



# ARYA Institute of Engg. & Technology

(Affiliated to University of Rajasthan/RTU • Approved by AICTE, New Delhi)

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## Microsoft IT Academy Program ("Program") Member Agreement

Microsoft and Member (both terms as defined below in Section 1) agree to the following terms and conditions:

**1. Definitions.** The following words and phrases capitalized in these terms and conditions shall have the meanings as provided here --

- a. **Microsoft** means the Microsoft business entity that is providing Notification of Acceptance and sponsoring the Program for the particular region of the Member
- For United States of America (USA) -- Microsoft Corporation
  - For Canada (Canada) -- Microsoft Corporation
  - For Latin America and the Caribbean (LATAM) -- Microsoft Corporation
  - For United Kingdom (UK) -- Microsoft Ireland Operations Limited
  - For Germany (Germany) -- Microsoft Ireland Operations Limited
  - For France (France) -- Microsoft Ireland Operations Limited
  - For Eastern Europe (EE) -- Microsoft Ireland Operations Limited
  - For Western Europe (WE) -- Microsoft Ireland Operations Limited
  - For Middle East and Africa (MEA) -- Microsoft Ireland Operations Limited
  - For Japan (Japan) -- Microsoft Company, Limited
  - For India (India) -- Microsoft Regional Sales Corporation
  - For People's Republic of China (China) -- Microsoft China (Company) Limited
  - For Asia/Pacific, including Australia and New Zealand (APAC) -- Microsoft Regional Sales Corporation
  - Hong Kong SAR -- Microsoft Regional Sales Corporation
  - Taiwan -- Microsoft Taiwan Corporation

b. **Member** means the organization applying for a subscription membership to the Program. The Member may also be referred to in conjunction with the applicable regional designation of the Microsoft entity that is a party to this Agreement such as Member-USA, Member - Canada, Member-LATAM, Member-UK, Member-Germany, Member-France, Member- EE, Member-WE, Member, Member-MEA, Member-Japan, Member-India, Member-China and Member-APAC.

c. **Agreement** means the Program subscription membership agreement for Member consisting of, in order of precedence in cases of conflict, these terms and conditions and the Benefits Guide.

d. **Benefits Guide** means the Microsoft IT Academy Benefits Guide available online at that applies to Member's region or country. See Section 7 below regarding updates.

e. **Program Benefits** mean those products and services provided as program benefits described in the Benefits Guide.

f. **Microsoft Training Materials (MTM)** means those products including course materials and e-learning made available through the Program Benefits.

g. **Affiliate** means any entity that directly or indirectly, the party controls, which controls the party, or which is under common Control with the party. "Control" and "Controlled" mean the power, directly or indirectly, to direct the management and policies of an entity, whether through ownership of voting securities or equity interests, through common directors, trustees or officers, by contract or otherwise.

i. **Term** means the period from the date of acceptance to the date of termination. The date of termination is based on the membership subscription cycle as described in the Benefits Guide. The applicable membership subscription cycle is determined by the date of acceptance. This Agreement will not take effect until Microsoft has provided a Notification of Acceptance to Member. Processing of the applicable subscription fee does not constitute acceptance.

j. **Program Customer Support Email Address** means the email address for the applicable Microsoft Regional Customer Service Center as provided.

k. **Jurisdiction Defined** is as defined in Section 12 based on the applicable region/country for the Member.



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2. **Subscription and Payment.** Once the Term has started, Member will be entitled to receive the Program Benefits subject to the respective terms and conditions (and, if applicable, ordering fees) of the Program Benefits and this Agreement. The applicable subscription fee must be received by Microsoft within thirty (30) calendar days of the Member's Notification of Acceptance else Microsoft shall have the right to terminate under Section 9. Member acknowledges that Microsoft's trademarks are and will continue to be owned by Microsoft, and nothing in this Agreement shall be construed either as a transfer of such trademarks or as an authorization to use them beyond what is strictly agreed upon in Benefits Guide including the Program Benefits.

3. **Relationship, Affiliates, Successors and Assigns.** Nothing in this Agreement will be deemed to create or constitute a partnership, joint venture, franchise, agency, or contract of employment between Microsoft and Member, or to otherwise grant either party any authority to assume or to create any obligation on behalf of or in the name of the other. Member is not permitted to extend this Agreement to any of Member's Affiliates. Member may not assign Member's rights or obligations under this Agreement by contract, merger, operation of law or otherwise, without Microsoft's prior written consent.

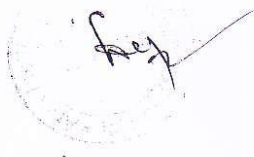
4. **Compliance Verification.** During the Term and for one year thereafter and subject to applicable privacy laws, Microsoft and/or its designated representatives shall have full access to the Member's pertinent books and records and shall have the right to make copies of such materials as is reasonable to verify Member's compliance with this Agreement, including without limitation all reporting and payment requirements hereunder. Microsoft shall conduct such audits from time to time as Microsoft deems necessary, but only during Member's normal business hours after reasonable notice and in a manner that does not interfere unreasonably with Member's business activities. Additionally, during the Term, Microsoft and/or its designated representative may audit all training on Microsoft products that Member offers as a Program member. Audits may include a formal written critique of Member's product knowledge and delivery skills, and/or a review of the equipment and facilities. If Microsoft determines, in its reasonable judgment, that such training is not being delivered in a professional manner, Member is not providing an effective learning environment and/or experience, or that facilities and equipment are not sufficient for quality training to occur, Microsoft shall immediately notify Member in writing. If the defect is not cured within thirty (30) calendar days, Microsoft may terminate this Agreement in accordance with Section 9.

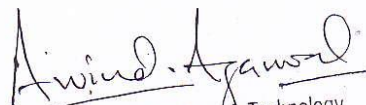
5. **No Warranties.** EXCEPT FOR ANY LIMITED WARRANTIES EXPRESSLY PROVIDED THROUGH A PROGRAM BENEFIT OR IDENTIFIED EXPRESSLY IN THIS AGREEMENT AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, MICROSOFT PROVIDES THE PROGRAM BENEFITS "AS IS" AND "AS AVAILABLE" AND HEREBY DISCLAIMS ALL WARRANTIES AND CONDITIONS WHETHER EXPRESSED, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

6. **Exclusion of Certain Damages & Limitation of Liability.** To the maximum extent permitted by applicable law, neither party nor any of their Affiliates or suppliers will be liable for any indirect damages (including, without limitation, consequential, special or incidental damages, damages for loss of profits or revenues, business interruption, loss of business information) arising in connection with this Agreement even if advised of the possibility of such damages or if such possibility was reasonably foreseeable. This exclusion of liability does not apply to either party's liability to the other for violation of the other party's intellectual property rights.

Except as specifically provided in this paragraph, whatever the legal basis of Member's claims, Microsoft's entire liability under this Agreement shall be limited, to the maximum extent permitted by applicable law, to the greater of the fees paid by member for the subscription for the applicable term or the fees paid by Member for the MTM that causes the damage. The limitations in this paragraph will not apply with respect to the following in connection with this Agreement:

- (i) Microsoft's obligations, as may be provided in the terms and conditions of the Program Benefits for infringement defense and to pay damages resulting from any final adjudication (or settlement to which Microsoft consents of such claims, and
- (ii) Microsoft's liability for damages for gross negligence or willful misconduct, to the extent caused by Microsoft or Microsoft's agent and awarded by a court of final adjudication.



  
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7. **Amendment, Waiver and Modification.** No amendment or waiver of or to this Agreement shall have effect unless reduced in writing and signed by both parties. Nevertheless, Microsoft reserves the right to unilaterally modify the Benefits Guide. Any changes to the Benefits Guide shall take effect within thirty (30) calendar days of issuance or of notice by Microsoft of issuance, whichever is later.

8. **Notice.** Notices in connection with this Agreement must be sent by mail/post, express courier or email (other than for service of process) to the points of contact information found at Member's Organization Profile. Notifications to Microsoft must be made to Program Customer Support Email Address. Notices will be deemed delivered on the date shown on the postal return receipt or on the courier or email confirmation of delivery.

9. **Termination and Expiration.** The start of the Term terminates any prior Program membership agreement. Member may terminate this Agreement at any time, without cause, on the delivery of thirty (30) calendar days' prior written notice. Neither party will be responsible to the other for any refunds, costs or damages resulting from the termination of this Agreement. Without prejudice to any of Microsoft's other legal or equitable rights or remedies, Microsoft will have the right to terminate this Agreement immediately upon written notice if Member materially breaches this Agreement or if Member fails to remedy within 30 calendar days any breach Microsoft calls upon Member to remedy. Microsoft shall have the right to terminate this Agreement immediately if Member makes any assignment for the benefit of creditors, file a petition in bankruptcy or reorganization, or are adjudged bankrupt or becomes insolvent, or are placed in the hands of a receiver, or the equivalent of any of these proceedings or acts. Section 4 through Section 12 will survive any termination or expiration. Notification of early termination to Microsoft must be made in writing to Program Customer Support Email Address. Upon expiration or termination of this Agreement, Members enjoyment of any Program Benefits shall cease including the right to identify itself as a Program member and any rights limited to the Term of this Agreement.

10. **Export Laws.** The software is subject to United States of America export laws and regulations. Member must comply with all domestic and international export laws and regulations that apply to the software. These laws include restrictions on destinations, end users and end use. For additional information,

11. **Jurisdiction and Laws.** This Agreement shall be governed by and construed in accordance with the laws of the Jurisdiction Defined, without regard to the conflict of laws provisions thereof. The parties hereby consent to jurisdiction of the courts of the Jurisdiction Defined in the event of any dispute or controversy relating to this Agreement. This choice of jurisdiction, dispute resolution method and venue stated below does not prevent either party from seeking injunctive relief for: (i) a violation of intellectual property rights or (ii) enforcement or recognition of any award or order in any appropriate jurisdiction. The 1980 United Nations Convention on Contracts for the International Sale of Goods does not govern this Agreement. Member shall ensure that its performance under this Agreement complies with any and all applicable laws and regulations. If a court of competent jurisdiction holds any provision of this Agreement to be unenforceable, the remaining provisions will remain in full force and effect.

12. **Region/Country-Specific Terms and Conditions.** The following region/country-specific terms and conditions shall apply to Member as appropriate based on the "Member" definition and based on the region/country Microsoft has "on record" under the Program for Member's principal place of business --

**for Members-USA**

**Jurisdiction Defined** means the State of Washington, or if Member is an entity of a state (including the District of Columbia) or local government including public educational institutions, the state (including the District of Columbia) in which Member is organized or formed.

**for Members-LATAM**

- a. The definition of "Agreement" in Section 1(c) above also includes the Notice of Acceptance which shall have the lowest precedence in cases of conflict.
- b. Member further represents and warrants that Member: (i) has full internet access; (ii) acknowledges and agrees that Microsoft Training Materials (MTM) are in English and therefore required English speaking resources and even translation is needed; (iii) MTM require localization for the jurisdiction where member is located.; and (iv) All MTM are delivered to Member under DDU terms (INCOTERMS 2000) port of arrival in Members



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county. Member shall be exclusive responsible to pay all costs and related procedures, including customs and import duties, as well as any cost of freight, transport and mobilization.

c. **Jurisdiction Defined** means the United States of America's State of Washington.

d. If the Member meets the "public sector entity" definition described in the volume licensing Microsoft Government Eligibility Definition (LATAM), the Agreement shall be governed by the laws and jurisdiction of the State where the Member is located.

**for Members-UK, Germany, France, EE, WE, and MEA**

a. The applicable legislation implementing Article 6 of the European Community's Directive for the Legal Protection of Computer Programmes, OJL 122/42 (17 May 1991) (the "Directive") may provide Member the right to decompile the Software in order to obtain information necessary to achieve the interoperability of an independently created computer programme, prior to exercising any such possible rights under the Directive Member agrees to (i) first notify Microsoft of Member's good faith belief that information necessary to achieve the interoperability of an independently created computer programme is not otherwise available and that decompilation is indispensable within the meaning of the Directive; and (ii) provide Microsoft with a commercially reasonable amount of time to respond to Member regarding the foregoing assertions.

b. **Jurisdiction Defined** means the Republic of Ireland.

**for Members-Japan**

**Jurisdiction Defined** means this Agreement will be construed and controlled by the laws of Japan, and Member-APAC consents to exclusive jurisdiction in the Tokyo District Court.

**for Members-India**

**Jurisdiction Defined** means this Agreement is construed and controlled by the laws of Singapore. Further, any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, must be referred to and finally resolved by arbitration in Singapore under the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC"), which rules are deemed to be incorporated by reference into this subsection. The Tribunal shall consist of one arbitrator to be appointed by the Chairman of SIAC. The language of the arbitration will be English. The decision of the arbitrator will be final, binding and incontestable and may be used as a basis for judgment thereon in India or elsewhere.

**for Members-China**

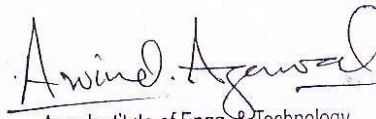
If Member is located in the **People's Republic of China** (excludes for the purposes of this Agreement Hong Kong S.A.R., Macao S.A.R., and Taiwan) --

**Jurisdiction Defined** means this Agreement will be construed and controlled by the laws of the People's Republic of China, and Member-APAC consents to submit any dispute arising out of or in relation to this Agreement to the binding arbitration at the China International Economic and Trade Arbitration Commission in Beijing (CIETAC) under its rules in effect from time to time.

If Member is located in **Hong Kong SAR** --

**Jurisdiction Defined** means this Agreement is construed and controlled by the laws of Singapore. Further, any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, must be referred to and finally resolved by arbitration in Singapore under the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC"), which rules are deemed to be incorporated by reference into this subsection. The Tribunal shall consist of one arbitrator to be appointed by the Chairman of SIAC. The language of the arbitration will be English. The decision of the arbitrator will be final, binding and incontestable and may be used as a basis for judgment thereon in Hong Kong SAR or elsewhere.



  
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**for Members-APAC**

Unless otherwise specified below, **Jurisdiction Defined** means the United States of America's State of Washington.

If Member is located in **Australia** or its external territories --

**a. Consumer Remedies.** Notwithstanding anything in this Agreement, consumers may have the benefit of certain rights or remedies pursuant to the Trade Practices Act 1974 (Cth) and similar state and territory laws in Australia in respect of which liability may not be excluded. If so, then to the maximum extent permitted by law, such liability is limited, at Microsoft's option, in the case of goods to either (i) replacement of the goods or (ii) correction of defects in the goods, and in the case of services to either (i) resupply of the services or (ii) the cost of the resupply of the services.

**b. GST.** If any GST is payable by Microsoft to Australian tax authorities on any supplies made under this Agreement, an amount on account of this GST will also be payable by Member to Microsoft on receipt of an appropriate invoice.

**c. Jurisdiction Defined** means this Agreement is construed and controlled by the laws of Singapore and Member consents to the non-exclusive jurisdiction of the Singapore courts.

If Member is located in **Brunei** --

**Jurisdiction Defined** means this Agreement is construed and controlled by the laws of Singapore and Member consents to the non-exclusive jurisdiction of the Singapore courts.

If Member is located in **Indonesia** --

**a.** To the extent necessary to implement the termination provisions of this Agreement, each of the parties waives any right or obligation that the other party may have now or in the future under any applicable law or regulation, to request or obtain the approval, order, decision or judgment of any court to terminate this Agreement.

**b. Jurisdiction Defined** means this Agreement is construed and controlled by the laws of Singapore. Further, any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, must be referred to and finally resolved by arbitration in Singapore under the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC"), which rules are deemed to be incorporated by reference into this subsection. The Tribunal shall consist of one arbitrator to be appointed by the Chairman of SIAC. The language of the arbitration will be English. The decision of the arbitrator will be final, binding and incontestable and may be used as a basis for judgment thereon in Indonesia or elsewhere.


If Member is located in **Republic of Korea** --

**Jurisdiction Defined** means this Agreement will be construed and controlled by the laws of Republic of Korea, and Member-APAC's consents to exclusive original jurisdiction and venue in the Seoul District Court.

If Member is located in **Macao Special Administrative Region** --

Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration in accordance with the UNCITRAL Arbitration Rules as at present in force and as may be amended by the rest of this clause. The decision of the arbitrator shall be final, binding and incontestable and may be used as a basis for judgment thereon in Macao SAR or elsewhere. The appointing authority shall be Hong Kong International Arbitration Centre (HKIAC). The place of arbitration shall be in Hong Kong at HKIAC. There shall be only one arbitrator. The language of the arbitration shall be English. Any such arbitration shall be administered by HKIAC in accordance with HKIAC Procedures for Arbitration in force at the date of this contract including such additions to the UNCITRAL Arbitration Rules as are therein contained. This choice of dispute resolution and/or jurisdiction does not prevent



  
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either party from seeking injunctive relief with respect to a violation of intellectual property rights or confidentiality obligations in any appropriate jurisdiction.

If Member is located in Malaysia --

**a. Consumer Remedies.** Notwithstanding anything in this Agreement, consumers may have the benefit of certain rights or remedies pursuant to the Consumer Protection Act in Malaysia in respect of which liability cannot be excluded or restricted. If permitted by law and to the maximum extent permitted by law, such liability is limited, at Microsoft's option, in the case of goods to either (i) replacement of the goods or (ii) correction of defects in the goods, and in the case of services to either (i) re-supply of the services or (ii) the cost of the re-supply of the services.

**b. Jurisdiction Defined** means this Agreement is construed and controlled by the laws of Singapore and Member consents to the non-exclusive jurisdiction of the Singapore courts.

If Member is located in New Zealand --

**a. Member confirms** that the Program Benefits and other goods or services provided by under this Agreement are acquired for the purposes of an undertaking in the course of which goods or services are acquired or supplied, and Member agrees that (to the maximum extent permitted by law) Microsoft and its Affiliates have no liability or obligation to Member under any statutory condition, warranty or guarantee.

**b. Business.** Where Microsoft is a supplier (as that term is defined in the Consumer Guarantees Act 1993 ("CGA")) of the products or other goods or services, Member confirms that the products or other goods or services provided by Microsoft under this Agreement are acquired for the purposes of a business (as that term is defined in the CGA) and Member agrees that the CGA does not apply to the products or other goods or services supplied by Microsoft.

**c. Consumers.** Subject to this sub-section, nothing in this Agreement is otherwise intended to limit the rights of a "consumer" under the CGA where that Act applies, and the terms of this Agreement are to be modified to the extent necessary to give effect to this intention.

**d. On-Supply.** If Member on-supplies any products or goods or services supplied by Microsoft under this Agreement to any person Member must include the following clause in the terms of all agreements for the on-supply of products: "Where you are acquiring products or services for the purposes of a business, you acknowledge and agree that Microsoft Corporation and its affiliates have no liability or obligation to you under the Consumer Guarantees Act 1993 and where you on-supply the products or services you must include all of this clause in the terms of that on-supply".

**e. Failure to Comply.** Member must indemnify and keep Microsoft and its Affiliates indemnified and hold Microsoft and Microsoft's Affiliates free and harmless from any costs, expenses, loss or damages incurred by Microsoft or its Affiliates as a result of Member or any purchaser or acquirer from Microsoft failing to comply with the obligations contained in this subsection.

**f. GST.** If any GST is payable by Microsoft to New Zealand tax authorities on any supplies made under this Agreement, an amount on account of this GST will also be payable by Member to Microsoft on receipt of an appropriate invoice.

**g. Jurisdiction Defined** means this Agreement is construed and controlled by the laws of Singapore and Member consents to the non-exclusive jurisdiction of the Singapore courts.

If Member is located in the Philippines --

**a. No technology transfer arrangement.** This Agreement does not create a "technology transfer" agreement, as defined by applicable law because (a) the technology (including any software) made available under this Agreement is not an integrated part of a technology chain for production or management purposes and (b) the technology (including any software) will have its own technology license. Member will not hold itself out as Microsoft's technology recipient and will not attempt to identify Microsoft as a technology provider under this Agreement.



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b. **Jurisdiction Defined** means this Agreement is construed and controlled by the laws of Singapore. Further, any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, must be referred to and finally resolved by arbitration in Singapore under the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC"), which rules are deemed to be incorporated by reference into this subsection. The Tribunal shall consist of one arbitrator to be appointed by the Chairman of SIAC. The language of the arbitration will be English. The decision of the arbitrator will be final, binding and incontestable and may be used as a basis for judgment thereon in the Philippines or elsewhere.

If Member is located in **Singapore** --

**Jurisdiction Defined** means this Agreement is construed and controlled by the laws of Singapore and Member consents to the non-exclusive jurisdiction of the Singapore courts.

If Member is located in **Sri Lanka** --

Member warrants that it has obtained all necessary Exchange Control and other permissions and authorities from the regulatory authorities in Sri Lanka to effect the necessary payments to Microsoft.

If Member is located in **Taiwan** --

**Jurisdiction Defined** means this Agreement will be governed by and construed under the laws of Taiwan. The parties hereby designate the Taipei District Court as the court of first instance having jurisdiction over any disputes arising out of or in connection with this Agreement.

If Member is located in **Thailand** --

**Jurisdiction Defined** means this Agreement is construed and controlled by the laws of Singapore. Further, any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, must be referred to and finally resolved by arbitration in Singapore under the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC"), which rules are deemed to be incorporated by reference into this subsection. The Tribunal shall consist of one arbitrator to be appointed by the Chairman of SIAC. The language of the arbitration will be English. The decision of the arbitrator will be final, binding and incontestable and may be used as a basis for judgment thereon in Thailand or elsewhere.

If Member is located in **Vietnam** --

a. **No technology transfer arrangement.** This Agreement does not create a "technology transfer" agreement, as defined by applicable law because (a) the technology (including any software) made available under this Agreement is not an integrated part of a technology chain for production or management purposes and (b) the technology (including any software) will have its own technology license. Member will not hold itself out as Microsoft's technology recipient and will not attempt to identify Microsoft as a technology provider under this Agreement.

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By signing below, Member acknowledges that it has read and has agreed to be bound by the terms and conditions contained in the Agreement.

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