

## **US Operating Agreement Rosetta Stone Affiliate Agreement**

Read this carefully before submitting the application (the “Application”) for participation in the Affiliate Program (the “Affiliate Program”) of Rosetta Stone Ltd., makers of the Rosetta Stone Language Learning Software and related products and services (individually and collectively the “Product”). This (“Agreement”) is between the individual submitting the Application or the entity on whose behalf the Application is being submitted (“you” and “your”) and Rosetta Stone Ltd. (“Rosetta Stone”). By submitting the Application, you hereby ACCEPT AND AGREE to all of the terms and conditions set forth in this Agreement as they may be revised or amended by Rosetta Stone from time to time. This Agreement will become binding when your Application is accepted by Rosetta Stone.

### **1. Information Collection and Application Process.**

1.1 Information Collection. Rosetta Stone has hired Commission Junction, Inc. (“Commission Junction”), whose offices are at 530 East Montecito Street, Santa Barbara, CA 93103, USA to manage and administer the Affiliate Program. Commission Junction will (i) serve as the data interchange between you and Rosetta Stone; (ii) be responsible for collecting Applications; (iii) track your performance in the Affiliate Program; and (iv) operate the Reporting Site. Commission Junction’s role in the Affiliate Program means that they will have access to a great deal of information about you, including the personal information contained in the Application and the performance data associated with your participation in the Affiliate Program. All personal information supplied by you in connection with the Affiliate Program shall be used by Commission Junction in a manner that is consistent with its Privacy Policy. That policy is available for your review at <http://www.cj.com/privacy.jsp>, and sets forth Commission Junction’s practices with respect to, among other things, information sharing with its affiliated companies, online marketing, and information security. It also includes contact information in the event you have any questions or concerns about its handling of your personal information. By submitting your Application you consent to Commission Junction’s role in the Affiliate Program, including the collection and use of the information they gather in order to manage and administrate the Affiliate Program.

1.2 Application. By submitting the Application you are expressing your desire to participate in the Affiliate Program through which you may promote certain Rosetta Stone web site links, Products, and promotions and are paid Commissions for Qualified Purchases (as those terms are defined in Section 7) that are made as a direct result of your promotion. As part of the Application you must submit the principal address of your web site (the “Web site”) upon which you desire to place the Rosetta Stone Links (as defined in Section 2). You represent and warrant that: (i) the information submitted in the Application is truthful and accurate; (ii) the person submitting the Application is at least 18 years old; (iii) in the event you are an entity, the person submitting the Application has the full right, power and authority to enter into this Agreement on behalf of such entity; and (iv) the execution of this Agreement by such person, and the performance by you of your obligations and duties hereunder, do not and will not violate any agreement to which you are a party or by which you are otherwise bound. You acknowledge that Rosetta Stone makes no representations, warranties or agreements related to the subject matter

hereof that are not expressly provided for in this Agreement. Rosetta Stone will evaluate the Application and will notify you of Rosetta Stone's acceptance or rejection of the Application in a timely manner. Rosetta Stone may reject the Application or end your participation in the Affiliate Program if the Web site or your participation is deemed at any time and in the Rosetta Stone's sole discretion, to be unsuitable for the Affiliate Program. Unsuitable web sites include, but are not limited to, those that:

- display or provide content that is grossly offensive to the communities served by your Web site, including blatant expressions of bigotry, prejudice, racism, hatred or excessive profanity or post any obscene, lewd, lascivious, filthy, excessively violent, harassing or otherwise objectionable content;
- display or provide content containing pornographic material;
- sell or promote any products or services that are unlawful in the location at which the content is posted or received;
- introduce viruses, worms, harmful code and/or Trojan horses on the Internet;
- post any content or otherwise infringe in any way or violate any copyright, patent, trademark, service mark, trade name, trade secret or other intellectual property right of Rosetta Stone or any third party;
- post any content that holds Rosetta Stone open to public scorn or ridicule; or
- post or disclose any personally identifying information or private information about children or any third parties without obtaining their consent in a legally sufficient way (or their parents consent in case of a minor).

Unsuitable participation in the Affiliate Program includes, but is not limited to, actions that violate Rosetta Stone's rules relating to the Affiliate Program or these terms and conditions.

**2. Linking With Rosetta Stone and Use of Rosetta Stone Links.** In the event your Application is accepted by Rosetta Stone, you may use (to the extent provided in Section 5 below) the electronic graphic artwork, text and corresponding links to Rosetta Stone's Products (collectively the "Rosetta Stone Links") available at <http://www.cj.com> (the "Reporting Site") as necessary to participate in the Affiliate Program. The Reporting Site will identify the Rosetta Stone Links that will allow you the opportunity to earn a Commission ("Commission Links"). The Reporting Site may also give you the option of using Rosetta Stone Links that will not result in any compensation to you. Rosetta Stone will provide the HTML for the Rosetta Stone Links at the Reporting Site. It is the Rosetta Stone Links that will make it possible to track and report all of the Qualified Purchases (as defined in Section 7) acquired through your Web site, provided that cookies have not been disabled on the web browser being used to link to Rosetta Stone web site. It is your responsibility to integrate the Rosetta Stone Links into your Web site properly in accordance with the instructions available at the Reporting Site, and Rosetta Stone shall not be liable to you with respect to your failure properly to integrate the Rosetta Stone Links into your

Web site, including to the extent such failure may result in any reductions of amounts that would otherwise be paid to you under this Agreement. You agree not to modify any Rosetta Stone Links in any way without the express written permission of Rosetta Stone. You may only display the Rosetta Stone's Links on your Web site. If you have multiple web sites, you may submit one Application for multiple web sites to display the Rosetta Stone Links on such web sites. Without limiting the foregoing, and without Rosetta Stone's written consent, you shall not promote or otherwise announce the availability of the Rosetta Stone Links on your Web site anywhere other than within your Web site including, but not limited to, using the Rosetta Stone Links in e-mail and promoting or otherwise announcing the availability of the Rosetta Stone Links on your Web site through e-mail.

**3. Rosetta Stone Affiliate Program Trademark and Paid Search Policy.** This Section 3 sets forth the Rosetta Stone Affiliate Program trademark and paid search policy requirements and prohibitions, and coincides with the "Keyword Link" rules listed through Commission Junction, as may be revised by Rosetta Stone in its sole discretion from time to time. In the event of any discrepancy between this Section 3 and the applicable and most current version of the Keyword Link rules listed through Commission Junction, the Keyword Link rules listed through Commission Junction site shall control solely with respect to Keyword Link rules; all other Sections of these Affiliate terms shall at all time remain in effect.

**Usage Recommendation:**

Rosetta Stone will not pay commissions to affiliates who violate these trademark and paid search rules and terms, and may withhold commissions retroactively for such violations. You may not use Rosetta Stone trademarks or brands in any manner that, in our sole judgment, may diminish or in any way negatively impact them or their effectiveness.

**Bidding:**

- Required: If you use broad match, you must set the following terms as negative keywords: Rosetta Stone, rosettastone.com, rosettastone.
- Restricted: You may not bid on Rosetta Stone trademarked terms and/or use Rosetta Stone trademarked terms or confusingly similar terms as paid search keywords. This includes bidding on Trademark + Language. Example: Rosetta Spanish; or Rosetta Stone Spanish

**Ad Copy:**

- Allowed: You may use Rosetta Stone trademarked terms or variations in the ad text/search listings (title, description lines 1 and 2), *but not* in the display URL, except as expressly set forth below.
- Allowed: Your ad copy can reflect that you are an authorized partner (not a reseller) of Rosetta Stone. Example: "Authorized partner", "Official partner", "Affiliate", "Aff."
- Restricted: You may not claim to be the official Rosetta Stone, or use "Official Site" or similar claims in the ad copy.

**Display URL:**

- Allowed: You may include Rosetta Stone trademarked terms as a folder or category name of a non-branded domain. Example: www.exampledomain.com/RosettaStone, or www.exampledomain.com/RosettaSoftware
- Restricted: You may not use any of Rosetta Stone's URLs as display URL, including but not limited to www.RosettaStone.com and www.RosettaStone.co.uk.
- Restricted: You may not use any of Rosetta Stone's trademarks, variations or misspelling thereof in the domain or sub-domain name. Examples: www.rosetta-stone.com; www.rosetta.com

**Direct Linking:**

- Allowed: You may Direct Link (i.e., send traffic directly to the Rosetta Stone landing page/ Web site), *provided* that you don't use a Rosetta Stone URL as the display URL in your paid search ads.

**Discounts:**

- Restricted: You may not promote a higher % discount in your ad copy than Rosetta Stone's current affiliate promotion without the prior written permission of Rosetta Stone. If you have a rebate or cash-back site, you must clearly indicate so in your advertising. Example: If Rosetta Stone runs an affiliate promotion of 10% off and you give 2% cash-back, your ad must say "10% Off + 2% cash-back on Rosetta Stone," instead of "12% Off Rosetta Stone."

**Protected Keywords:**

You are expressly prohibited from bidding on Protected Keywords, including, but not limited to: rosetta stone, rosettastone, rosettastone.com, Rosetta Stone, Rosetta Spanish, Rosetta World, as well as any variations or misspellings, or confusingly similar terms. **Note:** This is not an exhaustive list of prohibited words, phrases, or combinations thereof.

**Recommended Keywords:**

You are permitted, and Rosetta Stone recommends that you bid on Recommended Keywords, including, but not limited to: language software, language learning, foreign language, foreign language software, language course, learn spanish, learn spanish online, spanish course, speak spanish, spanish training, spanish software, french, learn german, learn Italian. **Note:** This is not an exhaustive list.

**4. Your Web site.** You are solely responsible for, and Rosetta Stone hereby disclaims all liability for, the development, operation and maintenance of, and all costs associated with, your Web site, any content thereon and any equipment thereof. You hereby agree that your Web site shall not, in any way, copy or resemble the look and feel of, or create the impression that it is part of Rosetta Stone's or its subsidiaries' web sites. You agree that your Web site shall not engage in any of the unsuitable web site activities listed in Sections 1 and 2 above, and you understand and agree that Rosetta Stone may, at its sole discretion, withhold commissions and/or

terminate you from the Affiliate Program entirely for any violations of these or any other terms of this Agreement.

**5. Limited License to Use Rosetta Stone Links.** Rosetta Stone hereby grants to you a limited nonexclusive, nontransferable, revocable license to display on your Web site the Rosetta Stone Links solely as necessary for, and for the purpose of, promoting the Products associated with the Rosetta Stone Links as set forth at the Reporting Site and identifying you as a participant in the Affiliate Program. To the extent, if any, that Rosetta Stone Links contain Rosetta Stone's trademarks, service marks or trade names, you shall not use such marks in a manner that might be deemed to create a unitary composite mark. You agree not to use the Rosetta Stone Links in a manner that is, or otherwise include materials on your Web site that are, disparaging of Rosetta Stone. Rosetta Stone reserves all proprietary rights in and to the Rosetta Stone Links not expressly granted herein. You acknowledge that all use of the Rosetta Stone Links by you inures solely to the benefit of Rosetta Stone and that you do not acquire any rights in the Rosetta Stone Links as a result of such use. You will remove any outdated Rosetta Stone Links immediately upon our request. We may update these guidelines at any time without prior notice to you and you will update immediately according to any revisions to these guidelines. You agree this license can be revoked at any time for any or no reason upon notice by Rosetta Stone to you (regardless of termination of this Agreement) and you agree upon receipt of such notice immediately to cease using all Rosetta Stone Links.

## **6. Marketing.**

6.1 You may market the Products only by means of your approved web site(s) ("Approved Web site"). Rosetta Stone reserves the right to approve all content appearing on your Approved Web site which describes Rosetta Stone or the Products. You may nevertheless advertise the Products on web sites other than the Approved Web site (including on the results pages of search engines such as Google, Yahoo, MSN and AOL), provided that (a) all expenses incurred by you with respect to creating advertising materials and advertising the Products shall be borne exclusively by you, (b) all such advertising complies with this Agreement, and (c) all such advertising is subject to the prior written approval 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 your Web site or any advertising created by or for you is inappropriate for publication and should be removed, or otherwise violates this Agreement, you shall promptly remove such content following receipt of written notice from Rosetta Stone.

6.2 The Rosetta Stone Affiliate Program is **not a reseller program**. As an affiliate, you are authorized to refer prospects directly to Rosetta Stone; you are not authorized to buy and resell our Products. If you are interested in a reseller relationship with Rosetta Stone, you may contact us for more information at: <http://www.rosettastone.com/personal/form/contact-sales>. Include the subject line "regarding reseller program" in your email.

6.3 **Coupon Codes and Discounts:** You may only use coupons and codes that are provided by Rosetta Stone's Affiliate Program or that are on Rosetta Stone's affiliate landing page(s). All other coupon codes referring to Rosetta Stone must be removed from your sites, and you may not

use coupon codes from any other source, including from Rosetta Stone's customer emails, print ads or TV spots.

6.4 All advertising in any medium is subject to the prior written approval of Rosetta Stone.

## **7. Commissions and Payments.**

7.1 Qualified Purchases. Sales in the Affiliate Program are limited to individual and home school Product sales. No Commissions will be paid for any other type of sales. Commissions will be paid to you for Qualified Purchases. A "Qualified Purchase" is any purchase: (i) of Rosetta Stone Products; (ii) made via Rosetta Stone's web site (located at <http://www.rosettastone.com>) as a direct result of your promotion of the Rosetta Stone Products by linking from one of the Commission Links on your Web site; (iii) shipped by Rosetta Stone; and (iv) for which Rosetta Stone has received full payment. Notwithstanding the foregoing, no Commissions will be paid for purchases made by persons who have disabled the use of cookies within their web browsers and are subsequently not accounted for on the Reporting Site. Such persons are deemed to be direct customers of Rosetta Stone, will not be included on the Reporting Site, and will not contribute to the Commissions generated under the Affiliate Program. No Commissions will be paid for purchases made on any web site of Rosetta Stone other than <http://www.rosettastone.com>.

7.2 Commissions . Commissions shall be (i) 15% of Net Sales for Qualifying Purchases up to \$2000 per month; and (ii) 20% of all Net Sales beyond **\$2,000.01** per month for Qualifying Purchases ("Commissions "). For example, if an affiliate refers \$3,000 in Net Sales during a particular month, that affiliate will be paid 15% on \$2,000 and 20% on the additional \$1,000 in sales that make up to \$3,000, which would account for  $\$300 + \$200 = \$500$  total commission. If an affiliate refers only \$1,000 during a particular month, that affiliate will be paid 15% of those Net Sales or \$150. Net Sales means the amount actually paid to Rosetta Stone for Qualifying Purchases, excluding any amounts paid for sales taxes, duties, shipping and handling, or similar fees. Commissions will be adjusted downwards if (i) the Products are returned for refund at any time; or (ii) Rosetta Stone determines that a purchase for which you received a Referral Fee was made fraudulently including, but not limited to, the use of stolen credit cards, general charge-backs, and any other instances that cause us to credit a customer's account; or (iii) Rosetta Stone determines that a purchase for which a referral fee was made involved actions you took in violation of this Affiliate Program. Rosetta Stone, at its sole discretion and upon notification to you, may prospectively change this method of compensation or add additional methods of compensation.

7.3 Cookie Duration. End users referred by you will be marked with cookies of a 30 day duration, provided cookies have not been disabled by the end user. Affiliates will not be compensated for any Qualifying Purchases made by an end user who can't be identified after the 30 day cookie has expired or been removed.

**7.4 Payment of Commissions.** When the total Commissions due to you exceed a minimum amount set by you, Commission Junction will send you a check for the applicable amount (less any taxes required to be withheld under applicable law). If, at the end of the month, the Commissions due to you is less than the minimum amount, Commission Junction will roll your balance over to the next month. Rosetta Stone may choose to adjust the Fee for a particular period of time or for particular types of Rosetta Stone Products. Rosetta Stone will either provide you notice of such Fee changes to the e-mail address in your Application or will post notice of such change on the Reporting Site. You acknowledge that Rosetta Stone may offer a Fee to other participants in the Affiliate Program that is different than the Fee you receive. Nothing in the foregoing shall limit Rosetta Stone's ability to change the minimum Fee contained herein in accordance with Section 10. Consistent with these terms and conditions, Rosetta Stone may withhold commissions, both retroactively and proactively, if it determines that you have violated the terms of this Affiliate Program.

**7.5 Liability for Payment.** Rosetta Stone's sole obligation in regards to remitting payment to you as described in Sections 7.1 through 7.3 shall be to mail such payment to the address provided in your Application or in the event your address changes, to the address thereafter submitted at the Reporting Site. You are solely responsible for assuring your address of record is current and correct. In the event a payment sent to such address is returned to Rosetta Stone for any reason other than an error in such address on the part of Rosetta Stone, you hereby waive any rights to receive such payment. Rosetta Stone shall not be liable for any payment to you if Rosetta Stone deems that you have engaged in any fraudulent or criminal activity in connection with the Affiliate Program, or that you have otherwise violated the terms of this Affiliate Program.

**8. Reporting.** On an ongoing basis during the term of this Agreement, Commission Junction will provide you with a report accessible through a password protected portion of the Reporting Site. You are solely responsible for the security and use of your password. This includes responsibility for unauthorized access by third parties. You agree you shall not disclose your passwords to anyone not authorized to act on your behalf. You agree to notify Commission Junction immediately in writing of any breach in password security if you suspect any misuse of the passwords. Through the Reporting Site, Commission Junction shall provide you with a daily report setting forth the number of click-throughs to Rosetta Stone's web site that were generated from the Rosetta Stone Links on your Web site, and the number of Qualified Products purchased from Rosetta Stone through your Web site. The form, content and timing of the foregoing report may vary from time to time in Commission Junction's sole discretion.

**9. Policies and Pricing.** Customers purchasing Rosetta Stone Products through the Affiliate Program will be deemed Rosetta Stone's customers. All rules, policies, terms, and conditions and operating procedures concerning customer orders, customer service, and Rosetta Stone Product sales will apply to those customers. Rosetta Stone may change its policies and operating procedures, including pricing, at any time. Rosetta Stone, at its sole discretion, will determine the prices to be charged for Products sold under the Affiliate Program in accordance with our own pricing policies. You may not include price information on your site unless pricing information is made available on links Rosetta Stone provides on the Commission Junction Manager Portal (<http://www.cj.com>). Prices and availability of Rosetta Stone Products may vary from time to



time. Rosetta Stone will use commercially reasonable efforts to present accurate information, but we cannot guarantee the availability or price of any particular Product.

**10. Modification of This Agreement.** Rosetta Stone may modify any terms and conditions in this Agreement, including any amounts payable as Commissions under Section 7, at any time in its sole discretion by posting a notice or a new Agreement on the Reporting Site, and such notice or new Agreement shall be effective immediately upon such notice or posting on the Reporting Site. YOUR SOLE REMEDY AND RECOURSE IN THE EVENT ANY SUCH MODIFICATION IS UNACCEPTABLE TO YOU IS TO TERMINATE THIS AGREEMENT, PROVIDED THAT ROSETTA STONE SHALL PAY TO YOU ALL AMOUNTS DUE TO YOU PRIOR TO YOUR TERMINATION. Such termination by you in the event of a modification shall be effective immediately upon receipt by Rosetta Stone of notice thereof. Your continued participation in the Affiliate Program after such notice and/or posting shall constitute acceptance of the modifications.

**11. Press Releases; Publicity.** You may not announce your use of the Rosetta Stone Links on your Web site unless you first receive Rosetta Stone's prior written approval of such announcement. Rosetta Stone may announce your use of the Rosetta Stone Links on your Web site in its sole discretion.

**12. Term and Termination.** This Agreement shall be effective on the date Rosetta Stone accepts the Application and shall continue until either party terminates this Agreement as set forth herein (the "Term"). Either party may terminate this Agreement at any time for any or no reason (i) in the case of termination by Rosetta Stone, to you at Rosetta Stone's option, at either the e-mail address contained in the Application or by posting such notice on the Reporting Site, and (ii) in the case of termination by you, to Rosetta Stone at the following email address: [affiliate@rosettastone.com](mailto:affiliate@rosettastone.com). Rosetta Stone may terminate this Agreement immediately if (i) you breach this Agreement; or (ii) you go into liquidation or file for bankruptcy or suffer any similar action in consequence of debt.

**13. Limitation of Liability; Disclaimer; Indemnification.**

**13.1 Liability.** UNDER NO CIRCUMSTANCES WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES (EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES), ARISING IN CONNECTION WITH THIS AGREEMENT, EVEN IF EITHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES (COLLECTIVELY, "DISCLAIMED DAMAGES"); PROVIDED THAT YOU SHALL REMAIN LIABLE TO ROSETTA STONE TO THE EXTENT ANY DISCLAIMED DAMAGES ARE CLAIMED BY A THIRD PARTY AND ARE SUBJECT TO INDEMNIFICATION PURSUANT TO SECTION 10.3. ROSETTA STONE SHALL NOT BE HELD LIABLE IN ANY PART FOR FAILURE OF COMMISSION JUNCTION TO MAINTAIN SERVICE. IN NO EVENT SHALL THE LIABILITY OF ROSETTA STONE IN CONNECTION WITH THIS AGREEMENT FOR DAMAGES NOT EXCLUDED IN THE IMMEDIATELY PRECEDING SENTENCE EXCEED THE AMOUNT PAID OR PAYABLE



BY ROSETTA STONE TO YOU UNDER THIS AGREEMENT WITHIN THE THREE (3) MONTH PERIOD IMMEDIATELY PRECEDING THE ACCRUAL OF SUCH CLAIM.

13.2 No Additional Warranties. THE AFFILIATE PROGRAM, THE REPORTING SITE, ROSETTA STONE'S WEB SITE, THE ROSETTA STONE LINKS, (COLLECTIVELY, "SUBJECT MATTER") ARE PROVIDED "AS IS" AND "AS AVAILABLE." EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, NEITHER PARTY MAKES ANY, AND EACH PARTY HEREBY SPECIFICALLY DISCLAIMS ANY, REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE.

13.3 Indemnification. You agree to defend, indemnify and hold harmless Rosetta Stone, its subsidiaries and referrals, and their respective officers, directors, agents, distributors, franchisees and employees against any loss, damage, expense, or cost, including reasonable attorneys fees (including allocated costs for in-house legal services) arising out of any claim, demand, action, suit, investigation, arbitration or other proceeding by a third party ("Liabilities") based on (i) your material breach of any covenant, duty, representation, or warranty of this Agreement, (ii) materials contained on your Web site (including any allegation that such materials infringe a third party's proprietary rights), (iii) any covenant, representation or warranty made by you regarding Rosetta Stone's web site or Rosetta Stone's Products or services, and (iv) any claims that are otherwise related to your Web site and the content thereon.

#### **14. Ownership of Intellectual Property.**

Rosetta Stone reserves all rights in the Rosetta Stone Software not expressly granted to you in this Agreement. You acknowledge and agree that Rosetta Stone or its third-party licensors own all right, title and interest in and to the Rosetta Stone Software (including all text, photographs, graphics, animation, applets, music, video and audio incorporated therein and any related user guides and documentation), the trademarks ROSETTA STONE and ROSETTA WORLD and confusingly similar marks related to our Products and URLs, including but limited to rosettastone.com and rosettaworld.com, rosettaspainish, etc., and the trade dress, look and feel of the Rosetta Stone Software, all of which are covered by various protections including copyright, trademark, and trade secrecy law. If you suggest new features or functionality that Rosetta Stone, in its sole discretion, adopts for the Rosetta Stone Software, such new features or functionality will be the sole and exclusive property of Rosetta Stone. Rosetta Stone reserves the right, in its sole discretion and without incurring any liability to you, to update, improve, replace, modify and alter the specifications for and functionality of all or any part of the Rosetta Stone Software from time to time.

#### **15. Confidentiality.**

15.1. Confidentiality Obligations. Each party shall hold the Confidential Information of the other in confidence and protect the same with at least the same degree of care, but no less than reasonable care, with which it protects its own most sensitive confidential information. Each

party shall use the Confidential Information of the other solely in connection with the exercise of its rights and the performance of its obligations under this Agreement, and shall restrict disclosure of and access to the Confidential Information of the other to such party's Personnel that require access to such Confidential Information in connection with this Agreement. Each party shall require its personnel to comply with the obligations of confidentiality set forth herein and shall be liable for any failure by its Personnel to so comply.

15.2. Exceptions to Confidentiality Obligations. Each party's obligations pursuant to Section 15.1 shall not apply to Confidential Information of the other party that (a) was in the public domain prior to the Effective Date or subsequently came into the public domain through no fault of the receiving party; (b) was lawfully received by the receiving party from a third party free of any obligation of confidence; (c) was already in the lawful possession of the receiving party prior to receipt from the disclosing party; (d) is required to be disclosed by law, provided that the party seeking disclosure provides prior written notice of such disclosure to the other party and takes all reasonable and lawful actions to avoid and/or minimize the extent of such disclosure; or (e) the receiving party can show by a preponderance of documentary evidence was subsequently and independently developed by its employees, consultants or agents without reference to the Confidential Information of the disclosing party.

15.3. Equitable Relief. You agree that, in the event of your breach of Section 14 of this Agreement, Rosetta Stone may not have an adequate remedy solely in money damages and any such breach will cause Rosetta Stone irreparable harm. In the event of such breach, you agree that Rosetta Stone shall be entitled, without the requirement of posting a bond or other security, to equitable relief, including to an injunction or specific performance.

## **16. Miscellaneous.**

16.1 Survival. Sections 13, 14 and 15 shall survive the expiration or termination of this Agreement. Additionally, to the extent this Agreement is not terminated as a result of fraud relating to the Affiliate Program by you or otherwise as a result of your breach of this Agreement, Rosetta Stone's obligation to pay Fees shall survive for so long as is necessary to account for Fees generated from Qualified Products properly registered prior to the date of termination.

16.2 Applicable Law; Jurisdiction. This Agreement is governed and construed in accordance with the laws of the Commonwealth of Virginia, excluding conflicts of law provisions, and the parties hereby submit themselves to the exclusive personal jurisdiction of the state and federal courts located within Virginia for the resolution of any dispute arising out of this Agreement. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

16.3 Excuse. Neither party will be liable for, or be considered in breach of or default under this Agreement on account of, any delay or failure to perform as required by this Agreement as a result of any causes or conditions which are beyond such party's reasonable control and which such party is unable to overcome by the exercise of reasonable diligence. Both parties will be released from their respective obligations in the event of national emergency, war, prohibitive governmental regulations or if any other cause beyond the reasonable control of the parties renders

performance of the agreement impossible whereupon all money due to either of the parties shall be paid immediately and you shall cease to promote the Product immediately.

16.4 No Waiver. Any failure of either Party to insist upon or enforce performance by the other Party of any of the provisions of this Agreement or to exercise any rights or remedies under this Agreement will not be interpreted or construed as a waiver or relinquishment of such Party's right to assert or rely upon such provision, right or remedy in that or any other instance; rather the same will be and remain in full force and effect.

16.5 Assignment. You shall not assign this Agreement or any right, interest or benefit under this Agreement without the prior written consent of Rosetta Stone.

16.6 Injunctive Relief; Remedies. You acknowledge a violation of this Agreement could cause irreparable harm to Rosetta Stone for which monetary damages may be difficult to ascertain or an inadequate remedy. You therefore agree that Rosetta Stone will have the right, in addition to its other rights and remedies, to seek and obtain injunctive relief for any violation of this Agreement. Except where otherwise specified, the rights and remedies granted to a party under this Agreement are cumulative and in addition to, and not in lieu of, any other rights or remedies which the party may possess at law or in equity.

16.7 Notification. You shall keep Rosetta Stone informed in advance of any notifications, reports, filings, registrations and other documents required to be submitted to any government authority in the Territory in connection with this Agreement or the Products.

16.8 Relationship of Parties. You and Rosetta Stone are independent contractors, and nothing in this Agreement will create any partnership, joint venture, agency, franchise, sales representative, or employment relationship between the parties. You will (a) have no authority to make or accept any offers or representations on our behalf and (b) make no statement, whether on your Web site or otherwise, that reasonably would contradict anything in this Section. You will be solely responsible for providing any salary or other benefits to your employees and consultants, making all appropriate tax, social security, Medicare and other withholding deductions and payments, and making all appropriate unemployment tax payments.

16.9 Dispute Resolution. Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be referred to final and binding arbitration to be conducted under the commercial arbitration rules of the American Arbitration Association in effect from time to time. The tribunal shall consist of a single arbitrator appointed by mutual agreement of the parties. If the parties cannot agree on the appointment of an arbitrator within ten (10) days of the initiation of formal dispute resolution procedures, the arbitrator shall be appointed by the American Arbitration Association. The place of arbitration shall be Washington, D.C. Unless the arbitrator shall determine otherwise, the costs of the arbitration shall be borne by the parties equally and each party shall bear its other legal costs, including the fees of its attorneys. The arbitrator shall issue an award within six months of the filing of the notice of intention to arbitrate. This time limit may be extended by agreement of the parties or by the arbitrator if necessary. Either party may, without waiving any remedy under this Agreement, seek from any court having jurisdiction any interim or provisional

relief that is necessary to protect the rights or property of that party or to preserve the subject matter of the dispute, pending the selection of arbitrators or pending the arbitrator's issuance of an award.

16.10 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.

16.11 Acknowledgment. You acknowledge that you have read this Agreement and agreed to all the terms and conditions. You understand that Rosetta Stone may at any time (directly or indirectly) solicit customer referrals on terms that may differ from those contained in this Agreement, and Rosetta Stone and its referrals and subsidiaries may operate web sites that compete with your Web site. You further agree that this document and any invoices arising under it, constitute the complete and exclusive agreement between the parties regarding their subject matter.

[I have read the terms above and am ready to Apply.](#)