

MICROSOFT SAM MANAGED SERVICE PROGRAM PARTNER TERMS AND CONDITIONS

These SAM Managed Service Program Partner Terms and Conditions (“**Agreement**”) are between Microsoft Corporation and its Affiliates (“**Microsoft**”) and the party agreeing to the terms of this Agreement (“**Partner**”).

By participating in the SAM Managed Service Program (“Program”) Partner agrees to be bound by this Agreement. If Partner does not agree to the terms of this Agreement, Partner should not participate in the Program.

This Agreement consists of the Terms and Conditions below and any other documents referenced or linked to in this Agreement, any policies or procedures referenced in this Agreement and any applicable NDA.

TERMS AND CONDITIONS

SECTION 1 Program participation

- (a) Detailed terms and conditions regarding Partner’s participation in the Program are provided in the SAM Managed Service Program Guide (the “**Program Guide**”), as the Program Guide may be updated from time to time. The most current version of the Program Guide is available at <https://aka.ms/sammanagedserviceprogramguide> or any successor site thereto (the “**Program Site**”). Note that Program offerings and materials are only available in English at this time.
- (b) Microsoft does not guarantee that activities undertaken hereunder will result in customer sales for Microsoft or Partner licenses or services. Partner acknowledges and agrees that each customer will freely determine its supplier(s) of choice and that Microsoft has no obligation to recommend Partner to any customer.
- (c) Partner’s participation in the Program is voluntary. Nothing in this Agreement restricts Partner from also supporting, promoting or using non-Microsoft technology.
- (d) Partner will be enrolled in the Program after it accepts this Agreement, meets all applicable participation requirements, and is accepted by Microsoft into the Program. Microsoft may accept or decline to accept Partner in the Program at Microsoft’s sole discretion. Microsoft will notify Partner when its enrollment is complete.

SECTION 2 Partner obligations

Partner agrees to the following:

- (a) Partner will continuously maintain an active Microsoft Partner Network (“**MPN**”) membership in good standing with a valid MPN agreement (“**MPN Agreement**”) and a valid Channel Partner Agreement.
- (b) Partner will at all times during the Term of the Agreement satisfy the Program participation criteria set forth in Exhibit A and on the Program Site or otherwise provided from time to time by Microsoft.
- (c) Partner must submit to initial testing and assessment of the SAM Managed Services by an Independent Evaluator (defined below) selected by Microsoft (currently Ernst & Young or PwC) (“**Assessment**”), as well as biennial Re-Assessments with the Independent Evaluator (“**Biennial Re-Assessment**”), and adhere to all other Program requirements. Detailed information regarding the Assessment and Biennial Re-Assessment process is set forth in the Program Guide. Partner will pay Microsoft for the Assessment and Biennial Re-Assessments.
- (d) Partner will not disclose any Personal Data (as defined below) to Microsoft or any Affiliate (as defined below) of Microsoft in connection with any SAM assessment, any other SAM managed services or otherwise in connection with the Program (collectively, “**Program Activities**”). Except for limited information about the customer that may be reflected on the Customer Engagement Letter (as defined below) or the final SAM assessment report delivered to the customer (if and to the extent those are submitted to Microsoft in connection with a request to receive any channel incentives), Partner will not disclose any Customer Data (as defined below) to Microsoft or any Microsoft Affiliate in connection with any Program Activities. With respect to any Customer Data that is disclosed to Microsoft, any Microsoft Affiliate, or any Independent

Evaluator by or on behalf of Partner, Partner will obtain any and all necessary consents from the customer and any customer personnel and will be responsible for disclose such Customer Data only to the extent permitted by and in compliance with any applicable law. **“Personal Data”** means any and all data and information relating to an identified or identifiable individual to include linked data and/or linkable data and any combination thereof. This includes authenticated and unauthenticated data, user ID, device ID, or any similar ID that singles out a user. An identifiable individual is one who can be identified, directly or indirectly, in particular by reference to (1) an identifier such as name, an identification number, location data, an online identifier or (2) one or more factors specific to the physical, psychological, genetic, mental, economic, cultural or social identity of that individual. **“Letter of Engagement”** means the letter sent by Partner to a customer at the commencement of an engagement for a SAM assessment in the form approved in writing and in advance by Microsoft. **“Customer Data”** means any and all data and information (including any Personal Data) provided by a customer to Partner or otherwise obtained or generated by a Partner from or about a customer in connection with any Program Activities.

- (e) Partner must not breach this or any other agreement with Microsoft (or any Microsoft Affiliate).
- (f) Partner will follow all applicable Microsoft policies, procedures and guidelines described in this Agreement or on the Program Site or otherwise made available to Partner by Microsoft (**“Policies”**).
- (g) Partner will comply with any end user license agreement or other terms and conditions applicable to the software, documents, resources and tools made available by Microsoft and used by Partner in connection with any SAM assessment, other SAM managed services or otherwise related to the Program (**“Microsoft Tools”**). Partner will ensure that each customer that uses any Microsoft Tool agrees to and, to Partner’s knowledge, complies with any end user license or other terms and conditions applicable to a user of the applicable Microsoft Tool.

Partner will promptly notify Microsoft if it no longer satisfies any of the above referenced criteria.

SECTION 3 Fees and expenses

Payment of any fees and expenses from Partner to Microsoft related to Partner Accreditation will be as set forth in the Program Guide. Each party is responsible for its own costs and expenses associated with this Agreement. Partner is not entitled to any fees or other compensation from Microsoft for its participation in the Program.

SECTION 4 Program changes

Microsoft may change the Program or any aspect of it, including the Program Guide at any time. All changes will be posted on the Program Site and are effective on the date they are posted. Changes do not apply retroactively. Partner is responsible to check the Program Site regularly for Program changes and, if and to the extent necessary to reconcile any inconsistencies with the changes, to promptly update its agreements with customers accordingly.

SECTION 5 Intellectual property

- (a) **Counterfeit and other illegal software and infringements.** Partner will not engage, or participate with any third party, in the unauthorized manufacture, duplication, delivery, transfer or use of counterfeit, pirated, unlicensed or illegal software, or otherwise infringe any of Microsoft’s intellectual property rights. Partner will reasonably cooperate with Microsoft and its Affiliates in the investigation of any such activities. As soon as Partner becomes aware, Partner will report to Microsoft any suspected instances of any suspected counterfeiting, piracy, or other copyright infringement in marketing materials, or other copyrighted materials owned by Microsoft, its Affiliates and/or its licensors.
- (b) **Reservation of rights.** Microsoft reserves all rights not expressly granted in this Agreement.

SECTION 6 Use of trademarks and logos; publicity

- (a) Partner hereby grants to Microsoft a limited, non-transferable, non-sublicensable, royalty-free, revocable and non-exclusive license to reproduce, use and display its names, trademarks, trade names, logos and/or services marks (**“Partner Marks”**) solely in connection with Partner’s participation in the Program.

- (b) Partner will not use any logo or trademark of Microsoft in any manner or for any purpose without Microsoft's prior written approval. Partner will display any Program certifications as provided in the Program Guide, subject to all applicable Microsoft policies and requirements ("**Program Certificate**").
- (c) Both parties agree that any press release or communication to the press and/or public regarding this Agreement and the parties' relationship shall be made only after prior consultation with and written approval by Microsoft. Partner is not required to obtain additional approvals to distribute, without modification, the programmatic marketing materials provided by Microsoft on the Program Site ("**Marketing Materials**") subject to all applicable Microsoft policies and requirements, including without limitation those set forth in the Program Guide.
- (d) Partner must meet criteria explained on the Program Site to use the Program Certificate and Marketing Materials and any other materials provided to Partner by Microsoft in connection with the Program ("**Program Materials**"). Microsoft grants to Partner a nonexclusive, nontransferable, limited, royalty-free license to use the Program Materials solely in connection with the Program as long as it meets the criteria on the Program Site and remains a participant in the Program. Microsoft is the sole owner of the Program Materials and all associated intellectual property rights. All Program Materials will be deemed Microsoft Materials, subject to the terms of the applicable terms of Partner's MPN Agreement. Any trademarks, logos, symbols, and names included in the Program Materials will be deemed Microsoft Marks, subject to the applicable terms of Partner's MPN Agreement, including Section 6 (Trademarks) or any equivalent provision in Partner's MPN Agreement however labelled. Such terms are incorporated herein by this reference.

SECTION 7 Warranties; Disclaimer of Warranties

- (a) Microsoft warrants that it will use reasonable care and skill to administer the Program. Partner's effort and resulting performance are under Partner's control. Microsoft does not guarantee Partner's satisfaction with the Program or Partner's results.
- (b) Partner represents and warrants that:
 - (1) It has the full and exclusive right and power to enter into and perform this Agreement according to its terms.
 - (2) It has obtained all necessary customer consents, including any consents from customer's personnel, necessary for Partner to access, collect, use, store, disclose, transmit and otherwise process (collectively, "**Process**") Customer Data for (i) performance of any activities as required by this Agreement, or (ii) as Processed by Partner in connection with any Program Activities.
 - (3) Any services provided by Partner in connection with this Agreement ("**SAM Managed Services**") will not infringe any copyright, patent, trade secret, trademark or other proprietary right of any third party. Any materials, including any Customer Data provided to Microsoft, and all rights granted to Microsoft with respect to such materials, will not (i) infringe any copyright, patent, trade secret, trademark or other proprietary right of any third party or violate any rights of any other person; or (ii) require Microsoft to obtain any additional permission from or make payments to any third party.
 - (4) The SAM Managed Services and all Partner activities related to its participation in the Program will comport with all applicable laws, regulations, rules, orders, and other requirements of governmental and other authorities (collectively, "**Laws**"), including all applicable Laws pertaining to electronic mail, privacy and data collection, transactions with consumers and consumer protection, unfair competition, advertising, as well as with all privacy policies and terms of use applicable to the SAM Managed Services, and participating customers.
 - (5) Partner will handle all customer data in accordance with all applicable Laws, including all applicable Laws pertaining to electronic mail, privacy and data collection, transactions with consumers and consumer protection, unfair competition, advertising, as well as with all privacy policies and terms of use applicable to the SAM Managed Services and participating customers, and will ensure that all

transfers and processing of EU customer data will be in accordance with EU data protection laws, including, General Data Protection Regulation.

- (6) The SAM Managed Services will be performed professionally and be of high grade, nature and quality.
- (c) Except for loss and damage which cannot be limited or excluded under applicable law:
- (1) Microsoft provides the Program to Partner “as is,” and without warranties of any kind; and
 - (2) **DISCLAIMER OF WARRANTIES.** EXCEPT AS PROVIDED HEREIN, MICROSOFT EXPRESSLY DISCLAIMS ALL OTHER EXPRESS, IMPLIED, OR STATUTORY WARRANTIES TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. THIS INCLUDES THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT. OTHERS THAT MAY BE INCLUDED ARE LACK OF VIRUSES, QUIET ENJOYMENT, SCOPE OF LICENSE, LACK OF ERRORS, SATISFACTORY CONDITION OR QUALITY. THE DISCLAIMER ALSO INCLUDES ANY IMPLIED WARRANTY OR CONDITIONS ARISING FROM COURSE OF DEALING OR PERFORMANCE OR USAGE OF TRADE.

SECTION 8 Indemnification

Partner will defend, indemnify and hold Microsoft, its Affiliates and their respective officers, directors, employees, contractors, and agents harmless from any and all third-party claims, suits, demands, costs, liabilities, expenses, damages (including reasonable attorneys’ costs and fees) and judgments (or settlements to which Partner consents) related to: (a) any default or breach or alleged default or breach of this Agreement by Partner; (b) any other act or omission by Partner relating to its role under this Agreement based on (1) Partner’s failure to comply with applicable laws, rules or regulations; or (2) any gross negligence, willful misconduct or strict liability of Partner (or any Strategic Integrator); or (c) any Partner Processing of any Customer Data. Microsoft will provide Partner with reasonably prompt notice of claims, permit Partner through mutually acceptable counsel to answer and defend claims, and provide Partner with reasonable information and assistance to help Partner defend claims at Partner’s expense. Microsoft has the right to employ separate counsel and participate in the defense of any claim at its own expense. If Microsoft decides to do this, Partner and Microsoft will work together in good faith to reach decisions about which both parties agree. Partner must have Microsoft’s written consent before settling any claim or publicizing any settlement. Microsoft will not unreasonably withhold its consent.

SECTION 9 Limitation of liability

TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, SPECIAL, OR EXEMPLARY DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR LOSS OF DATA, REVENUE, AND/OR PROFITS) ARISING OUT OF OR THAT RELATE IN ANY WAY TO THIS AGREEMENT OR ITS PERFORMANCE. THIS EXCLUSION WILL APPLY REGARDLESS OF THE LEGAL THEORY UPON WHICH ANY CLAIM FOR SUCH DAMAGES IS BASED, WHETHER THE PARTIES HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER SUCH DAMAGES WERE REASONABLY FORESEEABLE, OR WHETHER APPLICATION OF THE EXCLUSION CAUSES ANY REMEDY TO FAIL OF ITS ESSENTIAL PURPOSE. THIS EXCLUSION WILL NOT APPLY TO EITHER PARTY’S LIABILITY FOR BREACH OF ITS CONFIDENTIALITY OBLIGATIONS, COMPANY’S DEFENSE AND INDEMNIFICATION OBLIGATIONS, VIOLATION OF THE OTHER PARTY’S INTELLECTUAL PROPERTY RIGHTS, OR ANY DIRECT OR INDIRECT LOSS OF PROFITS, DATA, BUSINESS, OR ANTICIPATED SAVINGS DUE TO FRAUD OR GROSS NEGLIGENCE.

SECTION 10 Confidentiality

- (a) **NDA and MPN Agreement.** All information exchanged under this Agreement or relating to the Program is subject to the nondisclosure agreement between the parties identified in the Partner’s MPN Agreement, if any, and all existing confidentiality obligations in Partner’s MPN Agreement (including all default confidentiality terms applicable if information was exchanged prior to execution of the nondisclosure agreement, there is no existing nondisclosure agreement, or if such existing nondisclosure agreement is terminated or otherwise ceases to be in effect) which are incorporated herein by this reference. Partner will comply with all applicable privacy and data protection laws and regulations.

- (b) Right to use feedback.** If Partner provides suggestions for changes or improvements, or other feedback, to Microsoft about the Program or Microsoft's products or services, Microsoft may use such feedback for any purpose without obligation of any kind, except that Microsoft will not disclose the source of feedback without Partner's consent.

SECTION 11 Compliance with laws and Microsoft Anti-Corruption Policy

Partner will comply with all compliance with laws, anti-corruption and audit requirements set forth in the MPN Agreement, including Section 14(d)(2) (Compliance with laws and Microsoft Anti-Corruption Policy) or any equivalent provision in Partner's MPN Agreement however labelled. Such terms are incorporated herein by this reference.

SECTION 12 Termination

- (a) Termination by Partner.** Partner may terminate its participation in the Program on 12 months' notice to Microsoft.
- (b) Termination by Microsoft.** Partner's participation in the Program may be terminated by Microsoft for Partner's material breach of this or any other agreement Partner maintains with Microsoft (or any Microsoft Affiliate) as follows:
- (1) If Partner does not comply with the Program participation requirements contained in this Agreement, including the Program Guide, Microsoft may immediately terminate Partner's participation in the Program.
 - (2) If Partner does not participate in, or does not pass, any Biennial Re-Assessment or if in Microsoft's judgment the quality of the SAM Managed Services declines, Microsoft may immediately terminate Partner's participation in the Program.
 - (3) For all other breaches, Microsoft may terminate Partner's participation in the Program if Partner fails to remedy the breach within thirty (30) days after written notice thereof.

Partner's participation in the Program may also be terminated by Microsoft if:

- (1) Partner is acquired or otherwise makes an assignment in contravention of Section 14.
- (2) The Program is discontinued.
- (3) Partner ceases to do business in the normal course; admits in writing its inability to pay its debts as they become due; becomes or is declared insolvent or bankrupt; is the subject of any proceeding under any bankruptcy act, receivership statute or the like, as they now exist or as they may be amended, related to its liquidation or insolvency (whether voluntary or involuntary) which is not dismissed within 90 calendar days, or makes an assignment for the benefit of creditors.

(c) Effect of termination

Upon termination of Partner's participation in the Program all Program support will terminate immediately. Partner will comply with all transition obligations specified in the Partner Guide, including continuing to offer the SAM Managed Services to each affected customer for 12 months after notice of termination or until a new partner is onboarded for such customer (i.e., a new SOW is signed), whichever comes first. Partner acknowledges that Microsoft may assist customers with the onboarding process, including providing such customers with a list of available partners. Upon termination of Partner's participation in the Program, all rights and obligations under these Program Terms terminate, except for the terms of this Agreement that are likely to require performance, or have application to events that may occur, after termination or expiration of this Agreement, will survive such termination, including all indemnity obligations and procedures.

SECTION 13 Partner to comply with Microsoft policies and procedures

Partner will comply with Microsoft's policies described in this Agreement and on the Program Site.

SECTION 14 General

Except as otherwise provided herein, all notices, authorizations, and requests in connection with this Agreement will be deemed given as of the day they are sent either by messenger or delivery service, charges prepaid, or the day they are deposited in the United States of America mails, postage prepaid, certified or registered, return receipt requested; and addressed, in the case of Partner, to the address at which you received your Program Participation Letter or current contact address on file, or, in the case of Microsoft, to your local Microsoft SAM&C Lead. Partner and Microsoft are independent contracting parties. Nothing in this Agreement will be construed as creating an employer-employee relationship, partnership, joint venture, agency relationship or as granting a franchise. Neither Partner nor any of its distributors or employees shall have any right to make any representation, warranty or promise on behalf of Microsoft or its suppliers. The laws of the State of Washington govern this Agreement. If federal jurisdiction exists, the parties consent to exclusive jurisdiction and venue in the federal courts in King County, Washington. If not, the parties consent to the exclusive jurisdiction and venue in the Superior Court of King County, Washington. Failure by either party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision. This Agreement will be construed according to the fair intent of the language as a whole, and not for or against either party. Partner may not assign this Agreement, or any rights or obligations hereunder, directly or indirectly (e.g., by merger, consolidation, other corporate reorganization, or a transfer or sale of a controlling interest), by operation of contract, law or otherwise, except with the express prior written consent of Microsoft, and any attempted assignment by Partner in violation of this Section shall be void. In the event of such assignment or attempted assignment by Partner, Microsoft shall have the right to immediately terminate this Agreement. “**Affiliate**” means any legal entity that owns, is owned by, or is commonly owned with a party where “**own**” means having more than 50% ownership or the right to direct the management of the entity. This Agreement, including the Exhibit(s), constitutes the entire agreement between the parties with respect to the subject matter hereof and merges all prior and contemporaneous communications. This Agreement does not amend or otherwise affect any other agreement between you and Microsoft, including the MPN Agreement.

Exhibit A

PROGRAM PARTICIPATION REQUIREMENTS

In addition to the requirements set forth above and in the Program Guide, the following are prerequisites to, and ongoing requirements of, participation in the Program:

- (a)** Partner must maintain accreditation as an Accredited Provider by an independent evaluator selected by Microsoft (currently Ernst & Young or PwC) (“**Independent Evaluator**”). Detailed information regarding the accreditation process and requirements is set forth in the Program Guide. Partner consents to the Independent Evaluator sharing information with Microsoft: (1) as provided in the Program Guide, and (2) as necessary to complete the Assessment and Biennial Re-Assessment processes. Partner will pay Microsoft for the accreditation process. Partner acknowledges that accreditation is based on predetermined local geographies and accreditation in one geography does not mean that Partner is accredited in other geographies. Partner must continuously meet all program participation requirements for each geography in which it maintains an accreditation. Please see the Program Guide for further details.
- (b)** Partner must maintain the following qualifications:

 - (1) Partner must be an MPN partner and maintain a valid Channel Partner Agreement.
 - (2) Partner must be eligible to receive SAM Channel Incentives/Partner Fees per the Eligibility Requirements, which are currently located at: <https://aka.ms/SAMIncentivesProgram>
 - (3) Partner must have an established Managed Service in place for more than 2 consecutive years with 10+ customers or >5,000 seats for specified geographies.
 - (4) Partner must deliver ten completed Microsoft SAM engagements / Solution Assessments within the last 12 months in each location and be evidenced by the local SAM&C Team. Engagements may be Microsoft Generated Opportunities (MGO) or Partner Generated Opportunities (PGOs) and do not require use of SAM Channel Incentive funding.
 - (5) Any additional qualifications set forth in the Program Guide.
- (b)** Partner must provide and contract with each participating customer for the minimum services set forth in the Program Guide.
- (c)** If Partner contracts with a third party service provider (“**Strategic Integrator**”), Partner must require each Strategic Integrator to agree in writing to terms no less protective of Microsoft than the terms of this Agreement.