Microsoft Publisher Agreement

Version: 1.2

Effective date: August 12, 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

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/](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.
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 https://docs.microsoft.com/en-us/legal/marketplace/certification-policies (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&clcid=0x409](http://go.microsoft.com/fwlink/?LinkID=526833&clcid=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 Marketplace Metering Service (formerly known as “Services”).

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

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

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

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.
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.

(c)  **Excluded Licenses.** You may not take any action that would cause any Microsoft Software Product, or any other Microsoft product, service, or documentation to be governed, in whole or in part, by an Excluded License. “Excluded License” means any license that requires, as a condition of the use, modification, or distribution of software subject to such license, that such software or other software combined or distributed with such software be: (i) disclosed or distributed in source code form; (ii) licensed for the purpose of making derivative works; or (iii) redistributed at no charge. Without limiting the generality of the foregoing, any version of the GNU General Public License (“GPL”), Lesser/Library GPL, or Affero GPL will be considered an Excluded License.

SECTION 2  Distribution and Licensing.

(a)  **Appointment.** You may make the Microsoft Software Products included within your approved Image available to Customers through the Marketplace on our behalf. You may not make the Microsoft Software Products available through any other channels.

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

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.