

## **Examples of License Audit Provisions**

### Sample #1

Book and Records. Licensee agrees to maintain adequate books and records relating to its compliance with the terms of this Agreement, including the distribution of Titles, during the term of this Agreement and for a period of three (3) years thereafter. Such books and records shall clearly and separately set forth, without limitation, as to each item separately licensed hereunder, at least the following information: the computation of all royalties and any other amounts owing to Licensor. Such books and records shall be available at Licensee's place of keeping for inspection, at Licensor's expense, by a mutually agreed upon auditor, for the purpose of determining whether Licensee has complied with the terms of this Agreement. Any audits will be performed during normal business hours and will not unreasonably disrupt Licensee's business. Licensor shall have the right to conduct such an audit upon at least 30 days advance notice. In the event that any such audit discloses an underpayment, such underpayment shall be promptly paid and, if the amount of such underpayment is greater than 10% of the amount that was due, Licensee shall be responsible for paying the costs of such audit.

### Sample #2

Audit Rights. Licensee shall maintain for a period of two (2) years after the end of the year to which they pertain, complete records of the Software distributed by Licensee and to Licensee Customers in order to calculate and confirm Licensee's royalty obligations hereunder. Upon reasonable prior notice, Licensor will have the right, exercisable not more than once every twelve (12) months, to appoint a representative, at Licensor's expense, to examine such books, records and accounts during Licensee's normal business hours to verify the royalties due by Licensee to Licensor herein. Licensor may audit more than once every twelve (12) months if there has already been a previous audit and some discrepancy of payment has been found. In the event such audit discloses an underpayment or overpayment of royalties due hereunder, the appropriate party will promptly remit the amounts due to the other party. If any such audit discloses a shortfall in payment to Licensor of more than five percent (5%) for any quarter, Licensee agrees to pay or reimburse Licensor for the expenses of such audit.

### Sample #3

Audit Rights. Licensee agrees to keep complete and accurate books of account and records covering all of the revenues described in Paragraph 4 and amounts due under this Agreement at Licensee's address set forth above and shall permit Licensor or its agents to inspect such books of account and records during reasonable business hours (upon prior reasonable written notice) no more frequently than once during any twelve (12) month period for the purpose of verifying the reports to be provided hereunder. In the event that any such inspection reveals that Licensee has underpaid Licensor by five percent (5%) or more with respect to the Royalty Period(s) which is the subject of such inspection,

Licensee agrees that it shall reimburse Licensor for the reasonable costs for any such inspection. All books of accounts and records relating to each report to be provided under this Agreement shall be retained by Licensee for at least two (2) years after the termination or expiration of this Agreement and Licensor's rights under this Paragraph 5.02 shall survive termination or expiration of this Agreement for a period of 2 years. Licensee shall pay to Licensor the amount of any deficiency discovered by Licensor with interest as described in Paragraph 5.03 from the date such deficiency was originally due, and, if applicable, the costs of the inspection, within fifteen days after receipt of notice thereof from Licensor. Licensee acknowledges that Licensor may delegate its rights hereunder to Licensor's affiliates and may use outside accountants to conduct such inspections. Licensee shall not interfere with Licensor's inspectors in the performance of their duties. In addition, Licensee expressly acknowledges that its agreements with third parties involving the Licensed Products or the Licensed Property, any reports issued thereunder by the third parties, and any revenue therefrom are part of the books and records subject to inspection under this Paragraph 5.02. Licensee shall require each MSO Distribution Partner to agree in writing to permit Licensee and Licensor to access its books and records to confirm compliance with the applicable access agreement or sublicense. Should Licensor elect to exercise its rights with respect to the inspection of the books and records of any MSO Distribution Partner, Licensee shall fully cooperate, at Licensee's expense, in connection therewith.

#### Sample #4

Audit Rights. Licensee shall retain records and supporting documentation sufficient to document the fee payable under this Agreement in any particular year in which this Agreement is in effect for at least three years following the end of such year. Upon no less than 30 days prior written notice, Licensee shall provide to a nationally recognized independent public accounting firm (the "Auditors") designated in writing by Licensor access during normal business hours to Licensee's personnel, outside accountants and data and records maintained in connection with this Agreement, in each case to the extent necessary or appropriate for the purpose of determining whether calculations of the fees payable under this Agreement are accurate and in accordance with this Agreement (an "Audit"). Audits will be conducted by Licensor no more frequently than once per calendar year. Licensee shall use commercially reasonable efforts to assist such Auditors in connection with such Audits. Any such Audits shall be conducted at Licensor's sole cost and expense, subject to clause (c) below. Licensor shall cause its Auditors to provide a copy of their final report to Licensee and Licensor simultaneously, but in any event within ten Business Days following the conclusion of the applicable Audit. If it is determined that Licensee underpaid Licensor in a particular period, Licensee shall reimburse Licensor the applicable amount, plus interest from the date upon which such erroneous payment was made to the date upon which such reimbursement is made at an annual rate equal to the published prime rate of Chase Manhattan Bank as in effect from time to time during such period, or the maximum rate permitted by law, whichever is less. If such underpayment was equal to or greater than 3% of the fee payable under this Agreement during the

audited period, Licensee will promptly reimburse Licensor for Licensor's reasonable expenses incurred in connection with such audit. If it is determined that Licensee overpaid Licensor in a particular period, Licensee shall be entitled to offset such overpayment against amounts payable to Licensor pursuant to this Agreement.

#### Sample #5

Audit Rights. During the term of this Agreement and for three (3) years thereafter, Licensee agrees to keep all usual and proper records and books of account and all usual and proper entries relating to the Licensee Product and the OEM Product. Records and books of account include, but are not limited to, information regarding the number of Licensee Product and OEM Product units distributed or subscriptions activated. Licensor may cause an audit and/or inspection to be made of the applicable Licensee records in order to verify statements issued by Licensee and Licensee's compliance with the terms of this Agreement. Any such audit shall be conducted by an independent certified public accountant selected by Licensor, and reasonably acceptable to Licensee. Such independent certified public accountant shall provide a summary of its findings regarding its verification of the statements by Licensee and Licensee's compliance with the terms of this Agreement. Any audit and/or inspection shall be conducted during regular business hours at Licensee's facilities with reasonable notice. Licensee agrees to provide Licensor's designated audit or inspection team access to the relevant Licensee records. Licensee shall pay Licensor the full amount of any underpayment revealed by the audit plus interest from the date such payments were due under the terms of this Section 4. Notwithstanding the foregoing, if such audit reveals an underpayment by Licensee of more than five percent (5%) for the period covered by the audit report, Licensee shall pay all of the fees and costs associated with such audit and the amount underpaid with interest from the date such payment was due pursuant to this Section 4.

#### Sample #6

Verifying compliance. You must keep records relating to the products you and any affiliate participating under a license agreement run. We have the right to verify compliance with any license agreement, at our expense, during the term of the license agreement and any enrollment and for a period of one year thereafter. To do so, we will engage an independent accountant from a nationally recognized public accounting firm, which will be subject to a confidentiality obligation. Verification will take place upon not fewer than 30 days notice, during normal business hours and in a manner that does not interfere unreasonably with your operations. As an alternative, we may require you to accurately complete our self-audit questionnaire relating to the products you and any affiliates participating under a license agreement use. If verification or self-audit reveals unlicensed use of products, you must promptly order sufficient licenses to permit all product usage disclosed. If material unlicensed use is found (license shortage of 5% or more), you must reimburse us for the costs we have incurred in verification and acquire the necessary additional licenses as single retail licenses within 30 days. If we undertake such verification and do not find material unlicensed use of

products, we will not undertake another verification of the same entity for at least one year. We and our auditors will use the information obtained in compliance verification only to enforce our rights and to determine whether you are in compliance with the terms of the applicable license agreement. By invoking the rights and procedures described above, we do not waive our rights to enforce this agreement (including any license or services agreement incorporating these terms) or to protect our intellectual property by any other means permitted by law.

#### Sample #7

Verifying compliance. You agree to keep all usual and proper records relating to the products you run. We may request that you conduct an internal audit of all Microsoft products in use throughout your organization, comparing the number of products in use to the number of effective licenses issued in your name, at any time up to one year after the authorization number expires. Following any audit, you agree to deliver to us a written statement signed by your authorized representative, certifying that either (i) you have sufficient licenses to permit all usage disclosed by the audit or (ii) you have ordered sufficient licenses to permit all usage disclosed by the audit. By requesting an audit, we do not waive our rights to enforce this agreement or to protect our intellectual property by any other means permitted by law.