January 7, 2019

DeKalb County, GA
3630 Camp Road
Decatur, GA 30032
ATTN: Michelle Vernon

Re: Agreement for Consulting Services

Dear Ms. Vernon:

The purpose of this Letter Agreement ("Agreement") is to describe the scope of the services Microsoft Corporation ("we," "us," or "our") will provide to the **DeKalb County, GA** ("you") in connection with your **Implementation for Active Directory ("DIAD"), Active Directory Migration Service ("ADMS"), Assistance for Office 365 Onboarding, and Privileged Access Workstation Projects**.   It is our intent that this agreement, including Attachments, be in compliance with applicable laws and regulations with respect to the laws of the State of Georgia. It is specifically understood that all services and service deliverables provided under this agreement are for the sole benefit and use of **DeKalb County, GA** and are not provided to or for the benefit of any individual government employee.

We will provide the services described in the Statements of Work found at Attachment A and B, (each a "SOW.") We may, in our sole discretion, reduce the scope of work and alter the period of performance provided under this agreement. The Terms and Conditions in Attachment C are part of this agreement and apply to the services and service deliverables provided under this Agreement.

If the terms of this Agreement are acceptable to you, please sign in the space provided below and return to me.

Sincerely,

David T. Gallagher
Director of Contracts

ACCEPTED AND AGREED:

DeKalb County, GA

By:_____

Title:_____

Date:_____

1. Services

We will assist you in the performance of the services outlined in the attached Statements of Work entitled, "**Design and Implementation for Active Directory ("DIAD"), Assistance for Office 365 Onboarding, Privileged Access Workstation** and the ADMS description outlined in Attachment B. Any dates provided are estimates only. Most of the services will be performed at the place of performance identified on the cover page or at such other facility as you specify in writing. Some services may be performed off-site at our facilities. All off-site services will be coordinated with your project leader for the services. Because we are performing the services under your direction, based on an estimated period of performance and fees, we do not warrant that any services deliverables will be completed or be satisfactory to you within the estimated period or fees.

2. Fees.

You will pay the following hourly rates and any reasonable out of pocket travel and living expenses (if any) for the individuals assigned on a Time and Material basis. We reserve the right to utilize whichever labor categories in whatever quantities we determine, in our sole discretion, are appropriate to perform the services. Any total fee and labor hours stated are estimates only. As such, you will only pay for those hours consumed and fees presented. The fees do not include fees for products. Unless otherwise specified in the invoice, you will pay us within thirty (30) calendar days of the date of our invoice.

DIAD

Labor Category/Activity	Units	Description	Rate	Proposed Cost
DAID				
Associate Technician	0	Hours	$ 110.00	$0
Technician	0	Hours	$ 140.00	$0
Technician I	0	Hours	$ 165.00	$0
Technician II	0	Hours	$ 195.00	$0
Technician III	0	Hours	$ 220.00	$0
Technician IV	0	Hours	$ 250.00	$0
Technician V	0	Hours	$ 265.00	$0
MCS Associate Consultant	0	Hours	$ 226.00	$0
MCS Consultant	**452**	**Hours**	**$ 259.00**	**$117,068**
MCS Senior Consultant	0	Hours	$ 288.00	$0
MCS Principal Consultant	0	Hours	$ 301.00	$0
MCS Project Manager	**40**	**Hours**	**$ 276.00**	**$11,040**
MCS Senior Project Manager	0	Hours	$ 288.00	$0
MCS Account Delivery Executiv	**50**	**Hours**	**$ 276.00**	**$13,800**
MCS Solution Architectural Consultant	**91**	**Hours**	**$ 314.00**	**$28,574**
MCS Digital Architectural Consultant	0	Hours	$ 314.00	$0
	633	**TOTAL HOURS**		$170,482
Proposed Travel Cost				$20,457.84
Estimated Total				**$190,939.84**

ADMS

The following represents the fee schedule for the Active Directory Migration Service. All fees are fixed and listed in US dollars.

Unit	Fee (Per Unit)	Estimated Units	Totals
Users to be Migrated Between Active Directories	$10.00	**6,200**	**$62,000.00**
Connected Directories to Consolidate	$10,000.00	**5**	**$50,000.00**
Application Databases to Remediate	$10,000.00	**7**	**$70,000.00**
Expected Months of Consumption	$30,000.00	**7**	**$210,000.00**
-	-	**-**	**$392,000.00**

Consumption fees are payable, according to the following consumption schedule, upon acceptance of this Work Order.

You will be invoiced based upon the following schedule.

Timing	Invoice Amount
Monthly	$30,000[1] (monthly service and support) plus actual migration units in a monthly period

- A monthly service and support fee is charged on a monthly basis and is not prorated for partial months.
- A monthly invoice will be sent and will include monthly service and support fee plus all fee eligible charges per the acceptance criteria above from the previous monthly period.
- The total invoice amount, for a given month, can be computed from the following formula:
  - The invoice amount equals $30,000[1] plus the number of migrated users times $10 plus the number of migrated directories times $10,000 plus the number of remediated application databases times $10,000.

(1) To temporarily suspend migration services, you must notify us through email. Upon receipt of your written notice, we will acknowledge the request in writing and will adjust the monthly service and support fee to $15,000 for the next full month. For avoidance of doubt, there will be no fractional or partial months billed during this suspended state. Any time spent performing active migrations in a monthly period will result in the full $30,000 monthly service and support fee. During the suspension of the service, all migration services will be deactivated. You will notify us by email when you want to reactivate the service, and we will respond through an email acknowledging the reactivation request.

Should you wish to terminate this Work Order with a minimum 30 days written notice according to the agreement, you will be obligated to pay any and all outstanding migration fees (monthly service and support plus actual migration units) accrued up to the end of the calendar month of cancellation.

On Boarding Assistance

Labor Category/Activity	Units	Description	Rate	Proposed Cost
On-Boarding Assistance				
Associate Technician	0	Hours	$ 110.00	$0
Technician	0	Hours	$ 140.00	$0
Technician I	0	Hours	$ 165.00	$0
Technician II	0	Hours	$ 195.00	$0
Technician III	0	Hours	$ 220.00	$0
Technician IV	0	Hours	$ 250.00	$0
Technician V	0	Hours	$ 265.00	$0
MCS Associate Consultant	0	Hours	$ 226.00	$0
MCS Consultant	0	Hours	$ 259.00	$0
MCS Senior Consultant	**262**	**Hours**	**$ 288.00**	**$75,456**
MCS Principal Consultant	0	Hours	$ 301.00	$0
MCS Project Manager	**76**	**Hours**	**$ 276.00**	**$20,976**
MCS Senior Project Manager	0	Hours	$ 288.00	$0
MCS Account Delivery Executive	0	Hours	$ 276.00	$0
MCS Solution Architectural Consultant	**55**	**Hours**	**$ 314.00**	**$17,270**
MCS Digital Architectural Consultant	0	Hours	$ 314.00	$0
	393	TOTAL HOURS		$113,702
Proposed Travel Cost				$13,644.24
Estimated Total				**$127,346.24**

Privileged Access Workstation

Labor Category/Activity	Units	Description	Rate	Proposed Cost
PAWS				
Associate Technician	0	Hours	$ 110.00	$0
Technician	0	Hours	$ 140.00	$0
Technician I	0	Hours	$ 165.00	$0
Technician II	0	Hours	$ 195.00	$0
Technician III	0	Hours	$ 220.00	$0
Technician IV	0	Hours	$ 250.00	$0
Technician V	0	Hours	$ 265.00	$0
MCS Associate Consultant	0	Hours	$ 226.00	$0
MCS Consultant	0	Hours	$ 259.00	$0
MCS Senior Consultant	**120**	**Hours**	**$ 288.00**	**$34,560**
MCS Principal Consultant	0	Hours	$ 301.00	$0
MCS Project Manager	**16**	**Hours**	**$ 276.00**	**$4,416**
MCS Senior Project Manager	0	Hours	$ 288.00	$0
MCS Account Delivery Executive	0	Hours	$ 276.00	$0
MCS Solution Architectural Consultant	**16**	**Hours**	**$ 314.00**	**$5,024**
MCS Digital Architectural Consultant	0	Hours	$ 314.00	$0
	152	TOTAL HOURS		$44,000
Proposed Travel Cost				$5,280
Estimated Total				**$49,280.00**

Cumulative Table

Work Stream	Total Amount
DIAD	$190,939.84
ADMS	$392,000.00
On-Boarding Assistance	$127,346.24
Privileged Access Workstation	$49,280.00
Total	**$759,566.08**

3. **Period of Performance.**

Services under this Agreement will begin on or about **February 26, 2019**. The Expiration Date of this Agreement is **September 25, 2019** or such later date as mutually agreed to in writing by the parties.

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ATTACHMENT A

"STATEMENTS OF WORK"

(See Attached SOWs entitled, **"Design and Implementation for Active Directory," "Assistance for Office 365 Onboarding," and "Privileged Access Workstation"**)

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ATTACHMENT B

"ACTIVE DIRECTORY MIGRATION SERVICE"

OVERVIEW OF AD MIGRATION SERVICE

The Active Directory Migration Service makes use of Microsoft Azure–based user migration and identity provisioning services that can be used to consolidate or separate Active Directory domains. The migration can include users and workstations from source Active Directory domains that are being migrated to target Active Directory domains.

The Active Directory Migration Service components include optional capabilities that can be turned off as necessary to meet the deployment requirements. The following components and service definitions describe the range of migration components and typical actions.

CORE COMPONENTS OF AD MIGRATION SERVICE

Component	Description
Identity Synchronization and Provisioning	The Active Directory Migration Service will be configured to support the migration of objects from source Active Directories to target Active Directories for: ▪ User objects ▪ Groups and group membership ▪ Computers (user workstations)
User Activation, Migration, and Remediation	The Azure-based self-service migration portal will be configured for user self-activation in the target Active Directory for: ▪ Pre-migrated user accounts ▪ User workstations and application databases that require remediation

AD MIGRATION SERVICE DEFINITIONS

Parameter	Definition
Source Domain or Directory	The customer-specified source directory that is to be migrated from (such as abc.com
Target Domain	The customer-specified target domain that is to be migrated to (such as abcus.corp)
Users to Migrate	The total user count that is to be migrated

Parameter	Definition
Directories	The directories that are being migrated, including source and target directories
Application Remediation Databases	Application database instances that require updates to account for the user's migrated identity
UAT	User acceptance testing ("UAT")
Pilot	The pilot is a complete functional solution that is implemented in the production environment. It is expected to have full functionality. The purpose of a pilot is to verify that the solution will perform in production as specified, and to verify that production has been completely and correctly set up. Microsoft engineering staff will configure the Active Directory Migration Service solution within Azure and will assist the customer staff as it configures on-premises services for integration with the Active Directory Migration Service solution. The first use of this production implementation will be considered the pilot. It is this implementation that the customer will use to perform the UAT. The scope of the pilot includes: • Configuration of Active Directory Migration Services. • Configuration of customer on-premises services for interfacing with Active Directory Migration Service. • Preparation of user, group, and workstation accounts to the target Active Directory. • Remediation of application databases that require updating with the new user credentials. (such as Microsoft SharePoint and Microsoft Exchange).
Migration Services	Services that facilitate the migration of users and directories (or remediation pertaining to) an application database.
Monthly Service and Support	Engineering migration setup. Migration and engineering support until migration is complete. Updates will be made to the Active Directory Migration Service when feature or processing logic that was working during solution acceptance testing has ceased to function or no longer functions as baselined in the current production release. For support, the following will apply: • A limit of eight (8) hours of daily support Monday through Friday excluding US holidays. • Up to forty (40) hours support a week.
Incident	An incident is any event that is not part of the standard operation of the Active Directory Migration Service and that causes, or can cause, an interruption to, or a reduction in the quality of that service.

MICROSOFT RESPONSIBILITIES

- Connect to the customer network.
  - Establish an Internet Protocol security ("IPSec") virtual private network ("VPN") or ExpressRoute connection.
  - Validate connectivity and service access.
- Define and document migration configuration items.
  - Lead a series of workshops to determine migration configuration options

- Perform data analysis using Active Directory data extracts
- Publish configuration workbook defining all migration configuration parameters
- Configure Azure cloud migration services.
  - Configure Active Directory object migration
  - Configure the self-service portal
  - Configure the application remediation pipeline and agents
  - Configure migration reporting services
- Pilot implementation engineering assistance.
  - Active monitoring of pilot migrations
- Active Directory Migration Service operations and incident support for production migrations.
  - Migration service operations
  - Incident support for user migrations
  All Microsoft Services work will be delivered by remote resources.

CUSTOMER RESPONSIBILITIES

- Connect to the migration service (Active Directory Migration Service).
  - Establish IPSec VPN or ExpressRoute connection to the migration service
  - Supply Active Directory accounts to facilitate the reading and writing of directory objects and attributes between the source and target domains
  - Supply computer accounts in the target Active Directory for the Active Directory Migration Service
  - Supply the necessary Groups and Group Policy Objects as required for the planned migration scenarios
- Prepare or confirm network infrastructure.
  - Fully routed IP network
  - Fully resolvable DNS namespace
  - Port and protocols implemented for Windows Services
  - Bidirectional relationship between source and target domains
- Application remediation list.
  - List of applications with Active Directory dependencies
- Manage desktop security configurations (if required).
  - Disk encryption
  - PKI certificates
- Persistent client network.
  - Full client or desktop self-service migrations require a persistent connection
- Self-service client migration.
  - End-user initiation of the Active Directory Migration Service client process
  - Communication and coordination with users during pilot and production deployment

ACCEPTANCE PROCESS AND CRITERIA

Acceptance Process

Microsoft will perform the necessary configurations to implement UAT in the pilot. We will work with your pilot coordinators to align close support during these early migrations.

- UAT Phase 1 functional testing will begin with test accounts and test workstations selected by you to demonstrate base migration operations.
- UAT Phase 2 will begin immediately after a successful UAT Phase 1, with prepilot users involving up to 5 production users per source Active Directory
- The UAT Phase 3 pilot will begin after UAT Phase 2; during thus phase, you can migrate a diverse set of pilot users to further validate the end-to-end migration process.

Service Acceptance

The Active Directory Migration Service components will be consumption-fee eligible in the month in which each of the services reaches the implementation state as defined in the following bullet points:

- **User migration**: migrated users will be prepared for use in the target Active Directory and each of the identified application databases (configured for application remediation services) has been updated with the migrated user account information.
- **Directory migration**: objects from the *source* Active Directory(s) are created or joined to existing objects in the *Target* Active Directory(s) and can include Users, Groups, Group Members, and Workstations.
- **Application database**: application remediation services are deployed, and user identity updates are confirmed successful for a user migration.

ATTACHMENT C

"TERMS AND CONDITIONS"

1.   *Definitions.* In this agreement, a "party" or "parties" means you and/or us as the context requires. "**You**" means the entity that has entered into this agreement and may also refer, as the context requires, to your affiliates who enter into a statement of services under this agreement.   "**We,**" "**us,**" or "**our**" means, the Microsoft entity that has entered into this agreement and may also refer, as the context requires, to our affiliates. In addition, the following definitions apply:

"**affiliate**" means (i) with regard to you, any government agency, department, office, instrumentality, division, unit or other entity of your state or local government that is supervised by or is part of you, or which supervises you or of which you are a part, or which is under common supervision with you; together with, as mandated by law, any county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality located within your state's jurisdiction and geographic boundaries; provided that a state and its affiliates shall not, for purposes of this definition, be considered to be affiliates of the federal government and its affiliates; and (ii) with regard to us, any legal entity that we own, which owns us, or which is under common ownership with us.

"**Ownership**" means more than 50% ownership.

 "**contractor(s)**" means any third-party supplier or other provider of computer technology or related services;

"**developments**" means any computer code or materials (other than products, fixes or pre-existing work) developed by us or in collaboration with you which is provided to you in the course of performance of a statement of services;

"**fixes**" means product fixes, modifications or enhancements or their derivatives that we either release generally, (such as commercial product service packs) or that we provide to you when performing services (such as workarounds, patches, bug fixes, beta fixes and beta builds);

 "**joint ownership**" means each party has the right to independently exercise any and all rights of ownership now known or here after created or recognized, including without limitation the rights to use, reproduce, modify and distribute the developments for any purpose, without the need for further authorization to exercise any such rights or any obligation of accounting or payment of royalties;

"**open source license terms**" means license terms that require computer code to be generally (i) disclosed in source code form to third parties; (ii) licensed to third parties for the purpose of making derivative works; or (iii) redistributable to third parties at no charge;

"**pre-existing work**" means computer code or materials (other than products and fixes) developed or otherwise obtained independently of the efforts of a party under a statement of services;

 "**product**" means any computer code, web-based services, or materials comprising commercially released, pre-release or beta products (whether licensed for a fee or no charge) and any derivatives of the foregoing we make available to you for license which is published by us, our affiliates, or a third party;

"**service deliverables**" means any computer code or materials, other than products or fixes, that we leave with you at the conclusion of our performance of services;

"**services**" means all support, consulting and other services or advice, including any resulting deliverables provided to you under the terms and conditions of this agreement;

"**statement of services**" means the Scope of Work specified in Attachment A, including any amendment thereto.

2.   *Services.* See Attachments A and B.

3.   *Ownership and license of service deliverables.*

   a.   **Products and fixes**. All products, related solutions and fixes provided under a statement of services will be licensed according to the terms of the license agreement packaged with or otherwise applicable to such product. You are responsible for paying any licensing fees associated with products.

   b.   **Pre-existing work**. All pre-existing work will remain the sole property of the party providing the pre-existing work. During the performance of services, each party grants to the other (and our contractors as necessary) a temporary, non-exclusive license to use, reproduce and modify any of its pre-existing work provided to the other party solely for the performance of such services.

   Except as may be otherwise explicitly agreed to in a statement of services, upon payment in full, we grant you a non-exclusive, perpetual, fully paid-up license to use, reproduce and modify (if applicable) our pre-existing work in the form delivered to you as part of the service deliverables only for your internal business operations.

   The perpetual license to our pre-existing work that we leave to you at the conclusion of our performance of the services is conditioned upon your compliance with the terms of this agreement and the applicable statement of services.

   c.   **Developments.** Except as may be otherwise explicitly agreed to in a statement of services, upon payment in full we grant you joint ownership in the developments. You agree to exercise your rights for your internal business operations only and you will not resell or distribute the developments to any third party. Each party shall be the sole owner of any modifications that it makes based upon the developments.

   d.   **Affiliates rights and sublicensing to affiliates.** Except as may be otherwise explicitly agreed to in a statement of services, you may sublicense the rights to the service deliverables granted hereunder to your affiliates, but you or your affiliates may not further sublicense these rights.

   Any sublicensing of the service deliverables to your affiliates, if permitted, must be consistent with the license terms in this agreement or in any statement of services.

   e.   **Open source license restrictions.** Because certain third party software is subject to open source license terms, the license rights that each party has granted to any computer code (or any intellectual property associated therewith) do not include any license, right, power or authority to incorporate, modify, combine and/or distribute that computer code with any other computer code in a manner which would subject the other's computer code to open source license terms. Furthermore, each party warrants that it will not provide or give to the other party computer code that is governed by open source license terms.

   f.   **Reservation of Rights.** All rights not expressly granted in this section are reserved.

4.   **Restrictions on use.** You may not:

   a)   Rent, lease, lend, host or otherwise distribute service deliverables or fixes, except as otherwise provided in a statement of services; or

   b)   Reverse engineer, de-compile, or disassemble fixes or service deliverables, except to the extent expressly permitted by applicable law despite this limitation.

   Fixes and service deliverables licensed under this agreement are subject to U.S. export jurisdiction. You 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 related to Microsoft products, services,

and technologies. For additional information related to Microsoft compliance with export rules, see www.microsoft.com/exporting.

5. **Supportability.** We may add support for new products or discontinue support for existing products from time-to-time. If we discontinue support for a product, we will inform you six months in advance of the discontinuation by posting the information at http://support.microsoft.com or any successor site. If we sell a product to another company, we will give you notice of the sale and at the time of such notice will either (i) arrange for the other company to continue the support; or (ii) continue support ourselves for 90 days to give you time to make alternative arrangements.

There may be cases where your implementation of our products cannot be effectively supported. As part of providing the support services, we will notify you if we reach that conclusion. If you do not modify the implementation to make it effectively supportable within 30 calendar days after the notice, we will not be obligated to provide additional support services for that implementation, however we will continue to provide support for your other supportable implementations covered by the statement of services.

For statements of services for support, we will use commercially reasonable efforts to provide the support services for those products covered in the statement of services, provided they are validly licensed by you.

6. **Fees.** You agree to pay us (or our designees) the fees described in each statement of services. The fees do not include fees for products. Unless otherwise stated in a statement of services, (i) you agree to pay within 30 calendar days of the date of the receipt of our invoice; and (ii) we will not change our hourly rates identified in a statement of services during its term, but we may adjust our hourly rates prior to entering any new or amended statement of services. Our fees exclude any taxes, duties, tariffs, levies or other governmental charges or expenses (including, without limitation, any value added taxes), which will be billed to and paid by you. We will acknowledge that you are exempted from sales and use taxes in the State of Georgia upon receipt of your certificate of exemption. We are responsible for taxes based upon our personal property ownership and net income. We will have no obligation to continue to provide services if you fail to make timely payment.

Notwithstanding any other provision of this agreement, the parties hereto acknowledge that institutions of the State of Georgia are prohibited from pledging the credit of the State. In the event that the source of funding for the services no longer exists or is insufficient with respect to the services to be provided under this agreement, then this agreement shall terminate without further obligation by you as of that moment. Your certification of the events stated above shall be conclusive.

7. **Confidentiality.** Subject to the requirements of your public records and trade secret laws (if any):

    a. **Confidential information.** Confidential information means information marked or otherwise identified in writing by a party as proprietary or confidential or that, under the circumstances surrounding the disclosure, ought in good faith to be treated as proprietary or confidential. It includes, but is not limited to, non-public information regarding either party's products, features, marketing and promotions, and the negotiated terms of this agreement and any statement of services. *Confidential information includes all information designated as confidential or protected from disclosure by law, rule, or regulation, including but not limited to, the Health Insurance Portability and Accountability Act, the Gramm-Leach-Bliley Act, the Family Educational Rights and Privacy Act, the USA Patriot Act, the Georgia Open Records Act, the Georgia Computer Systems Protection Act,*

Payment Card Industry Data Security Standards, Trade Secrets, Criminal History Records.

Confidential information does not include information which: (i) the recipient developed independently; (ii) the recipient knew before receiving it from the other party; or (iii) is or subsequently becomes publicly available or is received from another source, in both cases other than by a breach of an obligation of confidentiality.

b.   *Use of confidential information.*   For a period of five years after initial disclosure, neither party will use the other's confidential information without the other's written consent except in furtherance of this business relationship or as expressly permitted by this agreement or disclose the other's confidential information except (i) to obtain advice from legal or financial consultants, or (ii) if compelled by law, in which case the party compelled to make the disclosure will use its best efforts to give the other party notice of the requirement so that the disclosure can be contested.

Each party will take reasonable precautions to safeguard the other's confidential information. Such precautions will be at least as great as those each party takes to protect its own confidential information. Each party will disclose the other's confidential information to its employees, consultants or contractors only on a need-to-know basis, provided that such employees, consultants or contractors are subject to confidentiality obligations no less restrictive than those contained herein. When confidential information is no longer necessary to perform any obligation under any statement of services, each of us will return it to the other party or destroy it at the other's request.

Either party may provide suggestions, comments or other feedback to the other with respect to the other's products and services. Feedback is voluntary and the party receiving feedback may use it for any purpose without obligation of any kind except that the party receiving feedback will not disclose the source of feedback without the consent of the party providing it.

c.   *Cooperation in the event of disclosure*. Each party will immediately notify the other upon discovery of any unauthorized use or disclosure of the other party's confidential information and will cooperate in any reasonable way to help the other regain possession of the confidential information and prevent further unauthorized use or disclosure.

d.   *Knowledge base.*   We may use any technical information we derive from providing services related to our products for problem resolution, troubleshooting, product functionality enhancements and fixes, for our knowledge base. We agree not to identify you or disclose any of your confidential information in any item in the knowledge base.

8.   *Warranties.*

a. Services.   We warrant that all services will be performed with professional care and skill.

b. *No other warranties.*   TO THE EXTENT PERMITTED BY APPLICABLE LAW, WE DISCLAIM AND EXCLUDE ALL REPRESENTATIONS, WARRANTIES, AND CONDITIONS WHETHER EXPRESS, IMPLIED OR STATUTORY OTHER THAN THOSE IDENTIFIED EXPRESSLY IN THIS AGREEMENT (INCLUDING ANY STATEMENT OF SERVICES THAT INCORPORATES THESE TERMS), INCLUDING BUT NOT LIMITED TO WARRANTIES OR CONDITIONS OF TITLE, NON-INFRINGEMENT, SATISFACTORY QUALITY, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE PRODUCTS, FIXES, SERVICE DELIVERABLES, RELATED MATERIALS AND SERVICES. WE WILL NOT BE LIABLE FOR ANY SERVICE(S) OR PRODUCT(S) PROVIDED BY THIRD PARTY VENDORS, DEVELOPERS OR

CONSULTANTS IDENTIFIED OR REFERRED TO YOU BY US UNLESS SUCH THIRD-PARTY PRODUCTS OR SERVICES ARE PROVIDED UNDER OUR WRITTEN AGREEMENT BETWEEN YOU AND US, AND THEN ONLY TO THE EXTENT EXPRESSLY PROVIDED IN THIS AGREEMENT.

9. *Defense of infringement and misappropriation claim.* We will defend you against any claims made by an unaffiliated third party that any service deliverable infringes its patent, copyright, or trademark or misappropriates its trade secret, and will pay the amount of any resulting adverse final judgment (or settlement to which we consent).

You must notify us promptly in writing of the claim and allow us to participate fully in its defense or settlement. You agree to provide us with all available information, assistance, and authority in defending the claim, and we will reimburse you for reasonable out of pocket expenses that you incur in providing that assistance. We shall not be liable for any award or judgment against you reached by compromise or settlement unless we accept the compromise or settlement. We shall have the right to enter into negotiations for and the right to effect compromise or settlement of any such action, but no such settlement shall be binding on you or the State of Georgia unless accepted by you. The terms "misappropriation" and "trade secret" are used as defined in the Uniform Trade Secrets Act and the Georgia Trade Secrets Act.

Our obligations will not apply to the extent that any claim or adverse final judgment is based on (i) computer code or materials (e.g. specifications) you provide; (ii) your use of a fix or service deliverables after we notify you to discontinue use due to such a claim; (iii) your combining a fix or service deliverables with a non-Microsoft product, data or business process; (iv) damages attributable to the value of the use of a non-Microsoft product, data or business process; (v) an alteration of fixes or service deliverables by someone other than us or our contractors; (vi) your distribution of the fix or services deliverables to, or its use for the benefit of, any third party other than permitted by an applicable statement of services; (vii) your use of our trademark(s) without express written consent to do so; or (viii) any trade secret claim that is a result of your acquiring a trade secret (a) through improper means; (b) under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (c) from a person (other than us or our affiliates) who owed to the party asserting the claim a duty to maintain the secrecy or limit the use of the trade secret. *You will be responsible to the extent provided by Georgia law for any costs or damages that result from these actions.*

If we receive information concerning an infringement claim related to a fix or service deliverables, we may, at our expense and without obligation to do so, either (i) procure for you the right to continue to use the allegedly infringing fix or service deliverables as permitted by the applicable statement of services; or (ii) modify the fix or service deliverables or replace it with a non-infringing functional equivalent, to make it non-infringing, in which case you will stop using the allegedly infringing fix or service deliverables immediately. If as a result of an infringement claim, your use of a fix or service deliverables is enjoined by a court of competent jurisdiction, we will, at our option, either i) procure the right to continue its use; ii) modify it to make it non-infringing; iii) replace it with a non-infringing functional equivalent; or iv) refund the amount paid for the infringing fix or service deliverables and terminate the license for (or as applicable, your ownership rights in) the infringing fix or service deliverable.

If any other type of third party claim is brought against you regarding our intellectual property, you must notify us promptly in writing. We may, at our option, choose to treat these claims as being covered by this Section 9. This Section 9 provides your exclusive remedy for third party infringement and trade secret misappropriation claims.

10. **_Limitations of liability._**

    a. **_Limitation on Direct Damages._** There may be situations in which you have a right to claim damages or payment from us. Except as otherwise specifically provided in this paragraph, whatever the legal basis for your claims, our total liability (and that of our contractors) will be limited, to the maximum extent permitted by applicable law, to direct damages up to the amount you have paid under the applicable statement of services for the services giving rise to the claims. In the event services or any service deliverables are provided to you on a gratuitous or no-charge basis, our total liability to you will not exceed US$5000. The limitations contained in this paragraph will not apply with respect to the following:

    (i) our obligations under Section 9;

    (ii) our liability for damages for gross negligence or willful misconduct, to the extent caused by us or our contractors and awarded by a court of final adjudication;

    (iii) our obligations under Section 7;

    (iv) damages for bodily injury, personal injury, property damage, or any other claim which may be subject to the Georgia Tort Claims Act, O.C.G.A. § 50-21-20 et seq., to the extent caused by us or our agent and awarded by a court of final adjudication; and

    (v) the provisions of this paragraph shall not operate or be construed to expose you to liability in excess of any liability limit applicable to the State of Georgia pursuant to federal or state law, rule, or regulation.

    b. **_NO LIABILITY FOR CERTAIN DAMAGES._** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY NOR THEIR AFFILIATES, SUPPLIERS OR CONTRACTORS WILL BE LIABLE FOR ANY INDIRECT DAMAGES (INCLUDING WITHOUT LIMITATION, CONSEQUENTIAL, SPECIAL, OR INCIDENTAL DAMAGES, DAMAGES FOR LOSS OF PROFITS OR REVENUES, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION), ARISING IN CONNECTION WITH THIS AGREEMENT, ANY STATEMENT OF SERVICES, SERVICES, SERVICE DELIVERABLES, FIXES, PRODUCTS, OR ANY OTHER MATERIALS OR INFORMATION, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH POSSIBILITY WAS REASONABLY FORESEEABLE. THIS EXCLUSION OF LIABILITY DOES NOT APPLY TO EITHER PARTY'S LIABILITY TO THE OTHER FOR VIOLATION OF ITS CONFIDENTIALITY OBLIGATION, REDISTRIBUTION OR OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS.

    c. **_Application._** Except as specified expressly in this Section 10, the limitations on and exclusions of liability for damages in this agreement apply regardless of whether the liability is based on breach of contract, tort (including negligence), strict liability, breach of warranties, or any other legal theory.

11. **_Term and termination._** This agreement will remain in effect until terminated. The parties signing the cover page of this agreement may terminate it at any time by giving the other party at least 60 calendar days prior written notice.

Either party may terminate this agreement if the other party is (i) in material breach or default of any obligation that is not cured within 30 calendar days' notice of such breach or (ii) fails to pay any invoice that is more than 60 calendar days outstanding. You agree to pay all fees for services performed and expenses incurred prior to termination and any additional amounts that may be specified in a statement of services.

12.   ***Notices.***   All notices, authorizations, and requests given or made in connection with this agreement must be sent by post, express courier, facsimile or email to the addresses indicated on the cover page of this agreement or on an applicable statement of services, if different. Notices will be deemed delivered on the date shown on the postal return receipt or on the courier, or facsimile or email confirmation of delivery.

13.   ***Insurance.***   We will procure and maintain the following insurance coverage, at all times when performing services on your premises under this agreement, via either commercial insurance, self-insurance, a combination of the two or any other similar risk financing alternative:

a)   Commercial General Liability covering bodily injury and tangible property damage liability with a limit of not less than U.S. $2,000,000 each occurrence;

b)   Workers' Compensation (or maintenance of a legally permitted and governmentally-approved program of self-insurance) covering Microsoft employees pursuant to applicable state workers' compensation laws for work-related injuries suffered by our employees;

c)   Employer's Liability with limits of not less than U.S. $1,000,000 per accident;

d)   Professional Liability/Errors & Omissions Liability covering damages arising out of negligent acts, errors, or omissions committed by us or our employees in the performance of services, with a limit of liability of not less than U.S. $2,000,000 per claim; and

e)   Automobile Liability (if vehicles are brought on your premises or used in the performance of the services) with $2,000,000 combined single limit per occurrence, for bodily injury and property damage combined covering owned, non-owned and hired vehicles.

We will provide you with evidence of coverage on request.

14.   ***Miscellaneous.***

a.   ***Assignment and right to subcontract.***   Neither party may assign this agreement or any statement of services without the written consent of the other. We may use contractors to perform services and we will be responsible for their performance subject to the terms of this agreement.

b.   ***Independent contractor.***   We provide our services as an independent contractor, and will be responsible for any and all social security, unemployment, workers' compensation and other withholding taxes for all of our employees. You and we are free to develop products independently without the use of the other's confidential information. Neither you nor we are obligated to restrict the future work assignments of people who have had access to confidential information. In addition, you, we and these people are free to use the information that these people remember related to information technology, including ideas, concepts, know-how or techniques, so long as confidential information of the other party is not disclosed in violation of this agreement in the course of such use. This use shall not grant either party any rights under the other's copyrights or patents and does not require payment of royalties or separate license.

c.   ***Applicable law; dispute resolution.***   This agreement together with the applicable statement of services will be governed by the laws of your state, without giving effect to its conflict of law provisions. Disputes relating to this agreement will be subject to applicable mandatory dispute resolution statutes and regulations of your state.

d.   ***Entire agreement.***   This agreement and the statements of services constitute the parties' entire agreement concerning the subject matter hereof, and supersede any other prior and contemporaneous communications. The terms of these documents will control in the following order: (i) this agreement; and (ii) any statement of services.   Any terms and conditions maintained by you or your affiliates or contained in any purchase order, other

than those mandatory terms required by law, will not apply. The parties signing the cover page of this agreement may amend this agreement only in writing when signed by both parties. The parties signing a statement of services may amend the statement of services only in writing when signed by both parties.

e. ***Survival.***   The sections regarding ownership and license, restrictions on use, fees, confidentiality, no other warranties, defense of infringement and misappropriation claims, limitations of liability, term and termination, notices, and miscellaneous of this agreement will survive any termination or expiration of this agreement or any statement of services. Additionally, as provided in Section 11 above, if this agreement is terminated all its terms shall survive termination for purposes of any remaining statement of services in existence at the time this agreement is terminated.

f. ***Severability.*** If a court holds any provision of this agreement or a statement of services to be illegal, invalid or unenforceable, the remaining provisions will remain in full force and effect and the parties will amend the agreement or statement of services to give effect to the stricken clause to the maximum extent possible.

g. ***Waiver.*** No waiver of any breach of this agreement or statement of services will be a waiver of any other breach, and no waiver will be effective unless made in writing and signed by an authorized representative of the waiving party.

h. ***Force majeure.*** To the extent that either party's performance is prevented or delayed, either totally or in part, for reasons beyond that party's control, then that party will not be liable, so long as it resumes performance as soon as practicable after the reason preventing or delaying performance no longer exists.

i. ***Counterparts.*** This agreement and any statements of services may be executed in any number of counterparts, each of which will be an original, and such counterparts together will constitute one and the same instrument. Execution may be effected by delivery of facsimiles of signature pages (and the parties will follow such delivery by prompt delivery of originals of such pages).

j. ***Cost or pricing data.*** We will not, under any circumstances, accept any statement of services that would require the submission of cost or pricing data.

k. ***Non-exclusivity.*** This agreement (including any statement of services incorporating these terms) is non-exclusive. Nothing contained in it requires you to license, use or promote Microsoft software or services exclusively. You may, if you choose, enter into agreements with other parties to license, use or promote non-Microsoft software or services.