

Authorized Retailer Terms and Conditions

Authorized Retailers' sale of the Microsoft Corporation goods and services ("Products") is subject to and based upon the following Terms and Conditions.

(a) Authorized Retailer:

- (1)** will purchase, distribute or sell only those Products permitted by InComm and authorized in a Distribution Appendix;
- (2)** will distribute or sell Products only through the authorized Product Delivery Solution and with the applicable End User License Agreement, if any;
- (3)** will comply with requests aimed at ensuring compliance with legal requirements applicable to the Products and/or Product Delivery Solution;
- (4)** will conduct its distribution, sale and disposition of Products in a manner that complies with all applicable laws, rules and regulations, including but not limited to any applicable privacy requirements, CAN-SPAM rules, consumer protection, trade, commerce, tax and export laws and regulations;
- (5)** will comply with the Authorized Retailer's privacy policy and with practices that meet or exceed industry standards;
- (6)** will be PCI level 3 compliant (or its recognized equivalent);
- (7)** acknowledges that InComm is required to cease activation of the affected Products through InComm's systems as soon as possible, but no later than five (5) days (unless informed that an earlier date is required by law), after notice of such suspension from Microsoft to InComm and as such, Authorized Retailer will work with InComm on the execution plan as defined by Microsoft for such affected Products and shall suspend distribution of any affected Product within such period and remove any promotion or marketing of the affected Product or Product Delivery Solution (including any related Marketing Materials related to such suspended Product or Product Delivery Solution) as soon as possible.
- (8)** will use commercially reasonable efforts to prevent unauthorized distribution, duplication or pirating of the Products and/or any Product Delivery Solution;
- (9)** will have processes and procedures in place, to the reasonable satisfaction of Microsoft and InComm, that are designed to prevent Product fraud;
- (10)** will use commercially reasonable efforts to protect and store all Product and Marketing Materials against loss or damage while such items are under its control and/or in its possession;
- (11)** will implement and maintain, a measurable, documented disaster recovery plan to ensure the continued performance of its obligations under the Agreement;
- (12)** will notify InComm as soon as practical, and in any event within seventy-two (72) hours, of becoming aware of any material loss, damage, or destruction of any Product or Marketing Materials;
- (13)** will implement and maintain industry standard security procedures and measures in connection with the systems used (including physical lock/key security, computer and communications network security and data security) designed to prevent disclosure of Microsoft's intellectual property and Confidential Information to any unauthorized persons or any damage to any Product, Marketing Materials or Confidential Information, and provide requested information to InComm with respect to the same;
- (14)** will promptly notify InComm of any potentially fraudulent transaction relating to any Products and shall use commercially reasonable efforts to identify the affected Product information (codes, keys, PINs, etc.);
- (15)** will utilize commercially reasonable security measures to facilitate the secure exchange of data with InComm and/or Microsoft;
- (16)** will provide customer service to End Users relating to the Product purchase process and Product delivery transaction and as required in any applicable Distribution Appendix and promptly notify InComm in writing of any suspected support issue that is the responsibility of InComm or Microsoft as set forth in that Section;
- (17)** will promptly notify InComm after its receipt of any End User complaints or returns relating to defects in the Products or any other related Microsoft technology or service;
- (18)** will remove and cease all distribution, promotion and marketing of any allegedly infringing item(s) as soon as possible after notice;
- (19)** will immediately cease distribution of any Product and/or Product Delivery Solution (including any related Marketing Materials) that InComm or Microsoft informs Authorized Retailer must be recalled and use prompt, commercially reasonable efforts to undertake any other instructions provided by InComm or Microsoft in connection with a recall;
- (20)** will work with InComm on the execution plan as defined by Microsoft for such affected Marketing Materials and shall as soon as possible but in any event within five (5) business days of when Microsoft has provided InComm notice, cease all use of and replace all Marketing Materials if removal is requested by Microsoft or if Authorized Retailer is provided Marketing Materials that are intended to supplement or replace previously provided Marketing Materials or is otherwise provided updated Marketing Materials;
- (21)** will, within ten (10) business days after any expiration or termination of the Agreement with InComm or any applicable Distribution Appendix, as directed or as further specified in a Product Appendix, return or destroy any physical embodiments of the Products in its possession as directed, and anything else in its possession that embodies InComm or Microsoft's Confidential Information and provide a certification of destruction in a writing reasonably acceptable to InComm or Microsoft;
- (22)** will make commercially reasonable efforts to comply with any guidelines that are provided regarding distribution or sale of the Products and/or any Product Delivery Solution;

- (23) will comply with all applicable international and national laws in the Territory, including without limitation the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, and end-user, end use and destination restrictions of the U.S. and other governments as further described at www.microsoft.com/exporting;
- (24) will cooperate in good faith and provide assistance as reasonably requested if InComm or Microsoft is required to report to any governmental agency that regulates digital distribution and/or the transmission of consumer or commercial products; and
- (25) will cooperate with any audit required by InComm in order to comply with its obligations to Microsoft.

(b) Authorized Retailers will not:

- (1) trade any Product/Product Delivery Solutions with other Microsoft authorized distributors or resellers;
- (2) distribute or sell any discontinued Product after the designated discontinuance date set forth in any notice from InComm or Microsoft;
- (3) distribute or sell Products outside of the Territory nor sell or distribute Products to any third party whom it has reason to believe will redistribute or resell outside of the Territory;
- (4) where applicable, sell or distribute any Product prior to the "street date" for the relevant Product (except for authorized pre-orders);
- (5) disassemble, de-compile or otherwise reverse engineer any Product and/or Product Delivery Solution or otherwise attempt to learn the source code, structure, algorithms or ideas underlying such items;
- (6) modify, reverse engineer or decompile any Products or Marketing Materials and shall not remove any proprietary notices or licenses contained in any Marketing Materials;
- (7) take any action contrary to the End User License Agreement applicable to the Product and/or Product Delivery Solution;
- (8) copy, reproduce, modify, alter, or tamper with any Product and/or Product Delivery Solution;
- (9) introduce any computer virus or other illicit code into any Product, Product Delivery Solution or Microsoft system;
- (10) link or bundle the distribution or sale of any Product through any Product Delivery Solution with any

- (11) unauthorized third-party product or through any alternative product transmission methods; knowingly distribute or sell, or aid in the distribution or sale of any counterfeit Product and/or Product Delivery Solution;
- (12) alter or modify the End User License Agreement;
- (13) issue press releases, publicity, or other disclosure in any form concerning Microsoft or the Products without the written approval of Microsoft;
- (14) disclose any of Microsoft's Confidential Information to any third party;
- (15) make any representations, conditions, warranties or promises with respect to any Product and/or Product Delivery Solution that are not contained in or would conflict with the written warranty documentation provided by Microsoft and accompanying the Product or included in the End User documentation of the Product; and
- (16) combine the Products or Product Delivery Solutions in a manner that would cause the Product or Product Delivery Solutions, in whole or in part, to be governed by any license that requires, as a condition of use, modification or distribution, that software or other software combined or distributed with such software be:
 - A) disclosed or distributed in source code form;
 - B) licensed for the purpose of making derivative works; or
 - C) redistributable at no charge.

(c) Authorized Retailers acknowledge and agree:

- (1) Distribution Appendices terms shall control in the event of a conflict with these terms;
- (2) that Products are distributed and sold to End Users subject to the terms of the applicable Microsoft End User License Agreement or such other Microsoft written documentation that may be included in any Product and/or Product materials;
- (3) that InComm may suspend the right to distribute or sell the Products or to use a Product Delivery Solution at any time in order to comply with Microsoft's requirements or at Microsoft's direction; and
- (4) that Microsoft is an intended third party beneficiary of the agreement between InComm and the Authorized Retailer.