

MASTER SERVICE AGREEMENT – MICROSOFT CLOUD SOLUTION PROVIDER HOSTING

PLEASE READ THESE TERMS AND CONDITIONS VERY CAREFULLY BEFORE USING PLEXHOSTED PROVIDED MICROSOFT CLOUD SOLUTION PROVIDER SERVICES. IF YOU DO NOT ACCEPT THESE TERMS AND CONDITIONS, PLEASE CLOSE YOUR BROWSER AND DO NOT PROCEED WITH ORDERING OR USING THE SERVICES.

BY CLICKING "I AGREE", ORDERING AND/OR USING PLEXHOSTED SERVICES, YOU AGREE TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS OF THIS MASTER SERVICE AGREEMENT, THE ATTACHED APPENDIX A: MICROSOFT CLOUD SOLUTION PROVIDER – VOLUME LICENSING, THE PLEXHOSTED ACCEPTABLE USE POLICY, THE PLEXHOSTED SERVICE LEVEL AGREEMENT (THE "SERVICE LEVEL AGREEMENT" OR "SLA"), THE PLEXHOSTED PRIVACY POLICY AND THE PLEXHOSTED NO-SPAM POLICY, EACH OF WHICH MAY BE FOUND AT <http://www.plexhosted.com/company/legal.html> (COLLECTIVELY, THE "AGREEMENT").

(For present purposes, "Person" means an individual, corporation, company, cooperative, partnership, trust, unincorporated association, entity with juridical personality or governmental authority or body, and pronouns that refer to a Person shall have a similarly extended meaning. "Includes" and "including", when used in this Agreement, mean "including (or includes) without limitation")

THIS AGREEMENT is by and between PLEXHOSTED LLC, with offices at PO Box 149, Jamestown, RI 02835 ("PLEX"), and the recipient and payer of Services hereunder as identified as part of the subscription process for PLEX Services ("You" and, where appropriate, "Your", "Yours" or "Yourself").

PLEX and You agree as follows:

1. SCOPE; ACCESS; SECURITY

1.1 Provision of Services.

Subject to and in accordance with the terms of this Agreement, including any Appendices, PLEX grants You a non-exclusive, non-sub-licensable, non-transferable, non-assignable, revocable license for the term of this Agreement to access and use the Services. For present purposes, "Services" means such Microsoft Cloud Solution Provider services as Office 365, Azure, Mobile App, SharePoint Microsoft Dynamics CRM, and other Microsoft-hosted online services as PLEX may offer from time to time. Services may be used by Your users for internal business purposes only. You agree to comply with the terms and conditions of this Agreement, including any Appendices, and with all applicable PLEX procedures and policies that further define use of the Services. You acknowledge and agree that the actions of any of Your users with respect to the Services will be deemed to be actions by You and that any breach by any of Your users of the terms of this Agreement, including any Appendices, will be deemed to be a breach by You.

1.2 Account Information and Ownership.

You agree to maintain accurate Account information by providing updates to PLEX promptly, but no later than three (3) business days, when any of Your Account information requires change, including any relevant account contact or billing information. Failure by You, for any reason, to respond within three (3) business days to any inquiries made by PLEX to determine the validity of information provided by You will constitute a material breach of this Agreement. You acknowledge and agree, and expressly consent, that in the event of any dispute regarding access to or legal ownership of any PLEX account or any portion thereof, including Your account, PLEX will resolve such dispute in its sole discretion. In addition, in the event of such a dispute, PLEX may immediately suspend, alter or terminate any relevant account, including Your account, or any portion thereof. You will reimburse PLEX for any legal fees and other fees incurred with respect to any dispute regarding control or ownership of Your account or Your data or the same of another PLEX customer. You acknowledge and agree that (i) the legal owner of all Data on the Account is You, the counterparty to this Agreement, and not any individual User, including any Account contact registered with PLEX, regardless of any administrative designation (e.g., Administrator, Billing Contact, Owner, etc.) and (ii) PLEX may request any documentation it requires to establish ownership and rights to Your account and any related Data;

provided that any user with an administrative designation has the authority to bind You to any amendments, modifications or acknowledgements regarding this Agreement or otherwise relating to the Services.

1.3 Account Security and Activity.

You acknowledge and agree that You are solely responsible for (i) maintaining the confidentiality and security of Your account access information, and (ii) all activities that occur in connection with Your account, whether initiated by You, by others on Your behalf or by any other means. You will notify PLEX immediately of any unauthorized use of Your account, access Information or any other actual or potential breach of security. You acknowledge and agree that PLEX will not be liable for any loss that You may incur as a result of any party using Your access information, either with or without Your knowledge and/or authorization. You further agree that You may be held liable for losses incurred by PLEX, any PLEX party, or another party due to any party using Your access information. PLEX strongly recommends that You keep Your access information in a secure location, take precautions to prevent others from accessing it and change it when necessary to maintain its confidentiality and security. PLEX specifically disclaims all liability for any activity in Your account, whether authorized by You or not.

2. LAWFUL USE OF THE SERVICES

You agree to use all Services provided to You hereunder only for Your lawful, appropriate, and permitted internal purposes hereunder. In no event may You resell the Services. In addition, You may not use the Services if You are a competitor of PLEX (as determined by PLEX in its sole discretion). In the event that your use of the Services violates any law, rule or regulation or this Agreement, PLEX shall have the right to immediately terminate this Agreement and pursue any and all its other remedies.

3. TERM, TERMINATION, CANCELLATION POLICY

3.1 Term

The Agreement's "Term" is comprised of the Initial Term and any Renewal Term (each, as defined below).

- a. Monthly Plan Agreement Term. For monthly plans, the "Initial Term" is defined as the period from the date of your initial payment or execution of this Agreement, whichever occurs earlier, until the thirtieth (30th) day thereafter. "Renewal Terms" for monthly plans, are defined as the thirty (30) day period beginning at the end of the Initial Term and each subsequent thirty (30) day period thereafter.
- b. Prepaid Yearly Plan Agreement Term. For prepaid yearly plans, the "Initial Term" is defined as the period from the date of your initial payment or execution of this Agreement, whichever occurs earlier, through the end of the twelve (12) calendar month period thereafter. "Renewal Terms" for prepaid yearly plans are defined as the twelve (12) month period beginning at the end of the Initial Term and each subsequent twelve (12) month period thereafter.
- c. Defined Term Plan Agreement Term. For defined term plans, the "Initial Term" is defined as the period from the date of your initial payment or execution of this Agreement, whichever occurs earlier, until the end of such defined term. "Renewal Terms" for defined term plans are defined as the agreed term in months beginning at the end of the Initial Term and each subsequent defined term in months thereafter.
- d. Automatic Renewal. This Agreement shall renew automatically at the end of the Initial Term and each Renewal Term unless terminated in accordance with this Agreement either by You or by PLEX.
- e. In some cases, PLEX may offer a 30 day trial for the Services. If You choose to participate in the 30 day trial, You will order the Services in the usual and customary manner, and PLEX will delay billing for 30 days for those Services You choose and are offered under the 30 day trial. During the 30 day trial, You may cancel the Services in the usual and customary manner during the 30 day trial and PLEX will terminate those Services immediately with no charge to You for those Services. If you do not cancel the Services during the 30 day trial, PLEX will charge You the fees set forth in the order form created at the outset of the 30 day

trial per Section 4 below. No customer or customer organization may participate in a 30 day trial for a particular PLEX Service more than once annually.

3.2 Termination for convenience and cancellation policy

- a. Monthly Plan. You may terminate the Agreement for convenience at any time on fifteen (15) days advance notice by logging into the PLEX portal at - <https://plexhosted.com/billing/clientarea.php>. The termination effective date will be fifteen (15) days after receipt of the written notice. If You terminate for convenience a monthly plan prior to the end of the then current Term, PLEX shall not be required to refund You fees already paid and you will be charged the entire month in which the effective termination date occurs. For plans that are having a different billing cycle than monthly, such as a three (3) month or a six (6) month cycle, You shall be reimbursed for the unused month(s) after the termination effective date. In every case, only full months shall be reimbursed, no partial monthly fees shall be refunded.

For plans that terminate prior to the 12 month anniversary of Your use of the Services and include Data Migration at a 100% discount, as described in 4.2 Data Migration below, the associated Data Migration invoice received by you at the start of the plan, shall have the 100% discount removed and will become due and payable in full on the date you terminate the Services.

- b. Prepaid Yearly Term.
 - 1) For all Services with a prepaid yearly term contract, you may terminate the Agreement for convenience with a fifteen (15) day advance notice before the end of the Term by logging into the PLEX portal at - <https://plexhosted.com/billing/clientarea.php>. However, if the written notice is received after this required fifteen (15) days but before the end of the Term, PLEX may charge You a fee of \$15.00 to proceed with the cancellation.
 - 2) If you terminate your account for convenience prior to the end of the Term, PLEX will not reimburse any prepaid fees and/or if your account has automatically renewed and we did not receive your written notice on time, You will be charged for all the months remained unpaid.
- c. Defined Term Plan. You may terminate the Agreement for convenience at any time on ninety (90) days advance notice by logging into the PLEX portal at - <https://plexhosted.com/billing/clientarea.php>. The termination effective date will be ninety (90) days after receipt of the written notice. If You terminate for convenience such plan prior to the end of the then current Term, PLEX shall not be required to refund You fees already paid and You will be charged the entire ensuing ninety (90) day period before which the effective termination date occurs.

3.3 Termination by PLEX without cause

PLEX may terminate this Agreement without cause by providing written or electronic mail notice of termination to Your administrative email contact address not less than sixty (60) calendar days prior to the effective termination date.

- a. Monthly Plan. For monthly plans, if the effective termination date occurs prior to the end of the then current Term, PLEX shall refund or not charge You the monthly fees for the month in which Services terminate.
- b. Prepaid Yearly Term. If PLEX terminates a prepaid yearly term Agreement for convenience prior to the end of the then current Term without cause, a refund equal to the prepaid hosting fees attributable to the remaining month(s) PLUS the fee for the month in which the contract is terminated LESS any unpaid fees shall be issued within thirty (30) calendar days of account termination to the credit card on record at time of termination. This refund shall be Your sole and exclusive remedy and PLEX's entire aggregate liability for PLEX's early termination of the Agreement without cause.

- c. Defined Term Plan. If PLEX terminates a defined term plan Agreement for convenience prior to the end of the then current Term, PLEX shall refund or not charge You the fees attributable to the remaining unused months of the current Term.

3.4 Termination for Cause

- a. By You. To terminate Your account for PLEX's material breach of the terms or conditions of this Agreement, You shall provide to PLEX's legal department in writing, via email (legal@plexhosted.com) or via certified mail, the details of PLEX's material breach and allow PLEX thirty (30) days to cure any such violation prior to termination of this Agreement. You may only terminate this Agreement if PLEX fails to cure the alleged material breach within such thirty (30) day delay.
- b. PLEX may terminate any or all Services immediately and without prior notice (termination for cause) for any of the following reasons: any material breach of this agreement, which includes any failure to make payment when due, violation of the PLEX's Acceptable Use or No-Spam Policies; or any non-material breach of this Agreement which remains uncured beyond a reasonable time after breach notification; and failure to provide and keep current all administrative contact and billing information. In the event of termination for cause, PLEX shall not refund any paid fees. Termination for cause will not cancel or waive any fees owed to PLEX as per this Agreement.

3.5 Following Termination

TERMINATION OF YOUR ACCOUNT WILL NOT CANCEL OR WAIVE ANY FEES OWED TO PLEX AS PER THIS AGREEMENT. YOUR DATA AND ACCOUNT SETTINGS SHALL BE IRREVOCABLY DELETED 15 DAYS FROM THE DATE OF TERMINATION (OR AS OTHERWISE SET FORTH IN THE SLA) UNLESS YOU HAVE BY SUCH DATE PAID ALL AMOUNTS AND DAMAGES OWED TO PLEX, INCLUDING WEB SITE CONTENT, DATABASES, AND EMAIL MESSAGES. IT SHALL BE YOUR SOLE AND EXCLUSIVE RESPONSIBILITY TO SECURE ALL NECESSARY DATA FROM YOUR ACCOUNT PRIOR TO TERMINATION.

4. FEES, BILLING, TAXES, CHARGES

4.1 Fees

The fees set forth in the order form created at the outset of Your account shall be effective for the Initial Term and each Renewal Term of this Agreement, provided that PLEX shall have the right to increase these fees at any time upon thirty (30) days written notice to You. In the event that You do not agree with such fee increase, You shall have the right to terminate this Agreement upon thirty (30) days written notice, provided that such notice of termination must be received within thirty (30) days of date of notice of the fee increase. If You terminate the Services prior to the 12 month anniversary date of the Services first use, please note that You may be liable for Data Migration termination fees as described in 4.2 Data Migration bellow.

4.2 Data Migration.

In some cases PLEX may offer and You may accept data migration services to move Your designated data from an existing hosting environment to the new hosting environment for the purpose of using the Services described herein ("Data Migration"). In such cases and upon commencement of the Services, You will receive an invoice calculated at the prevailing Data Migration price per user for Data Migration with an associated one-hundred percent (100%) discount. In the event You terminate the Services prior to the 12 month anniversary of Your use, the 100% discount associated with the invoice for Data Migration will be removed and the invoice will become due and payable upon the date you terminate the Services. After the 12 month anniversary of Your use of the Services, the invoice for Data Migration will become null and void.

4.3 Billing and Payment Arrangements

PLEX will bill You on a monthly basis for all recurring fees. PLEX's payment preference is credit card as described below. Additionally and at PLEX's option You may request payment by check or wire transfer. For payment by wire transfer, all wire transfer fees are the responsibility of You, the sender. One-time fees, including late payment fees, invoice processing fees, and returned check fees may occur at any time. All plan or feature changes may be billed within a seven (7) day period. No refunds or adjustment shall be

issued for one-time fees. For recurring fees, no refund or adjustment for plan downgrades or elimination of plan features within the current monthly term shall be issued. INVOICES/PAYMENTS ARE IRREVOCABLY DEEMED FINAL AND ACCEPTED BY YOU THIRTY (30) DAYS FROM THE LATER OF WHEN (I) YOUR INVOICE IS ISSUED AND (II) YOU MAKE PAYMENT THEREOF (INCLUDING THROUGH YOUR CREDIT CARD AS AUTHORIZED HEREUNDER). YOU SHALL AT ALL TIMES PROVIDE AND KEEP CURRENT AND UP-TO-DATE YOUR CONTACT, CREDIT CARD, IF APPLICABLE, AND BILLING INFORMATION ON THE ADMINISTRATIVE CONTROL PANEL.

4.4 Payment by Credit Card

- a. For payment by credit card, PLEX shall provide an invoice to You. You may view and print the invoice for Your account using the Account Manager. At the beginning of each term, PLEX will apply the current monthly charges to Your credit card number which You entered into the Account Manager.
- b. It is Your responsibility to keep Your credit card information up-to-date at all times. Deleting Your credit card information at any time may be considered grounds for immediate termination. In the event charges to Your credit card fail, PLEX shall email a warning to Your account billing contact. If, after ten (10) days, PLEX is unable to bill Your credit card, PLEX may suspend Your access to or terminate any Services. During suspension, existing data will not be affected. After fifteen (15) days of non-payment from the date Your credit card was initially charged, PLEX shall have the right to immediately terminate this Agreement and delete all your Data as per the above.
- c. In the event You issue a chargeback or reversal of charges without first following the procedures in Section 3, the You will be responsible for a \$50.00 billing service fee.

4.5 Excessive use

You shall monitor and maintain Your accounts within all plan-specified limits and in a manner that does not disrupt the activities of other PLEX customers. In the event Your usage exceeds the limits for Your account or may disrupt the activities of other PLEX customers, You agree PLEX may, in its sole discretion, (i) charge You for such excess usage via Your credit card, or by invoice, (ii) upgrade You to a plan or increase the limits on Your account to address this excess usage, and/or (iii) suspend or terminate Your account for cause. Usage and associated charges for excess usage shall be determined based solely upon PLEX's collected usage information. Unused monthly allotments shall not accrue or carry over from one month to any other month. Upon any upgrade or increase on the limits of Your Account, You shall be responsible for the new costs and fees.

4.6 Taxes

You shall be liable for taxes, governmental fees and assessments to be paid related to fees and charges arising under this Agreement or in connection with the Services. You shall also pay all taxes, fees, and assessments of any nature associated with products or services sold through the use of or with the aid of the Services.

5. MODIFICATION OF TERMS

PLEX may update, amend, modify or supplement the terms and conditions of this Agreement from time to time by updating this Agreement on its web site. You are responsible for regularly reviewing the most current version of this Agreement at any time at <http://www.plexhosted.com/legal/>. If You continue to use the Services following any such amendment, modification or supplement, such use will be deemed acceptance of such update, amendment, modification or supplement by You. If at any time you do not agree with any amendment, modification or supplement to the terms and conditions of this Agreement, you may terminate this Agreement for convenience as per Section 3.2.

6. BETA PRODUCTS AND SERVICES

6.1 Provided "As Is"

This section applies only to customers with accounts created on experimental "Beta" plans and platforms. The Service Level Agreement does not apply to such "Beta" plans or platforms, and PLEX has no liability

whatsoever in relation to any such "Beta" plans or platforms or any related databases, web site content and email messages, whether direct or indirect or otherwise. Any use of "Beta" platforms or plans is at Your risk and peril, and you are strongly discouraged to use such accounts in production or in relation to sensitive data.

6.2 Upgrades

PLEX may upgrade software on "Beta" programs when and as PLEX deems necessary in its sole discretion. Without limitation, PLEX does not represent or warrant that new versions of the software installed on "Beta" programs will be compatible with the currently installed version or that loss of functionality or interruption of service will not occur as a result of such upgrades.

6.3 Termination

PLEX has the right to terminate any "Beta" program or plan at any time without cause or notice. PLEX may convert the "Beta" servers to a PLEX Services plan selected at PLEX's sole discretion. To discontinue the account and avoid incurring increased charges under selected PLEX Service plan, You must terminate the account in accordance with the termination provisions in Section 3 of this Agreement.

7. MATERIAL, DATA, SOFTWARE, OR PRODUCTS

7.1 Server Ready

Any material, data, software or products You provide to PLEX in connection with PLEX Services shall be server ready, meaning that they shall be in a condition and form, as determined solely by PLEX, which requires no additional manipulation or verification on the part of PLEX. Attempting to place or requesting placement of non-server-ready material, data, software or products on PLEX's servers shall be a material breach of this Agreement.

7.2 Rejection

PLEX may, in its sole discretion, reject material, data, software or products that You have placed, attempted to place, or have requested be placed on PLEX's servers. PLEX shall notify You of its rejection and provide You with an opportunity to amend or modify such material, data, software or products to meet the requirements of PLEX.

7.3 Malicious Code

Any material, data, software or products placed on PLEX's servers by or through You shall be free of any and all malicious code, including disabling devices, drop dead devices, time bombs, trap doors, trojan horses, worms, computer viruses and mechanisms that may disable or negatively impact the servers.

8. LIMITED WARRANTY, LIMITATION OF DAMAGES.

8.1 PLEX PROVIDES SERVICES ON AN "AS IS", "WHERE IS" BASIS, WITH ALL FAULTS, AND WITHOUT ANY WARRANTIES, CONDITIONS OR REPRESENTATIONS ALL OF WHICH ARE DISCLAIMED, WAIVED AND EXCLUDED. YOU EXPRESSLY AGREE THAT ANY AND ALL USE OF SERVICES IS AT YOUR RISK AND PERIL. ALL WARRANTIES, CONDITIONS AND REPRESENTATIONS OF ANY KIND, WHETHER EXPRESS, IMPLIED OR LEGAL, WHETHER ARISING BY LAW, CONTRACT, STATUTE, USAGE OF TRADE, CUSTOM, COURSE OF DEALING OR PERFORMANCE, OR THE PARTIES' CONDUCT OR COMMUNICATIONS WITH ONE ANOTHER, OR WHETHER ARISING AS RESULT OF THE NATURE OF THIS AGREEMENT OR IN CONFORMITY WITH USAGE, EQUITY OR LAW, OR OTHERWISE, INCLUDING ANY AND ALL WARRANTIES, CONDITIONS AND REPRESENTATIONS OF TITLE, OWNERSHIP (INCLUDING BUT NOT LIMITED TO THE WARRANTY THAT THE RELEVANT PROPERTY IS FREE OF ANY OTHER RIGHTS OR CHARGES), NON-INFRINGEMENT, SATISFACTORY QUALITY, MERCHANTABILITY AND FITNESS FOR A PARTICULAR OR GENERAL PURPOSE, QUALITY AND WORKMANSHIP, ARE HEREBY DISCLAIMED, WAIVED AND EXCLUDED.

8.2 TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AND NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, YOU AGREE THAT PLEX'S (AND THAT OF ITS SUBSIDIARIES, AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, PARTNERS, MANDATARIES, VENDORS AND LICENSORS) TOTAL MAXIMUM AGGREGATE CUMULATIVE LIABILITY, FOR ALL

PAST, PRESENT OR FUTURE CLAIMS, DEMANDS, FINES, PENALTIES, ACTIONS, CAUSES OF ACTIONS, REQUESTS, LAWSUITS, JUDGMENTS, DAMAGES, LIABILITIES COSTS, EXPENSES, PREJUDICES OR LOSSES, INCLUDING REASONABLE ATTORNEYS FEES ("CLAIMS") ARISING AS A RESULT OF OR IN RELATION TO THIS AGREEMENT, SHALL BE LIMITED TO ACTUAL AND DIRECT DAMAGES AND SHALL NOT, UNDER ANY CIRCUMSTANCES, EXCEED, IN THE AGGREGATE FOR ALL CLAIMS BY ANY AND ALL PERSONS, 100% OF ALL FEES ACTUALLY PAID TO PLEX BY YOU UNDER THIS AGREEMENT FOR THE ONE MONTH PRIOR TO THE EVENT GIVING RISE TO THE CLAIM.

8.3 PLEX AND ITS SUBSIDIARIES, AFFILIATES, OFFICERS, EMPLOYEES, AGENTS, PARTNERS, MANDATARIES, VENDORS AND LICENSORS SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR FOR DAMAGES FOR LOST PROFITS, GAINS OR OPPORTUNITIES, BUSINESS INTERRUPTION, LOSS OF PROGRAMS OR INFORMATION, AND THE LIKE, REGARDLESS OF WHETHER PLEX HAS BEEN ADVISED OF SUCH DAMAGES OR THEIR POSSIBILITY.

8.4 You agree that Your recourses and remedies and PLEX's (and its SUBSIDIARIES', AFFILIATES', OFFICERS', EMPLOYEES', AGENTS', PARTNERS', MANDATARIES', VENDORS' AND LICENSORS') liability hereunder may be further limited by the Service Level Agreement.

8.5 You are fully responsible for the content of the information and data passing through PLEX's network or using the Services and for all activities that You conduct with the assistance of the Services.

9. PATENTS, COPYRIGHTS, TRADEMARKS, AND OTHER INTELLECTUAL AND PROPRIETARY RIGHTS

9.1 Except for rights expressly granted herein, this Agreement does not transfer any intellectual or other property or proprietary right to You. All right, title, and interest in any product or service provided to You is solely the property of PLEX and its vendors and licensors. These products and services are only for Your use in connection with the Services.

9.2 You hereby represent and warrant to PLEX that You have the right to use any patented, copyrighted, trademarked or proprietary material which You use, post, or otherwise transfer to or by way of PLEX servers.

10. HARDWARE, EQUIPMENT, AND SOFTWARE

You are responsible for and must provide all phones, phone services, computers, software, hardware, and other services necessary to access the Services. PLEX makes no representations, warranties, or assurances that Your equipment will be compatible with PLEX services.

11. INDEMNIFICATION

You shall indemnify, defend and hold harmless PLEX (and its subsidiaries, affiliates, officers, employees, agents, partners, mandataries, vendors and licensors) of any and all Claims (including third party Claims) arising as a result of or in relation to any breach of this Agreement or fault by You, or in relation to any activities conducted by You through the Services, or otherwise in relation to Your products or services.

12. MISCELLANEOUS

12.1 Governing Law, Jurisdiction, Forum, Attorneys' Fees

This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia, USA without regard to its conflicts of laws or its principles. The courts of the State of Georgia or the federal courts of the USA situated therein, as applicable, shall have sole and exclusive jurisdiction over any action, claim, demand, proceeding or lawsuit whatsoever arising under or in relation to this Agreement or its subject matter. The parties irrevocably agree, consent and submit themselves to the subject matter and personal jurisdiction of the courts of the State of Georgia and of the federal courts of the USA situated therein for such purposes. This choice of jurisdiction does not prevent either Party from seeking injunctive relief with respect to a violation, infringement or misappropriation of intellectual property rights or confidentiality obligations in any jurisdiction.

12.2 Severability

In the event that any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any of the other provisions of this Agreement, and this Agreement shall be construed as if such provision(s) had never been contained herein, provided that such provision(s) shall be curtailed, limited, or eliminated only to the extent necessary to remove the invalidity, illegality, or unenforceability.

12.3 Waiver

No waiver by PLEX of any breach by You of any of the provisions of this Agreement shall be deemed a waiver of any preceding or succeeding breach of this Agreement. No such waiver shall be effective unless it is in writing signed by the parties hereto, and then only to the extent expressly set forth in such writing. No modification of this Agreement shall be effective unless it is in writing and signed by PLEX, and then only to the extent set forth in such writing. We may modify or amend this Agreement, including the Service Level Agreement and the rates and fees, from time to time. Unless otherwise provided in this Agreement, all such modifications or amendments shall be effective immediately upon posting on the Website. You may request a copy of the revised Agreement by emailing us at legal@plexhosted.com. YOUR CONTINUED USE OF YOUR ACCOUNT AND/OR THE SERVICES AFTER THE NOTICE PERIOD WILL BE CONCLUSIVELY DEEMED TO BE ACCEPTANCE BY YOU OF ANY SUCH MODIFICATIONS OR AMENDMENTS.

12.4 Assignment

Neither party may assign or transfer this Agreement or any rights or obligations hereunder, in whole or in part, except with the prior written consent of the other party, which shall not be unreasonably withheld; provided that PLEX may assign or transfer this Agreement, or any rights or obligations hereunder, in whole or in part: (i) to an affiliate of PLEX, (ii) in connection with a merger, amalgamation or sale of all or a substantial part of the business of PLEX, or (iii) for financing, securitization or other similar purposes, which assignments and/or transfers shall operate novation and discharge PLEX hereunder. A change of control of You shall be deemed to be an assignment and transfer hereunder and shall be governed by the requirements of this provision.

12.5 Excused Performance

Except for monetary obligations, this Agreement and Your obligations hereunder shall not be affected or impaired because PLEX is unable to fulfill any of its obligations hereunder or is delayed in doing so, if such inability or delay is caused by reason of circumstances beyond PLEX's control (including failure of a part of the power grid, failure of the Internet, natural disaster, war, riot, insurrection, epidemic, strikes or other organized labor action, terrorism, or other events of a magnitude or type for which precautions are not generally taken in the industry) and PLEX's obligations under this Agreement shall be suspended and excused by any such events or circumstances.

12.6 Survival

Sections 8, 9, 11 and this Section 12 of this Agreement shall survive termination.

12.7 Entire Agreement

This Agreement constitutes the entire agreement for provision of the Services to You and supersedes all other prior agreements and understandings, both written and oral, between You and PLEX with respect to the Services. You understand and agree that PLEX and You intend to include, as the sole third party beneficiaries of this Agreement, PLEX's software vendors, with all rights and remedies available as if such vendors were a party to this Agreement.

APPENDIX 1: Microsoft Cloud Agreement

This Microsoft Cloud Agreement is between the entity you represent, or, if you do not designate an entity in connection with a Subscription purchase or renewal, you individually (“you” or “your”), and Microsoft Corporation (“Microsoft”, “we”, “us”, or “our”). It consists of the terms and conditions below, as well as the Online Services Terms, and the SLA (together, the “agreement”). It is effective on the date that your Reseller provisions your Subscription. Key terms are defined in Section 11.

1. *Use of Online Services.*

- a. **Right to use.** We grant you the right to access and use the Online Services and to install and use the Software included with your Subscription, as further described in this agreement. We reserve all other rights.
- b. **Choosing a Reseller.** You must choose and maintain a Reseller authorized within your region. If Microsoft or Reseller chooses to discontinue doing business with each other, you must choose a replacement Reseller or purchase a Subscription directly from Microsoft, which may require you to accept different terms.
- c. **Reseller Administrator Access and Customer Data.** You acknowledge and agree that (i) once you have chosen a Reseller, that Reseller will be the primary administrator of the Online Services for the Term and will have administrative privileges and access to Customer Data, however, you may request additional administrator privileges from your Reseller; (ii) Reseller’s privacy practices with respect to Customer Data or any services provided by Reseller may differ from Microsoft’s privacy practices; and (iii) Reseller may collect, use, transfer, disclose, and otherwise process Customer Data, including personal data. You consent to Microsoft providing Reseller with Customer Data and information that you provide to Microsoft for purposes of ordering, provisioning and administering the Online Services.
- d. **Acceptable use.** You may use the Product only in accordance with this agreement. You may not reverse engineer, decompile, disassemble, or work around technical limitations in the Product, except to the extent applicable law permits it despite these limitations. You may not disable, tamper with, or otherwise attempt to circumvent any billing mechanism that meters your use of the Online Services. You may not rent, lease, lend, resell, transfer, or host the Product, or any portion thereof, to or for third parties except as expressly permitted in the Online Services Terms.
- e. **End Users.** You control access by End Users, and you are responsible for their use of the Product in accordance with this agreement. For example, you will ensure End Users comply with the Acceptable Use Policy.
- f. **Customer Data.** You are solely responsible for the content of all Customer Data. You will secure and maintain all rights in Customer Data necessary for us to provide the Online Services to you without violating the rights of any third party or otherwise obligating Microsoft to you or to any third party. Microsoft does not and will not assume any obligations with respect to Customer Data or to your use of the Product other than as expressly set forth in this agreement or as required by applicable law.
- g. **Responsibility for your accounts.** You are responsible for maintaining the confidentiality of any non-public authentication credentials associated with your use of the Online Services. You must promptly notify customer support about any possible misuse of your accounts or authentication credentials or any security incident related to the Online Services.
- h. **Eligibility for Academic, Government and Nonprofit versions.** You agree that if you are purchasing an academic, government or nonprofit offer, you meet the respective eligibility requirements listed at the following sites:

- (i) For academic offers, the requirements for educational institutions (including administrative offices or boards of education, public libraries, or public museums) listed at <http://go.microsoft.com/academic>;
- (ii) For government offers, the requirements listed at <http://go.microsoft.com/government>; and
- (iii) For nonprofit offers, the requirements listed at <http://go.microsoft.com/nonprofit>.

Microsoft reserves the right to verify eligibility at any time and suspend the Online Service if the eligibility requirements are not met.

- i. **Preview releases.** We may make Previews available. **Previews are provided “as-is,” “with all faults,” and “as-available,” and are excluded from the SLA and all limited warranties provided in this agreement.** Previews may not be covered by customer support. Previews may be subject to reduced or different security, compliance, and privacy commitments, as further explained in the Online Services Terms and any additional notices provided with the Preview. We may change or discontinue Previews at any time without notice. We also may choose not to release a Preview into “General Availability.”

2. **Subscriptions, ordering.**

- a. **Available Subscription offers.** The Subscription offers available to you will be established by your Reseller and generally can be categorized as one or a combination of the following:
 - (i) **Commitment Offering.** You commit in advance to purchase a specific quantity of Online Services for use during a Term and to pay upfront or on a periodic basis in advance of use.
 - (ii) **Consumption Offering (also called Pay-As-You-Go).** You pay based on actual usage with no upfront commitment.
 - (iii) **Limited Offering.** You receive a limited quantity of Online Services for a limited term without charge (for example, a free trial) or as part of another Microsoft offering (for example, MSDN). Provisions in this agreement with respect to the SLA and data retention may not apply.
- b. **Ordering.**
 - (i) Orders must be placed through your designated Reseller. You may place orders for your Affiliates under this agreement and grant your Affiliates administrative rights to manage the Subscription, but, Affiliates may not place orders under this agreement. You also may assign the rights granted under Section 1.a to a third party for use by that third party in your internal business. If you grant any rights to Affiliates or third parties with respect to Software or your Subscription, such Affiliates or third parties will be bound by this agreement and you agree to be jointly and severally liable for any actions of such Affiliates or third parties related to their use of the Products.
 - (ii) Your Reseller may permit you to modify the quantity of Online Services ordered during the Term of a Subscription. Additional quantities of Online Services added to a Subscription will expire at the end of that Subscription.
- c. **Pricing and payment.** Prices for each Product and any terms and conditions for invoicing and payment will be established by your Reseller.
- d. **Renewal.**
 - (i) Upon renewal of your Subscription, you may be required to sign a new agreement, a supplemental agreement or an amendment to this agreement.
 - (ii) Your Subscription will automatically renew unless you provide your Reseller with notice of your intent not to renew prior to the expiration of the Term.
- e. **Taxes.** The parties are not liable for any of the taxes of the other party that the other party is legally obligated to pay and which are incurred or arise in connection with or related to the

transactions contemplated under this agreement, and all such taxes will be the financial responsibility of the party who is obligated by operation of law to pay such tax.

3. *Term, termination, and suspension.*

- a. Agreement term and termination.** This agreement will remain in effect until the expiration or termination of your Subscription, whichever is earliest. You may terminate this agreement at any time by contacting your Reseller. The expiration or termination of this agreement will only terminate your right to place new orders for additional Products under this agreement.
- b. Cancellation or transfer of Subscription.** Your Reseller will establish the terms and conditions, if any, upon which you may cancel or transfer a Subscription.
- c. Suspension.** We may suspend your use of the Online Services if: (1) it is reasonably needed to prevent unauthorized access to Customer Data; (2) you fail to respond to a claim of alleged infringement under Section 6 within a reasonable time; or (3) you do not abide by the Acceptable Use Policy or you violate other terms of this agreement. If one or more of these conditions occurs, then:
 - (i)** For Limited Offerings, we may suspend your use of the Online Services or terminate your Subscription and your account immediately without notice.
 - (ii)** For all other Subscriptions, a suspension will apply to the minimum necessary part of the Online Services and will be in effect only while the condition or need exists. We will give notice to the named administrators for your Subscription, which may be you and/or your Reseller, before we suspend, except where we reasonably believe we need to suspend immediately. If you do not fully address the reasons for the suspension within 60 days after we suspend, we may terminate your Subscription and delete your Customer Data without any retention period. We may also terminate your Subscription if your use of the Online Services is suspended more than twice in any 12-month period.

4. *Security, privacy, and data protection.*

- a.** You consent to the processing of personal information by Microsoft and its agents to facilitate the subject matter of this agreement. You may choose to provide personal information to Microsoft on behalf of third parties (including your contacts, resellers, distributors, administrators, and employees) as part of this agreement. You will obtain all required consents from third parties under applicable privacy and data protection laws before providing personal information to Microsoft.
- b.** Additional privacy and security details are in the Online Services Terms. The commitments made in the Online Services Terms only apply to the Online Services purchased under this agreement and not to any services or products provided by your Reseller.
- c.** You consent and authorize Microsoft (and its service providers and subcontractors), at Reseller's direction or as required by law, to access and disclose to law enforcement or other government authorities data from, about or related to you, including the content of communications (or to provide law enforcement or other government entities access to such data).
- d.** As and to the extent required by law, you shall notify the individual users of the Online Services that their data may be processed for the purpose of disclosing it to law enforcement or other governmental authorities as directed by Reseller or as required by law, and you shall obtain the users' consent to the same.
- e.** You appoint Reseller as your agent for purposes of interfacing with and providing instructions to Microsoft for purposes of this Section 4.

5. **Warranties.**

a. **Limited warranty.**

- (i) **Online Services.** We warrant that the Online Services will meet the terms of the SLA during the Term. Your only remedies for breach of this warranty are those in the SLA.
- (ii) **Software.** We warrant for one year from the date you first use the Software that it will perform substantially as described in the applicable user documentation. If Software fails to meet this warranty we will, at our option and as your exclusive remedy, either (1) return the price paid for the Software or (2) repair or replace the Software.

b. **Limited warranty exclusions.** This limited warranty is subject to the following limitations:

- (i) any implied warranties, guarantees or conditions not able to be disclaimed as a matter of law will last one year from the start of the limited warranty;
- (ii) this limited warranty does not cover problems caused by accident, abuse or use of the Products in a manner inconsistent with this agreement or our published documentation or guidance, or resulting from events beyond our reasonable control;
- (iii) this limited warranty does not apply to problems caused by a failure to meet minimum system requirements; and
- (iv) this limited warranty does not apply to Previews or Limited Offerings.

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

6. **Defense of claims.**

a. **Defense.**

- (i) We will defend you against any claims made by an unaffiliated third party that a Product infringes that third party's patent, copyright or trademark or makes unlawful use of its trade secret.
- (ii) You will defend us against any claims made by an unaffiliated third party that (1) any Customer Data, Customer Solution, or Non-Microsoft Products, or services you provide, directly or indirectly, in using a Product infringes the third party's patent, copyright, or trademark or makes unlawful use of its trade secret; or (2) arises from violation of the Acceptable Use Policy.

b. **Limitations.** Our obligations in Section 6.a won't apply to a claim or award based on: (i) any Customer Solution, Customer Data, Non-Microsoft Products, modifications you make to the Product, or services or materials you provide or make available as part of using the Product; (ii) your combination of the Product with, or damages based upon the value of, Customer Data, or a Non-Microsoft Product, data, or business process; (iii) your use of a Microsoft trademark without our express written consent, or your use of the Product after we notify you to stop due to a third-party claim; (iv) your redistribution of the Product to, or use for the benefit of, any unaffiliated third party; or (v) Products provided free of charge.

c. **Remedies.** If we reasonably believe that a claim under Section 6.a.(i) may bar your use of the Product, we will seek to: (i) obtain the right for you to keep using it; or (ii) modify or replace it with a functional equivalent and notify you to stop use of the prior version of the Product. If these options are not commercially reasonable, we may terminate your rights to use the Product and then refund any advance payments for unused Subscription rights.

d. **Obligations.** Each party must notify the other promptly of a claim under this Section 6. The party seeking protection must (i) give the other sole control over the defense and settlement of

the claim; and (ii) give reasonable help in defending the claim. The party providing the protection will (1) reimburse the other for reasonable out-of-pocket expenses that it incurs in giving that help and (2) pay the amount of any resulting adverse final judgment or settlement. The parties' respective rights to defense and payment of judgments (or settlement the other consents to) under this Section 6 are in lieu of any common law or statutory indemnification rights or analogous rights, and each party waives such common law or statutory rights.

7. Limitation of liability.

- a. Limitation.** The aggregate liability of each party for all claims under this agreement is limited to direct damages up to the amount paid under this agreement for the Online Service during the 12 months before the cause of action arose; provided, that in no event will a party's aggregate liability for any Online Service exceed the amount paid for that Online Service during the Subscription. For Products provided free of charge, Microsoft's liability is limited to direct damages up to \$5,000.00 USD.
- b. EXCLUSION.** Neither party will be liable for loss of revenue or indirect, special, incidental, consequential, punitive, or exemplary damages, or damages for lost profits, revenues, business interruption, or loss of business information, even if the party knew they were possible or reasonably foreseeable.
- c. Exceptions to limitations.** The limits of liability in this Section apply to the fullest extent permitted by applicable law, but do not apply to: (1) the parties' obligations under Section 6; or (2) violation of the other's intellectual property rights.

8. Software.

- a. Additional Software for use with the Online Services.** To enable optimal access and use of certain Online Services, you may install and use certain Software in connection with your use of the Online Service. The number of copies of the Software you will be permitted to use or the number of devices on which you will be permitted to use the Software will be as described in the Online Services Terms in the product specific license terms for the Online Service. We may check the version of the Software you are using and recommend or download updates, with or without notice, to your devices. Failure to install updates may affect your ability to use certain functions of the Online Service. You must uninstall the Software when your right to use it ends. We may also disable it at that time. Your rights to access Software on any device do not give you any right to implement Microsoft patents or other Microsoft intellectual property in software or devices that access that device.
- b. License confirmation.** Proof of your Software license is (1) this agreement, (2) any order confirmation, and (3) proof of payment.
- c. License rights are not related to fulfillment of Software media.** Your acquisition of Software media or access to a network source does not affect your license to Software obtained under this agreement. We license Software to you, we do not sell it.
- d. Transferring and assigning licenses.** License transfers are not permitted.

9. Support.

Support services for Products purchased under this agreement will be provided by your Reseller.

10. *Miscellaneous.*

- a. **Notices.** You must send notices by mail, return receipt requested, to the address below.

Notices should be sent to:	Copies should be sent to:
Microsoft Corporation Volume Licensing Group One Microsoft Way Redmond, WA 98052 USA Via Facsimile: (425) 936-7329	Microsoft Corporation Legal and Corporate Affairs Volume Licensing Group One Microsoft Way Redmond, WA 98052 USA Via Facsimile: (425) 936-7329

You agree to receive electronic notices from us, which will be sent by email to the account administrator(s) named for your Subscription. Notices are effective on the date on the return receipt or, for email, when sent. You are responsible for ensuring that the email address for the account administrator(s) named for your Subscription is accurate and current. Any email notice that we send to that email address will be effective when sent, whether or not you actually receive the email.

- b. **Assignment.** You may not assign this agreement either in whole or in part. Microsoft may transfer this agreement without your consent, but only to one of Microsoft's Affiliates. Any prohibited assignment is void.
- c. **Severability.** If any part of this agreement is held unenforceable, the rest remains in full force and effect.
- d. **Waiver.** Failure to enforce any provision of this agreement will not constitute a waiver.
- e. **No agency.** This agreement does not create an agency, partnership, or joint venture.
- f. **No third-party beneficiaries.** There are no third-party beneficiaries to this agreement.
- g. **Applicable law and venue.** This agreement is governed by Washington law, without regard to its conflict of laws principles, except that (i) if you are a U.S. Government entity, this agreement is governed by the laws of the United States, and (ii) if you are a state or local government entity in the United States, this agreement is governed by the laws of that state. Any action to enforce this agreement must be brought in the State of Washington. This choice of jurisdiction does not prevent either party from seeking injunctive relief in any appropriate jurisdiction with respect to violation of intellectual property rights.
- h. **Entire agreement.** This agreement is the entire agreement concerning its subject matter and supersedes any prior or concurrent communications. In the case of a conflict between any documents in this agreement that is not expressly resolved in those documents, their terms will control in the following order of descending priority: (1) this Microsoft Online Subscription Agreement, (2) the Online Services Terms, and (3) any other documents in this agreement.
- i. **Survival.** The terms in Sections 1, 2.e, 5, 6, 7, 10 and 11 will survive termination or expiration of this agreement.
- j. **U.S. export jurisdiction.** The Products are subject to U.S. export jurisdiction. You must comply with all applicable laws, including the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, and end-user, end-use and destination restrictions issued by U.S. and other governments. For additional information, see <http://www.microsoft.com/exporting/>.
- k. **Force majeure.** Neither party will be liable for any failure in performance due to causes beyond that party's reasonable control (such as fire, explosion, power blackout, earthquake, flood, severe storms, strike, embargo, labor disputes, acts of civil or military authority, war, terrorism

(including cyber terrorism), acts of God, acts or omissions of Internet traffic carriers, actions or omissions of regulatory or governmental bodies (including the passage of laws or regulations or other acts of government that impact the delivery of Online Services)). This Section will not, however, apply to your payment obligations under this agreement.

- I. **Contracting authority.** If you are an individual accepting these terms on behalf of an entity, you represent that you have the legal authority to enter into this agreement on that entity's behalf.

11. Definitions.

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

"Acceptable Use Policy" is set forth in the Online Services Terms.

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

"Consumption Offering", "Commitment Offering", or "Limited Offering" describe categories of Subscription offers and are defined in Section 2.

"Customer Data" is defined in the Online Services Terms.

"Customer Solution" is defined in the Online Services Terms.

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

"Non-Microsoft Product" is defined in the Online Services Terms.

"Online Services" means any of the Microsoft-hosted online services subscribed to by Customer under this agreement, including Microsoft Dynamics Online Services, Office 365 Services, Microsoft Azure Services, or Microsoft Intune Online Services.

"Online Services Terms" means the terms that apply to your use of the Products available at <http://www.microsoft.com/licensing/onlineuserights>. The Online Services Terms include terms governing your use of Products that are in addition to the terms in this agreement.

"Previews" means preview, beta, or other pre-release version or feature of the Online Services or Software offered by Microsoft to obtain customer feedback.

"Product" means any Online Service (including any Software).

"Reseller" means an entity authorized by Microsoft to resell Software licenses and Online Service Subscriptions under this program and engaged by you to provide assistance with your Subscription.

"SLA" means the commitments we make regarding delivery and/or performance of an Online Service, as published at <http://www.microsoft.com/volumelicensing/csla>, or at an alternate site that we identify.

"Software" means software we provide for installation on your device as part of your Subscription or to use with the Online Service to enable certain functionality.

"Subscription" means an enrollment for Online Services for a defined Term as established by your Reseller.

"Term" means the duration of a Subscription (e.g., 30 days or 12 months).