

FY17 MICROSOFT LEARNING EXPERIENCES MASTER INCENTIVE PROGRAM AGREEMENT

Company's participation in the FY17 Microsoft Learning eXperiences Incentive Program is governed by the terms and conditions in this agreement (the "**Agreement**"). By selecting the "I Agree" button, Company accepts and agrees to be bound by this Agreement. You also represent and warrant that (a) you are a duly authorized representative of the Company associated with the Microsoft Partner Network program ("**MPN**") location ID number you used to log into the Incentive Portal with the legal authority to bind Company to this Agreement, and (b) you have read and understand the Agreement. Company must accept this Agreement before it can participate in any Program.

1. PURPOSE

Company is an active, registered MPN member who currently is in good standing in the Learning Partner Program. Microsoft may, from time-to-time, make an Incentive Program (as such terms are defined below) available to Company. This Agreement sets forth the master terms and conditions that apply to all Incentive Programs. Additional terms and conditions that apply to specific Incentive Programs (each, a "**Program**") will be set forth in separate Program Letters issued by Microsoft. This Agreement does not grant any rights to Company and will have no effect unless Microsoft issues a Program Letter in accordance with **section 3** below.

2. DEFINITIONS

"**Affiliate**" means any legal entity that owns, is owned by, or is commonly owned with Company who is currently a MPN program member in good standing in the Learning Partner Program. "**Own**" means having more than 50% ownership or the right to direct the management of the entity

"**Courseware Marketplace**" means arvato distribution GmbH's online global commerce and fulfillment platform located [here](#).

"**dMOC**" means the English-language, digital student-kit version of the 3-5 day instructor-led courseware titles released under the Microsoft Official Course brand and the Microsoft Dynamics CRM courses.

"**EDP**" means Pearson VUE or such other exam delivery provider specified in writing by Microsoft as being a Microsoft Certified Professional exam delivery provider.

"**Eligible Product**" means the Product specified in a Program Letter as eligible for an Incentive.

"**End User**" means the ultimate consumer of a Product, typically an individual.

"**Exam Voucher**" means the unique voucher code purchased from Courseware Marketplace that may be redeemed to take one (1) Microsoft Certification Exam at an authorized EDP test center.

"**Incentive**" means a rebate or incentive offered under a Program.

"**Learning Partner Program**" means the learning program status available to qualified silver or gold level MPN members.

"**Marketing Activity**" means an advertising, marketing, promotion or merchandising activity conducted in connection with a Program.

"**Marketing Plan**" means the mutually agreed marketing plan prepared in connection with a Marketing Activity and which details the Marketing Activities that Company will perform in connection with a Program.

"**Microsoft**" means Microsoft Corporation, or that subsidiary, Affiliate, or related company identified as the Microsoft Contracting Entity in your MPN Agreement.

"**Microsoft Labs Online Voucher**" or "**MLO Voucher**" means the unique code purchased from Courseware

Marketplace that Company may redeem to obtain one (1) access code to obtain limited-time access to a Virtual Lab located at the website specified on the voucher.

“MOC Voucher” means the voucher that may be redeemed for one (1) 5-day dMOC title.

“Net Purchases” means the amount invoiced by Courseware Marketplace, excluding any taxes, duties, VAT, freight, insurance and other shipment charges, less rebates, returns and credits.

“Products” means the Microsoft product(s) identified as an Eligible Product in a Program Letter.

“Program Letter” means a written notice from Microsoft to Company which refers to this Agreement and specifies the terms and incentives of a specific Program.

“Program Term” means the period of time designated in a Program Letter that begins on the Program start date and ends on the Program end date.

“Proof of Execution,” or “POE” means documented and verifiable evidence that Company or a third party acting on Company’s behalf has completed a Marketing Activity. Proof of Execution may include, without limitation, a copy or description of the completed Marketing Activity (e.g., geographic scope, content, run time, treatment and text), completed Marketing Materials and similar evidence of completion in a format reasonably required by Microsoft or as set forth in the applicable Program Letter.

3. PROGRAMS AND PROGRAM LETTERS

- 3.1. **Programs.** Microsoft has no obligation to offer, and Company has no obligation to participate in, any Programs. Participation in any Program is voluntary and Company retains sole discretion to set prices for Products.
- 3.2. **Program Letters.** Company acknowledges it must comply with this Agreement and the applicable Program Letter as a condition of participation in any Program and eligibility for related Incentives. Company agrees that it will be bound by and will comply with the applicable Program Letter if it: (i) participates in a Program and notifies Microsoft of the same; or (ii) accepts any Incentive funds offered under a Program. This Agreement will control in the event of a conflict between this Agreement and an individual Program Letter unless the terms of the unmodified Program Letter expressly modify this Agreement. To the extent permitted by applicable law, Microsoft may modify or terminate a Program or a Program Letter at any time on notice to Company.
- 3.3. **Program Changes.** Microsoft has the right to cancel any Program, change the Program requirements, or products eligible for Incentive payments at any time in its sole discretion. If Company does not agree to the changes, its sole remedy is to terminate this Agreement.

4. ELIGIBILITY AND PROGRAM REQUIREMENTS

Company must meet and maintain the following qualifications throughout the Term of this Agreement to be eligible to participate in a Program and be eligible for an Incentive:

- a. Be an active, registered MPN member who is currently in good standing in the Learning Partner Program.
- b. Accept and comply with this Agreement.
- c. Be in full compliance with this Agreement, the MPN Program Agreement and Learning Partner Program guidelines and the applicable Program Letter.
- d. Company’s use and distribution of all Products must be compliant with the terms and conditions that are applicable to, accompany or are included with the Product.

- e. The Products must be genuine Products acquired from Courseware Marketplace using your MPN ID number associated with this Agreement to be eligible for an Incentive.
- f. Product orders that have not been invoiced by the last day of the Purchase Period will not be considered “eligible” Products.
- g. Products may not be returned.

The Program Letters may include eligibility and requirements for a particular Program that are in addition to the requirements set forth in this Agreement.

5. MARKETING ACTIVITIES

Except as set forth in section 6 below, Company will be solely responsible for all Marketing Activities conducted in connection with a Program. Company will ensure that all such Marketing Activities comply with all applicable laws, regulations and Microsoft policies. Company will not engage in any unfair or deceptive Marketing Activities.

All Marketing Activities will adhere to any Microsoft branding requirements, trademark requirements and related guidelines made available to Company by Microsoft and all additional requirements set forth in this Agreement and any Program Letter. Microsoft’s approval or disapproval of any materials used by Company in connection with any Marketing Activity will not limit or reduce Company’s obligations set forth in this Agreement or any Program Letter.

Company represents and warrants that it has obtained or will obtain all necessary third party rights and permissions to use any image, content, service mark, product, trademark, logo, and/or any other intellectual property right displayed or contained in any materials created in connection with any Marketing Activities.

Unless otherwise set forth in a Program Letter or agreed in advance by Microsoft in writing, Incentives cannot be used for Marketing Activities for which Company is receiving or has received any other form of payment or consideration, whether from Microsoft or any third party.

Company will immediately notify Microsoft if it fails to execute on any Marketing Activity (in whole or in substantial part). Upon receipt of such notice from Company, Microsoft will determine, in its sole discretion, whether Company will be required to substitute additional Marketing Activities of equal value or provide a mutually acceptable remedy. Microsoft reserves the right to deduct the value of any uncompleted Marketing Activity from any future Incentive payments to Company whether under the same or any other Program Letter (a “**Deduction**”). The Deduction value will be equal to the Company’s standard rates for a similar activity.

6. PROOF OF EXECUTION

Company will submit acceptable POE as set forth in the applicable Program Letter. If Company does not provide the required POE as defined in the Program Letter, then Company will not be eligible to receive any Incentives under that Program unless Company has obtained Microsoft's prior written consent.

7. REPORTING REQUIREMENTS

Company is responsible for actively reviewing their monthly purchase statements using the Incentive portal reporting tool designated by Microsoft (<https://mslearning.ms-rebates.com>). Company must notify Microsoft of any errors in their monthly purchase statements no later than 15 days after the end of the month. Any errors in reporting may result in delayed Incentive payments until reporting errors are completely fixed and updated

Company will provide timely, accurate and complete reports as may be required by a Program Letter. The reports must be provided to Microsoft at a frequency and in the format required by the Program Letter.

If Company does not provide a timely, accurate and complete report as required by a Program Letter, then:

- a. Company will not be eligible to receive any related Incentives unless Company has obtained the prior written consent of Microsoft; and
- b. Microsoft may terminate this Agreement pursuant to section **11.3** (Termination for Cause) unless Microsoft agrees in writing that the reporting is not required.

During the Term of this Agreement and for two years thereafter, Company must keep complete and accurate records relating to this Agreement and any Program. These records must include complete financial statements and all documents relating to the Program, including execution of marketing activities and POE. Microsoft may verify the accuracy of Company's reporting by: (a) third party sources; (b) auditing Company's books and records; or (c) requiring Company to have its authorized officer submit a statutory declaration certifying Company's reports.

8. CONFIDENTIAL INFORMATION

- 8.1. If the parties have entered into a Microsoft Corporation or a Microsoft standard reciprocal Nondisclosure Agreement ("**NDA**") with Microsoft that has a version date of March 2002 or later, its terms will govern use of Confidential Information (as defined in the NDA). The parties agree that the terms of the NDA are incorporated in this Agreement by this reference, and will continue to apply to any Confidential Information exchanged at any time by the parties in connection with this Agreement, regardless of any earlier termination or expiration of the NDA. Section **8.2** will apply in all other cases.
- 8.2. Company agrees that at all times during the Term of this Agreement, and for five (5) years thereafter, Company will hold in strictest confidence, and will not use or disclose to any third party, any Microsoft Confidential Information.
- 8.3. Microsoft Confidential Information includes (i) the existence and terms of this Agreement; and (ii) information provided or transmitted by Microsoft under this Agreement or in connection with the Program.

9. EXPENSES

Each party will bear sole responsibility for paying its own costs and expenses relating to its activities associated with this Agreement unless otherwise agreed in writing.

10. PAYMENT TERMS

- 10.1. **Incentive Calculations.** Microsoft will calculate Incentives as set forth in the applicable Program Letter. The calculation will be based upon sales data or other mutually agreed upon data for the applicable Product.
- 10.2. **Payment.** Any Incentive payments will be paid via wire transfer approximately sixty (60) calendar days following the end of the applicable Program term.

- 10.3. **Banking Information.** Company must provide Microsoft (or its third party payment processor) with all financial and banking information requested in order to make Incentive payments under this Agreement. Failure to provide such information within sixty (60) days after request by Microsoft or failure to keep such information current and accurate may result in forfeiture of amounts owed to Company by Microsoft under any Program Letter.
- 10.4. **Disputes.** Any claims concerning the Incentive payment must be sent to Microsoft no later than thirty (30) days following the receipt of the disputed Incentive payment or, if the Incentive is not received, following the date the Incentive was due. If such written notice is not sent within such thirty (30) day period, Company will be deemed to have waived any such claim. The notice of dispute must: (i) include a description of the dispute and supporting documentation as reasonably requested by Microsoft; and (ii) be sent via email to Microsoft at learningpartner@msdirectservices.com. Microsoft's decisions with respect to eligibility and amount of Incentive payments are at Microsoft's sole discretion. All decisions are final.
- 10.5. **Non-Compliance.** Microsoft may, at its sole discretion, withhold an Incentive if Company fails to comply with this Agreement or any related Program Letter, including without limitation if Company: (i) fails to provide the required final invoice or claim for payment, POE, or reports within the timeframe specified in this Agreement or any Program Letter; or (ii) distributes any non-genuine Product. If Microsoft determines that Company has not complied with the Program Letter or this Agreement in connection with any Program, Microsoft may require Company to return all or part of any Incentives issued to Company under the related Program.
- 10.6. **Taxes.** The amounts to be paid by Microsoft to Company are inclusive of taxes. Company will be responsible for any applicable stamp taxes and for all other taxes, including but not limited to net income or gross receipts taxes, sales, use, value added and similar taxes which are incurred or arise in connection with or related to the sale of goods and/or services under this Agreement, and all such taxes shall be the financial responsibility of Company.
- If taxes are required to be withheld on any amounts otherwise to be paid by Microsoft to Company, Microsoft will deduct such taxes from the amount otherwise owed and pay them to the appropriate taxing authority. Microsoft shall secure and deliver to Company an official receipt for any taxes withheld. Microsoft shall use reasonable efforts to minimize such taxes to the extent permissible under applicable law.

11. TERM; TERMINATION

- 11.1. **Term.** This Agreement is effective on December 1, 2016, and will continue until May 31, 2017, unless terminated earlier in accordance with section 11.2 or 11.3 below.
- 11.2. **Termination for Convenience.** Either party may terminate this Agreement at any time and for any reason on thirty (30) days' notice to the other party. If this Agreement is terminated, then all Programs and the related Program Letters will also automatically terminate concurrently therewith unless Microsoft notifies Company otherwise in writing. If a Program or Program Letter is terminated pursuant to section 3 or this section 11.2, then Microsoft will not be required to pay Company any Incentive for sales, Marketing Activities or other activities conducted after the termination date of such Program or Program Letter.
- 11.3. **Termination for Cause.** Microsoft may terminate this Agreement immediately upon notice if Company:
- Breaches this Agreement or a Program Letter;
 - Fails to provide the POE required by section 6 or the reporting required by section 7; or
 - (i) makes an assignment for the benefit of creditors; (ii) files a voluntary petition under any bankruptcy act, receivership statute or the like; (iii) becomes subject to any proceeding under any bankruptcy act, receivership statute or the like; (iv) becomes unable to pay its debts as they mature; (v) suffers or

permits the appointment of a receiver for its business or assets; or (vi) has wound up or liquidated its business voluntarily or otherwise.

11.4. **Survival.** Sections 2 (Definitions) and all defined terms herein, and Sections 8 (Confidential Information), 9 (Expenses), 8 (Confidentiality), 10.6 (Taxes), 11.4 (Survival), 13 (Indemnity), 14 (Limitation of Liability), and 15 (Miscellaneous) will survive expiration or termination of this Agreement, and Sections 6 (Proof of Execution), 10.1 (Incentive Calculations) 10.2 (Payment), 10.3 (Banking Information) and 10.4 (Disputes) will survive as long as need to finalize payment, but no longer than 4 months, and Section 7 (Reporting) will survive for 2 years after expiration or termination of this Agreement.

12. SUSPENSION OF PARTICIPATION

Microsoft reserves the right to suspend Company's participation in any Program (including reducing, withholding, or eliminating any Incentive payments designated for Company), if Company fails to comply with any of the terms and conditions of this Agreement or a Program Letter or other written instructions from Microsoft in connection with a Program.

13. INDEMNITY

Company will indemnify, hold harmless and defend Microsoft and its Affiliates from and against any third party claims, demands, costs, liabilities, losses, expenses and damages (including attorneys' fees, costs and expert witness fees) (collectively, "**Claims**") arising out of or in connection with Company's performance under this Agreement or any Program Letters, including any Claims made in connection with any Marketing Activities.

14. LIMITATION OF LIABILITY

IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR SPECIAL DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, AND THE LIKE FOR A BREACH OF THIS AGREEMENT OR A PROGRAM LETTER, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE TOTAL LIABILITY OF EITHER PARTY RELATED TO OR ARISING FROM A PROGRAM LETTER, IF ANY, AND THE EXCLUSIVE REMEDY FOR ANY SUCH LIABILITY WILL BE LIMITED TO THE OTHER PARTY'S DIRECT DAMAGES INCURRED NOT TO EXCEED THE AGGREGATE AMOUNT OF INCENTIVES PAID TO COMPANY UNDER SUCH APPLICABLE PROGRAM LETTER. THE EXCLUSIONS OF LIABILITY AND THE LIABILITY CAP IN THIS **SECTION 14** DO NOT APPLY TO COMPANY'S (I) INDEMNITY OBLIGATIONS UNDER **SECTION 13**; OR (II) UNAUTHORIZED USE OF MICROSOFT'S INTELLECTUAL PROPERTY, OR TO EITHER PARTY'S BREACH OF ITS CONFIDENTIAL OBLIGATIONS OR WILLFUL MISCONDUCT.

15. MISCELLANEOUS

- 15.1. Notices may be provided either by electronic or physical mail. The contact person(s) identified in Company's MPN profile will receive notices at the address in the MPN profile. For notices and requests to Microsoft, notices will be sent to the Microsoft entity identified in your MPN agreement, attn.: Microsoft Learning Experiences. Notices are considered delivered on the date shown on the confirmation of delivery. You are responsible for notifying Microsoft if you change the person to whom notices will be sent or if the address for your organization changes.
- 15.2. Microsoft may call Company a "partner" for reference purposes only. Each party is independent of the other party. This Agreement does not create an employer-employee relationship, partnership, joint venture, or agency relationship and does not create a franchise. Neither Company nor any of its

representatives may make any representation, warranty, or promise on Microsoft's behalf.

- 15.3. This Agreement is non-exclusive. Nothing contained in this Agreement precludes Company from advertising, teaching, promoting, marketing and selling non-Microsoft courseware.
- 15.4. The parties will keep confidential the terms of this Agreement, including all Program Letters in accordance with section 8 (Confidential Information). Neither party will make or authorize any press releases or other disclosures regarding this Agreement or any Program Letter without the written consent of the other party. However, Company and Microsoft may disclose the terms and conditions of this Agreement to their respective immediate legal and financial consultants as required in the ordinary course of each party's respective business.
- 15.5. Company is solely responsible for complying with all applicable local, state and federal laws and regulations pertaining to its activities under this Agreement.
- 15.6. Company may not assign this Agreement, or assign or transfer any rights or obligations hereunder, whether by operation of contract, law or otherwise, without first obtaining Microsoft's written consent, and any attempted assignment by Company in violation of this section will be void.
- 15.7. Company agrees to disclaim and waive all obligations or requirements under applicable law to the extent that prior judicial approval is required for termination of this Agreement. Microsoft will not be responsible to Company for any costs or damages resulting from the termination of this Agreement.
- 15.8. This Agreement is executed in the English language which will be the sole and controlling language used in interpreting or construing its meaning.
- 15.9. Company will comply with all applicable laws against bribery, corruption and money-laundering, including the U.S. Foreign Corrupt Practices Act ("*Anti-Corruption Laws*"). Company certifies that it has read and will comply with the Anti-Corruption Policy for Representatives at <http://www.microsoft.com/about/corporatecitizenship/en-us/our-focus/operating-responsibly/governance-standards/anti-bribery-and-corruption.aspx>. Microsoft can hire a third-party auditor if it has a good faith reason to believe Company or its representatives are in violation of the Anti-Corruption Laws. The third-party auditor will:
 - a. Investigate the suspected violations ("*Anti-Corruption Audit*"); and
 - b. Report its Anti-Corruption Audit findings solely to Microsoft. Company will fully participate and assist in any Anti-Corruption Audit. Company will make all books, records and employees promptly available to assist the third-party auditor. Microsoft may terminate this Agreement if Company fails to comply with this provision. Microsoft will not be liable for damages resulting from such termination.
- 15.10. If any court of competent jurisdiction determines that any provision of this Agreement is illegal, invalid, or unenforceable, the remaining provisions will remain in full force and effect.
- 15.11. A party's delay or failure to exercise any right or remedy will not result in a waiver of that or any other right or remedy.
- 15.12. The terms and conditions of the MPN program agreement is incorporated into and form part of this Agreement. To avoid doubt, the incorporated terms include terms of general application in the MPN program agreement (including, without limitation, terms concerning governing law, limitation of liability and exclusive remedies, record keeping, audits, and quality assurance) insofar as such general terms are relevant to this Agreement. If the MPN program agreement and this Agreement conflict, this Agreement will control.

- 15.13. This Agreement, including all applicable Program Letters, the MPN Agreement and other referenced documents, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements or communications. If the MPN Agreement and this Agreement conflict, this Agreement will control, but solely for this Agreement and solely to the extent of the inconsistency. This Agreement will not be modified except by a written agreement dated subsequent to the date of this Agreement and signed by duly authorized representatives of the parties.
- 15.14. **Survival.** Sections **2** (Definitions) and all other definitions herein, **7** (Reporting Requirements), **10.4** (Disputes), **10.5** (Non-Compliance), **10.6** (Taxes), **13** (Indemnity), **14** (Limitation of Liability) and **15** (Miscellaneous) will survive termination or expiration of this Agreement. Microsoft will not be responsible for any Incentive payments if this Agreement is terminated by Company or by Microsoft under section **11.3** (Termination with Cause).