

# Microsoft Customer Agreement

## Financial Services Amendment

The terms and conditions of this Financial Services Amendment (“**Amendment**”) supplement the terms and conditions stated in the Microsoft Customer Agreement (the “**Agreement**”) that applies to Customer’s use of Online Services. Customer is subject to oversight by a Financial Services Regulator and is subject to certain compliance and regulatory requirements. The Amendment incorporates certain additional benefits to Customer to meet those requirements. The rights granted in this Amendment may not be exercised in a manner that would compromise the privacy or security of any other Microsoft customer’s data, or that would threaten or adversely impact the stability or performance of an Online Service.

This Amendment is effective upon Customer’s acceptance (“**Acceptance**”) and expires on the earlier of (i) the termination date of the Agreement or (ii) the last day of the 36<sup>th</sup> calendar month after Customer’s Acceptance.

### 1. **Defined Terms**

Capitalized terms used but not defined in this Amendment will have the same meanings as provided in the Agreement (including, as applicable, the Product Terms (including the Glossary to the Product Terms and the Online Services Privacy and Security Terms), or the Online Services Data Protection Addendum (“**DPA**”). The following definitions are used in this Amendment:

“**Customer**” means, for purposes of this Amendment, Customer and any Affiliates that provide Financial Services, are subject to oversight by a Regulator, and are consuming Online Services.

“**Customer Auditor**” means, for purposes of this Amendment, both Customer’s internal and external auditors.

“**Financial Services**” means, without limitation, banking, credit, insurance, payment services, stock broking, futures trading, stock exchanges, issuing electronic money, and other services involving the investment, lending, trading, and management of money and assets.

“**Online Services**” means, for purposes of this Amendment, the Online Services listed as Core Online Services in the Online Services Privacy & Security Terms and subject to SSAE 18 SOC 1 Type II and SSAE 18 SOC 2 Type II audits.

“**Regulator**” means a prudential or conduct regulator with supervisory rights, as provided under applicable law or regulation, over Customer, or Microsoft as the provider of Online Services to Customer.

### 2. **Enabling Customer Compliance**

- a. **Penetration Testing by Customer and Microsoft.** Customer has the ability to conduct vulnerability and penetration testing of Customer’s deployments in the Online Services or other similar testing as applicable to a specific Online Service that Customer is using. Customer must conduct any testing in accordance with Microsoft’s terms and conditions, which may require, among other things, Customer to provide Microsoft with advance notice of any tests and prohibit Customer from targeting any other Microsoft customer. At least annually, Microsoft will commission third-party penetration testing against the Online Services, including evidence of data isolation among tenants in the multi-tenant Online Services. Such information is available to customers through the Service Trust Portal.
- b. **Audits of Online Services by Microsoft.** On behalf of customers including Customer and Customer’s Auditor, Microsoft will cause the performance of audits of the security of the computers, computing environment and physical data centers that it uses in processing Customer Data (including personal data) for each Online Service. Each audit will result in the generation of a Microsoft Audit Report, as set forth in the DPA.
- c. **Logical Separation.** Microsoft uses logical separation for the storage and processing of Customer Data to prevent commingling of such data with the data of other Microsoft customers.
- d. **Data Residency and Transfer Policies.** Customer Data that Microsoft processes on behalf of Customer will be processed, transferred, and stored as stated in the DPA. Customer may access additional details pertaining to the data residency and transfer policies specific to the Online Service by visiting <https://www.microsoft.com/en-us/TrustCenter/Privacy/where-your-data-is-located> or successor site as determined by Microsoft.

- e. **Significant Events.** Microsoft will provide communications to Customer regarding (1) the nature, common causes, and resolutions of Security Incidents and other circumstances that can reasonably be expected to have a material service impact on Customer's use of the Online Services; (2) Microsoft risk-threat evaluations; and (3) significant changes to Microsoft's business resumption and contingency plans, or other circumstances, that might have a serious impact on Customer's use of the Online Services. This is in addition to various features already provided in the Online Services.

### **3. Unrestricted Rights of Examination or Audit by Regulator**

- a. In the event that the Regulator requests to examine or audit the Online Services operations and controls in order to meet the Regulator's supervisory obligations of Microsoft as a direct service provider of Customer, Microsoft will provide the Regulator with an unrestricted right to examine or audit the Online Services. This includes providing full access to all relevant business premises (e.g., head offices and operation centers), including the full range of relevant devices, systems, networks, information and data used for providing the outsourced function, including related financial information, personnel and Microsoft's external auditors. Access to premises is subject to ensuring the health, safety and security of all persons involved in an examination. To the extent such information may be accessed virtually, the parties will work to accommodate such requests through online virtual communications and sharing of documentation, through secured protocols. This may include, as necessary, audit of subcontractors that perform and process operations of the Online Service. Such activities will be performed under the coordination and supervision of Microsoft and subject to all provisions in this Amendment.
- b. Regulator may require Customer to provide Regulator with direct access to Customer Data whenever Customer outsources services with third-party services providers. Customer may comply with such requirement by directly (i) granting administrative rights to individuals designated by the Regulator, or (ii) designating a third-party services provider that can respond to such a request directly from the Regulator. If Microsoft receives such request from the Regulator, Microsoft will redirect it to Customer. Customer or designated third party shall be responsible for complying with the request and will not circumvent it by referring such matters to Microsoft. Regulator will not be allowed access to data belonging to any other Microsoft customer.
- c. Customer will at all times have access to Customer Data using the standard features of the Online Services and may delegate its access to Customer Data to representatives of the Regulator.
- d. Customer and Microsoft will be responsible for their own costs associated with any of the activities described in this Section 3.
- e. Microsoft agrees to cooperate with Regulators, where appropriate and necessary for the purposes of the Regulator's supervisory activities, including where Customer licenses the Online Services directly from Microsoft or where Customer licenses a third-party solution that leverages Online Services.

### **4. Unrestricted Rights of Audit by Customer**

- a. **General Audit Rights.** As set forth in this Amendment, Microsoft will provide Customer and Customer Auditors unrestricted rights of inspection and auditing related to the outsourcing arrangement(s) as specified in Section 4(b) to enable Customer to monitor the outsourcing arrangement and to ensure compliance with all applicable regulatory and contractual requirements (including where Customer licenses the Online Services directly from Microsoft or where Customer licenses a third-party solution that leverages Online Services) (the "**Customer Audits**"). This includes providing full access to all relevant business premises (e.g., head offices and operation centers), including the full range of relevant devices, systems, networks, information and data used for providing the outsourced function, including related financial information, personnel and Microsoft's external auditors. The exercise of such rights shall be subject to the principle of proportionality, relating to the criticality of such Online Services in performing material functions of Customer.

Further, access to premises is subject to ensuring the health, safety and security of all persons involved in an inspection and audit. To the extent such information may be accessed virtually, the parties will work to accommodate such requests through online virtual communications and sharing of documentation through secured protocols.

- b. **Customer Audit Scope.** Customer has the right to access for itself, its regulated Affiliates, Customer Auditors or the Regulator all information necessary to enable compliance under relevant legal obligations to ensure that:
  - (i) The Online Services comply with the terms and conditions of the Product Terms, DPA and this Amendment;

- (ii) The Service Level Agreements are being met;
  - (iii) The integrity and confidentiality of Customer Data are protected in compliance with the terms and conditions in the DPA and this Amendment; and
  - (iv) The Online Services provided to Customer are secure.
- c. **Customer Audit Procedures.** Microsoft will allow Customer to perform Customer Audits, including on-site audits (as necessary), as described hereunder:
  - 1. Upon reasonable advance written notice, Microsoft will allow Customer to conduct a Customer Audit of the Microsoft business premises and the Online Services Customer is using. The date, time and place of the Customer Audit will be mutually agreed upon between Customer and Microsoft. This may include, as necessary, audit of subcontractors that perform and process operations of the Online Service. Such activities will be performed under the coordination and supervision of Microsoft and subject to all provisions in this Amendment. For clarity, nothing in this paragraph is intended to restrict the right to audit of Customer, and Microsoft confirms that an agreement to a date, time and place of audit will not be unreasonably withheld or delayed, taking into account the scope and reasons for the audit being requested, and that limited prior reasonable notice will be possible in an emergency or crisis situation, and that such scheduling will not be used to jeopardize the objective of the audit.
  - 2. Customer agrees that it shall bear the cost incurred by Microsoft relating to the Customer Audit (US \$4,000 per day for each Microsoft employee, plus any reasonable travel expenses). Customer will not be charged the full per diem fee for a Microsoft engineering resource who is needed for only a portion of a single day. Microsoft will only charge fees for work performed on a pro rata basis. Further, Microsoft will not charge fees for any Microsoft employee performing administrative tasks, such as meeting coordination, escorting visitors or document copying. If there is any dispute regarding fees associated with a Customer Audit, the parties will escalate the matter to their appropriate executives for resolution.
  - 3. The following guidelines shall apply to each Customer Audit:
    - A. Microsoft will designate and make available to Customer a reasonable number of appropriately qualified and knowledgeable Microsoft employees to facilitate the Customer Audit.
    - B. Customer may use an independent auditor to conduct the Customer Audit on its behalf, provided that Customer confirms with reasonable prior written notice that such Customer Auditor is authorized to act on behalf of Customer.
    - C. Customer may exercise Customer Audits directly or with its Auditor. Customer remains accountable for supervising and directing Customer Auditor in connection with the exercise of such Customer Audit, and must approve of the Statement of Work for any such Customer Audit to be performed.
    - D. The Customer Audit will be conducted in accordance with Microsoft security-related policies and procedures to ensure the safety of the persons involved and to protect the security and confidentiality of Customer Data.
    - E. The Customer Audit will be conducted in a manner that avoids any unreasonable or unnecessary disruption to Microsoft's operations.
    - F. Any information and documentation provided by Microsoft or its auditors in relation to a Customer Audit will be treated or will request to be treated, by Customer, its Affiliates, Customer Auditors and the Regulator as confidential information of Microsoft.
    - G. The exercise of such rights shall be subject to the principle of proportionality concerning whether such Online Services are used for critical or important functions of Customer's operations.

## **5. Additional Customer Benefits**

Microsoft recognizes the needs of the Financial Services industry and offers a set of capabilities to help Customer with regulatory matters.

- a. Community Events.** Customer may participate in community events organized by Microsoft to receive briefings about updates to the Online Services, Microsoft responses to regulator changes, and to provide optional feedback to Microsoft for future development of the Online Services.
- b. Discussion with External Auditor.** If Customer is not reasonably satisfied by the sufficiency of the information provided by Microsoft employees, Customer may submit a written request to meet with one of Microsoft's external auditors. Microsoft will request that the external auditor that has audited the relevant Online Service meet with Customer to discuss any questions. Any such discussion will be subject to the agreement of the external auditor, will be at Customer's expense, and will be subject to Customer signing confidentiality documentation in form and content satisfactory to the external auditor.
- c. Responding to Regulatory Changes.**
  - 1.** In the event that the Regulator publishes new or updated guidance that relates to the Online Services, upon Customer's written request to Microsoft, Microsoft will prepare a written response to such guidance including how (and the extent to which) the Online Services address the guidance through either existing features or planned changes on the roadmap for the Online Services.
  - 2.** If Customer, either acting on its own behalf or upon instruction from its Regulator, requires a change to any new or existing services feature or control, Customer may request such feature or control from Microsoft, and Microsoft will respond within a reasonable time, so that the parties can discuss if accommodating such request is feasible and, if so, how to accommodate such Customer's requirements.
  - 3.** In the event Microsoft and Customer cannot come to a mutually satisfactory resolution to address concerns about regulatory changes or changes to the Online Services, Customer may elect to terminate the Online Service, with no penalty, by providing reasonable notice of termination.

## **6. Additional Customer Termination Rights**

Customer may terminate, with reasonable notice, an Online Service under the following scenarios:

- a.** At the express direction of a Regulator;
- b.** Upon Microsoft's breach of applicable law, regulations or its obligations under this Amendment;
- c.** Where impediments capable of altering the performance of the outsourced function are identified;
- d.** Where Customer can reasonably demonstrate that there are weaknesses regarding the management and security of Customer Data or information;
- e.** Where Customer can reasonably demonstrate that there are material changes affecting the provisioning of the Online Services by Microsoft; or
- f.** In accordance with the termination right under Section 5(c)(3).

All amounts owed that relate to the Online Service(s) terminated will become immediately due upon exercising this right and no portion of any prepaid amounts, including any annual fees (if applicable), will be refunded.

## **7. Business Continuity of Online Services**

Microsoft acknowledges that Customer may be required by its Regulator or national resolution authority to ensure that it is able to continue to carry on its business in the event of (1) regulatory or other legal action impacting Customer or one of its Affiliates; (2) termination or expiration of the Agreement; or (3) a natural disaster or some other similar emergency impacting Microsoft. Microsoft and Customer agree as follows:

- a. Continuity after Intervention by Regulator.** Upon intervention of Customer by the Regulator or a national resolution authority pursuant to applicable laws or regulations, Microsoft will comply with the

requirements of such resolution authority and assist the Regulator to preserve business continuity of Customer over the Online Services.

**b. Continuity after Customer Transfer of Rights.**

1. In the event of the insolvency, reorganization, liquidation or some other action impacting Customer, as provided by applicable law or regulation for the financial industry (e.g., “too big to fail”, “recovery and resolution”, “special administration”, and similar regulations and actions), and to the extent required to maintain continuity of Microsoft’s provision of the Online Services purchased by Customer under the Agreement, and if required, Microsoft will consent to Customer assigning, sublicensing or transferring its rights under the Agreement to (A) one or more of its Affiliates, or (B) a third party that purchases or otherwise succeeds to any or all of the business or assets or equity of Customer. In each case, the entity to which rights are transferred is the “**Transferee**,” and Transferee will have access to Customer Data through Microsoft’s standard processes and tools.
2. Subject to Section 7(b)(1) above, Microsoft will neither terminate the Agreement nor suspend or delay the performance of its obligations under the Agreement, subject to the following conditions:
  - A. The Transferee (or Customer) must pay all fees and charges payable by Customer to Microsoft under the terms of the Agreement for services provided before the transfer and through the renewal or replacement of the Agreement.
  - B. The Transferee and Microsoft will work in good faith to renew the Agreement or, as appropriate, to replace the Agreement with appropriate terms for Microsoft to provide the Online Services to the Transferee.
  - C. If Microsoft and the Transferee cannot agree on terms, as described in clause B, within twelve months after the transfer of rights to Transferee, then Microsoft may terminate the Agreement by providing notice to Transferee.
  - D. The aggregate liability of Microsoft and its Affiliates to Customer, Customer’s Affiliates, the Transferee and Transferee’s Affiliates will not exceed the aggregate liability of Microsoft and its Affiliates under the Agreement.
- 2) In the event the Transferee would like to enter into a new agreement, the parties will work in good faith to put in place terms that are appropriate in light of the transfer under this Section 7(b).

**c. Continuity after Termination or Expiration of Agreement.**

- 1) If Customer terminates the Agreement for any reason, or if the Agreement expires or terminates for any reason, other than for the reason set out in Section 7(c)(2) below, then Customer may elect to extend the Online Services on a month-to-month basis for up to twelve months, or longer if expressly required by a Regulator in writing that Microsoft continue to provide the Online Services, from the date of termination by providing notice of such election to Microsoft. During such period, Microsoft will continue to provide, and Customer will continue to receive and pay for, the Online Services pursuant to the terms and conditions of the Agreement. In addition, during such period Customer will be able to retrieve its Customer Data through Microsoft’s standard processes and tools. The retrieval of Customer Data from the Online Services into Customer’s selected system or online service will occur at Customer’s expense and by Customer selected means. Customer may choose to engage with the Microsoft’s Professional Services organization or another provider for assistance in transferring Customer Data. Customer may cancel the extended service by providing a notice of cancellation to Microsoft. Cancellation will be effective at the end of the month following thirty days after Microsoft receives the notice of cancellation. After the effective date of the service cancellation, the removal of Customer Data from the Online Services will be subject to the Data Retention and Deletion section of the DPA.
- 2) If Microsoft terminates the Agreement as a result of an uncured breach by Customer, Microsoft will continue to provide the Online Services on a month-to-month basis for up to twelve months, or longer if expressly required by a Regulator in writing that Microsoft continue to provide the Online Services, from the date of termination. During such period, Microsoft will continue to provide, and Customer will continue to receive and pay for, the Online Services pursuant to the terms and conditions of the Agreement. In addition, during such period Customer will be able to retrieve its Customer Data through Microsoft’s standard processes and tools. The retrieval of

Customer Data from the Online Services into Customer's selected system or online service will occur at Customer's expense and by Customer selected means. Customer may choose to engage with the Microsoft's Professional Services organization or another provider for assistance in transferring Customer Data. Customer may cancel the extended service by providing a notice of cancellation to Microsoft. Cancellation will be effective at the end of the month following thirty days after Microsoft receives the notice of cancellation. After the effective date of the service cancellation, the removal of Customer Data from the Online Services will be subject to the Data Retention and Deletion section of the DPA.

- d. **Reversibility.** In the event of a termination or expiration of the Agreement as described in this Section 7 and Customer chooses to migrate its Customer Data to a different online service, Customer may request that Microsoft provide assistance in such transition through Microsoft's Professional Services organization at the then-current rates for such services. Customer may request migration or transition assistance and support in retrieval of its Customer Data from Microsoft's Professional Services organization at any time during the extended service period described in Sections 7(b) and 7(c).
- e. **Microsoft's Business Continuity and Disaster Recovery Plans.** Microsoft represents and warrants that it has and will maintain for the duration of the Agreement adequate business continuity and disaster recovery plans intended to restore normal operations and the proper provision of the Online Services in the event of an emergency and in accordance with applicable laws and regulations. The controls supporting such plans are validated through ISO 27001 and SSAE 18 SOC 2 Type II audits, which are initiated for each Online Service at least annually and are performed by qualified, independent, third-party auditors. Microsoft shall make available to Customer through the Customer Compliance Program information to understand Microsoft's approaches to business continuity and disaster recovery.

## 8. *Miscellaneous*

- a. **Confidentiality.** This Amendment, the Audit Reports, and all information regarding and provided through the Customer Compliance Program are Microsoft Confidential Information. Customer may disclose these items to a Customer Auditor or consultant or a Regulator, provided that (1) Customer first redacts all terms that are unrelated to regulatory oversight and approval, including pricing information and order quantities; and (2) other than disclosures to a Regulator, Customer must comply with the Confidentiality terms of the Agreement as if the disclosure was a disclosure of Microsoft Confidential Information by Customer to a Customer Representative.
- b. **Term and termination.** Subject to Section 5, Section 6 and Section 7 above, this Amendment will terminate automatically upon any termination or expiration of the Agreement.
- c. **Microsoft's Obligations.** For each Online Service terminated pursuant to Section 5 or Section 6, Microsoft's only obligation in addition to the obligations set forth in the DPA is to remove any future payment obligations from future invoices as of the date of the written notice from Customer. Microsoft will not reimburse Customer for any payments made or costs incurred for any professional services related to a terminated Online Service or resulting from that termination.
- d. **Conflict and Coordination.** Except for changes made by this Amendment, the Agreement remains unchanged and in full force and effect. If there is any conflict between any provision in this Amendment and any provision in the Agreement, this Amendment shall control. If Customer maintains the right through a Microsoft partner to audit Online Services that are leveraged by the Microsoft partner's solution, for convenience, Customer may exercise its rights under Sections 2, 3, and 4 of this Amendment directly with Microsoft with respect to the Online Services that are leveraged by such Microsoft partner's solution.
- e. **Appropriate Insurance.** Microsoft will maintain appropriate insurance coverage via commercial insurance, self-insurance, a combination of the two or any other similar risk financing alternative. Microsoft can provide Customer with evidence of coverage as requested.

## **Jurisdiction-Specific Companion Amendment (Japan)**

The terms and conditions of this companion amendment supplement the terms and conditions stated in the Financial Services Amendment to Microsoft Customer Agreement (“**MCA FSA**”) that apply to Customer’s use of Online Services (the “**Companion Amendment**”). Customer is subject to oversight by a Financial Services Regulator in Japan and subject to Japan’s compliance and regulatory requirements. All terms used but not defined in this Companion Amendment will have the same meanings provided in the MCA FSA. To the extent that the terms and conditions of this Companion Amendment conflict with the terms and conditions in the MCA FSA, the terms and conditions of this Companion Amendment will control to the extent Customer is subject to oversight by a Financial Services Regulator in Japan.

The following terms shall be added to the MCA FSA, in the respective sections as indicated below:

### **3. Unrestricted Rights of Examination or Audit by Regulator**

f. In the event the Regulator provides Microsoft and Customer with findings from its review or examination requiring that Microsoft either change an existing services feature or control or add a new services feature or control, Microsoft will discuss with Customer how Microsoft might be able to accommodate the Regulator’s findings. The parties may contemplate adding additional products or services, getting those products or services from a third-party provider, or adding other solutions at Customer’s expense.

### **5. Additional Customer Benefits**

#### **d. Anti-Social Forces.**

Microsoft affirms that Microsoft or its officers (directors, executives or auditors) do not constitute Anti-Social Forces (organizations or individuals which pursue economical interests or profits using violence, forces or fraudulent acts, including gangsters and terrorist groups) and do not provide any benefit such as funding to Anti-Social Forces.

#### **e. Use of Subcontractor.**

If Customer reasonably determines, based on objective documents, that a subcontractor of Microsoft has problems with its performance capability with respect to the provision of Online Services, Customer may, along with the reason, request Microsoft to terminate the use of the subcontractor. Microsoft shall consider the request in good faith, provided, however, that the final decision is left to the discretion of Microsoft and there is no guarantee that Microsoft will terminate the use of the subcontractor.

**This amendment is effective upon acceptance of its terms and expires on either (i) the last day of the 36th calendar month after acceptance; or (ii) the termination date of the Agreement, whichever occurs first.**