

# Rosetta Stone Standard Reseller Distribution Terms and Conditions

The following standard Reseller Distribution Terms and Conditions (‘Agreement’) shall apply to all orders submitted by resellers and distributors (the “**Reseller**”) authorized by **Rosetta Stone Ltd.**, or its affiliates (“**Rosetta Stone**”) to re-sell the Rosetta Stone® language learning software and products. The following Terms and Conditions shall not apply to the extent that a Reseller and Rosetta Stone have agreed in writing to different terms and conditions.

## WITNESSETH

**WHEREAS**, Rosetta Stone has developed, and is the owner of, a library of interactive language-learning software (the “Products” or “Product”) which is marketed to end users under its Rosetta Stone® brand;

**WHEREAS**, the Products are sold to end users as a license via an online subscription or as a tangible product (e.g., CD-ROM); and

**WHEREAS**, Rosetta Stone desires to market and sell Products to End Users by means of Reseller’s website or by other means provided by the Reseller and Reseller desires to act as a non-exclusive authorized reseller of the Products within a certain territory (the “Territory”) as more particularly described in Exhibit A, on the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

### 1 **DEFINITIONS.** Capitalized terms shall have the meanings set forth below and elsewhere in this Agreement:

“**Confidential Information**” means any data or information disclosed by one party to the other in connection with this Agreement that is not generally known to the public, and is clearly identified as confidential or, by its nature, should be reasonably considered confidential, including (a) the terms and conditions of this Agreement (excluding the existence of this Agreement), (b) information about product plans, product development costs, marketing strategies and costs, finance, operations, customer relationships, customer profiles, sales estimates or financial performance of either party, (c) any computer software (in source code or object code form) or computer database, and (d) any specifications, business methods, data, reports, formulae, data models, data formats, field or record layouts, or improvements related thereto.

“**Derivative Work**” means a work that is based upon or derives in any way from one or more preexisting works, such as a revision, modification, translation (including compilation or recapitulation by computer), abridgement, condensation, expansion, improvement or any other form in which such a preexisting work may be recast, transformed, or adapted.

“**End User License Agreement**” means the Rosetta Stone standard end user license agreement as set forth at [http://www.rosettastone.com/us\\_assets/eulas/eula-online-us-eng.pdf](http://www.rosettastone.com/us_assets/eulas/eula-online-us-eng.pdf) as may be amended by Rosetta Stone from time to time, that must be accepted by the End User as a condition precedent to using the product.

“**End Users**” means those duly authorized persons or entities who have validly purchased or acquired the Products for their personal use and not for resale.

“**MSRP**” is Manufacture’s Suggested Retail Price.

“**Online Language Learning Center**” has the meaning set forth in Section 4.1.

“**Online Service**” means the service and related technical infrastructure that allows an end user to use the functionality of the Software for a particular language remotely by means of password-protected access to a website created, hosted and maintained by Rosetta Stone.

**“Product”** means either a tangible product delivered in tangible form –including CD-ROM, DVD, videotape, or other physical format or the online product where the content is delivered via the Internet, wireless, or similar communications protocol.

**“Wholesale Sales”** as set forth in Exhibit A and B refers to the amount of sales direct from Rosetta Stone to Reseller, and does not include amount of sales from Reseller to End Users or any other permitted third parties.

**2 APPOINTMENT AND RESPONSIBILITIES OF RESELLER.** Subject to the restrictions and conditions set forth in this Section 2, and the Agreement, Rosetta Stone grants Reseller a non-exclusive, revocable right to market and sell the Products in the Territory per the terms of this Agreement.

**2.1 Territory:** The rights granted to Reseller hereunder are personal to Reseller, and Reseller hereby agrees that during the term of this Agreement it will not, directly or indirectly authorize, or grant to any third party, the right to distribute or sublicense any of the Products, as described in Exhibit A, inside or outside the Reseller’s Territory as defined in Exhibit A, without prior written consent of an authorized representative of Rosetta Stone. Reseller hereby covenants and agrees that it will fully abide by this Section 2, and failure to abide is a material breach of this Agreement. Rosetta Stone may consider and approve, in its sole discretion, any Reseller proposal related to Reseller’s appointment of an agent or sub-reseller in Reseller’s Territory.

**2.2 Marketing/Sales:** Reseller shall exert its best efforts and resources to market and sell the Products to End Users in the Territory. Reseller shall maintain at all times the necessary personnel required to reasonably and efficiently promote and sell the Products.

**2.3 Restrictions:** The rights granted in this Section 2 are subject to the following restrictions:

- a. Reseller shall market Products only by means of (i) links on the websites listed in Exhibit D, (ii) the Online Language Learning Center created for Reseller, or (iii) such other marketing or distribution arrangement approved in writing by an authorized representative of Rosetta Stone.
- b. Reseller shall not itself, nor permit any third parties to, directly or indirectly: (i) reverse assemble, reverse compile, or otherwise reverse engineer or attempt to derive the source code of the Software, (ii) create Derivative Works of the Software without the prior written consent of an authorized representative of Rosetta Stone or (iii) access or use the Product for any purpose other than the purposes identified in this Section 2 with the prior written consent of an authorized representative of Rosetta Stone. The parties agree that, in the event of a breach of this Section 2.3 (b), Rosetta Stone shall be the sole and exclusive owner of any products of reverse engineering or Derivative Works created by or for Reseller.
- c. Reseller may market, distribute and sell the Products only by means of the websites having the URLs listed in Exhibit D (“Authorized Websites”). Rosetta Stone reserves the right to approve all content appearing on the Authorized Website(s) which describes Rosetta Stone or the Products. Reseller may nevertheless advertise the Products on websites other than the Authorized Websites (including on the results pages of search engines such as Google, Yahoo, MSN and AOL), provided that (a) any such advertising is directed solely to customers in the Territory, (b) Reseller may only ship Products or direct promotional materials related to the Products to locations in the Territory, (c) all expenses incurred by Reseller with respect to creating advertising materials and advertising the Products shall be borne exclusively by Reseller, and (d) all such advertising is subject to the prior written approval of an authorized representative of Rosetta Stone. In the event that Rosetta Stone determines, in the exercise of its sole judgment, that any description of Rosetta Stone or the Products appearing on the Authorized Website(s) or any advertising created by or for Reseller is inappropriate for publication and should be removed, Reseller shall promptly remove such content following receipt of written notice from Rosetta Stone.
- d. Reseller may not bid on Rosetta Stone’s trademarks, services marks or trade names such as “Rosetta Stone”, “Rosetta World”, “rosettastone”, “rosettastone.com” and any other words or phrases confusingly similar (e.g., “Rosetta Spanish”, “Rosetta French”, etc.) to such trademarks,

service marks or trade names (i) as paid search keywords; (ii) in the ad text/search listings; (iii) as part of any Display URL; or (iv) as a destination URL

- e. All advertising in any medium is subject to the prior written approval of an authorized representative of Rosetta Stone.

**2.4 Product Changes:** Rosetta Stone reserves the right, in its sole discretion and without incurring any liability to Reseller or End User, to update, improve, replace, discontinue, modify or alter the specifications for and functionality of the Products or the Online Service from time to time.

**2.5 Product Association:** Products may not be linked to or appear on web pages or other media containing inappropriate material such as, but not limited to, material that is obscene (including child pornography), sexually explicit, defamatory, libelous, threatening, abusive, hateful, excessively violent, racially offensive or that Rosetta Stone otherwise deems harmful or offensive.

**2.6 After-Sales Support:** Reseller shall provide after-sales support at the same level as performed during the term of this Agreement for a period of six months after the termination of this Agreement for all Products that it distributes, except as Rosetta Stone may otherwise agree in writing. Such support shall be provided in the applicable local language, if such language is available, for the End User's territory.

**2.7 Unauthorized Use and Distribution:** During the term of this Agreement, Reseller shall ensure that it will:

- a. enforce the restrictions and limitations in End User Agreements and Licenses with the End Users including, without limitation, ensuring that the End Users purchase the correct licenses required for their use of the Products;
- b. promptly inform Rosetta Stone if it becomes aware of any unlicensed users or distributors of the Products and, after approval by Rosetta Stone, take all appropriate actions against such unlicensed users or distributors in the Territory to stop such use or distribution. Reseller shall report to Rosetta Stone the outcome of any such actions that it undertakes;
- c. proactively protect the intellectual property in the Products by actively participating in and supporting anti-piracy associations and initiatives in the Territory; and
- d. support and co-operate with Rosetta Stone with respect to any actual or contemplated proceedings Rosetta Stone initiates or may initiate against unlicensed users or distributors of the Products in instances in which Rosetta Stone's rights and/or intellectual property in the Products may be infringed, including, without limitation, testifying at any such proceedings.

**2.8 Competitive Products:** During the term of this Agreement, Reseller shall purchase the Products only from Rosetta Stone and shall not directly or indirectly engage in the development, marketing, distribution or sale of any product with functionality substantially similar to or competitive with the Products, in or outside of the Territory.

### 3 TERMS OF AGREEMENT.

#### 3.1 Tangible Product.

- a. **Limited Warranty.** Rosetta Stone warrants that the media on which the Tangible Products are furnished is free from defects in material and workmanship under normal use for a period of ninety (90) days from the date of delivery to End User. Rosetta Stone's entire liability and Reseller's sole and exclusive remedy shall be either a credit equal to Reseller's purchase price of the Product or replacement without charge for any Product which proves defective within said period, at the option of Rosetta Stone. Rosetta Stone shall not be responsible for losses due to defects or perceived defects in the Products. In no event will Rosetta Stone be responsible for damaged Products shipped via airmail, book rate, or library rate. THIS WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES,

WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THOSE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. THIS WARRANTY SHALL EXPIRE THREE MONTHS FROM THE DATE OF SHIPMENT OF PRODUCT TO RESELLER.

- b. Shipment.** All Tangible Products shall be shipped via carrier selected by Reseller, F.O.B. point of origin. Risk of loss during transport and all shipping costs shall be borne by Reseller.
- c. Customs and Duties.** Reseller shall be responsible for payment of all applicable taxes, customs, duties and assessments.
- d. Returns.** Reseller must contact Rosetta Stone directly for defective and non-defective product returns. Rosetta Stone will pay freight (via carrier of its choice) for replacement of defective products; provided that Rosetta Stone reserves the right to charge back such shipping charges incurred on products returned if Rosetta Stone has subsequently determined them to be non-defective..
- e. Obsolete Products.** Rosetta Stone will give notice to Reseller if and when a Product becomes obsolete. Reseller is not permitted to sell any Product upon receipt of such notice without Rosetta Stone's authorized representative's prior written consent. Rosetta Stone retains the right to repurchase Products that are obsolete or require Reseller to destroy them and credit reseller for them.

### 3.2 Online Product.

- a. Issuance of End User License.** Reseller's End Users will receive licenses allowing such users to subscribe to an online service to access the Products remotely by means of password-protected access to a Rosetta Stone website. No ownership is transferred by the sale of such licenses. In the event of breach of this Agreement by the Reseller, Rosetta Stone reserves the right to:
  - 1. end further license sales by Reseller;
  - 2. notify all of Reseller's End Users that their licenses will expire at the end of the purchased period;
  - 3. provide assistance and the means for re-issuance of licenses directly from Rosetta Stone.
- b. Limited Warranty.** Subject to the terms and conditions of this Agreement, Rosetta Stone warrants, for Reseller's benefit alone, that the Online Service provided to End Users pursuant to this Agreement will provide substantially the same features and functionality as the online service provided by Rosetta Stone to its other retail customers.
- c. Exclusive Remedy.** Reseller shall notify Rosetta Stone in writing of any breach of the warranty set forth in Section 3.2(b). If Reseller submits such a warranty notice, Reseller's exclusive remedy and Rosetta Stone's entire liability will be (a) the correction of errors that cause breach of the warranty or (b) if Rosetta Stone is unable to correct such errors within a commercially reasonable time, direct damages not to exceed the aggregate amount of fees received from Reseller in the three month period preceding the date of Reseller's claim for damages.

**3.3 Orders.** Orders shall be directed to the designated sales representative shown in Exhibit D, or as otherwise agreed by the parties. Orders can be placed by email, or by fax as shown in Exhibit D. Orders for Products shall identify each Product ordered, quantities ordered, shipping and invoicing address, and any other ordering information Rosetta Stone may require from time-to time. All orders are subject to acceptance by Rosetta Stone. Rosetta Stone shall use reasonable efforts to ship accepted orders but shall not be liable to Reseller or any third party for any delay, error or failure in filling any orders, even if advised by Reseller of the consequences of any delivery failure.

**3.4 Products and Prices.** The product and price list attached hereto in Exhibit B is in effect as of the Effective Date of this Agreement. Prices are subject to change within seven (7) days upon written notice by Rosetta Stone to Reseller.

### **3.5 Payment or Commission and Title.**

- a.** Payment or Commissions will be paid according to the terms in Exhibits B and C. Payment for Products shall be made by the Reseller, without any deduction, setoff or bank charges, to Rosetta Stone at the banking institution nominated by Rosetta Stone in United States dollars or on any other terms mutually agreed upon. Reseller will pay interest at the rate of 1.5% per month on any accounts more than 30 days overdue. Reseller will pay all costs associated with collecting any debt which is more than 30 days overdue. These costs include, but are not limited to, court costs, attorneys' fees, and cost of a collection agency.
- b.** The title to Products shall remain with Rosetta Stone until they have been paid for by the Reseller, and Reseller may not distribute the Products until they have been paid for.

## **4 ONLINE LANGUAGE LEARNING CENTER.**

**4.1 General Description.** Upon mutual agreement of the parties, Rosetta Stone shall create, host and maintain a set of web pages (collectively, "Online Language Learning Center") that can be used by Reseller and End Users.

- a.** From the Online Language Learning Center, OLLC Administrator selected by the client will be able to:
  1. create and manage End User accounts;
  2. view reports for all End Users or a specific End User;
  3. edit landing page and site access;
  4. view ancillary materials (curriculum text, workbooks, and users guide); and
  5. communicate directly with Rosetta Stone via email/phone.
- b.** From the Online Language Learning Center, upon acceptance of the End User License Agreement, End User will be able to:
  1. login, access and use Online Service for a particular language once a license has been activated;
  2. access support and help features, and download supporting software for the Online Service;
  3. communicate directly with Rosetta Stone via email;
  4. customize End User profile and learning experience;
  5. review End User usage and performance for all courses; and
  6. view the Online Language Learning Center in any of the available languages.

**4.2 Creation.** Rosetta Stone shall, subject to this Section 4.2, create an Online Language Learning Center for the Reseller that is branded with the marks of Rosetta Stone, and the Reseller. Rosetta Stone may decline to create, host, or maintain an Online Language Learning Center for the Reseller if such Reseller refuses to provide any necessary consents or approvals or imposes conditions on such consents or approvals that would increase the risk of loss for Rosetta Stone or increase its cost of performance.

**4.3 Look and Feel.** The initial look and feel of the Online Language Learning Center shall be substantially similar to look and feel of <http://shipit.onlinelanguagelearning.com> or as otherwise agreed by the parties. Reseller acknowledges that the look and feel of an Online Language Learning Center may evolve over time to respond to changes in market circumstances, including changes in end user preferences. Rosetta Stone will attempt (but has no obligation or requirement) to notify Reseller and End Users when such changes are made to the Online Learning Center.

**4.4 Maintenance of Domain.** Rosetta Stone shall be responsible for acquiring and maintaining <http://onlinelanguagelearning.com> (or such other domain as to which the parties mutually agree) for use as the domain for the Online Language Learning Centers created pursuant to this Agreement.

## **5 TERM AND TERMINATION.**

**5.1** The term of this Agreement is twelve (12) months, and will automatically continue for successive one (1) year terms, unless either party provides written notice of its intentions to not renew the Agreement, no later than five (5) business days prior to the end of the initial or renewal term. Either party shall have the right at any time, by giving notice in writing, to terminate this Agreement on the occurrence of any of the following events:

- a.** if the other party commits a breach of any of the terms and conditions of this Agreement and such breach has not been rectified within thirty (30) days after receipt of notice to rectify served on the defaulting party by the other party;
- b.** if the other party becomes insolvent, makes a general assignment for the benefit of creditors, suffers or permits an appointment of a receiver for its business or assets, becomes subject to any proceedings under any bankruptcy or insolvency law, whether domestic or foreign, is liquidated, voluntarily or otherwise, or suffers any similar action in consequence of debt;
- c.** if the Reseller engages in illegal activities such as spamming; or
- d.** if either party gives thirty (30) days written notification of termination to other party.

**5.2 Effect of Termination.** In the event of the expiration or termination of this Agreement for any reason, all rights granted to Reseller hereunder shall terminate, and Reseller shall immediately discontinue all marketing and distribution of Product. In the case of Section 5.1(d), Reseller must immediately discontinue all marketing, but will have an exemption to continue to distribute Products per the original terms of this Agreement, under all of the following conditions:

- a.** Provided that Reseller has valid contractual obligations with End Users in the Territory to provide Product that extends beyond the time of termination of the Agreement;
- b.** Reseller provides Rosetta Stone a detailed list of customers in the Territory with contractual obligations for the Product to include: the Name, Address, Products Purchased, Contract Terms, Contract Start Date, and Contract End Date to Rosetta Stone;
- c.** After termination of the Agreement, Reseller does not extend, renew, or provide new contractual obligations for Products to any customers or End Users;
- d.** Reseller may only continue to distribute Product through the end date of the contract with the customers or End Users for Product;
- e.** The original contract for Product between Reseller and the End User may be no longer than twelve (12) months in total length;
- f.** Reseller provides certified copies of contracts with End User for Product if requested in writing by Rosetta Stone.

If termination is because of Rosetta Stone's breach under Sections 5.1(a) or 5.1(b) or Rosetta Stone's convenience under Section 5.1(d) above, Rosetta Stone will pay the costs of returning the products; otherwise Reseller will pay those costs.

**6 DISCLAIMER OF WARRANTIES.** Except for the limited warranties expressly set forth in Sections 3.1(a) and 3.2(b), the Software and Online Service are provided "As Is," with all faults, and the entire risk as to the satisfactory quality, performance, accuracy, and effort of such Software or Online Service shall be with Reseller or the applicable corporate customer or End User. There is no warranty herein against interference with

enjoyment by Reseller, a corporate customer, or End User of the Software or Online Service or against infringement. Rosetta Stone disclaims any and all other express or implied representations and warranties with respect to the Software, the Online Service and any other services provided hereunder, including any express or implied warranty of merchantability, fitness for a particular purpose, non-infringement, or that use of the Software or Online Service will be uninterrupted or error-free.

**7 EXPENSES.** Reseller assumes full responsibility for all costs and expenses which it incurs in carrying out its obligations under this Agreement (including all salaries, commissions, advertising costs, demonstration costs, translation costs, travel and accommodation expenses) without the right to reimbursement for any portion thereof from Rosetta Stone.

**8 CONFIDENTIALITY.**

**8.1** Each party, in performing its obligations under this Agreement, will have access to or be exposed to, directly and indirectly, proprietary materials of the other party (the “Confidential Information”). Confidential Information shall include End User Information, Online Product sales information, usage information, revenue information, know-how, and other information relating to the Online Products or either party's business marketing, and/or business affairs, and proprietary and trade secret information of such party, whether disclosed in oral, graphic, written, electronic, or machine readable form.

**8.2** Confidential Information shall not include information which can be demonstrated: (i) to have been rightfully in the possession of the receiving party from a source other than the owner of such Confidential Information prior to the time of disclosure of said information to the receiving party hereunder (“Time of Receipt”); (ii) to have been in the public domain prior to the Time of Receipt; (iii) to have become part of the public domain after the Time of Receipt by a publication or by any other means except an unauthorized act or omission or breach of this Agreement on the part of the receiving party or its officers, directors, employees, consultants, or agents; (iv) to have been supplied to the receiving party after the Time of Receipt without restriction by a third party who is under no obligation to the owner of such Confidential Information to maintain such information in confidence; or (v) to be required to be disclosed by any applicable law or regulation or the order of any court, tribunal, or regulatory authority of competent jurisdiction or in order to enforce the receiving party's rights hereunder, provided that the receiving party (a) gives the other party prior notice of such compelled disclosure in order to afford the other party an opportunity to seek a protective order or such other limitations on the compelled disclosure as they may be lawfully entitled to receive, (b) thereafter cooperates in good faith with the other party's efforts to obtain such protection, and (c) does not disclose any more Confidential Information than is expressly required to be disclosed pursuant to the applicable law, regulation, or order.

**8.3** Each party agrees to hold all Confidential Information of the other party in strict confidence and shall not, without the express written permission of the owner of such Confidential Information, (i) disclose any of such Confidential Information to third parties (except as set forth below) or (ii) use Confidential Information for any purposes whatsoever, other than the performance of its duties and obligations, or the exercise of its rights hereunder. Each party may disclose the other party's Confidential Information only to those of its officers, directors, employees, consultants, and agents who have a need to know such Confidential Information in furtherance of the purposes of this Agreement and then only so long as such person has agreed in writing to hold the same in confidence on terms not less restrictive than those set forth herein. Each party shall use reasonable efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, each party shall immediately advise the other in the event that it learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement, and shall cooperate in seeking injunctive relief against any such person.

**8.4** Each party shall use the same degree of care to safeguard and keep confidential all Confidential Information disclosed to it by the other party as it uses to protect its own proprietary, confidential, and valuable trade secrets, but in any event shall use no less than a reasonable degree of care. Neither party shall publish, disclose, or use Confidential Information of the other party at any time during the term of this Agreement or after its termination, except as expressly permitted by the terms of this Agreement.

**8.5** Reseller shall not remove any patent, copyright, or other proprietary notice or legend contained on or within any Online Products or the packaging thereof.

**8.6** The parties each acknowledge and agree that the threatened or actual unauthorized disclosure of Confidential Information hereunder will cause the party owning or disclosing such Confidential Information irreparable harm and, accordingly, the party owning or disclosing such Confidential Information shall be entitled to injunctive relief or such other equitable remedy as a court of competent jurisdiction may impose in order to prevent or cure such unauthorized disclosure, together with legal costs and expenses relating to the application for, and enforcement of, such equitable relief.

**8.7** The confidentiality obligations of the parties set forth in this Section 8 shall survive termination of this Agreement and remain in effect for five (5) years thereafter. Upon termination of this Agreement for any reason, the parties shall each immediately cease to use the other party's Confidential Information and shall return all copies of Confidential Information in the receiving party's possession and control or shall alternatively verifiably destroy all such copies and, in either case, shall provide to the other party a certificate, signed by an authorized officer of the receiving party, confirming that it has satisfied its obligations to destroy or return all such Confidential Information.

## **9 INTELLECTUAL PROPERTY.**

**9.1 Proprietary Rights.** Except for the rights expressly granted in Section 2, Rosetta Stone, and its licensors shall retain all right, title and interest in and to the Products. This Agreement grants no express or implied license, right or interest in or to any copyright, patent, trade secret, trademark, URL, domain, invention or other intellectual property right other than the express rights set forth in Section 2 and all rights not expressly granted by Rosetta Stone herein are retained by Rosetta Stone. Without limitation of the foregoing, Reseller will not acquire any rights to the intellectual property including domain names, other than the limited use rights granted herein for the term of this Agreement. If Reseller suggests new features or functionality that Rosetta Stone, in its sole discretion, adopts for the Products, such new features or functionality will be the sole and exclusive property of Rosetta Stone. Reseller shall not remove, or allow (through act or omission) to be removed, any copyright, trade secret or other proprietary rights notice from the Products, the Online Service or any related marketing materials.

### **9.2 Use of Rosetta Stone Trademarks and Content**

- a.** From time to time during the Term of this Agreement, Rosetta Stone may provide or make available to Reseller (i) certain advertising copy and other content describing the Products (the "Advertising Content"), and (ii) the "ROSETTA STONE" and certain other trademarks, slogans, logos, designs and other similar means of distinction used in the Marketing of the Products (the "Rosetta Stone Marks").
- b.** During the Term of this Agreement and subject to the restrictions and conditions set forth in Section 2, Rosetta Stone hereby grants Reseller a non-exclusive, fully-paid license to use and display (i) the Advertising Content in the Territory, (ii) the Rosetta Stone Marks in the Territory, in each case solely (A) in the form provided by Rosetta Stone or translated/localized as expressly approved by an authorized representative of Rosetta Stone in writing, (B) in conjunction with the marketing and sale of Products, and (C) if used on the internet, on the authorized websites of Reseller specified in Exhibit D.
- c.** The rights set forth in this Section 9.2 shall not include the right to grant sublicenses; provided that Reseller may sublicense the rights granted in this Section 9.2 to a third party that provides web hosting services to Reseller and to any agents and Sub-Resellers as may be permitted under Section 2, 2.1
- d.** Reseller acknowledges that all rights in the Rosetta Stone Marks, and all goodwill pertaining thereto, are and shall be the sole property of Rosetta Stone. Reseller shall not use any Rosetta Stone Mark in any corporate, partnership or business name or in any URL without Rosetta Stone's prior written consent. Upon the termination of this Agreement, Reseller shall cease all further use of the Advertising Content and Rosetta Stone Marks.



- e. Any reference by Reseller to the Products, Online Service or the Software (including any description of their features or functionality) in documentation, advertising or marketing materials, including web site pages, shall be subject to the prior written approval of Rosetta Stone. Reseller shall correct any specified misuses of the Rosetta Stone Marks or any references to, or descriptions of, the Products, Online Service or the Software not approved by Rosetta Stone pursuant to this Section 9.2(e).

**9.3 Trademarks.** During the term of this Agreement, Reseller hereby grants Rosetta Stone a non-exclusive, worldwide license to (a) use and display the trademarks of Reseller solely in the form provided by Reseller and only in conjunction with the Online Language Learning Centers created pursuant to this Agreement, and (b) use and display the trade name in the URL for the Online Language Learning Center in the form <http://tradename.onlinelanguagelearning.com> or in such other form as may be agreed by the parties in writing.

**9.4 Registration and Use Data.** All data collected from persons during registration for the Online Service shall be the joint property of Rosetta Stone and the Reseller as long as the Reseller does not sell the list of users, nor use the user information for the transmission of unsolicited electronic mail. The use and disclosure of such data shall be subject to Rosetta Stone's privacy policy (located at <http://www.rosettastone.com/global/privacy>), and applicable law.

## 10 INDEMNIFICATION.

**10.1 Indemnification by Rosetta Stone.** Rosetta Stone agrees to indemnify, defend and hold Reseller harmless from and against any loss, claim, judgment, liability, damage, action or cause of action (including reasonable attorneys' fees and court costs) (collectively, "**Losses**") finally awarded in connection with (a) a third party claim that use of the Software or Online Service by an End User infringes or misappropriates a valid U.S. patent, copyright, or trademark, and (b) willful misconduct or unlawful acts of Rosetta Stone in performing its obligations hereunder; *provided, however*, that Rosetta Stone shall have no obligation to indemnify, defend, or hold Reseller harmless unless Reseller promptly notifies Rosetta Stone in writing of the claim, allows Rosetta Stone to control the defense of such claim, and cooperates with Rosetta Stone in the defense of the claim or in any related settlement negotiations.

**10.2 Indemnification by Reseller.** Reseller agrees to indemnify, defend and hold Rosetta Stone, its directors, officers, shareholders, employees, affiliates and its licensees harmless from and against any Losses finally awarded in connection with (a) any claims, suits, demands, causes of action or other proceedings brought by an End-User, customer or consumer arising in any way from the marketing, sales or distribution of the Products by Reseller; (b) a third party claim that the use of any trademark, content, or other materials provided or made available by Reseller pursuant to this Agreement infringes or misappropriates a valid U.S. copyright or trademark, and (c) any claim, loss, cost, fine, or expense, including reasonable attorney's fees, arising out of Reseller's breach of any provision set forth in this Agreement; *provided, however*, that Reseller shall have no obligation to indemnify, defend, or hold Rosetta Stone harmless unless Rosetta Stone promptly notifies Reseller in writing of the claim, allows Reseller to control the defense of such claim, and cooperates with Reseller in the defense of the claim or in any related settlement negotiations.

## 11 LIMITATION OF LIABILITY.

**11.1** Notwithstanding anything to the contrary, the cumulative liability of Rosetta Stone, its directors, officers, shareholders, employees and affiliates, to Reseller for any actual or alleged damages arising out of, based on, or relating to this Agreement whether arising out of, based on, or relating to breach of contract, tort (including negligence), warranty or any other legal theory, shall be limited to Reseller's direct damages not to exceed the amount paid to Rosetta Stone by reseller under this agreement within the twelve (12) month period immediately preceding the accrual of such claim.

**11.2** In no event shall Rosetta Stone, or its directors, officers, shareholders, employees or affiliates, be liable to reseller for any indirect, special, incidental, consequential, punitive, or exemplary damages howsoever arising and whether under contract, tort or otherwise (including, without limitation, third party claims,

damages related to delays, loss of data, interruption of service, or loss of business or profits or damage to reputation or goodwill), even if Rosetta Stone or its directors, officers, shareholders, employees and affiliates have been advised of the possibility of such damages and even if a limited remedy is deemed to have failed of its essential purpose.

## 12 GENERAL TERMS.

- 12.1 Construction.** If any provision of this Agreement is held to be unenforceable for any reason, it shall be adjusted rather than voided, if possible, in order to achieve the intent of the parties to this Agreement to the extent possible. Unless the context otherwise requires, the conjunction “or” shall be understood in its inclusive sense (and/or). The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.”
- 12.2 Governing Law; Remedies.** This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia without reference to its conflict of laws provisions, as though entered into by Virginia residents and to be performed entirely within the Commonwealth of Virginia. Except as otherwise expressly provided in this Agreement, the rights, powers, remedies, and privileges provided in this Agreement are cumulative and not exclusive of any rights, powers, remedies, and privileges provided by applicable law.
- 12.3 Dispute Resolution.** The Parties expressly agree that any controversy, claim or dispute arising under or relating to this Agreement, including, without limitation, the existence, validity, interpretation, performance, breach or termination thereof, shall be brought and decided in the state or federal courts of the Commonwealth of Virginia. The parties expressly waive any objections on grounds of forum non conveniens, venue or personal jurisdiction to proceeding in the above-referenced courts exclusively.
- 12.4 Independent Contractors.** The status of the parties under this Agreement shall be that of independent contractors, in all relationships and actions arising and contemplated under this Agreement. Neither party shall be authorized to waive any right, or assume or create any contract or obligation of any kind in the name of, nor on behalf of, the other or to make any statement that it has the authority to do so. Nothing in this Agreement shall be construed as establishing a partnership, joint venture, agency, employment, or other similar relationship between the parties hereto.
- 12.5 Non-Solicitation.** Reseller shall not solicit for employment or contract with whether as a partner, employee, or independent contractor, directly or indirectly, any of Rosetta Stone’s personnel during the contract period or during the period twelve (12) months thereafter. If any Rosetta Stone personnel are hired by Reseller, either directly or indirectly, during the period specified above, the new employer shall pay Rosetta Stone, as liquidated damages, an amount equal to one hundred percent (100%) of the employee’s first year salary, including bonuses payable as of the date of hire.
- 12.6 Publicity.** Neither Rosetta Stone nor Reseller shall release or publish any news release, advertising or other public announcement relating to this Agreement or to the transactions contemplated herein without the prior review and written approval of the other party, which approval shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, (a) Rosetta Stone may, without seeking Reseller’s prior approval, state publicly or list in advertising, announcements, presentations, or other marketing materials the fact that Reseller is an authorized Reseller of Rosetta Stone products, and (b) either party may make such disclosures as are required by legal, accounting, or regulatory requirements after making reasonable efforts to consult in advance with the other party.
- 12.7 Assignment and Binding Effect.** This Agreement shall be binding upon the parties hereto and their respective permitted successors and assigns. Neither party may assign or otherwise transfer, by operation of law or otherwise, this Agreement without the prior written consent of the other party and any attempt to so assign or transfer this Agreement without such consent shall be void and of no effect, except that Rosetta Stone may assign or otherwise transfer its rights and obligations under this Agreement without consent to an affiliated entity or in conjunction with a merger or reorganization or to any acquirer of all or substantially all of Rosetta Stone’s assets.

**12.8 Excusable Delays.** If the performance of this Agreement or of any obligation hereunder, except for the payment of any amounts due hereunder, is prevented, restricted, or interfered with by reason of any cause beyond the reasonable control of the affected party, such party, upon prompt written notice to the other party, shall be excused from such performance to the extent of the aforementioned prevention, restriction or interference, *provided, however*, that the party so affected shall use its commercially reasonable efforts to avoid or remove such causes of nonperformance and shall continue performance hereunder with the utmost dispatch whenever such causes are removed.

**12.9 Third Party Rights.** Except as expressly set forth herein, nothing in this Agreement shall be construed as giving any person or entity, other than the parties hereto and their successors and permitted assigns, any right, remedy or claim under or in respect of this Agreement or any provision hereof.

**12.10 Notices.** All notice required to be given under this Agreement must be given in writing and delivered either in hand with receipt obtained, by certified mail, return receipt requested, postage pre-paid, or by Federal Express or other recognized overnight delivery service, all delivery charges pre-paid, and addressed, email (with confirmation of delivery) or facsimile (with confirmation of delivery):

If to Rosetta Stone:

Rosetta Stone Ltd.  
135 West Market Street  
Harrisonburg, VA. 22801 USA  
Phone No: (540) 432-6166  
Fax No: (540) 432-0953  
Attention: Legal Department

If to Reseller:

Name:  
Address:  
Phone No:  
Fax No:  
Attention:

**12.11 Severability.** If any of the provisions of this Agreement is found by an appropriate arbitral, judicial or regulatory authority to be void or unenforceable, such provision shall be deemed to be deleted from this Agreement and the remaining provisions shall continue in full force and effect.

**12.12 Survival.** The parties agree and acknowledge that they have read this Agreement, understand it, and agree to be bound by its terms. The parties further agree that this document and any invoices arising under it, constitute the complete and exclusive agreement between the parties regarding their subject matter. The provisions of Sections 2.7, 6, 7, 8, 9, 10, 11 and 12 shall survive termination or expiration of this Agreement.

**12.13 Additional Undertakings**

- a. Compliance with Laws. Reseller shall comply with all laws, rules, regulations (including government procurement regulations), and industry standards existing with respect to the sale of Products and the performance by Reseller of its obligations hereunder.
- b. Export. Reseller shall not export, re-export, or transfer the Products except in full compliance with the laws and regulations of the United States, including the Export Administration Regulations established by the U.S. Department of Commerce and regulations of the U.S. Treasury Department's Office of Foreign Assets Control.

**12.14 Counterparts; Amendments; Entire Agreement, Etc.** This Agreement may be executed in as many counterparts, as may be required, each of which, when delivered, is an original, but all of which taken together constitute one and the same instrument. This Agreement may be executed by facsimile and the facsimile execution pages will be binding upon the executing parties to the same extent as the original executed pages. The executing party shall provide originals of the facsimile executed pages for insertion

into the Agreement in place of the facsimile pages. This Agreement and any of its provisions may be changed, modified, waived, amended, or supplemented only by a written instrument signed by an authorized officer of each party. Any supplemental or additional terms contained in a separate document shall not amend this Agreement unless such separate document expressly references this Agreement and is signed by an authorized officer of each party. The Exhibits referred to in this Agreement are attached hereto, and such Exhibits, as amended from time to time, are incorporated into this Agreement by this reference. This Agreement will constitute the entire agreement between the parties and any prior understanding related to the subject matter hereof, preceding the date of this Agreement will not be binding upon either party.

**EXHIBIT A**  
**TERRITORY**

1. **Territory**: Territory is defined as non-exclusive rights to market and sell Tangible and Online Product(s) to \_\_\_\_\_ in \_\_\_\_\_.

Any leads or sales outside the above Territory must be directed back to Rosetta Stone.

**EXHIBIT B**  
**PRODUCT DESCRIPTION AND PRICE LIST**

Contracts not covered by the following product description and price list, including but not limited to bundled, OEM (original equipment manufacturer), low price/high volume opportunities and others, and the terms of those contracts, including deliverability, payment, territory and all other pertinent terms, will be negotiated separately in each instance. All such contracts, or other special projects or products, shall be with the consultation and approval of Rosetta Stone. Reseller will inform Rosetta Stone of the identity, status, and details of all such contracts. The prices given below are recommended prices (MSRP or Manufacturer's Suggested Retail Price), and Reseller shall ultimately be responsible for determining the prices of Products that it sells. All prices based on volume require consolidated purchase on single purchase order or equivalent.

All prices listed are in United States Dollars (\$);

**A. ROSETTA STONE PERSONAL EDITION:** For use by individual employees or students and purchased by the organization. Institutional resellers are not authorized to sell direct to consumers. Licensed per installation of a personal computer for home or personal use.

Personal Edition CD-ROM: Retail box, Data CD, Application CD, Curriculum Text, Users Guide (US English or localized, where available)

**[TO BE PROVIDED]**

**B. ROSETTA STONE CLASSROOM OR ENTERPRISE - VERSION 3 - CD-ROM (FLOATING):**

Available in Arabic, English (American and British), Chinese (Mandarin), French, German, Hebrew, Irish, Italian, Japanese, Portuguese, Russian, and Spanish (Latin American and Spain) - Levels 1,2 & 3: Rosetta Stone Manager Version 3 Server CD, Rosetta Stone Manager Version 3 CD, Rosetta Stone Network Version 3, Rosetta Stone Language Level(s) CD, Installation Guide, Administrator Guide, User Guide, Each license provides for installation on multiple machines and allows multiple users. Each license is per language per level per concurrent user.

The same license and pricing model applies for Rosetta Stone Classroom Edition - Version 2. Available in 1, 2 or 3 levels depending on the language. Rosetta Stone - Version 2 is available to customers who have already purchased in the past and require additional licenses or for customers who require languages not yet available in Version 3.

**[TO BE PROVIDED]**

**C. ROSETTA STONE TEACHER MATERIALS - VERSION 3:** Teacher materials are available in English (US) and Spanish (Latin America) only. Materials include: Printed Teachers Guide, Printed Users Guide, Printed Administrators Guide, Content/Curriculum Guide (CD), Student Workbook (printed and on CD), Tests (CD), Answer Key - workbook and tests (CD).

**[TO BE PROVIDED]**

**E. ROSETTA STONE CLASSROOM - VERSION 3 ONLINE. ROSETTA STONE ENTERPRISE - VERSION 3 ONLINE OR ROSETTA STONE VERSION 2/VERSION 3 - ONLINE LANGUAGE LEARNING CENTER (OLLC):** Rosetta Stone Online offerings are sold in 12 month periods. Printed or CD-ROM ancillary materials for the Online Service are not included in the License price and are sold separately as described above.

Rosetta Stone Online services are offered based on three different licensing options as described below and are available either as part of a Rosetta Stone portal or integrated with a Learning Management System (LMS). Integration with an LMS is provided via SCORM or AICC files and standards or via a single sign-on process. Required Set-up, LMS, professional services required to integrate Rosetta Stone with the client's LMS, and/or Hosting Fees, if applicable, are priced separately from the License for the Online Service and are negotiated based on client specific requirements.

Online Option 1 - Course (Vouchers, blocks or tickets):

Each course equals one language (all available levels) for one year from the point of registration. Once a student is registered, the license may not be reassigned. All purchased courses must be activated within 12 months of purchase. Unused courses are forfeited. Each registered user has a maximum of 12 months to complete their course from the point in time when they are registered.

**[TO BE PROVIDED]**

Online Option 2 - Annual Subscription:

Each license begins and ends at the same time. Each license provide for access to one active or named user. Licenses may be reassigned during the 12 month active period.

**[TO BE PROVIDED]**

Online Option 3 - Annual Site License

This is a license for an entire organization or school based on the total population of employees (business or organization) or students (school). The license is for potential access for the entire organization and is a 12 month license. Online schools are not eligible for this model. For schools, site licenses are per school and can not be grouped or combined (i.e. district or local authority).

**[TO BE PROVIDED]**

**F. ROSETTA STONE HOMESCHOOL - CD ONLY:** Licensed per language per level for installation on a home or personal computer. Purchase includes application CD, language level(s), parents tracking and curriculum management tools, Parents Guide, headset, and student materials CD-Rom.

**[TO BE PROVIDED]**

**G. PROMOTIONAL OFFERS:** Periodically, Rosetta Stone will offer or approve promotional offers. When promotional pricing is approved in advance, standard reseller margins/discounts apply.

**DISCOUNT PERCENTAGE FOR RESELLER:**

Reseller shall pay net wholesale price to Rosetta Stone of MSRP less discount based on discount levels listed below.

**[TO BE PROVIDED]**

**PROFESSIONAL SERVICES OR CUSTOMIZATION:**

NO DISCOUNT PROVIDED FOR PROFESSIONAL SERVICES TO PROVIDE CUSTOMIZATION OR INTEGRATION SERVICES.

**EXHIBIT C**  
**PAYMENT TERMS**

Terms of Payment: Net 30 Days with a \$\_\_\_\_\_ credit limit.

Rosetta Stone may change or revoke Payment Terms and Credit Limit upon written notice to Reseller.

Special payment terms for individual purchase orders may be extended by Rosetta Stone to Reseller in writing.

Reseller pays shipping.

No minimum order requirement.

**EXHIBIT D**  
**CONTACT INFORMATION**

**Rosetta Stone**

**Reseller**

**ADMINISTRATIVE:**

Telephone:  
E-mail:

**SALES**

Telephone:  
E-mail:

**TECHNICAL**

Telephone:  
E-mail:

**RETURNS**

Telephone:  
E-mail:

**ACCOUNTING**

Telephone:  
E-mail:

**Web site URLs:** [www.rosettastone.com](http://www.rosettastone.com)

**ADMINISTRATIVE:**

Telephone:  
E-mail:

**SALES**

Telephone:  
E-mail:

**TECHNICAL**

Telephone:  
E-mail:

**RETURNS**

Telephone:  
E-mail:

**ACCOUNTING**

Telephone:  
E-mail:

**Web site URLs:**