

Terms and Conditions of the FY14 Q3 Microsoft APAC Open Opportunity Registration Program (the “Program”)

IMPORTANT: PLEASE READ THESE TERMS AND CONDITIONS (“AGREEMENT”) BEFORE PARTICIPATING IN THE PROGRAM. THIS IS A LEGALLY BINDING AGREEMENT BETWEEN YOU AND MICROSOFT ESTABLISHING THE TERMS AND CONDITIONS UNDER WHICH YOU ARE ENTITLED TO PARTICIPATE IN THE PROGRAM. BY PARTICIPATING IN THE PROGRAM, YOU (“RESELLER”) ARE DEEMED TO HAVE READ AND UNDERSTOOD, AND AGREED TO ABIDE BY, THESE TERMS AND CONDITIONS.

SECTION 1 Purpose

This Agreement sets out the terms and conditions under which Reseller may receive discounts on Eligible Transactions to Customers during the Program Period if the Opportunity has been registered.

This Agreement consists of:

- (1) The terms and conditions below (these “Terms and Conditions”);
- (2) Appendix A – Channel Code of Conduct; and
- (3) Appendix B - Program Supplements.

SECTION 2 Definitions

- (a) “Affiliate” means, in relation to Microsoft, any legal entity that Microsoft owns, that owns Microsoft, or that is under its common ownership. “Ownership” means, for purposes of this definition, more than 50% direct or indirect shareholding, and “control” means direct or indirect control of the management of the board of directors.
- (b) “Eligible Transaction” shall be as described in the relevant Program Supplement.
- (c) “Microsoft” means the Microsoft contracting entity determined by the country where Reseller and the Customer are located as follows:
 - For Australia, Bangladesh, Brunei, Indonesia, Singapore, Sri Lanka, Malaysia, New Zealand, the Philippines, Thailand, Vietnam - Microsoft Regional Sales Corporation
 - For the Republic of Korea - Microsoft Korea, Inc.
- (d) “Opportunity” means a potential Eligible Transaction that has not previously been identified by Microsoft or any of its Affiliates and entered into Microsoft’s Global Sales internal customer relationship management application used to manage sales activities (GSX).
- (e) “Program Web Site” means www.mspowerup.com.
- (f) “Program Period” means **1 January 2014 to 24 January 2014** (both dates inclusive).
- (g) “Territory” means: **Vietnam, Laos, Cambodia & Myanmar**

SECTION 3 Reseller Eligibility.

In order for Reseller to be eligible to participate in the Program, Reseller must be a registered member of the Microsoft Partner Network for the duration of the Program Period.

SECTION 4 Opportunity Registration

- (a) Registration. Reseller must register the Opportunity at the Program Web Site. Each registration shall be valid for 45 days, after which it will automatically expire. Once the registration for the Opportunity has expired, Reseller cannot re-register the Opportunity for 90 days from the date of expiry. An Opportunity registered before the Program Period and expiring during the Program Period shall be deemed registered.
- (b) Validation. Microsoft or its agent will validate the Opportunity using the information in its internal sales tools. If the Opportunity is validated, Microsoft or its agent will send Reseller an email confirming the registration of the Opportunity (the “Confirmation Email”) together with a validation code. Microsoft reserves the right, in its discretion, to reject an Opportunity for registration. Microsoft shall have no liability

for any delay in validating any Opportunity submitted for registration or for rejecting an Opportunity for registration.

(c) Rules.

- (1) Reseller may register more than 1 Opportunity with the same customer as long as the Opportunities are different, i.e. they relate to different license types and/or products.
- (2) Reseller may not register more than **75 Opportunities** at any point in time. Once an order is submitted in respect of an Opportunity, that Opportunity will not be counted towards the number of Opportunities registered.
- (3) For the same Opportunity in respect of a non-public sector or non-open tender deal, Microsoft will only validate the Opportunities registered by the first 3 Resellers. With respect to public sector or open tender opportunities, there is no restriction on the number of Resellers who can register for the related Opportunity.

SECTION 5 Discount Entitlement and Claim Procedure

(a) In order to receive the discount in respect of an Eligible Transaction:

- (1) Reseller must have registered the Opportunity in respect of the Eligible Transaction;
- (2) Reseller must have submitted an order in respect of the Opportunity to a Microsoft Authorized Distributor together with a copy of the Confirmation Email and the validation code. The list of Microsoft Authorized Distributors is published at the Program Web Site; and
- (3) Microsoft must receive the order together with all supporting documentation from the Microsoft Authorized Distributor by the earlier of (i) the date falling 45 days after the date of registration of that Opportunity as indicated in the Confirmation Email, or (ii) the last day of the Program Period.

SECTION 6 Taxes

It is solely Reseller's responsibility to report and pay all applicable taxes or duties that may be required under any appropriate laws related to the discount it receives. Reseller must consult its own tax advisor with any question or concern about the taxes that apply to it in relation to this Agreement. Microsoft and its Affiliates will not be liable for any taxes, including income taxes, withholdings and GST (if applicable) or their equivalent, in connection with any discounts Reseller receives pursuant to this Agreement.

SECTION 7 Conflicts of interest

Reseller will not be entitled to receive a discount in respect of transactions (1) with a customer to which it owes an agency or fiduciary duty, be it contractual or legal in nature, and/or (2) with which Reseller could find itself in a conflict of interest, unless in any instance the discount is not prohibited by applicable law and Reseller informs the applicable customer in writing before Reseller provides any advice and the customer provides its written consent indicating that it does in the form of a certification by the customer's procurement officer that it does not object to Reseller receiving the discount. In such circumstance, in order to qualify for the discount, Reseller must first provide Microsoft a copy of such customer notice and written consent document, and must certify in writing that it has complied with the obligations identified in this Section 7. If Reseller does not comply, Reseller materially breaches this Agreement and Reseller must refund to its distributor any discount already received by it as of the date of the material breach. Microsoft also retains all other legal and equitable remedies.

SECTION 8 Other terms

- (a) Compliance.** In order to be eligible for a discount under the Program, Reseller must at all times comply with all of its obligations under the Agreement, including the Channel Code of Conduct in Appendix A.
- (b) No returns.** Product licenses sold in relation to the Program are not returnable or exchangeable.
- (c) Pricing.** Reseller is at all times free to set and determine the price at which it sells Microsoft products.

- (d) Other promotions. Transactions in respect of which a discount is provided under the Program are not eligible for any other discounts or rebates. Likewise, any product purchased under any other Microsoft discount program shall not be eligible for any discount under the Program.
- (e) Sales to end customers only. Reseller will resell Microsoft product licenses to end users and not to resellers of any kind and only in the Territory.
- (f) No direct purchase rights. This Agreement does not grant any right to Reseller to purchase any products directly from Microsoft.
- (g) Voluntary participation. Participation in the Program is entirely voluntary.
- (h) Non-exclusivity. This Agreement is non-exclusive, and Reseller is free to license, use, recommend or support non-Microsoft software, hardware or services.
- (i) No use of unlicensed software. Reseller declares and warrants to Microsoft that, in participating in the Program, Reseller shall not use any unauthorized or unlicensed software. If Reseller is found doing so, it shall be disqualified from the Program.
- (j) Microsoft's IP rights not affected. Nothing in the Program shall affect any intellectual property rights in any product or service which may be the subject matter of the program.
- (k) Program disputes. In the event of any dispute arising from in relation to the Program (e.g. the validity of an Opportunity for registration, etc.) or this Agreement, the decision of Microsoft shall be final and binding on all parties. No correspondence will be entertained.

SECTION 8 Audit

Reseller must keep proper records and books pertaining to its activities under this Agreement. Microsoft or its designated agent may, during the term of this Agreement and for a period of one year after its expiry, carry out random audits of such records and books to verify Reseller's compliance with this Agreement.

SECTION 9 Term and termination

This Agreement is effective as of **1 January 2014** and, unless terminated, will expire on **31 March 2014**. Microsoft may terminate this Agreement without cause by giving Reseller at least 30 days' written notice. Microsoft will be entitled to terminate this Agreement immediately if Reseller breaches its obligations under this Agreement. Microsoft will not be liable for any costs or damages resulting from the termination of this Agreement as provided above. Sections 2 (Definitions), Section 8 (Audit), this Section 9 (Term and termination), Section 10 (Confidentiality), Section 11 (Exclusion of Liability), Section 12 (Indemnity) and Section 13 (Miscellaneous) will survive expiration or termination of this Agreement.

SECTION 10 Confidentiality

Reseller shall keep all information relating to this Agreement confidential for a period of 3 years.

SECTION 11 Exclusion of liability

To the maximum extent permitted by applicable law, in no event shall Microsoft or any of its Affiliates be liable for any damages or losses whatsoever (including, but not limited to, damages for loss of profits, for business interruption, for loss of privacy, for failure to meet any duty including of good faith or of reasonable care, for negligence and for any other pecuniary or other loss whatsoever) arising out of or in any way related to Reseller's participation in the Program, even if Microsoft has been advised of such damages, and even in the event of fault, tort (including negligence) or strict or product liability or misrepresentation.

SECTION 12 Indemnity

To the maximum extent permitted by law, Reseller undertakes to indemnify and keep Microsoft and its Affiliates, related, subsidiaries, directors, officers, employees and agents harmless and indemnified against any loss, damage, claims, costs and expenses which may be incurred or suffered by any or each of them due to Reseller's breach of this Agreement and/or arising from its participation in the Program.

SECTION 13 Miscellaneous

- (a) **Relationship.** The parties are independent contractors. This Agreement does not create an employer-employee relationship, partnership, joint venture, or agency relationship and does not create a franchise. Neither Reseller nor any of its representatives may make any representation, warranty or promise on Microsoft's behalf.
- (b) **Notices.** Notices may be given either by electronic or physical mail or, in the case of changes to the Program or these Terms and Conditions by Microsoft, by publishing them at the Program Web Site.
- (c) **Applicable law and jurisdiction/dispute resolution.**
- (1) If Reseller's principal place of business is in Australia, Bangladesh, Brunei, Indonesia, Malaysia, New Zealand, the Philippines, Singapore, Sri Lanka, Thailand and Vietnam, this Agreement is construed and controlled by the laws of Singapore.
- (i) If Reseller's principal place of business is in Australia, Brunei, Malaysia, New Zealand or Singapore, Reseller consents to the non-exclusive jurisdiction of the Singapore courts.
- (ii) If Reseller's principal place of business is in Bangladesh, Indonesia, the Philippines, Sri Lanka, Thailand or Vietnam, any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, will be referred to and finally resolved by arbitration in Singapore under the Arbitration Rules of the Singapore International Arbitration Centre ("SIAC"), which rules are deemed to be incorporated by reference into this section. The arbitral tribunal will consist of one arbitrator to be appointed by the Chairman of SIAC. The language of the arbitration will be English. The decision of the arbitrator will be final, binding and incontestable and may be used as a basis for judgment on it in Bangladesh, Indonesia, the Philippines, Sri Lanka, Thailand or Vietnam (as appropriate), or elsewhere.
- (2) If Reseller's principal place of business is in the Republic of Korea, this Agreement is construed and controlled by the laws of Republic of Korea. Reseller consents to the exclusive original jurisdiction and venue in the Seoul Central District Court.
- (d) **Attorneys' fees.** If either Microsoft or Reseller employs attorneys to enforce any rights arising out of or relating to this Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees, costs and other expenses, including the costs and fees incurred on appeal or in a bankruptcy or similar action.
- (e) **Compliance with laws.** Reseller will comply with all applicable laws including local anti-corruption laws and the U.S. Foreign Corrupt Practices Act ("*Anti-Corruption Laws*"). Microsoft can hire a third-party auditor if it has a good faith reason to believe Reseller or its representatives are in breach of the Anti-Corruption Laws. The third-party auditor will (1) investigate the suspected breaches ("*Anti-Corruption Audit*"), and (2) report its Anti-Corruption Audit findings solely to Microsoft. Reseller will fully participate and assist in any Anti-Corruption Audit. Reseller will make all books, records and employees promptly available to assist the third-party auditor. Microsoft may terminate this Agreement if Reseller fails to comply with this provision. Microsoft will not be liable for damages resulting from that termination.
- (f) **Errors.** Microsoft is not responsible for printing or typographical errors in any Program-related materials or for registrations that are incomplete, lost or misdirected, fail to enter into the processing system, or are processed, reported, or transmitted late or incorrectly or are lost for any reason including electronic, computer, telephone, paper transfer, mail system, human or other error; including inability to access the Program Web Site or any other web site associated with the Program. Reseller's proof of online registration shall not constitute proof of receipt by Microsoft or its agents. If any information provided by or on behalf of Reseller is found to be misleading or inaccurate, that registration shall be deemed invalid.
- (g) **Privacy.** The information submitted by Reseller when participating in the Program may include phone number(s), email address, ID number and other personal information ("*Personal Information*") of Reseller's employee(s). Except as may be provided elsewhere in this Agreement, Microsoft will only use Personal Information in accordance with applicable data protection laws and regulations and Microsoft's privacy policy referred to below, for the purposes of administering Reseller's participation in the Program. For more details on Microsoft's privacy policy, please see: <http://privacy.microsoft.com/en-us/default.aspx>.

- (h) Assignment. This Agreement is binding on Reseller in the Territory. Reseller is not entitled to assign this Agreement. Microsoft may assign this Agreement to an Affiliate. If Microsoft assigns this Agreement, it will notify Reseller in writing.
- (i) Waiver. A party's delay or failure to exercise any right or remedy will not result in a waiver of that or any other right or remedy.
- (j) Severability. If any court of competent jurisdiction determines that any provision of this Agreement is illegal, invalid or unenforceable, the remaining provisions will remain in full force and effect.
- (k) Integration and modification.
- (1) Entire Agreement. This Agreement (including the Appendices) forms the entire agreement between the parties regarding the Program. It replaces all prior agreements, communications and representations between the parties regarding the Program.
- (2) Amendment. To the maximum extent permitted by applicable law, Microsoft may change, extend or discontinue the Program or any portion of the Program or modify these Terms and Conditions at any time by notice posted at the Program Web Site, without liability towards Reseller or anyone. A change to a Program includes, but is not limited to, any change to the amount of the discount. In addition to these Terms and Conditions, other specific terms may be imposed by Microsoft at any time to deal with any unforeseen situation. Reseller is advised to check the Program Web Site regularly for any changes. In the case of changes to the Program, acceptance by Reseller of any discount or compliance with the Program requirements will constitute acceptance of the relevant changed Program requirements.
- (l) Third party beneficiaries. Certain sections of this Agreement are for the benefit of Microsoft's Affiliates. As a result, Microsoft and Microsoft's Affiliates are entitled to enforce this Agreement. Except for Microsoft's Affiliates, this Agreement does not create any enforceable rights by anyone other than Reseller and Microsoft. Any representation or agreement made by Microsoft's Affiliates that would change the terms of this Agreement must be in writing and signed by Microsoft's authorized representative.

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Appendix A: Channel Code of Conduct

Reseller affirms that unauthorized copying of copyrighted computer software violates the law and is contrary to both its standards of conduct and industry standards. Reseller disapproves of such unlawful copying as contrary to the collective interests of software developers, manufacturers, and sellers.

Accordingly, Reseller will apply these principles to its business:

- It will not commit or tolerate the making or using of unauthorized software copies under any circumstances.
- It will provide legally acquired software to meet all legitimate software needs in a timely fashion and in sufficient quantities for all its computers.
- It will comply with all license or purchase terms regulating the use of any software it acquires or uses.
- It will enforce strong internal controls to prevent making or using of unauthorized software copies. This includes taking effective measures to verify compliance with these standards and appropriate disciplinary actions.
- It will neither commit nor tolerate the manufacture, use or distribution of unlicensed software under any circumstances.
- It will only supply original, licensed software to its customers.
- It will comply with all terms regulating the supply of software.
- It will endeavour to ensure that its customers only use the original, licensed software.

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FY14 Q3 MICROSOFT APAC OPEN OPPORTUNITY REGISTRATION PROGRAM (THE “PROGRAM”)

APPENDIX B: PROGRAM SUPPLEMENT (GENERAL)

IMPORTANT: THIS IS A SUPPLEMENT TO THE TERMS AND CONDITIONS OF THE PROGRAM. THIS IS A LEGALLY BINDING AGREEMENT BETWEEN YOU AND MICROSOFT IN RELATION TO YOUR PARTICIPATION IN THE PROGRAM. BY PARTICIPATING IN THE PROGRAM, YOU (“RESELLER”) ARE DEEMED TO HAVE READ AND UNDERSTOOD, AND AGREED TO ABIDE BY, THIS SUPPLEMENT AND ALSO THE TERMS AND CONDITIONS OF THE PROGRAM.

SECTION 1. SCOPE.

This Supplement applies to Resellers whose principal place of business is the **Vietnam, Laos, Cambodia & Myanmar**

SECTION 2. SUPPLEMENTAL TERMS

(1) All terms used but not defined will have the same meanings as provided in the Terms and Conditions of the Program. For the purposes of this Supplement:

(a) **“Customer”** means all customers in the Territory, including Small Medium Business and Corporate Accounts customers.

(b) **“Eligible Products”** means licenses in respect of any of the following Microsoft software products:

- Windows Server + CALs
- SQL Server + CALs
- Exchange Server + CALs
- System Center Server Managed Licenses + Client Managed Licenses
- Office
- Office 365 (except M and ProPlus), Exchange Online
- Visual Studio
- Visio, Project

(c) **“Eligible License Type”** means any of the following:

- i. Open License (‘Open L’)
- ii. Open License and Software Assurance (‘Open L&SA’)
- iii. Open Value (‘OV’)
- iv. Open Value Subscription (‘OVS’)

(d) **“Eligible Transactions”**: with deal size of a minimum value of 1500USD and a maximum value of 100,000USD of all Microsoft products including eligible products and eligible license types

(2) Upon registration of an Opportunity for an Eligible Transaction, Reseller will be eligible to receive the following discounts from its Distributor:

	Discount
Eligible Transactions on Windows Server & CALs	15%
Eligible Transactions on Office	15%

For the avoidance of doubt, the discounts above are independent to each other and also cumulative.

(3) In the event of any conflict or inconsistency between any terms of this Supplement and the terms and conditions, the terms of this Supplement shall prevail.