

End User License Agreement

This End User License Agreement (“Agreement”) is between you and the publisher (“Publisher”) providing Offerings (defined below) and governs your use of Offerings purchased (by you or on your behalf) through Azure Marketplace and AppSource Marketplace (collectively, “Marketplace”).

This Agreement is the parties’ entire agreement on this subject and merges and supersedes all related prior and contemporaneous agreements. By agreeing to these terms, you represent and warrant that you have the authority to accept this Agreement, and you also agree to be bound by its terms. This Agreement applies to all Orders entered into under or in connection with this Agreement. Capitalized terms have the meanings given under “Definitions.”

I. **License to Offerings**

- a. **License grant.** Offerings are licensed and not sold. Upon Microsoft’s acceptance of an Order, and subject to your compliance with this Agreement, Publisher grants you a non-exclusive, non-sublicenseable, irrevocable and limited license to use the ordered Offerings. This license is solely for your own internal use and business purposes and are non-transferable except as expressly permitted under applicable law.
- b. **Duration of licenses.** Licenses granted on a subscription basis expire at the end of the applicable subscription period set forth in the Order.
- c. **Reservation of Rights.** Publisher reserves all rights not expressly granted in this Agreement. Offerings are protected by copyright and other intellectual property laws and international treaties. No rights will be granted or implied by waiver or estoppel. Rights to access or use Offerings on a device do not give you any right to implement Publisher’s patents or other intellectual property in the device itself or in any other software or devices.
- d. **Restrictions.** You must not (and are not licensed to):
 - (1) copy, modify, reverse engineer, decompile, or disassemble any Offering, or attempt to do so;
 - (2) install or use any third-party software or technology in any way that would subject Publisher’s intellectual property or technology to any other license terms;
 - (3) work around any technical limitations in an Offering or restrictions in Documentation;
 - (4) separate and run parts of an Offering on more than one device;
 - (5) upgrade or downgrade parts of an Offering at different times;
 - (6) use an Offering for any unlawful purpose, or in any unlawful manner, or in any manner inconsistent with this Agreement or the Documentation;
 - (7) transfer parts of an Offering separately;
 - (8) sell, copy, distribute, sublicense, rent, lease, or lend any Offerings, in whole or in part, or use them to offer hosting services to a third party;
 - (9) access or use any parts of any Offerings for which Publisher has not granted you authorization, or tamper or interfere with Publisher’s computer systems or the technical delivery systems of Publisher’s providers; or

- (10) encourage, authorize, or enable anyone to do any of the foregoing.
- e. You acknowledge and agree that Publisher is not required to monitor or police communications or data transmitted through the Offerings and that Publisher shall not be responsible for the content of any such communications or transmissions. You shall use the Offerings exclusively for authorized and legal purposes, consistent with all applicable laws, regulations and the rights of others. You shall keep confidential and not disclose to any third-parties any user identifications, account numbers or account profiles.
 - f. **Account.** Where necessary, you will need to register and create an account to access and use the Offerings. You shall provide accurate, current and complete information in relation to such account and are responsible for maintaining the confidentiality of your passwords and account. You shall notify Publisher if any account passwords are lost, stolen, or disclosed to an unauthorized third-party, or otherwise may have been compromised. Publisher reserves the right to suspend or terminate any account if any information provided during the registration process or thereafter is or becomes inaccurate, false or misleading.
 - g. **Feedback.** Any Feedback is given voluntarily, and you grant to the Publisher, without charge, a non-exclusive, transferrable, perpetual license to make, use, modify, distribute, and commercialize the Feedback as part of any of Publisher's products and services, in whole or in part and without regard to whether such Feedback is marked or otherwise designated by you as confidential.

II. **Privacy.**

- a. Publisher's Privacy and Security Policy, accessible at <https://www.reflektive.com/privacy-policy/>, is incorporated herein for all purposes and each party agrees to the provisions contained therein. If any portion of this Agreement conflicts with any portion of the Privacy and Security Policy, this Agreement shall govern for all purposes.
- b. You hereby grant to Publisher a non-exclusive, worldwide license to use, reproduce and transfer Customer Data solely in connection with your use of the Offerings and Publisher's provision of the Offerings to you. You represent and warrant that you own all right, title and interest in and to Customer Data and that you have all rights in Customer Data necessary and sufficient to transmit to, upload to, transfer to, process on, store in, or cause to interface with, the Offerings (and any account necessary to access and the Offerings), and to grant the rights contemplated by this Agreement. You are solely responsible for all the Customer Data as provided to Publisher, and for your development, transmission, operation, maintenance, storage, and use of Customer Data.
- c. You consent to Publisher's internal access, collection, transmission, storage, copying, processing, analysis and use of Customer Data (i) to administer the Offerings and to monitor compliance with this Agreement and (ii) solely in anonymized and aggregated format and without the use of any personally identifiable information, for research and development purposes related to the Offerings and related services. Publisher maintains the right, title, and interest in and to any data or information regarding the use or optimizing the use or sale of the Offerings, so long as such data does not include Customer Data.
- d. Your use of the Offerings does not require the entry or collection of Prohibited Information. You agree not to use the Offerings to collect or manage Prohibited Information. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, PUBLISHER DISCLAIMS ANY AND ALL LIABILITY THAT MAY ARISE FROM YOUR USE OF THE OFFERINGS TO COLLECT OR MANAGE PROHIBITED INFORMATION.

III. Exclusion of representations and warranties.

YOU ACKNOWLEDGE AND AGREE THAT ANY AND ALL OFFERINGS ARE PROVIDED "AS IS," EXCLUSIVE OF ANY WARRANTIES WHATSOEVER. PUBLISHER EXPRESSLY DISCLAIMS ANY WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT, AND ANY WARRANTIES AND CONDITIONS ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. PUBLISHER DOES NOT WARRANT OR REPRESENT THAT YOUR USE OF OFFERINGS WILL MEET YOUR REQUIREMENTS OR WILL BE SECURE, UNINTERRUPTED OR ERROR-FREE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED FROM PUBLISHER OR ELSEWHERE WILL CREATE ANY WARRANTY OR CONDITION NOT EXPRESSLY STATED IN THIS AGREEMENT.

IV. Defense of third-party claims.

You will indemnify, defend and hold harmless Publisher and its officers, directors, employee and agents, from and against any third-party claims, disputes, demands, liabilities, damages, losses, and costs and expenses, including reasonable legal and professional fees, arising out of or in any way connected with (i) your access to or use of Offerings otherwise than in accordance with this Agreement, or (ii) the Customer Data as provided to Publisher.

V. Limitation of liability.

- a. Publisher's maximum aggregate liability to you for any and all claims whatsoever of any kind under this Agreement will not exceed US\$20.00 (twenty United States dollars).
- b. In no event will Publisher be liable for indirect, incidental, special, punitive, or consequential damages, or loss of use, loss of data, loss of profits, or interruption of business, however caused or on any theory of liability.
- c. You assume sole responsibility and liability for your use of any output and/or results obtained from the use of Offerings and for conclusions drawn from such use. Publisher shall have no liability for any claims, losses, or damage caused by errors or omissions in any information provided to Publisher by you in connection with the Offerings or any actions taken by Publisher at your direction that are consistent with such direction. Other than third-party products, services, software or web sites provided by Publisher to facilitate performance of the services, Publisher shall have no liability for any claims, losses or damages arising out of or in connection with your use of any third-party products, services, software or web sites that are accessed via links from within the Offerings.
- d. IN NO EVENT SHALL PUBLISHER BE LIABLE TO YOU OR TO ANY THIRD PARTY FOR THE INITIATION, PROCESSING OR RESULT OF ANY LEGAL OR ADMINISTRATIVE ACTION RELATED TO HUMAN RESOURCES POLICIES OR PRACTICES, INCLUDING WITHOUT LIMITATION EMPLOYMENT DECISIONS, EEO POLICIES, HIRING PRACTICES, EMPLOYMENT DISCRIMINATION OR AFFIRMATIVE ACTION PLANNING.

VI. Pricing and payment.

Applicable pricing and payment terms for a given order are set forth and governed by the Microsoft Services Agreement and applicable Order.

VII. Term and termination.

- a. **Term.** This Agreement is effective until terminated by a party, as described below. The term for each Order will be set forth therein.

- b. **Termination for cause.** Without limiting other remedies it may have, the Publisher may terminate this Agreement or any Order immediately on notice if you breach the Agreement or an Order, and where such breach is remediable, fail to cure the breach within 14 days of notice of the breach. Upon such termination, the following will apply:
 - (1) All licenses granted under this Agreement will terminate immediately.
 - (2) All amounts due under any unpaid invoices will become due and payable immediately. For metered Offerings billed periodically based on usage, unpaid usage must be paid for immediately.
- c. **Suspension.** Publisher may suspend use of the Offering without terminating this Agreement during any period of breach, suspected misuse or non-payment. Where reasonably possible, Publisher will give reasonable notice before suspending the Offering.
- d. **Survival.** The terms of this Agreement, including the applicable Order, that are likely to require performance, or have application to events that may occur, after the termination or expiration of this Agreement or any Order, will survive termination or expiration, including all indemnity obligations and procedures.

VIII. *Miscellaneous.*

- a. **Entire Agreement.** This Agreement supersedes all prior and contemporaneous communications, whether written or oral, regarding the subject matter covered in this Agreement. If there is a conflict between any parts of this Agreement, the following order of precedence will apply:
 - (1) Order;
 - (2) this Agreement;
 - (3) Service Level Agreement (SLA); and
 - (4) Documentation.
- b. **Amendments.** Publisher may change the terms of this Agreement, including privacy terms, during the term of this Agreement from time to time and your use of any Offerings thereafter constitutes its acceptance.
- c. **Assignment.** Publisher may assign this Agreement to an Affiliate or third party, without prior notice, including any rights Publisher may have under this Agreement to receive payment and enforce payment obligations, and all assignees may further assign such rights without further consent. Furthermore, Publisher may assign this Agreement without your consent in connection with a merger, reorganization, acquisition, or other transfer of all or substantially all of its assets. You may not assign or transfer any of its rights or obligations under this Agreement.
- d. **Severability.** If any part of this Agreement is held to be unenforceable, the rest of the Agreement will remain in full force and effect.
- e. **Waiver.** Failure to enforce any provision of this Agreement will not constitute a waiver. Any waiver must be in writing and signed by the waiving party.
- f. **No third-party beneficiaries.** This Agreement does not create any third-party beneficiary rights except as expressly provided by its terms.
- g. **Notices.** Notices must be in writing and will be treated as delivered on the date received at the address, date shown on the return receipt, email transmission date, or date on the courier or fax confirmation of delivery. Notices to Publisher must be sent to the address stated in the Order.

Notices to you will be sent to at the address identified on your account as its contact for notices. Publisher may send notices and other information by email or other electronic form.

- h. **Applicable law.** This Agreement and any action related thereto will be governed by the laws of the Delaware without regard to its conflict of laws provisions. Each party irrevocably consents to the jurisdiction of, and venue in, the state or federal courts located in Wilmington, Delaware for any disputes arising under this Agreement.
- i. **Order of precedence.** The body of this Agreement will take precedence over any conflicting terms in other documents that are part of this Agreement that are not expressly resolved in those documents. Terms in an amendment control over the amended document and any prior amendments concerning the same subject matter.
- j. **Force Majeure.** Publisher will not be responsible for any failure or delay in its performance under this Agreement due to causes beyond its reasonable control, including, but not limited to, labor disputes, strikes, lockouts, shortages of or inability to obtain labor, energy, raw materials or supplies, war, acts of terror, riot, acts of God or governmental action.
- k. **Construction.** Neither party has entered this Agreement in reliance on anything not contained or incorporated in it. This Agreement is in English only. Any translation of this Agreement into another language is for reference only and without legal effect. If a court of competent jurisdiction finds any term of the Agreement unenforceable, the Agreement will be deemed modified as necessary to make it enforceable, and the rest of the Agreement will be fully enforced to effect the parties' intent. Lists of examples following "including", "e.g.", "for example", or the like are interpreted to include "without limitation," unless qualified by words such as "only" or "solely." This Agreement will be interpreted according to its plain meaning without presuming that it should favor either party. Unless stated or context requires otherwise:
 - (1) all internal references are to this Agreement and its parties;
 - (2) all monetary amounts are expressed and, if applicable, payable, in U.S. dollars;
 - (3) URLs are understood to also refer to successors, localizations, and information or resources linked from within websites at those URLs;
 - (4) a party's choices under this Agreement are in its sole discretion, subject to any implied duty of good faith;
 - (5) "written" or "in writing" includes email;
 - (6) "days" means calendar days;
 - (7) "may" means that the applicable party has a right, but not a concomitant duty,
 - (8) "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;
 - (9) "notify" means to give notice under subsection (i) above; and
 - (10) a writing is "signed" when it has been hand-signed (i.e., with a pen) or signed via an electronic signature service by a duly authorized representative of the signing party.

IX. Definitions.

"Affiliate" means any legal entity that Controls, is Controlled by, or is under common control with Publisher.

"Control" means ownership of more than a 50% interest of voting securities in an entity or the power to direct the management and policies of an entity, and cognate terms shall be interpreted accordingly.

"Customer Data" means all data, including all text, sound, software, image or video files that are provided to Publisher or its Affiliates by you through use of the Offering.

"Documentation" means all user manuals, handbooks, training material, requirements, and other written or electronic materials Publisher makes available for, or that result from use of, the Offering.

"Feedback" means ideas, suggestions, comments, input, or know-how, in any form, that you provide in relation to Publisher's confidential information, products, or services.

"Offering" means all services, websites (including hosting), solutions, platforms, and products identified in an Order and that Publisher makes available under or in relation to this Agreement, including the software, equipment, technology, and services necessary for Publisher to provide the foregoing. Offering availability may vary by region.

"Order" means an ordering document used to transact the Offering via the Marketplace.

"Prohibited Information" means credit or debit card numbers, passwords, protected health information as defined in HIPAA (45 C.F.R. § 160.103), and information relating to a customer or consumer of a financial institution under GLBA (15 U.S.C. §§ 6801–6809).

"use" means to copy, download, install, run, access, display, use or otherwise interact with.