

Microsoft Publisher Agreement

Version: 2.0

Effective date: May 26, 2020

Thank you for your interest in publishing content with Microsoft. This Publisher Agreement (“**Agreement**”) describes the relationship between you (“**Publisher,**” “**you,**” or “**your**”) and Microsoft Corporation (“**Microsoft,**” “**we,**” “**us**” or “**our**”) and governs your access and use of the Stores (defined below).

By submitting a Product for publication in the Stores or accessing the functionality that allows a Product to be published through your Publisher Account for the Partner Center, you agree to the terms of this Agreement. Microsoft may update this Agreement at any time and will notify you of such changes. By continuing to use your Publisher Account or Listing your Products in the Stores after the changes become effective, you agree to the new terms. If you do not agree to the new terms, you must remove your Products from the Stores and close your Publisher Account.

This Agreement contains terms applicable to all Stores, and the Addenda contain Store specific terms. The Addenda may contain additional or different terms from the body of this Agreement, and in such case, the Addenda will control. Except to the extent a provision states that it applies only in limited circumstances or to certain Products, provisions in this Agreement referring to “publishing,” “making available,” “submitting” or taking other actions with respect to Products apply to all Products Listed in the Stores.

The Agreement consists of:

- the Terms And Conditions;
- Addendum A- Commercial Benefits Program;
- Addendum B - Terms and Conditions Applicable to Distribution of Products through Microsoft indirect channels and in Reseller Countries;
- Addendum C - Terms and Conditions applicable to Commercial Marketplace, Office Store, and Office 365 Certification Program;
 - Attachment 1 - Terms Applicable to Specific Categories of Products on Commercial Marketplace;
 - Attachment 2 - Inclusion of Microsoft Software Products;
 - and Attachment 3 - Terms Applicable to Specific Categories of Products on Office Store; and
- the provisions in any documents or online resources referenced in other parts of this Agreement, including Documentation.

TERMS AND CONDITIONS

1. **PUBLISHER ACCOUNT.** To submit Products to the Stores, you must open a Publisher Account through the Partner Center and provide all information required by Microsoft to approve you as a Publisher. You agree that Microsoft may display in the Stores the contact information (including email address) that you provide for Customer support and transactional purposes. You are responsible for all activity that takes place with your Publisher Account. If you fail to keep your Publisher Account in good standing (as determined by Microsoft) Microsoft may revoke your Publisher Account, remove your Products from the Stores, delete Product ratings and reviews, retain associated fees (if any), and pursue any other remedies available to Microsoft.
2. **SUBMISSION, CERTIFICATION, AND DISTRIBUTION OF PRODUCTS.**

- (a) **Submission.** You must submit to Microsoft each Product that you wish to make available through the Stores, including any Product Assets and updates. You are solely responsible and liable for the Product and Product Assets, including all delivery and support. Microsoft may retain copies of the Product, Product Assets, and any other materials you submit. Microsoft will not return them, so you must maintain your own backup copies.
- (b) **Updates to Product.** You may submit updates to Products for Certification and distribution through the Stores. Those updates are subject to all of the requirements of this Agreement. You understand that Customers may elect to receive updates automatically. You may not add any new functionality to your Product which requires written consent from the Customer without first providing notice and obtaining any consents as required by applicable law.
- (c) **Certification.** Each Product (including any updates) is subject to Certification before such Product is made available in the Stores. Microsoft has no obligation to make available each Product that you submit or to maintain the availability of the Product, even if that Product has been certified.
- (d) **Post Publication Assurances.** Once published in a Store, Microsoft may periodically test the Product. Microsoft may also make minor changes to the Product Assets or Listing, including Product title, nature, volume, price, and terms of use to correct for error(s) or for other similar reasons.
- (e) **Content.** You are solely responsible for selecting all content that you submit or make available through your Product, including your Product Assets, and for ensuring that such content complies with the terms of this Agreement and all applicable laws and regulations. Microsoft's Certification of a Product does not constitute any representation or acknowledgment by Microsoft that the Product complies with such requirements, nor does it constitute any acceptance by Microsoft of any responsibility or liability for the Product.
- (f) **Responding to Claims.** If Microsoft receives a claim from a third party requesting that your Product be changed or removed, Microsoft may remove the Product and refer that claim to you. You must respond to the notice as soon as reasonably practicable, and comply with any other requirements included in the [Microsoft's Notice and Takedown process](#). If you discover that your Product violates this Agreement, you must immediately notify Microsoft, and work with Microsoft to repair the Product.
- (g) **Making a Claim.** If you believe another Product violates your rights, you may submit a claim to Microsoft in accordance with [Microsoft's Notice and Takedown process](#).
- (h) **Product Placement and Promotion.** Microsoft reserves the right, in its sole discretion, to make (or to designate Affiliates or third parties to make) all decisions regarding placement or promotion of Products anywhere in the Stores, except as may be otherwise agreed between you and Microsoft, including via an Addendum.
- (i) **Removal Policies.** Microsoft may remove or suspend the availability of any Product from the Stores for any reason. Reasons may include: (i) your breach of the terms of this Agreement (including Documentation); (ii) your termination of this Agreement or of the license grants associated with a Product; (iii) an assertion or claim that your Product infringes the intellectual property rights of a third party; (iv) complaint(s) about the content or quality of your Product; or (v) your actual or potential violation of any applicable federal or state advertising or pricing law, regulation, or regulatory guideline. Unless your Product is removed or disabled for breach of this Agreement, or in response to an infringement allegation (in which case Section 10(b) will apply), Microsoft will pay you the amounts owed (if any) that accrued before removal or disablement of your Product. Microsoft's termination and suspension rights are without prejudice to any other rights and remedies available to Microsoft.

- (j) **Modification or Discontinuance.** The Stores and the Partner Center are the property of Microsoft. Microsoft may, in its sole discretion, change or discontinue the Stores and the Partner Center at any time.

3. LICENSES.

- (a) **Grant of Rights to Microsoft.** You do not transfer ownership of any Product to Microsoft by submitting it for publication. By submitting a Product for publication, you either (i) for portions of the Product you own or control that are not subject to open source license obligations, directly grant to Microsoft, or (ii) for portions of the Product subject to third party ownership or control or that are subject to open source license obligations, ensure that Microsoft has, in its capacity as your agent or commissionaire, the worldwide right to: host, install, use, reproduce, publicly perform and display via any digital transmission technology, format, make available to Customers (including through multiple tiers of distribution), insert third party ad controls selected by you via Partner Center, and sign the Product (including by removing preexisting signatures), all for purposes of exercising Microsoft's rights and responsibilities under this Agreement, including conducting penetration or other testing for identification of security vulnerabilities. Microsoft may continue evaluating your Product to verify that it continues to comply with this Agreement, remains compatible with Microsoft's development and distribution platforms, and to improve Microsoft's development and distribution platforms.
- (b) **In-Store Marketing Rights.** You grant Microsoft, its agents, contractors, licensees, marketing partners, and Covered Parties the right to use, reproduce, display, publicly perform and publish your entity name, Product or portion of your Product and the Product Assets, and to modify your Product description solely to correct obvious spelling, grammatical or typographical errors, in connection with the distribution and marketing of the Product through the Stores and any other Microsoft websites, products and services related to the Stores and Products. Nothing in this Agreement precludes Microsoft from using your Product or Product Assets as permitted by law (e.g., fair use under applicable copyright law or "referential" use under trademark law).
- (c) **Removing a Product Listing.** If you wish to remove your Product, you may do so via your Publisher Account in the Partner Center. Within a reasonable period of time, Microsoft may remove the Product from the applicable Stores and cease making the affected Product available through the Store, except as permitted under Section 10(b) of this Agreement.
- (d) **Product Rankings and Ratings.** The Stores may allow Customers to comment on and rate Products. Microsoft may use those ratings and other data to determine the placement or marketing of Products in the Stores. You may not attempt to manipulate rankings, ratings or comments for your Product or any other Product. Microsoft may remove any rankings, ratings, or comments at its sole discretion and for any reason.
- (e) **License to Customer for Store Products.** You, not Microsoft, will license to Customers the rights to install and use your Product and Product Assets. You may provide a license agreement to Customers for your Product. That license agreement or other terms that govern a Customer's use of your Product, or a link to them, must be delivered to Microsoft for publication via the Product Listing. If you provide a license agreement, your agreement must provide Customers with Product download, streaming, and usage rights that are no more restrictive than the download, streaming, and usage rights set forth in the Microsoft Usage Rules applicable to your Product, currently available at <http://go.microsoft.com/fwlink/p/?LinkId=723143>.
- (f) **License to Microsoft Marks.** While your Product is Listed in a Store, Microsoft grants you a worldwide, nonexclusive, nontransferable, non-sublicensable, royalty-free, revocable license to use the Microsoft Marks in connection with advertising for your Product, solely as described in

the [Microsoft Marketing Guidelines](#) and in compliance with the General [Microsoft Trademark and Brand Guidelines](#). You will correct any misuse of Microsoft Marks upon Microsoft's reasonable notice, and will cease using Microsoft Marks if you fail to correct such misuse. Microsoft reserves all rights not expressly granted herein. Microsoft is the sole owner of the Microsoft Marks and associated goodwill, and the sole beneficiary of the goodwill associated with your use of the Microsoft Marks. You will not acquire any right, title or interest in the Microsoft Marks because of your use of the Microsoft Marks. You hereby assign and will assign in the future any rights you may acquire in the Microsoft Marks as a result of your use of the Microsoft Marks under this license, along with the associated goodwill. You will reasonably assist Microsoft at Microsoft's expense in protecting the Microsoft Marks. Microsoft will determine, in its sole discretion, whether to take legal action to enforce or defend its rights in the Microsoft Marks and will control any legal action concerning the Microsoft Marks.

4. PRODUCT REQUIREMENTS. Each Product you submit to Microsoft for publication and distribution through the Stores must meet the following requirements:

(a) General Requirements. The Product must comply with this Agreement and any other materials provided to you by Microsoft, as any of these may be revised from time to time.

(b) Local Law. Your Product and your marketing of the Product must comply with the applicable laws of each territory or country in which you elect to make the Product and Product Assets available. This includes applicable: (i) Data Protection Law, relating to collection and use of Personal Data; (ii) telecommunications laws; (iii) content ratings regulations; (iv) consumer protection and marketing laws; including laws that prohibit direct exhortations to children to buy advertised products; (v) export control laws; (vi) tax laws, regardless of the origin of your Product; (vii) medical device regulation; and (viii) financial regulation. If you are required to make any disclosures to consumers prior to sale or download of the Product, you must provide those in the Product description field (unless they are provided elsewhere in a Store's product description page). The Stores' product description pages may include your full contact information and information about in-Product purchases available in a Product. You must make such notices sufficiently prominent as is required by local law. You must disclose to Microsoft any controlled technology employed, used or supported by your Product that may impose any legal obligations or requirements on Microsoft. You must inform Microsoft of such legal obligations and requirements, and take any action if necessary for Microsoft to comply with its legal obligations. You may not use the Stores or any services or tools made available for the development of Products for, or to permit others to carry out, any illegal activity or breach of contract.

(c) Third Party Rights. Your Product and the Product Assets must not infringe or misappropriate any intellectual property or personal right of any third party. If any portion of your Product's code is used under license from a third party, you are solely responsible for compliance with those license terms and conditions. You are, at your sole cost and expense, responsible for securing, reporting, and maintaining all necessary rights, clearances and consents and paying all licensing fees (including applicable public performance license fees or other consideration associated with providing music or video (and all content embodied therein) in and through your Product or Product Assets), and for undertaking all related reporting obligations.

5. APPOINTMENT AS AGENT OR COMMISSAIRE, PRODUCT PRICING, PAYMENTS, TRANSACTIONS AND TAXES.

(a) Appointment of Microsoft.

(i) Microsoft provides the technology and services enabling the Stores (including Customer purchases of Products). Except as otherwise provided in this Section 5(a), you appoint

Microsoft as your agent or commissionaire, as applicable, for these purposes. You acknowledge that you, not Microsoft, are the distributor of Products acquired through the Stores. You also acknowledge that: (i) Microsoft will receive on your behalf amounts that a Customer pays when they acquire any of your Products through the Stores; (ii) Microsoft's services to you include the processing of purchases, returns, and chargebacks for you arising out of the purchase by Customers of your Products; and (iii) Microsoft will make payments to you in accordance with Section 5. You grant Microsoft the right to appoint any Covered Parties (solely as required to administer value-added tax (VAT) obligations and for collection and payout of applicable fees made under this Agreement) as sub-agents and also grant any Covered Party appointed by Microsoft the right to appoint other Covered Parties as sub-agents.

- (ii) For any transactions that involve a purchase of your Product by an Australian Customer (as determined by Microsoft), you understand and agree that Microsoft has assigned its right to act as your agent or commissionaire (as the case may be) solely to the extent required to allow Microsoft to manage the local tax collection requirements in Australia for such purchase, to Microsoft Regional Sales Corporation, located at 438B Alexandra Road #04-09/12 Block B, Alexandra Technopark Singapore 119968 ("MRS"), or Microsoft Pty Ltd, located at 1 Epping Road, North Ryde, New South Wales, Australia 2113 ("MPL"). You and MRS or MPL (as the case may be) agree for purposes of Section 84-60 of A New Tax System (Goods and Services Tax) Act 1999 (the "AU GST Act"): (A) Section 84-55 of the AU GST Act applies to sales of your Products made available by you through the Store as if such sales were an inbound intangible consumer supply; and (B) for the purposes of the GST law, MRS or MPL (as the case may be) is treated as the supplier of and as making the supply for consideration for which it was made.
 - (iii) For any transactions that involve a purchase of your Product by a New Zealand Customer (as determined by Microsoft), where Microsoft has assigned its right to act as your agent or commissionaire (as the case may be) solely to the extent required to allow Microsoft to manage the local tax collection requirements in New Zealand for such purchase, to Microsoft New Zealand Limited, located at Level 5, 22 Viaduct Harbour Avenue, PO Box 8070, Symonds Street, Auckland 1150, New Zealand ("MSNZ"), you understand and agree to such assignment. You and MSNZ agree: (A) for the purposes of Section 60(1AB) of the Goods and Services Tax Act 1985 ("NZ GST Act") MSNZ, and not you, are treated as making the supply of your Product to Customers located in New Zealand in the course and furtherance of a taxable activity carried on by you; and (B) for the purposes of Section 60(1B) of the NZ GST Act that the supply of your Product to New Zealand Customers is treated for the purposes of the NZ GST Act as two separate supplies, being: (i) a supply of goods and services from you to MSNZ; and (ii) a supply of goods and services from MSNZ to the Customers, treating MSNZ as if it were the principal for the purpose of the supply.
 - (iv) Microsoft acts as a reseller, rather than your agent, in making your Product(s) available in the Store in the country(ies) and to the extent listed at: <http://go.microsoft.com/fwlink/p/?LinkId=529043>, and as further described in Section 2 of Addendum B, entitled Products Made Available in Reseller Countries.
- (b) **Product Pricing.** When you submit a Product for publication, you will designate the price (if any) to be charged to Customers for use of your Product. The publishing portal may direct you to designate prices for different Product SKUs, geographies, currencies, or other aspects of your Product. Microsoft will convert the prices from the currency a Customer pays with to your elected payment currency at the exchange rate we make available to you. If you wish to set a different

price for a market from Microsoft's exchange rate price, you may change the price for that market. Microsoft may change its supported currencies or the default currencies for certain markets after providing you thirty 30 days' notice of any such changes.

- (c) **Publisher Net Revenue.** Amounts payable to you will be based on the Publisher Net Receipts minus the applicable Store Service Fee. Our standard Store Service Fee will be 20% of Publisher Net Receipts, except as specifically indicated by Microsoft, or for certain Microsoft reseller instances set forth in the Agreement or Addenda or as otherwise agreed to by the parties, and will be charged by Microsoft or its Affiliates in Microsoft's sole discretion. The total sum payable hereunder is referred to as Publisher Net Revenue. For clarity, Publisher Net Revenue only applies to Products purchased directly through the Stores and excludes licenses purchased outside of the Stores. We will include a transaction report along with payments made to you hereunder that reflects the calculation of Publisher Net Revenues and the number of purchased Products used or downloaded by Customers during the relevant payment period, as applicable.
- (d) **Payment to Publishers.** We will pay you applicable Publisher Net Revenues within each payment period, as specified at <https://docs.microsoft.com/en-us/azure/marketplace/> (or at an alternate site that we identify) (collectively, with other technical instructions and baseline requirements to Publishers we provide to assist them in creating, testing, and publishing Products in the Stores, the "**Participation Policies and Guidelines**"). If Publisher Net Revenue is less than \$250.00 USD in any given payment period, we may elect to carry forward the amount owed to subsequent payment periods until the total amount owed is at least \$250.00 USD.
- (e) **Payment Processing.** Microsoft will pay you Publisher Net Revenues in accordance with Microsoft's then-current payment policies and in the manner you indicate during the Publisher Account setup, which may include checks payable to you and sent via U.S. mail or ACH electronic payment to a financial institution that you designate. You must provide Microsoft (or our third-party payment processor) with all financial, tax, and banking information requested so that we can pay you under this Agreement. Microsoft will notify you of any changes to the required information via updates to the Documentation. Your failure to keep such information current and accurate may result in Microsoft's removal of your Product from the Stores and forfeiture of amounts owed to you under this Agreement. A Customer will be deemed to have paid in full for your Product when Microsoft receives payment from the Customer, and any failure by Microsoft to remit the amounts owing to you will not affect a Customer's rights to the Product. Microsoft is not responsible for delay or misapplication of payment because of incorrect or incomplete information supplied by you or a bank or for failure of a bank to credit your account. If you are outside of the United States of America, Microsoft may remit payment to you in the local currency of your address for payment, using Microsoft's then-current conversion rates for United States Dollars ("**USD**"). The amount you receive will depend on the rates and fees imposed by your financial institution and on any applicable tax withholding requirements, and will be inclusive of any sales, use, goods and services, value-added, or similar taxes that may be chargeable by you to Microsoft.
- (f) **Retaining Costs.** If Microsoft removes your Product from the Stores and any Customer's device(s) for breach of this Agreement or in response to an allegation of intellectual property infringement, Microsoft may deduct any costs incurred in connection with the removal of such Product from any amounts payable to you. If Microsoft terminates or suspends your Publisher Account for breach of this Agreement, Microsoft will deduct any costs incurred in connection with closing or suspending your Publisher Account from any amounts otherwise payable to you and may retain Store Service Fees, if Microsoft deems appropriate under the circumstances.
- (g) **Refund, Reconciliation, and Offset.** You are responsible for all taxes, costs and expenses for returns, and chargebacks of your Product, including the full refund and chargeback amounts paid

or credited to Customers. Refunds and chargebacks processed after you receive the payments will be debited against your account. If Microsoft is unable to collect payments from Customer, Microsoft may offset any amounts owed to Microsoft (including the refund and chargeback costs described in this paragraph) against amounts Microsoft owes you. You grant Microsoft a right to provide refunds to Customers in accordance with Microsoft's prevailing policies and applicable laws from time to time. For clarity, if Microsoft provides you payment of the Publisher Net Revenue in advance of receiving such payment from the Customer, and Customer does not pay Microsoft, Microsoft may offset any such amounts paid and request a refund of any such prepaid amounts from you.

- (h) Taxes on Payments.** You are responsible for your own taxes, including taxes unique to where you reside, that are related to payments you may receive under this Agreement. You are also responsible for paying any sales, use, goods and services, value-added or similar taxes (if any) in connection with any Store Service Fee that Microsoft collects from you. You must provide accurate information regarding your tax profile as requested by Microsoft. If you complete and submit to Microsoft a Certificate of Foreign Status, you (i) hereby represent and warrant that your services are not provided in the U.S.; or (ii) must notify Microsoft via e-mail to us_services_notify@microsoft.com that your services are performed in the U.S. If Microsoft is required to withhold any taxes on any amounts to be paid by Microsoft to you, Microsoft will deduct such taxes from the amount owed and pay them to the appropriate taxing authority and, as required and solely to the extent within Microsoft's ability, as determined in its sole discretion, to obtain an official receipt for any such taxes withheld and deliver such receipt to you. Microsoft will use reasonable efforts to minimize such taxes to the extent permissible under applicable law, and each party will reasonably cooperate with the other to obtain the lowest tax rates or elimination of such taxes pursuant to the applicable income tax treaties. If a Customer is required to withhold any taxes on the purchase of your Product, the amount to be paid by Microsoft to you will be reduced by such withheld amount, and Microsoft will not provide to you any receipt for any such withheld taxes. If you are located in Australia and wish to submit paid Products to the Stores for distribution by Microsoft (or any sub-agents appointed in accordance with Section 5(a) of this Agreement) as your agent or commissioner, you: (1) are required to be registered for Australian Goods Services Tax ("**AU GST**"), (2) must provide Microsoft with your Australian Business Number, and (3) must affirm that you are AU GST registered when setting up your Publisher Account. If you are located in New Zealand and wish to submit paid Products to the Stores for distribution by Microsoft (or any sub-agents appointed in accordance with Section 5(a) of this Agreement) as your agent or commissioner, you: (a) are required to be registered for New Zealand Goods and Services Tax ("**NZ GST**") and (b) must affirm that you are NZ GST registered when setting up your Publisher Account. If you are in a country that recognizes a sale to Microsoft as a taxable supply for VAT/GST purposes, that supply is deemed to be made to Microsoft exclusive of VAT. Microsoft makes no warranty that its collection of taxes as related to agency transactions in the countries listed in accordance with Section 5(i) discharges developer from your own tax obligations.
- (i) Taxes on Product Transactions.** Each of your and Microsoft's responsibilities for calculating, charging, collecting and remitting sales, use goods and services, value-added or similar taxes, if any, applicable to Customers' acquisitions of your Product through the Stores are available at https://docs.microsoft.com/en-us/windows/uwp/publish/tax-details-for-paid-apps?redirected_from=MSDN. Microsoft makes no warranties that Microsoft's or its Affiliates' actions will completely satisfy your obligations in these countries. You are solely responsible for determining whether you have any tax obligations in any country. You are also solely responsible for appropriately identifying the content type for, and providing accurate information to Microsoft with respect to, any content you offer or sell from within your Product. Microsoft is not be

responsible for collecting and remitting telecommunications taxes or any similar taxes in connection with Customers' acquisition of your Product. You acknowledge and agree to cooperate with Customers to facilitate the furnishing, exchange, transmittal or other provision of tax documentation, and such cooperation includes, but is not limited to, authorizing Microsoft to grant Customers the ability to contact you in order to obtain any required tax invoices.

6. WARRANTIES. You represent, warrant, and undertake to Microsoft that:

- (a) you have the power and authority to enter into this Agreement and to fully perform your obligations under this Agreement;
- (b) if you are a business or other legal entity, then the individual entering into this Agreement on your behalf represents that he or she has all necessary legal authority to bind you to this Agreement;
- (c) your Product and Product Assets, together with all advertising or other materials accessible from or that provide access to your Product and Product Assets comply with and will continue to comply with all requirements of this Agreement;
- (d) listing, distribution, and monetization of your Product in the Stores does not and will not violate any agreements to which you are a party or of which you are otherwise aware. You have obtained any and all consents, approvals or licenses (including written consents of third parties where applicable) required for you to make your Product, or Product Assets available in the Stores and for your Product to access any Internet-based or Microsoft-provided services, if any, to which the Product enables access;
- (e) Microsoft's exercise of the rights you grant under this Agreement will not obligate Microsoft or its Affiliates to pay any third party any amounts; and
- (f) the information you provide to Microsoft under or in connection with this Agreement is true, accurate, current, and complete.

7. CONFIDENTIALITY, PRIVACY, AND DATA PROTECTION.

- (a) **Confidentiality.** Information shared under this Agreement is subject to our existing Non-Disclosure Agreement ("NDA"). If no NDA exists, then during the term of this Agreement and for 5 years after, the parties will hold in strictest confidence, and will not use or disclose any Confidential Information of the other party to any third party (except to an Affiliate or contractor performing services on behalf of the recipient, and only subject to confidentiality terms as protective as this section). This section does not prohibit either party from responding to lawful requests from law enforcement authorities.

(b) Privacy

- (i) **Disclosure of Information.** Microsoft may disclose your contact information as necessary for Microsoft to administer this Agreement through its Covered Parties and other parties that help Microsoft administer this Agreement.
- (ii) **Privacy Policy.** You must maintain a privacy policy if (i) your Product accesses, collects or transmits any Personal Data to you or a third party; (ii) you elect to receive Analytics and Error Reporting Data as provided in Section 7; or (iii) otherwise required by law. You are responsible for informing Customers of your privacy policy (including by submitting that policy to us for display to Customers). Your privacy policy must (1) comply with this Agreement and applicable laws and regulations, including applicable Data Protection Law; (2) inform Customers and users of the information accessed, collected or transmitted by your Product and how that information is used, stored, secured and disclosed; and (3) describe the controls that Customers have over the use and sharing of their information, and how they may access their information. You will maintain a

prominent link to your privacy policy in a reasonable location within your Product. Covered Parties' privacy policies will not apply to a Customer's use of your Product. Before obtaining Personal Data from Customers, you must obtain their legally valid consent or have another valid legal basis to process their data. You must obtain Customer's consent in accordance with applicable laws and regulations.

- (iii) **Use of Customer Personal Data.** You may use Customer's Personal Data only to provide your Product, prevent fraud, provide support, perform statistical analysis, and as otherwise permitted in Subsection ((b)(iv)) below. You may not use Customer's Personal Data for any other purposes, unless you have obtained a valid legal consent for such purposes. Where required for Microsoft's license administration, incentive program participation, or financial settlement, you will provide the following additional information about transactions with Customers to Microsoft: Customer name and address and system where Product is being installed (i.e., Tenant ID and location).
- (iv) **Communications with Customers.** Contacting Customer using Customer information is limited to transactional purposes only. You may not contact any Customer for promotional purposes unless the Customer has provided affirmative, opt-in consent to receive such communications from you or unless otherwise instructed by Microsoft. You may not use Customer information to attempt to directly sell the same product or service to the Customer outside of the Stores. This section does not restrict you from using information that you acquire independent of this Agreement. Though, for clarity, you may not target individuals on the basis that they are Microsoft Customers, or otherwise violate the terms of the Agreement.
- (v) **Roles.** With respect to the Personal Data collected from Customers, you and Microsoft agree that both you and Microsoft are independent data controllers, and not joint controllers, as defined in the GDPR, of the Personal Data that each independently processes.

(c) **Data Protection**

- (i) **Error Reporting Data.** Microsoft may, at its discretion, provide you with crash data ("**Error Reporting Data**"). If Microsoft provides any Personal Data in the Error Reporting Data, then between you and Microsoft, that Personal Data is Microsoft Confidential Information. You agree to use Error Reporting Data solely for the purpose of testing and resolving compatibility issues, fixing and resolving "bugs" or other quality issues related to your Product, and not to disclose it for any purpose. You agree to delete such Error Reporting Data that includes Personal Data within 30 days after receipt, and to return to Microsoft or destroy that information immediately upon Microsoft's request. During such 30 days, you must store any Personal Data only on a secure server with access to such server limited to you, or if an entity, your regular employees with a business need for access. The following types of non-personally identifiable data can be retained beyond 30 days, also on a secure server with limited access: counts of error entities (e.g., buckets, events, failures), version ranges, application names, module names, exception codes, problem classes, failure offsets, extracted symbolic information including: call stacks and symbols, loaded and unloaded module lists (including names, versions, and linker generated information, timestamps, checksum, size). If you are served with a court order compelling disclosure of any Personal Data, you will oppose the order, will notify Microsoft of such order, and will provide Microsoft the opportunity to intervene before you file any response to the order. You agree to conduct an audit on at least an annual basis to verify your compliance with the terms of this section.
- (ii) **Product Analytics Data.** Microsoft may, at its discretion, provide you with in-Product telemetry ("**Product Analytics**") data. If Microsoft exposes you to any Personal Data in the Product Analytics data, then between you and Microsoft, that Personal Data is Microsoft Confidential Information.

You agree to use Product Analytics data solely for improving your Product. Further, you agree not to provide any Product Analytics data to third parties (except for a third-party service provider who is assisting you in processing and analyzing such data on your behalf and who is not permitted to use it for any other purpose or disclose it to any other party). You are not permitted to aggregate (or permit any third-party to aggregate) the Product Analytics data with any third-party data. You must not use the Product Analytics data to attempt to identify or derive information about any particular end-user or device.

(iii) Compliance with Data Protection Law. Each party will comply with the obligations imposed on it under all applicable Data Protection Law.

8. REPORTING. Microsoft will provide you the reporting capabilities we are required to provide under applicable tax laws and regulations. The reporting capabilities available to you through Partner Center will provide aggregate information relating to your Product downloads and Product transactions and Microsoft's payments to you under this Agreement.

9. DISCLAIMER, LIMITATION OF LIABILITY, AND DEFENSE OF CLAIMS.

(a) DISCLAIMER OF WARRANTY. WE PROVIDE THE STORES AND PARTNER CENTER "AS-IS," "WITH ALL FAULTS," AND "AS AVAILABLE." YOU BEAR THE RISK OF USING THE STORES AND PARTNER CENTER. MICROSOFT EXCLUDES ANY IMPLIED WARRANTIES OR CONDITIONS, INCLUDING THOSE OF PRODUCT LIABILITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, WORKMANLIKE EFFORT, AND NON-INFRINGEMENT, RELATING TO THE STORES AND PARTNER CENTER. YOU MAY HAVE CERTAIN RIGHTS UNDER YOUR LOCAL LAW. NOTHING IN THESE TERMS IS INTENDED TO AFFECT THOSE RIGHTS, IF AND SOLELY TO THE EXTENT THAT THEY ARE APPLICABLE. WITHOUT LIMITING THE FOREGOING, COVERED PARTIES EXPRESSLY DISCLAIM ANY WARRANTIES THAT ACCESS TO, OR USE OF, THE STORES OR PARTNER CENTER WILL BE UNINTERRUPTED OR ERROR FREE.

(b) LIMITATION OF LIABILITY. AS PERMITTED BY LAW, YOU CAN ONLY RECOVER FROM COVERED PARTIES DIRECT DAMAGES UP TO THE GREATER OF: (I) THE TOTAL AMOUNTS YOU RECEIVE UNDER THIS AGREEMENT DURING THE PREVIOUS TWELVE (12) MONTHS; OR (II) FIVE THOUSAND (\$5,000) USD. YOU AGREE NOT TO SEEK AND YOU WAIVE ANY RIGHT TO RECOVER ANY OTHER LOSSES OR DAMAGES, INCLUDING WITHOUT LIMITATION CONSEQUENTIAL, LOST PROFITS, SPECIAL, INDIRECT, PUNITIVE OR INCIDENTAL DAMAGES FROM ANY COVERED PARTY. THESE LIMITS AND EXCLUSIONS APPLY EVEN IF THE COVERED PARTY KNEW OR SHOULD HAVE KNOWN ABOUT THE POSSIBILITY OF THE DAMAGES.

(c) Duty to defend. You will defend, indemnify and hold harmless Covered Parties, from and against (including by paying any associated costs, losses, damages or expenses and attorneys' fees) any and all third party claims: (i) alleging that your Product infringes any proprietary or personal right of a third party; (ii) arising from your breach of this Agreement, (iii) relating to the functionality of, the use of, or the inability to use the Product, including any claims of product liability or misleading advertising; or (iv) by any tax authority based on any nonpayment or underpayment of any sales, use, goods and services, value-added or other similar tax, including any associated penalties and interest, which you are obligated to pay. The Covered Party will (1) promptly notify you of the claim; provided, however, a Covered Party's failure to notify you shall not relieve you of any liability that you may have, except to the extent that such failure materially prejudices your legal rights; and (2) at your reasonable request, provide you with reasonable assistance in defending the claim. You will: (A) reimburse the Covered Party for any reasonable out-of-pocket expenses incurred in providing that assistance, and (B) permit the Covered Party, through mutually acceptable counsel, to answer and defend such claims. You will not make any settlement or compromise of a claim, or admit or stipulate any fault or liability on a Covered Party with respect to any claim covered by this section without such Covered Party's express, prior written consent. Covered Parties who are not party to this Agreement are beneficiaries

of this Agreement solely for the purpose of enforcing the rights granted to such Covered Parties in this Section 9.

- (d) **Limitation on Claims.** As permitted by applicable law, any claim related to this Agreement or to a Store must be filed within one year of the claimant first becoming aware of the claim. If it is not filed within that time, then the claim is permanently barred. This applies to you and your successors and to Microsoft and our successors and assigns.

10. TERM AND TERMINATION.

- (a) **Termination for Convenience.** This Agreement will remain in effect until terminated. Either party may terminate this Agreement at any time, for any reason or no reason, upon 30 days' written notice.
- (b) **Effect of Termination.** Within 30 days of either party's notice of termination, Microsoft will remove all of your Products from the Stores and terminate each of your Product(s), subject to any applicable wind-down periods as specified in this Agreement. We reserve the right to remove and terminate your Products on an expedited basis if we terminate this Agreement for material breach. Terminate your Product means that Microsoft will (i) notify existing Customers that the Product has been removed and may no longer be used after a specific termination date; and (ii) cease billing Customers for any continued use of the Product after the termination date.
- (c) **Termination of Product.** In certain cases where Microsoft suspends or removes your Product pursuant to its rights under the Agreement, Microsoft may elect (in its sole discretion) to terminate the Agreement solely with respect to such Product. You agree that Microsoft will have no responsibility or liability for Customers' unauthorized use of your Product after the termination date.
- (d) **Wind-Down Period.** Except as set forth in this Section 10(d), if a Product is terminated, existing Customers will be able to continue using the Product for the longer of: (i) 90 days, or (ii) the expiration of the term of the Customer's subscription to your Product ("**Wind-Down Period**"). You must continue to provide any services that are part of your Product to each existing Customer during the Wind-Down Period. Except in cases where termination is legally required or is otherwise necessitated by compelling circumstances, such as fraud or a claim of intellectual property infringement, we will not terminate any Product prior to completion of its Wind-Down Period, and we will not terminate any non-service Product during the term of this Agreement.
- (e) **API License.** Upon terminating a Product that interoperates with a Microsoft Software Product (as defined below), Microsoft will cease connecting new Customers to APIs via that Product. However, existing Customers using the integration will continue to be able to refresh their data by making calls using such APIs after the termination of a Product unless otherwise blocked.

11. MISCELLANEOUS

- (a) **Notices.**
 - (i) All notices that you provide to Microsoft under this Agreement must be sent to the following email alias: mktlegal@microsoft.com.
 - (ii) For notices to you under this Agreement, you will identify an individual through the Partner Center to serve as the primary contact. This contact will receive all notices unless you change such contact information through Partner Center.
- (b) **Assignment.** Microsoft may freely assign or delegate all rights and obligations under this Agreement, fully or partially without notice to you. You may not assign or delegate any rights or obligations under this Agreement, including in connection with a change of control. Any purported assignment and delegation shall be ineffective.

- (c) **Sublicensing and Subcontractors.** Microsoft may sublicense its rights under this Agreement to third parties or otherwise authorize third parties to assist Microsoft in performing its obligations or exercising its rights under this Agreement. Microsoft will remain obligated under this Agreement for the performance of such third parties excepting any assumption of responsibility for the administration of any sales, use, goods and services, value-added or other similar tax.
- (d) **Affiliates.** Microsoft may perform certain of our obligations under this Agreement through one or more Microsoft Affiliates.
- (e) **URLs.** URLs listed in this Agreement also refer to successor URLs, URLs for localized content, and information or resources linked from within the websites at the specified URLs.
- (f) **Choice of Law and Venue.** This Agreement is governed by Washington state law (disregarding conflict of laws principles) and the parties consent to exclusive jurisdiction and venue in the state and federal courts in King County, Washington, USA. Neither party will claim lack of personal jurisdiction or forum non conveniens in these courts. In any action or suit related to this Agreement, the prevailing party is entitled to recover its costs, including reasonable attorneys' fees.
- (g) **Miscellaneous.** A party's failure to enforce any rights under this Agreement will not be deemed a waiver of the same right on another occasion, or of the right to enforce any other right under this Agreement. Microsoft's decision to make a Product available in the Stores will not be deemed a waiver of any rights Microsoft may have under this Agreement. Sections of this Agreement that, by their terms, require performance after the termination or expiration of this Agreement will survive. This Agreement is nonexclusive, and nothing in this Agreement restricts you or Microsoft from entering into other, similar agreements with other marketplaces or partners, or from acquiring, licensing, developing, manufacturing, or distributing similar or competing technologies. This is the entire Agreement between you and Microsoft in connection with your Products in the Stores. It supersedes any prior agreements between you and Microsoft regarding your Products in the Stores. All parts of this Agreement apply to the maximum extent permitted by relevant law. If a court holds that Microsoft can't enforce a part of this Agreement as written, Microsoft may replace those terms with similar terms to the extent enforceable under the relevant law, but the rest of this Agreement won't change. This Agreement's section titles are for reference only and have no legal effect. Neither this Agreement, nor any terms and conditions contained herein, create a partnership, joint venture, employment relationship, or franchise relationship.

12. DEFINITIONS.

- (a) "**Affiliate**" means any legal entity that owns, is owned by, or is commonly owned with a party. "**Own**" means more than 50% ownership or the right to direct the management of the entity.
- (b) "**Certification**" means Microsoft's process for testing the compliance of Products with the applicable Certification Requirements. A Product is "Certified" when (i) Microsoft (or Microsoft's designated certification provider) confirms that the Product has completed and passed the Certification Requirements; and (ii) the Product is packaged and signed with a Microsoft-issued certificate for those categories of Products in which Microsoft makes available such Microsoft-issued certificates. For clarity, the Office 365 Certification Program is an additional certification process, as set forth in Section C of Addendum C.
- (c) "**Certification Requirements**" means the technical, functional, content, and other policy requirements provided by Microsoft, including the [Commercial Marketplace certification policies](#), [Office Store validation policies](#), and the [Microsoft Store Policies](#).
- (d) "**Confidential Information**" means all non-public information that a party designates as confidential, or which under the circumstances of disclosure ought to be treated as confidential. Confidential

Information does not include information that is (i) known to a party before the disclosing party's disclosure to the receiving party; (ii) information publicly available through no fault of the receiving party; (iii) received from a third party without breach of an obligation owed to the disclosing party; or (iv) independently developed by a party without reference to or use of the disclosing party's Confidential Information.

- (e) **"Covered Parties"** means, collectively, Microsoft, Microsoft's Affiliates, authorized resale partners, and network operators that provide billing services for the Stores.
- (f) **"Customer"** means an end user who seeks or acquires a right to use or redistribute your Product via the Stores, Partner Center, indirect channel or directly from you.
- (g) **"Data Protection Law"** means any law, rule, regulation, decree, statute, or other enactment, order, mandate or resolution relating to data security, data protection and/or privacy, including but not limited to 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 the California Consumer Privacy Act ("**CCPA**"), and any implementing, derivative or related legislation, rule, regulation, and regulatory guidance, as amended, extended, repealed and replaced, or re-enacted.
- (h) **"Documentation"** means the Certification Requirements and such other Stores or Partner Center materials and information Microsoft makes available to you from time to time pursuant to this Agreement for your internal use.
- (i) **"List" (Listed or Listing)** means the creation or display in the Store of a catalog entry or description for a Product.
- (j) **"Microsoft Mark(s)"** means trademarks and services marks, logos, badges and other business identifiers described in the [Microsoft Branding Guidelines](#), including any other trademarks, service marks, logos, and badges that Microsoft identifies in writing as being available for use by you pursuant to the Agreement or Addenda.
- (k) **"Partner Center"** means website, currently available at <https://partner.microsoft.com>, or other Microsoft owned and operated interfaces, through which developers access their Publisher Account and receive communications from Microsoft relating to the Stores and can submit Products for Certification and make Products available in the Stores.
- (l) **"Personal Data"** means any information relating to an identified or identifiable natural person ("Data Subject") and any other data information that constitutes personal data or personal information under any applicable Data Protection Law. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to 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.
- (m) **"Product"** means the product submitted by you to Microsoft for evaluation, Certification, and publication or distribution through the Store, including, but not limited to, apps, games, titles, services, and any additional content sold or offered from within a product.
- (n) **"Product Assets"** means, for each Product, the name, trademarks, logos, icons, product descriptions, titles, trade dress, images, screenshots, video trailers, user generated content, and other metadata you provide to Microsoft in connection with your Product.
- (o) **"Publisher Account"** means a service account for publishing your Product through Partner Center, which includes a user name and password.

- (p) **“Publisher Net Receipts”** means the aggregate amounts collected from Customers for their use of Publisher’s Products for a specific payment period, less any applicable taxes, refunds, and chargebacks (if applicable).
- (q) **“Publisher Net Revenue”** means the sum payable by Microsoft to Publisher for Products purchased directly through the Store. Publisher Net Revenue is calculated based on the Publisher Net Receipts minus Microsoft standard Store Service Fee of 20%, unless otherwise agreed to by the parties.
- (r) **“Stores”** means any Microsoft owned or operated distribution platforms, however named, through which Products may be offered to or acquired by Customers. Unless otherwise specified, Stores include the Azure Marketplace, Microsoft AppSource, Office Store, and Microsoft Store for Business.
- (s) **“Store Service Fee”** means a fee collected by Microsoft for publishing your Product. Store Service Fee is equal to 20% of Publisher Net Receipts.

ADDENDUM A: COMMERCIAL BENEFITS PROGRAM ADDENDUM

This Commercial Benefits Program Addendum (“**Addendum**”) supplements the terms and conditions of the Agreement.

- 1. The Program.** Under the Commercial Benefits Program (“**Program**”) you may qualify to receive certain benefits (“**Program Benefits**”) from Microsoft or its third-party partners or qualify to participate in additional sub-programs.
- 2. How it Works.** You will be automatically enrolled in the Program when you make your Product available through one of our commercial Stores. Program Benefits may become available from time to time during the Program term. If you qualify for Program Benefits, you will be able to redeem access them through Partner Center.
- 3. Program Benefits; Requirements and Limitations.**
 - (a)** To qualify for many of the Program Benefits, your Product must be available to transact in our Stores.
 - (b) Program Level.**
 - (i)** Some Program Benefits will be made available only to Partners with certain development expertise. For purposes of this Agreement, development expertise will be known as “**Program Level.**”
 - (ii)** Your Program Level will be determined by Microsoft based on criteria such as your existing Product performance, type of listing in the Stores, market relevance of your existing Products, Customer feedback on your existing Products, and level of investment and success.
 - (iii)** You may need to provide Microsoft with information about existing Products that you have on other platforms in order for Microsoft to determine your Program Level. You may also need to register with a third-party service in order for Microsoft to verify this information. Microsoft is not responsible for such third-party service. Your use of the third-party service may be subject to that third party’s terms and conditions.
 - (iv)** Your Program Level may change during the Program term and will be determined by Microsoft in its sole discretion.
 - (c)** Some Program Benefits may have additional qualifying criteria, which you will need to meet to be eligible for those benefits. Such criteria will be disclosed by Microsoft when the Program Benefits are made available.
 - (d)** Some Program Benefits may be subject to additional terms. By using such Program Benefits, you agree to be bound by these additional terms.
 - (e)** Some Program Benefits may be provided by third parties. Microsoft is not responsible for third party websites, services or Program Benefits. Your use of such Program Benefits may be subject to that third party’s terms and conditions.
 - (f)** Program Benefits may be limited in number, change without notice, and be available for a limited time only or while supplies last. Some Program Benefits may be available in limited geographies and limited languages. Microsoft may substitute Program Benefits with a benefit of equal or greater value in the event supplies of a Program Benefit are exhausted.
- 4. Right to cancel, terminate, modify or suspend.** Microsoft may, in its sole discretion, cancel, terminate, modify or suspend the Program, Program terms or any Program Benefits, in whole or in part. A Program Benefit may be withheld, reduced, or terminated or you may be removed from the Program, at any time and in the sole discretion of Microsoft. Microsoft may exercise its rights under

this section for any reason, including, without limitation if you breach any of your obligations under this Addendum A or if you are suspected of committing fraud under this Program. In the event of such an occurrence Microsoft may post a notice on the Program page.

ADDENDUM B: TERMS AND CONDITIONS APPLICABLE TO DISTRIBUTION OF PRODUCTS THROUGH INDIRECT CHANNELS AND IN RESELLER COUNTRIES

1. MICROSOFT RESELLERS.

- (a) Indirect Channels.** If Customers purchase your Product in indirect channels, your sale of the Products will be to the applicable Microsoft reseller, not directly to the Customers. We will bill the Microsoft resellers, as your agents or commissionaires, for their Customers' use of your Products according to the prices you have established for the Products. Such Microsoft resellers will be responsible for setting the prices at which they resell your Products to their Customers (or to other Microsoft resellers) and for collecting such amounts from their Customers (or Microsoft resellers). The prices at which Microsoft resellers resell your Products will not affect the fees that are charged to Microsoft resellers for their Customers' use of your Products. Such Microsoft resellers will not be entitled to collect any Marketplace Service Fee in connection with their resale of your Products. These Microsoft Resellers, however, will be entitled to retain any markup of your Products as compensation for making your Products available in indirect channels.
- (b) Consent to Resell.** By publishing a Product in the Store and indicating that you wish to make your Product available to the indirect channel for resale through Partner Center, you consent to having your Product resold as set forth in this Addendum B in any associated indirect channels at resale prices established by such Microsoft resellers in their discretion. If you do not wish to allow a Product to be resold by Microsoft in a particular country, you may make your Product unavailable for purchase in such country. Removal of a Product in any country will apply to both indirect channel sales and sales directly to Customers in that country.
- (c) Marketplace Service Fees.** We will continue to collect a Store Service Fee of 20% of Publisher Net Receipts received from Microsoft resellers.
- (d) Licensing of Products.** Notwithstanding the lack of a direct sale between you and Customers in indirect channels, your terms of use and privacy policy shall be solely between you and such Customers, and all terms applicable to Customers in this Agreement shall pertain to Customers in indirect channels.

2. PRODUCTS MADE AVAILABLE IN RESELLER COUNTRIES

- (a)** If you make your Product available in one of the "Reseller Countries/Regions" as listed at <http://go.microsoft.com/fwlink/p/?LinkId=529043>, then Microsoft shall act as a reseller, rather than your agent, in making your Product(s) available in the Store in that listed country or region only and you agree to the following modified and additional terms and conditions solely in connection with the offering and distribution of your Product(s) in such country(ies). Except as expressly provided in this Section, all of the terms and conditions in this Agreement apply to the Product in such country(ies).
- (b) License Grants.** Notwithstanding the Agreement, for the country(ies) referenced in this Section in which you choose to make your Product available, you grant to Microsoft a license (which you agree may be sublicensed by Microsoft to its resale partners, in Microsoft's sole discretion, and by such resale partners to other resale partners) to make Product available to Customers and to provide the Product through the Store. You do not transfer ownership of any Product to Microsoft by submitting it, but you do grant to Microsoft a license (which you agree may be sublicensed by Microsoft to its resale partners, in Microsoft's sole discretion, and by such resale partners to other resale partners), for the country(ies) referenced at the URL listed herein, in which you choose to make your Products available, (a) to host, install, use, reproduce, publicly perform and display via any digital transmission technology, format, make available to Customers (including through multiple tiers of distribution),

insert third party ad controls (selected by you via the Partner Center), and sign your Product (including by removing preexisting signatures) all for purposes of exercising Microsoft's rights and responsibilities under this Agreement, including performing Certification of your Product and conducting penetration or other testing for identification of security vulnerabilities; and (b) directly or indirectly through authorized partners (including pursuant to a sublicense agreement), to host, reproduce, market, promote, offer, and provide your Product to Customers and to market, promote, offer, and make available any content you offer or sell within your Product(s) to Customers. You will continue to license your Product and to license and deliver any content you offer or sell from within your Product to Customers as provided in this Agreement. Microsoft may also evaluate your Product periodically after it becomes available in the Store, to verify that it continues to comply with this Agreement, remains compatible with Microsoft's development and distribution platforms, and to improve Microsoft's development and distribution platforms.

- (c) **Application Pricing; Taxes on Applications.** Notwithstanding Section 5 of the Agreement, when you submit a Product and choose to make the Product available as provided in this Section 2, you may suggest the price (if any) to be charged to Customers (consistent with the price points specified by Microsoft in the Documentation) in that country, and Microsoft may charge that price (or another price that Microsoft or a resale partner chooses in its discretion) in making your Product available in the Store in that country.
- (d) **Payment Terms and Fees.** Proceeds payable to you in connection with the sale of your Product in the country(ies) listed in this Section 2 will be calculated and paid to you as provided in the Agreement, but Proceeds will be provided to you as a royalty payment in exchange for the license granted in this Section.

ADDENDUM C: TERMS AND CONDITIONS APPLICABLE TO COMMERCIAL MARKETPLACE, OFFICE STORE, AND OFFICE 365 CERTIFICATION PROGRAM;

SECTION A. COMMERCIAL MARKETPLACE TERMS (formally called the Azure Marketplace Addendum)

This Section A governs your use of the Azure Marketplace and Microsoft AppSource (collectively, the “**Marketplace**”). To the extent this Section A contains additional or different terms than those included in the body of the Agreement, this Section A will control.

1. Licensing of Product and Deployment

- (a) Licensing of Products.** You are responsible for licensing or otherwise granting rights to your Products to Customers. If you allow your Product to be available in the Marketplace, you may provide your own end user license agreement (subject to the requirements herein, including any privacy policy required under the Agreement), or you may elect to govern Customers’ use of your Product with the Microsoft Standard Agreement (available [here](#)). If you do not provide your own license agreement (or, if you elect to use the Standard Agreement), then the Standard Agreement terms will apply between you and Customers. Any licenses and grants are between you and Customers and will not create any obligations or responsibilities of any kind for Microsoft. Microsoft may also enable Customers to purchase and access Products through Marketplace APIs. You acknowledge that Microsoft grants no right or license to your Products through the operation of the Marketplace or through enabling you to provide Products through the Marketplace.
- (b) Deployment.** You grant us the right and license to deploy your Products within our systems for staging, onboarding, testing, troubleshooting, support, demonstration, or other similar purposes. You agree our use of your Products in this manner: (i) does not create a customer relationship between you and us; (ii) does not constitute our acceptance of your terms of use or privacy policy or other agreement; and (iii) will not incur fees.
- (c) Support.** You are responsible for supporting your Products. You will ensure that any support options described in your listing information remain available to Customers for as long as the relevant Product is available in the Marketplace or is otherwise provided to Customers. For each Product that you publish in a Marketplace, you must make support available to Customers, either as included within the price associated with the Product, if any, or as a support offering that may be separately purchased either through or outside of the Marketplace. You must provide commercially reasonable support to Customers for inquiries related to deployment of Product via the Marketplace. You must make technical and billing support contacts available to Microsoft via e-mail and telephone for notification in the event that there are any billing issues that require your response or technical problems with any of your Products. If we contact you regarding a problem that requires your support, you must respond promptly and provide a resolution within a commercially reasonable period of time. You agree to work with us to identify or isolate root cause issues and fixes in necessary scenarios. Our sole obligation with respect to customer service for any Products is to make your customer service contact information reasonably available to Customers. You will ensure that the contact information you provide in the publishing portal and in the listing information associated with each Product remains accurate and current.
- (d) Commercial Benefit Programs.** When you make a Product available through our Marketplace you are automatically enrolled in the Program facilitated through the Commercial Benefits Program Addendum as described in Addendum A.

SECTION B. OFFICE STORE TERMS

This Section B governs your use of the Office Store. To the extent this Section B contains additional or different terms than those included in the body of the Agreement, this Section B will control.

1. PRE-RELEASE VERSION. LICENSING OF PRODUCT.

- (a) Pre-Release Version.** The Office Store may be made available to Customers using a “beta” or pre-release version. If the Office Store is available to Customers using a pre-release version, which Microsoft may change for the final, commercial version, the Office Store may not work the way a final version of the Office Store would work. We also may not release a commercial version of a given pre-release version. If you decide to make use of any of the rights under this Section B, you assume all responsibility for and risk of any and all damages that may result from or in connection with the use or compatibility of the Office Store with pre-release versions of Office 2013, including, without limitation, the unavailability or interruption of operations or the loss of any data or other content.
- (b) Licensing of Product.** You must provide a license agreement to the Customer with your Product. If you did not provide a license agreement with your Product, or your license agreement does not comply with the requirements in the next sentence, then the Standard Application License Terms, available [here](#), will apply between you and your Customers. Your license must:
- (i)** let the Customer download and run your Product on up to five (5) devices associated with that Customer’s Microsoft Account, without any additional fees,
 - (ii)** include “disclaimer of warranty” and “limitation on and exclusion of remedies and damages” sections that are at least as protective of distributors as the terms in the Standard Application License Terms,
 - (iii)** disclaim any support services from Microsoft,
 - (iv)** not conflict, in any way, with the Standard Application License Terms, and
 - (v)** comply with all applicable laws and regulations.
- (c)** If you choose to participate in the Microsoft 365 Certification Program, you can do so in accordance with the terms of the Microsoft 365 Certification Program in Section C below.

SECTION C. MICROSOFT 365 CERTIFICATION PROGRAM

This Section C governs your participation in the Microsoft 365 Certification Program. This Section C applies only if you choose to participate in the Microsoft 365 Certification Program. By submitting your Product for inclusion in the Microsoft 365 Certification Program, you agree to be bound by this Section C and the Agreement. To the extent this Section C contains additional or different terms than those included in the body of the Agreement, this Section C will control.

1. Definitions

Capitalized terms not otherwise defined herein have the same meanings provided in the Agreement. The term “Certification” as used in this Section C refers to certification under the Microsoft 365 Certification Program, and does NOT have the same meaning as defined in the Agreement.

- (a) **“Microsoft 365 Certified Product”** means a Product that meets the applicable Microsoft 365 Certification Criteria, as confirmed through the evaluation procedures described in Section 2, and that is identified by product name and version and other identifying factors required in the Submission Forms.
- (b) **“Microsoft 365 Certification Criteria”** or **“Criteria”** means the security, privacy, compliance controls and other requirements provided by Microsoft and applicable to your Product as of the date you submit the Product for Certification to Microsoft. The Microsoft 365 Certification Criteria are Confidential Information of Microsoft.
- (c) **“Microsoft Mark”** means the Microsoft 365 Certified trademark, including any stylized badges, and or designations Microsoft provides under the Microsoft 365 Certification Program.
- (d) **“Submission Forms”** means the forms that Microsoft provides for requesting self-attestation and Certification of Products.
- (e) **“Supporting Evidence”** means documents you provide as evidence that your Product meets the Criteria, including but not limited to audit reports, standard operating procedures, incident response plans, penetration test reports, data protection impact assessments, data flow diagrams, and system design or architecture diagrams. With the exception of documents you have otherwise made public, we will treat Supporting Evidence as your Confidential Information.

2. Submission and Evaluation of Products

- (a) **Submission.** For each Product you wish to enroll in the Microsoft 365 Certification Program you must submit the required Submission Forms and provide all information requested by Microsoft in the Submission Forms.
- (b) **Evaluation.** We or our third-party evaluation agents will verify whether your Product meets the required Criteria based on the Supporting Evidence provided by you in the Submission Forms. We will make commercially reasonable efforts to complete the evaluation within a reasonable time.
- (c) **Request for Information.** We or our third-party evaluation agents may, at our sole discretion, request additional information or documentation reasonably necessary to complete the evaluation. Failure to respond to requests for additional information may result in a denial of Certification and enrollment in the Microsoft 365 Certification Program.
- (d) **Evaluation Results.** If the Product is determined to meet the Criteria, Microsoft or our third-party evaluation agent will notify you in writing that the Product is certified (**“Notice of Certification”**). In the event that the Product fails the evaluation, Microsoft or our third-party evaluation agent will report the reason for the failure. Reports provided under this Section 1(c) may be sent by email.

- (e) **Re-Submission.** If a Product fails evaluation two (2) times (initial evaluation plus one additional re-evaluation of the corrected Product) Microsoft may reject any subsequent submissions for further evaluation of that same Product.
- (f) **Material Changes.** In the event of (a) a modification to the source code or functionality of the Product, or your internal processes related to the Product, or any other event that renders the information provided in your Submission Forms materially untrue, or (b) an update to the Criteria or other aspects of this Section C that, in Microsoft’s sole discretion, require that existing certified Products be re-evaluated against the updated Criteria, you must promptly, and no later than 30 days after the event, submit a request for re-evaluation, or discontinue the use of the Microsoft Mark in any manner that may imply that the Product continues to meet the Microsoft 365 Certification Criteria.
- (g) **Certification Term.** Upon receipt of the Notice of Certification, your Product will be considered a Microsoft 365 Certified Product for the Certification Term. The “Certification Term” expires at the sooner of:
 - (i) One (1) year from the date of the Notice of Certification;
 - (ii) Within 30 days after a material change as provided in Section 2(f), provided however, that if you have submitted a request for re-evaluation within 30 days of the event of material change, the Certification Term will be automatically extended for up to 30 additional days while Microsoft completes the re-evaluation based on the revised information for the Product. If, at the end of the additional 30-day re-evaluation period, you have not received a renewed Notice of Certification, the Certification Term will immediately cease.
 - (iii) Termination of the Microsoft 365 Certification Program.

3. Microsoft Mark

- (a) **Limited License.** Subject to all the terms of this Section C, we grant you a limited, non-exclusive, non-transferable, worldwide license to use the Microsoft Mark solely (a) in connection with your Microsoft 365 Certified Product and (b) in compliance with Microsoft’s Branding Guidelines. We reserve all rights not expressly granted herein.
- (b) **Trademark Footnote.** Where you include a trademark footnote to give notice of your own trademarks or third-party trademarks in relation to a Microsoft 365 Certified Product, you must add the following wording (or wording having equivalent legal effect) to the trademark footnote, when using a Microsoft Mark: *“All other trademarks are the property of their respective owners.”*

4. Term and Termination

- (a) **Term.** For each individual Microsoft 365 Certified Product, this Section C shall extend for the Certification Term unless you (a) cease to offer the Microsoft 365 Certified Product for sale or distribution, or (b) you are or your Microsoft 365 Certified Product is in material breach of this Section C.
- (b) **Cessation of Microsoft Marks Use.** Upon expiration or termination of this Section C for any reason whatsoever, you will immediately cease all use of the Microsoft Mark. However, unless this Section C is terminated for your breach, you may distribute then-existing advertising materials containing Microsoft Mark for a period of one hundred twenty (120) days.

5. Modification to the Microsoft 365 Certification Program

- (a) **New Certifications.** Any time you submit a Product for evaluation pursuant to Section 1(a)), 1(d)), or 1(e)), you agree to be bound by the then-current terms and conditions. If you do not agree with such

an update to this Section C, you have no right to (and must not) submit a Product for evaluation and certification.

(b) Impact on Microsoft 365 Certified Product.

- (i)** In the event we update this Section C, including without limitation the Criteria, after you have already received a Notice of Certification, the existing Notice of Certification will remain valid for the then-existing remainder of the Certification Term except as stated in Section 5(b)(ii).
- (ii)** If we update the Criteria or other aspects of the Certification that require re-evaluation of your Product, we will provide you with a written notice (email shall suffice), and you will be required to resubmit your Product for re-evaluation, or terminate the use of the Microsoft Marks, in accordance with Section 2(f).

ATTACHMENT 1

TERMS APPLICABLE TO SPECIFIC CATEGORIES OF PRODUCTS ON COMMERCIAL MARKETPLACE

1. VIRTUAL MACHINE IMAGES.

- (a) **Base Images.** In addition to all other relevant third party approvals, if your Product contains virtual machine images (“**Images**”) derived from Microsoft or other party (such as Image, a “**Base Image**”) (such as Product, an “**Image Product**”), you are responsible for obtaining any necessary permissions from the owner of the Base Image prior to publishing your Image Product.
- (b) **User Price and Metering.**
- (i) **New Virtual Machine Sizes.** For Image Products, you will be directed to designate prices based on virtual machine sizes available in Azure at the time of your publication request. Following publication of your Image Product, in the event that we plan to offer a new virtual machine size (based on the number of cores), we will notify you and provide you with at least 30 days to designate prices for the new virtual machine size. Failure to designate pricing within such time will constitute your designation of prices for the new virtual machine size equal to the rate proportional to the difference in the number of cores between the new virtual machine size compared to the existing virtual machine size(s) then in effect for your Image Product.
- (ii) **Metering.** We will meter Customers’ use of virtual machines deployed from your Image in Azure by inserting, or enabling you to insert, one or more Billing Tags into your Image. A “**Billing Tag**” is a digital tag inserted within a designated byte offset in an Image that enables Azure to meter usage of virtual machines deployed from the Image. You may not insert Billing Tags into any Image or remove Billing Tags from any Base Image except as authorized or instructed by us. You may not insert Billing Tags that you receive from us into Images that you make available through other channels outside of the Marketplace.
- (iii) **Limitations.** We are not able to meter, and are not responsible for collecting fees associated with, Customers’ use of Images that were not properly embedded with, or that otherwise cease to contain, appropriate Billing Tags. In addition, the Marketplace does not currently support the ability to charge fees in connection with Customers’ use of data disks associated with Image Products. We are not able to meter, and are not responsible for collecting fees associated with, Customers’ use of Images outside of Azure. Should you wish to restrict Customers’ use of your Images outside of Azure, you are responsible for including appropriate restrictions in your terms of use.

2. VIRTUAL MACHINE EXTENSIONS.

Any software or other data installed by your Virtual Machine Extension, even if retrieved from an external location, is considered a Product for purposes of this Agreement. You will be responsible, and must provide support to Customers, for any Virtual Machine Extension handlers associated with your Virtual Machine Extension Products.

3. MARKETPLACE METERING SERVICES (formerly known as “Services”).

If you publish a Product that requires usage-based billing fees, you can use the Marketplace Metering Service (as defined below). The Marketplace Metering Service allows you to charge Customers based on events captured within your Product (the “**Marketplace Metering Service**”). We expect you to transmit usage based billing data to Microsoft hourly via API, and we will use commercially reasonable efforts to notify you if we have not received usage based billing data for 72 hours. We reserve the right to mark the usage event as expired if we do not receive usage based billing data within 24 hours.

If you choose to use the Marketplace Metering Service you will be responsible to: (i) notify Customers that you will collect, generate, and deliver to Microsoft all data related to Customers' usage of the Product necessary to calculate the applicable usage fees; (ii) report such usage accurately to Microsoft; (iii) notify Customers and Microsoft of any erroneous usage information reported to Microsoft; and (iv) resolve any Customer inquiries with respect to usage disputes within 3 business days, and notify Microsoft if a refund to the Customer is necessary. We reserve the right not to collect fees for any usage information provided more than 24 hours after the close of any billing cycle or any usage based billing that appears to be erroneous.

We reserve the right to: (i) audit your records to verify the reported usage in connection with the Marketplace Metering Service and your compliance with the Agreement; and (ii) suspend your use of the Marketplace Metering Service if you repeatedly submit erroneous usage information to us or fail to resolve Customer inquiries within 3 business days.

4. WEB APPLICATIONS.

We may enable Customers to download and use web applications in their on-premises or hybrid cloud environments. You agree that Customers' acceptance of your terms of use for a web application Product will entitle them to use such web application both in Azure and on their premises.

5. ARM TEMPLATES.

If you publish an Azure Resource Manager template ("**ARM Template**") that references another publisher's Product (a "**Third-Party Product**"), you may not represent yourself as the publisher of the Third-Party Product. You also acknowledge and agree that other publishers may reference your Products in their ARM Templates in a manner consistent with this Agreement. Notwithstanding any inclusion of your Product in another publisher's ARM Template, you will remain the publisher of your Product for all Customer deployments of the ARM Template, your terms of use and privacy policy will continue to govern your relationship with such Customers, and such other publisher will not be entitled to any of the Publisher Net Receipts attributable to Customers' use of your Product.

6. PRODUCTS FOR USE IN CONSUMERS' ON-PREMISES ENVIRONMENT

If you choose to make a Product available for use in Customer's on-premises environments (e.g., on Azure Stack), we may enable Customers to download and use such Products in their on-premises environments. You agree that Customers' acceptance of your terms of use for such Products will entitle them to use such Product in their on-premises environments. You acknowledge that you, not Microsoft, are the distributor of such Product.

ATTACHMENT 2

INCLUSION OF MICROSOFT SOFTWARE PRODUCTS

In some cases, Microsoft provides publishers with the ability to publish Image Products that include one or more of the Microsoft software products set forth in the Marketplace Participation Policies and Guidelines (“**Microsoft Software Products**”). If we approve your request to publish an Image Product that includes one or more Microsoft Software Products, we grant you the right to include copies of the Microsoft Software Products in your Image subject to the following terms.

1. IMAGE CREATION.

- (a) **Base Image.** You must create your Image using a Microsoft-published Base Image from the Marketplace that consists of the same Microsoft Software Products that you have been authorized to include in your Image Product. You may not publish an Image that includes copies of Microsoft Software Products that you obtained elsewhere, whether from Microsoft or from a Microsoft reseller. You may not download a Base Image and run copies of any Microsoft Software Products therein outside of Azure for the purpose of creating your Image unless you have valid pre-existing licenses that permit such on-premises use.
- (b) **No Modification.** You must include complete copies of the Microsoft Software Products in your Image. You may configure the Microsoft Software Products solely as necessary to work with your Products. You may not modify the Microsoft Software Products in any other way, including reverse engineering, decompiling, or disassembling the Microsoft Software Products, or tampering with any license or activation features in the Microsoft Software Products. You must maintain and not alter, obscure, or remove any copyright or other protective notices, identification, branding, or legends or license terms contained in the Microsoft Software Products. Except as expressly provided, this Agreement does not grant you any right, title, or interest in or to any of Microsoft Marks.
- (c) **Excluded Licenses.** You may not take any action that would cause any Microsoft Software Product, or any other Microsoft product, service, or documentation to be governed, in whole or in part, by an Excluded License. “**Excluded License**” means any license that requires, as a condition of the use, modification, or distribution of software subject to such license, that such software or other software combined or distributed with such software be: (i) disclosed or distributed in source code form; (ii) licensed for the purpose of making derivative works; or (iii) redistributed at no charge. Without limiting the generality of the foregoing, any version of the GNU General Public License (“**GPL**”), Lesser/Library GPL, or Affero GPL will be considered an Excluded License.

2. DISTRIBUTION AND LICENSING.

- (a) **Appointment.** You may make the Microsoft Software Products included within your approved Image available to Customers through the Marketplace on our behalf. You may not make the Microsoft Software Products available through any other channels.
- (b) **Licensing of Microsoft Software Products.** Microsoft alone is the licensor of any Microsoft Software Products included within your Image, and any use by Customers of such Microsoft Software Products is governed by Microsoft’s license terms. Nothing in this Agreement grants you the right to license or sublicense any Microsoft Software Products to Customers or any other third parties. The terms of use associated with your Image must make clear that: (i) the rights you grant to Customers extend only to your Products within the Image and not to any Microsoft Software Products within the Image; (ii) Microsoft is the licensor of any Microsoft Software Products within the Image; and (iii) the Customer’s use of any Microsoft Software Products within the Image will be governed by Microsoft’s license terms.

3. NOTICE TO RECALL.

We may issue a notice of recall of a Microsoft Software Product at any time in our sole discretion for reasons such as, but not limited to, a serious security vulnerability in the Microsoft Software Product. If you receive a notice of recall, you agree to remove any Image Products that include the impacted Microsoft Software Product from the Marketplace within 10 business days. Following the notice of recall, we may, but will have no obligation to, make a replacement Microsoft Software Product available to you in place of the recalled Microsoft Software Product.

4. TERMINATION.

Upon termination of this Agreement or removal of your Image Product from the Marketplace, your rights under this Attachment 2 will automatically terminate and you must destroy all copies of Microsoft Software Products obtained under this Attachment 2.

5. ADDITIONAL DISCLAIMER OF WARRANTIES.

ALL MICROSOFT SOFTWARE PRODUCTS ARE PROVIDED "AS IS" AND WITH ALL FAULTS AND WITHOUT WARRANTY OF ANY KIND. YOU ASSUME ALL RISK AS TO YOUR USE OF THE MICROSOFT SOFTWARE PRODUCTS, INTEROPERABILITY BETWEEN YOUR OFFERING CONTENTS AND THE MICROSOFT SOFTWARE PRODUCTS, YOUR OFFERING OF IMAGES THAT INCLUDE MICROSOFT SOFTWARE PRODUCTS, AND CUSTOMERS' USE OF YOUR IMAGES THAT INCLUDE MICROSOFT SOFTWARE PRODUCTS.

6. MISCELLANEOUS.

- (a) Support.** Microsoft has no obligation under this Agreement to provide technical support to you regarding any Microsoft Software Products or creation of Images that include Microsoft Software Products or to Customers regarding use of any Microsoft Software Products within your Product.
- (b) Export Restrictions.** You acknowledge that the Microsoft Software Products are of U.S. origin and subject to U.S. export jurisdiction. You agree to comply with all applicable international and national laws that apply to the Microsoft Software Products, including the U.S. Export Administration Regulations, as well as end-user, end-use, and destination restrictions issued by U.S. and other governments. For additional information, see <http://www.microsoft.com/exporting>.

ATTACHMENT 3

TERMS APPLICABLE TO SPECIFIC CATEGORIES OF PRODUCTS IN OFFICE STORE

Microsoft wishes to make certain Office Store Products (also known as “**add-ins**”) available to users of Office on non-Microsoft platforms such as Apple's App Store, Google Play Store, and other App Store and operating systems (collectively “**Additional App Store**”). This Attachment 3 grants Microsoft the rights necessary to make your Product available on these operating systems as well as others.

Terms and Conditions

1. The Agreement grants Microsoft the right to sublicense rights required for publication to our Affiliates, distributors, and agents. This Attachment 3 clarifies that Additional App Store may be distributors of Microsoft Office and Microsoft may sublicense any and all required rights in order to distribute your Product in Additional App Store. To the extent that Additional App Store require rights beyond those you granted to Microsoft under Section B, you agree to license those rights to Microsoft with a right to sublicense to Additional App Store.
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3. Microsoft may remove your Product at any time and with no notice if the Product does not comply with an Additional App Store's terms and conditions. This may include immediately disabling the Product for existing users.
4. Your Product must remain free and must not contain in-App purchases or present a trial version designed to upsell users to a paid version.
5. Because your Product will be free, you will not receive any proceeds from Additional App Store.
6. Microsoft may, at its own discretion, feature your Product in marketing material including in descriptions in the Additional App Store. Microsoft has no obligation to market or otherwise advertise your Product.
7. You must register with any Additional App Store you wish to publish on as a developer on that store and furnish Microsoft with your developer ID or equivalent for that App Store. Microsoft may use your name, developer ID, or other necessary information when communicating with the Additional App Store owner as part of publishing and administering your Product.
8. Your Product must comply with any Additional App Store terms and conditions required to develop apps in that App Store.