

Amendment to Contract Documents

Agreement Number

01C36218

01C36218-
08222019-1

This amendment (“Amendment”) is entered into between the parties identified on the attached program signature form. It amends the Enrollment or Agreement identified above. All terms used but not defined in this Amendment will have the same meanings provided in that Enrollment or Agreement.

Section of the 16 of the Agreement is hereby deleted and restated as follows:

- a. **Limitation on liability.** To the extent permitted by applicable law, the liability of each party and its Affiliates arising under this agreement is limited to direct damages up to (1) for Products other than Online Services, the amount Institution paid for the Product giving rise to that liability and (2) for Online Services, the amount Institution was required to pay for the Online Service giving rise to that liability during the prior 12 months. In the case of Products provided free of charge, or code that Institution is authorized to redistribute to third parties without separate payment to Microsoft, Microsoft’s liability is limited to U.S. \$5,000. These limitations apply regardless of whether the liability is based on breach of contract, tort (including negligence), strict liability, breach of warranties, or any other legal theory. However, these monetary limitations will not apply to:
- (ii) Microsoft’s and Institution’s obligations under the section titled “Defense of infringement, misappropriation, and third party claims”;
 - (iii) liabilities arising out of any breach by either party of its obligations under the section entitled “Confidentiality”, except that Microsoft’s liability arising out of or in relation to Customer Data shall in all cases be limited to the amount Institution paid for the Online Service giving rise to that liability during the prior 12 months, or for any Services giving rise to that liability;
 - (iv) violation by either party of the other party’s intellectual property rights; and
 - (v) liability for gross negligence or willful misconduct awarded by a court of final adjudication;
- b. **EXCLUSION OF CERTAIN DAMAGES.** *TO THE EXTENT PERMITTED BY APPLICABLE LAW, WHATEVER THE LEGAL BASIS FOR THE CLAIM, NEITHER PARTY, NOR ANY OF ITS AFFILIATES, WILL BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, OR INCIDENTAL DAMAGES, OR DAMAGES FOR LOST PROFITS, REVENUES, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION ARISING IN CONNECTION WITH THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH POSSIBILITY WAS REASONABLY FORESEEABLE. HOWEVER, THIS EXCLUSION DOES NOT APPLY TO EITHER PARTY’S LIABILITY TO THE OTHER FOR VIOLATION OF ITS CONFIDENTIALITY OBLIGATIONS (EXCEPT TO THE EXTENT THAT SUCH VIOLATION RELATES TO CUSTOMER DATA), THE OTHER PARTY’S INTELLECTUAL PROPERTY RIGHTS, OR THE PARTIES’ RESPECTIVE OBLIGATIONS IN THE SECTION TITLED “DEFENSE OF INFRINGEMENT, MISAPPROPRIATION, AND THIRD PARTY CLAIMS.”* c. *Affiliates. Neither Microsoft nor Institution shall bring any action against the other’s Affiliates in respect of any matter disclaimed on their behalf in this agreement. Each party will indemnify the other in the event of any breach of this provision.*
- c. The Parties agree that the following damages under this Agreement arising out of a breach that results solely from Microsoft’s failure to comply with its security policies as set forth in the applicable Online Services Terms shall be considered direct damages: The Institution’s reasonable expenses for notifying the affected individuals and the provision of one year of credit monitoring for the affected individuals

d. **Affiliates.** Neither Microsoft nor Institution shall bring any action against the other's Affiliates in respect of any matter disclaimed on their behalf in this agreement. Each party will indemnify the other in the event of any breach of this provision.

Except for changes made by this Amendment, the Enrollment or Agreement identified above remains unchanged and in full force and effect. If there is any conflict between any provision in this Amendment and any provision in the Enrollment or Agreement identified above, this Amendment shall control.

This Amendment must be attached to a signature form to be valid.

Microsoft Internal Use Only:

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