**MICROSOFT PRE-RELEASE SERVICE AGREEMENT FOR MICROSOFT DEEPDEV PREVIEW**

LAST UPDATED: May 2021

Microsoft DeepDev Preview is an optional evaluation service offered by Microsoft to select customers to obtain customer feedback prior to general release. Evaluation services may employ lesser or different security measures than those typically present in the other Microsoft services. Please read this Agreement carefully.

YOUR USE OF MICROSOFT DEEPDEV PREVIEW IS CONFIDENTIAL AND GOVERNED BY THE TERMS OF YOUR NON-DISCLOSURE AGREEMENT WITH MICROSOFT. PLEASE DO NOT DISCLOSE YOUR EXPERIENCES USING MICROSOFT DEEPDEV PREVIEW EXCEPT IN ACCORDANCE WITH THAT NON-DISCLOSURE AGREMENT.

BECAUSE OF THE PRE-RELEASE NATURE OF MICROSOFT DEEPDEV PREVIEW, MICROSOFT STRONGLY DISCOURAGES YOU FROM USING ANY DATA IN OR WITH THE MICROSOFT DEEPDEV PREVIEW THAT (1) YOU CONSIDER CONFIDENTIAL OR PROPRIETARY, OR (2) PERSONALLY IDENTIFIES, DIRECTLY OR INDIRECTLY, ANY INDIVIDUAL.

**WHAT THIS AGREEMENT COVERS**

This is an agreement (**“Agreement”**) between you, an individual, corporation, or other legal entity (**“you”**) and Microsoft Corporation, One Microsoft Way, Redmond, Washington, USA (**“Microsoft**, **“we,”** **“us”** or **“our”**). This Agreement applies to your access and use of Microsoft DeepDev, a pre-release version of an AI-assisted online service that provides a software development ecosystem containing models trained on publicly available source code (including software), services, content, information, materials and updates that Microsoft makes available to you as part of such service (collectively, the **“Service”**) The Microsoft DeepDev platform offers an interconnected system of services, tools and AI-assisted pre-trained models that provide a streamlined fine-tuning and model deployment workflow. To use Microsoft DeepDev, you select the model architecture and pre-trained domain (Python, Java, multi-language, etc.) from our Microsoft DeepDev model library. You can fine-tune the selected model by specifying the high-level task you want to complete and then provide your data by using pre-defined hyperparameters and then deploy the trained model as a web service ready for consumption. The Microsoft DeepDev model library contains transformer models from the three dominant architectures: decoders, encoders, and encoder-decoders. The user-facing component of Microsoft DeepDev subsists of a set of web service application programming interfaces (APIs) that can be queried using an HTTP request tool or library familiar to you. With Microsoft DeepDev you can use your data to produce custom models for various software engineering tasks and deploy them in your development and operations environments. By using the Service, you acknowledge that you have read this Agreement and agree to its terms, including the electronic delivery of notices and disclosures in connection with the Service. If you do not accept these terms or do not want to enter into this Agreement with Microsoft, please close this web page and exit this site and avoid use of the Service.

**1. HOW YOU MAY USE THE SERVICE**

**1.1 General**

The Service provides you with the ability to process streaming data flows.

You may access and use the Service only through the means we designate for the Service and only in accordance with the terms of this Agreement and the policies and procedures we designate for use of the Service.

Subject to your acceptance of and compliance with this Agreement, you may use the Service for the sole purposes of testing of the Service in a test environment and providing feedback to Microsoft. You may not use this Service in a production or live environment.

For purposes of this Agreement, “Data” means your data that you upload to and process with the Service. You may not use the Service for any other data. BECAUSE OF THE PRE-RELEASE NATURE OF THE SERVICE, MICROSOFT STRONGLY DISCOURAGES YOU FROM USING ANY DATA IN OR WITH THE SERVICE THAT (1) YOU CONSIDER CONFIDENTIAL OR PROPRIETARY, OR (2) PERSONALLY IDENTIFIES, DIRECTLY OR INDIRECTLY, ANY INDIVIDUAL.

Microsoft has no obligation to monitor the Services. However, Microsoft reserves the right to review your use of the Service and your Data and to remove any Data in its sole discretion.

**1.2 Your Responsibility**

You bear sole responsibility for the Data, software programs or services that you use in connection with your access or use of this Service, including any Microsoft Azure accounts and services, and any costs associated with using such Data, software programs or services.

You represent, and will ensure during the term of this Agreement, that you have the necessary rights to your Data, and any other data, software programs or services that you use in connection with the Service, and that such activities do not and will not infringe the intellectual property or other proprietary rights of any third party. You will obtain all necessary rights, and comply with all licenses or other terms, from the rightful owner of such Data, any other data, software programs or services that you do not own. You will access or use the Service (a) without violating the rights of any third party or purporting to subject Microsoft to any other obligations to you or any third party, and (b) solely in a manner that complies with all applicable laws and regulations.

**1.3 Pre-Release Services and Updates**

The Service is an early preview of prototypes in various pre-release stages that are intended for gathering feedback and are not production quality.

The Service and any updates to the Service may be unreliable. You may experience errors, bugs, unexpected interruptions, delays or periods of inaccessibility, and loss of Data. You assume all risks associated with your use of the Service and any updates, including the risk that it may not operate properly or reliably and that it may cause damage to your Data, or other data, content, software applications and/or systems used in conjunction with the Service. Microsoft may delete any Data that remains in the Service after this agreement terminates. You are fully responsible for backing up your Data. Microsoft has no liability for the deletion of your Data.

Microsoft may change the Service at any time, including without limitation for a future pre-release or commercial version, and we may not release a future pre-release or commercial version.

**1.4 Software**

a) Any software that is made available to download from the Services ("Software") is the copyrighted work of Microsoft and/or its suppliers. Use of the Software is governed by the terms of the end user license agreement, if any, which accompanies or is included with the Software ("License Agreement"). An end user will be unable to install any Software that is accompanied by or includes a License Agreement, unless he or she first agrees to the License Agreement terms. Third party scripts or code, linked to or referenced from this website, are licensed to you by the third parties that own such code, not by Microsoft.

b) The Software is made available for download solely for use by end users according to the License Agreement. Any reproduction or redistribution of the Software not in accordance with the License Agreement is expressly prohibited by law, and may result in severe civil and criminal penalties. Violators will be prosecuted to the maximum extent possible.

c) WITHOUT LIMITING THE FOREGOING, COPYING OR REPRODUCTION OF THE SOFTWARE TO ANY OTHER SERVER OR LOCATION FOR FURTHER REPRODUCTION OR REDISTRIBUTION IS EXPRESSLY PROHIBITED, UNLESS SUCH REPRODUCTION OR REDISTRIBUTION IS EXPRESSLY PERMITTED BY THE LICENSE AGREEMENT ACCOMPANYING SUCH SOFTWARE.

d) THE SOFTWARE IS WARRANTED, IF AT ALL, ONLY ACCORDING TO THE TERMS OF THE LICENSE AGREEMENT. EXCEPT AS WARRANTED IN THE LICENSE AGREEMENT, MICROSOFT CORPORATION HEREBY DISCLAIMS ALL WARRANTIES AND CONDITIONS WITH REGARD TO THE SOFTWARE, INCLUDING ALL WARRANTIES AND CONDITIONS OF MERCHANTABILITY, WHETHER EXPRESS, IMPLIED OR STATUTORY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. FOR YOUR CONVENIENCE, MICROSOFT MAY MAKE AVAILABLE AS PART OF THE SERVICES OR IN ITS SOFTWARE PRODUCTS, TOOLS AND UTILITIES FOR USE AND/OR DOWNLOAD. MICROSOFT DOES NOT MAKE ANY ASSURANCES WITH REGARD TO THE ACCURACY OF THE RESULTS OR OUTPUT THAT DERIVES FROM SUCH USE OF ANY SUCH TOOLS AND UTILITIES. PLEASE RESPECT THE INTELLECTUAL PROPERTY RIGHTS OF OTHERS WHEN USING THE TOOLS AND UTILITIES MADE AVAILABLE ON THE SERVICES OR IN MICROSOFT SOFTWARE PRODUCTS.

e) RESTRICTED RIGHTS LEGEND. ANY SOFTWARE WHICH IS DOWNLOADED FROM THE SERVICES FOR OR ON BEHALF OF THE UNITED STATES OF AMERICA, ITS AGENCIES AND/OR INSTRUMENTALITIES ("U.S. GOVERNMENT"), IS PROVIDED WITH RESTRICTED RIGHTS. USE, DUPLICATION, OR DISCLOSURE BY THE U.S. GOVERNMENT IS SUBJECT TO RESTRICTIONS AS SET FORTH IN SUBPARAGRAPH (C)(1)(II) OF THE RIGHTS IN TECHNICAL DATA AND COMPUTER SOFTWARE CLAUSE AT DFARS 252.227-7013 OR SUBPARAGRAPHS (C)(1) AND (2) OF THE COMMERCIAL COMPUTER SOFTWARE - RESTRICTED RIGHTS AT 48 CFR 52.227-19, AS APPLICABLE. MANUFACTURER IS MICROSOFT CORPORATION, ONE MICROSOFT WAY, REDMOND, WA 98052-6399.

**1.5 Service Application Programing Interfaces (APIs)**

We may provide you with access to certain Service APIs, as determined by us in our sole discretion. If we do, and subject to your compliance with the terms of this Agreement, you may use these Service APIs for only the purpose that we specify at the time we provide you with access to the Service APIs. If no terms are provided, your access is subject to the terms of this Agreement.

**2. HOW YOU MAY NOT USE THE SERVICE**

(a) Unless you are otherwise notified by Microsoft in writing, you may not access or use the Service in or to support your live operating or commercial production environment.

(b) You may not interfere or attempt to interfere in any manner with the functionality or proper performance of the Service, or the availability or accessibility of any other services or offerings used in connection with the Service.

(c) You may not access or use the Service for any unlawful or deceptive purpose or in any way that is illegal or promotes illegal activities. Without limitation, you may not access or use the Service in any manner that:

(i) might be discriminatory based on race, sex, religion, nationality, disability, sexual orientation, or age,

(ii) publishes, posts, uploads, distributes or disseminates any inappropriate, profane, defamatory, obscene, indecent or unlawful topic, name, material or information

(iii) would violate local, state, federal or other applicable consumer privacy regulations,

(iv) uploads files that contain viruses, Trojan horses, worms, time bombs, cancelbots, corrupted files, or any other similar software or programs that may damage the operation of another's computer or property of another,

(v) harvests or otherwise collects information about others, including e-mail addresses.

(vi) creates a false identity for the purpose of misleading others.

(vii) uses Communication Services, if any, in connection with surveys, contests, pyramid schemes, chain letters, junk email, spamming or any duplicative or unsolicited messages (commercial or otherwise).

(viii) would compile or use any information obtained through the Service for the purpose of spamming, unsolicited sales or any advertising.

(ix) would infringe the intellectual property or other proprietary rights of any third party, (x) would violate the rights of any third party, or

(xi) purports to subject Microsoft to any other obligations.

(d) You may not use the Service (or any component thereof) to design or build a competitive service or to otherwise copy the design, functionality or user interfaces within the Service.

(e) You may not (i) sell, assign, lease, rent, transfer, broadcast, act as a service bureau, distribute or grant rights in or to the Service to any third party; (ii)‘frame’, ‘mirror’, link to, or incorporate the Service or any of its components within your own online environment; or (iii) directly or indirectly offer or provide the Services as a service to third parties.

(f) You may not remove, obscure, or alter any notice of any trademarks, service marks, service or trade names, logos, and other proprietary designations of Microsoft, its affiliates or its suppliers.

**3. PROPRIETARY RIGHTS**

**3.1 Reservation of Rights; No Other License**

Except for the express limited use and access rights set forth in this Agreement, Microsoft, our licensors and our suppliers reserve all right, title and interest (including all intellectual and proprietary rights) in and to the Service, including without limitation any technology, software and other content that we provide or use to provide the Service. No additional rights (including implied licenses, rights or covenants) are granted by implication, estoppel or otherwise.

**3.2 License to Microsoft**

By using the Service, you license Microsoft (and its affiliated companies and necessary sublicensees), under your intellectual property rights, any rights needed by Microsoft to use or process your Data through the Service or any other information you provide to us in connection with your use of the Service, solely for the purpose of enabling Microsoft to provide to you and improve the Service or support services (if any). You also grant Microsoft the right to track and record usage patterns, trends, and other statistical data related to your use of the Service for Microsoft’s internal use.

**3.3 No Claims of Ownership by Microsoft**

Microsoft claims no ownership of or control over your Data, output created through your use of the Service or other information you provide to us in connection with your use of the Service. It is solely your responsibility to protect any rights you may have in your Data and such information.

**3.4 No Claims of Ownership by You**

Except as expressly permitted under this Agreement, you agree to claim no ownership of or control over the Service.

**4. SERVICE ACCESS**

**4.1 You Are Solely Responsible For Your Access to the Service**

You are responsible for all activity that takes place with your use of the Service, including all use by your employees or other authorized agents, who must comply with all of the terms of this Agreement. Without limitation, it is your obligation to: (a) prevent corruption, deletion, destruction or loss of any content associated with your access to the Service, (b) protect your Service account, assigned keys or certificates, or other credentials if any; and (c) ensure your applications and any software or services that you use or run with the Service are current with the latest security patches or updates. Further you may not access anyone else’s Service account, data or content at any time without the express permission of the Service account holder.

**4.2 Representations and Warranties Related to Registration**

You represent and warrant that (a) the information you provide in connection with your registration for the Service is accurate and complete and (b) you have legal capacity to enter into this Agreement. If you are entering into this Agreement on behalf of an entity or organization, you further represent and warrant that you are an authorized representative of such entity and duly authorized to enter into this Agreement.

**5. SERVICE LEVELS; SECURITY**

**5.1 Service Levels**

We have no obligation to provide any support services for the Service. The Service may be inaccessible due to scheduled and unscheduled reasons, including maintenance updates, power outages, system failures, extended downtime and other interruptions. During such periods, you may be unable to access or use all of, or a portion of, the Service. Some or all of your Data may be lost. In the event of an outage or interruption that Microsoft determines may cause risk to the Service, Microsoft may determine in its sole discretion to suspend the Service.

**5.2 Security**

We use a variety of security technologies and procedures to help prevent unauthorized access or use of the Service; however, we cannot guarantee that we will be successful at doing so. Accordingly, without limitation to any other provisions of this Agreement, you acknowledge that you bear sole responsibility for adequate security, protection and backup of your Data, and any other data, software programs or services that you use in connection with the Service. We strongly encourage you, where available and appropriate, to take measures to protect your Data, including without limitation using encryption technology to protect your Data from unauthorized access and routinely archiving your Data.

BECAUSE OF THE PRE-RELEASE NATURE OF THE SERVICE, MICROSOFT STRONGLY DISCOURAGES YOU FROM USING ANY DATA IN OR WITH THE SERVICE THAT (1) YOU CONSIDER CONFIDENTIAL OR PROPRIETARY, OR (2) PERSONALLY IDENTIFIES, DIRECTLY OR INDIRECTLY, ANY INDIVIDUAL.

**5.3 Security Breach – Notice to Microsoft**

In using the Service, you agree to promptly notify us if you learn of a security breach related to the Service.

**6. PRIVACY AND PROTECTION OF PERSONAL INFORMATION**

BECAUSE OF THE PRE-RELEASE NATURE OF THE SERVICE, MICROSOFT STRONGLY DISCOURAGES YOU FROM USING ANY DATA IN OR WITH THE SERVICE THAT (1) YOU CONSIDER CONFIDENTIAL OR PROPRIETARY, OR (2) PERSONALLY IDENTIFIES, DIRECTLY OR INDIRECTLY, ANY INDIVIDUAL.

See the Privacy Statement disclosures relating to the collection and use of your information.

**7. NOTICE; GOVERNMENT CUSTOMERS**

**7.1 Notices to you**

Microsoft may provide you with notices in any manner Microsoft chooses, including by email or posting any such notices on a portal or community development center web site for the Service. Notices provided to you via e-mail will be deemed given and received on the transmission date of the e-mail. Notices provided via posting on a portal or community development center web site will be deemed given on the date they are posted. As long as you can access and use the Service, you acknowledge that you have the necessary software and hardware to receive and retain these notices.

**7.2 Government Customers**

Before accepting this Agreement, government customers should consult with their Microsoft representative to assure full compliance with local laws and government procurement processes.

**8. FEEDBACK**

**8.1 Feedback**

You hereby license to Microsoft without charge, all intellectual property rights or other rights necessary for Microsoft to use, share and commercialize any feedback about the Service you give us in any way and for any purpose. You also license without charge to third parties all intellectual property rights or other rights necessary for their products, technologies and services to use or interface with any specific parts of a Microsoft software or service that includes the feedback. You will not give feedback that is subject to a license that requires Microsoft to license its software or documentation or provide its services to third parties. The rights granted in this paragraph are perpetual, irrevocable and world-wide and survive any termination of this Agreement.

**8.2 Solicitation of Feedback**

As a participant in a pre-release program, your feedback is valuable to Microsoft. You agree that Microsoft may contact you to solicit feedback regarding the Service.

**9. INDEMNIFICATION**

You agree to indemnify, pay the defense costs of, and hold Microsoft and its successors, officers, directors and employees harmless from and against any and all claims, demands, costs, liabilities, judgments, losses, expenses and damages (including attorneys’ fees) arising out of, in connection with, or related to (a) your use of the Service in breach of this Agreement or in violation of any applicable law or regulation, or (b) any Data, any other data, software programs or services that you use in connection with the Service, including without limitation any claim that such Data, other data, software program or services, or any part thereof, infringes, misappropriates, or otherwise violates any copyright, patent, trade secret, trademark, or other legal right of any third party.

**10. WE MAKE NO WARRANTY**

WE PROVIDE THE SERVICE (INCLUDING WITHOUT LIMITATION, ANY SOFTWARE, APIS AND INFORMATION), AND SUPPORT SERVICES (IF ANY) “AS IS,” “WITH ALL FAULTS” AND “AS AVAILABLE,”

**11. LIMITATION OF LIABILITY**

IN NO EVENT SHALL MICROSOFT AND/OR ITS RESPECTIVE SUPPLIERS BE LIABLE FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES OR ANY DAMAGES WHATSOEVER RESULTING FROM LOSS OF USE, DATA OR PROFITS, WHETHER IN AN ACTION OF CONTRACT, NEGLIGENCE OR OTHER TORTIOUS ACTION, ARISING OUT OF OR IN CONNECTION WITH THE USE OR PERFORMANCE OF SOFTWARE, DOCUMENTS, PROVISION OF OR FAILURE TO PROVIDE SERVICES, OR INFORMATION AVAILABLE FROM THE SERVICES.

**12. LINKS TO THIRD PARTY SITES**

The Service may include links to third-party sites. The linked sites are not under the control of Microsoft and Microsoft is not responsible for the content of any linked site, or any links contained in a linked site, or any changes or updates to such sites. Microsoft is not responsible for webcasting or any other form of transmission received from any linked site. Microsoft is providing these links to you only as a convenience, and the inclusion of any link does not imply endorsement by Microsoft of the site.

**13. MODIFYING THE TERMS**

Microsoft may modify this Agreement at any time and will provide notice of any modifications. If you do not agree to these changes, then you must immediately stop using the Service. Your continued use of the Service constitutes acceptance of the modified agreement.

**14. TERM; TERMINATION**

**14.1 Term**

This Agreement is effective on the date you first agree to it and will automatically terminate upon the next release of the Service (pre-release or otherwise), or upon Microsoft’s termination of the Service, unless earlier terminated by notice from Microsoft to you.

**14.2 Termination**

You may discontinue your use of the Service at any time. Microsoft may at its sole discretion terminate this Agreement for any reason or no reason at any time. Upon any termination of this Agreement, your rights to access or use the Service immediately cease, and you must promptly remove from the Service any data, software programs or services (if any) used in connection with your access to or use of the Service. If you do not remove such data, software programs or services from the Service, we reserve the right to remove them in accordance with our normal business practices for the Service. You are responsible for taking the steps necessary to back up your Data. You may stop using and accessing the Service at any time without further obligation, whether or not it deletes or extracts your Data.

**15. NO THIRD PARTY BENEFICIARIES**

No third-party beneficiaries. There are no third-party beneficiaries to this agreement.

**16. NO WAIVER**

Any delay or failure by Microsoft to exercise a right or remedy will not result in a waiver of that, or any other, right or remedy.

**17. CONTRACTING PARTY, CHOICE OF LAW AND LOCATION FOR RESOLVING DISPUTES**

The laws of the State of Washington, USA, govern the interpretation of this Agreement and applies to claims for breach of it. All other claims, including claims regarding consumer protection laws, unfair competition laws, and in tort, will be subject to the laws of your state of residence in the United States, or if you live outside the United States, the laws of the country to which we direct your Service. You and we irrevocably consent to the exclusive jurisdiction and venue of the state or federal courts in King County, Washington, USA, for all disputes arising out of or relating to this Agreement.

**18. INTERPRETING THE AGREEMENT**

If any court of competent jurisdiction determines that any provision of this Agreement is illegal, invalid or unenforceable, the remaining provisions will remain in full force and effect. This agreement, including any other policies or terms incorporated by reference, is the entire agreement between the parties regarding the Service. It supersedes any prior agreements or statements (whether oral or written) regarding the Service, and is separate and independent from any other agreement(s) that may exist between the parties.

**19. ASSIGNMENT**

We may assign this Agreement, in whole or in part, at any time with or without notice to you. You may not assign this Agreement, or any part of it, to any third party. Any attempt by you to do so is void. You may not transfer to a third party, either temporarily or permanently, any rights to use the Service (or any component thereof).

**20. LIMITATION OF CLAIMS**

Any claim related to this agreement or the Service is barred unless brought within one year from the date the claim could first be filed. This limitation applies to each party’s successors or assigns.

**21. U.S. EXPORT JURISDICTION**

The Service and any software and documentation provided in connection with the Service are subject to U.S. export jurisdiction. You must comply with all applicable laws including the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, and end-user, end-use and destination restrictions issued by U.S. and other governments.

**22. ENGLISH LANGUAGE CONTROLS**

The English language version of this agreement controls. If you are in Canada, it is the express wish of the parties that this agreement, and any associated documentation, be written and signed 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.

**23. SURVIVAL**

Sections ‎4, ‎9 - 12 and ‎16 - 23 will survive the termination of this Agreement.