Microsoft CustomerSource Terms of Use Agreement

You and Microsoft agree to the following terms and conditions for purposes of accessing and benefiting from the Services provided in CustomerSource. This Agreement is meant to supplement the TOU and the TOU related links contained therein.

1. **Definitions.** For purposes of this section, all definitions contained in the TOU are incorporated herein by this reference. The term "parties" refers to both you and Microsoft, and the term "party" may be used to refer to you or Microsoft individually. In addition, the following definitions apply:

   1.1. "Affiliate" means any legal entity that owns, is owned or is commonly owned by Microsoft or you. Own means holding or controlling more than 50% of the shares, interests or assets of a legal entity.

   1.2. "Agreement" means this Microsoft CustomerSource Terms of Use Agreement.

   1.3. "Support Services" means the services made available to you in support of a Microsoft service or product as described in Microsoft’s Customer Support Plans, including but not limited to electronic and telephone support incidents, newsgroups, marketing and readiness resources and all other services described at https://mbs.microsoft.com/customersource/support/information/SupportInformation/services_guidebook.htm.

2. **Support Service.** Your Services may contain Support Services and your right to use them as offered in CustomerSource may be governed by a separate agreement. IN THE EVENT OF A CONFLICT BETWEEN THIS AGREEMENT AND YOUR CURRENT SERVICES AGREEMENT WITH MICROSOFT (IF ANY), THE TERMS AND CONDITIONS OF YOUR CURRENT SERVICES AGREEMENT WITH MICROSOFT CONTROL. Your Ownership and license of deliverables obtained through Support Services shall be subject to the following:

   2.1. **Fixes.** Microsoft grants you a non-exclusive, perpetual, fully paid-up license to use and reproduce the fix Microsoft or its designee deliver to you for your internal business operations only. Fixes are not for resale or distribution to unaffiliated third parties. Except as otherwise provided herein, the license rights granted to fixes are governed by the license agreement for the affected product or, if the fix is not provided for a specific product, any other use terms Microsoft provides. Your use of the product is governed by the license agreement for the product. You are responsible for paying any product licensing fees. "Product(s)" means any computer code, web-based services or materials comprising commercially released, pre-release or beta products (whether licensed for a fee or no charge) and any derivatives of the foregoing Microsoft or its designee make available to you for license which is published by Microsoft, its affiliates or a third-party. "Fixes" means product fixes that Microsoft either releases generally (such as commercial product service packs) or that Microsoft or its designee provide to you when performing Support Services (such as workarounds, patches, bug fixes, beta fixes and beta builds) and any derivatives of the foregoing. You may not modify, reverse engineer, decompile, disassemble, change the file name of or combine with any non-Microsoft computer code any fixes delivered to you.

   2.2. **Pre-Existing Work.** All rights in any computer code or non-code based written materials ("materials") developed or otherwise obtained by or for Microsoft or its affiliates, or you or your affiliates independent of this agreement ("pre-existing work") shall remain the sole property of the
party providing the pre-existing work. During the performance of the Support Services, each party grants to the other party (and our contractors as necessary) a temporary, non-exclusive license to use, reproduce and modify any of its pre-existing work provided solely for the performance of Support Services. Microsoft grants you a non-exclusive, perpetual, fully paid-up license to use, reproduce and modify (if applicable) Microsoft's pre-existing work in the form delivered to you that Microsoft leaves with you at the conclusion of the performance of Support Services for use with any developments (if applicable). The license rights granted to Microsoft’s pre-existing work are limited to your internal business operations and are not for resale or distribution to unaffiliated third-parties.

2.3. Developments. We grant you a non-exclusive, perpetual right to use, reproduce and modify any computer code or materials (except for fixes or pre-existing work) that we leave with you at the conclusion of our performance of the Support Services (“developments”) for your internal business operations only. Developments are not for resale or distribution to unaffiliated third parties.

2.4. Sample Code. In addition to the rights set out in the Developments section above, you may also reproduce and distribute the object code form of any computer code, provided by Microsoft under any Support Services for the purpose of illustration (“sample code”) provided that you agree: (i) not to use Microsoft's name, logo, or trademarks to market your computer product in which the sample code is embedded; (ii) to include a valid copyright notice on your computer product in which the sample code is embedded; and (iii) to indemnify, hold harmless, and defend Microsoft and its suppliers from and against any claims or lawsuits, including attorneys’ fees, that arise or result from the use or distribution of the sample code.

2.5. Open Source License Restrictions. Because certain third party license terms require that computer code be generally (i) disclosed in source code form to third parties; (ii) licensed to third parties for the purpose of making derivative works; or (iii) redistributable to third parties at no charge (collectively, “open source license terms”), the license rights that each party has granted to any computer code (or any intellectual property associated therewith) do not include any license, right, power or authority to incorporate, modify, combine and/or distribute that computer code with any other computer code in a manner which would subject the other's computer code to open source license terms. Furthermore, each party warrants that it will not provide or give to the other party computer code that is governed by open source license terms.

2.6. Affiliates Rights. You may sublicense the rights contained in this section to your affiliates, but your affiliates may not sub-license these rights and your affiliates’ use must be consistent with these license terms contained herein.

2.7. Reservation of rights. All rights not expressly granted in this section are reserved.

3. Consumer rights. If the provisions of this Agreement are considered to constitute a supply of goods or services to a “consumer” for the purposes of your local law, for which liability may not be excluded or restricted, then nothing in the this Agreement will have the effect of excluding those rights or remedies. If such liability may not be excluded, then to the maximum extent permitted by law, such liability is limited, at our exclusive option, in the case of services to either supplying the services again or the payment of the cost of having the services supplied again, and in the case of goods to either (i) replacement of the goods, (ii) correction of defects in the goods, or (iii) payment of the cost of replacing or repairing the goods or acquiring equivalent goods.

4. Term and Termination

4.1. This Agreement will take effect on the date Microsoft accepts this Agreement (“Effective Date”) and will continue for one year from the Effective Date (“Term”), unless terminated earlier. This Agreement will not renew automatically.

4.2. Either party may terminate this Agreement at any time, without cause, upon 30 calendar days’ notice. Neither party will be responsible to the other for any costs or damages that are a direct
result of this termination. You must contact Microsoft by clicking the Contact Us link contained in CustomerSource to begin the Agreement termination process.

4.3. If either party breaches any provision of this Agreement, and the cause for termination is considered curable, the non-breaching party will give 30 calendar days' email or written notice and an opportunity to cure. If the cause for termination is considered not curable, termination will take effect immediately upon notice from the non-breaching party. Microsoft retains its other rights and remedies.

4.4. When this Agreement terminates, you must immediately stop using any rights and benefits granted by this Agreement. You must also return or destroy all copies of Documents, Service collaterals and Software and, if requested, provide Microsoft with a signed certificate of destruction.

5. Miscellaneous

5.1. Non-compete business purposes. You may not (or allow any third party to) use, copy, modify, create derivative works of, reverse engineer, disassemble, decompile or use unauthorized modified versions of any Documents, Services or Software, in whole or in part, in any manner or form, or otherwise attempt to discover any source code, for purposes of building a similar or competitive product or service or obtaining unauthorized access to the Documents, Services or Software.

5.2. Entire agreement. This Agreement, the TOU and the TOU’s related links constitute the entire agreement concerning the subject matter and supersede any prior or contemporaneous communications. In the event of a conflict between this Agreement and the TOU and/or the TOU related links, the terms and conditions of this Agreement will control.

5.3. Severability. If a court holds any provision of this Agreement to be illegal, invalid or unenforceable, the rest of the document will remain in effect and this Agreement will be amended to give effect to the eliminated provision to the maximum extent possible.

5.4. Assignment. You may not assign this Agreement. Microsoft may assign this Agreement to its Affiliates.

5.5. Waiver. A waiver of any breach of this Agreement is not a waiver of any other breach. Any waiver must be in writing and signed by an authorized representative of the waiving party.

5.6. Applicable law and jurisdiction. This Agreement is governed by the laws of the State of Washington, U.S.A. The parties consent to the exclusive jurisdiction and venue sitting in King County, State of Washington, U.S.A. This choice of jurisdiction does not prevent either party from seeking injunctive relief with respect to a violation of intellectual property rights or confidentiality obligations in any appropriate jurisdiction. If either party commences litigation in connection with this Agreement, the prevailing party will be entitled to recover reasonable attorney’s fees, costs and other expenses.

5.7. This Agreement is not exclusive. You are free to enter into agreements to license, use or promote non-Microsoft software or services.

5.8. Survival. Provisions regarding restrictions on use, transfer of licenses, privacy, limited warranty, limitations of liability, consumer rights, unlawful or prohibited use, use of services, Support Services, in the TOU or this Agreement, and the provisions in this section entitled “Miscellaneous” will survive termination of this Agreement.

5.9. No transfer of ownership. Microsoft does not transfer any ownership rights in any software or service. Microsoft reserves all rights not specifically granted. Microsoft software is protected by copyright and other intellectual property rights laws and international treaties.