**Microsoft Gaming & Novis Games Agreement**

This Microsoft 365 Development and Marketing Agreement (the “**Agreement**”) is between Microsoft Corporation, a Washington corporation (“**Microsoft**”), and [*Novis Games*], a *Partner* (“**Partner**”). This Agreement is effectived as of the later of the signature dates below (“**Effective****Date**”).

This Agreement consists of:

• this document (“Cover Page”);

• the following general terms and conditions (“General Teams”);

• the non-disclosure agreement between the parties effective as of [DATE ] (“NDA”); and

• any attached Exhibits and Application Project Descriptions

**Addresses and contacts for notices**

|  |  |
| --- | --- |
| **“Microsoft”** | **“Partner”** |
| Name: Microsoft Corporation | Name: Novis Games |
|  |  |
| Primary Contact: | Primary Contact: |
| Address:  One Microsoft Way  Redmond, WA 98052-6399 | Address: |
| Phone number: (425) 882-8080 | Phone number: |
| Fax number: | Fax number: |
| Email: | Email: |
| Secondary Contact (*if applicable*): | Secondary Contact (*if applicable*): |
| With copy to:  Microsoft Corporation  Deputy General Counsel, E&D (CELA)  One Microsoft Way  Redmond, WA 98052-6399 | With copy to: |

**Agreed and accepted**

|  |  |
| --- | --- |
| **Microsoft** | **Partner** |
| Signature: | Signature: |
| Name: | Name: |
| Title: | Title: |
| Date: | Date: |

**Background**

Microsoft is a manufacturer of artificial intelligence (“**AI**”) software and related technologies. Licensor is the developer and manufacturer of AI software entitled “Novis Games” which develops accessibility tool for visually impaired gamers using Generative AI, for which Licensor may derive a benefit from development, collaboration and wider distribution by Microsoft. Following delivery of Deliverables (defined below), each Party will provide the other Party certain integration support services as described herein. In consideration of the terms of this Agreement and other good and valuable consideration, the sufficiency of which is acknowledged, the parties agree as follows:

**GENERAL TERMS AND CONDITIONS**

1. **Definitions**
   1. “**Affiliate**” means any legal entity that controls, is controlled by, or is under common control with a party.
   2. “**App**” or “**Application**” means any Partner application or plug-in developed and promoted in collaboration with Microsoft, as described in this Agreement.
   3. "**Application Project Description**" means any exhibit attached to this Agreement that describes the scope, timeline, and deliverables for a specific project related to the development and promotion of Applications in the Microsoft 365 app ecosystem.
   4. “**Confidential** **Information**” has the meaning set forth in the NDA.
   5. “**Competitive Platform Variant**” means a comparable Partner application in a non-Microsoft enterprise-level app store or application platform.
   6. “**Data Protection Law**” means any law, rule, regulation, decree, statute, or other enactment, order, mandate or resolution, applicable to Partner or Microsoft, relating to data security, data protection or privacy, and any implementing, derivative or related legislation, rule, regulation, and regulatory guidance, as amended, extended, repealed and replaced, or reenacted.
   7. “**Intellectual Property Rights**” or “**IPR**” means any patents, copyrights, trademarks, trade secrets, moral rights, and any other intellectual property or proprietary rights, whether under statute or at common law or equity, arising at any time under the law of any jurisdiction.
   8. "**Microsoft 365**" means the suite of cloud-based productivity and collaboration tools offered by Microsoft, including but not limited to Microsoft Office, Microsoft Teams, and Microsoft SharePoint.
   9. “**Personal Data**” means any information relating to an identified or identifiable natural person and any other data or information that constitutes personal data or personal information under any applicable Data Protection Law.
   10. "**Store**" means any Microsoft owned or operated distribution platform of apps or plugins, however named, through which the App may be offered to or acquired by Microsoft 365 customers.
2. **Partner App Development, Review, Maintenance**
   1. **Partner Application Development****.** Partner will develop the Application(s) subject to the specifications, milestones, set forth in an Application Project Description and will submit such App to the Store by the Submission Date specified in the relevant Application Project Description. In the event that, Microsoft requires revisions of any App version, pursuant to the App Review Process below, the parties will agree as necessary to modify future milestone deadlines under the corresponding Application Project Description.
   2. **Feature** **Parity**. Partner will use commercially reasonable efforts to ensure that App contains substantially similar core features, functionalities, and content that Partner makes available for Competitive Platform Variant.
   3. **App Review Process.** Partner will submit the App through the official validation and quality review process for Microsoft 365 applications published at https://learn.microsoft.com/en-us/legal/marketplace/certification-policies, and will revise the App until it passes such process or an exception is granted. Partner will comply with the application developer program terms and conditions at https://learn.microsoft.com/en-us/office/developer-program/terms-and-conditions and the Microsoft Publisher Agreement at https://learn.microsoft.com/en-us/legal/marketplace/msft-publisher-agreement (collectively, the “ADAs”).
   4. **Catalogue Commitment.** Partner will not remove the App (including any updates) from the applicable Store catalogue for at least thirty-six (36) months following first publication in the applicable Store, unless such removal is necessary to prevent damages in connection with a bona fide complaint or claim by a third party related to the App, including but not limited to cases where Partner loses the rights to third party content in the App despite commercially reasonable efforts to retain them. Upon written request from Partner on the basis of a reasonable business justification, this period may be shortened at Microsoft’s discretion.
   5. **App Maintenance and Support.** Partner will maintain and update the App, as needed and upon Microsoft’s reasonable request, to fix material bugs and resolve significant customer issues. In addition, Partner will maintain and update the App to provide continued feature parity with the Competitive Platform Variants to support new feature changes that are shipped through the Microsoft 365 roadmap, and to fix bugs and push new updates as needed to maintain App functionality. Partner will provide commercially reasonable support to end users who acquire the App at a level that is no less than it provides to end users of its Competitive Platform Variants.
3. **Technical Support; Telemetry Data**
   1. **Technical Support.** Microsoft will provide to Partner reasonable technical assistance for the development of Partner’s App, but only available during the following hours: Monday through Friday, U.S. Pacific Time, during normal business hours at the technical support email address indicated in the corresponding Application Project Description.
   2. **Telemetry Data.** Following publication of the App and for the remainder of the Term of this Agreement, upon the reasonable request of Microsoft, Partner will provide aggregated telemetry data on the download and use of the App. Any telemetry data provided by Partner to Microsoft will be redacted to remove any information that might identify any natural person or otherwise constitute personal data and no telemetry data related to any Competitive Platform Variant will be requested or provided.
4. **Go-to-Market/ Marketing**

Subsequently if both parties mutually agree in writing (email will suffice), both parties will collaborate to enable Licensor to sell the Integrated Product(s) to first- and third-party customers generally. At its discretion Microsoft may add such Integrated Product(s) to the Microsoft sales playbook. All customer contracts, sales, billing and support will be managed by Licensor. Microsoft will make commercially reasonable efforts to provide timely engineering resources and customer support needed by Licensor to promptly problem-solve and resolve Microsoft Product, Microsoft Materials, and/or Integrated Product engineering questions from customers.

Partner and Microsoft will use good faith efforts to market and promote the App to end users by engaging in activities mutually agreed upon by the parties, including but not limited to the activities stated in this Agreement. Each party will give the other party any marketing materials necessary to fulfill the other party’s marketing or promotional commitments under this Agreement. All such marketing materials will be governed, as applicable, by the terms of an Application Project Description, the relevant ADAs, the applicable Store terms, or such other terms upon which the parties may mutually agree in writing.

1. **Costs and Expenses**.

Except as explicitly provided in an Application Project Description, each party will perform all obligations under this Agreement at its own expense, and this Agreement does not require either party to share with the other party any revenues it may receive as a result of its activities undertaken pursuant to this Agreement.

1. **Intellectual Property**

**6.1. FOREGROUND IP.**

**MICROSOFT OWNS FOREGROUND IP.** THIS SECTION 6.1 DOES NOT APPLY TO BACKGROUND IP (DEFINED BELOW). THE SERVICES HAVE BEEN SPECIALLY COMMISSIONED BY MICROSOFT AS “WORKS MADE FOR HIRE.” TO THE EXTENT ANY SERVICES INCLUDE MATERIAL SUBJECT TO COPYRIGHT, MASK WORK, PATENT, TRADEMARK, TRADE SECRET, OR ANY OTHER PROPRIETARY RIGHTS PROTECTION, AND ANY RIGHTS IN SUCH SERVICES ARE NOT OWNED BY MICROSOFT AS “WORKS MADE FOR HIRE” PURSUANT TO THE PRECEDING SENTENCE, SUPPLIER HEREBY IRREVOCABLY AND UNCONDITIONALLY ASSIGNS TO MICROSOFT, ALL RIGHTS (INCLUDING SUBLICENSING RIGHTS), TITLE, AND INTEREST IN AND TO ALL SUCH SERVICES AND ALL RESULTS AND PROCEEDS OF THE SERVICES, IN ALL STAGES OF COMPLETION, INCLUDING ANY SPECIFICATIONS, SCHEMATICS, DESIGNS, PROTOTYPES, REFERENCE PLATFORMS, PRODUCTS, SOFTWARE CODE, DOCUMENTATION, REPORTS, MEMORANDA, STUDIES, PLANS, EXHIBITS, OR OTHER MATERIALS PREPARED BY SUPPLIER AS PART OF THE SERVICES. ACCORDINGLY, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MICROSOFT WILL OWN, WITHOUT ANY RESTRICTIONS OR LIMITATIONS WHATSOEVER, THE SOLE AND EXCLUSIVE RIGHTS TO PREPARE DERIVATIVE WORKS BASED ON THE SERVICES AND TO REPRODUCE, ADAPT, MODIFY, DISTRIBUTE, PUBLICLY PERFORM AND DISPLAY, USE, MAKE AND HAVE MADE, SELL AND HAVE SOLD, IMPORT, AND OTHERWISE EXPLOIT THE SERVICES AND SUCH DERIVATIVE WORKS, BY ANY AND ALL MEANS AND IN ANY AND ALL MEDIA NOW OR HEREAFTER KNOWN, THROUGHOUT THE WORLD AND IN PERPETUITY. TO THE EXTENT ANY OF SUPPLIER’S OR ITS EMPLOYEES’ RIGHTS IN THE SERVICES, INCLUDING ANY MORAL RIGHTS, ARE NOT CAPABLE OF ASSIGNMENT UNDER APPLICABLE LAW, SUPPLIER HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ALL ENFORCEMENT OF THOSE RIGHTS TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW. TO THE EXTENT THAT ANYTHING IN THE SERVICES IS NOT BACKGROUND IP (DEFINED BELOW) AND WILL NOT BE OWNED BY MICROSOFT PURSUANT TO THIS SECTION 6.1, IT WILL NEVERTHELESS BE DEEMED TO BE PART OF BACKGROUND IP FOR PURPOSES OF SECTION 6.2.

**6.2. BACKGROUND IP.**

SECTION 6.1 DOES ***NOT*** APPLY TO “*BACKGROUND IP*,” WHICH MEANS (I) ANYTHING SUPPLIER OWNS OR CONTROLS AS OF THE SOW EFFECTIVE DATE; (II) ANYTHING THAT SUPPLIER INVENTS, CREATES, OR ACQUIRES AFTER THE SOW EFFECTIVE DATE BUT NOT AS PART OF PERFORMING OR CREATING THE SERVICES; AND (III) ANYTHING OWNED BY A THIRD-PARTY THAT SUPPLIER INCLUDES IN THE SERVICES WITH MICROSOFT’S PRIOR WRITTEN CONSENT. INSTEAD, TO THE EXTENT THAT ANY SERVICES INCLUDE OR USE ANY BACKGROUND IP, SUPPLIER GRANTS MICROSOFT A NON-EXCLUSIVE, IRREVOCABLE, NON-TERMINABLE, PERPETUAL, WORLDWIDE, FULLY PAID-UP, ROYALTY-FREE LICENSE TO DIRECTLY AND INDIRECTLY THROUGH THIRD-PARTIES MAKE, HAVE MADE, USE, SELL, OFFER FOR SALE, IMPORT, REPRODUCE, DISTRIBUTE, PUBLICLY PERFORM AND DISPLAY, TRANSMIT, MAKE DERIVATIVE WORKS, AND OTHERWISE DISPOSE OF THE SERVICES AND DERIVATIVES AND COMBINATIONS OF THE SERVICES, AND TO AND TO GRANT SUBLICENSES UNDER ANY OR ALL OF THE FOREGOING RIGHTS UNDER THIS SECTION 6.2, INCLUDING THE RIGHT TO SUBLICENSE SUCH RIGHTS TO FURTHER THIRD-PARTIES.

**6.3. Ownership and reservation.** All rights, title, and interests in and to the Licensed Properties (including all Intellectual Property Rights therein and thereto) vests in Licensor. Notwithstanding anything to the contrary herein, Microsoft hereby irrevocably assigns (and to the extent necessary, has caused its employees, contractors, and others to assign) to Licensor all right, title, and interest in and to any: (i) IPR (including the Joint Patents), or (ii) Enhanced Software (other than Microsoft Materials), in each case, that is created, prepared, discovered, conceived, reduced to practice, or otherwise developed by or on behalf of Microsoft under this Agreement (or jointly with Licensor). Subject to the licenses expressly granted in this Agreement, nothing in this Agreement will have any effect on either party’s ownership of its IPR. All rights not expressly granted in this Agreement are expressly reserved. Without limiting the above, and except to the extent otherwise expressly provided in this Agreement, nothing in this Agreement may be construed as a license to either party’s IPR, expressly or by implication, estoppel, exhaustion, or otherwise.

**6.4. NO JOINT DEVELOPMENT.** The parties do not intend to engage in any joint development under this Agreement, and will not do so unless expressly agreed otherwise in a separate agreement or in an amendment to this Agreement.

**6.5. RESERVATION OF RIGHTS.** Nothing in this Agreement (I) except as expressly set forth by a party, grants either party (by implication, estoppel, exhaustion, or otherwise) any right, title, interest, or license, in the other party’s IPR and each party reserves all rights not expressly granted in this Agreement; ; or (ii) prohibits or restricts a party from: (1) creating, developing, acquiring, improving, marketing, selling, licensing, or otherwise commercializing any current or future products, services, or technologies (although nothing in this Agreement allows a party to disclose the other party’s Confidential Information except as permitted under the NDA); or (2) independently offering and pricing such products, services, and technologies.

**6.6. Feedback.** Either party may provide to the other party suggestions, comments, ideas, know-how, or other feedback relating to the other party’s Confidential Information and technology, including but not limited to an Application and any technologies developed outside of this Agreement, together with all IPR, the Agreement, whether provided during strategy sessions and assessments, envisioning meetings, business review calls, or otherwise (“Feedback"). For clarity, Feedback does not include Confidential Information provided during the course of engineering, design, or other support provided to Partner by Microsoft. Feedback is voluntary and the receiving party is not required to hold it in confidence. The receiving party may use, share, and commercialize Feedback provided to it by the other party for any purpose without obligation or restrictions of any kind.

1. **Royalties and Taxes**

**7.1. Microsoft Royalty.** Licensor shall pay to Microsoft a royalty of thirty percent (30%) of Gross Profit derived from all purchases by any person or entity of Covered Products during the Royalty Period.

**7.2. Payments and Royalty Reports**. Each party will pay all amounts due under this Agreement within sixty (60) days after the end of each calendar month during the Royalty Period. Payment will be made via wire transfer. Commencing and contemporaneously with payments made pursuant to Sections 10(a) and 10(b), each party (“***Payor***”) will deliver to the other party (“***Payee***”) a true and accurate report (“***Royalty Report***”), certified by an officer of Payor, giving such particulars of the business conducted by Payor and its Affiliates during the applicable reporting period under this Agreement as necessary for Payee to account for Payor’s payments, including any royalties, hereunder (even if no payments are due) and such other information otherwise requested by Payee from time to time for all products comprising the Enhanced Software sold, provided, made available, hosted, leased, licensed, given, or transferred to or for any person or entity during the applicable Reporting Period. Receipt or acceptance by Payee of any Royalty Report or of any sums paid by Payor, will not preclude Payee from questioning or auditing the completeness or accuracy of such statement or payment at any time.

**7.3. Records and Audits**. Each party will keep, and will cause its Affiliates to keep, complete and accurate records of such party’s or its Affiliates’ sale, transfer, lease, hosting, or other disposition (whether for consideration or free) of any Covered Products and other information in enough detail to enable the royalty payments made under this Agreement to be determined and audited for a period of two (2) years after the applicable Reporting Period. On an annual basis, each party (“**Auditee**”) will make its (and its applicable Affiliates’) internal control report, and all other documents, reports and the books of account available to the other party (“**Auditor**”) with respect to the production and sale, transfer, lease, hosting, making available, disposition, and giving of Covered Products for inspection, copying and audit by Auditee, its agents and representatives, during normal business hours, upon not less than fourteen (14) business days advance notice, which will be made by the Auditor at its own expense. The Auditee will make available qualified employees and agents to promptly answer questions pertaining to such audit. Unless otherwise requested by the Auditor, Auditee will promptly correct any errors or omissions disclosed by such audit.

**7.4. Taxes.** Microsoft will not be liable for any foreign, U.S. federal, state, local, municipal, or other governmental taxes, duties, levies, fees, excises, or tariffs (collectively, “***Taxes***”) of Licensor that Licensor is legally obligated to pay that are incurred or arise in connection with or related to the sale of goods and services under this Agreement, and all such Taxes (including net income or gross receipts taxes, franchise taxes, and property taxes) will be the financial responsibility of Licensor. Microsoft will, however, pay to Licensor any sales or use taxes that are owed by Microsoft solely as a result of entering into this Agreement and that are required to be collected from Microsoft by Licensor under Law. Microsoft may provide to Licensor a valid exemption certificate in which case Licensor will not collect the Taxes covered by such certificate. Licensor agrees to indemnify, defend, and hold Microsoft harmless from any Taxes (including sales or use taxes paid by Microsoft to Licensor) or claims, causes of action, costs (including reasonable attorney’s fees) and any other liabilities of any nature whatsoever related to such Taxes. If Taxes are required to be withheld on any amounts otherwise to be paid by Microsoft to Licensor, Microsoft will deduct such Taxes from the amount otherwise owed and pay them to the appropriate taxing authority. At Licensor’s written request and expense, Microsoft will use reasonable efforts to cooperate with and assist Licensor in obtaining tax certificates or other appropriate documentation evidencing such payment. The responsibility for such documentation will, however, remain with Licensor. Despite anything in this Agreement to the contrary, this Section 10(e) will govern the treatment of all Taxes relating to this Agreement.

1. **Data Protection**

Neither party will disclose Personal Data of its customers to the other party under this Agreement. If the parties do elect to do so, they will amend this Agreement prior to any sharing of such Personal Data. Nothing in this Agreement changes either party’s responsibility with regard to the Personal Data of users of the App, including obligations under the ADAs and Data Protection Law.

1. **Confidential Information**

The parties’ disclosures and activities in connection with this Agreement are subject to the Non-Disclosure Agreement (“**NDA**”) entered into by the parties on [*insert effective date of NDA*]. The NDA terms will continue to apply pursuant to this Agreement even if the NDA is terminated or expires.

1. **Representations and Warranties**
   1. Each party represents and warrants to the other party that: (1) it has the full right, power and authority to enter into and perform under this Agreement; (2) it will comply with all applicable laws, statutes and regulations applicable to its activities and performance under this Agreement; (3) the performance of its obligations do not and will not breach any agreements with a third party; and (4) the person signing on each party’s behalf has full authority to bind it to this Agreement.
   2. Partner represents and warrants that it, and any third party it engages, will not use or manipulate any data provided by Microsoft under this Agreement and any applicable Application Project Description in any manner (1) that could reasonably be used to identify or make identifiable any natural person, or (2) make any such data Personal Data.
   3. EACH PARTY DISCLAIMS ALL OTHER EXPRESS, IMPLIED, OR STATUTORY WARRANTIES OF ANY KIND, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NONINFRINGEMENT. ANY SOFTWARE, MATERIALS, SERVICES AND/OR TECHNOLOGIES PROVIDED BY EITHER PARTY ARE PROVIDED STRICTLY “AS IS” AND “WITH ALL FAULTS” AND WITHOUT WARRANTIES OF ANY KIND.
2. **Limitation of Liability**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES LIMIT THEIR LIABILITY FOR ANY CLAIMS UNDER THIS AGREEMENT TO $5,000 AND IN NO EVENT WILL EITHER PARTY (INCLUDING THEIR DIRECTORS, OFFICERS AND AFFILIATES) BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, SPECIAL, OR EXEMPLARY DAMAGES ARISING OUT OF THIS AGREEMENT. THESE EXCLUSIONS APPLY REGARDLESS OF WHETHER APPLICATION OF THESE EXCLUSIONS CAUSES ANY REMEDY TO FAIL OF ITS ESSENTIAL PURPOSE. THIS SECTION 10 WILL NOT APPLY TO LIABILITY ARISING OUT OF PARTNER’S FAILURE TO MEET ITS REPRESENTATION AND WARRANTY IN SECTION 9(B) OR EITHER PARTY’S LIABILITY FOR (A) VIOLATION OF ITS CONFIDENTIALITY OBLIGATIONS INCLUDING OBLIGATIONS RELATED TO DATA PROTECTION; (B) INFRINGEMENT, MISAPPROPRIATION, OR OTHER VIOLATIONS OF THE OTHER PARTY’S TECHNOLOGIES OR IPRs; OR (C) DEFENSE OBLIGATIONS UNDER THIS AGREEMENT OR ANY APPLICABLE ADAs.

1. **Term and Termination**
   1. **Term**. This Agreement’s terms start on the Effective Date and continues for twenty-four (24) months from the date of the App’s first publication on the Store (“**Term**”), unless earlier terminated under this Section 10.
   2. **Termination for Cause.** 
      1. Either party may terminate this Agreement immediately for cause if the other party materially breaches this Agreement and does not cure that breach within thirty (30) days after of receipt of written notice of such breach. Any notice of breach must be clearly marked “Notice of Breach of Contract” and must specify in reasonable detail the nature of the breach and the requirements to cure the breach.
      2. Either party may terminate this Agreement immediately for cause and without notice if the other party 1) breaches Section 7 (Confidentiality), 2) or infringes the other party’s IPRs, or 3) makes an assignment for the benefit of creditors, becomes subject to a bankruptcy proceeding, is subject to the appointment of a receiver, or admits in writing its inability to pay its debts as they become due.
   3. **Termination for Convenience**. Microsoft may terminate this Agreement for convenience on thirty (30) days’ written notice following the successful completion of the Application Project Description.
   4. **Effect of Termination.** Except as set forth in this section, this Agreement’s termination or expiration will not affect rights granted between the parties through other agreements and will not require either party to recall any printed materials created and distributed in accordance with this Agreement.
   5. **Survival**. The following sections will survive this Agreement’s termination: Sections 2(d), 3(b), 6-10, 11(e), 12.
2. **General**
   1. **Non-Exclusive**. This Agreement is non-exclusive. Either party may develop, use, distribute, promote, or support software, services, or technology offerings similar to or competing with the solutions or services that are the subject of this Agreement. Nothing in this Agreement will limit either party’s rights with respect to its own products and services, and the marketing, resale, or development thereof (or a party’s right to cease doing any of the foregoing), whether during the Term or at any time thereafter.
   2. **Governing Law and Jurisdiction; Waiver of Jury Trial. The** laws of the State of Washington govern this Agreement without regard to conflict of law provisions. Each party consents to exclusive jurisdiction and venue in the federal or state courts sitting in King County, Washington. The parties irrevocably waive, to the fullest extent permitted by applicable law, any and all right to trial by jury in any legal proceeding arising out of or relating to this Agreement.
   3. **Notices.** All notices under this Agreement must be in writing and will be effective on the day they are (1) transmitted via electronic mail to the email address identified below; (2) deposited in the mails, postage prepaid, certified or registered, return receipt requested; or (3) sent by overnight courier, with charges prepaid. Communications in the ordinary course of business however (which do not include any notices related to any dispute under or alleged breach of this Agreement, any effort to enforce the terms of this Agreement, or any notice regarding termination of this Agreement) may be sent via email and need not be copied. The person(s) identified on the first page of this Agreement will receive notices on behalf of the respective party. A party may change the persons to whom notices will be sent by giving notice to the other.
   4. **Waiver** **and** **Severability**. A party’s delay or failure to exercise a right is not a waiver of that right. No waiver of a right or remedy under this Agreement will serve to waive any right or remedy in the future, nor to waive any other right or remedy. Waivers are effective only if written in English and signed by the waiving party’s authorized representative. If a court of competent jurisdiction holds any provision of this Agreement to be illegal, invalid or unenforceable the remaining provisions will remain in full force and effect, and will be construed so as to most nearly reflect the parties’ intent with respect to such provision.
   5. **Assignment**. Neither party may assign this Agreement to any party other than an Affiliate (including by change of control), in whole or in part (by contract, merger, operation of law, or otherwise), without the other’s prior written consent, with such consent not to be unreasonably withheld.
   6. **Counterparts**. The parties may execute this Agreement in counterparts. Each counterpart will be deemed an original, and all counterparts will constitute one agreement binding both parties. This Agreement may be translated for the convenience of the parties. In all cases, only the English version of this Agreement will be binding upon the parties. This Agreement may be executed by original, facsimile, or electronic signatures (complying with the U.S. Federal ESIGN Act of 2000, 15 U.S.C. 96).
   7. **Relationship**. The parties are independent contractors. This Agreement does not create an employer-employee relationship, partnership, joint venture, or agency relationship and does not create a franchise.
   8. **No Reliance**. The parties have not relied upon any promises, representations, warranties, statements, agreements, covenants or undertakings, other than those expressly incorporated into or set forth in this Agreement. This Agreement has been negotiated by the parties and their respective counsel and will be interpreted fairly in accordance with its terms and without any strict construction in favor of or against either party.
   9. **Cumulative** **remedies**. Except as may be otherwise provided in this Agreement, the rights and remedies of the parties hereunder are not exclusive, and each party is entitled alternatively or cumulatively, subject to the other provisions of this Agreement, to damages for breach, to an order requiring specific performance or to any other remedy available under applicable law or in equity.
   10. **Headings** **and** **References**.The division of this Agreement into sections, and the insertion of headings, are for convenience of reference only and will not affect the construction or interpretation of this Agreement.
   11. **No Third Party Beneficiaries**.Nothing expressed or referenced to in this Agreement will be construed to give any person or entity other than the parties or their permitted successors and assigns expressly provided in this document any legal or equitable right, remedy or claim under or with respect to this Agreement.
   12. **Order of precedence**. If there is any direct conflict between this Agreement and any terms contained in any other agreement referenced in this Agreement, then the terms of the relevant other agreement will control, but only to the extent of that conflict. If a particular subject is addressed in this Agreement and not in the relevant other agreement, then the terms in this Agreement will control.
   13. **Entire Agreement**. This Agreement (including its Exhibits, incorporated herein by this reference), the ADAs, applicable Store agreement and the NDA make up the entire agreement between the parties with respect to their collaboration described in this Agreement, and its other subject matter. They supersede all prior and contemporaneous agreements or communications about that subject matter. Nothing in this Agreement amends or supersedes the ADAs or applicable Store agreement. This Agreement can be changed only by an agreement written in English and signed by both parties by their authorized representatives.

[*Remainder of the document is intentionally left blank*]

**Exhibit A**

(EXHIBIT ONLY - NOT FOR SIGNATURE)

**Application Project Description**

This Application Project Description is a supplemental document pursuant to the Microsoft 365 Development and Marketing Agreement identified below (the “Agreement”), the terms of which are incorporated herein by reference. Capitalized terms used but not defined herein have the meanings given in the Agreement. By signing below the parties acknowledge and agree to be bound to this Application Project Description.

1. **App Description and Specifications.**

|  |  |
| --- | --- |
| **Application Name** | [name] |
| **Application Project Description Signing Date** | [Insert date of signature of Application Project Description] |
| **Languages** | All languages in which the Competitive Platform Variants are available. |
| **Target Markets** | All markets in which the Competitive Platform Variants are available. |
| **Platform(s)** | Microsoft [Teams], [Outlook], [other] |
| **App Functionality** | Showcase (detailed in development schedule):  1. Tab  2. Bot  3. Messaging Extension  4. Azure Active Directory  5. Actionable Messages  *[insert true functionality]^^* |
| **Submission Date** | [date] |
|  |  |

1. **Development Schedule**

|  |  |
| --- | --- |
| **Milestone** | **Timing** |
| **1. Launch Minimum Viable Product (MVP) to M365** **Store/AppSource** | *[insert]* |
| Architecture  *API endpoints*  *Services & Policies*  *Presenters & Models*  *Development phase: make changes for the parity release*  *Full regression testing cycle* | *[insert (est. 1-2 weeks)]* |
| M365 Foundation  *AAD Authentication*  *Permissions*  *Create/Populate Org Service*  *Tab View Action Buttons, List, Send Poll*  *Decision Detail Task Module*  *Channel tab list item view*  *Personal tab list item view* | *insert (est. 3-4 weeks)]* |
| M365 Decision Polls & Announce  *Create Poll Task Module*  *Take Poll Task Module*  *Decision Poll Card*  *Announce Decision Task Module*  *Decision Announcement Card*  *Prepare and submit app for AppSource review* | *insert (est. 4-6 weeks)]* |
| **2. Launch version 2 of the application to Store/AppSource** | *insert ]* |
| M365 Full MVP Enhancements (est. 8 weeks)  *Initiate a decision through Compose Area Icon*  *Search for decisions through Command Box*  *Initiate a decision from a message through Message Action*  *Initiate a decision from @mentioning [\_\_\_\_]*  *Decision list export*  *Rate Buy-In Task Module*  *Iterate on UX and requirements based on Preview Release feedback*  *Prepare and re-submit app for AppSource review as needed* | *insert (est. 8 weeks)]* |

1. **Support and technical contacts**

|  |  |  |  |
| --- | --- | --- | --- |
| **Microsoft:** | \_\_\_\_\_\_\_\_\_\_@microsoft.com | **Partner:** | [email address] |

1. **Funding for Engineering and Design Support**
2. **Invoicing schedule**. Microsoft will provide Partner with limited, dedicated engineering design, and Go-to-Market support, as well as funding to support Partner’s engineering and design towards the creation of the App in accordance with (i) and (ii) below:.
   1. USD $[*insert amount*] available to be invoiced by Partner on or after the Submission Date, and
   2. USD $[*insert amount*] available to be invoiced by Partner on or after the date version 2 of the App is made available in the applicable Store(s).
3. **Refund**. At Microsoft’s election, Partner will promptly refund all amounts paid under this Agreement if the App does not timely pass the App Review Process.
4. **Invoicing and Payment.** In order to receive the funds outlined in Section 4(c), Partner must complete the process to become an authorized Microsoft Vendor and invoice Microsoft via the MS Invoice online tool in accordance with the then-current requirements at <https://einvoice.microsoft.com>. Invoices will not bear an invoice date earlier than the date on which Partner is entitled to be paid under this Application Project Description. Milestone based payments will be processed within sixty (60) days from each Milestone being certified as complete. Microsoft will not be obligated to pay an invoice received more than sixty (60) days from the date the payment was otherwise due.
5. **Taxes.** Neither party will be liable for any taxes the other is legally obligated to pay and which relate to any transactions contemplated under this Agreement. Each party will indemnify, defend and hold the other harmless from any claims, costs (including reasonable attorneys’ fees) and liabilities that relate to that party’s taxes. Despite any other provision in this Agreement, this Application Project Description will govern the treatment of all taxes relating to this Agreement.
6. **Partner Marketing Efforts**
7. [List of Partner marketing efforts]
8. Partner will feature the availability of the App on its website(s) by featuring the applicable Store badge designated by Microsoft. Partner will market the App at a level that is at least at parity with the marketing effort invested in Competitive Platform Variants.
9. Without limitation, Partner will feature the availability of the App on its marketing (in any form, including websites, print, television, and other media) by featuring the relevant Store badge wherever Partner promotes the availability of Competitive Platform Variants, and no less conspicuous in size and placement than the featuring of similar promotional elements for the Competitive Platform Variants.
10. Partner will promote the App in at least two (2) out of the following ways: (1) a direct customer email, (2) inclusion in the integrations/channels section on the Partner’s website, or (3) through a website interstitial. In addition, Partner will maintain parity with marketing engagements and terms extended to the Competitive Platform Variants.
11. Partner will make no public announcements or issue any press release without Microsoft's prior written consent, including without limitation any blogs, case studies, or other public facing content regarding the subject matter of this Agreement.
12. Partner will publish, on the Publication Date, a blog post on Partner website to announce the availability of the App and the integration of the App with Microsoft Teams.
13. Partner will publish Application integration messaging on Partner website when the Application is published on the applicable Store(s).
14. Partner will develop and publish a customer case study to highlight pilot customer use of the App to be reviewed and approved by Microsoft.
15. **Microsoft Marketing Efforts**
16. [List of Microsoft Marketing efforts]
17. Microsoft will provide guidance and approval on the pilot customer case study, upon finding a joint pilot customer who is willing to be named in promotional materials.
18. Microsoft will create internal Microsoft-field ready content to highlight the integration of the App with Microsoft 365.
19. Microsoft will publicize the integration with the Microsoft customer success managers for Microsoft 365.
20. Microsoft will provide attribution in Partner’s promotional materials in accordance with Microsoft’s third-party announcement guidelines.

[Signature page follows]

**Addresses and contacts for notices**

|  |  |
| --- | --- |
| **“Microsoft”** | **“Partner”** |
| Name: Microsoft Corporation | Name: |
|  |  |
| Primary Contact: | Primary Contact: |
| Address:  One Microsoft Way  Redmond, WA 98052-6399 | Address: |
| Phone number: (425) 882-8080 | Phone number: |
| Fax number: | Fax number: |
| Email: | Email: |
| Secondary Contact (*if applicable*): | Secondary Contact (*if applicable*): |
| With copy to:  Microsoft Corporation  Deputy General Counsel, E&D (CELA)  One Microsoft Way  Redmond, WA 98052-6399 | With copy to: |

**Agreed and accepted**

|  |  |
| --- | --- |
| **Microsoft** | **Partner** |
| Signature: | Signature: |
| Name: | Name: |
| Title: | Title: |
| Date: | Date: |

[*Remainder of the document is intentionally left blank*]