



# Microsoft Partner Agreement

## Core Terms

(the “Core Terms”)

These Core Terms govern how we work together, and, when combined with any Program-specific terms referenced in the Enrollment accepted by Microsoft and Company, also govern how we work together in the context of a specific Program. “**Microsoft**” means the entity identified in the Agreement; “**Company**” means the entity designated in an Enrollment.

### *Definitions*

“**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, reasonably should be treated as confidential by the receiving party. Confidential Information does not include information that: (1) the receiving party already knew without an obligation to maintain the information as confidential; (2) the receiving party received from a third party without breach of an obligation of confidentiality owed to the other party; (3) the receiving party independently developed; or (4) becomes publicly known through no wrongful act of the receiving party.

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

“**Data Protection Laws**” means any and all Laws applicable to Company or Microsoft, relating to data security, protection, privacy, or the processing of Personal Data, including, but not limited to, (where applicable) 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**”), and any implementing, derivative or related legislation, rule, regulation, and regulatory guidance, as amended, extended, repealed and replaced, or re-enacted.

“**Enrollment**” means a form, document, or online enrollment process that identifies Company, as well as these Core Terms and any Program-specific terms, which collectively, along with the Enrollment itself, constitute the “**Agreement**” for purposes of that Program.

“**Excluded License**” means any license that includes the following requirement as a condition of use, modification, or distribution of any material subject to that license: such software, or anything combined or distributed with such material, is required to be: (a) disclosed or distributed in source code form; (b) licensed for the purpose of making derivative works; or (c) redistributable at no charge.

“**Force Majeure Event**” means as fire, explosion, power blackout, earthquake, flood, severe storms, strike, embargo, labor disputes, acts of civil or military authority, war, terrorism

(including cyber terrorism), acts of God, acts or omissions of Internet traffic carriers, actions or omissions of regulatory or governmental bodies (including the passage of or material change in Laws or other acts of government) that materially affect the performance under this Agreement. A Force Majeure Event does not include theft or loss, or events caused by the negligent or intentional acts or omissions of the affected party.

“**Laws**” means any and all applicable international, national, and local laws (including regulations and binding judicial law) as amended, extended, repealed and replaced, or re-enacted.

“**Partner Portal**” means, regarding a given Program, the website(s) through which Microsoft may provide Company access to tools, documents, and communications related to that Program.

“**Personal Data**” means any information relating to an identified or identifiable natural person (“Data Subject”). An identifiable natural person is one who can be identified, directly or indirectly, in particular 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.

“**Processing**” means any operation or set of operations that is performed on Personal Data, whether or not by automated means, such as collection, recording, organization, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination, or otherwise making available, alignment or combination, restriction, erasure, or destruction. “Process” and “Processed” will have a corresponding meaning.

“**Products**” means online services, tools, software, hardware, or professional support or consulting services as defined in the Agreement.

“**Program**” means an engagement between Microsoft and Company under which either party may make available to the other certain rights or benefits related to using, interoperating with, integrating, sublicensing, distributing, re-selling, promoting, or marketing Microsoft’s or Company’s Products.

“**Representatives**” means the employees, agents, contractors, advisors and consultants (each acting in such respective capacity) of a party or its Affiliate.

## ***General***

- 1. Notice of Changes.** Microsoft reserves the right to unilaterally modify these Core Terms from time to time. Microsoft will provide Company no less than one-hundred and eighty (180) days’ prior notice before such changes become effective; after such time such changes to these Core Terms will become effective without further action by the parties. Any modification of these Core Terms per this provision will have prospective effect only.
- 2. Relationship of the Parties.**

- (a) **Non-Exclusive relationship.** The parties are working together on a non-exclusive basis. Engagements between the parties will not be interpreted to limit either party's right to obtain, promote, or distribute products or services from other sources, and will not restrict either party's freedom to set prices for its products or services.
- (b) **Right to independent development.** Neither party is restricted from independently developing or acquiring new products or services, improving existing products or services, or marketing any new, improved, or existing products or services.
- (c) **Independent contractors.** 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. Neither party nor any of its Representatives may make any representation, warranty, or promise on behalf of the other party.
- (d) **Costs.** Each party will bear its own costs of performance under the Agreement, unless otherwise specified.
- (e) **Publicity.** Except as otherwise required by Laws or as otherwise expressly authorized under the Agreement, neither party will issue any press release, publicity, or other disclosure in any form that relates to the terms of the Agreement or to a party's relationship with the other party, including in client presentations or client lists, without the other party's prior written approval.

### ***Business Integrity Principles***

1. **Compliance with Laws.** Each party will conduct its respective business activities under the Agreement in full compliance with all Laws. Without limiting the foregoing, each party will:
  - (a) comply with (i) Laws that apply to the other party's Marks or to the use, transfer, import, export, or re-export of any Products licensed or distributed under the Agreement (including the U.S. Export Administration Regulations and the International Traffic in Arms Regulations); (ii) any end-user, end-use, and destination restrictions of the U.S. and other governments; and (iii) the guidelines related to exporting Microsoft's Products at: <http://www.microsoft.com/en-us/exporting>.
  - (b) comply with all Laws (and pay the related fees and taxes that it owes) that govern environmental protection, including Laws related to use, import, collection, treatment, recovery, recycling, disposal, and reuse of Products (including packaging);
  - (c) comply with Laws that govern the rights to and protection of the other party's copyrights, Marks, patents, trade secrets, and other forms of intellectual property;
  - (d) comply with Laws that govern labor practices, human rights, and health and safety;
  - (e) obtain and maintain any required local government approvals, each at its own expense; and

- (f) timely provide information, assistance, and cooperation (at the requesting party's commercially reasonable request and expense) as necessary to comply with Laws, or to register (or renew registration) or report to any governmental agency or certification body that regulates or certifies the use, licensing or distribution of Products.

**2. Business Conduct.** Each party will:

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

**3. Business Conduct Training.**

- (a) Microsoft will provide regular training on anti-corruption laws and business integrity principles to its employees who resell, distribute, or market Microsoft's Products. For additional information on Microsoft's commitment to anti-corruption, see <http://www.microsoft.com/en-us/legal/compliance/anticorruption/default.aspx> and <https://www.microsoft.com/en-us/legal/compliance/anticorruption/reppolicy.aspx>.
- (b) For Company employees in a position to influence the pricing, terms, or conditions under which Microsoft's Products are distributed, resold, used, or marketed (but excluding employees engaged solely in distribution of Microsoft's Products to end consumers), Company will:
  - (i) provide regular training on anti-corruption laws and business integrity principles to its employees who use, resell, distribute, or market Microsoft's Products; or
  - (ii) ensure (and certify upon request) that such employees regularly complete online anti-corruption training made available free of charge by Microsoft at <https://partner.microsoft.com/en-us/training/required-training/>.
- (c) Company will comply with the Microsoft Partner Code of Conduct located at <https://assets.microsoft.com/Microsoft-Partner-Code-of-Conduct.pdf>.

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

**5. Privacy and Data Security.**

- (a) With respect to any Personal Data transferred under this Agreement, Company and Microsoft agree that both Company and Microsoft are data controllers of the Personal Data that each independently processes.
- (b) The nature, purpose, and subject matter of the Processing, including the types of Personal Data and categories of Data Subjects involved, are described in the Agreement. Company will not Process Personal Data under this Agreement for any other purpose.
- (c) Without limiting the foregoing, each party will:
  - (i) comply with the obligations imposed on it under Data Protection Laws;
  - (ii) prior to obtaining information from Data Subjects, obtain their legally valid permission or have another valid legal basis to process their data and to transfer it to the other party. If obtaining user permission, such permission must comply with applicable law as valid consent;
  - (iii) establish independent procedures for managing and responding to any communication from a Data Subject seeking to exercise its rights under Data Protection Laws, including where the other party is communicating the Data Subject request on behalf of the Data Subject;
  - (iv) provide commercially reasonable assistance to the other (at the latter's expense) in responding to any requests, investigation, consultation, or claims from a Data Subject, regulator, or supervisory authority concerning Data Protection Laws;
  - (v) take all measures that are required by Data Protection Laws, and in accordance with good industry practice relating to data security (including, if applicable, pursuant to Article 32 of GDPR);
  - (vi) provide prominent notice of its privacy practices to Data Subjects and maintain a prominent link to an online privacy policy on each page of its website and/or in a reasonable location within its application and will ensure that each notice and policy complies with this Agreement and Data Protection Laws;
  - (vii) upon termination of the Agreement, delete or return to the other all copies of Personal Data except to the extent the party has the right or obligation under applicable Data Protection Laws to retain Personal Data after termination; and

- (viii) refrain from transmitting unsolicited commercial communications in any manner that would violate Laws or that would associate either party with the other in an unauthorized manner.

### ***Proprietary Rights***

1. **Excluded License.** A party's rights to any of the other's Products under the Agreement do not include any license, right, power, or authority to subject the other's Products to any of the terms of an Excluded License. A party may use or distribute the other's Products with other material that is subject to an Excluded License only if such Products are used or distributed in a manner that does not subject, or purport to subject, such Products (or any intellectual property related to the Products) to the terms of an Excluded License.
2. **Proprietary Notices.** Neither party will remove any copyright, trademark, patent, or similar notices from the other party's materials without express written consent from the other party.
3. **Use of Marks.** Except as expressly provided in the Agreement, or any separate license agreement that is incorporated into the Agreement by reference, the Agreement does not grant either party any right, title, interest, or license in or to any of trademarks, trade names, trade dress, or logos (collectively, "**Marks**") of the other party. Company may use Microsoft's corporate name, Microsoft's 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. However, in making such references, Company must refrain from use that is likely to cause confusion about Company's relationship with Microsoft and must comply with Microsoft's usage guidelines at: <https://www.microsoft.com/en-us/legal/intellectualproperty/Trademarks/EN-US.aspx>. Company will promptly correct any misuse on notice from Microsoft.
4. **No Reverse Engineering.** Both parties agree not to reverse engineer, decompile, or disassemble any of the other party's Products, except and only to the extent expressly permitted by Laws.
5. **Antipiracy.** Each party will implement and enforce reasonable internal controls to prevent unauthorized access to (or manufacture, duplication, distribution, delivery, or use of) counterfeit, stolen, pirated, or unlicensed technology or products and services of the other party by the party's Representatives and Affiliates. Each party agrees to promptly report to the other party any suspected counterfeiting, theft, piracy, unauthorized access, or infringement of copyright, trademark, patent, or other intellectual property rights owned or licensed by the other party and agrees to promptly and reasonably cooperate with the other party in the investigation of such unauthorized activities.
6. **Reservation of Rights.** Except as otherwise expressly granted in the Agreement: (i) each party owns and retains all rights, title, or interest in and to its own respective intellectual and other proprietary rights, and neither party grants such rights to the other party whether by implication, statute, estoppel or otherwise; and (ii) all permitted use of



Products is by license only, and is not subject to the “first sale” or any similar doctrine under copyright or other applicable intellectual property rights Laws. Except as otherwise expressly granted in the Agreement, any use in the Agreement of words such as “distribute,” “sell,” “price,” “fees,” or similar words is for convenience only, and not to be construed to mean that title to any underlying intellectual property rights in the Products is being transferred.

### ***Term; Termination***

- 1. Term.** These Core Terms shall remain effective until terminated.
- 2. Termination without Cause.** Either party can terminate these Core Terms at any time without cause, and without intervention of the courts, by giving the other party not less than thirty (30) days’ prior written notice. However, if any underlying Program-specific terms require a longer period of prior notice prior to termination of such without cause (such being an “**W/O Cause Period**”), such W/O Cause Period shall apply here as well; provided that the prior notice period required to terminate without cause under this provision will not exceed one-hundred-and-fifty (150) days. Except as otherwise provided in the Agreement, neither party will have to pay the other party any costs or damages resulting from termination of these Core Terms without cause.
- 3. Termination for Cause.** If a party breaches any term of these Core Terms and such breach is curable, then the breaching party shall have thirty (30) days’ following written notice of such breach by the non-breaching party to cure. If the breaching party fails to cure the breach within such thirty-day period, the non-breaching party may terminate these Core Terms upon written notice to the breaching party. A party will be allowed to cure a breach once; if a party breaches these Core Terms for the same reason as a prior breach then the other party may terminate these Core Terms immediately upon written notice to the breaching party. If the breach is not curable, then the non-breaching party may terminate these Core Terms immediately upon written notice to the breaching party. Either party may also terminate these Core Terms immediately upon written notice to the breaching party due to the other party’s: (i) breach of the confidentiality terms, or (ii) failure to comply with the requirements and obligations outlined in the section entitled “Business Conduct”. Microsoft may also terminate these Core Terms immediately upon written notice to Company due the infringement, misappropriation or violation of Microsoft’s intellectual property rights. Microsoft may, in its sole discretion, deem a termination for breach of the Core Terms of an agreement between Company and a Microsoft Affiliate, where Company is the breaching party, to be a breach of, and the basis of an immediate termination of, these Core Terms.
- 4. Effect of Termination.** Company acknowledges that the termination of these Core Terms shall immediately, and without further action by the parties, terminate any underlying Program-specific terms.

### ***Confidentiality***

- 1. General Obligations.**

- (a) If a separate nondisclosure agreement is in place between Microsoft and Company, such agreement will govern all Confidential Information exchanged between the parties under the Agreement.
- (b) If no such nondisclosure agreement is in effect, the following provisions apply to the parties' exchange of Confidential Information under the Agreement:
  - (i) Each party will take reasonable steps to protect the other's Confidential Information and will use the other party's Confidential Information only for purposes of the parties' business relationship. Neither party will disclose that Confidential Information to third parties, except to its Representatives and then only on a need-to-know basis under nondisclosure obligations at least as protective as this Agreement. Each party remains responsible for the use of the Confidential Information by its Representatives and, in the event of discovery of any unauthorized use or disclosure, must promptly notify the other party.
  - (ii) Each party must not disclose any Confidential Information of the other for five (5) years following the date of initial disclosure; notwithstanding the foregoing, each party must not disclose any Confidential Information of the other that contains Personal Data.
  - (iii) Notwithstanding the parties' obligations set forth above, a receiving party may disclose the other party's Confidential Information if required by a court order or Laws to do so; provided that prior to disclosure, the disclosing party must seek the highest level of protection available and must give the other party reasonable prior notice when possible to allow it to seek a protective order.
  - (iv) Neither party is required to restrict the work assignments of Representatives 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 Representatives will remember, even without notes or other aids. Neither party will bring a claim under trade secret law, or for breach of this Agreement, to the extent arising out of use of Confidential Information in such Representatives' unaided memories in the development or deployment of each party's respective products and services.

## ***Miscellaneous***

### **1. Applicable Law and Venue.**

- (a) Each party consents to the exercise of personal jurisdiction by the applicable courts and the choice of law designated in the Agreement.
- (b) The United Nations Convention on Contracts for the International Sale of Goods does not apply to the Agreement.
- (c) Either party may pursue injunctive relief against the other party in any forum (i) to protect its intellectual property rights; (ii) to enforce the confidentiality obligations of the other party; or (iii) for the enforcement or recognition of any award or order in



any appropriate jurisdiction regarding its intellectual property rights arising out of or related to the Agreement.

- (d) If either party employs attorneys to enforce any rights related to the Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees, costs and other expenses if permitted by Laws.
- (e) Each party waives any right or obligation under any applicable law or regulation to request or obtain intervention of the courts to terminate this Agreement.

**2. Assignment.** Microsoft may assign the Agreement (or delegate certain duties) to a Microsoft Affiliate at any time upon notice, provided that such assignment (or delegation) will not materially impair Company's rights and remedies under the Agreement. Except for such right, neither party may assign the Agreement (whether by merger, asset sale, operation of law, or otherwise) without the prior written approval of the other party (which shall not be unreasonably withheld), and any attempted assignment in violation of the Agreement shall have no effect.

**3. Notices.**

(a) Legal notices under the Agreement (for example, notices related to assignment, termination, audit, and indemnification) must be in writing (which may be in electronic form if permitted by Laws) and addressed to the contacts provided by the receiving party. Legal notices from Company must be signed by an authorized representative of Company. Company agrees to receive notices at the addresses and email addresses provided by it in its Enrollment; Company agrees to keep such information current at all times. Legal notices will be deemed received seven (7) business days after notice has been sent via email, air express courier (charges prepaid), or by postal service (postage prepaid, certified or registered, prepaid recorded delivery). If permitted by the Agreement, business notices may be subject to different notice requirements or delivery methods, including delivery on a Partner Portal.

(b) If Microsoft makes a Partner Portal available to Company in connection with a Program, Company will ensure that its relevant Representatives become familiar with the Partner Portal and consult it on a regular basis to receive communications and business notices from Microsoft. Company is solely responsible for managing which of its Representatives are authorized to access and act on the Partner Portal on Company's behalf.

**4. No Waiver.** Failure to enforce any provision of the Agreement will not constitute a waiver. Any waiver must be in writing and executed by the waiving party.

**5. Entire Agreement.** The Agreement shall constitute the entire agreement relating to the subject matter and engagements addressed therein and herein and shall supersede any prior or contemporaneous communications and agreements in such regard.

**6. Order of Precedence.** In the case of a conflict between any documents in the Agreement that is not expressly resolved therein, their terms will control in the following order, from highest to lowest priority: (1) terms of the Enrollment, (2) any Program-specific

terms, and (3) these Core Terms. Terms of an amendment control over the amended document and any prior amendments concerning the same subject matter.

7. **Amendments.** Except as otherwise expressly permitted in the Agreement, no amendment or modification of any provision of the Agreement will be effective unless it is in a writing accepted by authorized representatives of both parties. The Agreement may not be amended or modified by any Side Agreement. “**Side Agreement**” means any arrangement between Microsoft and Company, written or oral, that purports to modify the Agreement and is not accepted by an authorized representative of the Microsoft entity that accepted this Agreement. Side Agreements do not include Microsoft incentives, offers of rebates, promotions, discounts or extensions of payment terms offered by Microsoft when such are made available pursuant to a separate written agreement generally available to Microsoft’s partners.
8. **Force Majeure.** Neither party will be liable for failing to perform under the Agreement to the extent that a Force Majeure Event caused the failure. The party subject to the Force Majeure Event must promptly notify the other party in writing and must perform the obligations that were not performed as soon as the Force Majeure Event stops. This section will not apply to any payment obligations under this Agreement.
9. **Severability.** If a court of competent jurisdiction finds any term of the Agreement illegal, invalid, or unenforceable, the remaining terms will remain in full force and effect.
10. **References.** The section headings and titles of the provisions of all parts of the Agreement are for convenience only and do not affect the interpretation of any provision. Unless specifically stated, the plural shall include the singular. URLs are understood to also refer to successor URLs, URLs for localized content, and information or resources linked from within the websites at the specified URLs. All references to days will mean calendar days unless otherwise specified.
11. **English Language.** Unless required by Laws or as otherwise provided in the Agreement, the English language version of all parts of the Agreement controls, and communications and notices under the Agreement must be in the English language to be effective. Any translations of the Agreement, in whole or in part, that Microsoft may provide as a courtesy are not official or binding.
12. **Survival.** Except as otherwise expressly provided, the provisions of the Agreement requiring performance (or applying to events that may occur) after termination will survive termination of the Agreement, including any and all terms pertaining to confidentiality, indemnification, allocation and limitation of risk and liability, any perpetual licenses, and ownership.
13. **Microsoft Affiliates as Third-Party Beneficiaries.** Microsoft Affiliates are third-party beneficiaries of the Agreement. If the doctrine of third-party beneficiaries is not recognized in the applicable jurisdiction, the parties agree that while Microsoft’s Affiliates are not parties to the Agreement, Microsoft is a trustee of Microsoft’s Affiliates for the limited purpose of holding in trust those rights in favor of Microsoft’s Affiliates. The parties agree that a Microsoft Affiliate may enforce such rights without being required to add Microsoft as a party to any proceedings for such enforcement.



**14. Counterparts.** The Agreement may be accepted in counterparts, which together constitute one instrument.



# Microsoft Partner Agreement

## Channel Terms

(the “Channel Terms”)

These Channel Terms apply to Company’s participation in a Channel Authorization (as defined herein).

### *Definitions*

“**Channel Authorization**” means the terms and conditions arising under these Channel Terms applicable to an engagement between Microsoft and Company pursuant to which Microsoft makes available to Company certain rights or other benefits related to using, interoperating with, integrating, sublicensing, distributing, re-selling, promoting, or marketing Products.

“**Claim**” means a third-party action, cause of action, suit, or judicial claim brought by a party other than Company or a Company Affiliate.

“**Customer**” means an individual or legal entity within the Territory that meets the qualifying customer criteria set forth in a Channel Authorization.

“**Customer Agreement**” means an agreement between a Customer and Microsoft, or a Microsoft Affiliate, and the associated Microsoft license terms that govern a Customer’s use of a Product.

“**Customer Purchase Commitment**” means a binding written commitment from the Customer to pay for the Products that specifies product, quantity, pricing, and date consistent with the order submitted by Company to Microsoft.

“**Government Customer**” means, except as otherwise provided in a Channel Authorization, any “Eligible Entity” under Microsoft’s Qualifying Government Eligibility Definition found at [www.aka.ms/governmenteligibility](http://www.aka.ms/governmenteligibility).

“**Guide**” means a document delivered to Company or published on a Partner Portal that specifies the execution and operational details, policies, and requirements applicable to a Channel Authorization.

“**Material Discrepancy**” means either (i) a material breach of the Agreement; or (ii) amounts revealed to be owed by Company to Microsoft with respect to a Channel Authorization in excess of the specific percentage or fee amount threshold set forth in that Channel Authorization.

“**Products**” as used herein, means the Microsoft online services, tools, software, hardware, or professional support or consulting services with respect to which Microsoft has granted Company certain rights or other benefits pursuant to a Channel Authorization, as further defined therein.

“**Product Materials**” means the materials, disclosures, and Customer Agreements associated with a specific Product.

**“Product Specific Terms”** means the additional terms, conditions, or restrictions that apply to specific Products in connection with a Channel Authorization.

**“Relevant Records”** means, collectively, the books, documents, data, records, papers, and other information and materials related to transactions and obligations contemplated by the Agreement

**“State-Owned Enterprise”** means an entity for which any of the following conditions exist: (a) a government entity or apparatus clearly controls the company; (b) employees of the company are considered to be public officials or civil servants; (c) the company is financed through governmental appropriations; (d) the company is financed through revenues obtained from government-mandated taxes, licenses, fees, or royalties; (e) the company pays its profits to a government entity or apparatus; (f) a government entity or apparatus is the largest single shareholder; (g) a government entity or apparatus controls the board of directors; (h) a government entity or apparatus can appoint the majority of the company’s administrative or managerial body or supervisory board; (i) a government entity or apparatus can appoint less than a majority of the board but has negative veto powers; (j) minister-level officials sit on the board; (k) the company performs governmental functions; (l) a government entity or apparatus owns 30% or more of the company, directly or indirectly.

**“Taxes”** means any national, federal, state, provincial or local taxes, fees, charges, surcharges, or other similar fees or charges arising as a result of or in connection with the transactions contemplated under the Agreement and include, sales and use taxes, value added, gross receipts taxes, utility user’s fees, municipal occupation and license taxes, excise taxes, business and occupations taxes, 911 taxes, franchise fees, universal service fund fees or taxes, regulatory cost recovery and other surcharges, taxes imposed or based on or with respect to or measured by any net or gross income or receipts (other than taxes based upon Microsoft’s net income and any gross receipts taxes imposed in lieu of taxes on the income or profits of Microsoft), franchise taxes, stamp taxes, taxes on doing business, duties, tariffs, levies, withholding taxes and any taxes that arise on the distribution or provision of products or services by Company.

**“Unauthorized Disposition”** means theft, loss, transfer, sale, or distribution of a Product other than as expressly permitted by a Channel Authorization, including transfer, sale, or distribution of a Product outside of the Territory or to an unauthorized party.

## ***General Rights, Restrictions, and Obligations***

### **1. General Restrictions.**

- (a) **Third-Party Rights.** Except as required by Law, Microsoft grants no rights to Company to sublicense Products, or any rights under the Agreement, to any third parties (including Company Affiliates or subcontractors) unless such rights are expressly provided in a Channel Authorization.
- (b) **No Internal Use Rights.** Except as otherwise provided in the Agreement, Company may not (i) use Products acquired under the Agreement for its own internal use or (ii)



distribute or otherwise transfer Products acquired under the Agreement to any Company Affiliates for their internal use.

- (c) **No Modifications.** Company may not modify any Product (or any packaging or Product Materials) unless Microsoft directs or permits Company to do so in writing.
- (d) **No Conflicting Commitments.** Company may not make any representation, warranty, guarantee, or promise with respect to any Product that would conflict with or expand Microsoft's obligations to a Customer or end user. Company's instructions to Customers on the use of Products must be consistent with any Product Specific Terms, the Customer Agreement, and any relevant warranty document, services terms, or end user documentation provided by Microsoft.

## 2. General Obligations.

- (a) **Microsoft Partner Network.** Company must maintain its status as a registered member of the Microsoft Partner Network and maintain an active Microsoft Partner Network Agreement. Registered member status is available to Company free of charge.
- (b) **Technology.** Company agrees to, as required to perform its obligations under the Agreement, provide the necessary equipment, technology, and infrastructure needed and take necessary steps, on an ongoing basis and as applicable, to access and use Microsoft online tools and Partner Portals.
- (c) **Security and Unauthorized Disposition.** Company will take commercially reasonable measures to protect Products and Product Materials under its possession or control from any damage, destruction, or Unauthorized Disposition, and will comply with any additional security requirements otherwise set forth in a Channel Authorization and any associated Guide. Each party agrees to (i) promptly notify the other party if it becomes aware of any material Unauthorized Disposition; and (ii) reasonably cooperate to investigate the suspected activities, and to share relevant information in furtherance of the Agreement.
- (d) **Support.** Company agrees to use commercially reasonable efforts and professional care and skill in providing any required service and support to its Customers, as applicable.

## *Product Fees and Ordering, General*

### 1. Ordering.

- (a) Company agrees to submit orders only in quantities that Company can distribute in the normal course of its business. Microsoft will have no obligation to accept orders or liability to Company due to lack of Product availability, any Product shortage, or any delay in fulfillment. Fulfillment times are estimates only. Microsoft may allocate Products or limit the amount of Product available for order, including in advance of new releases or price changes. Any purported terms or conditions that Company includes with its orders, invoices or web portals, or otherwise provides to Microsoft

in connection with this Agreement, are hereby excluded and will be deemed void and will not amend or modify this Agreement.

2. **Purchase Commitment Obligations.** Prior to submitting orders for Products for a State-Owned Enterprise or Government Customer, Company must obtain a Customer Purchase Commitment. For all other Customers, Company must obtain a Customer Purchase Commitment upon request from Microsoft. By submitting an order, Company (i) represents that any Customer Purchase Commitment provided is complete and accurate in all respects and (ii) agrees to pay Microsoft for all orders it submits for Products.
3. **Customer Discount & Customer Special Offer Transparency, Passthrough.**
  - (a) **“Customer Discount”** means, collectively, any promotional or negotiated discount, offered by Microsoft to Company solely for the benefit of a Customer. If Microsoft provides Company with a Customer Discount for a State-Owned Enterprise or Government Customer, Company must ensure that the Customer Discount is passed through for the benefit of the Customer. This also means that the Company’s price to the Customer may not exceed the Maximum Resell Price. **“Maximum Resell Price”** is the total estimated retail price for the Products *less* the applicable Customer Discount.
  - (b) If Microsoft provides Company with a Customer Special Offer for a State-Owned Enterprise or Government Customer, Company must ensure that the Customer Special Offer is passed through by transferring the full value of such Customer Special Offer to the State-Owned Enterprise or Government Customer as directed by Microsoft. **“Customer Special Offers”** means any credits or other benefits (including, but not limited to, previews and trials) offered by Microsoft to Company and expressly communicated by Microsoft to be for the sole benefit of Customers.
  - (c) Company agrees to ensure the disclosure of all Customer Discount and Customer Special Offer information, provided to it by Microsoft, to the relevant State-Owned Enterprise or Government Customer, as further explained in the relevant Program Guides. Microsoft reserves the right to disclose Customer Discounts and Customer Special Offers directly to a State-Owned Enterprise or Government Customer.
  - (d) Company agrees to provide accurate contact information of the authorized representative of a State-Owned Enterprise or Government Customer receiving a Customer Discount or Customer Special Offer in order to enable Microsoft’s communication to it of information regarding such.
  - (e) Microsoft encourages the Company employees to take discounting training for MPN members in Partner University (located at <https://learningportal.microsoft.com/ethics> and [https://partner.microsoft.com/en-US/training/assets/collection/microsoft-contract-requirements-and-compliance-18552#/\) \).](https://partner.microsoft.com/en-US/training/assets/collection/microsoft-contract-requirements-and-compliance-18552#/)
4. **Company Pricing.** Except as otherwise provided in the section entitled “Customer Discount & Customer Special Offer Transparency, Passthrough” in these Channel Terms,



Company has full discretion to set its own pricing for the resale or distribution of Products.

### ***Audit, General***

1. **Duty to Maintain Records.** Company must maintain complete and accurate records relating to its performance under the Agreement (“**Relevant Records**”) during the term of its participation under a Channel Authorization and for two (2) years after the later of either (i) the termination of Company’s participation under such, or (ii) the date of issuance of final payment between Microsoft and Company in connection with such participation (collectively, the “**Audit Period**”). Relevant Records include, but may not be limited to, complete financial statements and all documents related to acquisition, reproduction, installation, distribution, and other disposition of each unit of Product. The Relevant Records must not contain any false, misleading, incomplete, inaccurate, or artificial entries. If Relevant Records are co-mingled with Company’s other non-relevant information, Company may redact the Relevant Records with respect to such non-relevant information.
2. **Right to Audit.** Microsoft may use a third-party auditor, or an audit related agent, (“**Auditor**”) to review Relevant Records and audit Company’s premises, operations, processes, and Relevant Records during the Audit Period, to verify performance under the Agreement. Any third-party Auditor will (i) be independent and internationally recognized, certified or chartered, (ii) not be hired on a contingent fee basis; and (iii) be instructed by Microsoft to treat Company’s Confidential Information in accordance with applicable professional standards and the confidentiality requirements set forth in the Agreement. Except as otherwise provided in the Agreement, unless a prior audit has revealed a Material Discrepancy or Company’s non-compliance with the section entitled “Business Integrity Principles” set forth in the Core Terms, or Microsoft has credible and reliable evidence of Company’s non-compliance with the section entitled “Business Integrity Principles” set forth in the Core Terms, Microsoft will not audit Company more than one time per calendar year under this section. Notwithstanding the foregoing, upon Microsoft’s request, Company agrees to promptly provide information reasonably necessary to demonstrate Company’s compliance with the Microsoft Partner Code of Conduct; Microsoft’s exercise of this right shall not be deemed an exercise of its right to review and audit Company’s Relevant Records. In the exercise of Microsoft’s audit rights, Microsoft may require Company to provide electronic downloads of relevant data and may require Company to complete a self-assessment questionnaire.
3. **Audit Procedure.**
  - (a) Microsoft will provide not less than thirty (30) days’ prior notice to Company before beginning an audit. Audits will take place during Company’s regular business hours, and the Auditor will use commercially reasonable efforts to avoid disrupting Company’s operations. Company personnel may escort the Auditor on Company’s premises. Company will have all Relevant Records and operations available to the Auditor at the beginning of the audit. Microsoft may have the Relevant Records audited at multiple sites to verify performance under the Agreement. At Microsoft’s option, Company will make all Relevant Records, available to Auditor at one location.



Company will provide reasonable access to the Auditor to facilitate the audit and permit the Auditor to copy records. At Microsoft's request, Company will make relevant employees available to the Auditor during the audit. Microsoft will provide Company with a summary of the audit findings upon request.

(b) If Microsoft has credible and reliable evidence that counterfeiting, piracy or corruption may have occurred, Company must promptly cooperate with Microsoft or its Auditor to carry out an investigation of the suspected activities. If an investigation results in a referral to law enforcement agencies, or if Microsoft initiates other legal action to enforce its rights against responsible parties, Company agrees to provide reasonable and timely cooperation and information.

4. **Payment of Audit Costs and Amounts Due.** Microsoft will pay the cost of audit expenses for verifying Company's compliance with the Agreement; provided, however, that if the audit reveals a Material Discrepancy, then Company must promptly reimburse Microsoft for the reasonable costs of the audit. If the audit reveals any discrepancy, Company must promptly correct any errors or omissions disclosed by the audit.

### ***Warranties and Disclaimers, General***

1. **Company Warranties to Customers.** Company is solely responsible for any independent or extended warranties or other offers or services it makes to Customers (specifically excluding any extended warranty products or similar services that Microsoft may make available on a Price List).
2. **NO IMPLIED WARRANTIES OR REPRESENTATIONS.** EXCEPT AS EXPRESSLY PROVIDED IN A CHANNEL AUTHORIZATION, ALL PRODUCTS ARE PROVIDED TO COMPANY "AS IS." THE FOREGOING "AS IS" WARRANTY, AND ANY WARRANTIES EXPRESSLY SET FORTH IN A CHANNEL AUTHORIZATION, ARE THE ONLY WARRANTIES MADE BY EITHER PARTY TO THE OTHER. NEITHER PARTY MAKES ANY OTHER WARRANTIES, REPRESENTATIONS, CONDITIONS OR GUARANTEES TO THE OTHER RELATED TO THE AGREEMENT. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH PARTY DISCLAIMS ANY IMPLIED WARRANTIES OF NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE.
3. **HIGH RISK USE WARNING.** UNLESS OTHERWISE EXPLICITLY STATED IN THE AGREEMENT, THE PRODUCTS ARE NOT DESIGNED OR INTENDED FOR HIGH RISK USE SCENARIOS WHERE FAILURE OR FAULT OF ANY KIND OF THE PRODUCT COULD REASONABLY BE SEEN TO LEAD TO DEATH OR SERIOUS BODILY INJURY, OR TO SEVERE DAMAGE TO TANGIBLE OR INTANGIBLE PROPERTY OR THE ENVIRONMENT.
4. **NO WARRANTIES FOR THIRD-PARTY PRODUCTS OR SERVICES.** EXCEPT AS EXPRESSLY PROVIDED IN A CHANNEL AUTHORIZATION, MICROSOFT MAKES NO WARRANTIES, REPRESENTATIONS, OR CONDITIONS, AND ASSUMES NO LIABILITY AS TO ITEMS DISTRIBUTED UNDER A THIRD-PARTY NAME, COPYRIGHT, TRADEMARK OR TRADE NAME THAT MAY BE OFFERED OR COMBINED WITH OR INCORPORATED INTO THE PRODUCTS. TO THE MAXIMUM EXTENT PERMITTED BY LAW, MICROSOFT WILL HAVE NO LIABILITY IN CONNECTION WITH THE THIRD-PARTY ITEMS (SUCH AS IN CONNECTION WITH ANY SUPPLY OR FAILURE TO SUPPLY THEM).

### ***Defense of Third-Party Claims, General***

- (a) Each Channel Authorization will identify what, if any, specific indemnity or defense obligations apply to that Channel Authorization and any related terms. In the event that a Channel Authorization requires a party (a “**Defending Party**”) to defend at its own expense the other party (the “**Tendering Party**”) in a Claim, and to pay a judgment or settlement in such Claim, such requirement will be subject to the conditions and limitations set forth below and in the relevant Channel Authorization.
- (b) The Tendering Party must promptly notify the Defending Party in writing of the Claim, specifying the nature of the Claim and the relief sought, provided that any failure by the Tendering Party to provide such notice to the Defending Party reasonably promptly will not relieve the Defending Party of any obligation or liability to the Tendering Party, except and only to the extent that the Defending Party demonstrates that it has been materially prejudiced by such failure by the Tendering Party to provide such notice to the Defending Party reasonably promptly.
- (c) Except as set forth below, the Defending Party will have sole control over the defense of the Claim, and the Tendering Party must provide the Defending Party with reasonable assistance in the defense of the Claim (for which the Defending Party will reimburse the Tendering Party’s reasonable out of pocket expenses). The Tendering Party will have the right to employ separate counsel and participate in the defense at its own expense. The Defending Party may not settle the Claim without the Tendering Party’s prior written consent (which will not be unreasonably withheld, conditioned or delayed). Neither party will acknowledge or admit fault or liability on the other’s part nor publicize any settlement without the other’s prior written consent (which will not be unreasonably withheld, conditioned or delayed).
- (d) In a multi-party action that includes Claims for relief directed to both Microsoft and Company, each party will reasonably cooperate on a defense strategy to limit the overall liability for both parties across all Claims in the action. Such cooperation will include providing specific information, witnesses, and evidence to support Microsoft and Company’s legal theories.
- (e) If Microsoft receives information concerning a covered intellectual property Claim, Microsoft may, at its option and expense, and in addition to its other rights and obligations under the Agreement, undertake further actions to mitigate or resolve the Claim such as: (i) procure the copyright, trademark, or patent rights, or licenses to address the Claim; (ii) replace or modify the Product or Mark to make it non-infringing; or (iii) if Microsoft reasonably determines, after the exercise of commercially reasonable efforts, that neither of the foregoing are feasible, refund all, or a portion of, the Product Fees paid for affected Products, as appropriate. Except as otherwise provided in the Agreement, this section provides Company’s only remedy for third party infringement and trade secret misappropriation Claims.

### ***Limitations on Liability, General***

- (a) TO THE EXTENT PERMITTED BY LAW, NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY DAMAGES FOR LOSS OF PROFITS OR REVENUES, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION OR DATA, OR FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, INDIRECT, OR PUNITIVE DAMAGES.
- (b) THE LIMITATIONS ON LIABILITY AND ALLOWABLE DAMAGES DESCRIBED ABOVE WILL NOT APPLY TO EITHER PARTY'S (I) LIABILITIES FOR UNAUTHORIZED USE OR UNAUTHORIZED DISPOSITION OF THE OTHER PARTY'S INTELLECTUAL PROPERTY; (II) VIOLATION OF ANY LICENSE GRANTS AND LIMITATIONS, OR CONFIDENTIALITY OBLIGATIONS IN THE AGREEMENT; (III) OBLIGATIONS TO DEFEND AND PAY THIRD-PARTY CLAIMS (INCLUDING, BUT NOT LIMITED TO, THOSE ARISING FROM PERSONAL INJURY OR DEATH); (IV) BREACH OF THE BUSINESS INTEGRITY PRINCIPLES SET FORTH IN THE CORE TERMS; OR (V) FRAUD OR GROSS NEGLIGENCE. MICROSOFT AND COMPANY AGREE THAT ALL LIMITATIONS ON LIABILITY AND EXCLUSIONS ON ALLOWABLE DAMAGES SHALL APPLY EVEN IF ANY REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE.
- (c) MICROSOFT AND COMPANY AGREE THAT A PARTY'S LIABILITY FOR ANY DAMAGES OR INDEMNITY SHALL BE REDUCED TO THE EXTENT THAT THE OTHER PARTY OR ITS AGENTS CAUSED OR CONTRIBUTED TO THE HARM GIVING RISE TO THE DAMAGES OR INDEMNITY OBLIGATION.

### *Notice of Changes; Termination; Order of Precedence*

1. **Notice of Changes.** Microsoft reserves the right to unilaterally modify these Channel Terms from time to time. Microsoft will provide Company no less than one-hundred and eighty (180) days' prior notice before such changes become effective; after such time such changes to these Channel Terms will become effective without further action by the parties. Any modification of these Channel Terms per this provision will have prospective effect only.
2. **Term.** These Channel Terms shall remain effective until terminated.
3. **Automatic Termination.** Company acknowledges that termination of the Core Terms shall immediately, and without further action by the parties, terminate these Channel Terms.
4. **Termination without Cause.** Either party can terminate these Channel Terms at any time without cause, and without intervention of the courts, by giving the other party not less than thirty (30) days' prior written notice. However, if an underlying Channel Authorization requires a longer W/O Cause Period, such W/O Cause Period shall apply here as well; provided that the prior notice period required to terminate without cause under this provision will not exceed one-hundred and fifty (150) days. Except as otherwise provided in the Agreement, neither party will have to pay the other party any costs or damages resulting from termination of these Channel Terms without cause.
5. **Termination for Cause.** If a party breaches any term of these Channel Terms, the breaching party shall have thirty (30) days' following written notice of such breach by the non-breaching party to cure the breach if the breach is curable. If the breaching party fails to cure the breach within such thirty-day period, the non-breaching party

may terminate these Channel Terms upon written notice to the breaching party. A party will be allowed to cure a breach once; if a party breaches these Channel Terms for the same reason as a prior breach then the other party may terminate these Channel Terms immediately upon written notice to the breaching party. If the breach is not curable, then the non-breaching party may terminate these Channel Terms immediately upon written notice to the breaching party. Either party may also terminate these Channel Terms immediately upon written notice to the breaching party due to the other party's breach of the confidentiality terms. Microsoft may also terminate these Channel Terms immediately upon written notice to Company due to its (i) infringement, misappropriation or violation of Microsoft's intellectual property rights (ii) insolvency, bankruptcy or undergoing other similar proceedings. Microsoft may, in its sole discretion, deem a termination for breach of the Channel Terms of an agreement between Company and a Microsoft Affiliate, where Company is the breaching party, to be a breach of, and the basis of an immediate termination of, these Channel Terms.

6. **Effect of Termination.** Company acknowledges that the termination of these Channel Terms shall immediately, and without further action by the parties, terminate any underlying Channel Authorizations.
7. **Order of Precedence.** These Channel Terms, a Channel Authorization, and any associated documents underlying such, are to be collectively deemed "**Program-specific terms.**" In the case of a conflict between the terms of the documents composing Program-specific terms that is not expressly resolved therein, their terms will control in the following order, from highest to lowest priority: (1) any Product Specific Terms, (2) the Channel Authorization, (3) these Channel Terms, and (4) any Guide or Guides. Terms of an amendment control over the amended document and any prior amendments concerning the same subject matter.

## Microsoft Partner Agreement

### Indirect Reseller Authorization

(the "Channel Authorization")

#### *Definitions*

"**Additional Terms**" means that portion of the Distributor Agreement that Distributor provides as relevant to Company in its resale of Products.

"**Administrative Access Credentials**" means any administrative log-in credentials Microsoft provides for accessing or managing a Product.

"**Customer**" means, except as otherwise provided in the Additional Terms, any legal entity (other than Company or Company Affiliates, or Distributor or its Affiliates) within the Territory that acquires Products for use as an end user, and not for distribution or resale.

"**Distributor**" means the legal entity (i) that has entered into an agreement with Microsoft, whereby Microsoft has authorized it to distribute certain Microsoft products and services



through an Indirect Reseller, and (ii) that has engaged Company to act as its Indirect Reseller.

**“Distributor Agreement”** means the agreement between Microsoft and Distributor, pursuant to which, Distributor is authorized to distribute Products through an Indirect Reseller, and on which Company’s subordinate authorization to distribute Products is dependent.

**“Indirect Reseller”** means a legal entity (other than an Affiliate of Distributor) within the Territory (i) that has accepted and complies with this Channel Authorization and (ii) that has agreed to purchase Products from Distributor for resale to Customers in accordance with the Distribution Agreement.

**“Products”** means those certain Microsoft products and services that Microsoft has granted Distributor authorization to distribute through an Indirect Reseller.

**“Territory”** means the geographic region designated in the Additional Terms, in which Company is authorized to resell Products to Customers in accordance with the Distribution Agreement.

### ***Authorization***

- 1. General.** This Channel Authorization details the terms and conditions of the rights granted by Microsoft to the Company to resell Products as an Indirect Reseller. Company agrees and understands that its authorization to resell Products is conditioned on its compliance with (i) this Channel Authorization and (ii) the Additional Terms. Except as otherwise specifically provided in the Additional Terms, the Additional Terms shall be interpreted as applying to Company and its resale of Products to Customers in accordance with the Distribution Agreement. A breach of the Additional Terms will be considered a breach of this Channel Authorization.
- 2. Territory.** Company may not (i) resell, distribute or market Products outside the Territory or (ii) collect orders or receive payments for Products from any Customer located outside the Territory.
- 3. Company Affiliates.** Except as otherwise provided by the Agreement, Company’s Affiliates are not authorized to perform under the rights granted under this Channel Authorization.
- 4. Subcontractors.** Except as otherwise provided by the Agreement or in the Additional Terms, Company may use third-party subcontractors and Company Affiliates (**“Subcontractors”**) to support the performance of its obligations under this Channel Authorization. Company unconditionally guarantees its Subcontractors’ compliance with the Agreement and the Additional Terms and agrees that it will be liable for the acts and omissions of each Subcontractor as if such acts and omissions were Company’s own. With respect to Subcontractors retained to perform material elements of Company’s online business or any customer support functions, Company will reserve for Microsoft (as an intended third-party beneficiary of Company’s agreement with each such Subcontractor) the right to conduct an audit at Subcontractor locations in accordance with the section entitled “Audit, General” of the Channel Terms for the limited purpose of confirming compliance with the Agreement and the Additional Terms. Subcontractors



are not authorized to perform under the rights granted under this Channel Authorization, and, unless otherwise authorized, may not directly participate in the resell or distribution of Products under this Channel Authorization.

### ***General Requirements and Obligations***

#### **1. Relationship of Parties.**

- (a) While Microsoft may make available certain tools and systems that can facilitate Company's relationship with Distributor, Company's use of such tools or systems does not create a duty on the part of Microsoft to directly or indirectly sell or supply Company with Products, process orders or in any other way enable Company's business. Microsoft is not a party to the terms and conditions between Company and Distributor. Except as otherwise provided in the Agreement or the Additional Terms, Company is free to set its pricing and other terms of sale of Products to Customers.
- (b) Company may perform certain functions associated with the purchase, activation, support and management of Customer Products on behalf of Distributor. Company acknowledges and agrees that from time to time Microsoft may update the processes and tools needed to perform those functions, as Microsoft in its sole discretion deems appropriate, and Company may be required to implement such updates or changes to continue to perform such functions.

#### **2. Product Availability; Fulfillment.**

- (a) Company acknowledges and agrees that Microsoft (i) will have no liability to Company or any Customer arising from Product availability or any Product shortages; and (ii) may at any time limit order quantity or impose other limitations or conditions on Products.
- (b) Microsoft may discontinue the availability of any Product at any time and shall have no obligation to Company with respect to any Product. Company may retain all information and data necessary to provide transition services to Customers in accordance with this Channel Authorization or the Additional Terms.
- (c) Company shall not resell Products provided by any source other than Distributor, unless such source is a Microsoft-approved distributor of the Products.
- (d) Company shall coordinate with Distributor to ensure fulfillment of each Customer's order or purchase. Company shall comply with the terms and conditions contained in the Additional Terms that relate to the Products; additional fulfillment obligations specific to the Products may be provided in the Additional Terms.
- (e) Administrative Access Credentials are the property of the Customer; Company must provide Customers with any Administrative Access Credentials Microsoft provides with respect to a Product purchased by Customer. Company must cooperate with and facilitate the transference of any Administrative Access Credentials to any other Microsoft reseller at a Customer's direction.

#### **3. Reservation of Rights.**



- (a) Microsoft may terminate any Customer's status as a Customer. Microsoft will promptly notify Company of the termination of any of its Customers. Following such notice, Company will promptly stop collecting orders for Products from the terminated Customers; Microsoft may refuse to provision any orders submitted after the termination of Customer. Company will also stop delivery of any program information and materials to the terminated Customer. If Microsoft terminates a Customer, Company will not have any claim against Microsoft for damages or lost profits resulting from the termination.
- (b) Microsoft may provide any Products directly to Customers; Microsoft may also authorize other entities to do so. Microsoft may send direct communications to Customers related to the terms of the Customer Agreement or the operation or delivery of a Product.

4. **Support Obligations.** Except as may be set forth in the Additional Terms, Company shall have sole responsibility for providing all aspects of customer support, customer service and billing for the purchase of Products and will fulfill such obligations and perform such services with professional care and skill. Company understands and agrees that, except as otherwise provided in the Additional Terms, Microsoft shall have no responsibility for support regarding the purchase and fulfillment process for Products.

**Defense Obligations.** Subject to the conditions set forth in that section entitled "Defense of Third Party Claims, General" of the Channel Terms, Company will defend Microsoft (including by paying external attorneys' fees and costs and expenses of defense) from, and will pay any resulting adverse final judgment or settlement (to which Microsoft consents) associated with, a Claim that arises out of or is connected with any default or breach or alleged default or breach of the Agreement by Company, Company's sale or distribution of any Product, or any other act or omission by Company. Notwithstanding anything otherwise provided in this Channel Authorization, Microsoft will not amend Company's indemnification obligations in this Channel Authorization through the introduction of new Product Specific Terms, except that Microsoft may introduce new Product Specific Terms that supersede or modify such terms solely as applicable to new Products. Microsoft will not amend Company's indemnification obligations in this Channel Authorization with retroactive effect, or with prospective effect across all Products.

### ***Term and Termination***

1. **Term.** Company shall remain authorized as an Indirect Reseller until this Channel Authorization is terminated.
2. **Automatic Termination.** Company acknowledges that termination of either the Core Terms or the Channel Terms shall immediately, and without further action by the parties, terminate this Channel Authorization.
3. **Termination without Cause.** Except as otherwise provided in the Additional Terms, either party may terminate this Channel Authorization at any time without cause, and without intervention of the courts, by giving the other party not less than thirty (30) days' prior written notice. Neither party will have to pay the other party any costs or damages resulting from termination of this Channel Authorization without cause.

- 4. Termination for Cause.** If a party breaches any term of this Channel Authorization, the breaching party shall have thirty (30) days' following written notice of such breach by the non-breaching party to cure the breach if the breach is curable. If the breaching party fails to cure the breach within such thirty-day period, the non-breaching party may terminate this Channel Authorization upon written notice to the breaching party. A party will be allowed to cure a breach once; if a party breaches this Channel Authorization for the same reason as a prior breach then the other party may terminate this Channel Authorization immediately on written notice to the breaching party. If the breach is not curable, then the non-breaching party may terminate this Channel Authorization immediately upon written notice to the breaching party. Either party may also terminate this Channel Authorization immediately upon written notice to the breaching party due to the other party's breach of the confidentiality terms. Microsoft may also terminate this Channel Authorization immediately upon written notice to Company due to the infringement, misappropriation or violation of Microsoft's intellectual property rights. Microsoft may, in its sole discretion, deem a termination for breach of the Channel Authorization of an agreement between Company and a Microsoft Affiliate, where Company is the breaching party, to be a breach of, and the basis of an immediate termination of, this Channel Authorization.
- 5. Effect of Termination.** Upon the termination of this Channel Authorization, Company must immediately stop using all rights granted by this Channel Authorization. In addition to any obligations detailed in the Additional Terms, following the termination of this Channel Authorization, Company shall: (i) immediately cease distribution of the Products; (ii) within twenty-four (24) hours of such termination, shut down any websites or pages and any Customer access to such websites or pages that include any advertising, marketing or branding that include the Products or Microsoft Marks; (iii) promptly remove any other advertising, marketing or branding, that include the Products, marketing materials or Microsoft Marks and (iv) provide any other cooperation, as reasonably requested, to Distributor and Microsoft.
- 6. Termination of Distributor.** Company acknowledges that expiration or termination of the Distributor Agreement shall immediately, and without further action by the parties, terminate any Product distribution rights granted to Company by Distributor in accordance with the Distribution Agreement. Upon termination or expiration of the Distribution Agreement, Microsoft may work with Company to facilitate its engagement with a replacement distributor to enable the continuation of the rights granted in this Channel Authorization.
- 7. Customer Change of Partner.**

  - (a) A Customer may be permitted under a Customer Agreement to elect to change its reseller or distributor. The change becomes effective at the time specified in the underlying Customer Agreement. If a Customer elects to terminate its relationship with Company, Company will not have any claim against Microsoft for damages or lost profits resulting from the termination or Customer's failure to provide any required notice to Company.





- (b) Company must use commercially reasonable efforts to cooperate with Customer, Distributor, and/or Microsoft to facilitate the transference of any Customer orders, subscriptions, administrative credentials, Customer Discounts, and/or Customer Special Offers, as appropriate, to a new reseller or distributor at a Customer's direction, in connection with of a Customer request to change reseller or distributor, or Microsoft's direction, in connection with the termination of this Channel Authorization.

**Notice of Changes.** Microsoft reserves the right to modify this Channel Authorization from time to time. Microsoft may modify this Channel Authorization with (i) five (5) days' prior notice if such modifications relate to the storage, handling or distribution of Microsoft intellectual property, or (ii) thirty (30) days' prior notice in all other cases. After the applicable notice period, such changes to this Channel Authorization will become effective without further action by the parties. Any modification of this Channel Authorization per this provision will have prospective effect only.



## Microsoft Partner Agreement Acceptance Terms

Company's acceptance may be attributed to one or more offers to contract with one or more Contracting Microsoft Entities. The Agreement, as amended by the Country Specific Provisions listed on each Contracting Microsoft Entity identifier page below (each modified Agreement being a "Country Specific Agreement"), represents an offer separately presented by each Contracting Microsoft Entity (each being an "Offer").

By Company's acceptance, as performed by its authorized representative, Company (i) consents to its acceptance of each Country Specific Agreement by electronic means, (ii) accepts the terms of each separate Offer and (iii) agrees that Company (a) has received, read and understands the Country Specific Agreement underlying each Offer, including any websites or documents incorporated by reference and any amendments, and (b) agrees to be bound by the terms of each Offer without any additions or modifications whatsoever.

Each Country Specific Agreement is entered into between Company and the applicable Contracting Microsoft Entity as of the Effective Date, which is the date the applicable Contracting Microsoft Entity receives this properly executed signature form, subject to satisfactory processing for completion. On the Effective Date, each Country Specific Agreement shall form a separate legally binding agreement between Company and the applicable Contracting Microsoft Entity.



**Contracting Microsoft Entity**

Name  
**Microsoft Corporation**

**Located at:**  
**Microsoft Corporation**  
One Microsoft Way  
Redmond, WA 98052  
USA

**Send notices to:**  
**Microsoft Corporation**  
6100 Neil Road, Suite 210  
Reno, Nevada 89511-1137  
USA

The terms of the Agreement entered into as of the Effective Date by and between Company and the Contracting Microsoft Entity listed immediately above are amended by the “Country Specific Provisions” detailed below.

**Country Specific Provisions:**

**The following text is added to the first item under that subsection of the “Core Terms”, under that subsection entitled “Miscellaneous”, entitled “Applicable Law and Venue”:**

*This Agreement is governed by and interpreted in accordance with the laws of the State of Washington and the federal laws of the United States. The parties consent to the exclusive jurisdiction and venue in the courts sitting in King County, Washington. Company waives all defenses of lack of personal jurisdiction and forum non conveniens.*

[End of amended terms]