Master Supplier Services Agreement

This Master Supplier Services Agreement ("*Agreement*") is between Microsoft Czech Republic, a corporation ("*Microsoft*"), and SOŠ INFORMATIKY A SPOJŮ A SOU KOLÍN, a ("*Supplier*"). This Agreement will be effective on the date noted below ("*Effective Date*").

This Agreement consists of

- the following terms and conditions, including exhibits and attachments,
- applicable addenda and SOWs,
- the nondisclosure agreement between the parties dated_____("*NDA*"), and
- Policies.

Addresses and contact details

Microsoft		Supplier	
Address:	Vyskočilova 4, Praha	Address:	Jaselská 826, 280 90 Kolín
Attention:	Karel Klatovsky	Attention:	Miloš Hölzl
Phone Number:		Phone Number:	
E-Mail Address:	Kaklat@microsoft.com	E-Mail Address:	milos.holzl@soskolin.cz
		Supplier Number:	**0002299505**

Term

Effective Date:	September 2, 2019
Term:	**5 Years** from the Effective Date

Agreed and accepted

Microsoft	Supplier
Signature:	Signature:
Name: Rudolf Urbanek (RUURBANE)	Name: Milos Holzl
Title: General manager	Title: Ing
Date: 31 August 2019 | 12:07 AM PDT	Date: 28 August 2019 | 4:11 AM PDT

Master Supplier Services Agreement (March 2019)

SECTION 1 Definitions

(a) *"Affiliate(s)"* means any legal entity that directly or indirectly owns, is owned by, or is commonly owned with a party. "*Own*" means having more than 50% ownership or the right to direct the management of the entity.

(a) *"Anti-Corruption Laws"* means all applicable laws against fraud, bribery, corruption, inaccurate books and records, inadequate internal controls, money-laundering, including the U.S. Foreign Corrupt Practices Act.

(b) *"Claim(s)"* means any and all (1) third-party claims, actions, demands, lawsuits, or proceedings and (2) damages, costs (including reasonable fees of attorneys and other professionals), or liabilities of any kind (including any fine, penalty, judgement, or order issued by a governmental, regulatory, or judicial body), in each case arising out of or relating to that third-party claim, action, demand, lawsuit, or proceeding.

(c) "*Confidential Information*" means all non-public information a party designates in writing or orally as being confidential, or which under the circumstances of disclosure would indicate to a reasonable person that it ought to be treated as confidential.

(d) "*Data Protection Law"* means any law, rule, regulation, decree, statute, or other enactment, order, mandate or resolution, applicable to Supplier or Microsoft, relating to data security, data protection and/or privacy, including Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to processing of personal data and the free movement of that data ("*GDPR*"), and any implementing, derivative or related legislation, rule, regulation, and regulatory guidance, as amended, extended, repealed and replaced, or re-enacted.

(e) *"Deliverables"* means all work product developed by Supplier (or a Subcontractor) specifically for Microsoft under a SOW or as part of Services, including IP therein.

(f) *"Excluded License"* means any software license requiring, as a condition of use, modification, or distribution that the software or other software combined or distributed with it be (1) disclosed or distributed in source code form, (2) licensed to make derivative works, or (3) redistributable at no charge.

(g) "*Intellectual Property*" or "*IP*" means all intellectual property rights, existing under statute or at common law or equity, in force or recognized now or in the future in any jurisdiction, including

　　(1)　copyrights (and any neighboring/ancillary right), trade secrets, trademarks, service marks, patents, inventions, designs, logos, trade dress, moral rights, mask works, publicity rights, and database rights, and

　　(2)　any application or right to apply for any of the foregoing rights, and all renewals, extensions, and restorations.

(h) "*Microsoft Materials*" means any tangible or intangible materials provided by or on behalf of Microsoft to Supplier to perform Services (including hardware, software, source code, documentation, methodologies, know how, processes, techniques, ideas, concepts, technologies, and data). Microsoft Materials include modifications to, or derivative works of, the foregoing materials, Trademarks, and any data entered into any Supplier database as part of Services. Microsoft Materials do not include Microsoft products obtained by Supplier outside of and unrelated to this Agreement.

(i) *"Microsoft Project"* means any engagement where Supplier requires access to Microsoft's corporate network or facilities.

(j) "*Policies*" means policies, procedures, requirements, and guidelines identified in this Agreement or made available to Supplier by Microsoft.

(k) "*Services*" means all services identified in a SOW or otherwise performed by Supplier under this Agreement.

(l) "*SOW(s)*" means any of the following:

    (1)   Microsoft purchase orders;

    (2)   Electronic statements of work transmitted by Microsoft and signed by both parties, or

    (3)   Written agreements signed by the parties' authorized representatives referencing, and subject to, this Agreement.

(m) "*Subcontractor(s)*" means a third-party to whom Supplier delegates its obligations under this Agreement, including a Supplier Affiliate not contracting directly with Microsoft.

(n) "*Supplier IP*" means (1) Supplier's pre-existing or independently developed IP and (2) any third-party IP with respect to which Supplier has sufficient rights to grant to Microsoft the license and sublicense rights contemplated in this Agreement.

(o) "*Supplier Materials*" means any technology created by a Supplier or third-party prior to or outside of the course of any Microsoft SOW, but which may be necessary or useful for achieving the requirements of a Microsoft SOW (including hardware, software, source code, documentation, methodologies, know how, processes, techniques, ideas, concepts, technologies, and data).

(p) "*Trademarks*" means trademarks, servicemarks, and logos identified and provided by Microsoft under a SOW.

SECTION 2   Services

(a) **SOW.** The parties will describe Services in one or more SOW. This Agreement applies to each SOW. Microsoft (or any Microsoft Affiliate) may enter into a SOW with Supplier (or any Supplier Affiliate) for Services under this Agreement. Local legal requirements will be documented separately in writing and agreed by the parties. Supplier will, at its own expense,

    (1)   obtain and maintain approvals, licenses, filings, or registrations necessary to perform Services, and

    (2)   comply with all applicable laws, including those specified in this Agreement.

(b) **Export compliance.** The Services, parts, components, devices, software, technology and other materials provided under this Agreement (collectively, "Items") may be subject to U.S. and other import/export jurisdiction. The parties must comply with all applicable international and national laws, including but not limited to the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, US Department of Treasury's Office of Foreign Assets Control sanctions programs, and end-user, end use and destination restrictions by U.S. and other governments. Supplier agrees to provide Microsoft with the import/export control classifications and information, including documentation, on the applicable import, export or re-export authorizations and all necessary information about the Items for any required import,

export or re-export procedures and/or licenses without additional cost to Microsoft. For additional information, see https://www.microsoft.com/en-us/exporting

(c) **Anti-Corruption Laws.** Supplier will comply with applicable Anti-Corruption laws and provide training to its employees on compliance with Anti-Corruption laws while performing under this Agreement. Supplier is prohibited from paying expenses for travel, lodging, gifts, hospitality, or charitable contributions for government officials on Microsoft's behalf.

(d) **Workplace safety and health.** Supplier will comply with (and will require, through contract, all Subcontractors to comply with) applicable laws related to workplace safety and health, including the Occupational Safety and Health Act of 1970 (OSHA) and parallel state laws approved under OSHA Section 18. Supplier will promptly notify Microsoft Employee Safety and Health Team at employeesafety@microsoft.com and Microsoft Global Security at (425) 706-0000 if Supplier encounters unsafe conditions or workplace hazards in a Microsoft-provided or controlled facility. Supplier will take appropriate safety measures until Microsoft is able to correct the hazard.

(e) **Affirmative Action Clause for Microsoft Suppliers on Covered Subcontracts for the United States government**

　　(1) Contractors and suppliers doing business with Microsoft on a covered contract in the United States will comply with all Federal, State and local labor and employment laws.

　　(2) This contractor and subcontractor will abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a), 60-741.5(a) and 29 CFR 471, Appendix A to Subpart A and incorporate the requirements of these regulations if applicable. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. These regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

(f) **Acceptance of Deliverables.** Unless otherwise agreed, Microsoft may evaluate each Deliverable and accept or reject it within 15 business days after receipt. If Microsoft does not accept or reject within that time period, the Deliverable is deemed accepted. Supplier will fix rejected Deliverable within 10 business days after notice of rejection from Microsoft ("*Correction Period*"). If Supplier does not fix the Deliverable within the Correction Period, Microsoft will have no obligation with respect to that Deliverable and Supplier will promptly refund Microsoft Fees paid for that Deliverable within 15 days following the end of the Correction Period.

(g) **Supplier to comply with Microsoft Policies.** Supplier will comply with the following as applicable to the Services provided.

　　(1) Supplier will comply with the most current Supplier Code of Conduct at https://www.microsoft.com/en-us/procurement/supplier-conduct.aspx and the most current Anti-Corruption Policy for Microsoft Representatives at http://aka.ms/microsoftethics/representatives.

　　(2) Supplier may only use Trademarks for Services and Deliverables in compliance with the guidelines at https://www.microsoft.com/en-us/legal/intellectualproperty/Trademarks/Usage/General.aspx.

(3) Supplier will participate in the Microsoft Supplier Security and Privacy Assurance ("*SSPA*") program by attesting to Supplier's compliance status with respect to all applicable portions of Microsoft's then-current Supplier Data Protection Requirements (the "*DPR*") (available through https://www.microsoft.com/en-us/procurement/supplier-contracting.aspx) on an annual basis (or more frequently if additional portions of the DPR become applicable). Supplier will comply with its most recent SSPA DPR attestation that has been accepted by Microsoft in writing (which may be via email or through an online portal made available by Microsoft); provided, however, if Microsoft has not provided written approval of Supplier's attestation to all applicable portions of the DPR, Supplier will comply with all applicable portions of the DPR (provided in the link above). Supplier's current SSPA attestation is available upon request from SSPAHelp (sspahelp@microsoft.com).

(4) Supplier will comply with physical and information security Policies identified in a SOW or provided to Supplier by Microsoft.

(5) Any device, product, website, web-based application, cloud service, software, or content developed for or provided by or on behalf of Supplier or Supplier's Affiliate under this Agreement must comply with all legal and Microsoft-provided accessibility requirements, including Level A and AA Success Criteria of the latest published version of the Web Content Accessibility Guidelines (*"WCAG"*), available at https://www.w3.org/standards/techs/wcag#w3c_all. An overview of WCAG is available at http://www.w3.org/WAI/intro/wcag, and WCAG Version 2.0 is codified as ISO/IEC 40500:2012.

(6) Supplier will comply with all other Policies or training requirements provided by Microsoft during the Term.

(7) Microsoft may change or promulgate new Policies. Changes and new Policies will be effective 30 days after Microsoft makes them available to Supplier, unless otherwise agreed in writing. If new or changes to Policies cause a material impact to the delivery schedule, Fees or other costs for Services, or Supplier's ability to meet the quality or performance standards of service level agreements, Supplier will promptly notify Microsoft. The parties will discuss how to mitigate the impact to enable Supplier to comply.

(h) Supplier's personnel and subcontracting

(1) Supplier will recruit, select, and train its personnel according to the applicable SOW. If required by Microsoft, Supplier personnel who develop or test Microsoft software or access Microsoft source code will receive training on Microsoft's security development lifecycle. At Microsoft's request, Supplier will promptly remove or replace any individual performing Services.

(2) Supplier is responsible for all wages, fringe benefits, social security and other payroll taxes, healthcare benefits reporting, unemployment insurance, workers' compensation insurance payments and disability benefits (including, where applicable, medical coverage compliant with the Affordable Care Act), work schedules, work conditions, and similar matters of its employees, contractors, or other personnel performing Services.

(3) Before assignment of a Supplier employee to provide Services, Supplier will be compliant with the immigration rules and laws in the jurisdiction in which the Supplier

employee will provide Services. For assignments in the United States, Supplier will ensure the Supplier employee has the proper work authorization and visa to perform a specific job at a particular work location, and proper postings have been made at worksites for applicable Labor Conditions Applications pursuant to 20 C.F.R. Section 655, Subpart H. If necessary, Supplier will coordinate with Microsoft through the approved Microsoft process to obtain supporting documents for personnel requiring verification letters from Microsoft in support of an immigration filing.

(4)   For personnel performing Services on a Microsoft Project, Supplier will

    (i)   ensure that any of its personnel receiving compensation that is taxable as U.S. source income under Sections 861 to 863 of the Internal Revenue Code of 1986, as amended, will be an employee of Supplier and,

    (ii)   ensure that its personnel use Microsoft sites or facilities only for business purposes within the scope of Service, and (iii) be responsible for loss, damage, theft, or disappearance of personal property belonging to its personnel.

(5)   Supplier will not subcontract Services to third parties without Microsoft's prior written consent. If Supplier subcontracts any Services to any Subcontractor, Supplier will

    (i)   be fully liable to Microsoft for any actions or inactions of Subcontractor,

    (ii)   remain subject to all obligations under this Agreement,

    (iii)   require the Subcontractor to agree in writing to terms no less protective of Microsoft than the terms of this Agreement applicable to the work performed by the Subcontractor, including the privacy and data protection terms in Section 6,

    (iv)   require the Subcontractor to agree in writing that Microsoft is an intended third-party beneficiary of its agreement with Supplier,

    (v)   require the Subcontractor, while performing Services, to be compliant all applicable immigration laws in the jurisdiction in which the Subcontractor employee(s) will provide Services.

    (vi)   unless otherwise agreed, if Supplier fails to pay the Subcontractor, Microsoft may pay the Subcontractor and offset those amounts against amounts owed to Supplier.

(i)   Supplier equipment and technology. Unless otherwise agreed in an applicable SOW, Supplier will provide the equipment, technology, and infrastructure necessary to perform Services at its expense. Supplier will ensure such items are compatible with Microsoft's equipment, technology, and infrastructure as necessary to perform Services. Supplier will identify for Microsoft all third-party software used in conjunction with the Services.

SECTION 3   Ownership and use of the parties' respective IP

(a)   Ownership of pre-existing IP. Each party will own and retain all rights to its pre-existing IP and any IP developed independently of Services performed under this Agreement.

(b)   Supplier's use of Microsoft Materials

(1)   License to use Microsoft Materials

(i)   Microsoft grants Supplier a nonexclusive, revocable license under Microsoft's IP to copy, use, and distribute Microsoft Materials provided to it as necessary to perform Services. Microsoft retains all other interest in Microsoft Materials and related IP. The license is not sublicensable to Subcontractors unless approved by Microsoft in accordance with this Agreement.

(ii)   If Microsoft Materials come with a separate license, the terms of that license will apply and those terms, including any applicable Source Code License Form, control in the case of conflict with this Agreement.

(iii)   Supplier will take reasonable precautions to protect and ensure against loss or damage, theft, or disappearance of Microsoft Materials.

(2)   Microsoft may revoke the license to Microsoft Materials at any time for any reasonable business reason. The license will terminate automatically on the earlier of the expiration or termination of this Agreement or an applicable SOW. Supplier will promptly return any Microsoft Materials on request or termination of Supplier's license.

(3)   Additional provisions

(i)   Supplier will not modify, reverse engineer, decompile, or disassemble Microsoft Materials except as allowed by Microsoft to perform Services.

(ii)   Supplier will leave in place and not alter or obscure proprietary notices and licenses contained in Microsoft Materials.

(iii)   Unless otherwise specified in an applicable SOW, Supplier will maintain and use Microsoft Materials according to the manufacturer's specifications and instructions.

(iv)   Microsoft is not obligated to provide technical support, maintenance, or updates for Microsoft Materials.

(v)   Microsoft Materials are provided as-is without warranty.

(vi)   Supplier assumes the risk of loss, damage, unauthorized access or use, or theft or disappearance of Microsoft Materials in Supplier's (or its Subcontractors') care, custody, or control.

(vii)   Supplier will take no action affecting Microsoft's, or the owner of Microsoft Materials if not Microsoft, title or interest in Microsoft Materials.

(c)   Supplier's use of non-Microsoft IP

(1)   Supplier will obtain Microsoft's written consent before using Supplier Materials in a manner that would

(i)   cause them to be included in Deliverables,

(ii)   alter or affect Microsoft's ownership interests in Deliverables, or

(iii)   require a license under Supplier IP or third-party IP for the Deliverables to be used, modified, or distributed by Microsoft.

(2)   If Supplier Materials are incorporated into Deliverables or are necessary for the use or distribution of Deliverables by Microsoft or any third-party, then Supplier will continue to own the Supplier Materials, including any Supplier IP therein ("*Retained IP*"). Unless

the parties agree on written license terms, Supplier grants Microsoft and its Affiliates a worldwide, nonexclusive, perpetual, irrevocable, royalty-free, fully paid-up right and license, under all current and future Retained IP, to

    a. make, use, reproduce, format, modify, and create derivative works of the applicable Supplier Materials,

    b. publicly perform or display, import, broadcast, transmit, distribute, license, offer to sell and sell, rent, lease, or lend copies of the applicable Supplier Materials and derivative works thereof,

    c. combine the Supplier Materials and derivative works thereof with any software, firmware, hardware, or services, and

    d. sublicense to third parties the foregoing rights, including the right to sublicense to further third parties.

(3)   In no event will Supplier use any Supplier Materials in any manner that implicates third-party IP under which Supplier does not have the rights necessary to grant Microsoft the license and sublicense set forth in Section 3(c)(2) above.

(d)   Ownership of Deliverables

(1)   Subject to Supplier's Retained IP rights, Deliverables are "work made for hire" under applicable copyright law. If Deliverables do not qualify as a work made for hire, Supplier assigns to Microsoft all right, title, and interest in and to the Deliverables, including all IP rights therein. Supplier waives all moral rights in Deliverables.

(2)   Supplier will promptly disclose to Microsoft in writing any inventions, works of authorship, improvements, developments or discoveries conceived, authored, made, or reduced to practice by Supplier or its Subcontractors, either solely or in collaboration with others, in the performance of Services. At Microsoft's request and expense, Supplier will execute documents and take any other action reasonably necessary to evidence, perfect, or protect Microsoft's rights in the Deliverables. Supplier will cooperate with Microsoft in the filing and prosecution of copyright, trademark, or patent applications Microsoft elects to file on Deliverables or related inventions and designs. Supplier will not challenge, oppose, or interfere with Microsoft's applications prepared according to Microsoft's rights under this Agreement relating to the Deliverables, or file applications on its own behalf.

SECTION 4   Supplier compensation

(a)   Microsoft's payment of Fees

(1)   Microsoft will pay Supplier fees stated in each SOW ("*Fees*"). A Supplier rate card, if one is attached to this Agreement, will provide ceiling rates for Microsoft. Supplier is responsible for expenses it incurs unless agreed otherwise in a SOW. Supplier will not markup expenses Microsoft agrees to pay. Supplier will not offset against amounts Microsoft owes.

(2)   Unless agreed otherwise in a SOW, after Microsoft accepts Services and receives a proper and undisputed invoice, it will pay Fees and approved expenses

    (i)   net 10 days less a 2% discount on the invoiced amount, or

(ii)   net 60 days with no discount.

(3)   Microsoft will pay Supplier according to Microsoft's then-current payment policies.

(b)   **MS Invoice**. Supplier will invoice Microsoft using MS Invoice according to https://einvoice.microsoft.com. Supplier will not charge Microsoft for researching, reporting on, or correcting invoice-related errors. Supplier will not date its invoices earlier than the date Supplier may be paid under an applicable SOW. If a date is not specified in a SOW, Supplier may issue invoices monthly in arrears.

(c)   **Disputed amounts**. Microsoft may dispute any invoice amount (each, a "*Disputed Amount*") by providing written notice to Supplier. Partial payment is notice from Microsoft of a Disputed Amount. Microsoft will make commercially reasonable efforts to notify Supplier in writing of any Disputed Amount within 60 days of receiving the invoice. Microsoft's failure to provide notice or payment of an invoice does not waive any of its claims or rights. Microsoft will pay Supplier within 60 days from the date of dispute resolution.

(d)   **Late invoices.** Microsoft is not obligated to pay any invoice received 120 days or more after the date Supplier was required to invoice Microsoft under this Agreement or an applicable SOW. This does not apply to

(1)   amounts paid after a dispute,

(2)   rejected invoices that are first received timely and then corrected,

(3)   invoices delayed due to Microsoft's actions or omissions, or

(4)   delays the parties have agreed to in writing.

(e)   **Taxes.** Except as otherwise provided below, the amounts to be paid by Microsoft to Supplier do not include taxes. Microsoft is not liable for any taxes Supplier is legally obligated to pay, including net income or gross receipts taxes, franchise taxes, and property taxes. Microsoft will pay Supplier sales, use, or value added taxes it owes due to this Agreement that the law requires Supplier to collect from Microsoft.

(1)   Microsoft will not be involved in the importation of the goods/services, and import taxes are the responsibility of the supplier unless otherwise agreed in a SOW.

(2)   If Microsoft provides Supplier a valid exemption certification, Supplier will not collect the taxes covered by such certificate.

(3)   If the law requires Microsoft to withhold taxes from payments to Supplier, Microsoft may withhold those taxes and pay them to the appropriate taxing authority. Microsoft will deliver to Supplier an official receipt for such taxes. Microsoft will use reasonable efforts to minimize taxes withheld to the extent allowed by law.

(4)   Despite any other provision of this Agreement, this section governs the treatment of all taxes related to this Agreement.

SECTION 5   Term and termination

(a)   **Term.** This Agreement commences on the Effective Date and will continue for the term on the first page of this Agreement ("*Term*") unless it is

(1)   terminated earlier according to its terms, or

(2)   extended by a written and signed amendment.

(b) **Termination for convenience.** Without prejudice to any other remedies, Microsoft may terminate this Agreement, any Source Code License Form subject to this Agreement, or any SOW at any time without cause by giving 30 days written notice. If Microsoft terminates for convenience, its only obligation is to pay for

    (1) Services or Deliverables it accepts before the effective date of termination, and

    (2) Services performed where Microsoft retains the benefit after the effective date of termination.

(c) **Termination for cause**

    (1) Either party may terminate this Agreement, any Source Code License Form subject to this Agreement, or any SOW on the other party's material breach of this Agreement or a SOW. The non-breaching party must give 30 calendar days written notice and the opportunity to cure its breach. Either party may immediately terminate this Agreement on written notice of a breach of Section 6 (Confidentiality, privacy and data protection, and publicity).

    (2) Microsoft may terminate this Agreement, any Source Code License Form subject to this Agreement, or any SOW effective immediately upon written notice if Supplier breaches Sections 2(a) (SOW), 2(d) (Acceptance of Deliverables) through 2(g) (Supplier equipment and technology), 3 (Ownership and use of the parties' respective IP), 7 (Representations and warranties), 10 (Insurance), or 12(d) (Assignment) or if Supplier sells a substantial part of Supplier's assets to a third-party.

(d) **Effect of termination.** Supplier will deliver to Microsoft any affected Deliverables in progress and all related data and materials. Supplier will assist Microsoft with a post-termination transition at Microsoft's request. Supplier's assistance will not exceed 60 calendar days. Microsoft will pay Supplier for its assistance at a rate no greater than the rate set forth in any SOW for comparable services.

(e) **Survival.** The provisions of this Agreement which by their terms require performance after the termination or expiration of this Agreement or have application to events that may occur after the termination or expiration of this Agreement, will survive such termination or expiration. All indemnity obligations and indemnification procedures will survive the termination or expiration of this Agreement.

SECTION 6 **Confidentiality, privacy and data protection, and Publicity**

(a) **Confidentiality**

    (1) Information shared under this Agreement is Confidential Information and subject to the NDA. Section 6(a)(2) applies if information related to Services was shared before execution of the NDA, no NDA exists, or the NDA terminates or ceases to be in effect.

    (2) During the Term plus 5 years, the parties will hold in strictest confidence and not use or disclose to any third-party any Confidential Information of the other party.

    (3) A party will consult with the other if it questions what comprises Confidential Information. Confidential Information excludes information known to a party before the disclosing party's disclosure to the receiving party, or information publicly available through no fault of the receiving party.

(4)   Supplier will employ security procedures to prevent disclosure of Microsoft Confidential Information to unauthorized third parties. Supplier's security procedures must include risk assessment and controls for

(i)   system access,

(ii)   system and application development and maintenance,

(iii)   change management,

(iv)   asset classification and control,

(v)   incident response, physical and environmental security,

(vi)   disaster recovery/business continuity, and

(vii)   employee training.

(5)   Notwithstanding anything to the contrary in this Section 6(a), all Personal Data shared in connection with this Agreement is Confidential Information.

(b)   Privacy and data protection

(1)   For purposes of this Section 6(b) and this Agreement, the following definitions apply:

(i)   "*Controller*" means the natural or legal person, public authority, agency or any other body which alone or jointly with others determines the purposes and means of the Processing of Personal Data; where the purposes and means of Processing are determined by the European Union or Member State laws, the controller (or the criteria for nominating the controller) may be designated by those laws.

(ii)   "*Data Subject*" Means an identifiable natural person who can be identified, directly or indirectly, in particular by referencing an identifier such as a name, an identification number, location data, an online identifier, or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural, or social identity of that natural person.

(iii)   "*Personal Data*" means any data or information that constitutes personal data or personal information under any applicable Data Protection law, including any information relating to a Data Subject.

(iv)   "*Personal Data Breach*" means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to Personal Data, whether transmitted, stored, or otherwise Processed.

(v)   "*Processing*" means any operation or set of operations that is performed on Personal Data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination, or otherwise making available, alignment or combination, restriction, erasure, or destruction. "*Process*" and "*Processed*" will have a corresponding meaning.

(vi)   "*Processor*" means a natural or legal person, public authority, agency or other body which Processes Personal Data on behalf of the Controller.

(2)   Without limiting Supplier's obligations under Section 2(g)(3), Supplier, in its capacity as a Processor, service provider, or subprocessor of Personal Data, will

(i)   Process the Personal Data only on documented instructions from Microsoft, including with regard to transfers of Personal Data to a third country or an international organization, unless required to do so by European Union or Member State law to which Supplier is subject, and only for the specific purpose of performing Services specified in this Agreement. In such case, Supplier will inform Microsoft of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest,

(ii)   ensure that persons authorized to Process the Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality,

(iii)   take all measures required in accordance with good industry practice and by Data Protection Law relating to data security (including pursuant to Article 32 of the GDPR),

(iv)   not engage another party to Process the Personal Data without Microsoft's prior written authorization, and if such authorization is granted, take those measures required pursuant to paragraphs 2 and 4 of Article 28 of the GDPR,

(v)   take into account the nature of the Processing, assist Microsoft by appropriate technical and organizational measures, insofar as this is possible, for the fulfilment of Microsoft's obligation to respond to requests for exercising the Data Subject's rights laid down in Data Protection Law (including Chapter III of the GDPR) and, to the extent applicable, implementing the Data Subject's rights,

(vi)   assist Microsoft in ensuring compliance with data security, Personal Data Breach, data protection impact assessments, and engaging in other consultations, pursuant to Data Protection Law (including Articles 32 to 36 of the GDPR taking into account the nature of processing and the information available to Supplier),

(vii) without limiting Microsoft's rights under Section 11, make available to Microsoft all information necessary to demonstrate compliance with Data Protection Law (including the obligations laid down in Article 28 of the GDPR) and allow for and contribute to audits, including inspections, conducted by Microsoft or another auditor mandated by Microsoft,

(viii) immediately inform Microsoft if, in its opinion, an instruction infringes Data Protection Law.

(3)   The subject matter and duration of the Processing, the nature and purpose of the Processing, and the type of Personal Data and categories of data subjects will be described in a SOW, which forms an integral part of this Agreement.

(4)   Supplier will notify Microsoft without undue delay upon becoming aware of a Personal Data Breach.

(5)   Where Microsoft faces an actual or potential claim arising out of or related to violation of any Data Protection Law (e.g., Article 82 of the GDPR) concerning Services, Supplier will promptly provide all materials and information requested by Microsoft that is

relevant to the defense of such claim and the underlying circumstances concerning the claim.

(c) **Return or destroy Confidential Information**. At the expiration or termination of Services, or upon request by Microsoft or Microsoft's Affiliate, Supplier will, without undue delay, (1) return all Microsoft Confidential Information (including copies thereof) to Microsoft or the applicable Microsoft Affiliate or (2) upon request by Microsoft or its Affiliate, destroy all Confidential information (including copies thereof), in each case unless applicable law expressly requires otherwise or the parties otherwise expressly agree in writing. For any Microsoft Confidential Information Supplier retains after expiration or termination of Services (for example, because Supplier is legally required to retain the information), Supplier will continue to comply with the data security and privacy provisions in this Agreement (Section 2(g)(3) and Section 6) and Supplier must de-identify or aggregate Personal Data, if any, to the extent feasible. Without limiting Supplier's other obligations agreed in writing by the parties, this Section 6(c) does not apply to Personal Data that is Processed by Supplier as a Controller under the GDPR.

(d) **Publicity.** Supplier will not issue press releases or other publicity related to Supplier's relationship with Microsoft or this Agreement without prior written approval from the Microsoft representative executing this Agreement.

SECTION 7   Representations and warranties

Supplier continuously represents and warrants

(a) it has full rights and authority to enter into, perform under, and grant the rights in, this Agreement,

(b) its performance will not violate any agreement or obligation between it and any third-party,

(c) Deliverables and Supplier IP or third-party IP provided to Microsoft under this Agreement

   (1) are not governed, in whole or in part, by an Excluded License, and

   (2) will not be subject to license terms requiring Microsoft products, services, or documentation incorporating or derived from such Deliverables, Supplier Materials, or Microsoft IP, to be licensed or shared with any third-party,

(d) Services will be performed professionally and be at or above industry standard,

(e) Services, Deliverables, and Supplier Materials provided to Microsoft under this Agreement will not

   (1) to the best of Supplier's knowledge, infringe any third-party patent, copyright, trademark, trade secret, or other proprietary right, or

   (2) contain viruses or other malicious code that will degrade or infect any Deliverables, products, services, software, or Microsoft's network or systems, and

(f) Supplier will comply with all applicable laws, including Data Protection law and Anti-Corruption laws.

EXCEPT AS SET FORTH IN THIS SECTION 7 (REPRESENTATIONS AND WARRANTIES), SERVICES ARE PROVIDED AS-IS. TO THE MAXIMUM EXTENT PERMITTED BY LAW, SUPPLIER DISCLAIMS ANY AND ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE, WHETHER ARISING BY A COURSE OF DEALING, USAGE OR TRADE PRACTICE OR COURSE OF PERFORMANCE.

SECTION 8   Indemnification and other remedies

(a)   Indemnification by Supplier. Supplier will defend, indemnify, and hold Microsoft, its Affiliates, and their respective successors, directors, officers, employees, and agents (each a "*Microsoft Indemnified Party*") harmless from and against all Claims to the extent such Claims arise out of or relate to

(1)   Supplier's or its Subcontractors' breach of Sections 7(a) or 7(b),

(2)   Supplier's or its Subcontractors' negligent or willful acts or omissions resulting in bodily injury or death to any person or loss, disappearance, or damage to tangible or intangible property,

(3)   Supplier's or its Subcontractors' infringement, misuse, or misappropriation of third-party IP rights or Microsoft IP,

(4)   Supplier's or its Subcontractors' breach of any confidentiality, privacy, data protection or publicity obligations under this Agreement, including Section 6 (Confidentiality, privacy and data protection, and publicity),

(5)   Supplier's or its Subcontractors' tax obligations or non-compliance with applicable laws, rules, or regulations, or

(6)   actions by Supplier personnel against Microsoft for wages, fringe benefits, other compensation, or similar claims, and claims challenging Supplier's right to dismiss its personnel.

Supplier will not be liable under this Section 8(a) (Indemnification by Supplier) to the comparative extent that Claims result from;

(1)   a Microsoft Indemnified Party's negligent or willful acts, or

(2)   Supplier's strict compliance with Microsoft's express instructions that could not be reasonably performed in a non-infringing manner.

(b)   Indemnification by Microsoft. Microsoft will defend, indemnify, and hold Supplier, its Affiliates, and their respective successors, directors, officers, employees, and agents (each a "*Supplier Indemnified Party*") harmless from and against all Claims to the extent that such Claims arise out of or relate to

(1)   Microsoft's negligent or willful acts or omissions resulting in bodily injury or death to any person or loss, disappearance, or damage to tangible or intangible property, violation of Supplier's IP rights, or

(2)   Microsoft's non-compliance with applicable laws, rules, or regulations.

Microsoft will not be liable under this Section 8(b) (Indemnification by Microsoft) to the comparative extent that Claims result from a Supplier Indemnified Party's negligent or willful acts.

(c)   Indemnification procedures. The indemnified party will

(1)   provide the indemnifying party with reasonably prompt notice of Claims,

(2)   permit the indemnifying party through mutually acceptable counsel to answer and defend Claims, and

     (3)   provide the indemnifying party with reasonable information and assistance to help the indemnifying party defend Claims at the indemnifying party's expense.

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

(d)   **Acknowledgment of fault and settling Claims.** Neither party will stipulate, admit, or acknowledge fault or liability by the other without their prior written consent. The indemnifying party will not settle any Claim or publicize any settlement without the other party's prior written consent.

(e)   **Industrial insurance immunity.** Supplier waives immunity under industrial insurance laws, such as Title 51 of the Revised Code of the State of Washington, U.S., except to the extent prohibited by law and solely regarding bodily injury or death Claims.

(f)   **Other remedies.** In addition to all other remedies available to Microsoft,

     (1)   if use of Services or Deliverables under this Agreement is enjoined or injunction is threatened, Supplier, at its expense, will notify Microsoft and immediately

          (i)   procure for Microsoft the right to continue using such Services and Deliverables, or

          (ii)   replace or modify such Services and Deliverables so they are non-infringing and useable to Microsoft's satisfaction.

If Supplier does not comply with this Section 8(f)(1), then in addition to any amounts reimbursed under this Section 8 (Indemnification and other remedies), Supplier will refund all amounts paid by Microsoft for infringing Services and Deliverables and pay reasonable costs to transition Services to a new supplier.

     (2)   Supplier will pay Microsoft the fair market value of Microsoft Materials or property if Supplier misappropriates or fails to return such items according to this Agreement.

SECTION 9   **Limitations of liability**

(a)   AS PERMITTED BY APPLICABLE LAW AND SUBJECT TO SECTION 9(b) BELOW, NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES (INCLUDING DAMAGES FOR LOSS OF DATA, REVENUE, OR PROFITS), WHETHER FORESEEABLE OR UNFORESEEABLE, ARISING OUT OF THIS AGREEMENT REGARDLESS OF WHETHER THE LIABILITY IS BASED ON BREACH OF CONTRACT, TORT, STRICT LIABILITY, BREACH OF WARRANTIES, OR OTHERWISE, AND EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES. ADDITIONALLY, NEITHER PARTY'S TOTAL AGGREGATE LIABILITY TO THE OTHER PARTY WILL EXCEED THE GREATER OF

     (1) $2,000,000 US OR THE EQUIVALENT IN LOCAL CURRENCY, OR

     (2)   THE ACTUAL FEES PAID BY MICROSOFT IN THE 12-MONTH PERIOD PRIOR TO THE DATE THE CLAIM AROSE**.**

(b)   THE LIMITATIONS ON LIABILITY IN SECTION 9(a) DO NOT APPLY TO LIABILITY ARISING FROM

     (1)   A PARTY'S DUTY TO INDEMNIFY THE OTHER UNDER THIS AGREEMENT,
     (2)   A BREACH OF A PARTY'S CONFIDENTIALITY, PRIVACY, DATA PROTECTION, AND PUBLICITY OBLIGATIONS UNDER THIS AGREEMENT,

    (3)   INFRINGEMENT, MISUSE, OR MISAPPROPRIATION OF IP RIGHTS IN CONNECTION WITH THIS AGREEMENT, OR

    (4)   FRAUD.

SECTION 10   Insurance

(a)   **General.** Supplier will maintain sufficient insurance coverage to meet obligations required by this Agreement and by law. Supplier's insurance must include the following coverage (or the local currency equivalent) to the extent the Agreement creates risks generally covered by these insurance policies:

    (1)   Commercial General Liability (occurrence form) including contractual and product liability with limits of at least $2,000,000 US per occurrence;

    (2)   Automobile liability with limits of at least $2,000,000 US per occurrence; and

    (3)   As reasonably commercially available, privacy and cybersecurity liability (including costs arising from data destruction, hacking or intentional breaches, crisis management activity related to data breaches, and legal claims for security breach, privacy violations, and notification costs) of at least $2,000,000 US per claim;

    (4)   Workers' compensation satisfying all statutory limits; and

    (5)   Employer's liability with limits of at least $500,000 US per occurrence.

Supplier will name Microsoft, its subsidiaries, and their respective directors, officers, and employees as additional insureds in the Commercial General Liability policy for contractual liability assumed by Supplier in Section 8 (Indemnification and other remedies).

(b)   **Professional liability/errors and omissions liability.** Supplier will purchase and maintain professional liability/errors and omissions insurance if Services create exposures generally covered by such a policy. The policy will

    (1)   have limits of at least $2,000,000 US per claim (or the local currency equivalent),

    (2)   cover infringement of third-party proprietary rights (e.g., copyright, and trademark) if such coverage is reasonably commercially available, and

    (3)   have a retroactive coverage date no later than the applicable SOW's effective date.

Supplier will maintain active policy coverage or an extended reporting period providing coverage for claims first made and reported to the insurance company within 12 months after this Agreement's termination or expiration or fulfillment of a SOW.

(c)   **Deductible.** Unless agreed to otherwise in writing, Supplier will maintain a deductible or retention of no more than $100,000 US (or the local currency equivalent) per occurrence or accident throughout the Term for all lines of coverage under Sections 10(a) (General) and 10(b) (Professional liability/errors and omissions liability).

(d)   **Proof of Coverage.** Upon request, Supplier will provide Microsoft with proof of insurance coverage required under this Agreement. Supplier will promptly buy additional coverage, and notify Microsoft in writing, if Microsoft reasonably determines that Supplier's coverage is less than that required to meet its obligations.

SECTION 11   Reports, records, audits, and inspections

(a) **Reports.** Reports Supplier provides to Microsoft must be accurate, complete, and timely. Supplier will correct errors or omissions in any report within 5 days after becoming aware of the error or omission.

(b) **Records.** For the Term plus 4 years, Supplier will keep usual and proper records and books of account and quality and performance reports related to Services and the Processing of Personal Data ("*Supplier Records*"). Supplier will maintain additional documentation if directed to do so by Microsoft related to Microsoft's compliance with the U.S. Sarbanes-Oxley Act of 2002.

(c) **Financial statements.** If not publicly available, upon Microsoft's request, Supplier will provide Microsoft with its most recent financial statements. A "*financial statement*" means a balance sheet as of the last day of the calendar quarter or fiscal year, an income statement, statement of cash flows, and any related notes for the quarter and year-to-date, prepared under GAAP, international financial representation standards, or other generally accepted accounting principles in Supplier's jurisdiction. Supplier must note any departure in the quarterly financial statements from these principles. Supplier's authorized officer will acknowledge the financial statements' completeness and accuracy by signature.

(d) **Audits, inspections, and refunds**

(1) For the Section 11(b) term, Microsoft may audit Supplier Records and inspect Supplier facilities to verify Supplier's compliance with this Agreement, including privacy, security, export compliance, taxes, and Microsoft software licensing requirements. Microsoft or a Microsoft-selected independent certified public accountant or consultant will conduct audits and inspections. Microsoft will provide reasonable notice to Supplier before the audit or inspection and will use best efforts to avoid disrupting Supplier's operations, including consolidating audits where practical. Supplier will provide reasonable access to Supplier Records and Microsoft contracts and facilities. Auditors may copy Supplier Records for evidence.

(2) Supplier will reimburse Microsoft for overpayments discovered by auditors. If Supplier overcharged Microsoft 5% or more during an audited period, it will immediately refund Microsoft all overpayments plus pay interest at 0.5% per month on such overcharge.

(3) For audits related to Anti-Corruption Laws, in addition to the obligations above, Supplier will maintain books, documents, records, papers, and other materials related to this Agreement (*"Relevant Records"*), and internal controls to prevent bribes and assure accurate financial statements and reporting. Supplier will not have undisclosed or unrecorded accounts, or false, misleading, incomplete, inaccurate, or artificial entries in the Relevant Records. Relevant Records and relevant employees will be available to Microsoft or Microsoft-selected independent certified public accountant or consultant. Microsoft may exercise its rights under this provision at any time if it in good faith believes Supplier or its representatives violated this Agreement's Anti-Corruptions Laws obligations.

(4) Nothing in this Section 11(d) limits Microsoft's right to audit Supplier under Section 6(b)(2)(viii).

SECTION 12   Miscellaneous

(a) **Relationship.** The parties are independent contractors. Supplier's employees and Subcontractors are not Microsoft employees. Supplier will provide Microsoft with satisfactory proof of independent contractor status upon request. This Agreement does not create an

exclusive relationship between the parties and Microsoft does not commit to acquiring any minimum amount of Services from Supplier. There are no third-party beneficiaries under this Agreement unless provided otherwise.

(b) **Jurisdiction and Governing Law.** The laws of the State of Washington govern this Agreement. If federal jurisdiction exists, the parties consent to exclusive jurisdiction and venue in the federal courts in King County, Washington. If not, the parties consent to exclusive jurisdiction and venue in the Superior Court of King County, Washington. If either Microsoft or Supplier employs attorneys to enforce any rights arising out of or relating to this Agreement, the prevailing party may recover its reasonable attorneys' fees, costs, and other expenses, including costs and fees incurred on appeal or in a bankruptcy or similar action.

(c) **No waiver.** A party's delay or failure to exercise any right or remedy is not a waiver of that or any other right or remedy.

(d) **Assignment.** Supplier will not sell, assign, transfer, pledge, or encumber this Agreement or any right, or delegate any duty or obligation under this Agreement, by assignment or operation of applicable law, without Microsoft's prior written consent. Microsoft will not unreasonably withhold such consent. Supplier will be deemed to have assigned this Agreement if Supplier engages in a change of control transaction. Microsoft may assign this Agreement to any of its Affiliates. This Agreement will inure to the benefit of and bind all permitted successors, assigns, receivers, and trustees of each party. Any attempted assignment that violates this provision is a material breach and is void.

(e) **Force majeure.** Except for business continuity (i.e., disaster recovery) obligations under this Agreement, neither party is liable for failing to perform its obligations under this Agreement due to acts of God, natural disasters, war, civil disturbance, or government action where the cause is beyond the party's reasonable control ("*Force Majeure Event*"). A Force Majeure Event does not include difficulty in obtaining labor, materials, or transport, or a strike, lock-out, trade dispute, or labor disturbance where Supplier is a direct party. The party affected by a Force Majeure Event will provide written notice to the other party within a commercially reasonable time and use best efforts to resume performance as soon as reasonably possible. If Supplier does not complete Services due to a Force Majeure Event within 3 weeks after the start of the Force Majeure Event, or an alternate date specified in an applicable SOW or this Agreement, whichever is earlier, then (1) Microsoft may choose not to purchase or pay for those Services, and (2) Supplier will promptly refund any pre-paid Fees.

(f) **Severability.** If a court of competent jurisdiction determines that any Agreement provision is illegal, invalid, or unenforceable, the remaining provisions will remain in full force and effect.

(g) **Insolvency, loss of profits, damages.** The insolvency or adjudication of bankruptcy, the filing of a voluntary petition in bankruptcy, or the making of an assignment for the benefit of creditors by either party will be a material breach of this Agreement. "*Insolvency*" means either (1) the party's liabilities exceed its assets, each fairly stated, or (2) the party's failure to timely pay its business obligations in the regular course of business.

(h) **Entire agreement, precedence, and amendment.** This Agreement supersedes all prior and contemporaneous communications, whether written or oral, regarding the subject matter covered in this Agreement. Any preceding master agreement, listed in an exhibit to this Agreement, if any, previously executed between the parties (each a "*Prior Agreement*") is terminated, except that any SOWs under the Prior Agreement that have not expired or been terminated will survive according to the terms of the Prior Agreement as if the Prior Agreement

were still in effect, provided that the SOWs cannot be extended beyond the current term as of the Effective Date of this Agreement. If there is a conflict between any parts of this Agreement not resolved by its terms, the following order of precedence will apply:

(1)   This Agreement, including any Addenda, Exhibits and Microsoft Policies referenced herein;

(2)   A signed SOW, except if this Agreement or the SOW provides that a particular section of the SOW takes precedence over a particular section of this Agreement; and

(3)   Microsoft purchase order terms and conditions.

This Agreement may be modified only by a written agreement signed by authorized representatives of both parties. However, Microsoft may unilaterally modify the Policies identified in Section 2(g) (Supplier to comply with Microsoft Policies). This Agreement does not replace any separate written license agreement between Microsoft and Supplier, and any conflicts with licensing of Microsoft Materials will be resolved as provided in Section 3(b)(1)(ii).

(i)   **Notices**. All notices under this Agreement will be in writing, deemed given when received (unless otherwise specified), and sent by electronic mail or physical mail (*e.g.*, registered or certified mail) to the person and address provided on the first page of this Agreement (or as the recipient has otherwise designated through a previous notice given in accordance with this Section).

(j)   **Counterparts**. The parties may execute this Agreement in any number of counterparts. Each counterpart is an original and all counterparts constitute one agreement binding both parties. Facsimile and electronic signatures will be binding for all purposes.

(k)   **Construction.** Neither party has entered this Agreement in reliance on any promise, representation, or warranty not contained herein. This Agreement will be interpreted according to its plain meaning without presuming that it should favor either party. Lists of examples following "including," "e.g.," "for example," or the like are interpreted to include "without limitation," unless qualified by words such as "only" or "solely." URLs are understood to also refer to successors, localizations, and information or resources linked from within websites at those URLs.

[*Remainder of this page is intentionally left blank*]