

## Enterprise Agreement Amendment ID CTM

000-dmills-s-1041

This amendment ("Amendment") is entered into between the parties as of the effective date identified on the signature form. It amends the Enterprise Agreement ("Agreement"). Except for changes made by this Amendment, the Agreement remains unchanged and in full force and effect. This Amendment shall automatically apply to all Enrollments under the Agreement, through those Enrollments' expiration or earlier termination.

### Terms and Conditions

#### 1. New Definitions.

The following definitions are hereby added to the Agreement:

"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.

"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.

"Enterprise Online Service" means any Online Service designated as an Enterprise Online Service in the Product List and chosen by Enrolled Affiliate under its Enrollment. Enterprise Online Services are treated as Online Services, except as noted.

"Expiration Date" means the date upon which an Enrollment expires.

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

"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.

"Qualified Device," when used in this Amendment and applied to each applicable Enrollment, shall be synonymous with the definition of "Qualified Desktop" also applicable to each such Enrollment.

"Qualified User" means a person (e.g., employee, consultant, contingent staff) who: (1) is a user of a Qualified Device, or (2) accesses any server software requiring an Enterprise Product Client Access License or any Enterprise Online Service. It does not include a person who accesses server software or an Online Service solely under a License identified in the Qualified User exemptions in the Product List.

"Reserved License" means for an Online Service identified as eligible for true-ups in the Product List, the License reserved by an Enrolled Affiliate prior to use and for which Microsoft will make the Online Service available for activation.

"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.

"Transition" means the conversion of one or more License(s) to or from another License(s). Products eligible for Transition and permitted Transitions are identified in the Product List.

"Transition Period" means the time between the Transition and the applicable Enrolled Affiliate's next Enrollment anniversary date for which the Transition is reported.

## **2. Amended Definitions.**

The following definitions hereby replace and supersede the original defined terms in the Agreement:

"Enterprise Product" means any Desktop Platform Product that Microsoft designates as an Enterprise Product in the Product List and chosen by Enrolled Affiliate under its Enrollment. Enterprise Products may only be licensed for all Qualified Devices (formerly called Qualified Desktops) and Qualified Users on an Enterprise-wide basis under this program.

"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;

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

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

## **3. Warranties**

Section 13 of the Agreement is hereby amended and restated in its entirety by a new Section 13, as follows:

**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 of 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 13(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.**

#### 4. Defense of Infringement and Misappropriation Claims

Section 14 of the Agreement is hereby amended and restated in its entirety by a new Section 14, as follows:

- 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 methods 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.*

## 5. Limitation of Liability

Section 15 of the Agreement is hereby replaced in its entirety by a new Section 15 as follows:

- 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 was 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 wilful 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 15;
  - (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 15(d) and Section 15(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 11 of this Amendment ("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 15(a), above, titled "Limitation on Liability," is hereby replaced with the following provisions of this Section 15(d)(1), without changing other paragraphs or provisions in Section 15(a):

Except as provided for Collective Agencies in Section 15(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 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 15(e), below, the amount of the limitation of liability as set forth in this Section 15 will be calculated and applied separately for each Enrolled Affiliate.

## (2) Confirmation of Direct Damages

For purposes of both this Section 15(d) and Section 15(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 Personally Identifiable 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 customary, 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 15(a), 15(b), and 15(c), above, shall continue to apply as written.

### e. Exception for Certain Washington State Agencies.

The following additional definitions shall apply to this Section 15(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, as of the date it is calculated;*

- (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 Enterprise 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 15(d)(1) titled "Calculation of Limit," is hereby replaced with the following provisions of this Section 15(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.

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 15, the amount of that party's total remaining liability to the other under this Section 15 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 15.

## **(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 15 (including but not limited to this subsection 15(e)); and
- (b) disbursing such payments to the applicable Collective Agencies.

By its signature on this Amendment, DES represents that:

1. It has the authority to accept, and accepts, the terms and conditions of this Section 15(e); and
2. In the event that a dispute regarding Covered Online Services arises between a Collective Agency and Microsoft with regard to the terms and conditions of this Section 15 (and its applicable Subsections including this Section 15(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 15(e).

## **6. Modification or termination of an Online Service for regulatory reasons.**

The following section is hereby added to the Agreement:

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.*

## **7. Open Source Restrictions.**

The following section is hereby added to the Agreement:

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.

## **8. Data Location**

The following section is hereby added to the Agreement:

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.

## **9. 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 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 the Agreement amended hereby (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. Commerce Department 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 9(C) of this Amendment 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 Article 12(b) of 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 9 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) will be performed according to ISO 27001 standards and 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.

## **10. Permitted Use of Customer Data for Office 365 Services**

The following section is hereby added to the Agreement:

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.

## **11. Security Incident Notification**

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

- a. 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.
- b. Customer agrees that:
  - (i) 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
  - (ii) 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.
- c. 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.

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

The following section is hereby added to the Agreement:

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

- a) disable its account and then delete its Customer Data ("Data Deletion"); or
- b) 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 12. 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.

### **13. Force Majeure**

The following section is hereby added to the Agreement:

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 Security Incidents, as defined in Section 11), fires, floods, epidemics, quarantine, restrictions, strikes, freight embargoes, or unusually severe weather.

### **14. Office 365 Services License Transitions**

This terms and conditions of this section, which are hereby added to the Agreement, enable Enrolled Affiliates' Enterprise to obtain, or subscribe to, Licenses for Enterprise Products, Enterprise Online Services, and Additional Products and Services. Enrolled Affiliate may choose between on-premise software and Online Services as well as the ability to transition Licenses to Online Services while maintaining Enterprise-wide coverage.

**a. Transitions.** The following requirements apply to Transitions:

- (i) An Enrolled Affiliate's Licenses with active Software Assurance or Subscription Licenses may be Transitioned at any time if permitted in the Product List. While the Enrolled Affiliate may Transition any time, it will not be able to reduce Licenses or associated Software Assurance prior to the end of the Transition Period.
- (ii) Enrolled Affiliate must order the Licenses to which it is transitioning for the year(s) following the Transition Period
- (iii) If a Transition is made back to a License that had active Software Assurance as of the date of Transition, then Software Assurance will need to be re-ordered for all such Licenses on a prospective basis following the Transition Period. Software Assurance coverage may not exceed the quantity of perpetual Licenses for which Software Assurance was current at the time of any prior Transition. Software Assurance may not be applied to Licenses transferred by Enrolled Affiliate.
- (iv) If a device-based License is Transitioned to a user-based License, all users of the device must be licensed as part of the Transition.
- (v) If a user-based License is Transitioned to a device-based License, all devices accessed by the user must be licensed as part of the Transition.

**b. Effect of Transition on Licenses.** Transition will not affect an Enrolled Affiliate's rights in perpetual Licenses paid in full.

- (i) New version rights will be granted for perpetual Licenses covered by Software Assurance up to the end of the Transition Period.
- (ii) For L&SA not paid in full at the end of the Transition Period, Enrolled Affiliate will have perpetual Licenses for a proportional amount equal to the amounts paid for the Transitioned Product as of the end of the Transition Period.

(iii) For L&SA not paid in full or granted a perpetual License in accordance with the above or Subscription Licenses, all rights to Transitioned Licenses cease at the end of the Transition Period.

c. **True Up Orders and Update Statements.** For Enrollments for which the Enrolled Affiliate submits a revised Product Selection Form and thereby elects to license Office 365 Services, the following terms and conditions replace and supersede the original terms of the Agreement which govern True Ups and Update Statements. This section shall not apply to Enrolled Affiliates that do not elect to license Office 365 Services.

Each applicable Enrolled Affiliate must submit an annual true-up order that accounts for changes since the initial order or last true-up order, including: (1) any increase in Licenses, including any increase in Qualified Devices or Qualified Users and Reserved Licenses; (2) Transitions (if permitted); or (3) Subscription License quantity reductions (if permitted, for Enrolled Affiliates that do not make an enterprise-wide commitment). Microsoft, at its discretion, may validate the customer true-up data submitted through a formal product deployment assessment using an approved Microsoft Partner.

The true-up order must be received by Microsoft between 60 and 30 days prior to the Enrollment anniversary date. The third-year anniversary true-up order is due within 30 days prior to the Expiration Date. Each Enrolled Affiliate may true-up more often than at each Enrollment anniversary date except for Subscription License reductions.

(i) **Enterprise Products.** Each applicable Enrolled Affiliate must determine the current number of Qualified Devices and Qualified Users (if ordering user-based Licenses) and order the License difference (if any), including any Enterprise Online Services.

(ii) **Additional Products.** For Products that have been previously ordered, each Enrolled Affiliate must determine the Additional Products used and order the License difference (if any).

(iii) **Online Services.** For Online Services identified as eligible for true-up orders in the Product List, Enrolled Affiliate may first Reserve the additional Licenses prior to use. Microsoft will provide a report of Reserved Licenses in excess of existing orders to each Enrolled Affiliate and its Reseller. Reserved Licenses will be invoiced retroactively for the prior year based upon the month in which they were reserved. The Notices Contact and Online Administrator, other Online Administrator(s) and Online Services Manager(s) are authorized to reserve Licenses for eligible Online Services.

(iv) **Late true-up order.** If the true-up order is not received when due:

- 1) Microsoft will invoice Reseller for all Reserved Licenses not previously ordered.
- 2) Transitions and Subscription License reductions cannot be reported until the following Enrollment anniversary date (or at Enrollment renewal, as applicable).

(v) **Transitions.** Each applicable Enrolled Affiliate must report all Transitions. Transitions may result in an increase in Licenses to be included on the true-up order and a reduction of Licenses for prior orders. Reductions in Licenses will be effective at end of the Transition Period. Associated invoices will also reflect this change. For Licenses paid upfront, Microsoft will issue a credit for the remaining months of Software Assurance or Subscription Licenses that were reduced as part of the Transition.

(vi) **Subscription License Reductions.** Each applicable Enrolled Affiliate may reduce the quantity of Subscription Licenses on a prospective basis if permitted in the Product List as follows:

- 1) For Subscription Licenses part of an Enterprise-wide purchase, Licenses may be reduced if the total quantity of Licenses and Software Assurance for an applicable group meets or exceeds the quantity of Qualified Devices identified on the Product Selection Form. Step-up Licenses do not count towards this total count.
- 2) For Enterprise Online Services not a part of an Enterprise-wide purchase, Licenses can be reduced as long as the initial order minimum requirements are maintained.

- 3) For Additional Products available as Subscription Licenses, Enrolled Affiliate may reduce the Licenses. If the License count is reduced to zero, then Enrolled Affiliate's use of the applicable Subscription License will be cancelled.

Invoices will be adjusted to reflect any reductions in Subscription Licenses at the true-up order Enrollment anniversary date and effective as of such date.

**Update statement.** An update statement must be submitted instead of a true-up order if, as of the initial order or last true-up order, an Enrolled Affiliate's Enterprise has not: (1) changed the number of Qualified Devices and Qualified Users licensed with Enterprise Products or Enterprise Online Services; and (2) increased its usage of Additional Products. This update statement must be signed by Enrolled Affiliate's authorized representative. The update statement must be received by Microsoft between 60 and 30 days prior to the Enrollment anniversary date. The last update statement is due within 30 days prior to the Expiration Date.

- d. **Step-Up Licenses.** For Enrollments for which the Enrolled Affiliate submits a revised Product Selection Form and thereby elects to license Office 365 Services, the following terms and conditions replace and supersede the original terms of the Agreement which govern Step-Up Licenses. This section shall not apply to Enrolled Affiliates that do not elect to license Office 365 Services.

For Licenses eligible for a step-up under this Enrollment, Enrolled Affiliate may step-up to a higher edition or suite as follows:

- (i) For step-up Licenses included on an initial order, Enrolled Affiliate may order according to the true-up process.
- (ii) If step-up Licenses are not included on an initial order, Enrolled Affiliate may step-up initially by following the process described in the Section titled "Adding new Products not previously ordered," then for additional step-up Licenses, by following the true-up order process.
- (iii) If Enrolled Affiliate has previously ordered an Online Service as an Additional Product and wants to step-up to an Enterprise Online Service eligible for a Transition, the step-up may be reported as a Transition.
- (iv) If Enrolled Affiliate Transitions a License, it may be able to further step-up the Transitioned License. If Enrolled Affiliate chooses to step-up and the step-up License is separately eligible to be Transitioned, such step-up Licenses may result in a License reduction at the Enrollment anniversary date following the step-up.

## **15. Extended Term of Service for Certain Online Services**

### **a. Month-To-Month Extended Term.**

For certain Online Services (including Office 365 Services) identified as eligible for an Extended Term in the Product List, the following options are available at the end of each Enrollment's initial or renewal term.

- (i) **Extended Term.** Licenses for Online Services will automatically expire in accordance with the terms of the Enrollment. An extended term feature that allows Online Services to continue month-to-month ("Extended Term") is available. During the Extended Term, Online Services for an Enrollment will be invoiced monthly to the Reseller at the then-current published price for Enrolled Affiliate's price level as of the Expiration Date plus a 3% administrative fee for up to one year. If an Enrolled Affiliate does want an Extended Term it must submit a request to Microsoft. Microsoft must receive the request not less than 30 days prior to the Enrollment's Expiration Date.

Notwithstanding anything to the contrary in the preceding paragraph, if an Enrolled Affiliate's original SKU(s) for an Online Service required the additional purchase of certain active Software Assurance ("For SA SKU(s)"), then the Reseller must choose one of the following options on behalf of each Enrolled Affiliate:

1. It may choose to renew the Enrolled Affiliate's required Software Assurance for a full year, in which case it may renew the "For SA" SKU on a month-to-month basis, in which case the terms of the preceding paragraph will apply to the price of the For SA SKU; or
  2. It may choose not to renew the required Software Assurance, in which case the price it will pay for the Extended Term (exclusive of the 3% administration fee) will be based upon the then-current published price for a full User Subscription License SKU (and not the For SA SKU).
- (ii) **Cancellation during Extended Term.** If an Enrolled Affiliate has opted for the Extended Term and later determines not to continue with the Extended Term, it must submit a notice of cancellation for each Online Service. Cancellation will be effective at the end of the calendar month following 30 days after Microsoft has received the notice.
- (iii) **Online Services not eligible for an Extended Term.** If Online Services are not identified as eligible for an Extended Term in the Product List, the Licenses will be cancelled and will terminate as of the Expiration Date. Any associated media must be uninstalled and destroyed and the Enrolled Affiliate's Enterprise must discontinue use. Microsoft may request written certification to verify compliance.

Upon expiration of the Extended Term, the Enrolled Affiliate may extract Customer Data and Microsoft will delete Customer Data, each in accordance with Section 12 of this Amendment,

**b. 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 above in Section 15(b) of this Amendment, an Enrolled Affiliate 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 the Agreement amended hereby.

**16. Miscellaneous.**

**a. 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.

- b. **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.
- c. **Confidentiality.** Section 12 of the Agreement, titled "Confidentiality," is hereby restated as follows:

To the extent permitted by applicable law, administrative code rule, or court order, the terms and conditions of this Agreement are confidential. Neither party nor any of its Affiliates will disclose such terms and conditions, or the substance of any discussions that led to them, to any third party other than such party's Affiliates or agents, or to the Enrolled Affiliate's designated or prospective resellers who: (1) have a need to know such information to assist in carrying out this agreement; and (2) have been instructed by one of the parties that all such information is to be handled in strict confidence. You will provide us the opportunity to review and contest any intended disclosures by you to the extent required by your 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 9, above) 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 Amendment, the 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).

- d. **Additional termination right for Online Services.** Except as noted below for Transitions, an Enrolled Affiliate may terminate an 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 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).
- e. **Order of precedence.** If there is a conflict between any provision in this Agreement and any provision in an Enrollment or the Agreement, this Amendment shall control.
- f. **Entire agreement.** The Section of the Agreement amended hereby titled "entire agreement" is hereby amended and restated in its entirety, as follows:

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 documents that are referenced in this Agreement and are 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.

Except for changes made by this Agreement, each Enrollment (and the original terms of the Agreement incorporated thereby) remain unchanged and in full force and effect, until the Enrollment expires or is terminated early pursuant to its terms and conditions.

#### **17. Confidentiality.**

The Section titled "Confidentiality" is hereby amended and restated as follows:

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.

**This Amendment must be attached to a signature form to be valid.**



# Program Signature Form

MBA/MBSA number

Agreement number **01E72788**

000-dmills-s-1041

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>	
<Choose Enrollment/Registration>	
Amendment	CTM (01E72788)

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	<b>Microsoft</b> 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)	7/23/2013

Optional 2<sup>nd</sup> 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  
 8100 Neil Road, Suite 210  
 Reno, Nevada 89511-1137  
 USA

**Prepared By: Bruce Valentin**

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