

**RESOLUTION NO. 44-11**

**COUNCIL OF THE CHEROKEE NATION**

**A RESOLUTION AUTHORIZING THE PRINCIPAL CHIEF TO NEGOTIATE AND EXECUTE A LIMITED WAIVER OF SOVEREIGN IMMUNITY FOR MICROSOFT LANGUAGE LOCALIZATION PROJECT**

**WHEREAS**, the Cherokee Nation since time immemorial has exercised the sovereign rights of self-government in behalf of the Cherokee people; and

**WHEREAS**, the Cherokee Nation is a federally recognized Indian Nation with a historic and continual government to government relationship with the United States of America; and

**WHEREAS**, being a federally recognized Indian Tribe, the Cherokee Nation enjoys governmental immunity from suit under federal law; and

**WHEREAS**, the Cherokee Nation ("Nation") has through inherent sovereign authority and by constitution and tribal law the authority to enter into contractual agreements to benefit the Nation and the citizenry thereof; and

**WHEREAS**, the Cherokee Nation has entered into a contractual agreement with Microsoft Corporation ("Microsoft") to produce software solutions in the Cherokee language; and

**WHEREAS**, the Nation has entered into an MOU with Microsoft wherein both parties agreed to share information as needed to achieve this common goal, and both parties acknowledge that confidential information and trade secrets may be shared between the parties pursuant to the MOU; and

**WHEREAS**, Microsoft and the Nation desire to enter into a non-disclosure agreement that contains provisions for enforceability so that both parties may be assured that if any breaches of the NDA occur the other party will be able to limit the breach and obtain actual damages, including a reasonable attorney fee and costs.

**BE IT RESOLVED BY THE CHEROKEE NATION**, that for the sole purpose of allowing for enforcement of the terms of the Microsoft Non-Disclosure Agreement ("NDA"), established as set forth in Attachment 1, which is incorporated by reference and made a part of this resolution as if stated herein in full, the Cherokee Nation Council authorizes the Principal Chief to negotiate a limited waiver of sovereign immunity that would permit a suit by Microsoft against the Nation; and

**BE IT FURTHER RESOLVED BY THE CHEROKEE NATION** that the authorization of the Principal Chief to waive immunity from suit is limited to suits that meet all of the following requirements: (a) suit is filed in the Courts of the Cherokee Nation; and (b) suit is filed by Microsoft to enforce the NDA; and

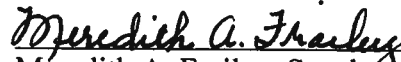
**BE IT FURTHER RESOLVED BY THE CHEROKEE NATION** that the authorization of the Principal Chief to waive immunity from suit shall only extend to (a) a suit requesting an injunction to prevent the release of confidential information acquired by the Cherokee Nation pursuant to the MOU; (b) suit to recover actual damages resulting from the Nation's violation of the attached non-disclosure agreement; (c) suit to collect a reasonable attorney fee and actual costs associated with a successful claim against the Nation; and

**BE IT FURTHER RESOLVED BY THE CHEROKEE NATION** that in the event of an award of monetary damages, the award may be paid out of any assets of the Cherokee Nation, excluding real property and improvements by way of fixtures and excluding funds held in trust by the United States on behalf of the Cherokee Nation and shall not be a lien or encumbrance upon tribal property; and

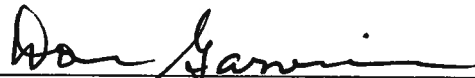
**BE IT FINALLY RESOLVED BY THE CHEROKEE NATION** that the Principal Chief is authorized to negotiate and execute an agreement on behalf of the Nation that would waive the sovereign immunity of the Nation subject to the limits stated in this resolution.

#### CERTIFICATION


The foregoing resolution was adopted by the Council of the Cherokee Nation at a duly called meeting on the 16<sup>th</sup> day of May, 2011, having 17 members present, constituting a quorum, by the vote of 17 yea; 0 nay; 0 abstaining.

  
Meredith A. Frailey, Speaker  
Council of the Cherokee Nation

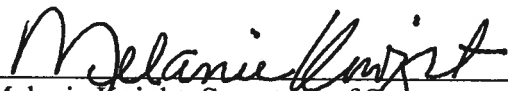
ATTEST:

  
Don Garvin, Secretary  
Council of the Cherokee Nation

Approved and signed by the Principal Chief this 19th day of MAV, 2011.

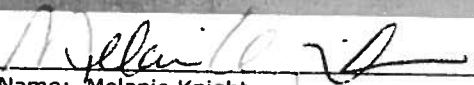
  
Chadwick Smith, Principal Chief  
Cherokee Nation

ATTEST:

  
Melanie Knight, Secretary of State  
Cherokee Nation

## Non-Disclosure Agreement (Non-Standard)

This Non-Disclosure Agreement ("agreement") is between the parties signing below. "We," "us" and "our" refer to both of the parties signing below and our respective affiliates.

<b>COMPANY AND ITS AFFILIATES or INDIVIDUAL:</b> CHEROKEE NATION	<b>MICROSOFT CORPORATION AND ITS AFFILIATES</b>
Address: 17675 South Muskogee Avenue Tahlequah OK 74464	One Microsoft Way Redmond, WA 98052-6399
USA	USA
Sign: 	
Print Name: Melanie Knight	
Print Title: Secretary of State	
Signature Date: 1/21/11	

**Expiration Date of this Agreement:** one hundred and eighty (180) days from the later of the two signature dates above, unless an earlier date is stated in the limited purpose that follows.

**Limited Purpose:** application of this Agreement is limited to the following transaction or other interaction between the parties:

- Language Interface Pack

**LCA Contact:** Zohra Tejani (LCA)

**1. The purpose of this agreement.** This agreement allows us to disclose confidential information to each other, to our own affiliates and to the other's affiliates, under the following terms. An "affiliate" is any legal entity that one of us owns, that owns one of us or that is under common control with one of us. "Control" and "own" mean possessing a 50% or greater interest in an entity or the right to direct the management of the entity.

**2. Confidential information.**

- a. **What is included.** "Confidential information" is non-public information, know-how and trade secrets in any form that:
- Are designated as "confidential"; or
  - A reasonable person knows or reasonably should understand to be confidential.

**Microsoft Filing Instructions:** after both parties sign and date this Agreement, Your customer should retain one original for their files and return the other to you. Then, address the second original to:

**NDA, CRM 124/Records**  
Microsoft Corporation  
1 Microsoft Way  
Redmond, WA 98052-6399



- b. **What is not included.** The following types of information, however marked, are not confidential information. Information that:
- Is, or becomes, publicly available without a breach of this agreement;
  - Was lawfully known to the receiver of the information without an obligation to keep it confidential;
  - Is received from another source who can disclose it lawfully and without an obligation to keep it confidential;
  - Is independently developed; or
  - Is a comment or suggestion one of us volunteers about the other's business, products or services.

### 3. Treatment of confidential information.

- a. **In general.** Subject to the other terms of this agreement, each of us agrees:
- We will not disclose the other's confidential information to third parties; and
  - We will use and disclose the other's confidential information only for purposes of our business relationship with each other.
- b. **Security precautions.** Each of us agrees:
- To take reasonable steps to protect the other's confidential information. These steps must be at least as protective as those we take to protect our own confidential information;
  - To notify the other promptly upon discovery of any unauthorized use or disclosure of confidential information; and
  - To cooperate with the other to help regain control of the confidential information and prevent further unauthorized use or disclosure of it.
- c. **Sharing confidential information with affiliates and representatives.**
- A "representative" is an employee, contractor, advisor or consultant of one of us or one of our respective affiliates.
  - Each of us may disclose the other's confidential information to our representatives (who may then disclose that confidential information to other of our representatives) only if those representatives have a need to know about it for purposes of our business relationship with each other. Before doing so, each of us must:
    - ensure that affiliates and representatives are required to protect the confidential information on terms consistent with this agreement; and
    - accept responsibility for each representative's use of confidential information.
  - Neither of us is required to restrict work assignments of representatives who have had access to confidential information. Neither of us can control the incoming information the other will disclose to us in the course of working together, or what our representatives will remember, even without notes or other aids. We agree that use of information in representatives' unaided memories in the development or deployment of our respective products or services does not create liability under this agreement or trade secret law, and we agree to limit what we disclose to the other accordingly.



- d. **Disclosing confidential information if required to by law.** Each of us may disclose the other's confidential information if required to comply with a court order or other government demand that has the force of law. Before doing so, each of us must seek the highest level of protection available and, when possible, give the other enough prior notice to provide a reasonable chance to seek a protective order.

**4. Length of confidential information obligations.** Except as permitted above, neither of us will use or disclose the other's confidential information for five years after we receive it. The five-year time period does not apply if applicable law requires a longer period.

## **5. General rights and obligations.**

- a. **Law that applies; jurisdiction and venue.** The laws of the State of Washington govern this agreement. If necessary, the parties may seek interpretation of the contract and its provisions from the District Court or other appropriate Court of the Cherokee Nation.
- b. **Compliance with law.** Each of us will comply with all export laws that apply to confidential information.
- c. **Waiver.** Any delay or failure of either of us to exercise a right or remedy will not result in a waiver of that, or any other, right or remedy.
- d. **Money damages insufficient.** Each of us acknowledges that money damages may not be sufficient compensation for a breach of this agreement. Each of us agrees that the other may seek court orders to stop confidential information from becoming public in breach of this agreement.
- e. **Attorneys' fees.** In any dispute relating to this agreement the prevailing party will be entitled to recover reasonable attorneys' fees and costs.
- f. **Transfers of this agreement.** If one of us transfers this agreement, we will not disclose the other's confidential information to the transferee without the other's consent.
- g. **Enforceability.** If any provision of this agreement is unenforceable, the parties (or, if we cannot agree, a court) will revise it so that it can be enforced. Even if no revision is possible, the rest of this agreement will remain in place.
- h. **Entire agreement.** This agreement does not grant any implied intellectual property licenses to confidential information, except as stated above. We may have contracts with each other covering other specific aspects of our relationship ("other contracts"). The other contract may include commitments about confidential information, either within it or by referencing another non-disclosure agreement. If so, those obligations remain in place for purposes of that other contract. With this exception, this is the entire agreement between us regarding confidential information. It replaces all other agreements and understandings regarding confidential information. We can only change this agreement with a signed document that states that it is changing this agreement.



**ADMINISTRATIVE CLEARANCE**

Dept/Program:

Signature/Initial \_\_\_\_\_ Date \_\_\_\_\_

Group Leader:

*Melanie Knight*  
Signature/Initial \_\_\_\_\_ Date \_\_\_\_\_

Finance (if needed):

Signature/Initial \_\_\_\_\_ Date \_\_\_\_\_

Government Resources:

*Rita May 4/12/11*  
Signature/Initial \_\_\_\_\_ Date \_\_\_\_\_

Administration Approval:

Signature/Initial \_\_\_\_\_ Date \_\_\_\_\_

**LEGISLATIVE CLEARANCE:**

Legal & Legislative Coordinator:

*S. Brittan 4/12/11*  
Signature/Initial \_\_\_\_\_ Date \_\_\_\_\_

Standing Committee & Date:

*Rules 4/28/11*

Chairperson:

*M. Frailey*  
Signature/Initial \_\_\_\_\_ Date \_\_\_\_\_

Returned to Presenter: \_\_\_\_\_

Date \_\_\_\_\_

**Cherokee Nation  
Act/Resolution Proposal Form**

Act  Resolution

A RESOLUTION AUTHORIZING THE PRINCIPAL CHIEF TO NEGOTIATE AND EXECUTE A LIMITED WAIVER OF SOVEREIGN IMMUNITY FOR MICROSOFT

TITLE: LANGUAGE LOCALIZATION PROJECT

DEPARTMENT CONTACT: Secretary of State Melanie Knight

RESOLUTION PRESENTER: Secretary of State Melanie Knight

COUNCIL SPONSOR: Meredith A. Frailey and Julia Coates

**NARRATIVE:**

The purpose of this resolution is to negotiate a non-disclosure agreement between the Cherokee Nation and Microsoft for the Language Localization Project.

04-12-11P04:58 RCVD