The ISV App Accelerator Program Terms and Conditions

The ISV App Accelerator Program (“Program”) is a program for independent software vendors (ISVs) that are looking to update their applications to leverage the most current version of Microsoft products and services. If you are an ISV and are accepted into the Program, Microsoft may provide some or all of the services described in Section 1 below (“Services”) to support your endeavor to:

- Embed visuals and analytics in your apps with Power BI Embedded;
- Upgrade your app database to the latest version of SQL Server;
- Migrate legacy SQL Server or Oracle apps to Azure SQL Database; or
- In limited preview. Modernize legacy apps to Azure SQL Database for MySQL and PostgreSQL

By participating in the Program and electing to receive any of the Services, you accept and agree to be bound, without modification, by the following terms and conditions. If you are accepting these terms on behalf of your company, you represent and warrant that you have the necessary authority to bind your company to the following terms and conditions:

ISV App Accelerator Services

1. Description.
   a. Data Accelerator Services: These Services include a database assessment of your current databases against Latest version of Microsoft SQL Server; and/or Azure SQL Database; and/or Azure SQL Database for MySQL and PostgreSQL. Additional information about these Services can be found in the Program registration page. You are responsible for testing and migrating your applications and ensuring that the guidance that Microsoft provides is compatible with your implementation.
   b. Power BI Accelerator Services: These Services include support on Java scripting; and/or Using rest APIs, authentication, security settings RLS, flow to run an ALM process; and/or Azure ARM APIs, scale out, load balance, scenarios. Additional information about these Services can be found in the Program registration page. You are responsible for testing and migrating your applications and ensuring that the guidance that Microsoft provides is compatible with your implementation.

2. Consent for Internet-Based Services. Certain software used in connection with the Services connects to Microsoft and/or other service providers over the Internet. By using the Services, you consent to the transmission of information via the Services.

3. Cooperation and Compatibility. Microsoft’s ability to deliver the Services depends upon your full and timely cooperation as well as the accuracy and completeness of any information you provide. You must meet the minimum requirements communicated by Microsoft. Microsoft reserves the right to cancel the Services due to problems with your devices, system requirements, or configuration, or for any other reasons that are beyond Microsoft’s control that make providing the Services impossible or impractical.

4. Data Backup. Since data can be inadvertently lost, corrupted or breached, you understand and agree that you are wholly responsible for the backup of any and all data, software, information or other files stored on your device, including all disks and drives, or other associated devices (collectively, “Data”) before participating in the Services. You understand and agree that Microsoft may need to transfer your Data, including any confidential, proprietary and personal information stored on your device, to third party service providers in order to perform the Services. To the maximum extent permitted by applicable law, Microsoft is not responsible or liable for any disclosure, loss or corruption of your Data.
5. Remote Access. The Services may require Microsoft to connect remotely to your devices, which allows Microsoft to access and control your device, view your device screens, install software and change settings on your devices. When establishing the remote access connection, Microsoft may ask you to download Microsoft or third party software to establish the connection.

6. Right to use Services Deliverables. Microsoft may develop computer code or materials in connection with the Services (“Services Deliverables”). Microsoft grants you a non-exclusive, non-transferable, perpetual license to reproduce, use and modify the Services Deliverables solely for your internal business purposes. Services Deliverables are protected by copyright and other intellectual property rights laws and international treaties. Microsoft (1) does not transfer any ownership rights in any Services Deliverables and (2) reserves all rights not expressly granted to you.

7. No Software License. For the avoidance of doubt, except for the Services Deliverables, no Microsoft products or services are licensed to you pursuant to the terms of this Agreement. Your use of Microsoft products and services is at all times subject to your separate license agreement(s) with Microsoft.

Marketing

8. Microsoft may make available certain marketing collateral for use in connection with your distribution and marketing of your applications. If Microsoft makes such materials available to you, Microsoft grants you a nonexclusive, nontransferable, nonassignable, limited license to use such materials solely for the purpose of marketing applications that have been upgraded as part of the Program. Except as incorporated into marketing collateral, you must not use Microsoft’s logos, logotypes, trade dress, or designs. However, you may make descriptive references to Microsoft’s nonstylized word marks. Such use will be according to Microsoft’s standard Trademark guidelines. You will promptly correct any misuses of Microsoft’s trademarks after notice.

9. Microsoft may offer co-marketing and GTM opportunities. Such opportunities will be subject to a separate agreement between you and Microsoft.

Confidentiality

10. “Confidential Information” is non-public information that is designated “confidential” or that a reasonable person should understand is confidential. Confidential Information does not include information that (1) becomes publicly available without a breach of this agreement, (2) the receiving party received lawfully from another source without a confidentiality obligation (3) is independently developed, or (4) is a comment or suggestion volunteered about the other party’s business, products or services. Each party will take reasonable steps to protect the other’s Confidential Information and will use the other party’s Confidential Information only for purposes of the parties’ business. Neither party will disclose Confidential Information to third parties, except to its employees, affiliates, contractors, advisors and consultants ( “Representatives”) and then only on a need-to-know basis under nondisclosure obligations at least as protective as this agreement. Each party remains responsible for the use of the Confidential Information by its Representatives and, in the event of discovery of any unauthorized use or disclosure, must promptly notify the other party. A party may disclose the other’s Confidential Information if required by law; but only after it notifies the other party (if legally permissible) to enable the other party to seek a protective order.
11. Neither party is required to restrict work assignments of its Representatives who have had access to Confidential Information. Each party agrees that the use of information retained in Representatives’ unaided memories in the development or deployment of the parties’ respective products or services does not create liability under this agreement or trade secret law, and each party agrees to limit what it discloses to the other accordingly.

12. These obligations apply for a period of five years after the Confidential Information is received.

**No Warranty, Limitation of Remedies**

13. NO WARRANTY. TO THE MAXIMUM EXTENT PERMITTED BY LAW, THE PROGRAM, SERVICES AND SERVICES DELIVERABLES ARE PROVIDED “AS IS” AND MICROSOFT DISCLAIMS AND EXCLUDES ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO REPRESENTATIONS, WARRANTIES OR CONDITIONS OF TITLE, NONINFRINGEMENT, SATISFACTORY CONDITION OR QUALITY, MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE PROGRAM OR ANY SERVICES, SOFTWARE OR OTHER MATERIALS OR INFORMATION MICROSOFT PROVIDES. YOU BEAR THE ENTIRE RISK OF THE SERVICES’ AND SERVICES DELIVERABLES’ QUALITY AND PERFORMANCE.

14. LIMITATION OF REMEDIES. If law gives you any implied warranties despite the exclusions and limitations in this Service Agreement, your remedies are limited to the re-supply of the Services or Services Deliverables. This is your only remedy for a breach of warranty or condition, even if the remedy fails of its essential purpose. Unless law mandates otherwise, Microsoft will determine the order in which these limited remedies are provided. You may have additional consumer rights under applicable law which this Service Agreement cannot change.

15. PREVIEW. You acknowledge that Microsoft SQL Server 2017 Community Technology Preview 2.0 is a prerelease version and is subject to change. You assume all risks of updating or modifying your applications to be compatible with such release.

**Limitation of Liability**

TO THE MAXIMUM EXTENT PERMITTED BY LAW:

- IF YOU HAVE ANY BASIS FOR RECOVERING DAMAGES, YOU CAN RECOVER FROM MICROSOFT AND ITS VENDORS ONLY DIRECT DAMAGES UP TO $500.00 USD; AND

- NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, SPECIAL, DIRECT, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, LOSS OF YOUR DATA OR LOSS OF BUSINESS, FOR ANY MATTER RELATED TO THIS SERVICE AGREEMENT, ANY SERVICES, SERVICES DELIVERABLES OR ANY OTHER MATERIALS OR INFORMATION THAT MICROSOFT PROVIDES, EVEN IF MICROSOFT WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR THEY WERE FORESEEABLE.

THIS LIMITATION OF LIABILITY DOES NOT APPLY TO EITHER PARTY’S LIABILITY TO THE OTHER FOR VIOLATION OF THE OTHER PARTY’S INTELLECTUAL PROPERTY RIGHTS OR IN THE EVENT OF FRAUD, GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT BY A PARTY OR FOR DEATH OR PERSONAL INJURY
YOU ARE RESPONSIBLE FOR YOUR USE OF THE SERVICES AND YOU ARE LIABLE FOR ANY DAMAGE RESULTING THEREFROM TO THE MAXIMUM EXTENT PERMITTED BY LAW.

Contracting Party, Governing Law, and Location for Resolving Disputes

• If you live in the United States, you are contracting with Microsoft Corporation, One Microsoft Way, Redmond, WA 98052, USA. The laws of the state where you live govern the interpretation of this Service Agreement, claims for breach of it, and all other claims (including consumer protection, unfair competition, and tort claims), regardless of conflict of law principles. You and Microsoft irrevocably consent to the exclusive jurisdiction and venue of the state or federal courts in King County, Washington, for all disputes arising out of or relating to this Service Agreement or the Services.

• If you live in Canada, you are contracting with Microsoft Corporation, One Microsoft Way, Redmond, WA 98052, USA. The laws of the province where you live govern the interpretation of this Service Agreement, claims for breach of it, and all other claims (including consumer protection, unfair competition, and tort claims), regardless of conflict of law principles. You and Microsoft irrevocably consent to the exclusive jurisdiction and venue of the courts in Ontario for all disputes arising out of or relating to this Service Agreement or the Services.

• If you live in North or South America outside the United States or Canada, you are contracting with Microsoft Corporation, One Microsoft Way, Redmond, WA 98052, USA. Washington state law governs the interpretation of this Service Agreement and claims for breach of it, regardless of conflict of law principles. The laws of the country where you live govern all other claims, including consumer protection, unfair competition, and tort claims.

• If you live in Europe, the Middle East, or Africa, you are contracting with Microsoft Ireland Operations Limited, The Atrium Building, Block B, Carmanhall Road, Sandyford Industrial Estate, Dublin 18, Ireland (registered at the Companies Registration Office in Ireland under number 256796, VAT registration number: IE 8256796 U, with a registered address of 70 Sir John Rogerson’s Quay, Dublin 2, Ireland) and the laws of Ireland govern the interpretation of this Service Agreement and claims for breach of it, regardless of conflict of law principles. The laws of the country where you live govern all other claims, including consumer protection, unfair competition, and tort claims. You and Microsoft irrevocably agree to the exclusive jurisdiction and venue of the Ireland courts for all disputes arising out of or relating to this Service Agreement or the Services.

• If you live in Asia or the South Pacific (other than the countries called out below), you are contracting with Microsoft Regional Sales Corp. located at 438B Alexandra Road, #04-09/12, Block B, Alexandra Technopark, Singapore, 119968. Washington state law governs this Service Agreement, regardless of conflict of law principles. Any dispute arising out of or relating to this Service Agreement, the Services or the software will be referred to and finally resolved by arbitration in Singapore according to the Arbitration Rules of the Singapore International Arbitration Center (“SIAC”). These rules are incorporated by reference into this clause. The tribunal will consist of one arbitrator appointed by the Chairman of SIAC. The language of arbitration will be English. The decision of the arbitrator will be final, binding, and incontestable. The decision may be used as a basis for judgment in any country or region.
• If you live in People’s Republic of China, you are contracting with Microsoft (China) Company Limited, No. 5 Danling Street, Haidian District, Beijing 100080. The laws of the People’s Republic of China govern this Service Agreement regardless of conflict of law principles. You may submit any dispute arising out of or in relation to this Service Agreement for arbitration to the China International Economic and Trade Arbitration Commission (the “CIETAC”) in accordance with the rules of arbitration of CIETAC in Beijing.

• If you live in Japan, you are contracting with Microsoft Japan Co., Ltd, Shinagawa Grand Central Tower, 2-16-3 Konan Minato-ku, Tokyo 108-0075. The laws of Japan govern this Service Agreement and any matters arising out of or relating to it or the Services. You and Microsoft irrevocably agree to the exclusive original jurisdiction and venue of the Tokyo District Court for all disputes arising out of or relating to this Service Agreement or the Services.

• If you live in the Republic of Korea, you are contracting with Microsoft Korea, Inc., 12th FL. Tower A, The K-Twin Towers, 50, Jongno 1 gil, Jongno-Gu, Seoul 110-150, Korea. The laws of the Republic of Korea govern this Service Agreement. You and Microsoft irrevocably agree to exclusive original jurisdiction and venue of the Seoul District Court for all disputes arising out of or relating to this Service Agreement or the Services.

• If you live in Taiwan, you are contracting with Microsoft Taiwan Corp., 8F, No 7 Sungren Road, Shinyi Chiu, Taipei, Taiwan 110. The laws of Taiwan govern the interpretation of this Service Agreement. You and Microsoft irrevocably designate the Taipei District Court as the court of first instance having jurisdiction over any disputes arising out of or in connection with this Service Agreement or the Services.