



**INPHASE LIMITED**

***INPHASE Cloud***

**END USER LICENCE AGREEMENT**

**Agreement Number:** \_\_\_\_\_

**Effective Date:** \_\_\_\_\_

**Licensee**

\_\_\_\_\_

Accepted for the LICENSEE

Granted by the LICENSOR  
(INPHASE)

Signature.....

Signature.....

Name.....

Name.....

Title.....

Title.....

Date.....

Date.....

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**1. DEFINITIONS**

- (i) 'Documentation' shall mean the manual or manuals and other documents associated with the Program supplied by the Licensor to the Licensee.
- (ii) 'Equipment' shall mean the computer or the computers described in Appendix 1 and situated at the location or locations identified in Appendix 1.
- (iii) 'Licence' shall mean this document with its Appendices.
- (iv) 'Licensee' shall be as defined in Appendix 1.
- (v) 'Licensor' shall be as defined in Appendix 1 and shall include the Licensor's legal personal representatives, successors and assigns.
- (vi) 'Program' shall mean the computer program or programs specified in Appendix 1 and shall include any replacements, modifications or additions supplied under this Licence.

**2. LICENCE**

The Licensor hereby grants to the Licensee a non-exclusive, non-transferable licence to use the Program on the Equipment on the terms and conditions contained herein and for the period specified in Appendix 1 from the date of delivery.

### **3. CHARGES**

The licence and maintenance charges are set out in the Appendices. Once only licence charges shall not be subject to variation. The Licensor shall have the right to vary periodic licence charges or maintenance charges by giving to the Licensee not less than three months written notice in advance of such variation effective at the end of the initial period specified in the Appendices or at any time thereafter. Such variation shall not result in the charges exceeding the Licensor's then current standard scale of charges, or in the absence of a standard scale, such charges as are reasonable in the circumstances.

### **4. TERMS OF PAYMENT**

4.1 Following acceptance under Clause 6, the Licensor shall be entitled to claim payment of those charges specified in the Appendices as due on acceptance. Subsequent charges shall become due for payment at the intervals specified in the Appendices.

4.2 All charges due under the Licence shall be paid by the Licensee either within the period specified in the Appendices from receipt of a correct invoice from the Licensor or by the due date whichever is the later.

4.3 The Licensee reserves the right to withhold payment against any invoice which is not submitted in accordance with the Licence and shall forthwith notify to the Licensor in writing the reasons for withholding payment.

4.4 If the payment of any sum due under the Licence shall be delayed by the Licensee other than in accordance with Sub-Clause 4.3, the Licensor shall be entitled to charge interest at the rate specified in Appendix 1 on the amount of the delayed payment for the period of delay.

### **5. DELIVERY**

The Licensor shall deliver a copy of the Program, in machine readable form, on the media to the location and, if applicable, install the Program by the date, all as specified in Appendix 1. The Documentation shall also be delivered to the location and by the date specified in Appendix 1.

### **6. ACCEPTANCE**

6.1 Acceptance of the Program shall be deemed to take place on delivery or delivery and installation of the Program and Documentation in accordance with Clause 5.

### **7. USE**

7.1 Except as specified as Appendix 1, the Program shall be used only for the Licensee's own data processing and shall not be used to provide a data processing service to any third party whether by way of trade or otherwise.

7.2 The Licensee may use the Program only on the Equipment. If the Program cannot be used because the Equipment or any part thereof is temporarily inoperable, then the Licence will be deemed to apply, without any additional payment to the Licensor but at the Licensee's risk and expense, to the use of the Program on any other compatible equipment until the Equipment becomes operable.

7.3 The Licensee may not transfer the Program permanently to another location or to other equipment without the consent in writing of the Licensor which shall not be unreasonably withheld.

7.4 The Licensee shall follow all reasonable instructions given by the Licensor from time to time with regard to the use of the Program. The Licensee shall permit the Licensor, at all reasonable times at the Licensor's expense, to verify that the use of the Program is within the terms of the Licence.

## **8. DOCUMENTATION**

8.1 The Licensor shall supply to the Licensee those items of the Documentation specified in Appendix 1.

8.2 The Licensee may not make copies of the Documentation without the Licensor's prior written agreement which shall not be unreasonably withheld. At the request of the Licensee the Licensor shall provide such additional copies of the Documentation as the Licensee may reasonably require for the normal operation of his business, at the Licensor's then current standard scale of charges.

## **9. PROGRAM COPYING**

The Licensee may make only such copies of the Program as are necessary for his operational use and security. The Licence applies to such copies as it applies to the Program.

## **10. PERFORMANCE**

The Licensor undertakes that, provided it is operated in accordance with the Licensor's instructions, the Program will perform in accordance with the Licensor's published specification and the Documentation existing at the date of delivery. The Licensor does not guarantee that the Program is free of minor errors not materially affecting such performance. The undertaking given in this clause is in lieu of any condition or warranty express or implied by law as to the quality or fitness for any particular purpose of the Program.

## **11. MAINTENANCE AND SUPPORT**

11.1 A maintenance service shall be provided as specified in Appendix 2 from the date of this agreement and continue as a requisite for this Licence.

11.2 Where the provision of error correction is included in the maintenance service and charge specified in Appendix 2, it shall be conditional upon the Licensee having:

- (i) provided adequate information in respect of any malfunction in the Program,
- (ii) incorporated all amendments issued by the Licensor, and
- (iii) not otherwise changed the Program.

11.3 Where a new issue or update of the Program and/or Documentation or part thereof is released by the Licensor it shall be installed (if applicable) by the Licensor under the maintenance service and accepted and used by the Licensee except where the Licensee elects to retain and use the superseded issue of the Program, in which case the Licensor shall use his best endeavours to provide a maintenance service on terms to be agreed.

## **12. MODIFYING**

The Licensee may not, without the prior written consent of the Licensor, modify the Program or incorporate the Program in programs not provided by the Licensor.

## **13. OWNERSHIP**

13.1 Title, copyright and all other proprietary rights in the Program and the Documentation and all parts and copies thereof shall remain vested in the Licensor.

13.2 The Licensee shall follow all reasonable instructions given by the Licensor from time to time with regard to the use of trade marks owned by the Licensor and other indications of the property and rights of the Licensor.

## **14. ASSIGNMENT**

Neither party shall assign any of its obligations under the Licence without the prior written consent of the other party, which shall not be unreasonably withheld.

## **15. COPYRIGHT INDEMNITY**

15.1 The Licensor shall fully indemnify the Licensee against all damages (excluding consequential damages), costs, charges and expenses arising from or incurred by reason of any infringement or alleged infringement in the United Kingdom of copyright in consequence of the authorised use or possession of the Program or Documentation supplied by the Licensor under the License, subject to the following:-

- (i) the Licensee to promptly notify the Licensor in writing of any alleged infringement of which he has notice
- (ii) the Licensee must make no admissions without the Licensor's prior consent
- (iii) the Licensee, at the Licensor's request and expense shall allow the Licensor to conduct any negotiations or litigation and/or settle any claim. The Licensee shall give the Licensor all reasonable assistance. The costs incurred or recovered in such negotiations or settled claim shall be for the Licensor's account.

15.2 If at any time an allegation of infringement of copyright is made in respect of the Program, or if in the Licensor's reasonable opinion such an allegation is likely to be made, the Licensor may at his own expense modify or replace the Program so as to avoid the infringement, without detracting from overall performance.

## **16. INDEMNITY AND INSURANCE**

16.1 The Licensor shall indemnify and keep indemnified the Licensee, against injury (including death) to any persons or loss of or damage to any property (including the Program) which may arise out of the act, default or negligence of the Licensor, his employees or agents in consequence of the Licensor's obligations under the Licence and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto, provided that the Licensor shall not be liable for nor be required to indemnify the Licensee against any compensation or damages for or with respect to injuries or damage to persons or property to the extent that such injuries or damage result from any act, default or negligence on the part of the Licensee his employees or contractors (not being the Licensor or employed by the Licensor).

16.2 The Licensee shall indemnify and keep indemnified the Licensor against injury (including death) to any persons or loss of or damage to any property (including the Program) which

may arise out of the act, default or negligence of the Licensee, his employees or agents in consequence of the Licensee's obligations under the Licence and against all claims, demands, proceedings, damages, costs, charges and expenses whatsoever in respect thereof or in relation thereto, provided that the Licensee shall not be liable for nor be required to indemnify the Licensor against any compensation or damages for or with respect to injuries or damage to persons or property to the extent that such injuries or damage result from any act, default or negligence on the part of the Licensor his employees or contractors.

- 16.3 Without thereby limiting their responsibilities under Sub-Clauses 16.1 and 16.2, each party shall insure with a reputable insurance company against all loss of or damage to property and injury to persons (including death) arising out of or in consequence of his obligations under the License and against all actions, claims, demands, costs and expenses in respect thereof, save only as is set out in the exceptions in Sub-Clause 16.4 and Clause 17.
- 16.4 The liability of the parties under Sub-Clause 16.1 or 16.2 as appropriate, shall exclude damage or injury (other than injury including death resulting from negligence) consequent upon design, formula, specification or advice. Except in respect of injury, including death to a person due to negligence for which no limit applies, the liability of the parties under Sub-Clause 16.1 or 16.2 as appropriate shall not exceed the sums specified in Appendix 1 in respect of any event or series of connected events.

## **17. CONSEQUENTIAL LOSS**

Save as expressly stated elsewhere in the Licence, the Licensor shall not be liable to the Licensee for consequential loss or damage including loss of use or of profit or of contracts.

## **18. TERMINATION**

- 18.1 The Licensee may terminate the License by giving three months prior written notice to the Licensor to take effect at the end of the initial period specified in the Appendices or such extension of this period as may be agreed or, if no initial period is stated, by three months prior written notice to the Licensor.
- 18.2 The Licensor may not terminate the Licence except in the circumstances described in Sub-Clauses 18.3 and 18.4.
- 18.3 The Licence may be terminated forthwith by either party on written notice if the other party is in breach of the terms of the Licence and, in the event of a breach capable being remedied, fails to remedy the breach within 14 days of receipt of notice thereof in writing.
- 18.4 Either party may terminate the Licence forthwith on written notice if the other party shall become insolvent or bankrupt or make an arrangement with his creditors or go into liquidation.
- 18.5 Termination of the Licence shall not prejudice any rights of either party which have arisen on or before the date of termination.
- 18.6 Within seven days following the date of termination the Licensee shall at the option of the Licensor return or destroy all copies, forms, and parts of the Program and Documentation which are covered by this Licence and shall certify to the Licensor in writing that this has been done.
- 18.7 The maintenance service specified in Appendix 2 may be terminated by the Licensee if the Licensor is in significant breach of his obligations under Clause 11 and fails to remedy the

breach within 14 days of receipt of notice in writing thereof or such longer period as may be reasonable in the circumstances. In the event that the Licensee can demonstrate that such breach has involved him in additional costs then he shall have the right to recover such costs from the Licensor.

## **19. SOURCE CODING**

- 19.1 The Licensor may, at the request of the Licensee and on terms to be agreed, provide to the Licensee a copy of the source coding of the Program together with all necessary associated documentation.
- 19.2 Notwithstanding the provisions of Sub-Clause 19.1, if the Licensee terminates the maintenance service under the provisions of Sub-Clause 18.7, then, the Licensor shall provide to the Licensee at no additional charge a copy of the source code to the Program together with all necessary associated documentation.
- 19.3 Notwithstanding the provisions of Sub-Clause 19.1, in the event that the Licensor shall become insolvent or bankrupt or go into liquidation, other than a voluntary liquidation for the purpose of reconstruction or amalgamation, the Licensor shall, in so far as he is permitted in law to do so, provide to the Licensee at no additional charge a copy of the source coding of the Program together with all necessary associated documentation.
- 19.4 In the event only that the source coding is provided under the provisions of Sub-Clauses 19.2 and 19.3, the Licensee's use of the source coding shall be restricted to the purpose of maintaining the Program.

## **20 CONFIDENTIALITY, FREEDOM OF INFORMATION and GDPR CLAUSE**

- 20.1 The Licensee shall keep confidential the Program and the Documentation or any part thereof and shall not disclose the same to any third party without prior written consent of the Licensor other than under the requirements of a court of law.
- 20.2 The Licensor's consent referred to in Sub-Clause 20.1 shall not unreasonably be refused if it is required to enable the Licensee to disclose (under conditions of confidentiality satisfactory to the Licensor) the Program and/or the Documentation or any part thereof to a third party for the performance of services for the Licensee.
- 20.3 The Licensor and the Licensee shall keep confidential the Licence and all other information of the other party designated as 'confidential' obtained under or in connection with the procurement of the Licence or use of the Program and shall not divulge the same to any third party other than in accordance with the procedures set out below, without the prior written consent of the other party excepting that either party may include the other party in a list of clients or suppliers.
- 20.4 The provisions of this Clause shall not apply to:-
- (i) any information in the public domain otherwise than by breach of this Licence,
  - (ii) information in the possession of the receiving party thereof before divulgence as aforesaid, and
  - (iii) information obtained from the third party who is free to divulge the same.

- 20.5 The Licensor and the Licensee shall divulge confidential information only to those employees who are directly involved in the Licence or use of the Program and shall ensure that such employees are aware of and comply with these obligations as to confidentiality.
- 20.6 The obligations of both parties as to disclosure and confidentiality shall come into effect on the signing of the Licence and shall continue in force notwithstanding the termination of the Licence.
- 20.7 Licensor shall comply with any requirements under the General Data Protection Regulation and Data Protection Act 2018 and shall duly observe all obligations under the data protection laws, which arise in connection with the Agreement.
- 20.8 No personal data or special category data is anticipated to be processed in relation to this Agreement. Notwithstanding the general obligation in condition 20.7 or this clause where Licensor is processing Personal Information as a Data Processor for the Licensee who acts as the data controller, Licensor shall ensure that it has in place appropriate technical and contractual measures to ensure the security of Personal Information (and to guard against unauthorised or unlawful processing of the Personal Information and against accidental loss or destruction of, or damage to, the Personal Information) in compliance with GDPR and Data Protection Act 2018. Licensor will

- (i) only act on the written instructions of the Licensee as controller (unless required by law to act without such instructions);
- (ii) ensure that people processing the data are subject to a duty of confidence;
- (iii) take appropriate measures to ensure the security of processing;
- (iv) only engage a sub-processor with the prior consent of the data controller and a written contract;
- (v) assist the data controller in providing subject access and allowing data subjects to exercise their rights under the GDPR;
- (vi) assist the Licensor as data controller in meeting its GDPR obligations in relation to the security of processing, the notification of personal data breaches and data protection impact assessments;
- (vii) delete or return all personal data to the Licensor as controller as requested at the end of the contract; and
- (viii) submit to audits and inspections, provide the controller with information it needs to ensure that they are both meeting their Article 28 obligations;
- (ix) tell the controller immediately if it is asked to do something infringing the GDPR or other data protection law of the EU or a member state;
- (x) promptly notify the Client of any breach of the security measures required to be put in place pursuant to condition 10.7; and
- (xi) ensure it does not knowingly or negligently do or omit to do anything which places the Client in breach of the Client's obligations under data protection laws,

where any INPHASE services time required shall be subject to charges payable by the data controller at the standard rate.

## **21. FORCE MAJEURE**

Neither party shall be liable for failure to perform its obligations under the Licence if such failure results from circumstances beyond the party's reasonable control.

## **22. WAIVER**



No delay, neglect or forbearance on the part of either party in enforcing against the other party any term or condition of the Licence shall either be or be deemed to be a waiver or in any way prejudice any right of that party under the Licence.

**23. TRAINING**

The Licensor shall provide instruction in the use of the Program for the Licensee's personnel as specified in Appendix 1. Charges shall be made for such instruction as specified in Appendix 1 and the Licensee shall be responsible for paying any travel or living expenses.

**24. PUBLICITY**

Neither party shall without the prior written consent of the other advertise or publicly describe any details of the services the Licensor is providing to the Licensee, excepting that either party shall be entitled to include the other party in a list of clients or suppliers.

**25. ARBITRATION**

Any dispute or difference which may arise between the Licensee and the Licensor in connection with or arising out of the Licence may, by agreement of both parties, be resolved in arbitration, in which event such dispute or difference shall be referred to a single arbitrator to be agreed between the Licensee and the Licensor or, failing such agreement within fourteen days, to be nominated by the President for the time being of the British Computer Society.

**26. LAW**

Unless otherwise agreed in writing between the parties, the Licence shall be subject to and construed and interpreted in accordance with English Law.

## End User Licence Agreement APPENDIX 1 To Agreement \_\_\_\_\_

### LICENCE INFORMATION (EXCLUDING MAINTENANCE SERVICE)

**1. Licensee (Clause 1.iv)**

**2. Licensor (Clause 1.v)**

InPhase Limited  
The Manor House  
Sefton Park  
Stoke Poges  
Buckinghamshire  
SL2 4JS

**3. Title or Description of Program(s) (Clause 1.vi)**

☐ x InPhase Web Server  
☐ x InPhase Web Named User

Site Licences	Number
Data provider (Excel or ASCII file)	Unlimited
Published Snapshot Briefing Book Viewer	Unlimited
<b>Named Users logging into the software</b>	
Data Entry	
Business manager	
Report Creator	
Performance Manager	
Modeller	
Administrator	
<b>Server Software</b>	
INPHASE Server Module	1

**4. Make, Type and serial Number of Equipment (Clause 1.ii)**

1 x Windows Server 2008r2, or above  
☐ x Windows XP PC or above

**5. Address of Location(s) (Clauses 1.ii, 5 and 7.3)**

Server: INPHASE provided hosted server on back-to-back terms provided by the Data Centre hosting company from time to time in use currently Microsoft Azure North Europe.  
Desktop client; offices or other authorised locations of the Licensee

**6. (a) Date of Delivery (Clause 5)**

To be arranged

**(b) Date of Installation (if applicable)(Clause 5)**

Not applicable

**7. Type of Media (Clause 5)**

CD or electronic

**8. Documentation (Clause 8.1)**

On-line

**9. Period of Licence (Clause 2)**

For a minimum Initial Period of \_\_\_\_ times 52 weeks commencing from date of this agreement and thereafter for successive periods of 52 weeks unless terminated by either party in accordance with clause 18, Licence will terminate at the next anniversary date.

**10. Licence Charges (Clauses 3 & 4)**

\_\_\_\_\_

**11. Terms of Payment (Clause 4)**

Payment shall be within 14 days from receipt of a correctly rendered invoice. The rate of interest to be charged in the event of delays in payment shall be 4% per annum above Barclays Bank Plc base rate.

**12. Training (Clause 23)**

Separately arranged

**13. Indemnity and Insurance (Clause 16)**

Other than for liability regarding death, injury or breach of copyright and IPR for which neither party limits liability, the liability of either party to the other under Sub-Clauses 16.1 and 16.2 in respect of any one event or series of connected events shall not exceed £1,000,000.

**14. Details of, Procedures for the Commencement Date of Acceptance Tests (Clause 6)**

Not applicable.

**15. Special Use - if applicable (Clause 7.1)**

Not applicable

## End User Licence Agreement APPENDIX 2 To Licence \_\_\_\_\_

### MAINTENANCE SERVICE

#### 1. Description of Maintenance Services to be Provided (Clause 11)

- a) Licence continuation
- b) Error Correction
- c) Updates and New Releases
- d) Documentation Amendments
- e) Enhancements
- f) Telephone Hot-line support 9.00 a.m. to 5.30 p.m. UK time Monday to Friday excluding UK Bank and Public Holidays.

#### 2. Maintenance Period (clause 11)

For a minimum Initial Period of three times 52 weeks commencing from date of this agreement and thereafter for successive periods of 52 weeks unless terminated by either party in accordance with clause 18. Maintenance will terminate at the next anniversary date.

#### 3. Maintenance Charges (Clauses 3 & 4)

£\_\_\_\_\_ plus applicable taxes payable for each period of 52 weeks on or prior to the first day of the 52 week period, fixed for the Initial Period of 3 years and variable thereafter in accordance with clause 3.

## **End User Licence Agreement**

**Amendment Schedule 1 (Local Authorities) To Agreement \_\_\_\_\_BMSH52\_\_**

### **Amendments**

**The following amendments are made to the End User Licence Agreement, where the following clauses shall be considered as if included in the main body of the Agreement and shall replace or amend any conflicting terms or conditions within the Agreement.**

**There are no amendments on this Licence**

## Appendix 3

# Microsoft Azure Agreement

Last updated: January 2014

This Microsoft Azure Agreement is between you or the entity you represent, or, if no such entity is designated by you in connection with a Subscription purchase or renewal, you individually ("you") and Microsoft Corporation ("Microsoft", "we", "us", or "our") and consists of the below terms and conditions, as well as the Acceptable Use Policy, the Services Terms, the SLAs, and the Offer Details for your Subscription, or renewal (together, the "Agreement"). It is effective on the date we provide you with confirmation of your Subscription or the date on which your Subscription is renewed as applicable. Key terms are defined in Section 10.

### **1. Use of Services.**

1. **Right to use.** We grant you the right to access and use the Services and to install and use the Software included with your Subscription, as further described in this agreement. You may create and maintain a Customer Solution, which you may permit third parties to access and use, provided that the Customer Solution adds material functionality to the Services and is not primarily a substitute for the Services. We reserve all other rights.
2. **Acceptable use.** You may use the Product only in accordance with this Agreement. You may not reverse engineer, decompile, disassemble, or work around technical limitations in the Product, except to the extent that applicable law permits it despite these limitations. You may not disable, tamper with, or otherwise attempt to circumvent any billing mechanism that meters your use of the Product. You may not rent, lease, lend, resell, transfer, or sublicense the Product or any portion thereof to or for third parties.
3. **End Users.** You control access by End Users, and you are responsible for their use of the Product in accordance with this agreement. For example, you will ensure End Users comply with the Acceptable Use Policy.
4. **Customer Data.** You are solely responsible for the content of all Customer Data. You will secure and maintain all rights in Customer Data necessary for us to provide the Services to you without violating the rights of any third party or otherwise obligating Microsoft to you or to any third party. Microsoft does not and will not assume any obligations with respect to Customer Data or to your use of the Products other than as expressly set forth in this Agreement or as required by applicable law

5. **Non-Microsoft Products.**

- a. We may make Non-Microsoft Products available to you through the Portal or other means. The use of any Non-Microsoft Product will be governed by separate terms between you and the third party providing the Non-Microsoft Product. For your convenience, Microsoft may include charges for the Non-Microsoft Product as part of your bill for the Services. Microsoft, however, assumes no responsibility or liability whatsoever for any Non-Microsoft Products.
- b. You are solely responsible for any Non-Microsoft Product that you install or use with the Services. We are not a party to and are not bound by any terms governing your use of any Non-Microsoft Product.
- c. If you install or use any Non-Microsoft Product with the Services, then you, not Microsoft, direct and control the installation and use of it with the Services through your actions (for example, through your use of application programming interfaces and other technical means that are part of the Services). We will not run or make any copies of such Non-Microsoft Products outside of our relationship with you.
- d. If you install or use any Non-Microsoft Product with the Services, you may not do so in any way that would subject our intellectual property or technology to obligations beyond those included in this Agreement.

6. **Responsibility for your accounts.** You are also responsible for maintaining the confidentiality of any non-public authentication credentials associated with your use of the Services. You must promptly notify our customer support team about any possible misuse of your accounts or authentication credentials or any security incident related to the Services.

7. **Updates.** We may make changes to the Services from time to time. We will provide you with 12 months' prior notice before removing any material feature or functionality (excluding Previews), unless security, legal, or system performance considerations require an expedited removal.

8. **Preview releases.** We may make available Previews. **PREVIEWS ARE PROVIDED "AS-IS," "WITH ALL FAULTS," AND "AS AVAILABLE," AND ARE EXCLUDED FROM THE SLAS AND LIMITED WARRANTY.** Previews may not be covered by customer support. Previews may be subject to reduced or different security, compliance, and privacy commitments, as further explained in the Privacy Statement, Trust Center, and any additional notices provided with the Preview. We may change or discontinue Previews at any time without notice. We also may choose not to release a Preview into "General Availability."

## ***2. Security, privacy, and data protection.***

1. **Security.** We maintain appropriate technical and organizational measures, internal controls, and data security routines intended to protect Customer Data against accidental loss or change, unauthorized disclosure or access, or unlawful destruction. Current information about our security practices can be found within the [Trust Center](#). You are wholly responsible for configuring your Customer Solution to ensure adequate security, protection, and backup of Customer Data.
2. **Privacy and data location.** We treat Customer Data in accordance with our [Privacy Statement](#). Subject to any restrictions set forth in the Privacy Statement, we may transfer to, store, or process Customer Data in any country where we or our Affiliates or subcontractors have facilities used to provide or support the Services. We are a data processor (or sub-processor) acting on your behalf, and you appoint us to do these things with Customer Data in order to provide the Services to you. You will obtain any necessary consent from End Users or others whose personal information or other data you will be hosting using the Services.
3. **Ownership of Customer Data.** Except for Software we license to you, as between the parties, you retain all right, title, and interest in and to Customer Data. We acquire no rights in Customer Data, other than the right to host Customer Data within the Services, including the right to use and reproduce Customer Data solely as necessary to provide the Services.
4. **Use of Customer Data.** We will use Customer Data only to provide you the Services. This use may include troubleshooting to prevent, find, and fix problems with the operation of the Services. It may also include improving features for finding and protecting against threats to users. We will not use Customer Data or derive information from it for any advertising or other commercial purposes without your consent.
5. **Third-party requests.** We will not disclose Customer Data to a third party (including law enforcement, other government entity, or civil litigant; excluding our subcontractors) except as you direct or unless required by law. Should a third party contact us with a demand for Customer Data, we will attempt to redirect the third party to request that data directly from you. As part of this effort, we may provide your basic contact information to the third party. If compelled to disclose Customer Data to a third party, we will promptly notify you and provide a copy of the demand, unless legally prohibited from doing so. You are responsible for responding to requests by third parties regarding your use of the Services, such as requests to take down content under the Digital Millennium Copyright Act.
6. **Subcontractors.** We may hire other companies to provide limited services on our behalf, such as customer support. Any such subcontractors will be permitted to



obtain Customer Data only to deliver the services we have retained them to provide, and they are prohibited from using Customer Data for any other purpose. We remain responsible for our subcontractors' compliance with the obligations set forth in this agreement.

7. **Compliance with law.** We will comply with all laws applicable to our provision of the Services, including applicable security breach notification laws, but not including any laws applicable to you or your industry that are not generally applicable to information technology services providers. You will comply with all laws applicable to your Customer Solution, Customer Data, and your use of the Services, including any laws applicable to you or your industry.

### ***3. Purchasing Services.***

1. **Available Subscription offers.** The Portal provides Offer Details for available Subscription offers, which generally can be categorized as one or a combination of the following:
  - a. **Commitment Offering.** You commit in advance to purchase a specific quantity of Services for use during a Term and to pay upfront or on a periodic basis during the Term in advance of use. Additional or other usage (for example, usage beyond your commitment quantity) may be billed like a Consumption Offering.
  - b. **Consumption Offering (also known as Pay-As-You-Go).** You pay based on actual usage in the preceding month with no upfront commitment. Payment is on a periodic basis in arrears.
  - c. **Limited Offering.** You receive a limited quantity of Services for a limited term without charge (for example, a free trial) or as part of another Microsoft offering (for example, MSDN). Provisions in this agreement with respect to pricing, cancellation fees, payment, and data retention may not apply.
2. **Ordering.** By ordering or renewing a subscription, you agree to the offer details for that Subscription offer. Unless otherwise specified in those offer details Services are offered on an "as available" basis and we make no guarantee that a particular quantity of Services will be available at the time of request. You may place orders for your Affiliates under this agreement and grant your Affiliates administrative rights to manage subscription , but Affiliates may not place orders under this agreement. If you grant any rights to Affiliates with respect to your subscription, such Affiliates shall be bound by this agreement and you agree to be jointly and severally liable for any actions of such Affiliates related to their use of the Products
3. **Pricing and payment.** Payments are due and must be made according to the Offer Details for your Subscription.

- a. For Commitment Offerings, the price level may be based on the quantity of Services you ordered. Some offers may permit you to modify the quantity of Services ordered during the Term and your price level may be adjusted accordingly, but price level changes are not retroactive. During the Term of your Subscription, prices for Services will not be increased, as to your Subscription, from those posted in the Portal at the time your commitment period commenced or renewed, except for Previews where prices are identified as temporary or for Non-Microsoft Products for which we do not control the price. All prices are subject to change at the beginning of any Subscription renewal.
- b. For Consumption Offerings, pricing is subject to change at any time upon notice.
4. **Renewal.** Upon renewal of your Subscription, this agreement will terminate and your Subscription will thereafter be governed, by the terms and conditions set forth on the Portal on the date on which your Subscription is renewed (the "Renewal Terms"). If you do not agree to any Renewal Terms, you may decline to renew your Subscription.
  - a. For Commitment Offerings, you may choose to have a Subscription automatically renew or terminate upon expiration of the Term. Automatic renewal is pre-selected. You can change your selection at any time during the Term. If the existing Term is longer than one calendar month, we will provide you with written notice of the automatic renewal before the expiration of the Term.
  - b. For Consumption Offerings, the Subscription renews automatically at the end of every month until you terminate the Subscription.
  - c. For Limited Offerings, renewal may not be permitted.
5. **Taxes.** Prices are exclusive of any taxes. You shall pay any applicable value added, goods and services, sales, or like taxes that are owed with respect to any order placed under this agreement and which we are permitted to collect from you under applicable law. You shall be responsible for any applicable stamp taxes and for all other taxes that you are legally obligated to pay including any taxes that arise on the provision of Products to your Affiliates. We shall be responsible for all taxes based on our net income or on our property ownership. If any taxes are required to be withheld on payments you make to us, you may deduct such taxes from the amount owed to us and pay them to the appropriate taxing authority, provided however that you promptly secure and deliver an official receipt for those withholdings and other documents we reasonably request to claim a foreign tax credit or refund. You will make certain that any taxes withheld are minimized to the extent possible under applicable law.

#### ***4. Term, termination, and suspension.***

1. **Agreement term and termination.** This agreement will remain in effect until the expiration, termination, or renewal of your Subscription, whichever is earliest.
2. **Subscription Term and termination.** You may terminate this Subscription at any time during its Term; however, you must pay all amounts due and owing before the termination is effective, and no refunds will be provided.
  - a. **One-month Subscription.** A Subscription with a one-month Term may be terminated at any time without any cancellation fee.
  - b. **Subscriptions of more than one month.** If you terminate a Subscription within 30 days of the date on which the Subscription became effective or was renewed, you must pay for the initial 30 days of the Subscription, but no payments will be due for the terminated portion of the Subscription. If you terminate a Subscription at any other time during the Term, you must pay for the terminated portion of the Subscription as set forth Offer Details for your Subscription.
3. **Customer Data return and deletion.** You may extract and/or delete Customer Data at any time. When a Subscription expires or terminates, we will retain any Customer Data you have not deleted for at least 90 days so that you may extract it, except for free trials, where we may delete Customer Data immediately without any retention period. You remain responsible for all storage and other applicable charges during this retention period. Following the expiration of this retention period, we will delete all Customer Data, including any cached or back-up copies, within 30 days of the end of the retention period. You agree that we have no additional obligation to continue to hold, export or return Customer Data and that we have no liability whatsoever for deletion of Customer Data pursuant to these terms.
4. **Regulatory.** In any country where any current or future government regulation or requirement applies to us, but not generally to businesses operating there, presents a hardship to us operating the Services without change, and/or causes us to believe this Agreement or the Services may be in conflict with any such regulation or requirement, we may change the Services or terminate this Agreement. If we use this subsection 4(d) of the Agreement to change the Services, then you may terminate this Agreement.
5. **Suspension.** We may suspend your use of the Services if: (1) it is reasonably needed to prevent unauthorized access to Customer Data; (2) you fail to respond to a claim of alleged infringement under Section 6 within a reasonable time; (3) you do not pay amounts due under this Agreement; or (4) you do not abide by the Acceptable Use Policy or you violate other terms of this Agreement. If one or more of these conditions occurs, then:

- a. For Limited Offerings, we may suspend your use of the Services or terminate your Subscription and your account immediately without notice.
- b. For all other Subscriptions, a suspension will apply to the minimum necessary part of the Services and will be in effect only while the condition or need exists. We will give notice before we suspend, except where we reasonably believe we need to suspend immediately. We will give at least 30 days' notice before suspending for non-payment. If you do not fully address the reasons for the suspension within 60 days after we suspend, we may terminate your Subscription and delete your Customer Data without any retention period. We may also terminate your account if your use of the Services is suspended more than twice in any 12-month period.

## ***5. Warranties.***

1. **Limited warranty.** We warrant that the Services will meet the terms of the SLAs during the Term. Your only remedies for breach of this warranty are those in the SLAs.
2. **Limited warranty exclusions.** This limited warranty is subject to the following limitations:
  - a. any implied warranties, guarantees, or conditions not able to be disclaimed as a matter of law will last one year from the start of the limited warranty;
  - b. this limited warranty does not cover problems caused by accident, abuse, or use of the Products in a manner inconsistent with this agreement or our published documentation or guidance, or resulting from events beyond our reasonable control;
  - c. this limited warranty does not apply to problems caused by any failure to meet minimum system requirements; and
  - d. this limited warranty does not apply to Previews or free offerings.

**DISCLAIMER. Other than this warranty, we provide no warranties, whether express, implied, statutory, or otherwise, including warranties of merchantability or fitness for a particular purpose. These disclaimers will apply except to the extent applicable law does not permit them**

## ***6. Defense of claims.***

1. **Defense.**

- a. We will defend you against any claims made by an unaffiliated third party that the Product infringes the third party's patent, copyright, or trademark or makes unlawful use of its trade secret.
  - b. You will defend us against any claims made by an unaffiliated third party that (1) any Customer Solution or Customer Data infringes the third party's patent, copyright, or trademark or makes unlawful use of its trade secret; (2) arise from violation of the Acceptable Use Policy.
2. **Limitations.** Our obligations in subsection 6(a) will not apply to a claim or award based on: (i) the Customer Solution, Customer Data, Non-Microsoft Products, modifications you make to the Product, or materials you provide or make available in the course of using the Product; (ii) your combination of the Product with, or damages based upon the value of, a Non-Microsoft Product, data, or business process; (iii) your use of a Microsoft trademark without our express written consent, or your use of the Product after we notify you to stop due to a third-party claim; or (iv) your redistribution of the Product to, or use for the benefit of, any unaffiliated third party. (v) Services provided free of charge.
  3. **Remedies.** If we reasonably believe that a claim under subsection 6(a)(i) may bar your use of the Product, we will seek to: (i) obtain the right for you to keep using it; or (ii) modify or replace it with a functional equivalent. If these options are not commercially reasonable, we may terminate your rights to use the Product and then refund any advance payments for unused Subscription rights.
  4. **Obligations.** Each party must notify the other promptly of a claim under this Section 6. (i) The party seeking protection must (1) give the other sole control over the defense and settlement of the claim; and (2) give reasonable help in defending the claim. (ii) The party providing the protection will (1) reimburse the other for reasonable out-of-pocket expenses that it incurs in giving that help and (2) pay the amount of any resulting adverse final judgment (or settlement that the other consents to). The parties' respective rights to defense and payment of judgments or settlements under this Section are in lieu of any common law or statutory indemnification rights or analogous rights, and each party waives such common law rights.

## ***7. Limitation of liability.***

1. **Limitation.** The aggregate liability of each party under this agreement is limited to direct damages up to the amount paid under this Agreement for the Services giving rise to that liability during the 12 months before the liability arose, or for Products provided free of charge, Five Thousand United States dollars (\$5,000.00 USD).

2. **EXCLUSION.** Neither party will be liable for indirect, special, incidental, consequential, punitive, or exemplary damages, or damages for lost profits, revenues, business interruption, or loss of business information, even if the party knew that such damages were possible.
3. **Exceptions to limitations.** The limits of liability in this Section apply to the fullest extent permitted by applicable law, but do not apply to: (1) the parties' obligations under Section 6 or subsection 9(m); or (2) violation of the other's intellectual property rights.

## **8. Software.**

1. **Software provided for use on devices.** If the Software is provided to you with its own proprietary license terms, those terms control. If the Software does not have its own license terms, then you may install and use any number of copies of the Software on your devices for use with Services. This subsection does not apply to Software addressed in subsection 8(b).
2. **Software provided for use within the Services.** We may provide you with the option of running Software within the Services (for example, in a virtual machine). Your use of that Software is subject to Microsoft's proprietary license terms c provided with the Software, as modified below:
  - a. You may use such Software only within the Services and only in conjunction with your permitted use of any applicable Services role. To the extent of any conflict between this paragraph and the proprietary license terms contained in the Software, this paragraph controls.
  - b. You have no other rights under the Software's license terms or under this agreement to run the software (for example, you may not run or install copies of the Software on your on-premise servers or other devices unless you separately obtain the license to do so).
3. **Effect of termination or expiration on Software.** If this agreement or the related Subscription is terminated or expires and you do not exercise an available buy-out option for Software, then you must delete all copies of Software and destroy any associated media.
4. **Other rights.** Your rights to access Software on any device do not give you any right to implement Microsoft patents or other Microsoft intellectual property in software or devices that access that device.
5. **Third party software.** Software may contain third party proprietary programs that are licensed under separate terms that are presented to you. Software may also contain third party open source programs that Microsoft, not the third party, licenses

to you under Microsoft's license terms. Third party notices, if any, for such open source programs are included for your information only.

## 9. *Miscellaneous.*

1. **Notices.** You must send notices by mail to the address below.

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NOTICES SHOULD BE SENT TO:	COPIES SHOULD BE SENT TO:
Microsoft Corporation	Microsoft Corporation
Volume Licensing Group	Legal and Corporate Affairs
One Microsoft Way	Volume Licensing Group
Redmond, WA 98052	One Microsoft Way
USA	Redmond, WA 98052
Via Facsimile: (425) 936-7329	USA
	Via Facsimile: (425) 936-7329

You agree to receive electronic notices from us, which will be sent by email to the account administrator you specify in the Portal. Notices are effective on the date on the return receipt or, for email, when sent. You are responsible for ensuring that the account administrator email address that you specify in the Portal is accurate and current, and you agree that any email notice that we send to such email address will be effective when sent, whether or not you actually receive the email.

2. **Assignment.** You may not assign this agreement either in whole or in part.
3. **Consent to partner fees.** When you place an order, you may be given the option to identify a "Partner of Record" associated with your Subscriptions. By identifying a Partner of Record, directly or by authorizing a third party to do so, you consent to us paying fees to the Partner of Record. The fees are for pre-sales support and may also include post-sales support. The fees are based on, and increase with, the size of your Order. Our prices for Products are the same whether or not you identify a Partner of Record.



4. **Severability.** If any part of this agreement is held unenforceable, the rest remains in full force and effect.
5. **Waiver.** Failure to enforce any provision of this agreement will not constitute a waiver.
6. **No agency.** You and Microsoft are independent contractors. This agreement does not create an agency, partnership, or joint venture.
7. **No third-party beneficiaries.** There are no third-party beneficiaries to this agreement.
8. **Applicable law and venue.** This agreement is governed by State of Washington law, without regard to its conflict of laws principles, except that (i) if you are a U.S. Government entity, this agreement is governed by the laws of the United States, and (ii) if you are a state or local government entity in the United States, this agreement is governed by the laws of that state. Any action to enforce this agreement must be brought in the State of Washington. This choice of jurisdiction does not prevent either party from seeking injunctive relief in any appropriate jurisdiction with respect to violation of intellectual property rights.
9. **Entire agreement.** This agreement is the entire agreement concerning its subject matter and supersedes any prior or concurrent communications.
10. **Survival.** The following provisions will survive this agreement's termination or expiration: 1(c)–(f), 2(b)–(g), 3(e), 4(b)–(c), sections 5–7, 8(c), and sections 9–10.
11. **U.S. export jurisdiction.** The Product is subject to U.S. export jurisdiction. You must comply with all applicable laws, including the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, and end-user, end-use and destination restrictions issued by U.S. and other governments. For additional information, see <https://www.microsoft.com/exporting/>.
12. **International availability.** Availability of the Services, including specific features and language versions, varies by country. Information on availability is located at <https://products.office.com/en-us/business/international-availability?legRedir=true&CorrelationId=06647202-e1f3-4ae5-b61f-cf9c6350e7c9> or at an alternate site we identify.
13. **Acquired rights.** You will defend us against any claim that arises from (1) any aspect of the current or former employment relationship between you and any of your current or former personnel or contractors or under any collective agreements, including, without limitation, claims for wrongful termination, breach of express or implied employment contracts, or payment of benefits or wages, unfair dismissal



costs, or redundancy costs, or (2) any obligations or liabilities whatsoever arising under the Acquired Rights Directive (Council Directive 2001/23/EC, formerly Council Directive 77/187/EC as amended by Council Directive 98/50/EC) or any national laws or regulations implementing the same, or similar laws or regulations, (including the Transfer of Undertakings (Protection of Employment) Regulations 2006 in the United Kingdom) including a claim from your current or former personnel or contractors (including a claim in connection with the termination of their employment by us following any transfer of their employment to us pursuant to such laws or regulations). You must pay the amount of any resulting adverse final judgment (or settlement to which you consent). This section provides our exclusive remedy for these claims. We will notify you promptly in writing of a claim subject to this section. We must (1) give you sole control over the defense or settlement of such claim; and (2) provide reasonable assistance in defending the claim. You will reimburse us for reasonable out of pocket expenses that we incur in providing assistance.

14. **Force majeure.** Neither party will be liable for any failure in performance due to causes beyond its reasonable control (such as fire, explosion, power blackout, earthquake, flood, severe storms, strike, embargo, labor disputes, acts of civil or military authority, war, terrorism (including cyber terrorism), acts of God, acts or omissions of Internet traffic carriers, actions or omissions of regulatory or governmental bodies (including the passage of laws or regulations or other acts of government that impact the delivery of Services). This section will not, however, apply to your payment obligations under this agreement.
15. **Modifications.** We may modify this agreement at any time by posting a revised version on the legal information section of the Portal (<http://azure.microsoft.com/en-us/support/legal/> or an alternate site we identify) or by notifying you in accordance with subsection 9(a). Modified terms that relate to changes or additions to the Product or that are required by law will be effective immediately, and by continuing to use the Services you will be bound by the modified terms. All other modified terms will be effective upon renewal (including automatic renewal) of an existing Subscription or order for a new Subscription.
16. **Contracting Authority.** If you are an individual accepting these terms on behalf of an entity, you represent that you have the legal authority to enter into this Agreement on that entity's behalf.

## **10. Definitions.**

Any reference in this agreement to "day" will be a calendar day.

"Acceptable Use Policy" means a list of prohibited uses of the Services that is published at <http://azure.microsoft.com/en-us/support/legal/> or at an alternate site that we identify.



"Affiliate" means any legal entity that a party owns, that owns a party, or that is under common ownership with a party. "Ownership" means, for purposes of this definition, control of more than a 50% interest in an entity.

"Consumption Offering", "Commitment Offering", or "Limited Offering" describe categories of Subscription offers and are defined in Section 3.

"Customer Data" means all data, including all text, sound, software, or image files that are provided to us by, or on behalf of, you or your Affiliates through your use of the Services.

"Customer Solution" means any application you run in connection with Services.

"End User" means any user of a Customer Solution, or any person permitted by you to access Customer Data hosted in Services or otherwise use the Services.

"Non-Microsoft Product" means any software, data, service, website or other product licensed, sold or otherwise provided to you by an entity other than us, whether you obtained it via our Product or elsewhere.

"Offer Details" means the pricing and related terms applicable to a Subscription offer, as published in the Portal.

"Portal" means the online portal from which you purchase a Subscription at <http://azure.microsoft.com/en-us/pricing/> or at an alternate site we identify.

"Previews" means preview, beta, or other pre-release versions of the Services or Software offered by Microsoft to obtain customer feedback.

"Privacy Statement" means the Microsoft Azure Privacy Statement, published at <http://www.microsoft.com/en-us/privacystatement/OnlineServices/Default.aspx> or at an alternate site that we identify.

"Product" means any Services or Software.

"Services" means one or more of the Microsoft Azure services or features made available to you under this agreement by Microsoft and identified at <http://azure.microsoft.com/en-us/services/>, except the Microsoft Azure Marketplace (which is governed by separate terms).

"Services Terms" means the additional terms that govern specific features within the Product and customer support for the Product, and are published at

<http://azure.microsoft.com/en-us/support/legal/> or an alternate site we identify. You may also need to use other Microsoft web sites and online services to access and use the Services (for example, Windows Live ID), and if so, the terms of use associated with those web sites or online services apply to your use of them.

"SLAs" means the commitments we make regarding delivery or performance of the Services, as published in the service level agreements available at <http://azure.microsoft.com/en-us/support/legal/sla/> or at an alternate site that we identify.

"Software" means Microsoft software we provide to you as part of the Services for use with the Services.

"Subscription" means an enrollment for Services for a defined Term as specified on the Portal. You may purchase multiple Subscriptions, which may be administered separately and which will be governed by the terms of a separate Microsoft Azure Agreement.

"Term" means the duration of a Subscription (for example, 30 days or 12 months).

"we" and "us" means Microsoft Corporation and its affiliates, as appropriate.

"Trust Center" means the Microsoft Azure Trust Center published at <http://azure.microsoft.com/en-us/support/trust-center/> or at an alternate site we identify.

"you" and "your" means the entity entering into this agreement to use the Product.

# INPHASE BMS

## INPHASE Maps feature

### Bing Maps base layer Licence

From INPHASE BMS version 14 – Vector released 1 January 2015 the following Licence Terms apply to the use of the INPHASE BMS Maps feature use of Bing Maps base layer.

**If you do not agree with these Terms of Licence ADVISE INPHASE IMMEDIATELY and do not use the Bing Maps Key provided below to activate the Bing Maps base layer feature in INPHASE BMS.**

End User	Bing Key

## MICROSOFT BING MAPS END USER MINIMUM TERMS

Applicable from 1 January 2015 to INPHASE BMS software Maps feature.

**END USER MINIMUM TERMS: LIGHT KNOWN USER APPLICATIONS** These license terms ("End User Minimum Terms") are an agreement between

Inphase Ltd ("Bing Maps Licensor") governing the software application or suite of applications [INPHASE BMS Maps feature] ("Bing Maps Application") with which

[End User] ("End User" or "you") acquired use of the Microsoft Bing Maps Services ("Services"). Please read them.

Microsoft has licensed the Services to Bing Maps Licensor. By using the Bing Maps Application, you accept these terms. If you do not accept them, do not use the Bing Maps Application.

### Definitions.

"Asset" means one of any of the following classes: vehicle, device or other mobile object.

"Content" means the maps, images and other data and third party content that Bing Maps Licensors are authorized to access via the Services.

"Known User" means an End User that is provisioned and/or authenticated by Bing Maps Application, for example through the use of usernames, passwords, digital certificates, unique IDs, smart cards, or other identification technology.

"Known User SLs" means single user Subscription Licenses accessed by Bing Maps Licensor's authenticated employees and/or End Users' authenticated employees on Bing Maps Licensor's extranet or End User's private intranet, in order to access and display maps and related information in a Bing Maps Application.

"Services" means the Bing Maps Platform APIs to be provided by Microsoft.

"Subscription License" or "SL" means a subscription license (e.g., Known User SL, Mobile Asset Management SL, or Mobile Asset Management for Consumer SL) that may be granted pursuant to an agreement between Licensor and End User, with the license rights further granted in a Bing Maps Distributor Service Order.

**License.** Bing Maps Licensor provides you a license to access the Services from within the Bing Maps Application provided by Bing Maps Licensor only.

**Light Known Users.** You must acquire the appropriate Subscription License (SL) for each Light Known User that accesses the Bing Maps Application. Light Known Users are permitted to access the Bing Maps Application for the purpose of displaying maps and related maps in a Bing Maps Application.

You have acquired 5 (unless otherwise specified in writing) Light Known User SLs for use solely within the Bing Maps Application supplied by Bing Maps Licensor.

These Known User SLs are valid for the term of your agreement with Bing Maps Licensor, which may not exceed one year.

### Additional Restrictions for Light Known Users

Light Known User may overlay administrative boundaries or other map content provided in the Bing Maps Application, provided that you do not use the Bing Maps Application for:

- (1) loading additional map content layers of any kind;
- (2) editing or creating map content. For avoidance of doubt, simple annotations such as a line, arrow, polygon or circle to highlight an area are allowed and not considered to be map content under this restriction; and
- (3) executing any spatial query other than proximity (find the nearest), point-in-polygon, distance between two points or as provided by the find and route services. For avoidance of doubt, Bing Maps Application may not perform Geofences, buffers or query a spatially enabled database.

**General Restrictions:** Microsoft does have some restrictions on your use of the Bing Maps Application supplied by Bing Maps Licensor. In using the Services provided with the Bing Maps Application, you may not:

(a) Upload or incorporate any content to the Services via the Bing Maps Application, or use the Bing Maps Application to display or use any content:

- for which you do not have all necessary permissions from the copyright holder(s);
- which includes nudity or is obscene, indecent, pornographic;
- which is intended to exploit minors in any way;
- which incites, advocates, or expresses hatred, bigotry, racism, or gratuitous violence; or
- which is intended to threaten, stalk, defame, defraud, degrade, victimize, or intimidate an individual or group of individuals for any reason, including on the basis of age, gender, disability, ethnicity, sexual orientation, race, or religion, or to incite or encourage anyone else to do so.

(b) Copy, store, archive, or create a database of the Content.

(c) Use Content, including geocodes, other than in conjunction with the Bing Maps Application.

(d) Present or alert a Known User to individual maneuvers of a route in any way that is synchronized with the Known User's sensor-based position along the route (e.g. turn by turn navigation that tracks Known User's position using GPS and communicates a maneuver as the Known User approaches the location for such maneuver).

(e) Change, obscure, or minimize any logo, trademark, copyright or other notice of Microsoft or its suppliers, or digital watermarks in the Content; except that we may make alternative logo, trademark and copyright attribution requirements available for use with small maps or on small devices; if available you will find them here: <http://go.microsoft.com/fwlink/?LinkID=229258>.

- (f) Use the Services for business asset tracking, fleet management, or dispatch including, without limitation, to monitor or track the location or movement of Asset(s), including to provide guidance based on the position or routing of multiple objects tracked using GPS or other sensor-generated methods.
- (g) Use Content other than in combination with the Services and not separately.
- (h) Use Content that consists of points of interest data to generate sales leads information in the form of ASCII or other text-formatted lists of category-specific business listings which (i) include complete mailing address for each business; and (ii) contain a substantial portion of such listings for a particular country, city, state or zip code region.
- (i) Transmit, sell, license or deliver any infringing, defamatory, offensive, or illegal products, services or materials.
- (j) Violate any applicable U.S. Export Administration Regulations or End User, end-use and destination restrictions issued by U.S. and other governments. The Services are subject to U.S. export jurisdiction.
- (k) Use the Services in any way that threatens the integrity, performance or reliability of the Services including performance or stress testing, or in any manner that works around any technical limitations in the Services.
- (l) Syndicate, redistribute, resell or sublicense access to the Services or Content on a standalone basis.
- (m) Falsify or alter any unique referral identifier in, or assigned to, a Bing Maps Application, or otherwise obscure or alter the source of queries coming from a Bing Maps Application.
- (n) Reverse engineer, decompile or disassemble the Services, except and only to the extent that applicable law expressly permits, despite this limitation.
- (o) Integrate road maps from the Services with road maps supplied by any third party. You may not replace aerial imagery from the Services with imagery supplied by any other mapping platform.
- (p) Use the Services or Content with a vehicle's dashboard, or a device connected to a vehicle's dashboard, systems or sensors, except that the device may be connected to the vehicle power source for charging purposes.
- (q) Use bird's eye aerial imagery (if it is made available through the Bing Maps Platform APIs) to reveal latitude, longitude, altitude or other metadata.
- (r) Save, download, print, distribute, transmit or manipulate bird's eye imagery, or offer others that ability, through your Bing Maps Application.
- (s) Use bird's eye imagery of the United States, Canada, Mexico, New Zealand, Australia, and/or Japan if you are a government entity.
- (t) Use Content from Ordnance Survey.

**Intellectual Property and Reservation of Rights.** All rights to the Services and the Content, including rights of use, not specifically granted under these End User Minimum Terms or your agreement with Bing Maps Licensor are reserved by Microsoft and its suppliers. Except as set forth in your agreement with your Bing Maps Licensor, these End User Minimum Terms do not grant Microsoft any right or license to any Bing Maps Application or your intellectual property, including intellectual property that you licensed from third parties. Except for material that Microsoft may license to you, Microsoft does not claim ownership of the content you post or otherwise provide to us, which is hosted by Microsoft or a third party hosting provider on Microsoft's behalf, related to the Services (called a "Submission"). However, by posting or otherwise providing your Submission (and for the avoidance of doubt, where Microsoft hosts content on your behalf including by a third party hosting provider, this constitutes a Submission, but where you host or a third party hosts content on your behalf, other than Microsoft or a third party hosting provider on behalf of Microsoft, this does not constitute a Submission), you are granting to Microsoft free permission to use, copy, distribute, display, publish, transcode and otherwise modify your Submission, each in connection with the Services, and sublicense these rights to others in order to provide the Services. For every Submission you make, you must have all rights necessary for you to grant the permissions in this section.

#### **Additional Rights and Restrictions for End Users**

- (i) **Support or SLA.** Microsoft does not provide any support or SLA directly to End Users for Bing Maps Application provided to End User by Bing Maps Licensor.
- (ii) **Termination Rights.** Microsoft reserves the right terminate access to the Bing Maps Application to any End User who is in breach of any restriction included in these End User Terms or Bing Maps Licensor's terms with End User related to use of the Services, and who fails to cure such breach within thirty (30) days after written notice thereof.
- (iii) **No Warranty by Microsoft to End Users.** Microsoft does not make any representation or warranty (express, implied, statutory, or otherwise) with respect to the Services or otherwise.

#### **EXHIBIT D**

##### **LICENSED USE CASES**

The following are the Licensed Use Cases for Subscription Licenses purchased for use with the Bing Maps Applications. All definitions have the meanings set forth in the Bing Maps Licensor Service Order.

##### **1.2 Light Known User.**

Bing Maps Licensor will use the Services provided under this Bing Maps Licensor Service Order in a Bing Maps Application that is accessed by Bing Maps Licensor's authenticated employees and/or End Users' authenticated employees on Bing Maps Licensor's extranet or End User's private intranet, in order to access and display maps and related information in a Bing Maps Application. Bing Maps Application may be accessed via a web browser or an installed client, provided that functionality provided in the user interface and authentication of Known Users is strictly controlled by Bing Maps Licensor in order to comply with this Bing Maps Licensor Service Order.

##### **(a) Additional License Rights and Restrictions.**

- (i) Bing Maps Licensor is granted the number of Known User Subscription Licenses (SLs) reported and paid for by Bing Maps Licensor.
- (ii) Bing Maps Licensor's Bing Maps Application may not exceed 25,000 total forward or reverse geocoding transactions, sessions or routing requests within any 24 hour period. Bing Maps Application may not exceed 5 million total forward or reverse geocoding transactions, sessions or routing requests per year. Should Licensor report more than 5000 Light Known User SLs, upon such reporting, these limits will be increased at the rate of 10 requests per Light Known User within any 24

hour period and 1000 requests per Light Known User per year, for each Light Known User SL above 5,000. Such increased limits will continue for the duration that Bing Maps Licensor reports more than 5000 Light Known User SLs.

(iii) Bing Maps Application may only overlay administrative boundaries or other map content subject to Section 1.2(p) of the TOU provided that the Bing Maps Application's user interface prevents End Users from:

- loading additional map content layers of any kind;
- editing or creating map content. For avoidance of doubt, simple annotations such as a line, arrow, polygon or circle to highlight an area is allowed and not considered to be map content under this restriction; and
- executing any spatial query other than proximity (find the nearest), point-in-polygon, distance between two points or as provided by the find and route within the Services. For avoidance of doubt, Bing Maps Application may not perform Geofences, buffers or query a spatially enabled database.