

MICROSOFT LEARNING MARKETING DEVELOPMENT FUNDS PROGRAM AGREEMENT

This Microsoft Learning Marketing Development Funds Program Agreement (the “**Agreement**”) is between Microsoft and Learning Partner. By entering its Microsoft Partner Network Program (“**MPN**”) ID number and company name and by clicking the “I Accept” button, Learning Partner accepts and agrees to be bound by this Agreement. Learning Partner also represents and warrants that you are a duly authorized representative of the company associated with the MPN ID number with the legal authority to bind company to this Agreement. Learning Partner must accept this Agreement before it can participate in the Microsoft Learning Marketing Development Funds Program (“**MDF Program**”). This Agreement is effective on the date Learning Partner accepts the terms and conditions of this Agreement (the “**Effective Date**”).

1 PURPOSE

This Agreement sets forth the terms and conditions governing Learning Partner’s participation in the MDF Program. This MDF Program is designed to help drive awareness and demand for Microsoft products, technologies and services, by reimbursing eligible costs associated with certain Microsoft-approved marketing activities.

2 DEFINITIONS

“**Affiliate**” is any legal entity that owns, is owned by, or is commonly owned with a party. “**Own**” means having more than 50% ownership or the right to direct the management of the entity.

“**Authorized MOC Distributor,**” means arvato distribution GmbH.

“**Learning Partner**” means the business entity that meets the qualifications to participate in this MDF Program and that has entered into this Agreement.

“**Marketing Activities**” means the advertising, marketing, promotional, and event activities set forth in the Marketing Plan.

“**Marketing Materials**” means all materials created or provided by Microsoft to Learning Partner to use for the Microsoft-approved Marketing Activities.

“**MDF**” means marketing development funds.

“**Microsoft**” means Microsoft Corporation or that subsidiary, Affiliate, or related company identified as the Microsoft contracting entity in your Microsoft Partner Network (“**MPN**”) program agreement.

“**Personal Information**” or “**PII**” means any information that can be used to identify, contact, or locate a person. PII includes a person’s name, address, e-mail address, phone number, fax number, financial information, account numbers, and government-issued ID numbers. PII also includes information associated or combined with PII (such as a personal profile, unique identifier, biometric information, or IP address).

3 ELIGIBILITY CRITERIA

Learning Partner must meet the following criteria to be eligible to participate in the MDF Program:

- 3.1 Be and remain an active registered Gold or Silver managed MPN program member currently enrolled in the Learning Option (“**Learning Option**”), in good standing, throughout the Term of this Agreement.

3.2 Have a Microsoft-approved marketing plan that details each specific Marketing Activity Learning Partner will provide to help drive awareness and demand for Microsoft products, technologies and services (“**Marketing Plan**”). Learning Partner must obtain Microsoft sign-off and approval on its Marketing Plan before it can participate in this MDF Program.

3.3 Learning Partner must accept and agree to be bound by this Agreement.

4 LEARNING PARTNER OBLIGATIONS

4.1 Learning Partner will create and submit for Microsoft’s approval a Marketing Plan by April 2, 2017, that includes a description of the Marketing Activities Learning Partner will perform from February 1, 2017, to May 31, 2017 (“**H2 FY17**”). To be eligible for MDF funds, Learning Partner’s Marketing Activities must align with Microsoft Learning’s FY17 campaigns and initiatives and be an eligible Marketing Activity as defined in Section 5 below. All Marketing Activities must have a well-defined strategy and provide an acceptable marketing return on investment (“**ROI**”) or business outcome. The Marketing Plan will include the following information for each Marketing Activity:

- Category type (Demand Generation, Sales & Readiness, Events or Social Marketing);
- Microsoft products, software, services and solutions promoted;
- Forecasted budget (in \$USD);
- Start and end date;
- Milestones or touch points; and
- Targeted ROI or business outcome for each Marketing Activity.

4.2 If the Marketing Activity involves the collection of Personal Information directly from individuals, such as through a webpage, Learning Partner will provide a clear and conspicuous notice regarding the uses of the Personal Information. Learning Partner will not use the Personal Information in any manner beyond the specific purpose(s) for which the individual provided it, unless there has been adequate disclosure of the additional purpose(s) and the individual has consented.

4.3 Learning Partner must complete all Marketing Activities by May 31, 2017.

5 ELIGIBLE MARKETING ACTIVITIES

Microsoft will award Learning Partner the corresponding number of points listed below for each eligible Marketing Activity it successfully completes in accordance with the Marketing Plan approved by Microsoft during H2 FY17:

ELIGIBLE MARKETING ACTIVITIES			
Category	Marketing Activity	POE Examples	Points
Demand Generation	Print Advertising	2 different final PDF files utilizing campaign resources	10 pts.
	TV or Radio Advertising	For TV or radio spots: electronic file	50 pts.
	Catalog Advertising and Product Placements	Final PDF file	10 pts.
	Newspaper Advertising	2 different final PDF files utilizing campaign resources	10 pts.
	Direct Mail	2 different final PDF files utilizing campaign resources	15 pts.
	Electronic Mail	Copy of electronic mail with training or certification offer and CTA	20 pts.

ELIGIBLE MARKETING ACTIVITIES			
Category	Marketing Activity	POE Examples	Points
	Online Advertising (Web Banners, Product Pages, Search/SOE, etc.)	Electronic file/screenshot of 3rd party webpage and of jump page with ad running.	50 pts.
Sales & Readiness	Sales Training	Copy of training curriculum and invite to attendees and metrics on # of attendees trained. Completed sales assessments confirmed through PLC.	5 pts.
	Sales Contests/Incentives	Announcement mail, Report on completed contest and associated metrics per Marketing Plan.	10 pts.
Events	Customer Incentives	Announcement mail, Report on completed contest and associated metrics as per campaign proposal	15 pts.
	Customer Recruitment (Events, Training, Promotions, etc.)	Announcement mail, Report on completed contest and associated metrics as per campaign proposal	20 pts.
	Tech Showcase Customer Events (In-Person or Online)	Registration, updated reporting and submitted event on Tech Showcase	20 pts.
Social Marketing	Blog, Facebook, Twitter, etc.	Copies of ads. Webcasts, Links to sites.	20 pts.

The total number of points Learning Partner can receive cannot exceed fifty percent (50%) in any one (1) category of Marketing Activity as listed in the Eligible Marketing Activity table above.

Upon completion of each Marketing Activity, Learning Partner will review and verify the Marketing Activities results to see how it compares with the ROI forecasts presented in the Marketing Plan ("**Marketing Results**"). Learning Partner will provide Microsoft with monthly baseline reports that documents Learning Partner's progress on executing its Marketing Plan, what strategies worked and did not work, and how they resolved any issues that arose ("**Reports**"). Learning Partner will not include any PII in the Reports.

All points will automatically expire at the end of H2 FY167

6 MDF CLAIMS

6.1 **Claims Process.** No later than June 15, 2017, Learning Partner must submit claims for each Marketing Activity successfully completed by Learning Partner in accordance with the Microsoft-approved Marketing Plan as follows:

- a. Provide Microsoft with acceptable proof of execution and documentation of the fees paid by Learning Partner for the Marketing Activity ("**POE**") and Marketing Results for Microsoft's review and approval; and
- b. Include the following information for **each** Marketing Activity included in a claim:
 - The Marketing Activity category and description;
 - The number of points associated with the Marketing Activity;
 - Claim amount (in US Dollars);
 - the POE; and
 - Marketing Results.
- c. If Microsoft approves the POE and Marketing Activity, Learning Partner will receive the corresponding number of points for the Marketing Activity as outlined in Section 5 (Eligible Marketing Activities) ("**Approved Marketing Activity**").

- 6.2 **POE Documentation.** Microsoft will determine Learning Partner’s compliance with the Marketing Plan through POE documentation. Learning Partner must submit POE documentation at the same time it submits claims. All POE documentation must be complete and accurate. Incomplete or missing POE documentation may cause delays in processing or rejection of claims.
- 6.3 **MDF Payout Percentage.** MDF payment percentage rates vary based on budget allocated to the learning partner and the total number of points earned by Learning Partner as outlined in the table below:

Total Number of Points	Payout Percentage
75 or more points	100%
50-74 points	75%
25-49 points	50%
5-24 points	25%

- 6.4 **Denial of Claims.** Microsoft may deny claims if submitted late, there is insufficient POE or if the claim is for unapproved or uncompleted Marketing Activities. Microsoft reserves the right to approve or reject all submitted Marketing Activities, in its sole discretion.

7 INTELLECTUAL PROPERTY

- 7.1 **Marketing Materials License.** Microsoft grants Learning Partner a nonexclusive, nontransferable, non-assignable, limited license to use the Marketing Materials solely in connection with the Microsoft-approved Marketing Activities during the Term. Learning Partner may not modify the Marketing Materials.

- 7.2 **Trademarks.** This Agreement does not grant Learning Partner any right, title, interest, or license in or to any of Microsoft’s names, word marks, logos, logotypes, trade dress, designs, or other trademarks. Learning Partner may make descriptive references to Microsoft’s non-stylized word marks (but may not use Microsoft’s logos, logotypes, trade dress, or designs) according to Microsoft’s standard trademark guidelines available at: <http://www.microsoft.com/en-us/legal/intellectualproperty/Trademarks/Usage/default.aspx>. Learning Partner will promptly correct any specified misuses of Microsoft’s Trademarks.

- 7.3 **No Other Licenses.** Except as expressly licensed to Learning Partner in Section 7.1 (Marketing Materials License) of this Agreement, Microsoft retains all right, title and interest in and to the Marketing Materials (including all intellectual property rights).

- 7.4 **Reservation of Rights.** Microsoft reserves all rights not explicitly granted under this Agreement.

8 PAYMENT DETAILS

- 8.1 **Payment.** Microsoft will reimburse Learning Partner the applicable payout percentage (based on points earned) of actual and reasonable third party fees paid by Learning Partner for each Approved Marketing Activity not-to-exceed the amount listed for that Marketing Activity in its Marketing Plan. The maximum total amount of the MDF payment paid by Microsoft to Learning Partner under this Agreement will not exceed the applicable Maximum MDF Allocation listed in Section 6.3 (MDF Payout Percentage). MDF payments will be paid in US Dollar via wire transfer,

with any conversion into local currency conducted by partner's beneficiary financial institution, (bank charges or FX fees are covered by Microsoft). Payment will be made by the Microsoft regional service center approximately ninety (90) days following the end of Marketing Activities complete deadline date.

- 8.2 **Banking Information.** Learning Partner must provide Microsoft (or its third party payment processor) with all financial and banking information requested in order to make a MDF payment under this Agreement. Failure to provide such information within thirty (30) days after request by Microsoft may result in forfeiture of amounts owed to Learning Partner by Microsoft under this Agreement.
- 8.3 **Disputes.** Any claims concerning the MDF payment amount must be received in writing (along with Learning Partner's current contact information) to Microsoft no later than thirty (30) days following receipt of the disputed MDF payment. If Microsoft does not receive written notice within such thirty (30) day period, Learning Partner will be deemed to have waived any such claim. Microsoft's decisions with respect to Approved Marketing Activities and the amount of MDF payments are at Microsoft's sole discretion. All decisions are final.
- 8.4 **Taxes.** Any MDF payment made under this Agreement does not include any taxes. Learning Partner is responsible for paying all taxes arising out of any MDF payment received under this MDF Program.

9 EXPENSES

Each party will pay for its own costs and expenses related to this Agreement unless otherwise agreed in writing.

10 MDF PROGRAM CHANGES

Microsoft has the right to cancel the MDF Program or change the MDF Program requirements, eligible Marketing Activities, the number of points awarded at any time in its sole discretion.

11 MARKETING ACTIVITY AUDITS

Learning Partner must keep relevant documentation, receipts and financial records on file of the fees paid by Learning Partner to third parties for the Approved Marketing Activities during the Term and for one (1) year thereafter. Microsoft reserves the right to conduct random reviews and audits, itself or through an independent auditor, of these records on Learning Partner's premises by notifying Learning Partner. In such event, Learning Partner agrees to provide access to the documentation, receipts and financial records and acceptable proof of performance on any requested activity. Learning Partner will ensure it maintains separate files for each Marketing Activity to ensure the necessary information is readily available upon request. Microsoft reserves the right to request repayment of all or part of any MDF funds paid to Learning Partner not in compliance with this Agreement.

12 SUBCONTRACTORS

Learning Partner will not subcontract any of its obligations under this Agreement to any third-party without Microsoft's prior written consent.

13 TERM AND TERMINATION

- 13.1 **Term.** Unless terminated earlier in accordance with this Agreement, this Agreement and the MDF Program will automatically terminate on July 31, 2017(the "**Term**").

- 13.2 **Termination Without Cause.** MDF Program participation is voluntary. Either party may terminate this Agreement upon thirty (30) days written notice to the other party. Termination may be without cause or the intervention of the courts.
- 13.3 **Termination with Cause.** Microsoft may immediately terminate this Agreement if Learning Partner (a) fails to meet one or more of the eligibility qualifications in Section 3 (Eligibility), or (b) does not comply with any of this Agreement's terms and conditions.
- 13.4 **Survival.** Upon expiration or termination of this Agreement, all rights granted to Learning Partner under this Agreement will terminate and Microsoft will have no liability to Learning Partner under this Agreement. Learning Partner must immediately stop all use of the Marketing Materials and all Marketing Activity related to this Agreement. Sections 2 (Definitions) and all other definitions herein, 7.4 (Reservation of Rights), 8.4 (Taxes), 13.4 (Survival), 14 (Representations and Warranties), 15 (No Warranties), 16 (Indemnification), 17 (Limitation of Liability) and 20 (Miscellaneous) will survive expiration or termination of this Agreement, and Sections 11 (Marketing Activity Audits) and 18 (Insurance) will survive for one (1) year. Microsoft will not be liable for any costs or damages resulting from the termination of this Agreement. Additionally, Microsoft will not be responsible for any MDF payments if this Agreement is terminated by Learning Partner or by Microsoft under Section 13.3 (Termination with Cause).

14 REPRESENTATIONS AND WARRANTIES

Learning Partner represents and warrants that:

- a. It has the right, power and authority to enter into this Agreement and perform according to its terms;
- b. The performance of its obligations under this Agreement will not breach any agreements with a third party and will strictly comply with the terms and conditions of this Agreement;
- c. Its use and distribution of the Microsoft Materials will strictly comply with the terms and conditions of this Agreement;
- d. The performance of its obligations under this Agreement and the Marketing Activities will be compliant with all applicable standards, laws, regulations and rules;
- e. The Marketing Activities will not infringe or misappropriate any copyright, patent, trade secret, trademark or other proprietary right held by another party; and
- f. The Marketing Activities will be performed in a professional, lawful and ethical manner and will not include any libelous, deceptive, materially false, or misleading statements or practices.

15 NO WARRANTIES

EXCEPT AS PROVIDED HEREIN, MICROSOFT EXPRESSLY DISCLAIMS ALL OTHER EXPRESS, IMPLIED, OR STATUTORY WARRANTIES. THIS INCLUDES THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT. THIS ALSO INCLUDES ANY IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, USAGE OF TRADE, LACK OF ERRORS, SATISFACTORY CONDITION, OR QUALITY.

16 INDEMNIFICATION

Learning Partner will, at Microsoft's request, indemnify, defend, and hold Microsoft and its officers, directors, employees, contractors, Affiliates, and agents harmless from any and all claims, suits, demands, costs, liabilities, expenses, and damages (including reasonable attorneys' cost and fees) related to any:

- a. Breach of any of Learning Partner's representations or warranties in **Section 14** (Representations and Warranties);
- b. Provision of any materials that are libelous or obscene;
- c. Negligent or willful acts or omissions that result in any bodily injury or death to any person or loss, disappearance, or damage to tangible or intangible property; or
- d. Violation of any third party right of privacy.

When seeking indemnification, Microsoft will promptly:

- a. Notify Learning Partner in writing of any such claim;
- b. Allow Learning Partner to assume sole control of the defense or settlement of such claim with counsel of its choice; and
- c. Give Learning Partner all necessary information and assistance (as it may reasonably request and at its sole expense) to defend and settle such claim.

Microsoft may retain counsel of its choosing and participate in the defense or settlement of any claim at its own expense. Learning Partner will not settle any claim on Microsoft's behalf, or publicize any settlement, without Microsoft's prior written consent.

17 LIMITATION OF LIABILITY

TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, SPECIAL, OR EXEMPLARY DAMAGES ARISING OUT OF OR THAT RELATE IN ANY WAY TO THIS AGREEMENT OR ITS PERFORMANCE. THIS EXCLUSION WILL APPLY REGARDLESS OF THE LEGAL THEORY UPON WHICH ANY CLAIM FOR SUCH DAMAGES IS BASED, WHETHER THE PARTIES HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER SUCH DAMAGES WERE REASONABLY FORESEEABLE, OR WHETHER APPLICATION OF THE EXCLUSION CAUSES ANY REMEDY TO FAIL OF ITS ESSENTIAL PURPOSE. THIS EXCLUSION WILL NOT APPLY TO EITHER PARTY'S LIABILITY FOR ITS INDEMNIFICATION OBLIGATIONS, VIOLATION OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, FRAUD, OR GROSS NEGLIGENCE.

18 INSURANCE

18.1 General. Learning Partner will maintain sufficient insurance coverage to meet obligations created by this Agreement and by law. Learning Partner's insurance must include the following coverage to the extent the Agreement creates risks generally covered by these insurance policies:

- a. Commercial general liability (occurrence form), including contractual, product liability with limits of at least \$2,000,000 USD per occurrence;
- b. Automobile liability with limits of at least \$2,000,000 USD per occurrence;
- c. Workers' compensation that satisfies all statutory limits; and
- d. Employer's liability with limits of at least \$500,000 USD per occurrence.

Learning Partner will name Microsoft, its subsidiaries, and their respective directors, officers, and employees as additional insured in the Commercial General Liability policy, to the extent of contractual liability assumed by Learning Partner in **Section 16** (Indemnification). Microsoft must approve any deductible or retention in excess of \$100,000 USD per occurrence or accident.

18.2 Professional liability/errors & omissions liability. Learning Partner will purchase and maintain professional liability/errors & omissions insurance if the services it performs create exposures generally covered by such a policy. The policy will:

- a. Have limits of at least than \$2,000,000 USD each claim.
- b. Cover infringement of third party proprietary rights (including, for example, copyright, and trademark) if such coverage is reasonably commercially available; and
- c. Have a retroactive coverage date no later than the effective date of this Agreement.

Learning Partner will maintain either active policy coverage or an extended reporting period providing coverage for claims first made and reported to the insurance Learning Partner within 12 months after termination or expiration of this Agreement.

18.3 Proof of coverage. Upon request, Learning Partner will provide Microsoft with proof of insurance coverage required by this section. If Microsoft reasonably determines that Learning Partner's coverage is less than that required to meet its obligations, Learning Partner will promptly buy additional coverage and notify Microsoft in writing.

19 PRESS RELEASES AND PUBLIC STATEMENTS

Neither party nor its Affiliates will make any public statement related to this Agreement without the other's prior written consent.

20 MISCELLANEOUS

- 20.1 Notices may be provided either by electronic or physical mail. The contact person(s) identified in Learning Partner's MPN profile will receive notices at the address in the MPN profile. For notices and requests to Microsoft, notices should be sent to the Microsoft entity identified in your MPN agreement, Attn.: Microsoft Learning MDF Program. 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. Either party may change the persons to whom notices will be sent by giving notice to the other.
- 20.2 This Agreement is nonexclusive. Nothing contained in this Agreement precludes Learning Partner from advertising, promoting or marketing non-Microsoft software or technologies.
- 20.3 Learning Partner 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.
- 20.4 This Agreement, and any rights or obligations hereunder, may not be assigned or transferred by Learning Partner without Microsoft's prior written approval.
- 20.5 Learning Partner will comply at its own expense with the provisions of all applicable federal, state, provincial and local laws, regulations, and ordinances.
- 20.6 The terms and conditions of the MPN program agreement and the Microsoft Learning Competency guidelines are 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 terms concerning governing law, compliance with laws and Microsoft policies, Microsoft anti-corruption policy, record keeping, audits and limitation of liability included therein insofar as such general terms are relevant to this Agreement).

- 20.7 This Agreement (including referenced incorporated agreements and documents) constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements or communications. 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.
- 20.8 In the event of conflict between the MPN program agreement and this Agreement, this Agreement will control. If a particular subject is addressed in the MPN program agreement and not in this Agreement, then the terms of the MPN program agreement will control.