Microsoft Dynamics Lifecycle Services Combined Terms

You are accessing Microsoft Dynamics Lifecycle Services ("LCS") at any given time in the role of a Channel Partner, a Customer, or a Prospect. You may have more than one role overall in your various uses of LCS, but each access to LCS will be in a distinct role. When you access as a Channel Partner, the applicable terms of use are here. When you access as a Customer, the applicable terms of use are here. And, when you access as a Prospect, the applicable terms of use are here. As used in this paragraph:

(A) you are a “Customer” when you purchase licenses or subscriptions to Dynamics Software and access LCS to manage the implementation of this software for your organization; (B) you are a “Channel Partner” when you access LCS to create solutions for Dynamics Software and make them available to Customers, deploy and manage Dynamics Software in your Microsoft Azure subscription or on your local servers, assist Customers with their implementations of Dynamics Software, or perform any of these activities; and (C) you are a “Prospect” when you access LCS to use it or Dynamics Software for evaluation purposes.

These Combined Terms include:
- Channel Partner Terms
- Customer Terms
- Prospect Terms

Terms applicable to Channel Partners

MICROSOFT DYNAMICS LIFECYCLE SERVICES

ONLINE SERVICE AGREEMENT FOR CHANNEL PARTNERS

Last Revised: May 2018

This Online Service Agreement ("Agreement") is a contract between Channel Partner (defined below) and Microsoft Corporation. By indicating acceptance in the Online Service’s user interface or by registering for, activating, or using the Online Service (defined in Section 1), you (the individual accepting this Agreement on Channel Partner’s behalf) represent and warrant you are authorized to enter into this Agreement and bind Channel Partner to it. By registering for, activating, or using the Online Service, Channel Partner is ratifying this acceptance. Channel Partner may not use the Online Service if it does not agree to this Agreement. Whenever accessing or using the Online Service, Channel Partner will comply with this Agreement.

Section 1. DEFINITIONS.

“Affiliate” means any legal entity that owns, is owned by, or that is under its common ownership with a party. “Ownership” means, for purposes of this definition, control of more than a 50% interest.

“Channel Partner Data” means all data, including all text, sound, video, or image files, and software, that are provided to Microsoft by, or on behalf of, Channel Partner through use of the Online Service. Channel Partner Data does not include Support Data.

“Channel Partner” means the legal entity that (A) is a systems integrator that has signed an agreement with Microsoft authorizing that entity to market the Online Service and distribute licenses or subscriptions
for any Dynamics Software; or (B) is an independent software vendor that has signed an agreement with Microsoft inviting such software vendor to develop software or services for any Dynamics Software.

"Customer" means any legal entity that acquires a license, subscription, or other right to use Dynamics Software for its own use and not to resell, redistribute, use for commercial hosting, or other similar purposes.

"Dynamics Software" means any Microsoft Dynamics technology that Microsoft makes generally available separately as on-premise software or a web-based Microsoft hosted and operated cloud service for deployment using the Online Service. Dynamics Software excludes the Online Service.

"Non-Microsoft Product" means any Channel Partner or third-party (or third-party branded) software (online, offline, web-based, or otherwise), data, service (e.g., online, implementation, customization, or consulting), website, hardware, process, content, or product.

"Online Service" means Microsoft’s hosted and operated online services known as Microsoft Dynamics Lifecycle Services (or any successor) that Microsoft provides under this Agreement, including any fixes, patches, error corrections, service packs, additions, version releases, and any other revisions to the Online Service, as determined by Microsoft (which may add, change, or remove features or functions that had been available in a prior release of the Online Service).

"Online Service Account ID" means the credentials that Channel Partner must use to authenticate and log into the Online Service, such as a Microsoft account (e.g., live.com or Hotmail.com) or a Microsoft Azure Active Directory account.

"Online Service Requirements" means the credentials, conditions, and criteria Channel Partner must satisfy and maintain to access or use the Online Service. Online Service Requirements consist of: (A) registered membership and active status in a Microsoft commercial partner program (e.g., MPN, CSP) (each, a "Partner Agreement"); (B) validly licensed internal-use rights required for use of the applicable Dynamics Software; (C) any required technical credentials for the applicable Dynamics Software; (D) a valid Online Service Account ID; and (E) any other applicable requirements specified in the Services Portal.

"Online Services Terms" or "OST" means the then-current version of the Microsoft Online Services Terms (or its successor) located at: http://go.microsoft.com/fwlink/?LinkID=521470.

"Permitted User" means any individual or entity that Channel Partner: (A) authorizes to access and use the Online Service, Dynamics Software, Channel Partner Data, or Support Data; and (B) has not de-authorized for such access and use.

"Personal Data" means any information relating to an identified or identifiable natural person. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to 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.

"Preview" means preview, beta, or other pre-release features, data center locations, software, or services offered by Microsoft for optional evaluation.

"Services Portal" means the website(s) designated by Microsoft where Microsoft publishes Online Service information.
"Support Data" means all data, including all text, sound, video, image files, or software, that are provided to Microsoft by or on behalf of Channel Partner (or that Channel Partner authorizes Microsoft to obtain from the Online Service or Dynamics Software) through an engagement with Microsoft to obtain technical support for the Online Service or Dynamics Software.

Section 2. INITIATING THE ONLINE SERVICE.

2.1 Requirements. Channel Partner must, throughout the Term, satisfy the Online Service Requirements to activate and continue to use the Online Service. Channel Partner must cease using the Online Service if it becomes non-compliant with the Online Service Requirements. Microsoft may periodically check compliance status and will use reasonable efforts to notify Channel Partner of non-compliance. Microsoft may limit or suspend Channel Partner’s access to or use of, the Online Service without notice, at any time if Channel Partner is non-compliant. For clarity, maintaining an executory Partner Agreement (defined in Section 1) is an Online Service Requirement and a condition precedent to continuing to use the Online Service but no Partner Agreement will apply to the Online Service itself (although it may apply to Dependent Software (defined in Section 6.2)).

2.2 Contact Information. Either before or promptly after the Effective Date, Channel Partner will provide Microsoft with current organizational and contact information. If such organizational or contact information changes during the Term, Channel Partner will, within 30 days, provide updated information to Microsoft. If such contact information is materially inaccurate or fraudulent, Microsoft may limit or suspend Channel Partner's access to or use of the Online Service.

2.3 Workspace Management. Channel Partner may, from time to time, use the Online Service to create a workspace (e.g., a prospective-presales project or implementation project) with Dynamics Software for, or may be invited to an existing workspace by, a Customer. Microsoft has no direct role in the management of any such workspace, which is solely for Channel Partner or between Channel Partner and its Customer. Channel Partner acknowledges that if it is acting as a Permitted User to a Customer, it is subject to that Customer’s Permitted User TOU (defined in Section 2.4.1), under which it may lose access to that Customer's workspace.

2.4 Permitted Users. Channel Partner will authorize Permitted Users to access and use the Online Service and, as applicable, the Dynamics Software. Channel Partner may add Permitted Users to, or remove them from, the Online Service and, as applicable, the Dynamics Software, if the Online Service or Dynamics Software allows.

2.4.1 Non-Microsoft. Channel Partner may require non-Microsoft Permitted Users to agree to terms applicable to their access to and use of workspaces Channel Partner creates, or any Channel Partner Data or Support Data it makes available, in the Online Service ("Permitted User TOU"). Any Permitted User TOU will require Permitted User to agree at least that: (A) the Permitted User TOU is solely between Channel Partner and Permitted User, and Microsoft is not liable in any way under the Permitted User TOU or for the acts or omissions of Channel Partner, Permitted User, or any third-party agent of either; and (B) any dispute arising out of or related to the Permitted User TOU, or the Permitted User’s use of the Online Service under it, is solely between Channel Partner and Permitted User. Microsoft may rely on information or instructions provided by any Non-Microsoft Permitted User.

2.4.2 Microsoft. Channel Partner is deemed to have granted any Microsoft Permitted User a license to access and use Channel Partner’s Online Service workspaces, Channel Partner Data, and Support Data. If Channel Partner requires Microsoft to agree to a Permitted User TOU to gain access to or use Channel Partner’s Online Service workspaces, Channel Partner Data, or Support Data, the Permitted User
TOU is deemed rejected by, and will not apply to, Microsoft, even if any Microsoft personnel purports to accept it.

2.5 Previews. Microsoft may provide Previews. If Channel Partner uses (or tries to use) a Preview, the terms in this Section 2.5 will apply. Microsoft will mark Previews as “beta”, “pre-release”, “preview”, or with a similar designation. Previews are provided solely as a convenience and, unless otherwise expressly set forth by Microsoft in a separate signed writing, are not for use in a production or “live operating” environment. Microsoft is not liable for any breach or loss if Channel Partner uses any Preview in a production or “live operating” environment. Microsoft may change or discontinue Previews at any time, without notice. Previews: (A) may have certain features that are missing or disabled; (B) may contain bugs or other errors that could cause them not to function correctly; (C) employ lesser or different privacy and security measures than those typically present in the Online Service or any Dynamics Software; (D) are not, unless otherwise noted, subject to any service level agreement that may be applicable to the Online Service or any Dynamics Software; and (E) are deemed included in the Online Service and subject to the terms of this Agreement (except as otherwise stated in any separate terms that may accompany such Preview and that conflict with or supplement this Agreement, or as otherwise stated in this Agreement, including as stated in this Section 2.5). Channel Partner is solely responsible for evaluating the Previews and any reports or output generated from them. Channel Partner will not use Previews to process Personal Data or other data that is subject to legal or regulatory compliance requirements. The following terms incorporated from the OST under Section 4.2 do not apply to Previews: Processing of Personal Data; GDPR, Data Security, and HIPAA Business Associate.

2.5.1 No Assurances. In choosing to use a Preview, Channel Partner is not relying on Microsoft delivering any future functions or features, or on any comments regarding the Preview or product roadmap. Microsoft may significantly change a Preview for a final, commercial version, if any, or Microsoft may elect not to release a commercial version. A commercial version, if any, may be subject to this Agreement, or to a separate agreement, and may be subject to a fee even if the Preview was free of charge.

2.5.2 Support. Microsoft is not obligated to provide technical support for Previews. If Microsoft provides any technical support, information for such support can be found in the Preview offer details. Any support Microsoft may provide for Previews is provided “as is”, “with all faults”, and without warranty.

Section 3. RIGHTS TO USE THE ONLINE SERVICE.

3.1 License. Subject to the terms of this Agreement, Microsoft grants to Channel Partner a limited, non-transferable, non-exclusive, revocable license under Microsoft’s copyrights to access and use the Online Service during the Term. Channel Partner may use the Online Service only in accordance with this Agreement (and any separate terms that Microsoft may provide with any Preview).

3.2 Feedback. Microsoft may use any Feedback that Channel Partner or its Permitted Users provides, even if Channel Partner or its Permitted Users designated the Feedback as confidential. Channel Partner will not, and it will cause its Permitted Users not to, include any Customer Data, Personal Data, or other data that is subject to legal or regulatory compliance requirements in any Feedback. Channel Partner gives to Microsoft, without charge, the right to use, share, and freely commercialize Feedback in any way and for any purpose. Channel Partner also gives third parties, without charge, the right to use, or interface with, any Microsoft products or services that include the Feedback. Channel Partner represents and warrants that it owns or otherwise controls all rights to such Feedback and that no such Feedback is subject to any third-party rights. “Feedback” means all comments, suggestions, or feedback about the
Online Service or Microsoft software (including the Dynamics Software) that Channel Partner (including its Permitted Users) provides to Microsoft.

3.3 **Acceptable Use Policy.** Channel Partner may not use the Online Service: (A) in a way prohibited by law, regulation, government order, or decree; (B) to violate the rights of others; (C) to try to gain unauthorized access to or disrupt any service, device, data, account, or network; (D) to spam or distribute malware; (E) in a way that could harm the Online Service, any Microsoft software (including the Dynamics Software), or impair anyone else’s use of them; or (F) in any application or situation where failure of the Online Service could lead to the death or serious bodily injury of any person, or to severe physical or environmental damage. Channel Partner will not work around any technical or functional limitations in the Online Service, Microsoft software (including the Dynamics Software), or in Microsoft’s systems. Violation of the terms in this Section 3.3 may result in suspension of the Online Service or termination of this Agreement. Microsoft will suspend the Online Service only to the extent reasonably necessary. Unless Microsoft believes an immediate suspension is required, Microsoft will provide reasonable notice before suspending Channel Partner’s access to the Online Service.

3.4 **Technical Limitations.** Channel Partner will not download or otherwise remove copies of software or source code from the Online Service except as explicitly authorized. Microsoft may, in connection with the Online Service or any Dynamics Software, and in each case subject to Section 4.2, use any information or data derived or learned from Channel Partner Data or Support Data, but only if such use does not include or disclose Channel Partner Data or Support Data and no Channel Partner Data or Support Data can be reverse engineered from such use. All rights not expressly granted in this Agreement are reserved. Microsoft will not use Channel Partner Data or Support Data, or derive information from either, for advertising or similar commercial purposes without Channel Partner’s permission.

3.5 **Confidentiality.** Each party will: (A) protect the other party’s Confidential Information shared under this Agreement from unauthorized dissemination with the same degree of care it uses to protect its own like information, but never less than reasonable care; (B) use the other party’s Confidential Information solely as necessary to perform under this Agreement; and (C) not disclose the other party’s Confidential Information to any third party without such other party’s prior written permission in each case. Confidential Information may, however, be disclosed in accordance with a judicial or other governmental order, if the party complying with such order either gives reasonable notice of such disclosure to allow the other party a reasonable opportunity to seek a protective order or equivalent; or obtains written assurance from the applicable judicial or governmental entity that it will afford the Confidential Information the highest level of protection available. Confidential Information may also be disclosed to the receiving party’s personnel (who are bound by written confidentiality obligations not less restrictive than those of this Agreement) and its Affiliates, in each case solely to the extent such personnel or Affiliates reasonably need to know such Confidential Information for proper performance of this Agreement. “Confidential Information” means nonpublic information that the disclosing party designates as being confidential, or that, under the circumstances surrounding disclosure, ought to be treated as confidential; Previews are deemed Microsoft’s Confidential Information unless and until they are made publicly available; Channel Partner Data, Support Data, and the terms of Microsoft agreements are also Confidential Information.

3.6 **Downtime.** Microsoft may schedule interruptions to the Online Service for upgrades, updates, or other maintenance (“Scheduled Downtime”). Microsoft will make commercially reasonable efforts to notify Channel Partner of Scheduled Downtime in advance. Channel Partner may not be able to access or use the Online Service, any Dynamics Software, or any Non-Microsoft Product during Scheduled
Downtime; such lack of access is deemed not to breach this Agreement. Without limiting the foregoing, there are no service level guarantees or uptime requirements applicable to the Online Service, except if, and solely to the extent, expressly stated to the contrary in the Service Portal.

Section 4. DATA PROTECTION.

4.1 Data Retention and Deletion. During the Term, Channel Partner can access, extract, and delete Channel Partner Data stored in the Online Service. Except for free trials and Previews and except as otherwise provided in this Section 4.1, Microsoft will retain Channel Partner Data stored in the Online Service in a limited function account for 90 days after Channel Partner’s access to the Online Service ends so that Channel Partner may extract the data. After the 90-day retention period ends, Microsoft will disable Channel Partner’s account and delete the Channel Partner Data and Personal Data within an additional 90 days, unless Microsoft is (A) permitted or required by applicable law to retain such data, (B) is authorized in this Agreement; or (C) solely to the extent that, Channel Partner has multiple roles (e.g., both Channel Partner and Customer) within the Online Service and some of the Channel Partner Data or Personal Data is common to more than one such role, in which case Microsoft will retain such common data until Channel Partner’s access to the Online Service ends as applicable to all such roles. The Online Service may not support retention or extraction of any Non-Microsoft Product provided by Channel Partner. For purposes of this Section 4.1, “Channel Partner’s access to the Online Service” is deemed to end as soon as Channel Partner has no executory subscription to, or executory support agreement for, any Dependent Software. Microsoft has no liability for the deletion of Channel Partner Data or Personal Data as described in this Section 4.1.

4.2 Data Protection Terms. This Agreement includes, and incorporates by reference, those portions of the OST entitled “Data Protection Terms” or otherwise expressly pertaining to data processing or protection (including the Standard Contractual Clauses (Processors) and the European Union General Data Protection Regulation Terms, each as incorporated in the OST), but expressly excluding any terms specific to particular, named online services as well as any terms specific to “scope”, Location of Customer Data at Rest, Educational Institutions, or HIPAA Business Associate. Solely for purposes of interpreting terms incorporated from the OST in the context of this Agreement: (A) references in such incorporated terms to “Customer” are deemed to apply to “Channel Partner”; (B) all references in such incorporated terms to “Customer Data” are deemed to mean “Channel Partner Data”; and (C) to the extent such incorporated terms reference any definitions defined both in this Agreement and the OST, the definitions in this Agreement will apply.

4.3 Security Practices and Policy. Microsoft will implement and maintain appropriate technical and organizational measures to protect Channel Partner Data and Personal Data. Those measures will be set forth in a Microsoft Security Policy. Microsoft will make that policy available to Channel Partner, along with descriptions of the security controls in place for the Online Service and other information reasonably requested by Channel Partner regarding Microsoft security practices and policies. In addition, those measures will comply with the requirements set forth in ISO 27001, ISO 27002, and ISO 27018. Microsoft will not eliminate ISO 27001, ISO 27002, or ISO 27018 unless it is no longer used in the industry and it is replaced with a successor (if any).

4.4 How to Contact Microsoft. If Channel Partner believes that Microsoft is not adhering to its privacy or security commitments, Channel Partner may contact customer support or use Microsoft’s Privacy web form, located at http://go.microsoft.com/?linkid=9846224. Microsoft’s mailing address is:

Microsoft Dynamics Lifecycle Services Privacy
Microsoft Corporation
Microsoft Ireland Operations Limited is Microsoft’s data protection representative for the European Economic Area and Switzerland. The privacy representative of Microsoft Ireland Operations Limited can be reached at the following address:

Microsoft Ireland Operations, Ltd.
Attn: Data Protection
One Microsoft Place
South County Business Park
Leopardstown
Dublin 18
D18 P521

Section 5. DEALINGS WITH THIRD PARTIES.

5.1 Non-Microsoft Product. Microsoft may make Non-Microsoft Products available to Channel Partner through Channel Partner’s use of the Online Service (such as through a store or gallery or other integration). Channel Partner’s use of Non-Microsoft Products may be subject to the third party’s terms and conditions. If Channel Partner installs or uses any Non-Microsoft Product with the Online Service or any Dynamics Software, Channel Partner may not do so in any way that would subject Microsoft’s intellectual property to obligations beyond those in this Agreement. Microsoft assumes no responsibility or liability for any Non-Microsoft Product (including any of Channel Partner’s intellectual property in any such Non-Microsoft Product). If Channel Partner (or its Customer) installs or uses any Non-Microsoft Product with the Online Service or any Dynamics Software: (A) as between Microsoft and Channel Partner, Channel Partner is solely responsible for such Non-Microsoft Product and will comply with all applicable policies and processes Microsoft may implement; (B) and if Customer changes its reseller or system integrator to a third party, then: (1) Channel Partner will lose access to such Customer’s applicable workspaces, content, and any copies of Channel Partner’s Non-Microsoft Product that Channel Partner may have provided to Customer, but (2) such Customer, and its new reseller or system integrator, will have access to such Customer’s applicable workspaces, content, and any such copies of Channel Partner’s Non-Microsoft Product; and (C) effective as of when Channel Partner first made such Non-Microsoft Product available to Microsoft and continuing until Microsoft has deleted such Non-Microsoft Product from its systems, Channel Partner grants Microsoft a non-exclusive, royalty-free, fully paid-up license to host, use, distribute, reproduce, and otherwise provide worldwide access to such Non-Microsoft Product.

5.2 User Agreements. Channel Partner must have an agreement (including any license terms or privacy statement) with each of its Customers to which Channel Partner provides access to or use of any Non-Microsoft Product (and failing to do so is a material breach) through the Online Service ("User Agreement"). The User Agreement must not: (A) make any representation or warranty on Microsoft’s behalf, with respect to any such Non-Microsoft Product or otherwise; (B) purport to create any obligations that name or refer to Microsoft as the party or third party obligated to fulfill or discharge any duties; (C) otherwise name or refer to Microsoft other than as may be necessary to disclose in its privacy policy; or (D) purport to supersede, modify, or abrogate the applicable terms of use as applicable between Microsoft and each and every such Customer.

Section 6. CHANGES TO THE ONLINE SERVICE.
6.1 **Changes and Cancelation.** Except as may be otherwise expressly provided in this Agreement, Microsoft may change the Online Service or any Dynamics Software at any time, without notice. Channel Partner cancels the Online Service on 30 days’ prior notice to Microsoft.

6.2 **Discontinuing.** Discontinuation of the Online Service will be in accordance with Microsoft’s online services support lifecycle policy for businesses and developers located at: https://support.microsoft.com/en-us/gp/osslpolicy/en-us (or any successor or localized version). Notwithstanding the foregoing or anything in this Agreement to the contrary, however, Microsoft will not discontinue the Online Service solely to the extent the Online Service is necessary for Channel Partner to access or use any Dynamics Software ("Dependent Software"), at least one of Channel Partner’s Customers maintains either an executory subscription to, or an executory support agreement for, the Dependent Software, and the discontinuation would prevent such access or use.

Section 7. TERM AND TERMINATION.

7.1 **Term.** The term of this Agreement ("Term") begins on the earliest date when Channel Partner or its signatory agrees to be bound, as described in the first paragraph of this Agreement, and will continue until terminated.

7.2 **Termination.** Either party may terminate this Agreement immediately on notice if the other party has breached this Agreement and failed to cure such breach within 30 days after notice of the breach. Channel Partner may also terminate this Agreement, for any reason or no reason, on 60 days' prior notice to Microsoft. This Agreement will terminate automatically if the Online Service is canceled or discontinued in accordance with Section 6. If this Agreement is terminated with respect to Channel Partner for any reason, it will automatically terminate with respect to all Permitted Users.

7.3 **Survival.** The following sections will survive termination of this Agreement: Sections 1 (Definitions), 3.2 (Feedback), 7.3 (Survival), 8 (Warranties and Disclaimers), 9 (Microsoft's Defense of Infringement Claims), 10 (Channel Partner’s Defense of Claims), 11 (Limitations on Liability), and 12 (General). The terms incorporated from the OST to the extent they are intended to survive as stated in the OST.

Section 8. WARRANTIES AND DISCLAIMERS.

8.1 **By Channel Partner.** In addition to the warranty in the preamble of this Agreement, Channel Partner continuously represents and warrants to Microsoft that: (A) it will not use the Online Service for any purpose or in any way that subjects Microsoft to any obligations outside of this Agreement; (B) it has all rights necessary to grant the licenses granted under this Agreement; (C) it has or will obtain and maintain all necessary rights to Channel Partner Data, Support Data, and any other data, software, and services (including any Non-Microsoft Products and other third-party content and materials) used in connection with the Online Service; and (D) Microsoft’s use of any Channel Partner Data and Support Data, and exercise of the rights and licenses granted under this Agreement, does not and will not misappropriate or infringe the intellectual property or other proprietary rights of any third party or otherwise violate any law.

8.2 **Disclaimer.** The Online Service, any Services Portal, Dynamics Software, and any technology, materials, systems, infrastructure, or information provided by Microsoft or its suppliers in connection with Online Service are provided “as is”, without any warranty. Microsoft disclaims all warranties (express, implied, statutory, or otherwise, including implied warranties of merchantability, fitness for a particular purpose, satisfactory quality, non-infringement, title, and
any warranties arising out of any course of dealing or usage of trade). These disclaimers will apply unless otherwise required by applicable law.

8.3 **High-Risk Activities.** Microsoft, on behalf of itself and its suppliers, disclaims any express or implied warranty of fitness of the Online Service for high-risk activities, including operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems.

Section 9. **MICROSOFT’S DEFENSE OF CERTAIN THIRD-PARTY CLAIMS.**

9.1 **Duty and Process.** Subject to Sections 9.1 and 9.2, Microsoft will: (A) defend Channel Partner, Channel Partner’s Affiliates, and each of its or their subsidiaries, directors, officers, employees, agents, or independent contractors against an unaffiliated third party’s claim alleging the Online Service, as provided by Microsoft and used as licensed under this Agreement, infringes or misappropriates that third party’s intellectual property rights ("Microsoft Indemnified Claim"); and (B) pay any resulting adverse final judgment for a Microsoft Indemnified Claim (or settlement to which Microsoft consents). Channel Partner will: (y) notify Microsoft promptly of a Microsoft Indemnified Claim and give Microsoft sole control over the defense and settlement, although Channel Partner may participate at its own expense; and (z) provide Microsoft with reasonable assistance to defend any Microsoft Indemnified Claim. Microsoft will not be responsible for any settlement made by Channel Partner without Microsoft’s prior written permission (not unreasonably conditioned, delayed, or withheld). Microsoft’s obligations to defend and pay a patent claim will be limited to patent claims where the Online Service alone, without combination or modification, constitutes direct or contributory infringement of the patent.

9.2 **Limitations.** Microsoft’s obligations under this Section 9 will not apply to the extent a Microsoft Indemnified Claim, adverse final judgment, or settlement is based on: (A) any Channel Partner Data, Support Data, Non-Microsoft Product, links to third party websites, or non-Microsoft content or materials; (B) Channel Partner’s use of any portion of the Online Service after Microsoft notifies Channel Partner to stop using it due to a third-party claim, if damages would not have accrued but for the continued use; (C) Channel Partner’s combination of any portion of the Online Service with anything not provided by or on behalf of Microsoft, to the extent the claim arises from the combination; (D) damages attributable to the value of the use of any Non-Microsoft Product; (E) Channel Partner’s use of any Microsoft trademark(s) without Microsoft’s express, prior, written consent; (F) Channel Partner’s use of any Preview in a production or “live operating” environment (unless otherwise expressly stated in a separate written agreement with Microsoft); (G) Channel Partner’s use of the Online Service in a manner that violates this Agreement to the extent the claim arises from the violation; or (H) allegations that Channel Partner acquired a trade secret: (1) through improper means; (2) under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (3) from any party (other than Microsoft) who owed the third-party claimant a duty to maintain the secrecy or limit use of the trade secret. Channel Partner will reimburse Microsoft for any costs or damages resulting from any of the above actions. Moreover, Microsoft will have no obligation under this Section 9 to the extent any claim, adverse final judgment, or settlement arises out of or relates to Dynamics Software (as opposed to the Online Service); Microsoft’s obligations to defend and settlement any such claims, or to pay any such judgments or settlements, related to Dynamics Software are set forth, if at all, in the agreement under which Channel Partner was given access to, and a right to access and use, such Dynamics Software.

9.3 **Specific Rights and Remedies.**

9.3.1 **Possible Infringement.** If Microsoft receives information concerning a Microsoft Indemnified Claim, Microsoft may, at its expense, either: (A) procure for Channel Partner the right to
continue using the allegedly infringing portion of the Online Service; (B) modify the allegedly infringing portion of the Online Service to make it non-infringing; or (C) replace the allegedly infringing portion of the Online Service with a non-infringing functional equivalent. Channel Partner will immediately stop using the allegedly infringing Online Service after receiving Microsoft’s notice. If any other type of third party claim is brought against Channel Partner regarding Microsoft’s intellectual property rights, Channel Partner must notify Microsoft promptly in writing. Microsoft may, at Microsoft’s option, choose to treat these claims as being covered by Section 9.

9.3.2 Exclusive Remedy. This Section 9 states Channel Partner’s exclusive remedy and Microsoft’s sole duty regarding Microsoft Indemnified Claims (to the extent Microsoft does not breach this Section 9).

Section 10. CHANNEL PARTNER’S DEFENSE OF CLAIMS.

10.1 Duty and Process. Channel Partner will defend Microsoft, Microsoft’s Affiliates, and each of its or their subsidiaries, directors, officers, employees, agents, or independent contractors against any claim made by an unaffiliated third party (“Channel Partner Indemnified Claim”): (A) that alleges Channel Partner Data, Support Data, Channel Partner’s Non-Microsoft Products, other non-Microsoft content or materials, or Channel Partner’s (including non-Microsoft Permitted Users’) use of the Online Service (excluding only claims for which Microsoft is obligated to defend and pay under Section 9) infringes or misappropriates that third party’s intellectual property rights; (B) that if true as alleged, reflects a breach by Channel Partner of this Agreement; (C) that relates to any dispute of any kind or nature between Channel Partner and a non-Microsoft Permitted User, whether arising under or related to a Permitted User TOU or otherwise; (D) that relates to Channel Partner’s use of a Preview in a production or “live operating” environment; (E) that arises out of or relates to Channel Partner’s Non-Microsoft Product, including any product liability claims; or (F) for which Microsoft’s liability would have been reduced had Channel Partner effectively bound the applicable Customer to a Permitted User TOU under Section 2.4.1. Channel Partner will also pay any resulting adverse final judgment for a Channel Partner Indemnified Claim (or settlement to which Channel Partner consents). Microsoft will notify Channel Partner of a Channel Partner Indemnified Claim and give Channel Partner, through competent counsel chosen by Channel Partner (in consultation with Microsoft), control over defense and settlement, although Microsoft may participate at its own expense. Channel Partner will not, without Microsoft’s express, prior, written consent (not unreasonably conditioned, delayed, or withheld), acquiesce to any judgment or enter into any settlement that adversely affects Microsoft’s rights or interests or obligates Microsoft to pay any sums not fully paid by Channel Partner, at the time of settlement, under this Section 10.1. Channel Partner will not stipulate, admit, or acknowledge any fault or liability on Microsoft’s part without Microsoft’s express, prior, written permission. Channel Partner will not be responsible for any settlement made by Microsoft without Channel Partner’s written permission (not unreasonably conditioned, delayed, or withheld). Microsoft will also provide Channel Partner with reasonable assistance to defend any Channel Partner Indemnified Claim, at Channel Partner’s reasonable request and expense.

10.2 Exclusive Remedy. This Section 10 states Microsoft’s exclusive remedy and Channel Partner’s sole duty regarding any Channel Partner Indemnified Claim (to the extent Channel Partner does not breach this Section 10).

Section 11. LIMITATIONS ON LIABILITY.

11.1 Liability Cap. Subject to Section 11.3 and to the extent permitted by applicable law, each party’s total aggregate liability to the other for all claims related to this Agreement is limited to direct damages incurred in reasonable reliance, in an amount not to exceed $5,000. These
limitations apply whether liability is based on breach of contract, tort (including negligence), strict liability, breach of warranties, or any other theory. For clarity, Microsoft has no liability at all under any Permitted User TOU between Channel Partner and any non-Microsoft Permitted User.

11.2 Excluded Damages. To the extent permitted by applicable law, whatever the legal basis for the claim, neither party, nor any of its Affiliates, suppliers, or contractors, will be liable for any indirect damages (including consequential, special, punitive, or incidental damages, or damages for lost profits or revenues, business interruption, or loss of business information) arising under or related to this Agreement, even if advised such damages were possible or if the possibility was reasonably foreseeable.

11.3 Applicability. The limitations in Section 11.1 and exclusions in Section 11.2 will not apply to: (A) violation or misappropriation of the other party’s intellectual property rights; (B) duties under, or breach of, Sections 9 or 10; (C) damages attributable to a party’s or its agent’s gross negligence or willful misconduct (in jurisdictions that do not recognize a legal distinction between “gross negligence” and “negligence”, “gross negligence” means “recklessness”); (D) bodily injury or death caused by a party’s negligence or that of its employees or agents; (E) fraud; or (F) breach of obligations regarding Confidential Information (except as related to Channel Partner Data or Support Data, which are subject to the limitations in Section 11.1 and exclusions in Section 11.2). In addition, the limitations in Section 11.1 will not apply to fees, if any, payable for the Online Service.

11.4 Comparative Fault. Neither party nor its Affiliates will be responsible for any damages to the extent caused by the error, negligence, or fault of the other or such other’s agents or Permitted Users (although the foregoing in this Section 11.4 will not apply to insulate Microsoft from applicable liability when Microsoft is acting as Channel Partner’s Permitted User).

11.5 Liability for Others. Channel Partner will be liable for any use of the Online Service, or any actions taken or omitted (including with regard to Non-Microsoft Products or other non-Microsoft content or materials, Channel Partner Data, or Support Data), by any Permitted User (other than Microsoft) to which Channel Partner provides access to the Online Service. Actions or failures to act of any Permitted User (other than Microsoft) related to the Online Service (and any other acts or omissions of any Permitted User that would have breached this Agreement had Channel Partner so acted or failed to act) will be imputed to Channel Partner. Microsoft is not liable in any way for harm or damages related to Channel Partner’s (or its non-Microsoft Permitted Users) interactions with third parties, third-party websites, or any third party acting on Channel Partner’s behalf.

Section 12. GENERAL.

12.1 Agreement Changes. Microsoft may periodically change this Agreement. When changes are made, Microsoft will notify Channel Partner (in accordance with Section 12.16 or via other commercially reasonable means) and will post a new version of the applicable document on the Service Portal, which will include all changes and a new "Last Revised" date. If Channel Partner does not agree to a change, it must cancel or stop using the Online Service. By continuing to access or use the Online Service after a change is posted, Channel Partner is bound by the change and this Agreement.

12.2 Availability. Microsoft makes no representation that the Online Service is appropriate or available for use in all geographic locations. If Channel Partner accesses or uses any portion of the Online Service from outside a country for which the Online Service was intended, Channel Partner does so at its own risk and is solely responsible for compliance with all applicable laws.
12.3 Applicable Law. The 1980 United Nations Convention on Contracts for the International Sale of Goods and its related instruments will not apply to this Agreement. The Online Service and Microsoft software (including Dynamics Software) are protected by copyright and other intellectual property rights laws and international treaties. If Channel Partner registers for, activates, or uses the Online Service from its business operations in the following locales, then:

12.3.1 United States. Washington state law governs this Agreement and claims for breach, regardless of conflict of laws principles. The laws of the state where Channel Partner is domiciled govern all other claims, including under state consumer protection laws, unfair competition laws, and in tort.

12.3.2 Canada. The laws of the province where Channel Partner is domiciled govern this Agreement, claims for breach, and all other claims (including consumer protection, unfair competition, and tort claims), regardless of conflict of laws principles.

12.3.3 Other Regions. The laws of that country apply.

12.4 Venue and Jurisdiction. The exclusive venue for any action related to this Agreement and brought by: (A) Microsoft will be in the federal or state courts with jurisdiction over where Channel Partner has its headquarters; and (B) Channel Partner will be in the federal or state courts with jurisdiction over where Microsoft is headquartered. The parties consent to exclusive venue and jurisdiction of such courts. This Section 12.4 does not prevent either party from seeking injunctive relief for violation of intellectual property rights or confidentiality obligations in any appropriate jurisdiction.

12.5 Disputes. Before either party (or any of its personnel) files a claim or suit with a federal or state agency, court, or other public forum, it will provide 60 days’ prior written notice to the other and, within such 60-day period (or longer, if extended by the parties’ mutual agreement), the parties’ authorized representatives will work in good faith to resolve the dispute.

12.6 Time to Bring Claim. To the extent permitted under applicable law, any claim against Microsoft, its Affiliates, or suppliers under this Agreement must commence within one year after the claim accrues. Otherwise, it is permanently barred.

12.7 Attorneys’ Fees. In any dispute related to this Agreement, the prevailing party, including on any appeal, will be entitled to recover its reasonable attorneys’ fees and expenses.

12.8 Severability. If any part of this Agreement is held to be unenforceable, it will be deemed replaced by an enforceable section that matches the intent of the original language as closely as possible. The rest of this Agreement will continue in full force and effect.

12.9 Assignment. Microsoft may assign this Agreement, in whole or part, at any time without notice. Channel Partner may not assign this Agreement, or any rights or duties under it, without Microsoft’s prior, written consent. Any attempted assignment by Channel Partner without such consent is void.

12.10 Third Party Beneficiaries. There are no third-party beneficiaries to this Agreement.

12.11 Relationship. The parties are independent contractors. Channel Partner will not represent itself as a representative, agent, or employee of Microsoft. This Agreement does not create a joint venture, partnership, agency, fiduciary, or employment relationship. Microsoft and its suppliers are independent entities, and Microsoft is neither liable for, nor bound by, any acts of such third parties. For avoidance of doubt, there is no partnership relationship between Microsoft and Channel Partner.
12.12 **Language.** Any translation of the English-language version of this Agreement is for convenience only and the English-language version will govern. If Channel Partner is domiciled in Canada, the parties expressly wish to execute this Agreement and any associated documentation in English. **C’est la volonté expresse des parties que la présente convention ainsi que les documents qui s’y rattachent soient rédigés en anglais.**

12.13 **Compliance with Law.** The Online Service is subject to U.S. export jurisdiction. Channel Partner will comply with all applicable laws, including all domestic and international export laws and regulations that apply to any software, which include restrictions on destinations, end users, and end use. For further information on export restrictions, visit [http://aka.ms/exporting](http://aka.ms/exporting). Channel Partner is responsible for implementing and maintaining privacy protections and security measures for components that Channel Partner provides or controls, and for determining whether the Online Service is appropriate for storage and processing of information subject to any specific law or regulation. Channel Partner is responsible for responding to any request from a third party regarding Channel Partner’s use of the Online Service, such as a request to take down content under the U.S. Digital Millennium Copyright Act or other applicable laws. Microsoft will comply with all laws and regulations applicable to its provision of the Online Service, including security breach notification laws. Microsoft is not, however, responsible for compliance with any laws or regulations applicable to Channel Partner or Channel Partner’s industry that are not generally applicable to information technology service providers. Microsoft does not determine whether Channel Partner Data or Support Data includes information subject to any specific law or regulation.

12.14 **Support.** Microsoft supports the Online Service, but Microsoft does not provide support for any Non-Microsoft Product, or for the Online Service accessed or used from outside a country for which it was intended. If you need to contact Microsoft about the Online Service, visit [http://go.microsoft.com/fwlink/?LinkID=402982](http://go.microsoft.com/fwlink/?LinkID=402982).

12.15 **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.

12.16 **Notices.** Except as otherwise provided under Section 4.4, notices made under this Agreement will be provided as follows:

12.16.1 **To Channel Partner.** Except as otherwise expressly stated in this Agreement, Microsoft’s notices that relate generally to the Online Service will be posted on the Services Portal or other designated location. Microsoft's notices specifically to Channel Partner (e.g., notices of breach, suspension, or discontinuation) will be provided to Channel Partner by email to the address Microsoft received during Channel Partner’s signup for the Online Service or any updated email address that Microsoft received under Section 2.2. Channel Partner will be deemed to have received any email sent to any such email address when Microsoft sends the email, whether Channel Partner received the email or not.

12.16.2 **To Microsoft.** All notices to Microsoft related to this Agreement: (A) must be in writing (excluding email), sent to the address immediately below; and (B) will be deemed given when received by the Microsoft recipient below. Communications in the ordinary course of using the Online Service (which do not include notices related to breach or claims) may be sent by email to: lcssupport@microsoft.com.

Microsoft Corporation  
**Attn:** Corporate, External, and Legal Affairs, Dynamics  
One Microsoft Way, Redmond, WA 98052  
or via Facsimile: (425) 936-7329
12.17 **Interpretation.** This Agreement will be interpreted according to its plain meaning without presuming it should favor either party. Unless stated or context requires otherwise: (A) all internal references are to this Agreement and its parties; (B) all monetary amounts are expressed and, if applicable, payable, in U.S. dollars; (C) “days” means calendar days; (D) “may” means that the applicable party has a right, but not a concomitant duty; (E) “partner,” if used in this Agreement or related documents, is used in its common, marketing sense and does not imply a partnership; (F) “notify” means to give notice under (and “notice” means a notice that complies with) Section 12.16, as applicable; (G) “current” or “currently” means “as of the Effective Date” but “then-current” means the present time when the applicable right is exercised or performance rendered or measured; (H) URLs are understood to also refer to successors, localizations, and information or resources linked from within websites at such URLs; (I) lists of examples following “including”, “e.g.”, “such as”, “excludes”, “for example”, or similar words are deemed to include “without limitation”; and (J) the word “or” is deemed to be an inclusive “or”; and (K) a party’s choices under this Agreement are in its sole discretion.

12.18 **Font Components.** While Channel Partner uses the Online Service or Dynamics Software, Channel Partner may use the fonts installed by the Online Service or Dynamics Software to display and print content. Channel Partner may only embed fonts in content as permitted by the embedding restrictions in the fonts and temporarily download them to a printer or other output device to print content.

12.19 **Non-Exclusive.** This Agreement is non-exclusive. Channel Partner is free to license, use, recommend, or support Non-Microsoft Products.

12.20 **Entire Agreement.** This Agreement (including the incorporated portions of the OST) is the entire agreement between Channel Partner and Microsoft with respect to the Online Service and it supersedes all prior or contemporaneous communications and proposals (electronic, oral, or written) between Channel Partner and Microsoft regarding its subject matter.

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**Terms applicable to Customers**

**MICROSOFT DYNAMICS LIFECYCLE SERVICES**

**ONLINE SERVICE AGREEMENT FOR CUSTOMERS**

**Last Revised:** May 2018

This Online Service Agreement ("Agreement") is a contract between the legal entity you represent ("Customer") and Microsoft Corporation. By indicating acceptance in the Online Service’s user interface or by registering for, activating, or using the Online Service (defined in Section 1), you (the individual accepting this Agreement on Customer’s behalf) represent and warrant you are authorized to enter into this Agreement and bind Customer to it. By registering for, activating, or using the Online Service, Customer is ratifying this acceptance. Customer may not use the Online Service if it does not agree to this Agreement. Whenever accessing or using the Online Service, Customer will comply with this Agreement.

**Section 1. DEFINITIONS.**

"Affiliate” means any legal entity that owns, is owned by, or that is under its common ownership with a party. "Ownership" means, for purposes of this definition, control of more than a 50% interest.
"Customer Data" means all data, including all text, sound, video, or image files, and software, that are provided to Microsoft by, or on behalf of, Customer through use of the Online Service. Customer Data does not include Support Data.

"Dynamics Software" means any Microsoft Dynamics technology that Microsoft makes generally available separately as on-premise software or a web-based Microsoft hosted and operated cloud service for deployment using the Online Service. Dynamics Software excludes the Online Service.

"Non-Microsoft Product" means any third-party (or third-party branded) software (online, offline, web-based, or otherwise), data, service (e.g., online, implementation, customization, or consulting), website, hardware, process, content, or product.

"Online Service" means Microsoft's hosted and operated online services known as Microsoft Dynamics Lifecycle Services (or any successor) that Microsoft provides under this Agreement, including any fixes, patches, error corrections, service packs, additions, version releases, and any other revisions to the Online Service, as determined by Microsoft (which may add, change, or remove features or functions that had been available in a prior release of the Online Service).

"Online Service Account ID" means the credentials that Customer must use to authenticate and log into the Online Service, such as a Microsoft account (e.g., live.com or hotmail.com) or a Microsoft Azure Active Directory account.

"Online Service Requirements" means the credentials, conditions, and criteria Customer must satisfy and maintain to access or use the Online Service. Online Service Requirements consist of: (A) validly licensed internal-use rights required for use of the applicable Dynamics Software; (B) a valid Online Service account ID; and (C) any other applicable requirements specified in the Services Portal.

"Online Services Terms" or "OST" means the then-current version of the Microsoft Online Services Terms (or its successor) located at: http://go.microsoft.com/fwlink/?LinkID=521470.

"Permitted User" means any individual or entity that Customer: (A) authorizes to access and use the Online Service, Dynamics Software, Customer Data, or Support Data; and (B) has not de-authorized for such access and use.

"Personal Data" means any information relating to an identified or identifiable natural person. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to 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.

"Preview" means preview, beta, or other pre-release features, data center locations, software or services offered by Microsoft for optional evaluation.

"Services Portal" means the website(s) designated by Microsoft where Microsoft publishes Online Service information.

"Support Data" means all data, including all text, sound, video, image files, or software, that are provided to Microsoft by or on behalf of Customer (or that Customer authorizes Microsoft to obtain from the Online Service or Dynamics Software) through an engagement with Microsoft to obtain technical support for the Online Service or Dynamics Software.
Section 2. INITIATING THE ONLINE SERVICE.

2.1 Requirements. Customer must, throughout the Term, satisfy the Online Service Requirements to activate and continue to use the Online Service. Customer must cease using the Online Service if it becomes non-compliant with the Online Service Requirements. Microsoft may periodically check compliance status and will use reasonable efforts to notify Customer of non-compliance. Microsoft may limit or suspend Customer’s access to or use of the Online Service, without notice, at any time if Customer is non-compliant.

2.2 Contact Information. Either before or promptly after the Effective Date, Customer will provide Microsoft with current organizational and contact information. If such organizational or contact information changes during the Term, Customer will, within 30 days, provide updated information to Microsoft. If such contact information is materially inaccurate or fraudulent, Microsoft may limit or suspend Customer’s access to or use of the Online Service.

2.3 Workspace Management. Customer may, from time to time, use the Online Service to create a workspace (e.g., a prospective-presales project or implementation project) with Dynamics Software for, or may be invited to an existing workspace by, a Channel Partner or other third party. Microsoft has no direct role in the management of any such workspace, which is solely for Customer or between Customer and its Channel Partner or such other third party. Customer acknowledges that if it is acting as a Permitted User to a Channel Partner or other third party, it is subject to that Channel Partner’s or other third party’s Permitted User TOU (defined in Section 2.5.1), under which it may lose access to that workspace.

2.4 Permitted Users. Customer will authorize Permitted Users to access and use the Online Service and, as applicable, the Dynamics Software. Customer may add Permitted Users to, or remove them from, the Online Service and, as applicable, the Dynamics Software, if the Online Service or Dynamics Software allows.

2.4.1 Non-Microsoft. Customer may require non-Microsoft Permitted Users to agree to terms applicable to their access to and use of workspaces Customer creates, or any Customer Data or Support Data it makes available, in the Online Service (“Permitted User TOU”). Any Permitted User TOU will require Permitted User to agree at least that: (A) the Permitted User TOU is solely between Customer and Permitted User, and Microsoft is not liable in any way under the Permitted User TOU or for the acts or omissions of Customer, Permitted User, or any third-party agent of either; and (B) any dispute arising out of or related to the Permitted User TOU, or the Permitted User’s use of the Online Service under it, is solely between Customer and Permitted User. Microsoft may rely on information or instructions provided by any Non-Microsoft Permitted User.

2.4.2 Microsoft. Customer is deemed to have granted any Microsoft Permitted User a license to access and use Customer’s Online Service workspaces, Customer Data, and Support Data. If Customer requires Microsoft to agree to a Permitted User TOU to gain access to or use Customer’s Online Service workspaces, Customer Data, or Support Data, the Permitted User TOU is deemed rejected by, and will not apply to, Microsoft, even if any Microsoft personnel purports to accept it.

2.5 Previews. Microsoft may provide Previews. If Customer uses (or tries to use) a Preview, the terms in this Section 2.5 will apply. Microsoft will mark Previews as “beta”, “pre-release”, “preview”, or with a similar designation. Previews are provided solely as a convenience and, unless otherwise expressly set forth by Microsoft in a separate signed writing, are not for use in a production or “live operating” environment. Microsoft is not liable for any breach or loss if Customer uses any Preview in a production
or “live operating” environment. Microsoft may change or discontinue Previews at any time, without notice. Previews: (A) may have certain features that are missing or disabled; (B) may contain bugs or other errors that could cause them not to function correctly; (C) employ lesser or different privacy and security measures than those typically present in the Online Service or any Dynamics Software; (D) are not, unless otherwise noted, subject to any service level agreement that may be applicable to the Online Service or any Dynamics Software; and (E) are deemed included in the Online Service and subject to the terms of this Agreement (except as otherwise stated in any separate terms that may accompany such Preview and that conflict with or supplement this Agreement, or as otherwise stated in this Agreement, including as stated in this Section 2.5). Customer is solely responsible for evaluating the Previews and any reports or output generated from them. Customer will not use Previews to process Personal Data or other data that is subject to legal or regulatory compliance requirements. The following terms incorporated from the OST under Section 4.2 do not apply to Previews: Processing of Personal Data, GDPR, and Data Security.

2.5.1 No Assurances. In choosing to use a Preview, Customer is not relying on Microsoft delivering any future functions or features, or on any comments regarding the Preview or product roadmap. Microsoft may significantly change a Preview for a final, commercial version, if any, or Microsoft may elect not to release a commercial version. A commercial version, if any, may be subject to this Agreement, or to a separate agreement, and may be subject to a fee even if the Preview was free of charge.

2.5.2 Support. Microsoft is not obligated to provide technical support for Previews. If Microsoft provides any technical support, information for such support can be found in the Preview offer details. Any support Microsoft may provide for Previews is provided “as is”, “with all faults”, and without warranty.

Section 3. RIGHTS TO USE THE ONLINE SERVICE.

3.1 License. Subject to the terms of this Agreement, Microsoft grants to Customer a limited, non-transferable, non-exclusive, revocable license under Microsoft’s copyrights to access and use the Online Service during the Term. Customer may use the Online Service only in accordance with this Agreement (and any separate terms that Microsoft may provide with any Preview).

3.2 Feedback. Microsoft may use any Feedback that Customer or its Permitted Users provides, even if Customer or its Permitted Users designated the Feedback as confidential. Customer will not, and it will cause its Permitted Users not to, include any Customer Data, Personal Data, or other data that is subject to legal or regulatory compliance requirements in any Feedback. Customer gives to Microsoft, without charge, the right to use, share, and freely commercialize Feedback in any way and for any purpose. Customer also gives third parties, without charge, the right to use, or interface with, any Microsoft products or services that include the Feedback. Customer represents and warrants that it owns or otherwise controls all rights to such Feedback and that no such Feedback is subject to any third-party rights. “Feedback” means all comments, suggestions, or feedback about the Online Service or Microsoft software (including the Dynamics Software) that Customer (including its Permitted Users) provides to Microsoft.

3.3 Acceptable Use Policy. Customer may not use the Online Service: (A) in a way prohibited by law, regulation, government order, or decree; (B) to violate the rights of others; (C) to try to gain unauthorized access to or disrupt any service, device, data, account, or network; (D) to spam or distribute malware; (E) in a way that could harm the Online Service, any Microsoft software (including the Dynamics Software), or impair anyone else’s use of them; or (F) in any application or situation where failure of the
Online Service could lead to the death or serious bodily injury of any person, or to severe physical or environmental damage. Customer will not work around any technical or functional limitations in the Online Service, Microsoft software (including the Dynamics Software), or in Microsoft’s systems. Violation of the terms in this Section 3.3 may result in suspension of the Online Service or termination of this Agreement. Microsoft will suspend the Online Service only to the extent reasonably necessary. Unless Microsoft believes an immediate suspension is required, Microsoft will provide reasonable notice before suspending Customer’s access to the Online Service.

3.4 Technical Limitations. Customer will not download or otherwise remove copies of software or source code from the Online Service except as explicitly authorized. Microsoft may, in connection with the Online Service or any Dynamics Software, and in each case subject to Section 4.2, use any information or data derived or learned from Customer Data or Support Data, but only if such use does not include or disclose Customer Data or Support Data and no Customer Data or Support Data can be reverse engineered from such use. All rights not expressly granted in this Agreement are reserved. Microsoft will not use Customer Data or Support Data, or derive information from either, for advertising or similar commercial purposes without Customer’s permission.

3.5 Confidentiality. Each party will: (A) protect the other party’s Confidential Information shared under this Agreement from unauthorized dissemination with the same degree of care it uses to protect its own like information, but never less than reasonable care; (B) use the other party’s Confidential Information solely as necessary to perform under this Agreement; and (C) not disclose the other party’s Confidential Information to any third party without such other party’s prior written permission in each case. Confidential Information may, however, be disclosed in accordance with a judicial or other governmental order, if the party complying with such order either gives reasonable notice of such disclosure to allow the other party a reasonable opportunity to seek a protective order or equivalent; or obtains written assurance from the applicable judicial or governmental entity that it will afford the Confidential Information the highest level of protection available. Confidential Information may also be disclosed to the receiving party’s personnel (who are bound by written confidentiality obligations not less restrictive than those of this Agreement) and its Affiliates, in each case solely to the extent such personnel or Affiliates reasonably need to know such Confidential Information for proper performance of this Agreement. “Confidential Information” means nonpublic information that the disclosing party designates as being confidential, or that, under the circumstances surrounding disclosure, ought to be treated as confidential; Previews are deemed Microsoft’s Confidential Information unless and until they are made publicly available; Customer Data, Support Data, and the terms of Microsoft agreements are also Confidential Information.

3.6 Downtime. Microsoft may schedule interruptions to the Online Service for upgrades, updates, or other maintenance (“Scheduled Downtime”). Microsoft will make commercially reasonable efforts to notify Customer of Scheduled Downtime in advance. Customer may not be able to access or use the Online Service, any Dynamics Software, or any Non-Microsoft Product during Scheduled Downtime; such lack of access is deemed not to breach this Agreement. Without limiting the foregoing, there are no service level guarantees or uptime requirements applicable to the Online Service, except if, and solely to the extent, expressly stated to the contrary in the Services Portal.

Section 4. PRIVACY AND SECURITY.

4.1 Data Retention and Deletion. During the Term, Customer can access, extract, and delete Customer Data stored in the Online Service. Except for free trials and Previews and except as otherwise provided in this Section 4.1, Microsoft will retain Customer Data stored in the Online Service in a limited
function account for 90 days after Customer’s access to the Online Service ends so that Customer may extract the data. After the 90-day retention period ends, Microsoft will disable Customer’s account and delete the Customer Data and Personal Data within an additional 90 days unless Microsoft is: (A) permitted or required by applicable law to retain such data; (B) authorized in this Agreement; or (C) solely to the extent that, Customer has multiple roles (e.g., both Prospect and Customer) within the Online Service and some of the Customer Data or Personal Data is common to more than one such role, in which case Microsoft will retain such common data until Customer’s access to the Online Service ends as applicable to all such roles. The Online Service may not support retention or extraction of any Non-Microsoft Product provided by Customer. For purposes of this Section 4.1, “Customer’s access to the Online Service” is deemed to end as soon as Customer has no executory subscription to, or executory support agreement for, any Dependent Software. Microsoft has no liability for the deletion of Customer Data or Personal Data as described in this Section 4.1.

4.2 Data Protection Terms. This Agreement includes, and incorporates by reference, those portions of the OST entitled “Data Protection Terms” or otherwise expressly pertaining to data processing or protection (including the Standard Contractual Clauses and the European Union General Data Protection Regulation Terms, each as incorporated in the OST), but expressly excluding any terms specific to particular, named online services as well as any terms specific to “scope”, Location of Customer Data at Rest, Educational Institutions, or HIPAA Business Associate. Solely for purposes of interpreting terms incorporated from the OST in the context of this Agreement, to the extent such incorporated terms reference any definitions defined both in this Agreement and the OST, the definitions in this Agreement will apply.

4.3 Security Practices and Policy. Microsoft will implement and maintain appropriate technical and organizational measures to protect Customer Data and Personal Data. Those measures will be set forth in a Microsoft Security Policy. Microsoft will make that policy available to Customer, along with descriptions of the security controls in place for the Online Service and other information reasonably requested by Customer regarding Microsoft security practices and policies. In addition, those measures will comply with the requirements set forth in ISO 27001, ISO 27002, and ISO 27018. Microsoft will not eliminate ISO 27001, ISO 27002, or ISO 27018 unless it is no longer used in the industry and it is replaced with a successor (if any).

4.4 How to Contact Microsoft. If Customer believes that Microsoft is not adhering to its privacy or security commitments, Customer may contact customer support or use Microsoft’s Privacy web form, located at http://go.microsoft.com/?linkid=9846224. Microsoft’s mailing address is:

Microsoft Dynamics Lifecycle Services Privacy
Microsoft Corporation
One Microsoft Way
Redmond, Washington 98052 USA

Microsoft Ireland Operations Limited is Microsoft’s data protection representative for the European Economic Area and Switzerland. The privacy representative of Microsoft Ireland Operations Limited can be reached at the following address:

Microsoft Ireland Operations, Ltd.
Attn: Data Protection
One Microsoft Place
South County Business Park
Leopardstown
Section 5. DEALINGS WITH THIRD PARTIES. Microsoft may make Non-Microsoft Products available to Customer through Customer's use of the Online Service (such as through a store or gallery or other integration). Customer’s use of Non-Microsoft Products may be subject to the third party’s terms and conditions. If Customer installs or uses any Non-Microsoft Product with the Online Service or any Dynamics Software, Customer may not do so in any way that would subject Microsoft’s intellectual property to obligations beyond those in this Agreement. Microsoft assumes no responsibility or liability for any Non-Microsoft Product (including any of Customer’s intellectual property in any such Non-Microsoft Product). If Customer installs or uses any Non-Microsoft Product with the Online Service or any Dynamics Software: (A) as between Microsoft and Customer, Customer is solely responsible for such Non-Microsoft Product and will comply with all applicable policies and processes Microsoft may implement; and (B) effective as of when Customer first made such Non-Microsoft Product available to Microsoft and continuing until Microsoft has deleted such Non-Microsoft Product from its systems, Customer grants Microsoft a non-exclusive, royalty-free, fully paid-up license to host, use, distribute, reproduce, and otherwise provide worldwide access to such Non-Microsoft Product.

Section 6. CHANGES TO THE ONLINE SERVICE.

6.1 Changes and Cancelation. Except as may be otherwise expressly provided in this Agreement, Microsoft may change the Online Service or corresponding Dynamics Software at any time, without notice. Customer may cancel the Online Service on 30 days’ prior notice to Microsoft.

6.2 Discontinuing. Discontinuation of the Online Service will be in accordance with Microsoft’s online services support lifecycle policy for businesses and developers located at: https://support.microsoft.com/en-us/gp/osslpolicy/en-us (or any successor or localized version). Notwithstanding the foregoing or anything in this Agreement to the contrary, however, Microsoft will not discontinue the Online Service solely to the extent the Online Service is necessary for Customer to access or use any Dynamics Software (“Dependent Software”), Customer maintains either an executory subscription to, or an executory support agreement for, the Dependent Software, and the discontinuation would prevent such access or use.

Section 7. TERM AND TERMINATION.

7.1 Term. The term of this Agreement (“Term”) begins on the earliest date when Customer or its signatory agrees to be bound, as described in the first paragraph of this Agreement, and will continue until terminated.

7.2 Termination. Either party may terminate this Agreement immediately on notice if the other party has breached this Agreement and failed to cure such breach within 30 days after notice of the breach. Customer may also terminate this Agreement, for any reason or no reason, on 60 days’ prior notice to Microsoft. This Agreement will terminate automatically if the Online Service is canceled or discontinued in accordance with Section 6. If this Agreement is terminated with respect to Customer for any reason, it will automatically terminate with respect to all Permitted Users.

7.3 Survival. The following sections will survive termination of this Agreement: Sections 1 (Definitions), 3.2 (Feedback), 7.3 (Survival), 8 (Warranties and Disclaimers), 9 (Microsoft’s Defense of Infringement Claims), 10 (Customer’s Defense of Claims), 11 (Limitations on Liability), and 12 (General). The terms incorporated from the OST to the extent they are intended to survive as stated in the OST.
Section 8. WARRANTIES AND DISCLAIMERS.

8.1 By Customer. In addition to the warranty in the preamble of this Agreement, Customer continuously represents and warrants to Microsoft that: (A) it will not use the Online Service for any purpose or in any way that subjects Microsoft to any obligations outside of this Agreement; (B) it has all rights necessary to grant the licenses granted under this Agreement; (C) it has or will obtain and maintain all necessary rights to Customer Data, Support Data, and any other data, software, and services (including any Non-Microsoft Products and other third-party content and materials) used in connection with the Online Service; and (D) Microsoft's use of any Customer Data and Support Data, and exercise of the rights and licenses granted under this Agreement, does not and will not misappropriate or infringe the intellectual property or other proprietary rights of any third party or otherwise violate any law.

8.2 Disclaimer. The Online Service, any Services Portal, Dynamics Software, and any technology, materials, systems, infrastructure, or information provided by Microsoft or its suppliers in connection with Online Service are provided “as is”, without any warranty. Microsoft disclaims all warranties (express, implied, statutory, or otherwise, including implied warranties of merchantability, fitness for a particular purpose, satisfactory quality, non-infringement, title, and any warranties arising out of any course of dealing or usage of trade). These disclaimers will apply unless otherwise required by applicable law.

8.3 High-Risk Activities. Microsoft, on behalf of itself and its suppliers, disclaims any express or implied warranty of fitness of the Online Service for high-risk activities, including operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems.

Section 9. MICROSOFT’S DEFENSE OF CERTAIN THIRD-PARTY CLAIMS.

9.1 Duty and Process. Subject to Sections 9.1 and 9.2, Microsoft will: (A) defend Customer, Customer’s Affiliates, and each of its or their subsidiaries, directors, officers, employees, agents, or independent contractors against an unaffiliated third party's claim alleging the Online Service, as provided by Microsoft and used as licensed under this Agreement, infringe or misappropriate that third party's intellectual property rights ("Microsoft Indemnified Claim"); and (B) pay any resulting adverse final judgment for a Microsoft Indemnified Claim (or settlement to which Microsoft consents). Customer will: (y) notify Microsoft promptly of a Microsoft Indemnified Claim and give Microsoft sole control over the defense and settlement, although Customer may participate at its own expense; and (z) provide Microsoft with reasonable assistance to defend any Microsoft Indemnified Claim. Microsoft will not be responsible for any settlement made by Customer without Microsoft's prior written permission (not unreasonably conditioned, delayed, or withheld). Microsoft's obligations to defend and pay a patent claim will be limited to patent claims where the Online Service alone, without combination or modification, constitutes direct or contributory infringement of the patent.

9.2 Limitations. Microsoft's obligations under this Section 9 will not apply to the extent a Microsoft Indemnified Claim, adverse final judgment, or settlement is based on: (A) any Customer Data, Support Data, Non-Microsoft Product, links to third party websites, or non-Microsoft content or materials; (B) Customer’s use of any portion of the Online Service after Microsoft notifies Customer to stop using it due to a third-party claim, if damages would not have accrued but for the continued use; (C) Customer’s combination of any portion of the Online Service with anything not provided by or on behalf of Microsoft, to the extent the claim arises from the combination; (D) damages attributable to the value of the use of any Non-Microsoft Product; (E) Customer’s use of any Microsoft trademark(s) without Microsoft’s express, prior, written consent; (F) Customer’s use of any Preview in a production or “live operating” environment
(unless otherwise expressly stated in a separate, written agreement with Microsoft); (G) Customer’s use of the Online Service in a manner that violates this Agreement to the extent the claim arises from the violation; or (H) allegations that Customer acquired a trade secret: (1) through improper means; (2) under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (3) from any party (other than Microsoft) who owed the third-party claimant a duty to maintain the secrecy or limit use of the trade secret. Customer will reimburse Microsoft for any costs or damages resulting from any of the above actions. Moreover, Microsoft will have no obligation under this Section 9 to the extent any claim, adverse final judgment, or settlement arises out of or relates to Dynamics Software (as opposed to the Online Service); Microsoft’s obligations to defend and settlement any such claims, or to pay any such judgments or settlements, related to Dynamics Software are set forth, if at all, in the agreement under which Customer was given access to, and a right to access and use, such Dynamics Software.

9.3 Specific Rights and Remedies.

9.3.1 Possible Infringement. If Microsoft receives information concerning a Microsoft Indemnified Claim, Microsoft may, at its expense, either: (A) procure for Customer the right to continue using the allegedly infringing portion of the Online Service; (B) modify the allegedly infringing portion of the Online Service to make it non-infringing; or (C) replace the allegedly infringing portion of the Online Service with a non-infringing functional equivalent. Customer will immediately stop using the allegedly infringing Online Service after receiving Microsoft’s notice. If any other type of third party claim is brought against Customer regarding Microsoft’s intellectual property rights, Customer must notify Microsoft promptly in writing. Microsoft may, at Microsoft’s option, choose to treat these claims as being covered by Section 9.

9.3.2 Exclusive Remedy. This Section 9 states Customer’s exclusive remedy and Microsoft’s sole duty regarding Microsoft Indemnified Claims (to the extent Microsoft does not breach this Section 9).

Section 10. CUSTOMER’S DEFENSE OF CLAIMS.

10.1 Duty and Process. Customer will defend Microsoft, Microsoft’s Affiliates, and each of its or their subsidiaries, directors, officers, employees, agents, or independent contractors against any claim made by an unaffiliated third party ("Customer Indemnified Claim"): (A) that alleges Customer Data, Support Data, Non-Microsoft Products, other non-Microsoft content or materials, or Customer’s (including non-Microsoft Permitted Users’) use of the Online Service (excluding only claims for which Microsoft is obligated to defend and pay under Section 9) infringes or misappropriates that third party’s intellectual property rights; (B) that if true as alleged, reflects a breach by Customer of this Agreement; (C) that relates to any dispute of any kind or nature between Customer and a non-Microsoft Permitted User, whether arising under or related to a Permitted User TOU or otherwise; (D) that relates to Customer’s use of a Preview in a production or “live operating” environment; (E) that arises out of or relates to a Non-Microsoft Product, including any product liability claims; or (F) for which Microsoft’s liability would have been reduced had Customer effectively bound the applicable Permitted User to a Permitted User TOU under Section 2.5.1. Customer will also pay any resulting adverse final judgment for a Customer Indemnified Claim (or settlement to which Customer consents). Microsoft will notify Customer of a Customer Indemnified Claim and give Customer, through competent counsel chosen by Customer (in consultation with Microsoft), control over defense and settlement, although Microsoft may participate at its own expense. Customer will not, without Microsoft’s express, prior, written consent (not unreasonably conditioned, delayed, or withheld), acquiesce to any judgment or enter into any settlement that adversely affects Microsoft’s rights or interests or obligates Microsoft to pay any sums not fully paid by Customer, at the time of settlement, under this Section 10.1. Customer will not stipulate, admit, or acknowledge any
fault or liability on Microsoft’s part without Microsoft’s express, prior, written permission. Customer will not be responsible for any settlement made by Microsoft without Customer’s written permission (not unreasonably conditioned, delayed, or withheld). Microsoft will also provide Customer with reasonable assistance to defend any Customer Indemnified Claim, at Customer’s reasonable request and expense.

10.2 Exclusive Remedy. This Section 10 states Microsoft’s exclusive remedy and Customer’s sole duty regarding any Customer Indemnified Claim (to the extent Customer does not breach this Section 10).

Section 11. LIMITATIONS ON LIABILITY.

11.1 Liability Cap. Subject to Section 11.3 and to the extent permitted by applicable law, each party’s total aggregate liability to the other for all claims related to this Agreement is limited to direct damages incurred in reasonable reliance, in an amount not to exceed $5,000. These limitations apply whether liability is based on breach of contract, tort (including negligence), strict liability, breach of warranties, or any other theory. For clarity, Microsoft has no liability at all under any Permitted User TOU between Customer and any non-Microsoft Permitted User.

11.2 Excluded Damages. To the extent permitted by applicable law, whatever the legal basis for the claim, neither party, nor any of its Affiliates, suppliers, or contractors, will be liable for any indirect damages (including consequential, special, punitive, or incidental damages, or damages for lost profits or revenues, business interruption, or loss of business information) arising under or related to this Agreement, even if advised such damages were possible or if the possibility was reasonably foreseeable.

11.3 Applicability. The limitations in Section 11.1 and exclusions in Section 11.2 will not apply to: (A) violation or misappropriation of the other party’s intellectual property rights; (B) duties under, or breach of, Sections 9 or 10; (C) damages attributable to a party’s or its agent’s gross negligence or willful misconduct (in jurisdictions that do not recognize a legal distinction between “gross negligence” and “negligence”, “gross negligence” means “recklessness”); (D) bodily injury or death caused by a party’s negligence or that of its employees or agents; (E) fraud; or (F) breach of obligations regarding Confidential Information (except as related to Customer Data or Support Data, which are subject to the limitations in Section 11.1 and exclusions in Section 11.2). In addition, the limitations in Section 11.1 will not apply to fees, if any, payable for the Online Service.

11.4 Comparative Fault. Neither party nor its Affiliates will be responsible for any damages to the extent caused by the error, negligence, or fault of the other or such other’s agents or Permitted Users (although the foregoing in this Section 11.4 will not apply to insulate Microsoft from applicable liability when Microsoft is acting as Customer’s Permitted User).

11.5 Liability for Others. Customer will be liable for any use of the Online Service, or any actions taken or omitted (including with regard to Non-Microsoft Products or other non-Microsoft content or materials, Customer Data, or Support Data), by any Permitted User (other than Microsoft) to which Customer provides access to the Online Service. Actions or failures to act of any Permitted User (other than Microsoft) related to the Online Service (and any other acts or omissions of any Permitted User that would have breached this Agreement had Customer so acted or failed to act) will be imputed to Customer. Microsoft is not liable in any way for harm or damages related to Customer’s (or its non-Microsoft Permitted Users) interactions with third parties, third-party websites, or any third party acting on Customer’s behalf.

Section 12. GENERAL.
12.1 Agreement Changes. Microsoft may periodically change this Agreement. When changes are made, Microsoft will notify Customer (in accordance with Section 12.16 or via other commercially reasonable means) and will post a new version of the applicable document on the Services Portal, which will include all changes and a new "Last Revised" date. If Customer does not agree to a change, it must cancel or stop using the Online Service. By continuing to access or use the Online Service after a change is posted, Customer is bound by the change and this Agreement.

12.2 Availability. Microsoft makes no representation that the Online Service is appropriate or available for use in all geographic locations. If Customer accesses or uses any portion of the Online Service from outside a country for which the Online Service was intended, Customer does so at its own risk and is solely responsible for compliance with all applicable laws.

12.3 Applicable Law. The 1980 United Nations Convention on Contracts for the International Sale of Goods and its related instruments will not apply to this Agreement. The Online Service and Microsoft software (including Dynamics Software) are protected by copyright and other intellectual property rights laws and international treaties. If Customer registers for, activates, or uses the Online Service from its business operations in the following locales, then:

12.3.1 United States. Washington state law governs this Agreement and claims for breach, regardless of conflict of laws principles. The laws of the state where Customer is domiciled govern all other claims, including under state consumer protection laws, unfair competition laws, and in tort.

12.3.2 Canada. The laws of the province where Customer is domiciled govern this Agreement, claims for breach, and all other claims (including consumer protection, unfair competition, and tort claims), regardless of conflict of laws principles.

12.3.3 Other Regions. The laws of that country apply.

12.4 Venue and Jurisdiction. The exclusive venue for any action related to this Agreement and brought by: (A) Microsoft will be in the federal or state courts with jurisdiction over where Customer has its headquarters; and (B) Customer will be in the federal or state courts with jurisdiction over where Microsoft is headquartered. The parties consent to exclusive venue and jurisdiction of such courts. This Section 12.4 does not prevent either party from seeking injunctive relief for violation of intellectual property rights or confidentiality obligations in any appropriate jurisdiction.

12.5 Disputes. Before either party (or any of its personnel) files a claim or suit with a federal or state agency, court, or other public forum, it will provide 60 days' prior written notice to the other and, within such 60-day period (or longer, if extended by the parties' mutual agreement), the parties' authorized representatives will work in good faith to resolve the dispute.

12.6 Time to Bring Claim. To the extent permitted under applicable law, any claim against Microsoft, its Affiliates, or suppliers under this Agreement must commence within one year after the claim accrues. Otherwise, it is permanently barred.

12.7 Attorneys’ Fees. In any dispute related to this Agreement, the prevailing party, including on any appeal, will be entitled to recover its reasonable attorneys' fees and expenses.

12.8 Severability. If any part of this Agreement is held to be unenforceable, it will be deemed replaced by an enforceable section that matches the intent of the original language as closely as possible. The rest of this Agreement will continue in full force and effect.
12.9 Assignment. Microsoft may assign this Agreement, in whole or part, at any time without notice. Customer may not assign this Agreement, or any rights or duties under it, without Microsoft’s prior, written consent. Any attempted assignment by Customer without such consent is void.

12.10 Third Party Beneficiaries. There are no third-party beneficiaries to this Agreement.

12.11 Relationship. The parties are independent contractors. Customer will not represent itself as a representative, agent, or employee of Microsoft. This Agreement does not create a joint venture, partnership, agency, fiduciary, or employment relationship. Microsoft and its suppliers are independent entities, and Microsoft is neither liable for, nor bound by, any acts of such third parties. For avoidance of doubt, there is no partnership relationship between Microsoft and Customer.

12.12 Language. Any translation of the English-language version of this Agreement is for convenience only and the English-language version will govern. If Customer is domiciled in Canada, the parties expressly wish to execute this Agreement and any associated documentation in English. C’est la volonté expresse des parties que la présente convention ainsi que les documents qui s’y rattachent soient rédigés en anglais.

12.13 Compliance with Law. The Online Service is subject to U.S. export jurisdiction. Customer will comply with all applicable laws, including all domestic and international export laws and regulations that apply to any applicable software, which include restrictions on destinations, end users, and end use. For further information on export restrictions, visit http://aka.ms/exporting. Customer is responsible for implementing and maintaining privacy protections and security measures for components that Customer provides or controls, and for determining whether the Online Service is appropriate for storage and processing of information subject to any specific law or regulation. Customer is responsible for responding to any request from a third party regarding Customer’s use of the Online Service, such as a request to take down content under the U.S. Digital Millennium Copyright Act or other applicable laws. Microsoft will comply with all laws and regulations applicable to its provision of the Online Service, including security breach notification laws. Microsoft is not, however, responsible for compliance with any laws or regulations applicable to Customer or Customer’s industry that are not generally applicable to information technology service providers. Microsoft does not determine whether Customer Data or Support Data includes information subject to any specific law or regulation.

12.14 Support. Microsoft supports the Online Service, but Microsoft does not provide support for any Non-Microsoft Product, or for the Online Service accessed or used from outside a country for which it was intended. If you need to contact Microsoft about the Online Service, visit http://go.microsoft.com/fwlink/?LinkID=402982.

12.15 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.

12.16 Notices. Except as otherwise provided under Section 4.4, notices made under this Agreement will be provided as follows:

12.16.1 To Customer. Except as otherwise expressly stated in this Agreement, Microsoft’s notices that relate generally to the Online Service will be posted on the Services Portal or other designated location. Microsoft’s notices specifically to Customer (e.g., notices of breach, suspension, or discontinuation) will be provided to Customer by email to the address Microsoft received during Customer’s signup for the Online Service or any updated email address that Microsoft received under Section 2.2. Customer will be deemed to have received any email sent to any such email address when Microsoft sends the email, whether Customer received the email or not.
12.16.2  To Microsoft. All notices to Microsoft related to this Agreement: (A) must be in writing (excluding email), sent to the address immediately below; and (B) will be deemed given when received by the Microsoft recipient below. Communications in the ordinary course of using the Online Service (which do not include notices related to breach or claims) may be sent by email to: lcssupport@microsoft.com.

Microsoft Corporation
Attn: Corporate, External, and Legal Affairs, Dynamics
One Microsoft Way, Redmond, WA  98052
or via Facsimile: (425) 936-7329

12.17  Interpretation. This Agreement will be interpreted according to its plain meaning without presuming it should favor either party. Unless stated or context requires otherwise: (A) all internal references are to this Agreement and its parties; (B) all monetary amounts are expressed and, if applicable, payable, in U.S. dollars; (C) “days” means calendar days; (D) “may” means that the applicable party has a right, but not a concomitant duty; (E) “partner,” if used in this Agreement or related documents, is used in its common, marketing sense and does not imply a partnership; (F) “notify” means to give notice under (and “notice” means a notice that complies with) Section 12.16, as applicable; (G) “current” or “currently” means “as of the Effective Date” but “then-current” means the present time when the applicable right is exercised or performance rendered or measured; (H) URLs are understood to also refer to successors, localizations, and information or resources linked from within websites at such URLs; (I) lists of examples following “including”, “e.g.”, “such as”, “excludes”, “for example”, or similar words are deemed to include “without limitation”; and (J) the word “or” is deemed to be an inclusive “or”; and (K) a party’s choices under this Agreement are in its sole discretion.

12.18  Font Components. While Customer uses the Online Service or any Dynamics Software, Customer may use the fonts installed by the Online Service or Dynamics Software to display and print content. Customer may only embed fonts in content as permitted by the embedding restrictions in the fonts and temporarily download them to a printer or other output device to print content.

12.19  Non-Exclusive. This Agreement is non-exclusive. Customer is free to license, use, recommend, or support Non-Microsoft Products.

12.20  Entire Agreement. This Agreement (including the incorporated portions of the OST) is the entire agreement between Customer and Microsoft with respect to the Online Service and it supersedes all prior or contemporaneous communications and proposals (electronic, oral, or written) between Customer and Microsoft regarding its subject matter.

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Terms applicable to Prospects

MICROSOFT DYNAMICS LIFECYCLE SERVICES

ONLINE SERVICE AGREEMENT FOR PROSPECTS

Last Revised: May 2018

This Online Service Agreement (“Agreement”) is a contract between the legal entity you represent (“Prospect”) and Microsoft Corporation. By indicating acceptance in the Online Service’s user interface or by registering for, activating, or using the Online Service, you (the individual accepting
this Agreement on Prospect’s behalf) represent and warrant you are authorized to enter into this Agreement and bind Prospect to it. By registering for, activating, or using the Online Service (defined below), Prospect is ratifying this acceptance. Prospect may not use the Online Service if it does not agree to this Agreement. Whenever accessing or using the Online Service, Prospect will comply with this Agreement.

Section 1. DEFINITIONS.

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

"Dynamics Software" means any Microsoft Dynamics technology that Microsoft makes generally available separately as on-premise software or a web-based Microsoft hosted and operated cloud service for deployment using the Online Service. Dynamics Software excludes the Online Service.

"Non-Microsoft Product" means any third-party (or third-party branded) software (online, offline, web-based, or otherwise), data, service (e.g., online, implementation, customization, or consulting), website, hardware, process, content, or product.

"Online Service" means Microsoft's hosted and operated online services known as Microsoft Dynamics Lifecycle Services (or any successor) that Microsoft provides under this Agreement, including any fixes, patches, error corrections, service packs, additions, version releases, and any other revisions to the Online Service, as determined by Microsoft (which may add, change, or remove features or functions that had been available in a prior version of the Online Service).

"Online Service Account ID" means the credentials that Prospect must use to authenticate and log into the Online Service, such as a Microsoft account or a Microsoft Azure Active Directory account.

"Online Services Terms" or "OST" means the then-current version of the Microsoft Online Services Terms (or its successor) located at: http://go.microsoft.com/fwlink/?LinkID=521470.

"Permitted User" means any individual or entity that Prospect: (A) authorizes to access and use the Online Service, Dynamics Software, Prospect Data, or Support Data; and (B) has not de-authorized for such access and use.

"Personal Data" means any information relating to an identified or identifiable natural person. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to 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.

"Preview" means preview, beta, or other pre-release features, data center locations, and services offered by Microsoft for optional evaluation.

"Prospect Data" means all data, including all text, sound, video, or image files, and software, that are provided to Microsoft by, or on behalf of, Prospect through use of the Online Service. Prospect Data does not include Support Data.

"Services Portal" means the website(s) designated by Microsoft where Microsoft publishes Online Service information.
"Support Data" means all data, including all text, sound, video, image files, or software, that are provided to Microsoft by or on behalf of Prospect (or that Prospect authorizes Microsoft to obtain from the Online Service or Dynamics Software) through an engagement with Microsoft to obtain technical support for the Online Service or Dynamics Software.

Section 2. INITIATING THE ONLINE SERVICE.

2.1 Contact Information. Either before or promptly after the Effective Date, Prospect will provide Microsoft with current organizational and contact information. If such organizational or contact information changes during the Term, Prospect will, within 30 days, provide updated information to Microsoft. If such contact information is materially inaccurate or fraudulent, Microsoft may suspend Prospect’s access to or use of the Online Service.

2.2 Permitted Users. Prospect will authorize Permitted Users to access and use the Online Service and, as applicable, the Dynamics Software. Prospect may add Permitted Users to, or remove them from, the Online Service and, as applicable, the Dynamics Software, if the Online Service or Dynamics Software allows.

2.2.1 Non-Microsoft. Prospect may require non-Microsoft Permitted Users to agree to terms applicable to their access to and use of workspaces Prospect creates, or any Prospect Data or Support Data it makes available, in the Online Service ("Permitted User TOU"). Any Permitted User TOU will require Permitted User to agree at least that: (A) the Permitted User TOU is solely between Prospect and Permitted User, and Microsoft is not liable in any way under the Permitted User TOU or for the acts or omissions of Prospect, Permitted User, or any third-party agent of either; and (B) any dispute arising out of or related to the Permitted User TOU, or the Permitted User’s use of the Online Service under it, is solely between Prospect and Permitted User. Microsoft may rely on information or instructions provided by any Permitted User (other than Microsoft personnel).

2.2.2 Microsoft. Prospect is deemed to have granted any Microsoft Permitted User a license to access and use Prospect’s Online Service workspaces, Prospect Data, and Support Data. If Prospect requires Microsoft to agree to a Permitted User TOU to gain access to or use Prospect’s Online Service workspaces, Prospect Data, or Support Data, the Permitted User TOU is deemed rejected by, and will not apply to, Microsoft, even if any Microsoft personnel purports to accept it.

2.3 Previews. Microsoft may provide Previews. If Prospect uses (or tries to use) a Preview, the terms in this Section 2.3 will apply. Microsoft will mark Previews as “beta”, “pre-release”, “preview”, or with a similar designation. Previews are provided solely as a convenience and, unless otherwise expressly set forth by Microsoft in a separate signed writing, are not for use in a production or “live operating” environment. Microsoft is not liable for any breach or loss if Prospect uses any Preview in a production or “live operating” environment. Microsoft may change or discontinue Previews at any time, without notice. Previews: (A) may have certain features that are missing or disabled; (B) may contain bugs or other errors that could cause them not to function correctly; (C) employ lesser or different privacy and security measures than those typically present in the Online Service or Dynamics Software; (D) are not, unless otherwise noted, subject to any service level agreement that may be applicable to the Online Service or Dynamics Software; and (E) are deemed included in the Online Service and subject to the terms of this Agreement (except as otherwise stated in any separate terms that may accompany such Preview and that conflict with or supplement this Agreement, or as otherwise stated in this Agreement, including as stated in this Section 2.3). Prospect is solely responsible for evaluating the Previews and any reports or output generated from them. Prospect will not use Previews to process Personal Data or other data that is
subject to legal or regulatory compliance requirements. The following terms incorporated from the OST under Section 4.2 do not apply to Previews: Processing of Personal Data, GDPR, and Data Security.

2.3.1 No Assurances. In choosing to use a Preview, Prospect is not relying on Microsoft delivering any future functions or features, or on any comments regarding the Preview or product roadmap. Microsoft may significantly change a Preview for a final, commercial version, if any, or Microsoft may elect not to release a commercial version. A commercial version, if any, will be subject to this Agreement, or to a separate agreement, and may be subject to a fee even if the Preview was free of charge.

2.3.2 Support. Microsoft is not obligated to provide technical support for Previews. If Microsoft provides any technical support, information for such support can be found on the Preview offer details. Any support Microsoft may provide for Previews is provided “as is”, “with all faults”, and without warranty.

Section 3. RIGHTS TO USE THE ONLINE SERVICE.

3.1 License. Subject to the terms of this Agreement, Microsoft grants to Prospect a limited, non-transferable, non-exclusive, revocable license under Microsoft’s copyrights to access and use the Online Service during the Term. Prospect may use the Online Service only in accordance with this Agreement (and any separate terms that Microsoft may provide with any Previews).

3.2 Feedback. Microsoft may use any Feedback that Prospect or its Permitted Users provides, even if Prospect or its Permitted Users designated the Feedback as confidential. Prospect will not, and it will cause its Permitted Users not to, include any Customer Data, Personal Data, or other data that is subject to legal or regulatory compliance requirements in any Feedback. Prospect gives to Microsoft, without charge, the right to use, share, and freely commercialize Feedback in any way and for any purpose. Prospect also gives third parties, without charge, the right to use, or interface with, any Microsoft products or services that include the Feedback. Prospect represents and warrants that it owns or otherwise controls all rights to such Feedback and that no such Feedback is subject to any third-party rights. “Feedback” means all comments, suggestions, or feedback about the Online Service or Microsoft software (including the Dynamics Software) that Prospect (including its Permitted Users) provides to Microsoft.

3.3 Acceptable Use Policy. Prospect may not use the Online Service: (A) in a way prohibited by law, regulation, government order, or decree; (B) to violate the rights of others; (C) to try to gain unauthorized access to or disrupt any service, device, data, account, or network; (D) to spam or distribute malware; (E) in a way that could harm the Online Service, any Microsoft software (including the Dynamics Software), or impair anyone else’s use of them; or (F) in any application or situation where failure of the Online Service could lead to the death or serious bodily injury of any person, or to severe physical or environmental damage. Prospect will not work around any technical or functional limitations in the Online Service, Microsoft software (including the Dynamics Software), or in Microsoft’s systems. Violation of the terms in this Section 3.3 may result in suspension of the Online Service or termination of this Agreement. Microsoft will suspend the Online Service only to the extent reasonably necessary. Unless Microsoft believes an immediate suspension is required, Microsoft will provide reasonable notice before suspending Prospect’s access to the Online Service.

3.4 Technical Limitations. Prospect will not download or otherwise remove copies of software or source code from the Online Service except as explicitly authorized. Microsoft may, in connection with the Online Service or Dynamics Software, and in each case subject to Section 4.2, use any information or
data derived or learned from Prospect Data or Support Data, but only if such use does not include or disclose Prospect Data or Support Data and no Prospect Data or Support Data can be reverse engineered from such use. All rights not expressly granted in this Agreement are reserved. Microsoft will not use Prospect Data or Support Data, or derive information from either, for advertising or similar commercial purposes without Prospect’s permission.

3.5 Confidentiality. Each party will: (A) protect the other party’s Confidential Information shared under this Agreement from unauthorized dissemination with the same degree of care it uses to protect its own like information, but never less than reasonable care; (B) use the other party’s Confidential Information solely as necessary to perform under this Agreement; and (C) not disclose the other party’s Confidential Information to any third party without such other party’s prior written permission in each case. Confidential Information may, however, be disclosed in accordance with a judicial or other governmental order, if the party complying with such order either gives reasonable notice of such disclosure to allow the other party a reasonable opportunity to seek a protective order or equivalent; or obtains written assurance from the applicable judicial or governmental entity that it will afford the Confidential Information the highest level of protection available. Confidential Information may also be disclosed to the receiving party’s personnel (who are bound by written confidentiality obligations not less restrictive than those of this Agreement) and its Affiliates, in each case solely to the extent such personnel or Affiliates reasonably need to know such Confidential Information for proper performance of this Agreement. “Confidential Information” means nonpublic information that the disclosing party designates as being confidential, or that, under the circumstances surrounding disclosure, ought to be treated as confidential; Previews are deemed Microsoft’s Confidential Information unless and until they are made publicly available; Prospect Data, Support Data, and the terms of Microsoft agreements are also Confidential Information.

3.6 Downtime. Microsoft may schedule interruptions to the Online Service for Upgrades or maintenance (“Scheduled Downtime”). Prospect may not be able to access or use the Online Service, any Dynamics Software, or any Non-Microsoft Product during Scheduled Downtime; such lack of access is deemed not to breach this Agreement. Without limiting the foregoing, there are no service level guarantees or uptime requirements applicable to the Online Service.

Section 4. PRIVACY AND SECURITY.

4.1 Data Retention. During the Term, Prospect can access and extract Prospect Data stored in the Online Service. After the Term ends, Microsoft will suspend Prospect’s account and delete the Prospect Data (except if, and solely to the extent that, Prospect has multiple roles within the Online Service and some of the Prospect Data is common to more than one such role, in which case Microsoft will retain such common data until expiration or termination of Prospect’s access to the Online Service as applicable to all such roles). The Online Service may not support retention or extraction of any Non-Microsoft Product provided by Prospect. Notwithstanding the foregoing, or anything in this Agreement to the contrary, if Prospect has not logged into the Online Service using Prospect’s Online Service Account ID for 180 consecutive days, Microsoft will notify Prospect at least 60 days before Microsoft deems the Agreement terminated and deletes any data Prospect may have stored in the Online Service. If Prospect wishes to maintain access to, and avoid deletion of any data in, the Online Service, it must login to its Online Service account using such Online Service Account ID during such 60-day notice period. Microsoft has no liability for the deletion of Prospect Data as described in this Section 4.1.

4.2 Data Protection Terms. This Agreement includes, and incorporates by reference, those portions of the OST entitled “Data Protection Terms” or otherwise expressly pertaining to data processing or
protection (including the Standard Contractual Clauses and the European Union General Data Protection Regulation Terms, each as incorporated in the OST), but expressly excluding any terms specific to particular, named online services as well as any terms specific to “scope”, to HIPAA, or to the location of data at rest. Solely for purposes of interpreting terms incorporated from the OST in the context of this Agreement, to the extent such incorporated terms reference any definitions defined both in this Agreement and the OST, the definitions in this Agreement will apply.

4.3 Security Practices and Policy. Microsoft will implement and maintain appropriate technical and organizational measures to protect Customer Data and Personal Data. Those measures will be set forth in a Microsoft Security Policy. Microsoft will make that policy available to Prospect, along with descriptions of the security controls in place for the Online Service and other information reasonably requested by Prospect regarding Microsoft security practices and policies. In addition, those measures will comply with the requirements set forth in ISO 27001, ISO 27002, and ISO 27018. Microsoft will not eliminate ISO 27001, ISO 27002, or ISO 27018 unless it is no longer used in the industry and it is replaced with a successor (if any).

4.4 How to Contact Microsoft. If Prospect believes that Microsoft is not adhering to its privacy or security commitments, Prospect may contact customer support or use Microsoft’s Privacy web form, located at http://go.microsoft.com/?linkid=9846224. Microsoft’s mailing address is:

Microsoft Dynamics Lifecycle Services Privacy
Microsoft Corporation
One Microsoft Way
Redmond, Washington 98052 USA

Microsoft Ireland Operations Limited is Microsoft’s data protection representative for the European Economic Area and Switzerland. The privacy representative of Microsoft Ireland Operations Limited can be reached at the following address:

Microsoft Ireland Operations, Ltd.
Attn: Data Protection
One Microsoft Place
South County Business Park
Leopardstown
Dublin 18
D18 P521

Section 5. DEALINGS WITH THIRD PARTIES. Microsoft may make Non-Microsoft Products available to Prospect through Prospect’s use of the Online Service (such as through a store or gallery or other integration). Prospect’s use of Non-Microsoft Products may be subject to the third party’s terms and conditions. If Prospect installs or uses any Non-Microsoft Product with the Online Service, Prospect may not do so in any way that would subject Microsoft’s intellectual property to obligations beyond those in this Agreement. Microsoft assumes no responsibility or liability for any Non-Microsoft Product (including any of Prospect’s intellectual property in any such Non-Microsoft Product). If Prospect installs or uses any Non-Microsoft Product with the Online Service or Dynamics Software: (1) Prospect is solely responsible for such Non-Microsoft Product and will comply with all applicable policies and processes Microsoft may implement; and (2) effective as of when Prospect first made such Non-Microsoft Product available to Microsoft and continuing until Microsoft has deleted such Non-Microsoft Product from its systems,
Prospect grants Microsoft a nonexclusive, royalty-free, fully paid-up license to host, use, distribute, reproduce, and otherwise provide worldwide access to such Non-Microsoft Product.

Section 6. CHANGES TO THE ONLINE SERVICE.

6.1 Changes and Cancelation. Except as may be otherwise expressly provided in this Agreement, Microsoft may change the Online Service or corresponding Dynamics Software at any time, without notice. Prospect may also cancel the Online Service on 30 days prior notice to Microsoft.

6.2 Discontinuing. Discontinuation of the Online Service will be in accordance with Microsoft’s online services support lifecycle policy for businesses and developers located at: https://support.microsoft.com/en-us/gp/osslpolicy/en-us (or any successor or localized version). Notwithstanding the foregoing or anything in this Agreement to the contrary, however, Microsoft will not discontinue the Online Service solely to the extent the Online Service is necessary for Prospect to access or use the Dynamics Software and the discontinuation would prevent such access or use.

Section 7. TERM AND TERMINATION.

7.1 Term. The term of this Agreement (“Term”) begins on the earliest date when Prospect or its signatory agrees to be bound, as described in the first paragraph of this Agreement, and will continue until terminated.

7.2 Termination. Either party may terminate this Agreement immediately on notice if the other party has breached this Agreement and failed to cure such breach within 15 days after notice of the breach. Either party may also terminate this Agreement, for any reason or no reason, on 30 days’ prior notice to Microsoft. This Agreement will terminate automatically if the Online Service is canceled in accordance with Section 6. If this Agreement is terminated with respect to Prospect for any reason, it will automatically terminate with respect to all Permitted Users.

7.3 Survival. The following sections will survive termination of the Agreement: Sections 1 (Definitions), 3.2 (Feedback), 7.3 (Survival), 8 (Warranties and Disclaimers), 9 (Microsoft’s Defense of Infringement Claims), 10 (Prospect’s Defense of Claims), 11 (Limitations on Liability), and 12 (General). The terms incorporated from the OST to the extent they are intended to survive as stated in the OST.

Section 8. WARRANTIES AND DISCLAIMERS.

8.1 By Prospect. In addition to the warranty in the preamble of this Agreement, Prospect continuously represents and warrants to Microsoft that: (A) it will not use the Online Service for any purpose or in any way that subjects Microsoft to any obligations outside of this Agreement; (B) it has all rights necessary to grant the licenses granted under this Agreement; (C) it has or will obtain and maintain all necessary rights to Prospect Data, Support Data, and any other data, software, and services (including any Non-Microsoft Products and other third-party content and materials) used in connection with the Online Service; and (D) Microsoft’s use of any Prospect Data and Support Data, and exercise of the rights and licenses granted under this Agreement, does not and will not misappropriate or infringe the intellectual property or other proprietary rights of any third party or otherwise violate any law.

8.2 Disclaimer. The Online Service, any Services Portal, Dynamics Software, and any technology, materials, systems, infrastructure, or information provided by Microsoft or its suppliers in connection with Online Service are provided “as is”, without any warranty. Microsoft disclaims all warranties (express, implied, statutory, or otherwise, including implied warranties of merchantability, fitness for a particular purpose, satisfactory quality, non-infringement, title, and
any warranties arising out of any course of dealing or usage of trade). These disclaimers will apply unless otherwise required by applicable law.

8.3 High-Risk Activities. Microsoft, on behalf of itself and its suppliers, disclaims any express or implied warranty of fitness of the Online Service for high-risk activities, including operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems.

Section 9. CUSTOMER’S DEFENSE OF CLAIMS. Prospect will defend Microsoft, Microsoft’s Affiliates, and each of its or their subsidiaries, directors, officers, employees, agents, or independent contractors against any claim made by an unaffiliated third party (“Prospect Indemnified Claim”: (A) that alleges Prospect Data, Support Data, Non-Microsoft Products, other non-Microsoft content or materials, or Prospect’s (including non-Microsoft Permitted Users’) use of the Online Service infringes or misappropriates that third party’s intellectual property rights; (B) that if true as alleged, reflects a breach by Prospect of this Agreement; (C) that relates to any dispute of any kind or nature between Prospect and a non-Microsoft Permitted User, whether arising under or related to a Permitted User TOU or otherwise; (D) that relates to Prospect’s use of a Preview version of the Online Service in a production or “live operating” environment; (E) that arises out of or relates to a Non-Microsoft Product, including any product liability claims; or (F) for which Microsoft’s liability would have been reduced had Prospect effectively bound the applicable Permitted User to a Permitted User TOU under Section 2.3.1. Prospect will also pay any resulting adverse final judgment for a Prospect Indemnified Claim (or settlement to which Prospect consents). Microsoft will notify Prospect of a Prospect Indemnified Claim and give Prospect, through competent counsel chosen by Prospect (in consultation with Microsoft), control over defense and settlement, although Microsoft may participate at its own expense. Prospect will not, without Microsoft’s express, prior, written consent (not unreasonably withheld), acquiesce to any judgment or enter into any settlement that adversely affects Microsoft’s rights or interests or obligates Microsoft to pay any sums not fully paid by Prospect, at the time of settlement, under this Section 9. Prospect will not stipulate, admit, or acknowledge any fault or liability on Microsoft’s part without Microsoft’s express, prior, written permission. Prospect will not be responsible for any settlement made by Microsoft without Prospect’s written permission (not unreasonably withheld). Microsoft will also provide Prospect with reasonable assistance to defend any Prospect Indemnified Claim, at Prospect’s reasonable request and expense.

Section 10. LIMITATIONS ON LIABILITY.

10.1 Liability Cap. Subject to Section 10.3 and to the extent permitted by applicable law, each party’s total aggregate liability to the other for all claims related to this Agreement is limited to direct damages incurred in reasonable reliance, in an amount not to exceed $5. These limitations apply whether liability is based on breach of contract, tort (including negligence), strict liability, breach of warranties, or any other theory. For clarity, Microsoft has no liability at all: (A) under any Permitted User TOU between Prospect and any non-Microsoft Permitted User; or (B) under this Agreement to the extent related to the Dynamics Software (as opposed to the Online Service); Microsoft’s liability, if any, related to the Dynamics Software is governed by the agreement under which Prospect was given access to, and a right to access and use, such Dynamics Software.

10.2 Excluded Damages. To the extent permitted by applicable law, whatever the legal basis for the claim, neither party, nor any of its Affiliates, suppliers, or contractors, will be liable for any indirect damages (including consequential, special, punitive, or incidental damages, or damages for lost profits or revenues, business interruption, or loss of business information) arising under or
related to this Agreement, even if advised such damages were possible or if the possibility was reasonably foreseeable.

10.3 Applicability. The limitations in Section 10.1 and exclusions in Section 10.2 will not apply to: (A) violation or misappropriation of the other party’s intellectual property rights; (B) duties under, or breach of, Section 9; (C) damages attributable to a party’s or its agent’s gross negligence or willful misconduct (in jurisdictions that do not recognize a legal distinction between “gross negligence” and “negligence”, “gross negligence” means “recklessness”); (D) bodily injury or death caused by a party’s negligence or that of its employees or agents; (E) fraud; or (F) breach of obligations regarding Confidential Information (except as related to Prospect Data or Support Data, which are subject to the limitations in Section 10.1 and exclusions in Section 10.2). In addition, the limitations in Section 10.1 will not apply to fees payable for the Online Service.

10.4 Comparative Fault. Neither party nor its Affiliates will be responsible for any damages to the extent caused by the error, negligence, or fault of the other or such other’s agents or Permitted Users (although the foregoing in this Section 10.4 will not apply to insulate Microsoft from applicable liability when Microsoft is acting as Prospect’s Permitted User).

10.5 Liability for Others. Prospect will be liable for any use of the Online Service, or any actions taken or omitted (including with regard to Non-Microsoft Products or other non-Microsoft content or materials, Prospect Data, or Support Data), by any Permitted User (other than Microsoft) to which Prospect provides access to the Online Service. Actions or failures to act of any Permitted User (other than Microsoft) related to the Online Service (and any other acts or omissions of any Permitted User that would have breached this Agreement had Prospect so acted or failed to act) will be imputed to Prospect. Microsoft is not liable in any way for harm or damages related to Prospect’s (or its non-Microsoft Permitted Users) interactions with third parties, third-party websites, or any third party acting on Prospect’s behalf.

Section 11. GENERAL.

11.1 Agreement Changes. Microsoft may periodically change this Agreement. When changes are made, Microsoft will notify Prospect (in accordance with Section 11.16 or via other commercially reasonable means) and will post a new version of the applicable document on the Services Portal, which will include all changes and a new “Last Revised” date. If Prospect does not agree to a change, it must cancel the Online Service. By continuing to access, use, or receive the Online Service after a change is posted, Prospect is bound by the change and this Agreement.

11.2 Availability. Microsoft makes no representation that the Online Service is appropriate or available for use in all geographic locations. If Prospect accesses or uses any portion of the Online Service from outside a country for which the Online Service was intended, Prospect does so at its own risk and is solely responsible for compliance with all applicable laws.

11.3 Applicable Law. The 1980 United Nations Convention on Contracts for the International Sale of Goods and its related instruments will not apply to this Agreement. The Online Service and Microsoft software (including Dynamics Software) are protected by copyright and other intellectual property rights laws and international treaties. If Prospect registers for, activates, or uses the Online Service from its business operations in the following locales, then:

11.3.1 United States. Washington state law governs this Agreement and claims for breach, regardless of conflict of laws principles. The laws of the state where Prospect is domiciled govern all other claims, including under state consumer protection laws, unfair competition laws, and in tort.
11.3.2 Canada. The laws of the province where Prospect is domiciled govern this Agreement, claims for breach, and all other claims (including consumer protection, unfair competition, and tort claims), regardless of conflict of laws principles.

11.3.3 Other Regions. The laws of that country apply.

11.4 Venue and Jurisdiction. The exclusive venue for any action related to this Agreement and brought by: (A) Microsoft will be in the federal or state courts with jurisdiction over where Prospect has its headquarters; and (B) Prospect will be in the federal or state courts with jurisdiction over where Microsoft is headquartered. The parties consent to exclusive venue and jurisdiction of such courts. This Section 11.4 does not prevent either party from seeking injunctive relief for violation of intellectual property rights or confidentiality obligations in any appropriate jurisdiction.

11.5 Disputes. Before either party (or any of its personnel) files a claim or suit with a federal or state agency, court, or other public forum, it will provide 60 days’ prior written notice to the other and, within such 60-day period (or longer, if extended by the parties’ mutual agreement), the parties’ authorized representatives will work in good faith to resolve the dispute.

11.6 Time to Bring Claim. To the extent permitted under applicable law, any claim against Microsoft, its Affiliates, or suppliers under this Agreement must commence within one year after the claim accrues. Otherwise, it is permanently barred.

11.7 Attorneys’ Fees. In any dispute related to this Agreement, the prevailing party, including on any appeal, will be entitled to recover its reasonable attorneys’ fees and expenses.

11.8 Severability. If any part of this Agreement is held to be unenforceable, it will be deemed replaced by an enforceable section that matches the intent of the original language as closely as possible. The rest of this Agreement will continue in full force and effect.

11.9 Assignment. Microsoft may assign this Agreement, in whole or part, at any time without notice. Prospect may not assign this Agreement, or any rights or duties under it, without Microsoft’s prior, written consent. Any attempted assignment by Prospect without such consent is void.

11.10 Third Party Beneficiaries. There are no third-party beneficiaries to this Agreement.

11.11 Relationship. The parties are independent contractors. Prospect will not represent itself as a representative, agent, or employee of Microsoft. This Agreement does not create a joint venture, partnership, agency, fiduciary, or employment relationship. Microsoft and its suppliers are independent entities, and Microsoft is neither liable for, nor bound by, any acts of such third parties. For avoidance of doubt, there is no partnership relationship between Microsoft and Prospect.

11.12 Language. Any translation of the English-language version of this Agreement is for convenience only and the English-language version will govern. If Prospect is domiciled in Canada, the parties expressly wish to execute this Agreement and any associated documentation in English. C’est la volonté expresse des parties que la présente convention ainsi que les documents qui s’y rattachent soient rédigés en anglais.

11.13 Compliance with Law. The Online Service is subject to U.S. export jurisdiction. Prospect will comply with all applicable laws, including all domestic and international export laws and regulations that apply to any applicable software, which include restrictions on destinations, end users, and end use. For further information on export restrictions, visit http://aka.ms/exporting. Prospect is responsible for
implementing and maintaining privacy protections and security measures for components that Prospect provides or controls, and for determining whether the Online Service is appropriate for storage and processing of information subject to any specific law or regulation. Prospect is responsible for responding to any request from a third party regarding Prospect’s use of the Online Service, such as a request to take down content under the U.S. Digital Millennium Copyright Act or other applicable laws. Microsoft does not determine whether Prospect Data or Support Data includes information subject to any specific law or regulation.

12.14 Support. Microsoft supports the Online Service, but Microsoft does not provide support for any Non-Microsoft Product, or for the Online Service accessed or used from outside a country for which it was intended. If you need to contact Microsoft about the Online Service, visit http://go.microsoft.com/fwlink/?LinkID=402982.

11.15 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.

11.16 Notices. Except as otherwise provided under Section 4.4, notices made under this Agreement will be provided as follows:

11.16.1 To Prospect. Except as otherwise expressly stated in this Agreement, Microsoft’s notices that relate generally to the Online Service will be posted on the Services Portal or other designated location. Microsoft’s notices specifically to Prospect (e.g., notices of breach or suspension) will be provided to Prospect by email to the address Microsoft received during Prospect’s signup for the Online Service or any updated email address that Microsoft received under Section 2.1. Prospect will be deemed to have received any email sent to any such email address when Microsoft sends the email, whether Prospect received the email or not.

11.16.2 To Microsoft. All notices to Microsoft related to this Agreement: (A) must be in writing (excluding email), sent to the address immediately below; and (B) will be deemed given when received by the Microsoft recipient below. Communications in the ordinary course of using the Online Service (which do not include notices related to breach or claims) may be sent by email to: lcssupport@microsoft.com.

Microsoft Corporation
Attn: Corporate, External, and Legal Affairs, Dynamics
One Microsoft Way, Redmond, WA  98052
or via Facsimile: (425) 936-7329

11.17 Interpretation. This Agreement will be interpreted according to its plain meaning without presuming it should favor either party. Unless stated or context requires otherwise: (A) all internal references are to this Agreement and its parties; (B) all monetary amounts are expressed and, if applicable, payable, in U.S. dollars; (C) “days” means calendar days; (D) “may” means that the applicable party has a right, but not a concomitant duty; (E) “partner,” if used in this Agreement or related documents, is used in its common, marketing sense and does not imply a partnership; (F) “notify” means to give notice under (and “notice” means a notice that complies with) Section 11.16, as applicable; (G) “current” or “currently” means “as of the Effective Date” but “then-current” means the present time when the applicable right is exercised or performance rendered or measured; (H) URLs are understood to also refer to successors, localizations, and information or resources linked from within websites at such URLs; (I) lists of examples following “including”, “e.g.”, “such as”, “excludes”, “for example”, or similar words are deemed to include “without limitation”; and (J) the word “or” is deemed to be an inclusive “or”; and (K) a party’s choices under this Agreement are in its sole discretion.
11.18 **Font Components.** While Prospect uses the Online Service, Prospect may use the fonts installed by the Online Service to display and print content. Prospect may only embed fonts in content as permitted by the embedding restrictions in the fonts and temporarily download them to a printer or other output device to print content.

11.19 **Non-Exclusive.** This Agreement is non-exclusive. Prospect is free to license, use, recommend, or support Non-Microsoft Products.

11.20 **Entire Agreement.** This Agreement (including the incorporated portions of the OST) is the entire agreement between Prospect and Microsoft with respect to the Online Service and it supersedes all prior or contemporaneous communications and proposals (electronic, oral, or written) between Prospect and Microsoft regarding its subject matter.

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