

Enterprise Agreement

State and Local

Not for Use with Microsoft Business Agreement or Microsoft Business and Services Agreement

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This Microsoft Enterprise Agreement is entered into between the entities identified on the program signature form.

Effective date. The effective date of this agreement is the effective date of the first Enrollment or the date Microsoft accepts this agreement, whichever is earlier.

This agreement consists of (1) these agreement terms and conditions and the signature form and all attachments identified therein, (2) the Product List, (3) the Product Use Rights applicable to Products licensed under this agreement, (4) any Affiliate Enrollment entered into under this agreement, and (5) any order submitted under this agreement.

Terms and Conditions

A Note on Section Summaries: Some sections of this agreement have a summary at the beginning. These summaries are intended for ease of reference and are not part of the agreement. If any summary conflicts with the section it is summarizing, the section of the agreement, and not the summary, controls.

1. Definitions.

"Affiliate" means

- a. with regard to Customer,
 - (i) any government agency, department, office, instrumentality, division, unit or other entity of the state or local government that is supervised by or is part of Customer, or which supervises Customer or of which Customer is a part, or which is under common supervision with Customer;
 - (ii) any county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality established by the laws of

Customer's state and located within Customer's state jurisdiction and geographic boundaries; and

(iii) any other entity in Customer's state expressly authorized by the laws of Customer's state to purchase under state contracts; provided that a state and its Affiliates shall not, for purposes of this definition, be considered to be Affiliates of the federal government and its Affiliates; and

b. with regard to Microsoft, any legal entity that Microsoft owns, that owns Microsoft, or that is under common ownership with Microsoft;

"Additional Product" means any Product other than an Enterprise Product that an Enrolled Affiliate chooses to license under its Enrollment;

"available" means Microsoft has made Licenses for that Product available on the Product List for ordering under a particular licensing program;

"CAL" means a Client Access License;

"Commercial Product" means any Product Microsoft makes available for license for a fee;

"Customer" means the entity that has entered into this agreement and its Affiliates;

"Defined Region" means the United States;

"Device-based Licenses" means Licenses that are calculated based on the number of Qualified Desktops that allow a single device to run a Product;

"Enrolled Affiliate" means an entity, either Customer or any one of Customer's Affiliates, that has entered into an Enrollment under this agreement;

"Enrollment" means the document that an Enrolled Affiliate submits under this agreement to place its initial order;

"Enterprise" means the Enrolled Affiliate and the Affiliates it chooses on its Enrollment to include in its enterprise;

"Enterprise Product" means any Product that Microsoft designates as an Enterprise Product and that an Enrolled Affiliate chooses to license under its Enrollment (Enterprise Products may only be licensed on an Enterprise-wide basis under this program);

"Fixes" means Product fixes, modifications or enhancements or their derivatives that Microsoft releases generally (such as Commercial Product service packs);

"Free Product" means any Product Microsoft makes available for license without charge;

"Industry Device" (also known as "Line of Business Device") means any device that: (1) is not used in its deployed configuration as a general purpose personal computing device (such as a personal computer), a multi-function server, or a commercially viable substitute for one of these systems; and (2) only employs an industry or task-specific software program (e.g. a computer-aided design program used by an architect or a point of sale program) ("Industry Program"). The device may include features and functions derived from Microsoft software or third-party software. If the device performs desktop functions (such as email, word processing, spreadsheets, database, network or Internet browsing, or scheduling, or personal finance), then the desktop functions: (1) may only be used for the purpose of supporting the Industry Program functionality; and (2) must be technically integrated with the Industry Program or employ technically enforced policies or architecture to operate only when used with the Industry Program functionality;

"License" means, for any one of the Products identified in the Product List (including standard Licenses and upgrades for desktop operating systems), the right to run the version of the Product ordered;

"L&SA" means a License and Software Assurance for any Product ordered;

"Microsoft" means the Microsoft Affiliate that has entered into this agreement or an Enrollment and its Affiliates, as appropriate;

"Online Service" means any software Microsoft Licenses Enrolled Affiliate to run on Microsoft servers on a subscription basis;

"Pre-release" or "Beta" Products are Products provided prior to commercial release;

"Product" means all Commercial Products, Free Products, Pre-release Products and Beta Products, including any Online Services and other web-based services identified on the Product List;

"Product List" means, with respect to any licensing program, the statement published by Microsoft from time to time on the World Wide Web at <http://microsoft.com/licensing/contracts>, or at a successor site that Microsoft identifies, which identifies the Products that are or may be made available under the program (which availability may vary by region) and any Product-specific conditions or limitations on the acquisition of Licenses for those Products;

"Product Use Rights" means, with respect to any licensing program, the use rights for each Product and version published for that licensing program at <http://www.microsoft.com/licensing/contracts> or at a successor site;

"Qualified Desktop" means any personal desktop computer, portable computer, workstation, or similar device that is used by or for the benefit of an Enrolled Affiliate or any Affiliate included in its Enterprise and that meets the minimum requirements for running any of the Enterprise Products. Qualified Desktops do not include: (1) any computer that is designated as a server and not used as a personal computer, (2) Line of Industry Device, or (3) any device running an embedded operating system (e.g., Windows Vista for embedded, Windows XP embedded); that does not access a Windows virtual desktop infrastructure;

"Qualified User" means a person who (1) is a user of a Qualified Desktop or (2) accesses any server software or Online Services licensed within an Enrolled Affiliate's Enterprise. It does not include a person who accesses server software or Online Services solely under a License identified in the Qualified User exemptions in the Product List;

"Qualifying Enrollment" means (1) an Enterprise Enrollment under a separate Microsoft Enterprise Agreement, (2) any Enterprise Subscription Enrollment under a separate Microsoft Enterprise Subscription Agreement, or (3) any other Enrollment submitted under the Microsoft Enterprise Agreement identified on the program signature form;

"Reseller" means a large account Reseller authorized by Microsoft to resell Licenses in an Enrolled Affiliate's Defined Region under this program;

"run" or "use" means to copy, install, use, access, display, run or otherwise interact with;

"Software Assurance" means an annuity offering that provides new version rights and other benefits for Products as described in the Product List; and

"User-based Licenses" means Licenses calculated based on the number of Qualified Users that allow named users to run a Product from any device.

2. How the Enterprise program works.

Enrolled Affiliate can order two general types of Commercial Products under this agreement. For "Enterprise Products," Enrolled Affiliate must pay for a License for all Qualified Desktops and/or Qualified Users. For "Additional Products," Enrolled Affiliate must pay for Licenses based on the actual number of copies used. To participate in this agreement, Enrolled Affiliate must order at least one Enterprise Product.

Where to submit orders. Enrolled Affiliate's orders will be submitted directly to a Reseller. Online Services may have additional terms.

The Enterprise program gives Customers that wish to license one or more of Microsoft platform Commercial Products the means to ensure that their entire Enterprise will be licensed. Customer and Customer Affiliates can participate in this program by submitting one or more Enrollments under this agreement. On the Enrollment, the Enrolled Affiliate will designate the scope of its Enterprise and make

the initial selection of Enterprise Products and any Additional Products it wishes to license. Each Enrollment must include at least one Enterprise Product. Microsoft may refuse to accept an Enrollment if it has a business reason for doing so. Notwithstanding any other provision of this agreement, only Enrolled Affiliates identified in an Enrollment will be responsible for complying with the terms of that Enrollment, including the terms of this agreement incorporated by reference in that Enrollment.

- a. **How Enrolled Affiliates acquire Licenses.** An Enrolled Affiliate will acquire its Licenses through its chosen Reseller. Orders will be made out to and submitted to the Enrolled Affiliate's Reseller. Microsoft will invoice that Reseller according to the terms in the applicable Enrollment. *Throughout this agreement the term "price" refers to reference price. The Reseller and the Enrolled Affiliate will determine the Enrolled Affiliate's actual price and payment terms.*
- b. **Choosing and maintaining a Reseller.** Each Enrolled Affiliate must choose and maintain a Reseller authorized in the Enrolled Affiliate's Defined Region.
- c. **Online Services.** The terms and conditions of the agreement apply to Online Services subscriptions throughout the entire term of the subscription except as provided here and in the Product List or Product Use Rights at <http://microsoft.com/licensing/contracts>. Online Services are provided as subscription services and may carry additional terms that are independent of the agreement terms as specified in the Product Use Rights. Billing terms for Online Services subscriptions may also differ from the terms of this agreement.

3. How to establish price level.

Generally, price levels for each category of Product are based on the number of Qualified Desktops or Qualified Users in the Enrolled Affiliate's Enterprise. Prices are locked for a particular Product based on the price at the time Enrolled Affiliate first orders that Product.

- a. **Establishing Price Levels.** Each Product is assigned to a Product pool (applications, systems, or servers). There are four price levels (A, B, C, and D). An Enrolled Affiliate's price level for Enterprise Products is based on the initial number of Qualified Desktops or Qualified Users in its Enterprise and applies to Products ordered in each pool. The ability to order Device-based Licenses or User-based Licenses is determined by how the License is offered in the price list (e.g. Windows Vista is not offered as User-based License). If Enrolled Affiliate orders a platform Enterprise Product that contains both Device-based and User-based Licenses, prices will be based on the Qualified Desktop price level. Price levels are established separately for each Enrollment.

The price level for Additional Products in that pool will be level "D" throughout the term of the Enrollment.

- b. **Deriving prices from price levels.** The Enrolled Affiliate's prices, including true-up prices, are determined as follows:

For Products covered by the initial order. The Enrolled Affiliate's price for Licenses for Products on its order will not change throughout the initial Enrollment term.

For Additional Products added after the initial order. The Enrolled Affiliate's prices for Licenses for Additional Products ordered after acceptance of the Enrollment will be those prices in effect for its price level for that Product as of the date that it places its first order for that Product.

4. License grant — what Enrolled Affiliates are licensed to run.

Enrolled Affiliate can use the Enterprise Products on all Qualified Desktops (or, in the case of CALs and certain Online Services), all Qualified Desktops or Qualified Users, as applicable, may access

the specified server software. For Additional Products, Enrolled Affiliate can run as many available Products as desired, provided Enrolled Affiliate submits orders for them. Enrolled Affiliate can use the latest version of the Products or choose to use any earlier version.

Generally, use rights become permanent once the Enrollment term ends and Enrolled Affiliate has completed all payments. At that time, Enrolled Affiliate will have perpetual Licenses for the number of desktops or users, for which Enrolled Affiliate submitted orders during the term. In cases where the Enrollment is terminated prior to the end of the term, subsections entitled "Termination for breach" and "Early termination" describe Enrolled Affiliate's rights.

Upon Microsoft's acceptance of the Enrollment, the Enrolled Affiliate has the following rights during the term of its Enrollment. These rights apply to the Licenses obtained under an Enrollment and are not related to any order or fulfillment of software media. The ability to run current or later versions of a Product licensed under this agreement could be affected by minimum system requirements or other factors (e.g. hardware or other software).

- a. **General.** The Enrolled Affiliate may use the latest version (or any prior version) of any Product as permitted in the Product Use Rights, so long as it timely orders and pays for all required Licenses.
- b. **Use by Affiliates.** The Enrolled Affiliate may sublicense the right to use the Products to any Affiliates covered under its Enrollment but Affiliate recipient of Licenses may not sublicense these rights and its use must be consistent with the License terms contained in this agreement.
- c. **Special rule for Enterprise Products.** So long as the Enrolled Affiliate places true-up orders as required, the Enrolled Affiliate may use the latest version (or any prior version) of each Enterprise Product on each of its Qualified Desktops as permitted in the Product Use Rights. In addition, for CALs, each Qualified Desktop (or, for CALs that are User-based Licenses, each Qualified User) covered by the Enrollment may access and use the associated server software.
- d. **When Licenses become perpetual.** The right to run any Product licensed under an Enrollment is temporary until:
 - (i) the Enrolled Affiliate has paid all installments of the price for that Product License and the applicable initial Enrollment or renewal term during which that Product License was ordered has expired or been renewed; or
 - (ii) the Enrolled Affiliate is otherwise eligible for perpetual Licenses upon early termination as provided in this agreement.

Thereafter, the Enrolled Affiliate will have perpetual Licenses to run the Products ordered in the latest version available (or any prior version) as of the date of expiration, termination, or renewal. The number of perpetual Licenses will be equal to:

- **For Enterprise Products other than CALs that are User-based Licenses**, the total number of Qualified Desktops covered by the Enrollment;
- **For CALs that are User-based Licenses**, the total number of Qualified Users covered by the Enrollment; and
- **For each Additional Product**, the total number of Licenses ordered during the applicable initial Enrollment term or renewal term.
- **Subscription (Online Services) Licenses** are not perpetual under any circumstances.

In the case of early termination of an Enrollment as provided in the subsection entitled "Early termination," if an Enrolled Affiliate chooses only to pay amounts due and payable as of the termination date, then the Enrolled Affiliate will instead have perpetual Licenses for the number of Licenses specified in the subsection entitled "Early termination."

- e. **Perpetual Licenses through Software Assurance.** Any perpetual Licenses received through Software Assurance supersede and replace the underlying perpetual Licenses for which that Software Assurance coverage was ordered. All perpetual Licenses acquired under this agreement remain subject to the terms of this agreement and the applicable Product Use Rights.
- f. **License confirmation.** This agreement, the applicable Enrollment, the Enrolled Affiliate's order confirmation, and any documentation evidencing transfers of Licenses, together with proof of payment, will be the Enrolled Affiliate's evidence of all Licenses obtained under its Enrollment.

5. **How to know what Product Use Rights apply.**

Generally, Microsoft agrees to lock-in the Product Use Rights at the start of the Enrollment, for current versions, and on the date of first release, for new versions, so that any subsequent changes Microsoft makes to the Product Use Rights will not affect the Enrolled Affiliate. A special rule applies in the case of downgrades, as described below. Microsoft also agrees that, if it changes any Product Use Rights from one version of an Enterprise Product to the next, any detrimental changes will not apply to the Enrolled Affiliate.

- a. **Product Use Rights.** Microsoft publishes Product Use Rights for each version of each Product. The latest version of the Product Use Rights is available at <http://www.microsoft.com/licensing/contracts>.

- (i) **Product Use Rights for current and future versions of Products.**

The Product Use Rights in effect on the effective date of an Enrollment will apply to the Enrolled Affiliate's use of then-current versions of each Product. For future versions, the Product Use Rights in effect when those future versions are first released will apply. In both cases, subsequent changes made by Microsoft to the Product Use Rights for a particular version will not apply to the Enrolled Affiliate's use of that version.

- (ii) **Product Use Rights for earlier versions (downgrade).**

If Enrolled Affiliate runs an earlier version of a Product than the version that was current on the Enrollment effective date, the Product Use Rights for the version licensed, not the version being run, will apply. However, if the earlier version includes components that are not part of the licensed version, any Product Use Rights specific to those components will apply to the Enrolled Affiliate's use of those components.

- b. **No detrimental changes for Enterprise Products.** If a new version of an Enterprise Product has more restrictive use rights than the version that is current at the start of the applicable initial or renewal term of the Enrollment, those more restrictive use rights will not apply to the Enrolled Affiliate's use of that Product during that term.
- c. **Reservation of rights.** All rights not expressly granted are reserved.

In lieu of Customer's obligation to indemnify Microsoft under various provisions of the Product Use Rights, Customer will be responsible for any cost or damages arising from any claim to which Customer's indemnity obligation would otherwise apply.

6. **How to order Product Licenses.**

Enterprise Products must be ordered at the time the Enrollment is signed. In general, Software Assurance cannot be ordered without also ordering simultaneously underlying Licenses unless the Enrolled Affiliate is renewing unexpired Software Assurance coverage. Enrolled Affiliate can "step-up" to a higher Product edition of an existing Product by following the process described in this section. Enrolled Affiliate must submit true-up orders annually to reflect Qualified Desktops, Qualified Users,

and Additional Products added during the year.

- a. **Placing the initial order.** Each Enrolled Affiliate must submit an initial order for the Enterprise Products and Additional Products it selects with its Enrollment. Except as provided in the following paragraph, the order must be for L&SA for all Products. When placing orders, an Enrolled Affiliate must specify the country or countries where the Enrolled Affiliate and its Affiliates will use the Licenses.

When is the Enrolled Affiliate eligible to order only Software Assurance for an Enterprise and Additional Product? An Enrolled Affiliate may order Software Assurance for the Enterprise Products and Additional Products it selects without the need to simultaneously order a License if the Enrolled Affiliate or any of the Affiliates in its Enterprise has obtained perpetual Licenses for that Product:

- (i) **For Enterprise Products** on an Enterprise-wide basis under a previous Qualifying Enrollment; and
- (ii) **For Additional Products** through Software Assurance or any similar upgrade protection.

The new Enrollment becomes effective no later than the day following the date of expiration of that previous Enrollment or Software Assurance. These Software Assurance orders cannot exceed the number of perpetual Licenses acquired for that Product. For all other Products the Enrolled Affiliate must order L&SA.

- b. **Adding new Products not previously ordered.** An Enrolled Affiliate may only add new Enterprise Products by entering into a new Enrollment. New Additional Products may be run provided an order for L&SA is placed in the month the Product is first run. For additional copies run after the first order, the Enrolled Affiliated must place true-up orders.
- c. **Stepping up to higher Product editions.** If an already-ordered Product has multiple Product editions, an Enrolled Affiliate may migrate to the higher Product edition by ordering the applicable step-up License where available through Software Assurance. If step-up details are included in an initial Enrollment order, then the Enrolled Affiliate may step-up in accordance with the section entitled "True-ups and update statements." If the step-up details are not included in the initial Enrollment order, the Enrolled Affiliate may step-up by placing an order in the month the step-up is first run in accordance with the process set out in the section entitled "Adding new Products not previously ordered."
- d. **Reorganizations, Consolidations, and Privatizations.** If the number of Qualified Desktops or Qualified Users covered by an Enrollment changes by more than ten percent as a result of a reorganization, consolidation, or privatization of an Enrolled Affiliate, Microsoft will work with the Enrolled Affiliate in good faith to determine how to accommodate its changed circumstances in the context of this agreement. If an Enrolled Affiliate consolidates with a third party with an existing Qualifying Enrollment, Microsoft will work with the Enrolled Affiliate in good faith to accommodate its changed circumstances in the context of this agreement.
- e. **True-ups and update statements.** Within 15 days following the anniversary of the effective date of the Enrollment (including the third-year anniversary before any renewal), or on expiration or termination, the Enrolled Affiliate must submit either:
- (i) **a true-up order** to account for any increase in Qualified Desktops, Qualified Users, and/or Additional Products run since the last anniversary. To do this, the Enrolled Affiliate must determine the current number of Qualified Desktops, Qualified Users (if ordering User-based Licenses), and/or Additional Products run and submit a true-up order to account for any increase; or
- (ii) **an update statement** using a form we provide to show there is no change to the number of Qualified Desktops, Qualified Users, and/or Additional Products run since the last anniversary.

Any Product deemed an Additional Product may also be licensed by Customer through other Microsoft licensing programs and/or channels. (e.g. Select Enrollment) If such Products are acquired outside of this agreement, Customer may omit those Products from true-up orders and/or update statements if Customer licenses such Products in accordance with the Product's corresponding use rights.

In order to meet the annual true-up requirement, Enrolled Affiliate must report an annual true-up or update statement must be submitted within 60 days prior to or 15 days following the anniversary to meet the annual true-up requirement. However, an Enrolled Affiliate may also true-up multiple occasions and at any time during the term of the Enrollment. Except where Online Services are included as part of other Licenses, or where true-ups are expressly permitted for an Online Service by the Product List or Product Use Rights, true-ups do not apply to Online Services -- any Licenses required to cover incremental users must be purchased in advance.

- f. **How to confirm orders.** Microsoft will publish information about orders placed by each Enrolled Affiliate, including an electronic confirmation of each order on a password-protected site on the World Wide Web at <https://licensing.microsoft.com> or a successor site. Upon Microsoft's acceptance of this agreement and Enrollments entered into under this agreement, the contact identified for this purpose will be provided access to this site.

7. Making copies of Products and re-imaging rights.

Enrolled Affiliate can make as many copies as it needs. The copies must be complete and from master copies obtained from an authorized source. If Enrolled Affiliate uses third parties to make copies, Enrolled Affiliate is responsible for them. Enrolled Affiliate can make a specified number of complimentary copies for training, evaluation, and back-up. In certain circumstances, Enrolled Affiliate can use the media that it obtains under this program to make copies of Products that it is licensing through some other channel. Generally, this is only allowed where the Product, version, language, type, and components that are being copied are identical to those licensed through that other channel.

- a. **General.** The Enrolled Affiliate may make as many copies of the Products as it needs to distribute them within its organization. Copies must be true and complete (including copyright and trademark notices), from master copies obtained from a Microsoft approved fulfillment source. The Enrolled Affiliate may use a third party to make these copies, but the Enrolled Affiliate agrees that it will be responsible for that third party's actions. The Enrolled Affiliate agrees to use reasonable efforts to make its employees, agents, and any other individuals that it allows to use the Products aware that the Products are licensed from Microsoft and subject to the terms of this agreement.
- b. **Copies for training/evaluation and back-up.** The Enrolled Affiliate may (1) use up to 20 complimentary copies of any Product in a dedicated training facility on its premises, (2) use up to 10 complimentary copies of any Product for a 60 day evaluation period, and (3) use one complimentary copy of any licensed Product for back-up or archival purposes for each of its distinct geographic locations.
- c. **Right to re-image.** In certain cases, re-imaging is permitted using the volume licensing program Product media. If the Microsoft Product(s) is licensed (1) from an original equipment manufacturer (OEM), (2) as full packaged Product through a retail source, or (3) under another Microsoft program, then media provided under this agreement may be used to create images for use in place of copies provided through that separate source. This right is conditional upon the following:
- (i) Separate Licenses must be owned from the source for each Product that is re-imaged.

- (ii) The Product, language, version and components of the copies made must be identical to the Product, language, version and all components of the copies they replace and the number of copies or instances of the re-imaged Product permitted remains the same.
- (iii) Except for copies of an operating system and copies of Products licensed under another Microsoft program, the Product type (e.g., upgrade or full License) must be identical to the Product type from the separate source.
- (iv) Re-images made under this subsection remain subject to the terms and use rights provided with the License from the separate source. This subsection does not create or extend any warranty or support obligation.

8. Transferring and reassigning Licenses.

Enrolled Affiliate can transfer perpetual Licenses to an Affiliate and to third parties in connection with a privatization, reorganization, or consolidation — Enrolled Affiliate only needs to provide notice to Microsoft. Enrolled Affiliate cannot transfer Licenses to third parties under other circumstances without Microsoft's prior consent. Transferees must agree to be bound by applicable terms. License transfers must be permanent; Software Assurance cannot be transferred, but under certain conditions can be reassigned to another machine within the same Enterprise; all new version rights must be transferred together with their underlying Licenses; desktop operating system upgrade Licenses must stay with the computer system on which they were first installed. Generally, Enrolled Affiliate can reassign Licenses internally from one user to another or from one device to another.

a. Transferring Licenses to third parties.

- (i) **Right to transfer.** Enrolled Affiliate may transfer fully-paid perpetual Licenses to (1) an Affiliate or (2) an unaffiliated third party in connection with a privatization of an Affiliate or of an operating division of the Enrolled Affiliate or one of its Affiliates, a reorganization, or a consolidation. To do so, the Enrolled Affiliate must complete and send to Microsoft a transfer notice in a form which can be obtained from <http://microsoft.com/licensing/contracts> before the transfer. All other transfers require Microsoft's prior written consent. Guidance on what types of transfers are permissible can be found at <http://microsoft.com/licensing/contracts>. No License transfer will be valid unless the Enrolled Affiliate provides to the transferee, and the transferee accepts in writing, the applicable Product Use Rights, use restrictions, limitations of liability, and the transfer restrictions described in this section. Any transfer not made in compliance with this section will be void. The resale of Licenses, including any transfer by a Customer or its Affiliate with a primary purpose to enable the transfer of those Licenses to an unaffiliated third party, is expressly prohibited.
- (ii) **Certain transfers not permitted.** The Enrolled Affiliate may not transfer any of the following:
 - Licenses on a short-term basis (90 days or less);
 - temporary rights to use Products;
 - Software Assurance coverage;
 - perpetual Licenses for any version of any Product acquired through Software Assurance separately from the underlying perpetual Licenses for which that Software Assurance coverage was obtained;
 - an upgrade License for a desktop operating system Product separately from the underlying desktop operating system License or from the computer system on which the Product is first installed.

- full version desktop operating system Licenses, unless transferred with the sale of the device for which it operates;
- any Software Assurance benefits or Online Services products; or
- any Licenses for resale to unaffiliated third parties.

b. Internal reassignment of Licenses and Software Assurance.

- (i) **For Products other than the desktop operating system upgrade.** For Products other than the desktop operating system upgrade, the Enrolled Affiliate may internally reassign Licenses to another department within its Enterprise. However, Enrolled Affiliate may not reassign Licenses on a short-term basis (90 days or less) or reassign Software Assurance or other upgrade coverage separately from the underlying License, except as otherwise provided in this agreement. The Enrolled Affiliate may not reassign desktop operating system upgrade Licenses from one computer to another.
- (ii) **For desktop operating systems.** The Enrolled Affiliate may internally reassign Software Assurance coverage on desktop operating systems from the original computer to a replacement computer within its Enterprise, as long as (1) the replacement computer is licensed to run the latest version of that operating system and (2) the Enrolled Affiliate removes any desktop operating system upgrades from the original computer.

9. Term and termination.

This agreement stays in place until terminated. The term of each Enrollment is stated in the Enrollment. "Renewal" means the renewal of an Enrollment. Either party can terminate the agreement on notice — that will not affect any existing Enrollments. Generally, existing Enrollments may be terminated: (1) if either party breaches the agreement and does not cure the breach in the time allotted; or (2) for non-appropriation of funds. Generally, upon termination or expiration, Enrolled Affiliate must order Licenses for copies of Products it has been using but has not yet placed orders for, and pay for all Licenses in full.

- a. **Term.** This agreement will remain in effect unless it is terminated by either party as described below. Each Enrollment or order will have the term provided in that Enrollment or order.
- b. **Termination without cause.** Either party may terminate this agreement, without cause, upon 60 days written notice. Such termination will merely terminate either party's and its Affiliates' ability to enter into new Enrollments under this agreement. Such termination will not affect any Enrollment or order not otherwise terminated, and any terms of this agreement applicable to any Enrollment or order not otherwise terminated will continue in effect with respect to that Enrollment or order. An Enrolled Affiliate may terminate an Enrollment without liability, penalty or further obligation to make payments if funds to make payments under the Enrollment are not appropriated or allocated for such purpose.
- c. **Termination for breach.** Either party to an Enrollment may terminate it if the other party materially breaches its obligations under this agreement, including any obligation to submit orders or pay amounts owed (even if such non-payment is caused by non-appropriation of funds). Except where the breach is by its nature not curable within 30 days, the terminating party must give the other party 30 days notice and opportunity to cure.

If Microsoft gives such notice to an Enrolled Affiliate, Microsoft will give Customer a copy of that notice as well and Customer agrees to assist in attempting to resolve the breach. If the breach also affects other Enrollments and cannot be resolved between Microsoft and Customer within a reasonable period of time, Microsoft may also terminate this agreement and all other Enrollments under it, unless the basis for termination of the Enrollment is non-appropriation of funds to the Enrolled Affiliate, in which event Microsoft may only terminate

the affected Enrollment(s). If an Enrolled Affiliate ceases to be Customer's Affiliate, Customer must promptly notify Microsoft, and Microsoft may terminate its Enrollment.

- d. **Early termination.** If (1) an Enrolled Affiliate terminates its Enrollment as a result of a breach by Microsoft, or (2) if Microsoft terminates an Enrollment because the Enrolled Affiliate has ceased to be an Affiliate of Customer, or (3) Enrolled Affiliate terminates an Enrollment for non-appropriation of funds, or (4) Microsoft terminate an Enrollment for non-payment due to non-appropriation of funds, then the Enrolled Affiliate will have the following options:
- (i) It may immediately pay the total remaining amount due, including all installments, in which case, the Enrolled Affiliate will have perpetual rights for all Licenses it has ordered; or
 - (ii) It may pay only amounts due as of the termination date, in which case the Enrolled Affiliate will have perpetual Licenses for:
 - all copies of Products (including the latest version of Products ordered under SA coverage in the current term) for which payment has been made in full, and
 - the number of copies of Products it has ordered (including the latest version of Products ordered under Software Assurance coverage in current term) that is proportional to the total of installment payments paid versus total amounts due (paid and payable) if the early termination had not occurred.

Nothing in this section shall affect perpetual License rights acquired either in a separate agreement or in a prior term of the terminated Enrollment.

- e. **Effect of termination or expiration.** When an Enrollment expires or is terminated,
- (i) Enrolled Affiliate must order Licenses for all copies of Products it has run for which it has not previously submitted an order. Any and all unpaid payments or any order of any kind, including subscription services, remain due and payable. Except as provided in the subsection titled "Early termination," all unpaid payments for Licenses immediately become due and payable.
 - (ii) Enrolled Affiliate's right to Software Assurance benefits under this agreement ends if it does not renew Software Assurance.

10. How to renew an Enrollment.

Generally, an Enrolled Affiliate can renew Enrollments for an additional one-year or three-year term, at its option. The renewal must include an order for Software Assurance for all Enterprise Products previously ordered, for all Qualified Desktops, and/or Qualified Users previously covered. Price levels and prices are reset at the beginning of the renewal term.

Microsoft will provide each Enrolled Affiliate with 60 days prior written notice of expiration of its Enrollment or renewal term advising it of its renewal options. An Enrolled Affiliate may have the option to renew its Enrollment for one term of 12 or 36 full calendar months. Microsoft and its Affiliates will not unreasonably reject any renewal. However, Microsoft may make a change to this program that will make it necessary for Customer and its Enrolled Affiliates to enter into new agreements and Enrollments.

- a. **Renewal option.** The renewal term will start on the day following expiration of the prior term. An Enrolled Affiliate may not add new Enterprise Products not previously ordered as part of its renewal; to license new Enterprise Products, it must submit a new Enrollment.
- (i) **Consequences of non-renewal.** If the Enrolled Affiliate elects not to renew its Enrollment or Software Assurance for any Product under its Enrollment, and it otherwise allows Software Assurance for any Licenses acquired under its Enrollment to lapse, then

the Enrolled Affiliate will not be permitted to order Software Assurance later without first acquiring L&SA.

- (ii) **Renewal price levels.** Prices and price levels for pools from which an Enterprise Product has been ordered will be reset for each renewal term based upon the Enrolled Affiliate's total number of Qualified Desktops as of the date of the renewal order.
- (iii) **Renewing User-based Licenses.** If user-based Enterprise Products are renewed as part of the platform, then price levels are reset based on the current Qualified Desktop count. However, if the user-based Enterprise Product is renewed outside of a platform, then the price level for the applicable pool will be based on the Enrolled Affiliate's total number of Qualified Users as of the date of the renewal order.
- (iv) **For Products renewed in a renewal order.** For each Enterprise Product and each Additional Product being renewed, the Enrolled Affiliate's renewal prices for all Licenses will be those prices in effect for its renewal price level for that Product as of the date of the renewal order.
- (v) **For Additional Products added during a renewal term.** For each new Additional Product first added during a renewal term, the Enrolled Affiliate's prices for all Licenses will be those prices in effect for its renewal price level for that Product as of the date that it places its first order for that Product.
- (vi) **Placing renewal orders.** To renew, the Enrolled Affiliate must submit a renewal order prior to or on the expiration of the previous term. The renewal order must be for Software Assurance for:
 - all platform Products or device-based Enterprise Products previously ordered equal to the number of Qualified Desktops in the Enrolled Affiliate's Enterprise as of the date of that renewal order;
 - all user-based Enterprise Products equal to the number of Qualified Users covered by the Enrolled Affiliate's Enrollment as of the date of that renewal order;At renewal, where applicable, an Enrolled Affiliate can elect to exchange its Device-based Licenses for User-based Licenses or vice-versa. In that event, the Enrolled Affiliate's renewal order must include L&SA for any number of Qualified Desktops or Qualified Users in excess of its current count. See the Product List for more information; and
 - all Additional Product Licenses for which the Enrolled Affiliate elects to renew Software Assurance.

11. Restrictions on use.

This section describes several restrictions that apply generally to Customer's use of any software Microsoft provides to Customer (e.g., prohibitions on renting or hosting the software, or reverse engineering it).

a. Enrolled Affiliate must not:

- (i) separate and use the components of a Product on two or more computers, upgrade or downgrade components at different times, or transfer components separately, except as provided in the Product Use Rights;
- (ii) reverse engineer, decompile or disassemble any Product or Fix, except where applicable law permits it despite this limitation; or
- (iii) rent, lease, lend or host to or for third parties any Product or Fix, except where Microsoft agrees in a separate written agreement.

12. Confidentiality.

Each party agrees not to disclose the terms of this agreement except as provided below. Feedback a party gives about the other party's Products is not confidential and can be used by the receiving party. Each party has a right to use residual information obtained in the course of their relationship, and neither is obligated to restrict their own representatives' work assignments because of this agreement.

To the extent permitted by applicable law, the terms and conditions of this agreement are confidential. Neither party will disclose such terms and conditions, or the substance of any discussions that led to them, to any third party other than Affiliates or agents, or to designated or prospective resellers who: (1) have a need to know such information in order to assist in carrying out this agreement; and (2) have been instructed that all such information is to be handled in strict confidence.

13. Warranties.

Microsoft warrants that its Commercial Products will work substantially as described in the accompanying documentation, subject to certain limitations. If not, Microsoft will provide replacement Commercial Product or a refund. Microsoft disclaims all other warranties.

- a. **Limited Product warranty.** Microsoft warrants that each version of a Commercial Product licensed by Enrolled Affiliate will perform substantially as described in the applicable Microsoft user documentation. This warranty is subject to the following limitations:
 - (i) the warranty applies for one year from the date Enrolled Affiliate first runs a copy of the Product;
 - (ii) any implied warranties, guarantees or conditions last only during the term of the limited warranty, except where applicable law does not permit such a limitation;
 - (iii) the warranty does not cover problems caused by accident, abuse or use of the Products in a manner inconsistent with the is agreement or the Product Use Rights, or resulting from events beyond Microsoft's reasonable control;
 - (iv) the warranty does not apply to components of Products that Enrolled Affiliate is permitted to redistribute; and
 - (v) the warranty does not apply to problems caused by the failure to meet minimum system requirements.
- b. **Remedies for breach of limited Commercial Product warranty.** If Customer notifies Microsoft within the warranty period that a Commercial Product does not meet the limited warranty, then Microsoft will, at its option, either (1) return the price paid for the Product, or (2) repair or replace the Product. These are Customer's only remedies for breach of the limited warranty, unless other remedies are required to be provided under applicable law.
- c. **No warranty on Free, Pre-Release, and Beta Products.** To the maximum extent permitted by law, Free Products, Pre-Release Products, and Beta Products are provided "as-is," without any warranties. Customer acknowledges that the provisions of this paragraph are reasonable, among other things as these Products are being provided to Customer without charge, prior to commercial release and/or before Microsoft has fully tested them.
- d. **DISCLAIMER OF OTHER WARRANTIES. OTHER THAN THIS LIMITED WARRANTY, MICROSOFT PROVIDES NO OTHER EXPRESS OR IMPLIED WARRANTIES. MICROSOFT DISCLAIMS ANY IMPLIED REPRESENTATIONS, WARRANTIES OR CONDITIONS, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE OR NON-INFRINGEMENT.**

THESE DISCLAIMERS WILL APPLY UNLESS APPLICABLE LAW DOES NOT PERMIT THEM.

14. Defense of infringement and misappropriation claims.

Microsoft agrees to defend Customer against claims that Microsoft software infringes someone else's intellectual property rights, and pay any damages awarded by a court or in a settlement. There are several exceptions, which limit Microsoft's obligations in cases where Customer has contributed in some way to the claim. If something Customer has done caused the claim and Microsoft is damaged, Customer must reimburse Microsoft.

If Microsoft believes that it is necessary to avoid an infringement claim, Microsoft may replace or modify the Products Customer is using. If someone enjoins Customer use of a Product, Microsoft will, at its option, replace the Product, modify it to make it non-infringing, obtain the rights Customer needs to keep using it, or refund Customer's money.

- a. **Agreement to protect.** Microsoft will defend Customer against any claims made by an unaffiliated third party that any Commercial Product or Fix infringes that party's patent, copyright or trademark or makes intentional unlawful use of its trade secret or undisclosed information. Microsoft will also pay the amount of any resulting adverse final judgment (or settlement to which Microsoft consents). This section provides Customer's and its Affiliate's exclusive remedy for these claims. The term "undisclosed information" is used in accordance with Article 39.2 of the TRIPs agreement.
- b. **What the Customer must do.** Customer must notify Microsoft promptly in writing of the claim and give Microsoft sole control over its defense or settlement. Customer must also provide Microsoft with reasonable assistance in defending the claim. Microsoft will reimburse Customer for reasonable out of pocket expenses that it incurs in providing that assistance.
- c. **Limitations on defense obligation.** Microsoft's obligations will not apply to the extent that the claim or award is based on:
 - (i) Customer's or its Affiliate's use of the Product or Fix after Microsoft notifies it to discontinue that use due to a third party claim;
 - (ii) Customer's or its Affiliate's combination of the Product or Fix with a non-Microsoft product, data or business process;
 - (iii) damages attributable to the value of the use of a non-Microsoft product, data or business process;
 - (iv) modifications that Customer or its Affiliates make to the Product or Fix;
 - (v) Customer's or its Affiliate's redistribution of the Product or Fix to, or Customer's or its Affiliate's use for the benefit of, any unaffiliated third party, except as expressly permitted by a License Agreement;
 - (vi) Customer's or its Affiliate's use of Microsoft's trademark(s) without express written consent to do so; or
 - (vii) any trade secret or undisclosed information claim, where Customer or its Affiliates acquires the trade secret or undisclosed information (1) through improper means; or (2) under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (3) from a person (other than Microsoft or Microsoft's Affiliates) who owed to the party asserting the claim a duty to maintain the secrecy or limit the use of the trade secret or undisclosed information.

Customer will reimburse Microsoft for any costs or damages that result from any of these actions.

- d. **Specific rights and remedies in case of infringement.**

- (i) **Microsoft's rights in addressing possible infringement.** If Microsoft receives information concerning an infringement claim related to a Product or Fix, Microsoft may, at its expense and without obligation to do so, either:
- procure for Customer the right to continue to run the allegedly infringing Product or Fix, or
 - modify the Product or Fix, or replace it with a functional equivalent, to make it non-infringing, in which case Customer will immediately stop using the allegedly infringing Product or Fix after receiving notice from Microsoft.
- (ii) **Customer's specific remedy in case of injunction.** If, as a result of an infringement claim, Customer's use of a Commercial Product or Fix is enjoined by a court of competent jurisdiction, Microsoft will, at its option, either:
- procure the right to continue its use, or
 - replace it with a functional equivalent, or
 - modify it to make it non-infringing, or
 - refund the amount paid and terminate the License for the infringing Commercial Product or Fix.

15. Limitation of liability.

Microsoft limits its liability to Customer to the amount of money Customer has paid Microsoft for the Product giving rise to the claim. This limit does not apply, however, to Microsoft's obligations under the section entitled "Defense of infringement and misappropriation claims," or to damages Customer incurs because of Microsoft's breach of its confidentiality obligations or because of Microsoft's gross negligence or willful misconduct.

Each party agrees that it will not be liable to the other for consequential, indirect, punitive or special damages, except those that result from a breach of confidentiality or from one party violating the other's intellectual property rights.

- a. **Limitation on liability.** Except as otherwise provided in this section, to the extent permitted by applicable law, the liability of Microsoft and of Microsoft's contractors to Customer and its Affiliates arising under this agreement is limited to direct damages up to the amount Customer paid for the Product giving rise to that liability. In the case of Free Product or code that Customer is authorized to redistribute to third parties without separate payment to Microsoft, Microsoft's liability is limited to U.S. \$5,000. These limitations apply regardless of whether the liability is based on breach of contract, tort (including negligence), strict liability, breach of warranties, or any other legal theory. However, these monetary limitations will not apply to:
- (i) Microsoft's obligations under the section titled "Defense of infringement and misappropriation claims"; or
 - (ii) liability for damages caused by Microsoft's gross negligence or willful misconduct, or that of its employees or its agents, and awarded by a court of final adjudication; or
 - (iii) liabilities arising out of any breach by Microsoft of its obligations under the section entitled "Confidentiality"; or
 - (iv) liability for personal injury or death caused by Microsoft's negligence or that of its employees or agents or for fraudulent misrepresentation.
- b. **EXCLUSION OF CERTAIN DAMAGES. TO THE EXTENT PERMITTED BY APPLICABLE LAW, WHATEVER THE LEGAL BASIS FOR THE CLAIM, NEITHER PARTY, NOR ANY OF ITS AFFILIATES OR SUPPLIERS, WILL BE LIABLE FOR ANY INDIRECT DAMAGES**

(INCLUDING, WITHOUT LIMITATION, CONSEQUENTIAL, SPECIAL OR INCIDENTAL DAMAGES, DAMAGES FOR LOST PROFITS OR REVENUES, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION) ARISING IN CONNECTION WITH THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH POSSIBILITY WAS REASONABLY FORESEEABLE. HOWEVER, THIS EXCLUSION DOES NOT APPLY TO EITHER PARTY'S LIABILITY TO THE OTHER FOR VIOLATION OF ITS CONFIDENTIALITY OBLIGATIONS OR OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS.

16. *Verifying compliance.*

Microsoft has the right to review Customer's records or conduct an onsite audit through an independent auditor. Microsoft will pay for the costs of the audit unless it reveals a material noncompliance.

- a. **Right to verify compliance.** Customer must keep records relating to the Products it and its Affiliates use under any License agreement. Microsoft has the right to verify compliance with the agreement, at Microsoft's expense, during the term of the applicable Enrollment and for a period of one year thereafter.
- b. **Verification process and limitations.** To verify compliance, Microsoft will engage an independent accountant from an internationally 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 Customer's operations. As an alternative, Microsoft can require Customer to complete Microsoft's self-audit questionnaire relating to the Products Customer and any of its Affiliates use under this agreement, but reserves the right to use a verification process as set out above.

If Microsoft undertakes verification and does not find material unlicensed use (License shortage of 5% or more), Microsoft will not undertake another verification of the same entity for at least one year. Microsoft and Microsoft's auditors will use the information obtained in compliance verification only to enforce Microsoft's rights and to determine whether Customer is in compliance with the terms of this agreement. By invoking the rights and procedures described above, Microsoft does not waive its rights to enforce this agreement or to protect its intellectual property by any other means permitted by law.

- c. **Remedies for non-compliance.** If verification or self-audit reveals any unlicensed use, Customer must promptly order sufficient Licenses to cover its use. If material unlicensed use is found, Customer must reimburse Microsoft for the costs Microsoft has incurred in verification and acquire the necessary additional Licenses at single retail License cost within 30 days.

17. *Miscellaneous.*

- a. **Notices to Microsoft.** Notices, authorizations, and requests in connection with this agreement must be sent by regular or overnight mail, express courier, or fax to the addresses and numbers listed on the signature form and in this agreement. Notices will be treated as delivered on the date shown on the return receipt or on the courier or fax confirmation of delivery.

Copies should be sent to:

Microsoft Corporation
Legal and Corporate Affairs
Volume Licensing Group
One Microsoft Way
Redmond, WA 98052
USA

Via Facsimile: (425) 936-7329

- b. **Assignment.** Either party may assign this agreement to an Affiliate only. Assignment will not relieve the assigning party of its obligations under the assigned agreement. If either party assigns this agreement, it must notify the other party of the assignment in writing.
- c. **Severability.** If a court holds any provision of this agreement to be illegal, invalid or unenforceable, the rest of the document will remain in effect and this agreement will be amended to give effect to the eliminated provision to the maximum extent possible.
- d. **Waiver.** A waiver of any breach of this agreement is not a waiver of any other breach. Any waiver must be in writing and signed by an authorized representative of the waiving party.
- e. **Applicable law; Dispute resolution.** The terms of this agreement will be governed by the laws of Enrolled Affiliate's state, without giving effect to its conflict of laws. Disputes relating to this agreement will be subject to applicable dispute resolution laws of Enrolled Affiliate's state.
- f. **This agreement is not exclusive.** Customer is free to enter into agreements to license, use or promote non-Microsoft software or services.
- g. **Entire agreement.** This agreement, the Product List, all Enrollments under this agreement, and the Product Use Rights constitute the entire agreement concerning the subject matter and supersede any prior or contemporaneous communications. In the case of a conflict between any of these documents that is not resolved expressly in the documents, their terms will control in the following order: (1) these terms and conditions and the accompanying signature form; (2) the Product List; (3) the Product Use Rights; (4) all Enrollments under this agreement; and (5) all orders submitted under this agreement. The terms of any purchase order or any general terms and conditions Customer or Customer Affiliates maintain do not apply.
- h. **Survival.** Provisions regarding ownership and License rights, fees, Product Use Rights, restrictions on use, evidence of perpetual Licenses, transfer of Licenses, warranties, defense of infringement and misappropriation claims, limitations of liability, confidentiality, compliance verification, obligations on termination or expiration and the other provisions in this section entitled "Miscellaneous" will survive termination or expiration of this agreement and of any agreement in which they are incorporated.
- i. **No transfer of ownership.** Microsoft does not transfer any ownership rights in any licensed Product.
- j. **Free Products.** It is Microsoft's intent that the terms of this agreement and the Product Use Rights be in compliance with all applicable federal law and regulations. Any Free Product provided to Enrolled Affiliate is for the sole use and benefit of the Enrolled Affiliate, and is not provided for use by or personal benefit of any specific government employee.
- k. **Amending the agreement.** This agreement (except the Product List and the Product Use Rights) can be changed only by an amendment signed by both parties.
- l. **Resellers and other third parties cannot bind Microsoft.** Resellers and other third parties do not have authority to bind or impose any obligation or liability on Microsoft.

- m. Customer's rights to privacy.** Microsoft and Customer will comply with all applicable privacy and data protection laws and regulations. Customer may choose to provide personal information to Microsoft on behalf of third parties (including, Customer's contacts, resellers, distributors, and administrators) as part of this agreement. Customer represents and warrants that it has and will comply with any applicable laws to provide notices to or obtain permissions from any such individuals to allow sharing of their personal information with Microsoft for the purpose of allowing Microsoft or its agents to facilitate Customer's agreements. Customer consents to Microsoft's and its agents use of the contact information provided by Customer for purposes of administering its agreements, the business relationship and related services and with Microsoft's sharing of Customer's information with Customer's designated representatives, resellers, distributors, and administrators for such purposes, including allowing such individuals to update Customer's contact information on Customer's behalf. The personal information Customer provides in connection with this agreement will be used and protected according to the privacy statement available at <https://licensing.microsoft.com>.
- n. Natural Disaster.** In the event of a "natural disaster," Microsoft may provide additional assistance or rights by posting them on <http://www.microsoft.com> at such time
- o. Copyright Violation.** Except as set forth in the section above entitled "Transferring and reassigning Licenses", the Enrolled Affiliate agrees to pay for, and comply with the terms of this agreement and the Product Use Rights, for the Products it uses. Except to the extent Enrolled Affiliate is licensed under this agreement, it will be responsible for its breach of this contract and violation of Microsoft's copyright in the Products, including payment of License fees specified in this agreement for unlicensed use.
- p. U.S. Export jurisdiction.** Products and Fixes are subject to U.S. export jurisdiction. Customer must comply with all applicable laws including the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, as well as end-user, end-use and destination restrictions issued by U.S. and other governments. For additional information, see <http://www.microsoft.com/exporting/>.