

Enterprise Agreement

State and Local

CUSTOM for State of Washington - ID CTM-000-dmills-s-1039

Contents

1. **Definitions.** 2

2. **How the Enterprise and Enterprise Subscription program works.** 3

3. **Licenses for Products.** 5

4. **How to know what Product Use Rights apply.** 6

5. **Making copies of Products and re-imaging rights.** 6

6. **Transferring and reassigning Licenses.** 7

7. **Term and termination.** 7

8. **Restrictions on use.** 9

9. **Open Source Restrictions.** 9

10. **Confidentiality.** 9

11. **Warranties.** 10

12. **Defense of infringement and misappropriation claims.** 11

13. **Limitation of liability.** 13

14. **Verifying compliance.** 18

15. **Miscellaneous.** 18

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

Effective date. The effective date of this Agreement is the first day of August, 2013. Any reference in this Agreement or an Enrollment to "day" will be a calendar day.

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, and (4) any Affiliate Enrollment entered into under this Agreement.

Please note:

- A. Several documents referenced in this Agreement but not attached to the signature form may be found at: <http://www.microsoft.com/licensing/contracts>, including the Product List and Product Use Rights. These documents may contain additional terms and conditions for Products licensed under this Agreement and may be changed from time to time. Customer and/or its Affiliates should review such documents carefully, both at the time of signing and periodically, to ensure a full understanding of all terms and conditions applicable to Products licensed. Nonetheless, only the documents included in the paragraph above (and any other documents they may reference as binding) are intended to be incorporated into this Agreement.
- B. This Agreement contains changes, made relative to the standard July 2011 version of Enterprise Agreement, which have been agreed upon by Microsoft and the Washington Department of Enterprise Services, on behalf of the state of Washington.
- C. For purposes of determining whether certain volume thresholds have been met (e.g. with respect to counts of certain licenses for the purpose of establishing a discounted price), Microsoft will use applicable counts determined from Enrollments under this Agreement and the Older Master Agreements (as defined below), so long as there are unexpired Enrollments under such Older Master Agreements from which the applicable counts may be made, unless the parties have agreed expressly in writing to the contrary.

Terms and Conditions

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;

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

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

"Customer Data" means all data, including all text, sound, or image files, including any Personal Information that may be contained in such data, that are provided to Microsoft by, or on behalf of, Enrolled Affiliate through its use of the Online Services;

"End User" means an individual that accesses the Office 365 Services;

"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;

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

"License" means Enrolled Affiliate's right to use the quantity of a Product ordered. For certain Products, a License may be available on a subscription basis ("Subscription License"). Licenses for Online Services will be considered Subscription Licenses under this Agreement;

"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;

"Office 365 Services" means both: (A) the following Office 365 Plans which may be provided to certain Enrolled Affiliates provisioned in Microsoft's "public cloud" offering: E1, E2, E3, E4, K1, and K2; Exchange Online Plan 1, Plan 2, and Kiosk; SharePoint Online Plans 1 and 2; Office Web Apps Plans 1 and 2; and Lync Online Plans 1, 2 or 3 branded services; and (B) the following Office 365 Plans which may be provided to certain Enrolled affiliates provisioned in Microsoft's "Government Community Cloud" (also known as "Office 365 for Government") offering: G1, G2, G3, G4, K1-G, and K2-G; Exchange Online Plan 1-G, Plan 2-G, and Kiosk-G; SharePoint Online Plans 1-G and 2-G; Office Web Apps Plans 1-G and 2-G; and Lync Online Plans 1-G, 2-G and 3-G branded services. Office 365 Services do not include Office

365 ProPlus, Yammer or any separately branded service made available with an Office 365-branded plan or suite.

"Older Master Agreements" mean the following Enterprise Agreements between Microsoft and the State of Washington; (a) 01E68910 (Dated June 1, 2008) and (b) 01E72788 (dated June 1, 2011).

"Online Service" means the Microsoft-hosted services identified in the Online Services section of the Product List.

"Personal Information" means the same as defined in RCW 19.255.010(5) and RCW 42.56.590(5). Microsoft asserts and Customer acknowledges that the Office 365 Services are not held out as appropriate repositories for data elements described in RCW 19.255.010(5)(c) and RCW 42.56.590(5)(c). Customer represents and warrants that it will comply with all laws and regulations applicable to Customer or Customer's government function.

"Product" means all software, Online Services and other web-based services, including pre-release or beta versions, identified on the Product List.

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

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

"Reseller" means a large account reseller authorized by Microsoft to resell Licenses under this program;

"Service Level Agreement" means the document specifying the standards Microsoft agrees to adhere to and by which it measures the level of service for an Online Service.

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

"Trade Secret" means information that is not generally known or readily ascertainable to the public, has economic value as a result, and has been subject to reasonable steps under the circumstances to maintain its secrecy;

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

2. How the Enterprise and Enterprise Subscription program works.

The Enterprise and Enterprise Subscription Program. The Enterprise and Enterprise Subscription programs establish a Customer's overall licensing framework and the applicable terms and conditions. Under the Enterprise program, Customer may license Products by entering into Enrollments. The Enterprise Subscription program offers Customer the same options as the Enterprise Program, but on a subscription basis, with an optional buy-out to obtain perpetual Licenses.

- a. **Enrollments.** The Enterprise program gives Customer and/or its Affiliates the ability to enter into one or more Enrollments to order Products. Subscription Enrollments may be available for some of these Enrollments.
- b. **Licenses.** The types of Licenses available are L&SA, Licenses obtained under Software Assurance and Subscription Licenses. These License types as well as additional License Types are defined in the Product List.
- c. **How Enrolled Affiliates acquire Licenses.** An Enrolled Affiliate will acquire its Licenses by executing an Enrollment under which it acquires its licenses through the Washington State Department of Enterprise Services (DES) (which obtains the products through its chosen Reseller). Each Enrolled Affiliate's orders under its Enrollment will be made out to DES. DES

will make out and submit its corresponding orders to the Reseller. The following additional terms and conditions shall apply to pricing and payment terms:

- a. Microsoft will invoice the Reseller based upon confidential net prices and with payment terms agreed to between Microsoft and the Reseller, and those net prices shall be proportionate and correspond to reference prices, payment schedules and other terms and conditions of each applicable Enrollment (and the terms and conditions of this Agreement which apply to each applicable Enrollment);
- b. The Reseller will invoice DES based upon prices and payment terms agreed to between DES and the Reseller; and
- c. DES will determine each Enrolled Affiliate's actual prices and payment terms.

In the event that DES notifies Microsoft in writing that DES' role in the process described above has been terminated, Microsoft will work with DES in good faith to amend this section to accommodate the change.

- d. **Choosing and maintaining a Reseller.** DES must choose and maintain a Reseller authorized by Microsoft to resell under the Enterprise Agreement program in the United States.

e. **Pricing.**

(i) **Establishing Price Levels.** Each Product generally is assigned to a Product pool (e.g., applications, systems, or servers). Each Product pool will be assigned one of four price levels (A, B, C, and D). *Except as otherwise provided pursuant to Section 2(e)(iii) below (or pursuant to an exception agreed upon in writing by the parties with respect to an individual Enrollment), Enrolled Affiliate's Price Level will be Level D for all Enterprise Products, Enterprise Online Services, Online Services and Additional Products ordered under any Enrollment.*

(ii) **Placing Orders through Reseller.** Orders under an Enrollment will be made to the Reseller. Microsoft will invoice the Reseller according to the terms in the applicable Enrollment. Throughout this Agreement the term "price" refers to reference price. DES' and Enrolled Affiliates actual prices and payment terms will be determined as set forth in Section 2(c), above.

(iii) **Discount for Enterprise Products and Enterprise Online Services.** For the purposes of this Section 2(e)(iii), the following additional definitions shall apply:

"Enterprise Product Volume" means, with respect to each Enterprise Product or Enterprise Online Service ordered under the Enrollment it is calculated for, the Qualified Device count or Qualified User count applicable to that Product.

"Enterprise Pool Volume" means, with respect to each pool for which a determination is made for an Enterprise Enrollment or Enterprise Subscription Enrollment hereunder, the greatest Enterprise Product Volume of any one Product within that pool on that Enrollment; and

"Aggregate Enterprise Volume" means, with respect to each pool as of the date it is calculated, the sum of that pool's Enterprise Pool Volumes on every unexpired Enrollment under this Agreement and all Older Master Agreements.

Unless an exception is agreed upon for an Enrollment hereunder by its Enrolled Affiliate (or DES, on its behalf), each Enrolled Affiliate's reference prices for Enterprise Products and Enterprise Online Services ordered from a pool will receive a minimum 8% discount from then-current Microsoft's Level D reference price, as of the date the applicable prices are set for any Enrollment hereunder, so long as the Aggregate Enterprise Volume remains at or above 80,000 for that pool.

f. **Deriving Prices from Price Levels.**

Each Enrolled Affiliate's reference prices for Licenses for all Products, including true-up prices, will not change throughout the applicable Enrollment Term during which each such Product is first ordered, unless the parties agree in writing to the such change. For clarity, an Enrollment may establish true-up prices which differ across the Enrollment's term, depending upon when during such term a License is ordered (or is required to be ordered).

Notwithstanding that the Old Master Agreements each included a clause which determined how reference prices were derived, Enrollments executed hereunder may each have a clause intended to establish a price level and/or determine how pricing is to be determined by agreement between the Enrolled Affiliate and its Reseller. In the event of a conflict between such terms and conditions of such Enrollment and the terms and conditions of this Section 2, the terms and conditions of this Section 2 shall control, unless the Enrollment is amended to expressly resolve such conflict in favor of such amendment.

- g. **Order Requirements.** Order Requirements are outlined in each Enrollment.
- h. **Management and Reporting.** Customer and/or Enrolled Affiliate may manage account details (e.g., contacts, orders, Licenses, software downloads) on Microsoft's Volume Licensing Service Center ("VLSC") web site (or successor site) at: <https://www.microsoft.com/licensing/servicecenter>. Upon the effective date of this Agreement and any Enrollments, the contact(s) identified for this purpose will be provided access to this site and may authorize additional users and contacts. Microsoft will take commercially-reasonable efforts to assure the information on the web site is accurate.

3. Licenses for Products.

- a. **General.** Enrolled Affiliate will have the number of Licenses ordered for the latest version of a Product and may use prior versions as permitted in the Product Use Rights, so long Microsoft receives timely orders from Reseller for all required Licenses for such Products and complies with applicable license terms. The Licenses obtained under an Enrollment are not related to any order or fulfillment of software media. The ability to use a Product ordered may be affected by minimum hardware or software requirements.
- 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 these Licenses may not sublicense these rights and their use must be consistent with the License terms contained in this Agreement.
- c. **When Licenses become perpetual.** The right to run any Product licensed under an Enrollment is temporary unless and until it becomes perpetual as follows:
 - (i) A License is temporary until Enrolled Affiliate's Reseller has paid for a License in full and the applicable initial Enrollment or renewal term during which the License was ordered must have expired or been terminated as permitted in this Agreement.
 - (ii) Subscription Licenses are never perpetual. If a buy-out option is available, Enrolled Affiliate may obtain a perpetual License by exercising the buy-out option and paying for the License in full.
 - (iii) Enrolled Affiliate will have perpetual Licenses to use the Products ordered in the latest version available (or any prior version) as of the date of expiration, termination, or renewal.
 - (iv) All perpetual Licenses acquired under this Agreement remain subject to the terms of this Agreement and such terms survive expiration or termination of this Agreement or an Enrollment.
- d. **Perpetual Licenses through Software Assurance.** Perpetual Licenses received through Software Assurance supersede and replace the underlying perpetual Licenses for which

Software Assurance coverage was ordered. In the case of Early Termination, the terms in Section 7 titled "Term and Termination will apply."

- e. **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.
- f. **Reorganizations, Consolidations, and Privatizations.** If the number of Qualified Devices 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 agreement or enrollment, Microsoft will work with the Enrolled Affiliate in good faith to accommodate its changed circumstances in the context of this Agreement.

4. How to know what Product Use Rights apply.

- a. **Product Use Rights.** The Product Use Rights in effect on the effective date of an Enrollment will apply to Enrolled Affiliate's use of then-current versions of each Product (excluding Online Services). 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 Enrolled Affiliate's use of that version, unless Enrolled Affiliate chooses to have such changes apply. The use rights for Online Services and the process for updating them as the Online Services evolve are detailed in the Product Use Rights.
- b. **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 Enrolled Affiliate's use of those components.
- c. **Reservation of rights.** All rights not expressly granted are reserved.

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

- a. **General.** Enrolled Affiliate may make as many copies of Products, if applicable, 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. Enrolled Affiliate may use a third party to make these copies, but Enrolled Affiliate agrees it will be responsible for any third party's actions. Enrolled Affiliate agrees to use reasonable efforts to notify its employees, agents, and any other individuals who use the Products that the Products are licensed from Microsoft and subject to the terms of this Agreement.
- b. **Copies for training/evaluation and back-up.** For all Products other than Online Services, Enrolled Affiliate may: (1) use up to 40 complimentary copies of any licensed Products in a dedicated training facility on its premises for purposes of training on that particular Product, (2) use up to 20 complimentary copies of any Products 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. Trials for Online Services may be available if specified in the Product Use Rights.
- c. **Right to re-image.** In certain cases, re-imaging is permitted using the Product media. If the Microsoft Product is licensed (1) from an original equipment manufacturer (OEM), (2) as a full

packaged Product through a retail source, or (3) under another Microsoft program, then media provided under this Agreement may generally 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) Enrolled Affiliate must adhere to any Product-specific processes or requirements for re-imaging identified in the Product List.
- (v) Re-images made under this subsection remain subject to the terms and use rights provided with the License from the separate source.
- (vi) This subsection does not create or extend any warranty or support obligation.

6. Transferring and reassigning Licenses.

- a. **License Transfers.** License transfers are not permitted, except as explicitly set forth in the Perpetual License Transfer Form. The resale of Licenses is prohibited, including any transfer by a Customer or its Affiliate(s) for the purpose of transferring those Licenses to an unaffiliated third party.
- b. **Internal Assignment of Licenses and Software Assurance.** Licenses and Software Assurance must be assigned to a single user or device within the Enterprise. Licenses may be reassigned within the Enterprise as described in the Product Use Rights.

7. Term and termination.

- a. **Term.** The term of this Agreement will be 36 months from the Effective date unless terminated by either party as described below. Each Enrollment will have the term provided in that Enrollment.
- 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 cause.** 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 invoices (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:
 - 1) 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
 - 2) 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.
 - (iii) In the case of Early Termination under Subscription Enrollments, Enrolled Affiliate will have the following options:
 - 1) For eligible products Enrolled Affiliate may obtain perpetual Licenses as described in the section titled "Buy-out option," provided that Microsoft receives the buy-out order for those Licenses within 60 days after Enrolled Affiliate provides notice of termination.
 - 2) Where not exercising buy-out option, in the event of breach by Microsoft, Microsoft will issue Reseller a credit for any amount paid in advance that would apply after the date of termination.

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.
- f. Modification or termination of an Online Service for regulatory reasons.** Microsoft may modify or terminate an Online Service where there is any current or future government requirement or obligation that: (1) subjects Microsoft to any regulation or requirement not generally applicable to businesses operating there; (2) presents a hardship for Microsoft to continue operating the Online Service without modification; and/or (3) causes Microsoft to believe these terms or the Online Service may be in conflict with any such requirement or obligation. For example, Microsoft may modify or terminate an Online Service in connection with a government requirement that would cause Microsoft to be regulated as a telecommunications provider. *Any such modification or termination of an Online Service shall*

apply to all customers for which Microsoft's provision of the applicable Online Service is affected by the applicable government requirement or obligation.

- g. **Program updates.** 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.
- h. **Additional termination right for Online Services.** Except as noted below for Transitions, an Enrolled Affiliate may terminate Online Services subscriptions licensed under its Enrollment, in the event that damages paid to Enrolled Affiliate (or DES on behalf of Collective Agencies) for the applicable Online Services meet or exceed Microsoft's limit of liability (as calculated in accordance with Section 13 of this Agreement), provided that Enrolled Affiliate provides a minimum of 30 days prior written notice to Microsoft of such termination. Such termination will be deemed a termination for convenience. Service Level Agreement credits and expenses incurred by Microsoft to support its products and services and respond to customer satisfaction or warranty issues do not constitute damages for purposes of calculating Microsoft's limit of liability. In the event of such termination, no credit shall be issued for prepaid installments for any Online Service coverage period prior to the termination date, and credits issued for prepaid months of service following the termination date (if any) shall not constitute damages for purposes of calculating Microsoft's limit of liability. This option to terminate is not applicable to Online Services subscriptions obtained through a Transition (as defined in the Enrollment).

8. Restrictions on use.

Restrictions on use. Enrolled Affiliate must not:

- a. 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;
- b. reverse engineer, decompile or disassemble any Product or Fix, except where applicable law permits it despite this limitation; or
- c. distribute, sublicense, rent, lease, lend, or host any Product or Fix except as permitted in the Product Use Rights or in a separate written agreement.

9. Open Source Restrictions.

Certain third party license terms require that computer code be generally (1) disclosed in source code form to third parties; (2) licensed to third parties for the purpose of making derivative works; or (3) redistributable to third parties at no charge (collectively, "Open Source License Terms"). Neither party may use, incorporate, modify, distribute, provide access to, or combine the computer code of the other with any other computer code or intellectual property (collectively, "Provide") in a manner that would subject the other's computer code to Open Source License Terms. Microsoft is not responsible for Customer's upload, use or distribution of Customer's code from the Online Services. Customer may upload code to an Online Service and allow third parties access to use or download Customer's code on the Online Service, provided that (1) such use is not restricted by a Supplemental Agreement or the Product Use Rights and (2) any Open Source License Terms apply solely to Customer and their uploaded code, and not to any code or Products provided by Microsoft. Each party warrants that it will not provide the other party with, or give third parties access through the Online Services to, computer code that is governed by Open Source License Terms, except as described above.

10. Confidentiality.

To the extent permitted by applicable law, *administrative code rule, or court order*, 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. *DES and each Enrolled Affiliate will provide Microsoft the opportunity to review and contest any intended disclosures by DES or the Enrolled Affiliate, to the extent permitted by applicable public records laws.*

To the extent permitted by applicable law, administrative code rule, or court order, Customer and each Enrolled Affiliate will treat the Microsoft Online Information Security Policy, the Microsoft Audit Report and the Summary Report (as described in Section 15, below) as confidential and shall not disclose them to any third party except for Customer's employees, Affiliates, auditors or consultants that need access to this information for the purpose of this business relationship as articulated in this Agreement and any applicable Enrollment. Customer asserts that all administrative code rules which might result in the disclosure of such documents are subject to the protections afforded to Microsoft under RCW 42.56, including but not limited to (i) provisions requiring notification of affected parties following a disclosure request, and (ii) exemptions from disclosure of Proprietary Data and Trade Secret Information as set forth in RCW 42.57.270 (11).

11. Warranties.

a. Limited warranty. Microsoft warrants that:

- (i) Online Services will perform in accordance with the applicable Service Level Agreement;
- (ii) Products other than Online Services will perform substantially as described in the applicable Microsoft user documentation; and

b. Limited warranty term. The limited warranty for:

- (i) Online Services is for the duration of Enrolled Affiliate's use of the Online Service, subject to the notice requirements in the applicable Service Level Agreement;
- (ii) Products other than Online Services is one year from the date Enrolled Affiliate first uses the Product; and

c. Limited warranty exclusions. This limited warranty is subject to the following limitations:

- (i) any implied warranties, guarantees or conditions not able to be disclaimed as a matter of law last for one year from the start of the limited warranty;
- (ii) the limited warranty does not cover problems caused by accident, abuse or use in a manner inconsistent with this Agreement or the Product Use Rights, or resulting from events beyond Microsoft's reasonable control;
- (iii) the limited warranty does not apply to components of Products that Enrolled Affiliate is permitted to redistribute;
- (iv) the limited warranty does not apply to free, trial, pre-release, or beta products; and
- (v) the limited warranty does not apply to problems caused by the failure to meet minimum system requirements.

d. Remedies for breach of limited warranty. If Microsoft fails to meet any of the above limited warranties and Enrolled Affiliate notifies Microsoft within the warranty period, then Microsoft will:

- (i) for Online Services, provide the remedies identified in the Service Level Agreement for the affected Online Service;
- (ii) for Products other than Online Services, at its option either (1) return the price paid or (2) repair or replace the Product *within a commercially-reasonable timeframe*; and

These are Enrolled Affiliate's only remedies for breach of the limited warranty, unless other remedies are required to be provided under applicable law.

- e. **Date warranty.** Microsoft warrants that each Product, when run with accurate date data and in accordance with its documentation, (i) does not have a life expectancy limited by date or time format; (ii) will correctly record, store, process, and present calendar dates; and (iii) will lose no functionality, date integrity, or performance with respect to any date, as long as, and only to the extent that, all other information technology used in combination with such product (e.g. software, firmware, hardware) properly exchanges date data with it. This warranty does not extend or apply to user-customizable features of third party add-on features or products, including items such as macros and custom programming or formatting features. This warranty is valid for a period of one year from the date an enrolled affiliate first runs a copy of the Product. To the maximum extent permitted by law, any warranties imposed by law concerning the Products are limited to the same extent and the same one-year period. This warranty does not apply to components of Products that an Enrolled Affiliate is permitted to redistribute under the applicable Product Use Rights, or if failure of the Product has resulted from accident, abuse or misapplication. If an Enrolled Affiliate (or DES, acting on behalf of an Enrolled Affiliate) notifies Microsoft within the warranty period that a Product does not meet this Warranty, then Microsoft will, at its option, either (i) return the price paid for the Product or (ii) repair or replace the Product within a commercially-reasonable timeframe. To the maximum extent permitted by law, this is Enrolled Affiliate's (and DES', acting on behalf of Enrolled Affiliate) exclusive remedy for any failure of any Product to function as described in this subsection 11(e).
- f. **DISCLAIMER OF OTHER WARRANTIES. OTHER THAN THIS LIMITED WARRANTY, MICROSOFT PROVIDES NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS. 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.**

12. **Defense of infringement and misappropriation claims.**

- a. **Microsoft's agreement to protect.** Microsoft will defend Enrolled Affiliate against any claims made by an unaffiliated third party that any Product or Fix that is made available by Microsoft for a fee 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 Enrolled Affiliate's exclusive remedy for these claims. *The terms "intentional unlawful use" and "undisclosed information" are used as defined in Article 39.2 of the TRIPs agreement.*
- b. **Limitations on defense obligation.** Microsoft's obligations will not apply to the extent that the claim or award is based on:
- (i) Customer Data, code, or materials provided by Enrolled Affiliate as part of an Online Service;
 - (ii) Enrolled Affiliate's use of the Product or Fix after Microsoft notifies it to discontinue that use due to a third party claim;
 - (iii) Enrolled Affiliate's combination of the Product or Fix with a non-Microsoft product, data or business process;
 - (iv) damages attributable to the value of the use of a non-Microsoft product, data or business process;
 - (v) non-Microsoft-provided modifications that Enrolled Affiliate makes to the Product or Fix;

- (vi) Enrolled Affiliate's redistribution of the Product or Fix to, or its use for the benefit of, any unaffiliated third party, except as expressly permitted by this Agreement or the Product Use Rights;
- (vii) Enrolled Affiliate's use of Microsoft's trademark(s) without express written consent to do so; or
- (viii) any Trade Secret claim or undisclosed information claim, where Enrolled Affiliate acquires the Trade Secret or undisclosed information (1) through improper means; (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 its 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.

Enrolled Affiliate will be reimburse Microsoft for any costs or damages that result from any of these actions.

c. 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:

- 1) use commercially reasonable methods to procure for Enrolled Affiliate the right to continue to use the allegedly infringing Product or Fix; or
- 2) modify the Product or Fix, or replace it with a functional equivalent, to make it non-infringing, in which case Enrolled Affiliate will immediately cease use of the allegedly infringing Product or Fix after receiving notice from Microsoft.

(ii) **Enrolled Affiliate's specific remedy in case of injunction.** If, as a result of an infringement claim, Enrolled Affiliate's use of a Product or Fix that is made available by Microsoft for a fee is enjoined by a court of competent jurisdiction, Microsoft will, at its option:

- 1) use commercially reasonable efforts to procure the right to continue its use;
- 2) replace it with a functional equivalent;
- 3) modify it to make it non-infringing; or
- 4) refund the amount paid (or, for Online Services, refund any amounts paid in advance for unused Online Services) and terminate the license or right to access the infringing Product or Fix.

d. Enrolled Affiliate's Responsibility. Enrolled Affiliate will be responsible for any costs or damages to the extent that any claims made by an unaffiliated third party:

- (i) are based on any Customer Data or non-Microsoft software Microsoft hosts on Enrolled Affiliate's behalf infringes the third party's patent, copyright, or trademark or makes intentional unlawful use of its Trade Secret; or
- (ii) arise from Enrolled Affiliate's or its end user's violation of the Acceptable Use Policy set forth in the Product Use Rights.

Enrolled Affiliate must pay the amount of any resulting adverse final judgment (or settlement to which Enrolled Affiliate consents).

e. Obligations of protected party. Enrolled Affiliate must notify Microsoft promptly in writing of a claim subject to the subsection titled "Microsoft's agreement to protect" and Microsoft must notify Enrolled Affiliate promptly in writing of a claim subject to the subsection titled "Enrolled Affiliate's Responsibility." *Either party's failure to provide timely notice to the other shall only relieve the other party from its obligations under this Section if and to the extent such late notice prejudices the defense or results in increased expense or loss to the other party.*

In addition, Enrolled Affiliate, and DES when acting on Enrolled Affiliate's behalf, each agree to cooperate with, and agree to use best efforts to encourage, the Office of Attorney General of Washington (OAG) to grant Microsoft sole control of the defense and all related settlement negotiations which pertain to (or which may affect) Microsoft and/or Microsoft's intellectual property. In the event that OAG opts not to grant Microsoft sole control of such defense and related negotiations, Enrolled Affiliate (and DES, when acting on its behalf) agrees to encourage the OAG to allow all parties to participate jointly in any defense and all related settlement negotiations. Microsoft will reimburse Enrolled Affiliate (and DES, when acting on its behalf) for reasonable out of pocket expenses that it incurs in providing that assistance.

13. Limitation of liability.

- a. **Limitation on liability.** To the extent permitted by applicable law, the liability of Microsoft and Enrolled Affiliate, their respective Affiliates and contractors arising under this Agreement is limited to direct damages up to (1) for Products other than Online Services, the amount Enrolled Affiliate was required to pay for the Product giving rise to that liability and (2) for Online Services *other than Covered Services (as defined below)*, the *monthly* amount Enrolled Affiliate is required to pay for the Online Service giving rise to that liability *multiplied by 12*. In the case of Products provided free of charge, or code that Enrolled Affiliate 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 and Enrolled Affiliate's obligations under the section titled "Defense of infringement, misappropriation, and third party claims"
 - (ii) liability for damages caused by either party's gross negligence or willful misconduct, or that of its employees or its agents, and awarded by a court of final adjudication (provided that, in jurisdictions that do not recognize a legal distinction between "gross negligence" and "negligence," "gross negligence" as used in this subsection shall mean "recklessness"). *For purposes of clarity, this section applies to fines and penalties that may be assessed by government authorities due to Microsoft's gross negligence or willful misconduct,*
 - (iii) liabilities arising out of any breach by either party of its obligations under the section entitled "Confidentiality", except that Microsoft's liability arising out of or in relation to Customer Data shall be as set forth for Online Services or Covered Online Services elsewhere in this Section 13;
 - (iv) liability for personal injury or death caused by either party's negligence, or that of its employees or agents, or for fraudulent misrepresentation; and
 - (v) violation by either party of the other party's intellectual property rights.
- 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 CONTRACTORS, WILL BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, OR INCIDENTAL DAMAGES, OR DAMAGES FOR LOST PROFITS, 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 (EXCEPT TO THE EXTENT THAT SUCH VIOLATION RELATES TO CUSTOMER DATA), THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, OR THE PARTIES' RESPECTIVE OBLIGATIONS IN THE SECTION TITLED "DEFENSE OF INFRINGEMENT, MISAPPROPRIATION, AND THIRD PARTY CLAIMS."**

c. **Affiliates and Contractors.** Neither Microsoft nor Enrolled Affiliate shall bring any action against the other's Affiliates or contractors in respect of any matter disclaimed on their behalf in this Agreement.

d. **Limitation of Liability for Office 365 Services.**

The following additional definitions shall apply to both this Section 13(d) and Section 13(e) below:

- (i) "Covered Data Loss" means loss of Customer Data that is not (a) attributable to the instructions, acts or omissions of Enrolled Affiliate or its users or (b) the most recent 90 minutes worth of Customer Data;
- (ii) "Covered Disclosure" means disclosure of Customer Data as a result of a Security Incident, as defined in Section 16(r) ("Security Incident Notification"); and
- (iii) "Covered Online Services" means Office 365 Services.

(1) Calculation of Limit

Solely with respect to Covered Online Services ordered under an Enrollment, the first paragraph of Section 13(a), above, titled "Limitation on Liability," is hereby replaced with the following provisions of this Section 13(d)(1), without changing other paragraphs or provisions in Section 13(a):

Except as provided for Collective Agencies in Section 13(e), below, the liability of Microsoft and each Enrolled Affiliate, and their respective Affiliates and Contractors, arising separately under an Enrollment for damages caused by the Covered Online Service(s) giving rise to the liability, shall be limited to direct damages up to an amount equal to (a) twenty-four (24) multiplied by (b) the monthly per-unit price (as set by the Reseller) for each applicable Covered Online Service SKU multiplied by (c) the quantity of each applicable SKU ordered by the applicable Enrolled Affiliate under its current subscription orders.

For the purpose of clarity:

- (a) This amendment to the monetary limitation of liability for the Covered Online Services will apply to Microsoft's liability arising out of or in relation to its breach of its obligations under the applicable Enrollment related to Customer Data.
- (b) Notwithstanding the extent to which the extent any component of Covered Online Services (e.g. Exchange Online) gives rise to liability, Microsoft's limitation of liability will be calculated using the whole monthly prices of each Covered Online Services SKUs (including the monthly prices of Suites, rather than the components of such Suites) for which the Enrolled Affiliate has placed subscription orders; and
- (c) Except as provided separately for Collective Agencies, pursuant to Section 13(e), below, the amount of the limitation of liability as set forth in this Section 13 will be calculated and applied separately for each Enrolled Affiliate.

(2) Confirmation of Direct Damages

For purposes of both this Section 13(d) and Section 13(e), below, the following shall be deemed to be "direct damages" not subject to the exclusion of indirect or consequential damages set forth herein:

- (A) The following costs related to a Covered Disclosure:
 - a. An Enrolled Affiliate's reasonable costs in notifying affected individuals of Covered Disclosure in which the data subjects' Personal Information has been disclosed;
 - b. Credit monitoring for up to twelve (12) months for affected individuals;
 - c. Damages assessed against an Enrolled Affiliate by a court of competent jurisdiction and awarded to individuals whose Personal Information is subject to a Covered Disclosure.

- d. Any additional reasonable and documented costs of any mitigation, remedies or plans to the extent that such mitigation, remedies or plans are reasonable and would otherwise have been expected to be paid by Washington government entities in the event such entities were to experience a Covered Disclosure while hosting and processing their own Customer Data, given the nature and scope of the Covered Disclosure, as validated by an independent internationally recognized third party industry expert chosen by both parties.
- (B) The following additional costs related to each applicable Enrolled Affiliate's obligations under the Freedom of Information Act, Washington Public Records Act, or other applicable open records laws due to Covered Data Loss:
- a. Government fines and penalties assessed against an Enrolled Affiliate for failure to comply with such open records laws, where such failure is attributable solely to Covered Data Loss; and
 - b. Damages assessed against an Enrolled Affiliate by a court of competent jurisdiction and awarded to third parties based solely on the Enrolled Affiliate's failure to provide information to them under such open records acts, where such failure is attributable solely to a Covered Data Loss.

In all other respects, including with respect to any exclusions from the limitation on liability, Sections 13(a) 13(b), and 13(c), above, shall continue to apply as written.

e. Exception for Certain Washington State Agencies.

The following additional definitions shall apply to this Section 13(e):

- (i) "Aggregate Collective Monthly Value" means the sum of Covered Online Service Monthly Prices of all current Collective Agency Enrollments. The Aggregate Collective Monthly Value will be calculated as of the date upon which a Covered Data Loss or Covered Disclosure occurs;
- (ii) "Collective Agency," means, as of the date upon which the Aggregate Collective Monthly Value is calculated, each Agency of the Executive Branch of the State of Washington government (hereafter, an "Eligible Agency") that has executed a Collective Agency Amendment (as defined below).
- (iii) "Collective Agency Amendment" means an amendment, signed optionally by an Eligible Agency enrolled hereunder, which amends such Eligible Agency's Enrollment by adding the following statement to its Enrollment:

"Enrolled Affiliate agrees, on behalf of itself and affiliates (if any) to which it sublicenses under the Enrollment amended hereby, that it shall be a Collective Agency, as defined in the section of the Agreement titled "Limitation of Liability." As such, if there are any disputes between Enrolled Affiliate and Microsoft regarding a Covered Data Loss (as defined in the Agreement), Enrolled Affiliate agrees to provide the Washington Department of Enterprise Services (or its successor) (DES) written notice of the nature of such dispute. DES will review, and Enrolled Affiliate grants and assigns to DES the authority to resolve such dispute on behalf of Enrolled Affiliate regarding the Covered Data Loss. DES will consult reasonably with Enrolled Affiliate and Enrolled Affiliate will provide reasonable assistance and cooperation to DES in that resolution process. Enrolled Affiliate agrees that it will seek relief for any damages related to Covered Online Services solely through this Enrollment. Further, Enrolled Affiliate agrees to grant and assign DES sole authority to receive from Microsoft on its behalf and disburse to Enrolled Affiliate liability payments made by Microsoft for a Covered Data Loss in the manner set forth in the Agreement.."

Microsoft will, upon written request by an Eligible Agency, make Collective Agency Amendments available for execution by such Eligible Agencies. Any Enrollment used for any such renewal term must be executed under this Agreement or another agreement which binds both DES and the Collective Agency to these terms and conditions, and must be amended by the addition of a Collective Agency Amendment. Each Eligible Agency is responsible for reading and understanding these terms and conditions, and Microsoft shall not be responsible to notify Eligible Agencies of their options hereunder.

- (iv) "Collective Agency Enrollment" mean an unexpired Enrollment between Microsoft and a Collective Agency under this Agreement or any other Enterprise Agreement between Microsoft and DES (or its successor), provided that such Enrollment is amended by a Collective Agency Amendment (as set forth above); and
- (v) "Covered Online Service Monthly Price" means, individually with respect to any Collective Agency Enrollment as of the date the Aggregate Collective Monthly Value is calculated, (a) the monthly per-unit SKU price (as set by the Reseller) of the Covered Online Service(s) giving rise to Microsoft's liability hereunder, multiplied by (b) the quantity of such SKUs on current subscription orders purchased under such Enrollment.

(1) Calculation of Limit

Solely with respect to Covered Online Services ordered under Collective Agency Enrollments, Subsection 13(d)(1) titled "Calculation of Limit," is hereby replaced with the following provisions of this Section 13(e)(1):

Microsoft's total aggregate liability to DES for damages suffered by Collective Agencies and related to Covered Online Services purchased under all Collective Agency Enrollments shall be limited to direct damages up to twenty-four (24) times the Aggregate Collective Monthly Value, as of the date such liability is calculated.

DES acknowledges and agrees that:

- (i) The monetary limit of Microsoft's aggregate liability to DES for Covered Online Services will vary over time, as Covered Online Services are purchased or expire, or as Collective Agency Enrollments are added, expire or terminate; and
- (ii) In the event either Microsoft or DES pays any amounts to the other party for damages attributable to Covered Online Services pursuant to this Section 13, the amount of that party's total remaining liability to the other under this Section 13 will be diminished by that amount (but in no case will be lower than zero).
- (iii) Notwithstanding that this provision for aggregate limitation of liability for DES on behalf of Collective Agencies (or the terms and conditions contained herein) may appear in more than one active Agreement between DES and Microsoft, the terms and conditions of each such provision shall apply once, and the multiple iterations hereof shall not have the effect of multiplying the limitation of liability of either party beyond the amount provided separately in any of the individual Agreements' provisions.

The following example is provided for clarity, and is not intended to establish any specific Dollar amount for Microsoft's limitation of liability:

- On date #1, before Microsoft has paid any amount to DES for damages pertaining to Covered Online Services, the Aggregate Collective Monthly Value is \$100,000, such that Microsoft's aggregate limitation of liability to DES on date #1 is \$2,400,000.
- On date #2, before which there has been no change to the Covered Online Service Monthly Price, Microsoft pays DES \$1,500,000 for direct damages related to Covered Online Services. Microsoft's remaining total aggregate liability to DES will then be $\{(24 \times$

\$100,000) - \$1,500,000 =} \$900,000, until such time as the Aggregate Collective Monthly Value changes.

- On date #3, due to a Covered Enrollment's expiration, the Aggregate Collective Monthly Value is reduced from \$100,000 to \$80,000. Microsoft's remaining total aggregate liability to DES will then be $\{(24 \times \$80,000) - \$1,500,000 =\}$ \$420,000, until such time as the Aggregate Collective Monthly Value changes again.
- On date #4, due to the addition of a new Covered Enrollment, the Aggregate Collective Monthly Value is increased from \$80,000 to \$120,000. Microsoft's remaining total aggregate liability to DES will then be $\{(24 \times \$120,000) - \$1,500,000 =\}$ \$1,380,000, until such time as the Aggregate Collective Monthly Value changes again.

For the purpose of clarity:

- (a) This amendment to the monetary limitation of liability for the Covered Online Services will apply to Microsoft's liability arising out of or in relation to its breach of its obligations under Covered Agency Enrollments related to Customer Data;
- (b) Notwithstanding the extent to which any component of Covered Online Services (e.g. Exchange Online) gives rise to liability, each party's limitation of liability will be calculated using the whole monthly prices of each Covered Online Services SKUs (including the monthly prices of Suites, rather than the components of such Suites) for which the Covered Affiliates have placed subscription orders under their Covered Affiliate Enrollments;
- (c) Microsoft then-current limitation of liability, for any event which gives rise to Microsoft's liability based upon one or more such Collective Agencies Covered Online Services, will not be increased or decreased with respect to such event by the addition or reduction of other Collective Agencies on or after the date such event commenced; and
- (d) Microsoft will not pay any amount directly to any Collective Agency (other than DES or its successor on behalf of the other Collective Agencies) for Covered Online Services under this Section 13.

(2) DES and Collective Agency Duties

DES assumes full and sole responsibility for both:

- (a) collecting from Microsoft those payments for damages, related to Covered Services, for which Microsoft is responsible, with respect to each Collective Agency; pursuant to the terms and conditions of this Section 13 (including but not limited to this subsection 13(e)); and
- (b) disbursing such payments to the applicable Collective Agencies.

By its signature on this Agreement, DES represents that:

1. It has the authority to accept, and accepts, the terms and conditions of this Section 13(e); and
2. In the event that a dispute regarding Covered Online Service(s) arises between a Collective Agency and Microsoft with regard to the terms and conditions of this Section 13 (and its applicable Subsections including this Section 13(e)), it will work on behalf of such Collective Agency to resolve such dispute with Microsoft. For clarity, disputes pertaining to Products other than covered Online Services are not subject to this Subsection 13(e).

14. Verifying compliance.

- a. **Right to verify compliance.** Enrolled Affiliate must keep records relating to the Products it and its Affiliates use or distribute. Microsoft has the right, to the extent permitted by applicable law, to verify compliance with the license terms for Products, at Microsoft's expense.
- b. **Verification process and limitations.** To verify compliance, Microsoft will engage an independent auditor, 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 Enrolled Affiliate's operations. Enrolled Affiliate must promptly provide the independent auditor with any information it reasonably requests in furtherance of the verification, including access to systems running the Products and evidence of Licenses for Products Enrolled Affiliate hosts, sublicenses, or distributes to third parties. As an alternative, Microsoft can require Enrolled Affiliate to complete Microsoft's self-audit questionnaire relating to the Products Enrolled Affiliate and any of Affiliates use or distribute, but reserve 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 per Product), Microsoft will not undertake another verification of the same entity for at least one year. Microsoft and the independent auditors will use the information obtained in compliance verification only to enforce Microsoft's rights and to determine whether Enrolled Affiliate are in compliance with the license terms for the Products. By invoking the rights and procedures described above, Microsoft does not waive its rights to enforce the Agreement or to protect Microsoft's intellectual property by any other means permitted by law.

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

15. Office 365 Security Terms

The following terms and conditions ("Office 365 Security Terms") shall apply solely to Office 365 Services sold under this Agreement:

(A) Privacy

- a. **Privacy practices.** Microsoft complies with all data protection and privacy laws generally applicable to Microsoft's provision of the Office 365 Services. However, Microsoft is not responsible for compliance with any data protection or privacy law applicable to an Enrolled Affiliate or its industry or government function and not generally applicable to information technology service providers.
- b. **Customer Data.** Microsoft will process Customer Data in accordance with the provisions of this Agreement (including these Office 365 Security Terms) and, except as stated in the Enrollment and these Office 365 Security Terms, Microsoft (a) will acquire no rights in Customer Data and (b) will not use, process or disclose Customer Data for any purpose other than stated below. Microsoft's use of Customer Data is as follows:
 - (i) Customer Data will be used, processed or disclosed only to provide Enrolled Affiliates the Office 365 Services. This may include troubleshooting aimed at preventing, detecting and repairing problems affecting the operation of the Office

365 Services and the improvement of features that involve the detection of, and protection against, emerging and evolving threats to the user (such as malware or spam).

- (ii) Microsoft will not disclose Customer Data to law enforcement unless required by law. Should law enforcement contact Microsoft with a demand for Customer Data, it will attempt to redirect the law enforcement agency to request it directly from Customer. As part of this effort, Microsoft may provide Customer's basic contact information to the agency. If compelled to disclose Customer Data to law enforcement, Microsoft will use commercially reasonable efforts to notify Customer in advance of a disclosure unless legally prohibited.
- c. **Customer Data deletion or return.** Upon expiration or termination of Customer's use of the Office 365 Services, Customer may extract Customer Data and Microsoft will delete Customer Data, each in accordance with the terms of this Agreement.
- d. **End User requests.** Microsoft will not independently respond to requests from Customer's End Users without Customer's prior written consent, except where required by applicable law.
- e. **Microsoft personnel.** Microsoft personnel will not use, process or disclose Customer Data without authorization. Microsoft personnel are obligated to maintain the confidentiality of any Customer Data and this obligation continues even after their engagement ends.
- f. **Subcontractor; transfer.** Microsoft may hire other companies to provide limited services on its behalf, such as providing customer support. Any such subcontractors will be permitted to obtain Customer Data only to deliver the services Microsoft has retained them to provide, and they are prohibited from using Customer Data for any other purpose. Microsoft remains responsible for its subcontractors' compliance with the terms and conditions of this Agreement. Any subcontractors to whom Microsoft transfers Customer Data will have entered into written agreements with Microsoft requiring that the subcontractor provide at least the same level of privacy protection with respect to personal data received from Microsoft as is required by the relevant Safe Harbor Privacy Principles issued by the U.S. Department of Commerce as part of the U.S.-E.U. Safe Harbor Framework. Customer consents to Microsoft's transfer of Customer Data to subcontractors as described in this Agreement. Except as set forth above, or as Customer may otherwise authorize, Microsoft will not transfer to any third party (not even for storage purposes) Customer Data provided to Microsoft through the use of the Office 365 Services.

(B) Customer responsibilities.

Customer must comply with applicable legal requirements for privacy, data protection, and confidentiality of communications related to its use of Office 365 Services.

(C) Additional European terms.

If Customer has End Users in the European Economic Area or Switzerland, the additional terms in this Section 15(C) will apply in addition to the other terms and conditions of this Agreement. Terms used in this Section that are not specifically defined will have the meaning in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ("EU Data Protection Directive").

- a. **Intent of the parties.** For the Office 365 Services, Customer is the data controller and Microsoft is a data processor acting on Customer's behalf. As data processor, Microsoft will only act upon Customer's instructions. These Office 365 Security Terms

and the Enrollment (including the terms and conditions incorporated by reference therein) are Customer's complete and final instructions to Microsoft for the processing of Customer Data. Any additional or alternate instructions must be agreed to according to the process for amending Customer's Enrollment.

- b. Duration and object of data processing.** The duration of data processing shall be for the term designated under the Enrollment. The objective of the data processing is the performance of the Office 365 Services.
- c. Scope and purpose of data processing.** The scope and purpose of processing of Customer Data, including any personal data included in the Customer Data, is described in these Office 365 Security Terms and the Enrollment.
- d. Customer Data access.** For the term designated under the Enrollment Microsoft will, at its election and as necessary under applicable law implementing the EU Data Protection Directive, either: (1) provide Customer with the ability to correct, delete, or block Customer Data, or (2) make such corrections, deletions, or blockages on Customer's behalf.
- e. Privacy officer.** Microsoft's data privacy representative for the European Economic Area and Switzerland can be reached at the following address:

Microsoft Ireland Operations Ltd.
Attn: Privacy Officer
Carmenhall Road
Sandyford, Dublin 18, Ireland

(D) Security

- a. General practices.** Microsoft has implemented and will maintain appropriate technical and organizational measures, internal controls, and information security routines intended to protect Customer Data against accidental loss, destruction, or alteration, unauthorized disclosure or access, or unlawful destruction. Additionally, Microsoft has implemented and will maintain (A) reasonable procedures intended to review, monitor, audit, (and when necessary, investigate) the use of Customer Data by personnel of Microsoft and subcontractors, and (B) appropriate measures to prevent unauthorized use, sale, sharing, or transfer of Customer Data. These measures are as follows:

(i) Domain: organization of information security

- 1) Security ownership.** Microsoft has appointed one or more security officers responsible for coordinating and monitoring the security rules and procedures.
- 2) Security roles and responsibilities.** Microsoft personnel with access to Customer Data are subject to confidentiality obligations.
- 3) Risk management program.** Microsoft performed a risk assessment before processing the Customer Data or launching the Office 365 Service.
- 4) Microsoft retains its security documents** pursuant to its retention requirements after they are no longer in effect.

(ii) Domain: asset management

- 1) Asset inventory.** Microsoft maintains an inventory of all media on which Customer Data is stored. Access to the inventories of such media is restricted to Microsoft personnel authorized in writing to have such access.
- 2) Asset handling.**

- A. Microsoft classifies Customer Data to help identify it and to allow for access to it to be appropriately restricted (e.g., through encryption).
- B. Microsoft imposes restrictions on printing Customer Data and has procedures for disposing of printed materials that contain Customer Data.
- C. Microsoft personnel must obtain Microsoft authorization prior to storing Customer Data on portable devices, remotely accessing Customer Data, or processing Customer Data outside Microsoft's facilities. This includes removing media (e.g., USB sticks and CD ROMs) and documents containing Customer Data from Microsoft's facilities.

(iii) Domain: human resources security

1) Security training.

- A. Microsoft informs its personnel about relevant security procedures and their respective roles. Microsoft also informs its personnel of possible consequences of breaching the security rules and procedures.
- B. Microsoft will only use anonymous data in training.

(iv) Domain: physical and environmental security

- 1) Physical access to facilities. Microsoft limits access to facilities where information systems that process Customer Data are located to identified authorized individuals.
- 2) Physical access to components. Microsoft maintains records of the incoming and outgoing media containing Customer Data, including the kind of media, the authorized sender/recipients, date and time, the number of media and the types of Customer Data they contain.
- 3) Protection from disruptions. Microsoft uses a variety of industry standard systems to protect against loss of data due to power supply failure or line interference.
- 4) Component disposal. Microsoft uses industry standard processes to delete Customer Data when it is no longer needed.

(v) Domain: communications and operations management

- 1) Operational policy. Microsoft maintains security documents describing its security measures and the relevant procedures and responsibilities of its personnel who have access to Customer Data.
- 2) Data recovery procedures.
 - A. On an ongoing basis, but in no case less frequently than once a week (unless no Customer Data has been updated during that period), Microsoft maintains multiple copies of Customer Data from which Customer Data can be recovered.
 - B. Microsoft stores copies of Customer Data and data recovery procedures in a different place from where the primary computer equipment processing the Customer Data is located.
 - C. Microsoft has specific procedures in place governing access to copies of Customer Data.
 - D. Microsoft reviews data recovery procedures at least every six months.

E. Microsoft logs data restoration efforts, including the person responsible, the description of the restored data and which data (if any) had to be input manually in the data recovery process.

3) Malicious software. Microsoft has anti-malware controls to help avoid malicious software gaining unauthorized access to Customer Data, including malicious software originating from public networks.

4) Data beyond boundaries.

A. Microsoft encrypts Customer Data that is transmitted over public networks.

B. Microsoft restricts access to Customer Data in media leaving its facilities (e.g., through encryption).

(vi) Domain: access control

1) Access policy. Microsoft maintains a record of security privileges of individuals having access to Customer Data.

2) Access authorization.

A. Microsoft maintains and updates a record of personnel authorized to access Microsoft systems that contain Customer Data.

B. Microsoft deactivates authentication credentials that have not been used for a period of time not to exceed six months.

C. Microsoft identifies those personnel who may grant, alter or cancel authorized access to data and resources.

3) Least privilege

A. Technical support personnel are only permitted to have access to Customer Data when needed.

B. Microsoft restricts access to Customer Data to only those individuals who require such access to perform their job function.

4) Integrity and confidentiality.

A. Microsoft instructs Microsoft personnel to disable administrative sessions when leaving premises Microsoft controls or when computers are otherwise left unattended.

5) Authentication.

A. Microsoft uses industry standard practices to identify and authenticate users who attempt to access information systems.

B. Where authentication mechanisms are based on passwords, Microsoft requires that the passwords are renewed regularly.

C. Where authentication mechanisms are based on passwords, Microsoft requires the password to be at least eight characters long.

D. Microsoft ensures that de-activated or expired identifiers are not granted to other individuals.

E. Microsoft monitors repeated attempts to gain access to the information system using an invalid password.

F. Microsoft maintains industry standard procedures to deactivate passwords that have been corrupted or inadvertently disclosed.

G. Microsoft uses industry standard password protection practices, including practices designed to maintain the confidentiality and integrity of passwords when they are assigned and distributed, and during storage.

6) Network design. Microsoft has controls to avoid individuals assuming access rights they have not been assigned to gain access to Customer Data they are not authorized to access.

(vii) Domain: information security incident management

1) Incident response process. Microsoft maintains a record of security breaches with a description of the breach, the time period, the consequences of the breach, the name of the reporter, and to whom the breach was reported, and the procedure for recovering data.

2) Service Monitoring. Microsoft security personnel verify logs at least every six months to propose remediation efforts if necessary.

(viii) Domain: Business Continuity Management

1) Microsoft maintains emergency and contingency plans for the facilities in which Microsoft information systems that process Customer Data are located.

2) Microsoft's redundant storage and its procedures for recovering data are designed to attempt to reconstruct Customer Data in its original state from before the time it was lost or destroyed.

(ix) Other than any requirements imposed by law, administrative rule or court order, the security measures described in this Section 15 are Microsoft's only responsibility with respect to the security of Customer Data. For Customer Data, these measures replace any confidentiality obligations contained in the Enrollment or any other non-disclosure agreement between Microsoft and Customer specifically for Office 365 Services.

b. Certifications and audits

(i) Microsoft has established and agrees to maintain a data security policy that complies with the ISO 27001 standards for the establishment, implementation, control, and improvement of the Information Security Management System and the ISO/IEC 27002 code of best practices for information security management ("**Microsoft Online Information Security Policy**"). On a confidential need-to-know basis, and subject to Customer's agreement to non-disclosure obligations Microsoft specifies, Microsoft will make the Microsoft Online Information Security Policy available to Customer, along with other information reasonably requested by Customer regarding Microsoft security practices and policies. Customer is solely responsible for reviewing the Microsoft Online Information Security Policy, making an independent determination as to whether the Microsoft Online Information Security Policy meets Customer's requirements, and for ensuring that Customer's personnel and consultants follow the guidelines they are provided regarding data security.

(ii) Microsoft will perform audits on the security of the computers and computing environment that it uses in processing Customer Data (including personal data) on the Office 365 Services and the physical data centers from which Microsoft provides the Office 365 Services. Audit(s): (a) will be performed at least annually; (b) (i) will be performed according to ISO 27001 standards and (ii) will meet the SSAE 16 SOC1 Type II audit standards or other SSAE 16 variant standards that include the SOC1 scope; (c) will be performed by independent third party security and audit professionals at Microsoft's selection and expense;

(d) will result in the generation of one or more audit reports ("**Microsoft Audit Reports**"), which will be Microsoft's confidential information; and (e) may be performed for other purposes in addition to satisfying this Section (e.g., as part of Microsoft's regular internal security procedures or to satisfy other contractual obligations).

(iii) If Customer requests in writing, Microsoft will provide Customer with a confidential summary of each of the Microsoft Audit Reports ("**Summary Reports**") so that Customer can reasonably verify Microsoft's compliance with the security obligations under these Office 365 Security Terms. Each Summary Report is Microsoft confidential information. Summary Reports will not be prepared in a way that would frustrate or prevent Customer's ability to understand any non-conformities reported in the corresponding Microsoft Audit Report.

(iv) Microsoft will be responsible for the remediation of (a) any errors identified in a Microsoft Audit Report that could reasonably be expected to have an adverse impact on Customer use of the Office 365 Services and (b) material control deficiencies identified in the Microsoft Audit Report.

16. **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

- Microsoft may provide information about upcoming Enrollment deadlines and Online Services in electronic form. Such information may be provided by email to contacts provided by Enrolled Affiliate under an Enrollment, or through a web site Microsoft identifies. Notice by email is given as of the transmission date.
- 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.
- 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 documents referenced in this Agreement that is not expressly resolved in the documents, their terms will control in the following order: (1) these terms and conditions and the accompanying signature form; (2) an Enrollment; (3) the Product List; (4) the Product Use Rights; (5) only such other documents that are referenced in this Agreement and expressly incorporated herein, including but not limited to the Service Level Agreements applied separately to Enrollments and applicable to certain Online Services, as set forth in the Product Use Rights, for each subscription term; and (6) all orders submitted under this Agreement.
- 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, Microsoft's and Customer's obligations to protect each other, 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. **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 and related services.

Customer consents to Microsoft's 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://www.microsoft.com/licensing/servicecenter> to the maximum extent permitted by applicable law. Product-specific privacy commitments are described in the Product Use Rights.
- 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 and Microsoft will comply with all U.S. Export Administration Regulations and International Traffic in Arms Regulation requirements as well as all end-user, end-use, and destination restrictions issued by the U.S. and other governments applicable to this Agreement. For additional information, see <http://www.microsoft.com/exporting>.
- q. Additional renewal option when Transitioning from Enterprise Online Services to Enterprise Products.** Notwithstanding that each Enrollment form may indicate only an option to renew for a 36-month period, if renewed at all, the following additional renewal terms and conditions shall apply. Any Enrolled Affiliate pursuant to an Enterprise Agreement hereunder (but not an Enterprise Subscription Enrollment) that has, as of its expiration date, Transitioned one or more Enterprise Products to Enterprise Online Services (and Bridge Client Access Licenses, as applicable) may optionally (at Enrolled Affiliate's option) be renewed for a single 12-month period in lieu of the 36-month period provided by the Enrollment's Renewal clause, in order to Transition back all Licenses of its Enterprise Online Services to Enterprise Products for which perpetual licenses are issued in the most-current version available as of the expiration of the 12-month renewal term following both (1) the payment of Software Assurance for the renewal period (in the case of perpetual licenses issued in older versions upon the original Transition) and (2) the purchase of a new License with one year of Software Assurance upon the start of the renewal period (in the cases of Qualified Devices and Qualified Users for which no perpetual license for the applicable Enterprise Products was previously issued), in accordance with the terms and conditions of this Agreement, including but not limited to Section 3 of this Agreement and the section(s) of the applicable Enrollment which govern Transitions to and from Enterprise Online Services. Except as modified by this Section 16(q), all other terms and conditions of the Agreement and Enrollment which pertain to Renewal, Transition and issuance of Perpetual Licenses under an Enrollment shall remain in full force and effect.
- r. Security Incident Notification.**

The following terms and conditions shall apply solely to Office 365 Services, and shall survive the expiration of any Enrollment for as long as Customer Data is retained in Microsoft's servers:

- i.** If Microsoft become aware of any unlawful access to any Customer Data stored on Microsoft's equipment or in Microsoft's facilities, or unauthorized access to such equipment or facilities resulting in loss, disclosure, or alteration of Customer Data (each a "Security Incident"), Microsoft will: (1) notify Customer of the Security Incident immediately following discovery; (2) investigate the Security Incident and provide Customer with detailed information about the Security Incident; (3) take reasonable steps to mitigate the effects and to minimize any damage resulting from the Security Incident; and (4) provide reasonable cooperation and assistance to Customer in fulfilling its mitigation, investigation, and notification obligations under applicable law or regulation, including assisting third parties retained by Customer for such purposes.
- ii.** Customer agrees that:
- (A)** An unsuccessful Security Incident will not be subject to this Section. An unsuccessful Security Incident is one that results in no unauthorized access to Customer Data or to any of Microsoft's equipment or facilities storing Customer Data, and may include, without limitation, pings and other broadcast attacks on firewalls or edge servers, port scans, unsuccessful log-on attempts, denial of service attacks, packet sniffing (or

other unauthorized access to traffic data that does not result in access beyond IP addresses or headers) or similar incidents; and

(B) Microsoft's obligation to report or respond to a Security Incident under this Section is not and will not be construed as an acknowledgement by Microsoft of any fault or liability with respect to the Security Incident.

iii. Notification(s) of Security Incidents, if any, will be delivered to one or more of Customer's administrators by any means Microsoft selects, including via email. It is Customer's sole responsibility to ensure Customer's administrators maintain accurate contact information on the Online Services portal at all times.

s. **Data Location.** If an Enrolled Affiliate provisions its tenant in the United States, Microsoft will provide Office 365 for Government Services from data centers in the United States. In connection with the Office 365 for Government Services, storage of the following customer data at rest will be located in data centers only in the United States: (i) Exchange Online mailbox content (e-mail body, calendar entries, and the content of e-mail attachments), and (ii) SharePoint Online site content and the files stored within that site.

t. **Permitted use of Customer Data for Office 365 Services.** In providing Office 365 Services, Microsoft shall use Customer Data only to provide and maintain the Online Service for the customer. Office 365 Services shall not capture, maintain, scan, index, share or use Customer Data stored or transmitted by the Online Service, or otherwise use any data-mining technology, for any non-authorized activity or non-government purpose. Office 365 Services shall not use Customer Data stored or transmitted by the Online Service for any advertising or other commercial purpose of Microsoft or any third party. The Office 365 Services will be logically separate from Microsoft's consumer Online Services. Customer Data, other data in Microsoft's consumer Online Services, and data created by or resulting from Microsoft's scanning, indexing, or data-mining activities of other such data, will not be commingled unless expressly approved by Customer in advance.

u. **Customer Data retention and deletion upon expiration or termination of an Office 365 Services Subscription**

Upon expiration or termination of a License for Office 365 Services, the applicable Enrolled Affiliate must tell Microsoft whether to:

- (i) disable its account and then delete its Customer Data ("Data Deletion"); or
- (ii) retain its Customer Data in a limited function account for at least 90 days after expiration or termination of the License for such Online Service (the "Retention Period") so that Enrolled Affiliate may extract its Customer Data.

If Enrolled Affiliate indicates Data Deletion, Enrolled Affiliate will not be able to extract its Customer Data. If Enrolled Affiliate indicates it wants a Retention Period, Enrolled Affiliate will be able to extract its Customer Data through Microsoft's standard processes and tools, and Enrolled Affiliate will reimburse Microsoft if there are any applicable costs. If Customer is unable to access its Customer Data pursuant to the Microsoft-provided self-help procedures, standard protocols, tools and access methods then, upon request, Microsoft Customer Service will provide commercially reasonable assistance to Customer to assist Customer in performing such procedures to enable the Customer to obtain for itself the Customer Data. Microsoft's Office 365 Service Description for Support provides no-cost support for IT professionals and Office 365 Administrators. If Enrolled Affiliate does not indicate either Data Deletion or a Retention Period, Microsoft will retain Enrolled Affiliate's Customer Data in accordance with the Retention Period.

Following the expiration of the Retention Period, Microsoft will disable Enrolled Affiliate's account and then delete its Customer Data.

Enrolled Affiliate agrees that, other than as described above, Microsoft has no obligation to continue to hold, export or return Enrolled Affiliate's Customer Data. Enrolled Affiliate agrees Microsoft has no liability whatsoever for deletion of Enrolled Affiliate's Customer Data pursuant to these terms.

At any time during an Enrolled Affiliate's paid subscription term and for at least 90 days thereafter (unless Enrolled Affiliate elects Data Deletion, as described above), Microsoft will allow Customer to periodically extract its Customer Data through Microsoft's standard processes and tools at no additional cost. The 90-day period during which data may be extracted shall also apply in the event the applicable Online Service is terminated by Microsoft as set forth in Section 7(f), above.

For the purposes of clarity, this Section 16.u. applies to only the expiration or termination of Office 365 Services. Rights and obligations of the parties upon the expiration or termination of any other Online Service may be set forth in the Product Use Rights or other documents incorporated into this Agreement.

- v. **Force Majeure.** Neither party shall be liable or deemed to be in default for any Force Majeure delay in performance occasioned by unforeseeable causes beyond the control and without the fault or negligence of the parties, including, but not restricted to, acts of God or the public enemy (other than a Security Incident, as defined in Section 16(r)), fires, floods, epidemics, quarantine, restrictions, strikes, freight embargoes, or unusually severe weather.
- w. **90-day Extension Period for Office 365 Services upon expiration of Enrollment term**

Notwithstanding anything to the contrary in the Agreement or an Enrollment, and in lieu of the separate terms for an Extended Term as set forth in Enterprise Enrollments and Enterprise Subscription Enrollment, an Enrolled Affiliate for such Enrollment may notify Microsoft in writing, no fewer than 30 days prior to the expiration of the term of its Enrollment that it wishes to extend its subscription order(s) for Office 365 Services for an additional 90-day term, in order to have additional time during which to extract its data.

Following Microsoft's receipt of such notice, Microsoft and Customer will execute an Amendment for the purposes of (i) extending the term of the Enrollment on a one-time basis by an additional 90 days (the "Extension Period"), and (ii) continuing its subscription orders for Office 365 Services during such Extension Period. The Enrolled Affiliate's orders for Products other than Office 365 Services will not be extended for this Extension Period. The 90-day Extension Period shall commence on the day following the expiration date of the applicable Enrollment's term.

When requesting an Extension Period pursuant to these terms and conditions, Enrolled Affiliate must place an order with its Reseller (concurrent with its submission of the extension Amendment contemplated by the preceding paragraph) for the 90-day purchase of its Office 365 Services. The monthly per-unit confidential net price that Microsoft will charge the Reseller for the Office 365 Services during the Extension Period will be the same price charged to the Reseller during the annual Enrollment period which immediately preceded the Extension Period. As an exception to the preceding sentence, if an Enrolled Affiliate's original SKU(s) for Office 365 Service(s) required the additional purchase of certain active Software Assurance ("For SA SKU(s)"), the Reseller will instead order the Full User Subscription License(s) for the applicable Office 365 Service(s), in lieu of the For SA SKU(s), and will pay the then-current Level D pricing for such full License(s) (less any other discounts that the Enrolled Affiliate may be entitled to, relative to Level D, pursuant to other terms and conditions). The Reseller will subsequently place its corresponding order with Microsoft, and the Reseller's order must be received by Microsoft prior to the expiration date in order to extend the Office 365 Services subscription. Enrolled Affiliate's pricing and payment terms for this order will be determined as set forth in Section 2(c), above.

x. **NIST 800-53 Standard**

Microsoft agrees that, during the term of Enrolled Affiliate's subscription for Office 365 for Government, Microsoft will maintain compliance with the NIST Special Publication 800-53 Revision 3 Moderate-Impact System Baseline or its successor.

- y. **Washington data breach statute.** Microsoft will comply with RCW 19.255.010(2) to the extent required in its capacity as an IT service provider. Microsoft asserts that RCW 19.255.010(1) is inapplicable, to the extent that Microsoft neither owns nor licenses the Personal Information of any third party, and does not assert any ownership right in Customer Data.

Supplemental Contact Information Form State and Local

This form can be used in combination with Agreement and Enrollment/Registration. However, a separate form must be submitted for each Enrollment/Registration when more than one is submitted on a signature form. For the purposes of this form, "Entity" can mean the signing Entity, Customer, Enrolled Affiliate, Government Partner, Institution, or other party entering into a Volume Licensing program agreement. Primary and Notices contacts in this form will not apply to Enrollments or Registrations.

- This form applies to:
- Agreement
 - Enrollment/Affiliate Registration Form

Insert primary entity name if more than one Enrollment/Registration Form is submitted

Contact information.

Each party will notify the other in writing if any of the information in the following contact information page(s) changes. The asterisks (*) indicate required fields; if the Entity chooses to designate other contact types, the same required fields must be completed for each section. By providing contact information, entity consents to its use for purposes of administering the Enrollment by Microsoft and other parties that help Microsoft administer this Enrollment. The personal information provided in connection with this agreement will be used and protected according to the privacy statement available at <https://licensing.microsoft.com>.

1. Additional notices contact.

This contact receives all notices that are sent from Microsoft. No online access is granted to this individual.

Name of Entity*
Contact name*: First Last
Contact email*
Street address*
City* State* Postal code*
Country*
Phone* Fax

This contact is a third party (not the Entity). Warning: This contact receives personally identifiable information of the Entity.

2. Software Assurance manager.

This contact will receive online permissions to manage the Software Assurance benefits under the Enrollment or Registration.

Name of Entity*
Contact name*: First Last
Contact email*
Street address*
City* State* Postal code*
Country*
Phone* Fax

This contact is a third party (not the Entity). Warning: This contact receives personally identifiable information of the Entity.

3. Subscriptions manager.

This contact will assign MSDN, Expression, and TechNet Plus subscription licenses to the individual subscribers under this Enrollment or Registration. Assignment of the subscription licenses is necessary for access to any of the online benefits, such as subscription downloads. This contact will also manage any complimentary or additional media purchases related to these subscriptions.

Name of Entity*
Contact name*: First Last
Contact email*
Street address*
City* State* Postal code*
Country*
Phone* Fax

This contact is a third party (not the Entity). Warning: This contact receives personally identifiable information of the Entity.

4. Online Services manager.

This contact will be provided online permissions to manage the Online Services ordered under the Enrollment or Registration.

Name of Entity*
Contact name*: First Last
Contact email*
Street address*
City* State* Postal code*
Country*
Phone* Fax

This contact is a third party (not the Entity). Warning: This contact receives personally identifiable information of the Entity.

5. Customer Support Manager (CSM):

This person is designated as the Customer Support Manager (CSM) for support-related activities.

Name of Entity*
Contact name*: First Last
Contact email*
Street address*
City* State* Postal code*
Country*
Phone* Fax

This contact is a third party (not the Entity). Warning: This contact receives personally identifiable information of the Entity.

6. Primary contact information:

An individual from inside the organization must serve as the primary contact. This contact receives online administrator permissions and may grant online access to others. This contact also receives all notices unless Microsoft is provided written notice of a change.

Name of Entity* Department of Enterprise Services
Contact name*: First Mike Last Dombrowsky

Contact email* mike.dombrowsky@des.wa.gov
Street address* 1500 Jefferson Street SE
City* Olympia **State*** WA **Postal code*** 98504
Country*: USA
Phone* (360) 407-8717 **Fax**

7. Notices contact and online administrator information:

This individual receives online administrator permissions and may grant online access to others. This contact also receives all notices.

Same as primary contact

Name of Entity*

Contact name*: First Last

Contact email*

Street address*

City* **State*** **Postal code***

Country*:

Phone* **Fax**

This contact is a third party (not the Entity). Warning: This contact receives personally identifiable information of the Entity.

Program Signature Form

MBA/MBSA number		000-dmills-s-1039
Agreement number	01E73529	

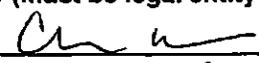
Note: Enter the applicable active numbers associated with the documents below. Microsoft requires the associated active number be indicated here, or listed below as new.

For the purposes of this form, "Customer" can mean the signing entity, Enrolled Affiliate, Government Partner, Institution, or other party entering into a volume licensing program agreement.

This signature form and all contract documents identified in the table below are entered into between the Customer and the Microsoft Affiliate signing, as of the effective date identified below.

Contract Document	Number or Code
<Choose Agreement>	
Enterprise Agreement	CTM (NEW)
<Choose Enrollment/Registration>	

By signing below, Customer and the Microsoft Affiliate agree that both parties (1) have received, read and understand the above contract documents, including any websites or documents incorporated by reference and any amendments and (2) agree to be bound by the terms of all such documents.

Customer	
Name of Entity (must be legal entity name)* Department of Enterprise Services	
Signature*	
Printed First and Last Name*	Christine Warnock
Printed Title*	Chief Procurement Officer
Signature Date*	7/19/13
Tax ID	

* indicates required field

Microsoft Affiliate	
Microsoft Licensing, GP	Microsoft Microsoft Licensing, GP
Signature _____	<i>[Signature]</i>
Printed First and Last Name	JUL 23 2013
Printed Title	David Racis
Signature Date (date Microsoft Affiliate countersigns)	Duly Authorized on behalf of Microsoft Licensing, GP
Effective Date (may be different than Microsoft's signature date)	7/26/2013

Optional 2nd Customer signature or Outsourcer signature (if applicable)

Customer
Name of Entity (must be legal entity name)*
Signature* _____
Printed First and Last Name*
Printed Title*
Signature Date*

* indicates required field

Outsourcer
Name of Entity (must be legal entity name)*
Signature* _____
Printed First and Last Name*
Printed Title*
Signature Date*

* indicates required field

If Customer requires physical media, additional contacts, or is reporting multiple previous Enrollments, include the appropriate form(s) with this signature form.

After this signature form is signed by the Customer, send it and the Contract Documents to Customer's channel partner or Microsoft account manager, who must submit them to the following address. When the signature form is fully executed by Microsoft, Customer will receive a confirmation copy.

Microsoft Licensing, GP
Dept. 551, Volume Licensing
6100 Neil Road, Suite 210
Reno, Nevada 89511-1137
USA

Prepared By: Bruce Valentin
bvalenti@compucom.com

