

# Surface Commercial Breadth Reseller Compliance Rider

*(Last updated July 15, 2024)*

This Surface Commercial Breadth Reseller Compliance Rider (“**Rider**”) are entered into by and between TD SYNnex Corporation and its subsidiary TD SYNnex Canada ULC (together “**Distributor**”) and you (“**Breadth Reseller**”) shall apply to all orders and purchases of Surface Devices by Breadth Reseller from Distributor. Except as modified herein, Distributor’s Terms and Conditions of Sale (as available at <https://www.tdsynnex.com/us/en/terms-and-conditions.html>) (“**Terms of Sale**”) applies to Breadth Reseller’s purchase of Surface Devices.

The parties agree as follows:

## 1. Definitions

“**Affiliate**” means any legal entity that owns, is owned by, or that is under common ownership with an entity. Ownership means control of more than 50% of the equity interests of, or the right to direct the management of, an entity for so long as such control exists.

“**Surface Devices**” means all Microsoft products and technologies Microsoft makes available to Distributor and that a Distributor is permitted to make available to Breadth Reseller for sale to Customers in the Territory. Currently, “Surface Devices” only includes Microsoft Surface-branded devices and their peripheral products and Microsoft Surface Hub-branded devices and their peripheral products and Protection Plans. For a complete list of permitted Surface Devices and their respective stock keeping units (SKUs) in the Territory, contact Distributor.

“**Protection Plan**” means a mechanical breakdown and/or accidental damage protection product between Microsoft and Customer or between a third-party obligor/Insurer and Customer and can be either a manufacturer’s service contract or third-party service contract program (including Insurance Policies). All references to Protection Plan in this Guide shall be subject to the actual terms and conditions of the Protection Plan product provided by Microsoft to the Customer.

“**Customer**” means any legal entity (other than Breadth Reseller or an Affiliate of Breadth Reseller) that is a commercial business, government, or education institution within the Territory that acquires Surface Devices for use as an end user, and not for distribution or resale.

“**Microsoft**” as used herein means Microsoft Corporation and its Affiliates.

“**Term**” means the period that begins as of the later of the two signature dates below and continues until cancelled, suspended or terminated.

“**Territory**” means the United States.

## 2. Authorization.

- (a) Subject to this Rider, Breadth Reseller shall receive a limited, non-exclusive right during the Term to purchase Surface Devices from Distributors for resale to Customers in the Territory.
- (b) Except as otherwise provided for herein and to the maximum extent permitted under applicable laws Breadth Reseller is not authorized to do the following: (i) resell, distribute, market, or otherwise dispose of Surface Devices outside the Territory; (ii) collect orders or receive payments for Surface Devices from any Customer outside the Territory; or (iii) accept orders or receive payments for Surface Devices from

any entity other than a Customer.

- (c) Where Breadth Reseller is engaged in online sales of Surface Devices, Breadth Reseller will take steps to ensure that it has a “business login portal” which will permit Customers to see prices but will restrict such prices from being viewed by consumers or other individuals or entities not in the commercial, governmental, or educational business.
- (d) Breadth Reseller authorizes Microsoft to confirm the existence of Breadth Reseller’s relationship with the Distributor and consents to Distributor sharing that information, together with the sales reporting information set out in Section 3 below and any other information contemplated herein, with Microsoft and Microsoft’s Affiliates.

**3. Sales Reporting.** Breadth Reseller will provide Distributor with sales data for sales of Surface Devices acquired from Distributor. Breadth Reseller authorizes Distributor, as applicable, to share all such sales data with Microsoft and Microsoft’s Affiliates and, to the extent applicable, Breadth Reseller will obtain and is solely responsible for all necessary Customer consents required in order to share such sales data in the manner contemplated herein.

#### **4. General Restrictions**

- (a) **No Internal Use Rights.** Except as otherwise provided in this Rider, Breadth Reseller may not (i) use Surface Devices acquired under this Rider for its own internal use or (ii) distribute or otherwise transfer Surface Devices acquired under this Rider to any Affiliates of Breadth Reseller for their internal use.
- (b) **Proprietary Notices.** Breadth Reseller may not remove any copyright, trademark, patent, or similar notices from the other party’s materials.
- (c) **No Alterations or Modifications.** Breadth Reseller may not modify any Surface Devices (or any packaging or materials provided with the Surface Devices); Breadth Reseller will only distribute Surface Devices in unopened packages.
- (d) **Use of Microsoft Marks.** Except as expressly provided for herein, this Rider do not grant Breadth Reseller any right, title, interest, or license in or to any of trademarks, trade names, trade dress, or logos of Microsoft (the “**Microsoft Marks**”). Breadth Reseller may use Microsoft Marks in plain text (but not logos, trade dress, designs, or word marks in stylized form) to accurately identify and refer to Microsoft and the Surface Devices. However, in making such references, Breadth Reseller must refrain from use that is likely to cause confusion about Breadth Reseller’s relationship with Microsoft and must comply with Microsoft’s usage guidelines at: <https://www.microsoft.com/en-us/legal/intellectualproperty/Trademarks/EN-US.aspx>. Breadth Reseller will promptly correct any misuse on notice.
- (e) **Publicity.** Breadth Reseller will not make public statements relating to this Rider without written approval.

**5. Compliance with Laws.** Breadth Reseller will conduct its respective business activities under this Rider in full compliance with all applicable laws. Without limiting the foregoing, Breadth Reseller acknowledges that the devices, services, software, and related technology (“**Items**”) may be subject to applicable Trade Laws (as hereinafter defined) in one or more countries. Breadth Reseller will comply with all relevant laws

and regulations applicable to the import or export of the Items, including but not limited to, trade laws such as the U.S. Export Administration Regulations or other end-user, end use, and destination restrictions by the U.S. and other governments, as well as sanctions regulations administered by the U.S. Office of Foreign Assets Control. Breadth Reseller will comply with all Legal and Regulatory Compliance practices detailed in Microsoft's [Standards of Business Conduct](#), including trade laws and notice requirements as applicable] ("**Trade Laws**"). These Terms and Conditions may be suspended or terminated immediately to the extent that continued performance would violate Trade Laws or put Distributor or Microsoft at risk of becoming subject to sanctions or penalties under Trade Laws. For additional information, see [www.microsoft.com/exporting](http://www.microsoft.com/exporting). Breadth Reseller shall timely provide information, assistance, and cooperation as necessary to comply with Trade Laws or to register (or renew registration) or report to any governmental agency or certification body that regulates or certifies the use, licensing, or distribution of Surface Devices.

**6. Business Conduct.** Breadth Reseller will:

- (a) conduct its business activities with integrity;
- (b) comply with anti-corruption laws and other laws prohibiting bribery, corruption, inaccurate books and records, inadequate internal controls, and money-laundering;
- (c) ensure that none of its representatives directly or indirectly pays or offers to pay anything of value (including gifts, travel, hospitality, charitable donations, or employment) to any candidate for political office or to any official or employee (including elected officials or any private person acting on behalf of a public sector entity) of any governmental entity, public international organization, or political party, to improperly influence any act or decision of such person for the purpose of promoting the business interests of either party;
- (d) refrain from making any unauthorized representation or commitment in connection with the sale of Surface Devices;
- (e) ensure that all communications to its customers and to Distributor are complete, truthful, accurate, not misleading, and include any required disclosures; and
- (f) refrain from retaliating against anyone who has, in good faith, reported a possible violation of the foregoing commitments.

**7. Monitoring and Reporting.** If either party has a good-faith reason to believe that the other party is in violation of anti-corruption laws or Trade Laws in connection with business or sales activity relating to this Rider, it will notify the other party with a general description of the nature of the concern, and the reason for its belief. Distributor or Breadth Reseller may also contact Microsoft's Business Conduct Alias ([BUSCOND@microsoft.com](mailto:BUSCOND@microsoft.com)) with questions or requests for further information or guidance. The parties will confer in good faith on an appropriate and lawful approach to addressing the concern.

**8. Right to Audit.** Distributor may use a third-party auditor, or an audit related agent, ("**Auditor**") to review Relevant Records and audit Breadth Reseller premises, operations, processes, and Relevant Records during the Term and for three (3) years thereafter, to verify compliance under this Rider. Any third-party Auditor will (i) be independent and internationally recognized, certified or chartered, (ii) not be hired on a contingent fee basis; and (iii) be instructed by Distributor to treat the Breadth Reseller's Confidential Information in accordance with applicable professional standards and the confidentiality requirements. In the exercise of Distributor's audit rights, Distributor may require Breadth Reseller to provide electronic downloads of relevant data. "**Relevant Records**" means complete and accurate records relating to Breadth Reseller's performance under this Rider (including the books, documents, data, records, papers, and other information and materials related to transactions and obligations contemplated by this Rider) for the shorter of (a) the three (3) most recent years of Breadth Resellers participation under this Rider; or (b) the duration of Breadth Reseller's participation under this Rider. Notwithstanding the foregoing, upon Distributor's request, Breadth Reseller agrees to promptly provide information reasonably necessary to

demonstrate Breadth Reseller's compliance with this Rider.

**9. Use of Others.** Breadth Reseller may not (i) delegate any of its obligations under this Rider to any third party (which includes Affiliates of Breadth Reseller) except as otherwise authorized in this Rider. Breadth Reseller may only hire and use third parties to perform ancillary services in support of Breadth Reseller's performance of its obligations under this Rider. Breadth Reseller guarantees such third parties' compliance with this Rider and will be liable for the acts and omissions of each such third party.

**10. Pricing.** The price at which Breadth Reseller purchases Surface Devices from Distributor will be determined and communicated by Distributor. Except as otherwise provided in this Rider, Breadth Reseller has complete discretion to negotiate and set pricing and payment terms and conditions with its Customers. Breadth Reseller's negotiation of those terms will not be subject to Microsoft's review or approval in any way.

**11. Warranties and Disclaimers, General.**

**(a) Warranty.** Breadth Reseller acknowledges that Microsoft warrants its Surface Devices to Customers as described in the manufacturer's warranty accompanying the Surface Devices. Breadth Reseller's instructions to Customers on the use of Surface Devices must be consistent with the terms of Microsoft's manufacturer's warranty, product use rights, and Microsoft's end user documentation. Breadth Reseller may sell additional service warranties to Customers provided that the terms do not conflict, contradict or void any manufacturer's warranty provided with the Surface Devices. Breadth Reseller must not make any other representations or warranty (verbally or in writing) about the Surface Devices.

**(b) Breadth Reseller's Warranties to Customers.** Breadth Reseller is solely responsible for any independent or extended warranties or other offers or services it makes to Customers.

**(c) NO IMPLIED WARRANTIES OR REPRESENTATIONS.** EXCEPT AS EXPRESSLY PROVIDED IN THESE TERMS AND CONDITIONS, ALL SURFACE DEVICES ARE PROVIDED "AS IS." THE FOREGOING "AS IS" WARRANTY, AND ANY WARRANTIES EXPRESSLY SET FORTH IN THESE TERMS AND CONDITIONS, ARE THE ONLY WARRANTIES MADE BY MICROSOFT. MICROSOFT MAKES NO OTHER WARRANTIES, REPRESENTATIONS, CONDITIONS OR GUARANTEES TO THE OTHER RELATED TO THE SURFACE DEVICES. TO THE MAXIMUM EXTENT PERMITTED BY LAW, MICROSOFT DISCLAIMS ANY IMPLIED WARRANTIES OF NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE.

**(d) HIGH RISK USE WARNING.** SURFACE DEVICES ARE NOT DESIGNED OR INTENDED FOR HIGH-RISK USE SCENARIOS WHERE FAILURE OR FAULT OF ANY KIND COULD REASONABLY BE SEEN TO LEAD TO DEATH OR SERIOUS BODILY INJURY, OR TO SEVERE DAMAGE TO TANGIBLE OR INTANGIBLE PROPERTY OR THE ENVIRONMENT.

**(e) NO WARRANTIES FOR THIRD-PARTY PRODUCTS OR SERVICES.** MICROSOFT MAKES NO WARRANTIES, REPRESENTATIONS, OR CONDITIONS, AND ASSUMES NO LIABILITY AS TO ITEMS DISTRIBUTED UNDER A THIRD-PARTY NAME, COPYRIGHT, TRADEMARK OR TRADE NAME THAT MAY BE OFFERED OR COMBINED WITH OR INCORPORATED INTO THE SURFACE DEVICES. TO THE MAXIMUM EXTENT PERMITTED BY LAW, MICROSOFT WILL HAVE NO LIABILITY IN CONNECTION WITH THE THIRD-PARTY ITEMS (SUCH AS IN CONNECTION WITH ANY SUPPLY OR FAILURE TO SUPPLY THEM).

**(f) Exception to Limitation of Liability.** If applicable law gives Breadth Reseller any implied terms, despite the exclusions and limitations in this Rider, then to the extent permitted by applicable law, Breadth Reseller's remedies are limited to repair or replacement of the Surface Device and if Microsoft cannot repair or replace the Surface Device, Microsoft will refund the amount Breadth Reseller paid for it either directly or via the Distributor.

**12. Termination.**

Breadth Reseller acknowledges that Microsoft may cancel, suspend or terminate this Rider or Distributor's authorization to provide Breadth Reseller with Devices at any time without notice to Breadth Reseller. Breadth Reseller agrees not to bring any claims against Microsoft against such cancellation, suspension or termination, and to indemnify and hold harmless Microsoft and Microsoft's Affiliates from and against any and all claims by Breadth Reseller, any Customer of Breadth Reseller or any other third party related to or caused by such cancellation, suspension or termination.

**13. Entire Agreement; Order of Precedence.**

This Rider together the Terms of Sale govern Breadth Reseller's orders and purchases of Surface Devices from Distributor constitute the entire agreement between Breadth Reseller and Distributor relating to the subject matter addressed herein and shall supersede any prior or contemporaneous communication and agreements in such regard. In the event of a conflict between this Rider and the Terms of Sale, this Rider shall control as it relates to purchase and resale of Surface Devices.