**Microsoft Teams Video Performance Tool License Agreement**

This Microsoft Teams Video Performance Tool License Agreement (the “**Agreement**”) is between the entity that receives access to the Microsoft Teams Video Performance Tool from Microsoft (“**Partner**”) and Microsoft Corporation (“**Microsoft**”) (referred to jointly as the “**Parties**,” and individually as a “**Party**”). This Agreement is effective on the date Partner receives access to the Video Performance Tool (the “**VPT**”) (“**Effective Date**”).

**1. Overview**

Partner and Microsoft desire to enter into a collaboration for Microsoft to offer Partner the Video Performance Tool (the “**VPT**”) so that Partner may use the VPT to run tests to validate video call performance between Partner’s products and Microsoft Teams. This Agreement sets forth the terms and conditions under which the VPT will be provided to Partner. Each Party will bear its own expenses associated with its activities related to the licensing and use of the VPT. This Agreement supersedes all other agreements or communications the Parties may have entered into with respect to the VPT.

**2. Intellectual Property**

* 1. License to VPT.Microsoft hereby grants Partner a nonexclusive license during the Term to use the VPT only for Partner’s internal business purpose of testing to validate video call performance between Partner’s products and Microsoft Teams, provided Partner complies with the restrictions in this Section 2. Such internal business purpose does not include use by any parent, subsidiary, or affiliate of Partner, or any third party, and Partner shall not permit any such use.
  2. License Conditions and Restrictions. Partner receives no rights to the VPT other than those specifically granted in this Section 2. Without limiting the generality of the foregoing, Partner shall not reverse engineer, decompile, disassemble, or otherwise attempt to derive source code or other trade secrets from the VPT; or (b) allow third parties to exploit the VPT.
  3. End Users. Partner will control access and use of the VPT by any end user that Partner permits to access or use the VPT, and Partner is responsible for their use of the VPT in accordance with this Agreement.
  4. Retained Rights. Copies of the VPT created or transferred pursuant to this Agreement are licensed, not sold, and Partner receives no title to or ownership of any copy or of the VPT itself. Furthermore, Microsoft does not grant Partner (by implication, estoppel or otherwise) any right, title, interest, or license, in Microsoft’s patents, patent applications, trade secrets, copyrights, mask work rights, trademarks or other intellectual property.
  5. Feedback**.** Partner may provide suggestions, comments, ideas, know-how, or other feedback regarding the VPT to Microsoft. Any feedback is voluntary and Microsoft is not required to hold it in confidence. Microsoft may use feedback for any purpose without obligation of any kind.

**3. Non-exclusivity**

This Agreement is non-exclusive and the relationship established by its terms is intended to be non-exclusive. Microsoft may distribute or offer the VPT to other parties and either Party may enter into activities with others regarding competing offerings.

**4. Confidentiality.**

1. Existing NDA. The existence of the VPT, test results arising from use of the VPT, the terms of this Agreement and all other information shared under this Agreement (except Feedback) is Confidential Information subject to any nondisclosure agreement in effect between the parties (“NDA”). If the parties do not have an existing NDA that is in effect, Section 4b. will apply.
2. Use of Confidential Information. Neither party will disclose the other party’s Confidential Information to a third party. Each party will (a) use such information only for purposes of this business relationship, and (b) take reasonable steps to protect the other party’s Confidential Information. A party may disclose the other party’s Confidential Information to its affiliates, employees, and contractors only on a need-to-know basis, subject to the obligations of this section. If a party so discloses the other party’s Confidential Information, that party remains responsible for any unauthorized use or disclosure. As used herein, “Confidential Information” means non-public information, know-how, or trade secrets in any form that are designated as being confidential or that a reasonable person knows or reasonably should understand to be confidential. Confidential Information does not include any information, however designated, that (i) is or becomes publicly available without a breach of this Agreement; (ii) was lawfully known to the receiver of the information without an obligation to keep it confidential; (iii) is received from another source who can disclose it lawfully and without an obligation to keep it confidential; (iv) is independently developed; or (v) is Feedback.

**5. Term and Termination**

1. Term. This Agreement starts on the Effective Date and will continue for the Term unless terminated earlier in accordance with this Agreement.
2. Termination. Either Party may terminate this Agreement immediately upon prior written notice if any of the following events occurs: (i) the other Party breaches the terms of the NDA or Section 4 (Confidentiality) relative to Confidential Information exchanged in connection with this Agreement; or (ii) Partner breaches the terms of the VPT license and restrictions in Section 2(a) and (b) of this Agreement.
3. Termination for Convenience. Either Party may terminate this Agreement for convenience upon ninety (90) days prior written notice to the other Party.
4. Effect of Expiration. Upon expiration of this Agreement, Partner shall delete the VPT and cease any further use of the VPT and will no longer have any rights to the VPT under this Agreement.
5. Survivals. Sections 2(d) (Feedback), 3 (Non-Exclusivity), 4 (Confidentiality), 6(d) (Effect of Termination), 7 (Representations and Warranties), 8 (Limitation of Liability), 9 (Governing Law) and 10 (Entire Agreement; Assignment) will survive expiration or termination of this Agreement.

**6. Representations and Warranties.** Each party will comply with all applicable laws under this Agreement, including in the provision and use of the VPT. Each party represents and warrants that it has the full power and authority to enter into and perform its obligations under this Agreement. MICROSOFT DISCLAIMS ALL OTHER EXPRESS, IMPLIED, OR STATUTORY WARRANTIES OF ANY KIND WITH RESPECT TO THE VPT, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NONINFRINGEMENT. ANY SOFTWARE, MATERIALS, SERVICES AND/OR TECHNOLOGIES PROVIDED BY MICROSOFT UNDER THIS AGREEMENT ARE PROVIDED STRICTLY “AS IS” AND “WITH ALL FAULTS” AND WITHOUT WARRANTIES OF ANY KIND.

**7. Exclusion of Damages and Limitation of liability.**

a. Exclusion of Damages. EXCEPT FOR DAMAGES ARISING FROM BREACH OF A PARTY’S OBLIGATION UNDER SECTIONS 2(a), 2(b), and 4, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL EITHER PARTY, NOR ITS RESPECTIVE DIRECTORS, OFFICERS, AFFILIATES, AND SUPPLIERS, BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS OR REVENUES, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, LOSS OF PRIVACY, OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH DAMAGES WERE REASONABLY FORESEEABLE. THE EXCLUSIONS OF LIABILITY FOR DAMAGES IN THIS SECTION 7(a) APPLY REGARDLESS OF WHETHER THE LIABILITY IS BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF WARRANTY, OR ANY OTHER LEGAL THEORY.

b. Limitation of Liability.EXCEPT FOR DAMAGES ARISING FROM BREACH OF A PARTY’S OBLIGATION UNDER SECTIONS 2(a), 2(b), and 4, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE MAXIMUM AGGREGATE LIABILITY OF EACH PARTY TO THE OTHER PARTY (AND ITS RESPECTIVE DIRECTORS, OFFICERS, AFFILIATES, AND SUPPLIERS) FOR ANY AND ALL CLAIMS WHATSOEVER ARISING OUT OF OR UNDER THIS AGREEMENT WILL NOT EXCEED IN THE AGGREGATE FIVE THOUSAND US DOLLARS (US $5,000). THE LIMITATIONS ON LIABILITY FOR DAMAGES IN THIS SECTION 8(b) APPLY REGARDLESS OF WHETHER THE LIABILITY IS BASED ON BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, BREACH OF WARRANTY, OR ANY OTHER LEGAL THEORY.

**8. Governing Law.** The terms of this Agreement will be governed and construed in accordance with the laws of the state of Washington of the United States of America, U.S.A.

**9. Entire agreement; assignment**. This Agreement together with any exhibits or supplements entered into under this Agreement or applicable Project Description(s) is the entire agreement between the parties regarding its subject matter and merges and replaces all prior and contemporaneous agreements, communications, and representations between the parties regarding its subject matter. Customer may not assign or transfer this Agreement to a third party without Microsoft’s prior written consent.