Microsoft

IMPORTANT NOTICE:

As part of our ongoing commitment to ensure that our clients are kept updated regarding terms applicable to use a third party service provided by a third party service provider, we wish to inform you as follows:

By ordering or using the third party services of the type identified below in the left column, you, as Client, are subject to the applicable third party service provider's agreement terms of use (including, without limitation, any compliance and audit requirements related thereto), also known as "end user license agreement" terms, listed or linked below (identified below in the right column).

<u>Please Note:</u> Where such terms <u>are not</u> made available for review through a link providing access to a third party publicly available webpage(s), then the terms disclosed below constitute "IBM Confidential Information" (unless otherwise indicated) and you, as Client, should maintain their confidentiality (Client may share these terms with Client's customer end users on a confidential basis).

Name/Brand (and where different Third Party Services Provider)	Applicable TPS Agreement Terms
	Applicable TPS Agreement Terms
Microsoft	Note to all Clients: Clients who want to use Microsoft products under their own license with Microsoft, on orders for IBM Cloud VMware-as-a-Service Multi-tenant must access the below referenced Microsoft "Mobility Verification Form" (the "Form") (access the form at this Microsoft webpage: http://www.microsoft.com/licensing/software-assurance/license-mobility.aspx), complete it, and submit the completed Form to Microsoft as indicated on the Form. Note to all Resellers: The above "Note to Clients" applies to a Resellers for their own use and that of any downstream Customers, whether a Reseller's End Users or Remarketers, or a Remarketer's Customer End Users.
	If End User (meaning IBM's Client) wants to use Microsoft Products licensed under End User's own license on a shared server, Microsoft requires that End User follow the procedure below to verify End User's license rights:
	Mobility Verification Form. In order to exercise License Mobility through Software Assurance rights, End Users must execute the "Mobility Verification Form" located at http://www.microsoft.com/licensing/software-assurance/license-mobility.aspx or at a successor site. Customer (<i>meaning IBM</i>) agrees to provide to End Users, and End Users may obtain, the Mobility Verification Form via the link to the Microsoft provided location above, and on request Customer will provide End User with

confirmation of the End Users' verification status informing End Users that have been verified to use the License Mobility through Software Assurance benefits, the specific products and license counts the End User will deploy in Customer's environment, and may be used to support compliance discussions, should End Users have questions for Customer.

Compliance. If Microsoft believes in good faith that any End User is not complying with the End User License Terms, Customer must cooperate in good faith with Microsoft to investigate and remedy the non-compliance.

Copies of Products. Within thirty (30) days of the termination of an End User Agreement, Customer shall:

 (i) Remove all copies of Client Software and/or Redistribution Software from the End User's devices or otherwise render the Products permanently unusable; and
 (ii) Require that the End User returns or destroys all copies of Client Software and Redistribution Software that it received.

Clients and Resellers Who Obtain Microsoft Products from IBM: The following terms apply:

Compliance. If Microsoft believes in good faith that any End User is not complying with the End User License Terms, Customer must cooperate in good faith with Microsoft to investigate and remedy the non-compliance.

Copies of Products. Within thirty (30) days of the termination of an End User Agreement, Customer shall:

(iii) Remove all copies of Client Software and/or Redistribution Software from the End User's devices or otherwise render the Products permanently unusable; and (iv) Require that the End User returns or destroys all copies of Client Software and Redistribution Software that it received.

Clients and Resellers Who Obtain Microsoft Products from IBM: The following terms apply:

END USER LICENSE TERMS TERMS AND CONDITIONS REGARDING USE OF MICROSOFT SOFTWARE

This document governs the use of Microsoft software, which may include associated software, media, printed materials, and "online" or electronic documentation (individually and collectively, "**Products**") ordered from IBM Technologies, Inc. ("**IBM US**") to US based customers and IBM Dutch Holdings B.V. ("**IBM NL**") to non-US based customers (IBM US and IBM NL are collectively referred to as "**Customer**") and

provided by Microsoft to those customers of IBM customer who order Products. Customer does not own the Products and the use thereof is subject to certain rights and limitations of which Customer must inform you. Your right to use the Products is subject to the terms of your agreement with Customer, and to your understanding of, compliance with, and consent to the following terms and conditions, which Customer does not have authority to vary, alter, or amend.

1. DEFINITIONS.

"Client Software" means software that is installed on a Device that allows the Device to access or utilize the Products.

"Device" means each of a computer, workstation, terminal, handheld PC, pager, telephone, personal digital assistant, "smart phone", server or any other hardware where software can be installed that would allow End User to intact with the Product. "End User" means an individual or legal entity that obtains Software Services directly from Customer, or indirectly through a Software Services Reseller. You are an End User. "Redistribution Software" means the software described in Paragraph 4 ("Use of Redistribution Software") below.

"Software Services" means services that Customer provides to you that make available, display, run, access, or otherwise interact, directly or indirectly, with the Products. Customer must provide these services from data center(s) through the Internet, a telephone network or a private network, on a rental, subscription or services basis, whether or not Customer receives a fee. Software Services exclude any services involving installation of a Product directly on any End User device to permit an End User to interact with the Product.

- 2. OWNERSHIP OF PRODUCTS. The Products are licensed to Customer from an affiliate of the Microsoft Corporation (collectively "Microsoft"). Microsoft Products are protected by copyright and other intellectual property rights. Products and other Product elements including but not limited to any images, photographs, animations, video, audio, music, text and "applets" incorporated into the Products are owned by Microsoft or its suppliers. You may not remove, modify or obscure any copyright trademark or other proprietary rights notices that are contained in or on the Products. The Products are protected by copyright laws and international copyright treaties, as well as other intellectual laws and treaties. Your possession, access, or use of the Products does not transfer any ownership of the Products or any intellectual property rights to you.
- 3. USE OF CLIENT SOFTWARE. You may use the Client Software installed in your Devices only in accordance with your agreement with Customer and the terms under this document, and only in connection with the Software Services, provided to you by Customer. The terms of this document permanently and irrevocably supersede the terms of any Microsoft End User License Agreement that may be presented in electronic form during the installation and/or use of the Client Software.

 4. USE OF REDISTRIBUTION SOFTWARE. In connection with the Software Services provided to you by Customer, you many have access to certain "sample",

- "redistributable" and/or software development software code and tools (individually and collectively "Redistribution Software"). You may use, copy and/or install the Redistribution Software only in accordance with the terms of your agreement with Customer and this document and/or your agreement with Customer.
- 5. COPIES. You may not make any copies of the Products; provided, however, that you may (a) make one copy of Client Software on your Device as expressly authorized by Customer, and (b) you may make copies of certain Redistribution Software in accordance with Paragraph 4 (Use of Redistribution Software). You must erase or destroy all such Client Software and/or Redistribution Software upon termination or cancellation of your agreement with Customer, upon notice from Customer or upon transfer of your Device to another person or entity, whichever occurs first. You may not copy any printed materials accompanying the Products.
- 6. LIMITATIONS ON REVERSE ENGINEERING, DECOMPILATION AND DISASSEMBLY. You may not reverse engineer, decompile, or disassemble the Products, except and only to the extent that applicable law, notwithstanding this limitation, expressly permits such activity.
- 7. NO RENTAL. You may not rent, lease, lend, pledge, or directly or indirectly transfer or distribute the Products to any third party, and may not permit any third party to have access to and/or use the functionality of the Products except for the sole purpose of accessing the functionality of the Products in the form of Software Services in accordance with the terms of this agreement and any agreement between you and Customer.
- 8. TERMINATION. Without prejudice to any other rights, Customer may terminate your rights to use the Products if you fail to comply with these terms and conditions. In the event of termination or cancellation of your agreement with Customer or Customer's agreement with Microsoft under which the Products are licensed, you must stop using and/or accessing the Products and destroy all copies of the Products and all of their component parts within thirty (30) days of the termination of your agreement with Customer.
- 9. NO WARRANTIES, LIABILITIES OR REMEDIES BY MICROSOFT. Microsoft disclaims, to the extent permitted by applicable law, all warranties and liability for damages by Microsoft or its suppliers for any damages and remedies whether direct, indirect or consequential, arising from the Software Services. Any warranties and liabilities are provided solely by Customer and not by Microsoft, its affiliates or subsidiaries.
- 10. PRODUCT SUPPORT. Any support for the Software Services is provided to you by Customer or a third party on Customer's behalf and is not provided by Microsoft, its suppliers, affiliates or subsidiaries.
- 11. NOT FAULT TOLERANT. The Products are not fault-tolerant and are not guaranteed to be error free or to operate uninterrupted. You must not use the Products in any application or situation where the Product(s) failure could lead to death or serious bodily injury of any person, or to sever physical or environmental damage ("High Risk Use").
- 12. EXPORT RESTRICTIONS. The Products are subject to U.S. Export jurisdiction. Customer must comply with all applicable laws including the U.S. Export

Administration Regulations, the International Traffic in Arms Regulations, as well as end-user, end-use and destination restrictions issued by U.S. and other governments. For additional information, see http://www.microsoft.com/exporting/.

- 13. LIABILITY FOR BREACH. In addition to any liability you may have to Customer, you agree that you will also be legally responsible directly to Microsoft for any breach of these terms and conditions.
- 14. INFORMATION DISCLOSURE. You must permit Customer to disclose any information requested by Microsoft under Customer's Agreement with Microsoft. Microsoft will be an intended third party beneficiary of your agreement with Customer, with the right to enforce provisions of your agreement with Customer and to verify your compliance.

MICROSOFT SERVICES PROVIDER USE RIGHTS

To review the applicable SPUR (Services Provider Use Rights) terms for a customer's Microsoft product(s), a customer should review the Microsoft SPUR website (see link below) reviewing the applicable SPUR terms by applicable Microsoft product and licensing model. Note that Microsoft updates its SPUR terms on a quarterly basis.

Link to Microsoft Services Provider Use Rights: http://www.microsoft.com/en-us/Licensing/product-licensing/products.aspx

Please observe and pay special attention to the applicable SPUR terms regarding the use, modification, copying and/or distribution applicable to the Microsoft products licensed.