Subscriber Agreement for Certificates

PLEASE READ THIS AGREEMENT AND MICROS CERTIFICATION PRACTICES STATEMENTS ("CPS") CAREFULLY BEFORE USING THE CERTIFICATE ISSUED TO YOUR ORGANIZATION. BY USING THE CERTIFICATE, YOU ARE AGREEING TO BE BOUND BY THE TERMS OF THIS AGREEMENT AND THE CPS. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT AND THE CPS, PROMPTLY RETURN THE UNUSED CERTIFICATE TO MICROS AND YOUR CERTIFICATE WILL BE REVOKED. IF YOU HAVE ANY QUESTIONS REGARDING THIS AGREEMENT, E-MAIL US AT support@micros.com.

THIS SUBSCRIBER AGREEMENT FOR CERTIFICATES ("Agreement") is effective as of the date of the accompanying Certificate (the "Effective Date") between MICROS and the organization receiving the Certificate ("Applicant").

The legal name of the Applicant is (as stated above).

The Contract Signer (as hereinafter defined) is duly authorized by the Applicant to bind the Applicant to this Agreement is (as stated above).

Unless agreed otherwise by the parties, each Certificate that MICROS issues to Applicant shall be governed by this Agreement and the CPS.  Further, the parties hereby agree that Relying Parties and Application Software Vendors (as such terms are defined below) are intended third party beneficiaries of this Agreement.

1.      DEFINITIONS

Application Software Vendors

A developer of Internet browser software or other software that displays or uses certificates and distributes root certificates, such as, but not limited to, KDE, Microsoft Corporation, Mozilla Corporation, Opera Software ASA, and Red Hat, Inc.

Certificate Revocation List ("CRL")

A regularly updated time-stamped list of revoked or invalid Certificates that is created and digitally signed by the CA that issued the Certificates.

Certification Authority ("CA")

 MICROS is Applicant's CA hereunder.

Contract Signer

The natural person who is employed by the Applicant, or an authorized agent who has express authority to represent the Applicant who has agreed this Agreement on behalf of the Applicant and who has authority on behalf of the Applicant to bind the Applicant to this Agreement.

Digital Signature

Information encrypted with a Private Key which is appended to electronic data to identify the owner of the Private Key and verify the integrity of the electronic data. Digitally Signed shall refer to electronic data to which a Digital Signature has been appended.

Certificate

Any certificate that contains information specified in the CPS and/or the Guidelines, as applicable, and that has been validated in accordance with the CPS and/or the Guidelines, as applicable.

Guidelines

Guidelines for Extended Validation Certificates, and other Certificates as adopted by the CA/Browser Forum and as amended, revised and updated from time to time.

Key Pair

Key Pairs is the Private Key and Public Key that correspond to each other.

Private Key

The key of a Key Pair that is kept secret by the holder of the Key Pair, and that is used to create digital signatures and/or to decrypt electronic records or files that were encrypted with the corresponding Public Key.

Public Key

The key of a Key Pair that may be publicly disclosed by the holder of the corresponding Private Key and that is used by a Relying Party to verify digital signatures created with the holder's corresponding Private Key and/or to encrypt messages so that they can be decrypted only with the holder's corresponding Private Key.

Relying Parties

Any person (individual or entity) that relies on a Valid Certificate. An Application Software Vendor is not considered a Relying Party when software distributed by such Vendor merely displays information regarding a Certificate.

Private Certification Authority Hierarchy

A collection of CAs and their certified Users.

User

An individual or an organization that has requested a CA to issue him/her or it a Certificate.

Valid Certificate

A Certificate that has not expired and has not been revoked.

2.      AUTHORITY TO USE CERTIFICATE

Grant of Authority

As of the Effective Date, Micros hereby grants to Applicant the authority for the term set forth in Section 7 to use the Certificate to as set forth in Micros CPS.  Notwithstanding the foregoing, Micros reserves the right to revoke the Certificate at any time and in its sole discretion.

Limitations on Authority

Applicant shall use its Certificate only in connection with properly licensed cryptographic software.

3.        SERVICES PROVIDED BY Micros

After execution of this Agreement and payment of all applicable fees, in addition to the grant of authority pursuant to Section 2, Micros or Trustwave, a third party providing certification authority services on behalf of Micros,  shall provide the following services to Applicant hereunder:

CRL Availability

Use its reasonable efforts to compile, aggregate and make electronically available to all CAs and certified Users in the Private Certification Authority Hierarchy (i)  MICROS 's current CRL, and (ii) the CRLs provided by CAs to  MICROS ; provided, however, that  MICROS  shall not be in breach of its obligations hereunder as a result of any delay in or failure of performance on its part which arises out of any equipment failure or telecommunications breakdown beyond the reasonable control of Trustwave. Trustwave shall make reasonable efforts to compile and issue CRLs on a daily basis.

Revocation Status Services

Use its reasonable efforts to provide to CAs, certified Users and users of those Certificates in the Private Certification Authority Hierarchy information concerning the status of particular Certificates; provided, however, that  MICROS  shall not be in breach of its obligations hereunder as a result of any delay in or failure of performance on its part which arises out of any equipment failure or telecommunications breakdown beyond the reasonable control of  MICROS .

Revoke Certificates

Promptly upon the request of Applicant, revoke the Certificate of Applicant.  MICROS   agrees that if desired, promptly after revoking Applicant's Certificate at Applicant's request, shall issue Applicant a

new Certificate upon verification and approval by the appropriate CA and payment by Applicant of the then-current applicable fee.

4.        APPLICANT OBLIGATIONS

User Identification Information

All information provided by Applicant to MICROS  for the purpose of obtaining their Certificate shall be truthful, accurate, and not misleading. If at any time, the name of Applicant contained in the Certificate request provided by Applicant has changed, Applicant shall immediately cease using such Certificate, request that MICROS  revoke such Certificate, and provide  MICROS  with such changed information. If at any time, any other significant information, in particular Applicant's organization name, city, state, or country changes from that contained in the Certificate request, Applicant shall request that MICROS revoke the Certificate.  MICROS   agrees that it shall, promptly after revoking Applicant's Certificate at Applicant's request, issue Applicant a new Certificate upon acceptable completion of verification process and payment by Applicant of the then-current applicable fee.

Compromised Certificate

If Applicant has any reason to believe that the security of Applicant's Private Key may have been compromised, Applicant shall immediately request that MICROS  revoke Applicant's Certificate and MICROS  shall revoke said Certificate immediately upon Applicant's request.

Accuracy of Information

Applicant hereby agrees and warrants that it will provide accurate and complete information at all times to MICROS , both in the Certificate request and as otherwise requested by  MICROS  in connection with the issuance of the Certificate(s) to be supplied by  MICROS .

Protection of Private Key

Applicant hereby agrees and warrants that it (and its authorized subcontractors) will take all reasonable measures necessary to maintain sole control of, keep confidential, and properly protect at all times the Private Key that corresponds to the Public Key to be included in the requested Certificate(s) (and any associated access information or device - e.g., password or token).  Applicant hereby assumes a duty to retain control of Applicant's Private Key, to use a trustworthy system, and to take reasonable precautions to prevent its loss, disclosure or unauthorized use.

Acceptance of Certificate

Applicant hereby agrees and warrants that it will not install and use the Certificate(s) until it has reviewed and verified the accuracy of the data in each Certificate. Applicant is required to notify MICROS immediately if there is an error in its Certificate.

Reporting and Revocation Upon Compromise

Applicant hereby agrees and warrants that it will promptly cease using a Certificate and its associated Private Key, and promptly request MICROS to revoke the Certificate, in the event that: (a) any information in the Certificate is or becomes incorrect or inaccurate, or (b) there is any actual or suspected misuse or compromise of the Private Key associated with the Public Key listed in the Certificate.

Termination of Use of Certificate

Applicant hereby agrees and warrants that it will promptly cease all use of the Private Key corresponding to the Public Key listed in a Certificate upon expiration or revocation of that Certificate.

Use of Certificate

Applicant hereby agrees and warrants that it will install the Certificate only on the server accessible at the domain name listed on the Certificate, and to use the Certificate solely in compliance with all applicable laws, for authorized company business, and in accordance with this Agreement and the CPS.

5.      PERMISSION TO PUBLISH INFORMATION & RECEIVE COMMUNICATIONS

Applicant agrees that MICROS may publish the serial number of Applicant's Certificate in connection with MICROS's dissemination of CRLs and Certificate status information within and outside of MICROS Private Certification Authority Hierarchy. Applicant agrees to receive communications from MICROS via email.

6.      DISCLAIMER OF WARRANTY AND LIMITATION OF LIABILITY

NO WARRANTIES OF ANY KIND INCLUDING ANY WARRANTY REGARDING MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSED OR ARE TO BE IMPLIED IN THE TRANSACTION EVIDENCED BY THIS AGREEMENT.

IN CASES WHERE MICROS HAS ISSUED AND MANAGED A CERTIFICATE IN COMPLIANCE WITH THE GUIDELINES AND ITS POLICIES AS SET FORTH IN ITS CPS, MICROS  SHALL NOT BE LIABLE TO THE APPLICANT OR ANY OTHER THIRD PARTIES FOR ANY LOSSES SUFFERED AS A RESULT OF USE OR RELIANCE ON SUCH CERTIFICATE BEYOND THOSE SPECIFIED IN MICROS  CPS.  IN CASES WHERE MICROS HAS NOT ISSUED OR MANAGED A CERTIFICATE IN COMPLETE COMPLIANCE WITH THE GUIDELINES AND ITS CPS, ITS LIABILITY FOR DIRECT DAMAGES FOR ANY CAUSE OF ACTION OR LEGAL THEORY INVOLVED FOR ANY AND ALL CLAIMS, LOSSES OR DAMAGES SUFFERED AS A RESULT OF THE USE OR RELIANCE ON SUCH CERTIFICATE BY ANY APPROPRIATE MEANS SHALL IN NO CIRCUMSTANCE EXCEED $2,000 PER CERTIFICATE.

IN NO EVENT SHALL MICROS BE LIABLE FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR FOR ANY LOSS OF PROFITS, LOSS OF DATA, OR OTHER INDIRECT, CONSEQUENTIAL OR PUNITIVE DAMAGES ARISING FROM OR IN CONNECTION WITH THE USE, DELIVERY, LICENSE, PERFORMANCE OR NONPERFORMANCE OF CERTIFICATES, DIGITAL SIGNATURES, OR ANY OTHER TRANSACTIONS OR SERVICES OFFERED OR CONTEMPLATED BY THIS AGREEMENT OR THE CPS.  MICROS WILL NOT BE HELD LIABLE IN ANY CIRCUMSTANCE RELATING TO THE APPLICANT BREACHING ITS REPRESENTATIONS OR OBLIGATIONS UNDER SECTION 4 OF THIS AGREEMENT.

7.      TERM AND TERMINATION

This Agreement shall terminate on the earliest of:

a.      The expiration date of the Certificate issued; or

b.      Failure by Applicant to perform any of its material obligations under this Agreement if such breach is not cured within fifteen (15) days after receipt of notice thereof from MICROS .

8.      EFFECT OF TERMINATION

Upon termination of this Agreement for any reason, Applicant's Certificate shall be revoked by MICROS in accordance with MICROS 's procedures then in effect. Upon revocation of Applicant's Certificate for any reason, all authority granted to Applicant pursuant to Section 2 shall terminate. Such termination or revocation shall not affect Sections 5, 6, 7, 9 and 10 of this Agreement which shall continue in full force and effect to the extent necessary to permit the complete fulfillment thereof.

9.        MISCELLANEOUS PROVISIONS

GOVERNING LAW

This Agreement will be governed by and interpreted in accordance with the laws of the State of Maryland, USA,  excepting the conflict of law rules of the State of Maryland, as if this contract were made and to be performed entirely within the State of Maryland.  The parties mutually consent to exclusive jurisdiction and venue in the state and federal courts sitting in the State of Maryland.

Binding Effect

Except as otherwise provided herein, this Agreement shall be binding upon, and inure to the benefit of, the successors, executors, heirs, representatives, administrators and assigns of the parties hereto. Neither this Agreement nor Applicant's Certificate shall be assignable by Applicant. Any such purported assignment or delegation shall be void and of no effect and shall permit MICROS  to terminate this Agreement.

Severability

If any provision of this Agreement, or the application thereof, shall for any reason and to any extent, be invalid or unenforceable, the remainder of this Agreement and application of such provision to other persons or circumstances shall be interpreted so as best to reasonably effect the intent of the parties hereto.

IT IS EXPRESSLY UNDERSTOOD AND AGREED THAT EACH AND EVERY PROVISION OF THIS AGREEMENT WHICH PROVIDES FOR A LIMITATION OF LIABILITY, DISCLAIMER OF WARRANTIES OR EXCLUSION OF DAMAGES IS INTENDED BY THE PARTIES TO BE SEVERABLE AND INDEPENDENT OF ANY OTHER PROVISION AND TO BE ENFORCED AS SUCH.

Intended Third Party Beneficiaries

The parties understand and agree that Microsoft and any other third party that Trustwave wishes to have the Trustwave roots included in the third party's certificate store, browsers, devices, software, and other products is an intended third party beneficiary of this Agreement.

Entire Agreement

This Agreement constitutes the entire understanding and agreement of the parties hereto with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements or understandings between the parties.

Notices

Whenever Applicant desires or is required to give any notice, demand, or request to MICROS with respect to this Agreement, each such communication shall be in writing and shall be effective only if it is delivered by a courier service that confirms delivery in writing or mailed, certified or registered mail, postage prepaid, return receipt requested, addressed to MICROS Director of Technical Services, MICROS, Inc. 100 1255 Twenty-Third Street, N.W. Wasington, D.C. 20037, with a copy to Trustwave Attn. Legal Department, 70 W. Madison St., Suite 1050, Chicago, IL 60602. Such communications shall be effective when they are received.

Trade Names, Logos

By reason of this Agreement or the performance hereof, Applicant and MICROS shall acquire no rights of any kind in any trademark, brand name, logo or product designation of the other party and shall not make any use of the same for any reason except as otherwise authorized in writing by the party which owns all rights to such trademarks, trade names, logos or product designation.

10. ACCEPTANCE

By agreeing to use the Certificate, Applicant agrees to be bound by this Agreement and the CPS. Further, in accordance with the Uniform Electronic Transactions Act and, to the extent applicable, the Federal U.S. law governing Electronic Signatures in Global and National Commerce, the Applicant agrees to be bound by this Agreement and the CPS by providing an electronic signature logically associated with this Agreement. In accordance with Section 9 above, this Agreement (including the manner of acceptance) is governed by and construed in accordance with the laws of the State of Delaware.