

Microsoft Partner Network Agreement

This Microsoft Partner Network Agreement (the "**Agreement**") is entered into by and between the Microsoft entity set forth in Section 11 ("**Microsoft**", "**we**", "**us**") and the company you represent ("**Company**", "**you**", "**your**") regarding you and your Company's use of the Microsoft Partner Network and related websites through which Microsoft may provide you with access to tools, documents, and communications related to an MPN Program ("**Partner Portal**"). You represent that you have the legal authority to enter into this Agreement on your Company's behalf.

1. General

- a. The Microsoft Partner Network (the "**MPN**") gives you access to (1) Microsoft content, information, sales tools, documentation, branding materials such as logos, and resources (the "**Microsoft Materials**"); (2) Microsoft offers, incentives, and programs ("**MPN Offers**" or "**MPN Programs**"); and (3) Microsoft software, services, products, and technologies (the "**Microsoft Products**"), to empower you to achieve more and deliver great solutions to your customers.
- b. Subject to the applicable Program Guide or Additional Terms, your affiliates may be eligible to participate in MPN Programs.
- c. Microsoft will administer the MPN and its benefits through the Partner Portal and MPN communications. You give us permission to communicate with you to: (1) administer the MPN; (2) give you information about the MPN, including but not limited to, sending promotional information and information about events and training opportunities; (3) invite you to participate in surveys and research; (4) give you Microsoft Materials to help deliver solutions based on Microsoft Products; and (5) contact you at the business number you have provided with information about the MPN.
- d. The Partner Portal may contain features that allow you to post, submit, or publish information about your Company ("**Profile**"). You agree that any information you provide in your Profile will be truthful and accurate. By providing your Profile, you grant us the right to use, reproduce, display, distribute and otherwise disclose your Profile to third parties for purposes relating to the MPN. We may (1) remove your Profile if we deem it necessary or appropriate; and (2) disclose your Profile information to law enforcement pursuant to lawful process.
- e. This Agreement applies to your MPN membership, including any benefits or incentives extended to you through an MPN Program. This Agreement does not by itself authorize you to distribute, resell, or use Microsoft Products. We may provide you with additional terms to participate in MPN Programs, access Microsoft technologies, or use Microsoft Products ("**Additional Terms**"). We may also make usage or program guides available on the Partner Portal ("**Guides**").
- f. Participating in the MPN may be an eligibility requirement to participate in other Microsoft programs, including programs that authorize partners to distribute or resell Microsoft Products, but this Agreement does not alter, amend, or modify the terms of any such program. In the event of a conflict between this Agreement and the terms of a separate program or agreement not specifically referenced herein, the terms of the separate program or agreement govern such program.

2. Exclusion of Warranties

- a. Your use of content, software, products, or services that are provided or supported by third parties ("**Third-Party Content**") and provided to you by Microsoft is subject to the applicable agreement between you and the Third-Party Content provider. Microsoft does not control or assume any liability for Third-Party Content. If there is a conflict between this Agreement and the Third-Party Content provider's terms, this Agreement will control.
- b. The information presented on or through the Partner Portal is made available solely for general information purposes. We do not warrant the accuracy, completeness or usefulness of this information. Any reliance you place on such information is strictly at your own risk. WE DISCLAIM ALL LIABILITY AND RESPONSIBILITY ARISING FROM ANY RELIANCE PLACED ON SUCH MATERIALS BY YOU OR ANY OTHER VISITOR TO THE PARTNER PORTAL, OR BY ANYONE WHO MAY BE INFORMED OF ANY OF ITS CONTENTS. FURTHER, THE MPN, MICROSOFT MATERIALS, THIRD-PARTY CONTENT, AND ANY BENEFITS OR OTHER MATERIALS THAT WE MAY OFFER THROUGH THE MPN ARE PROVIDED "AS-IS." EXCEPT TO THE EXTENT PROHIBITED BY LAW, WE MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE MPN, MICROSOFT MATERIALS, THIRD-PARTY CONTENT, AND ANY BENEFITS OR OTHER MATERIALS THAT WE MAY OFFER THROUGH THE MPN, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR QUIET ENJOYMENT, ANY WARRANTIES THAT THE MATERIALS OR THIRD-PARTY CONTENT WILL BE ERROR FREE OR FREE OF HARMFUL COMPONENTS, AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE.

3. Intellectual Property

- a. Each party owns and retains all right, title, or interest in and to its own respective intellectual and other proprietary rights, and neither party grants such rights to the other party except as expressly granted in the Agreement.
- b. You may use, reproduce, and incorporate into portions of your own materials ("**Partner Materials**") into the Microsoft Materials solely for your business purposes contemplated under the MPN during the term of this Agreement. If you provide Partner Materials to Microsoft, you grant to Microsoft a non-exclusive, worldwide, royalty-free license to reproduce, publish, distribute, modify, and translate all or any part of the Partner Materials in connection with the MPN.
- c. Neither party will remove any copyright, trademark, patent, or similar notices from the other party's materials.
- d. Except as otherwise provided in a separate license agreement entered into between you and Microsoft, this Agreement does not grant either party any right, title, interest, or license in or to any of the other party's trademarks, trade names, trade dress, or logos (collectively, "**Marks**"). You may use Microsoft's corporate name, Microsoft Product names, and trademarks ("**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 its technology and services. In making such references, you must refrain from use that is likely to cause confusion about your relationship with Microsoft and must comply with [Microsoft's usage guidelines](#). You will promptly correct any misuse upon notice from Microsoft. We may revoke your permission to use Microsoft's corporate name, Microsoft Product names, and

trademarks in plain text (but not logos, trade dress, designs, or word marks in stylized form) at any time by giving you written notice. Any goodwill generated by the use of Microsoft Marks will inure solely to the benefit of Microsoft.

4. Term and Termination

- a. The term of this Agreement commences when you accept this Agreement and continues until terminated in accordance with Section 4.b.
- b. Either party may terminate this Agreement (in whole or in part):
 - (1) by giving 30 days' prior written notice;
 - (2) immediately if a party breaches or defaults in its obligations under Sections 5 (Privacy and Data Protection), 6 (Mutual Confidentiality), or 7 (Business Integrity Principles); or
 - (3) immediately if there is an infringement of a party's intellectual property rights, or Incurable Breach.

"Incurable Breach" means any breach or default of this Agreement where a timely remedy is infeasible under the circumstances.

- c. Upon termination of this Agreement: (1) your enrollment in all MPN Programs will end; (2) all licenses granted by you or us under this Agreement will be terminated; (3) you will immediately cease use of all Microsoft Materials; and (4) you will immediately cease to identify yourself or hold yourself out as an MPN participant. Microsoft will have no obligation to make any payments for activities that are not completed prior to the effective date of termination, including applicable incentive payments. Except as otherwise provided in this Agreement and the Additional Terms, only Sections 2, 3, 5, 6, 7.d, 8, 9, 10 and 11 will survive termination.

5. Privacy and Data Protection

- a. Each party will comply with Data Protection Law (as defined below). Without limiting the foregoing, each party will:
 - (1) not use or share Personal Data received from the other party (or its customers) for a purpose for which it has not obtained consent;
 - (2) establish independent procedures for managing and responding to any communication from a customer seeking to exercise its rights under Data Protection Laws;
 - (3) provide reasonable assistance to the other in responding to any requests, investigation, consultation, or claims from a customer, regulator, or supervisory authority concerning Data Protection Law;
 - (4) take appropriate security measures that are required by Data Protection Law, and in accordance with good industry practice relating to data security; and
 - (5) refrain from transmitting unsolicited commercial communications in any manner that would violate applicable laws.

"Data Protection Law" means any laws applicable to you or Microsoft, relating to data security, data protection and/or privacy, including Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to processing of Personal Data and the free movement of that data ("**GDPR**").

"Personal Data" means any information relating to an identified or identifiable natural person. An identifiable natural person is one who can be identified directly or indirectly by referencing an identifier such as a name, an identification number, location data, an online identifier, or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural, or social identity of that natural person.

- b. In the event of a conflict between this Section 5 (Privacy and Data Protection) and Section 6 (Mutual Confidentiality), the Section that offers greater protection for Personal Data will apply.

6. Mutual Confidentiality

The parties will treat all confidential information exchanged between the parties under this Agreement in accordance with the separate nondisclosure agreement ("**NDA**") executed by the parties. If no separate NDA is in effect, the following provisions apply to the parties' exchange of confidential information:

- a. "Confidential Information" means a party's non-public information, know-how, or trade secrets that (a) the party designates as being confidential, or (b) given the nature of the disclosure or circumstances surrounding the disclosure, the receiving party should treat as confidential.
- b. Neither party will disclose the other party's Confidential Information to any third party except as permitted in Section 6.c. The receiving party will not be liable for disclosure of information which: (i) it already knew without an obligation to maintain the information as confidential; (ii) it received from a third party without breach of an obligation of confidentiality owed to the other party; (iii) it independently developed; or (iv) becomes publicly known through no wrongful act of the receiving party.
- c. The receiving party may disclose the other's Confidential Information to its Affiliates and Representatives. The receiving party remains responsible for any unauthorized use or disclosure. These disclosures may be made only on a need-to-know basis, subject to the obligations of this Section 6. The receiving party is responsible for its Affiliates' and Representatives' compliance with this Section 6. "**Representative**" means an employee, contractor, advisor, or consultant of a Party or its Affiliates. "**Affiliate**" means any legal entity that owns, is owned by, or is commonly owned with a party and "own" means having more than 50% ownership or the right to direct the management of the entity.
- d. Neither party is required to restrict work assignments of employees who have had access to Confidential Information. Neither party can control the incoming information the other will disclose in the course of working together, or what its employees will remember, even without notes or other aids. Use of Confidential Information in such employees' unaided memories in the development or deployment of each party's respective products or services does not create liability under the Agreement.
- e. If either party is required by a court order or other laws to disclose the other party's confidential information, prior to disclosure, the disclosing party must seek the highest level of protection

available and give the other party reasonable prior notice when possible to allow it to seek a protective order.

- f. Except as permitted above or required by applicable law, neither party will disclose the other party's confidential information for five years after receiving such confidential information. The five-year time period does not apply if applicable law requires a longer period of protection or to Personal Data.

7. Business Integrity Principles

- a. In performance of this Agreement, each party will comply with:
 - (1) the [Microsoft Partner Code of Conduct](#); and
 - (2) applicable laws against bribery, corruption, inaccurate books & records, inadequate internal controls and money-laundering, including the U.S. Foreign Corrupt Practices Act ("**Anti-Corruption Laws**").
- b. Each party will comply with and provide to their respective Personnel who resell, distribute, market, support or otherwise dispose of Microsoft Products the [Anti-Corruption Policy for Microsoft Representatives](#). "**Personnel**" includes your or an Affiliate's employee, contractor, agents, advisor or consultant.
- c. Your Personnel who deal in Microsoft Products must complete annual training on compliance with Anti-Corruption Laws as follows:
 - (1) the [Ethics and Integrity training for Microsoft Partners](#) made available free of charge by Microsoft; or
 - (2) in lieu of providing the Ethics and Integrity training for Microsoft Partners, you may provide your own annual training only if such training is substantially similar and at least as comprehensive as the Ethics and Integrity training for Microsoft Partners.

Upon request, you will certify to Microsoft in writing that the training outlined above has been completed. You will keep copies of the training and related training completion records and provide reasonable access of such copies to Microsoft in accordance with Section 7.d.

- d. During the term of this Agreement and for a minimum of 2 years following termination, you will maintain complete and accurate books, documents, records, papers, and other materials related to your compliance with this Agreement, the Guides, and Additional Terms. Microsoft may conduct audits of your compliance: (1) upon at least 30 days' notice, except for potential breaches of Sections 5, 6 or 7 which may be initiated upon shorter, reasonable notice; (2) in accordance with your reasonable confidentiality and security procedures; (3) during normal business hours; (4) in a manner that does not interfere unreasonably with your operations; (5) not more than once every 12 months, unless potential violations of this Agreement, the Guides, or Additional Terms support additional audits; and (6) at Microsoft's sole cost and expense. Notwithstanding the foregoing and without limiting Microsoft's remedies under law, you will reimburse Microsoft for all costs and expenses associated with an audit where Microsoft discovers that you violated Anti-Corruption Laws.

- e. If either party has a good-faith reason to believe that the other party is in violation of this Section 7, it will notify the other party with a general description of the nature of the concern, and the reason for its belief. You may contact Microsoft's Anti-Corruption Alias (ANTICPT@microsoft.com) or the Business Conduct Alias (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. Limitation of Liability

- a. Subject to Section 8.b, to the maximum extent permitted by law, in no event will either party be liable for any direct, indirect, incidental, consequential, punitive, special, or exemplary damages (including, but not limited to, damages for loss of data, revenue, and/or profits) arising out of or that relate in any way to this Agreement. This exclusion will apply regardless of the legal theory upon which any claim for such damages is based, whether you have been advised of the possibility of such damages, whether such damages were reasonably foreseeable, or whether application of the exclusion causes any remedy to fail of its essential purpose.
- b. The limitations in Section 8.a do not apply to liability arising out of:
 - (1) Section 5 (Privacy and Data Protection);
 - (2) Sections 6 (Mutual Confidentiality) or 9 (Indemnification);
 - (3) claims for non-payment, fraud, gross negligence or violations of intellectual property rights; or
 - (4) a separate agreement with Microsoft for the sale or distribution of Microsoft Products.
- c. Each party's liability for loss or damage of any kind (including loss or damage caused by negligence) to the other is reduced to the extent that the other's agents caused or contributed to that loss or damage.

9. Indemnification

- a. This Section 9 does not apply to any Third-Party Claims (defined below) arising under a separate agreement with Microsoft for the sale or distribution of Microsoft Products.
- b. You will defend Microsoft against any Third-Party Claims. "**Third-Party Claim**" means any third-party claims or allegations against Microsoft that arise out of or are connected with any default or breach or alleged default or breach of this Agreement by you or any other act or omission by you, such as those claims identified in Section 9c(3). If there is an adverse final judgment (or settlement to which Microsoft consents) resulting from any Third-Party Claims, you will pay it for Microsoft. Microsoft will promptly notify you in writing of any Third-Party Claim, specify the nature of the Third-Party Claim and the relief the third party seeks. Microsoft will give you reasonable assistance in defending the Third-Party Claim. At Microsoft's option and cost, Microsoft may participate in the selection of counsel, defense and settlement of any Third-Party Claims covered by this section. If Microsoft decides to participate in the defense of a Third-Party Claim, you and Microsoft will work together in good faith to reach decisions about defending the Third-Party Claim. You must have Microsoft's written consent before settling any Third-Party Claim, which consent Microsoft will not unreasonably withhold.

c. Microsoft's Defense of Infringement Claims.

- (1) Microsoft will defend you in a lawsuit in which a third-party claims that a Microsoft Product supplied to you for your internal use under an MPN Program infringes the third party's copyright, trademark or patent rights or misappropriates the third party's trade secrets. If there is an adverse final judgment (or settlement to which Microsoft consents) from the lawsuit, Microsoft will pay it for you. The third party may not be one of your Affiliates. The terms "misappropriation" and "trade secret" have the meanings defined in the Uniform Trade Secret Act, except if this Agreement is governed by the laws of a jurisdiction outside the United States, in which case "misappropriation" will mean "intentional unlawful use" and "trade secret" will mean "undisclosed information" as specified in Article 39.2 of The Agreement on Trade-Related Aspects of Intellectual Property Rights.
- (2) Microsoft's obligations under Section 9.c are subject to the following conditions: (i) you must promptly notify Microsoft in writing of the claim; (ii) Microsoft will have sole control over defense or settlement of the claim; and (iii) you will provide Microsoft with reasonable assistance in the defense of the claim. Microsoft's obligations to defend and pay a patent claim will be limited to patent claims where the Microsoft Product alone, without combination or modification, constitutes direct or contributory infringement of the patent.
- (3) Microsoft will not be liable for any claim under this Section 9.c to the extent that the claim or adverse final judgment is based on your: (i) unauthorized distribution or use of any Microsoft Product, or continued distribution or use after Microsoft notifies you to stop distribution or use of the Microsoft Product; (ii) combination of a Microsoft Product with any non-Microsoft product, data or business process; (iii) damages attributable to the value of the use of a non-Microsoft product, data or business process; (iv) alteration of any Microsoft Product; (v) use of Microsoft's Mark(s) without Microsoft's written consent to do so; or (vi) acquiring of a trade secret (1) through improper means, (2) under circumstances giving rise to a duty to maintain its secrecy or limit its use, or (3) from a person who had a duty to maintain its secrecy or limit its use. You will reimburse Microsoft for any costs or damages that result from the foregoing exclusions.
- (4) If Microsoft receives information concerning an infringement claim relating to a Microsoft Product, Microsoft may, at Microsoft's expense, but without obligation to do so: (i) procure for you the right(s) or license(s) as may be necessary to address the claim; (ii) replace the Microsoft Product with a functional equivalent; or (iii) modify the Microsoft Product to make it non-infringing. You must immediately stop distribution of the allegedly infringing Microsoft Product if Microsoft elects either option outlined in subsections (i) or (ii) in this paragraph. You will work with Microsoft to recall all Microsoft Products that are the subject of a claim and replace them with the non-infringing alternative subsections (ii) or (iii) of this paragraph. If any other type of third party claim is brought against you regarding Microsoft's intellectual property, you must notify Microsoft promptly in writing. Microsoft may, at Microsoft's option, choose to treat these claims as being covered by this Section 9.b(4). This Section 9.c provides your only remedy for third party infringement and trade secret misappropriation claims.

10. Miscellaneous

- a.** Microsoft may communicate with you via the email address, phone number, or physical address we have on record for you or through the Partner Portal. Notices to Microsoft must be sent to Microsoft

Corporation, Americas Operation Center, 6100 Neil Rd., Reno, NV 89511 and to the applicable Microsoft entity identified in Section 11, which may be updated from time to time.

- b.** Nothing in this Agreement restricts a party from: (1) working with and using third-party technologies; or (2) independently developing or acquiring new products or services, improving existing products or services, or marketing any new, improved, or existing products or services.
- c.** Any use of the term “partner” is for reference purposes only. The parties are independent contractors and do not intend to create an employer-employee relationship, partnership, joint venture, agency relationship, or fiduciary relationship.
- d.** Each party will bear its own costs of performance under this Agreement, unless otherwise specified.
- e.** We may modify this Agreement, the Microsoft Materials, an MPN Program, the Anti-Corruption Policy for Microsoft Representatives, and any other aspect of the Partner Portal or the MPN. We will endeavor to provide you with 30 days’ advance notice of any changes before they become effective. If you do not agree to any such changes, you must discontinue or terminate your participation in the MPN or the applicable MPN Program. Your continued participation will be deemed to be your acceptance of the changes.
- f.** The choice of jurisdiction and venue set forth in Section 11 does not prevent you or Microsoft from seeking injunctive relief for a violation of intellectual property rights, confidentiality obligations or enforcement of recognition of any award or order, which may be sought in any appropriate jurisdiction. If a party commences litigation under this Agreement, the substantially prevailing party will be entitled to recover its reasonable attorneys’ fees, costs and other expenses.
- g.** The 1980 United Nations Convention on Contracts for the International Sale of Goods does not govern this Agreement.
- h.** A party’s delay or failure to exercise any right or remedy under this Agreement will not result in a waiver of that or any other right or remedy available. No waiver will be effective unless made in writing and signed by an authorized representative of the waiving party.
- i.** If any provision of this Agreement is illegal, invalid or unenforceable, the remaining provisions will remain in full force and effect, and the parties will amend this Agreement to give effect to the stricken clause to the maximum extent possible.
- j.** Except as otherwise expressly permitted in this Agreement, an amendment or modification of a provision of this Agreement will only be effective if signed in writing by authorized representatives of both parties.
- k.** This Agreement (including the Additional Terms, Guides, and any attached or incorporated documents) forms the entire agreement between the parties regarding the MPN. It replaces all prior agreements, communications and representations between the parties regarding the MPN.

11. Country-Specific Provisions

The [Country-Specific Provisions](#), which set forth the applicable law, jurisdiction, and Microsoft contracting entity, are hereby incorporated into this Agreement.

Additional Terms for MPN Programs

These Additional Terms for MPN Programs apply to your participation in any MPN Program or Offer (as defined in the Agreement).

1. Affiliate Participation

- a. Subject to any limitations set out in a Program Guide, your Personnel and those of your Affiliates may participate in an MPN Program under your membership and any MPN ID assigned to you. You must promptly deny access for any Personnel who are no longer associated with you or your Affiliate. You are solely responsible and liable for activity that occurs under your membership and/or MPN ID, and any breach of this Agreement or the Additional Terms by any of your or your Affiliates' Personnel will be deemed a breach by you.
- b. Microsoft may assign these Additional Terms (or delegate certain duties) to a Microsoft Affiliate at any time upon 30 days' notice, provided that such assignment or delegation will not materially impair your rights and remedies under these Additional Terms. Except for such right, neither party may assign these Additional Terms (whether by merger, asset sale, operation of law, or otherwise) without the prior written approval of the other party, and any attempted assignment in violation of this Section shall have no effect.

2. MPN Programs

- a. Co-Sell Programs. If you participate in a partner co-selling program, such as the P-Seller Program, Microsoft may share customer information with you, which may include Personal Data such as customer contact information. You must only use the customer contact information and any other customer Personal Data:
 - (1) in accordance the laws and regulations governing such data, including the Data Protection Laws and Canada's Anti-Spam Law (CASL);
 - (2) to contact the customer in accordance with their previously indicated preferred means of communication, and
 - (3) to sell Microsoft products or services and related products or services that are of interest to customer.

You must independently obtain customer's consent for any other use of customer contact information or customer Personal Data, and Microsoft will not be responsible or liable for such other use. For any lead information you provide to Microsoft, you must comply with applicable notice or consent laws or requirements before sharing any Personal Data with Microsoft.
- b. Tools and Software. If you access any tools or software through the MPN Programs or Offers, including Partner Sales Connect, you agree to access and use solely for internal business purposes consistent with the MPN.

- c. If either party provides suggestions, comments, or other feedback with respect to the other party's products and services, the party receiving the feedback may use it for any purpose without obligation of any kind. The party receiving feedback will not disclose the source of the feedback without consent. Unless the parties specifically agree in writing, feedback will not create confidentiality obligations.

d. Investment Programs and Incentives.

For clarity, the following terms for Investment Programs and Incentives replace the Microsoft Channel Incentives Agreement (MCIA).

- (1) Restrictions. You will not be entitled to receive or retain incentive payments received in connection with a customer (i) that is your Affiliate, or (ii) to which you owe an agency or fiduciary duty, be it contractual or legal in nature. Upon Microsoft's reasonable request, you must provide Microsoft with complete and accurate information concerning your Affiliates with whom you conduct Microsoft business. To the extent you receive any incentive payments as a result of a transaction with an Affiliate or an entity to which you owe an agency or fiduciary duty, you will promptly notify Microsoft and arrange to return or offset such payments against future incentive payments.
- (2) Changes to MPN Programs or Offers. Microsoft may update, change or remove any portion of an MPN Program or Offer, including incentives, campaigns, and programs, and Microsoft may cancel an entire MPN Program or Offer. Microsoft will use commercially reasonable efforts to provide you with 30 days' notice of such update or change, and 90 days' notice of any cancellation of an MPN Program or Offer. Your continued participation in an MPN Program or Offer following an update or change confirms your acceptance of such update or change.
- (3) Eligibility Criteria. In addition to eligibility criteria set forth in a Program Guide, eligibility criteria for all MPN Programs include:
- fully cooperating with Microsoft's anti-corruption program, including timely submission of all requested documents and completion of questionnaires;
 - avoiding sales of Microsoft Products intended for Academic or Charity Institutions to ineligible customers;
 - avoiding fraudulent or deceptive activities in connection with earning incentives; and
 - providing complete and accurate evidence in connection with earning incentives.
- (4) Non-Compliance with Eligibility Criteria. If you no longer meet the eligibility criteria associated with an MPN Program or Offer, Microsoft will notify you and you will have 30 days to remedy any lapse in eligibility. If you fail to remedy the lapse in eligibility within 30 days, your eligibility will be suspended and you will not be entitled to participate in the applicable MPN Program or Offer. You may regain eligibility by demonstrating compliance with applicable eligibility criteria to Microsoft's reasonable satisfaction, at which time your eligibility status will be restored the calendar month following your renewed eligibility.

3. Taxes and Payments

a. Taxes.

- (1) Neither party is liable for any taxes the other is legally obligated to pay, including but not limited to net income or gross receipts taxes, franchise taxes, and property taxes, which relate to any transactions contemplated under this Agreement. Except as set forth in Section 3.b in these Additional Terms, each party will pay to the other any sales, use or value added taxes it owes due to entering into the Agreement and which the law requires be collected from it by the other party. Neither party will collect taxes covered by a valid exemption certificate provided by the other. Each party agrees to indemnify, defend and hold the other party harmless from any taxes or claims, causes of action, costs (including, without limitation, reasonable attorneys' fees) and any other liabilities related to the indemnifying party's tax obligations.
- (2) If the law requires that taxes be withheld from any payments from one party to the other, such amounts will be withheld and paid to the appropriate taxing authority. The party that withholds such taxes will secure and deliver to the other party an official receipt for those withholdings and other documents reasonably requested by the other party in order to claim a foreign tax credit or refund. The parties will use reasonable efforts to minimize any taxes withheld to the extent allowed by law.

b. Payments from Microsoft.

- (1) The specific terms relating to payments from Microsoft, including incentive payments, vary by MPN Program or Offer and are included in the applicable Guides. Incentive payments are subject to the Microsoft calculation and compliance rules and policies, and other requirements for registering and earning incentive payments (including invoice submission instructions), which may be further described in the applicable Program Guide.
 - (2) Except as may be otherwise provided in the applicable Program Guide, the payments you receive from Microsoft include any applicable goods and services tax, value added tax, sales tax, gross receipts tax, or any other tax that is applicable. It is your sole responsibility to pay all applicable taxes related payments from Microsoft.
 - (3) In the event Microsoft overpays you, regardless of the reason, Microsoft may recover such overpayment from you by deducting amounts from future incentive payments. In addition to any other remedies, Microsoft may reduce, cancel or withhold incentive payments relating to your breach or default under the Agreement, Additional Terms, or Program Guide or fail to act in good faith in trying to earn incentive payments. Microsoft will provide you with written notice of any decision to reduce, cancel or withhold incentive payments under this Section.
- c. For disputes relating to Microsoft's decision to reduce, cancel or withhold incentive payments under Section 3.cb(3) in these Additional Terms, you must contact Microsoft in writing within 30 days of receiving notice of such action, after which time you waive any right to dispute Microsoft's decision. For all other disputes related to incentive payments, you must contact Microsoft in writing within 90 days after your receipt of the applicable incentive payment, after which time you waive any right to dispute Microsoft's decision.

4. Alternative Terms for Incentives

Notwithstanding anything to the contrary in the Agreement, the [Alternative Terms for Incentives](#) will apply to incentive payments and/or MPN Programs that are listed as in-scope.