Important note: These SAMPLE terms below are provided solely as a courtesy to Refurbisher. Nothing in this sample will modify any of the terms in Refurbisher’s Agreement with Microsoft. Refurbisher is responsible for the final modification, drafting and execution of an appropriate agreement that complies with the terms and conditions of the Agreement regarding Refurbisher’s use of TPRs. Refurbisher may include additional and/or alternative terms in the Agreement that Refurbisher executes with TPR, provided such terms are not less protective of Microsoft (and its affiliates).

| Refurbisher Name: |  |
| TPR Name: |  |
| Start Date: |  |
| End Date: |  |

SAMPLE THIRD-PARTY REFURBISHER TERMS

OEM Refurbisher (“Refurbisher”) and the third party refurbisher (“TPR”) referenced above agree to be bound by this Sample Third-Party Refurbisher Terms (“Agreement”). It takes effect as of the Start Date above.

RECITALS

Refurbisher has entered into a Microsoft Authorized Refurbisher Program License Agreement for certain Microsoft software products to be installed on and distributed with Refurbisher’s computer systems.

Refurbisher want to grant to TPRs a sublicense of certain rights granted by Microsoft to Refurbisher.

The parties agree to the terms and conditions set forth below.

1. Definitions.

“ADK” means the Assessment and Deployment Kit, which may include Product software, installation instructions, utilities and tools for the preinstallation and deployment of Products.

“AT” or “Additional Terms” means the additional Product-specific terms that are indicated in a Product Schedule as applicable to a particular Product SKU, and that are more fully described in the Product Terms Document posted at Device Partner Center (or https://devicepartner.microsoft.com).

“Channel Partner” means entities in a TPR’s distribution chain for Refurbished Customer Systems, such as distributors, resellers, and retailers.

“Citizenship Licenses” means Product licensing rights available only to Eligible Recipients.

“Citizenship Office Products” means Product available only to Eligible Charitable Organizations and Specially Approved Recipients.

“Client Products” means Microsoft desktop operating system products that are listed in the Product Schedule for Microsoft OEM Desktop Operating System Products.

“COA” means a Microsoft Certificate of Authenticity.

“CPU” or “Processor” mean a central processing unit.

“Custom Image” means an image customized for a specific End User that includes Downgrade Product or a Product, and may include customer-requested applications, drivers and other customizations.

“Default Charge” means an amount owed as liquidated damages for the Unauthorized Disposition of Product software, recovery media or Program COAs, including distribution separate from a Refurbished Customer System. The Default Charge, if any, will be listed in the ATs for the applicable Product.

“Downgrade Software” means a previous version of a Product as specified in the License Terms for that Product.

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“DPC” means the Microsoft Device Partner Center portal located at https://devicepartner.microsoft.com. Device Partner Center is an information resource.

“Eligible Academic Users” means educational institutions that are:
   (i) accredited academic institutions; or
   (ii) vocational institutions; or
   (iii) preschools that provide educational services to children, serve at least ten children, and have been in operation for at least one year.

“End User” means the eventual person, company or other legal entity that acquires a Refurbished Customer System with a Product.

“Hard Drive Image” means a preinstalled instance on a hard drive.

“License Terms” or “EULA” means the end user license Agreement or terms of use between Microsoft and an End User that are delivered by Microsoft with each Product.

“Office Trial Product” means the Microsoft Office Trial Product listed on the Product Schedule for Microsoft OEM Office Trial Product.

“OPK” means the OEM pre-installation kit that includes, where applicable, any proprietary tools that Microsoft provides to assist with the Refurbish process and other installation instructions, utilities, software, and/or Supplements delivered to TPR by Microsoft for installing the applicable Product on the Qualified Customer System. Not all Products will have an OPK. The Product Schedule will indicate if there is not an OPK for the applicable Product. For purposes of this Agreement, the term OPK includes the ADK.

“OSE” or “operating system environment” means
   (1) all or part of an operating system Instance, or all or part of a virtual (or otherwise emulated) operating system Instance that enables separate machine identity (primary computer name or similar unique identifier) or separate administrative rights; and
   (2) instances of applications, if any, set up to run on the operating system Instance or parts identified above.

There are two types of OSEs, physical and virtual. A physical OSE is set up to run directly on a physical hardware system. The operating system Instance used to run hardware virtualization software (e.g. Microsoft Virtual Server or similar technologies) or to provide hardware virtualization services (e.g. Microsoft virtualization technology or similar technologies) is considered part of the physical OSE. A virtual OSE is set up to run on a virtual (or otherwise emulated) hardware system.

A physical hardware system can have either or both of the following:
   (i) one physical OSE, and
   (ii) one or more virtual OSEs.

“Product” or “Product” means the Microsoft products licensed on a Product Schedule including, where applicable, Product software, Program COA, and any Supplement.

“Product Schedule” means the schedules in this Agreement that includes the current Products available for license for that Product group (e.g., Client Products and Office Trial Product), along with the royalty rate, if any.

“Product Terms Document” means the document posted at Device Partner Center (or https://devicepartner.microsoft.com) containing the Additional Terms for each Product listed on the Product Schedule.

“Program COA” means the COA provided by [Refurbisher] for Products licensed under this Agreement.

“Qualified Customer System” is defined in the applicable Product Schedule for the Products licensed by TPR.

“Refurbish” means the work done in a professional and workmanlike manner required to make a used, essentially intact, Qualified Customer System on which Product will be installed pursuant to this Agreement for a new owner, which may include, if necessary, cleaning, repairing and upgrading it.

“Refurbished Customer System” or “Customer System” means a Qualified Customer System that has been Refurbished by TPR with Products licensed under this Agreement.

“RRG” means the Microsoft Authorized Refurbisher Resource Guide and successor versions of the RRG published on DPC during the term of this Agreement.

“Supplement” means a royalty-free supplement to, replacement of, or re-release of any part of a Product or OPK.

“Supplement Letter” means a letter in which Microsoft provides additional terms for a Supplement.

“Unauthorized Disposition” means distribution of Product or COAs:

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(1) separate from a Customer System (including theft or loss other than a Force Majeure Event);
(2) with a device that is not properly licensed for the associated Product;
(3) after the Product has reached its end of license;
(4) when not in compliance with the RRG; or
(5) outside of any geographic limitations in applicable Additional Terms; and
(6) will be subject to Default Charges.

“Windows 10 Family Products” means all Products with the words “Windows 10” in the Product name.

2. Product Schedules
   (a) Additional Terms. TPR must comply with the Additional Terms listed in the Product Terms Document with respect to each Product. If an Additional Term conflicts with another term in this Agreement, that Additional Term controls for the Product.
   (b) Multiple Products. TPR may distribute a Refurbished Customer System with more than one Product under this Agreement. For each Product, TPR must distribute the COA, if any, and comply with all other requirements of this Agreement.

3. License Grants and Limitations
   (a) License Grant Specific to Client Products
      (1) Grant. If TPR complies with the terms of this Agreement, then TPR has the following rights. For each Product, TPR may:
         (i) preinstall the Product on a Qualified Customer System;
         (ii) if TPR provides a hard disk recovery system, preinstall a back-up copy of the Product software on the Refurbished Customer System hard disk; and
         (iii) distribute and sublicense the preinstalled Product to End Users.
      (2) Requirements.
         (i) TPR must:
            (A) distribute one Program COA with each copy of a Product;
            (B) sublicense the Product only under the License Terms;
            (C) during the term of this Agreement,
               (1) have in place a policy addressing the rights of customers that do not accept the License Terms to a refund or credit upon return of the Product, either along with the entire Refurbished Customer System or otherwise,
               (2) make that policy available to customers and potential customers, either publicly or on request, and
               (3) comply with that policy, and
            (D) comply with the RRG, the OPK, and the Additional Terms in the applicable Product Schedule (if any, for the Product).
      (3) Testing. TPR may install and use copies of each Product solely to test Qualified Customer Systems. These units may only be used in non-production environments on TPR premises. No Program COAs are required for these copies.
      (4) Custom Images
         (i) General. Subject to the conditions in this Section, TPR may create a Custom Image and preinstall that Custom Image on Refurbished Customer Systems for an End User. TPR may distribute the Custom Image only directly to that End User. TPR may not distribute Custom Images on Customer Systems to distributors or retailers for resale.
         (ii) Qualifying End Users. TPR may only distribute Custom Images to an End User that is a business (including governmental or educational institutions) expected to annually order at least 25 Customer Systems with the same Custom Image. The End User must request that TPR create the Custom Image.
(iii) **Product Versions.** The Microsoft desktop operating system used in the Custom Image must be the same version, language version, and release as the COA affixed to the Customer System. If TPR preinstalls Downgrade Software, then the software may be a different version or release than the COA affixed to the Customer System. It must be the same language version, however.

(iv) **Downgrade Rights**

(A) TPR may act as an End User’s agent and exercise the “Use of Previous Version” or “Downgrade” rights on that End User’s behalf, but only to preinstall the Downgrade Software (instead of the Product) as part of the Custom Image.

(B) TPR either may use a Custom Image provided by the End User or may create the Custom Image.

(C) TPR may not market the availability of the Downgrade Software except as a right granted in the License Terms. In any marketing, the Downgrade Software must not be featured more prominently than the Product licensed under this Agreement.

(D) TPR does not owe Microsoft any additional royalty for the Downgrade Software.

(v) **OPK Rights.** OPK rights depend on the software included on the Custom Image.

(A) **Downgrade Software.** If the Custom Image includes Downgrade Software, then TPR may use the OPKs for the Downgrade Software and the Product, and any related tools, to create and preinstall that Custom Image.

(B) **Other Custom Images.** For all Custom Images that do not include Downgrade Software, TPR may use the OPK for the Product included in the Custom Image, and any related tools, to create and preinstall the Custom Image.

(vi) **Hardware Requirements.** All hardware requirements for each Product identified on a COA affixed to the Customer System apply to that Customer System. This applies even if the Customer System includes Downgrade Software.

(vii) **Recovery Solutions.** TPR may provide a recovery solution for the Product software only. For Custom Images that include Downgrade Software, TPR may choose not to provide a recovery solution. If a recovery solution is provided for those Custom Images, it must include the Product software and not the Downgrade Software and must be the same language as the Downgrade Software. For all other Custom Images, the recovery solution must include the same version, edition and language version of the Product as are included in the Custom Image.

(viii) **Indemnity.** TPR will indemnify and defend [Refurbisher] and Microsoft from and against any damages, claims, costs, judgments (or settlements to which TPR consents), and expenses (including reasonable attorneys’ fees) arising from any unlicensed software products on the Custom Image (including all Microsoft software products, unless TPR has taken commercially reasonable steps to verify that the End User has a valid license for those products). Any amount due to [Refurbisher] or Microsoft under this Section will be reduced by the amount of any Default Charges already paid by TPR for the unlicensed software products on the Custom Image(s). The indemnity in this Section will survive termination or expiration of this Agreement.

(ix) **Other Obligations.** This Section does not relieve TPR of its royalty obligations for any Product included in the Custom Image or for Product that allows for the use of Downgrade Software. TPR may not continue to distribute a Custom Image after release of a required Supplement for the Product included in that Custom Image, except as provided in sections 3(8)(v) (Required Supplements) and 3(8)(vi) (Option to Not License) of this Agreement.

(x) **End User’s Creation of a Custom Image.**

(A) To enable an End User to create a Custom Image for preinstallation by TPR, TPR may provide one copy of the Product to the End User. TPR must preinstall the copy on a hard drive (“Hard Drive Image”).

(B) TPR may distribute the Hard Drive Image to the End User either with or without the Customer System. The End User may customize the Hard Drive Image as needed to create the Custom Image, as long as the End User does not modify the Product. Once the End User completes the Custom Image, the End User must return to TPR the customized Hard Drive Image. TPR must notify the End User that the Hard Drive Image may only be used for testing, evaluating and creating the Custom Image. TPR must permanently affix a Program COA on the hard drive or Customer System.

(b) **License Grant Limitations.** The following license limitations apply to all Products.
(1) Recovery Solutions

   (i) **With Refurbished Customer System.** TPR may distribute in each Refurbished Customer System package a recovery solution as a recovery image on the Refurbished Customer System hard disk. If an End User requests not to receive a recovery solution, then TPR is not required to provide one.

   (ii) **No Recovery Media.** Recovery media is not available for this program. Microsoft does offer End User recovery solutions at: https://www.microsoft.com/en-us/software-download/windows10

   (iii) **Product Version and Supplements.** The Product included in the recovery solution must be the same version and language version as the preinstalled Product. Such Product must include any required Supplements.

   (iv) **No Marketing.** TPR will not market the availability of any replacement recovery media previously available for this program.

(2) OPKs and ADKs

   (i) **Use.** TPR may use the OPK (if any) for the Product and related tools only to test (pursuant to the license grants above) and to preinstall the Product. In addition to the limited purpose described in the license terms which accompany the ADK, TPR may use the ADK for the purpose of preinstalling the Product. TPR must preinstall the Product as provided in the OPK. TPR may not make any changes to the Product unless expressly permitted in the OPK. TPR may not use the OPK as a general operating system product or as a substitute for an operating system product. TPR may request an OPK for a Product by requesting the Product version via the email form provided on OPC. Microsoft may modify the ADK from time to time. In the event of any conflict between the ADK license terms and this Agreement, the terms of this Agreement shall control.

   (ii) **Certain Files.** If the TPR is including a Recovery Solution they must include, on the hard disk drive of each Refurbished Customer System, the back-up disk images and all directories and files specified in the OPK for each Product on the Refurbished Customer System.

   (iii) **Extended Use.** After TPR’s rights to distribute the Product end, TPR may retain one copy of the OPK and related tools for that Product. TPR may use that OPK and tools only to support End Users of Refurbished Customer Systems that included that Product originally distributed by TPR. TPR may only use the OPK for the version of the Product that includes all required Supplements issued by Microsoft for that Product.

   (iv) **Hardware Requirements.** The OPK may set forth additional hardware requirements for certain Products. TPR must comply with all Product-specific hardware requirements.

(3) Program COAs

   (i) **Placement of Program COA.** TPR must permanently affix the Program COA to the Refurbished Customer System. The Program COA must be visible on the exterior of the Refurbished Customer System.

   (ii) **Previously affixed COA.** TPR must remove the previously affixed COA for the operating system installed prior to being Refurbished. COA must be destroyed in compliance with this Agreement.

(4) End User Notices

   (i) **Notices from TPR to End Users.** Where this Agreement requires TPR to provide a notice to End Users, TPR may provide that notice in writing or via email. TPR must provide the notice in the same language as the language version of the Product on the Refurbished Customer System. All notices must be provided in the installed languages.

   (ii) **Notices from End User to TPR.** Where this Agreement requires TPR to receive notice, a request, or confirmation from an End User, the notice or request may be in writing, via email or via an electronic communication that identifies the sender. The End User must affirmatively make the request or confirmation; that is, the End User must “opt-in” to the selection rather than confirming it as a default choice. TPR must retain records of each notice, request or confirmation provided under this section.

(5) Channel Partners.

   (i) TPR may distribute finished-goods Customer Systems indirectly through Channel Partners, provided, however, that TPR is responsible for ensuring that (i) Customer Systems comply with all applicable terms and conditions of the Agreement when shipped to a Channel Partner, and (ii) Channel Partners are aware of and are obligated to comply with any additional terms and conditions in this Agreement and any ATs related to distribution of Customer Systems.

   (ii) TPR must reasonably monitor each Channel Partner’s performance and compliance with these obligations, and is responsible for investigating a Channel Partner’s suspected breach of these terms. If a Channel Partner breaches any applicable terms of the Agreement:
A. TPR must immediately notify [Refurbisher], and TPR must, within ten (10) days of becoming aware of the breach (unless the Channel Partner has cured that breach within that time):

(i) stop distributing Product and/or COAs (with a Customer System or otherwise) to that Channel Partner; and

(ii) retrieve remaining Customer Systems from that Channel Partner.

B. TPR is responsible for paying a Default Charge for all Unauthorized Dispositions made by its Channel Partners.

C. TPR must give [Refurbisher] and/or Microsoft reasonable assistance if either party chooses to investigate a Channel Partner’s suspected breach of these terms. TPR must stop any distribution of Customer Systems to Channel Partners immediately upon notice by [Refurbisher] or Microsoft if either party reasonably determines that the Channel Partner is unlikely to cure its breach.

(6) Not a Stand-Alone Product. Unless otherwise authorized in this Agreement, TPR will not advertise, give a separate price for, or otherwise market or distribute the Product, OPK, or any portion thereof, as separate items from the Refurbished Customer System. However, TPR may compensate End Users for Product returned to TPR under the License Terms.

(7) Ordering COAs. TPR may acquire Program COAs only from [Refurbisher]. TPR may obtain the ADK directly from Microsoft at: https://developer.microsoft.com/en-us/windows/hardware/windows-assessment-deployment-kit

(8) Supplements

(i) Supplements. Microsoft may modify the OPK from time to time by Supplement Letter. Microsoft may provide Supplements for the Products licensed under this Agreement. Additional terms, if any, will be in the Supplement Letter. Microsoft will provide those terms with the Supplement. By distributing a Supplement, TPR agrees to the additional terms.

(ii) Supplement Letters. Microsoft will provide Supplement Letters electronically or physically, at Microsoft discretion, with each OPK provided.

(iv) Types of Supplements. Microsoft may designate some Supplements as optional and some as required. Microsoft will use commercially reasonable efforts to minimize the number of required Supplements.

(v) Required Supplements

(A) Implementation. TPR must distribute the Product as supplemented by the required Supplement on all Refurbished Customer Systems that are:

(1) refurbished after, or

(2) characterized as work in-process and not distributable on,

the 90th day after Microsoft ships (or makes available via download) the required Supplement.

However, if Microsoft ships the OPK for a required Supplement between September 1 and October 31, TPR must begin shipping Products as supplemented by the required Supplement no later than February 1 of the following year.

(vi) Option to Not License. If Microsoft makes a required Supplement available to TPR, TPR may elect not to license the required Supplement. TPR must notify Microsoft within 60 days after Microsoft shipped the required Supplement. If TPR provides this notice, TPR’s rights to distribute the Product supplemented by the required Supplement will end on the 90th day after Microsoft ships (or makes available via download) the required Supplement.

(9) Changes to the RRG

(i) Microsoft will not change the RRG, unless the change is related to a new Product (excluding Supplements).

(ii) If there is any inconsistency between the RRG and this Agreement, this Agreement will control.

(10) IP Notices. TPR must not remove or obscure any copyright, trademark or patent notices that appear on the Product as delivered to TPR.

(11) Licensed not Sold. All use of the OPK, and use and distribution of Products, is by license only. Microsoft does not authorize the redistribution of the OPK and it is not subject to the “first sale” or similar doctrine under copyright law.
(12) **Reservation of Rights.** Microsoft reserves all other rights not expressly granted in this Agreement. Except as expressly allowed in this Agreement or OPK, TPR agrees not to

(i) modify or translate the OPK or the Product; or
(ii) distribute, sublicense, lease, rent, loan or otherwise transfer the OPK or the Products to any third party.

TPR acknowledges that Microsoft retains all copyright, patent, moral, trademark, title and other proprietary and intellectual property in the Product and OPKs.

(13) **Excluded License**

(i) “Excluded License” means any license that requires as a condition of use, modification or distribution of software subject to such license, that such software or other software combined and/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.

(ii) License rights to any Product (or any Microsoft or Microsoft Affiliate intellectual property associated therewith) do not include any license, right, power or authority to subject the Product software or derivative works in whole or in part to any of the terms of an Excluded License.

(iii) Subject to this Agreement, TPR may distribute the Products with:

(A) any software that is not subject to an Excluded License;
(B) software that is subject to an Excluded License, if distributed in a manner that does not subject, or purport to subject, the Products (or any Microsoft or Microsoft Affiliate intellectual property related to the Products) to the terms of an Excluded License.

(14) **No Reverse Engineering.** TPR must not reverse engineer, decompile, or disassemble the Product or OPK software, except and only to the extent applicable law expressly permits the activity.

(15) **TPR Restrictions**

(i) Unless expressly provided for in a separate Agreement or except as expressly authorized in this Agreement,

(A) TPR must not distribute or transfer any software media (e.g., disks, CDs, DVDs or Blu-ray Disc), other Microsoft software products, end user license agreements, Program COA, product manuals or other Microsoft components or documentation relating to any Microsoft product or service; or
(B) TPR must not install, distribute or otherwise transfer any Microsoft software product other than the Product(s) licensed under this Agreement.

(ii) TPR may not receive or be entitled to receive any royalties in connection with the limited authorization granted to it by Microsoft to install and distribute the Product(s) licensed under this Agreement.

(16) **Microsoft Logos.** TPR may use the Microsoft Authorized Refurbisher logo if the [Refurbisher] has a fully executed logo license from MSCORP and standard guidelines are posted at http://www.microsoft.com/en-us/legal/IntellectualProperty/Trademarks/Usage/Logo.aspx.

(17) **Product Support.** TPR is not required to provide Product Support to End Users. However, End User may obtain fee based and no-charge software support from MSCORP. End Users may contact MSCORP at http://support.microsoft.com for this support.

(18) **Scope of Distribution.** TPR is not licensed to distribute Products to the People’s Republic of China (excluding the Special Administrative Regions of Hong Kong and Macau) (“PRC”).

(c) **TPR Obligations**

(1) TPR must erase all existing data, applications and operating systems on the Qualified Customer Systems prior to installing the Product, and must reformat the hard drive in accordance with the Guidelines for Media Sanitization published in the National Institute of Standards and Technology Special Publication 800-88 or similar standard;

(2) TPR must submit all Program COA media and documentation obtained from original licensee for destruction as described below. TPR must prepare for destruction all media and existing Program COAs in connection with Qualified Customer Systems separating the existing Program COAs, CD/DVD/Edge-to-Edge media and documentation. TPR may either send all existing Program COAs, media and documentation to [Refurbisher] for
destruction every two weeks, or it may destroy all media and documentation every two weeks, subject to the requirements in this section. If TPR opts to send all existing Program COAs, media and documentation to [Refurbisher] for destruction, then TPR will provide to [Refurbisher] a detailed list of the number of CDs/DVDs/Edge-to-Edge media and manuals contained in such shipments. If TPR opts to destroy all existing Program COAs, media and documentation itself, then it must ensure that the existing Program COAs, media and documentation are completely destroyed and it must submit evidence to an Refurbisher or an auditor regarding TPR’s process of destruction and records listing the specific media and documentation destroyed by it in a given period of time.

(3) TPR must send any and all Program COAs provided under this Agreement, and which remain in inventory, to [Refurbisher] within 10 calendar days following the termination of this Agreement.

(4) TPR must Take all steps to prevent Unauthorized Disposition, duplication or pirating of the Product and the OPK and immediately report known or suspected instances of software piracy to [Refurbisher];

(5) Comply with the security requirements contained in RRG; and

(6) Comply with the reporting requirements provided of this Agreement.

5. Required Records, Reporting and Verifying Compliance

(a) Records. TPR must keep complete and accurate records relating to its performance under this Agreement (“Relevant Records”) for a period of 2 years following expiration or termination of this Agreement. Those records include complete financial statements and all documents related to acquisition, reproduction, installation, distribution, and other disposition of each unit of Product (including Program COAs) and each Refurbished Customer System (including manufacturing processes and systems related to the management of Program COAs).

(b) Reports.

(i) Sales Reports. TPR must submit a sales report of all Refurbished Customer Systems to [Refurbisher] on a monthly basis substantially in the form in the RRG or as otherwise specified by [Refurbisher] or Microsoft. In order to continue to order the Product from [Refurbisher], TPR’s sales reports must be up-to-date. TPR shall comply with all related national data protection laws when submitting its sales reports.

(ii) COA Reports. TPR must submit on a monthly basis a report that indicates how many Refurbished Customer Systems shipped by TPR during the previous month period had a pre-affixed Program COA and how many Refurbished Customer Systems did not have a pre-affixed COA (“Program Report”). TPR shall also include the following information in the Program Report for each Refurbished Customer System that did not have a pre-affixed COA:

- TPI or TPR Name
- Date Product was Installed (mm/dd/yyyy)
- Product Installed (Windows 10 Pro or Windows 10 Home)
- Device Type
- Device Serial Number
- Brand of Refurbished Customer System
- Model of Refurbished Customer System
- Type of Processor
- Recipient Destination Country
- Original COA Serial Number
- MAR COA Serial Number
- Recipient Name
- Recipient City
- Recipient State
- Recipient Type
- Office Version Installed

(c) Inventory Management and Inventory Reconciliation Report. TPR must:

(1) Maintain a level of security sufficient to prevent loss or Unauthorized Disposition of the Product (including Program COAs).

(2) Keep separate the Product program materials that TPR acquires under this Agreement from all other Microsoft products that TPR acquires.

(3) Keep books and records for all hardware and software that TPR acquires under this Agreement separate from books and records for all other Microsoft inventory that TPR acquires.
(4) Keep separate accounts for the Product that TPR acquires under this Agreement from accounts for all other Microsoft product(s) that TPR acquires.

(5) Make reasonable efforts to account for and reconcile the Product in inventory and in transit on a monthly basis. The reconciliation should account for beginning and ending Program COAs acquisitions from [Refurbisher], Program COAs distribution on Refurbished Customer Systems and Program COAs destruction (scrapped). TPR will make this reconciliation available to [Refurbisher] or Microsoft upon request or subsequent to an audit performed under this Agreement.

(6) Report any unaccounted Program COAs in the applicable period during which the absence of units is identified.
   (i) The inventory report will identify the total number of unaccounted Program COAs units identified. TPR will report net inventory amounts of the unaccounted Program COAs units.
   (ii) TPR will report unaccounted Program COAs by Product name with the appropriate royalty amount during the month these units are identified.

(7) Manage all Program COAs in accordance with the COA procedures set forth below.
   (i) TPR must maintain accurate and complete shipping records of Program COAs distributed by or for the TPR.
   (ii) For Program COAs received from [Refurbisher] on account of a [Refurbisher] error (e.g., defective, quantity does not match shipment record, or the Product does not match [Refurbisher] shipment documentation) or TPR error (e.g., wrong Product ordered or wrong quantity of Product ordered) or for Program COAs ordered but not received, TPR must:
      (A) alert [Refurbisher] to the discrepancy; and
      (B) upon issuance of a return material authorization (“RMA”) by [Refurbisher], promptly return to [Refurbisher] the Program COAs received in error.

(d) Lost or Unaccounted Program COAs. In the event TPR loses or fails to account for Program COAs in its possession, then TPR is liable to [Refurbisher] and/or Microsoft for such lost or unaccounted Program COAs, as liquidated damages at the Default Charge identified for the Product in the applicable Product Schedule for each lost or unaccounted Program COA for Product.

(e) Compliance Audits
   (1) Premises Audit. During the term of this Agreement and for two years thereafter, Microsoft may have TPR premises audited to verify compliance with the Agreement. TPR must make the premises available for audit 14 days after Microsoft written request. This audit includes the Relevant Records that are normally kept at that site.
   (2) Records Audit. In addition, Microsoft may have TPR records for multiple sites audited to verify compliance with the Agreement. TPR must make the records available at one location. The records audit will begin no less than 45 days after notice.

(f) Audit Terms. Microsoft will choose an independent and internationally recognized third party that is either a certified public accountant, chartered accountant, or otherwise qualified professional to perform the audit. TPR agrees to give the audit team access to all the TPR’s Relevant Records, employees and premises with the following limits:
   (1) Access is limited to
      • those areas and systems related to the installation of Products and storage and management of Program COAs,
      • the Relevant Records, and
      • employees with relevant knowledge of TPR’s performance under this Agreement.
   (2) TPR personnel may escort the auditors on TPR’s premises.
   (3) The audit will take place during the TPR’s regular business hours.
   (4) The auditors will not unreasonably interfere with the TPR’s normal course of business.

(g) Return of Materials. Upon termination or expiration of this Agreement, TPR must stop distributing Products. TPR must return all OPKs and remaining Program COAs acquired under the Agreement. TPR must return these materials as directed by Microsoft and at TPR’s expense. TPR must return the materials within 10 days after the end of the Agreement.

6. Governmental Regulations
(a) **Applicable Laws and Regulations.** The Products and their OPKs are subject to U.S. and other countries’ export laws. TPR must comply with all applicable international and national laws, including the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, and end-user, end use and destination restrictions by U.S. and other governments. For additional information, see [http://www.microsoft.com/exporting/](http://www.microsoft.com/exporting/).

(b) **Distribution to Iran.**

1. TPR must comply with the International Traffic in Arms Regulations, regulations of the U.S. Treasury Department’s Office of Foreign Assets Control (“OFAC”), and any other End User, end use and destination restrictions by U.S. and other governments. TPR agrees that it will not transfer the devices, Products, their OPKs or any other Microsoft services to be supplied under this Agreement contrary to such U.S. and other laws.

2. TPR specifically agrees that it will not transfer the devices, Products, their OPKs, or any other Microsoft services to any of the following, or to any person with knowledge that the devices, Products, or any other Microsoft services are intended for any of the following:
   (i) the Government of Iran, or any agency, entity or persons acting on behalf of, or owned or controlled by, the Government of Iran;
   (ii) anyone on the OFAC lists of Specially Designated Nationals and Blocked Persons, or on the U.S. Commerce Department’s Denied Persons List, Entity List or on the U.S. State Department’s Nonproliferation List (see Commerce Lists to Check);
   (iii) any country or government subject to OFAC regulations, including Sudan, Syria, or Cuba and their governments; or
   (iv) for use with chemical or biological weapons, sensitive nuclear end-uses, or missiles to deliver them.

(c) **Government Approvals.** TPR must comply with all applicable domestic and international laws and regulations that apply to its distribution of the Product. TPR must obtain any required government approvals, at their own expense.

(d) **Compliance.** TPR must obtain any required local government approvals, at their own expense. TPR 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 TPR distributes Refurbished Customer Systems.

(e) **Environmental Law Requirements.** Wherever TPR distributes Customer Systems, TPR must, if applicable, comply with the laws about recovering, treating, reusing, recycling, and disposing of media, and packaging. This includes registration, reporting, and financial requirements. TPR agrees that, where applicable, TPR is the producer and importer of the Product under the Package Directive (94/62/EC as amended) and REACH Regulation (EC 1907/2006 as amended) or under the laws of other countries or jurisdictions that have legislation similar to the Packaging Laws and EU REACH Regulation and/or waste diversion legislation.


8. **Microsoft is a Third-party Beneficiary.** Microsoft Corporation (and its affiliates) is an intended third-party beneficiary of this Agreement, will full rights to enforce its terms and conditions.

9. **Notice to Stop Production RRG**

(a) **Notice from a Refurbisher Party.** The TPR Party must promptly stop TPR production and distribution upon notice from a Refurbisher Party. Refurbisher must give MS notice when it requires a TPR to stop production and distribution. The notice to MS must include a copy of the TPR notice. Refurbisher Party may allow the TPR to resume production and distribution if MS and Refurbisher mutually agree that the TPR fully complies with these terms.

(b) **Notice from MS.** MS may give Refurbisher notice to stop TPR only in cases where MS has information that a TPR does not comply with these terms. Refurbisher must ensure that the TPR stop 30 days after notice (if the defaults have not been cured within that period). Refurbisher must ensure that the TPR stop immediately if the TPR has received two or more previous notices to stop production and distribution (whether or not the previous defaults have been cured). Reproduction and distribution may resume if MS and Refurbisher mutually agree.

10. **TPR Subsidiaries.** Refurbisher may grant to TPR the right to sublicense to TPR Subsidiaries if:

(a) TPR has entered into a written Agreement with the TPR Subsidiary that has terms that are no less protective of MS and MSCORP than the terms of this schedule. In that Agreement
(1) TPR Subsidiary must appoint TPR to act as its agent with full authority to amend, renew, replace or otherwise alter the TPR Sublicense or any successor Agreements; and

(2) TPR Subsidiary is bound by and agrees to comply with all terms and conditions of the TPR Sublicense and any successor Agreements.

(b) TPR agrees that any sublicense does not discharge TPR or change TPR’s duties and liabilities under the TPR Sublicense; and

(c) TPR irrevocably and unconditionally guarantees each TPR Subsidiary’s performance under the TPR Sublicense.

11. **Guarantee.** Refurbisher guarantees the performance of each TPR under its TPR Sublicense. Such guarantee is unconditional and irrevocable. Refurbisher must defend, at Refurbisher’s expense, MS and its suppliers in a lawsuit or other judicial action, and pay to MS the amount of any adverse final judgment (or settlement that Refurbisher consents to) from the lawsuit or judicial action in connection with a breach of this schedule or any TPR Sublicense by Refurbisher, or a TPR.

12. **Termination.** If this Agreement terminates, or the applicable Microsoft Authorized Refurbisher Program License Agreement between Refurbisher and MS terminates or expires, then Refurbisher must terminate all TPR Sublicenses (including TPR Sublicenses between Refurbisher Subsidiaries and their TPRs). Sections 11 and 12 of this Agreement survive termination of this Agreement.