

Program Guide for Microsoft Cloud Solution Providers (Worldwide)

This Microsoft Program Guide for Microsoft Cloud Solution Providers (“Program Guide”) provides additional requirements and guidelines regarding the resale of Products to Customers in the Territory. All terms used but not defined herein will have the meaning given to them in the Microsoft Cloud Reseller Agreement and Microsoft Cloud Distributor Agreement (as applicable, the “Agreement”). In the case of a conflict between the terms and conditions of this Program Guide and the Agreement, where such conflict is not expressly resolved by the documents, the terms and conditions of the Agreement shall control. Notwithstanding the foregoing, Section 10 of this Program Guide will control and further supplement the Agreement with respect to the terms defined therein. All headings used herein are used for convenience only and shall not be used to construe or interpret this Program Guide.

1 General Obligations and Requirements

1.1 Criteria and Performance

Microsoft may set criteria and preconditions for Company's continued authorization to distribute Products under the Microsoft Cloud Solution Provider Program. Microsoft may require Company to maintain a minimum number of certified employees, minimum sales targets and a minimum number of active Subscriptions.

Company's failure to comply with or meet those criteria and preconditions may constitute a fundamental breach of the Agreement and will constitute grounds for termination of the Agreement.

1.1.1 Sales Competency

Company is strongly encouraged to invest in any Microsoft certifications or competencies needed to effectively support the sale, deployment or service of specific Products and to maintain such certifications or competencies throughout the course of business.

Company is encouraged to achieve “Gold Certified” status for the “Cloud Competency” in the Microsoft Partner Network for the Products they distribute. Information regarding the Cloud Competencies can be found at: <https://mspartner.microsoft.com/en/us/Pages/Solutions/cloud-is-our-core.aspx>

Company is strongly encouraged to maintain “MPN Competency” for “Cloud Customer Relationship Management” if it resells Microsoft Dynamics Online Services to service the needs of Customers deploying such. Information about the Cloud Customer Relationship Management competency can be found at: <https://mspartner.microsoft.com/en/us/pages/membership/cloud-customer-relationship-management-competency.aspx>

1.1.2 Sales Readiness

Company will ensure that relevant employees become familiar with the Portal and consult the Portal on a regular basis for communications and notices, including updates to this Program Guide, price lists, policies, processes and other information.

Company will make best efforts to participate in all trainings and briefings offered either in person or via printed or online text and video to ensure the highest degree of technical and sales readiness for all relevant staff. Company agrees to make available for these trainings all sales and technical staff during normal working hours and will make best efforts to track and monitor the consumption and retention of these trainings.

Company will make best efforts, in the event of employee change or turnover, to ensure that the readiness level will be maintained.

1.1.3 Customer Service Activation and Retention

Company will endeavor to drive not only sales, but usage, customer satisfaction and retention of the Products. Company agrees to implement, document, invest and maintain the systems, processes and tools necessary to ensure that Customers are acquired and retained via its relevant sales efforts. Company will actively measure or monitor the performance of such efforts including customer acquisition, user activation and deployment, and Customer renewals. In the event that monitored results (customer acquisition, activation, customer satisfaction, etc.) are not being met, Company will make best efforts to improve results.

1.1.4 Customer Support

Company must provide Customer support for Products on a continuous basis and be the primary point of contact for its Customers at all times. Company must communicate and clearly display its support policies, support hours, incident response time and service levels to Customers upon purchase and thereafter.

Microsoft may require Company to maintain certain support performance levels, including Customer satisfaction, direct support volume from Customer to Microsoft, and invalid support escalations from Company to Microsoft. If Microsoft determines that Company is unable to meet these performance levels, upon request by Microsoft, Company will meet to discuss a remediation plan. If Microsoft determines that remediation is necessary, Company will provide a report to Microsoft of Company's support capabilities and will perform any necessary additional training of its personnel to support the remediation plan.

Company is required to be the first point of contact for customer support issues directly related to the procurement, license key access/activation and product media/download fulfillment of Products deemed to be Software Perpetual License or Software Subscription offers. If Company receives incoming support requests from Customers, it must endeavor to diagnose and resolve issue to the best of their ability. In the event of Company being unable to resolve a Customer support issue, Company can escalate to Microsoft via appropriate commercial or technical support channels.

1.1.5 Additional Criteria for Company to qualify as Direct Bill Partners

To qualify as a Direct Bill Partner post August 31, 2018, Company must purchase and maintain either the Microsoft Advanced Support for Partners (ASfP) plan or the Microsoft Premier Support for Partners (PSfP) plan prior to the anniversary of their Enrollment date. "Enrollment date" is defined as execution date of the Agreement. **Company is required to have at least one managed service or solution that uses Microsoft IP as part of its sales portfolio to remain as a Direct Bill Partner and must meet any performance or investment requirements set by Microsoft.**

1.2 Customer Agreement

Each Customer must be provided with a Customer Agreement and each Customer must accept the terms of the Agreement in a manner that creates a legally enforceable contract between Microsoft and the Customer. Company will confirm through the Portal that Customer has accepted the Customer Agreement by providing a record of such acceptance (providing the acceptance date, name of signatory and other relevant details) upon the creation of any new subscriptions. Failure to provide such record of acceptance through the confirmation process or through a Microsoft enabled Customer Agreement acceptance process may result in disablement of Customer's account. The current Customer Agreements are available on the Portal. Company must provide the applicable regional version of the Customer Agreement to the Customer based on the Customer location; some locations may have the Customer Agreement available in multiple languages.

1.3 Customer Service Level Agreement

The current Online Services Service Level Agreement can be found at:
<http://www.microsoftvolumelicensing.com/DocumentSearch.aspx?Mode=3&DocumentTypeId=37>.

1.4 Portal

Company will ensure (i) that only its agents and, as applicable, Customers (collectively, and as used in this subsection, "users") that are authorized to use the Partner Portal are given access accounts, (ii) that its users access and use the Partner Portal responsibly, and (iii) that all access credentials are responsibly managed and secured. Microsoft may provide tools for Company to use to self-administer its users' access rights to the Portal and it will be Company's responsibility to use such tools to monitor and control its users' access. In the event that Company has no access to the self-administration tools, or if Company requires assistance, Company will contact Microsoft if a user should have their Portal account terminated. Microsoft will endeavor to respond to such requests in a timely manner, but Company remains responsible for actions taken using access rights that were established for its users.

Notwithstanding the foregoing, effective as of August 1, 2019, Company must, and must require its Indirect Resellers, as applicable, to, enable a multifactor authentication service in accessing any Microsoft Commercial Cloud portal or any underlying service. Further, starting on this date any software application that is used to access the Partner Center API must adhere to the Secure Application Model, which is made available on Partner Center.

The requirement to enable a multifactor authentication service may be fulfilled by either (i) Company's enablement of both the "Baseline policy: Require MFA for admins" and the "Baseline policy: End user protection" in the "Azure Portal" for all users; (ii) Company's purchase of a Microsoft offer that includes a multi-factor authentication service (for example, "Azure Active Directory Premium"); or (iii) Company's purchase of a third-party "on-premises" multi-factor authentication service that supports Azure Active Directory federated services.

If an offer or service, as described in items (ii) and (iii) above, is purchased in fulfillment of the requirement to enable a multifactor authentication service, then Company must, and must require its Indirect Resellers, as applicable, to, apply and enforce the use of the underlying multi-factor authentication service for all users in their accessing any Microsoft Commercial Cloud portal or any underlying service.

As used herein, “Microsoft Commercial Cloud portal” refers to each of, but is not limited to, the Portal, the “Azure Portal”, the “Store-For-Business” portal, the “Azure Marketplace” portal, and the “Office Portal”.

Company must inform its Indirect Resellers, if any, that they must comply with the requirements described above.

1.5 Azure Active Directory

Products may utilize “Azure Active Directory” for the complete customer experience. Company may be required to utilize “Azure Active Directory” to fulfill the Product to the Customer. Companies use of an alternative identity solution will not receive Escalation Support from Microsoft for identity-related issues.

1.6 Security Incident Response

In the event Company becomes aware of (i) any unlawful access to any Customer Data, or (ii) unauthorized access to such facilities or equipment that contain Customer Data that results in the loss, disclosure or alteration of any Customer Data, or (iii) any actual loss of or suspected threats to the security of Customer Data (each, a “Security Incident”), Company must notify Microsoft at cert@microsoft.com promptly and without undue delay; provided that in the event a Security Incident involves Customer Personal Data, Company must notify Microsoft within 72 hours after having become aware of it. “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.

1.7 Territory

The Portal will enable Company to resell Products to Customers based on Company’s location. The list of Customer locations enabled by the Portal are found in Appendix A of this Program Guide.

1.8 Affiliate Transactions

For the purposes of clarity, any and all transactions that purport to resell Products to or through Affiliates are prohibited within the Microsoft Cloud Solution Provider program. Indirect Resellers are similarly prohibited and may not resell Products to their affiliates. Company must inform its Indirect Resellers that they must comply with this limitation.

2 Price Lists

Prices for Products sold through the Microsoft Cloud Solution Provider program will be in the currency applicable to Company and reflected on Company’s invoice. A list of countries and currencies is available from Microsoft. Prices for Microsoft Azure Services may change without notice notwithstanding anything in the Agreement to the contrary.

Prices will be communicated via one or more price lists that are posted on the Portal. Microsoft may also make prices available via APIs or other tools for certain Products.

3 Ordering and Delivery of Products

Except as provided in Section 5.1.4 below, Company must electronically submit an order for all Products ordered by each of Company’s Customers. Upon receipt of each order, Microsoft will provision the Products based on the Customer information provided by Company.

Company may only submit orders to Microsoft for Products via the Portal, or by such other reasonable means as Microsoft may specify from time to time. Company is responsible for submitting all required fields requested in the Portal for the Customer’s Products to be delivered.

4 Product Offers and Billing

4.1 Fixed Term OLS Subscription Offers

Fixed term OLS Subscriptions are sold for a term of 12 months, unless provided otherwise in this Program Guide or on the price list. Company may choose to be billed and pay for fixed term OLS Subscriptions on a monthly or annual basis as follows:

4.1.1 If billed monthly, new OLS Subscriptions will expire 12 full calendar months after the date on which Company purchases the OLS Subscription. For those new OLS Subscriptions billed monthly, Company will be billed in advance for each month at Company’s scheduled invoice date, based on the applicable monthly OLS Subscription price.

4.1.2 If billed annually, new OLS Subscriptions will expire 12 full calendar months after the date on which Company purchases the OLS Subscription. Company will be billed in advance and in full at the Company’s next scheduled monthly invoice.

The unit price for the Online Service will not change during the term of the OLS Subscription (e.g. the price of the Online Services as of the OLS Subscription start date will apply for all 12 months of the fixed term).

Any subsequent adjustments to OLS Subscriptions (e.g. adding seats) made mid-billing cycle will be calculated and post-billed at the subsequent invoice. If an OLS Subscription is canceled before its fixed term expires and during Company's billing cycle, 1) Microsoft may provide a prorated credit for the un-used pre-paid portion of the canceled OLS Subscription in the Company's subsequent invoice and 2) Microsoft will not invoice Company for any future scheduled billings for that OLS Subscription. At this time, OLS Subscriptions that are canceled will not incur an Early Termination Charge. At a future date, however, Early Terminations Charges may be incurred for new OLS Subscriptions that are canceled prior to their expiration.

OLS Subscriptions will automatically renew for 12 months at the end of a subscription term. Renewal pricing will be based on the then-current pricing at renewal. If Customer chooses to not renew, Company must cancel the OLS Subscription in advance of the next scheduled invoice.

4.2 Consumption Subscription Offers (also called Pay-As-You-Go)

"Consumption Subscriptions" are one-month OLS Subscriptions that are billed based on actual usage in the preceding month without upfront commitment. Consumption Subscriptions do not expire unless canceled. Consumption Subscriptions can be canceled at any time and any usage before cancellation will be billed in the next scheduled invoice date.

Consumption Subscriptions will be billed at Company's next billing cycle and will include all usage from the prior month. Pricing will be based on the pricing effective during the current billing cycle except when prices decrease or increase. The unit price for an Online Service sold on a Consumption Subscription basis may change during the subscription period.

4.3 Reservations

"Reservations" means an advanced purchase of eligible Marketplace Offerings for a specified term and region (e.g. Reserved Software Instances, etc.). Reservations are purchased for specified terms of up to three years. Reservations expire at the end of the specified term. Refunds are not available for unused Reservations. Unless indicated otherwise for a particular Marketplace Offering, exchange and cancellation are not available. Reservation pricing will be based on the available pricing at the time of each purchase. Reserved Instances for software do not include the cost of compute.

4.4 Software Offers

Software is available for resale only if Company has met the eligibility requirements set by Microsoft.

Company can place an order for a Software offer for a Customer in the Portal. Company will use commercially reasonable efforts to ensure that any information that is submitted through the Portal with respect to a particular order, including, without limitation, Customer contact information, is accurate and current as of the date submitted. Microsoft may reject any purchase order, in whole or part, within ten (10) calendar days from the receipt of Company's order. Microsoft will notify Company if Microsoft rejects any order.

Once an order is submitted, Company will have sixty (60) calendar days from the order date to submit to Microsoft any revisions to such order. All order revision requests must include supporting Customer documentation as required by Microsoft and are subject to Microsoft's review and approval. An approved order revision will result in the full cancellation of the underlying order and a refund. Microsoft may decide, in its sole discretion, to charge a 5% handling fee for any purchase order revision submitted and approved after sixty (60) days.

Company is responsible for the fulfillment of Software offers to Customer through whichever means Company deems viable. Microsoft will make any associated product keys available through the Portal or through associated APIs.

Certain Software Subscriptions may not automatically renew at the end of their term. Company will be responsible for informing Customers about whether a purchased Software Subscription will require manual renewal or repurchase at the end of its term. Pricing for a renewal term will be Microsoft's price in the price list in effect as of the commencement of the renewal term.

4.4.1 Software Perpetual License Offers

Software Perpetual License offers are purchased on an as needed basis and billed upfront to Company at the upcoming billing cycle.

5 Additional Business Policies for Products

5.1 Preview and Pilot Releases

Microsoft may make preview or pilot releases available from time-to-time. **Previews and pilots are provided “as-is,” “with all faults,” and “as-available,”** as further described in the Customer Agreement. Company is required to identify as a “Preview” or “Pilot” any Products that are sold as a preview release to its Customers and refer Customers to their Customer Agreement and the Online Services Terms for applicable terms.

5.2 Microsoft Azure Services

5.2.1 Microsoft Azure Limits and Resource Management

Some Microsoft Azure services may include limits and maximum resources, known as “Usage Quota.” Usage Quotas may change periodically. Refer to <http://azure.microsoft.com/en-us/documentation/articles/azure-subscription-service-limits/> for the latest information on Limits and the Azure Resource Manager. If Company or a Customer wants to raise a limit above a default limit, Company must submit a request to Microsoft on behalf of the Customer.

5.2.2 Microsoft CSP Sandbox Environment

If Microsoft provides Company with a CSP Sandbox tenant, access is provided as a courtesy for API integration testing only and not for any type of commercial purpose. Using it for any other purposes is a violation of its intended use. The following uses are strictly prohibited:

- Direct revenue-generating activities such as hosting a commercial website, hosting a customer’s applications or development of custom solutions for a specific client, cryptocurrency mining, providing development or systems integration services to others, etc.
- Non-revenue-generating commercial activities such as providing free trials to customers, conducting proof-of-concept to customers, providing free resources to partner employees, etc.
- Customer training (except for learning partners)
- Reselling, transferring or otherwise giving unauthorized access to any third party.

Company is responsible for all activities occurring within its sandbox tenant and for any unauthorized access or usage including the use of any 3rd party applications. Refer to <https://docs.microsoft.com/partner-center/develop/set-up-api-access-in-partner-center> for API setup and use. Azure usage quotas also apply to the sandbox environment. Company will inform Microsoft of any unauthorized access or suspicious activity detected in its sandbox tenant within a reasonable timeframe. Company is responsible for ensuring that any unused subscriptions and Azure resources are promptly disabled. Company may be held financially liable to Microsoft for Azure usage stemming from any abuse or fraudulent activity occurring within Company’s sandbox tenant.

MICROSOFT (A) PROVIDES THE APIS AND CSP SANDBOX TENANT “AS-IS” AND WITH ALL FAULTS; (B) PROVIDES NO WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE; AND (C) DOES NOT GUARANTEE THAT THE APIS OR CSP SANDBOX TENANT WILL BE AVAILABLE, UNINTERRUPTED, OR ERROR-FREE, OR THAT LOSS OF DATA WILL NOT OCCUR.

Microsoft does not guarantee resource availability. Microsoft may change, suspend or delete any sandbox tenant or sandbox subscriptions at any point without prior notice. Microsoft does not guarantee that company can retrieve configuration or data from changed, suspended, or deleted sandbox accounts or subscriptions.

5.2.3 Microsoft Azure Stack

If Company resells Azure Stack services that are hosted on hardware that is owned or operated by Company (as opposed to the Customer), the resale of such Azure Stack services will be governed by the terms in Appendix B.

5.2.4 Customer purchase of Azure services

Company can provide a Customer subscription administrative rights that enable the Customer to provision or deprovision Azure subscription services within the Portal. This activity by the Customer will be treated as a Company order on behalf of the Customer under the terms of the Agreement and at the price set by Company. Company will monitor Customer activities and manage any limits on the types or volume of services that Customers can provision or deprovision.

5.2.5 Azure Partner Shared Services

Company may provision tenants to be dedicated as the “Azure Partner Shared Services” tenants for the purpose of Company’s provisioning shared resources and to host multi-tenant SaaS solutions using Azure.

Authorization. Notwithstanding anything in the Agreement to the contrary, Microsoft grants Company the right to access and use Azure Partner Shared Services for the above purposes and to purchase Azure services for internal consumption; provided, however, that Company must keep separate tenants for Azure Partner Shared Services from all Company's Customers' tenants.

Use Rights.

Company's access to and use of the Azure Partner Shared Services will be subject to the terms of the Customer Agreement as if Company were the "Customer." Company will have complied with its obligations under Section 4(a) (Customer Agreement Acceptance) of the Agreement by creating the Azure Partner Shared Services tenant. As between Company and Microsoft, Company is solely responsible for assessing and fulfilling any use tax obligations, where applicable, arising out of Company's exercise of the rights granted under this section.

5.3 Skype for Business Online PSTN Services

5.3.1 PSTN Service provider

Skype for Business Online PSTN Services ("PSTN Services") enable users to communicate with others via the worldwide voice telephone network known generally as the Public Switched Telephone Network. PSTN Services are provided to Customers in the United States by Skype Communications US Corporation, a subsidiary of Microsoft Corporation. PSTN Services are provided to Customers outside the United States by the Microsoft Affiliate that signs the Customer Agreement with the Customer.

5.3.2 Taxes

Notwithstanding anything to the contrary in the Agreement, amounts Company must pay Microsoft for certain Products may be tax inclusive. Tax inclusive amounts will be specified as such on the invoice. Company is responsible for paying any applicable Taxes on or with respect to its activities in connection with the Agreement.

5.3.3 Important Information About Emergency Calling/911 in the US

911 emergency calling operates differently with Skype for Business Online PSTN Calling services than on traditional telephone services. Company must inform Customers that they are required to notify each user of the Skype for Business Online PSTN Calling services of these differences. The differences include the following: (i) Skype for Business may not know the actual location of a 911 caller, which could result in a 911 call being routed to the wrong 911 call center and/or emergency services being dispatched to the wrong location; (ii) when a Skype for Business user dials a 911 call, the user may be asked by an operator to provide his or her current location to assist in properly routing the 911 call and dispatching emergency services; (iii) if the user's device has no power, is experiencing a power outage or, for any reason, cannot otherwise access the Internet, the user cannot make a 911 call through Skype for Business Online PSTN Calling services; and (iv) although Skype for Business Online PSTN Calling services can be used anywhere in the world where an Internet connection is available, users should not call 911 from a location outside the U.S. because the call likely will not be routed to the appropriate call center in that country.

5.4 Microsoft Dynamics 365

5.4.1 Microsoft Dynamics 365 for Operations, Enterprise edition; and Microsoft Dynamics 365 Plan 2, Enterprise edition

If Company resells any of the Products identified above, Company must purchase and maintain a Microsoft Dynamics Advanced support for partners plan (ASFP) or higher Microsoft plan. In addition, at least two (2) of Company's employees must pass the Microsoft Dynamics 365 technical exams as outlined in MPN.

Company can purchase ASFP at <https://partner.microsoft.com/en-US/Support/advanced-cloud-support>. Any support provided to Company by Microsoft through ASFP will be subject to the service terms presented to Company at the time ASFP is purchased.

5.4.2 Microsoft Dynamics 365 for Sales, Enterprise edition; Microsoft Dynamics 365 for Customer Service, Enterprise edition; Microsoft Dynamics 365 for Project Service Automation, Enterprise edition; Microsoft Dynamics 365 for Field Service, Enterprise, edition; and Microsoft Dynamics 365 Plan 1

If Company resells any of the Products identified above, at least two (2) of Company's employees must pass the Microsoft Dynamics 365 technical exams as outlined in MPN.

5.5 Government Offers

Products identified in the price list as “Government” may be provided only to Government Customers for their use. Company is responsible for validating Government Customer eligibility prior to any resale of such Product. “Government Customer” means any entity that meets the government eligibility found in the Customer Agreement. Company must retain documentation to validate a Government Customer’s status in the event of an audit. Government Customer status validation must be in the form of a valid government purchase order. Company will use reasonable efforts to promote Government Products only to Government Customers. If Company markets Government Products, Company shall do so only with advertisement or marketing materials that clearly indicate that the Government Product is only available for purchase by Government Customers. Company will disclose all rebates, fees and other concessions to a Government Customer as required by law, regulations or the terms of the government solicitation

5.4 Education Offers

If Company is an Authorized Education Partner (AEP), it may resell those Products identified on the price list as “Academic” (“Education Products”) directly to Education Customers. If Company wishes to resell Education Products indirectly through resellers to Education Customers, it must (i) enter into a Microsoft Cloud Distributor Agreement, (ii) fill out the registration form for “Distributor” in the AEP portal and (iii) ensure that its resellers are AEPs. Find more information about becoming an AEP at the AEP Portal: <https://www.mepn.com/MEPN/AEPHome.aspx>.

Education Products may be provided only to Education Customers for their use. Company is responsible for validating Education Customer eligibility prior to any resale of such Product. “Education Customer” means any Customer that meets the education customer eligibility requirements found at <http://www.microsoftvolumelicensing.com/DocumentSearch.aspx?Mode=3&DocumentTypeId=7>

5.6 ISV Cloud Embed Program

The ISV Cloud Embed Program is governed by the terms in Appendix C.

5.7 Third Party Offers

The following additional terms apply to Company reselling Third Party Offers to Customers. Except as provided below, all limitations, disclaimers, and Company obligations in the Agreement and Program Guide that apply to Products and Subscriptions apply to Third Party Offers. Microsoft may limit the number and geography of resellers of Third Party Offers.

5.7.1 Terms Subject to Developer Policy. Developers provide Third Party Offers subject to the terms of the associated Third Party Customer Agreement and policies of that Developer.

The Customer Agreement, OST, Product Terms, and Defense of Infringement Claims (Section 10.d. of the Agreement) that apply to Products and Subscriptions from Microsoft do not apply to Third Party Offers.

5.7.2 Third Party Customer Agreement Acceptance. Company must provide each Customer with the Third Party Customer Agreement associated with each Third Party Offer ordered by that Customer. If the agreement has regional versions based on the Customer location, Company must provide the appropriate regional version to the Customer. Customer must accept the applicable Third Party Customer Agreement(s) in a manner that creates a legally enforceable contract between Developer(s) and the Customer. If Microsoft provides Company an updated Third Party Customer Agreement, then Customer for that Third Party Offer must agree to the new Third Party Customer Agreement at or before renewal of their subscription. The links to access current Third Party Customer Agreements are made available on the Portal. By placing an order with Microsoft, Company (i) represents and warrants that Customer has accepted the associated Third Party Customer Agreement; and (ii) agrees to pay Microsoft for all orders it submits for Third Party Offers

5.7.3 Ordering and Delivery. Company will order, pay for, and conduct administration including disablement and cancelation, of Third Party Offers through the Portal. Microsoft will provide Company with instructions to access the Developer’s site for that offer. Company will use Developer’s site and designated processes for delivery of Third Party Offers, including provisioning and assignment of licenses and other service management. Company is responsible for submitting all required fields requested in the Portal and through Developer’s site for the Third Party Offers to be delivered and managed. Company agrees to respond to Developer or Microsoft’s reasonable request for certain types of tax documentation (for example, copies of withholding tax receipts or copies of the US sales and US tax resale exemption certificates).

The Developers’ sites are not under the control of Microsoft and Microsoft is not responsible for the contents of any Developer’s site, or any changes or updates to such sites.

- 5.7.4 Support.** Developer of a Third Party Offer provides technical support and service level commitments to Customer on that offer, as provided in Third Party Customer Agreement. Company is responsible for all other support for Third Party Offers as provided in the Agreement, including billing, account set-up, payment. Company may route technical support queries from Customers to the Developer of the Third Party Offer through the process and subject to the limitations designated by Microsoft or the Developer
- 5.7.5 Cancellation.** Company may cancel a subscription for a Third Party Offer for a Customer. Early termination of a subscription may result in a charge and will only be eligible for a refund to the extent allowed for by Microsoft and Developer for that Third Party Offer. Upon cancellation, Customer may have an opportunity to migrate any Customer data to either a new subscription with Company, Developer or Microsoft or some other service
- 5.7.6 Termination Notice.** Either party can terminate participation in selling a Third Party Offer or all Third Party Offers at any time without cause and without intervention of the courts by giving the other party not less than thirty (30) days' written notice. Neither party will have to pay the other party any costs or damages resulting from termination of this arrangement without cause.

If Company's ability to sell a Third Party Offers terminates or expires, Company and Microsoft will work in good faith to develop and specify options available to existing Customers at the end of such period and issue any necessary communication to such Customers describing such options. This will include, if available, an option to purchase Third Party Offers directly from Microsoft, Developer or other resellers.

5.8 Non-profit Offers

Company can only provide products identified in the price list as "Charity" to Non-profit Customers for their use. "Non-profit Customer" means any entity that meets the non-profit customer eligibility requirements found at: <https://www.microsoft.com/en-us/nonprofits/eligibility>. An entity claiming eligibility to purchase as a Non-profit Customer must have its non-profit eligibility verified by Microsoft's third-party customer validation vendor, TechSoup, at: <https://nonprofit.microsoft.com/#/register>

5.9 Software Offer Restrictions and Obligations

The following are additional obligations and requirements that the Company must fulfill in connection with its reselling or distributing Software. If Company is reselling or distributing Software with the support of or through a Reseller then Company must require that any engagement of such Reseller be on the same or similar terms as listed below, including that with regards to Microsoft right to verify compliance with these terms via the audit procedure.

- 5.9.1 No Alterations.** Company will not change, decompile, or reverse engineer any Software, except and only to the extent applicable law expressly permits, despite this limitation. Company will not change any written confirmation of a license or any Customer Agreement that Microsoft provides to a Customer.
- 5.9.2 Compliance with Customer Agreements and Anti-Piracy Efforts.** Company must not participate in the unauthorized manufacture, duplication, delivery, transfer or use of counterfeit, pirated or illegal software. Company must not otherwise infringe any of Microsoft's intellectual property rights. Company must use all reasonable measures to ensure that Customers use only original Software. Company must enforce strong internal controls to prevent the making or use of unauthorized copies of any Software. Company must fully cooperate with Microsoft's Affiliates and Microsoft in the investigation of counterfeit, pirated or illegal software. Company must report to Microsoft as soon as possible any suspected counterfeiting, piracy or other infringement of copyright in any materials owned by Microsoft or Microsoft's licensors.
- 5.9.3 Installation of Software.** Customer's installation of certain Software may require the Customer to have a qualifying base license on the Customer's hardware unit. The applicable requirements are set forth in the Product Terms incorporated into the Customer Agreement. In the case of installing Software on Customer's behalf, Company will take commercially reasonable efforts to confirm that the Customer has properly obtained any prerequisite Software. Company will retain all records related to the installation of Software, and, upon request, will provide such records to Microsoft for verification. Any falsification of Customer information provided by Company to Microsoft in connection with the Agreement will constitute a fundamental breach of the Agreement.

5.9.4 Proof of License, Verifying Compliance

- a. **Proof of License.** Company may issue license confirmations either in electronic or paper format to Customers or provide them with access to a secure website with Customer licensing information. Company will only deliver or facilitate the delivery of license confirmations to Customers who are entitled to receive them under Customer Agreements.
- b. **Sufficient Number of Licenses.** Company must ensure that its Customers acquire from Company or Microsoft sufficient numbers of Microsoft licenses for software, client access licenses, terminal service licenses, or subscription agreements for Online Services or any other appropriate services to match: (i) the quantities of the Software or Professional Services provided to the Customer; and (ii) the maximum number of users and/or devices that may access or use the Software or Professional Services under the Customer Agreement. Company will promptly notify Microsoft of any known or suspected failure by a Customer to possess sufficient numbers of Microsoft licenses.
- c. **Verifying Compliance.** Microsoft has the right to verify compliance with all contractual and legal obligations under the Agreement, with full consideration of all accounting rules, regulations, authoritative pronouncements, principles and practices accepted in Company's jurisdiction. Company must keep Relevant Records during the term, and for two years after the later of (i) the termination of Microsoft's Agreement with Company, or (ii) the date of issuance of final payment between Microsoft and Company. During this same period, Microsoft or its audit related agents ("Microsoft's Audit Team") may conduct audits of Company's Relevant Records, operations, processes and facilities during any selected period to verify Company's compliance with the terms of the Agreement. Microsoft's Audit Team may conduct the audit at Company's office or place of business, may require Company to provide electronic downloads of relevant data and copies of relevant documents, or may ask Company to complete a self-assessment questionnaire. Except for audits related to counterfeit software, Microsoft will give Company thirty (30) business days' notice of the audit. Audits related to counterfeit software do not require prior notice. Company will promptly correct any errors and omissions disclosed by the audits.

Any audit will be conducted during Company's normal business hours. It will not interfere unreasonably with Company's normal business activities. Company will provide Microsoft's Audit Team with access to all Relevant Records that Microsoft may need to review and employees Microsoft may need to interview. If an audit is conducted with notice, Company will have all Relevant Records and operations available to Microsoft's Audit Team at the beginning of the audit. Company will pay Microsoft the costs for the audit if the audit uncovers an underpayment of 2% or more of the amount that was reported during the applicable audit period. Company will also pay Microsoft the price of the Software that it failed to report plus interest at a rate of 1% per month (12% per annum) on a simple interest basis, and any other finance charge that may apply. This does not limit Microsoft's right to also seek other remedies. If Microsoft's Audit Team makes any commercially reasonable recommendations to Company related to record keeping, Company will implement the recommendations within a timeframe agreed to by both parties. Microsoft reserves the right to reduce or withdraw credit lines or credit terms or withhold or reduce rebates should any of the above requirements not be met.

6 Invoice and Credit Terms

6.1 Invoice

Microsoft will post Company's invoices to the Portal. Individuals who are authenticated in the Portal as "Billing Admin" or "Global Admin" will have access to the invoice. The invoice will identify the price payable by Company in accordance with the pricing applicable to each Product. Microsoft's standard payment terms are Net Sixty (60); some locations may differ and any such terms will appear on Company invoice. Company must remit payments to the account identified in Microsoft's invoice or another account Microsoft identifies. Payments not received within the required time frame may be assessed a finance charge of 1% of the invoice amount per month or the legal maximum, whichever is less.

6.2 Billing Reconciliation and Disputed Amounts

Microsoft will issue billing reconciliation reports on a monthly basis corresponding to the offers. The billing reconciliation report for Software Perpetual License offers and Software Subscription offers will be separate from the billing reconciliation report for OLS Subscription offers. The billing reconciliation will contain billing reconciliation information on Products, discounts and credits. In the event of a settlement dispute between Microsoft and Company, a case incident will be opened by Company. Company and Microsoft will review and resolve any disputes with respect to the settlement report. Upon resolution, a credit may be issued for the following period's invoice. For specific scenarios and examples of the invoice or billing reconciliation, refer to the Billing and Invoicing Guide found on the Portal.

6.3 Credit Terms and Security

Microsoft will inform Company in writing of the terms and any modifications to the terms outlined in section 6.1.

After review of Company's financial condition and overall credit worthiness, Microsoft may offer credit facilities to Company which may be revised or withdrawn (with effect from Microsoft's notification) if Company's financial circumstances change. To the extent that any and all credit offered by Microsoft to Company is withdrawn, all sums due and becoming due will become immediately due and payable and payment will then be made at the time orders are placed or otherwise as Microsoft directs. Microsoft reserves the right to alter, change or revoke credit terms or to require any other credit enhancement to secure payment. Microsoft may request Company to and Company will promptly secure and provide Microsoft one or more bank guarantees, stand-by letter of credit, cash in advance or other forms of security, in amounts and a form, and with a bank acceptable to Microsoft.

Microsoft reserves the right to place Company's account on hold or reduce Company's credit limit to levels deemed appropriate by Microsoft if the financial statements or clarifications are not provided in a timely manner. Furthermore, during contract renewal or extension Microsoft may delay the renewal of your contract until the latest financial statements, requested guarantees or satisfactory answers to clarification(s) requested, have been provided. The financial statements should not be older than 6 months after Company's financial year-end, however if there are specific circumstances Microsoft may allow an extension of this period. Company can contact the Risk team at the alias provided.

7 Escalation Support

When submitting an incident, Company is responsible for setting the initial severity level in accordance with the severity table below. The incident severity will determine Microsoft's estimated response times and levels, as well as Company's expected response.

Examples of support services that are commonly performed under Escalation Support include, but are not limited to: new or undocumented issues; code defects; or, service availability issues that are within Microsoft's control. Company agrees Escalation Support will be provided only in the English language and only for Products then being provided by Microsoft. If an Escalation Support issue cannot be resolved between Company and Microsoft on first contact, Microsoft's and Company's support personnel will re-engage for follow up.

7.1 Contact Information and Reports

Company will provide Microsoft with the telephone numbers, email addresses and website addresses for Company's support personnel. Company will insert support information in all websites or other materials that describe Company's support of the Products. Company may not publish, disclose or use Microsoft's support contact information in a way that directs Customers to Microsoft.

In performing support, Company will store case information in an incident management system that will enable Company to generate monthly reports as described in Section 7.2 below. Company agrees that Company's relevant support personnel will: 1) complete help desk training before the launch of the Products in the Territory, and 2) stay current on the latest help desk training.

7.2 Support Metrics Report

Company and Microsoft mutually agree to share information for the purpose of optimizing the Product unless restricted by applicable law or unless otherwise previously agreed upon by both parties. Such information includes:

- 7.2.1** Qualitative reporting such as Microsoft Technical Support, Operational Support, Corporate Engagement Model, and other suggestions for future improvements.
- 7.2.2** Quantitative reporting such as Company's attach rates for Products compared to other Microsoft programs (such as Enterprise Agreements) and closure rates for Products, and new Customer acquisition and Company service attach success metrics.

The parties agree to treat the information reported under this section as Confidential Information as defined in the Agreement provided that Microsoft may disclose the data in an aggregated and anonymous format to its other resellers to show support trends.

7.3 Escalation Support Engagement for Products

The following apply to Escalation Support for Products.

7.3.1 Severity Table

When Company contacts Microsoft to escalate a Customer issue, the incident will receive a severity level ranking based on the nature of the issue. This ranking will define the response guideline and on-going communication as Microsoft works to resolve the incident. The following table shows Microsoft severity and response guidelines.

Severity	Definition	Initial Response Goal
A – Critical	One or more Products aren't accessible or are unusable. Production, operations, or deployment deadlines are severely affected, or there will be a severe impact on production or profitability. Multiple users or Products are affected.	2 hour
B – Urgent	The Product is usable but in an impaired fashion. The situation has moderate business impact and can be dealt with during normal business hours. A single user, Customer, or Product is partially affected.	4 hours
C – Important	The situation has minimal business impact. The issue is important but does not have a significant current Product or productivity impact for the Customer. A single user is experiencing partial disruption, but an acceptable workaround exists.	8 hours

7.3.2 Escalation Contacts

Company will designate escalation contacts for support related activities. Escalation Support will be provided only to Company named contacts.

7.3.3 Online Services Customer and Partner Care

Operational support for subscription management, billing and other non-technical operational issues is available during local business hours, Monday through Friday, 9 AM to 5 PM.

8 Business Continuity Management

If a natural disaster or other major social disruption inhibits conduct of normal licensing operation procedure, Microsoft may choose to immediately alter its operational procedures. In such cases, an instruction document will be made available to Company from Microsoft. Company must follow the instruction document until Microsoft declares its return to normal operations procedure.

9 Miscellaneous

9.1 Customer Satisfaction Surveys

For the purpose of optimizing the Products, Microsoft may enable Customers or Company to participate in Customer satisfaction surveys, including but not limited to: 1) using online customer satisfaction survey tools as provided by Microsoft, or 2) sharing customer satisfaction results as collected by the Company and presented in a format that is mutually acceptable to Microsoft and Company.

9.2 Feedback

Either party may provide suggestions, comments or other feedback to the other party with respect to the other party's products and services. Even if designated as confidential, 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 feedback without the consent of the party providing it. Unless the parties specifically agree in writing, feedback will not create any confidentiality obligation.

10 Certain Defined Terms

"Customer" means any legal entity (other than Company or its Affiliates, or any Reseller or its affiliates) within the Territory that acquires Products for use as an end user, and not for distribution or resale.

"Developer" means the provider of the Third Party Offer.

"Direct Partner" means any legal entity that is authorized by Microsoft to resell Product directly to Customers.

“Indirect Reseller” means any Reseller, or other legal entity, that Company uses to facilitate the resell of Products to Customers, as may be permitted by the Agreement.

“Non-Microsoft Product” means any third-party (or third-party branded) software, data, service, website or other product available through the Microsoft Azure Marketplace, Virtual Machine Gallery, or other feature of Microsoft Online Services.

“OLS Subscription” mean a right to use Online Services for a defined term.

“Online Services” means Microsoft-hosted services identified on the then-current price list or price lists for the Microsoft Cloud Solution Provider program. It does not include Software or Professional Services provided under separate license terms.

“Product” means rights to Software, Online Services, tools, hardware, and Professional Services, including all attendant previews, prerelease versions, updates, patches, and bug fixes, that Microsoft makes available for the Microsoft Cloud Solution Provider program; except that with respect to the use of such term in Section 4(b) and the first paragraph of Section 5(c) of the Agreement, which use shall refer to the meaning of the term ascribed in the Agreement, provided that Professional Services will be considered a “Product” with respect to such use. Product availability may vary by region. “Product” does not include Non-Microsoft Products.

“Professional Services” means any professional support or consulting service operated by Microsoft and then-current price list or price lists for the Microsoft Cloud Solution Provider program.

“Software” means licensed copies of Microsoft software identified on the then-current price list or price lists for the Microsoft Cloud Solution Provider program. Software does not include Online Services, but Software may be part of an Online Service.

“Software Perpetual License” means a right to use Software identified on the then-current price list or price lists for the Microsoft Cloud Solution Provider program as being available and licensable for a perpetual term.

“Software Subscription” means a right to use the Software identified on the then-current price list or price lists for the Microsoft Cloud Solution Provider program as being available and licensable for a defined term.

“Subscriptions” may refer to OLS Subscriptions or Software Subscriptions, respectively, or OLS Subscriptions and Software Subscriptions, collectively; except that with respect to the use of such term in Section 4(c) of the Agreement, which use shall refer to the meaning of the term ascribed in the Agreement.

“Third Party Customer Agreement” means the terms and conditions, and usage rights for the Customer associated with the applicable Third Party Offer.

“Third Party Offers” means a selection of Non-Microsoft Products made available through a marketplace capability on the Portal at Microsoft’s discretion.

Appendix A – Territory List

The Territory in which you can exercise your rights under the Microsoft Cloud Reseller Agreement is listed below.

If your Microsoft sell-to location is the United States or U.S. Outlying Islands, your Territory includes customers located in the United States or U.S. Outlying Islands.

If your Microsoft sell-to location is Brazil, your Territory includes customers located in Brazil.

If your Microsoft sell-to location is a country/region on the following list, your Territory includes customers located in any country/region in the following list: Canada, Saint Pierre and Miquelon.

If your Microsoft sell-to location is a country/region on the following list, your Territory includes customers located in any country/region in the following list: Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Congo, Congo (DRC), Côte d'Ivoire, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, French Polynesia, Gabon, Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Liberia, Madagascar, Malawi, Mali, Mauritius, Mayotte, Namibia, New Caledonia, Niger, Nigeria, Reunion, Rwanda, São Tomé and Príncipe, Senegal, Seychelles, Sierra Leone, Somalia, South Sudan, St Helena, Ascension, Tristan da Cunha, Tanzania, Togo, Uganda, Zambia.

If your Microsoft sell-to location is a country/region on the following list, your Territory includes customers located in any country/region in the following list: Bangladesh, Bhutan, Brunei Darussalam, Cambodia, Hong Kong, Indonesia, Laos, Macao, Malaysia, Maldives, Myanmar, Nepal, Philippines, Singapore, Sri Lanka, Thailand, Timor-Leste, Vietnam.

If your Microsoft sell-to location is a country/region on the following list, your Territory includes customers located in any country/region in the following list: Australia, Christmas Island, Cocos (Keeling) Islands, Cook Islands, Fiji, French Southern Territories, Guam, Heard Island and McDonald Islands, Kiribati, Marshall Islands, Micronesia, Nauru, Niue, Norfolk Island, Northern Mariana Islands, Palau, Papua New Guinea, Pitcairn Islands, Solomon Islands, Tokelau, Tonga, Tuvalu, Wallis and Futuna.

If your Microsoft sell-to location is a country/region on the following list, your Territory includes customers located in any country/region in the following list: Åland Islands, Andorra, Austria, Belgium, Bouvet Island, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Faroe Islands, Finland, France, Germany, Gibraltar, Greece, Greenland, Guernsey, Hungary, Iceland, Ireland, Isle of Man, Italy, Jersey, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Monaco, Netherlands, Norway, Poland, Portugal, Romania, San Marino, Slovakia, Slovenia, Spain, Svalbard and Jan Mayen, Sweden, Switzerland, UK, Vatican City.

If your Microsoft sell-to location is India, your Territory includes customers located in India.

If your Microsoft sell-to location is Japan, your Territory includes customers located in Japan.

If your Microsoft sell-to location is the Republic of Korea, your Territory includes customers located in the Republic of Korea.

If your Microsoft sell-to location is a country/region on the following list, your Territory includes customers located in any country/region in the following list: Anguilla, Antarctica, Antigua and Barbuda, Argentina, Aruba, Bahamas, Barbados, Belize, Bermuda, Bolivia, Bonaire, British Virgin Islands, Cayman Islands, Chile, Colombia, Costa Rica, Curaçao, Dominica, Dominican Republic, Ecuador, El Salvador, Falkland Islands, French Guiana, Grenada, Guadeloupe, Guatemala, Guyana, Haiti, Honduras, Jamaica, Martinique, Mexico, Montserrat, Nicaragua, Panama, Paraguay, Peru, Puerto Rico, Saba, Saint Barthélemy, Saint Kitts and Nevis, Saint Lucia, Saint Martin, Saint Vincent and the Grenadines, Sint Eustatius, Sint Maarten, South Georgia and South Sandwich Islands, Suriname, Trinidad and Tobago, Turks and Caicos Islands, Uruguay, Venezuela, Virgin Islands, U.S.

If your Microsoft sell-to location is a country/region on the following list, your Territory includes customers located in any country/region in the following list: Afghanistan, Albania, Algeria, Armenia, Azerbaijan, Bahrain, Belarus, Bosnia and Herzegovina, British Indian Ocean Territory, Egypt, Georgia, Iraq, Israel, Jordan, Kazakhstan, Kosovo, Kuwait, Kyrgyzstan, Lebanon, Lesotho, Libya, Macedonia, Republic of, Mauritania, Moldova, Mongolia, Montenegro, Morocco, Mozambique, Oman, Pakistan, Palestinian Territory, Occupied, Qatar, Saudi Arabia, Serbia, South Africa, Swaziland, Tajikistan, Tunisia, Turkey, Turkmenistan, Ukraine, United Arab Emirates, Uzbekistan, Yemen, Zimbabwe.

If your Microsoft sell-to location is a country/region on the following list, your Territory includes customers located in any country/region in the following list: American Samoa, New Zealand, Samoa, Vanuatu.

If your Microsoft sell-to location is Russia, your Territory includes customers located in Russia.

If your Microsoft sell-to location is Taiwan, your Territory includes customers located in Taiwan.

If your Microsoft sell-to location is China, your Territory includes customers located in China.

Appendix B – Microsoft Azure Stack Terms

a. Definitions

“**Administrator Functions**” means functions associated with the purchase, activation, support and management of Customer Subscription and Products.

“**Administrator Subscription**” is the default provider subscription in Azure Stack (see Azure Stack technical documentation (<https://docs.microsoft.com/en-us/azure/>)). This subscription is created for the system administrator during the Azure Stack setup and deployment process. This subscription may be used solely to deploy and manage Azure Stack infrastructure resources; it may not be used to run Tenant Workloads.

“**Microsoft Azure Stack Infrastructure Resources**” are the software resources, services, resource providers and storage accounts that are generated by the Azure Stack setup and deployment scripts, and which enable Azure Stack to function as a cloud that can be used to host and run Tenant Workloads. These do not include any Tenant Workloads

“**Tenant Workloads**” are any virtual machines, storage accounts and applications (including PaaS applications) that are deployed by the system administrator or customers on Microsoft Azure Stack. These workloads typically are business applications, or perform management task such as application backup and restore. The Tenant Workloads do not include the Microsoft Azure Stack Infrastructure Resources.

“**Tenant**” means an Azure Active Directory tenant.

“**Product Terms**” means the document that provides information about Products available through volume licensing. The Product Terms document is published at <http://www.microsoft.com/licensing/contracts> and is updated from time to time.

b. **Authorization.** Notwithstanding anything in the Agreement to the contrary, Microsoft hereby grants Company the right to access and use the Administrator Subscription and the Microsoft Azure Stack Infrastructure Resources subject to the following conditions:

- a. Company may not provision, deploy or run any Tenant Workloads in the Administrator Subscription. The Administrator Subscription may be used solely to perform Administrator Functions and run the Microsoft Azure Stack Infrastructure Resources;
- b. Company must keep separate the Tenant that Company uses for the Administrator Subscription from all Company’s Customers’ Tenants.; and
- c. Company may only perform Administration Functions from the Administrator Subscription.

c. Use Rights.

- a. Company’s access and use of the Microsoft Azure Stack Infrastructure Resources will be subject to the terms of the Customer Agreement as if Company were the “Customer” thereunder and Company will deemed to have complied with its obligations under Section 4(a) (Customer Agreement Acceptance) of the Agreement.
- b. Company may use Microsoft Azure Stack only on the hardware on which it is preinstalled. Microsoft Azure Stack includes Windows Server, Windows Software Components and SQL Server Technology, each of which are subject to the Included Technologies section of the Product Terms and may not be used outside of Microsoft Azure Stack. The Enterprise and Developer Privacy Statement located at <https://www.microsoft.com/en-us/privacystatement/EnterpriseDev> applies to Company’s use of Microsoft Azure Stack.

d. **Customer Disclosures.** Company shall prominently disclose to Customers who purchase Azure Stack software or services hosted by Company that:

- a. Such software and use is hosted by Company and not Microsoft; and
- b. Use of such software or services is subject to Company’s privacy practices and not those of Microsoft.

- e. **Verifying Compliance.** In the event that an audit of Company discloses that Company has used the Microsoft Azure Stack Infrastructure Resources for any reason other than Administrator Functions, Microsoft may require Company to reimburse Microsoft for the estimated retail price of such Microsoft Azure Stack Infrastructure Resources, without prejudice to any of Microsoft's other legal or equitable rights or remedies. Such amounts shall be paid promptly upon receipt of an invoice from Microsoft.
- f. **Incentives.** Orders placed under the Administrator Subscription for any Microsoft Azure Infrastructure Resources will not be eligible for incentives.
- g. **Tax.** As between Company and Microsoft, Company is solely responsible for assessing and fulfilling any use tax obligations arising out of Company's exercise of the rights granted under this Authorization.

Appendix C – ISV Cloud Embed

The following terms apply to any party participating in the ISV Cloud Embed program. Program eligibility is based on the requirements and criteria on the [ISV Cloud Embed Program Page](#)

- a. **Limited Authorization for Embedded Unified Solutions.** Microsoft grants Company a limited use right to access, modify (solely to the extent required to Integrate), resell and make available the Embedded edition of the Product solely as part of the Embedded Unified Solution. Company may not resell the Embedded editions of Products as a standalone offering. Company's failure to comply with the terms and conditions of ISV Cloud Embed Additional Terms will constitute a breach of the Agreement.
- b. **Compatibility of the Embedded Unified Solution.** Company must maintain and ensure ongoing compatibility of the ISV Portion with the current version of the Embedded edition of the Product in order to maintain functionality of the Embedded Unified Solution. Microsoft agrees to give Company notice of changes to the Embedded edition of the Product through the manner in which Microsoft provides general notice to its partner and customer community of such changes, or through any other reasonable manner, to enable Company to comply with this section.
- c. **Configuration of Embedded editions of Products.** Company must not modify any Embedded edition of a Product in a manner that prevents it from operating in accordance with its documentation, causes degradation of it, prevents Microsoft from servicing, updating or supporting it, or in any way that invalidates the Customer Agreement.
- d. **ISV Customer Agreements for Embedded Unified Solutions.** In addition to the Customer Agreement, Company must cause each Customer to agree to an ISV Customer Agreement prior to ordering Embedded Unified Solutions from Company. The ISV Customer Agreement must not provide any warranty for the Embedded Unified Solution on behalf of Microsoft or accept any liability on behalf of Microsoft for the Embedded Unified Solution.
- e. **Branding and Ownership of Derivative Works.**
 - i. If the Embedded Unified Solution includes Company's (or third party's) branding, the branding must comply with Microsoft's co-branding guidelines.
 - ii. Company acknowledges that the Embedded Unified Solution is a derivative work based upon the Embedded edition of the Product. Company will own any Intellectual Property Rights in the Embedded Unified Solution to which they may be entitled under applicable law by virtue of their creation of any modification, addition or adaptation pursuant to the license granted under the ISV Cloud Embed.
- f. **Embedded Unified Solution Validation.** Prior to offering subscriptions to the Embedded Unified Solution for sale, Company must receive validation from Microsoft that the Embedded Unified Solution satisfies the Microsoft AppSource guidelines available at <https://appsource.microsoft.com/en-us/partners>, or a successor website. Company shall cause the Embedded Unified Solution to remain in compliance with such guidelines throughout the term of the Agreement.
- g. **No Warranties for Other Items.** With respect to Embedded Unified Solutions only, Section 10(c) of the Agreement is supplemented with the following:

No Warranties for Other Items. Microsoft makes no warranties or conditions as to any Embedded Unified Solution, any Company or third party components thereof (including the ISV Portion) or any other items distributed under Company's or a third party name, copyright, trademark or trade name that may be offered with or incorporated with the Embedded edition of the Products. To the maximum extent permitted by applicable law, Microsoft will have no liability in connection with the Company or third party items (such as any supply or failure to supply them) that make up or are distributed in connection with an Embedded Unified Solution.
- h. **Company's Defense Obligations.** With respect to Embedded Unified Solutions only, Section 10(e) of the Agreement is supplemented with the following addition to definition of "Third Party Claim":

"Third Party Claim" also means any third party claims or allegations against Microsoft that arise out of or are connected with any Embedded Unified Solution or services Company or a Customer

provides that are alleged to directly or indirectly infringe the third party's patent, copyright or trademark or make unlawful use of its trade secret.

i. For purposes of the ISV Cloud Embed terms, the following definitions apply:

"Embedded editions of Products" means any Products designated by Microsoft available under the ISV Cloud Embed Program, as listed in the ISV Cloud Embed Program Page. Microsoft can add additional Embedded editions of Products by giving notice to Company through the Portal updating the list of products on the ISV Cloud Embed Program page.

"Embedded Unified Solution" means a business application developed by Company and approved by Microsoft that Company licenses to Customers that (i) Integrates one or more Embedded editions of Products, (ii) adds significant and primary functionality to the Embedded Product(s), and (iii) leverages and executes certain functionality within the Embedded editions of Products.

"Integrate," or forms thereof, means including one or more Embedded editions of Products (provided to Company by Microsoft according to the use rights and terms under the Agreement or related development or API access agreements) along with Company's software, services, and/or other third-party products to comprise the Embedded Unified Solution.

"ISV Customer Agreement" means the Company's agreement with a Customer that is used to grant a right to use the ISV Portion.

"ISV Portion" means the ISV's software applications and scripts (and third-party software applications, if applicable) included in the proposed Embedded Unified Solution.

j. **Dynamics Team Member Licenses** Provided that Company continues to comply with the all of the terms of the Agreement, the ISV Cloud Embed Program, and the Program Guide, Company may elect, in addition to the license rights granted in Section a. of this Appendix C, to resell the Embedded edition of Microsoft Dynamics 365 Team Member licenses, solely as part of the Embedded Unified Solution, that operate in accordance with the terms of Appendix H of the Microsoft Dynamics 365 Licensing Guide (<https://go.microsoft.com/fwlink/?LinkId=866544&clid=0x409>) to (i) any customers until June 30, 2019, and (ii) to any existing customer as of June 30, 2019 until June 30, 2020.