

THE INFORMATION IN THIS BOX IS NOT A PART OF THE CONTRACT AND IS FOR COUNTY USE ONLY



Contract Number

24-128

SAP Number

Innovation and Technology Department

Department Contract Representative	<u>Christine Onyango</u>
Telephone Number	<u>909-388-5943</u>
Contractor	<u>Microsoft Corporation</u>
Contractor Representative	<u>Anya Merkle</u>
Telephone Number	<u>760-525-4322</u>
Contract Term	<u>Upon acceptance and continuing until no longer in use by the County.</u>
Original Contract Amount	<u>Non-financial</u>
Amendment Amount	<u>N/A</u>
Total Contract Amount	<u>Non-financial</u>
Cost Center	<u>1200604048</u>

Briefly describe the general nature of the contract: Non-financial Microsoft Azure App Service Migration Assistant License Terms including non-standard terms, with Microsoft Corporation, for access to free products, downloads, and tools, effective upon acceptance of the listed online terms and continuing until Microsoft Azure Data Migration Assistant is no longer in use by the County.

FOR COUNTY USE ONLY

Approved as to Legal Form

▶ Bonnie Uphold
Bonnie Uphold, Supervising Deputy County Counsel

Date

1/26/2024

Reviewed for Contract Compliance

▶

Date

Reviewed/Approved by Department

▶

Date

Microsoft Azure App Service Migration Assistant

MICROSOFT SOFTWARE LICENSE TERMS

MICROSOFT APP SERVICE MIGRATION TOOLS

These license terms are an agreement between Microsoft Corporation (or based on where you live, one of its affiliates) and you. They apply to the software named above. The terms also apply to any Microsoft services or updates for the software, except to the extent those have additional terms.

If you comply with these license terms, you have the rights below.

INSTALLATION AND USE RIGHTS.

General. You may install and use any number of copies of the software.

Third Party Components. The software may include third party components with separate legal notices or governed by other agreements, as may be described in the notices file(s) accompanying the software.

Microsoft Online Subscription Agreement. Some features of the software provide access to, or rely on, Microsoft Azure Services. The use of those services (but not the software) is governed by the separate terms and privacy policies associated with your Microsoft Azure subscription. The services may not be available in all regions. For more information see <https://aka.ms/privacy>.

DATA.

Data Collection. The software may collect information about you and your use of the software, and send that to Microsoft. Microsoft may use this information to provide services and improve our products and services. You may opt-out of many of these scenarios, but not all, as described in the software documentation. There are also some features in the software that may enable you and Microsoft to collect data from users of your applications. If you use these features, you must comply with applicable law, including providing appropriate notices to users of your applications together with a copy of Microsoft's privacy statement. Our privacy statement is located at <https://aka.ms/privacy>. You can learn more about data collection in the software documentation and our privacy statement. Your use of the software operates as your consent to these practices.

Processing of Personal Data. To the extent Microsoft is a processor or subprocessor of personal data in connection with the software, Microsoft makes the commitments in the European Union General Data Protection Regulation Terms of the Microsoft Products and Services Data Protection Addendum to all customers effective May 25, 2018, at <https://docs.microsoft.com/en-us/legal/gdpr>.

SCOPE OF LICENSE. The software is licensed, not sold. This agreement only gives you some rights to use the software. Microsoft reserves all other rights. For clarification Microsoft, or its licensors, retains ownership of all aspects of the software. Unless applicable law gives you more rights despite this limitation, you may use the software only as

expressly permitted in this agreement. In doing so, you must comply with any technical limitations in the software that only allow you to use it in certain ways. For example, if Microsoft technically limits or disables extensibility for the software, you may not extend the software by, among other things, loading or injecting into the software any non-Microsoft add-ins, macros, or packages; modifying the software registry settings; or adding features or functionality equivalent to that found in Microsoft products and services. You may not work around any technical limitations in the software:

- reverse engineer, decompile or disassemble the software, or otherwise to derive the source code for the software, except and only to the extent required by third party licensing terms governing use of certain open-source components that may be included with the software;

- remove, minimize, block or modify any notices of Microsoft or its suppliers in the software;

- use the software in any way that is against the law, or

- share, publish, rent, or lease the software; or

- provide the software as a stand-alone offering or combine it with any of your applications for others to use, or transfer the software or this agreement to any third person.

Export Restrictions. You must comply with all domestic and international export laws and regulations that apply to the software, which include restrictions on destinations, end users and end use. For further information on export restrictions, visit (aka.ms/exporting).

SUPPORT SERVICES. Because this software is "as is," we may not provide support services for it.

Entire Agreement. This agreement, and the terms for supplements, updates, Internet-based services and support services that you use, are the entire agreement for the software and support services.

Applicable Law. If you acquired the software in the United States, Washington law applies to interpretation of and claims for breach of this agreement, and the laws of the state where you live apply to all other claims. If you acquired the software in any other country, its laws apply.

CONSUMER RIGHTS; REGIONAL VARIATIONS. This agreement describes certain legal rights. You may have other rights, including consumer rights, under the laws of your state or country. Separate and apart from your relationship with Microsoft, you may also have rights with respect to the party from which you acquired the software. This agreement does not change those other rights if the laws of your state or country do not permit it to do so. For example, if you acquired the software in one of the below regions, or mandatory country law applies, then the following provisions apply to you:

Australia. You have statutory guarantees under the Australian Consumer Law and nothing in this agreement is intended to affect those rights.

Canada. If you acquired this software in Canada, you may stop receiving updates by turning off the automatic update feature, disconnecting your device from the Internet (if and when you re-connect to the Internet, however, the software will resume checking for and installing updates), or uninstalling the software. The product documentation, if any, may also specify how to turn off updates for your specific device or software.

Germany and Austria.

Warranty. The properly licensed software will perform substantially as described in any Microsoft materials that accompany the software. However, Microsoft gives no contractual guarantee in relation to the licensed software.

Limitation of Liability. In case of intentional conduct, gross negligence, claims based on the Product Liability Act, as well as, in case of death or personal or physical injury, Microsoft is liable according to the statutory law.

Subject to the foregoing clause (ii), Microsoft will only be liable for slight negligence if Microsoft is in breach of such material contractual obligations, the fulfillment of which facilitate the due performance of this agreement, the breach of which would endanger the purpose of this agreement and the compliance with which a party may constantly trust in (so-called "cardinal obligations"). In other cases of slight negligence, Microsoft will not be liable for slight negligence.

Disclaimer of Warranty. THE SOFTWARE IS LICENSED "AS-IS." YOU BEAR THE RISK OF USING IT. MICROSOFT GIVES NO EXPRESS WARRANTIES, GUARANTEES OR CONDITIONS. TO THE EXTENT PERMITTED UNDER YOUR LOCAL LAWS, MICROSOFT EXCLUDES THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT

Limitation on and Exclusion of Damages. YOU CAN RECOVER FROM MICROSOFT AND ITS SUPPLIERS ONLY DIRECT DAMAGES UP TO U.S. \$5.00. YOU CANNOT RECOVER ANY OTHER DAMAGES, INCLUDING CONSEQUENTIAL, LOST PROFITS, SPECIAL, INDIRECT OR INCIDENTAL DAMAGES.

This limitation applies to (a) anything related to the software, services, content (including code) on third party Internet sites, or third party applications; and (b) claims for breach of contract, breach of warranty, guarantee or condition, strict liability, negligence, or other tort to the extent permitted by applicable law.

It also applies even if Microsoft knew or should have known about the possibility of the damages. The above limitation or exclusion may not apply to you because your country may not allow the exclusion or limitation of incidental, consequential or other damages.

Please note: As this software is distributed in Quebec, Canada, some of the clauses in this agreement are provided below in French.

Remarque: Ce logiciel étant distribué au Québec, Canada, certaines des clauses dans ce contrat sont fournies ci-dessous en français.

EXONÉRATION DE GARANTIE. Le logiciel visé par une licence est offert « tel quel ». Toute utilisation de ce logiciel est à votre seule risque et péril. Microsoft n'accorde aucune autre garantie expresse. Vous pouvez bénéficier de droits additionnels en vertu du droit local sur la protection des consommateurs, que ce contrat ne peut modifier. La ou elles sont permises par le droit locale, les garanties implicites de qualité marchande, d'adéquation à un usage particulier et d'absence de contrefaçon sont exclues.

LIMITATION DES DOMMAGES-INTÉRÊTS ET EXCLUSION DE RESPONSABILITÉ POUR LES DOMMAGES. Vous pouvez obtenir de Microsoft et de ses fournisseurs une indemnisation en cas de dommages directs uniquement à hauteur de 5,00 \$ US. Vous ne pouvez prétendre à aucune indemnisation pour les autres dommages, y compris les dommages spéciaux, indirects ou accessoires et pertes de bénéfices.

Cette limitation concerne:

tout ce qui est relié au logiciel, aux services ou au contenu (y compris le code) figurant sur des sites Internet tiers ou dans des programmes tiers; et

les réclamations au titre de violation de contrat ou de garantie, ou au titre de responsabilité stricte, de négligence ou d'une autre faute dans la limite autorisée par la loi en vigueur.

Elle s'applique également, même si Microsoft connaissait ou devrait connaître l'éventualité d'un tel dommage. Si votre pays n'autorise pas l'exclusion ou la limitation de responsabilité pour les dommages indirects, accessoires ou de quelque nature que ce soit, il se peut que la limitation ou l'exclusion ci-dessus ne s'appliquera pas à votre égard.

EFFET JURIDIQUE. Le présent contrat décrit certains droits juridiques. Vous pourriez avoir d'autres droits prévus par les lois de votre pays. Le présent contrat ne modifie pas les droits que vous confèrent les lois de votre pays si celles-ci ne le permettent pas.