



U.S. Department of Justice

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Southern District of New York
One St. Andrew's Plaza
New York, New York 10007*

*Criminal Division
Fraud Section
1400 New York Avenue, NW
Washington, D.C. 20005*

July 22, 2019

Kathryn H. Ruemmler
Jonathan C. Su
Latham & Watkins LLP
555 Eleventh Street, NW
Suite 1000
Washington, D.C. 20004

Darryl S. Lew
Courtney Hague Andrews
White & Case LLP
701 Thirteenth Street, NW
Washington, D.C. 20005

Re: Microsoft Magyarország Számítástechnikai Szolgáltató és Kereskedelmi Kft.

Criminal Investigation

Dear Ms. Ruemmler and Mr. Lew:

The United States Department of Justice, Criminal Division, Fraud Section and the United States Attorney's Office for the Southern District of New York (the "Fraud Section and the Office"), and Microsoft Magyarország Számítástechnikai Szolgáltató és Kereskedelmi Kft. ("MS Hungary"), pursuant to the statutory authority of the MS Hungary General Manager reflected in Attachment B, enter into this Non-Prosecution Agreement ("Agreement"). On the understandings specified below, the Fraud Section and the Office will not criminally prosecute MS Hungary for any crimes (except for criminal tax violations, as to which the Fraud Section and the Office do not make any agreement) relating to any of the conduct described in the Statement of Facts attached hereto as Attachment A ("Statement of Facts"). To the extent there is conduct disclosed by MS Hungary or Microsoft Corporation ("Microsoft") that does not relate to any of the conduct described in the Statement of Facts, such conduct will not be exempt from prosecution and is not within the scope of, or relevant to, this Agreement. MS Hungary, pursuant to the statutory authority of the MS Hungary General Manager, and Microsoft, pursuant to authority granted to it by Microsoft's Board of Directors, also agree to certain terms and obligations of the Agreement as described below.

The Fraud Section and the Office enter into this Agreement based on the individual facts and circumstances presented by this case and MS Hungary, including:

(a) MS Hungary did not receive voluntary disclosure credit because it did not voluntarily and timely disclose to the Fraud Section and the Office the conduct described in the Statement of Facts;

(b) MS Hungary received full credit for its cooperation with the Fraud Section and the Office's investigation, including conducting a thorough internal investigation, making regular factual presentations to the Fraud Section and the Office, producing documents to the Fraud Section and the Office from foreign countries in ways that did not implicate foreign data privacy laws, and collecting, analyzing, organizing, and translating voluminous evidence and information for the Fraud Section and the Office;

(c) MS Hungary and Microsoft provided to the Fraud Section and the Office all relevant facts known to them, including information about the individuals involved in the conduct described in the Statement of Facts and conduct disclosed to the Fraud Section and the Office prior to the Agreement;

(d) MS Hungary and Microsoft engaged in extensive remedial measures, including: (1) taking disciplinary action against four MS Hungary employees; (2) terminating four Hungarian licensing partners; (3) enacting new discount transparency and pass-through requirements; (4) conducting a company-wide initiative to elicit reports of potential anticorruption concerns; (5) conducting training about business conduct standards based in part on the conduct described in the Statement of Facts; (6) implementing new controls for high-risk deals; (7) implementing new controls to prevent third-party intermediaries from placing licensing orders with MS Hungary before receiving end customer purchase orders; (8) creating an expanded transaction monitoring initiative at the regional level; and (9) developing and using data analytics to help identify high-risk transactions;

(e) MS Hungary and Microsoft have enhanced and are committed to continuing to enhance their compliance programs and internal controls to ensure that their compliance programs satisfy the minimum elements set forth in the Corporate Compliance Program attached hereto as Attachment C;

(f) based on MS Hungary's and Microsoft's remediation and the state of their compliance programs, and MS Hungary's and Microsoft's agreement to report to the Fraud Section and the Office as set forth in Attachment D to this Agreement, the Fraud Section and the Office determined that an independent compliance monitor was unnecessary as part of this resolution;

(g) the nature and seriousness of the offense conduct, including the involvement of a high-level executive at MS Hungary and the extensiveness of the scheme to inflate margins that were used to make improper payments under the Foreign Corrupt Practices Act ("FCPA"), Title 15, United States Code, Section 78dd-1 *et seq.*, and the fact that Microsoft did not exercise meaningful oversight during the relevant time period to ensure that discounts that Microsoft approved were passed on to MS Hungary's end customers instead of being used to facilitate the corrupt scheme described in the Statement of Facts. Although this failure of oversight at Microsoft did not amount to a criminal violation by the parent company, it was a discretionary factor that the Fraud Section and the Office considered in entering into a criminal resolution with MS Hungary;

(h) MS Hungary has no prior criminal history;

(i) MS Hungary and Microsoft have agreed to continue to cooperate with the Fraud Section and the Office in any ongoing investigation of the conduct of MS Hungary and Microsoft, their subsidiaries and affiliates, and their officers, directors, employees, agents, business partners, distributors, and consultants relating to violations of the FCPA;

(j) MS Hungary has agreed to disgorge \$13,780,733 in profits and \$2,784,417.92 in prejudgment interest to the Securities and Exchange Commission ("SEC") in connection with the SEC's parallel investigation of overlapping conduct; and

(k) accordingly, after considering (a) through (j) above, the Fraud Section and the Office believe that an appropriate resolution of this case is a non-prosecution agreement for MS Hungary and an aggregate discount of 25% off of the bottom of the applicable United States Sentencing Guidelines ("U.S.S.G." or "Guidelines") fine range;

MS Hungary admits, accepts, and acknowledges that it is responsible under United States law for the acts of its officers, directors, employees, and agents as set forth in the Statement of Facts, and that the facts described therein are true and accurate. MS Hungary also admits, accepts, and acknowledges that the facts described in the Statement of Facts constitute violations of law, specifically the FCPA. MS Hungary and Microsoft expressly agree that they shall not, through present or future attorneys, officers, directors, employees, agents or any other person authorized to speak for MS Hungary or Microsoft make any public statement, in litigation or otherwise, contradicting the acceptance of responsibility by MS Hungary set forth above or the facts described in the Statement of Facts. MS Hungary and Microsoft agree that if they or any of their direct or indirect subsidiaries or affiliates issues a press release or holds any press conference in connection with this Agreement, MS Hungary and Microsoft shall first consult the Fraud Section and the Office to determine (a) whether the text of the release or proposed statements at the press conference are true and accurate with respect to matters between the Fraud Section and the Office and MS Hungary and Microsoft; and (b) whether the Fraud Section and the Office have any objections to the release or proposed statements.

MS Hungary's and Microsoft's obligations under this Agreement shall have a term of three years from the date on which the Agreement is executed (the "Term"). MS Hungary agrees, however, that, in the event the Fraud Section and the Office determine, in their sole discretion, that MS Hungary has knowingly violated any provision of this Agreement or MS Hungary or Microsoft has failed to perform completely or fulfill each of their obligations under this Agreement, an extension or extensions of the Term may be imposed by the Fraud Section and the Office in their sole discretion for up to a total additional time period of one year, without prejudice to the Fraud Section and the Office's right to proceed as provided in the breach provisions of this Agreement below. Any extension of the Agreement extends all terms of this Agreement, including the terms of the reporting requirement in Attachment D, for an equivalent period. Conversely, in the event the Fraud Section and the Office find, in their sole discretion, that there exists a change in circumstances sufficient to eliminate the need for the reporting requirement in Attachment D, and that the other provisions of this Agreement have been satisfied, the Agreement may be terminated early.

MS Hungary and Microsoft shall cooperate fully with the Fraud Section and the Office, subject to applicable law and regulations, in any and all matters relating to the conduct described in this Agreement and the Statement of Facts and other conduct related to possible corrupt

payments, false books and records, failure to implement adequate internal accounting controls, and circumvention of internal controls under investigation by the Fraud Section and the Office until the later of the date upon which all investigations and prosecutions arising out of such conduct are concluded, or the end of the Term. At the request of the Fraud Section and the Office, MS Hungary shall also cooperate fully with other domestic or foreign law enforcement and regulatory authorities and agencies, as well as the Multilateral Development Banks (“MDBs”), in any investigation of MS Hungary, Microsoft, their subsidiaries and affiliates, or any of their present or former officers, directors, employees, agents, and consultants, or any other party, in any and all matters relating to the conduct described in this Agreement and the Statement of Facts and other conduct related to possible corrupt payments, false books and records, failure to implement adequate internal accounting controls, and circumvention of internal controls under investigation by the Fraud Section and the Office, except as otherwise prohibited by law. MS Hungary and Microsoft agree that their cooperation shall include, but not be limited to, the following:

a. MS Hungary and Microsoft shall truthfully disclose all factual information not protected by a valid claim of attorney-client privilege or attorney work product doctrine with respect to their activities, those of their subsidiaries and affiliates, and those of their present and former directors, officers, employees, agents, and consultants, including any evidence or allegations and internal or external investigations, about which MS Hungary or Microsoft have any knowledge or about which the Fraud Section and the Office may inquire. This obligation of truthful disclosure includes, but is not limited to, the obligation of MS Hungary and Microsoft to provide to the Fraud Section and the Office, upon request, any document, record or other tangible evidence about which the Fraud Section and the Office may inquire of MS Hungary or Microsoft.

b. Upon request of the Fraud Section and the Office, MS Hungary and Microsoft shall designate knowledgeable employees, agents, or attorneys to provide to the Fraud Section and the Office the information and materials described above on behalf of MS Hungary and Microsoft. It is further understood that MS Hungary and Microsoft must at all times provide complete, truthful, and accurate information.

c. MS Hungary and Microsoft shall use their best efforts to make available for interviews or testimony, as requested by the Fraud Section and the Office, present or former officers, directors, employees, agents, and consultants of MS Hungary or Microsoft. This obligation includes, but is not limited to, sworn testimony before a federal grand jury or in federal trials, as well as interviews with domestic or foreign law enforcement and regulatory authorities. Cooperation shall include identification of witnesses who, to the knowledge of MS Hungary or Microsoft, may have material information regarding the matters under investigation.

d. With respect to any information, testimony, documents, records or other tangible evidence provided to the Fraud Section and the Office pursuant to this Agreement, MS Hungary and Microsoft consent to any and all disclosures, subject to applicable law and regulations, to other governmental authorities, including United States authorities and those of a foreign government, as well as MDBs, of such information and materials as the Fraud Section and the Office, in their sole discretion, shall deem appropriate.

In addition, during the Term, should MS Hungary or Microsoft learn of any evidence or allegation of conduct that may constitute a violation of the FCPA anti-bribery or accounting provisions had the conduct occurred within the jurisdiction of the United States, MS Hungary and

Microsoft shall promptly report such evidence or allegation to the Fraud Section and the Office. On the date that the Term expires, MS Hungary, by the General Manager of MS Hungary and the Chief Financial Officer of MS Hungary, will certify to the Fraud Section and the Office that MS Hungary has met its disclosure obligations pursuant to this Agreement regarding any reportable matters at MS Hungary. Each certification will be deemed a material statement and representation by MS Hungary to the executive branch of the United States for purposes of Title 18, United States Code, Section 1001.

MS Hungary and Microsoft represent that they have implemented and will continue to implement a compliance and ethics program designed to prevent and detect violations of the FCPA throughout their operations, including those of their affiliates, agents, and joint ventures, and those of their contractors and subcontractors whose responsibilities include interacting with foreign officials or other activities carrying a high risk of corruption, including, but not limited to, the minimum elements set forth in Attachment C. In addition, MS Hungary and Microsoft agree that they will report to the Fraud Section and the Office annually during the Term regarding remediation and implementation of the compliance measures described in Attachment C. These reports will be prepared in accordance with Attachment D.

In order to address any deficiencies in their internal accounting controls, policies, and procedures, MS Hungary and Microsoft represent that they have undertaken, and will continue to undertake in the future, in a manner consistent with all of their obligations under this Agreement, a review of their existing internal accounting controls, policies, and procedures regarding compliance with the FCPA and other applicable anti-corruption laws. Where necessary and appropriate, MS Hungary and Microsoft agree to adopt a new compliance program, or to modify their existing ones, including internal controls, compliance policies, and procedures in order to ensure that they maintain: (a) an effective system of internal accounting controls designed to ensure the making and keeping of fair and accurate books, records, and accounts; and (b) a rigorous anticorruption compliance program that incorporates relevant internal accounting controls, as well as policies and procedures designed to effectively detect and deter violations of the FCPA and other applicable anti-corruption laws. Their compliance programs, including the internal accounting controls system, will include, but not be limited to, the minimum elements set forth in Attachment C.

MS Hungary agrees to pay a monetary penalty in the amount of \$8,751,795 to the United States Treasury no later than five business days after the Agreement is fully executed. The monetary penalty is based upon profits of at least \$14,586,325 as a result of the offense conduct, and reflects a discount of 25 percent off of the bottom of the Guidelines fine range. This monetary penalty is in addition to the \$16,565,151 disgorgement of profits plus prejudgment interest paid by MS Hungary in connection with its resolution with the SEC in the SEC's parallel investigation of overlapping conduct. MS Hungary acknowledges that no tax deduction may be sought in connection with the payment of any part of this \$8,751,795 penalty. MS Hungary shall not seek or accept, directly or indirectly, reimbursement or indemnification from any source with regard to the penalty or disgorgement amounts that MS Hungary pays pursuant to this Agreement or any other agreement entered into with an enforcement authority or regulator concerning the facts set forth in the Statement of Facts, except that it may accept reimbursement from Microsoft.

The Fraud Section and the Office agree, except as provided herein, that they will not bring any criminal or civil case (except for criminal tax violations, as to which the Fraud Section and the

Office do not make any agreement) against MS Hungary relating to any of the conduct described in the Statement of Facts. To the extent there is conduct disclosed by MS Hungary or Microsoft that does not relate to any of the conduct described in the Statement of Facts, such conduct will not be exempt from prosecution and is not within the scope of, or relevant to, this Agreement. The Fraud Section and the Office, however, may use any information related to the conduct described in the Statement of Facts against MS Hungary or Microsoft: (a) in a prosecution for perjury or obstruction of justice; (b) in a prosecution for making a false statement; (c) in a prosecution or other proceeding relating to any crime of violence; or (d) in a prosecution or other proceeding relating to a violation of any provision of Title 26 of the United States Code. This Agreement does not provide any protection against prosecution for any future conduct by MS Hungary or any of its present or former parents or subsidiaries. In addition, this Agreement does not provide any protection against prosecution of any individuals, regardless of their affiliation with MS Hungary or any of its present or former parents or subsidiaries.

If, during the Term, (a) MS Hungary commits any felony under U.S. federal law; (b) MS Hungary or Microsoft provides in connection with this Agreement deliberately false, incomplete, or misleading information, including in connection with its disclosure of information about individual culpability; (c) MS Hungary or Microsoft fails to cooperate as set forth in this Agreement; (d) MS Hungary or Microsoft fails to implement a compliance program as set forth in this Agreement and Attachment C; (e) MS Hungary or Microsoft commits any acts that, had they occurred within the jurisdictional reach of the FCPA, would be a violation of the FCPA; or (f) MS Hungary or Microsoft otherwise fails to completely perform or fulfill each of MS Hungary's or Microsoft's obligations under the Agreement, regardless of whether the Fraud Section and the Office become aware of such a breach after the Term is complete, MS Hungary and Microsoft shall thereafter be subject to prosecution for any federal criminal violation of which the Fraud Section and the Office have knowledge, including, but not limited to, the conduct described in the Statement of Facts, which may be pursued by the Fraud Section and the Office in the U.S. District Court for the Southern District of New York or any other appropriate venue. Determination of whether MS Hungary or Microsoft has breached the Agreement and whether to pursue prosecution of MS Hungary or Microsoft shall be in the sole discretion of the Fraud Section and the Office. Any such prosecution may be premised on information provided by MS Hungary, Microsoft, or their personnel. Any such prosecution relating to the conduct described in the Statement of Facts or relating to conduct known to the Fraud Section and the Office prior to the date on which this Agreement was signed that is not time-barred by the applicable statute of limitations on the date of the signing of this Agreement may be commenced against MS Hungary or Microsoft, notwithstanding the expiration of the statute of limitations, between the signing of this Agreement and the expiration of the Term plus one year. Thus, by signing this Agreement, MS Hungary and Microsoft agree that the statute of limitations with respect to any such prosecution that is not time-barred on the date of the signing of this Agreement shall be tolled for the Term plus one year. In addition, MS Hungary agrees that the statute of limitations as to any violation of U.S. federal law that occurs during the Term will be tolled from the date upon which the violation occurs until the earlier of the date upon which the Fraud Section and the Office are made aware of the violation or the duration of the Term plus five years, and that this period shall be excluded from any calculation of time for purposes of the application of the statute of limitations.

In the event the Fraud Section and the Office determine that MS Hungary or Microsoft has breached this Agreement, the Fraud Section and the Office agree to provide MS Hungary and

Microsoft with written notice of such breach prior to instituting any prosecution resulting from such breach. Within thirty days of receipt of such notice, MS Hungary and Microsoft shall have the opportunity to respond to the Fraud Section and the Office in writing to explain the nature and circumstances of such breach, as well as the actions MS Hungary and Microsoft have taken to address and remediate the situation, which explanation the Fraud Section and the Office shall consider in determining whether to pursue prosecution of MS Hungary.

In the event that the Fraud Section and the Office determine that MS Hungary or Microsoft has breached this Agreement: (a) all statements made by or on behalf of MS Hungary or Microsoft to the Fraud Section and the Office or to any court, including the Statement of Facts, the reports submitted to the Fraud Section and the Office pursuant to Attachment D, and any testimony given by MS Hungary before a grand jury, a court, or any tribunal, or at any legislative hearings, whether prior or subsequent to this Agreement, and any leads derived from such statements or testimony, shall be admissible in evidence in any and all criminal proceedings brought by the Fraud Section and the Office against MS Hungary; and (b) neither MS Hungary, Microsoft, nor their subsidiaries or affiliates shall assert any claim under the United States Constitution, Rule 11(f) of the Federal Rules of Criminal Procedure, Rule 410 of the Federal Rules of Evidence, or any other federal rule that any such statements or testimony made by or on behalf of MS Hungary or Microsoft prior or subsequent to this Agreement, or any leads derived therefrom, should be suppressed or are otherwise inadmissible. The decision whether conduct or statements of any current director, officer, or employee, or any person acting on behalf of, or at the direction of, MS Hungary or Microsoft, will be imputed to MS Hungary and Microsoft for the purpose of determining whether MS Hungary or Microsoft has violated any provision of this Agreement, shall be in the sole discretion of the Fraud Section and the Office.

Except as may otherwise be agreed by the parties in connection with a particular transaction, MS Hungary agrees that in the event that, during the Term, it undertakes any change in corporate form, including if it sells, merges, or transfers business operations that are material to MS Hungary's consolidated operations, or to the operations of any subsidiaries or affiliates involved in the conduct described in the Statement of Facts, as they exist as of the date of this Agreement, whether such change is structured as a sale, asset sale, merger, transfer, or other change in corporate form, it shall include in any contract for sale, merger, transfer, or other change in corporate form a provision binding the purchaser, or any successor in interest thereto, to the obligations described in this Agreement. The purchaser or successor in interest must also agree in writing that the Fraud Section's and the Office's ability to determine there has been a breach under this Agreement is applicable in full force to that entity. MS Hungary agrees that the failure to include this Agreement's breach provisions in the transaction will make any such transaction null and void. MS Hungary shall provide notice to the Fraud Section and the Office at least thirty (30) days prior to undertaking any such sale, merger, transfer, or other change in corporate form. The Fraud Section and the Office shall notify MS Hungary prior to such transaction (or series of transactions) if it determines that the transaction(s) will have the effect of circumventing or frustrating the enforcement purposes of this Agreement. If at any time during the Term MS Hungary engages in a transaction(s) that has the effect of circumventing or frustrating the enforcement purposes of this Agreement, the Fraud Section and the Office may deem it a breach of this Agreement pursuant to the breach provisions of this Agreement. Nothing herein shall restrict MS Hungary from indemnifying (or otherwise holding harmless) the purchaser or successor in interest for penalties or other costs arising from any conduct that may have occurred prior to the date of the transaction, so long as such indemnification

does not have the effect of circumventing or frustrating the enforcement purposes of this Agreement, as determined by the Fraud Section and the Office.

This Agreement is binding on MS Hungary and Microsoft, and the Fraud Section and the Office, but specifically does not bind any other component of the Department of Justice, other federal agencies, or any state, local, or foreign law enforcement or regulatory agencies, or any other authorities, although the Fraud Section and the Office will bring the cooperation of MS Hungary and Microsoft and its compliance with its other obligations under this Agreement to the attention of such agencies and authorities if requested to do so by MS Hungary or Microsoft.

It is further understood that MS Hungary, Microsoft, and the Fraud Section and the Office may disclose this Agreement to the public.

This Agreement sets forth all the terms of the agreement between MS Hungary, Microsoft, and the Fraud Section and the Office. No amendments, modifications or additions to this Agreement shall be valid unless they are in writing and signed by the Fraud Section and the Office, the attorneys for MS Hungary and Microsoft, and a duly authorized representative of MS Hungary.

Sincerely,

ROBERT ZINK
Acting Chief, Fraud Section
Criminal Division
United States Department of Justice

Date: 7/22/19 BY: _____


Derek J. Ettinger
Della G. Sentilles
Trial Attorneys

GEOFFREY S. BERMAN
United States Attorney
Southern District of New York

Date: 7/19/19 BY: _____


Sarah Lai
Assistant United States Attorney

AGREED AND CONSENTED TO:

Microsoft Magyarország Számítástechnikai Szolgáltató és Kereskedelmi Kft.

Date: July 16, 2019 By: 
Christopher Mattheisen
General Manager
MS Hungary

Date: _____ By: _____
Kathryn H. Ruemmler
Jonathan C. Su
Latham & Watkins LLP

Date: _____ By: _____
Darryl S. Lew
Courtney Hague Andrews
White & Case LLP

Microsoft Corporation

Date: 7-18-19 By: 
Bradford L. Smith
President and Chief Legal Officer
Microsoft Corporation

Date: _____ By: _____
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Microsoft Corporation

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Jonathan C. Su
Latham & Watkins LLP

Date: 7/18/19 By: 
Darryl S. Lew
Courtney Hague Andrews
White & Case LLP

ATTACHMENT A

STATEMENT OF FACTS

The following stipulated Statement of Facts (“Statement of Facts”) is incorporated by reference as part of the Non-Prosecution Agreement (the “Agreement”) between the United States Department of Justice, Criminal Division, Fraud Section and the United States Attorney’s Office for the Southern District of New York (the “Fraud Section and the Office”), and Microsoft Magyarország Számítástechnikai Szolgáltató és Kereskedelmi Kft. (“MS Hungary”). MS Hungary hereby agrees and stipulates that the following information is true and accurate. MS Hungary admits, accepts, and acknowledges that it is responsible for the acts of its officers, directors, employees, and agents as set forth below:

Relevant Entities

At all relevant times:

1. **MS Hungary** was a direct, wholly-owned subsidiary of Microsoft Corporation with headquarters in Budapest, Hungary. MS Hungary promoted and marketed the sale of licenses for various Microsoft software and provided services related to those products. MS Hungary’s Public Sector team was responsible for the subsidiary’s public sector accounts.

2. **Microsoft Corporation** (“Microsoft”) was a multinational technology company headquartered in Redmond, Washington. Microsoft generated revenue by, among other things, developing, licensing, and supporting a wide range of software and services. Microsoft’s shares were publicly traded on the National Association of Securities Dealers Automated Quotations (“NASDAQ”) Stock Exchange. Therefore, Microsoft was an “issuer” as that term is used in the Foreign Corrupt Practices Act (“FCPA”), Title 15, United States Code, Sections 78dd-1 and 78m(b).

3. **Microsoft Ireland Operations Limited** (“MIOL”) was an indirect, wholly-owned subsidiary of Microsoft with headquarters in Dublin, Ireland. MIOL was assigned the right to license Microsoft software to customers in countries in the Europe-Middle East-Africa region, including Hungary, through a number of agreements entered into by Microsoft and various subsidiaries.

4. **Executive 1** was a high-level executive at MS Hungary.

5. **Manager 1** was a manager overseeing the Public Sector team at MS Hungary.

6. **Employee 1** was a Public Sector Account Executive at MS Hungary.

7. **Agency 1** was a Hungarian government agency that purchased Microsoft software in 2013.

8. **Agency 2** was a Hungarian government agency that purchased Microsoft software in 2014.

9. **TPI 1** was an Austrian Licensing Solution Partner (“LSP”), *i.e.*, a reseller that has met certain criteria established by Microsoft, which purchased Microsoft software and resold it to its Hungarian affiliate, third party intermediary (“TPI”) 2, in certain subject transactions.

10. **TPI 2** was the Hungarian affiliate of TPI 1 and was involved in certain subject transactions.

11. **TPI 3** was a Hungarian TPI involved in certain subject transactions.

Overview

12. From approximately 2013 to June 2015, a senior executive and other employees of MS Hungary participated in a scheme to inflate margins in the Microsoft sales channel, which were used to fund improper payments under the FCPA. More specifically, a MS Hungary executive and other employees falsely represented to Microsoft that discounts from Microsoft’s estimated retail

prices for government contracts were necessary to conclude deals with Hungarian government agencies. The savings represented by the discounts, however, were not passed along in full by TPIs to the Hungarian government customers to reduce the end customer price. Instead, the inflated margins were used to fund improper payments under the FCPA in connection with the sale of Microsoft software to Hungarian government agencies. MS Hungary, therefore, knowingly and willfully caused Microsoft, a U.S. issuer, to falsely record as discounts in its books and records amounts that were used to fund improper payments under the FCPA. In total, MS Hungary caused Microsoft to report false discounts for a number of licensing deals. The subject licensing deals resulted in profits to Microsoft of \$14,586,325 attributable to the sales and marketing activities of MS Hungary.

The MS Hungary Licensing Sales Model

13. During the relevant time period from 2013 to June 2015, MS Hungary promoted and marketed Microsoft software to government agencies in Hungary. In Hungary, Microsoft employs an indirect distribution model whereby TPIs resell Microsoft software to end customers, attend to end customer accounts, and provide other services. As a result, MS Hungary did not contract directly with government end users. Instead, for the subject licensing deals, a separate Microsoft subsidiary, MIOL, entered into a framework licensing agreement with the government end user that set forth the terms and conditions for the government end user's Microsoft license purchases. TPIs would then bid in a tender to sell licenses to the government end user.

14. During the relevant time-period, the Hungarian central government maintained a simplified procurement process for purchases of Microsoft software. Under this process, five consortia of companies pre-qualified by the Hungarian government were invited by the government to bid in tenders for the purchase of Microsoft software by Hungarian government entities. Each consortium included an authorized Microsoft LSP, with one TPI (sometimes an LSP) acting on

behalf of its consortium. The TPI that won the tender would negotiate the final sales price with the government end user and, typically, sign an agreement with that agency. In certain instances, the TPI that purchased the licenses from MIOL did not resell the licenses directly to the end customer, but instead resold the licenses to another TPI for onward sale to the end customer.

15. Microsoft maintained standard estimated retail prices at which it offered its software for sale. Government and other large customers often expected discounts from the estimated retail prices because of their size and negotiating power. While Microsoft was open to considering discounts from estimated retail prices, Microsoft wanted its prices to remain as consistent as possible. Microsoft's intent and expectation was that discounts provided by Microsoft were to reduce end customer prices, not to create additional margin for LSPs.

16. Microsoft required its employees to record all sales information, including prices and discounts, accurately. To that end, Microsoft maintained policies and procedures governing the ability of Microsoft sales personnel to offer discounts below estimated retail prices. These policies and procedures were intended to ensure consistency in Microsoft pricing and to avoid improper use of discounts by sales personnel. These policies controlled discounting practices by, among other things, requiring sales personnel to obtain different levels of approval depending on the size of the discount that they intended to offer a customer.

17. Sales personnel who wished to offer a discount above a certain minimum threshold were required to obtain approval from a member of the Microsoft Business Desk, which was responsible for reviewing and approving or denying requests for discounts. The Microsoft Business Desk was managed by Microsoft personnel in Redmond, Washington, but had employees around the world. Although each licensing deal was different, Microsoft issued guidance to Microsoft Business Desk employees who reviewed requests for discounts to ensure that they considered appropriate factors in determining whether to approve a discount.

18. Although the final price that government agencies paid for Microsoft software licenses was negotiated between the TPI that won the tender and the government agency, discounts requested by MS Hungary personnel and approved by the Microsoft Business Desk should have been passed through in full to the government end customer by the LSP that purchased the licenses from MIOL.

The Corrupt Scheme Perpetrated by MS Hungary

19. From at least 2013 to June 2015, a MS Hungary executive and certain employees, including Executive 1, Manager 1, and Employee 1, were involved in a bid rigging and bribery scheme to create inflated margins in the Microsoft sales channel that were used to fund improper payments under the FCPA in connection with the sale of Microsoft software to Hungarian government agencies.

20. Two licensing deals, discussed further below, illustrate the scheme, which generally worked as follows. MS Hungary personnel obtained information about the Hungarian government customer's budget, which sometimes was supported by European Union ("EU") funding made available to Hungary, for a particular licensing deal before the tender. In addition, certain MS Hungary employees, including Executive 1, Manager 1, and Employee 1, knew in advance of the completion of the tender which TPI was going to win the tender. MS Hungary would then arrange to sell the licenses for a substantially discounted price. To do so, MS Hungary personnel made false representations to the Microsoft Business Desk about the need for, and purpose of, the discounts in order to obtain the Microsoft Business Desk's approval for the discounts. Such discounts were not true discounts, however, because they were not passed along in full by TPIs to the government agency end user, which paid at or near the maximum amount available for the licensing deals at issue. Instead, with knowledge of certain MS Hungary employees, including Executive 1, Manager

1, and Employee 1, the false discounts created inflated margins in the Microsoft sales channel that were used to make improper payments under the FCPA.

21. The inflated margins created through this scheme by MS Hungary personnel were not used to reduce the end customer price, but instead were used for corrupt purposes and, moreover, were falsely recorded as “discounts” and stored in various tools and databases on Microsoft servers in the United States. These false discounts were consolidated into Microsoft’s financial records and were used to support Microsoft’s financial reporting to the Securities and Exchange Commission (“SEC”). As such, MS Hungary caused the inflated margins created through the scheme to be falsely recorded as legitimate discounts in Microsoft’s books, records, and accounts.

Example 1: The Scheme Involving Agency 1

22. On or about February 28, 2013, a Hungarian government official working for Agency 1 sent an email to Employee 1 requesting a price quote for the purchase of 4,000 desktop licenses for Microsoft software. Thereafter, from in or around February 2013 through in or around June 2013, Employee 1 discussed various deal structures and different amounts of desktop licenses for the deal with several officials at Agency 1.

23. On or about May 2, 2013, another MS Hungary employee requested a 44% discount from the Microsoft Business Desk for the deal with Agency 1. The MS Hungary employee claimed that Agency 1 would commit to closing the deal in June, rather than October, if Microsoft reduced the price to fall within Agency 1’s €2 million budget. Executive 1 further supported the request for the discount by stating: “I was involved in this deal and give[n] the budget available and partner pre-sales efforts, it is vital we get the 44% discount approved.” The Microsoft Business Desk rejected the request and, among other things, noted that the estimated reseller margin seemed high.

24. On or about May 3, 2013, MS Hungary restructured the deal with Agency 1. The same MS Hungary employee who requested the initial discount sent an email to the Microsoft Business Desk, copying Executive 1, Manager 1, and Employee 1, requesting a 22.55% discount in order to, among other things, “fit [Agency 1’s] given budget.” This discount was approved by the Microsoft Business Desk.

25. On or about June 4, 2013, about two weeks before the Agency 1 tender was announced to the public, Employee 1 emailed Manager 1 regarding various “pending priority matters,” including the Agency 1 deal. The email identified TPI 3 as the “partner” for the deal; the same information was reflected in a spreadsheet in Manager 1’s possession. The spreadsheet showed that TPI 3 had already been selected as the intermediary for this licensing deal even though Agency 1’s procurement tender for the licenses had not yet been publicly announced.

26. On or about June 17, 2013, Employee 1 sent an email, copying Executive 1 and Manager 1, to the CEO of Agency 1, proposing a transaction for 4,400 Microsoft software desktop licenses for a price of approximately €2.36 million, which was outlined in a table in the email. The CEO responded to Executive 1, Manager 1, and Employee 1, “Thank you everyone, I accept the price, let’s get the order started.” That same day, Agency 1 launched the tender; bids were due on June 24, 2013.

27. On or about June 18, 2013, Employee 1 sent TPI 3 the product and price information that was included in the table he sent to the CEO the day before. That same day, a different TPI forwarded the tender invitation to Employee 1 by email with the comment, “[W]e will go along with this.” Employee 1 forwarded this TPI’s email to Manager 1, who said he had spoken to someone at that TPI. The timing and substance of these communications demonstrate that the bidding process was rigged in favor of TPI 3.

28. Despite knowing that Agency 1 had already accepted a €2.36 million price for the deal two days earlier, on or about June 19, 2013, Manager 1 wrote an email to the Microsoft Business Desk, copying Executive 1, Employee 1, and another MS Hungary employee, in which Manager 1 provided false justifications for an additional requested discount. Specifically, Manager 1 made the following misrepresentations:

We are in the final stage closing this deal for 4400 desktops and additional servers, and we have a real chance closing it in FY 13! (next week) We just had a meeting with the customer and we have to give an additional 4-5% discount from the price in order to fit the achievable budget. We agreed on [sic] with [Executive 1] that we try to get approval for additional +2% on top of previously approved 22,55% and the rest should be given by the [LSP]. In this case the final discount would be 24,55% and the net price 1.540.283 EUR (1.933.056 USD)[.]

29. Despite knowing that Agency 1 had already accepted a €2.36 million price, Executive 1 replied to Manager 1's email to the employee at the Microsoft Business Desk, copying Manager 1, Employee 1, and another MS Hungary employee, and stated, "I support [Manager 1's] request as we share pricing pressure with the partner and can close the deal on time."

30. Executive 1, Manager 1, and Employee 1 each knew that Agency 1 had already agreed to the deal for €2.36 million, which was higher than the end customer budget that the MS Hungary employees had provided to Microsoft Business Desk to justify the discount, making any additional discount unnecessary.

31. The Microsoft Business Desk approved the discount, unaware that Executive 1 and Manager 1 had intentionally misrepresented Agency 1's budget, the status of the negotiations, and the need for the discount.

32. On or about July 30, 2013, Agency 1 and TPI 3 signed an agreement for approximately €2.36 million, the price agreed to by Agency 1 on June 17, 2013. The difference between the discounted price TPI 1 paid to MIOL and the price reflected in the agreement between Agency 1 and TPI 3 created a margin of approximately €792,000 (approximately 34.1%). The

falsely obtained discount was not passed through in full by TPI 3 to Agency 1. Instead, with the knowledge of MS Hungary employees, including Executive 1, Manager 1, and Employee 1, the inflated margin was used to fund improper payments under the FCPA in connection with the sale of Microsoft software to Agency 1.

Example 2: The Scheme Involving Agency 2

33. In or about early 2014, MS Hungary began working on a deal involving 10,000 desktop licenses for Microsoft software for Agency 2. Employee 1 was aware of Agency 2's available budget since at least January 2014, as Employee 1 maintained a spreadsheet from around that time that reflected a net amount of approximately €3.76 million for a licensing deal.

34. On or about February 17, 2014, an employee of TPI 3 contacted Employee 1 and stated that Agency 2's parent entity was seeking approximately €3.76 million in net EU funding to purchase Microsoft software.

35. On or about February 20, 2014, an MS Hungary employee sent an email to the Microsoft Business Desk, copying Manager 1 and Employee 1, requesting to sell different types of software to Agency 2 at 25% and 30% discounts. The purported justifications for the discounts were competition, end customer price sensitivity, and the possibility of securing related service contracts. Those justifications were false because, as explained below, Employee 1 knew in early 2014 that the approximately €3.76 million in requested net EU funding would be sufficient to cover the cost of the licenses without a discount. The Microsoft Business Desk approved the requested discounts based on the false representations of the MS Hungary employee.

36. On or about June 19, 2014, Employee 1 wrote to another MS Hungary employee, "[t]he problem is that now another 5% would be needed :-(the idea of our Greats :-(." The five percent referred to an additional and unnecessary "discount" that would be used to fund improper payments under the FCPA.

37. On or about June 23, 2014, another MS Hungary employee wrote an email to the Microsoft Business Desk, copying Manager 1 and Employee 1, which stated, “We are still working to close on the [Agency 2] deal We were focusing on the financial aspects and collected all the necessary approvals in the Government up to the Prime Minister.” The MS Hungary employee then requested an additional 5% discount on certain licenses in the deal. Based on these false representations, the Microsoft Business Desk approved the additional discount, which increased the total discount to approximately 31.5%, on the condition that the deal be closed by the end of June.

38. On or about June 28, 2014—approximately two months before the tender for the Agency 2 deal was publicly announced—TPI 1 placed an order with MIOL for approximately €2.2 million for the software at issue in the Agency 2 deal, which reflected a total discount of approximately 31.5%. As explained above, sometimes the TPI that was selected to sell the licenses to the government agency was not the same entity as the TPI (and authorized Microsoft LSP) that purchased the licenses from MIOL. Here, although TPI 1 purchased the licenses from MIOL, TPI 1 later resold them to its Hungarian affiliate, TPI 2, which in turn resold them to TPI 3, which won the tender and contracted with Agency 2.

39. On or about September 1, 2014, Agency 2 announced the tender for the procurement of 10,000 desktop licenses and related products. But for the scheme, TPI 1 (which did not bid in the tender) would not have ordered the licenses from MIOL months before the tender was even announced. After winning the tender, TPI 3 did not pass along the 31.5% discount to Agency 2. Instead, on or about October 30, 2014, Agency 2 and TPI 3 signed an agreement for approximately €3.76 million, which corresponded to the budgeted amount that TPI 3 had shared with Employee 1 on or about February 17, 2014.

40. The difference between the discounted €2.2 million price that TPI 1 paid to MIOL and the €3.76 million price reflected in the agreement between Agency 2 and TPI 3 created a margin of approximately €1.56 million (approximately 41.7%). The falsely obtained discount that helped create this inflated margin was not passed through in full by TPI 3 to Agency 2. Instead, with the knowledge of MS Hungary employees, including Manager 1 and Employee 1, the margin was used to fund improper payments under the FCPA in connection with the sale of Microsoft software to Agency 2.

MS Hungary Caused Microsoft to Falsify Its Books, Records, and Accounts

41. During the relevant time period, MS Hungary knowingly caused Microsoft to record and maintain false books, records, and accounts in connection with the foregoing corrupt scheme.

42. As explained above, MS Hungary employees, including Executive 1, Manager 1, and Employee 1, lied to Microsoft Business Desk employees to obtain approval for discounts on software licenses to be sold to Hungarian government agencies. The discounts were false because they were not passed on in full by TPIS to the end customers and were used for an illegal purpose. In securing the subject licensing deals involving discounts approved by the Microsoft Business Desk, MS Hungary caused records to be created that documented the fraudulent discounts, which were then falsely recorded and maintained at Microsoft. As a direct, wholly owned subsidiary of Microsoft, MS Hungary's books, records, and accounts were consolidated into Microsoft's financial records.

43. The false records were recorded and maintained by Microsoft in several ways. First, the false discounts – and in some instances the false justifications for those discounts – were recorded in a Microsoft on-line tool with a server located in Bellevue, Washington. Second, the false discounts were included as part of the deal documents that were stored on the same server located in Bellevue, Washington, and in an online repository of Microsoft business documents with

a server located in Phoenix, Arizona. Third, false records from the MS Hungary licensing deals at issue were stored in a Microsoft Business Desk database located in Bellevue, Washington.

ATTACHMENT B

CERTIFICATE OF CORPORATE RESOLUTIONS

WHEREAS, Microsoft Magyarország Számítástechnikai Szolgáltató és Kereskedelmi Kft. (“MS Hungary”) has been engaged in discussions with the United States Department of Justice, Criminal Division, Fraud Section and the United States Attorney’s Office for the Southern District of New York (the “Fraud Section and the Office”), regarding issues arising out of its knowingly causing Microsoft Corporation (“Microsoft”) to make and keep false books, records, and accounts; and

WHEREAS, in order to resolve such discussions, it is proposed that MS Hungary enter into a certain agreement with the Fraud Section and the Office; and

WHEREAS, outside counsel for MS Hungary has advised MS Hungary General Manager Christopher Mattheisen of MS Hungary’s rights, possible defenses, the Sentencing Guidelines’ provisions, and the consequences of entering into such agreement with the Fraud Section and the Office;

WHEREAS, MS Hungary’s General Manager, Christopher Mattheisen, in the exercise of his statutory authority under Hungarian law, is authorized and empowered in his capacity of General Manager to enter into this agreement on behalf of and bind MS Hungary, and to ratify any past actions and take any and all actions now or in the future as may be necessary or appropriate to approve, on behalf of MS Hungary, the forms, terms or provisions of any agreement or other documents as may be necessary or appropriate to carry out and effectuate the purpose and intent of this agreement;

Therefore, MS Hungary per the undersigned signature and authority of the General Manager agrees to the following:

1. MS Hungary (a) enters into this non-prosecution agreement (“Agreement”) with the Fraud Section and the Office; and (b) agrees to accept a monetary penalty against MS Hungary totaling \$8,751,795, and to pay such penalty to the United States Treasury with respect to the conduct described in the Statement of Facts in Attachment A; and

2. MS Hungary accepts the terms and conditions of this Agreement, including, but not limited to, (a) a knowing waiver for purposes of this Agreement and any charges by the United States arising out of the conduct described in the Statement of Facts of any objection with respect to venue in the United States District Court for the Southern District of New York; and (b) a knowing waiver of any defenses based on the statute of limitations for any prosecution relating to the conduct described in the Statement of Facts or relating to conduct known to the Fraud Section and the Office prior to the date on which this Agreement was signed that is not time-barred by the applicable statute of limitations on the date of the signing of this Agreement.

Date: July 16, 2019

By: 
Christopher Mattheisen
General Manager
MS Hungary

ATTACHMENT C

CORPORATE COMPLIANCE PROGRAM

In order to address any deficiencies in its internal controls, compliance code, policies, and procedures regarding compliance with the Foreign Corrupt Practices Act (“FCPA”), 15 U.S.C. §§ 78dd-1, *et seq.*, and other applicable anti-corruption laws, Microsoft Corporation (“Microsoft”) on behalf of itself and its subsidiaries and affiliates, agrees to continue to conduct, in a manner consistent with all of its obligations under this Agreement, appropriate reviews of its existing internal controls, policies, and procedures.

Where necessary and appropriate, Microsoft agrees to modify its compliance program, including internal controls, compliance policies, and procedures in order to ensure that it maintains: (a) an effective system of internal accounting controls designed to ensure the making and keeping of fair and accurate books, records, and accounts; and (b) a rigorous anti-corruption compliance program that incorporates relevant internal accounting controls, as well as policies and procedures designed to effectively detect and deter violations of the FCPA and other applicable anti-corruption laws (collectively, the “anti-corruption laws”). At a minimum, this should include, but not be limited to, the following elements to the extent they are not already part of Microsoft’s existing internal controls, compliance code, policies, and procedures:

High-Level Commitment

1. Microsoft will ensure that its directors and senior management provide strong, explicit, and visible support and commitment to its corporate policy against violations of the anti-corruption laws and its compliance code.

Policies and Procedures

2. Microsoft will develop and promulgate a clearly articulated and visible corporate policy against violations of the anti-corruption laws, which policy shall be memorialized in a written compliance code.

3. Microsoft will develop and promulgate compliance policies and procedures designed to reduce the prospect of violations of the anti-corruption laws and Microsoft's compliance code, and Microsoft will take appropriate measures to encourage and support the observance of ethics and compliance policies and procedures against violation of the anticorruption laws by personnel at all levels of Microsoft. These anti-corruption policies and procedures shall apply to all directors, officers, and employees and, where necessary and appropriate, outside parties acting on behalf of Microsoft in a foreign jurisdiction, including but not limited to, agents and intermediaries, consultants, representatives, distributors, teaming partners, contractors and suppliers, consortia, and joint venture partners (collectively, "agents and business partners"). Microsoft shall notify all employees that compliance with the policies and procedures is the duty of individuals at all levels of Microsoft. Such policies and procedures shall address:

- a. gifts;
- b. hospitality, entertainment, and expenses;
- c. customer travel;
- d. political contributions;
- e. charitable donations and sponsorships;
- f. facilitation payments; and
- g. solicitation and extortion.

4. Microsoft will ensure that it has a system of financial and accounting procedures, including a system of internal controls, reasonably designed to ensure the maintenance of fair and accurate books, records, and accounts. This system should be designed to provide reasonable assurances that:

a. transactions are executed in accordance with management's general or specific authorization;

b. transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles or any other criteria applicable to such statements, and to maintain accountability for assets;

c. access to assets is permitted only in accordance with management's general or specific authorization; and

d. the recorded accountability for assets is compared with the existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

Periodic Risk-Based Review

5. Microsoft will develop these compliance policies and procedures on the basis of a periodic risk assessment addressing the individual circumstances of Microsoft, in particular the foreign bribery risks facing Microsoft, including, but not limited to, its geographical organization, interactions with various types and levels of government officials, industrial sectors of operation, involvement in joint venture arrangements, importance of licenses and permits in Microsoft's operations, degree of governmental oversight and inspection, and volume and importance of goods and personnel clearing through customs and immigration.

6. Microsoft shall review its anti-corruption compliance policies and procedures no less than annually and update them as appropriate to ensure their continued effectiveness, taking into account relevant developments in the field and evolving international and industry standards.

Proper Oversight and Independence

7. Microsoft will assign responsibility to one or more senior corporate executives of Microsoft for the implementation and oversight of Microsoft's anti-corruption compliance code, policies, and procedures. Such corporate official(s) shall have the authority to report directly to independent monitoring bodies, including internal audit, Microsoft's Board of Directors, or any appropriate committee of the Board of Directors, and shall have an adequate level of autonomy from management as well as sufficient resources and authority to maintain such autonomy.

Training and Guidance

8. Microsoft will implement mechanisms designed to ensure that its anti-corruption compliance code, policies, and procedures are effectively communicated to all directors, officers, employees, and, where necessary and appropriate, agents and business partners. These mechanisms shall include: (a) periodic training for all directors and officers, all employees in positions of leadership or trust, positions that require such training (e.g., internal audit, sales, legal, compliance, finance), or positions that otherwise pose a corruption risk to Microsoft, and, where necessary and appropriate, agents and business partners; and (b) corresponding certifications by all such directors, officers, employees, agents, and business partners, certifying compliance with the training requirements.

9. Microsoft will maintain, or where necessary establish, an effective system for providing guidance and advice to directors, officers, employees, and, where necessary and appropriate, agents and business partners, on complying with Microsoft's anti-corruption compliance code, policies, and procedures, including when they need advice on an urgent basis or in any foreign jurisdiction in which Microsoft operates.

Internal Reporting and Investigation

10. Microsoft will maintain, or where necessary establish, an effective system for internal and, where possible, confidential reporting by, and protection of, directors, officers, employees, and, where appropriate, agents and business partners concerning violations of the anti-corruption laws or Microsoft's anti-corruption compliance code, policies, and procedures.

11. Microsoft will maintain, or where necessary establish, an effective and reliable process with sufficient resources for responding to, investigating, and documenting allegations of violations of the anti-corruption laws or Microsoft's anti-corruption compliance code, policies, and procedures.

Enforcement and Discipline

12. Microsoft will implement mechanisms designed to effectively enforce its compliance code, policies, and procedures, including appropriately incentivizing compliance and disciplining violations.

13. Microsoft will institute appropriate disciplinary procedures to address, among other things, violations of the anti-corruption laws and Microsoft's anti-corruption compliance code, policies, and procedures by Microsoft's directors, officers, and employees. Such procedures should be applied consistently and fairly, regardless of the position held by, or perceived importance of, the director, officer, or employee. Microsoft shall implement procedures to ensure that where misconduct is discovered, reasonable steps are taken to remedy the harm resulting from such misconduct, and to ensure that appropriate steps are taken to prevent further similar misconduct, including assessing the internal controls, compliance code, policies, and procedures and making modifications necessary to ensure the overall anticorruption compliance program is effective.

Third-Party Relationships

14. Microsoft will institute appropriate risk-based due diligence and compliance requirements pertaining to the retention and oversight of all agents and business partners, including:

a. properly documented due diligence pertaining to the hiring and appropriate and regular oversight of agents and business partners;

b. informing agents and business partners of Microsoft's commitment to abiding by anti-corruption laws, and of Microsoft's anti-corruption compliance code, policies, and procedures; and

c. seeking a reciprocal commitment from agents and business partners.

15. Where necessary and appropriate, Microsoft will include standard provisions in agreements, contracts, and renewals thereof with all agents and business partners that are reasonably calculated to prevent violations of the anti-corruption laws, which may, depending upon the circumstances, include: (a) anti-corruption representations and undertakings relating to compliance with the anti-corruption laws; (b) rights to conduct audits of the books and records of the agent or business partner to ensure compliance with the foregoing; and (c) rights to terminate an agent or business partner as a result of any breach of the anti-corruption laws, Microsoft's compliance code, policies, or procedures, or the representations and undertakings related to such matters.

Mergers and Acquisitions

16. Microsoft will develop and implement policies and procedures for mergers and acquisitions requiring that Microsoft conduct appropriate risk-based due diligence on potential new business entities, including appropriate FCPA and anti-corruption due diligence by legal, accounting, and compliance personnel.

17. Microsoft will ensure that Microsoft's compliance code, policies, and procedures regarding the anti-corruption laws apply as quickly as is practicable to newly acquired businesses or entities merged with Microsoft and will promptly:

a. train the directors, officers, employees, agents, and business partners consistent with Paragraph 8 above on the anti-corruption laws and Microsoft's compliance code, policies, and procedures regarding anti-corruption laws; and

b. where warranted, conduct an FCPA-specific audit of all newly acquired or merged businesses as quickly as practicable.

Monitoring and Testing

18. Microsoft will conduct periodic reviews and testing of its anti-corruption compliance code, policies, and procedures designed to evaluate and improve their effectiveness in preventing and detecting violations of anti-corruption laws and Microsoft's anti-corruption code, policies, and procedures, taking into account relevant developments in the field and evolving international and industry standards.

ATTACHMENT D
REPORTING REQUIREMENTS

Microsoft Magyarország Számítástechnikai Szolgáltató és Kereskedelmi Kft. (“MS Hungary”) and Microsoft Corporation (“Microsoft”) agree that they will report to the Fraud Section and the Office periodically, at no less than twelve month intervals during a three-year term, regarding remediation and implementation of the compliance program and internal controls, policies, and procedures described in Attachment C. During this three-year period, MS Hungary shall: (1) conduct an initial review and submit an initial report, and (2) conduct and prepare at least two (2) follow-up reviews and reports, as described below:

a. By no later than one year from the date this Agreement is executed, MS Hungary and Microsoft shall submit to the Fraud Section and the Office a written report setting forth a complete description of their remediation efforts to date, their proposals reasonably designed to improve MS Hungary’s and Microsoft’s internal controls, policies, and procedures for ensuring compliance with the FCPA and other applicable anti-corruption laws, and the proposed scope of the subsequent reviews. The report shall be transmitted to Deputy Chief - FCPA Unit, Fraud Section, Criminal Division, U.S. Department of Justice, 1400 New York Avenue, NW, Bond Building, Eleventh Floor, Washington, D.C. 20530 and Chief – Criminal Division, United States Attorney’s Office for the Southern District of New York, 1 St. Andrew’s Plaza New York City, NY 10007. MS Hungary and Microsoft may extend the time period for issuance of the report with prior written approval of the Fraud Section and the Office.

b. MS Hungary and Microsoft shall undertake at least two follow-up reviews and reports, incorporating the Fraud Section’s and the Office’s views on the prior reviews and reports, to further monitor and assess whether MS Hungary’s and Microsoft’s policies and

procedures are reasonably designed to detect and prevent violations of the FCPA and other applicable anti-corruption laws.

c. The first follow-up review and report shall be completed by no later than one year after the initial report is submitted to the Fraud Section and the Office. The second follow-up review and report shall be completed and delivered to the Fraud Section and the Office no later than thirty days before the end of the Term.

d. The reports will likely include proprietary, financial, confidential, and competitive business information. Moreover, public disclosure of the reports could discourage cooperation, impede pending or potential government investigations and thus undermine the objectives of the reporting requirement. For these reasons, among others, the reports and the contents thereof are intended to remain and shall remain non-public, except as otherwise agreed to by the parties in writing, or except to the extent that the Fraud Section and the Office determine in their sole discretion that disclosure would be in furtherance of the Fraud Section's and the Office's discharge of their duties and responsibilities or is otherwise required by law.

e. MS Hungary and Microsoft may extend the time period for submission of any of the follow-up reports with prior written approval of the Fraud Section and the Office.