

(For ISV Royalty Program Only)

## Microsoft® Visio® LTSC Standard 2021 Edition <sup>1</sup>

Licenses: \_\_\_\_\_<sup>2</sup>

### END-USER LICENSE AGREEMENT

**IF YOU LIVE IN (OR IF YOUR PRINCIPAL PLACE OF BUSINESS IS IN) THE UNITED STATES, PLEASE READ THE BINDING ARBITRATION CLAUSE AND CLASS ACTION WAIVER IN SECTION 8. IT AFFECTS HOW DISPUTES ARE RESOLVED WITH THE LICENSOR OR MICROSOFT.**

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- b. Additional terms.** Additional Microsoft and third party terms may apply to your use of certain features, services and apps. Please be sure to read them.
  - (i) Some features of the software provide an access point to, or rely on, online services, and the use of those services is sometimes governed by separate terms and privacy policies, such as the Microsoft Services Agreement at ([aka.ms/msa](https://aka.ms/msa)). You can view these terms and policies by looking at the applicable service terms of use. The services may not be available in all regions.

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<sup>2</sup> **LICENSOR: Specify the total number of copies of the software the end-user is licensed for under this agreement.**

- (ii) The software may include third party programs that Microsoft, not the third party, licenses to you under this agreement. Notices, if any, for the third party program are included for your information only.
- (iii) While the software is running, you may use its fonts to display and print content. You may temporarily download the fonts to a printer or other output device to print content, and you may embed fonts in content only as permitted by the embedding restrictions in the fonts.

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- b. Device.** In this agreement, "device" means a hardware system (whether physical or virtual) with an internal storage device capable of running the software. A hardware partition or blade is considered to be a device.
- c. Restrictions.** The licensor and Microsoft reserve all rights (such as rights under intellectual property laws) not expressly granted in this agreement. For example, this license does not give you any right to, and you may not:
  - (i) use or virtualize features of the software separately;
  - (ii) publish, copy, rent, lease, or lend the software;
  - (iii) transfer the software (except as permitted by this agreement);
  - (iv) work around any technical restrictions or limitations in the software;
  - (v) use the software as server software, for commercial hosting, make the software available for simultaneous use by multiple users over a network, install the software on a server and allow users to access it remotely, or install the software on a device for use only by remote users;
  - (vi) reverse engineer, decompile, or disassemble the software, or attempt to do so, except if the laws where you live (or, if a business, where your principal place of business is located) permit this even when this agreement does not. In that case, you may do only what your law allows; or
  - (vii) when using Internet-based features you may not use those features in any way that could interfere with anyone else's use of them, or to try to gain access to or use any service, data, account, or network, in an unauthorized manner.
- d. Multiple use scenarios.**
  - (i) **Multiple versions.** If when acquiring the software you were provided with multiple versions (such as 32-bit and 64-bit versions), you may install and activate only one of those versions at a time.
  - (ii) **Multiple or pooled connections.** You may not use hardware or software to multiplex or pool connections, or otherwise allow multiple users or multiple computers or devices to access or use the software indirectly through the licensed computer.
  - (iii) **Use in a virtualized environment.** This license allows you to install only one instance of the software for use on one device, whether that device is physical or virtual. If you want to use the software on more than one virtual device, you must obtain a separate license for

each instance.

- (iv) **Remote access.** You may access and use the software installed on the licensed device from another device using remote access technologies, so long as the software installed on the licensed device is not being used by another user simultaneously. Other users, at different times, may access the licensed device from another device using remote access technologies, but only on devices separately licensed to run the same or higher edition of this software.
  - (v) **Remote assistance.** You may use remote assistance technologies to share an active session without obtaining any additional licenses for the software. Remote assistance allows one user to connect directly to another user's device, usually to correct problems.
  - e. **Backup copy.** You may download a backup copy of the software from ([office.com/backup](https://office.com/backup)) and may use that backup copy to transfer the software as described below. The right to a backup copy does not apply to Home Use Program software (see Section 13).
- 3. TRANSFER TO A THIRD PARTY.** The provisions of this section do not apply if you acquired the software in the European Economic Area (EEA) and only transfer it to another person or entity within the EEA, in which case any transfer of the software, as part of a transfer of the integrated software turnkey application or suite of applications (the "Unified Solution") delivered to you by or on behalf of the licensor solely as part of the Unified Solution, and the right to use it must comply with applicable law.
- a. You may transfer the software to another device that belongs to you, but not more than one time every 90 days (except due to hardware failure, in which case you may transfer sooner). If you transfer the software to another device, that other device becomes the "licensed device." You may also transfer the software to a device owned by someone else if (i) you are the first licensed user of the software, (ii) the new user agrees to the terms of this agreement, and (iii) the transfer of the software and the license is part of a transfer of the Unified Solution delivered to you by or on behalf of the licensor solely as part of the Unified Solution. The first user may not retain any copies of the software. Before any permitted transfer, the end user must agree that this agreement applies to the transfer and use of the software. If the software is an upgrade, any transfer must also include all prior versions of the software. To make that transfer, you must transfer the original media, the Certificate of Authenticity, if applicable, the product key and the proof of purchase directly to that other person, without retaining any copies of the software. Every time you transfer the software to a new device, you must remove the software from the prior device. You may not transfer the software to share licenses between devices.
- 4. PRIVACY; CONSENT TO USE OF DATA.** Your privacy is important to us. Some of the software features send or receive information when using those features. Many of these features can be enabled or disabled in the user interface, or you can choose not to use them. By accepting this agreement and using the software you agree that Microsoft may collect, use, and disclose the information as described in the Microsoft Privacy Statement available at ([aka.ms/privacy](https://aka.ms/privacy)), and as may be described in the user interface associated with the software features.
- 5. AUTHORIZED SOFTWARE AND ACTIVATION.** You are authorized to use this software only if you are properly licensed and the software has been properly activated with a genuine product key or by other authorized method. When you connect to the Internet while using the software, the software will automatically contact Microsoft or its affiliate to confirm the software is genuine and the license is associated with the licensed device. Depending on your geographic location, you may also be able to activate the software manually by Internet or telephone. In either case, transmission of certain information will occur, and Internet, telephone and SMS service charges may apply. During activation (or reactivation that may be triggered by changes to your device's components), the software may determine that the installed instance of the software is counterfeit, improperly licensed or includes unauthorized changes. If activation fails, the software will attempt to repair itself by replacing any tampered Microsoft software with genuine Microsoft software. If you activated the software by Internet, you may be required to periodically reconnect to the Internet while using the software to

confirm the license associated with the licensed device; and if you do not reconnect, the software may operate with reduced functionality. You may also receive reminders to obtain a proper license for the software. You may not bypass or circumvent activation. Certain updates, support, and other services might only be offered to users of genuine Microsoft software.

6. **UPDATES.** The software periodically checks for software updates, and downloads and installs them for you. You may obtain updates only from Microsoft or authorized sources, and by accepting this agreement, you agree to receive these types of automatic updates without any additional notice.
7. **GEOGRAPHIC AND EXPORT RESTRICTIONS.** If your software is restricted for use in a particular geographic region, then you may activate the software only in that region. You must also 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](https://aka.ms/exporting)).
8. **BINDING ARBITRATION AND CLASS ACTION WAIVER.** This section applies to you only if you live in (or, if a business, your principal place of business is in) the United States (inapplicable to residents of or businesses with principal place of business outside the United States).

In the event of a dispute, you and the licensor agree to try for 60 days to resolve it informally. If an informal resolution cannot be reached, you and the licensor agree to **binding individual arbitration before the American Arbitration Association ("AAA") under the Federal Arbitration Act ("FAA"), and not to sue in court in front of a judge or jury.** Instead, a neutral arbitrator will decide and the arbitrator's decision will be final except for a limited right of review under the FAA. **Class action lawsuits, class-wide arbitrations, private attorney-general actions, and any other proceeding where someone acts in a representative capacity aren't allowed. Nor is combining individual proceedings without the consent of all parties.**

- a. **Disputes covered—everything except IP.** The term "dispute" is as broad as it can be. It includes any claim or controversy between you and the licensor, or you and Microsoft, concerning the software, its price, advertising, marketing, communications, your purchase transaction, billing, or this agreement, under any legal theory including contract, warranty, tort, statute, or regulation, **except disputes relating to the enforcement or validity of your, your licensors', Microsoft's, or Microsoft's licensors' intellectual property rights.**
- b. **Mail a Notice of Dispute first.** If you have a dispute with the licensor, send a Notice of Dispute by U.S. Mail to the licensor, ATTN: LEGAL DEPARTMENT. After 60 days, you or we may start an arbitration if the dispute is unresolved.
- c. **Small claims court option.** Instead of mailing a Notice of Dispute, you may litigate in small claims court in your county of residence (or, if a business, your principal place of business) or the licensor's principal place of business.
- d. **Arbitration procedure.** The AAA will conduct any arbitration under its Commercial Arbitration Rules (or if you are an individual and use the software for personal or household use, or if the value of the dispute is \$75,000 USD or less whether or not you are an individual or how you use the software, its Consumer Arbitration Rules). For more information, see ([aka.ms/adr](https://aka.ms/adr)) or call 1-800-778-7879. To start an arbitration, submit the form available at ([aka.ms/arbitration](https://aka.ms/arbitration)) to the AAA; mail a copy to the licensor. In a dispute involving \$25,000 USD or less, any hearing will be telephonic unless the arbitrator finds good cause to hold an in-person hearing instead. Any in-person hearing will take place in your county of residence (or, if a business, your principal place of business) or the licensor's principal place of business. The arbitrator may award the same damages to you individually as a court could. The arbitrator may award declaratory or injunctive relief only to you individually to satisfy your individual claim. Under AAA Rules, the arbitrator rules on his or her own jurisdiction, including the arbitrability of any claim. But a court has exclusive authority to enforce the prohibition on arbitration on a class-wide basis or in a

representative capacity.

**e. Arbitration fees and payments.**

(i) **Disputes involving \$75,000 USD or less.** The licensor will promptly reimburse your filing fees and pay the AAA's and arbitrator's fees and expenses. If you reject the licensor's last written settlement offer made before the arbitrator was appointed, your dispute goes all the way to an arbitrator's decision (called an "award"), and the arbitrator awards you more than this last written offer, the licensor will: (1) pay the greater of the award or \$1,000 USD; (2) pay your reasonable attorney's fees, if any; and (3) reimburse any expenses (including expert witness fees and costs) that your attorney reasonably accrues for investigating, preparing, and pursuing your claim in arbitration.

(ii) **Disputes involving more than \$75,000 USD.** The AAA rules will govern payment of filing fees and the AAA's and arbitrator's fees and expenses.

**f. Must file within one year.** You and the licensor must file in small claims court or arbitration any claim or dispute (except intellectual property disputes—see Section 8.a) within one year from when it first could be filed. Otherwise, it's permanently barred.

**g. Severability.** If any part of Section 8 (Binding Arbitration and Class Action Waiver) is found to be illegal or unenforceable, the remainder will remain in effect (with an arbitration award issued before any court proceeding begins), except that if a finding of partial illegality or unenforceability would allow class-wide or representative arbitration, Section 8 will be unenforceable in its entirety.

**h. Conflict with AAA rules.** This agreement governs if it conflicts with the AAA's Commercial Arbitration Rules or Consumer Arbitration Rules.

**i. Microsoft as third-party beneficiary.** Microsoft is not a party to this agreement but is a third-party beneficiary of your agreement with the licensor to resolve disputes through informal negotiation and arbitration.

**9. GOVERNING LAW.** The laws of the state or country where you live (or, if a business, where your principal place of business is located) govern all claims and disputes concerning the software, its price, or this agreement, including breach of contract claims and claims under state consumer protection laws, unfair competition laws, implied warranty laws, for unjust enrichment, and in tort, regardless of conflict of law principles, except that the FAA governs all provisions relating to arbitration.

**10. NETWORKS, DATA AND INTERNET USAGE.** Some features of the software and services accessed through the software may require your device to access the Internet. Your access and usage (including charges) may be subject to the terms of your cellular or internet provider agreement. Certain features of the software may help you access the Internet more efficiently, but the software's usage calculations may be different from your service provider's measurements. You are always responsible for (i) understanding and complying with the terms of your own plans and agreements, and (ii) any issues arising from using or accessing networks, including public/open networks. You may use the software to connect to networks, and to share access information about those networks, only if you have permission to do so.

**11. LIMITED RIGHTS VERSIONS.** If the software version you acquired is marked or otherwise intended for a specific or limited use, then you may only use it as specified. You may not use the following versions of the software for commercial, non-profit, or revenue-generating activities.

**a. Academic or University.** For academic use, you must be a student, faculty or staff of an educational institution at the time of purchase.

**b. Home and Student.**

**c. Military Appreciation.** You must be a "Qualified Military User" to license software marked as

"Military Appreciation" edition. To be a Qualified Military User, in the United States of America, you must be an authorized patron of the Armed Services Exchanges in accordance with applicable U.S. Federal statutes and regulations.

**d. Canadian Forces.** You must be a "CANEX Authorized Patron" to license software marked as "Canadian Forces" edition. CANEX Authorized Patrons are:

- Armed Forces (CAF) members (Regular and Reserve Force) and their families;
- Veterans (former members of the CAF) and their families, including families of the deceased;
- Members of foreign military currently serving with the CAF and their families;
- Current Staff of the Non-Public Funds, Canadian Forces (NPF, CF);
- Current staff of Military Family Resource Centres (MFRCs);
- Current Department of National Defence (DND) public servants and their families;
- Serving and former Royal Canadian Mounted Police (RCMP) and their families;
- Current staff of Defence Research and Development Canada (DRDC) and their families;
- Current staff of Defence Construction Canada (DCC) and their families;
- Honourary Colonels/Captains(N), Lieutenant Colonels/Commanders and their families;
- Family members of the Staff of the NPF, CF; or
- Family members of the MFRCs.

**12. 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. 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:

**a. Australia.** This warranty is given in addition to other rights and remedies you may have under law, including your rights and remedies in accordance with the Australian Consumer Law consumer guarantees. Nothing in this agreement limits or changes those rights and remedies.

For more information on your rights under the Australian Consumer Law, please refer to the document at ([aka.ms/acl](https://aka.ms/acl)).

In this section, "goods" refers to the software for which Microsoft provides the express warranty. Our goods come with guarantees that cannot be excluded under the Australian Consumer Law. You are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure.

**b. Canada.** You may stop receiving updates on your device by turning off Internet access. If and when you re-connect to the Internet, the software will resume checking for and installing updates.

**c. European Union.** The academic use restriction in the section above titled "Limited Rights Versions, Academic or University" may not apply to you. Your use rights will be compliant with local laws which are subject to change.

**d. Germany and Austria.**

(i) **Warranty.** The properly licensed software will perform substantially as described in any Microsoft materials that accompany the software. However, the licensor and Microsoft give

no contractual guarantee in relation to the licensed software.

- (ii) **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, the licensor or Microsoft is liable according to the statutory law.

Subject to the preceding sentence, the licensor or Microsoft will only be liable for slight negligence if the licensor or 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, the licensor or Microsoft will not be liable for slight negligence.

- e. **Japan.** If you live in Japan, or acquired the software while you lived in Japan, you have the following rights provided that you comply with all the terms of this agreement: you may also install and use a second copy of the software on a second licensed device for your use as the licensed user of the first licensed device. The non-commercial use restrictions set forth in Section 12 do not apply to your use of the software if you live in Japan or acquired the software while you lived in Japan.

**13. HOME USE PROGRAM.** You must be a "Home Use Program User" to use software designated as "Home Use Program." To be a Home Use Program User, you must be both:

- a. an employee of an organization that has a Microsoft Volume License agreement with active Software Assurance or previously had active Software Assurance and meets certain other criteria, and
- b. the user of a copy of the software, or a product that includes the software, that is licensed to your employer under its Volume License agreement.

If you have questions about whether you qualify as a Home Use Program User, contact your employer.

**14. LANGUAGE PACKS AND PROOFING TOOLS.** If you acquire a language pack or proofing tool that offers additional language version support for the software, you may use the additional languages included in that pack or tool. The language packs and proofing tools are a part of the software and may not be used separately.

**15. RESERVATION OF RIGHTS AND FEEDBACK.** Except as expressly provided under this agreement, the licensor and Microsoft do not grant you a license or any other rights of any type under any patents, know-how, copyrights, trade secrets, trademarks or other intellectual property owned or controlled by Microsoft or any related entity, including but not limited to any name, trade dress, logo or equivalents. If you give to Microsoft any idea, proposal, suggestion or feedback, including without limitation ideas for new products, technologies, promotions, product names, product feedback and product improvements ("Feedback"), you give to Microsoft, without charge, royalties or other obligation to you, the right to make, have made, create derivative works, use, share and commercialize your Feedback in any way and for any purpose. You will not give Feedback that is subject to a license that requires Microsoft to license its software, technologies or documentation to any third party because Microsoft includes your Feedback in them.

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You understand that by using the software and services, you ratify this agreement and the linked terms. There are also informational links in this agreement. The links containing notices and binding terms are:

- Microsoft Privacy Statement ([aka.ms/privacy](https://aka.ms/privacy))
- Microsoft Services Agreement ([aka.ms/msa](https://aka.ms/msa))

- 17. NOT FAULT TOLERANT. THE SOFTWARE IS NOT FAULT TOLERANT. LICENSOR HAS INDEPENDENTLY DETERMINED HOW TO USE THE SOFTWARE IN THE INTEGRATED SOFTWARE APPLICATION OR SUITE OF APPLICATIONS THAT IT IS LICENSING TO YOU, AND MICROSOFT HAS RELIED ON LICENSOR TO CONDUCT SUFFICIENT TESTING TO DETERMINE THAT THE SOFTWARE IS SUITABLE FOR SUCH USE.**
- 18. NO WARRANTIES BY MICROSOFT. YOU AGREE THAT IF YOU HAVE RECEIVED ANY WARRANTIES WITH REGARD TO EITHER (A) THE SOFTWARE, OR (B) THE SOFTWARE APPLICATION OR SUITE OF APPLICATIONS WITH WHICH YOU ACQUIRED THE SOFTWARE, THEN THOSE WARRANTIES ARE PROVIDED SOLELY BY THE LICENSOR AND DO NOT ORIGINATE FROM, AND ARE NOT BINDING ON, MICROSOFT. MICROSOFT DOES NOT PROVIDE AN IMPLIED WARRANTY OF MERCHANTABILITY OR ANY OTHER EXPRESS OR IMPLIED WARRANTY.**
- 19. NO LIABILITY OF MICROSOFT FOR CERTAIN DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, MICROSOFT SHALL HAVE NO LIABILITY FOR ANY INDIRECT, SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES ARISING FROM OR IN CONNECTION WITH THE USE OR PERFORMANCE OF THE SOFTWARE OR THE SOFTWARE APPLICATION OR SUITE OF APPLICATIONS WITH WHICH YOU ACQUIRED THE SOFTWARE, INCLUDING WITHOUT LIMITATION, PENALTIES IMPOSED BY GOVERNMENT. THIS LIMITATION WILL APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. IN NO EVENT SHALL MICROSOFT BE LIABLE FOR ANY AMOUNT IN EXCESS OF TWO HUNDRED FIFTY U.S. DOLLARS (US\$250.00).**

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