

Amendment to the Microsoft Publisher Agreement

This Amendment (“Amendment”) to the Microsoft Publisher Agreement, Version 2.0 with Effective Date of May 26, 2020 (“Template Agreement” and as amended by the Amendment, the “Agreement”) is entered into by and between Microsoft Corporation (“Microsoft”) and Adobe, as defined in the subsequent sentence., effective as of the date last signed below (the “**Effective Date**”). For purposes of this Agreement, all references to “Adobe” or “Company” mean (i) if the Product is licensed in the United States (including its territories and possessions and military bases where ever located), Canada, or Mexico, Adobe Inc., a Delaware corporation with offices located at 345 Park Avenue, San Jose, California, 95110-2704, US, or (ii) if the Product is licensed in any other country(ies), Adobe Systems Software Ireland Limited, an Irish corporation with offices located at 4-6 Riverwalk, City West Business Campus, Dublin 24, Ireland. Capitalized terms not defined in this Amendment will have the meanings assigned to them in the Template Agreement.

1. Background.

Microsoft and Adobe entered into the Agreement pursuant to which Adobe may submit Products to Microsoft for publication in the Store. Now Microsoft and Adobe wish to expand their relationship.

Adobe is looking to make certain Products available to Customer(s) who have entered into Microsoft Enterprise Agreement with Microsoft through Microsoft’s Azure Marketplace through Private Marketplace (Adobe’s “Desired Scope”). Adobe understands that in order to gain access to the Azure Marketplace, Adobe will need to access Microsoft’s Partner Center and that Microsoft’s Partner Center is designed so that by gaining access to the Azure Marketplace, Adobe necessarily must also have access to other Stores, features, programs and offers. While Adobe’s review of this Agreement only contemplates the Desired Scope, Adobe understands that in the event that Adobe accesses or uses any of these other elements in Partner Center, such use will be pursuant to this Agreement.

Except for the terms of the Template Agreement that are expressly modified in this Amendment, the Template Agreement will remain in full force and effect and will continue to apply.

2. Amendment of the Agreement Provisions

The parties agree to the following amended terms in the Agreement:

- a. In Section 1 - Publisher Account, the last sentence in the paragraph shall be deleted in it’s entirety and the following will be added in its place:

“If you fail to keep your Publisher Account in good standing (as reasonably determined by Microsoft) Microsoft will provide no less than 30 days prior written notice of such failure and if you fail to cure by the end of such 30 days prior written notice may revoke your Publisher Account, remove your Products from the Stores, delete Product ratings and reviews, and pursue any other remedies available to Microsoft. Any removal of your Products pursuant to the prior sentence will be subject to the Wind-Down Period in section 10(d).”

- b. In Section 2(f) -Responding to Claims, the first sentence shall be deleted in its entirety and replaced with the following:

“If Microsoft receives a claim from a third party requesting that your Product be changed or removed, Microsoft may after reasonable notice to you remove the Product (subject to the Wind-Down Period in section 10(d)) and refer that claim to you.”

- c. In Section 2(i) - Removal Policies, the third sentence shall be deleted in its entirety and replaced with the following:

“Unless otherwise agreed to in writing by you and Microsoft, any such removal or suspension will, to the extent permitted by law, be subject to the Wind-Down Period described in section 10(d), and Microsoft will pay you the amounts owed (if any) that accrued through the end of the Wind-Down Period.”

- d. In Section 2(j) - Modification or Discontinuance, the following sentence shall be added at the end of the paragraph:

“You may terminate this Agreement by providing written notice to Microsoft if any change to the Stores and the Partner Center is not accepted to you, and any such termination will be subject to the Wind-Down Period described in section 10(d).”
- e. In section 5(a)(ii), the following sentence shall be added at the end of the paragraph:

For any transactions that involve a purchase of your Product by an Australian Customer (as determined by Microsoft), Microsoft understands and agrees that Adobe Systems Software Ireland Limited is acting as the authorized agent for Adobe Australia Trading Pty Ltd.
- f. In Section 7 - Confidentiality, Privacy, And Data Protection, the following sentence shall be added at the end of the paragraph:

“Information related to and your Product(s) and the identity of the Customer(s) will be Confidential Information of Adobe.”
- g. In Section 10 (b) – Term and Termination, (i) shall be deleted and replaced with the following:

“(i) notify existing Customers that the Product has been removed and may no longer be used after a specific termination date (which for the avoidance of doubt, will be after any applicable Wind-Down Period referenced in 10(d));”
- h. In Section 10 (d) – Term and Termination, the entire section shall be deleted and replaced with the following:

“Wind-Down Period. Except as set forth in this Section 2.h, if a Product is terminated, existing Customers will be able to continue using the Product until the expiration of the term of the Customer’s subscription to your Product and except as provided for below, Microsoft will continue billing Customers and making payments to you in accordance with this agreement through such date (“Wind-Down Period”). You must continue to provide any services that are part of your Product to each existing Customer during the Wind-Down Period except in cases where termination is required by law or it otherwise necessitated by compelling circumstances. Except in cases where termination is legally required or is otherwise necessitated by compelling circumstances, such as fraud or a claim of intellectual property infringement, we will not terminate any Product prior to completion of its Wind-Down Period, and we will not terminate any non-service Product during the term of this Agreement.”
- i. In Addendum B – Terms and Conditions Applicable to the Distribution of Products through Indirect Channels and Reseller Countries, in Section 2 (b) – License Grants, the following sentence will be inserted after the first sentence:

“For the avoidance of doubt, when Microsoft makes Product available to Customers and to provide Product through the Store pursuant to the prior sentence, Microsoft will not have access to the Product and you will still deliver the Product directly to the Customer.”
- j. In Addendum C – Terms and Conditions Applicable to the Commercial Marketplace, Office Store and Office 365 Certification Program, in Section C – Support, Sentences four and five will be deleted in their entirety and replaced with the following:

“If we contact you regarding a problem that requires your support, you must respond promptly and provide a resolution within the period of time agreed to by you and Customer in your licensing agreement with Customer. If requested by Customer, you agree to work with us to identify or isolate root cause issues and fixes in necessary scenarios.”
- k. Special Rate - The Store Service Fee will be 5% (the “Special Rate”) for the Products published as transactable offers on the Store. The Special Rate will apply only to Products that are purchased by the Customer during the period beginning on the Effective Date through the expiration or termination of this Amendment.

3. Term and Termination.

- a. Term.** The term of this Amendment will commence on the Effective Date and will expire on the fifth anniversary thereof. Additionally, either party may terminate this Amendment for convenience, if such party provides written notice at least thirty (30) days before the end the second anniversary of the Effective Date of this Amendment.
- b. Termination for Cause.** A party may terminate this Amendment (i) following the other party's material breach of this Amendment or the Agreement, provided that the non-breaching party must first give the breaching party sixty (60) days' written notice and the opportunity to cure that breach; or (ii) immediately upon written notice, if the other party ceases doing business, terminates its existence, dissolves or liquidates, or proceedings are instituted by or against such party under any bankruptcy or insolvency law (which proceedings are not dismissed within thirty (30) days).
- c. Effect of Termination.** In the event that Microsoft terminates this Amendment for any reason, Microsoft shall immediately be released of all payment and marketing obligations outlined under this Amendment. In the event that Company terminates this Agreement for cause, Microsoft shall complete payments under this Amendment for any milestones completed prior to the date of termination. Thereafter, Microsoft shall have no further payment obligations under this Agreement.

4. Confidentiality. This Amendment and its terms constitute Confidential Information as defined in Section 8 of the Agreement.



5. No Exclusivity. Each party acknowledges and agrees that the rights granted to and obligations due to the other party in this Agreement are intended to be non-exclusive, and therefore that nothing in this Agreement will be deemed or construed to prohibit either party from engaging in or participating with third parties in business arrangements similar to or competitive with those described herein


6. Entire Agreement; Conflicts. Except as modified by this Amendment, the Agreement will remain in full force and effect. This Amendment, together with the Agreement as modified by this Amendment, and the NDA constitute the entire agreement between the parties with respect to its subject matter and supersedes all prior and contemporaneous agreements, communications and representations, whether written or oral, between the parties regarding its subject matter. No modification to this Amendment will be effective unless signed by duly authorized representatives of each party. In the event of a conflict between the Agreement and this Amendment, the terms of this Amendment will control.

7. Execution in Counterparts and Electronically Transmitted Signatures. This Amendment may be executed in counterparts, each of which will be deemed an original, but each together will constitute one and the same instrument. Notwithstanding the foregoing, the parties will deliver original signature copies of this Amendment to the other party as soon as practicable following execution thereof.

By signing below the parties agree to be bound by the terms and conditions of this Amendment.

Agreed and Accepted:

| Microsoft Corporation | Adobe Inc |
|---|---|
|  <small>Jake Zborowski (Oct 20, 2020 09:11 PDT)</small> Signature |  Authorized Signature |
| Jake Zborowski Print Name | Andy Payne Print Name |
| General Manager Title | Director, WW Order Management Title |
| Oct 20, 2020 Date | Oct 20, 2020 Date |

| Adobe Systems Software Ireland Limited |
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|  <small>Brian Nolan (Oct 20, 2020 17:23 GMT+1)</small> Authorized Signature |
| Brian Nolan Print Name |
| Authorised Signatory Title |
| Oct 20, 2020 Date |