

Windows Desktop Application Program Agreement

Version 1.0

Effective date: October 1, 2017

Microsoft Corporation (including its Affiliates, “**Microsoft**,” “**We**,” “**Us**,” or “**Our**”) wants to ensure that you are fully aware of and understand the terms and conditions governing your participation in the Windows Desktop Application Program (the “**WDA Program**”).

By enrolling in the WDA Program and accessing the WDA Program Website, Company agrees to comply with the terms set forth below and the TOS (together “**this Agreement**”), and any other external documents referenced in this Agreement.

If you are an individual accepting this Agreement on behalf of a Company, you represent that: (i) you have the legal authority to accept this Agreement on that Company’s behalf, (ii) you have read and understand this Agreement, and (iii) you agree, on behalf of the Company that you represent, that your Company will comply with this Agreement. If you do not agree to, or with the above statements, or this Agreement, or if you are not authorized to accept this Agreement on your Company’s behalf, you must not enroll or participate in the WDA Program nor access the WDA Program Website. When agreeing to this Agreement on behalf of the Company you represent, unless the context suggests otherwise, the use of “You” or “Your” in this Agreement includes your Company.

1. Definitions.

1.1. “Affiliate(s)” means: (a) with respect to Microsoft, any legal entity that Microsoft owns, that owns Microsoft or that is under common control with Microsoft, and (b) with respect to Company, no person or legal entity. Within this definition, “control” or “own” means possessing a 50% or greater interest in an entity or the right to direct the management of the entity.

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

1.3. “Data” means App Analytics, Error Reporting Data and other information gathered by Microsoft from Microsoft customers using Microsoft products, along with certain associated content and/or software.

1.4. “Desktop Application” or “Desktop App” means an application that is built using the Win32 model and runs on the Windows desktop, inclusive of signed app packages that may include one or more bundled Desktop Apps, that Company submits for enrollment in the WDA Program.

1.5. “Microsoft Account” means the unique user name and password that identifies a customer of Microsoft services.

1.6. “Microsoft Materials” means the Data, software, services, technology, documents and other resources made available to you on or through the WDA Program Website, and such other WDA Program materials and information Microsoft makes available to developers from time to time, but excludes Microsoft Products.

1.7. “Microsoft Policies” means all then-current policies and procedures of Microsoft that Company must follow (including, without limitation, the TOS), which as of the Effective Date have been made available to you, and which if not already part of this Agreement are hereby incorporated by reference.

1.8. “Microsoft Products” means all Microsoft products and technologies Microsoft makes available to the public, including but not limited to products made available for license for a fee, products provided prior to commercial release, any online services and other web based services and hardware.

- 1.9. “Microsoft Privacy Statement”** means Microsoft’s privacy policy available at <https://privacy.microsoft.com/en-us/privacystatement/> or such other location as Microsoft may designate.
- 1.10. “NDA”** means the Microsoft Corporation nondisclosure agreement between you and Microsoft, if any.
- 1.11. “Personal Information”** means all information or data that identifies or could (alone or with other information or data) be used to identify, contact, or locate a person to whom such information pertains, or that is associated with such information or data. Examples of Personal Information may include: name and address, phone number, biometric identifiers, location, contacts, photos, audio and video recordings, documents, SMS, email, or other text communication, screen shots, and in some cases, combined browsing history.
- 1.12. “Personnel”** means yours or an affiliate’s employee, contractor, agents, advisor or consultant.
- 1.13. “TOS”** means the then-current Microsoft Terms of Service (linked at the bottom of the WDA Program Website or otherwise set forth at a location that Microsoft designates), which terms apply to Company's participation in the WDA Program, to the extent they do not conflict with this Agreement.
- 1.14. “WDA Program Account”** means a service account for the WDA Program Website, which includes a user name and password.
- 1.15. “WDA Program Website”** means a website, currently available at <http://developer.microsoft.com>, or other Microsoft owned and operated interface or successor sites, through which Company accesses information and receive communications from Microsoft relating to the WDA Program.

2. WDA Program General Terms and Administration.

- 2.1. Windows Desktop Application Program Description.** The WDA Program is intended to assist and support qualified companies in connection with their business of developing and supporting Desktop Apps. As part of the WDA Program, and subject to Section 3 of this Agreement, Microsoft may provide you with access to Microsoft Materials. The WDA Program and your use of the Microsoft Materials, including any updates, enhancements, or new features to either of the foregoing are subject to this Agreement.
- 2.2. WDA Program Administration and Changes.** Microsoft will administer the WDA Program through the WDA Program Website and by communicating with you in accordance with Section 11.1 of this Agreement. Microsoft may change any aspect of the WDA Program, including the WDA Program Website, in its own discretion without notice to you. You are responsible to check the WDA Program Website regularly for all changes, which are effective on the date they are posted. By accessing the WDA Program Website, you accept and agree to comply with the changes. Changes to the WDA Program and the WDA Program Website will not apply retroactively.
- 2.3. WDA Program Account.** To participate in the WDA Program, you must open a WDA Program Account. Microsoft may verify information you submit when you set up your WDA Program Account. You agree that any information you provide when establishing your WDA Program Account will be truthful and accurate at all times. Without limiting the foregoing, we have the right to fully cooperate with any law enforcement authorities or court order requesting or directing us to disclose your identity or your profile information. Microsoft may use the contact information you provide with your WDA Program Account to send you newsletters and information regarding events, contests, promotions, and the like. Your WDA Program Account is only for use by you and the individuals you authorize as your delegates in the WDA Program Website. You are responsible for all activity that takes place with your WDA Program Account. You may not share your user name and password or otherwise authorize any third party (other than your authorized delegate(s)) to access or use the WDA Program Website on your behalf. We have the right to freeze or remove your WDA Program Account if we deem it necessary or appropriate in our sole discretion, including if you fail to keep your WDA Program Account in good

standing (for example, by giving Microsoft incorrect or outdated information, by failing to provide any required information, by engaging in dishonest or fraudulent activity) or if you have otherwise violated this Agreement.

2.4. Your Privacy. Your privacy is important to us. Please read the Microsoft Privacy Statement as it describes the types of data we collect from you and your devices and how we use your data. By using the WDA Program Website or agreeing to this Agreement, you consent to Microsoft's collection, use and disclosure of your data as described in the Microsoft Privacy Statement.

2.5. Third Party Content. Microsoft may provide links to third party web sites and content through the WDA Program Website or in Microsoft Materials. The linked sites and content are not under Microsoft's control and Microsoft is not responsible for such content. Microsoft does not support or endorse any third-party sites or content and provides these links solely as a convenience. Microsoft makes no representations or warranties, express, implied or statutory, as to any third-party web sites or content.

3. Enrollment and Eligibility.

3.1. Enrollment and Eligibility. Your enrollment and eligibility for the WDA Program is subject to Microsoft's sole discretion. To participate in the WDA Program, you must claim at least one Desktop App under your WDA Program Account by following the enrollment process detailed on the WDA Program Website. Microsoft may request that you submit documentation and files related to your Desktop App, that Microsoft will use to confirm that such Desktop App can be enrolled in the WDA Program under your WDA Program Account. You confirm that you are the owner of any Desktop App you submit for enrollment in the WDA Program or otherwise have sufficient rights and authority to enroll such Desktop App under your WDA Program Account and rights to obtain all Data related to such Desktop App available under the WDA Program.

3.2. Non-Compliance with Eligibility Criteria. Microsoft will notify you if you no longer meet the eligibility criteria associated with the WDA Program and Microsoft may immediately revoke your access to Microsoft Materials and freeze or remove your WDA Program Account. To regain eligibility, you must show Microsoft that you have complied with all associated eligibility criteria as determined by Microsoft at its sole discretion.

3.3. Responding to Claims. If Microsoft receives a claim from a third party requesting that your Desktop App be removed from the WDA Program, Microsoft may remove the Desktop App from the WDA Program and/or refer that claim to you. You must respond to the notice as soon as reasonably practicable, and comply with any other requirements in Microsoft's Notice and Takedown policies at <http://go.microsoft.com/fwlink/p/?LinkID=224390>. If you discover that your Desktop App violates the terms of this Agreement, you must immediately notify Microsoft.

4. Use, Ownership, and License Rights for Microsoft Materials.

4.1. Use of Microsoft Materials.

4.1.1. Subject to the restrictions in this Agreement and any additional restrictions on use of Microsoft Materials as detailed on the WDA Program Website, Microsoft hereby grants you a non-exclusive, non-transferable license to reproduce, use, and modify the Microsoft Materials solely for your internal business purposes, subject to this Agreement and the rules and restrictions contained on the WDA Program Website. You may not reverse engineer, decompile or disassemble the Microsoft Materials, or work around any technical limitations in the Microsoft Materials, except and only to the extent that such activity is expressly permitted by applicable law, notwithstanding this limitation. You may not modify, copy, distribute, transmit, display, perform, reproduce, publish, license, create derivative works from, transfer, offer to sell or sell the Microsoft Materials, except that you may internally use and copy the Microsoft Materials as described in this Agreement. It is acknowledged that you may modify your affected

products in order to resolve compatibility issues related to the use of your products with Microsoft Products. In addition, you will not use the Microsoft Materials for any purpose not expressly granted by Microsoft in this Agreement, including, without limitation, promotional, sales, advertising, competitive analysis, or marketing purposes. The rights and licenses granted in this Section extend to your Affiliates; however, your Affiliates may not sublicense these rights and licenses to any other party.

4.1.2. App Analytics Data. Microsoft may, at its discretion, provide you with app telemetry (“**App Analytics**”) data. In addition to restrictions detailed in Section 4.1.1, you agree to use App Analytics data solely for improving your App. Further, you agree not to provide any App Analytics data to third parties (except for a third-party service provider who is assisting you in processing and analyzing such data on your behalf and who is not permitted to use it for any other purpose or disclose it to any other party). You are not permitted to aggregate (or permit any third-party to aggregate) the App Analytics data with any third-party data. You must not use the App Analytics data to attempt to identify or derive information about any particular end-user or device.

4.1.3. Error Reporting Data. Microsoft may, at its discretion, provide you with app crash data (“**Error Reporting Data**”) for your Desktop App. In addition to restrictions detailed in Section 4.1.1, you agree to use Error Reporting Data solely for the purpose of testing and resolving compatibility issues, fixing and resolving “bugs” or other quality issues related to your Desktop App. You agree to inform Customers in your privacy policy about Error Reporting Data that you collect and use. You must store any Personal Information only on a secure server with limited access for a maximum of 30 days. Access to such server will be limited to you or, if an entity, your regular employees. Following such 30-day period, you will promptly destroy the Personal Information. Certain types of non-personally identifiable data can be retained beyond 30 days, also on a secure server with limited access. These types of retainable Data are limited to the following: counts of error entities (e.g. buckets, events, failures), version ranges, application names, module names, exception codes, problem classes, failure offsets, extracted symbolic information including: call stacks and symbols, loaded and unloaded module lists (including names, versions and linker generated information, timestamps, checksum, size).

4.1.3.1. Protection of Personal Information. You may incidentally access Personal Information within the Error Reporting Data only as expressly allowed by this Agreement. You are not entitled to use such Personal Information for any purpose and you must destroy the Personal Information in conjunction with your destruction of the Data as required under this Agreement. You will not use Personal Information to contact any individual. You will maintain such Personal Information in strict confidence. You will not share any Personal Information that is collected or possessed by you with any third party for any reason. If you are served with a court order compelling disclosure of any Personal Information, you will oppose the order, will notify Microsoft of such order, and will provide Microsoft the opportunity to intervene before you file any response to the order. You will take reasonable steps to protect Personal Information in your possession from unauthorized use, access, disclosure, alteration or destruction. Security measures shall include access controls, encryption or other means, where appropriate. You agree to conduct an audit on at least an annual basis to evaluate the security of Personal Information in your possession and to verify that the terms of this Agreement with respect to Personal Information are being followed. Upon request from Microsoft, you shall provide Microsoft with any or all Personal Information in your possession. Upon termination or expiration of this Agreement, you shall within ten (10) days thereafter, at Microsoft's sole discretion either (i) provide Microsoft with all documents and

materials (including any and all copies) containing Personal Information, together with all other materials and property of Microsoft, which are in your possession or under your control or (ii) destroy all such specified documents and materials (including any and all copies in any and all formats) and provide Microsoft with a certificate of destruction signed by you, or if an entity, by an officer of your company.

4.2. Updates to Microsoft Materials. Microsoft may provide updates to the Microsoft Materials, at Microsoft's discretion; however, Microsoft has no duty to update the Microsoft Materials.

4.3. Reservation of Rights. Microsoft reserves all rights in the Microsoft Materials unless stated otherwise in this Agreement or in a license agreement specific to a certain Microsoft Material, in which case the language of the license agreement controls.

4.4. Referential Use of Trademarks. You may use Microsoft's corporate name, technology names, and trademarks in plain text to accurately identify and refer to Microsoft and Microsoft Products or other Microsoft technology strictly in accordance with our trademark usage guidelines (located at <https://www.microsoft.com/en-us/legal/IntellectualProperty/Trademarks/Usage/General.aspx>). You may not use Microsoft's logos, trade dress, designs, or word marks in stylized form. Any use of our corporate name, technology names, and trademarks must not cause confusion about the source of your solutions and services or your relationship with Microsoft.

4.5. Proprietary Rights Notices. You must not remove any copyright, trademark or patent notices in or on Microsoft Materials. You must use the right trademark, licensed Microsoft technology, products or services descriptor and trademark symbol (either "™" or "®") when first mentioning a licensed Microsoft technology name in any advertisement, brochure or other form of communications. The mention must also indicate Microsoft's (or Microsoft supplier's) ownership of the trademark.

4.6. Right to Use Feedback. Microsoft does not claim ownership of any comments, suggestions, or feedback you may provide to Microsoft WDA Program ("Feedback"). However, by providing Feedback to Microsoft, you are granting Microsoft, its affiliated companies and necessary sublicensees, a worldwide, royalty-free right and license to use, copy, modify, distribute, transmit, publicly display, publicly perform, reproduce, edit, translate, reformat, license, offer to sell, and sell, rent, lease, or lend your Feedback, entirely without obligation or restriction of any kind on account of intellectual property rights or otherwise; and the right to sublicense such rights to any third party. Feedback, even if designated as confidential by you, shall not, absent a separate written agreement, create any confidentiality obligation for or upon Microsoft. You will not give Feedback that is subject to license terms that seek to require any Microsoft product, technology, service or documentation incorporating or derived from such Feedback, or any Microsoft intellectual property, to be licensed or otherwise shared with any third party. No compensation will be paid with respect to the use of your Feedback, as provided herein. Microsoft is under no obligation to use any Feedback you may provide. By providing Feedback you warrant and represent that you own or otherwise control all of the rights to your Feedback as described in this TOU including, without limitation, all the rights necessary for you to license the Feedback to Microsoft under the terms set forth above.

5. Confidentiality.

5.1.1. Confidentiality Obligations Under Existing Nondisclosure Agreement. All Confidential Information (defined below) exchanged between you and us during your participation in the WDA Program is subject to the nondisclosure agreement ("NDA") between you and us, if any. If you do not have an effective NDA with Microsoft or your NDA is terminated or otherwise ceases to be in effect, Section 5.1.2 will govern your access to use, and disclosure of, Confidential Information provided to you through the WDA Program and WDA Program Website.

5.1.2. Confidentiality Obligations Without a Nondisclosure Agreement.

5.1.2.1. **"Confidential Information"** means all non-public information, know-how and trade secrets, in any form, that are disclosed by us to you and that: (i) is designated

as confidential or (ii) given the nature of the information or know-how, a reasonable person should know, consider or understand that the information or know-how be treated as confidential. Confidential Information does not include any information that: (i) is or becomes publicly available without breach of this Agreement, (ii) you can demonstrate was lawfully known by you at the time of Microsoft's disclosure to you, (iii) is received from a third party who can disclose the information lawfully and without an obligation to keep the information confidential, or (iv) you can demonstrate was independently developed by you without reference to any Confidential Information.

- 5.1.2.2. You and your Personnel, if any, will: (i) protect and safeguard the confidentiality of the Confidential Information with at least the same degree of care as you would protect your own Confidential Information, but in no event with less than a commercially reasonable degree of care, (ii) not use the Confidential Information, or permit it to be accessed or used, for any purpose other than to further our business relationship with each other, and (iii) not disclose the Confidential Information to any person or entity, except to other Personnel who need to know the Confidential Information. Before sharing Confidential Information with an Affiliate or Personnel, you must ensure that Affiliates and Personnel are required to protect the Confidential Information on terms consistent with this Agreement. You acknowledge and accept responsibility for your Affiliates' and Personnel's use and disclosure of Confidential Information. You are not required to restrict work assignments of representatives who have had access to Confidential Information.
- 5.1.2.3. You will promptly notify Microsoft upon discovery of any unauthorized use or disclosure of Confidential Information and cooperate with Microsoft to regain control of the Confidential Information and prevent further unauthorized use or disclosure of it.
- 5.1.2.4. Microsoft acknowledges that you cannot control what your Personnel will remember, even without notes or other aids. Accordingly, Microsoft agrees that use of information in your Personnel's unaided memory will not create liability under this Agreement.
- 5.1.2.5. Notwithstanding anything to contrary in this Agreement, you may disclose Confidential Information if required by a judicial or other governmental order but before doing so you must either: (i) obtain written assurance from the entity issuing the order that it will protect the Confidential Information to the maximum level allowed under applicable law or regulation (for example, by seeking protective order), or (ii) give Microsoft prompt notice of the order to allow it to seek a protective order or otherwise prevent or restrict disclosure of the Confidential Information.
- 5.1.2.6. Except for trade secrets, this Section 5.1.2 will govern each disclosure of Confidential Information for five years following the date of disclosure.

6. Representations. Company represents and warrants that:

- 6.1.** Company has the authority to enter into and fully perform this Agreement;
- 6.2.** the execution and performance of this Agreement will not violate any other agreement or obligation between Company and any third party;
- 6.3.** Company will comply with all applicable international and national laws, including the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, and end-user, end use and destination restrictions by U.S. and other governments;
- 6.4.** if requested, Company will aid us in complying with laws and regulations;

6.5. Company is the owner of, or otherwise has sufficient rights and authority to receive Data related to, any Desktop App that Company submits to Microsoft for participation in the WDA Program in accordance with Section 3 of this Agreement;

6.6. Company will comply with, and hereby represent that you have read, the terms of the Microsoft Developer Code of Conduct, located at <https://msdn.microsoft.com/en-us/library/windows/apps/dn764941.aspx>.

6.7. Company will maintain and follow appropriate technical and organizational measures intended to protect customer data against accidental, unauthorized or unlawful access, disclosure, alteration, loss, or destruction.

7. Indemnification.

7.1. Indemnification by Company. Company shall indemnify, defend and hold Microsoft and its Affiliates, and its and their directors, officers, and employees, contractors, agents, and third party suppliers harmless against any claims, actions, demands, proceedings, damages, costs and liabilities of any kind; (including, without limitation, reasonable attorneys' fees and legal expenses) (collectively, "**Claims**") arising out of: (a) Company's use or misuse of the WDA Program, (b) any content that Company posts, stores, or otherwise transmits in or through the WDA Program, (c) Company's violation of the rights of any third party, (d) Company's violation of Microsoft Policies, or (e) Company's breach of any of the representations, warranties, and covenants it has made herein.

7.2. Indemnification Procedure. The indemnified party will:

7.2.1. Provide the indemnifying party with reasonably prompt notice of Claims;

7.2.2. Permit the indemnifying party through mutually acceptable counsel to answer and defend Claims; and

7.2.3. Provide the indemnifying party with reasonable information and assistance to help the indemnifying party defend Claims at the indemnifying party's expense.

Any indemnified party may employ separate counsel and participate in the defense of any Claim at its own expense.

8. Limitation of Liability. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL WE BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, SPECIAL, OR EXEMPLARY DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF DATA, REVENUE, AND/OR PROFITS) ARISING OUT OF OR THAT RELATE IN ANY WAY TO THIS AGREEMENT. THIS EXCLUSION WILL APPLY REGARDLESS OF THE LEGAL THEORY UPON WHICH ANY CLAIM FOR SUCH DAMAGES IS BASED, WHETHER YOU HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER SUCH DAMAGES WERE REASONABLY FORESEEABLE, OR WHETHER APPLICATION OF THE EXCLUSION CAUSES ANY REMEDY TO FAIL OF ITS ESSENTIAL PURPOSE. THIS EXCLUSION WILL NOT APPLY TO YOUR LIABILITY FOR BREACH OF YOUR CONFIDENTIALITY OBLIGATIONS OR VIOLATION OF MICROSOFT'S INTELLECTUAL PROPERTY RIGHTS, OR ANY DIRECT OR INDIRECT LOSS OF PROFITS, DATA, BUSINESS, OR ANTICIPATED SAVINGS DUE TO YOUR FRAUD OR GROSS NEGLIGENCE.

9. Reliance on Information Posted; Disclaimer.

9.1.1. The Microsoft Materials and any other reporting or information presented on or through the WDA Program Website is made available solely for general information purposes. We do not warrant the accuracy, completeness or usefulness of this information. Any reliance you place on such information is strictly at your own risk. WE DISCLAIM ALL LIABILITY AND RESPONSIBILITY ARISING FROM ANY RELIANCE PLACED ON SUCH MATERIALS BY YOU OR ANY OTHER VISITOR TO THE WDA PROGRAM WEBSITE, OR BY ANYONE WHO MAY BE INFORMED OF ANY OF ITS CONTENTS.

9.1.2. DISCLAIMER OF WARRANTIES. WE EXPRESSLY DISCLAIM ALL OTHER EXPRESS, IMPLIED, OR STATUTORY WARRANTIES TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. THIS INCLUDES THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. OTHERS THAT MAY BE INCLUDED ARE LACK OF VIRUSES, QUIET ENJOYMENT, SCOPE OF LICENSE, LACK OF ERRORS, SATISFACTORY CONDITION OR QUALITY. THE DISCLAIMER ALSO INCLUDES ANY IMPLIED WARRANTY OR CONDITIONS ARISING FROM COURSE OF DEALING OR PERFORMANCE OR USAGE OF TRADE.

10. Term, Termination, and Survival.

10.1. Termination. Your participation in the WDA Program is voluntary. You may terminate this Agreement and your participation in the WDA Program at any time, without cause. Microsoft may terminate this Agreement and delete or freeze your WDA Program Account for convenience by providing at least 30 days' notice; or immediately for any breach of this Agreement, if you fail to comply with the Microsoft Policies, or for any violation of any additional terms, conditions, and licenses related to WDA Program benefits.

10.2. Waiver of required approval. To the extent necessary to implement the termination provisions of this Agreement, each party waives any right it has, or obligation that it may have, now or in the future under any applicable law or regulation, to request or obtain the approval, order, decision or judgment of any court to terminate this Agreement or to effect a variation or termination by using a statutory form.

10.3. Effect of Termination or Expiration. Upon termination or expiration, you must immediately stop using any rights and benefits granted by this Agreement and the WDA Program. Microsoft will not be liable to you for any loss of profits, goodwill, or otherwise arising as a result of such termination or expiration. You will do one of the following within 10 days of termination or expiration and at Microsoft's discretion:

10.3.1. Return all copies of Microsoft Confidential Information and Microsoft Materials; or

10.3.2. Destroy all such Microsoft Confidential Information and Microsoft Materials, including copies, and, upon request, give Microsoft a certificate of destruction signed by an officer or other responsible executive of your company. Following termination of this Agreement, Microsoft may continue to work to resolve any unresolved prior support requests. This Agreement will continue to apply until such unresolved requests are resolved or otherwise closed.

10.4. Survival. Sections of this Agreement that, by their terms, require performance after the termination or expiration of this Agreement will survive.

11. Miscellaneous.

11.1. Communication; Notices. Microsoft may communicate with you via the email address, phone number, or physical address we have on record for you or by posting updates to the WDA Program Website or another designated website. For communication with Microsoft, notices should be sent to the following email alias: mktlegal@microsoft.com. Microsoft may change its address where notices can be sent by giving you notice in accordance with this Section.

11.2. Exclusivity. Nothing in this Agreement restricts you from working with and using non-Microsoft technologies.

11.3. Entire Agreement. This Agreement, together with any other documents incorporated into this Agreement by reference, constitute the sole and entire agreement between you and Microsoft.

11.4. Order of precedence. If there is a direct conflict between this Agreement and any other terms, conditions, and licenses, the other terms, conditions, and licenses will control, but only to the extent of that conflict.

11.5. Waiver. The failure of either party to enforce, or the delay by either party in enforcing, any of its rights under this Agreement will not be deemed a continuing waiver or a modification thereof and

either party may, within the time provided by applicable law, commence appropriate legal proceeding to enforce any or all of its rights.

11.6. Third Party Beneficiaries. Except as expressly stated, no person, firm, group or corporation other than the parties will be deemed to have acquired any rights by reason of anything contained in this Agreement.

11.7. Paragraph Headings. Paragraph headings used herein are for convenience only and will not be deemed a part of this Agreement.

11.8. Severability. If any provision of this Agreement is found to be invalid or limited in its force, it will be enforced to the maximum extent of the law and the remainder of the Agreement will continue in force.

11.9. Choice of Law, Venue. This Agreement shall be construed and controlled by the laws of the State of Washington. With respect to any claim permitted in court under this Agreement, each party consents to exclusive jurisdiction by the courts sitting in King County, Washington.

11.10. Assignment.

11.10.1. Company will not sell, assign, transfer, pledge or encumber this Agreement or any right, or delegate any duty or obligation under this Agreement, by assignment or operation of law, without Microsoft's prior written consent.

11.10.2. Microsoft may assign or delegate its rights or obligations under this Agreement to any of its Affiliates, and any Affiliate of Microsoft may also assign or delegate any rights or obligations assigned to them pursuant to this Section 11.10.2 to another Affiliate. This Agreement will inure to the benefit of and bind all permitted successors, assigns, receivers and trustees of each party.

11.10.3. Any assignment in violation of this Section 11.10 will be null and void.

11.11. Updates. Microsoft may update this Agreement at any time in its sole discretion. Microsoft will indicate the last date on which the Agreement was modified at the top of the Agreement.

11.12. Independent Contractors. The parties are independent contractors. Neither party is an employer, employee, agent, partner or legal representative of the other for any purpose and neither has any right, power or authority to create any obligation or responsibility on the behalf of the other.