# The Microsoft Partner Agreement Review

## The Core Terms

The Core terms regulate general terms such as confidentiality, requirements for the processing of personal data in connection with resale, compliance obligations (related to law, HSE, ethical rules, anti-corruption rules, requirements for business conduct, training of the reseller's human resources, etc.), use of Microsoft's logo in connection with resale, term and termination, etc.

Of the obligations that the reseller should be particularly aware of, and where the reseller itself must review the obligations and establish procedures to ensure compliance, we would like to mention the following:

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| **Reference** | **Obligation** | **Action/responsibility** |
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| “General”, section 1 "Notice of Change" | This implies that Microsoft may unilaterally change the Core Terms with 180 days' notice. This may be notified by Microsoft in its portal to which the reseller should have access. These changes will have effect going forward only. | Establish routines to ensure that it is checked regularly for changes. The routines should also cover changes in the Channel terms and in the Channel Authorization, that is subject to the same 180 days’ notice period. |
| General", section 2 "Relationship of the Parties", (e) "Publicity" and “Proprietary Rights" section 3 "Use of Marks" | The requirements mean that neither Microsoft nor the reseller can send out any press release or the like stating cooperation between the parties, without consent from the other party.  There are strict regulations for use of Microsoft trademarks etc unless otherwise is specifically stated in the Agreement or approved in writing. This does however not prevent the reseller from marketing Microsoft products to end customers, as long as the reseller does not use Microsoft's logos and uses only written company names and product names. | The reseller must establish procedures to ensure compliance.  Procedures must be established to ensure compliance, including compliance with Microsoft's guidelines: https:// [www.microsoft.com/en-us](http://www.microsoft.com/en-)/legal/intellectualproperty/trademarks/usage/general.aspx. |
| "Business Integrity Principles", section 1 "Compliance with Laws" and section 2 "Business Conduct" | This contains detailed requirements for compliance with export control regulations, legislation related to environmental protection, IPR, HSE, anti-corruption laws, money laundering rules, internal control rules (e.g. under GDPR), bookkeeping obligations, etc.  Note the obligation to notify Microsoft of any violations of export control rules. | You should review this in detail to ensure compliance, and compliance should be documented. See also: [http://www.microsoft.com/](http://www.microsoft.com/exporting) [exporting](http://www.microsoft.com/exporting)  When it comes to export control, it is particularly important to ensure that you resell/allow end customers to use the services only in accordance with applicable laws and regulations.  Procedures must be established to notify Microsoft via [cmec@microsoft.com](mailto:cmec@microsoft.com) |
| "Business Integrity Principles", section 3 "Business Conduct Training" | This requires training in anti-corruption laws and business integrity principles for reseller’s employees, including completing and regularly taking Microsoft’s specific anti-corruption course.  Note the requirements for compliance with Microsoft's own code of conduct. | More detailed training requirements can be found by pressing the URL below and you should review the content and regularly check for updates. See:  [http://www.microsoft.com/en- us/legal/compliance/anticorruption/default.aspx and](http://www.microsoft.com/en-%20us/legal/compliance/anticorruption/default.aspx) http://www.microsoft.com/en- [us/legal/compliance/anticorruption/default.aspx](http://www.microsoft.com/en-%20us/legal/compliance/anticorruption/default.aspx)  The code is only linked to:<https://assets.microsoft.com/Microsoft-Partner-Code-of-Conduct.pdf> and the reseller should review the requirements and verify compliance with the requirements before entering into agreement. Procedures must be established for compliance and checking for any updates. |
| “Business Integrity Principles”, section 4 “Monitoring and Reporting” | Note requirements for reporting to Microsoft in case of violations of anti-corruption rules | Procedures must be established for notifying Microsoft by BUSCOND@microsoft.com if you discover violations of anti-corruption rules in connection with its resale of Microsoft services. |
| "Business Integrity Principles", section 5 "Privacy and Data Security", (b) and (c) | According to section 5 (b), the nature and purpose of the processing and categories of personal data/data subjects shall be defined in "the Agreement".  In addition to establishing routines as mentioned above, the provision in section 5 c) (ii) clarifies that the reseller is obliged to ensure that it has basis in the GDPR for disclosure of personal data to Microsoft as an independent data controller.  Furthermore, pursuant to section c) (iii), the reseller must establish procedures for responding to inquiries from the data subjects and, pursuant to section (v), establish information security in accordance with GDPR Art. 32 etc.  Section c) (iv) obliges the reseller to provide commercially reasonable assistance to the other party in the event of claims from data subjects, and section c) (vi) obliges the reseller to provide "notice of its privacy practices" to the data subjects either on its website or in "its application".  Section c) (viii) obliges the reseller to refrain from transmitting unsolicited commercial communication in any manner that would violate the Law. | This must be specifically stated in the form (Enrollment) when the reseller is registered as a CSP. If it is not stated in the form, this must be clarified with Microsoft.  These obligations must be reviewed in detail and routines should be established to comply with these.  You must therefore specifically take into consideration the national regulation of unsolicited commercial communication. |
| "Proprietary Rights", section 5 "Antipiracy" | This implies that reseller must implement and enforce internal controls to prevent unauthorized access to Microsoft's Online Services, and if there is any suspected breach, this must be notified to Microsoft. | Procedures must be established to ensure 1) access control for creation and deletion of users (possibly the use of two-factor authentication), for example control of users with extended (administrator) rights, monitoring/logging of the use (incl. of network and firewall configuration), analysis of the logs, 2) reporting of deviations internally and to Microsoft. |
| "Confidentiality", section 1 “General Obligations”, (b) (ii) and (iii) | This implies that the confidentiality obligations last for 5 years from when the information is received.  The provision further states that if the reseller is required by law or receives a court order to disclose confidential information, it must notify Microsoft as soon as possible. | Procedures must be established to inform own employees and, if applicable, to regulate this by agreement with external subcontractors/partners with whom you share information. In relation to external parties, the liability to pay damages should also be mirrored.  Procedures must be established to ensure this. |

Of other key sections in the Core Terms we would like to mention the following:

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| **Reference** | **Comment** |
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| "Business Integrity Principles", section 5 "Privacy and Data Security", (a) | It states that reseller and Microsoft are independent controllers of personal data that each party processes independently of each other. In other words, no processor relationship arises between the parties, and Microsoft is not the subcontracted processor of the reseller for personal data exchanged between Microsoft and the reseller. This provision does not govern the processing of personal data falling under the term Customer Data, which is governed by the provisions under "Customer Data and Privacy Obligations" in Channel Authorization. |
| «Term, Termination»  Section 2 “Termination without Cause”, section 3 «Termination for Cause” and section 4 “Effect of Termination” | This implies that Microsoft (and the reseller) can terminate the reseller agreement with a 30-day written notice. Program-specific terms may have a notice period of up to 150 days. Regardless, this is a short time frame for planning the termination process with the end customers to whom the products have been resold.  Note that the threshold for termination, as mentioned in the "termination for cause" section, is only "breach" and not "material breach". Normally, there is a 30-day window to rectify the issue before termination can take place. However, in cases of breaches that cannot be remedied, termination can happen immediately, including violations of confidentiality provisions, business conduct, or Microsoft IPR. Termination can also occur immediately if a previously remedied breach reoccurs, or if the reseller breaches agreements with other Microsoft companies (without requiring the actual termination of such agreement or the breach being material). The consequence of termination is the immediate loss of the right to resell. Microsoft may also claim compensation for any losses incurred (see the comment on the liability provision under "channel terms"). For this reason, it is crucial to establish routines to ensure compliance with the obligations set forth in the agreement. |
| "Miscellaneous" section 2 | This implies that merger/demerger is also considered an "assignment" that requires consent from Microsoft. |
| "Miscellaneous" section 3 | Means formal notices are deemed received 7 business days after they are sent. This must be considered when sending notices. |
| "Miscellaneous" section 13 | Means that Microsoft affiliates acquire corresponding rights in relation to the reseller as the rights the Microsoft entity has in the enrollments entered into. This is a consequence of the fact that different Microsoft companies may be contracting parties to the different terms included in the Microsoft Partner Agreement. |

The following should be addressed in the agreement with the reseller’s agreement with the distributor:

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| **Reference** | **Comment** |
| «Business Integrity Principles», section 5 «Privacy and Data Security»(c) (v) and (vi) | According to section (v), necessary security measures must be ensured in accordance with personal data protection legislation. Since a reseller will use the distributor's technical solution to communicate with the Microsoft Partner portal and similar platforms, to create and manage end customers, this obligation should be imposed on the distributor to ensure compliance on behalf of the reseller. The reseller and the distributor must enter into a data processor agreement covering the distributor’s processing of personal data, if any. |
| «Proprietary Rights» section 5 «Antipiracy» | This means that the reseller (like Microsoft) must implement and enforce internal controls to prevent unauthorized access to Microsoft's Online services, and if there is suspicion of a breach, it must be reported to Microsoft. If the reseller uses the distributor's portal to access Microsoft's services, this obligation should be mirrored as a commitment towards the distributor. This should cover access control for creating and deleting users (possibly using two-factor authentication), for example, control over users with extended (administrator) rights, monitoring/logging of usage (including network and firewall configurations), analysis of logs, and 2) reporting deviations to the reseller, so the reseller can fulfill their own duty to report to Microsoft. |
| «Confidentiality» section 1 «General Obligations» (b) (i) and (ii) | This means that the confidentiality obligations last for 5 years from the receipt of information, including for external subcontractors/partners with whom information is shared. The confidentiality obligation should be mirrored towards the distributor. Strictly speaking, the liability that arises if representatives breach the confidentiality obligation should also be mirrored. |

Furthermore, we would like to mention that the following obligations should be mirrored towards the end customers:

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| **Reference** | **Comment** |
| «General», section 1«Notice of Changes” | This means that Microsoft can unilaterally change the terms in Core Terms with a 180-day notice. Changes in the terms may affect what should be mirrored towards the reseller's own end customers, and therefore, it is advisable to account for this in the end customer agreements. These agreements should be able to be updated accordingly to reflect changes in Microsoft's Core Terms (and other agreement documents such as Channel Terms, etc.) where relevant towards the end customer. |
| "Business Integrity Principles" section 1 "Compliance with Laws" | Since the reseller is required to comply with export control legislation, it is important that a separate agreement with end customers includes corresponding export control provisions that follow from Microsoft's provisions. Especially because Microsoft may suspend the reseller's access to the Online Services if a customer violates export control regulations, in which case it would affect all customers of the reseller.  This actually follows from the Microsoft Customer Agreement, which will apply to end customers, but it is still recommended to regulate this separately in a separate agreement with the end customers as well, so the obligation also applies in the dimension between you as a reseller and the individual end customer. |
| "Business Integrity Principles" section 5 "Privacy and Data Security" (b)and (c) | Section 5 (b) requires the reseller to be obligated to ensure that the reseller has basis in the GDPR for disclosure of personal data to Microsoft as an independent data controller. This must, therefore, be ensured in an agreement with the end customers. |
| «Term; Termination”section 2 «Termination without Cause" and section 3 “Termination for Cause” | Since Microsoft can terminate the MPA for convenience with a 30-day written notice, it is advisable to have a similar contractual regulation towards your own end customers. The same applies if Microsoft terminates the agreement for cause (see the section "Term; Termination nr 3"), as the reseller may lose the right to resell to own end customers within 24 hours. You could also consider regulating contractually that Microsoft itself states that the end customers in such a case must be transferred to another reseller or Microsoft. |
| "Miscellaneous", section 8 "force majeure" | States that force majeure does not include problems with payment, for example, payment infrastructure is down. This means that non-payment in such situations will still be a breach of contract by the reseller. The same principle should therefore be used in the end customer agreements. This does not follow from MCA. |

## The Channel Terms

These are terms that apply specifically to the reseller's resale of Microsoft Online Services. They must be combined with a "Channel Authorization". The terms include terms for resale and restrictions (you may not use the Online services internally, modify them, or provide warranties on Microsoft's behalf to the end customer beyond what Microsoft itself provides), general obligations, ordering rules, payment obligations, audit, warranty obligations and limitations of liability, third party claims, term and termination.

When it comes to the reseller’s obligations that you should be particularly aware of, and where the reseller itself must review the obligations and create procedures to ensure compliance, we would like to mention the following:

| **Reference** | **Obligation** | **Action/responsibility** |
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| "General Rights, Restrictions and Obligations»" section 1 "General restrictions" | The reseller may not:   * sell other Microsoft Online Services than those explicitly agreed in a Channel Authorization * use the services internally itself, without a special agreement (i.e. become a customer itself) * modify the services * or resell them in a way that increases Microsoft's liability compared to Microsoft's own terms and conditions. | Procedures must be established to ensure compliance. Check if the Enrollment has any restrictions on services that can be resold. |
| "General Rights, Restrictions and Obligations» section 2 "General obligations" | The reseller must:   * maintain its status as a member of the Microsoft Partner Network and maintain an active Partner Network agreement. * procure the equipment, technology and infrastructure necessary to access the Microsoft online tools and Partner portal. The guide states further that such a solution must meet the requirements for the "Secure Application Model" as these requirements appear in the partner portal. * take reasonable steps to protect Microsoft products and product materials, that are under its control, against unauthorized access and comply with the security requirements of a Channel Authorization and related guides. * provide necessary services and support to end customers. There are no specific requirements to the content of such services, other than that the main rule is that end customers should not have the right to contact Microsoft directly. | Procedures must be established to ensure compliance. |
| "Product Fees and Ordering, General" section 2 "Purchase Commitment Obligations" | Includes an obligation to obtain a binding order from each end customer. This is ensured by entering into an agreement with end customer specifying the initial volume. However, it is important that subsequent additional orders are also documented in writing for the end customer, so it is possible to trace all additional purchases. In addition, it should be agreed in advance with the end customer who will be the authorized purchasers, so that this does not create discussions afterwards. Please, note that the term must also be specified in the orders/agreements with the end customers.  Note that this also states that the reseller must pay Microsoft for all orders. This means that the reseller bears the risk of the individual end customer being creditworthy, going bankrupt, etc. Strictly speaking, the point is somewhat illogical, as payment is not made to Microsoft, but to the distributor. | Make sure to establish written agreements with end customers to meet this requirement.  For private companies, its recommended to establish routines to ensure that a credit check is conducted before entering into an agreement and to conduct ongoing follow-up. |
| "Product Fees and Ordering, General" section 3 "Customer Discount & Customer Special Offer Transparency, Passthrough" | It states that if Microsoft provides a "special offer" to a state-owned or government end customers, the reseller must share the entire discount with the end customer. The reseller must also share this information with the end customer in question as further described in the relevant program guide. In any other context, the reseller is free to set the price for each individual customer. Furthermore, the reseller must provide contact information for the customer in question to Microsoft, so that Microsoft can make direct contact. | Procedures for proper follow-up must be established. |
| "Audit, General"  section 1  "Duty to Maintain Records" | Establishes an obligation for the reseller to maintain complete documentation of the fulfilment of its obligations under the agreement during the agreement period and for 5 years after termination. This includes information about customers, orders, quantity, etc. See the provision for more details on the documentation that must be retained. | Create a procedure to store the information. |

Of other important sections in the Channel Terms, we would like to highlight the following:

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| **Reference** | **Comment** |
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| "Audit, General" section 2 "Right to Audit" and section 3 "Audit Procedure" | Contains a right for Microsoft to conduct audit of the reseller. The reseller should review this in detail. If an audit reveals material discrepancies, the reseller will have to cover Microsoft' reasonable costs of the audit. Significant discrepancies are "material breach" or when any unpaid amount is higher than a percentage pre-agreed in the Channel Authorization. The latter should be considered contractually agreed upon, as it is pre-agreed. |
| «Warranties and disclaimers, General” section 3 | It clarifies that Microsoft does not guarantee that its Online services are error-free or similar, but only that they are provided "as is". This means that the reseller cannot make any claims against Microsoft for errors in the services, even if the end customer makes claims against the reseller. This is fairly standard, and the risk is managed by not promising anything more in the end customer agreements. |
| "Limitations of Liability, General" | Includes a definition of indirect loss that is fairly standard. Please, note, however, that these do not apply to unauthorized use etc. of the other party's IPR, any resale that do not comply with the provisions of the agreement, in case of breach of confidentiality or compliance obligations. Also the obligation to pay for consumed Online services is absolute, regardless of the limitations of damages. The consequence of the provision is that there will be relatively little chance of claiming damages from Microsoft from the reseller's perspective, while Microsoft will always be able to claim full payment for the use of online services and will always be able to claim damages for both direct and indirect losses in the event of a breach of IPR/overuse etc. Note also that there is no limitation of the size of the liability. |
| "Notice of Changes; Termination; Order Precedence" | As for the Core Terms, this implies that Microsoft may unilaterally termination for convenciance with 30 day’s notice, and termination due to breach without requiring a "material breach". The risk is managed by including corresponding provisions in the end customer agreements, allowing for changes to the agreement, as we have commented above under Core Terms. |

The following should be addressed in the agreement with the distributor:

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| **Reference** | **Comment** |
| “General Rights, Restrictions, and Obligations” section 2 «General Obligations» (b) «Technology» | States that the reseller is responsible for acquiring the necessary equipment, technology, and infrastructure required to access Microsoft online tools and Partner portal. The distributor will provide this, and thus this should also be contracted in the agreement with the distributor. |
| “General Rights, Restrictions, and Obligations” section 2 «General Obligations» 2 (c) «Security and Unauthorized Disposition” | States that the reseller must take reasonable measures to protect Microsoft products and product materials under their control against unauthorized access and will comply with the security requirements in the Channel Authorization and associated guides. Since an indirect reseller will need to use the distributor's solution for access to Microsoft's portal and the ability to order and manage Microsoft products on behalf of end customers, this should be reflected as an obligation towards the distributor. |
| «Defence of Third-Party Claims, General”, | Has a "standard" indemnification regulation in case of infringement, but initially states that the indemnification obligation applies to the products that arise from "each channel Authorization". However, it does not appear in the "channel authorization" that Microsoft actually assumes responsibility if Microsoft's Online services infringe third-party IPR. It is, however, stated in the version of "channel authorization" applicable to distributors, and we assume that Microsoft's intention is that since they provide such protection to the distributor, the distributor can, in turn, agree on this with the reseller (granting corresponding rights). This should therefore, be ensured. |

Furthermore, we would like to mention that the following obligations should be mirrored in relation to the end customers:

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| **Reference** | **Comment** |
| "Product Fees and Ordering, General", section 1 "Ordering" (a) | States that Microsoft has limited obligation to accept orders, may reduce the ordered quantity, and in any event has no liability for any lack of supply of products. This means similar reservations should be made towards the end customers when you resell, so that the agreement is only binding when Microsoft has accepted the order. |
| "Product Fees and Ordering, General", section 2 "Purchase Commitment Obligations" | Contains an obligation to obtain a binding order from each end customer. This is ensured by entering into an agreement with end customer where the initial volume is specified. However, it is important that subsequent additional orders are also documented in writing to the end customer, so that there is traceability for all additional purchases. In addition, it should be pre-agreed with the end Customer who the authorized purchasers are, so this does not create discussions afterwards. Please, note that term must also be specified in the orders/agreements with the end customers. |

## The Indirect Reseller Authorization (the Channel Authorization)

This is the document that actually authorize the reseller a right to resell Microsoft Online services (through a distributor). Here it is specified the territory in which you can resell, requirement to use the partner portal, requirement to ensure acceptance of the Microsoft terms and conditions by end customers, rules regarding suspension or cancellation of subscriptions, payment terms, requirement to provide support to end customers, etc.

Of the obligations for the reseller that you should be particularly aware of, and where the reseller itself must review the obligations and create procedures to ensure compliance, we would like to mention the following:

| **Reference** | **Obligation** | **Action/responsibility** |
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| "Authorization" Section 2 "Territory" | The reseller may not distribute, resell or market the Online Services outside the territory agreed with your distributor. The obligation does not prevent the reseller from selling to an end customer in the territory and that the end customer hosts applications and makes them available also to subsidiaries in the end customer group located outside the EU/EEA (due to the hosting exception in the Microsoft Customer Agreement), as long as export control rules are complied with. | Internal procedures must be established to ensure this. |
| "Authorization" section 4 "Use of Others", | When using third parties to interact with the end customers, the reseller must ensure audit access to such third party for Microsoft. | Be sure to mirror this in possible agreements with such third parties. |
| «General Requirements and Obligations” section 2 “Product Availability; Fulfilment” (d) | It is stated that the reseller shall coordinate the delivery of end customer orders with the distributor in accordance with the Additional Terms, included in the agreement entered into with the distributor. | An internal routine must be established to ensure compliance with the obligations in the separate agreement with the distributor. |
| "Customer Data and Privacy Obligations" section 2 “Customer Data” (c) | If a reseller receives a request to disclose customer data in accordance with law/ regulatory orders, the reseller is obliged to follow the stipulated procedure and to notify the customer in question. | Internal procedures must be established so that you can also document to Microsoft that the obligation is complied with. |
| "Customer Data and Privacy Obligations", section 2 "Customer Data" (f) | If the reseller become aware of unauthorized access to customer's data or any other security incidents related to security measures for customer data, the reseller must notify Microsoft without undue delay. In the event that the security incident involves Customer Personal Data, the reseller must notify Microsoft within 72 hours of becoming aware of the situation. | Internal procedure must be established. Notifications must be sent to [cert@microsoft.com](mailto:cert@microsoft.com) |

Of other important sections in the Indirect Reseller Authorization, we would like to highlight the following:

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| **Reference** | **Comment** |
| «Authorization» section 1 «General», | This means that the right to resell Microsoft Online-services 1) requires also an agreement with a distributor in addition to the reseller agreement with between you and Microsoft, and 2) breach of the Additional Terms in the distributor agreement also constitutes a breach towards Microsoft. |
| "Authorization" section 4 "Use of Others", | Stipulates that you may not resell through third parties or subsidiaries. I.e. these may not resell/contract with end customers (and in any case may not influence purchase decisions of public end customers), but they may assist in ensuring that the reseller complies with its obligations in the Microsoft Partner Agreement (such as compliance requirements, reporting requirements, training requirements, etc.) or help with deliverables towards end customers (such as support). In that case, the reseller will be liable to Microsoft for any breach of the Microsoft Partner Agreement committed by such subsidiaries/third parties. Reseller should therefore consider mirroring the liability to pay damages that may arise against such partners (at least when you use external partners and not affiliated companies where this is already regulated in intercompany agreements). |
| «General Requirements and Obligations” section 1 “Relationship ofParties” and “Product Availability; Fulfilment” (e) | Remember the obligation to provide end customers with access to the necessary login details for their account, even if the end customer's account is actually managed by you as a reseller. |
| «General Requirements and Obligations” section 5 “Defence Obligation” | Stipulates that the reseller must defend and hold Microsoft harmless against any third-party claims resulting from the reseller's non-compliance with the provisions of this Agreement, including those relating to the resale of Microsoft Online Services. Note also that Microsoft may introduce new product-specific terms for newly launched products that may have stricter liability. In any case, Microsoft has the right to change the terms of the Channel Authorization with 30 days’ notice, so this only provides protection against major changes within the 30 days’ notice period. The notification period is 5 days if the changes concern storage, handling or distribution of Microsoft IPR. |
| "Term and Termination" section 3 "Termination without Cause", section 4 “Termination for Cause” and section 5 "Suspension" | The termination of Core Terms and/or the Channel Terms entails automatic termination of the Channel Authorization terms.  There is, in the same way as in the Core Terms and the Channel Terms, a mutual termination for convenience right with 30 days' notice.The agreement may also be terminated as a result of breach without requiring a "material breach" etc. If the breach cannot be cured the agreement may be terminated immediately. This applies also in some other situations .  Note that section 5 explicitly states that Microsoft may also suspend your access to the Partner Portal and other tools as long as the reseller is in material breach of contractual obligations. Suspension must be notified before it takes place.  Further note that upon termination for cause, you must stop reselling Microsoft Online Services to end customers immediately, including stop any marketing. |
| "Termination", section 8 "Customer Change of a Partner" | Means that end customers can choose to change reseller at any time. The reseller must then assist to facilitate this to a reasonable extent. However, this does not mean that a lock-in period cannot be agreed with end customers in the end customer agreement between the reseller and the end-customer. |

The following should be addressed in the agreement with the distributor:

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| **Section** | **Comment** |
| «Authorization» section 2 «Territory» | It is stated here that the reseller has the right to resell Microsoft Products in the "Territory." Products are defined as the Microsoft online services that the distributor has been granted the right to resell through an "indirect reseller" in the distributor's agreement with Microsoft. The Territory is defined as the geographical area agreed upon in the agreement with the distributor. Therefore, the reseller must both agree with the distributor which online services the reseller shall have the right to resell, and reseller must explicitly agree on the territory for which this applies, as this is not specified in the MPA for indirect resellers (Microsoft Partner Agreement). |
| «Authorization» section 3 “Company Affiliates” and section 4 “Use of Others” | Establishes that one cannot resell through subsidiaries (or other third parties) unless this is agreed upon with the distributor in the agreement between the distributor and the reseller. This must therefore be done where relevant. |
| «General Requirements and Obligations”, section 1 “Relationship of Parties” | States that Microsoft may provide updates to purchasing, account activation/end customer, and support processes, and that the company must implement such changes in order to continue reselling, etc. The system-related tasks in the portal provided by the distributor should be the distributor's responsibility to carry out. |
| «Customer Data and Privacy Obligations” section 3 “Other Security Obligations” | It is stated that the reseller must establish multi-factor authentication for access to Microsoft's Partner Center, etc. Since access will occur through the distributor's portal, this should contractually be regulated as an obligation on the distributor. |
| «Term and Termination”, section 3 “Termination without cause” and section 7 “Termination of Distributor” | This means, in the same way as in the Core Terms and the Channel Terms, that there is a mutual termination for convenience right with 30 days' notice. The agreement with the distributor may, however, have different regulations. Termination of the distributor agreement will automatically result in the termination of the resale rights under the Microsoft Partner Agreement. Therefore, as a starting point, the reseller should ensure a long-term notice period towards the distributor to avoid the Microsoft Partner Agreement with Microsoft being terminated at short notice due to the distributor's termination.  It should also be considered to agree on the assistance the distributor should provide to the reseller upon termination, for example, granting access to relevant end-customer information and data, so that the reseller can continue to resell to end customers under another distributor, or by switching to only having an agreement with Microsoft (direct bill).  As the distributor also has a right to continue to resell, upon termination for convenience, to active end customers either according to the minimum duration agreed between MS and the end customer in MCA, but in any case, not more than 12 months, the reseller should also ensure that this distributor right is flowed down to you as reseller. |

Furthermore, we would like to mention that the following obligations should be mirrored/taken into account in relation to the end customers:

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| **Reference** | **Comment** |
| «General requirements and obligations, section 1 “Relationship of Parties” (a) and section 2 “Product Availability; Fulfilment” | This states that orders placed in the Microsoft partner portal are not binding for Microsoft, and that Microsoft can also limit the available volume. They can thus reject orders entirely or partially without further justification. For example, in March 2020, this happened due to capacity problems caused by Covid-19. The reseller should therefore not guarantee delivery times to end customers or enter into a larger delivery agreement with fixed milestones that depend on specific Microsoft Online Services without reserving the right for Microsoft to accept the order within a defined deadline. In other words, for larger orders, reseller should actually give Microsoft a heads up about possible orders that may come. |
| «General requirements and obligations, section 2 “Product Availability; Fulfilment” (b) | This means that the reseller can lose the right to resell products at any time. This uncertainty must therefore be reflected in the end-customer agreements so that an obligation to resell products are conditional upon thatnt Microsoft continue to make the products available. |
| «General requirements and obligations” section 3 “Reservation of Rights” | This states that Microsoft may have the right to demand that the reseller stop accepting further orders for Microsoft Online services from individual end customers. This assumes that Microsoft either has such a specified right in the Microsoft Partner Agreement or has such a right according to the terms towards the end customer in the Microsoft Customer Agreement. This should therefore be taken into account in the end-customer agreements so that an unconditional right to carry out orders only applies as long as Microsoft honors such orders. In addition, the company must ensure that program information or other new material is no longer made available to the terminated end customer. |
| «General requirements and obligations” section 4 “Support Obligations” | Entails that the reseller is responsible for providing support for all Online services it resells for the entire subscription period for each individual end customer. Therefore, this must be included as an obligation in agreements with end customers (and the end customers must be aware that under the CSP model, they may not contact Microsoft directly for support). |
| “Customer Data and Privacy Obligations” section 2 “Customer Data” (d) | The reseller must include a provision in its agreement with an end customer stating that the end customer shall be obliged to (i) notify the individual users that their personal data may be processed in accordance with what is determined by the reseller for the purpose of disclosing it to public authorities when it is required by law and (ii) obtain the individual's consent to this. |
| "Term and Termination" section 6 "Effect of Termination” | Entails that, once the agreement is terminated for cause or convenience, the reseller must stop reselling Microsoft Online Services to end customers within 24 hours. This must be taken into consideration in the end customer agreements. It can of course be argued that this should be the risk of the reseller in cause of termination for cause, but since the threshold for termination is only “breach” and not “material breach” it’s advisable to mirror this risk towards the end customers, at least when the reseller is not in “material breach”. |

**2.4 Additional Terms introduced through the agreement with a distributor:**

The MPA states in the Indirect Reseller Authorization (the Channel Authorization) that the Additional Terms in the distributor's agreement with the reseller also must be followed in connection with the resale of Microsoft online services. Any breach of Additional Terms is also considered a breach of the MPA with Microsoft. The distributor is obliged in its agreement with Microsoft to mirror its relevant obligations towards Microsoft through the distributor's own agreements with the resellers. Since the resellers also enters into a separate Microsoft Partner Agreement with Microsoft, most distributors will only mirror the provisions in the Microsoft Partner Agreement for "direct bill" that are “missing” in the Microsoft Partner Agreement for "indirect reseller". The differences are mainly:

* The Core Terms are almost identical. The largest difference to MPA "direct bill" is that upon termination for any reason, the right to resell ceases within 24 hours vs a 1-year transition period in MPA "direct bill" where reseller can still sell to existing end customers.
* Channel Terms are also quite similar. The large difference is that a number of provisions, including definitions, related to payment and payment terms have been removed since an "indirect" reseller must order and pay for the consumption of online services to its distributor. This means that provisions in MPA for "direct bill" such as the distributor not being allowed to offset any earned bonus against upcoming payments for consumption, that the distributor has a maximum of 25 days to submit written objections to Microsoft to any consumption measurements that form the basis for upcoming invoices, etc., are not found in MPA for "indirect reseller". In addition, MPA for "indirect reseller" lacks, for example, a limitation of liability that exists in MPA for "direct bill" (is limited to 12 months' fees there).
* Channel Authorization is fundamentally different. In MPA for "direct bill", topics such as the territory the reseller can resell in, which online services that can be resold, requirements for the use of the partner portal, requirements to ensure acceptance of Microsoft terms from end customers, rules around suspension or cancellation of subscriptions, payment terms, requirements for support towards end customers, etc. are addressed. These topics are not addressed in the MPA "indirect reseller" version.
* The Guide to the Online Services and Software Channel Authorization does not exist in MPA "indirect reseller", only in MPA "direct bill" which applies to the distributor. This document sets out additional requirements and guidelines for resale. For example, additional requirements for access to the Microsoft partner portal (including requirements for multi-factor authentication), additional requirements for support provided to end customers, policies for the products, other terms (such as end customer satisfaction survey, invoicing requirements), possibility for return/cancellation of orders, as well as a number of product-specific terms (for Azure services, Azure Stack, Skype, D365), rules for sales to public end customers, etc. Although these terms do not apply to resellers who are "indirect", the distributor will have to mirror several of these conditions (Additional Terms) towards the reseller in the agreement that will have to be entered into between the distributor and the reseller.

Based on our experience in negotiating distributor agreements), the distributor will introduce a number of provisions with rules and obligations that apply to the reseller, based on the additional obligations that apply to the distributor through MPA "direct bill" vs what applies to indirect resellers. From our experience, the reseller should be particularly aware of the following Additional Terms that are likely to be introduced by the distributor:

**Channel Terms:**

Of the obligations for the reseller that you should be particularly aware of (if introduced by the distributor), and where the reseller itself must review the obligations and create procedures to ensure compliance, we would like to mention the following:

|  |  |  |
| --- | --- | --- |
| "Product Fees and Ordering, General", section 1 "Available Products and Price Lists. | Price Lists and Product Fees and any conclusions, deductions, or inferences that may be reasonably derived from such must be treated as Confidential Information. | Make sure that all employees are familiar with this definition of Confidential Information. |
| "Reporting, Invoicing and Payment, General, section 4 "Invoice or Payment Discrepancies" | Gives the reseller only 25 days to protest any discrepancies between recorded consumption in the reseller systems for end customers vs. Microsoft's own records. Please, note that no dispute regarding proper settling of accounts shall entitle the reseller to withhold any payments, the reseller must pay the amount Microsoft deems appropriate. | Given the short deadline of 25 days, you should establish procedures for checking records of consumption, including getting acceptance or objections from end customers so this can be communicated to your distributor in due time before the deadline. |
| "Reporting, Invoicing and Payment, General, section 7 "Company's Financial Conditions)", (c) | Contains an obligation to notify Microsoft immediately in case of changes in the organization structure that will materially impact the contractual relationship, including changes in ownership, name, merger/demerger, etc., location, contact person, etc. | Create a procedure to comply with this obligation, and to notify your distributor when relevant. |

Furthermore, we would like to mention that the following obligations should be mirrored/taken into account in relation to the end customers (if introduced by the distributor):

|  |  |
| --- | --- |
| Section "Reporting, Invoicing and Payment, General, section 4 "Invoice or Payment Discrepancies" | Gives the reseller 25 days to protest in case of any discrepancies between measured consumption registered in the reseller’s systems for customers versus MS’s own quantity data. The distributor will probably claim a shorter period for the reseller. This must be mirrored in relation to the end customer, and preferably with an even shorter deadline, for example 5 days shorter, so that the reseller has time to receive customer objections before its own deadline expires. |

**Channel Autorization**

Of the obligations for the reseller that you should be particularly aware of (if introduced by the distributor), and where the reseller itself must review the obligations and create procedures to ensure compliance, we would like to mention the following:

|  |  |  |
| --- | --- | --- |
| "General Requirements and Obligations" section 1 "Authorization Criteria" | Besides the fact that Microsoft may set additional terms for resale in the Guide as well as specific terms for the various products (see previous comments), Microsoft may also in the Guide or in the Product Specific Terms set additional requirements in the form of number of employees, sales targets and minimum active subscriptions.. | Procedures must be established to keep track of any additional requirements communicated in the Partner Portal, or otherwise. |
| "Customer Related Terms and Obligations" section 1 "Customer Agreement Acceptance", (a) and (b) | Note the obligation to ensure that end customers accept Microsoft's terms (Microsoft Customer Agreement) without modification, prior to ordering. This must be the version of MCA applicable to the region in which the customer operates. Please, note that failure to comply with the obligation to ensure end customers' acceptance of Microsoft's terms and conditions (MCA) will entail liability for any cost or damage on Microsoft’s side.  Please, note also that Microsoft may amend the Microsoft Customer Agreement with 30 days' notice, which then must be used in relation to new customers, and the reseller must ensure that existing customers accept updated terms either when they make additional orders, or when they renew the subscription period. | Must be ensured through the agreement between the reseller and the individual end customer, where the Microsoft Customer Agreement must be accepted by the end customer, including that this entails that a direct agreement between Microsoft and the individual end customer is created.  Establish procedures for complying with the obligations and that this is documented. In the agreement with the end customers, you must include a link to MCA and other agreement documents such as, Product Terms, SLA, DPA, and possibly other agreement documents that apply (such as Financial addendum for banking and financial customers). |
| "General Requirements and Obligations, section 3 "Sales Readiness" | Microsoft sets a requirement that reseller must familiarize itself with the Partner Portal, including regularly monitoring alerts, updates to the Guide, price lists, policies, etc., as well as regularly attending training and briefings offered through the portal (and to document the participation). | The responsibility to monitor the Partner Portal must be allocated to named resources internally.  Procedures must be created to document participation in such courses and briefings. |
| "Software Offer Terms and Obligations", section 3 "Installation of Software" | If the reseller negotiates licenses for  software to end customers, the reseller must ensure that the end customer 1) uses only original software, 2) is adequately licensed (number of users/devices, etc.), 3) check that the customer has received the software, and 4) save copies of all documents related to the installation and provide Microsoft with copies upon request. | Create procedure for complying with the obligations and documenting the compliance. |

Of other important sections in the Channel Authorization (if introduced by the distributor), we would like to highlight the following:

|  |  |
| --- | --- |
| "General Product Related Obligations" section 2 "Disablement and Cancellation of Subscription Offers" (c) | Note that Microsoft may temporarily suspend or cancel/terminate an end customer's subscription under the terms of the Microsoft Customer Agreement or MPA. In such cases, your payment obligation to Microsoft will be suspended for further use related to that end customer. |
| "OLS Subscription Offer Terms and Obligations", section 4 "Service Level Agreement Credits" | Note that reseller will have the obligation to give at least the same SLA refund to the relevant end customer as accepted by Microsoft. |
| "Customer Data and Privacy Obligations" | Pursuant to section 1, the reseller must ensure that there is a legal basis for the processing of personal data the reseller obtains from end customers. This applies both to Microsoft' processing and to the reseller's own processing as controller. Section 2(e) stipulates that the reseller and Microsoft are independent processors regarding Customer Data, i.e. Microsoft is not the reseller’s subcontracted processor. The reseller must therefore ensure that Microsoft's data processing agreement is accepted by the customer, so that a direct contractual relationship between the customer and Microsoft is established, and at the same time the reseller must have a separate data processing agreement if the reseller processes Customer Data itself. In addition, Section 2(c) contains rules on the procedure the reseller must follow if the reseller receives, directly or through Microsoft, a request to disclose personal data on the basis of law, and Section 2 (f) contains procedures that the reseller must follow when it becomes aware of a security breach. |

The following should be addressed in the agreement with the distributor (if introduced by the distributor):

|  |  |
| --- | --- |
| **Section in MPA, «direct bill».** | **Comment** |
| “General Product Related Obligations”  section 1 “Product and Subscription Management” | If Microsoft updates processes and tools that you can use to manage individual customer subscriptions, you may be asked to implement such updates to be permitted to undertake such activities, including reselling. As long as the distributor provides their own portal, which in turn is used to communicate with the Microsoft Partner portal and similar, this obligation should be placed on the distributor. |
| «Customer Data and Privacy Obligations” section 3 “Other Security Obligations” | It is a requirement that the reseller must establish multifactor authentication for access to Microsoft's Partner Center, etc. In the Guide, this is further specified to be either "Security Defaults" (not a defined term in the MPA) or other security features identified by MS, or purchase of MS services such as AD Premium, or purchase of a third-party solution that supports federating in AD. The solution must be activated for all users who connect to MS solutions, including the Partner Portal. This obligation should be mirrored onto the distributor, so that the distributor's portal meets the requirements. |
| “Payment Ordering, Reporting, and Fulfilment”, section 2 “Payment Terms” | The distributor has a 60-day due date for invoices with Microsoft. Therefore, you should ensure that your own payment deadline with the distributor is somewhat similar, for example, 45 days, so that you can still offer a reasonably generous payment deadline to your own end customers, for example, 30 days. |

Furthermore, we would like to mention that the following obligations should be mirrored/taken into account in relation to the end customers (if introduced by the distributor):

|  |  |
| --- | --- |
| "Customer Related Terms and Obligations" section 1. "Customer Agreement Acceptance", (b) and (c) and section 2 "Maintenance of Acceptance"  "General Product Related Obligations" section 2 "Disablement and Cancellation of Subscription Offers" (a), (c) and (d) | Microsoft has a right to revise Customer Agreement also for existing end customers when such end customers submit subsequent orders or renews a subscription.  Microsoft may reject an end customer for legal reasons, as well as if Microsoft reasonably determines that the end customer entails an increased risk of liability for Microsoft. The reseller must thus mirror the same in the agreement to be entered with the end customers (since the reseller often enter into an end customer agreement before registering the relevant end customer with Microsoft).  Furthermore, Microsoft may, in consideration of the end customer eligibility requirements (which only applies to government customers or educational institutions, that either get special discounts or access to special products) or if it otherwise follows from the MCA, terminate any government customer as an end customer. ”. Microsoft will still be entitled to claim payment in accordance with placed order. The same should be mirrored in relation to the end customers.  If the reseller cancels an end customer subscription, the end customer will have ninety days to migrate customer data.  In addition, Microsoft has a general right to suspend or cancel an end customer subscription due to law or other regulations or as set forth in the MPA or MCA. Microsoft will normally return to the reseller any advance payment for such end customer if the cancellation is not caused by breach of the MPA or breach of the MCA. The same should be reflected in relation to the end customers, hereinunder that the end customer will not be reimbursed for advanced payment in such situations and that the customer still has to pay for committed consumption. You should also consider whether this reservation should cover your breach of the MPA because the threshold or termination is only “breach” and not “material breach”. |
| "General Product Related Obligations" section 2 "Disablement and Cancellation of Subscription Offers" (a) | If the reseller terminates an end customer subscriptionr, which the resellers is generally free to do in relation to Microsoft, Microsoft reserves the right to invoice any scheduled invoiced amount for this end customer. This is related to "OLS Subscription Offer Terms and Obligations" section 2 (Fixed Term OLS Subscriptions" which states that Online services sold by Microsoft for fixed defined subscription periods must be paid in full for such period/committed use. This must be mirrored in relation to the end customers when relevant. |
| "General Product Related Obligations" section 2 "Disablement and Cancellation of Subscription Offers" (b) | The reseller agreement gives the reseller the right to suspend an end customer's subscription. Such a regulation is probably smart to include in end-customer agreements, since non-payment by end customers does not exempt the reseller from paying Microsoft for consumed online services. Then you want to avoid ending up in a situation where you still have to resell the online services, despite payment breach or if the end customer is in the process of going bankrupt or similar. Note that the end customer may still, depending on the product, have access to one or more products. You should assess whether this may pose a specific credit risk for you, depending on the individual end customer/the products used. |
| "OLS Subscription Offer Terms and Obligations" section 2 "Fixed Term OLS Subscriptions" (a) and (d) | OLS Subscriptions sold for a determined fixed period cannot be terminated during this period (lock-in period)  The reseller must also select billing cycle (monthly vs. annual advance payment).  Be also aware of that such binding subscriptions upon their expiry will be automatically renewed for a corresponding period of time, unless termination take place before the subscription is renewed.  The mentioned lock-in period, billing cycle and renewal are not regulated in the end customer’s MCA and must be regulated in the resellers agreement with the end customer. |
| "OLS Subscription Offer Terms and Obligations" section 3 “Consumption Subscriptions, ("Pay as You Go")” | Subscriptions billed "as you go" follow the prices Microsoft has set for the current billing period. However the unit price for an online service may change during a subscription period. It is important that prices for end customers are regulated in the same way. |
| "OLS Subscription Offer Terms and Obligations", section 4 "Service Level Agreement Credits" | Note that the reseller will have the obligation to give at least the same SLA refund to the relevant end customer as accepted by Microsoft. This principle can be mentioned in the end-customer agreements, as it is “selling”. |
| "Software Offer Terms and Obligations", section 1 "Software Subscription Renewal" | Not all software subscriptions will be automatically renewed at the end of the subscription period. This must be checked and the reseller must in the reseller’s agreement with the end customer communicate to the end customer whether a subscription will require manual renewal or repurchase at the end of its term. This is not regulated in the end customer’s MCA. |
| "Payment, Ordering, Reporting and Fulfillment" section 2 "Payment Terms" | As a reseller, you have a 60-days deadline to pay Microsoft’s invoices. You should therefore mirror a somewhat shorter payment deadline to your end customers, for example 30 days, to ensure receiving payment from the end customer before Microsoft's invoices are due. Note that Microsoft has reserved the right to specify a shorter payment term on the invoice, or in the Guide or Product Specific Terms. The reseller should therefor also reserve the right to specify a shorter payment term on the invoice. |
| "Notice of Changes" | Microsoft may:  - change the terms of Channel Authorization with 180 days' notice.  - modify or remove products included in the Online Services with 30 days' notice (i.ereseller may not sell such products to new end customers after the 30 days’ period, but you may continue to deliver them to existing end customers as long as Microsoft under MCA has an obligation to do so in relation to the end customer (normally, there is 12 months' notice in the event of significant changes in products or product composition in MCA).  - change the list price with 30 days' notice, including making changes no later than 10 days before an announced new price list is due to take effect. For Non-Microsoft products, the price change may be immediate. Furthermore, Microsoft may change prices for Microsoft Azure services without notification, and also adjust prices due to currency fluctuation without notice  - change the Product specific terms or the Guide with 30 days' written notice  - with 60 days' notice change which countries end customers you can resell to, must be domiciled in.  This should also be mirrored in the end customer agreements. |

**Guide to the Online Services and Software Channel Authorization:**

Of the obligations for the reseller that you should be particularly aware of (if introduced by the distributor), and where the reseller itself must review the obligations and create procedures to ensure compliance, we would like to mention the following:

| **Reference** | **Obligation** | **Action/responsibility** |
| --- | --- | --- |
| "General Channel Authorization Terms and Conditions" section 3 "Customer Agreement Acceptance confirmation", (c) | In addition to the obligation in the Channel Authorization to ensure that end customers accept Microsoft' terms and conditions (MCA), there is an activity obligation to confirm in the Partner Portal that the terms have been accepted by the end customer. The reseller must register in the Partner Portal the date of acceptance and the name of the person authorized to sign on behalf of the end customer, and other relevant details). If this is not done for an end customer when registering the end customer's tenant for the first time, there is a risk that Microsoft may block the account, without prior notice. | Procedures must be established to register the required information in the Partner Portal.  Microsoft has additional information about options for end customer acceptance of the MCA that can be reviewed: <https://docs.microsoft.com/en-us/partner-center/confirm-customer-agreement> |
| "General Channel Authorization Terms and Conditions" section 5 "Support terms", (b) “Escalation Support”, (d) “Severity Table” and (f) “Azure Active Directory” | In the event of incidents connected to support (i.e. message about code errors, problems with availability, etc.), such incidents shall be categorized by the reseller according to the error categories provided in section (d), upon which Microsoft sets the final level. The level determines how quickly the inquiry will be followed up by Microsoft. All enquiries must be made in English.  Microsoft may require the use of AD to provide support for incidents related to identity issues. | Procedures must be established to report support inquiries in accordance with the requirements. |
| "General Channel Authorization Terms and Conditions" section 7 "Other Terms", (b) “Price Lists” | The price for the Online Services will be billed in the local currency. Prices and different currencies available in different countries can be found in the Partner Portal, and via other tools that Microsoft has. | Familiarize yourself with current prices and the currencies that apply. |
| "Product Specific Terms and Conditions" section 1 "Microsoft Azure Services Offer Terms", (d) "Microsoft CSP Sandbox Environment" | To the extent Microsoft provides the reseller with free access to a sandbox account, this sandbox account may only be used for API integration testing, and not for any other commercial purposes. It is specifically stated that the reseller is not allowed to 1) create any revenue-generating solutions (such as hosting of customer applications, etc.), 2) establish free access for end customer (carry out proof of concept etc.), 3) use it for training end customers (except for "learning partners"), 4) distribute, transfer or otherwise give third parties access.  The reseller will be responsible for all unauthorized access or usages of the sandbox tenant. Furthermore, the reseller must inform Microsoft of any unauthorized access. You may be held financially liable for usage stemming from any abuse or fraudulent activity within the sandbox tenant.  Note also that Microsoft does not promise availability, and may change, suspend or remove the sandbox application without notice, nor does Microsoft guarantee that configurations, data, etc. can be obtained. | Review:<https://docs.microsoft.com/partner-center/develop/set-up-api-access-in-partner-center> to check requirements for setup and use, and create routines to comply with the duty of disclosure.  Thus, you should not be dependent on such an environment to deliver contractual obligations to end customers. Because there is no guarantee that the service will be there the next day, or that it will be possible to retrieve the content. However, it is practical to use it in connection with testing of integrations with Microsoft products (before starting to resell to end customers). |
| "Product Specific Terms and Conditions", section 2 "Microsoft Partner Shared Services Offer Terms" | Azure Partner Shared Services can be resold only to end customers, if the reseller meets the eligibility requirements set by Microsoft.  The reseller has the right to provision end customer tenants to its «Azure Partner Shared Services» tenant, so the reseller may provision shared resources and host SaaS solutions which are used by several of its end customers.  The reseller must keep tenant for Azure Partner Shared Services separate from its customers' own Azure accounts.  NOTE that the reseller will be subject to the terms of the Microsoft Customer Agreement when using this service. This means that the MCA should be reviewed, so the reseller have control over rights and obligations. The most important is probably that the reseller 1) comply with export control regulations, 2) comply with license restrictions (it is prohibited to decompile code, etc.) and 3) comply with the acceptable use policy; as well as check for restrictions for the use of the service in the Product Terms.  Note also that the reseller will be liable for any tax charges associated with the use of the service and this should be analyzed. | Check if such eligibility requirements exist. Procedures must be established to comply with eligibility requirements  Microsoft Customer Agreement should be reviewed, especially to see if there are any restrictions for the use in the Product Terms.  Before the service is put into use, you should consider possible tax costs. |
| "Product Specific Terms and Conditions", section 3 "Microsoft Azure Stack Hub Offer Terms" | The Guide provides some additional terms that apply when the reseller resell Microsoft Azure Stack Hub services hosted on servers belonging to the reseller or its end customers.  Azure Partner Shared Services can only be resold to end customers if the reseller meets the eligibility requirements set by Microsoft.  Reseller cannot provision, use or run "Tennant Workloads" from its administrator subscription, reseller must keep customer accounts separate from its own account to manage Azure Stack, and reseller can only perform administrator functions from the administrator subscription.  The reseller will be subject to the terms of the Microsoft Customer Agreement when using this service. See corresponding comment to “Microsoft Partner Shared Services Offer Terms”.  Reseller may use Azure Stack Hub only on the equipment on which it is pre-installed and the following statements must be met: <https://www.microsoft.com/en-us/privacystatement/EnterpriseDev>  If you use Azure Stack Hub Infrastructure Resources for purposes other than those that are permitted, Microsoft may require the reseller to pay the list price for such use.  Administrator subscription orders for Microsoft Azure Infrastructure Resources do not count for the incentive model.  Reseller is also liable for assessing any tax liabilities arising from the use. | These terms should be reviewed in detail upon resale..  Check if such eligibility requirements exist. Procedures must be established to comply with the eligibility requirements.  Microsoft Customer Agreement should be reviewed, especially to see if there are any restrictions for the use in the Product Terms.  Establish procedure to comply with the obligations. |
| "Product Specific Terms and Conditions", section 4 "Skype for Business Online PSTN Services Offer Terms" | Skype may only be resold to end customers if the reseller meets the eligibility requirements set by Microsoft.  Note that tax may be added to the amounts the reseller must pay to Microsoft. | Check if such eligibility requirements exist. Procedures must be established to comply with the eligibility requirements.  Check this in advance as the price can go up compared with the price lists. |
| "Product Specific Terms and Conditions", section 5 "Microsoft Dynamics 365 Offer Terms" | Skype may only be resold to end customers if reseller meet the eligibility requirements set by Microsoft.  Reseller must have at least 2 employees who passed the Microsoft technical exam, as further specified in the Microsoft Partner Network agreement, before starting the resale. | Check if such eligibility requirements exist.  Procedures must be established to comply with such eligibility requirements.  Make sure that at least two employees meet the technical exam requirement. |
| "Product Specific Terms and Conditions", section 6 "Government Offer Terms" | Reseller may resell Government Customer Reserved Online Services only if the reseller meets the eligibility requirements set by Microsoft. The products reserved for government customers are identified in the Microsoft Price Lists.  Before selling such products to public customers, reseller must check that the Customer is considered public, according to Microsoft requirements, see [www.aka.ms/governmenteligibility](http://www.aka.ms/governmenteligibility).  The reseller is obliged to use reasonable efforts to promote Government Products only to Government Customers. If Company markets Government Products, Company shall do so only with advertisement or marketing materials that clearly indicate that the Government Product is only available for purchase by Government Customers. | Check if such eligibility requirements exist.  Procedures must be established to comply with such eligibility requirements.  Remember to store documentation that proves that each individual public customer actually meets the requirements.  Remember to make it clear that such offers are for government customers only. |
| "Product Specific Terms and Conditions", section 7 "Education Offer Terms" | Reseller may resell Education Offer only if the reseller meets the eligibility requirements set by Microsoft. The products reserved for Education Customers are identified in the Microsoft Price List.  Before selling products considered "Education Products" to end customers, the reseller is responsible for validating that the end customer meets the eligibility requirements for being an Educational Customer. However, if Microsoft determines that the end customer does not meet the eligibility requirements, Microsoft may reject the individual end customer. | Check if such eligibility requirements exist.  Procedures must be established to comply with such eligibility requirements.  For each end customer, consider (and document) that the customer meets the eligibility requirements that you can find here:  <http://www.aka.ms/academiceligibility>. |
| "Product Specific Terms and Conditions", section 8 "ISV Cloud Embed Offer Terms" | The reseller may resell ISV Cloud Embed Offers only if the reseller meets the eligibility requirements set by Microsoft.  ISV Cloud Embed Offers is the right to integrate self-developed software solutions with Microsoft products.  The right to sublicense applies only to bundled products and not to Microsoft products alone (in which case one must do it in the ordinary way).  Reseller is responsible for making any necessary updates to ensure continued interaction with Microsoft Products. Microsoft will inform about changes in its products via regular channels.  If the reseller promotes the solution and use its own logo at the same time, this must be done in accordance with Microsoft guidelines, see comments under the Core Terms.  The reseller must prior to offering subscriptions to Embedded Unified Solution receive validation from Microsoft that the solution satisfies the guidelines available at <https://appsource.microsoft.com/en-us/partners>. | Check that you meet the eligibility requirements stated here: <http://createopportunity.azurewebsites.net/ISVCloudEmbedTerms>  Remember to apply to MS to become eligible, according to the guidelines here: <https://appsource.microsoft.com/en-us/partners>    These eligibility requirements must be complied with throughout the contract period, so it is important to create procedures to ensure this, as well as checking for any updates. |
| "Product Specific Terms and Conditions", section 9 "Third Party Offer Terms" | If the reseller wants to resell Third Party Offers, the reseller must request access to such third-party products by completing the "Third Party Offers Interest Form". Microsoft is free to limit the number and geography of resellers of Third Party Offer.  The reseller can order, manage, and cancel such subscriptions through the Partner Portal, and the reseller shall use the applicable Third Party Provider Solution when required.  Reseller shall also provide Microsoft or relevant third parties with information they may reasonably require in relation to tax documentation.  The applicable third-party supplier will be liable for the support specified in Developer Customer Agreement. Anything beyond this will be the reseller’s responsibility.  Upon termination of the right to resell a third-party product, reseller is obliged to discuss loyally and help ensure that end customers are presented with alternatives for further use, for example to purchase directly from third parties, through Microsoft, or other resellers. | Remember to complete the Third Party Offers Interest Form.  Familiarize yourself with what support each relevant contract party provides according to its terms. |
| "Product Specific Terms and Conditions", section 10 “Non-profit Offer Terms”. | The reseller may resell Non-profit Offers only if the reseller meets the eligibility requirements set by Microsoft.  The reseller may only resell such offers after a TechSoup verification of the non-profit eligibility of the end customer. | Check if such eligibility requirements exist.  Procedures must be established to comply with such eligibility requirements.  You must check the status of the end customer with Microsoft (through its partner TechSoup): <https://nonprofit.microsoft.com/#/register> |

The following sections in the Guide to the Online Services and Software Channel Authorization (if introduced by the distributor) are worth mentioning:

|  |  |
| --- | --- |
| **Reference** | **Comment** |
| "General Channel Authorization Terms and Conditions, Section 7 "Other Terms", (e) “Product Return Period, General” (i) “Return Period for Software Offers” and (ii) “Return Period for Online Services Offers” | Please note that the reseller has the right to cancel or change quantity of licenses or the like for software products for a period of 30 days after ordering. However, this is due to Microsoft’s approval and Microsoft may request documentation. Microsoft may choose to approve the cancellation even after 30 days for a 5% handling fee. Any cancelled payment will be given as a credit on future invoices.  For online OLS Subscription of a Non-Microsoft Product billed monthly, the reseller will receive a full credit on next invoice if the reseller cancels the order within 24 hours from placing the order. The corresponding cancellation period is 14 days for online OLS Subscriptions of Non-Microsoft Products billed annually. Other online services have no such cancellation period. . |

The following should be addressed in the agreement (Additional Terms) with the distributor:

|  |  |
| --- | --- |
| **Section in MPA, «direct bill».** | **Comment** |
| “General Channel Authorization Terms and Conditions”, section 6 “Additional Policies for Products”, (a) “Partner Earned Credit” | The distributor can earn bonuses by accumulating discounts on future invoices. The details can be found in the price list and "Partner Earned Credit Offer Details." Such "Partner Earned Credit" is not a "discount" that must be shared with end customers.  The calculation of these earned discounts can be based on activities and information from the distributor itself, possibly from indirect resellers they it is licensed to sell through (such as you), or from end customers. The distributor must ensure that such information is shared with Microsoft according to the requirements in the partner portal.  Microsoft always reserves the right to retroactively invoice any miscalculated and thus over-calculated/settled bonuses.  How such distributor earned bonused should be shared by the distributor with you as a reseller, and other roules, can be agreed in the agreement reseller enters into with the distributor. |
| “General Channel Authorization Terms and Conditions, section 7 “Other Terms”, b) “Invoices” | Microsoft makes invoices available through the Partner Portal, typically on a monthly basis, for reseller roles set up as "Billing Admin" or "Global Admin." It should be verified with the distributor how this will work for the reseller. |

Furthermore, we would like to mention that the following obligations (if introduced by the distributer) should be mirrored/taken into account in relation to the end customers:

|  |  |
| --- | --- |
| **Rererence** | **Comment** |
| "General Channel Autorization Terms and Conditions", section 6 "Additional Policies for Products", (b) “Iinvoicing Currency” | Note that Azure plans are priced in USD, and are billed by Microsoft in the distributer’s local currency, and as further specified in section (ii) of the clause. Make sure the same is used in relation to end customers to avoid any currency risk. |
| "General Channel Authorization Terms and Conditions, section 7 "Other Terms", (c) "Invoices" | Microsoft’s invoices are usually payable within 60 days (but this can vary in different countries), so check what applies to your country). A somewhat shorter deadline should be agreed with end customers to limit the liquidity risk. |
| "Product Specific Terms and Conditions, section 1 "Microsoft Azure Services Offer Terms" | Note that pre-view releases must be marked as such by reseller in relation to the end customer. The reseller should specifically state in the end-customer agreement that if a product is a Preview Release, the end-customer must be aware of the regulation in the end-customer’s Customer Agreement and the customer’s Online Services Terms.  Some Azure services have some restrictions on use, and the restrictions may be changed by Microsoft from time to time. See: <http://azure.microsoft.com/en-us/documentation/articles/azure-subscription-service-limits/> for more information. These should be checked, and the resellers agreements with end customers should state that such updates will be binding for the end-customer. Possible increase in quantity must take place based on an order from an end customer.  Note also that one is permitted to give customers administrative rights in own portal solution that communicates with Microsoft portals, so that end customers can order or reduce quantity directly with Microsoft. All such orders etc. are considered as coming from the reseller, so it should be mirrored in the end customer's terms and conditions that the end customer is bound by such orders/changes. |
| "Product Specific Terms and Conditions", section 3 "Microsoft Azure Stack Hub Offer Terms", (d) “Customer Disclosures” | The reseller shall disclose to end customers that Azure Stack Hub software is hosted by the reseller and that use of such software/service is subject to the resellers privacy statement and not Microsoft's. |
| "Product Specific Terms and Conditions", section 3 “Microsoft Azure stack Hub Offer Terms”, (g) “Tax” and section 4 "Skype for Business Online PSTN Services Offer Terms", (b) “Taxes” | Note that tax may be added to the amounts the reseller must pay to Microsoft. Reseller must take this into consideration when pricing the products in the resellers agreement with the end customer |
| "Product Specific Terms and Conditions", section 6 "Government Offer Terms", section b) "Relationship Parties" | Do not list Microsoft as a sub supplier to government customers. This corresponds with the new Norwegian IT standard agreements for instance (SSA), where the cloud provider is considered a "third party" and not a subcontractor. The reseller is also solely responsible for meeting any end customer requirements, such as that the service must fulfil various laws and regulations.  If a court or similar instance rules the opposite, please, review the details of the provision and meet the requirements. If the reseller have a cost-based fee model with a public customer, the reseller should take into account that costs may decrease when the reseller receives bonuses or other incentives from Microsoft. |
| "Product Specific Terms and Conditions", section 8 "ISV Cloud Embed Offer Terms" | If the reseller licenses Microsoft Embedded Solutions to end customers, the reseller should specifically state in its agreement with the end customer that Microsoft provides no guarantee that the total solution will work. Note that Microsoft undertakes no financial liability whatsoever for the embedded solution. This also means that the end customers get no protection against defects in title from Microsoft for the embedded solution. This should be ensured in the agreement with the end customer (but this should be worded so that the reseller bears no liability whatsoever for any errors and defects in Microsoft Online services in general, and it should be mentioned that any rights given to the end customer will be governed by the MCA that the end customer will enter into with Microsoft). Since the end customers irrespectively must enter into MCA with Microsoft, end customer will be held harmless against third party claims that are caused by defects in title in Microsoft online services. |
| "Product Specific Terms and Conditions", section 9 "Third Party Offer Terms" | When reselling third-party products available for purchase through Microsoft, the reseller should submit the Developer Customer Agreement to the end customer and ensure that this is accepted by the relevant end customer and becomes a legally enforceable contract between the third party and the end customer.. Please, note also that Microsoft does not give any guarantee for protection against defect in title for such products. Check the Partner Portal for current terms and conditions and remember to choose the version of the Developer Customer Agreement that applies for the correct region.  Also create a procedure to check contract versions for updates, and make sure that the relevant end customer accept the updated contract versions when they renew subscription periods.  In principle, the reseller is free to cancel third party services at any time with Microsoft, but cancellation fees may apply. Check this before entering into an agreement with the end customer, and mirror applicable restrictions in relation to the end customer.  Please, note also that both Microsoft and the relevant third party may cancel the right to resell the third-party product with 30 days' notice. I.e., this must be mirrored in relation to the end customers. |
| "Product Specific Terms and Conditions", section 11 “Reservation Terms” | If a price for an end customer is based on a "reservation", then the reseller should mirror this towards the end customer for the relevant subscription period (and that there is no renewal), and that no prepayment for unused consumption will be refunded. |

# The Microsoft Partner Network Agreement

The agreement regulates the reseller's right to use the Microsoft Partner Network or related websites (the Partner Portal), including access to Microsoft marketing/sales materials, offers/campaigns, Microsoft products, etc. The Microsoft Partner Network Agreement does not change the Microsoft Partner Agreement, but it is a prerequisite for entering into and maintaining the Microsoft Partner Agreement.

Of special sections we would like to mention the following:

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| **Reference** | **Comment** |
| Section 1 "General" subsection d. | States that Microsoft may set additional terms regarding program participation, access to Microsoft technology, and may make available guides for use or program that may have additional terms. The reseller must comply with and review such terms when relevant. |
| Section 2 "exclusion of warranties" subsection b | Note that Microsoft provides no warranty for that information in the Partner Portal is accurate and complete. That means, you cannot rely on such information alone when you make offers to end customers, for instance promise that the Microsoft Online services have specific characteristics and capabilities. |
| Section 3 "Intellectual Property" | States that the reseller may use Microsoft information/materials, and supplement this with its own materials. If you use Microsoft’s company name and product name in marketing, you must comply with Microsoft’s guidelines for such use. Therefore, you should review the guidelines before using the material, so this is done correctly. |
| Section 4 "Term and Termination", b) | Gives each party right to terminate the agreement without cause with 30 days' notice and to terminate with immediate effect if the other party is in breach of the Privacy and Data Protection, Confidentiality, Business Integrity Principles, breach of the other's IPR or other breach that cannot be remedied within a reasonable time. There is no requirement that the breach of contract must be material or that an opportunity to rectify must be given before such termination takes place. Since this Microsoft Partner Network Agreement is a prerequisite for entering into the Microsoft Partner Agreement, this entails an increased risk that the Microsoft Partner Agreement may terminate than what follows from the wording in Microsoft Partner Agreement alone. |
| Section 5 "Privacy and Data Protection" | Note that each party must comply with privacy protection legislation, some examples (non-exhaustive) of measures - 5, a) 1 to 5 must be done (including establishing procedures and information security). Section 5(b) imposes additional information security requirements when participating in the Microsoft Office 365 Advisor program or CSP program.  The main problem with the provision is determining what data it applies to. "Customer Data" is defined as end customer data available through the "Microsoft Commercial Cloud Portal". When you do not know what data this is, it can create problems in demonstrating a valid legal basis, etc. for processing the data. If it is only data necessary to manage a subscription, this may be OK, but if there is more data, the reality may quickly become that you are on the edge of GDPR (more data than there is legal basis for) or are to be considered a data processor. This means that it must be verified with Microsoft which data is involved per agreement, and if necessary, a data processing agreement must be established. |
| Section 6 "Confidentiality and Publicity" | Imposes a duty of confidentiality for 5 years for information that is marked as confidential or information that the recipient must understand is confidential. The latter is a somewhat unclear indication of what is considered confidential or not, and since a breach of confidentiality duty may result in immediate termination for cause (and also terminate the Microsoft Partner Agreement), you should if in doubt, treat everything as Microsoft confidential information. |
| Section 7 "Business Integrity Principles" | Imposes (as in the Microsoft Partner Agreement) each party to comply with all laws and regulations applicable to its business, including export control rules, environment, IPR, HSE/AML/EMK, anti-corruption rules, etc. The reseller must ensure that relevant employees complete Microsoft's training on anti-corruption rules. The reseller must also comply with the Microsoft Code of Conduct. See comments on Microsoft Partner Agreement Core terms for details, as the obligations are relatively similar. |
| Section 8 "Limitation of liability" | Contains ordinary damages provisions. However, note that there is no limitation of liability. |
| Section 9 "Indemnification" | Contains a reasonable standard indemnification obligation, except that it includes third-party claims against Microsoft arising out of any minor or major breaches of the agreement. It means, it is not limited to issues concerning defect in title which is normal practice in Norway. Under Norwegian law, however, the risk appears to be limited, as Microsoft will rarely be liable directly in relation to third parties as a result of the reseller's breach of contract. |
| Section 10 "Miscellaneous", e) | Note that Microsoft may modify the Microsoft Partner Network Agreement, Microsoft Materials, a program, etc. with 30 days' written notice. If you actively opt out of the Microsoft Partner Network Agreement program, such updates are not deemed as automatically accepted. A procedure should be established to monitor any changes and their consequences. |
| Section 11 "Country-Specific Provisions" | Links to a document that applies in addition, and addresses the contracting party from Microsoft’s side and the choice of law. The contracting party is Microsoft Ireland Operations Limited and the choice of law is Irish law, and the legal venue is in Ireland. |

The Additional Terms for MPN Programs applies as well:

The following sections are worth mentioning:

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| **Reference** | **Comment** |
| Section 1, "Affiliate participation", c) | It appears that Microsoft Partner Network Agreement programs may also be provided by Microsoft subsidiaries. In this case, the subsidiary is the contracting party and not Microsoft centrally. Governing law and legal venue are in the country where the Microsoft subsidiary belongs. |
| Section 2, " Programs", a) | If you are acting as an Advisor, there are additional terms that *must be reviewed* if relevant, see <https://query.prod.com.rt.microsoft.com/api/am/binary/RE4E0lj>. You are considered an advisor when you: "engages with Customers in a non-transacting capacity, performing activities such as pre-sale consulting, quoting, and post-transaction services such as migration, deployment or infrastructure management on a per project or ongoing basis, and that can be granted the associated rights by the customer at a tenant or workload-level".  The terms set requirements for the processing of the customer's personal data, the customer's data in general, requirements for security, etc. NOTE the obligation to notify Microsoft if you are aware of or suspects that, a customer is in breach of the Microsoft Customer Agreement.  Any breach of these additional terms is considered to be a breach of the Microsoft Partner Network Agreement, which in turn allows Microsoft to terminate Microsoft Partner Agreement for cause. |
| Section 2, " Programs", c) | Entails that additional terms in the form of additional agreements, guides or other documentation may apply to each individual program. |
| Section 4, "Alternative Terms for Incentives": | Note additional terms that apply to incentive programs that should be reviewed when applicable. The essence here is that Microsoft Norway is a contracting party, the choice of law is Norwegian law and legal venue is in Norway, and that all payments the reseller receives exclude VAT and other taxes and fees. |

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