

**COMMUNITY MICROSOFT AUTHORISED REFURBISHER LICENSE AGREEMENT**  
Version 2009

This Community Microsoft Authorised Refurbisher License Agreement (“Agreement” or “Community MAR Agreement”) is between Microsoft (“MS”) and Refurbisher.

**1. Definitions.**

“COA” means the Certificate of Authenticity.

“Community MAR” means Community MS Authorised Refurbisher.

“Community MAR Administrator” means the entity administering the Community MAR Program.

“Eligible Academic Users” means

- a. Educational Institutions that are:
  - i. accredited academic institutions; or
  - ii. vocational institutions; or
  - iii. preschools that
    - 1) provide educational services to children;
    - 2) serve at least ten children; and
    - 3) have been in operation for at least one year.
- b. Administrative offices of an Educational Institution that are:
  - i. district, regional, state, provincial or national administrative offices;
  - ii. organized and operated exclusively for administration purposes; or
  - iii. government groups whose activities primarily consist of providing administrative support for Educational Institutions.
- c. Public museums that:
  - i. are organized primarily for educational or aesthetic purposes;
  - ii. have a professional or volunteer staff; and
  - iii. own or use real objects, care for them and show them to the public on a regular basis.

“Eligible Charitable Organization” means an organization that meets the MS – Community Technology Skills Program eligibility requirements. See <http://www.microsoft.com/about/CorporateCitizenship/US/CommunityInvestment/Eligibility.msp>. MS may make these requirements available in another place or different form. The requirements are subject to change from time to time at MS discretion.

“Eligible Recipient” means (a) an Eligible Charitable Organization, (b) an Eligible Academic User, or (c) a Specially Approved Recipient. The faculty, staff and students of any Educational Institution, home school program, hospital, healthcare system, and research laboratory are not included in the definition of an Eligible Recipient. However, this does not prohibit them from using Refurbished PCs as part of their role at an Eligible Recipient.

“Eligible Refurbisher” means an entity that refurbishes PCs for others, and is otherwise eligible to participate in the Community MAR Program. For “refurbishes” see the definition of “Refurbish.”

- a. Original Equipment Manufacturers (“OEMs”)
  - i. Refurbishers with an OEM royalty agreement that exists only for the OEM Microsoft Authorized Refurbisher Program are also eligible to participate in the Community MAR Program.
  - ii. Direct OEMs (entities that have signed a Microsoft Desktop Operating System License Agreement) are **NOT** eligible to participate in the Community MAR Program. Direct OEMs may only participate in the OEM Microsoft Authorized Refurbisher Program.

**“Jurisdiction”** means the court or legal venue that may adjudicate any dispute involving this Agreement.

- a. For Refurbishers in North America
  - i. *United States*. The laws of the state of Washington govern.
  - ii. *Canada*. The laws of the province of Ontario govern.
- b. For Refurbishers in Latin America, the laws of the state of Washington govern.
- c. For Refurbishers in Europe, Middle East and Africa, the laws of the Republic of Ireland govern.
- d. For Refurbishers in Asia Pacific
  - i. *Australia or its external territories, Brunei, Hong Kong S.A.R., India, Indonesia, Malaysia, New Zealand, Philippines, Singapore, Thailand, Vietnam*. The laws of Singapore govern. MS incorporates the Arbitration Rules of the Singapore International Arbitration Center (“SIAC”) by reference. The language of arbitration shall be English.
  - ii. *Japan*. The laws of the Tokyo District Court of Japan govern.
  - iii. *People’s Republic of China (excluding Hong Kong S.A.R. and Taiwan)*. The laws of the People’s Republic of China govern. All parties submit to the binding arbitration at the China International Economic and Trade Arbitration Commission in Beijing (CIETAC).
  - iv. *Republic of Korea*. The laws of the Seoul District Court of the Republic of Korea govern.
  - v. *Taiwan*. The laws of the Taipei District Court govern.

**“Microsoft” (“MS”)** means Microsoft Corporation and its affiliates as appropriate.

**“MS Windows Operating System Software”** means

- a. MS Windows 2000 Professional, or
- b. MS Windows XP Professional.

**“Other MS Software”** means MS Office XP Standard and MS Office Standard Edition 2003.

**“PC”** means a personal computer or desktop computer.

**“Prohibited Recipient”** means any entity whose primary purpose is the promotion and advancement of religion, a political party or a commercial for-profit entity.

**“Qualified Individual”** means a person

- a. In a community with limited access to technology; and
- b. With a disability; or
- c. A member of a low-income family. Examples of ways to identify low-income include those

- i. receiving state benefits based on need;
- ii. receiving aid from an IGO;
- iii. in a country defined as a low-income economy by the World Bank.  
<http://web.worldbank.org/WBSITE/EXTERNAL/DATASTATISTICS/0,,contentMDK:20420458~menuPK:64133156~pagePK:64133150~piPK:64133175~theSitePK:239419,00.html>

**“Qualified PC”** means a PC that has been in distribution or in use by an end user for at least six months. To the best of Refurbisher’s knowledge, the PC must contain the same motherboard as when its current Windows license was installed.

**“Refurbish”** means to restore a Qualified PC to a working state where it is suitable for a new owner. Upgrading the PC does not include upgrading the central processing unit (CPU). Refurbisher may upgrade the random access memory (RAM) and the hard disk drive (HDD). Refurbisher must replace faulty motherboards with a motherboard of the same specifications as the original. Refurbisher must reformat reused hard drives on Qualified PCs in accordance with US Department of Defense 5200.22-M standard<sup>1</sup> or similar standard.

**“Refurbisher”** means the entity entering into and accepting this Agreement. The online application form is located at [www.microsoft.com/communitymar](http://www.microsoft.com/communitymar).

**“Refurbished PC”** means a Qualified PC that has been Refurbished.

**“Software”** means MS Windows Operating System Software, Other MS Software and MS Digital Literacy Curriculum Courses.

**“Specially Approved Recipients”** means

- a. Eligible recipients of a qualified Technology Access Program (TAP). A qualified TAP is a documented program that distributes Refurbished PCs to Qualified Individuals. It is run by one of the following:
  - i. Eligible Charitable Organization,
  - ii. Eligible Academic User,
  - iii. national, state/provincial or local government agency; or
  - iv. International Governmental Organization (IGO)
- b. A teaching hospital or medical training school
- c. A public research establishment fully funded by government on a local, national or European level; or
- d. A national or regional governmental initiative, or such other initiative, as approved in writing by MS to be eligible under the Community MAR program.
- e. Public Libraries that provide their services to all residents of a given community without charge. Some charges may apply for users outside a designated region or for other services.

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<sup>1</sup> National Industrial Security Program Operating Manual. DoD 5200.22-M. Washington, DC: US Department of Defense, 1991.

## 2. License.

- a. Grant. MS grants to Refurbisher a non-exclusive, limited license to
  - i. install one copy of the MS Windows Operating System Software and/or one copy of the MS Digital Literacy Curriculum Courses on each Qualified PC. However, Refurbisher may only install MS Windows XP Professional on a Qualified PC that has a pre-existing MS Windows COA affixed to it;
  - ii. install one copy of the Other MS Software on each Qualified PC. However, Refurbisher may only install the Other MS Software on a Qualified PC that will be distributed to either an Eligible Charitable Organization or a Specially Approved Recipient; and
  - iii. distribute Refurbished PCs, with the Software installed and COA(s) affixed, only to Eligible Recipients.

MS reserves all rights not expressly granted.

- b. Ordering COAs. Refurbisher shall order COAs from a Community MAR Administrator. MS may designate other entities to receive orders from time to time. Refurbisher shall pay the COA provider the costs for the materials. MS reserves the right to put rules in place for COA ordering. For example, MS may require minimum or maximum order quantities or a showing of need based on inventory.
- c. Installation and Distribution Restrictions. Refurbisher shall
  - i. install the Software on each Refurbished PC. When available, installation may include use of the Refurbisher Preinstallation Kit (RPK). Follow installation instructions on the Community MAR website;
  - ii. attach the COA to the Refurbished PC. The COA must be visible on the outside of the Refurbished PC;
  - iii. include **Attachment A**, the Eligible Recipient Agreement, with each Refurbished PC. Attachment A must be visible inside the packaging; and
  - iv. distribute the Refurbished PC to an Eligible Recipient. A third party may help identify and deliver Refurbished PCs to Eligible Recipients. Refurbisher remains liable to MS for the actions and omissions of the third party.

Refurbisher shall not distribute to any Prohibited Recipients.

- d. Excluded License. “Excluded License” means any license that requires as a condition of use, modification or distribution of software subject to the license, that the software or other software combined and/or distributed with the software be (1) disclosed or distributed in source code form; (2) licensed for the purpose of making derivative works; or (3) redistributable at no charge.
  - i. License rights to any Software (or MS affiliate intellectual property) do not include any license, right, power or authority to subject the Software or derivative works in whole or in part to any of the terms of an Excluded License.
  - ii. Subject to this Agreement, Refurbisher may distribute the Software with
    - 1) any software that is not subject to an Excluded License;
    - 2) software that is subject to an Excluded License, if distributed in a manner that does not subject, or purport to subject, the Software (or any MS or MS affiliate intellectual property related to the Software) to the terms of an Excluded License.

### **3. Additional Refurbisher Commitments and Acknowledgements**

- a. Refurbisher represents and warrants to MS that
  - i. it is an Eligible Refurbisher.
  - ii. it has access to the World Wide Web
  - iii. information on interoperability of the Software with other products is readily available.
- b. Refurbisher shall not
  - i. earn or have a right to receive any royalties in connection with this Agreement.
  - ii. reverse engineer, decompile or disassemble the Software, except and only to the extent applicable law permits the activity.
- c. MS does not allow unauthorized duplication and distribution of Software and COA.
- d. Refurbisher must follow the Security Requirements in **Attachment B**.
- e. MS will not provide any support services for the Software.

### **4. Required Records and Reporting**

Refurbisher shall keep current and detailed records. Upon request from MS, Refurbisher shall provide written reports, including, details and numbers concerning:

- a. the acquisition or refurbishment of Qualified PCs;
- b. the installation of Software on Qualified PCs;
- c. the average specifications of Refurbished PCs distributed under this Agreement;
- d. Software titles and versions installed and distributed under this Agreement;
- e. Eligible Recipients and the number of Refurbished PCs distributed;
- f. COAs affixed to Refurbished PCs; and
- g. Pre-existing MS Windows COAs from Refurbished PCs installed with MS Windows XP Professional.

MS may change the specifics of these reporting requirements from time to time. MS may also designate a website for electronic reporting.

### **5. Audits**

MS or a an agent chosen by MS may audit Refurbisher's facilities, records and books from time to time to verify compliance with this Agreement. MS may request an audit at anytime during the Term of this Agreement, and for a period of one year after the end of the Agreement. The audit includes the records listed in Section 4. The audit will take place during normal business hours. Refurbisher must make reasonable efforts to make all records available at one convenient location. Auditors will take reasonable measures not to interfere with Refurbisher's business.

MS will pay for the audit. However, if the audit reveals an omission, misrepresentation or other Material Breach of the Agreement, Refurbisher agrees to pay for the audit, in addition to any unpaid amounts due. "Material Breach" means any intentional breach of the Agreement as interpreted by MS.

### **6. Nondisclosure**

As allowed by law, each party shall keep confidential the terms of this Agreement. Refurbisher shall keep confidential any other MS non-public information disclosed to it. (e.g., *license negotiations, terms*

*and conditions, business policies, practices or know-how*). If Refurbisher is subject to public records laws, then this Section is subject to the applicable laws. (e.g., *government entity, public school district*) This Section applies to any other applicable exceptions or trade secrets laws.

## **7. No Warranties and Disclaimer of Damages**

**No Warranty.** MS provides no warranties, conditions or guarantees under this Agreement. Refurbisher shall provide Software to Eligible Recipients on an “**As-Is**” basis. To the extent permitted by applicable law, MS excludes the implied warranties or conditions of merchantability, fitness for a particular purpose and non-infringement.

**Damage Disclaimer.** Refurbisher releases MS from all liability, including, any claim for indemnification or contribution. MS shall not be liable under this Agreement for any economic damages including:

- a. **loss of profits or revenues,**
- b. **business interruption, and**
- c. **loss of business information or data.**

**MS shall not be liable under this Agreement for any consequential, special, incidental, indirect, or punitive damages. Liability is disclaimed even if MS has been advised of the possibility of the damages. The exclusion of liability applies in the event of fault, tort (including negligence), misrepresentation, strict or product liability.**

**Refurbisher acknowledges that all exclusions of liability and any subsequent damages shall apply even if any remedies fail of their essential purpose. If MS contributes to the loss or damage of the Refurbisher, which by law cannot be excluded by this Agreement, the loss or damage shall be limited to Refurbisher’s direct damages as a result of a reasonable reliance upon MS. These direct damages are limited to the amount paid by the Refurbisher under this Agreement.**

## **8. Indemnification**

Refurbisher will indemnify and defend, at its expense, MS against any Refurbisher Claim. “Refurbisher Claim” means any third-party claim or allegation against MS related to:

- a. refurbishment of Qualified PCs
- b. distribution of Refurbished PCs
- c. breach or alleged breach of this Agreement by Refurbisher or
- d. negligent act or omission by Refurbisher under this agreement.
- e. claims or allegations resulting from action of Refurbisher affiliates, agents or subcontractors

If there is an adverse final judgment (or settlement to which Refurbisher consents) resulting from any Refurbisher Claim, Refurbisher will pay it for MS. MS will promptly notify Refurbisher of the Refurbisher Claim, describing the claim and the relief the third party seeks. MS will give Refurbisher reasonable assistance in defending the Refurbisher Claim. Refurbisher must have MS written consent before settling any Refurbisher Claim. MS will not unreasonably withhold its consent.

## **9. Term and Termination.**

- a. Term. This Agreement is effective from the date MS accepts it (“Effective Date”) through December 31 of the same year. If the Effective Date occurs within November or December, the Agreement shall be effective through December 31 of the following year.
- b. Default. Either party (the “non-defaulting party”) may terminate this Agreement immediately if the other party (the “defaulting party”)
  - i. materially fails to perform or comply with any provision of this Agreement;
  - ii. materially fails to comply with any surviving obligation under a previous Agreement; or
  - iii. becomes insolvent, enters bankruptcy or similar proceedings under applicable law, or admits in writing its inability to pay its debts, or makes or attempts to make an assignment for the benefit of creditors.
- c. Termination. Termination will be effective
  - i. 30 days after written notice (including reasons for termination) by the non-defaulting party, provided the defaults have not been cured within that period; or
  - ii. upon notice by the non-defaulting party if, the defaulting party has previously received two or more notices of Default under the Agreement.
- d. Refurbisher Responsibility. Refurbisher must return unused COA and Software to the provider upon Termination or expiration of this Agreement. Refurbisher must report all COAs not returned or previously reported. There are no refunds for returned items.
- e. Survival. Sections 3 through 11 will survive the Termination or expiration of this Agreement.

## **10. Laws, Courts and Jurisdiction**

- a. Choice of Law. The applicable law of the Jurisdiction governs this Agreement and any claims for breach of it, regardless of conflict of laws principles. Each party consents to the exercise of personal jurisdiction by courts in the Jurisdiction. Each party hereby waives any objection to venue in any such court and any claim that such forum is inconvenient. Each party agrees that it cannot revoke this consent and waiver.
- b. Injunctive Relief. MS may pursue injunctive relief against Refurbisher in any forum for a breach of confidentiality obligations, to protect intellectual property rights, or to enforce any award or order. If MS pursues injunctive relief in a forum other than the defined Jurisdiction, MS will give prior notice to Refurbisher. No notice is required if MS reasonably determines that doing so will prevent it from reasonably protecting its intellectual property.
- c. UN Convention. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.
- d. Compliance. Refurbisher agrees to comply with all local, state, provincial, federal and national health, safety and environmental laws and regulations for the country in which it is headquartered and the countries in which Refurbisher distributes Refurbished PCs.
- e. Export Restrictions. The Software is subject to U.S. and International export laws and regulations. You must comply with domestic and international export laws and regulations that apply to the Software. These laws include restrictions on destinations, end users and end use. See <http://www.microsoft.com/exporting/> for additional information.

## 11. General Terms

- a. Entire Agreement. This document and Attachments A&B constitute the entire agreement between the parties. Only a writing executed by each of the parties may modify this Agreement.
- b. Relationship of the Parties. The parties agree that this Agreement will not be construed as creating a partnership, joint venture, employment or agency relationship or as granting a franchise.
- c. No Waiver. No waiver of any breach of any part of this Agreement will be a waiver of any other breach. Any waiver must be in writing and signed by an authorized representative of the waiving party.
- d. Severability. If a court holds any term of this Agreement to be illegal, invalid, or unenforceable, the remaining terms will remain in full force and effect. The parties agree to amend the agreement to give effect to the stricken clause to the maximum extent possible.
- e. Assignment. Refurbisher may not assign this Agreement in whole or in part (by contract, merger, operation of law, or otherwise). Any assignment in violation of this provision will have no effect.
- f. Interpretation. The headings and titles of the provisions of this Agreement are for convenience only and do not affect the interpretation of any provision.
- g. Limited Distribution. Distribution and use of the Software is by license only. MS does not authorize any portion of the Software to be “issued to the public”, “put into circulation”, or subject to a “first sale” as the copyright laws may use those (or similar) terms.
- h. Force Majeure. “Force Majeure Event” means fire, casualty, or an act caused exclusively by forces of nature, riot, terrorist act, war, labour dispute, material changes in applicable law or regulation, or decree of any court. Force Majeure does not include theft. Neither party will be liable for failing to perform under this Agreement to the extent that a Force Majeure Event caused the failure. The party subject to the Force Majeure Event must give the other party notice within a reasonable time. The party must perform non-performed obligations as soon as the Force Majeure Event stops. In no event shall damage to, destruction, or disappearance of COAs as a result of a Force Majeure Event relieve Refurbisher of its payment obligations.
- i. Limitation of Liability. The total cumulative liability (if any) of MS, and Refurbisher's exclusive remedy for that liability, shall be limited to Refurbisher's direct damages incurred in reasonable reliance upon MS up to an amount not to exceed 100% of the amount having actually been paid by Refurbisher to MS during the three-month period preceding such damages under the Agreement. MS disclaims liability for all lost profits, indirect, consequential, incidental, economic, special and punitive damages.
  - i. The limitations in this section apply to
    - 1) the Software and claims of breach of contract,
    - 2) breach of warranty or condition,
    - 3) strict liability, or
    - 4) negligence or other tort claims.

The limitations also apply even if Refurbisher is not fully paid for any losses, or MS knew or should have known about the possibility of damages. Refurbisher also releases MS from all liability in excess of the limits in this section. This release includes any claim for indemnification or contribution even if such claims arise under local law.

- j. Anti-Piracy. You must not engage in the distribution of counterfeit or pirated software. If you suspect any infringement of MS intellectual property, you must report it to MS as soon as possible. You must also cooperate with the investigation.
- k. Technology Transfer. This Agreement does not create a “technology transfer” agreement, as defined by applicable law because
  - i. the technology here is not an integrated part of a technology chain for production or management purposes; and
  - ii. the technology will have its own license.

Refurbisher will not hold themselves out as MS technology recipients. Refurbisher will not attempt to identify MS as a technology provider under this Agreement.

## **12. Signature**

To sign the Agreement, Refurbisher clicks the “Accept Agreement and Continue” button, and completes the Refurbisher application form including online signature and clicks “Submit and Review”. **By signing, Refurbisher evidences its intent to be legally bound by all terms.** If Refurbisher does not wish to sign, click on “Cancel.”

**ATTACHMENT A – ELIGIBLE RECIPIENT LICENSE AGREEMENT  
COMMUNITY MICROSOFT AUTHORISED REFURBISHER PROGRAM**

Refurbisher (the “Refurbisher”): \_\_\_\_\_.

SOFTWARE PRODUCTS PROVIDED (the “Software”) (circle as applicable):

MS Windows 2000 Professional // MS Windows XP Professional  
MS Office XP Standard // MS Office Standard Edition 2003  
MS Digital Literacy Curriculum Courses

**IMPORTANT – PLEASE READ CAREFULLY**

**You must be an Eligible Recipient in order to have rights under this agreement. “Eligible Recipient” means (a) an Eligible Charitable Organization, (b) an Eligible Academic User, or (c) a Specially Approved Recipient. (see below)**

**By using the Software, you accept these terms. If you do not accept these terms, do not turn on the Refurbished PC, or open any more packaging. Instead, contact the Refurbisher and return the Refurbished PC.**

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**1. Definitions.**

**“Eligible Academic Users”** means

- a. Educational Institutions that are:
  - i. accredited academic institutions; or
  - ii. vocational institutions; or
  - iii. preschools that
    - 1) provide educational services to children;
    - 2) serve at least ten children; and
    - 3) have been in operation for at least one year.
- b. Administrative offices of an Educational Institution that are:
  - i. district, regional, state, provincial or national administrative offices;
  - ii. organized and operated exclusively for administration purposes; or
  - iii. government groups whose activities primarily consist of providing administrative support for Educational Institutions.
- c. Public museums that:
  - i. are organized primarily for educational or aesthetic purposes;
  - ii. have a professional or volunteer staff; and
  - iii. own or use real objects, care for them and show them to the public on a regular basis.

**“Eligible Charitable Organization”** means an entity satisfying the MS – Community Technology Skills Program eligibility requirements. See

<http://www.microsoft.com/about/CorporateCitizenship/US/CommunityInvestment/Eligibility.msp>. MS may make these requirements available in another place or different format. The requirements are subject to change from time to time at MS discretion.

**“Eligible Recipient”** means (a) an Eligible Charitable Organization, (b) an Eligible Academic User, or (c) a Specially Approved Recipient. The faculty, staff and students of any Educational Institution, home school program, hospital, healthcare system, and research laboratory are not included in the definition of an Eligible Recipient. However, this does not prohibit them from using Refurbished PCs as part of their role at an Eligible Recipient.

**“Refurbished PC”** means a PC that has been refurbished.

**“Software”** means MS Windows Operating System Software, Other MS Software and MS Digital Literacy Curriculum Courses.

**“Specially Approved Recipients”** means

- a. Eligible recipients of a qualified Technology Access Program (TAP). A qualified TAP is a documented program that distributes Refurbished PCs to Qualified Individuals. It is run by one of the following:
  - i. Eligible Charitable Organization,
  - ii. Eligible Academic User,
  - iii. national, state/provincial or local government agency; or
  - iv. International Governmental Organization (IGO)
- b. A teaching hospital or medical training school
- c. A public research establishment fully funded by government on a local, national or European level; or
- d. A national or regional governmental initiative, or such other initiative, as approved in writing by MS to be eligible under the Community MAR program.
- e. Public Libraries that provide their services to all residents of a given community without charge. Some charges may apply for users outside a designated region or for other services.

## **2. License.**

- a. Grant. This Software is licensed, not sold. This agreement gives you the right to use one (1) copy of the Software installed on a single Refurbished PC. The Software may have “online” or electronic documentation. Unless applicable laws give you more rights despite this limitation, you must use the software only as permitted in this agreement. MS reserves all rights not expressly granted in this Agreement. You may not
  - i. work around any technical limitations in the Software;
  - ii. reverse engineer, decompile or disassemble the Software, except and only to the extent that applicable law allows;
  - iii. use components of the Software to run applications not running the Software;
  - iv. copy, distribute, sublicense, lease, rent, lead, or transfer the Software and/or any accompanying material to a third party;
  - v. publish the Software for others to copy;
  - vi. modify or translate the Software and/or accompanying material, if any; or

vii. use the Software for commercial software hosting services.

- b. No Upgrade or Support Service Rights. The Eligible Recipient has no rights to upgrade the Software. If the Eligible Recipient wants to buy the upgrades, it will need to do so separately. MS is not providing any support services for the Software.

### 3. Additional Terms.

- a. Intellectual Property. You agree that MS retains all copyright, patent, trademark, title and other proprietary and intellectual property in the Software. You may make one backup copy of the Software. The copy is for archival purposes only.
- b. Assignment. Eligible Charitable Organizations may sublicense rights to use the Software to individuals who receive assistance in accordance with charitable, not-for-profit or educational purposes. The right to use the Software shall not be assigned or transferred without MS written consent.
- c. Separation of Components. The Software is licensed as a single product. It shall not be separated for use on more than one computer. The certificate of authenticity attached to the PC shall not be removed.
- d. Export Restrictions. The Software is subject to United States export laws and regulations. You must comply with applicable domestic and international export laws and regulations. These laws include restrictions on destinations, end users and end use. For additional information, see <http://www.microsoft.com/exporting/>.
- e. Disclaimer of All Warranties. The Software is licensed “**As-Is.**” The Software is made available without warranty. You bear the risk of using and distributing the Software. Unless required by applicable law, MS gives no express warranties, guarantees or conditions. MS, its affiliates or suppliers exclude all warranties and conditions of merchantability, fitness for a particular purpose and non-infringement, to the extent permitted by law.
- f. Limitation of Liability. MS disclaims liability for all lost profits, indirect, consequential, incidental, economic, special and punitive damages. The limitations in this section apply to
- i. the Software and claims of breach of contract,
  - ii. breach of warranty or condition,
  - iii. strict liability, or
  - iv. negligence or other tort claims.

The limitations apply even if MS knew or should have known about the possibility of damages. You release MS from all liability in excess of the limits in this provision. This includes claims for indemnification or contribution, even where the claims arise under local law.

- g. Applicable Law.
- i. United States. If you acquired the Software in the United States, Washington state law governs the interpretation of this agreement and applies to claims for breach of it, regardless of conflict of laws principles. The laws of the state where you live govern all other claims. This includes claims under state consumer protection laws, unfair competition laws, and in tort.
  - ii. Outside the United States. If you acquired the Software in any other country, the laws of that country apply.
- h. Legal Effect. This agreement describes certain legal rights. You may have other rights under the laws of your state or country. You may also have rights with respect to the party from whom you

acquired the Software. This agreement does not change your rights under the laws of your state or country if the laws of your state or country do not permit it to do so.

- i. Termination. MS may terminate this license, if the Eligible Recipient is in breach of this Agreement.

## **ATTACHMENT B**

### **SECURITY REQUIREMENTS**

#### **1. Physical Security**

Refurbisher must put security measures in place that prevent loss, theft or unauthorized delivery of Software. MS recommends these security measures:

- well defined rules and procedures;
- security awareness training for employees;
- system for contacting internal security personnel
- system for contacting local law enforcement;
- controlled access to buildings with Software;
- accurate records of all facility access codes and devices (e.g., electronic badges or keys, including masters, spares, and copies);
- current record of people with access to secure facilities;
- continual monitoring of secure facilities;
- adequate locks on doors, windows, gates and fences;
- alarm on exterior doors and accessible windows;
- immediate response to alarms;
- record of all alarms and their cause;
- record of security incidents and security shortfalls; and
- proper security lighting inside and outside secure buildings.

#### **2. Community MAR COAs**

##### Procurement of COAs

Refurbisher shall take all reasonable steps to obtain only the number of COAs required to fulfill the terms of the Community MAR Agreement. The Refurbisher must

- document and enforce written procedures for buying COAs;
- buy COAs from a vendor named by MS;
- store all COAs in a secure internal location when not in use;
- limit access to COAs to individuals with need to work with them;
- store COAs so the product key cannot be read except by those with access;
- maintain a current list of personnel with access to COAs;
- ship COA material only to those with access to COAs; and
- provide documentation of those with access to the Community MAR Administrator upon request.

##### COA Inventory and Tracking

Refurbisher shall keep accurate records of all their COAs. The Refurbisher must

- enforce written procedures on the tracking and inventory of COAs;
- keep a log that tracks inventory;
- keep a log that tracks the destruction of COAs; and

- monitor all COAs when outside a secure location.

### **3. Donations, Returns Handling, Scrap and Destruction Procedures**

Returned COAs, Refurbished PCs, media and accompanying documentation must be secure from unauthorized access at all times. The Refurbisher shall work with authorized vendors to put in place internal controls that ensure the secure destruction of scrap COAs, media and documentation (together “Materials”). The COA on a returned Refurbished PC does not need to be scrapped if it is to be delivered to another Eligible Recipient.

The Refurbisher must

- work with the authorized vendor (as appropriate) to investigate discrepancies;
- report any discrepancies via e-mail within 24 hours of discovery;
- report Materials provided and/or returned to the Refurbisher;
- prepare and enforce written procedures regarding returns and the destruction of Materials; and
- produce written procedures to the Community MAR Administrator upon request.

Refurbisher must maintain current reports which document the physical destruction of Materials. The reports must include the following information for each component destroyed:

- MS part number;
- MS product name or the description of the original media and/or documentation;
- number of the original media and/or documentation;
- number of COAs destroyed;
- date of destruction;
- signature of the authorized vendor witness verifying the above information; and
- date the witness signed the report.

The Refurbisher and vendor (as appropriate) must retain copies of all destruction reports for a minimum of four years.