; and
3. at any time to offset exchange rate fluctuations for prices other than U.S. dollars.
4. **Reseller Invoices.** Customer’s Reseller will invoice Customer based upon the number of licenses reported in Customer’s monthly use report (including any internal use).

# 13. How compliance is verified.

1. **Verifying compliance.** During the term of this SPLA and for two years after the later of either (1) the termination of this SPLA, or (2) the date of issuance of final payment in connection with this SPLA between Microsoft and Customer, the Customer shall maintain any books, documents, records, papers, or other materials of the Customer related to the provision of Software Services under this SPLA, including any anti-corruption training materials and training completion records (the “Relevant Records”).  During the same period, Microsoft or its audit-related agents shall have access to the Relevant Records and Customer’s operations, processes and facilities for the purpose of verifying Customer’s compliance with this agreement.
2. **Anti-corruption audit.** Microsoft will provide Customer with at least thirty days written notice of Microsoft’s intent to exercise its rights under this subsection 13(b), and such audit will address only Customer’s obligations related to the section of this agreement entitled “Anti-corruption laws.”  The Relevant Records and, if requested, relevant employees, shall be made available to Microsoft or its audit-related agents during normal business hours at the Customer’s office or place of business. Microsoft may exercise its rights under this provision any time it has a good faith reason to believe that Customer or its representatives are in violation of any Anti-Corruption Laws in connection with this SPLA. Microsoft will pay the cost of any audit required to verify compliance with Anti-Corruption Laws.
3. **Licensing compliance audit.** Audits to verify compliance with the license terms of this agreement will be governed by the applicable terms in the Master Agreement, as modified by this agreement. In addition to the Relevant Records, Customer must promptly provide the independent auditor with any information it reasonably requests in furtherance of the verification of licensing compliance, including evidence of licenses for Products Customer uses to provide Software Services directly or indirectly, and access to all servers running the Products Customer hosts, sublicenses, distributes to, or manages on behalf of third parties. If verification of compliance with this agreement reveals unlicensed use, Customer shall pay 125% of the then current price for each unpaid license. Microsoft will presume that such unreported use began upon commencement of each End User relationship with Customer, unless Customer reasonably demonstrates a different scope and duration.

# 14. Technical support services.

The SPLA does not include support services for Customer or its End Users. Customer must provide support for its End Users either itself or by obtaining and continuously maintaining support for its End Users through Microsoft or a third party.

# 15. Term and termination.

1. **Agreement term.** The term of this SPLA is three years from the effective date identified on the signature form. The parties may terminate this SPLA earlier as described below. Microsoft will provide Customer with sixty (60) days prior written notice of agreement expiration.
2. **Wind down period.** If Customer and Microsoft will not enter into a new SPLA following the expiration of this SPLA, Customer may request an extension of the term of this SPLA for the purpose of winding down the provision of Software Services to its existing End Users (“Wind Down Period”). Microsoft in its sole discretion may approve or deny this request. Customer may only request a Wind Down Period if Customer has continuing obligations under existing End User Agreements to provide Software Services beyond the term of this SPLA. Customer must request the Wind Down Period not less than thirty (30) days before this SPLA expires. If Microsoft agrees to grant Customer’s request for a Wind Down Period:
3. the Wind Down Period will be the lesser of the longest remaining End User Agreement period or twelve (12) months; and
4. Customer may not provide Software Services to any new End Users or extend any existing End User Agreements during the Wind Down Period.
5. **Earlier termination.** Customer may voluntarily terminate this SPLA without cause upon sixty (60) days prior written notice to Microsoft. Either party may terminate this SPLA for cause upon thirty (30) days written notice, during which time the breaching party has a right to cure before the termination will become effective.

Microsoft may immediately terminate this SPLA by giving notice to Customer if:

1. Customer’s breach is not curable within thirty (30) days;
2. Customer breaches the subsection of the Master Agreement entitled “Assignment”;
3. required by a valid judicial or governmental order;
4. Customer commits three or more material breaches of the use rights contained in the SPUR;
5. Customer engages in any unauthorized manufacture, copying, distribution or use of any Products, or otherwise engages in the infringement of Microsoft’s intellectual property rights;
6. At any time after the first six consecutive months following the effective date of this agreement, Customer’s Reseller reports of Zero Use or less than US$100 per month (or the equivalency in the applicable currency as of the effective date);
7. Customer becomes insolvent, voluntarily or involuntarily enters bankruptcy, reorganization, composition or other similar proceedings under applicable laws, admits in writing its inability to pay debts, or makes or attempts to make an assignment for the benefit of creditors; or
8. Customer fails to enter into a SPLA through an alternative Reseller within fourteen (14) days after Customer’s relationship with a Reseller terminates.
9. **Generally.** Customer is not eligible to enter into this SPLA if Customer is a Hyperscale Service Provider. If Microsoft determines, at any time during the term of this SPLA, that Customer satisfied the definition of Hyperscale Service Provider as of the effective date, Microsoft may immediately terminate this SPLA for cause.
10. **Obligations on termination or expiration.** Upon termination or expiration of this SPLA, Customer must return all copies of the Products and Client Software (including their component parts) and Software Documentation that Customer received under this SPLA to its Reseller. Customer’s Reseller may instead instruct Customer to delete and destroy the Products and Client Software, their component parts and Software Documentation. Customer must certify to Microsoft the deletion and destruction of those copies, components parts, and Software Documentation. Customer must instruct its Affiliates, End Users, Outsourcing Company and Software Services Resellers to do the same. Microsoft will not refund any amounts paid for Software Documentation or original media or software that have been destroyed.

# 16. Miscellaneous.

1. **Notices to Microsoft.** Notices, authorizations, and requests in connection with this agreement must be sent by regular or overnight mail, express courier, to the addresses listed on the signature form and in this agreement. Notices will be treated as delivered on the date shown on the return receipt or on the courier confirmation of delivery.

|  |
| --- |
| **Copies must be sent to:** |
| Microsoft Corporation  Legal and Corporate Affairs  Volume Licensing Group  One Microsoft Way  Redmond, WA 98052  USA |

1. **Order of precedence.** In the case of a conflict between any documents in this agreement that is not resolved expressly in those documents, their terms will control in the following order, from highest to lowest priority: (1) the SPLA and the accompanying signature form; (2) the Master Agreement; and (3) the SPUR. Terms in an amendment control over the amended document and any prior amendments concerning the same subject matter.
2. **No transfer of ownership.** Microsoft does not transfer any ownership rights in any Product. The Products are protected by copyright and other intellectual property rights laws and international treaties.
3. **Amending the Agreement.** This agreement may be amended only by a formal written agreement signed by both parties. The SPUR (including any documents referenced therein) may be changed by Microsoft in accordance with the terms of this SPLA.
4. **Relationship between parties.** Neither this agreement as a whole nor any specific term or condition will be interpreted as creating a partnership, joint venture, agency, or franchise relationship between the parties.
5. **Force Majeure.** To the extent that either party’s performance is prevented or delayed, either totally or in part, for reasons beyond that party’s control, then that party will not be liable, so long as it resumes performance as soon as practicable after the reason preventing or delaying performance no longer exists.
6. **Survival.** Sections of this agreement that, by their terms, require performance after termination or expiration of this agreement, including but not limited to, provisions regarding, restrictions on use, compliance with laws, compliance verification and obligations on termination or expiration of this agreement, will survive termination or expiration of this agreement.