Order Form

Framework agreement reference: SBS/19/AB/WAB/9411

Date of order	24 February 2025	Order Number	QU1048834

FROM

Customer	**NHS Counter Fraud Authority**
Customer's Address	NHS CFA, 7th Floor, HM Government Hub, 10 South Colonnade, Canary Wharf, London, E14 4PU
Invoice Address	Stella House, Goldcrest Way, Newburn Riverside, Newcastle, NE15 8NY accountspayable@nhsbsa.nhs.uk
Contact Ref:	C331106 - NHS CFA Microsoft Licencing Solution Partner

TO

Supplier	**Trustmarque Solutions Limited ("Supplier")**
Supplier's Address	Marlborough House Westminster Place, York Business Park, York, United Kingdom, YO26 6RW
Account Manager	**Name:** **Address:** Marlborough House Westminster Place, York Business Park, York, United Kingdom, YO26 6RW **Phone:** **e-mail:** **Fax:** N/A

GUARANTEE

Guarantee to be provided	**No**

1. TERM
(1.1)   Commencement Date
28 February 2025, as specified in the Customer's purchase order no. 600001338 dated 20ᵗʰ February

2025.

(1.2)   Expiry Date

The Contract shall expire 36 months after the Commencement Date (28th February 2028).

2. GOODS AND SERVICES REQUIREMENTS

(2.1) Goods and/or Services

The Supplier shall provide the Customer with the Goods and/or Services set out in Appendix A.

Minimum Order Value	£264,369.60 **(excluding VAT)**

(2.2) Premises

The Goods and/or Services will be provided remotely. Where site visits are needed, these will be called out in subsequent statement of works, specific to the service or product provide for in the relevant statement of work.

(2.3) Lease/ Licenses
Except where licence terms apply for Prism or software provided for in statements of work incorporated into this Contract, the parties agree that the applicable end user usage terms will be between the Authority and Microsoft direct, and the Customer agrees to be bound by the usage terms as set out in Appendix B.

(2.4) Standards

N/A

(2.5) Security Requirements

Security Policy

N/A

Additional Security Requirements

N/A

Processing personal data under or in connection with this contract

Limited business contact personal data only that is used for processing this order and communications between the parties during the deployment of the service e.g. name, role, work email, work email address. No patient data is being processed by the Supplier.

(2.6) Exit Plan (where required)

Three (3) months prior to the expiry of this Contract, the Supplier shall develop an exit plan, in consultation with the Customer which shall include the following:

(2.7) Environmental Plan

N/A

3. SUPPLIER SOLUTION

(3.1) Supplier Solution

As set out in Appendix A.

(3.2) Account structure including Key Personnel

Account team

████████████████████████████
████████████████████████████
████████████████████████

For escalations

████████████████████████
████████████████

Where named individuals are no longer with the business, we will seek to replace them to continue our support model

(3.3) Sub-contractors to be involved in the provision of the Services and/or Goods

Microsoft

(3.4) Outline Security Management Plan

As set out below:

N/A

| **(3.5) Relevant Convictions** |
| N/A |

| **(3.6) Implementation Plan** |
| N/A |

4. PERFORMANCE QUALITY

(4.1) Key Performance Indicators

N/A

(4.2) Service Levels and Service Credits

Microsoft standard service levels for each relevant product shall apply where provided by Microsoft. See paragraph 5.1 of the CSP terms and conditions in Appendix B to this order form; or any service levels agreed by the parties in a statement of work that is incorporated into this Contract.

5. PRICE AND PAYMENT

(5.1) Contract Price payable by the Customer in accordance with the commercial schedule set out in the framework agreement (including applicable discount but excluding VAT), payment profile and method of payment (e.g. Government Procurement Card (GPC) or BACS))

BACS

(5.2) Invoicing and Payment

The Customer shall pay the Supplier for all of the Goods and Services annually in advance for anniversary orders, where additional requirements for Microsoft products are needed, these will be paid in advance and on a pro-rated basis to the next anniversary date, or as set out in the relevant contract variation signed by the parties. Professional services are payable monthly in arrears for work completed, All payments should be paid within thirty (30) days of receipt of a Valid Invoice from the Supplier, submitted in accordance with this paragraph 5.2, the payment profile set out in paragraph 5.1 above and the provisions of the Contract. All invoices will contain a legitimate CFA purchase order number and should be issued digitally to the above invoice address.

6. SUPPLEMENTAL AND/OR ADDITIONAL CLAUSES

(6.1) Supplemental requirements;

The Parties agree that:
- No Supplier personnel employed in delivery of the Services provided under this Order Form shall be brought into contact with any vulnerable persons or individuals receiving health care, and no activities performed in the course of the Services are regulated activities for the purpose of the Safeguarding Vulnerable Groups Act 2006.
- Any Call-off provisions relating to TUPE are not applicable to this Order Form.
- For any indemnities that are to be subject to the limitation on liability at Clause 13, it is all claims in aggregate arising under all those indemnities (i.e., taken together) which are subject to the limitation of liability at Clause 13.2, as amended.

For the purposes of this Order Form, the Parties agree that Clauses 10, 11,12 and 13 shall be amended as follows:

10   Warranties

Clause 10.1.2 shall be deleted and replaced with:

"the Goods shall be suitable for the purposes and/or treatments as referred in the Specification and Tender response Document, be of satisfactory quality and shall comply with the standards and requirements set out in this Contract";

Clause 10.1.14 shall be deleted and replaced with:

"any equipment it uses in the delivery or installation of the Goods shall comply with all relevant Law and Guidance and maintained in accordance with the manufacturer's specification;"

11   Intellectual property

Clause 11 shall be deleted in its entirety and replaced with the following:

"11.1 All Intellectual Property Rights existing prior to the Commencement Date shall vest in their originator absolutely.

11.2 The Customer grants the Supplier for the Term a non-exclusive, worldwide, royalty free licence to use the Customer's Intellectual Property Rights in any pre-existing material that vests in the Customer pursuant to Clause 11.1 to the extent required by the Supplier to provide the products Services and to fulfil the Supplier's other obligations under this Contract.

11.3 Subject to Clauses 11.1 and 11.2 above and 11.4 below, all Intellectual Property Rights and all other rights in the products and/or Service shall be owned by the Supplier or its licensors. The Supplier hereby licences all such rights to the Customer free of charge and on a non-exclusive, worldwide basis to such extent as is necessary to enable the Customer to make reasonable use of the products and/or Service as set out in the Contract. If this Contract is terminated or expires, this licence will automatically terminate.

11.4 Where the Supplier has agreed to provide the Customer with third party software as part of the Service, the terms upon which such software is provided are set out in section 2.3 of this Contract."

12   **Indemnity**

Clause 12 shall be amended as follows:

12.1 Unamended

12.2 Liability under Clauses 12.1.1, 12.1.3 and 17.13 of this Schedule 2 of these Call-off Terms and Conditions shall be unlimited. Liability under Clauses 12.1.2 and 12.1.4 of this Schedule 2 of these Call-off Terms and Conditions and Clause 2.6 of Schedule 3 of these Call-off Terms and Conditions shall be subject to the limitation of liability set out in Clause 13 of this Schedule 2 of these Call-off Terms and Conditions.

12.3 Unamended

13   **Limitation of liability**

Clause 13 shall be amended as follows:

13.1 Unamended

13.2 Subject to Clauses 12.2, 13.1 and 13.3 of this Schedule 2 of these Call-off Terms and Conditions, the total liability of each Party to the other under or in connection with this Contract whether arising in contract, tort, negligence, breach of statutory duty or otherwise shall be limited in aggregate to one hundred and twenty five percent (125%) of the total Contract Price paid or payable by the Authority to the Supplier for the Services.

13.3 There shall be no right to claim losses, damages and/or other costs and expenses under or in connection with this Contract whether arising in   contract (to include, without limitation, under any relevant indemnity), tort, negligence, breach of statutory duty or otherwise to the extent that any losses, damages and/or other costs and expenses claimed are in respect of loss of production, loss of business opportunity or are in respect of indirect loss of any nature suffered or alleged.
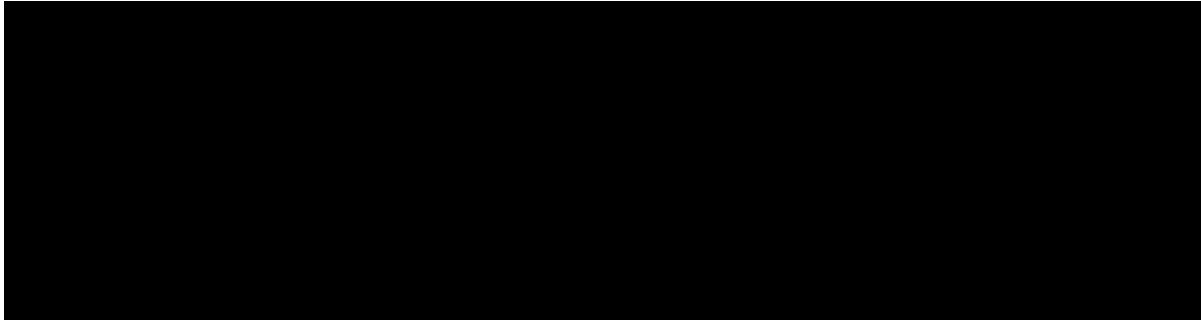
13.4 Unamended
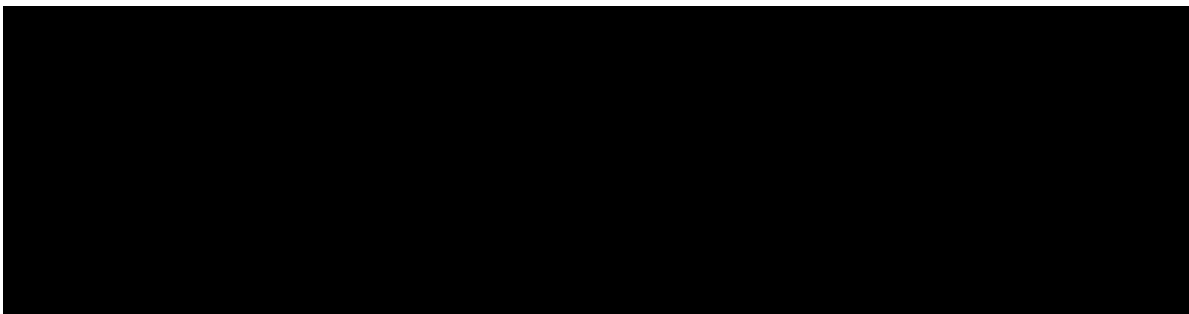
13.5 Delete and replace with "Not used".

13.6 Unamended.

BY SIGNING AND RETURNING THIS ORDER FORM THE SUPPLIER AGREES to enter a legally binding contract with the Customer to provide the Goods and/or Services. The Parties hereby acknowledge and agree that they have read the NHS Conditions of Contract for purchase of goods and/or Services and by signing below agree to be bound by the terms of this Contract.

For and on behalf of the Supplier:

For and on behalf of the Customer:

APPENDIX A – ███████████████████████

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2. The Supplier shall provide additional management services supplied at no additional charge:

   a) Named account team to perform quarterly business review of the types and volumes of Microsoft products provided by the Supplier (a "QBR") and annual review of the Customer's Enterprise Agreement(s) (an "Anniversary Management" meeting).

   b) Access to the Prism dashboard showing what Microsoft licences are in use by the Customer.

   c) Any professional or managed services related to Microsoft technologies, scoped and agreed on a case by case basis by individual statement of work incorporated into this Contract by both parties signing a contract variation.

APPENDIX B – **Additional Terms and Applicable third party licence terms***

1. **CSP Terms including the applicable Microsoft terms**

TRUSTMARQUE CLOUD SOLUTIONS PROVIDER TERMS OF SUPPLY FOR ORDERS PLACED UNDER SBS NHS ORDER NO. QU1048834

These Trustmarque Cloud Solutions Provider Terms of Supply ("CSP Terms") are between NHS Counter Fraud Authority ("Buyer", "you" or "your") and Trustmarque Solutions Limited ("Supplier", "we", "us", "our" or "Reseller").

These are the terms on which we agree to supply to you Microsoft Cloud Solutions and Trustmarque Related Services. Except for the Microsoft Customer Agreement or any terms that the Buyer accepts directly with Microsoft, these terms supersede any standard Trustmarque CSP terms that the Buyer may be asked to accept as part of Trustmarque's CSP onboarding process. SBS NHS("**SBS NHS Order**").

Definitions

The definitions set out in these terms of supply are in addition to the definitions set out in the SBS NHS Order. If there is a conflict between these definitions and those set out in a SBS NHS Order then these definitions shall prevail.

"Additional Terms" means the additional terms, which an CSP Order may be subject to, and will be presented and agreed at the time of placing an CSP Order. This excludes any Microsoft Customer Agreement and/or any Non- Microsoft Product terms and conditions.

"Billing Date" means the day of the month you will be billed on, for your Subscription(s). We will advise you of your Billing Date upon placement of your first CSP Order.

"Consumption Based Subscription" means monthly subscriptions that are billed based on actual usage in the preceding month without upfront commitment.

"CSP Order" means a CSP Order executed under the SBS NHS Order for Microsoft Product or Non-Microsoft Product via We as Reseller, which also includes the Trustmarque Product and Subscription Management Services and Reactive Support Services. The process for placing a CSP Order is described in 'Service Description and Service Level Agreement for Trustmarque Cloud Solutions'.

"Buyer Data" is defined in the Online Services Terms as "Customer Data".

"Customer Solution" is defined in the Online Services Terms.

"Early Termination Charge" means Microsoft's discretion charge for early termination of a Subscription before its term ends.

"End User" means any person you permit to access Buyer Data hosted in the Online Services or otherwise use the Online Services, or any user of a Customer Solution.

"Fixed Term Subscription" means a subscription to use software for a fixed duration.

"Microsoft" means Microsoft Ireland Operations Limited.

"Microsoft Customer Agreement" means the agreement between you and Microsoft for the licence and use of Microsoft Product (and Non-Microsoft Product as the case may be).

"Microsoft Product(s)" means any Online Service (including any Software).

"Microsoft SLAs" means the commitments Microsoft make regarding delivery and/or performance of an Online Service, as published at https://www.microsoftvolumelicensing.com/DocumentSearch.aspx?Mode=3&DocumentType Id=37 or at an alternate site that Microsoft identify.

"Non-Microsoft Product" means any third party-branded software, data, service, website or product but excluding Microsoft Product.

"Online Services" means any of the Microsoft-hosted online services subscribed to by Buyer under this agreement, including Microsoft Dynamics Online Services, Office 365 Services, Microsoft Azure Services, or Microsoft Intune Online Services.

"Online Services Terms" means the Microsoft terms that apply to your use of the Products available at
https://www.microsoftvolumelicensing.com/DocumentSearch.aspx?Mode=3&DocumentType Id=46
The Online Services Terms include terms governing your use of Products that are in addition to the terms in this agreement.

"Portal" means the Trustmarque Enterprise Services Portal, or an alternate site identified by Us. The Portal will be the preferred place for updates on pricing, terms and conditions and any other information relating to this Terms of Supply.

"Product and Subscription Management Services" means the assistance provided by Trustmarque, whereby We enable the purchase, activation and management of Microsoft Products by the Buyer. These may be provided by the Portal or through other processes or tools.

"Reactive Support Services" means the Trustmarque services provided to assist the Buyer with issues relating to Microsoft Products.

"Software" means software Microsoft provide for installation on your device as part of your Subscription or to use with the Online Service to enable certain functionality.

"Subscription" means an enrolment for Online Services for a defined Term as established by us, which is either a Fixed Term Subscription or a Consumption Based Subscription.

"Term" means the duration of a Subscription (e.g., 30 days or 12 months).

"Trustmarque Related Services" means the Product and Subscription Management Services, Reactive Support Services and Advisory Services provided by us.

Resale of Microsoft Cloud Solutions

2.1 These terms of supply apply to any CSP Order or any subsequent CSP Orders for Microsoft Product and/or Renewals, Non-Microsoft Products and/or Renewals, and any Trustmarque Related Services provided to you by us. Subject to your compliance with clause 3 and acceptance of the Microsoft Customer Agreement, we shall make available to you Microsoft Products that have been agreed with Microsoft and quoted for by us, or Microsoft Products that are available on a current price list, which can be requested from us at any time.

2.2 Any Non-Microsoft Products provisioned through Microsoft are subject to the Microsoft Customer Agreement and any additional terms the proprietor wishes to apply. Any Non-Microsoft Products purchased by you from us that have not been provisioned through Microsoft are subject to the proprietor's standard terms and conditions as notified to the Buyer in writing from time to time during the term of the Order..

2.3 In the event that you purchase Microsoft Azure and use CloudCheckr Services, you agree to the CloudCheckr End User Licence Agreement; https://cloudcheckr.com/end-user- license-agreement .

Microsoft Customer Agreement

3.1 The Microsoft Customer Agreement is between Buyer and Microsoft and consists of Microsoft general terms, the applicable Use Rights and SLAs, and any additional terms Microsoft presents when an CSP Order is placed. The Microsoft Customer Agreement applies to every CSP Order placed for Microsoft Products and must be signed and returned to us before you can place any CSP Orders for Microsoft Products. Microsoft may at its discretion accept or reject any proposed Buyer.

3.2 You acknowledge and agree that the Microsoft Customer Agreement is a valid, binding and enforceable agreement between you and Microsoft and that you are liable for and shall indemnify us against any loss or damage incurred as a result of your failure to comply with the terms of the Microsoft Customer Agreement. You further agree that it is your responsibility to ensure that the Microsoft Customer Agreement is signed and returned to us, any failure to sign the Microsoft Customer Agreement may result in your being unable to purchase any Microsoft products/services.

Description of Product and/or Services

4.1 We do not make any warranties or representations regarding the Microsoft Products and/or Non-Microsoft Product. Any relevant warranties and representations are made by Microsoft to the Buyer in accordance with the Microsoft Customer Agreement and/or the proprietor of Non-Microsoft Products to the Buyer in accordance with their standard terms and conditions.

4.2 The Microsoft Customer Agreement supplements this Agreement in relation to the description of the services and products you may CSP Order via us as Reseller of Microsoft Product. We shall therefore be entitled to rely on the terms of the Microsoft Customer Agreement, as they relate to the supply of the Microsoft Products by a Reseller.

Microsoft Service Level Agreement

5.1 Microsoft makes certain service levels commitments to Buyers in the Microsoft SLAs. These are Microsoft's commitments to the Buyer and not Trustmarque's, if you make a claim on the Microsoft

SLAs, we will escalate the claim to Microsoft for review. If Microsoft and have approved and agreed to provide any credit to you following a review, we will credit you the amount following receipt of the same from Microsoft to us, in the next invoice.

Fixed Term Subscription

6.1 Where you have requested a Fixed Term Subscription, unless otherwise specified on the CSP Order, the term of the subscription will be for a period of 12 months from your Billing Date and will automatically renew unless cancelled by you in in advance of the next scheduled invoice after the 12-month period. Automatic renewals are subject to any concerns we may have on your financial standing and whether you pose or are likely to pose a credit risk.

6.2 A Fixed Term Subscription is pre-billed on a pro-rata based on the applicable monthly Subscription price. The unit price for the Microsoft Product will not change from the price as of the Subscription start date during the term of the 12-month Subscription. Each renewal will be for the same number of months as the Initial Term. Pricing for a renewal will be agreed in a quote supplied by us or if no quote is provided, Trustmarque's pricing in a price list supplied to the Buyer that is in effect as of the date of the renewal.

6.3 An CSP Order for a new Fixed Term Subscription will expire 12 full calendar months (or other Term as agreed in an CSP Order) after the Buyer's next scheduled Billing Date. For those new Fixed Term Subscriptions, the period between the placing of the CSP Order and the Buyer's next scheduled Billing Date will not be charged.

6.4 If a Fixed Term Subscription is cancelled before its Term expires, and during the Buyer's billing cycle, we may provide a pro-rata credit for the un-used pre-paid portion of the cancelled Fixed Term Subscription in the Buyer's subsequent invoice, on the basis that Microsoft provide the same in respect of the Buyer's Subscription and We will not invoice the Buyer for any future scheduled billings for that Subscription. The pro-rata credit will be subject to Microsoft's Early Termination Charge if applicable.

6.5 If you decide to cancel your subscription before the fixed term period no refund of monies paid will be provided.

Consumption based Subscriptions

7.1 Where you have selected a Consumption Based Subscription you will be billed on the Billing Date based on actual usage in the preceding month with no upfront commitment. Payment is on a monthly basis in arrears.

7.2 Consumption Based Subscriptions do not expire unless cancelled. Consumption Based Subscriptions can be cancelled at any time. Any usage before cancellation will be billed at the next scheduled Billing Date, as a final invoice for the relevant Subscription.

7.3 The pricing charged for Consumption Based Subscriptions will be based on the unit price as provided for by Microsoft during the current billing cycle and will be billed to you on a consumption basis during the Term of your Subscription.

7.4 Any reduction, increase or suspension of licences can take up to 60 days to take effect and show in the invoice.

7.5 Where you have chosen a Consumption Based Subscription with an upfront commitment and you consume more than the anticipated monthly committed amount we will:

> 7.5.1 notify you of your actual usage as soon as reasonably practicable;

> 7.5.2 invoice you in full for your actual usage which shall be paid by you in accordance with clause 8;

> 7.5.3 and require you to raise an additional PO to the value of your revised annual usage based on your most recent consumption pattern.

Payment terms

8.1 Unless otherwise agreed, you shall pay all invoices to us, in full, and in cleared funds, within 30 days of date of invoice. Pricing shall be as per the price list which sets out the unit cost exclusive of VAT, unless a price is separately agreed in an CSP Order. Prices set out in the price list may decrease or increase at any time.

8.2 In the event that your internal purchasing requirements, require the issue and use of a valid Purchase CSP Order, you shall be required to provide a valid Purchase CSP Order equating to the total sum of the expected Subscription charge pursuant to an CSP Order for a period of 12 months. In the event that the total sum exceeds the initial purchase CSP Order, you shall issue a subsequent purchase CSP Order to cover the outstanding amount. You shall be responsible for the usage you consume on your Subscription(s). A value of a Purchase CSP Order shall not limit your liability for Subscription charges.

8.3 We are not liable for any failure on your part to provide an initial or subsequent purchase order for a CSP Order. Any failure to provide the purchase order for a CSP Order, which subsequently results in a delay to us receiving payment, will allow us to suspend or terminate the Contract and any CSP Orders in accordance with clause 9.1 a).

8.4 You may check your usage limits of a Subscription at any time by submitting a service request or via the Portal, if we make that functionality available for the Microsoft Products or Non-Microsoft Products. Any failure by us to notify you of your usage limits, as per any agreed notification process, shall not relieve you of your liability to pay any charges in respect of you Subscriptions that you have purchased.

Cancellation and/or Suspension

9.1 We may cancel and/or suspend the CSP Order in whole or in part.

a) Where you have failed to pay an outstanding invoice, and such invoice remains outstanding for a period of 30 days from the date of payment due

b) Breach of these CSP Terms and/or the Microsoft Customer Agreement.

c) Automatically if Microsoft does the same pursuant to the Microsoft Customer Agreement as a result of a customer breach.

d) Where (acting reasonably) we consider you to be a credit risk

e) Upon providing you 30 days' notice. We reserve the right to terminate the relevant CSP Order(s) and the Buyer's Subscription by providing the Buyer on 30 days' notice.

9.2 For the avoidance of doubt suspension or termination of the CSP Order includes the termination of any on-going subscription licences and any other Microsoft and non-Microsoft products where payment has not been made and suspension or termination of any Trustmarque Related Services.

9.3 Suspension or cancellation of the CSP Order by us shall not relieve you of your liabilities under these terms and the Microsoft Customer Agreement. You shall be liable for any invoice which relates to the consumption of Microsoft Products up until the expiry of the termination notice.

9.4 Upon expiry, termination or cancellation of the CSP Order for whatever reason, you shall pay in full all outstanding invoices within 10 days. You will have sixty (60) days to notify us if you wish to migrate any Buyer Data to either a new Subscription with us, with Microsoft directly, or some other service. Upon request, and if within the timescale, we will assist you with migration of the Buyer Data at an additional charge to be agreed between both parties.

9.5 In addition to the above, Microsoft may terminate your status as a Buyer at any time.

Trustmarque Related Services

10.1 Where Trustmarque Related Services are being provided, they are subject to the proprietor's standard terms and conditions as notified to the Buyer in writing from time to time during the term of the Order. Any charges for the Trustmarque Related Services will be included within the Subscription charges.

10.2 We will provide the Trustmarque Related Services using reasonable skill and care and in accordance with the Service Description and Service Level Agreement for Trustmarque Cloud Solutions document in all material respects.

10.3 Our performance is dependent upon your prompt performance of any Buyer obligations which include, among others, the responsibilities described in the Service Description and Service Level Agreement for Trustmarque Cloud Solutions document. You agree to make available to us an authorised representative who shall be authorised to make binding decisions on your behalf with regards to you Subscriptions.

10.5 Any title and all intellectual property rights in any document, material, idea, data or other information constituting an original item developed and supplied by us as part of the Trustmarque Related Services, shall remain vested in us.

Data Protection

11.1 You acknowledge and agree that if you are purchasing Azure services CloudCheckr will be a sub-processor.

2. Microsoft Customer Agreement

Microsoft Customer Agreement

This Microsoft Customer Agreement (the "Agreement") is between Customer and Microsoft and consists of these General Terms, the DPA, the applicable Product Terms and SLAs, and any additional terms Microsoft presents when an order is placed. This Agreement takes effect when the Customer accepts it, applies to any order under this Agreement, and supersedes any end user license agreement that accompanies a Product. The individual who accepts the Agreement represents that they are authorized to enter into this Agreement on behalf of Customer. Capitalized terms have the meanings given under "Definitions."

General Terms

License to use Microsoft Products

a. **Licenses for Products.** Products are licensed and not sold. Upon Microsoft's acceptance of each order and subject to Customer's compliance with this Agreement, Microsoft grants Customer a nonexclusive and limited license to use the Products ordered as provided in this Agreement. These licenses are solely for Customer's own use and business purposes and are nontransferable except as expressly permitted under this Agreement or applicable law.

b. **Duration of licenses.** Online Services and some Software are licensed on a subscription basis for a specified period of time. Subscriptions expire at the end of the applicable subscription period unless renewed. Some Subscriptions renew automatically until canceled. The Subscription term for Online Services that are billed in arrears based on usage is the same as the billing period unless otherwise specified in the Product Terms. Perpetual Software licenses become perpetual upon payment in full.

c. **End Users.** Customer will control access to, and use of, the Products by End Users and is responsible for any use of the Products that does not comply with this Agreement.

d. **Affiliates.** Customer may order Products for use by its Affiliates. If it does, the licenses granted to Customer under this Agreement will apply to such Affiliates, but Customer will have the sole right to enforce this Agreement against Microsoft. Customer will remain responsible for all obligations under this Agreement and for its Affiliates' compliance with this Agreement.

e. **Reservation of Rights.** Microsoft reserves all rights not expressly granted in this Agreement. Products and Services Deliverables are protected by copyright and other intellectual property laws and international treaties. No rights will be granted or implied by waiver or estoppel. Rights to access or use a Product on a device do not give Customer any right to implement Microsoft patents or other Microsoft intellectual property in the device itself or in any other software or devices.

f. **Restrictions.** Except as expressly permitted in this Agreement or Product documentation, Customer must not (and is not licensed to):

(i) reverse engineer, decompile, or disassemble any Product or Services Deliverable, or attempt to do so (except where applicable law permits despite this limitation);

(ii) install or use non-Microsoft software or technology in any way that would subject Microsoft's intellectual property or technology to any other license terms;

(iii) work around any technical limitations in a Product or Services Deliverable or restrictions in Product documentation;

(iv) separate and run parts of a Product or Services Deliverable on more than one device;

(v) upgrade or downgrade parts of a Product at different times;

(vi) transfer parts of a Product separately; or

(vii) distribute, sublicense, rent, lease, or lend any Products or Services Deliverables, in whole or in part, or use them to offer hosting services to a third party.

g. **License transfers.** Customer may only transfer fully-paid, perpetual licenses under this Agreement to (1) an Affiliate or (2) a third party solely in connection with the transfer of hardware to which, or employees to whom, the licenses have been assigned as part of (a) a divestiture of all or part of an Affiliate or (b) a merger involving Customer or an Affiliate. Upon such transfer, Customer must uninstall and discontinue using the licensed Product and render any copies unusable. Customer must provide the transferee a copy of these General Terms, the applicable Use Rights and any other documents necessary to show the scope, purpose and limitations of the licenses transferred. Nothing in this Agreement prohibits the transfer of Software to the extent allowed under applicable law if the distribution right has been exhausted.

h. **Customer Eligibility.** Customer agrees that if it is purchasing academic, government or nonprofit Products, Customer meets the respective eligibility requirements (https://aka.ms/eligiblitydefinition). Microsoft reserves the right to verify eligibility and suspend Product use if requirements are not met.

Professional Services

a. **Performance of Professional Services.** Upon Microsoft's acceptance of each Statement of Services and subject to Customer's compliance with this Agreement, Microsoft will perform the Professional Services ordered as provided in this Agreement and the applicable Statement of Services.

b. **Fixes.** Each Fix is licensed under the same terms as the Product to which it applies. If a Fix is not provided for a specific Product, any use rights Microsoft provides with the Fix will apply.

c. **Pre-existing Work.** All rights in any computer code or other written materials a party develops or obtains independent of this Agreement ("Pre-existing Work") will remain the sole property of the party providing it. Each party may use, reproduce, and modify the other party's Pre-existing Work only as needed to perform obligations related to Professional Services.

d. **Services Deliverables.** Subject to Customer's compliance with this Agreement, Microsoft grants Customer a non-exclusive, limited license to use and modify the Services Deliverables as provided in this Agreement, including, without limitation, the reservation of rights, restrictions, and license transfer provisions under the section entitled License to use Microsoft Products. These licenses are solely for Customer's own use and business purposes in connection with its use of Products and are nontransferable except as expressly permitted under this Agreement or applicable law.

e. **Affiliates' rights to Services Deliverables.** Customer may sublicense its rights in Services Deliverables to its Affiliates, but Customer's Affiliates may not sublicense these rights. Customer is liable for ensuring its Affiliates' compliance with this Agreement.

Non-Microsoft Products

Non-Microsoft Products are provided under separate terms by the Publishers of such products. Customer will have an opportunity to review those terms prior to placing an order for a Non-Microsoft Product through a Microsoft online store or Online Service. Microsoft is not a party to the terms between Customer and the Publisher. Microsoft may provide Customer's contact information and transaction details to the Publisher. Microsoft makes no warranties and assumes no responsibility or liability whatsoever for Non-Microsoft Products. Customer is solely responsible and liable for its use of any Non-Microsoft Product.

Verifying compliance

a. **Verification process.** Customer must keep records relating to Products it and its Affiliates use or distribute. At Microsoft's expense, Microsoft may verify Customer's and its Affiliates' compliance with this Agreement at any time upon 30 days' notice. Microsoft may engage an independent auditor under nondisclosure obligations to perform the verification. Customer must promptly provide any information and documents that Microsoft or the auditor reasonably requests related to the verification and visual access to systems running the Products. All information and reports related to the verification process will be Confidential Information and used solely to verify compliance.

b. **Remedies for non-compliance.** If verification reveals any unlicensed use, Customer must, within 30 days, order sufficient licenses to cover the period of its unlicensed use. Without limiting Microsoft's other remedies, if unlicensed use is 5% or more of Customer's total use of all Products, Customer must reimburse Microsoft for its costs incurred in verification and acquire sufficient licenses to cover its unlicensed use at 125% of the then-current Customer price or the maximum allowed under applicable law, if less.

Data Protection and Processing

Microsoft and its Affiliates, and their respective agents and subcontractors, will process Customer Data, Personal Data, and Professional Services Data as provided in this Agreement and the DPA, which is incorporated by reference. Before providing Personal Data to Microsoft, Customer will obtain all required consents from third parties (including Customer's contacts, Partners, distributors, administrators, and employees) under applicable privacy and data protection laws.

Confidentiality

a. **Confidential Information.** "Confidential Information" is non-public information that is designated "confidential" or that a reasonable person should understand is confidential, including, but not limited to, Customer Data, Professional Services Data, the terms of this Agreement, and Customer's account authentication credentials. Confidential Information does not include information that (1) becomes publicly available without a breach of a confidentiality obligation; (2) the receiving party received lawfully from another source without a confidentiality obligation; (3) is independently developed; or (4) is a comment or suggestion volunteered about the other party's business, products, or services.

b. **Protection of Confidential Information.** Each party will take reasonable steps to protect the other's Confidential Information and will use the other party's Confidential Information only for purposes of the parties' business relationship. Neither party will disclose Confidential Information to third parties, except to its Representatives, and then only on a need-to-know basis under nondisclosure obligations at least as protective as this Agreement. Each party remains responsible for the use of Confidential Information by its Representatives and, in the event of discovery of any unauthorized use or disclosure, must promptly notify the other party. The Product Terms and DPA provide additional terms regarding the disclosure and use of Customer Data.

c. **Disclosure required by law.** A party may disclose the other's Confidential Information if required by law, but only after it notifies the other party (if legally permissible) to enable the other party to seek a protective order.

d. **Residual information.** Neither party is required to restrict work assignments of its Representatives who have had access to Confidential Information. Each party agrees that the use of information retained in Representatives' unaided memories in the development or deployment of the parties' respective products or services does not create liability under this Agreement or trade secret law, and each party agrees to limit what it discloses to the other accordingly.

e. **Duration of Confidentiality obligation.** These obligations apply: (1) for Customer Data, until it is deleted from the Online Services; and (2) for all other Confidential Information, for a period of five years after a party receives the Confidential Information.

Warranties

a. **Limited warranties and remedies.** To the extent permitted by applicable law, the remedies below are Customer's sole remedies for breach of the warranties provided in this section, and Customer waives any warranty claims not made during the applicable warranty period.

   (i) Online Services. Microsoft warrants that each Online Service will perform in accordance with the applicable SLA during Customer's use. Customer's remedies for breach of this warranty are described in the SLA.

   (ii) Software. Microsoft warrants that the Software version that is current at the time Customer acquires it will perform substantially as described in the applicable Product documentation for one year from the date Customer acquires a license for that version. If it does not, and Customer notifies Microsoft within the warranty term, Microsoft will, at its option, (1) return the amount Customer paid for the Software license or a prorated portion of the applicable subscription fee or (2) repair or replace the Software.

   (iii) Professional Services. Microsoft warrants that it will perform Professional Services with the applicable professional standard of care and skill in the industry. If Microsoft fails to do so, and Customer notifies Microsoft within 90 days from the completion of the work giving rise to the warranty claim, then Microsoft will, at its discretion, either re-perform the Professional Services or return the amount Customer paid for them.

b. **Exclusions.** The warranties in this Agreement do not apply to problems caused by accident, abuse, or use inconsistent with this Agreement or applicable documentation, including failure to meet minimum system requirements. These warranties do not apply to free, trial, preview, or prerelease products, or to components of Products that Customer is permitted to redistribute.

c. **Disclaimer.** Except for the limited warranties above or as required by applicable law, Microsoft provides no other warranties or conditions and disclaims any other express, implied, or statutory warranties and conditions, including warranties and conditions of quality, title, non-infringement, merchantability, and fitness for a particular purpose. Professional Services that are provided without charge are provided "AS IS," WITHOUT ANY WARRANTY OR CONDITION.

Defense of third-party claims

The parties will defend each other against the third-party claims described in this section and will pay the amount of any resulting adverse final judgment or approved settlement, but only if the defending party is promptly notified in writing of the claim and has the right to control the defense and any settlement of it. The party being defended must provide the defending party with all requested assistance, information, and authority. The defending party will reimburse the other party for reasonable out-of-pocket expenses it incurs in providing assistance. This section describes the parties' sole remedies and entire liability for such claims.

a. **By Microsoft.** Microsoft will defend Customer against any third-party claim to the extent it alleges that a Product or Services Deliverable made available by Microsoft for a fee and used within the scope of the license granted under this Agreement (unmodified from the form provided by Microsoft and not combined with anything else), misappropriates a trade secret or directly infringes a patent, copyright, trademark, or other proprietary right of a third party. If Microsoft is unable to resolve a claim of misappropriation or infringement, it may, at its option, either (1) modify or replace the Product or Services Deliverable with a functional equivalent or (2) terminate Customer's license and refund any license fees (less depreciation for perpetual licenses), including amounts paid in advance for unused consumption for any usage period after the termination date. Microsoft will not be liable for any claims or damages due to Customer's continued use of a Product or Services Deliverable after being notified to stop due to a third-party claim.

b. **By Customer.** To the extent permitted by applicable law, Customer will defend Microsoft and its Affiliates against any third-party claim to the extent it alleges that: (1) any Customer Data or Non-Microsoft Product

hosted in an Online Service by Microsoft on Customer's behalf misappropriates a trade secret or directly infringes a patent, copyright, trademark, or other proprietary right of a third party; or (2) Customer's use of any Product or Services Deliverable, alone or in combination with anything else, violates the law or harms a third party.

Limitation of liability

Subject to the Exclusions, Exceptions and Applicability provisions in subsections e, f, and g, each party's liability to the other party for each Product or Professional Service provided under this Agreement is limited to direct damages finally awarded, not to exceed an amount determined as follows:

a. **Perpetual Licenses.** For each Product licensed on a perpetual basis, each party's maximum, aggregate liability is the amount Customer paid for the applicable licenses.

b. **Subscriptions.** For each Product licensed on a subscription basis, each party's maximum, aggregate liability is the total amount of subscription fees Customer paid to use the Product during the 12 months preceding the most recent incident giving rise to the claim(s).

c. **Professional Services.** For Professional Services, each party's maximum, aggregate liability is the amount Customer paid for the applicable Professional Services.

d. **Free offers and distributable code.** For Products or Professional Services provided free of charge, and code that Customer is authorized to redistribute to third parties without separate payment to Microsoft, Microsoft's liability is limited to direct damages finally awarded up to US$5,000.

e. **Exclusions.** In no event will either party be liable for indirect, incidental, special, punitive, or consequential damages; loss of revenue, profits, or anticipated savings (whether direct or indirect); or loss of use, loss of business information, or interruption of business, however caused or on any theory of liability.

f. **Exceptions.** No limitation or exclusions under this Agreement will apply to liability arising out of either party's (1) confidentiality obligations (except for all liability related to Customer Data and Professional Service Data, which will remain subject to the limitations and exclusions above); (2) obligations under the section entitled Defense of Third-Party Claims; or (3) violation of the other party's intellectual property rights; or (4) willful misconduct or gross negligence.

g. **Applicability.** To the extent permitted by applicable law, the limitations, exclusions, and exceptions set forth in this Limitation of Liability section apply to all claims and damages under or relating to this Agreement or the Products or Professional Services provided under this Agreement, including, without limitation, breach of contract, breach of warranty, strict liability, and negligence and other torts, even if the parties knew or should have known about the possibility of the damages.

h. **Liability for death or personal injury.** Nothing in this Agreement shall exclude liability for death or personal injury caused by negligence or liability for fraudulent misrepresentation.

Partners

a. **Selecting a Partner.** Customer may authorize a Partner to place orders on Customer's behalf and manage Customer's purchases by associating the Partner with its account. If the Partner's distribution right is terminated, Customer must select an authorized replacement Partner or purchase directly from Microsoft. Partners and other third parties are not agents of Microsoft and are not authorized to enter into any agreement with Customer on behalf of Microsoft.

b. **Partner Administrator privileges and access to Customer Data.** If Customer purchases Online Services from a Partner, Customer may choose to provide that Partner with administrator privileges. Customer consents to Microsoft and its Affiliates providing that Partner with Customer Data and Administrator Data for purposes of provisioning, administering, and supporting (as applicable) the Online Services. Partner may process such data

according to the terms of Partner's agreement with Customer, and its privacy commitments may differ from Microsoft's. Customer appoints Partner as its agent for purposes of providing and receiving notices and other communications to and from Microsoft. Customer may terminate the Partner's administrative privileges at any time.

c. **Product Support.** Partners may provide support for Products and other value-added services, and Partner is responsible for the performance of any services it provides. If Customer purchases Microsoft Support Services through a Partner, Microsoft will be responsible for the performance of those services subject to the terms of this Agreement.

Pricing and payment

If Customer orders from a Partner, the Partner will set Customer's pricing and payment terms for that order, and Customer will pay the amount due to the Partner. Pricing and payment terms related to orders placed by Customer directly with Microsoft are set by Microsoft, and Customer will pay the amount due as described in this section.

a. **Payment method.** Customer must provide a payment method or, if eligible, choose to be invoiced for purchases made on its account. By providing Microsoft with a payment method, Customer (1) consents to Microsoft's use of account information regarding the selected payment method provided by the issuing bank or applicable payment network; (2) represents that it is authorized to use that payment method and that any payment information it provides is true and accurate; (3) represents that the payment method was established and is used primarily for commercial purposes and not for personal, family or household use; and (4) authorizes Microsoft to charge Customer using that payment method for orders under this Agreement.

b. **Invoices.** Microsoft may invoice eligible Customers. Customer's ability to elect payment by invoice is subject to Microsoft's approval of Customer's financial condition. Customer authorizes Microsoft to obtain information about Customer's financial condition, which may include credit reports, to assess Customer's eligibility for invoicing. Unless the Customer's financial statements are publicly available, Customer may be required to provide its balance sheet, profit and loss and cash flow statements to Microsoft. Customer may be required to provide security in a form acceptable to Microsoft to be eligible for invoicing. Microsoft may withdraw Customer's eligibility at any time and for any reason. Customer must promptly notify Microsoft of any changes in its company name or location and of any significant changes in the ownership, structure, or operational activities of the organization.

c. **Invoice Payment terms.** Each invoice will identify the amounts payable by Customer to Microsoft for the period corresponding to the invoice. Customer will pay all amounts due within thirty (30) calendar days following the invoice date.

d. **Late Payment.** Microsoft may, at its option, assess a late fee on any payments to Microsoft that are more than fifteen (15) calendar days past due at a rate of up to two percent (2%) of the total amount payable, calculated and payable monthly, or the highest amount allowed by law, if less.

e. **Cancelation fee.** If a Subscription or Statement of Services permits early termination and Customer cancels the Subscription or Statement of Service before the end of the Subscription or billing period, Customer may be charged a cancelation fee. More details about cancelation can be found in the Product Terms.

f. **Recurring Payments.** For subscriptions that renew automatically, Customer authorizes Microsoft to charge Customer's payment method periodically for each subscription or billing period until the subscription is terminated. By authorizing recurring payments, Customer authorizes Microsoft to store Customer's payment details and process such payments as either electronic debits or fund transfers, or as electronic drafts from the designated bank account (in the case of automated clearing house or similar debits), as charges to the designated card account (in the case of credit card or similar payments) (collectively, "Electronic Payments"). If any payment is returned unpaid or if any credit card or similar transaction is rejected or denied, Microsoft or its service providers reserve the right to collect any applicable return item, rejection or insufficient funds fee to the

maximum extent permitted by applicable law and to process any such fees as an Electronic Payment or to invoice Customer for the amount due.

g. **Taxes.** Microsoft prices exclude applicable taxes unless identified as tax inclusive. If any amounts are to be paid to Microsoft, Customer will also pay any applicable value added, goods and services, sales, gross receipts, or other transaction taxes, fees, charges, or surcharges, or any regulatory cost recovery surcharges or similar amounts that are owed under this Agreement and that Microsoft is permitted to collect from Customer. Customer will be responsible for any applicable stamp taxes and for all other taxes that it is legally obligated to pay including any taxes that arise on the distribution or provision of Products or Professional Services by Customer to its Affiliates. Microsoft will be responsible for all taxes based upon its net income, gross receipts taxes imposed in lieu of taxes on income or profits, and taxes on its property ownership.

If any taxes are required to be withheld on payments invoiced by Microsoft, Customer may deduct such taxes from the amount owed and pay them to the appropriate taxing authority, but only if Customer promptly provides Microsoft an official receipt for those withholdings and other documents reasonably requested to allow Microsoft to claim a foreign tax credit or refund. Customer will ensure that any taxes withheld are minimized to the extent possible under applicable law.

Term and termination

a. **Term.** This Agreement is effective until terminated by a party, as described below.

b. **Termination without cause.** Either party may terminate this Agreement without cause on 60 days' notice. Termination without cause will not affect Customer's perpetual licenses. Licenses granted on a subscription basis and access to Online Services and Microsoft Support Services will continue for the remainder of the then-current subscription period(s) or support term, subject to the terms of this Agreement.

c. **Termination for cause.** Without limiting other remedies it may have, either party may terminate this Agreement on 30 days' notice for material breach if the other party fails to cure the breach within the 30-day notice period. Upon such termination, the following will apply:

(i) All licenses granted under this Agreement will terminate immediately except for fully paid, perpetual licenses.

(ii) All amounts due under any unpaid invoices shall become due and payable immediately. For Subscriptions billed in arrears based on usage, Customer must pay for all unpaid usage as of the termination date immediately upon receipt of an invoice.

(iii) If Microsoft is in breach, Customer will receive a credit for any Subscription fees, including amounts paid in advance for unused consumption for any usage period after the termination date.

(iv) Customer must pay for all Professional Services provided as of the termination date immediately upon receipt of an invoice.

d. **Suspension.** During any period of material breach by Customer, Microsoft may suspend a Subscription or Statement of Services without terminating this Agreement. Microsoft will give Customer 30 days' notice before such suspension unless Microsoft's charge against Customer's payment method is declined or Microsoft reasonably believes immediate suspension is required to prevent unauthorized access to Customer Data or to ensure the ongoing confidentiality, integrity, availability, or resilience of Microsoft's systems and services.

e. **Termination to comply with laws.** Microsoft may modify or discontinue offering a Product or Professional Service and/or terminate a Subscription or Statement of Services for that Product or Professional Service in any country or jurisdiction where there is any current or future government requirement or obligation that (1) subjects Microsoft to any regulation or requirement that is not generally applicable to businesses operating there; (2) presents a hardship for Microsoft to continue offering the

Product or Professional Service without modification; or (3) causes Microsoft to believe this Agreement or the Product or Professional Services offering may conflict with any such requirement or obligation. If Microsoft terminates a Subscription or Statement of Services under this provision, Customer will receive, as its sole remedy, a refund for any amount paid in advance for any period after termination. Customer will pay for all services provided or used before termination.

Modifications to this Agreement

Microsoft may update this Agreement from time to time. No changes will apply to perpetual Software licenses previously acquired. Changes will apply to new orders and to existing Subscriptions and Statements of Services as follows:

a. **DPA and SLA.** Changes to the DPA and SLA will apply as provided in those documents.

b. **Product Terms.** Material Adverse Changes will not apply during the then-current Subscription term but will take effect upon renewal. All other changes will apply when they are published on the Product Terms site. In addition, for Software Subscriptions, if Customer chooses to update the Software to a new version before the end of the Subscription term, the terms in effect at the time of the update will apply to the use of that Software.

c. **Other terms.** Customer may be required to accept revised or additional terms when placing a new order. For existing Subscriptions and Statements of Services, Customer will be notified at least 60 days before changes take effect to these General Terms or any other terms that are part of the Agreement except the DPA, SLA, and Product Terms, which have separate terms for updates. Such changes will take effect upon renewal unless Customer accepts them earlier in the manner specified in the notice and will not supersede or modify any amendments to this Agreement. Customer agrees that its continued use of the Products or Professional Services after renewal will constitute its acceptance of all changes. If Customer does not agree to the changes, it must stop using the Products and Professional Services by the end of the Subscription or support term and turn off recurring billing for any Subscriptions that are set to renew automatically.

d. **Changes proposed by Customer.** Customer may not modify this Agreement. Any additional or conflicting terms contained in a purchase order or otherwise presented by Customer are expressly rejected and will not apply.

Miscellaneous

a. **Independent contractors.** The parties are independent contractors. Customer and Microsoft each may develop products independently without using the other's Confidential Information.

b. **Agreement not exclusive.** Customer is free to enter into agreements to license, use, and promote the products and services of others.

c. **Assignment.** Either party may assign this Agreement to an Affiliate, but it must notify the other party in writing of the assignment. Customer consents to the assignment to an Affiliate or third party, without prior notice, of any rights Microsoft may have under this Agreement to receive payment and enforce Customer's payment obligations, and all assignees may further assign such rights without further consent. Any other proposed assignment of this Agreement must be approved by the non-assigning party in writing. Assignment will not relieve the assigning party of its obligations under the assigned Agreement. Any attempted assignment without required approval will be void.

d. **Severability.** If any part of this Agreement is held to be unenforceable, the rest of the Agreement will remain in full force and effect.

e. **Waiver.** Failure to enforce any provision of this Agreement will not constitute a waiver. Any waiver must be in writing and signed by the waiving party.

f. **No third-party beneficiaries.** This Agreement does not create any third-party beneficiary rights except as expressly provided by its terms.

g. **Survival.** All provisions survive termination of this Agreement except those requiring performance only during the term of the Agreement.

h. **Notices.** All notices must be in writing. Except for notices relating to arbitration (as provided in certain supplemental terms for individual users), notices to Microsoft must be sent to the following address and will be deemed received on the date received at that address:

> Microsoft Ireland Operations Limited
> One Microsoft Place
> South County Business Park
> Leopardstown
> Dublin 18
> D18 P521
> Ireland

Microsoft may provide Customer with information and notices electronically, including via email, through the portal for an Online Service, or through a web site that Microsoft identifies. Notice is given as of the date it is made available by Microsoft.

i. **Applicable law.** This Agreement will be governed by and construed in accordance with the laws of Ireland. The 1980 United Nations Convention on Contracts for the International Sale of Goods and its related instruments will not apply to this Agreement.

j. **Dispute resolution.** When bringing any action arising under this Agreement, the parties agree to the following exclusive venues:

(i) If Microsoft brings the action, the venue will be where Customer has its headquarters.

(ii) If Customer brings the action against Microsoft or any Microsoft Affiliate located outside of Europe, the venue will be the state or federal courts in King County, State of Washington, USA.

(iii) If Customer brings the action against Microsoft or any Microsoft Affiliate located in Europe, and not also against Microsoft or a Microsoft Affiliate located outside of Europe, the venue will be Ireland.

(iv) The parties consent to personal jurisdiction in the agreed venues. This choice of venue does not prevent either party from seeking injunctive relief in any jurisdiction with respect to a violation of intellectual property rights or confidentiality obligations.

k. **Order of precedence.** If there is a conflict between any documents in this Agreement that is not expressly resolved in those documents, their terms will control in the following order, from highest to lowest priority: (1) DPA; (2) these General Terms; (3) Product Terms; (4) SLA; and (5) any additional terms presented when an order is placed. Terms in an amendment control over the amended document and any prior amendments concerning the same subject matter.

l. **Microsoft Affiliates and subcontractors.** Microsoft may perform its obligations under this Agreement through its Affiliates and use subcontractors to provide certain services. Microsoft remains responsible for their performance.

m. **Government procurement rules.** If Customer is a government entity or is otherwise subject to government procurement requirements, Customer represents and warrants that (1) it has complied and will comply with all applicable government procurement laws and regulations; (2) it is authorized to enter into this Agreement; and (3) this Agreement satisfies all applicable procurement requirements.

n. **Compliance with Trade Laws.** Products and Services Deliverables may be subject to U.S. and other countries' export jurisdictions. Each party will comply with all laws and regulations applicable to the import or export of the Products and Services Deliverables, including, without limitation, trade laws such as the U.S. Export Administration Regulations and International Traffic in Arms Regulations and sanctions regulations

administered by the U.S. Office of Foreign Assets Control ("OFAC") ("Trade Laws"). Customer will not take any action that causes Microsoft to violate U.S. or other applicable Trade Laws. Microsoft may suspend or terminate this Agreement to the extent that Microsoft reasonably believes that performance would cause it to violate Trade Laws or put it at risk of becoming subject to sanctions and penalties under such laws.

Definitions

"Administrator Data" means the information provided to Microsoft or its Affiliates during sign-up, purchase, or administration of Products.

"Affiliate" means any legal entity that controls, is controlled by, or is under common control with a party.

"Control" means ownership of more than a 50% interest of voting securities in an entity or the power to direct the management and policies of an entity.

"Confidential Information" is defined in the "Confidentiality" section.

"Customer" means the entity identified as such on the account associated with this Agreement.

"Customer Data" means all data, including all text, sound, video or image files, and software, that are provided to Microsoft or its Affiliates by, or on behalf of, Customer and its Affiliates through use of Online Services. Customer Data does not include Professional Services Data.

"DPA" means the Microsoft Products and Services Data Protection Addendum, as updated from time to time, published at https://aka.ms/DPA or a successor site and any additional data protection terms that Microsoft presents with this Agreement.

"End User" means any person Customer permits to use a Product or access Customer Data.

"Fix" or "Fixes" means Product fixes, modifications or enhancements, or their derivatives, that Microsoft either releases generally (such as Product service packs) or provides to Customer to address a specific issue.

"Licensing Site" means http://www.microsoft.com/licensing/docs or a successor site.

"Material Adverse Change" means any change to the Use Rights for a Product that could reasonably affect Customer's decision to purchase the Product and that would require Customer to purchase additional licenses, increase the cost to Customer of using the Product, remove an existing right, or place additional restrictions on the use of the Product.

"Microsoft" means Microsoft Ireland Operations Limited.

"Microsoft Support Services" means Product support services that Microsoft offers under this Agreement as described in the Product Terms.

"Non-Microsoft Product" means any third party-branded software, data, service, website, or product, unless incorporated by Microsoft in a Product.

"Online Services" means Microsoft-hosted services to which Customer subscribes under this Agreement. It does not include software and services provided under separate license terms.

"Partner" means a company Microsoft has authorized to distribute Products to Customer.

"Personal Data" means any information relating to an identified or identifiable natural person.

"Pre-Existing Work" means any computer code or other written materials developed or otherwise obtained independent of this Agreement.

"Product" means all Software and Online Services that Microsoft offers under this Agreement as identified in the Product Terms, including previews, prerelease versions, updates, patches, and Fixes from Microsoft. Product availability may vary by region. "Product" does not include Non-Microsoft Products.

"Product Terms" means the Use Rights and other terms, as updated from time to time, which are published at https://www.microsoft.com/licensing/terms or a successor site.

"Professional Services" means Microsoft Support Services and consulting services provided by Microsoft to Customer under this Agreement. "Professional Services" do not include Online Services.

"Professional Services Data" means all data, including all text, sound, video, image files, or software, that are provided to Microsoft or its Affiliates by, or on behalf of, Customer and its Affiliates (or that Customer or an Affiliate authorizes Microsoft to obtain from an Online Service) or otherwise obtained or processed by or on behalf of Microsoft or its Affiliates through an engagement with Microsoft to obtain Professional Services.

"Publisher" means a provider of a Non-Microsoft Product.

"Representatives" means a party's employees, Affiliates, contractors, advisors, and consultants.

"SLA" means Service Level Agreement, which specifies the minimum service level for the Online Services and is published on the Licensing Site.

"Services Deliverables" means any computer code or materials (including without limitation proofs of concept, documentation and design recommendations, sample code, software libraries, algorithms, and machine learning models), other than Products or Fixes, that Microsoft leaves with Customer at the conclusion of Microsoft's performance of Professional Services.

"Software" means licensed copies of Microsoft software identified in the Product Terms. Software does not include Online Services, but Software may be part of an Online Service.

"Statement of Services" means any order under this Agreement that includes or describes Professional Services.

"Subscription" means a license for Customer to use or access a Product during a defined period of time.

"use" means to copy, download, install, run, access, display, or otherwise interact with.

"Use Rights" means the following sections of the Product Terms, as applicable to each Product offering: Use Rights, License Model terms, General Service Terms, Service Specific Terms, Add-ons, Universal License Terms, and Other Legal Terms.

Purchase Agreement with the "Microsoft Sales Affiliate" ( )

Certain Products and Professional Services are offered by a local Microsoft Sales Affiliate that Microsoft has authorized to distribute and supply such Products and Professional Services. If Customer orders those Products directly from Microsoft, the Microsoft Sales Affiliate will be the seller. By submitting the order, Customer is deemed to have accepted the terms offered by the Microsoft Sales Affiliate identified above, forming a separate agreement with such Microsoft Sales Affiliate to purchase the Products and Professional Services (the "Purchase Agreement"). The Purchase Agreement consists of all applicable terms of this Agreement, modified as follows:

a. **Licensing terms excluded.** All terms pertaining solely to the licensing of such Products, Fixes, and Services Deliverables are deemed excluded. Microsoft is the licensor of all Products, Fixes, and Services Deliverables, and the Agreement with Microsoft will continue to apply to any Products and Professional Services ordered from a Microsoft Sales Affiliate. Microsoft Sales Affiliate does not have authority to bind or impose any obligation or liability on any other Microsoft entity.

b. **Pricing and payment.** Microsoft Sales Affiliate will determine pricing for the applicable Products. All terms pertaining to pricing and payment apply to the Purchase Agreement. If Customer is eligible for invoicing, Microsoft Sales Affiliate will send invoices to the billing contact identified on Customer's account (with taxes added where applicable), and Customer must pay the amount due to Microsoft Sales Affiliate according to the payment instructions on the invoice. Customer's failure to make any payment due to Microsoft Sales Affiliate by the required date will constitute a material breach of both the Purchase Agreement and the Agreement with

Microsoft. In the event Microsoft terminates the Agreement for cause, all amounts due under any unpaid invoices shall become due and payable to Microsoft Sales Affiliate immediately.

c. **Warranties, defense, and limitations of liability.** All warranties, obligations to defend against third-party claims and limitations of liability shall also apply to claims under the Purchase Agreement. Microsoft, as licensor, is solely responsible for claims relating to the performance of Products and defense of third-party claims (including claims of intellectual property infringement). **Microsoft Sales Affiliate is not liable for such claims and, to the maximum extent permitted by applicable law, expressly disclaims all express, implied, and statutory warranties and liability for such claims, including, without limitation, warranties of quality, title, non-infringement, merchantability, and fitness for a particular purpose.**

d. **Applicable law.** The applicable law will be that of the jurisdiction where the Microsoft Sales Affiliate has its headquarters.

e. **Additional terms.** Any additional terms that Microsoft Sales Affiliate presents in connection with an order are deemed included. Any additional or conflicting terms and conditions contained in a purchase order or otherwise presented by Customer are expressly rejected and will not apply.