



SWG Azure MHS Terms

Client Agreement

Statement of Confidentiality

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Introduction

This Agreement is between you or the entity you represent, or, if no such entity is designated by you in connection with a Subscription purchase or renewal, you individually ("you") and Service Works Group Limited ("SWG", "we", "us", or "our") and consists of the below terms and conditions, as well as the Acceptable Use Policy, the License Terms, the SLAs, and the Customer Order Form ("CoF") or renewal (together, the "Agreement"). It is effective on the date we provide you with confirmation of your Subscription or the date on which your Subscription is renewed, as applicable. Key terms are defined in Section 10.

1. Use of Services

1. **Right to use.** We grant you the right to access and use the Services described in this agreement. We reserve all other rights.
2. **Acceptable use.** You may use the Product only in accordance with this Agreement. You may not reverse engineer, decompile, disassemble, or work around technical limitations in the Product, except to the extent that applicable law permits it despite these limitations. You may not disable, tamper with, or otherwise attempt to circumvent any billing mechanism that meters your use of the Product. You may not rent, lease, lend, resell, transfer, or sublicense the Product or any portion thereof to or for third parties.
3. **End Users.** You control access by End Users, and you are responsible for their use of the Product in accordance with this agreement. For example, you will ensure End Users comply with the Acceptable Use Policy.
4. **Customer Data.** You are solely responsible for the content of all Customer Data. You will secure and maintain all rights in Customer Data necessary for us to provide the Services to you without violating the rights of any third party or otherwise obligating SWG or Microsoft to you or to any third party. SWG and Microsoft do not and will not assume any obligations with respect to Customer Data or to your use of the Products other than as expressly set forth in this Agreement or as required by applicable law.
5. **Responsibility for your accounts.** You are also responsible for maintaining the confidentiality of any non-public authentication credentials associated with your use of the Services. You must promptly notify our support team about any possible misuse of your accounts or authentication credentials or any security incident related to the Services.
6. **Updates.** We may make changes to the Services from time to time. We will provide you with 1 months' prior notice before removing any material feature or functionality (excluding Previews), unless security, legal, or system performance considerations require an expedited removal.
7. **Preview releases.** We may make available Previews. **PREVIEWS ARE PROVIDED "AS-IS," "WITH ALL FAULTS," AND "AS AVAILABLE," AND ARE EXCLUDED FROM THE SLAS AND LIMITED WARRANTY.** Previews may not be covered by customer support. Previews may be subject to reduced or different security, compliance, and privacy commitments, as further explained in the Privacy Statement, Trust Center, and any additional notices provided with the Preview. We may change or discontinue Previews at any time without notice. We also may choose not to release a Preview into "General Availability."

2. Security, Privacy, and Data Protection

1. **Security.** We maintain appropriate technical and organisational measures, internal controls, and data security routines intended to protect Customer Data against accidental loss or change, unauthorised disclosure or access, or unlawful destruction. Current information about our security practices can be found within the [Trust Center](#).



2. **Privacy and data location.** We treat Customer Data in accordance with our [Privacy Statement](#). Subject to any restrictions set forth in the Privacy Statement, we may transfer to, store, or process Customer Data in any country where we or our Affiliates or subcontractors have facilities used to provide or support the Services. We are a data processor (or sub-processor) acting on your behalf, and you appoint us to do these things with Customer Data in order to provide the Services to you. You will obtain any necessary consent from End Users or others whose personal information or other data you will be hosting using the Services.
3. **Ownership of Customer Data.** Except for Software we license to you, as between the parties, you retain all right, title, and interest in and to Customer Data. We acquire no rights in Customer Data, other than the right to host Customer Data within the Services, including the right to use and reproduce Customer Data solely as necessary to provide the Services.
4. **Use of Customer Data.** We will use Customer Data only to provide you the Services. This use may include troubleshooting to prevent, find, and fix problems with the operation of the Services. It may also include improving features for finding and protecting against threats to users. We will not use Customer Data or derive information from it for any advertising or other commercial purposes without your consent.
5. **Third-party requests.** We will not disclose Customer Data to a third party (including law enforcement, other government entity, or civil litigant; excluding our subcontractors) except as you direct or unless required by law. Should a third party contact us with a demand for Customer Data, we will attempt to redirect the third party to request that data directly from you. As part of this effort, we may provide your basic contact information to the third party. If compelled to disclose Customer Data to a third party, we will promptly notify you and provide a copy of the demand, unless legally prohibited from doing so. You are responsible for responding to requests by third parties regarding your use of the Services.
6. **Subcontractors.** We may hire other companies to provide limited services on our behalf, such as customer support. Any such subcontractors will be permitted to obtain Customer Data only to deliver the services we have retained them to provide, and they are prohibited from using Customer Data for any other purpose. We remain responsible for our subcontractors' compliance with the obligations set forth in this agreement.
7. **Compliance with law.** We will comply with all laws applicable to our provision of the Services, including applicable security breach notification laws, but not including any laws applicable to you or your industry that are not generally applicable to information technology services providers. You will comply with all laws applicable to your Customer Solution, Customer Data, and your use of the Services, including any laws applicable to you or your industry.

3. Purchasing Services

1. **Available Subscription offers.** The Portal provides Offer Details for available Subscription offers, which generally can be categorised as one or a combination of the following:
 - a. **Commitment Offering.** You commit in advance to purchase a specific quantity of Services for use during a Term and to pay upfront or on a periodic basis during the Term in advance of use. Additional or other usage (for example, usage beyond your commitment quantity) may be billed like a Consumption Offering.
 - b. **Consumption Offering (also known as Pay-As-You-Go).** You pay based on actual usage in the preceding month with no upfront commitment. Payment is on a periodic basis in arrears.
 - c. **Limited Offering.** You receive a limited quantity of Services for a limited term without charge (for example, a free trial) or as part of another Microsoft offering (for example, MSDN). Provisions in this agreement with respect to pricing, cancellation fees, payment, and data retention may not apply.
2. **Ordering.** By ordering or renewing a subscription, you agree to the offer details for that Subscription offer. Unless otherwise specified in those offer details Services are offered on an "as available" basis and we make no guarantee that a particular quantity of Services will be available at the time of request. You may place orders for your Affiliates under this agreement and grant your Affiliates administrative rights to manage subscription, but Affiliates may not place orders under this agreement. If you grant any rights to Affiliates with respect to your subscription, such Affiliates shall be bound by this agreement and you agree to be jointly and severally liable for any actions of such Affiliates related to their use of the Products.



3. **Pricing and payment.** Payments are due and must be made according to the Offer Details for your Subscription.
 - a. For Commitment Offerings, the price level may be based on the quantity of Services you ordered. Some offers may permit you to modify the quantity of Services ordered during the Term and your price level may be adjusted accordingly, but price level changes are not retroactive. During the Term of your Subscription, prices for Services will not be increased, as to your Subscription, from those posted in the Portal at the time your commitment period commenced or renewed, except for Previews where prices are identified as temporary or for Non-Microsoft Products for which we do not control the price. All prices are subject to change at the beginning of any Subscription renewal.
 - b. For Consumption Offerings, pricing is subject to change at any time upon notice.
4. **Renewal.** Upon renewal of your Subscription, this agreement will terminate and your Subscription will thereafter be governed, by the terms and conditions set forth on the Portal on the date on which your Subscription is renewed (the "Renewal Terms"). If you do not agree to any Renewal Terms, you may decline to renew your Subscription.
 - a. For Commitment Offerings, you may choose to have a Subscription automatically renew or terminate upon expiration of the Term. Automatic renewal is pre-selected. You can change your selection at any time during the Term. If the existing Term is longer than one calendar month, we will provide you with written notice of the automatic renewal before the expiration of the Term.
 - b. For Consumption Offerings, the Subscription renews automatically at the end of every month until you terminate the Subscription.
 - c. For Limited Offerings, renewal may not be permitted.
5. **Taxes.** Prices are exclusive of any taxes. You shall pay any applicable value added, goods and services, sales, or like taxes that are owed with respect to any order placed under this agreement and which we are permitted to collect from you under applicable law. You shall be responsible for any applicable stamp taxes and for all other taxes that you are legally obligated to pay including any taxes that arise on the provision of Products to your Affiliates. We shall be responsible for all taxes based on our net income or on our property ownership. If any taxes are required to be withheld on payments you make to us, you may deduct such taxes from the amount owed to us and pay them to the appropriate taxing authority, provided however that you promptly secure and deliver an official receipt for those withholdings and other documents we reasonably request to claim a foreign tax credit or refund. You will make certain that any taxes withheld are minimised to the extent possible under applicable law.

4. Term, Termination, and Suspension

1. **Agreement term and termination.** This agreement will remain in effect until the expiration, termination, or renewal as specified in the CoF.
2. **Customer Data return and deletion.** You may extract and/or delete Customer Data at any time. When a Subscription expires or terminates, we will retain any Customer Data you have not deleted for at least 90 days so that you may extract it. You remain responsible for all storage and other applicable charges during this retention period. Following the expiration of this retention period, we will delete all Customer Data, including any cached or back-up copies, within 30 days of the end of the retention period. You agree that we have no additional obligation to continue to hold, export or return Customer Data and that we have no liability whatsoever for deletion of Customer Data pursuant to these terms.
3. **Regulatory.** In any country where any current or future government regulation or requirement applies to us, but not generally to businesses operating there, presents a hardship to us operating the Services without change, and/or causes us to believe this Agreement or the Services may be in conflict with any such regulation or requirement, we may change the Services or terminate this Agreement. If we use this subsection 4(d) of the Agreement to change the Services, then you may terminate this Agreement.



4. **Suspension.** We may suspend your use of the Services if: (1) it is reasonably needed to prevent unauthorised access to Customer Data; (2) you fail to respond to a claim of alleged infringement under Section 6 within a reasonable time; (3) you do not pay amounts due under this Agreement; or (4) you do not abide by the Acceptable Use Policy or you violate other terms of this Agreement. If one or more of these conditions occurs, then:
 - a. For Limited Offerings, we may suspend your use of the Services or terminate your Subscription and your account immediately without notice.
 - b. For all other Subscriptions, a suspension will apply to the minimum necessary part of the Services and will be in effect only while the condition or need exists. We will give notice before we suspend, except where we reasonably believe we need to suspend immediately. We will give at least 30 days' notice before suspending for non-payment. If you do not fully address the reasons for the suspension within 60 days after we suspend, we may terminate your Subscription and delete your Customer Data without any retention period. We may also terminate your account if your use of the Services is suspended more than twice in any 12-month period.

5. Warranties

1. **Limited warranty.** We warrant that the Services will meet the terms of the SLAs during the Term. Your only remedies for breach of this warranty are those in the SLAs.
2. **Limited warranty exclusions.** This limited warranty is subject to the following limitations:-
 - a. any implied warranties, guarantees, or conditions not able to be disclaimed as a matter of law will last one year from the start of the limited warranty;
 - b. this limited warranty does not cover problems caused by accident, abuse, or use of the Products in a manner inconsistent with this agreement or our published documentation or guidance, or resulting from events beyond our reasonable control;
 - c. this limited warranty does not apply to problems caused by any failure to meet minimum system requirements; and
 - d. this limited warranty does not apply to Previews or free offerings.

DISCLAIMER. Other than this warranty, we provide no warranties, whether express, implied, statutory, or otherwise, including warranties of merchantability or fitness for a particular purpose. These disclaimers will apply except to the extent applicable law does not permit them.

6. Defence of Claims

1. **Defence.**
 - a. We will defend you against any claims made by an unaffiliated third party that the Product infringes the third party's patent, copyright, or trademark or makes unlawful use of its trade secret.
 - b. You will defend us against any claims made by an unaffiliated third party that (1) any Customer Solution or Customer Data infringes the third party's patent, copyright, or trademark or makes unlawful use of its trade secret; (2) arise from violation of the Acceptable Use Policy.
2. **Limitations.** Our obligations in subsection 6(a) will not apply to a claim or award based on: (i) the Customer Solution, Customer Data, Non-Microsoft or Non SWG Products, modifications you make to the Product, or materials you provide or make available in the course of using the Product; (ii) your combination of the Product with, or damages based upon the value of, a Non-Microsoft Product, data, or business process; (iii) your use of a Microsoft trademark without our express written consent, or your use of the Product after we notify you to stop due to a third-party claim; or (iv) your redistribution of the Product to, or use for the benefit of, any unaffiliated third party; (v) Services provided free of charge.



3. **Remedies.** If we reasonably believe that a claim under subsection 6(a)(i) may bar your use of the Product, we will seek to: (i) obtain the right for you to keep using it; or (ii) modify or replace it with a functional equivalent. If these options are not commercially reasonable, we may terminate your rights to use the Product and then refund any advance payments for unused Subscription rights.
4. **Obligations.** Each party must notify the other promptly of a claim under this Section 6. (i) The party seeking protection must (1) give the other sole control over the defence and settlement of the claim; and (2) give reasonable help in defending the claim. (ii) The party providing the protection will (1) reimburse the other for reasonable out-of-pocket expenses that it incurs in giving that help and (2) pay the amount of any resulting adverse final judgment (or settlement that the other consents to). The parties' respective rights to defence and payment of judgments or settlements under this Section are in lieu of any common law or statutory indemnification rights or analogous rights, and each party waives such common law rights.

7. Limitation of Liability

1. **Limitation.** The aggregate liability of each party under this agreement is limited to direct damages up to the amount paid under this Agreement for the Services giving rise to that liability during the 12 months before the liability arose.
2. **EXCLUSION.** Neither party will be liable for indirect, special, incidental, consequential, punitive, or exemplary damages, or damages for lost profits, revenues, business interruption, or loss of business information, even if the party knew that such damages were possible.
3. **Exceptions to limitations.** The limits of liability in this Section apply to the fullest extent permitted by applicable law, but do not apply to: (1) the parties' obligations under Section 6 or subsection 9(m); or (2) violation of the other's intellectual property rights.

8. Software

1. **Software provided for use within the Services.** We may provide you with the option of running Software within the Services (for example, in a virtual machine). Your use of that Software is subject to Microsoft's proprietary license terms provided with the Software, as modified below:
 - a. You may use such Software only within the Services and only in conjunction with your permitted use of any applicable Services role. To the extent of any conflict between this paragraph and the proprietary license terms contained in the Software, this paragraph controls.
 - b. You have no other rights under the Software's license terms or under this agreement to run the software (for example, you may not run or install copies of the Software on your on-premise servers or other devices unless you separately obtain the license to do so).
2. **Effect of termination or expiration on Software.** If this agreement or the related Subscription is terminated or expires and you do not exercise an available buy-out option for Software, then you must delete all copies of Software and destroy any associated media.
3. **Other rights.** Your rights to access Software on any device do not give you any right to implement SWG or Microsoft patents or other SWG or Microsoft intellectual property in software or devices that access that device.
4. **Third party software.** Software may contain third party proprietary programs that are licensed under separate terms that are presented to you. Software may also contain third party open source programs that Microsoft, not the third party, licenses to you under Microsoft's license terms. Third party notices, if any, for such open source programs are included for your information only.



9. Miscellaneous

1. **Assignment.** You may not assign this agreement either in whole or in part.
2. **Severability.** If any part of this agreement is held unenforceable, the rest remains in full force and effect.
3. **Waiver.** Failure to enforce any provision of this agreement will not constitute a waiver.
4. **No third-party beneficiaries.** There are no third-party beneficiaries to this agreement.
5. **Applicable law and venue.** This agreement is governed by State of Washington law, without regard to its conflict of laws principles, except that (i) if you are a U.S. Government entity, this agreement is governed by the laws of the United States, and (ii) if you are a state or local government entity in the United States, this agreement is governed by the laws of that state. Any action to enforce this agreement must be brought in the State of Washington. This choice of jurisdiction does not prevent either party from seeking injunctive relief in any appropriate jurisdiction with respect to violation of intellectual property rights.
6. **Entire agreement.** This agreement is the entire agreement concerning its subject matter and supersedes any prior or concurrent communications.
7. **Survival.** The following provisions will survive this agreement's termination or expiration: 1(c) - (f), 2(b) - (g), 3(e), 4(b) - (c), sections 5 - 7, 8(c), and sections 9 - 10.
8. **Force majeure.** Neither party will be liable for any failure in performance due to causes beyond its reasonable control (such as fire, explosion, power blackout, earthquake, flood, severe storms, strike, embargo, labour disputes, acts of civil or military authority, war, terrorism (including cyber terrorism), acts of God, acts or omissions of Internet traffic carriers, actions or omissions of regulatory or governmental bodies (including the passage of laws or regulations or other acts of government that impact the delivery of Services). This section will not, however, apply to your payment obligations under this agreement.
9. **Modifications.** We may modify this agreement at any time by posting a revised version on the legal information section of the Portal (<http://azure.microsoft.com/en-us/support/legal/> or an alternate site we identify) or by notifying you in accordance with subsection 9(a). Modified terms that relate to changes or additions to the Product or that are required by law will be effective immediately, and by continuing to use the Services you will be bound by the modified terms. All other modified terms will be effective upon renewal (including automatic renewal) of an existing Subscription or order for a new Subscription.
10. **Contracting Authority.** If you are an individual accepting these terms on behalf of an entity, you represent that you have the legal authority to enter into this Agreement on that entity's behalf.

10. Definitions

Any reference in this agreement to "day" will be a calendar day.

"Acceptable Use Policy" means a list of prohibited uses of the Services that is published at <http://azure.microsoft.com/en-us/support/legal/> or at an alternate site that we identify.

"Affiliate" means any legal entity that a party owns, that owns a party, or that is under common ownership with a party. "Ownership" means, for purposes of this definition, control of more than a 50% interest in an entity.

"Customer Data" means all data, including all text, sound, software, or image files that are provided to us by, or on behalf of, you or your Affiliates through your use of the Services.

"Customer Solution" means any application you run in connection with Services.

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



“Non-Microsoft and Non-SWG Product” means any software, data, service, website or other product licensed, sold or otherwise provided to you by an entity other than us, whether you obtained it via our Product or elsewhere.

“Offer Details” means the pricing and related terms applicable to the related CoF.

“Previews” means preview, beta, or other pre-release versions of the Services or Software offered by Microsoft to obtain customer feedback.

“Privacy Statement” means the Microsoft Azure Privacy Statement, published at <http://www.microsoft.com/en-us/privacystatement/OnlineServices/Default.aspx> or at an alternate site that we identify.

“Product” means any Services or Software.

“Services” means one or more of the Microsoft Azure services or features made available to you under this agreement by SWG and identified at <http://azure.microsoft.com/en-us/services/>, except the Microsoft Azure Marketplace (which is governed by separate terms).

“Services Terms” means the additional terms that govern specific features within the Product and customer support for the Product, and are published at <http://azure.microsoft.com/en-us/support/legal/> or an alternate site we identify. You may also need to use other Microsoft web sites and online services to access and use the Services (for example, Windows Live ID), and if so, the terms of use associated with those web sites or online services apply to your use of them.

“SLAs” means the commitments we make regarding delivery or performance of the Services, as published in the service level agreements.

Available at:swg.com/wp-content/uploads/2019/07/SWG-MHS-SLA-Standard.pdf

“Software” means SWG and Microsoft software we provide to you as part of the Services for use with the Services.

“Term” means the duration of as defined in the related CoF.

“we” and “us” means Microsoft Corporation and its affiliates, as appropriate.

“Trust Center” means the Microsoft Azure Trust Center published at <http://azure.microsoft.com/en-us/support/trust-center/> or at an alternate site we identify.

“you” and “your” means the entity entering into this agreement to use the Product.