

MICROSOFT CERTIFIED PARTNER (*Agreement Letter*)

Signed By: **Ahmed, Noman 04/29/2010**

BY SCROLLING TO THE BOTTOM OF THIS AGREEMENT AND CLICKING THE “I ACCEPT” BUTTON, COMPANY (1) AGREES TO BE BOUND BY THIS AGREEMENT, THE PROGRAM GUIDE, AND THE PROGRAM WEBSITE (INCLUDING ITS TERMS OF USE AND PRIVACY STATEMENT); THE PROGRAM GUIDE AND THE PROGRAM WEBSITE ARE INCORPORATED INTO AND FORM A PART OF THIS AGREEMENT; and (2) REPRESENTS THAT IT HAS READ AND UNDERSTANDS THIS AGREEMENT. COMPANY MUST ACCEPT THIS AGREEMENT BEFORE IT CAN PARTICIPATE IN THE MICROSOFT PARTNER NETWORK.

Microsoft Partner Network Agreement

The parties agree to the following terms for Company’s participation in the Program.

SECTION 1 Scope

This Program is designed to help technology companies deliver solutions based on Microsoft technologies. Company’s participation in this Program is voluntary. Nothing in this Agreement restricts Company from supporting, promoting, distributing or using non-Microsoft technology.

SECTION 2 Definitions

- (a)** *“Affiliate”* means 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;
- (b)** *“Company”* means the business entity identified in the online signature block that has entered into this Agreement;
- (c)** *“Confidential Information”* means non-public information, know-how or trade secrets in any form, that:
 - (1) Are designated as being confidential; or
 - (2) A reasonable person knows or reasonably should understand to be confidential.

The following types of information, however marked, are not Confidential Information.

Information that:

- (i) Is, or becomes, publicly available without a breach of this Agreement;
- (ii) Was lawfully known to the receiver of the information without an obligation to keep it confidential;
- (iii) Is received from another source who can disclose it lawfully and without an obligation to keep it confidential;

- (iv) Is independently developed; or
 - (v) Is a comment or suggestion one party volunteers about the other's business products or services;
- (d)** "*Fix(es)*" means Product fixes, modifications or enhancements or their derivatives that Microsoft either releases generally (such as commercial Product service packs), or that Microsoft provides to Company when performing Services (such as workarounds, patches, bug fixes, beta fixes and beta builds);
- (e)** "*Location*" means the Company Affiliate(s) who enrolled in the Program and associated with the Company to share the Program benefits;
- (f)** "*Microsoft*" means the Microsoft entity identified in Section 13(m);
- (g)** "*Microsoft Materials*" means technology (including Products), Services, Microsoft Services Materials, security, technical and sales and marketing information and resources, training courses and materials and other benefits Microsoft offers to Company under the Program;
- (h)** "*Microsoft Services Material(s)*" means any non-code based written materials Microsoft provides to Company as part of performing the Services under the Program;
- (i)** "*Pre-existing Work*" means any computer code or materials (other than Products or Fixes) developed or obtained independent of this Agreement, whether by or for Microsoft or its Affiliates, or by or for Company or its Affiliates;
- (j)** "*Product*" means all Microsoft products and technologies Microsoft makes available under this Agreement, including but not limited to products made available for license for a fee, products provided prior to commercial release, and hardware, including any online services and other web-based services identified on the Product List;
- (k)** "*Product List*" means, with respect to any licensing program, the statement published by Microsoft from time to time on the World Wide Web at <http://microsoft.com/licensing/contracts>, or at a successor site that Microsoft identifies, which identifies the Products that are or may be made available under the Program (which availability may vary by region).; "*Program*" means the Microsoft Partner Network;
- (l)** "*Program Guide*" means the guide located on the Program Website. The Program Guide provides guidance about the Program and Program requirements;
- (m)** "*Program Level(s)*" means the level of Company's participation in the Program. There are three Program Levels:
 - (1) Registered member;
 - (2) Certified; and
 - (3) Gold certified.Program Levels and requirements are described more fully in the Program Guide.

- (n) *“Program Member”* means a business entity that meets the Program eligibility requirements defined in the Program Guide;
- (o) *“Program Website”* means the website located at <http://www.partner.microsoft.com> or a successor site designated by Microsoft. The Program Website provides tools and information about the Program, including the Program Guide, Terms of Use and Privacy Statement;
- (p) *“Services”* means support, consulting, training and other services or advice provided through the Program; and
- (q) *Term* has the meaning given to it under Section 7(a).

SECTION 3 Program

- (a) **Enrollment.** Company will be enrolled after it accepts this Agreement, pays a membership fee where applicable, and is accepted by Microsoft into the Program. Microsoft will notify Company when its enrollment is complete.
- (b) **Partner points.** The Program Guide explains how to earn partner points. Company may qualify for a Program Level by earning the required number of points. Microsoft will notify Company of its Program Level based on Company’s earned partner points.
- (c) **Competency.** A competency is a Program recognition given to partners for areas of expertise. The Program Guide explains the competencies and related requirements. Microsoft will notify Company once it earns any competency.
- (d) **Program administration.** Microsoft will administer the Program and its benefits through the Program Website and Program communications. Microsoft may communicate with Company to:
 - (1) Administer the Program;
 - (2) Give Company information about the Program, including events and training opportunities;
 - (3) Invite Company to participate in surveys and research; and
 - (4) Give Company Microsoft Materials to help it deliver solutions based on Products.
- (e) **Program changes**
 - (1) Microsoft may change the Program or any aspect of it. Microsoft will give Company 30 days’ e-mail or other written notice of any substantive Program changes.
 - (2) Company is responsible for checking the Program Website regularly for all other changes. Program Website changes are effective on the date the changes are posted. Changes do not apply retroactively.

SECTION 4 Program benefits

(a) Company will receive the benefits described in the Program Guide and Program Website. Benefits may vary by Program Level, competency, and country. Benefits may include Microsoft Materials.

(b) Program benefits may require additional fees and have additional terms, conditions, and licenses. Company must (i) accept those additional terms before using any Program benefit and (ii) use the Program benefits according to those additional terms and this Agreement. Company may not use the Program benefit(s) if it does not agree to those additional terms, if applicable.

(c) Company's Affiliates may participate in the Program as a Location for the purpose of pooling partner points or sharing benefits.

(d) Services benefits

(1) Company's use of Services offered under the Program, including the Program Guide, will be governed by this Agreement. Services purchased from Microsoft outside of the Program will be governed by a separate services agreement.

(2) Microsoft's delivery of Services depends on Company's full and timely cooperation, as well as the accuracy and completeness of Company's information.

(3) Microsoft may offer Services for new Products or discontinue Services for existing Products. Microsoft's current lifecycle policies are posted at support.microsoft.com/lifecycle. Microsoft will notify Company if it cannot effectively provide Services in certain cases.

(4) Practice Accelerator Services and associated Microsoft Services Materials are provided subject to the rules and restrictions contained in the Program Guide, in addition to the following:

(i) Third Party Content. Microsoft may provide links to third party web sites and content in the Services and Microsoft Services Materials. The linked sites and content are not under Microsoft's control and Microsoft is not responsible for such content. Microsoft does not support or endorse any third party sites or content and provides these links solely as a convenience. Microsoft makes no representations or warranties, express, implied or statutory, as to any third party web sites or content.

(ii) Updates. During the term of this Agreement, Microsoft may provide Company with updates to the Services or Microsoft Services Materials in Microsoft's discretion. Microsoft has no duty to update the Services or Microsoft Services Materials and Company accepts responsibility for any Services, Microsoft Services Materials or information that Company delivers to its customer.

(iii) Agreement to share information. Microsoft will periodically request the following types of opportunity/ project data regarding Company customers in order to adequately assess the value of the Services:

1. customer name (optional)
2. customer industry and size information
3. customer opportunity size
4. total customer opportunity versus portion attributable to Services
5. Win/Loss data (dates, reasons, perceived value of Services)

(iv) Agreement to provide program feedback. Microsoft will periodically request feedback on Company's experience with the Services:

- Value/quality of the Microsoft Services Materials
- Quality of support
- customer's perceptions
- Impact on Company's business

Terms of Section 8(d) below apply to all feedback provided by Company.

(5) Use, Ownership, and License Rights for Microsoft Services.

(i) Fixes. All Fixes provided for a specific Product are licensed according to the terms of the license agreement packaged with or otherwise applicable to such Product. Microsoft's Fixes are licensed to Company, not sold. If the Fix is not provided for a specific Product, the following license terms apply. Microsoft grants Company a non-exclusive, perpetual, fully paid-up license to use and reproduce any Fix that Microsoft provides to Company when performing Services for its internal business operations. Microsoft also grants Company the right to grant to its customers that Company specifically identifies in writing to Microsoft, a non-exclusive, perpetual, fully paid-up license to use and reproduce the identified Fix for customer's internal business operations only.

(ii) Pre-existing Work. All rights in any Pre-existing Work will remain the sole property of the party providing the Pre-existing Work. During the performance of the Services, each party grants to the other party (and their respective contractors as necessary) a non-exclusive, temporary, fully paid-up, license to use, reproduce and modify any of its Pre-existing Work solely to perform the Services. Microsoft also grants Company a non-exclusive, perpetual, fully paid-up, license to use, reproduce and modify (if applicable) its Pre-existing Work in the form provided to Company as part of the Microsoft Services Material(s) for Company's internal business operations. Microsoft also grants Company the right to grant to its customers that Company specifically identifies in writing to Microsoft a non-exclusive, perpetual, fully paid-up license to use ,

reproduce and modify (if applicable) Microsoft's Pre-existing Work in the form provided to Company as part of the Microsoft Services Material(s) for customer's internal business operations. In no event is Company granted any license to distribute Microsoft Pre-existing Work apart from the Microsoft Services Material(s).

(iii) Microsoft Services Materials. Microsoft retains all rights and ownership in the Microsoft Services Material(s) except to the extent such materials constitute Company's Pre-existing Work. Microsoft grants Company a non-exclusive, perpetual, fully paid-up, license to use, reproduce and modify any of the Microsoft Services Material(s) for Company's internal business operations. Microsoft also grants Company the right to grant to its customers, that Company specifically identifies in writing to Microsoft, a non-exclusive, perpetual, fully paid-up license to use, reproduce and modify Microsoft's Services Material(s) for customer's internal business operations.

(iv) Sample Code. Microsoft grants Company a non-exclusive, perpetual, royalty-free right to use and modify any software code provided by Microsoft for the purposes of illustration ("Sample Code") and to reproduce the object code form of the Sample Code for Company's internal business purposes.

(v) Distribution Indemnification and Additional Restrictions. Any distribution by Company under this Agreement must be pursuant to a license agreement with customer that includes a license grant with a statement of ownership and restrictions consistent with the terms of this Agreement. Company will indemnify and hold Microsoft harmless, and defend Microsoft and its suppliers from and against any claims or lawsuits, including attorneys' fees or legal costs, that relate to Company's distribution of any Microsoft Services Material(s) or Fixes including:

1. Company's customers' use;
2. Company's negligent or willfully wrongful acts associated with distribution or marketing;
3. Any additions or modifications Company makes; and
4. Any use in violation of this Agreement

(vi) Open source license restrictions. Some software licenses require, as a condition of use, modification and/or distribution, that the software or other software combined and/or distributed with it be:

1. Disclosed or distributed in source code form;
2. Licensed for the purpose of making derivative works; or
3. Redistributable at no charge (collectively, "*Open Source License Terms*").

The license rights that each party has granted to any computer code (or any intellectual property associated therewith) are limited. These license rights do not include any

license, right, power or authority to incorporate, modify, combine or distribute that computer code with any other computer code in a manner that would subject the other's computer code to Open Source License Terms. Each party warrants that it will not provide or give to the other party computer code that is governed by Open Source License Terms.

(vii) Affiliate rights. Company may sublicense the rights contained in this Section 4(d) to its Affiliates. However, Company's Affiliates may not sublicense these rights and Company's Affiliates' use must be consistent with these license terms.

(viii) Reservation of rights. With respect to Services, all rights not expressly granted to Company in this section 4(d) are reserved by Microsoft.

(e) Software benefits

- (1) Company's right to use Microsoft Products offered to Company under the Program will be governed by this Agreement and the terms of the license agreement packaged with or otherwise applicable to a Product. If there is any direct conflict between this Agreement and any terms contained in the separate agreement not resolved explicitly on the face of such documents, then the terms of this Agreement will control. If a particular subject is addressed in the separate agreement and not in this Agreement, then the terms of the separate agreement will control.
- (2) Company will not engage or participate in the unauthorized manufacture, duplication, delivery, transfer or use of counterfeit, pirated, unlicensed or illegal Product or other Microsoft Materials. Company will not otherwise infringe any of Microsoft's intellectual property rights. Company must reasonably cooperate with Microsoft and its Affiliates in the investigation of counterfeit, pirated, unlicensed or illegal Product and other Microsoft Materials. Company must promptly report to Microsoft any suspected counterfeiting, piracy or other copyright infringement in computer programs, manuals, course material, marketing Materials or other copyrighted Materials owned by Microsoft or its licensors.
- (3) Company will only use the Product licenses that it receives under the Program according to this Agreement and use terms that are part of a separate agreement. (See the Program Guide and Program Website for more details.) Company will acquire enough Microsoft Product licenses through the Program or applicable Microsoft licensing programs to match:
 - (i) The quantities of the Microsoft Product it uses; and
 - (ii) The maximum number of users and devices that may access or use the Microsoft Product under Company's agreements with Microsoft or a reseller.

Microsoft may take actions, including the following, to ensure that Company complies with the Agreement and this Section 4(e)(3). Microsoft may collect data from the “Windows Genuine Advantage,” “Office Genuine Advantage” and other similar programs. (See the Program Guide for more details.) Microsoft may conduct audits under Section 12(a) of this Agreement. Microsoft may:

- Contact Company; and
 - Take actions to prevent Company from using more Products than authorized by this Agreement.
- (4) Company’s benefits under the Program, including Products, may not be distributed to Company’s customers (with the exception of the rights granted in Section 4(d). Company will inform Microsoft if it:
- (i) Knows or suspects that a customer does not have enough Microsoft licenses, and
 - (ii) Knows or suspects that a customer is violating a Microsoft license agreement.
- (5) Any Product licenses that Company receives under the Program will be valid for the Term of this Agreement only.

SECTION 5 Trademarks

(a) Limited trademark license. The “*Microsoft Marks*” include those trademarks, logos, symbols, and names identified in the Microsoft logo guidelines on the Program Website and the “Partner Logo Builder Tool.” Company must meet criteria explained on the Program Website to use the Microsoft Marks. Microsoft grants to Company a nonexclusive, nontransferable, limited, royalty-free license to use the applicable Microsoft Marks as long as it meets the criteria. Microsoft is the sole owner of the Microsoft Marks and the sole beneficiary of any goodwill related to Company’s use of them. Company will:

- (1) Not acquire any right, title or interest in the Microsoft Marks because of its use of the Microsoft Marks.
- (2) Not register, adopt or use any name, trademark, domain name or other designation that includes any part of a Microsoft Mark, or any term that is confusingly similar to a Microsoft Mark. This includes a translation or transliteration of a Microsoft Mark.
- (3) Use the Microsoft Marks only in connection with Microsoft Materials:
 - (i) In the form Microsoft provides;
 - (ii) For Program advertising and promotion activities; and
 - (iii) According to the terms of this Agreement and the Program Guide.

- (4) Not alter, animate or distort the Microsoft Marks or combine them with any other symbols, words, images or design elements.
 - (5) Not use any of the Microsoft Marks or Microsoft Materials for the transmission or distribution of unsolicited commercial e-mail or in any manner that violates local law or custom or conflicts with the Microsoft policies published on <http://microsoft.com> or through the Program.
 - (6) Maintain the quality of the solutions and Services Company offers in relation to the Microsoft Marks and the Microsoft Materials at a level commensurate with the quality of Services Company offered before the date of this Agreement. The quality of Company solutions and Services must also meet or exceed standards of quality and performance generally accepted in the industry.
 - (7) Promptly correct any improper use of the Microsoft Marks and deficiencies in the quality of its solutions and Services on notice from Microsoft.
- (b) **Referential use of trademarks.** Company may use Microsoft's corporate name, technology names and trademarks in plain text to accurately identify and refer to Microsoft and its technology and Services. Company may not use the logos, trade dress, designs or word marks in stylized form. Such use must not cause confusion about the source of Company's solutions and Services or Company's relationship with Microsoft.
- (c) **Notices.** Company must not remove any copyright, trademark or patent notices in or on Microsoft Materials. Company must include Microsoft's copyright notice on the labels for tangible media containing licensed Microsoft technology. Company must also include Microsoft's copyright notice on documentation for licensed Microsoft technology, including online documentation. Company must use the right trademark, licensed Microsoft technology descriptor and trademark symbol (either "™" or "®") when first mentioning a licensed Microsoft technology name in any advertisement, brochure or other format. The mention must also indicate Microsoft's (or Microsoft suppliers) ownership of the trademark. Microsoft's trademark usage guidelines are located at <http://www.microsoft.com/about/legal/intellectualproperty/trademarks/usage/default.mspx>.
- (d) **No technology transfer arrangement.** This Agreement does not create a "technology transfer" agreement because:
- (1) The technology (including any Products) made available under this Agreement is not an integrated part of a technology chain for production or management purposes; and
 - (2) The technology (including any Products) will have its own technology license. Company will not hold itself out as Microsoft's technology recipient. Company will not identify Microsoft as a technology provider under this Agreement.

(e) Reservation of rights. Microsoft reserves all rights not expressly granted in this Agreement.

SECTION 6 Program fee

a. Program fee

- (1) Registered members are not required to pay a Program fee. Company agrees to pay Microsoft the annual Program fee and other applicable benefit fees if it qualifies and enrolls at a certified or gold certified level.
- (2) In some countries, the Program fee is for the welcome kit. In these countries, a Microsoft-designated distributor invoices the Company for the welcome kit and sends the kit once the invoice is paid. Price is an estimated price and is subject to variations, such as foreign exchange rates. Company must include a signed, hard copy of this Agreement when it sends its payment for the welcome kit.

(b) Taxes.

- (1) Taxation. The amounts to be paid by Company to Microsoft do not include any taxes. Company will pay Microsoft any applicable value added, sales or use taxes or like taxes Company owes because it entered this Agreement and which the law requires Microsoft to collect from Company. If Company provides Microsoft with a valid exemption certificate, Microsoft will not collect the taxes covered by that certificate. Microsoft is not liable for any taxes that Company is legally obligated to pay, including but not limited to net income or gross receipts taxes, franchise taxes, and property taxes ("*Company Taxes*") which relate to the sale of goods and services under this Agreement. Company agrees to indemnify and hold Microsoft harmless from Company taxes and any claims, costs (including reasonable attorneys' fees) and liabilities that relate to such taxes.
- (2) If the law requires Company to withhold taxes from payments made by Company to Microsoft, Company may withhold such taxes and pay them to the appropriate taxing authority, provided that Company promptly delivers to Microsoft an official receipt or other document necessary to allow Microsoft to claim a "U.S. Foreign Tax Credit." Company will ensure that it minimizes any taxes withheld to the extent allowed by law.
- (3) Tax treatment. Despite any other provision in this agreement, this Section 6(b) will govern the treatment of all taxes relating to this Agreement.

SECTION 7 Term and termination

(a) Term. This Agreement will take effect on the date Microsoft accepts this Agreement (the "*Effective Date*"). The Agreement will continue for one year from the Effective Date (the "*Term*"), unless terminated earlier. If Company upgrades from registered member status during

the Term, the Effective Date will change to the date Microsoft accepts the upgrade. An upgrade from certified to gold certified partner status will not change the Effective Date. If Company chooses to re-enroll in the Program on expiration of the Term, Company must do so on the Program Website.

- (b) Renewal.** This Agreement will not renew automatically. Microsoft may choose not to renew Company's membership in the Program.
- (c) Termination without cause.** Either party may terminate this Agreement at any time, without cause, on 60 calendar days notice. Neither party will be responsible to the other for costs or damages resulting from termination.
- (d) Termination for cause.** If either party breaches any provision of this Agreement that is considered curable the nonbreaching party will give 30 calendar days e-mail or written notice for an opportunity to cure. If the cause for termination is not curable, termination will be effective on notice from the nonbreaching party. Microsoft retains its other rights and remedies.
- (e) Statutory form.** Microsoft reserves the right to either terminate or vary this Agreement if it is required to use a statutory form for modifications to the Agreement. Termination will be without its use and without any liability to Company.
- (f) Effect of termination.** Company must immediately stop using any rights and benefits granted by this Agreement and the Program on termination. Company must also return or destroy all Microsoft Materials on termination. Company will do one of the following within 10 days of termination and at Microsoft's discretion:

 - (1) Return all copies of documents and Materials containing customer information that Company received because of this Agreement. Company will also return the Microsoft Materials and property in its possession or under its control; or
 - (2) Destroy all such specified documents and Microsoft Materials, including copies, and give Microsoft a certificate of destruction signed by an officer of the Company. Termination of this Agreement will not terminate any unresolved prior support requests. This Agreement will continue to apply until such unresolved requests are resolved or otherwise closed.
- (g) Waiver of rights and obligations.** Each party waives any legal right or obligation it has to seek judicial intervention to terminate this Agreement to the extent necessary to implement the termination.
- (h) Survival.** Sections 6(b) (Taxes), 7(h) (Survival), 8 (Confidentiality), 9 (Representation and warranties), 10 (Indemnification), 11 (Limitation of liability), 12(a) (Verifying compliance), 12(b)

(Business purposes), 12(c) (Consumer rights) and 13 (Miscellaneous) will survive the expiration or termination of this Agreement.

SECTION 8 Confidentiality and Privacy

If the parties have an existing nondisclosure agreement, then that agreement, as well as Sections 8(e) and (f) below, apply to information exchanges. If not, then the following applies.

- (a) Use of Confidential Information.** For a period of five years after initial disclosure:
- (1) Neither party will disclose the other's Confidential Information to third parties. Each party will use such information only for purposes of this business relationship. Each party will take reasonable steps to protect the other's Confidential Information;
 - (2) Each party may disclose the other's Confidential Information to its Affiliates employees, contractors. Such party remains responsible for any unauthorized use or disclosure. These disclosures may be made only on a need-to-know basis, subject to the obligations of this section.
 - (3) Each party will return Confidential Information to the other party or destroy it at the other's request when it is no longer needed to perform under this Agreement.
- (b) Disclosure if required by law.** Each party may disclose the other's Confidential Information if required to comply with a court order or other government demand that has the force of law. Before doing so, the disclosing party must seek the highest level of protection available and, when possible, give the other enough prior notice to provide a reasonable chance to seek a protective order.
- (c) Cooperation in the event of disclosure.** Each party will immediately notify the other on discovery of unauthorized use or disclosure of Confidential Information. Each party will help the other party regain possession of the Confidential Information and prevent further unauthorized use or disclosure.
- (d) Right to use feedback.** Either party may provide suggestions, comments or other feedback to the other party with respect to the other party's products and Services. Feedback is voluntary and, even if designated as confidential, the party receiving feedback may use it for any purpose without obligation of any kind. The party receiving feedback will not disclose the source of feedback without the consent of the party providing it. Unless the parties specifically agree in writing, feedback will not create any confidentiality obligation.
- (e) Lead generation and privacy.**

Microsoft may assist Company with sales lead generation and support. The assistance may include access to information, tools, templates and reports (e.g., the partner sales management

system). Microsoft may also share leads with Company that contain customer Personal Information. “*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). Company will only use Personal Information from Microsoft-generated leads to sell products or Services of interest to the customer. Company will not use or share Personal Information from such leads for any other purpose unless Company first obtains customer’s consent. Company will take reasonable security measures to protect such Personal Information from unauthorized use, access, disclosure, alteration or destruction, including by its vendors. Security measures will include access controls, encryption and any other security means that are legally required. Company may share leads with Microsoft so that it can assist with Company’s promotion and sale of Microsoft products and Services. Company will comply with all applicable notice or consent laws before sharing the Personal Information with Microsoft. All other Company data disclosed under the Program will be protected by the Privacy Statement at <https://partner.microsoft.com>.

(f) Commercial E-mail. Company agrees that, for purposes of 16 CFR §316.2(m) issued pursuant to the CAN-SPAM Act of 2003 and as between Microsoft and Company, Company is the “sender” of any commercial e-mail messages it sends to its customers in the United States unless otherwise agreed by the parties in writing. This includes but is not limited to any e-mails Company sends using e-mail templates provided by Microsoft as part of the Microsoft Materials, and any e-mails Company sends as part of a Microsoft-funded campaign.

SECTION 9 Representation and warranties

Microsoft warrants that it will use reasonable care and skill to administer the Program. Company’s effort and resulting performance are under Company’s control. Microsoft does not guarantee Company’s satisfaction with the Program or Company results. Except for loss and damage which cannot be limited or excluded under applicable law:

- (a)** Microsoft provides the Microsoft Materials to Company “as is,” and without warranties of any kind; and
- (b) Disclaimer of 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. Others that may be included are lack of viruses, quiet enjoyment, scope of license, lack of errors, satisfactory condition or quality. The

disclaimer also includes any implied warranty or conditions arising from course of dealing or usage of trade.

SECTION 10 Indemnification

Company will defend, indemnify 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' costs and fees) related to Company's or its agents' acts or omissions under this Agreement.

SECTION 11 Limitations 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 BREACH OF ITS CONFIDENTIALITY OBLIGATIONS, VIOLATION OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, OR ANY DIRECT OR INDIRECT LOSS OF PROFITS, DATA, OR BUSINESS ANTICIPATED SAVINGS IN THE ABSENCE OF FRAUD OR GROSS NEGLIGENCE.

SECTION 12 Additional obligations and conditions

(a) Verifying compliance

- (1) Company will keep all usual and proper books and records relating to its performance of this Agreement. This includes complying with the accounting rules, regulations, authoritative pronouncements, principles and practices accepted in Company's jurisdiction. Company will at least keep documents for the acquisition, delivery and destruction of licensed Products. These documents include:
 - (i) Products delivered as part of the Microsoft Action Pack Subscriptions; and
 - (ii) Microsoft volume license Product keys that it authorizes Company to use under this Agreement.
- (2) Company will keep these documents during the Term, and for three years after this Agreement ends. During this same period, Microsoft's may hire a third party auditor to audit Company's books, records, operations, processes and facilities to verify Company's compliance with this Agreement. See the Program Guide for more detail. The audit's sole purpose is to verify Company's compliance with the Agreement, if there are indications that Company does not comply with obligations under this Agreement.

Microsoft will give Company 48 hours' email or other written notice of the audit except for audits related to counterfeit Products. Audits related to counterfeit Products do not require prior notice. Company will promptly correct any errors and omissions disclosed by the audits. Microsoft may validate all customer references supplied by Company according to the Program requirements. If Company is using Microsoft Course Materials, Microsoft or a representative may audit Company's training using Microsoft Course Materials ("*Microsoft Courses*") without notice. Such audits may include a formal written critique of Company's trainers' software, technical knowledge, and delivery skills. The critique may also review the equipment, facilities, student rosters for Microsoft Courses taught, Course Materials provided to students, and Course Materials inventory. Microsoft will notify Company in writing if it determines that:

- (i) Company is not delivering Microsoft Courses in a professional manner;
- (ii) Company is not providing an effective learning environment or experience;
- (iii) The facilities and equipment are not sufficient for quality training to occur; or
- (iv) Course Materials acquisitions do not match the total number of students trained in Microsoft Courses, Microsoft Courses taught, and current Course Materials inventory. Microsoft may terminate this Agreement if not cured according to Section 7(d) of this Agreement. Microsoft may also terminate Company's Learning Solutions competency status.
- (v) Audits will be conducted during Company's normal business hours in a manner that does not unreasonably interfere with Company's normal business activities. Company will give the auditor hired by Microsoft access to the books, records, operations, processes and facilities that the auditor needs to complete a thorough audit. Company will have all applicable books, records and operations available to the auditor at the beginning of the audit if Microsoft provides advance notice. Microsoft and its third party auditors will conduct all inspections accompanied by a Company employee. Company will pay Microsoft's audit costs if an audit uncovers a terminable breach of this Agreement as defined in the Section 7(d) or a discrepancy of 2% or more in Company's use of license benefits during the applicable audit period. Company will implement any commercially reasonable recommendations made by the audit team regarding record keeping. The recommendations will be implemented within a mutually agreeable timeframe.

- (3) **Advertising and publicity.** Microsoft may only use Company's name, corporate logos, or identity in advertisements or promotions for the Program with Company's consent.

Company will not unreasonably withhold or delay its consent. Company will be deemed to grant its consent if it does not respond to Microsoft's request within 30 days.

(b) Business purposes. Company enters this Agreement and acquires the related Services and Program Materials for business purposes only. The provisions of any applicable consumer protection legislation do not apply to this Agreement to the extent that legislation allows the parties to contract out of such legislation.

(c) Consumer rights. Nothing in this Agreement is intended to limit the rights of a consumer, as defined by applicable law. This Agreement is modified as necessary to reflect this intention. Consumers may benefit from certain rights or remedies, which may not be excluded under applicable law. If Company has any implied terms under law, despite the parties' agreed exclusions and limitations in this Agreement, then to the extent permitted by law, Company's remedies are limited as determined by Microsoft:

- (1) In the case of Services to either:
 - (i) Re-supply of the Services; or
 - (ii) The cost of the re-supply of the Services (if any); and
- (2) In the case of goods to either:
 - (i) Replacement of the goods; or
 - (ii) Correction of defects in the goods.

SECTION 13 Miscellaneous

(a) Relationship of parties. Any use of the term "partner" is for reference purposes only. The parties are independent contractors. 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.

(b) No representations. Company has not relied on any representations by Microsoft about Microsoft Materials in deciding to acquire them or to enter into this Agreement. Company warrants that it has relied on its own skill and judgment or that of Company's advisers in relation to these matters. However, neither party limits or excludes liability for fraudulent misrepresentations.

(c) Notices. Notices may be provided either by electronic or physical mail. The contact person(s) identified in the Program profile will receive notices at the address provided by Company. Each party may change the persons to whom notices will be sent by giving notice to the other.

(d) Applicable law. Applicable law, jurisdiction and venue for this Agreement are identified below. This choice of jurisdiction and venue does not prevent either party from seeking injunctive relief for a violation of intellectual property rights, confidentiality obligations or enforcement of recognition of any award or order. Injunctive relief or enforcement of recognition may be sought in any appropriate jurisdiction.

(1) Generally. Except as provided in Section 13(d)(2), the laws of the State of Washington govern this Agreement. If federal jurisdiction exists, the parties consent to exclusive jurisdiction and venue in the federal courts in King County, Washington. If not, the parties consent to exclusive jurisdiction and venue in the Superior Court of King County, Washington. .

(2) Other terms. If Company's principal place of business is in one of the countries or regions listed below, the corresponding provision applies and supersedes Section 13(d)(1) to the extent that it is inconsistent:

(i) If Company's principal place of business is in Australia or its external territories, India, Indonesia, Malaysia, New Zealand, Philippines, Singapore, Thailand or Vietnam, the following applies: This Agreement is construed and controlled by the laws of Singapore and Company consents to the nonexclusive jurisdiction of the Singapore courts.

(ii) If Company's principal place of business is in India, Indonesia, Philippines, Thailand or Vietnam, any dispute related to this Agreement, including any question regarding its existence, validity or termination, will be referred to and finally resolved by arbitration in Singapore according to the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC"). The SIAC Arbitration Rules are incorporated by this reference into the Agreement. The Tribunal will consist of one arbitrator appointed by the Chairman of SIAC. The language of the arbitration will be English. The arbitrator's decision will be final, binding and incontestable and may be used as a basis for judgment thereon in India, Indonesia, Philippines, Thailand or Vietnam (as appropriate), or elsewhere.

(iii) If Company's principal place of business is in Japan, the following applies: The Agreement will be construed and controlled by the laws of Japan. Company consents to exclusive original jurisdiction and venue in the Tokyo District Court. The prevailing party in any action related to this Agreement may recover its reasonable attorneys' fees, costs and other expenses.

(iv) If Company's principal place of business is in Afghanistan, Albania, Algeria, Andorra, Angola, Armenia, Austria, Azerbaijan, Bahrain, Belarus, Belgium, Benin, Bosnia and Herzegovina, Botswana, Bouvet Island, Bulgaria, Burkina Faso, Burundi, Cameroon, Central African Republic, Chad, Comoros, Congo, Cote d'Ivoire, Croatia, Cyprus, Czech Republic, Democratic Republic of Sao Tome and Principe, Denmark, Djibouti, Egypt, Estonia, Ethiopia, Faeroe Islands, Finland, France, Gabon, Gambia, Georgia, Germany, Ghana, Gibraltar, Greece, Greenland, Guadeloupe, Guinea-Bissau, Hungary, Iceland, Ireland, Israel, Italy, Jordan, Kazakhstan, Kenya, Kosovo, Kuwait, Kyrgyzstan, Latvia, Lebanon, Lesotho, Liberia, Liechtenstein, Lithuania, Luxembourg, Libya, Macedonia, Madagascar, Malawi, Mali, Malta, Mauritania, Mauritius, Moldova, Monaco, Mongolia, Montenegro, Morocco, Mozambique, Namibia, the Netherlands, New Caledonia, Niger, Nigeria, Norway, Oman, Pakistan, Poland, Portugal, Qatar, Republic of Cape Verde, Republic of Equatorial Guinea, Republic of Guinea, Republic of Senegal, Reunion, Romania, Russian Federation, Rwandese Republic, Saint Helena, San Marino, Saudi Arabia, Serbia, Seychelles, Sierra Leone, Slovakia, Slovenia, Somalia, South Africa, Spain, Svalbard and Jan Mayen, Swaziland, Sweden, Switzerland, Tajikistan, Tanzania, Togo, Tunisia, Turkey, Turkmenistan, Uganda, Ukraine, United Arab Emirates, United Kingdom, Uzbekistan, Vatican City State, Yemen, Zaire, Zambia, Zimbabwe, the following applies:

The Agreement is governed by and construed according to the laws of Ireland. Company consents to the jurisdiction of and venue in the Irish courts in all disputes relating to this Agreement.

(v) If Company's principal place of business is in the People's Republic of China, the following applies. For purpose of this Agreement, the People's Republic of China does not include Hong Kong S.A.R., Macao S.A.R., or Taiwan:

The Agreement will be construed and controlled by the laws of the People's Republic of China. Company consents to submit any dispute relating to the Agreement and any addendum to binding arbitration. The arbitration will be at the China International Economic and Trade Arbitration Commission in Beijing ("CIETAC") according to its then current rules.

(vi) If Company's principal place of business is in Colombia or Uruguay, the following applies:

All disputes, claims or proceedings between the parties relating to the validity, construction or performance of this Agreement will be settled by arbitration. The arbitration will be according to the UNCITRAL Arbitration Rules as presently in force. The appointing authority will be the International Chamber of Commerce (“ICC”) acting according to the rules adopted by the ICC for this purpose. The place of arbitration will be Seattle, Washington, U.S.A. There will only be one arbitrator. The award will be in law and not in equity and will be final and binding on the parties. The parties hereto irrevocably agree to submit all matters and disputes arising in connection with this agreement to arbitration in Seattle, Washington, U.S.A.

(vii) If Company’s principal place of business is in Republic of Korea, the following applies: The Agreement will be construed and controlled by the laws of Republic of Korea. Company consents to the exclusive original jurisdiction and venue in the Seoul District Court. The prevailing party in any action to enforce a right or remedy under this Agreement or to interpret a provision of this Agreement will be entitled to recover its reasonable attorneys' fees, costs and other expenses.

(viii) If Company’s principal place of business is in Taiwan, the following applies: The terms of this Agreement will be governed by and construed according to 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.

(e) Attorneys’ fees. If either Microsoft or Company employs attorneys to enforce any rights arising out of or relating to this Agreement, the prevailing party will be entitled to recover its reasonable attorneys’ fees, costs and other expenses, including the costs and fees incurred on appeal or in a bankruptcy or similar action.

(f) Compliance with laws

- (1) Export restrictions. Each of the parties acknowledges that the hardware and software (collectively, “*Materials*”) of the other are subject to U.S. export jurisdiction. Each party will comply with all applicable international and national laws that apply to the other party’s Materials, including the U.S. Export Administration Regulations, as well as end-user, end use and destination restrictions by U.S. and other governments. For additional information, see <http://www.microsoft.com/exporting/>.
- (2) Compliance with laws and Anti-Corruption Policy. Company will comply with all applicable laws including local anti-corruption laws and the U.S. Foreign Corrupt

Practices Act (“*Anti-Corruption Laws*”). 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:

- (i) Investigate the suspected violations (“*Anti-Corruption Audit*”); and
- (ii) 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.

(3) Compliance with the Microsoft Partner Network Statement of Business Rules. Company will comply with the terms of the Microsoft Partner Network Statement of Business Rules as outlined in Exhibit A.

(g) Assignment. Either party may assign this Agreement to an Affiliate. If either party assigns this Agreement, it must notify the other in writing. Any other assignment requires prior written approval of the other party.

(h) Waiver. 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.

(i) Severability. 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.

(j) Integration and modification.

(1) Entire Agreement. This Agreement (including any exhibits), the Program Guide and the Partner Website form the entire agreement between the parties regarding the Program. It replaces all prior agreements, communications and representations between the parties regarding the Program.

(2) Amendment. This Agreement can be changed only by an amendment signed by both parties.

(k) Language. Microsoft offers this Agreement in several languages. The language version in which Company accepts this Agreement will control. If Company is located in Canada, the parties agree that this Agreement, and any associated Program documentation, be written and signed in

English. C'est la volonté expresse des parties que la présente convention ainsi que les documents qui s'y rattachent soient rédigés en anglais.

(l) Order of precedence: Program Guide, Addenda. If there is a direct conflict between the Agreement and the Program Guide not resolved explicitly on the face of those documents, then the Agreement will control, but only to the extent of that conflict. If a particular subject is addressed in the Program Guide and not in the Agreement, then the terms of the Program Guide will control. If there is a direct conflict between the Agreement and any separate addendum to the Agreement not resolved explicitly on the face of those documents, the terms of the addendum will control, but only to the extent of that conflict. If a particular subject is addressed in the addendum to the Agreement and not in the Agreement, then the terms of the addendum will control.

(m) Microsoft contracting entity. The Microsoft contracting entity for this Agreement is determined by the country or region where Company is located. See details below:

(1) The Microsoft entity for the following countries or regions is indicated below: Anguilla, Antigua and Barbuda, Argentina, Aruba, Bahamas, Barbados, Belize, Bermuda, Bolivia, Brazil, Canada, Cayman Islands, Chile, Colombia, Costa Rica, Curacao, Dominica, Dominican Republic, Ecuador, El Salvador, French Guiana, Grenada, Guam, Guatemala, Guyana, Haiti, Honduras, Jamaica, Martinique, Mexico, Montserrat, Netherlands Antilles, Nicaragua, Panama, Paraguay, Peru, Puerto Rico, Saint Kitts and Nevis, Saint Lucia, Saint Pierre and Miquelon, Saint Vincent and The Grenadines, Suriname, Trinidad and Tobago, Turks and Caicos Islands, United States, Uruguay, Venezuela, Virgin Islands (British) and Virgin Islands (U.S.):

Microsoft Corporation
One Microsoft Way
Redmond, WA 98052
USA

(2) The Microsoft entity for the following countries or regions is indicated below: Afghanistan, Albania, Algeria, Andorra, Angola, Armenia, Austria, Azerbaijan, Bahrain, Belarus, Belgium, Benin, Bosnia and Herzegovina, Botswana, Bouvet Island, Bulgaria, Burkina Faso, Burundi, Cameroon, Central African Republic, Chad, Comoros, Congo, Cote d'Ivoire, Croatia, Cyprus, Czech Republic, Democratic Republic of Sao Tome and Principe, Denmark, Djibouti, Egypt, Estonia, Ethiopia, Faeroe Islands, Finland, France, Gabon, Gambia, Georgia, Germany, Ghana, Gibraltar, Greece, Greenland, Guadeloupe, Guinea-Bissau, Hungary, Iceland, Ireland, Israel, Italy, Jordan, Kazakhstan, Kenya,

Kosovo, Kuwait, Kyrgyzstan, Latvia, Lebanon, Lesotho, Liberia, Liechtenstein, Lithuania, Luxembourg, Libya, Macedonia, Madagascar, Malawi, Mali, Malta, Mauritania, Mauritius, Moldova, Monaco, Mongolia, Montenegro, Morocco, Mozambique, Namibia, the Netherlands, New Caledonia, Niger, Nigeria, Norway, Oman, Pakistan, Poland, Portugal, Qatar, Republic of Cape Verde, Republic of Equatorial Guinea, Republic of Guinea, Republic of Senegal, Reunion, Romania, Russian Federation, Rwandese Republic, Saint Helena, San Marino, Saudi Arabia, Serbia, Seychelles, Sierra Leone, Slovakia, Slovenia, Somalia, South Africa, Spain, Svalbard and Jan Mayen, Swaziland, Sweden, Switzerland, Tajikistan, Tanzania, Togo, Tunisia, Turkey, Turkmenistan, Uganda, Ukraine, United Arab Emirates, United Kingdom, Uzbekistan, Vatican City State, Yemen, Zaire, Zambia and Zimbabwe:

Microsoft Ireland Operations Limited
The Atrium
Block B
Carmenhall Road
Sandyford Industrial Estate
Dublin 18
Ireland

- (3) The Microsoft entity for the following countries or regions is indicated below: Australia and its external territories, Bangladesh, Bhutan, Brunei Darussalam, Cambodia, Cook Islands, East Timor, Fiji, French Polynesia, French Southern Territories, Hong Kong, India, Indonesia, Kiribati, Lao Peoples Democratic Republic, Macao, Malaysia, Maldives, Marshall Islands, Mayotte, Micronesia, Nauru, Nepal, New Zealand, Niue, Northern Mariana Islands, Palau, Papua New Guinea, Philippines; Pitcairn, Samoa, Singapore, Solomon Islands, Sri Lanka, Thailand, Tokelau, Tonga, Tuvalu, Wallis and Futuna Islands, Vanuatu and Vietnam:

Microsoft Regional Sales Corporation
11 Collyer Quay #12-03
The Arcade
049317
Singapore

- (4) The Microsoft entity for Japan is:

Microsoft Company, Limited
Odakyu Southern Tower

2-1, Yoyogi 2-chome, Shibuya-ku, Tokyo
151-8583 Japan

(5) The Microsoft entity for Taiwan is:

Microsoft Taiwan Corporation
8F, No 7, Sungren Rd.
Shinyi Chiu, Taipei
Taiwan 110

(6) The Microsoft entity for the People's Republic of China is:

Microsoft (China) Company Limited
6F Sigma Center
No. 49 Zhichun Road Haidian District
Beijing 100080, P.R.C

(7) The Microsoft entity for the Republic of Korea is:

Microsoft Korea, Inc
5th Floor, West Wing
POSCO Center
892 Daechi-Dong Gangnam-Gu
Seoul, 135-777, Korea

Exhibit A

Microsoft Partner Network Statement of Business Rules

The members of the Program provide customers with Microsoft Products, support and solutions based on Microsoft technologies. Microsoft collaborates with Program members in those activities. Therefore, it is important for Microsoft that Company shares its values. Company must observe this Microsoft Partner Program Statement of Business Rules. **Company will have integrity in all its interactions.** Company interacts with a variety of individuals and groups and must be committed to interacting with them in a respectful, ethical manner. Company must ensure that all communications to its customers be truthful, accurate, and not misleading. Company may not make or attempt to make any unauthorized commitment on behalf of Microsoft. **Company will run its Microsoft-related business in compliance with its Microsoft agreement(s).**

Company will run its business in compliance with applicable laws and regulatory requirements. In

addition to any specific obligations under this Agreement or any separate agreement(s), Company must:

- conduct its business activities with Microsoft in full compliance with applicable laws and regulations;
- conduct its business in Microsoft-related activities in full compliance with applicable laws and regulations;
- comply with the laws and regulations that govern the rights to and protection of Microsoft copyrights, trademarks, patents, trade secrets, and other forms of intellectual property;
- must honestly and accurately record and report all business information and comply with all applicable laws regarding their completion and accuracy; and
- comply with all applicable anti-bribery laws and must not, directly or indirectly, make or offer bribes, kickbacks, or other payments to any third party, for the purpose of wrongfully obtaining or retaining business related to Microsoft Products.

Enforcement of and Compliance Verification with the Statement of Business. Microsoft intends to enforce the terms of the Statement of Business Rules in accordance with the terms of this Agreement. In addition, Company is expected to self-monitor its compliance with the Statement of Business Rules.

Compliance Acknowledgement. Company is required, as a condition for maintaining its enrollment in the Program, to acknowledge its obligation to comply with the Statement of Business Rules.

Reporting Issues. Company may report any issue related to this Statement of Business Rules, including any request by a Microsoft representative for Company to act in a manner that conflicts with this Statement of Business Rules or this Agreement, by using any of the resources listed below. Company is encouraged to work with its primary Microsoft contact in resolving a business practice or compliance

concern. However, Microsoft recognizes that there may be times when this is not possible or appropriate. In such instances, please use any of the following:

- **Microsoft Business Conduct Line.** The Microsoft Business Conduct Line is a dedicated, toll-free phone line that is available 24 hours a day, 7 days a week, and 365 days a year (phone calls may be made anonymously). It is operated by an external third-party vendor that has trained professionals to take calls in confidence, and report concerns to the Microsoft Director of Compliance for appropriate action.
 - Calls made from inside the United States may be made toll-free to 1-877-320-MSFT (6738).
 - Calls made from outside the United States may be made by accessing an international operator and asking to place a collect call to 1-704-540-0139.
- **Confidential E-Mail.** A confidential e-mail may be submitted via the Microsoft Integrity Web site. E-mails will be received by a third-party vendor, who will remove contact information before forwarding a summary to the Office of Legal Compliance.
- **Letter or Fax.** A letter may be sent to the Director of Compliance at Microsoft Corporation, Law and Corporate Affairs, One Microsoft Way, Redmond, WA 98052 or faxed to 1-425-705-2985. Letters and faxes sent to the Director of Compliance may be submitted anonymously if desired.

Microsoft will handle inquiries discreetly and make every effort to maintain, within the limits allowed by the law, the confidentiality of anyone requesting guidance or reporting a possible violation.