○ Award  ◉ Contract  ○ Grant

**Requested Board Meeting Date:** 08/08/2023

*\* = Mandatory, information must be provided*

**or Procurement Director Award:** ☐

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**\*Contractor/Vendor Name/Grantor (DBA):**

Microsoft Corporation (Headquarters: Redmond, WA)

**\*Project Title/Description:**

Microsoft Master Services Agreement

**\*Purpose:**

Award: Master Agreement No. MA-PO-23-209. This Master Agreement is effective August 8, 2023, to August 7, 2028, in the not-to-exceed contract amount of $7,000,000.00 (including sales tax). Administering Department: Information Technology.

**\*Procurement Method:**

Pursuant to Pima County Procurement Code 11.12.060, Emergency and other limited competition procurement, award for Requisition No. 23*248 is recommended to the above named vendor with which the County has negotiated an acceptable Agreement.

PRCUID: 488027

Attachment: Microsoft Master Services Agreement.

**\*Program Goals/Predicted Outcomes:**

To better secure the entire County computing environment and put systems in place that will allow us to reduce costs through the adoption of cloud technology.

**\*Public Benefit:**

This contract will allow IT and Contractor to continuously update County's systems using Microsoft products, permitting the County to more efficiently serve its constituents and secure County & constituent data.

**\*Metrics Available to Measure Performance:**

This contract will ensure the continued usage of Microsoft consulting hours for County's Security Administrative Environment. Performance will be measured by monitoring that consulting hours are fulfilled promptly, which will reduce downtime and provide continuity of operations.

**\*Retroactive:**

No.

TO: COB 07/20/2023
VERS: 1
PGS: 11

**Contract / Award Information**

Document Type: <u>MA</u>    Department Code: <u>PO</u>    Contract Number (i.e., 15-123): <u>23-209</u>

Commencement Date: <u>08/08/23</u>    Termination Date: <u>08/07/28</u>    Prior Contract Number (Synergen/CMS): <u>N/A</u>

☒ Expense Amount $ <u>7,000,000.00</u> *    ☐ Revenue Amount: $ <u>N/A</u>

*Funding Source(s) required: <u>IT Computer Hardware/Software</u>

Funding from General Fund?    ○ Yes ⦿ No    If Yes $ <u>N/A</u>    % <u>N/A</u>

Contract is fully or partially funded with Federal Funds?    ○ Yes ⦿ No

   **If Yes, is the Contract to a vendor or subrecipient?** _____

Were insurance or indemnity clauses modified?    ⦿ Yes ○ No
   *If Yes, attach Risk's approval.*

Vendor is using a Social Security Number?    ○ Yes ⦿ No
   *If Yes, attach the required form per Administrative Procedure 22-10.*

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**Amendment / Revised Award Information**

Document Type: _____    Department Code: _____    Contract Number (i.e., 15-123): _____

Amendment No.: _____    AMS Version No.: _____

Commencement Date: _____    New Termination Date: _____

Prior Contract No. (Synergen/CMS): _____

○ Expense ○ Revenue    ○ Increase ○ Decrease    Amount This Amendment: $ _____

Is there revenue included?    ○ Yes ○ No    If Yes $ _____

*Funding Source(s) required: _____

Funding from General Fund?    ○ Yes ○ No    If Yes $ _____    % _____

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**Grant/Amendment Information** (for grants acceptance and awards)    ○ Award ○ Amendment

Document Type: _____    Department Code: _____    Grant Number (i.e., 15-123): _____

Commencement Date: _____    Termination Date: _____    Amendment Number: _____

☐ Match Amount: $ _____    ☐ Revenue Amount: $ _____

*All Funding Source(s) required: _____

*Match funding from General Fund?    ○ Yes ○ No    If Yes $ _____    % _____

*Match funding from other sources?    ○ Yes ○ No    If Yes $ _____    % _____
   *Funding Source: _____

*If Federal funds are received, is funding coming directly from the Federal government or passed through other organization(s)?

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Contact:    Procurement Officer, Troy McMaster    *Digitally signed by Troy McMaster Date: 2023.07.11 13:40:46 -07'00'*    Division Manager, Ana Wilber    *Digitally signed by Ana Wilber Date: 2023.07.11 16:20:17 -07'00'*

Department: Procurement Director, Terri Spencer    *Digitally signed by Terri Spencer Date: 2023.07.11 16:50:44 -07'00'*    Telephone: 520.724.8728

Department Director Signature:    Javier Baca    *Digitally signed by Javier Baca DN: cn=Javier Baca, o=Pima County, ou=Information Technology Department, email=Javier.Baca@pima.gov, c=US Date: 2023.07.14 14:00:47 -07'00'*    Date: _____

Deputy County Administrator Signature: _____    Date: 7-18-2023

County Administrator Signature: _____    Date: 7/18/2023

# Microsoft Master Services Agreement
# State and Local Government & Public Educational Institutions

Microsoft Master Services Agreement Number
*Microsoft Affiliate to complete*

This Microsoft Master Services Agreement ("Agreement") is entered into between the following entities as of the Effective Date identified below. This Agreement is comprised of this cover page and the attached terms and conditions, the terms of which are incorporated herein by this reference.

This Agreement contains terms of the relationship between Customer (the entity signing the Agreement and its Affiliates) and Microsoft Corporation (the Microsoft Affiliate signing below and its Affiliates). If Customer contracts for Professional Services from Microsoft under this Agreement, the specific terms of those transactions will be contained in this Agreement and any Statement of Services incorporating the terms of this Agreement.

If the first Statement of Services entered into under this Agreement is given an effective date that is earlier than the Effective Date of this Agreement, the Effective Date of this Agreement will be that earlier date for the purposes of that Statement of Services.

By signing below, each party acknowledges that it has read and understood the terms of this Agreement and agrees to be bound by these terms.

| Customer | Microsoft Affiliate |
|---|---|
| Name of Customer (please print)<br>**Pima County** | Name<br>**Microsoft Corporation** |
| Signature | Signature<br>*Shirley Snyder* |
| Name of person signing (please print) | Name of person signing (please print)<br>Shirley Snyder |
| Title of person signing (please print) | Title of person signing (please print)<br>Microsoft Corporation Authorized Signatory |
| Signature date | Signature date (may be different than Effective Date)<br>July 11, 2023 |
| | Effective Date (may be different than Signature Date) |

APPROVED AS TO FORM

*Bobby Yu*
Deputy County Attorney

Bobby Yu
Print DCA Name

7/11/2023
Date

**Contact information.** Each party will notify the other in writing if any of the information in the following table changes. The * indicates required fields. By providing contact information, Customer consents to its use for purposes of administering this Agreement by Microsoft, Microsoft's Affiliates, and other parties that help Microsoft administer this Agreement.

| Customer | | |
|---|---|---|
| Name of Customer *<br>Pima County | | Contact Name *(This person receives notices under this Agreement pursuant to Section 10a (Notices)).<br>Alan Thomas |
| Street Address *<br>33 N Stone Ave | | Contact Email Address *<br>Alan.Thomas@pima.gov |
| City *<br>Tucson | State/Province *<br>AZ | Phone<br>520-724-8087 |
| Country *<br>United States | Postal Code *<br>85071 | Fax<br>N/A |

| Microsoft | | |
|---|---|---|
| Notices to Microsoft should be sent to (*Microsoft Affiliate to complete*):<br>*<br>Kevin Hartley, Esq.<br>Microsoft Corporation<br>5404 Wisconsin Avenue<br>Chevy Chase, MD 20815 | | **Copies should be sent to:**<br>Microsoft<br>Law and Corporate Affairs<br>One Microsoft Way<br>Redmond, WA 98052        USA<br>Services Attorney<br>(425) 936-7329 fax |

# *Terms and Conditions*

***1.   Definitions.***   In this Agreement, a "party" or "parties" means Customer and/or Microsoft as the context requires.  In addition, the following definitions apply:

"**Affiliate**" means (i) with regard to Customer, any government agency, department, office, instrumentality, division, unit or other entity of Customer's state or local government that is supervised by or is part of Customer, or which supervises Customer or of which Customer is a part, or which is under common supervision with Customer; together with, as mandated by law, any county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality located within Customer's state jurisdiction and geographic boundaries; provided that a state and its Affiliates shall not, for purposes of this definition, be considered to be Affiliates of the federal government and its Affiliates; and (ii) with regard to Microsoft, any legal entity that Microsoft controls, which controls Microsoft, or which is under common control with Microsoft.  "**Control**" means ownership of more than a 50% interest of voting securities in an entity or the power to direct the management and policies of an entity;

"**Customer**" means the legal entity that has entered into this Agreement;

"**Customer Data**" means all data, including all text, sound, software, image or video files that are provided to Microsoft by, or on behalf of, Customer and its Affiliates in connection with Professional Services;

"**day**" means a calendar day, except references that specify "business day";

"**Fix**" or "**Fixes**" means Product fixes, modifications, enhancements, or their derivatives, that Microsoft either releases generally (such as Product service packs) or that Microsoft provides to Customer when performing Professional Services to address a specific issue (including, but not limited to, workarounds, patches, bug fixes, beta fixes and beta builds);

"**Microsoft**" means the Microsoft Affiliate that has entered into this Agreement and its Affiliates, as appropriate;

"**Online Services**" means the Microsoft-hosted services identified as Online Services in the Microsoft Product Terms.  Online Services are not offered under the scope of this Agreement.;

"**Online Services Terms**" means the additional terms that apply to Customer's use of Online Services published on the Volume Licensing Site and updated from time to time;

"**Pre-Existing Work**" means any computer code or materials developed or otherwise obtained independently of the efforts of a party under a Statement of Services;

"**Product**" means all products identified in the Product Terms, such as all Software, Online Services and other web-based services, including pre-release or beta versions;

"**Product Terms**" means the document that provides information about Microsoft Products.  The Product Terms document is published on the Volume Licensing Site and is updated from time to time;

"**Professional Services**" means all Product support services and Microsoft consulting services or advice provided to Customer under this Agreement.  "Professional Services" does not include Online Services;

"**Professional Services Data**" means all data, including all text, sound, video, image files, or software, that are provided to Microsoft by, or on behalf of, Customer (or that Customer authorizes Microsoft to obtain from an Online Service) or otherwise obtained or processed by or on behalf of Microsoft through an engagement with Microsoft to obtain Professional Services;

"**Service Deliverables**" means any computer code or materials, other than Products or Fixes, that Microsoft leaves with Customer at the conclusion of Microsoft's performance of the Professional Services;

**"Software"** means licensed copies of Microsoft software identified on the Product Terms. Software does not include Online Services or Services Deliverables, but Software may be part of an Online Service;

**"Statement of Services"** means any work orders, services descriptions, or other description of Professional Services that incorporates this Agreement;

**"Trade Secret"** means information that is not generally known or readily ascertainable to the public, has economic value as a result, and has been subject to reasonable steps under the circumstances to maintain its secrecy;

**"use"** or **"run"** means to copy, install, use, access, display, run or otherwise interact with;

**"Use Rights"** means, with respect to any Product licensing program, the use rights or terms of service for each Product published on the Volume Licensing Site and updated from time to time. The Use Rights supersede the terms of any end user license agreement that accompanies a Product. The Use Rights for Software are published by Microsoft in the Product Terms. The Use Rights for Online Services are published in the Online Services Terms;

**"Volume Licensing Site"** means http://www.microsoft.com/licensing/contracts or a successor site.

**2. Services.** The precise scope of the Professional Services will be specified in a Statement of Services. Customer or any of Customer's Affiliates may enter into Statements of Services under this Agreement with Microsoft's local Affiliates. Microsoft's ability to deliver the Professional Services depends upon Customer's full and timely cooperation, as well as the accuracy and completeness of any information Customer provides. This Agreement does not obligate either party or its Affiliates to enter into any Statements of Services.

**3. Use, ownership, rights and restrictions.**

   **a. Products.** Unless otherwise specified in a license agreement, use of any Product is governed by the Use Rights specific to each Product and version and by the terms of the applicable license agreement. Products will not be purchased under this Agreement.

   **b. Fixes and Services Deliverables.**

   **i. Fixes.** Each Fix is licensed under the same terms as the Product to which it applies. If the Fix is not provided for a specific Product, any use terms Microsoft provides with the Fix will apply. If no use terms are provided, Customer shall have a non-exclusive, perpetual, fully paid-up license to use and reproduce the Fix solely for its internal business purposes. Customer may not modify, change the file name or combine any Fix with any non-Microsoft computer code, except as expressly permitted in a licensing agreement.

   **ii. Pre-Existing Work.** All rights in Pre-Existing Work will remain the sole property of the party providing the Pre-Existing Work. Each party may use, reproduce and modify the other party's Pre-Existing Work only as needed to perform obligations related to Professional Services.

   **iii. Services Deliverables.** Upon payment in full, Microsoft grants Customer a non-exclusive, non-transferable, perpetual license to reproduce, use and modify the Services Deliverables solely for Customer's internal business purposes, subject to the terms and conditions in this Agreement.

   **iv. Affiliates' rights.** Customer may only sublicense its rights in Services Deliverables and Sample Code granted hereunder to its Affiliates, but Customer's Affiliates may not sublicense these rights. Customer is responsible for ensuring its Affiliates' compliance with this Agreement.

   **c. Non-Microsoft software and technology.** Customer is solely responsible for any non-Microsoft software or technology that Customer installs or uses with the Products, Fixes or Services Deliverables. Customer may not install or use non-Microsoft software or technology in any way that would subject Microsoft's intellectual property or technology to obligations beyond those included in this Agreement.

d. **Sample Code.** Upon payment in full, Microsoft grants Customer a non-exclusive, perpetual, non-transferable license to use and modify any Software code provided by Microsoft for the purposes of illustration ("**Sample Code**") and to reproduce and distribute the object code form of the Sample Code for Customer's internal business purposes only and not to any unaffiliated third party.

e. **Restrictions on use.** Customer must not (and is not licensed to) (1) reverse engineer, de-compile or disassemble any Product, Fix or Service Deliverable; (2) install or use non-Microsoft software or technology in any way that would subject Microsoft's intellectual property or technology to any other license terms; or (3) work around any technical limitations in a Product, Fix or Services Deliverable or restrictions in Product documentation. Except as expressly permitted in this Agreement or a Statement of Services, Customer must not distribute, sublicense, rent, lease or lend any Product, Fix or Service Deliverable, in whole or in part, or use them to offer hosting services to a third party.

f. **Reservation of Rights.** Products, Fixes, and Service Deliverables are protected by copyright and other intellectual property rights laws and international treaties. Microsoft reserves all rights not expressly granted in this Agreement. No rights will be granted or implied by waiver or estoppel.

g. **Supportability of Products.** Support for Products is available under the terms of a licensing agreement, a separate Statement of Services or under the terms set forth at http://support.microsoft.com or a successor site.

4. **Confidentiality.** Subject to the requirements of your public records and trade secret laws (if any):

"Confidential Information" is non-public information that is designated "confidential" or that a reasonable person should understand is confidential, including Customer Data, Professional Services Data, and the terms of this Agreement. It includes, but is not limited to, non-public information regarding either party's products, features, marketing and promotions, and the negotiated terms of any Statement of Services.

Confidential Information does not include information that (a) becomes publicly available without a breach of this Agreement, (b) the receiving party received lawfully from another source without a confidentiality obligation, (c) is independently developed, or (d) is a comment or suggestion volunteered about the other party's business, products or services.

Each party will take reasonable steps to protect the other's Confidential Information and will use the other party's Confidential Information only for purposes of the parties' business relationship. Neither party will disclose that Confidential Information to third parties, except to its employees, Affiliates, contractors, advisors, and consultants (collectively "Representatives") and then only on a need-to-know basis, under non-disclosure obligations at least as protective as this Agreement. Each party remains responsible for the use of the Confidential Information by its Representatives and, in the event of discovery of any unauthorized use or disclosure, must promptly notify the other party.

A party may disclose the other party's Confidential Information if required by law; but only after it notifies the other party (if legally permissible) to enable the other party to seek a protective order.

Neither party is required to restrict work assignments of its Representatives who have had access to Confidential Information. Each party agrees that use of information in Representatives' unaided memories in the development or deployment of the parties' respective products or services does not create liability under this Agreement or Trade Secret law, and each party agrees to limit what it discloses to the other accordingly.

These obligations apply for a period of five years after the confidential information is received.

5. **Compliance with applicable laws, privacy and security.**

a. Customer consents to the processing of personal information by Microsoft and its agents to facilitate the subject matter of this Agreement. Customer will obtain all required consents from third parties (including Customer's contacts, resellers, distributors, administrators, and employees) under applicable privacy and data protection law before providing personal information to Microsoft.

b. Personal information collected through Professional Services (i) may be transferred, stored and processed in the United States or any other country in which Microsoft or its contractors maintain facilities and (ii) will be subject to the privacy terms specified in the Use Rights. Microsoft will abide by the requirements of European Economic Area and Swiss data protection law regarding the collection, use, transfer, retention and processing of personal data from the European Economic Area and Switzerland.

c. **U.S. Export.** Microsoft Products, Fixes and Services Deliverables are subject to U.S. export jurisdiction. Customer must comply with all applicable international and national laws, including the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, and end-user, end use and destination restrictions by U.S. and other governments related to Microsoft Products, services, and technologies.

## 6. *Warranties.*

a. *Limited warranties and remedies – Professional Services.* Microsoft warrants that it will perform Professional Services with professional care and skill. If Microsoft fails to do so, and Customer notifies Microsoft within 90 days of the date the Professional Services were performed, then Microsoft will, at its discretion, either re-perform the Professional Services or return the price paid for them. These remedies are Customer's sole remedies for breach of warranties in this section. Customer waives any breach of warranty claims not made during the warranty period.

b. *Exclusions.* The warranties in this section do not cover problems caused by accident, abuse or use in a manner inconsistent with this Agreement, including failure to meet minimum system requirements. These warranties do not apply to free, trial, pre-release or beta Products or to components of Products that Customer is permitted to redistribute. *DISCLAIMER.* **Except for the limited warranties above, Microsoft provides no other warranties or conditions and disclaims any other express, implied or statutory warranties, including warranties of quality, merchantability, fitness for a particular purpose, title and non-infringement.**

## 7. *Defense of third party claims.*

The parties will defend each other against the third-party claims described in this section and will pay the amount of any resulting adverse final judgment or approved settlement, but only if the defending party is promptly notified in writing of the claim and has the right to control the defense and any settlement of it. The party being defended must provide the defending party with all requested assistance, information and authority. The defending party will reimburse the other party for reasonable out-of-pocket expenses it incurs in providing assistance. This section describes the parties' sole remedies and entire liability for such claims.

a. **By Microsoft.** Microsoft will defend Customer against any third-party claim to the extent it alleges that any Fix or Services Deliverable made available by Microsoft for a fee and used within the scope of Section 3 of this Agreement (unmodified from the form provided by Microsoft and not combined with anything else) misappropriates a trade secret or directly infringes a patent, copyright, or trademark or other proprietary right of a third party. If Microsoft is unable to resolve a claim of infringement under commercially reasonable terms, it may, at its option, either (1) modify or replace the Fix or Services Deliverable with a functional equivalent; or (2) terminate Customer's license and refund any fees paid for such Fix(es) and Services Deliverable(s). Microsoft will not be liable for any claims or damages due to Customer's continued use of a Product, Fix or Services Deliverable after being notified to stop due to a third party claim.

b. **By Customer.** To the extent permitted by applicable law, Customer will defend Microsoft against any third-party claim to the extent it alleges that Customer's use of any Fix or Services Deliverable alone or in combination with anything else, violates the law or damages a third party.

## 8. Limitations of liability.

Each party's maximum, aggregate liability to the other is limited to direct damages finally awarded in an amount not to exceed the amounts Customer was required to pay for the applicable Statement of Services, subject to the following.

a. **Free Professional Services and Distributable Code.** For Professional Services provided free of charge and code that Customer is authorized to redistribute to third parties without a separate payment to Microsoft, Microsoft's liability is limited to direct damages finally awarded up to US$5000.

b. **Exclusions. In no event will either party be liable for any indirect, incidental, special, punitive, or consequential damages, or for loss of use, loss of business information, loss of revenue, or interruption of business, however caused or on any theory of liability.**

c. **Exceptions.** No limitation or exclusions will apply to liability arising out of either party's (1) confidentiality obligations (except for all liability related to Customer Data and Professional Services Data, which will remain subject to the limitations and exclusions above); (2) defense obligations; or (3) violation of the other party's intellectual property rights.

## 9. Term and termination. This Agreement will remain in effect until terminated.

Either party may terminate this Agreement at any time without cause by giving the other party at least 60 calendar days prior written notice. Terminating this Agreement will not affect any existing Statements of Services, but will terminate the ability of the parties to enter into subsequent Statements of Services.

Customer may terminate a Statement of Services upon 30 days' notice. Either party to the Statement of Services may terminate it if the other party is in material breach or default of any obligation that is not cured within 30 calendar days notice of such breach. Microsoft may terminate a Statement of Services if Customer fails to pay any invoice that is more than 60 days outstanding. Customer agrees to pay all fees for Professional Services performed and expenses incurred prior to termination and any additional amounts that may be specified in a Statement of Services. Upon Microsoft's receipt of payment for the Professional Services, Customer's interests in the Services Deliverables will vest.

## 10. Miscellaneous.

a. **Notices.** Notices must be sent to the address on the signature page of this Agreement or on an applicable Statement of Services. All notices, authorizations, and requests given or made in connection with this Agreement must be in writing and will be treated as delivered on the date shown on the return receipt or on the courier or fax confirmation of delivery. Microsoft may provide information to Customer about upcoming ordering deadlines, services and subscription information in electronic form, including by email to contacts provided by the Customer. Emails will be treated as delivered on the transmission date.

b. **Assignment.** Either party may assign this Agreement to an Affiliate, but it must notify the other party in writing of the assignment. Any other proposed assignment must be approved by the non-assigning party in writing. Assignment will not relieve the assigning party of its obligations under the assigned Agreement. Any attempted assignment without required approval will be void.

c. **Applicable law; dispute resolution.** This Agreement together with the applicable Statement of Services will be governed by the laws of Customer's state, without giving effect to its conflict of law provisions. Disputes relating to this Agreement will be subject to applicable mandatory dispute resolution statutes and regulations of Customer's state.

d.  **Severability.**  If any provision of this Agreement is held to be unenforceable, the balance of the Agreement will remain in full force and effect.

e.  **Waiver.**  Failure to enforce any provision of this Agreement will not constitute a waiver. Any waiver must be made in writing and signed by an authorized representative of the waiving party.

f.  **Survival.**  All provisions survive termination or expiration of this Agreement, except those requiring performance only during the term of a Statement of Services.

g.  **Agreement not exclusive**.  Customer is free to enter into agreements to license, use or promote non-Microsoft products or services.

h.  **Microsoft as independent contractor.**  The parties are independent contractors.  Customer and Microsoft each may develop products independently without using the other's Confidential Information.

i.  **Use of contractors.**  Microsoft may use contractors to perform Professional Services, but will be responsible for their performance subject to the terms of this Agreement.

j.  **Insurance while performing Professional Services on Customer's premises.**  Microsoft will maintain industry-appropriate insurance coverage at all times when performing Professional Services on Customer's premises under this Agreement via commercial insurance, self-insurance, or any other similar risk financing alternative.  Microsoft will provide Customer with evidence of coverage on request.

k.  **Amendments.**  Any amendment to this Agreement must be executed by both parties, except that Microsoft may change the Product Terms and Use Rights in accordance with the terms of this Agreement.   Any additional or conflicting terms and conditions contained in Customer's purchase order are expressly rejected and will not apply.

l.  **No transfer of ownership.**  Microsoft does not transfer ownership rights in any Product.  The Products are protected by copyright and other intellectual property rights, laws and international treaties.

m.  **Professional Services payment terms.**  Customer agrees to pay all fees in a Statement of Services within 30 days of the date of Microsoft's invoice; unless the Statement of Services provides otherwise. Microsoft may assess a finance charge of the lesser of 18% per annum, accrued, calculated and payable monthly or the highest amount allowed by law on all past due amounts due to Microsoft.  Microsoft will have no obligation to continue to provide Professional Services if Customer fails to make timely payment.

n.  **Taxes.**  If any amounts are to be paid to Microsoft, the amounts owed are exclusive of any taxes.  Customer shall pay all value added, goods and services, sales, gross receipts or other transaction taxes, fees, charges or surcharges or other similar taxes, charges or fees or any regulatory cost recovery and other surcharges that are owed under this Agreement and which Microsoft is permitted to collect from Customer.  Customer shall also be responsible for an applicable stamp taxes and for all other taxes that it is legally obligated to pay, including any taxes that arise on the distribution of provision of Professional Services by Customer to its Affiliates.  Microsoft shall be responsible for payment of all taxes based upon its net income, gross receipts taxes imposed in lieu of taxes on income or profits, or taxes on Microsoft's property ownership.

If any taxes are required to be withheld on payments made to Microsoft, Customer may deduct such taxes from the amount owed and pay them to the appropriate taxing authority; provided however, that Customer shall promptly secure and deliver an official receipt for those withholdings and other documents reasonably requested by Microsoft to claim a foreign tax credit or refund.  Customer will ensure that any taxes withheld are minimized to the extent possible under applicable law.

o.  **Cost or pricing data.**  We will not, under any circumstances, accept any statement of services that would require the submission of cost or pricing data.

p.  **No third-party beneficiaries.**  This Agreement does not create any third-party beneficiary rights.

**Agreement Amendment #1**

This amends the Master Services Agreement (the "Agreement") identified above between Pima County ("the County") and Microsoft Corporation as of the effective date identified below. Any terms that are used but not defined in this amendment will have the same meanings given them in the agreement.

I.     **Amendment.**

1.     The first sentence of Section 9, **Term and termination**, is hereby deleted in its entirety and replaced with the following:

"The Agreement shall take effect upon the date of last signature on this Agreement and will terminate after five (5) years unless renewed by the parties by a formal written amendment. The term of the Agreement, including all renewals, may not exceed five (5) years unless approved by the Pima County Board of Supervisors or Pima County Procurement Director, and the parties execute a formal written amendment to extend the term. The term of any Professional Services provided under this Agreement shall be specified in the applicable Statement of Services and shall renew or extend pursuant to the terms of the applicable Statement of Services."

2.     Section 10(c), **Applicable law; dispute resolution**, is hereby deleted in its entirety and replaced with the following:

This Agreement together with the applicable Statement of Services will be governed by the laws of the State of Arizona, without giving effect to its conflict of law provisions. Disputes relating to this Agreement will be subject to applicable mandatory dispute resolution statutes and regulations of the State of Arizona and will be filed and maintained in the appropriate court of the State of Arizona in Pima County.

3.     The Agreement is amended to add a new Section 11 titled **Additional Customer Terms and Conditions** as follows:

*"11. Additional Customer Terms and Conditions.*

   a.   *Timing of Invoices.* Pursuant to A.R.S. § 11-622(C), will not pay for any service invoiced more than 6-months after the related services were accepted by County.

   b.   *Cancellation for Conflict of Interest.* Pursuant to A.R.S. § 38-511, the County may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the County is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when Microsoft receives written notice of the cancellation unless the notice specifies a later time. If the Microsoft is a political subdivision of the County, it may also cancel this Contract as provided in A.R.S. § 38-511.

   c.   *Availability of Funds.* Every payment obligation of the County under this Agreement is conditioned upon the availability of funds appropriated and allocated for the payment of such obligation. If funds are not appropriated, allocated and available or if the appropriation is changed by the Board of Supervisors resulting in funds no longer being available for the continuance of this Agreement, this Agreement may be terminated by the County at the end of the period for which funds are available. No liability shall accrue to County in the event this provision is exercised, and the County will not be obligated or liable for any future payments or for any damages as a result of termination under this paragraph.

d. **Books and Records.** Microsoft will keep and maintain proper and complete books, records and accounts related to this Agreement, which will be open at all reasonable times for inspection and audit by duly authorized representatives of County, to the extent such books and records relate to the performance of services under this Agreement. In addition, Microsoft will retain all records relating to this Agreement for at least five (5) years after its expiration or termination or, if later, until any related pending proceeding or litigation has concluded.

e. **Public Records.** The County, as a public body, is subject to A.R.S. § 39-121 et seq., as applicable, regarding public records. Any provision regarding confidentiality is limited to the extent necessary to comply with the laws of the State of Arizona.

f. **Indemnification.** To the fullest extent permitted by law, Microsoft will defend, indemnify, and hold harmless Pima County and any related taxing district, and the officials and employees of each of them (collectively, "Indemnitee") from and against any and all claims, actions, liabilities, losses, and expenses (including reasonable attorneys' fees) (collectively, "Claims") arising out of actual or alleged injury of any person (including death) or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the gross negligence or willful misconduct of Microsoft or any of Microsoft's directors, officers, agents, employees, volunteers, or subcontractors. This indemnity includes any claim or amount arising or recovered under the Workers' Compensation Law or arising out of the failure of Microsoft to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree that is based on the gross negligence or willful misconduct of Microsoft or any of Microsoft's directors, officers, agents, employees, volunteers, or subcontractors. The Indemnitee will, in all instances, except for Claims arising solely from the acts or omissions of the Indemnitee, be indemnified by Microsoft from and against any and all Claims based on the gross negligence or willful misconduct of Microsoft or any of Microsoft's directors, officers, agents, employees, volunteers, or subcontractors. Microsoft is responsible for primary loss investigation, defense and judgment costs for any Claim to which this indemnity applies. This indemnity will survive the expiration or termination of this Agreement.

g. **Non-discrimination.** Microsoft shall comply with State Executive Orders No. 2023-01, 2009-09, and any and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.

h. **E-verify Requirements.** In accordance with A.R.S. § 41-4401, Microsoft warrants compliance with all Federal immigration laws and regulations relating to employees and warrants its compliance with Section A.R.S. § 23- 214, Subsection A.

i. **Americans with Disabilities Act.** Microsoft will comply with Title II of the Americans with Disabilities Act (Public Law 110-325, 42 U.S.C. §§ 12101-12213) and the federal regulations for Title II (28 CFR Part 35).

j. **Israel Boycott Certification.** Pursuant to A.R.S. § 35-393.01, if Microsoft engages in for-profit activity and has 10 or more employees, and if this Agreement has a value of $100,000.00 or more, Microsoft certifies it is not currently engaged in, and agrees for the duration of this Agreement to not engage in, a boycott of goods or services from Israel. This certification does not apply to a boycott prohibited by 50 U.S.C. § 4842 or a regulation issued pursuant to 50 U.S.C. § 4842.

k. **Forced Labor of Ethnic Uyghurs.** Pursuant to A.R.S. § 35-394 if Microsoft engages in for-profit activity and has 10 or more employees, Microsoft certifies it is not currently using, and agrees for the duration of this Agreement to not use (1) the forced labor of ethnic Uyghurs in the People's Republic of China; (2) any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; and (3) any contractors, subcontractor or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China. If Microsoft becomes aware during the term of the Agreement that the Microsoft

is not in compliance with A.R.S. § 35-394, Microsoft must notify the County within five business days and provide a written certification to County regarding compliance within one hundred eighty days."

## II. _Effect of Amendment._

Except as specifically amended by this amendment, all other provisions of the agreement shall remain unchanged, and in full force and effect. When this amendment is fully executed, you will receive a confirming copy.

| Customer | Microsoft |
|---|---|
| Name<br><br>**Pima County** | **Microsoft Corporation** |
| Signature | Signature  _Shirley Snyder_ |
| Printed Name | Printed Name<br><br>Shirley Snyder |
| Printed Title | Printed Title<br>Microsoft Corporation Authorized Signatory |
| Effective Date | Signature Date<br>July 11, 2023 |

| APPROVED AS TO FORM |
|---|
| _Bobby Yu_<br>Deputy County Attorney |
| Bobby Yu<br>Print DCA Name |
| 7/11/2023<br>Date |