

**PART 8 OF THE ENTERPRISE ACT 2002 (“EA02”)**

**UNDERTAKING TO THE COMPETITION AND MARKETS AUTHORITY (“CMA”) UNDER SECTION 219 OF THE EA02**

**Microsoft Limited (the “Company”), registered office, Microsoft Campus, Thames Valley Park, Reading, Berkshire, RG6 1WG has co-operated and constructively engaged with the CMA in voluntarily providing the following UNDERTAKING to the CMA pursuant to section 219 of the EA02, in response to the CMA’s consumer protection law investigation into automatic renewal practices in the supply of online console video gaming memberships (the “Undertaking”). The CMA accepts this Undertaking.**

**For the avoidance of doubt, this Undertaking represents promises in relation to future conduct by the Company in relation to UK consumers. This Undertaking does not amount to an admission, express or implied, that the Company has contravened UK consumer protection laws.**

### ***Interpretation***

1. Defined terms are set out in **Annex A** of this Undertaking.
2. Unless otherwise specified, each of the requirements of the Undertaking apply to the website, mobile, tablet and Console-based formats of the Online Store.

### ***Steps to be taken by the Company***

3. Without any admission of liability or wrongdoing, in accordance with section 219 and 219B of the EA02, the Company, during the course of its business within the UK:
  - a. undertakes to the CMA not to engage in any conduct which contravenes paragraphs 5 to 14 and paragraphs 21 to 22 below; and
  - b. shall ensure compliance with the enhanced consumer measures set out at paragraphs 15 to 20, paragraph 23 and paragraph 26 below.
4. It shall not be a breach of the Undertaking where an obligation on the Company as set out in the Undertaking is satisfied by a third party (which shall include any other Microsoft entity).

### ***Provision and timing of pre-contract information***

5. During the transaction which concludes with the consumer entering a Relevant Contract and directly before the consumer places the order the Company will provide the following Clear and Prominent Information:
  - a. That the Relevant Contract will Automatically Extend;
  - b. The length of the Initial Contract Period;
  - c. The consequence of Automatic Extension, namely that, unless Automatic Extension is disabled, the Initial Contract Period will Automatically Extend onto a Subsequent Contract Period and the Subsequent Contract Period Fee will be taken;
  - d. The length of the Subsequent Contract Period;
  - e. The amount of the Subsequent Contract Period Fee at the time of the offer, how frequently payment will be taken and the fact that the Subsequent Contract Period Fee may be subject to change on at least 30 days' notice;

- f. How and when the consumer may change their Automatic Extension settings in order to stop being charged the Subsequent Contract Period Fee;
- g. The nature of the consumer's cancellation rights (excluding the Accidental Renewal Refund Policy) and, if applicable, entitlement to any refund which may be due on cancellation; and
- h. Clear and Prominent Access Route(s) which lead(s) to the information set out in paragraph 7 below.

To avoid doubt, (i) the Company may display the information required under this paragraph 5 ('Provision and timing of pre-contract information') by way of an interstitial screen, pop-up screen or hover over, which are a mandatory part of the transaction process, as a way of achieving compliance with this paragraph 5, provided that the information is otherwise Clear and Prominent Information; and (ii) accessing information by interstitial screen, pop-up screen or hover over, shall not constitute a consumer taking a further material action provided such interstitial screen, pop-up screen or hover over is a mandatory part of the transaction process.

- 6. During the transaction to purchase a Relevant Contract which concludes with the consumer entering a Relevant Contract the Company shall provide the information necessary for compliance with The Consumer Protection from Unfair Trading Regulations 2008 (if applicable), including but not limited to providing information about main characteristics, price (or the manner in which the price is calculated) and the existence of any right of withdrawal or cancellation.

***Terms and offer details***

- 7. The Clear and Prominent Information referred to in paragraph 5 above will include Clear and Prominent Access Routes directly to the following:
  - a. The then current and applicable Microsoft Terms of Sale;
  - b. If relevant, the then current and applicable Microsoft Gift Terms and Conditions;
  - c. If relevant, Clear and Prominent Information concerning how a consumer can turn off Recurring Billing or cancel their Relevant Contract;

- d. Clear and Prominent Information on the consumer's refund rights; and
- e. If relevant, Clear and Prominent Information explaining that the current Subsequent Contract Period Fee may be subject to change.

***Termination information***

- 8. The Company shall not inform consumers that they have (or will have) a contractual right to terminate a Relevant Contract in its entirety at any time during any Contract Period if in fact this is not the case.

***Stopping Automatic Extension/cancellation***

- 9. The Company shall maintain an electronic system which allows consumers to stop the Automatic Extension of a Relevant Contract by either turning off Recurring Billing or cancelling the Relevant Contract on the Console and via the consumer's account on the website 'account.microsoft.com' (or future replacement website or medium through which consumers can access and modify their account in relation to the Relevant Contract and/or Relevant Contract settings), in a simple and straightforward fashion.
- 10. Regardless of the medium used by the consumer, the system shall include the following features:
  - a. following the consumer changing their Recurring Billing status to off, the consumer shall be provided with Clear and Prominent Information that Recurring Billing has been turned off and the date on which the Relevant Contract will end;
  - b. following the consumer cancelling the Relevant Contract, and in circumstances where cancellation does not take effect immediately, the consumer shall be provided with Clear and Prominent Information that the Relevant Contract will not Automatically Extend, and the date on which the Relevant Contract will end; and
  - c. the consumer shall, at all times, be able easily to identify their Recurring Billing status by accessing their 'Account' (or equivalent) page.

***Notification of Subsequent Contract Period Fee increases***

- 11. The Company shall notify affected consumers of Subsequent Contract Period Fee increases via email and, for so long as it is in operation, the Console messaging system. In the event

the Company discontinues the Console messaging system it will use a suitable alternative form of communication.

12. The email notification described at paragraph 11 above will be sent at least 30 days (or any other notice period prescribed by law) before the relevant fee increase is due to take effect and in a way which Clearly indicates that this is a communication which requires the consumer's attention, containing Clear and Prominent Information that:
  - a. the price of the Relevant Contract is going to increase and stating its current price and the planned increased price;
  - b. the date on which the increase will come into effect;
  - c. the ability of the consumer to avoid the price increase by stopping Automatic Extension, together with a Clear and Prominent Access Route to the electronic system detailed at paragraphs 9 and 10 above which allows consumers to stop Automatic Extension.

***Promotion of Accidental Renewal Refund Policy***

13. The Company shall within 30 Working Days of the Effective Date and whilst the Accidental Renewal Refund Policy is in existence:
  - a. include and maintain on its customer support, or equivalent, webpage Clear and Prominent Information on the existence and terms of the Accidental Renewal Refund Policy;
  - b. provide Clear and Prominent Information about the existence, and the significant terms, of the Accidental Renewal Refund Policy in the confirmation email sent to a consumer after the initial entry into a Relevant Contract; and
  - c. provide a Clear and Prominent Access Route to the Clear and Prominent Information set out at paragraph 13a. above in any email sent to a consumer confirming an Automatic Extension of a Relevant Contract.
14. For the avoidance of doubt such information provided for in paragraphs 13a. to 13b. above will be in addition to and clearly differentiated from that provided by the Company in respect of the consumer's right to cancel and receive a refund after first entering into a Relevant Contract.

***Inactive consumers***

15. The Company shall within 60 Working Days of the Effective Date and, thereafter, on an ongoing rolling daily basis and for a minimum period of three years from the Effective Date (after which time period the relevant obligation expires) (“Minimum Period”) identify those consumers with a Relevant Contract who have been Inactive for 12 or more consecutive months. The Company undertakes to take the following actions in respect of these consumers:

a. Send a communication by email to each consumer that has been Inactive for 12 or more consecutive months (‘First Inactivity Trigger Point’) (within 15 Working Days of having identified those consumers in scope of this paragraph 15), in a way which Clearly indicates that this is a communication which requires the consumer’s attention, containing the following Clear and Prominent Information:

- i. the consumer has been Inactive for at least 12 consecutive months (alternatively, the total number of months of Inactivity);
- ii. the actions that the consumer may take to access their account details and stop Automatic Extension of the Relevant Contract; and
- iii. if the consumer remains Inactive for a further 12 consecutive months, the Company will turn off the consumer’s Recurring Billing.

b. Send a further communication by email to each of the consumers that have been sent the initial communication identified in paragraph 15a. above when those consumers have been Inactive for a further 6 consecutive months after the initial communication identified in paragraph 15a. was sent (‘Second Inactivity Trigger Point’) within 15 Working Days of the Second Inactivity Trigger Point, in a way which Clearly indicates that this is a communication which requires the consumer’s attention, containing the following Clear and Prominent Information:

- i. the consumer has been Inactive for a further 6 consecutive months (alternatively, the total number of months of Inactivity);
- ii. the actions that the consumer may take to access their account details and stop Automatic Extension of the Relevant Contract; and

- iii. if the consumer remains Inactive for a further 6 consecutive months, the Company will turn off the consumer's Recurring Billing.
- c. Where a relevant consumer does not turn off Recurring Billing for their Relevant Contract following either of the communications referred to at paragraphs 15a. and 14b. above and they remain Inactive for a further 6 consecutive months after the further communication identified at paragraph 15b. was sent (i.e. the consumer has been Inactive for at least 24 cumulative months) ('Final Inactivity Trigger Point') the Company will:
- i. turn off Recurring Billing for that consumer as soon as reasonably practicable following the Final Inactivity Trigger Point; and
  - ii. retain the consumer's game achievements and tenure information for a further 12 consecutive months following the Company turning off Recurring Billing in a format which is recoverable in the event the consumer wishes to start using the Relevant Contract again or purchase a new Relevant Contract.
16. The Company will make such changes to the Microsoft Services Agreement and any other applicable agreement as are necessary to enable it to carry out the process set out at paragraph 15 above by the date required.
17. The Company shall by no later than the date on which the first email communication is sent under the provisions of paragraph 15a. above and for the remainder of the Minimum Period include and maintain on its customer support, or equivalent, webpage Clear details of the process set out at paragraph 15 above.

***Longer length contracts***

18. The Company shall within 60 Working Days of the Effective Date identify those consumers who, as at the Effective Date, have an active Relevant Contract with a Contract Period of 12 months which, in accordance with its contractual terms, will Automatically Extend onto a further Contract Period of 12 months. Notwithstanding the preceding sentence, a consumer is not in scope of this paragraph 18 if they have more than one Relevant Contract concerning the same product associated with their account at the same time (a circumstance known as 'stacked time'). For the avoidance of doubt a consumer who has, at the same time, separate Xbox Live Gold and Game Pass subscriptions is not considered to have 'stacked time' and would, therefore, fall within the scope of this paragraph 18. The Company undertakes to send a single, one-off communication by email to each of these consumers (within 15 Working

Days of having identified those consumers in scope of this paragraph 18), in a way which clearly indicates that this is a communication which requires the consumer's attention, containing the following Clear and Prominent Information:

- a. consumers have an annual subscription of a Relevant Contract that will Automatically Extend at the end of that consumer's billing period;
  - b. the actions that the consumer may take to stop Automatic Extension of their Relevant Contract and provides a Clear and Prominent Access Route to the mechanism to turn off Automatic Extension as provided for in paragraph 10 above; and
  - c. consumers have a one-time option to terminate their Relevant Contract within 30 days and receive a Pro-Rata Refund and provides a Clear and Prominent Access Route to the mechanism detailed at paragraph 19 below by which the consumer can terminate a Relevant Contract and receive a Pro-Rata Refund.
19. Prior to sending the communication provided for by paragraph 18 above the Company shall develop, test and implement an electronic mechanism by which consumers, in a simple and straightforward manner, can exercise their option to terminate a Relevant Contract and receive a Pro-Rata Refund.
20. In the event a consumer exercises their option to terminate their Relevant Contract and receive a Pro-Rata Refund, the Company undertakes to pay such Pro-Rata Refund as soon as reasonably practicable back to the consumer's original payment instrument or, if that instrument is unavailable and if applicable, to the consumer's PayPal account.

***Suspended consumer accounts and permanently banned consumers***

21. The Company shall allow a consumer to take the action necessary to stop the Automatic Extension of a Relevant Contract when such consumer's account has been suspended for any period of time or the consumer has been permanently banned, both for any reason. Further the Company shall not use and/or rely on terms or consumer notices that have the object or effect of preventing a consumer from taking such action.
22. In addition, as soon as reasonably practicable after the Effective Date, the Company shall implement a process whereby Recurring Billing will be turned off on all Relevant Contracts of consumers who have been permanently banned for any reason from using their account prior to and following the Effective Date.



## **Compliance Reports**

23. From the Effective Date until the Reporting End Date, the Company undertakes that within 30 Working Days of the end of each Reporting Period it will produce a Compliance Report to the CMA relating to that Reporting Period which provides:

### ***Major Changes***

- a. a summary of any Major Changes made during the Reporting Period and the reasons for such changes;

### ***Accidental Renewal Refund Policy***

- b. in the first Compliance Report only, information on the total number of consumers who received a minimum of a Pro-Rata Refund under the terms of the Accidental Renewal Refund Policy in the 12-month period preceding the Effective Date;
- c. the number of consumers who claimed a minimum of a Pro-Rata Refund under the terms of the Accidental Renewal Refund Policy, the number of consumers who subsequently received a minimum of a Pro-Rata Refund (if different) and, in the case of any consumer who was refused a minimum of a Pro-Rata Refund together with any available information on the reasons for such refusal;

### ***Inactive consumers***

- d. in the first Compliance Report only, the number of consumers who had reached the First Inactivity Trigger Point on the Effective Date;
- e. the number of consumers who reached the First Inactivity Trigger Point and were sent an email in accordance with paragraph 15a. above;
- f. the number of consumers who reached the Second Inactivity Trigger Point and were sent an email in accordance with paragraph 15b. above;
- g. the number of consumers in respect of which the Company turned off Recurring Billing after the Final Inactivity Trigger Point;

### ***Pro-Rata Refunds***

- h. in the first Compliance Report only, the total number of consumers to whom the communication was sent under paragraph 18 above; and
- i. in the first Compliance Report only, the number of consumers who claimed a Pro-Rata Refund within the 30 day period, the number of consumers who subsequently received a Pro-Rata Refund (if different) and, in the case of any consumer who was refused a Pro-Rata Refund, together with any available information on the reasons for such refusal, and the total value of such Pro-Rata Refunds.

### ***Supplemental***

24. Nothing in this Undertaking:

- a. limits or restricts consumers' existing statutory or contractual rights (or Microsoft's obligations in respect of these rights) in any way; or
- b. constitutes approval or certification by the CMA of the Company's compliance with consumer protection laws or admission that the Company has not complied with consumer protection laws; or
- c. represents or shall be construed as an admission by the Company, its directors, employees, or any member of its corporate group, that it has infringed consumer protection law; or
- d. precludes the Company from making further changes:
  - i. if required by law;
  - ii. to comply with any adjudication of the ASA; or
  - iii. to provide a higher standard of consumer protection or improve user experience.

and the Company will not make any public statement or claim that says, implies or could be taken to imply the opposite. To avoid doubt, the Company shall not be prohibited from making any accurate public statement or claim that says, implies or could be taken to imply that the CMA has approved the Company's compliance with the Undertaking.

25. In the Undertaking, unless an alternative meaning is expressly provided for, any reference to 'day' means calendar day and 'month' means calendar month. Where a deadline provided for in the Undertaking ends on a non-Working Day, the reference shall be taken to mean the deadline falling on the following Working Day.
26. The Company undertakes to provide the CMA, within 10 Working Days of the Effective Date, the contact details of an appropriate employee or other contact for the purpose of the Company responding to any requests the CMA may have prior to the Reporting End Date in relation to compliance with this Undertaking. The Company further undertakes to provide the CMA with any update to such contact details in the event the identity and/or location of the relevant employee or other contact changes prior to the Reporting End Date.
27. The Undertaking and any dispute, claim and/or enforcement action (including noncontractual disputes or claims) arising between the Company and the CMA in relation to the Undertaking shall be governed by and construed in accordance with the law of England and Wales. Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute arising between the Company and the CMA in relation to the Undertaking.
28. No breach of the Undertaking shall be deemed to have occurred where Microsoft is prevented from, or delayed in, performing its obligations under this Undertaking due to a technical fault, system outage or similar event or other circumstance beyond Microsoft's reasonable control, provided always that Microsoft uses reasonable endeavours to perform its obligations under this Undertaking as soon as reasonably practicable.
29. Microsoft shall be deemed to comply with any obligation pursuant to the Undertaking to provide "notification" to a consumer or for the consumer to be "notified", save for where expressly set out to the contrary, where Microsoft sends the information stipulated in the relevant obligation to an email address (or other electronic communication address) provided by the consumer to Microsoft.

**BY SIGNING THIS UNDERTAKING, THE COMPANY IS AGREEING TO THE TERMS OF THE UNDERTAKING.**

**THIS UNDERTAKING DOES NOT AMOUNT TO AN ADMISSION THAT ANY PERSON HAS COMMITTED ANY CRIMINAL OFFENCE OR OTHERWISE INFRINGED THE LAW.**

**IF HAVING SIGNED THIS DOCUMENT THE COMPANY BREACHES ANY PART OF THE ABOVE UNDERTAKING, IT IS AWARE THAT IT MAY BE THE SUBJECT OF AN APPLICATION TO THE COURT FOR AN ENFORCEMENT ORDER UNDER SECTION 215 OF THE EA02.**

**THE CMA WILL CONSIDER VARYING OR TERMINATING THE UNDERTAKING, EITHER UPON REQUEST FROM THE COMPANY OR UNDER THE CMA'S OWN INITIATIVE, WHERE THERE HAS BEEN A CHANGE OF CIRCUMSTANCES SUCH THAT THE UNDERTAKING IS NO LONGER APPROPRIATE IN DEALING WITH THE ISSUES IT WAS DESIGNED TO REMEDY (E.G., THE UNDERTAKING IS AFFECTED BY NEW LEGISLATION OR CHANGES IN TECHNOLOGY OR MARKET CONDITIONS).**

Signed on behalf of the Company by:

Signature.....  .....

Print name .....  .....

Position .....  .....

Date ..... Jan 20, 2022 .....

## Annex A Definitions

For the purpose of this Undertaking:

- **Access Route** means a way for a consumer to access features such as information and/or a mechanism where the consumer can take action with regards to their Relevant Contract, including but not limited to a button, a tab, a (hyper)link, a pop-up, dropdown and hover text.
- **Accidental Renewal Refund Policy** means the Company policy on the Effective Date by which a consumer may, on a one-time only basis, request within 30 days of a Relevant Contract Automatically Extending the cancellation of the Relevant Contract which has Automatically Extended and receive a minimum of the Pro-Rata Refund, or any subsequent materially similar version of it.
- **Automatic Extension** means the act of automatically extending and/or renewing the Contract Period of the Relevant Contract and of charging any fee for the automatically extended and/or renewed Contract Period unless the consumer has taken action to inform Microsoft otherwise by cancelling during performance of the contract, and **Automatically Extend** and **Automatically Extending** shall each be construed accordingly.
- **Clearly and Clear** means information must be:
  - a. displayed in plain English;
  - b. complete;
  - c. correct; and
  - d. not misleading, either by action or omission.
- **Clear and Prominent Access Route** means, having regard to the overall impression of the display in its entirety and commonly used features of website design, an Access Route which:
  - a. is Clear
  - b. provides a straightforward and simple method of access; and
  - c. is presented in an appropriate font, size, colour and position to enable the consumer to be aware of it and to easily identify the information accessible via it.
- **Clear and Prominent Information** means, having regard to the overall impression of the display in its entirety including commonly used features of website design, information which is:
  - a. Clear;

- b. presented in such a way as a whole to enable the consumer to easily identify the information;
  - c. is presented in an appropriate font, size, colour and position to enable the consumer to easily identify the information; and
  - d. except as permitted by this Undertaking, does not require the user to take any further material action to access the information.
- **Compliance Report** means a written statement supplied by the Company to the CMA by email relating to the Reporting Period in question providing the relevant information specified in paragraph 23 of the Undertaking.
- **Console** means the Xbox One console or the Xbox Series X or S console.
- **consumer** means a consumer who Microsoft reasonably determines to be an individual acting for purposes that are wholly or mainly outside that individual's business in the UK.
- **Contract Period** means the fixed duration of the Relevant Contract, following which it either expires or Automatically Extends.
- **Effective Date** means date the Undertaking is signed.
- **Inactive** means the time periods during which a consumer is not logged into the account associated with a Relevant Contract and/or otherwise makes no active use of a Relevant Contract.
- **Initial Contract Period Fee** is the sum paid by the consumer for the Initial Contract Period.
- **Initial Contract Period** means the first Contract Period following the formation of the Relevant Contract.
- **Major Change** means any significant change to the presentation of information that is required to be provided by this Undertaking, or, if relevant, to the terms of the Microsoft Terms of Sale, Microsoft Services Agreement or any other agreement or policy (including but not limited to the Accidental Renewal Refund Policy), which could reasonably affect compliance with this Undertaking.
- **Microsoft** means Microsoft Corporation (USA) and any other body corporate that is a member of the Microsoft corporate group including (but not limited to) Microsoft Ireland Operations Limited (Ireland), Microsoft Limited (UK), and any entity acting on behalf of a corporate body that is a member of that group.

- **Online Store** means microsoft.com, xbox.com/live/gold, xbox.com/gamepass, and any other internet-based site, platform or facility owned and operated by Microsoft, in any form, which is directed to UK consumers, and through which a consumer can enter into a Relevant Contract.
- **Pro-Rata Refund** means an amount of money equivalent to the Subsequent Contract Period Fee, divided by the number of days of the Subsequent Contract Period, multiplied by the number of full days left of the Subsequent Contract Period, at the time the consumer requests a refund.
- **Recurring Billing** means the setting in the consumer's account which means that a Subsequent Contract Period Fee will be taken at the end of each Contract Period without any further action or authorisation by the consumer unless and until the consumer disables it.
- **Relevant Contract** means a contract between Microsoft and consumers for the supply of (a) Xbox Live Gold, Game Pass, Game Pass Ultimate, or (b) any online video gaming product which replaces, rebrands or includes Xbox Live Gold, Game Pass, or Game Pass Ultimate (in whole or in part) and which is associated with a Console for a Contract Period, and (in the case of either (a) or (b)) which is or can be subject to Automatic Extension. A Relevant Contract includes, for the avoidance of doubt, contracts of such nature between Microsoft and consumers that were entered into through the redemption of cards or codes (including where the consumer initially purchased those cards or codes from third-party retailers), but excludes contracts in which the billing to consumers under such contract is not carried out by Microsoft.
- **Reporting End Date** means the date falling 39 months after the Effective Date.
- **Reporting Period** means: (i) in respect of the first Reporting Period, a period of 15 months running from the Effective Date; (ii) in respect of the second Reporting Period, the 12-month period running from the end of the first Reporting Period; and (iii) in respect of the third Reporting Period, the 12-month period ending with the Reporting End Date.
- **Subsequent Contract Period** means any Contract Period following the Automatic Extension of a Relevant Contract (which, for the avoidance of doubt, does not include the Initial Contract Period) and Subsequent Contract Periods shall be construed accordingly.
- **Subsequent Contract Period Fee** means the amount the consumer is charged in respect of the Subsequent Contract Period.
- **UK** means the United Kingdom of Great Britain and Northern Ireland, as such territory is constituted from time to time.

- **Working Day** means any day other than (a) a Saturday (b) a Sunday (c) Christmas Day (d) Good Friday (e) a day which is a bank holiday under the Banking and Financial Dealings Act 1971 in the relevant part of the UK (f) a day which is a national holiday in the Republic of Ireland, or (g) a day on which banks are required or authorized by law to be closed in Seattle, Washington.