



**Microsoft Partner Agreement
April 2022 Update Notice**

As you'll probably be aware there will be updates to the Microsoft Partner Agreement coming into effect in April 2022. We've taken a look and produced this document to help you prepare. The information does not constitute legal advice and should not be relied on as constituting legal advice. However if you do want help, please do get in contact by emailing hello@law365.co or visit our [Get started](#) page.

CORE TERMS		
Clauses Numbers / Definitions:	The revision	Comment/Suggested action
Terms	The word 'terms' has been changed to 'Terms' in a capitalised format throughout the agreement and added into the defined terms.	Information only, no action needed.
Effective Date	Effective Date has been included as a defined term, meaning that the agreement begins (is 'effective') on the date of acceptance by the parties.	Information only, no action needed.
Force Majeure	The definition of Force Majeure has been extended to include any event which is beyond the reasonable control of the party's, could not have been prevented through reasonable efforts and materially affects performance of the agreement by the party wishing to rely on Force Majeure. This will allow a wider range of events to be included as a Force Majeure event such as a pandemic or epidemic and other events not present in the previous definition.	Information only, no action needed.
Laws	It is clarified that the definition of 'Laws' including all applicable laws, also refer to the terms 'legal', 'legal or regulatory' and 'legally'.	Information only, no action needed.
General:	This clause requiring you to maintain your status as a registered	Information only, no action needed. It is interesting to note that this



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<p>Clause 3</p>	<p>member of the <i>Microsoft Partner Network</i> and maintain an active <i>Microsoft Partner Network Agreement</i> has been relocated to this General section of the Core Terms from the General Obligation section of Channel Terms.</p>	<p>requirement is now a Core Term rather than part of the Channel Terms.</p>
<p>Business Integrity Principles: Clause 2(c)</p>	<p>The prohibition on making any payments to government officials or those in public office has been extended to include a prohibition on paying expenses for travel, lodging, gifts, hospitality or charitable contributions.</p>	<p>This is for information only, but you may wish to extend your internal policies to include the wider prohibition on payment of expenses to any public or government officials.</p>
<p>Term & Termination: Clause 3 -Termination for Cause</p>	<p>A party may terminate for cause where a breach is not cured for 30 days following written notice by the non-breaching party. It is now possible for the parties to mutually agree that the non-breaching party does not trigger the right to terminate.</p>	<p>Information only, no action needed. It is useful to know that even where a party has failed to cure a breach for 30 days, it is contractually possible for the parties to agree not to terminate the agreement.</p>
<p>Term & Termination: Clause 3 - Termination for Cause</p>	<p>Microsoft can also now terminate the agreement immediately for cause as described in sections 4 (b) (2) and (3) of the Company’s Microsoft Partner Network Agreement which relates to breach of privacy & data protection, confidentiality, business integrity and IP rights.</p>	<p>This is for information only. Microsoft’s right to immediate termination for breach of these key terms already existed.</p>
<p>Miscellaneous: Clause 3 - Notices</p>	<p>Any notices will now be deemed received five (5) business days after being sent. Previously, it was deemed received after seven (7) business days.</p>	<p>Please note the change in notice period for your internal procedures and policies and amend those, where necessary.</p>

CHANNEL TERMS



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Clause number	The revision	Comments/Suggested action
Definitions:	<p>Education Customer has been included as a defined term which means customers who meet the education customer eligibility requirements that can be found at: http://www.aka.ms/academiceligibility.</p> <p>Public Customer has been included as a defined term meaning customers who are an Education Customer, Government Customer or are a State-Owned Entity.</p>	Information only, no action needed.
Product Fees and Ordering, General: Clauses 2 & 3	<p>The definition for 'State Owned Entity/Government Customer' has been made simpler by changing this to 'Public Customer'. This section deals with discounts, credits or other benefits offered to a Public Customer and it remains the case that any discounts, credits or benefits must be passed onto the Public Customer.</p> <p>Some amendments to typos and grammatical changes have been incorporated into these paragraphs which does not change the overall meaning of the text.</p> <p>There is a change to the hyperlink provided to access Microsoft's Ethics & Integrity and Microsoft Contract Requirement and Compliance training which can now be found at: https://learningportal.microsoft.com/ethics and https://partner.microsoft.com/enUS/training/assets/collection/microsoft-contract-requirements-and-compliance18552#/(.</p>	Information only, no action needed.
Audit, General:	There is a requirement to maintain records for the purposes of an Audit	Information only, no action needed.



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<p>Clauses 1 & 4</p>	<p>for the five (5) '<i>most recent</i>' years of participation which has replaced requirement to maintain records for five (5) years '<i>prior</i>' to the participation. This may be relevant where there are numerous periods of participation - it is clarified that the most recent period of participation is the relevant period for the purpose any proposed audit.</p> <p>In clause 4 a typo '<i>distributed</i>' has been amended to '<i>distribution</i>'.</p>	
<p>Limitations on Liability, General: Clause (b)</p>	<p>A typo has been amended in this clause and it is further clarified in clause (b) (iv) that the exemption to the limitation on liability does not include breach of the business integrity principles, specifically obligations in section (b) and (c), '<i>Business Conduct</i>', relating to anti-bribery, corruption and payments to government/public officials.</p>	<p>Information only, no action needed.</p>
<p>Notice of Changes; Termination; Order of Precedence: Clause 5 - Termination for Cause</p>	<p>It is now possible for the parties to mutually agree that the non-breaching party can refrains from terminating for cause where a breach remains uncured for 30 days following written notice.</p>	<p>Information only, no action needed.</p>
<p>Notice of Changes; Termination; Order of Precedence: Clause 7 - Order of Precedence</p>	<p>The order of precedence where there are conflicting terms has been changed. Ranking from the highest priority to the lowest, the order is: (1) any Product Specific Terms (2) the Chanel Authorisation (3) these Channel Terms.</p> <p>It has been clarified that in Program Specific Terms, Guides will be the lowest priority and in respect of the Agreement generally, Guides will hold the position in Core Terms (where it is listed as 4th and before terms incorporated by URL).</p>	<p>Information only, no action needed.</p>

<p>CSP INDIRECT RESELLER AUTHORISATION</p>		
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Definitions: Additional Terms Distributor Agreement Independent Customer Agreement Microsoft Product Non-Microsoft Product SLA	<p>The definition for 'Additional Terms' has been extended to include the part of the Distributor Agreement where technical support is given in the capacity as an Indirect Reseller of the Distributor. Distributor is the entity or "middleman" who sold you the product.</p> <p>It is stipulated that the Distributor Agreement may be updated from <i>'time to time'</i></p> <p>A definition for Independent Customer Agreement has been incorporated which is the agreement between you and your customers governing the customer's personal data.</p> <p>This definition is added which means any Product which is not a Non-Microsoft Product.</p> <p>This definition is added meaning any third-party product available through the Microsoft Azure Marketplace, Virtual Machine Gallery or other storefront/feature of Microsoft online services.</p> <p>A definition for SLA has been added meaning service level agreement commitments made by Microsoft to the Customers regards to the delivery/performance of the product.</p>	Information only, no action needed.
Authorization: Clauses 1 & 4	<p>Some typos have been amended in these paragraphs and the definition of State Owned Entity or Government Customer has been changed to <i>'Public Customer'</i>.</p>	Information only, no action needed.

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<p>Relationship to Parties:</p> <p>Clause 1 (a) – Access to Tools and Systems</p>	<p>It is clarified that except as otherwise provided in the agreements, <i>Microsoft sets no requirements on Company’s pricing and other terms</i> of sale. This is a slight change from the previous wording which stated that ‘<i>Company is free to set its own pricing</i>’. This change in wording indicates that while Microsoft sets no requirements, other party’s may do so such as the Distributor.</p>	<p>Information only, no action needed.</p>
<p>Relationship of Parties:</p> <p>Management of Customer Subscription</p> <p>Clause 2 (b)</p> <p>Clause 2 (c)</p>	<p>A new clause is inserted absolving Microsoft from all liability if the Distributor cancels a customer’s subscription or suspends a customer subscription.</p> <p>A new clause has been inserted that Microsoft is able to suspend or cancel a customer’s subscription at any time for legal / regulatory reasons, or as otherwise permitted under the Distributor and Customer Agreement, and Microsoft will not be liable for any such termination or suspension.</p>	<p>You need to flow down these terms to your customers in the agreement with your customer to ensure you are not liable for a customer’s loss where the Distributor is entitled to cancel or suspend a customer’s subscription.</p> <p>In such flow down terms, you may wish to use wording such as ‘</p> <p>In such flow down terms, you may wish to use wording such as: ‘On termination or suspension of the agreement of the Customer’s subscription these Terms shall automatically cease on notice by Microsoft or the Distributor to the [Company]; and the [Company] shall not be liable whatsoever to the Customer following any termination or suspension of the subscription for legal, regulatory or any other reason reasons by Microsoft or the Distributor.’</p>
<p>General Requirements and Obligations:</p> <p>Customer Agreement Acceptance</p> <p>Clauses 1 (a), (b) & (c)</p>	<p>These new clauses intend to create legal relations between Microsoft and</p>	<p>One to bear in mind that you need to incorporate into your</p>



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	<p>the final customer. The clause seeks to obtain the customer’s acceptance of Microsoft’s terms and conditions, the ‘Customer Agreement’ prior to the customer placing an order.</p> <p>The Distributor can require you to secure customer’s acceptance of the terms which creates a binding contract between Microsoft and customer; or Microsoft can obtain the acceptance of their terms independently. Neither you nor the Distributor may revise the terms. However, Microsoft can revise the terms for future customers and any revisions must be accepted by customer for all subsequent orders and renewals.</p> <p>Where you have secured the acceptance of the terms by the customer, you must provide accurate details to the Distributor for the Distributor to report the information to Microsoft. Microsoft can reject any customer for a legal or regulatory reasons or if it determines that the customer would create additional risk of liability for Microsoft.</p>	<p>procedure/policy the requirement that you may be required to obtain customer’s acceptance of Microsoft’s terms and condition prior to placing an order for a customer.</p> <p>You will need to include language in your agreements with your customers as follows:</p> <p><i>“The Customer agrees and acknowledges the terms of the CSP Customer Agreement (which is a direct agreement between Microsoft and the Customer and which may be updated by Microsoft from time to time).”</i></p> <p>You also need to ensure that in your ‘Third Party Rights’ section of your agreement with the Customer you include language to add Microsoft as a third party beneficiary. This will create the legal relationship.</p> <p>Please incorporate into your procedures the requirement to inform the Distributor of the details of any customer acceptance of the terms which create legal relations between the customer and Microsoft.</p>
<p>General Requirements and Obligations:</p> <p>Reservation of Rights</p> <p>Clauses 2 (a)</p>	<p>This additional clause relates to Microsoft’s reservation of certain rights such as right to reject potential customers and right to terminate customers for</p>	<p>You need to incorporate into your procedures the additional requirements relating to Microsoft’s right to terminates a customer.</p>

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	<p>compliance with Law, eligibility or as per the Customer Agreement. Where such termination occurs, Microsoft will promptly notify you, following which you must stop collecting orders from such customers and stop any further deliveries. However, such termination will not cease customer’s obligation to file next required order, reports or obligation to pay Microsoft for invoices submitted.</p> <p>Microsoft will not be liable to you, and you will not be liable to Microsoft (except where you have breached a contractual obligation), when a customer is rejected or terminated. You can invoice a terminated customer for orders placed prior to termination.</p> <p>Microsoft reserves the right to provide products directly to customers and can authorise third parties to do so and can communicate directly with customers.</p>	
<p>General Requirements and Obligations:</p> <p>Software Offer Terms and Obligations</p> <p>Clause 4 (a): Proof of License</p>	<p>This clause relates to the grant of licences to customers - you must only provide licence confirmations to those customers who are eligible to the licence (i.e., have a Customer Agreement in place).</p>	<p>Information only, nothing to action.</p>
<p>General Requirements and Obligations:</p> <p>Software Offer Terms and Obligations</p> <p>Clause 4 (b): Installation of Software</p>	<p>You must use reasonable measures to ensure customers are using the original software and bear in mind that the installation of certain software may require the customer to have a qualifying licence for the hardware.</p> <p>If you install software for a customer, then you must make commercially reasonable efforts to ensure that the software has been obtained properly</p>	<p>Please incorporate into your procedures the active requirement to make reasonable efforts to ensure customer is using original software, that the licence is properly obtained, keep records of installation and ensure that the customer is using the correct number of licenses.</p>



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	<p>and retain all records relating to the installation. On request, you must provide the records to Microsoft. Falsification of records is grounds for immediate termination of the Channel Authorisation.</p> <p>You must ensure that the customer has the correct number of licenses to match the quantities and number of users /devices which access the software/professional services. You are required to promptly notify Microsoft of any failure by customer to possess the correct number of licenses.</p>	
<p>Operational and Technical Support:</p> <p>Company Support Obligations</p> <p>Clause 1 (a)</p>	<p>What has been added is that the Distributor can cooperate with you to fulfil certain technical support or can delegate the technical support requirements to you.</p> <p>Where this is delegated, you must provide support services for all products and include the support service in your agreement with the customer. You must and perform the support services with professional care and skill. Such support must be provided on a continuous basis, and you must be the customer's primary point of contact.</p> <p>You are responsible for informing the customers about the support processes and must diagnose/resolve customers questions regarding how-to scenarios and all issues where a publicly documented solution is made available from Microsoft. You can escalate issues to Microsoft, through your Distributor, only the issues which can only be resolved by Microsoft.</p>	<p>You must provide technical support and assistance to your customers and flow down the same support terms that the Distributor has given to you to your customers. You can of course provide more support than what is given by your distributor/Microsoft and on your own terms.</p> <p>You are required to have in place appropriate level of technical staff, training capabilities and procedures in place to provide such a technical service to your customers, where this is delegated. You must be the primary point of contact.</p> <p>Please ensure you clarify within the Distributor Agreement whether such technical support has been delegated to you bearing in mind costs and capabilities to provide the support and where you seek to push back, ensure proper documentation of the agreements made.</p>



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Clause 1 (b)	Microsoft will provide support services for <i>Software Perpetual License and Software Subscription</i> offers and if you choose to provide frontline support for such areas you can choose to do so but are not obligated to. However, if they remain unsolved you may direct the customer to Microsoft. You are only responsible to provide support for issues relating to procurement & general fulfilment, including license key access, activation process, product media and download.	
Clause 1 (c)	You agree that Microsoft has no responsibility to support purchase and fulfilment process for products. You must <u>promptly</u> escalate to a Distributor any claims made by customer regards to an SLA.	
Clause 1 (d)	<p>You may be required to maintain certain support performance levels such as customer satisfaction, support volumes as directed by Microsoft and invalid support escalations.</p> <p>Where Microsoft determines you are not meeting performance levels, you may be required to discuss a remediation plan. Where remediation is necessary, you must provide a report to Microsoft of your support capabilities and perform any necessary additional training.</p>	
Clause 1 (e)	Distributor is the main point of contact for technical support requests escalated to Microsoft and Distributor must submit support tickets to Microsoft for you.	
Clauses 2: Support Contact Information	You are required to provide, at Microsoft's request, contact details of your support personnel and the personnel must complete help desk training before launch of the products and always remain up to date with the latest help desk training. You must not publish Microsoft's support contact information which can direct customers to Microsoft.	

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<p>Clause 3: Support Metric Report</p> <p>Clause 4 (a) & (b): Administrative Access</p>	<p>You must store case information in a management system which enable you generate monthly reports and with which you can share information with Microsoft on the optimization of the products, which must be treated as confidential, but Microsoft can disclose the information in an anonymised format.</p> <p>It is now possible that customers can request a transfer of their administrative access credentials to either the customer or any other reseller.</p> <p>Where you have obtained an administrative access credential (e.g., to provide technical support) you must enter an Independent Customer Agreement with the customer which aligns with the requirements of the Data Protection Laws.</p>	<p>There is a requirement to enter Data Protection agreements with your customers where any customer shares their administrative access credentials to you for support purposes. You need to draw up such agreements prior to providing technical support to your customers.</p>
<p>Defense Obligations</p> <p>Clause 2: Notifications of Claims</p>	<p>You must <i>promptly</i> notify Microsoft of a claim which allege gross negligence by Microsoft or intentional act/omission, alleges Microsoft products alone (without being combined or modified) infringes a patent, alleges that your use of Microsoft Marks infringes a third party’s trademark or third party’s copyright or that Microsoft has misappropriated a trade secret.</p> <p>Microsoft can choose to defend such above claims and if it chooses to defend, Microsoft will become the Defending Party and defend you, and pay costs, fees, judgments or settlements where applicable. Where Microsoft chooses not to defend a claim, Microsoft will not be obligated to defend or indemnify you for the claim.</p>	<p>As there is a requirement to act <i>promptly</i> to notify, we suggest you incorporate these new requirements to notify into your procedures and alert all relevant personnel how to notify Microsoft.</p>
<p>Customer Data and Privacy Obligations</p> <p>Clause 2: Customer Data</p>	<p>The requirement to notify Microsoft within 72 hours of a security incident relating to a customer data breach has been extended to include</p>	<p>As there is a relatively short period of time to notify of a security breach, the meaning of which is now slightly extended, and an active</p>



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<p>Clause 3: Other Security Obligations</p>	<p>unauthorised access to Partner Portal via any of your accounts or any other unauthorised or non-compliant access which affects end user experience or impacts products.</p> <p>It is now specified that a notification should include information regarding known cause or source of incident which can be shared by Microsoft with their representative, affected parties and government authorities. You must cooperate with Microsoft's investigations including timely provision of any requested information.</p> <p>This clause is slightly amended to stipulate that your representatives are authorised to use the Partner Portal <u>on your behalf</u>, and you are responsible for any misuse, including fraudulent activities conducted through the Partner Portals.</p>	<p>duty is incorporated to provide further information regards to the source of the incident; we suggest you update your procedures and policies with the additional requirements.</p>
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