MICROSOFT MCT AFFILIATE PROGRAM OPERATING AGREEMENT

This MICROSOFT MCT AFFILIATE PROGRAM OPERATING AGREEMENT(the "**Agreement**") is made and entered into as of the Effective Date as defined below by and between MICROSOFT CORPORATION ("**Microsoft**"), a Washington corporation and the entity identified on the signature block below ("**Affiliate**").

# **Recitals**

**i.** Affiliate wishes to participate in the Microsoft linking referral relationship described in this Agreement ("**Program**"); and

1. Microsoft has a Microsoft Certified Trainer ("**MCT**") program and operates a member Web site for the benefit of MCT members worldwide;
2. The parties desire that Microsoft make available to MCTs special offers from Affiliate through the Program, as described in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises below, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged,the parties agree as follows:

### Agreement

**1. Definitions**

Microsoft and Affiliate may each be referred to individually as a "party" or collectively as the "parties" in this Agreement. "Includes" or "including" when used herein will mean "including without limitation." In addition to the terms defined elsewhere in this Agreement the following terms when used herein shall have the following meanings:

**1.1** **"Affiliate's Site"** means the World Wide Web site and pages owned and operated by or for Affiliate that are dedicated to presenting Offers solely to MCTs pursuant to the terms and conditions set forth in this Agreement.

**1.2 "Confidential Information"** means all non-public information that a party hereto designates as being confidential, or which, under the circumstances of disclosure ought to be treated as confidential. "Confidential Information" includes, without limitation, the terms and conditions of this Agreement, information relating to released or unreleased software or hardware products, marketing or promotion of any product, business policies or practices, customers or suppliers, or information received from others that a party hereto is obligated to treat as confidential. "Confidential Information" shall not include information that: (i) is or becomes generally known or available by publication, commercial use or otherwise through no fault of the receiving party; (ii) is known and has been reduced to tangible form by the receiving party at the time of disclosure and is not subject to restriction; (iii) is independently developed or learned by the receiving party; or (iv) is lawfully obtained from a third party that has the right to make such disclosure.

**1.3 "Effective Date"** means the date upon which Microsoft, or its designee, provides Affiliate notice of Microsoft's acceptance of this Agreement.

**1.4 "Link(s)"** means the hyperlink graphic files that include a link that, when clicked by an MCT, will take the MCT to the Affiliate's Site.

**1.5 "MCT Site"** means the Web site currently known as the Microsoft Certified Trainer Web page or any successor site designated by Microsoft from time to time.

**1.6 "Offer"** means an offer made by Affiliate to MCTs for the acquisition of Affiliate's product(s) or services that (i) are approved by Microsoft after receipt of a Special Offer Form, (ii) are placed on the Affiliate's Site directly from a Link on the MCT Site, and (ii) may include, but not necessarily limited to, discounts, trial downloads, or other special offers to MCTs on such items as hardware, software, subscriptions, IT-related services, curriculum and courseware, and/or training services.

**1.7** **"Program Guide"** means the current Program Guide for the MCT Affiliate Program provided to Affiliates by Microsoft and as set forth at the Affiliate member site on microsoft.com and as the same may be updated from time to time in Microsoft's sole discretion.

**1.8** **"Special Offer Form"** means the form submitted by Affiliate to Microsoft describing an Offer.

**2.** **Affiliate Participation in the Program**

 **2.1 Press Releases.** Affiliate agrees that it will not issue any press release, sales, marketing, promotional material, advertisements, or similar materials discussing its relationship to Microsoft without prior written approval from Microsoft.

**2.2** **Special Offer Forms.** Affiliate will submit to Microsoft a Special Offer Form for each Offer it wishes to make available to MCTs as part of the Program. Each Special Offer Form will describe all pertinent details of the relevant Offer, including (a) the geographic region(s) for which the Offer will be made available, (b) the expiration date of the Offer (if applicable), (c) any limitations or restrictions of the Offer (if applicable), (d) details of the Offer and instructions for how to access it, and (e) an Affiliate contact person to respond to questions from Microsoft or MCTs about the Offer. Each Special Offer Form will also include (i) a printed and electronic sample of the proposed Link to the Affiliate's Site that will present the Offer, and (ii) printed and electronic screen shots (or a URL for a non-production version) of the proposed portion of the Affiliate's Site that will contain the Offer.

**2.3** **Contents of Offers.** Affiliate agrees that the Offers will not include any free or discounted Microsoft product or service as a premium or otherwise. Affiliate further agrees that no Offers or Links will imply any affiliation, endorsement, or liability by Microsoft with, of, or for any Offers.

**2.4** **Presentation of Offers.** Affiliate agrees that each Offer will be provided to MCTs according to the terms on the applicable Special Offer Form as approved by Microsoft. Each Offer will be presented on a portion of the Affiliate's Site that is (a) dedicated to such Offer and (b) not available to anyone other than Microsoft and the MCTs to whom such Offer is to be made, according to the terms of the Special Offer Form as approved by Microsoft.

**2.5** **Links.** Each Link will constitute the URL to the relevant portion of Affiliate's Site, and may also feature a logo and/or mark associated with Affiliate's Site, an image and/or name of the Affiliate or other product(s) that are the subject of the relevant Offer, and other unique promotional information for the relevant Offer, each as approved by Microsoft after receipt of a Special Offer Form describing such features. Each Link will be an active and correct Link to the relevant portion of Affiliate's Site at all times during the term of the relevant Offer. All Links approved by Microsoft for an approved Offer will be placed on the MCT Site in a manner to be determined by Microsoft. The Links will meet the size and other requirements herein and in the Program Guide. Microsoft reserves the right to approve or reject any Link. If a Link is rejected by Microsoft, Affiliate may make changes to the Link and resubmit to Microsoft for approval. Microsoft reserves the right to remove a Link from the MCT Site at any time.

**2.6** **No Unlawful or Offensive Content.** Affiliate's Site may not promote sexually explicit materials, violence, discrimination (based on age, race, color, sex, sexual orientation, national origin, religion, marital status, disability and/or veteran status), illegal activities or other matters, or contain any profane, obscene, indecent, abusive, harassing, unlawful, defamatory, infringing, prejudicial, or otherwise inappropriate topic, name, material, or information, that would detract from the MCT Site as determined solely in Microsoft's discretion and communicated to Affiliate from time to time.

**2.7** **MCT eNewsletter.** Affiliate acknowledges and agrees that Microsoft may include Offers in the *MCT eNewsletter*, which is distributed on a monthly basis to MCTs worldwide.

**2.8** **Replacement and Removal of Links.** Affiliate agrees that Microsoft, at its sole discretion, shall determine when a Link must be replaced either because the Link has become outdated, needs to be updated or replacement is required pursuant to applicable law. Affiliate will replace any Link immediately upon notice from Microsoft. Microsoft may also remove Links from the MCT Site from time to time upon expiration of an Offer or otherwise at its sole discretion.

**2.9** **Access to Affiliate's Site.** Affiliate will provide access to Microsoft to Affiliate's Site to allow Microsoft to review the Offers from time to time.

**2.10** **License to Microsoft.** Affiliate hereby grants to Microsoft a personal, non-exclusive, revocable, worldwide right and license, during the term of this Agreement, to use, copy, reproduce, publicly display, publicly perform, distribute, transmit, broadcast, and provide access to all content (including photographs, graphics, descriptions of products and/or services), Links to Affiliate's Site for Offers approved by Microsoft, Affiliate's logo, and any other information provided to Microsoft to use in conjunction with the Program.

**2.11** **Compliance with Laws.** Affiliate's Site, Links, and Offers will comport with all applicable laws, regulations, and standards for data collection, privacy, advertising, consumer protection, and unfair competition.

**2.12 Availability of Affiliate Site**. During the term of each Offer, the relevant portion of Affiliate's Site will be available to the recipient MCTs 99% of the time, excluding reasonable scheduled downtime.

1. **Operation of MCT Site**

Microsoft shall use commercially reasonable efforts to operate the MCT Site. All Offers placed on the MCT Site are subject to the MCT Site's terms, conditions, disclosures, notices and other policies (e.g., terms of use and privacy statement) provided to Microsoft's end users in connection with the MCT Site, which include, without limitation, Microsoft's right to reject any Offer which does not comply therewith.

4. Non-Exclusivity

The parties hereto agree that nothing contained in this Agreement shall be construed as creating an exclusive relationship between the parties. Nothing in this Agreement shall prevent Microsoft from entering into agreements or providing programs, on similar or dissimilar terms, with any other party (including, without limitation, one that is similar to or competes with Affiliate or Affiliate's Site) or to market and distribute such similar programs in addition to, or in lieu of, the Program contemplated by this Agreement.

1. **Reporting**

Affiliate will have the ability to (i) track the number of hits to Affiliate's Site from the MCT Site and (ii) the number of Offers subscribed to by MCTs, and will provide a monthly report on same and to Microsoft, or its third party vendor, within fifteen (15) days following the end of each month for the data for the previous month in a format which shall be provided to Affiliate by Microsoft.

**6. Costs**

All costs incurred by either party in performing its obligations hereunder shall be borne by that party, without reimbursement from the other party, except as otherwise expressly set forth in this Agreement.

**7. Confidentiality**

Each party shall protect the other's Confidential Information from unauthorized dissemination with the same degree of care that such party uses to protect its own like information. Neither party will use the other's Confidential Information for purposes other than those necessary to directly further the purposes of this Agreement. Neither party will disclose to third parties the other's Confidential Information without the prior written consent of the disclosing party. No ownership or license rights are granted in any Confidential Information. The receiving party's obligation hereunder shall extend for a period of five (5) years following the disclosure of the Confidential Information. Either party may disclose Confidential Information of the other party in accordance with a judicial or other governmental order, provided that the receiving party of the Confidential Information either (a) gives the disclosing party reasonable written notice prior to such disclosure to allow the disclosing party a reasonable opportunity to seek a protective order or equivalent, or (b) obtains written assurance from the applicable judicial or governmental entity that it will afford the Confidential Information the highest level of protection afforded under applicable law or regulation.

1. **Representations & Warranties**

Affiliate warrants and represents to Microsoft that: (i) it has the full right, power and authority to enter into this Agreement and perform according to the terms of this Agreement; (ii) in connection with its performance of this Agreement, it shall comply with the Program Guide and all relevant federal, state, provincial, and local laws and regulations, and ordinances, including without limitation consumer protection and privacy laws and regulations; (iii) it will be responsible for all acts, omissions of it employees and agents, (iv) the performance of Affiliate's obligations pursuant to this Agreement will not violate any agreement or obligation between Affiliate and a third party, any court or administrative order or decision, or any intellectual property or proprietary right of a third party; and (v) it will protect and maintain Microsoft's Confidential Information to the same degree as it would its own Confidential Information.

**9. Disclaimer of Warranties for MCT Site**

THE MCT SITE IS PROVIDED "***AS IS***," "***AS AVAILABLE***," AND "***WITH ALL FAULTS***." MICROSOFT PROVIDES NO WARRANTIES IN CONNECTION WITH THE MCT SITE OR THE PROGRAM AND DISCLAIMS ALL STATUTORY AND IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, OR OF FITNESS FOR A PARTICULAR PURPOSE. MICROSOFT DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE MCT SITE OR ANY INFORMATION OR CONTENT CONTAINED ON THE MCT SITE WILL BE ACCURATE, UNINTERRUPTED OR ERROR FREE, THAT DEFECTS WILL BE CORRECTED, OR THAT THE MCT SITE OR SERVER THAT MAKES IT AVAILABLE IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. MICROSOFT DISCLAIMS ALL LIABILITY FOR NEGLIGENCE OR FOR ANY LACK OF REASONABLE CARE. ALSO, MICROSOFT DOES NOT PROVIDE ANY WARRANTY OF NON-INFRINGEMENT OR OF TITLE OR QUIET ENJOYMENT OR QUIET POSSESSION AND MAKES NO EXPRESS WARRANTIES.

**10. Indemnity**

Affiliate hereby agrees to indemnify, pay the defense costs of, and hold Microsoft harmless from any and all claims, demands, costs, liabilities, losses, expenses and damages (including attorneys' fees, costs, and expert witnesses' fees) arising out of or in connection with: (i) any third party claim that Affiliate's Site, products, services, Offers, Links or marketing infringe any copyright, patent, trade secret, or other proprietary right held by any third party; or (ii) any claim which, taking the claimant's allegations to be true, would result in a breach by Affiliate of any of Affiliate's representations, warranties and covenants set forth in this Agreement. Prompt notice shall be given to Affiliate of any claim to which the foregoing indemnity relates.

1. **Limitation of Liability & Damages**

**11.1** EXCEPT FOR A PARTY'S LIABILITY ARISING UNDER SECTION 7 (CONFIDENTIALITY) AND EXCEPT WITH REGARD TO THE INDEMNIFICATION OBLIGATION SET FORTH IN SECTION 10 OF THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES (INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION AND THE LIKE) ARISING OUT OF OR RELATED TO THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**11.2** The total liability of Microsoft for any and all claims relating to or arising under this Agreement shall be limited to Five Thousand (US$5,000.00) and Affiliate releases Microsoft from all obligations, liability, claims or demands in excess of that amount.

**12. Term & Termination**

**12.1** The term of the Agreement shall commence on the Effective Date and shall continue until it is terminated by either party pursuant to Section 12.2.

**12.2** Either party may terminate this Agreement with or without cause at any time on thirty (30) days notice to the other party.

**12.3** Sections 1 (and all other definitions herein), 7 through 11, 12.3, and 13 through 19 shall survive any expiration or termination of this Agreement.

**13. Governing Law, Venue & Attorneys' Fees**

 **13.1** This Agreement shall be construed and controlled by the laws of the State of Washington, and Affiliate consents to exclusive jurisdiction and venue in the federal courts sitting in King County, Washington, unless no federal subject matter jurisdiction exists, in which case Affiliate consents to exclusive jurisdiction and venue in the Superior Court of King County, Washington. Affiliate waives all defenses of lack of personal jurisdiction and forum non conveniens. Process may be served on either party in the manner authorized by applicable law or court rule.

 **13.2** If either Microsoft or Affiliate employs attorneys to enforce any right or remedy under arising out of or relating to this Agreement or to interpret any provision of this Agreement, the prevailing party shall be entitled to recover its costs, including reasonable attorneys' fees, including expert witness fees.

**14. Notices & Requests**

**14.1** Except as otherwise provided in this Agreement, all notices under this Agreement must be addressed as provided below and sent by one of the following methods: (1) postage prepaid, certified or registered mail, return receipt requested; (2) overnight courier (e.g., DHL, Federal Express, UPS), charges prepaid, confirmation requested; or (3) facsimile, with confirmation of delivery. Notices will be deemed delivered on the date shown on the postal return receipt or on the overnight courier or facsimile confirmation of delivery.

Microsoft: MICROSOFT CORPORATION

 One Microsoft Way

 Redmond, WA 98052-6399

Attention: Microsoft Certified Trainers Program

E-mail: MCTaff@microsoft.com

With a cc to: MICROSOFT CORPORATION

 One Microsoft Way

 Redmond, WA 98052-6399

Attention: Legal & Corporate Affairs Department - Microsoft Learning

Fax: (425) 936-7329

or to such other address as Microsoft so designates by written notice to Affiliate.

**14.2** All notices and requests to Affiliate in connection with this Agreement shall be deemed given as of the day upon which such notice or request is sent to the email address provided by Affiliate to Microsoft as part of the Program registration or to such other email address as Affiliate so designates by written notice to Microsoft.

**15. No Assignment**

Affiliate may not assign this Agreement, or any rights or obligations hereunder, whether by operation of contract, law or otherwise, except with the express written consent of Microsoft, and any attempted assignment by Affiliate in violation of this Section shall be void. For purposes of this Agreement, an "assignment" by Affiliate under this Section shall be deemed to include, without limitation, each of the following: (a) a change in beneficial ownership of Affiliate of greater than twenty percent (20%) (whether in a single transaction or series of transactions) if Affiliate is a partnership, trust, limited liability company or other like entity; (b) a merger of Affiliate with another party, whether or not Affiliate is the surviving entity; (c) the acquisition of more than twenty percent (20%) of any class of Affiliate 's voting stock (or any class of non-voting security convertible into voting stock) by another party (whether in a single transaction or series of transactions); and (d) the sale or other transfer of more than fifty percent (50%) of Affiliate's assets (whether in a single transaction or series of transactions). In the event of such assignment or attempted assignment by Affiliate, Microsoft shall have the right to immediately terminate this Agreement.

**16. Relationship**

The parties hereunder are operating as independent contractors. Neither party is and will not represent itself to be the agent, employee, franchise, joint venture, officer or partner of the other. Nothing herein contained will be construed to place the parties in the relationship of partners or joint ventures, and neither party will have power to obligate or bind the other in any manner whatsoever, nor authority to assume, create or incur any obligation or liability on behalf of the other party. Both parties further agree to be responsible for all of their respective federal and state taxes, withholding, social security, insurance, and other benefits.

**17. Severability**

In the event that any provision of this Agreement is found invalid or unenforceable pursuant to judicial decree or decision, the remainder of this Agreement shall remain valid and enforceable according to its terms. The parties intend that the provisions of this Agreement be enforced to the fullest extent permitted by applicable law. Accordingly, the parties agree that if any provisions are deemed not enforceable, they shall be deemed modified to the extent necessary to make them enforceable.

**18. Entire Agreement, Modification, No Offer, English Language Version**

The parties hereto agree that this Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and merges all prior and contemporaneous communications. It cannot be modified except that Microsoft may modify this Agreement by providing Affiliate an email notification of any proposed modification. If Affiliate rejects such modification by the terms indicated in such email, this Agreement shall automatically terminate. If Affiliate fails to accept or reject such modification by the terms indicated in such email, such modification will be deemed accepted by Affiliate. Neither this Agreement nor any written or oral statements related hereto constitute an offer, and this Agreement shall not be legally binding until executed by both parties hereto. It is the express wish of the parties that this Agreement and all related documents be drawn up in English.  C'est la volonté expresses des parties que la présente convention ainsi que les documents qui s'y rattachment soient rédigés en anglais.

**19. Binding Effect**

Subject to the limitations herein before expressed, this Agreement will inure to the benefit of and be binding upon the parties, their successors, administrators, heirs, and permitted assigns.

I am a duly authorized representative of the Company listed below and have the legal authority to bind this Company to this Agreement by signature.

**Company (Affiliate): \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_**

**By**: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Signature

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Name (Print)

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date