

Microsoft Publisher Agreement

Version: 1.1

Effective date: June 1st, 2019

Thank you for your interest in publishing content with Microsoft. This Publisher Agreement (this "Agreement") includes the Exhibits, Addenda and all documents expressly referenced herein and describes the relationship between you and Microsoft Corporation ("Microsoft," "we," "us" or "our") and governs your use of Microsoft's distribution platforms to make content available to Customers and the Partner Center.

Addenda may be added over time. Those Addenda describe the specific terms and conditions pursuant to which you may make content available via one or more specific Microsoft distribution platforms. In certain cases, an Addendum may contain additional or different terms than those included in this Agreement and in such case the Addendum will control.

By submitting content for publication, you represent and warrant to us that you have the authority to accept this Agreement, and you also agree to be bound by its terms.

Terms and Conditions

1. **DEFINITIONS.** In this Agreement, the following definitions apply:
 - a. "**Account Fee**" means the fee you pay to Microsoft to establish and access your Partner Center Account.
 - b. "**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.
 - c. "**Application**" or "**App**" means an application or extension that can be submitted to Partner Center.
 - d. "**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 for use in connection with the submission and distribution of your Product in connection with the Store.
 - e. "**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 Certification and (ii) the Product is packaged and signed with a Microsoft-issued certificate.

- f. "**Certification Requirements**" means the technical, functional, content, and other policy requirements provided by Microsoft in the relevant Addenda.
- g. "**Indirect Channel**" means a sales channel in which Microsoft authorizes Microsoft Resellers to resell access to Marketplace Products. Terms applicable to the availability of your Product in Indirect Channels are set forth in Commercial Marketplace Addendum, under Attachment 1.
- h. "**Covered Parties**" means, collectively, Microsoft, Microsoft's Affiliates, authorized resale partners pursuant to Exhibit B, and network operators that provide billing services for the Store.
- i. "**Customer**" means an End User Customer or a Channel Customer, as the case may be.
- j. "**End User Customer**" means an end user who acquires a license to use your Product, either through the Store or from a Channel Customer.
- k. "**Channel Customer**" means an entity or individual that acquires a license to use or redistribute your Product, either through the Partner Center or from another Channel Customer.
- l. "**Partner Center**" means a website, currently available at <http://partner.microsoft.com>, or other Microsoft owned and operated interface, including the Cloud Publisher Portal, through which Partners access information and receive communications from Microsoft relating to the publication of Products on a Microsoft platform.
- m. "**Documentation**" means the Partner Center and the Certification Requirements, Addenda, and such other Store materials and information Microsoft makes available to Partners from time to time.
- n. "**Microsoft Account**" means the unique user name and password that identifies a customer of Microsoft services.
- o. "**Microsoft Mark**" means the Store logo, icon, and additional marks described in the relevant Addenda.
- p. "**NDA**" means the Microsoft Corporation nondisclosure agreement between you and Microsoft, if any.
- q. "**Organization**" means a third-party company, educational institution, governmental agency, or other organization.

r. "**Customer Data**" means all data, including all text, sound, video, or image files, and software that are provided to you by, or on behalf of, Customers through their use of your Products, and may include Personal Information.

s. "**Customer Information**" means any information that you collect through the Store or that we provide to you, in our discretion, about Customers who have purchased or accessed your Products, including contact information or, with respect to your Products, purchase history or usage information.

t. "**Personal Information**" means any information relating to an identified or identifiable natural person; 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.

u. "**Product**" means content in whatever form submitted, including, but not limited to, apps, games, titles, services, and any additional content sold or offered from within a Product.

v. "**Promotional Code**" means a Microsoft-generated code that is redeemable by customers for Products in the Store.

w. "**Free Trial Product**" means a Product that you permit Customers to use for free during a limited trial period.

x. "**Standard Application License Terms**" or "**SALT**" means the End User Customer license agreement made available by Microsoft at <https://go.microsoft.com/fwlink/?linkid=870772> (or another location specified by Microsoft).

y. "**Store**" or "**Marketplace**" means any Microsoft owned or operated distribution platform, however named, through which Products may be offered to or acquired by Customers. Unless otherwise specified, Store includes the Microsoft Store, the Windows Store, the Xbox Store, the Azure Marketplace, Microsoft Store for Business, and Microsoft Store for Education.

z. "**Partner Center Account**" means a service account for the Partner Center, which includes a user name and password.

aa. "**USD**" means United States Dollars.

bb. "**User Generated Content**" means content in any format, including files, photos, documents, audio, digital works, videos, music, artwork, 3D objects, game

modifications, graphics, text, or voice content, which originates from end users or Customers and is published through or as part of the Product.

cc. "Microsoft Azure" or "**Azure**" means Microsoft's Azure-branded cloud services platform.

dd. "**Microsoft Reseller**" means a Microsoft partner that is authorized to resell access to a Marketplace and/or Marketplace Products in one or more Indirect Channels.

2. **PARTNER CENTER ACCOUNT.** To submit Products to the Store, you must open a Partner Center Account through the Partner Center. Microsoft may verify information you submit when you set up your Partner Center Account. You may be required to pay an Account Fee to submit your Product for Certification. Microsoft may use the contact information you provide with your Partner Center Account to send you newsletters and information regarding events, contests, promotions, and the like. You agree that Microsoft may publicly display in the Store the email address that you provide in Partner Center for customer support purposes. Your Partner Center Account is only for use by you and the individuals you authorize as your delegates in the Partner Center. You are responsible for all activity that takes place with your Partner Center Account. You may not share your user name and password or otherwise authorize any third party (other than your authorized delegate(s)) to access or use the Store and/or Partner Center on your behalf. If you fail to keep your Partner Center Account in good standing (for example, by failing to pay fees, if any, associated with the Partner Center Account, by giving Microsoft incorrect or outdated information, by failing to provide any required tax information, by engaging in dishonest or fraudulent activity, by failing to maintain an active state in the Store catalog, or by repeatedly submitting Products that violate this Agreement, abusing the Store service, or interfering with any other party's use of the Store service) Microsoft may revoke your Partner Center Account, remove your Products from the Store, delete Product ratings and reviews, retain associated Account Fees (if any), and pursue any other remedies available to Microsoft (including, where appropriate, the retention of any Product Proceeds otherwise owed to you).

3. **SUBMISSION, EVALUATION, CERTIFICATION, AND DISTRIBUTION OF PRODUCTS.**

a. **Submission.** You must submit to Microsoft each Product and the metadata for each Product that you wish to make available through the Store, including any updates to each Product. You are solely responsible and liable for the Product you submit. You are responsible for supporting your Product and for delivering and supporting any content you offer or sell from within your Product. Microsoft will retain (or destroy) all copies of the Product and other materials you submit. Microsoft will not return them, so you must maintain your own backup copies.

b. Updates to Products. You may submit updates to Products for Certification and distribution through the Store. 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 via an update which requires written consent from the Customer without first providing notice to the Customer and obtaining any consents as may be required by law in the markets where you choose to distribute your Product.

c. Initial Certification. Microsoft will test each Product (including any updates) you submit for compliance with this Agreement (which includes the applicable Certification Requirements in the relevant Addenda) and other policies made available to you (if any). Microsoft will not make any Product available in the Store unless and until the Product is Certified.

d. Content. You are solely responsible for selecting all content made available through your Product, including your Product Assets, and for ensuring that such content complies with the terms of this Agreement, relevant Addenda, and all applicable laws and regulations. Microsoft's Certification of a Product does not constitute any representation or acknowledgement by Microsoft that the Product complies with such requirements, nor does it constitute any acceptance by Microsoft of any responsibility or liability in connection with such requirements.

e. 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/or refer that claim to you. You must respond to the notice as soon as reasonably practicable, and comply with any other requirements in [Microsoft's Notice and Takedown policies](#). If you discover that your Product violates the terms of this Agreement, you must immediately notify Microsoft and work with Microsoft to repair the Product.

f. 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 policies](#).

g. Product Availability. Microsoft has no obligation to make any Product available that you submit or to maintain the availability of the Product, even if that Product has been Certified.

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 Store, except as may be otherwise agreed between you and Microsoft, including via an Addendum.

i. Promotional Codes. If you select the Promotional Code offer in Partner Center, then you grant Microsoft, its agents, Affiliates, licensees and retail partners the right to use or acquire your Product Assets in connection with the manufacture, distribution,

promotion, and marketing of Promotional Codes and Free Trial Products (both referred to in this section as Promotional Codes). You may not offer or distribute Promotional Codes in any manner except as follows:

- a. Promotional Codes provide free downloads of your Product, and can be used by Customers to acquire content available in the Microsoft Store.
- b. You are provided a limited number of Promotional Codes that can each be used a limited number of times for each Product as a way to promote and deliver your Product or game-related content, for Customer retention programs and customer service.
- c. You forfeit revenue for your Product if you give out Promotional Codes.
- d. You shall not resell the Promotional Codes or get any payment for them.
- e. You shall distribute Promotional Codes only to Customers of the appropriate age, corresponding to the Promotional Codes you generate.
- f. Hidden content time limit: Premium content enabled through these Promotional Codes must be made available to Customers on the Product within 60 days of release of the content.

j. Removal Policies. Microsoft may remove or suspend the availability of any Product from any Store for any reason. Reasons may include, without limitation, (i) your breach of the terms of this Agreement or the Documentation; (ii) your express 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) an assertion by a mobile network operator that your Product causes harm to the operator's network; (v) an assertion by a mobile network operator that your Product is already provided under an agreement between you and a mobile operator or (vi) complaint(s) about the content or quality of your Product. Microsoft also may disable previously downloaded copies of a Product if Microsoft believes that the Product could cause harm to Customers or their devices, third parties (including any Covered Parties) or any network, or to comply with any judicial process, government order or lawsuit settlement. Unless your Product that accrued Product Proceeds is removed or disabled for breach of the terms of this Agreement or the Documentation, or in response to an infringement allegation (in which case Section 11.b will apply), Microsoft will pay to you the amounts owed, if any, in connection with the distribution of your Product that accrued Product Proceeds before removal or disablement. Microsoft's termination and suspension rights are without prejudice to its other rights and remedies.

k. Modification or Discontinuance. The Store and Partner Center are the property of Microsoft. Microsoft may, in its sole discretion, change or discontinue the Store and Partner Center at any time.

4. **APPOINTMENT AS AGENT OR COMMISSIONAIRE; LICENSES.**

a. Appointment of Microsoft.

i. Microsoft's role is to provide the technology and services to enable the Store, and to facilitate the purchase by Customers of App and In-App Products through the Store. Except as otherwise provided in Exhibit B to this Agreement, you appoint Microsoft to act as your agent or commissionaire, as applicable, for these purposes and you acknowledge that you, not Microsoft, are the distributor of the Product that is acquired through the Store. If you have appointed Microsoft as agent or commissionaire, then you also acknowledge that: (i) Microsoft will receive on your behalf amounts that a Customer pays when they acquire any App and/or In-App Products through the Store; (ii) Microsoft's services to you include the processing of purchases, returns and chargebacks for you arising out of the purchase by Customers of App and In-App Products; and (iii) Microsoft will make payments to you in accordance with Section 6. You give Microsoft the right to appoint any Microsoft Affiliates and/or Covered Parties (solely as required to administer VAT obligations) as sub-agents and also grant any Microsoft Affiliates appointed by Microsoft as sub-agents the right to appoint other Microsoft Affiliates and Covered Parties as sub-agents.

ii. **Australia and New Zealand.** For any transactions that involve a purchase of your Product by an Australian or New Zealand Customer (as determined by Microsoft), refer to exhibit A.

iii. If your Product is designated as pre-installable by an OEM or mobile operator, you will have the ability to provide the Product (as formatted and signed by Microsoft) to the designated OEM or mobile operator in accordance with the applicable Documentation and pursuant to an appropriate agreement between you and the designated OEM or mobile operator.

b. Grant of Rights to Microsoft. You do not transfer ownership of any Product to Microsoft by submitting it, but you do grant to Microsoft, 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 the 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 performing Certification of your Product and conducting penetration or other testing for identification of security vulnerabilities. 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. In-Store Marketing Rights. You grant Microsoft, its agents, contractors, licensees, marketing partners, and Affiliates the right to use, reproduce, display, publicly perform and publish your entity name, Product or portion of your Product and the Product

Assets for each Product, 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 Store and/or any other Microsoft websites, products and services related to the Store and/or Products. Nothing in this Agreement, however, will preclude Microsoft from using your Product or Product Assets as permitted by law without a license (e.g., fair use under applicable copyright law or "referential" use under trademark law).

d. Removing a Product Listing. If you use the functionality in the Partner Center to request that Microsoft remove your Product from availability in the Store (which function may be referred to as the "unpublish" functionality or otherwise), within a reasonable period of time Microsoft will remove the affected Product from the Store and cease making the affected Product available, except as permitted under Section 11.b of this agreement.

e. Product Rankings and Ratings. The Store allows 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 Store. Your Products may be subject to user ratings and/or comments with which you may not agree. You may not attempt to manipulate rankings, ratings or comments for your Product or any other Product. You may contact Microsoft if you have any questions or concerns regarding these ratings. Your relevant addenda may include additional requirements for Product rankings and ratings.

f. Privacy Policy. You must maintain a privacy policy if (1) your Product accesses, collects or transmits any Personal Information to you or a third party, (2) you elect to receive Analytics and Error Reporting Data as provided in Section 9, or (3) 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 (i) comply with applicable laws and regulations, (ii) inform Customers of the information accessed, collected or transmitted by your Product and how that information is used, stored, secured and disclosed, and (iii) describe the controls that Customers have over the use and sharing of their information, and how they may access their information. Covered Parties' privacy policies will not apply to a Customer's use of your Product.

g. License to Customer for Store Products. You, not Microsoft, will license the right to install and use each Product to Customers.

(i). **End-User Customer Licensing.** You may provide a license agreement to the End User Customers for your Product. That license agreement or other terms that govern an End User's use of your Product (including any privacy policy), or a link to them, must be delivered to Microsoft for publication via the product description materials you provide to Microsoft. Unless otherwise stated in your relevant addenda, if you do not provide such materials, then the Standard Application License Terms will apply between you and End User Customers of your Product, as applicable for the market(s) where your Product

is made available. The Standard Application License Terms are incorporated into this agreement by reference, and available [here](#). If you provide your own license agreement, your license must, at a minimum, provide the End User Customer 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 that are applicable to your Product (which are available at <http://go.microsoft.com/fwlink/p/?LinkId=723143>).

(ii). Channel Customer Licensing. Licensing to Channel Customers is determined in the relevant Addenda.

h. License to Microsoft Marks. Effective as of the day Microsoft makes your Product available in the Store, and for so long as your Product continues to be made available in the Store, Microsoft grants you a worldwide, nonexclusive, nontransferable, royalty-free license to use the Microsoft Marks in connection with advertising for your Product, solely as described at the logo use specifications posted at: <http://go.microsoft.com/fwlink/p/?linkid=254841>. Microsoft may change this URL, but if it does, Microsoft will use reasonable means to redirect you to any new URL(s) where these specifications are posted. Microsoft may, with reasonable notice to you, change the specifications to include new Microsoft Marks. 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.

5. **PRODUCT REQUIREMENTS.** Each Product you submit to Microsoft for distribution through the Store must meet the following requirements:

a. **General Requirements.** The Product must comply with this Agreement, the Addenda (including any content or functional requirements in such Addenda) 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 laws of each territory or country in which the Product, Product Assets and Product content are available. This includes: (i) data protection, privacy and other laws and regulations relating to collection and use of Personal Information by you or your Product, (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) all relevant export control laws, and (vi) tax laws, regardless of the origin of your Product. 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 the Store product description page). Disclosures provided on the Store product description page 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. Your Product must be lawfully distributable to all jurisdictions in which you choose to make your Product available through the Store, without additional review, approval, license, or technology-based restriction by any governmental entity. You must disclose to Microsoft any controlled technology employed, used or supported by your Product, and you must take any action reasonably requested by Microsoft if necessary for Microsoft to comply with its legal obligations. You may not use the Store or any services or tools made available for the development of Products for, or to permit others to carry out, any illegal activity, including 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 any other party, you are solely responsible for compliance with those license terms and conditions. You are, and will continue to be, at your sole cost and expense, responsible for securing, reporting, and maintaining all necessary rights, clearances and consents and paying all licensing fees (including but not limited to applicable public performance license fees to music publishers and/or performance rights and other sums, costs, and/or considerations associated with providing music or video (and all content embodied therein) in and through your Product or Product Assets), and for undertaking all associated reporting obligations related thereto.

d. Pre-Install. If you and Microsoft separately agree to preinstall one or more of your Products on Microsoft Products (as defined in Exhibit D), you are subject to and agree to the terms set forth in Exhibit D to this Agreement.

d. Advertising. If you elect to make use of Microsoft's advertising services, you are subject to and agree to the terms set forth on Exhibit C to this Agreement. If you elect to participate in the Promote Your App Program (as defined in Exhibit E), you are subject to and agree to the terms set forth in Exhibit E to this Agreement.

e. Partner Center Benefits. The Partner Center Benefits Program (as defined in Exhibit G) is an incentives program in which you are automatically enrolled when you open a Partner Center Account through Partner Center. Your participation in the Partner Center Benefits Program is subject to the terms set forth in Exhibit G to this Agreement.

f. Partner Center Insider Program. The Partner Center Insider Program (as described in Exhibit E) is a program that allows you to access experimental services and features

within Partner Center before such services and features are made available to the general public. If you elect to enroll in the Partner Center Insider Program, you will be subject to and agree to the terms set forth in Exhibit E to this Agreement.

6. **PRODUCT PRICING, PAYMENTS, TRANSACTIONS AND TAXES.**

a. **Product Pricing.** When you submit a Product, you will do so in accordance with the pricing, payment and revenue policies set forth in the relevant Addendum.

b. **Payment Processing.** Microsoft will pay you the Product Proceeds in accordance with Microsoft's then-current payment policies and in the manner you indicated during the Partner Center Account setup. 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 rates for converting USD into or from your local currency. The amount you actually receive will depend in part on the rates and fees imposed by your financial institution and on any applicable tax withholding requirements, and the amount you receive will be inclusive of any sales, use, goods and services, value-added or similar taxes that may be chargeable by you to Microsoft. You must provide Microsoft (or its third-party payment processor) with all financial, tax and banking information requested so Microsoft 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 Store 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.

c. **Retaining Costs.** If Microsoft removes your Product from the Store and/or 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 Product Proceeds. If Microsoft terminates or suspends your Partner Center Account for breach of this Agreement, Microsoft will deduct any costs incurred in connection with closing or suspending your Partner Center Account from any Product Proceeds otherwise payable to you and may retain Product Proceeds if appropriate under the circumstances.

d. **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 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 (1) hereby represent and warrant that your services are not provided in the U.S.; or (2) 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 Store for distribution by Microsoft (or any sub-agents appointed in accordance with Section 4(a) of this Agreement) as your agent or commissionaire, you: (i) are required to be registered for Australian Goods Services Tax ("AU GST"), (ii) must provide Microsoft with your Australian Business Number, and (iii) must affirm that you are AU GST registered when setting up your Partner Center Account. If you are located in New Zealand and wish to submit paid Products to the Store for distribution by Microsoft (or any sub-agents appointed in accordance with Section 4(a) of this Agreement) as your agent or commissionaire, you: (i) are required to be registered for New Zealand Goods and Services Tax ("NZ GST") and (ii) must affirm that you are NZ GST registered when setting up your Partner Center Account.

e. **Refund, Reconciliation and Offset.** You are responsible for all costs and expenses for returns and chargebacks of your Product, including the full refund and chargeback amounts paid or credited to Customers. Refunds and/or chargebacks processed after you receive the Product Proceeds will be debited against your account. 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.

f. **Taxes on Product Transactions.** Microsoft (or its billing service provider or other authorized partner) will collect and remit sales, use, goods and services, value added or similar taxes, if any, applicable to Customers' acquisition of your Product through the Store only in the country(s) and to the extent described in the attached Exhibit A and Exhibit B, as may be revised from time to time. Microsoft makes no warranties that Microsoft's actions will completely satisfy your obligations in these countries. Except as otherwise provided in Exhibit A and Exhibit B, Microsoft will not remit any sales, use,

goods and services, value added or other similar tax in connection with Customers' acquisition of your Product. You are responsible for reviewing Exhibit A and Exhibit B in light of your circumstances and determining whether you have an obligation to register, collect, and remit taxes in any country in which you elect to have Microsoft make your Product available to Customers and for complying with any such tax obligations that apply to you. 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 in Partner Center. For the sake of clarity, and notwithstanding anything to the contrary set forth in this Agreement, Exhibit A, or Exhibit B, Microsoft will 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.

7. **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 and not an individual, 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 complies with and will continue to comply with all requirements of this Agreement, including the Addenda;
- d. Listing, distribution, and monetization of your Product in the Store 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 Store 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.

8. **CONFIDENTIALITY.** If you have an existing NDA with Microsoft, then that agreement applies to information exchanges. If not, then during the term of this Agreement and for five (5) years after, the recipient of Confidential Information under this Agreement will hold in confidence, and will not use or disclose any of the other party's Confidential Information to a third party, except contractors who are performing on the receiving party's behalf and only subject to confidentiality terms at least as protective as this section. "Confidential Information" means all information that a party designates as confidential, or a reasonable person knows or reasonably should understand to be confidential. Confidential Information does not include information that is or becomes known to the receiving party without a breach of this agreement or any other confidentiality obligation owed to a disclosing party. If you have any questions as to what comprises Microsoft Confidential Information, you will consult with Microsoft. This section does not prohibit either party from responding to lawful requests from law enforcement authorities.

9. **REPORTING.**

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

b. **Error Reporting Data.** Microsoft may, at its discretion, provide you with crash data ("Error Reporting Data"). If Microsoft exposes you to any Personal Information in the Error Reporting Data, then between you and Microsoft, that Personal Information 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 inform Customers in your privacy policy about Error Reporting Data that you collect and use. If the Error Reporting Data provided to you includes any Personal Information, you agree to delete such Personal Information within thirty (30) days after receipt, and to return to Microsoft or destroy that information immediately upon Microsoft's request. During such thirty (30) days, you must store any Personal Information only on a secure server with access to such server limited to you, or if an entity, your regular employees. 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 Information, 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.

c. **Product Analytics Data.** Microsoft may, at its discretion, provide you with in-Product telemetry (“Product Analytics”) data. If Microsoft exposes you to any Customer Personal Information in the Error Reporting Data, then between you and Microsoft, that Personal Information 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.

10. **DISCLAIMER, LIMITATION OF LIABILITY, AND DEFENSE OF CLAIMS.**

a. **DISCLAIMER OF WARRANTY.** WE PROVIDE THE STORE AND PARTNER CENTER "AS-IS," "WITH ALL FAULTS," AND "AS AVAILABLE." YOU BEAR THE RISK OF USING THE STORE 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 STORE 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 STORE OR THE PARTNER CENTER WILL BE UNINTERRUPTED OR ERROR FREE.

b. **LIMITATION OF LIABILITY.** YOU CAN RECOVER FROM MICROSOFT AND ITS AFFILIATES ONLY DIRECT DAMAGES UP TO AN AMOUNT EQUAL TO YOUR ACCOUNT FEE (OR \$1, IF THERE IS NO ACCOUNT FEE). 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. THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU BECAUSE YOUR STATE OR COUNTRY MAY NOT ALLOW THE EXCLUSION OF CERTAIN DAMAGES.

c. **Duty to defend.** You will defend, indemnify and hold harmless each Covered Party, as applicable, 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 a failure of your Product to comply with any of the Product Certification Requirements;

(iii) alleging your breach of this agreement, (iv) relating to the functionality of, the use of, or the inability to use the Product, including any claims of product liability or misleading advertising; (v) alleging that use of your Product caused or contributed to any harm or injury to any person or damage to property or (vi) 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. Covered Party will (A) notify you promptly in writing 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, (B) at your reasonable request, provide you with reasonable assistance in defending the claim. You will reimburse Covered Party for any reasonable out-of-pocket expenses incurred in providing that assistance. 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.

d. 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 10.

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. You will identify an individual to serve as the primary Partner contact under this Agreement. This primary Partner contact will be the default administrator for this Agreement, and will receive all notices unless you change the primary Partner contact information through the Partner Center.

b. **Disclosure of Information.** Microsoft may disclose your contact information as necessary for Microsoft to administer this Agreement through its Affiliates and other parties that help Microsoft administer this Agreement.

c. **Assignment.** Microsoft may assign this Agreement (or any rights or duties under it) at any time. You may not assign this Agreement or any rights or duties under it without the express written consent of Microsoft, except that you may assign this Agreement without Microsoft's consent (i) to your Affiliate or (ii) in connection with the sale of all or substantially all of your assets. If you assign this Agreement as permitted in this Section 12.c, you agree (A) to provide prompt notice of such assignment to Microsoft and (B) if

the assignee does not already have a Store Account, such assignee shall open a Store Account in accordance with Section 2 of this Agreement within fourteen (14) days after the date of a permitted assignment under this Section 12.c.

d. 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. Such third parties may include mobile operators, hardware manufacturers and retailers. Microsoft will, subject to the terms of this Agreement, be responsible for the performance of such third parties excepting any assumption of responsibility for the administration of sales tax, VAT, GST and or similar taxes.

e. Choice of Law and Venue. This Agreement is governed by the laws of the state of Washington, USA, which apply to the interpretation of this Agreement and to any claims for breach of it, regardless of conflict of laws principles; and you irrevocably consent to the exclusive jurisdiction and venue of the courts in King County, Washington.

f. Limitation on Claims. To the maximum extent permitted by local law, any claim related to this Agreement or to the 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.

g. No Waiver. 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 an App available in the Store will not be deemed a waiver of any rights Microsoft may have under this Agreement, including for violations of the Certification Requirements or other content related terms.

h. Survival. Sections of this Agreement that, by their terms, require performance after the termination or expiration of this Agreement will survive.

i. Not Exclusive. This Agreement is nonexclusive, and nothing in this Agreement restricts you or Microsoft from entering into other, similar agreements with other marketplaces or app Partners, or from acquiring, licensing, developing, manufacturing, or distributing similar or competing technologies.

j. Updates. Microsoft may update this Agreement at any time in its sole discretion. Microsoft will indicate the last date on which the Agreement was modified at the top of the Agreement.

k. Entire Agreement. This is the entire Agreement between you and Microsoft in connection with your Products in the Store. It supersedes any prior agreements

between you and Microsoft regarding your Products in the Store. 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.

l. **Affiliates.** Microsoft may perform certain of our obligations under this Agreement through one or more Microsoft Affiliates. We may appoint one or more of our Affiliates, which may further appoint our Affiliates, to act as our agents in different regions.

m. **Relationship of Parties.** Neither this Agreement, nor any terms and conditions contained herein, create a partnership, joint venture, employment relationship, or franchise relationship.

EXHIBIT A: TAXES ON PRODUCT TRANSACTIONS

1. Microsoft Managed Tax Remittance Countries:

Microsoft (or its billing service provider) will collect and remit sales, use, goods and services, value added or similar taxes, if any, applicable to Customers' acquisition of your Product(s) through the Store in the countries set forth at:

<http://go.microsoft.com/fwlink/p/?LinkId=529042>

2. Mixed Remittance Countries:

Certain Microsoft billing partners **may** collect and remit sales, use, goods and services, value added or similar taxes, if any, applicable to Customers' acquisition of your Product(s) through the Store in the country(s) listed on the Partner Center at <http://go.microsoft.com/fwlink/p/?LinkId=271132>. The reports that Microsoft makes available to you will identify the transactions for which a billing partner has collected sales, use, goods and services, value added or similar taxes applicable to Customers' acquisition of your Product(s) through the Store. **Except for the transactions described in such reporting, neither Microsoft nor its billing services providers will remit any sales, use, goods and services, value added or other similar tax in connection with Customers' acquisition of your Product(s) in these country(s).**

You are responsible for reviewing the reporting provided to you and determining and complying with your obligations, if any, to register, collect, and remit taxes in connection with transactions involving your Product(s).

3. Australia and New Zealand

Australia: 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 applicable and solely to the extent required to allow Microsoft to manage the local tax collection requirements in Australia with respect to the purchase of your Product by an Australian Customer, 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**"), and you and MRS or MPL (as the case may be) agree for the purposes of Section 84-60 of the AU GST Act that: (I) 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 (II) 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. MRS and MPL will charge store fees to VAT/GST registered publishers and any other publisher identified as a business. Microsoft or its Affiliates will charge store fees to publishers not identified as VAT/GST registered to ensure compliance with VAT rules in other countries. The terms "consideration," "GST," "GST law," and "inbound intangible consumer

supply” in this section have the meanings given to those terms in the A New Tax System (Goods and Services Tax) Act 1999 (the “**AU GST Act**”).

New Zealand: 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, where applicable and solely to the extent required to allow Microsoft to manage the local tax collection requirements in New Zealand with respect to the purchase of your Product by a New Zealand Customer, 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; and you and MSNZ agree that: (I) for the purposes of Section 60(1AB) of the NZ GST Act that 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 (II) 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: (a) a supply of goods and services from you to MSNZ; and (b) 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. MRS and MSNZ will charge store fees to VAT/GST registered publishers and any other publisher identified as a business. Microsoft or its Affiliates will charge store fees to publishers not identified as VAT/GST registered to ensure compliance with VAT rules in other countries. Where applicable, the terms used in this sub-section, but not otherwise defined in this Agreement, have the meanings given to those terms in the Goods and Services Tax Act 1985 (“**NZ GST Act**”).

EXHIBIT B: TERMS AND CONDITIONS FOR RESELLER COUNTRIES

In the country(s) and to the extent listed at <http://go.microsoft.com/fwlink/p/?LinkId=529043>, Microsoft acts as a reseller, rather than your agent, in making your Product(s) available in the Store.

If you choose to make any Product(s) available in the Store in any of the listed country(s), 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(s) as described. Except as expressly provided in this Exhibit B, all of the terms and conditions in the Agreement apply to the offering and distribution of your Products in such country(s).

- 1. License Grants.** Notwithstanding the second sentence of Section 4.a and the first sentence of Section 4.b of the Agreement, for the country(s) referenced in this Exhibit B 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(s) referenced in this Exhibit B 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 Section 4.g of the 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.
- 2. Marketing Rights.** You grant Microsoft, its agents, contractors, licensees, marketing partners, and Affiliates the right to use, reproduce, display, publicly perform and publish your entity name, Product or portion of your Product and the Product Assets for each Product, 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 Store and/or any other Microsoft websites, products and services related to the Store and/or Products. Nothing in this Agreement, however, will preclude Microsoft from using your Product or Product Assets as permitted by law without a license (e.g., fair use under applicable copyright law or "referential" use under trademark law).

3. **Application Pricing; Taxes on Applications.** Notwithstanding Section 6 of the Agreement, when you submit an Product and choose to make the Product available as provided in this Exhibit B, 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. For any Product you choose to make available as provided in this Exhibit B, Microsoft (or a resale partner or billing service provider) will collect and remit sales, use, goods and services, value added or similar taxes, if any, applicable to the Customer's acquisition of your Product in such country(s) through the Store as provided in this Exhibit B. Except as provided herein, Microsoft will not remit any sales, use, goods and services, value added or other similar tax in connection with Customers' acquisition of your Product.
4. **Payment Terms and Fees.** Proceeds payable to you in connection with the sale of your Product in the country(s) listed in this Exhibit B will be calculated and paid to you as provided in Section 6.d of the Agreement, but Proceeds will be provided to you as a royalty payment in exchange for the license granted in paragraph 1 of this Exhibit B.

EXHIBIT C: ADVERTISING SERVICES ADDENDUM

This Advertising Services Addendum (this "**Addendum**") is a supplement to the terms and conditions of the Publisher Agreement (the "Agreement"). This Addendum applies if you choose to make use of Microsoft's advertising services as described in this Addendum. Except as expressly modified by this Addendum, all of the terms and conditions in the Agreement, which is incorporated by reference herein, apply to your use of Microsoft's advertising services. Capitalized terms not otherwise defined herein have the same meanings provided in the Agreement.

1. INTRODUCTION.

The terms and conditions of this Addendum are an agreement between you and Microsoft Online, Inc., located at 6100 Neil Road, Reno, NV 89511 USA ("**Microsoft**"). Unless you have separately negotiated an agreement with Microsoft covering a Microsoft advertising service or program, this Addendum applies to your participation in or use of one or more Microsoft's advertising services and programs.

2. MICROSOFT ADVERTISING SERVICE POLICIES.

a. **Advertisers' Right to Opt-In or Opt-Out.** Microsoft may provide advertisers with a list of Products and Partner names for the purposes of allowing advertisers to identify certain Partners and Products on which it does or does not wish to place its ads. Microsoft will not be required to disclose to you whether any individual advertiser chose to exercise this right with regard to you or your Products.

b. **Implementation Responsibilities.** You will:

i. implement: (1) the Microsoft Store Services SDK into your Product (if applicable) no later than three days prior to enabling ad delivery in the Product **in accordance with Microsoft designated technical requirements that Microsoft provides to you** and (2) updates that Microsoft makes to the Microsoft Store Services SDK within 60 days after Microsoft makes the Microsoft Store Services SDK update available to you;

ii. test on your Product: (1) the deployment of ad formats and browsers and (2) Microsoft's modifications to the Microsoft Store Services SDK specified by Microsoft;

iii. in a timely manner, make reasonable efforts to cooperate to resolve problems identified during any testing performed on your Product; and

iv. incorporate into your Product any and all Microsoft-provided guidance, specifications, placement guidelines, documentation and other consultation related to ads (e.g., placement, sizes, experiences, formats, etc.).

c. **COPPA Notification Requirement.** If your Product is directed at children under the age of 13 (as defined in the Children’s Online Privacy Protection Act), you must: (i) notify Microsoft of this fact in the Monetization Section of Partner Center; and (ii) ensure that all ad content displayed in your Product is appropriate for children under the age of 13.

d. **Community Ads Program.** If you elect to participate in Microsoft’s Community Ads Program, you acknowledge and agree that:

i. You will not receive any revenue for Community Ads displayed on or in your Product.

ii. Any Community Ads credits you receive in connection with the Community Ads Program are not transferable and do not have any cash value.

iii. All credits earned in the Community Ads Program can only be used to create advertising campaigns within the Community Ads Program.

iv. All accrued credits earned in the Community Ads Program will be forfeited if your enrollment in the program is terminated by you or Microsoft, or if the program is terminated, canceled, or suspended by Microsoft.

3. **REPORTS.**

In connection with its provision of advertising services, Microsoft may provide you with access to online reporting systems (collectively, “**Dashboard Systems**”) to view and use a variety of online reports related to your use of Microsoft’s advertising services. You may not publicly publish or otherwise distribute or disclose any of these reports to third parties and may only use these reports for your internal business purposes.

4. **PAYMENT POLICIES.**

On a monthly basis, Microsoft will pay you for advertising displayed on or in your Product based upon the then-current payment policies if your earned balance exceeds the then-current minimum payment amounts specified in such policies. The payment amounts you actually receive will depend in part on the rates and fees imposed by your financial institution and on any applicable tax withholding requirements. Further, any payment amounts you receive will be inclusive of any sales, use, or value-added taxes that may be chargeable between you and Microsoft. Supported countries, payment schedules, payment processing details, and minimum payment amounts are further

described in Microsoft's payment policies. Microsoft may update its payment policies at any time.

To the extent that payment is based on: (i) actions generated by advertising displayed in your Product, (ii) the number of clicks on advertising that is displayed in your Product, or (iii) the number of ad impressions in your Product, reports generated by Microsoft will be the sole measurement for purposes of invoicing and payment. Clicks, impressions, or advertising-generated actions that (i) Microsoft registers as coming from IP addresses owned or controlled by you, or (ii) are associated with a violation of the Agreement, this Addendum, or any Documentation or other policies applicable to you, are not valid impressions, clicks, or actions. MICROSOFT MAKES NO PROMISES OR GUARANTEES REGARDING: (A) THE NUMBER OF ADVERTISEMENTS YOU MAY EXPECT TO BE DISPLAYED ON OR IN YOUR PROPERTIES BY MICROSOFT OR (B) THE AMOUNT OF ANY PAYMENTS YOU MAY RECEIVE IN CONNECTION WITH YOUR USE OF MICROSOFT'S ADVERTISING SERVICES.

5. **MICROSOFT DATA COLLECTION.**

Microsoft will collect data about your use of its advertising services and its performance in connection with your Product. Microsoft may use this data to generate aggregated reports that may be viewed by Microsoft's clients and partners. Microsoft may also use this data to (a) improve and optimize its products and services, and (b) provide campaign reporting to advertisers whose advertising was displayed on your Products. In addition, Microsoft will have the right to, without any additional consent or approval from you, share with third parties (e.g., ad networks or exchanges) information specific to your Products, including, without limitation, the Property's name, your name as publisher of the Property, screenshots of your Product, and impression data and targeting availability. You expressly agree to worldwide disclosure and transfer of all data described in this Section to Microsoft free of any charge.

6. **PRIVACY.**

a. **Data Collection.** You assume all liability for the collection, use and disclosure of data related to users of your Products and you will comply with all applicable laws and regulations in your collection, use and disclosure of this data.

b. **User Consent.** Nothing in this Addendum provides for the collection or transfer between you and Microsoft of any personally identifying information of an End User Customer (user) without the express consent of the user. You will use commercially reasonable efforts to ensure that a user gives consent to the storing and accessing of cookies, device-specific information, location information or other information on the end user's device in connection with your use of Microsoft's advertising services where such consent is required by law or any applicable self-regulatory program guidelines.

c. **Notice to End Users.** If you pass precise location data or other user-related data (e.g., user identifier, profile data, behaviorally tracked user data, etc.) to Microsoft via any SDK provided to you by Microsoft (e.g., the Microsoft Store Services SDK), or any other means, then:

i. Notice. Your program must provide a clear and conspicuous notice to potential end users of your program (which must be viewable prior to download or use of the program) that is based on the then-current laws, regulations, and industry standards and contains, at a minimum, the following: (1) a notification to end users that the program will be collecting and using user-related data and providing this data to Microsoft for Microsoft's advertising use in cross-Product interest-based advertising; (2) a description of the types of data, including any personally identifiable information, precise location data, or personal directory data (e.g., calendar info or text logs) that the program collects for advertising purposes; (3) an explanation of how, and for what purpose, the collected data will be used or transferred to Microsoft; and (4) a link that provides users with the ability to opt out of Microsoft's cross-Product interest based advertising at the following location <https://choice.live.com/AdvertisementChoice/>; and

ii. Consent. You must explicitly obtain affirmative user consent (e.g. the user must click an "Accept" or continue "Install" button) for this data collection and use upon download, installation, or launch of Your Product.

7. **SUPPORT AND FEEDBACK.**

Microsoft is not obligated to provide any technical or other support to you for the advertising services it provides. If you provide Microsoft with feedback about its advertising services, then you grant to Microsoft, without charge, the right to use, share, and commercialize your feedback in any way and for any purpose. You also grant to third parties, without charge, any patent rights necessary for their products, technologies and services to use or interface with any specific parts of a Microsoft software or service that incorporates your feedback. You will not give feedback that is subject to a license that requires Microsoft to license its software or documentation to third parties because Microsoft includes your feedback in our software or documentation. These rights that you grant to Microsoft and third parties in this Section will survive any termination of the Agreement, this Addendum, or any termination of your rights to use Microsoft's advertising services. In addition, if you receive any feedback, comments, or complaints from users of your Product about any advertising delivered by Microsoft's advertising service, you will promptly forward this information to support@microsoft.com.

8. **PUBLICITY/INFORMATION REQUESTS.**

You may not cause or permit to be released any publicity, advertisement, news release, public announcement, or denial or confirmation of the same, in whatever form, regarding any aspect of this Addendum or the relationship between you and Microsoft, without Microsoft's prior written consent, except for the use of Microsoft Marks in accordance with Section 4.h of the Agreement.

9. RESERVATION OF RIGHTS.

Microsoft retains ownership of all intellectual property rights associated with its advertising services, its technology and any enhancements or modifications thereof. As between Microsoft and you, you retain all intellectual property rights in the contents of your Products, other than such content as Microsoft or its clients may supply. Microsoft's clients will retain all right to the advertising displayed on your Products.

- 10. DISCLAIMER OF WARRANTY. IF YOU LIVE IN AUSTRALIA,** there are guarantees that are implied under the Australian Consumer Law that may apply to the goods and services supplied to you as part of Microsoft's advertising services (the "**AU Guarantees**"). Should the AU Guarantees apply to you, then these AU Guarantees are not included in the disclaimers and exclusions specified in Section 10 of the Agreement. For those Microsoft advertising services that include services (rather than goods), should Microsoft breach any of the AU Guarantees, your remedy is limited to receiving the supply of the service again or the payment of the cost of having the services supplied again. For those Microsoft advertising services that includes goods (which includes computer software), the goods come with AU Guarantees that cannot be excluded under the Australian Consumer Law and you are entitled to a replacement or refund for a major failure and compensation for any other reasonably foreseeable loss or damage. You are also entitled to have the goods repaired or replaced if the goods fail to be of acceptable quality and the failure does not amount to a major failure. In the case of software, the repair of goods may not be practicable, and a replacement will be provided if this is the case. For any AU Guarantees related issues, please contact support@microsoft.com.

11. INDEMNIFICATION.

a. In addition to your obligations under Section 10.c of the Agreement, you will defend, indemnify and hold Microsoft and Microsoft's affiliates, agents and employees, harmless from all loss, liability and expense (including reasonable attorneys' fees) from any third-party claims, proceedings or suits arising from or related to (i) your use of Microsoft's advertising services; (ii) any access or use by third parties of Microsoft's advertising services through your account or with your credentials; (iii) your breach of any term of this Addendum, including any Microsoft policies referenced herein; and (iv) your collection, use and disclosure of user-related data.

b. Requirements for Indemnification. The obligations, processes and procedures in Section 10.c of the Agreement apply to the conduct and resolution of any claims, proceedings, or suits described in Section 11.a of this Addendum.

12. MISCELLANEOUS.

a. Adjustments for Prohibited Actions. If you or your Product violates any section of this Addendum, the Agreement, or any Microsoft policies, then, without limiting any other rights and remedies Microsoft may have under this Addendum, the Agreement, or at law, Microsoft may do or require any or all of the following as Microsoft deems appropriate under the circumstances in order to manage advertiser satisfaction issues: receive additional impressions within your Product at no charge, deactivate your ad units, remove some or all of your Community Ads Program credits, or withhold or deduct payments due to you for the time period within which Microsoft determines, after reasonable investigation, the prohibited action or applicable violation occurred.

b. Termination. Microsoft will have the right to immediately terminate or suspend, entirely or in part, your use of Microsoft's advertising services with respect to your Product at any time upon notice with respect to either all or some of your Products without cause or explanation. Except for payments due and payable to you in connection with advertising services provided to you by Microsoft, Microsoft will have no liability to you for any termination or suspension of this Addendum or the Agreement.

c. Venue; Choice of Law. The laws of the State of Nevada, USA govern the interpretation of this Addendum and any claims arising out of related hereto, regardless of conflict of laws principles. You and Microsoft irrevocably consent to the exclusive jurisdiction and venue of the state and federal courts located in King County, Washington, USA for all disputes arising out of or relating to this Addendum or any of Microsoft's advertising services that are heard in court (i.e., not arbitration and not small claims court).

EXHIBIT D: TERMS AND CONDITIONS FOR PRELOADED PRODUCTS

This preload exhibit (Exhibit D) is a supplement to the terms and conditions of the Agreement. Exhibit D applies only if Microsoft and you separately agree in a Preload Addendum to Preload your Product on Microsoft Products. Except as expressly modified by this Exhibit D, all of the terms and conditions in the Agreement, which is incorporated herein by reference, apply when Preloading your Product.

1. **Definitions.** Capitalized terms not otherwise defined herein have the same meanings provided in the Agreement.
 - a. "Error(s)" means any mistake, problem, defect, malfunction or deficiency which causes an incorrect or inadequate functioning or non-functioning of your Product and/or a failure to operate in connection with Microsoft Products.
 - b. "Microsoft Products" means any device or hardware manufactured or offered by or on behalf of Microsoft. You agree that Microsoft's Disclaimer of Warranty extends to all Microsoft Products identified in a Preload Addendum.
 - c. "Preload" means direct distribution by Microsoft of your Product(s) on Microsoft Products such that the Product(s) may be accessed by Customers directly from the Microsoft Product without having to actively download the Product(s) from the Store.
 - d. "Preload Addendum" means a written addendum executed by you and Microsoft that identifies which of your Product(s) may be Preloaded on identified Microsoft Products.
 - e. "Term" means two (2) years commencing from effective date of the Preload Addendum. After the initial two (2) years, the Preload Addendum will remain in force until terminated by either party by giving the other party six (6) months prior written notice.
 - f. "Update(s)" means modifications to your Product(s) which incorporate corrections of Errors and/or which provide functional, performance, user experience or other improvements.
2. **License to Preload Your Product.** In addition to the rights granted under the Agreement, you grant Microsoft a world-wide, non-exclusive, irrevocable for the Term, royalty-free, fully paid-up, right and license to Preload your Product(s) on Microsoft Products as identified and agreed to in a Preload Addendum.
3. **Additional Preload Obligations.**
 - 3.1 **Continued Publication.** Notwithstanding anything contrary in the Agreement, in the event your Product(s) are Preloaded pursuant to a Preload Addendum, you agree (i) not

to terminate the Agreement during the Term; and (ii) to keep your Product(s) available in the Store throughout the Term.

3.2 Delivery. You will deliver the Product(s) to Microsoft no later than the date agreed upon in the Preload Addendum, at your sole cost, on appropriate media and format (as specified by Microsoft) suitable for Preloading on Microsoft Products. You will test the Product(s) for Errors and ensure the Products(s) comply with the requirements defined by Microsoft and work with the applicable Microsoft Products identified in the Preload Addendum prior to delivery of such Product(s) to Microsoft.

3.3 Testing, Acceptance, or Rejection. Microsoft may test your Product(s) beyond the testing conducted during Certification to ensure a good Product experience for Customers on Microsoft Products. In the event Microsoft detects Errors, Microsoft will inform you of the same, and Microsoft may reject your Product(s) as being unsuitable for Preload. In the event Microsoft rejects the Product, you agree to correct such Errors within thirty (30) days of being notified of rejection.

3.4 Errors and Updates. You agree to correct any material Errors detected (by either party) in your Product(s) after being Preloaded by promptly publishing Updates in the Store. You will ensure that any Updates are compatible with the Microsoft Products selected for Preload.

3.5 Open Source Software Claims. If either party receives (and determines in good faith the validity of) any third-party claim that your Product(s) violate any open source software license terms, then you agree to promptly remedy the basis for the claim (e.g., provide missing notices or attributions, deliver underlying source code, etc.) and/or Update the Product to remove the open source software that is the basis for the claim.

- 4. Effect of Termination.** Termination or expiration of a Preload Addendum will not affect any rights of a Customer to use your Product(s). Within six (6) months (or earlier, if possible) of termination or expiration of a Preload Addendum, Microsoft will discontinue Preloading your Product(s) and using your Product Assets in connection therewith depending on what stage the affected Microsoft Products are in the manufacturing process. Termination or expiration of a Preload Addendum will not affect Microsoft's right to sell or distribute Microsoft Products on which your Product(s) are Preloaded in accordance with a Preload Addendum.

EXHIBIT E: PROMOTE YOUR APP PROGRAM ADDENDUM

This Promote Your App Program Addendum (this "**Addendum**") is a supplement to the terms and conditions of the Publisher Agreement (the "Agreement"). This Addendum applies if you choose to participate in the Promote Your App Program as described in this Addendum. Except as expressly modified by this Addendum, all of the terms and conditions in the Agreement, which is incorporated by reference herein, apply to your use of Microsoft's advertising services. Capitalized terms not otherwise defined herein have the same meanings provided in the Agreement.

PLEASE READ AND REVIEW ALL TERMS AND POLICIES ON THIS PAGE INCLUDING ALL HYPERLINKS REFERENCED IN SUCH TERMS AND POLICIES. YOU AGREE TO THESE TERMS WHEN YOU MAKE USE OF THE PROMOTE YOUR APP PROGRAM SERVICES.

These terms and policies ("Terms") are an agreement between you ("you," or "Advertiser") and Microsoft Online, Inc. ("Microsoft"). They apply to the Promote Your App Program services (the "Services"), unless you (or an agency acting on your behalf) and Microsoft are parties to an agreement that governs the purchase and sale of display advertising services (the "Advertising Agreement"), in which case those terms apply. If an Advertising Agreement does not exist, then the IAB/AAAA Standard Terms and Conditions for Internet Advertising for Media Buys One Year or Less at the URL <http://advertising.microsoft.com/international/iab-terms> (access code: ms59436) (the "IAB Terms") govern the purchase and sale of the Services and the remainder of this paragraph will apply. "Nevada" and "King County, Washington" are inserted into the respective placeholders in Section XIV(d) of the IAB Terms. "Media Company" means Microsoft Online, Inc., "Advertiser" means you, and "Agency" means the advertising agency acting on your behalf, if any. If an advertising agency is not acting on your behalf, where "Agency" is referred to in the IAB Terms that reference will be deleted and replaced with "Advertiser" and Sections II(b), II(d), and III(c) of the IAB Terms are deleted. Any reference to the term "website" or "websites" in the IAB Terms is also intended to include mobile websites and mobile applications. Undefined capitalized terms used in these Terms will have the meaning attributed to them in the IAB Terms unless otherwise indicated in this Addendum. You will be deemed to have entered into an "IO" with Microsoft upon clicking the "Save" button on the Promote Your App Webpage. In the event of any conflict or inconsistency between the IAB Terms or the Agreement, as applicable, and these Terms, these Terms will prevail. Microsoft may change these Terms, including the terms of the policies listed below, at any time, and such updated Terms will govern.

The following policies apply to the purchase and sale of Services that Microsoft may provide to you:

A. POLICIES AND OTHER TERMS THAT APPLY TO YOU:

1. **Delivery Measurements.** If you engage a party to provide Additional Reporting and related services, then (a) you are solely responsible for all costs associated with those services and the Additional Reporting; (b) Additional Reporting will not be the basis for determining ad delivery or billing; and (c) Microsoft does not guarantee the accuracy of any Additional Reporting. As between the parties, you are responsible for the actions of the party providing Additional Reporting and performing the related services. “**Standard Reporting**” means the industry standard, basic reporting generated by Microsoft (if Microsoft is serving the ad) or a third party ad server (if a third party is serving the ad) generated strictly from the act of loading an ad on a Microsoft property in response to a call from Microsoft’s ad server. “**Additional Reporting**” means any reporting other than Standard Reporting, including reporting regarding verification and viewability.
2. **Intellectual Property.** Microsoft retains ownership of all intellectual property rights associated with the Services and the Promote Your App Webpage, its technology and any enhancements or modifications thereof.
3. **Warranties.** At all times during the term of these Terms, you represent, warrant and undertake to Microsoft that:
 - a. You are a business and not a consumer;
 - b. You are authorized to act on behalf of any third party for which you facilitate purchase of the Services;
4. **Term and Termination.** Microsoft will have the right to immediately terminate or suspend, entirely or in part, your use of the Promote Your App Program with respect to either all or some of your Programs (as defined in the Agreement) at any time upon notice with respect to either all or some of your apps without cause or explanation. Microsoft will have no liability to you for any termination or suspension of this Addendum or the Advertising Agreement.
5. **Remedy for Breach of Terms.** If Microsoft reasonably believes that you have breached these Terms or that any of your Applications (as Agreement) are in violation of any applicable laws, regulations or Microsoft policies, then Microsoft will have the right to (a) immediately terminate or suspend, entirely or in part, Your use of the Promote Your App Webpage and the Services with respect to either all or some of your Programs and (b) suspend all payments due to you from Microsoft in connection with Microsoft's online advertising services. Except for payments made to Microsoft for which no Services were provided, Microsoft will have no liability to you for any termination or suspension under this section.

B. SPECIFIC TERMS THAT APPLY WHEN MICROSOFT PROVIDES THE FOLLOWING ADVERTISING SERVICES:

1. **Third Party Data.** If Advertiser or Microsoft uses third party data to inform audience segments for targeted advertising, each party will ensure that it has (a) obtained all End User Customer data in accordance with all applicable laws, including privacy laws; and

(b) the right to use the End User Customer data in the manner contemplated by Microsoft's targeted advertising programs.

2. **Windows App Network.** If Microsoft is providing ad services on the Windows App Network ("WAN"), then the terms in this paragraph apply to those services. Microsoft's reporting of WAN impressions or other deliverables is the definitive measurement for calculating payments due to Microsoft from Advertiser. Microsoft will cease delivery of ads when the applicable maximum budget agreed to between the parties is reached, unless otherwise agreed in writing by the parties. Deliverables available in WAN are not guaranteed. Microsoft Advertising reaches a global audience. Unless a United States based target is specified in these Terms, the parties agree that delivered impressions may include impressions from outside of the United States and these non-U.S. impressions are not an under delivery.
3. **Mobile Placements.** For mobile ad placements, reports generated by Microsoft or its designated agent will be the basis for billing.
4. **Microsoft Store Apps.** Advertiser (or Agency on behalf of Advertiser) acknowledges that all placements will be site served by Microsoft or its designated agent. For all ads served in connection with the Promote Your App Program, reports generated by Microsoft or its designated agent will be the basis for billing.
5. **Community Ads.** Microsoft does not make any guarantees regarding the delivery and placement priority of advertising campaigns you create in connection with the Community Ads Program. For all ads served in connection with the Community Ads Program, reports generated by Microsoft or its designated agent will be the basis for billing.

EXHIBIT E: PARTNER CENTER INSIDER PROGRAM ADDENDUM

This Partner Center Insider Program Addendum (this “**Addendum**”) is a supplement to the terms and conditions of the Publisher Agreement (the “**Agreement**”). Except as expressly modified by this Addendum, all of the terms and conditions in the Agreement, which is incorporated by reference herein, apply to your participation in the Partner Center Insider Program (the “**Program**”) and any services Microsoft provides in connection therewith (collectively, the “**Program Services**”). Capitalized terms not otherwise defined herein have the same meanings provided in the Agreement.

1. **Scope of Addendum; Changes.**

a. **Scope.** This Addendum governs your participation in the Program and use of the Program Services. Additional terms may be applicable to software, supplements, updates, and other Microsoft web sites and services that you use and are necessary to use the Program Services. To the extent those additional terms conflict with this Addendum, this Addendum will control. You agree that you will read the terms before using the Program Services, including any linked terms. You understand that by using the Program Services, you ratify this Addendum and the linked terms.

b. **Changes to Addendum.** From time to time, Microsoft may change or amend this Addendum. If we do, we will notify you, either by posting a notice on a Microsoft website or blog, through the user interface of Partner Center, in an email notification, or through other reasonable means. Your use of the Program Services after the date the change becomes effective will be your consent to the changed terms. If you do not agree to the changes, you must stop using the Program Services. Otherwise, the new terms will apply to you.

2. **Pre-Release Nature, Updates, and Support.**

a. **Pre-Release and Experimental Services.** The Program Services may have reduced or different security, privacy, accessibility, availability, and reliability standards relative to commercially provided services. We may change or discontinue the Program Services at any time without notice.

b. **Updates.** The Program Services update automatically. By using the Program Services, you agree to receive automatic updates without any additional notice.

c. **Support.** Limited or no support may be provided for the Program Services.

3. **Content.**

All documentation, images, Program Website web pages and other content provided in connection with the Program (collectively “**Content**”) are the copyrighted works of

Microsoft or its suppliers. Use of the Content is governed by the terms of the license agreement, if any, that accompanies or is included with the Content. If no license agreement accompanies or is included with the Content, then your use of the Content is governed by this Addendum. Except as provided in this section, no portion of the Content may be copied, imitated, published, transmitted, broadcast, or distributed, in whole or in part.

4. **Confidentiality.**

The Program Services are confidential information of Microsoft unless stated otherwise and as such you have confidentiality obligations with respect to the Program Services as more particularly described in Section 8 of the Agreement.

5. **Releases.**

As a condition of your participation in the Program, you agree to release Microsoft from and against any and all liability, claims or actions of any kind whatsoever for injuries, damages, or losses to persons or property which may be sustained in connection with accessing the Partner Center, participating in any aspect of the Program, the use of any Program Services, or while preparing for, participating in or traveling to or from any Program-related activity (if applicable) or any typographical or other error in this Addendum or any linked terms. Microsoft makes no representations or warranties of any kind concerning the appearance, functionality, or performance of any Program Services.

6. **Reservation of Rights.**

Microsoft may have patents, patent applications, trademarks, copyrights, or other intellectual property rights covering subject matter in the Program Services. Except as expressly provided in any written license agreement from Microsoft, the furnishing of the Program Services or associated Content does not give you any license to these patents, trademarks, copyrights, or other intellectual property. Microsoft reserves all rights not expressly granted under this Addendum, and no other rights are granted under this Addendum by implication or estoppel or otherwise.

7. **Feedback.** If you provide Microsoft with feedback about the Program or the Program Services, then you grant to Microsoft, without charge, the right to use, share, and commercialize your feedback in any way and for any purpose. You also grant to third parties, without charge, any patent rights necessary for their products, technologies and services to use or interface with any specific parts of a Microsoft software or service that incorporates your feedback. You will not give feedback that is subject to a license that requires Microsoft to license its software or documentation to third parties because Microsoft includes your feedback in our software or documentation. These rights that you grant to Microsoft and third parties in this Section 7 will survive any

termination of the Agreement, this Addendum, or any termination of your rights to use Partner Center or the Program Services.

8. Termination.

You may terminate this Addendum at any time by using the functionality in Partner Center to withdraw from the Program.

Microsoft reserves the right to terminate your participation in the Program and your access to any or all of the Program Services at any time, without notice, for any reason whatsoever.

Termination of use of, or access to, the Program Services or the termination of this Addendum terminates your right to use any Program Services. You must continue to comply with Section 4 (Confidentiality) after termination of this Addendum. After termination, Microsoft may continue to use all data collected prior to termination.

9. Prohibited Use of Program Services.

You will not use Program Services for any purpose that is unlawful or prohibited by this Addendum, the Agreement, or any Documentation. You may not use the Program Services in any manner that could damage, disable, overburden, or impair any Microsoft server, or the network(s) connected to any Microsoft server, or interfere with any other party's use and enjoyment of any Program Services or other Microsoft services or products. You may not attempt to gain unauthorized access to any Program Services, other accounts, computer systems, or networks connected to any Microsoft server or to any of the Program Services, through hacking, password mining, or any other means. You may not obtain or attempt to obtain any materials or information through any means not intentionally made available through the Program Services.

EXHIBIT G: COMMERCIAL BENEFITS PROGRAM ADDENDUM

This Commercial Benefits Program Addendum (this "Addendum") is a supplement to the terms and conditions of the Agreement. Except as expressly modified by this Addendum, all of the terms and conditions in the Agreement, which is incorporated by reference herein, apply to your use of the Commercial Benefits Program. Capitalized terms not otherwise defined herein have the same meanings provided in the Agreement.

1. **The Program.** The Commercial Benefits Program (the "Program") is an incentive for Partners of all experience levels. Under the Program, you may from time to time 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 or Offering available through one of our commercial Marketplaces. Program Benefits may become available from time to time during the Program term. If you qualify for Program Benefits, you will be able to access them through the Program page that will be available in the Partner Center. Follow the instructions to redeem or access the Program Benefits.
3. **Program Benefits; Requirements and Limitations.**
 - a. To qualify for many of the Program Benefits, you will need to have an active Product on our Marketplace.
 - b. Program Level.
 - i. Some Program Benefits will be made available to only 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 such things as your existing Product performance, type of listing in the Marketplace, market relevance of your existing Products, Customer feedback on your existing Products, 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. You will need to meet the additional criteria in order to be eligible for these Program 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 web sites, 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 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, 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.
5. **Releases.** As a condition of your participation in the Program, you agree to release Microsoft from and against any and all liability, claims or actions of any kind whatsoever for injuries, damages, or losses to persons or property which may be sustained in connection with accessing the Partner Center, participating in any aspect of the Program, the receipt, ownership or use of any Program Benefit, or while preparing for, participating in or traveling to or from any Program Benefit-related activity (if applicable) or any typographical or other error in the Program terms and conditions. Microsoft makes no representations or warranties of any kind concerning the appearance, safety or performance of any Program Benefit, except for any express manufacturer's warranty as may be included with the Program Benefit. Program Benefit recipients bear all risk of loss or damage to any goods received as Program Benefits. Microsoft is not responsible for any products and/or services offered as Program Benefits on the Partner Center by other participating companies.

COMMERCIAL MARKETPLACE ADDENDUM TO MICROSOFT PUBLISHER AGREEMENT

This Commercial Marketplace Addendum (formerly called the Azure Marketplace Addendum) to the Microsoft Publisher Agreement (this “Addendum”) governs your use of the Azure Marketplace and AppSource Marketplace (collectively, “Marketplace”). As mentioned in the body of the Agreement, to the extent this Addendum contains additional or different terms than those included in the body of the Agreement, this Addendum will control.

1. Access, Certification, and Post Publication Assurances

- (a) **Customer Access.** Customers may access the Marketplace via a web-based management portal, Azure APIs, or other mechanisms made available by Microsoft.
- (b) **Certification.** Microsoft will certify each Product (including any updates) you submit for compliance with the Agreement and this Addendum, as set forth at <http://go.microsoft.com/fwlink/?LinkID=526832&clid=0x409> (or at an alternate site that we identify) and any other policies made available to you (“Microsoft Azure Certified Guidelines”).
- (c) **Post Publication Assurances.** Once published in the Marketplace, we may periodically test the Product at our discretion. We may also at our discretion make minor changes to the Product or its listing information (e.g., Product title, nature, volume, fees, terms of use) to correct for error(s) or for other similar reasons.

2. Licensing of Product and Deployment

- (a) **Licensing of Products.** You are responsible for licensing or otherwise granting rights to your Products to Customers. You may provide your own end user license agreement (subject to the requirements herein, including any privacy policy required under the Microsoft Publisher 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 Offering 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 fees 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.

3. Privacy. The following terms are in addition to the privacy and security obligations in the body of the Agreement.

(a) Use of Customer Data and Customer Information. You may use Customer Data only to provide your Product. You may use Customer Information to: provide your Product, to prevent fraud, to provide support, to perform statistical analysis, and as otherwise permitted in Section 3(b) below. You may not use Customer Data or Customer Information for any other purposes unless you obtain permission from Customers for such other purposes in your privacy policy or otherwise.

(b) Communications with Customers. You may use Customer Information to contact Customers for 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. If a Customer has purchased a Product through the Marketplace, you may not use Customer Information to attempt to directly sell the same product or service to the Customer outside of the Marketplace. This section does not restrict you from using other Customer contact information that you acquire independently outside of the Marketplace for any purpose, even if that information is identical to Customer Information, provided that you do not target communications on the basis of the intended recipient being an Azure customer, or otherwise violate the terms of the Agreement (including this Addendum).

(c) Commercial Benefit Programs. The Commercial Benefits Program (the “Program”) is facilitated through the Commercial Benefits Program Addendum (as described in **Exhibit G**) is an incentive program in which you are automatically enrolled when you make a Product available through our Marketplace. The terms and conditions of the Program and any other Partner benefits are made available to Partners through their publisher account, which can be found in Partner Center.

4. Fees, Publisher Net Revenue, Payment Terms, and Taxes

(a) Fees. When you submit a Product for publication, you will designate the fees (if any) to be charged Customers for use of your Product. The publishing portal may direct you to designate fees for different Product SKUs, geographies, currencies, or other aspects of your Product. Microsoft will convert fees 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 fees for that market. Microsoft may change its supported currencies or the default currencies for certain markets after providing you 30 days’ notice of any such changes.

- (b) **Publisher Net Revenue.** Amounts payable to you will be calculated as follows: (i) aggregate fees paid and actually collected from Customers for Customers' use of your Products over the previous payment period, less any applicable taxes, refunds, and chargebacks ("Publisher Net Receipts"); less (ii) a marketplace service fee for promotion and availability of the Products ("Marketplace Service Fee"). Our standard Marketplace Service Fee will be 20% of Publisher Net Receipts, except as specifically indicated by Microsoft, or for certain Microsoft Reseller instances set forth in **Attachment 1** or as otherwise agreed to by the parties. 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 Marketplace and excludes licenses that are purchased outside of the Marketplace. 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 by Customers during the relevant payment period.
- (c) **Payment Terms.** We will pay you applicable Publisher Net Revenues within 45 days after each payment period, as specified at <http://go.microsoft.com/fwlink/?LinkID=526833&clid=0x409> (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 within the Marketplace, the "Marketplace 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. All Publisher Net Revenues will be paid using Microsoft's standard payment methods and in the manner you indicated during your 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 us (or our third-party payment processor) with all financial, tax, and banking information requested so that we can pay you under this Agreement. We are not responsible for delay, loss, 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. We may remit payment to you in the currency associated with your account using Microsoft's then-current conversion rates.
- (d) **Taxes.** Information related to each of Microsoft's and your responsibilities for taxes on end customer sales is set out in the Marketplace Participation Policies and Guidelines.

5. Termination of Products

- (a) **Right to Terminate.** In certain cases where Microsoft suspends or removes your Product pursuant to its rights under the Agreement and this Addendum, Microsoft may elect (in its sole discretion) to terminate your Product.
- (b) **Effect of Termination.** Terminating your Product means that we will (i) notify existing Customers that the Product has been terminated 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. You agree that we will have no responsibility or liability for Customers' unauthorized use of your Product after the termination date.
- (c) **Wind-Down Period.** Except as set forth in this Section 5(c), if a Product is terminated, existing Customers will be able to continue to use the Product for 90 days or until expiration of the term of the Customer's subscription to your Product, whichever is longer ("Wind-Down Period"). You must continue to provide any services that are part of your Product to each existing Customer

during that Customer's 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.

- (d) **API License.** Upon terminating a Product that interoperates with a Microsoft Software Product, 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.

6. Specific Product Category Terms; Microsoft Software Products

- (a) **Specific Product Category Terms.** Additional terms governing specific categories of Products are set forth in **Attachment 2**.
- (b) **Microsoft Software Products.** Additional terms governing your incorporating Microsoft Software Products (defined in **Attachment 3**) are set forth in **Attachment 3**.

7. Miscellaneous

- (a) **Order of Precedence.** In the event of a conflict between the terms of the body of the Agreement and the terms of the Microsoft Azure Certified Guidelines or the Marketplace Participation Policies and Guidelines, the body of the Agreement will control.

ATTACHMENT 1

DISTRIBUTION OF PRODUCTS THROUGH MICROSOFT INDIRECT CHANNELS

SECTION 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 fees 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 Marketplace, you consent to having your Product resold as set forth in this Attachment 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 Marketplace 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.

ATTACHMENT 2

TERMS APPLICABLE TO SPECIFIC CATEGORIES OF PRODUCTS

SECTION 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 another Microsoft or other publisher Image available in the Marketplace (such Image, a “Base Image”) (such Product, an “Image Product”), you are responsible for obtaining any necessary permissions from the owner and publisher of the Base Image prior to publishing your Image Product.
- (b) **User Fees and Publisher Net Revenue.**
- (i) **New Virtual Machine Sizes.** For Image Products, you will be directed to designate fees 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 fees for the new virtual machine size. Failure to designate pricing within such time will constitute your designation of fees 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.

SECTION 2 VM Extensions.

Any software or other data installed by your VM 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 VM Extension handlers associated with your VM Extension Products.

SECTION 3 Services.

For certain types of service Products, as described in the Marketplace Participation Policies and Guidelines, if your service Product includes usage-based billing fees, you are responsible for metering Customers’ use of your service Product and reporting such usage to us on a periodic basis not to exceed 24 hours. We will provide you with one or more manual or automated mechanisms to report such usage information to us. We reserve the right not to collect fees for any usage information provided more than

24 hours after the close of any billing cycle. You are also responsible for notifying us and requesting correction of any erroneous usage information previously submitted. If you notify us that usage information you previously submitted was incorrect, we will attempt to correct over-billing errors at any time, where feasible, but we will not correct under-billing errors for Customers whose billing cycles have already closed. We reserve the right to suspend your service Product if: (i) you repeatedly fail to submit usage information on a timely basis; or (ii) you repeatedly submit erroneous usage information or request billing corrections.

SECTION 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.

SECTION 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.

SECTION 6 Products for Use in Customers' 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 3

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.

SECTION 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’s names, logos, or trademarks.
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- (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.
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the Image; and (iii) the Customer's use of any Microsoft Software Products within the Image will be governed by Microsoft's license terms.

SECTION 3 Notice of 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.

SECTION 4 Termination.

Upon termination of this Agreement or removal of your Image Product from the Marketplace, your rights under this **Attachment 3** will automatically terminate and you must destroy all copies of Microsoft Software Products obtained under this **Attachment 3**.

SECTION 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.

SECTION 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>.