

# Online Services Supplemental Terms and Conditions

MBSA/MBA/Agreement/Enrollment  
number

57647924

**Must be attached to a signature form to be valid.**

If Customer has a Master Agreement v.2010 or earlier (the "Master Agreement") and either Customer or its Enrolled Affiliate desires to order Online Services, these Online Services Supplemental Terms and Conditions ("Supplemental Terms") update the terms of the Enterprise Subscription Enrollment ("Agreement").

## **1. Definitions.**

Capitalized terms used, but not defined herein, shall have the meanings given them in the Master Agreement and/or Agreement. The following definitions replace or supplement the definitions in the Agreement, as appropriate:

"Customer Data" means all data, including all text, sound, software, image or video files that are provided to Microsoft by, or on behalf of, Customer and its Affiliates through use of the Online Services.

"Online Services" means the Microsoft-hosted services identified as Online Services in the Product List.

"Product" means all products identified on the Product List, such as all software, Online Services and other web-based services, including pre-release or beta versions.

"Professional Services" means all support, consulting and other services or advice, including any resulting deliverables provided to Customer by Microsoft. Professional Services do not include Online Services.

"Service Level Agreement" means the document specifying the minimum service level for the Online Services. The Service Level Agreement is available at <http://www.microsoft.com/licensing/contracts> or a successor site.

"Supplemental Agreement" means any agreement that incorporates the Microsoft Business and Services Agreement or Microsoft Business Agreement signed by Customer and Microsoft.

## **2. Applicability of Supplemental Terms.**

These Supplemental Terms apply only to Customer's purchase and use of Online Services and Professional Services. Products other than Online Services remain subject to the terms of the Master Agreement, the Agreement, and any terms referenced therein. In the case of any conflict between these Supplemental Terms and the terms and conditions of the Master Agreement or Agreement that are not expressly resolved by their terms, these Supplemental Terms control.

## **3. Limited warranty for Online Services.**

Microsoft warrants that each Online Service will perform in accordance with the applicable Service Level Agreement during Customer's use. Customer's remedies for breach of this warranty are in the Service Level Agreement. These are Customer's sole remedies for breach of the limited warranty.

The warranty in this section does not cover problems caused by accident, abuse or use in a manner inconsistent with the Agreement, including failure to meet minimum system requirements. The limited warranty does not apply to free, trial, pre-release, or beta products, or to components of Products that Customer is permitted to redistribute.

**Microsoft provides no other warranties or conditions and disclaims any other express, implied or statutory warranties, including warranties of quality, title, non-infringement, merchantability,**

and fitness for a particular purpose. Any warranties, guarantees or conditions not able to be disclaimed as a matter of law last for one year from the start of the limited warranty.

#### **4. *Privacy and Compliance with Laws.***

- a. Customer consents to the processing of personal information by Microsoft and its agents to facilitate the subject matter of the Agreement, any Online Services subscription or enrollment and any Statement of Services or Supplemental Agreement, including these Supplemental Terms. Customer will obtain all required consents from third parties (including Customer's contacts, resellers, distributors, administrators, and employees) under applicable privacy and data protection laws before providing personal information to Microsoft.
- b. Personal information collected under the Agreement (i) may be transferred, stored and processed in the United States or any other country in which Microsoft or its service providers maintain facilities and (ii) will be subject to the privacy terms specified in the Use Rights. Microsoft abides by the EU Safe Harbor and the Swiss Safe Harbor frameworks as set forth by the U.S. Department of Commerce regarding the collection, use, and retention of data from the European Union, the European Economic Area, and Switzerland.

#### **5. *Non-Microsoft software or technology.***

Customer is solely responsible for any non-Microsoft software or technology that it installs or uses with the Products, Fixes or Services Deliverables. Customer may not install or use non-Microsoft software or technology in any way that would subject Microsoft's intellectual property or technology to obligations beyond those included in the Agreement or these Supplemental Terms.

#### **6. *Customer's agreement to protect.***

Customer will defend Microsoft against any claims made by an unaffiliated third party:

- a. that any Customer Data or non-Microsoft software Microsoft hosts on Customer's behalf infringes the third party's patent, copyright, or trademark or makes unlawful use of its Trade Secret; or
- b. that arises from use of an Online Service in violation of applicable laws and regulations; a violation of the rights of others; or unauthorized access to or disruption of any service, data, account, or network in connection with the use of the Online Services.

Customer must pay the amount of any adverse final judgment or settlement to which Customer consents resulting from a claim covered by this section 6. Microsoft must notify Customer promptly in writing of a claim subject to this section, give Customer sole control over the defense or settlement; and provide reasonable assistance in defending the claim. Customer will reimburse Microsoft for reasonable out of pocket expenses that Microsoft incurs in providing assistance. This section provides Microsoft's exclusive remedy for these claims.

#### **7. *Limitation on liability.***

- a. The total liability of each party for all claims arising under each Supplemental Agreement is limited to direct damages up to the following amounts: (1) for Professional Services, the amount Customer was required to pay for the Professional Services under the applicable Statement of Services, and (2) for Online Services, the amount Customer paid for the Online Service during the 12 months before the cause of action arose; provided, that in no event will a party's aggregate liability for any Online Service exceed the amount paid for that Online Service under the applicable Supplemental Agreement. In the case of Online Services or Services provided free of charge, previews, or code that Customer is authorized to redistribute to third parties without separate payment to Microsoft, Microsoft's liability is limited to direct damages and capped at U.S. \$5,000. These limitations apply regardless of whether the asserted liability is based on breach of contract, tort (including negligence), strict liability, breach of warranties, or any other legal theory.

- b. **EXCLUSION OF CERTAIN DAMAGES.** In no event will either party be liable for indirect, consequential, special, punitive or incidental damages, including loss of use, loss of profits, or interruption of business, however caused or on any theory of liability.
- c. **EXCEPTIONS.** The limits and exclusions in this Section 7 do not apply to (1) Microsoft's obligations under the section of the Master Agreement titled "Defense of infringement, misappropriation, and third party claims" or Customer's obligations under the section of these Supplemental Terms titled "Customer's agreement to protect", (2) either party's liability for violation of its confidentiality obligations (except obligations related to Customer Data, which remain subject to the limitations and exclusions above) or (3) either party's violation of the other party's intellectual property rights.

## **8. Subcontractors.**

Microsoft may use contractors to support Online Services and perform Professional Services. Microsoft will be responsible for their performance subject to the terms of this Supplemental Agreement.

