

## MICROSOFT SAM MANAGED SERVICE PROGRAM CUSTOMER TERMS AND CONDITIONS

This SAM Managed Service Program Customer Terms and Conditions (“**Program Terms**”) is between Microsoft Corporation (“**Microsoft**”) and the party agreeing to these Program Terms (“**Customer**”, “**you**” or “**your**”).

**By participating in the SAM Managed Service Program (“Program”) you agree (on behalf of the company you represent) to be bound by these Program Terms. Your participation in this Program is voluntary. If you do not agree to these Program Terms, do not participate in the Program.**

The Program Terms consist of the Terms and Conditions below and the Program Letter provided to you by Microsoft.

### TERMS AND CONDITIONS

#### SECTION 1 Program benefits

Program benefits will be set forth in the Program Participation Letter provided to you by Microsoft and described in more detail below (“**Program Benefits**”). These Program Benefits are subject to change as provided in Section 4 below.

- **Licensing flexibility and optimization that only Microsoft can offer:** Microsoft can assist you with a flexible path for licensing the products you need and set you up for future license optimization success.
- **A reduced risk of audit:** Microsoft will notify our License Contract and Compliance team that your organization is part of the Program, reducing your risk of being selected for an audit. You acknowledge that your participation in the Program does not mean that you will not be audited.
- **Ongoing product End-of-Support consultation:** Your Accredited Provider will work with you to analyze all Microsoft products in your infrastructure that are already at their end of support or are coming up to their end of support milestone and help you develop a migration plan.
- **One strategic consultation, such as cybersecurity, cloud, or other:** Based on the data insights from your participation in the Program, your Accredited Provider will provide you with an in-depth analysis on a specific topic of strategic interest to you, as defined in your agreement with your Accredited Provider.
- **Ongoing SAM maturity tracking:** Your Accredited Provider will review your current SAM maturity level annually, provide areas for improvement, and monitor your progress to establishing the best possible SAM policies and procedures for your business, as defined in your agreement with your Accredited Provider.
- **Potential additional local benefits:** Local Program benefits may or may not be available and may vary by region. Some Program benefits available in some locations may not be available in others.

#### SECTION 2 Customer obligations and eligibility

In order to participate in the Program, you agree to the following: (a) you will continuously maintain valid licensing agreements with Microsoft (“**Licensing Agreements**”); and (b) you will at all times satisfy the Program participation criteria set forth in these Program Terms or otherwise provided by Microsoft, including:

- You will continuously maintain a valid separate agreement with an Accredited Provider of the Microsoft SAM Managed Service Program (“**SAM Provider**”) for the provision of the following minimum SAM Managed Services (“**SAM Managed Services**”):
  - Ongoing SAM consultation;
  - At least one value added services using the Data;
  - End of Support guidance every 6 months at a minimum, highlighting versioning and patching;
  - License optimization and SAM maturity roadmap annually at a minimum, comparing Data over time to show variances; and
  - Additional local requirements as publicly outlined by the local Microsoft team.
- You must make a minimum 1 year commitment to the SAM Managed Services, with the intent to renew.
- You will share complete, enterprise-wide, inventory/deployment data for all Microsoft products and associated products specifically related to Microsoft virtualization environments across your and your affiliates’

organization (collectively the “Data”) with your SAM Provider (who will share such Data with Microsoft) within 90 days of signing an agreement with an Accredited Provider to provide the SAM Managed Services.

- You will share complete, enterprise-wide, Data with your SAM Provider (who will share such Data with Microsoft) not less than once every 6 months.
- You will not manipulate the Data in any way, or uninstall any software, before providing the Data to Partner. All Data submitted to the SAM Provider (and to Microsoft via the SAM Provider) will be, to the best of your knowledge, true, complete and correct.
- You are not in breach of this or any agreement with Microsoft (or any Microsoft affiliate), including any refusal to participate in an audit or missed payment.
- If you have received an audit notification from Microsoft or the BSA or are in the process of an ongoing audit with Microsoft or the BSA, you must complete the audit before participating in the Program.

You will promptly notify your SAM engagement manager and SAM Provider if you no longer satisfy any of the above referenced criteria.

### **SECTION 3 Fees and expenses**

Each party is responsible for its own costs and expenses associated with the Program. You are not entitled to any fees or other compensation from Microsoft for its participation in the Program, including any fees charged by any SAM Provider providing services in connection with the Program.

### **SECTION 4 Program changes**

Microsoft may change the Program or any aspect of it at any time. Microsoft will give you 14 days’ email or other written notice of any substantive changes to the Program Benefits to the address at which you received your Program Participation Letter or current contact address on file. You are responsible to review these Program Terms regularly for all other changes, which are effective on the date they are posted. Changes do not apply retroactively.

### **SECTION 5 Customer data**

Customer consents to the terms of the SAM Engagement Data Usage and Privacy Information document located at <https://aka.ms/IAMdatausage>. Customer also consents to: (a) Accredited Provider’s transfer of the Data, including any encrypted Personal Information captured within the Data, to Microsoft and any of Microsoft’s Affiliates in the United States; (b) Microsoft or any of Microsoft’s Affiliates to transfer of the Data, including the encrypted Personal Information, to Microsoft’s authorized subprocessors or agents in any country where they may be located; and (c) Microsoft, any of Microsoft’s Affiliates and/or Microsoft’s authorized subprocessors use, collection, transfer, copying, backup, storage, and processing of the Data, including the encrypted Personal Information, in connection with the Program.

### **SECTION 6 Disclaimer of warranty; limitation of liability**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, MICROSOFT DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, AS TO ANY MATTER WHATSOEVER, INCLUDING ANY (IF ANY) IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, OF FITNESS FOR A PARTICULAR PURPOSE, OF REASONABLE CARE OR WORKMANLIKE EFFORT, OF LACK OF NEGLIGENCE, OF ACCURACY OR COMPLETENESS OF RESPONSES, OR OF TITLE OR NON-INFRINGEMENT, AND IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE IN CONNECTION WITH THE PROGRAM. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL MICROSOFT BE LIABLE TO CUSTOMER FOR ANY PUNITIVE, EXEMPLARY, SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOST BUSINESS OPPORTUNITIES, LOSS OF USE OR EQUIPMENT DOWN TIME, AND LOSS OF OR CORRUPTION TO DATA) ARISING OUT OF OR RELATING TO THE PROGRAM, REGARDLESS OF THE LEGAL THEORY UNDER WHICH SUCH DAMAGES ARE SOUGHT, AND EVEN IF CUSTOMER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSS. MICROSOFT’S AGGREGATE LIABILITY FOR ALL CLAIMS, ACTIONS AND/OR OMISSIONS ARISING FROM OR RELATED TO THE PROGRAM WILL NOT EXCEED US FIVE THOUSAND DOLLARS (US\$5,000).

### **SECTION 7 Confidentiality**

At all times during the Term, and for five years thereafter, you will hold in strictest confidence, and will not use or disclose to any third party, any non-public information that Microsoft designates, either in writing or orally, as being confidential, or which, under the circumstances of disclosure ought to be treated as confidential, including these Program Terms.

## **SECTION 8 Termination**

Your participation in the Program may be terminated by Microsoft for your material breach of this or any other agreement you maintain with Microsoft (or any Microsoft affiliate).

- If Microsoft determines, in its sole discretion, that you have manipulated Data or uninstalled software in violation of these Program Terms, your participation in the Program will be terminated immediately.
- If you fail to provide complete Data on agreed upon dates, your participation in the Program may be terminated immediately.
- If you do not comply with the Program participation requirements contained in these Program Terms, your participation in the Program may be terminated immediately.
- For all other breaches, Microsoft may terminate your participation in the Program if you fail to remedy the breach within thirty (30) days after written notice thereof.

Your participation in the Program may also be terminated by Microsoft if: (1) the Program is discontinued; or (2) your SAM Provider discontinues your SAM Services and you do not transition to an alternative SAM Provider. In the case of (2), your SAM engagement manager can discuss your options and identify next steps.

Upon termination of your participation in the Program, all Program Benefits and support will terminate immediately, and all rights and obligations under these Program Terms terminate, except for the following Sections which survive: Sections 3, 5, 6, 7, 9.

## **SECTION 9 General**

Except as otherwise provided herein, all notices, authorizations, and requests in connection with these Program Terms will be deemed given as of the day they are sent either by messenger or delivery service, charges prepaid, or the day they are deposited in the United States of America mails, postage prepaid, certified or registered, return receipt requested; and addressed, in the case of Customer, to the email address provided by your SAM Provider, or, in the case of Microsoft, to your SAM engagement manager. The laws of the State of Washington govern the Program and these Program Terms. If federal jurisdiction exists, the parties consent to exclusive jurisdiction and venue in the federal courts in King County, Washington. If not, the parties consent to the exclusive jurisdiction and venue in the Superior Court of King County, Washington. Customer may not assign these Program Terms, or any rights or duties under it, directly or indirectly (e.g., by merger, consolidation, other corporate reorganization, or a transfer or sale of a controlling interest), by operation of contract, law, or otherwise, except with Microsoft's express, prior, written consent. Any attempted assignment by Customer in violation of this Section will be void. In the event of such assignment or attempted assignment by Customer, Microsoft will have the right to immediately terminate Customer's participation in the Program. Failure by either party to enforce any provision of these Program Terms will not be deemed a waiver of future enforcement of that or any other provision. These Program Terms will be construed according to the fair intent of the language as a whole, and not for or against either party. These Program Terms constitute the entire agreement between the parties with respect to the subject matter hereof and merges all prior and contemporaneous communications. These Program Terms do not amend or otherwise affect any other agreement between you and Microsoft, including the Licensing Agreements.