

# Select Plus License Program Agreement State and Local (CTM – Custom Agreement)

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This Microsoft Select Plus Agreement is entered into between the entities identified on the signature form.

**Effective date.** The effective date of this Agreement is the effective date of the first Affiliate Registration Form or the date Microsoft accepts this Agreement, whichever is earlier.

This Agreement consists of (1) the terms and conditions of this Agreement and all attachments identified therein, (2) the Product List, (3) the Product Use Rights, (4) any Affiliate registration entered into under this Agreement, and (5) any Order submitted under this Agreement.

**Please note:** Documents referenced in this Agreement but not attached to the signature form may be found at <http://www.microsoft.com/licensing/contracts> and are incorporated in this Agreement by reference, 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 should review such documents carefully, both at the time of signing and periodically thereafter, and fully understand all terms and conditions applicable to Products licensed and Services ordered.

In the event that additional Online Services are included in the scope of this Agreement, Lead Affiliate and Microsoft will work in good faith to amend this Agreement to accommodate the change. Until that time, Enrolled Affiliates cannot purchase additional Online Services products under the Select Plus Master Agreement entered into between Microsoft and State of Washington Department of Enterprise Services.

The parties agree to be bound by the terms of this Agreement.

# Terms and Conditions

## 1. Definitions.

In this Agreement the following definitions apply:

"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

"Contractor" means any third party supplier or other provider of computer technology or related services.

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

"Customer Data" means all data, including all text, sound, software, or image files that are provided to Microsoft by, or on behalf of, Customer through Customer's use of Online Services.

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

"Lead Affiliate" means the primary registrant under this Select Plus Agreement.

"License" means the right to download, install, access and use a Product. For certain Products, a License may be available on a fixed term or subscription basis ("Subscription License"). Licenses for Online Services will be considered Subscription Licenses;

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

"Microsoft" means the Microsoft Affiliate that has entered into this Agreement or accepted Registered Affiliate's registration form and its Affiliates, as appropriate;

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

"Order" means the document Customer or Customer's Affiliate submits under this Agreement to order Licenses or Services;

"Product" means all products identified on the Product List, such as all software, Online Services and other web-based services, including pre-release or beta versions. Products may be made available under programs that vary by region.

"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 a successor site. The Product List includes any Product-specific conditions or limitations on the acquisition of licenses for, or use of, Products;

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

"Qualifying Contract," means (1) an Enterprise Enrollment under a separate Microsoft Enterprise Agreement; (2) any Enterprise Subscription Enrollment entered into under a Microsoft Enterprise Agreement, or (3) a Select Agreement. Only agreements entered into by a Registered Affiliate may constitute a Qualifying Contract.

"Registered Affiliate" means an entity, either Customer or any one of Customer's Affiliates, identified on an affiliate registration form that has been accepted by Microsoft and has submitted an Order under this Agreement;

"Reseller" means a large account Reseller authorized by Microsoft, and selected and under contract with Lead Affiliate, to resell Licenses under this program and utilized by a Registered Affiliate to provide pre and post-transaction assistance related to this Agreement;

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

"Software Assurance" is an offering by Microsoft 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 Select Plus License program works.**

The Select Plus License program allows Registered Affiliates to order Licenses and Services if Registered Affiliate (1) submits a minimum qualifying Order as defined in the Product List, (2) identifies and maintains at least one active Qualifying Contract, or (3) identifies an order placed under a separate agreement during the 12 months preceding the effective date of this Agreement that would otherwise have been a minimum qualifying Order.

## **3. How to establish price level.**

**Establishing price levels.** Throughout the term of this Agreement, Enrolled Affiliate's price level for each Product will be level "D." The price Microsoft will invoice Reseller will be based on Customer's price level for the Product ordered. *Throughout this Agreement the term "price" refers to reference price.*

## **4. Licenses for Products.**

- a. **License Grant.** Microsoft grants Registered Affiliate a non-exclusive, worldwide and limited right to download, install and use software Products, and to access and use the Online Services, each in the quantity ordered under this Agreement. The rights granted are subject to the terms of this Agreement, the Product Use Rights, and the Product List. Microsoft reserves all rights not expressly granted in this Agreement.
- b. **Use by Affiliates.** Registered Affiliate may sublicense the right to use the Products ordered under this Agreement to any Affiliates, but Affiliates may not sublicense these rights and their use must be consistent with the terms of this Agreement.
- c. **Duration of Licenses.** Subscription Licenses and most Software Assurance rights are temporary and expire when the applicable agreement is terminated or expires, unless Registered Affiliate exercises a buy-out option, which is available for some Subscription Licenses. Except as otherwise noted in the applicable agreement or Product Use Rights, all other Licenses become perpetual only when all payments for that License have been made and any applicable Software Assurance term has expired.
- d. **Applicable Use Rights.**
  - (i) **Products (other than Online Services).** The Product Use Rights in effect on the date of the Order will apply to Registered Affiliate's use of the version of each Product ordered that is current at the time. For future versions and new Products,

the Product Use Rights in effect when those versions and Products are first released will apply. Changes Microsoft makes to the Product Use Rights for a particular version will not apply unless Registered Affiliate chooses to have such changes apply.

- (ii) **Online Services.** For Online Services, the Product Use Rights in effect on the subscription start date will apply to Registered Affiliate's use of the Online Service for the first 12 months of the subscription term, except as otherwise noted in the Product Use Rights. The process for updating the applicable use rights are detailed in the Product Use Rights.
- e. **Downgrade rights.** Registered Affiliate may downgrade to an earlier version of a Product than the version that is current on the date of the Order. In that case, the Product Use Rights for the current version apply to the use of the earlier version. If the earlier version of a Product includes features that are not in the new version, then the Product Use Rights applicable to the earlier version apply with respect to those features.
- f. **New Version Rights under Software Assurance.** With Software Assurance coverage, Registered Affiliates may use a new version of a licensed Product as soon as it is released. New version rights apply to the License automatically upon release of the new version, even if Registered Affiliate chooses not to use the new version immediately.
  - (i) Except as otherwise permitted under a Qualifying Contract, use of the new version will be subject to the new version's Product Use Rights.
  - (ii) If the License to the earlier version of the Product is perpetual at the time the new version is released, the License for the new version will also be perpetual. Perpetual licenses obtained through Software Assurance replace any perpetual licenses to the earlier version.
- g. **License confirmation.** This Agreement, the applicable Order, any Order confirmation, and any documentation evidencing transfers of perpetual Licenses, together with proof of payment, will be Registered Affiliate's evidence of all Licenses obtained under this Agreement.
- h. **After-acquired Licenses.** At any time after Microsoft has accepted its registration, Registered Affiliate may use any Product as if licensed under the terms of this Agreement, provided it submits an Order for a sufficient number of Licenses to authorize Registered Affiliate's use of the Product within thirty (30) days of when the Product is first used.

## **5. How to order Product Licenses.**

- a. **Placing Orders.** Registered Affiliate may order Licenses and Online Services Microsoft makes available under this program by placing Orders with Registered Affiliate's authorized Reseller. The price and payment terms for all Orders will be determined by agreement between Lead Affiliate and its selected Reseller. When placing orders, a Registered Affiliate must specify the country or countries where the Registered Affiliate will use the Licenses.

Microsoft may change the Products available under this program and may refuse to accept an Order if it has a business reason to do so.

- b. **When is the Registered Affiliate eligible to order just Software Assurance?** A Registered Affiliate may order Software Assurance to a previously-licensed Product without ordering a new License for the Product if:
  - (i) Registered Affiliate has previously obtained perpetual Licenses through Upgrade Advantage, Software Assurance, or any similar upgrade protection and, prior to expiration of its existing upgrade protection, orders Software Assurance for the Product to become effective no later than one day following the scheduled expiration of the previous upgrade protection.
  - (ii) Registered Affiliate is eligible to order Software Assurance for Products licensed through retail sources or from an original equipment manufacturer ("OEM"), and

places its order within the required time frame. The Product List at <http://www.microsoft.com/licensing/contracts> identifies those Products that may be enrolled in Software Assurance and the applicable time frame for placing an order.

- (iii) The Product List expressly permits Registered Affiliate to order Software Assurance without ordering a new License for the Product.
  - (iv) A Registered Affiliate renews Software Assurance as described in the section of this Agreement titled "How to renew Software Assurance."
- c. **How to confirm Orders.** Information about Orders, including an electronic confirmation of each Order, will be provided in a password-protected website at <https://www.microsoft.com/licensing/servicecenter/> or a successor site. Upon Microsoft's acceptance of this Agreement, the contact Registered Affiliate designates on the Affiliate Registration Form will be provided access to this site.
- d. **Invoices and payments.** For any Orders for Software Assurance or L&SA, Registered Affiliate may elect with the Reseller to spread payment over up to three years rather than making payment in a lump sum. In such cases, Microsoft will invoice the Reseller in installments, the first installment upon receipt of the Order and subsequent installments on each anniversary of the Order or, at Registered Affiliate's option, on the Affiliate anniversary month. Orders for Licenses without accompanying Software Assurance will be invoiced to the Reseller in full upon receipt of the Order.

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

- a. **General.** The Registered Affiliate may make as many copies of the Products as it needs to distribute them within its organization. Copies must be true and complete (including copyright and trademark notices), from master copies obtained from a Microsoft approved fulfillment source. The Registered Affiliate may use a third party to make these copies, but the Registered Affiliate agrees that it will be responsible for that third party's actions. The Registered Affiliate agrees to make reasonable efforts to make its employees, agents and any other individuals that it allows to use the Products aware that the Products are licensed from Microsoft and can only be transferred subject to the terms of this Agreement.
- b. **Copies for training, evaluation, and back-up.** For all Products other than Online Services, Registered Affiliate may (1) use up to 40 complimentary copies of any Product in a dedicated training facility on its premises, (2) use up to 20 complimentary copies of any Product for a 60-day evaluation period, and (3) use one complimentary copy of any licensed Product for back-up or archival purposes for each of its distinct geographic locations. 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 volume licensing program Product media. If the Microsoft Product(s) is licensed (1) from an original equipment manufacturer (OEM), (2) as full packaged Product through a retail source, or (3) under another Microsoft program, then media provided under this Agreement may be generally 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) Any Product-specific requirements for re-imaging identified in the Product List.

Re-imaged Products remain subject to the terms and use rights of the License acquired from the separate source. This subsection does not create or extend any Microsoft warranty or support obligation.

## **7. Transferring and assigning Licenses.**

- a. Transferring Licenses to third parties.** License transfers are not permitted, except that Registered Affiliate may transfer fully-paid perpetual licenses to:
  - (i) if you are an agency of a state or local government to: (a) any other government agency, department, instrumentality, division, unit or other office of your state or local government that is supervised by or is part of you, or which supervises you or of which you are a part, or which is under common supervision with you; (ii) any county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality established by the laws of your state and located within your state's jurisdiction and geographic boundaries; and (iii) any other entity expressly authorized by the laws of your state to purchase under state contracts, or (b) an unaffiliated third party in connection with a privatization of an affiliate of agency as set forth in (a) above or of an operating division of the Registered Affiliate or one of its affiliates as set forth in (a) above, a reorganization, or a consolidation.
- b. Notification of License Transfer.** Registered Affiliate must notify Microsoft of a License transfer by completing a transfer form, which can be obtained from <http://www.microsoft.com/licensing/contracts> and sending the completed form to Microsoft before the License transfer. No License transfer will be valid unless Registered Affiliate provides to the transferee, and the transferee accepts in writing, the applicable Product Use Rights, use restrictions, limitations of liability (including exclusions and warranty provisions), and the transfer restrictions described in this section. Any license transfer not made in compliance with this section will be void.
- c. Internal Reassignment of Licenses and Software Assurance.** Licenses and Software Assurance must be assigned to a single user or device within Registered Affiliate's organization. Licenses and Software Assurance may be reassigned within the organization as described in the Product Use Rights.

## **8. Term and termination.**

- a. Term.** This Agreement will remain in effect unless it is terminated by either party as described below.
- b. Termination without cause.** Either party may terminate this Agreement without cause upon 60 days written notice. In the event of termination, new Orders will not be accepted, but any terms of this Agreement applicable to any Orders not otherwise terminated will remain in effect.
- c. Mid-term termination for non-appropriation of Funds.** Registered Affiliate may terminate its affiliate registration form or any Orders without liability, penalty or further obligation to make payments if funds to make payments under the affiliate registration form or Orders are not appropriated or allocated by the Registered Affiliate for such purpose.
- d. Termination for cause.** Without limiting any other remedies it may have, either party may terminate this Agreement if the other party materially breaches its obligations under this Agreement, including any obligation to pay undisputed invoices. 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 the breach. If Microsoft gives such notice to a Registered Affiliate, Microsoft will give Customer a copy of that notice as well and Customer agrees to help resolve the breach. If the breach also affects other Affiliate registrations and cannot be resolved between Microsoft and Customer within a reasonable period of time, Microsoft may also terminate this Agreement and all other Affiliate registrations under it. If Registered Affiliate ceases to be a Customer's Affiliate,

Customer must promptly notify Microsoft, and Microsoft may terminate the former Affiliate's registration under this Agreement.

- e. **Early termination.** If Registered Affiliate terminates this Agreement as a result of a breach by Microsoft, or if Microsoft terminates this Agreement because Registered Affiliate has ceased to be Customer's Affiliate, then Registered Affiliate will have the following options for Licenses, excluding Subscription Licenses:

- (i) It may immediately pay the total remaining amount due, including all installments, in which case, Registered Affiliate will have perpetual rights for all Licenses ordered (for the latest version of Products with Software Assurance coverage); or
- (ii) It may pay only amounts due as of the termination date, in which case Registered Affiliate will have perpetual Licenses (for the latest version of Products with Software Assurance coverage) for (1) all Licenses for which payment has been made in full, and (2) a proportional number of Licenses it has ordered for which payment has been made.

For Subscription Licenses, in the event of a breach by Microsoft, Registered Affiliate will receive a credit for any amount paid in advance that would apply after the date of termination

- f. **Modification or termination of an Online Service for regulatory reasons.** Microsoft may modify or terminate an Online Service in any country or jurisdiction 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 conflict with any such requirement or obligation. 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 to enter into a new agreement before a Registered Affiliate may place a new Order. This Agreement will continue in full force and effect until such new agreement is signed by both parties to this Agreement.

## 9. **How to renew Software Assurance.**

- a. **Notice of expiration.** Microsoft will provide notice prior to the expiration of Software Assurance coverage and advise Registered Affiliate of its renewal options.
- b. **Renewal Order.** To maintain Software Assurance coverage for any Licenses previously ordered under this Agreement, Registered Affiliate must submit an Order for an additional term of Software Assurance for those Licenses prior to or at the expiration of the previous term. Microsoft may make changes to this program that will make it necessary for Customer to enter into a new agreement to renew Software Assurance. This Agreement will continue in full force and effect until such new agreement is signed by both parties to this Agreement.
- c. **Consequences of non-renewal.** If Registered Affiliate allows Software Assurance for any Licenses to lapse, then Registered Affiliate may not order Software Assurance for those Licenses again without first acquiring L&SA.

## 10. **Restrictions on use.**

Registered 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 to the extent applicable law permits it despite this limitation; or

- c. distribute, sublicense, rent, lease, lend, or host any Product or Fix except as permitted by this Agreement, the Product Use Rights, or in a separate written agreement

## **11. Confidentiality.**

Except as otherwise required by applicable law, the terms and conditions of this Agreement are confidential. Neither party will disclose the substance of any discussions that led to the terms and conditions of this Agreement 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.

- a. For the avoidance of doubt, the parties acknowledge that this Confidentiality provision recognizes that when there is a business need to do so, Microsoft and Customer or a Registered Affiliate may need to share/exchange their respective Confidential Information with each other to develop a more meaningful business relationship. This section provides Microsoft and Customer or Registered Affiliate with a well-balanced, commercially reasonable and comprehensive set of confidentiality terms that enable both parties to share/exchange a wide range of Confidential Information with each other knowing with confidence that significant confidentiality protections are in place. The confidentiality terms denoted below do not govern Microsoft's handling of Customer Data. In all instances under this Agreement, Microsoft's handling of Customer Data shall be governed as described under various other provisions of this Agreement and by Microsoft's data security policy.
- b. **What is included.** "Confidential Information" is non-public information, know-how and Trade Secrets in any form that are designated as "confidential" or that a reasonable person knows or reasonably should understand to be confidential. It includes non-public information regarding either party's products or customers, marketing and promotions, or the negotiated terms of Microsoft agreements.
- c. **What is not included.** The following types of information, however marked, are not Confidential Information. Information that:
  - (i) is, or becomes, publicly available without a breach of this Agreement;
  - (ii) was lawfully known to the receiver of the information without an obligation to keep it confidential;
  - (iii) is received from another source who can disclose it lawfully and without an obligation to keep it confidential;
  - (iv) is independently developed; or
  - (v) is a comment or suggestion one party volunteers about the other's business, products or services.
- d. **Treatment of Confidential Information.**
  - (i) **In general.** Subject to the other terms of this Agreement, each party agrees:
    - 1) it will not disclose the other's Confidential Information to third parties; and
    - 2) it will use and disclose the other's Confidential Information only for purposes of the parties' business relationship with each other.
  - (ii) **Security precautions.** Subject to the other terms of this Agreement, each party agrees:
    - 1) to take reasonable steps to protect the other's Confidential Information -- these steps must be at least as protective as those the party takes to protect its own Confidential Information;
    - 2) to notify the other promptly upon discovery of any unauthorized use or disclosure of Confidential Information; and

- 3) to cooperate with the other to help regain control of the Confidential Information and prevent further unauthorized use or disclosure of it.

**(iii) Sharing Confidential Information with Affiliates and representatives.**

- 1) A "Representative" is an employee, contractor, advisor, or consultant of one of the parties or of one of the parties' Affiliates.
- 2) Each party may disclose the other's confidential information to its Representatives (who may then disclose that Confidential Information to other of that party's Representatives) only if those Representatives have a need to know about it for purposes of the parties' business relationship with each other. Before doing so, each party must:
  - A. ensure that Affiliates and Representatives are required to protect the Confidential Information on terms consistent with this Agreement; and
  - B. accept responsibility for each Representative's use of Confidential Information.
- 3) Neither party is required to restrict work assignments of Representatives who have had access to Confidential Information. Neither party can control the incoming information the other will disclose to it in the course of working together, or what that party's Representatives will remember, even without notes or other aids. Each party agrees that use of information in Representatives' unaided memories in the development or deployment of the parties' respective products or services does not create liability under this Agreement or trade secret law, and each party agrees to limit what it discloses to the other accordingly.

**(iv) Disclosing Confidential Information if required to by law.** Each party may disclose the other's Confidential Information if required to comply with a court order or other government demand that has the force of law, or in order to comply with the Washington Public Records Act (RCW Chapter 42.56). Before doing so, each party must use the same degree of care as it uses to prevent disclosure of its own proprietary information, but in no case less than reasonable care and give the other ten (10) business days prior notice to provide a reasonable chance to seek a protective order. The party providing notice of a request for disclosure must also provide the party seeking protection a final date that such information must be disclosed (the "Final Date"). In the event the party seeking protection notifies the other party of its plan to seek a protective order at least three (3) business days prior to the Final Date, then the other party shall not disclose such information prior to the Final Date unless the party seeking the protective order fails to secure such protective order prior to the Final Date.

- e. **Length of Confidential Information obligations.** Except as permitted above, neither party will use or disclose the other's Confidential Information for five years after it is received. The five-year time period does not apply if applicable law requires a longer period or the Product Use Rights provide a more specific requirement.

## **12. 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 Customer'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 Customer first uses the Product; and

- c. **Limited warranty exclusions.** This limited warranty is subject to the following limitations:
- (i) 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;
  - (ii) the limited warranty does not apply to components of Products that Customer is permitted to redistribute;
  - (iii) the limited warranty does not apply to free, trial, pre-release, or beta products; and
  - (iv) 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 Customer notifies Microsoft within the warranty term, 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 time frame; and
- These are Customer's only remedies for breach of the limited warranty other than remedies required to be provided under applicable law.
- e. **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 APPLY UNLESS APPLICABLE LAW DOES NOT PERMIT THEM. Any warranties, guarantees, or conditions that cannot be disclaimed as a matter of law last for one year from the start of the limited warranty.**

### **13. Defense of infringement, misappropriation, and third party claims.**

- a. **Microsoft's agreement to protect.** Microsoft will defend Registered Affiliate against any claims made by an unaffiliated third party that (i) any Product or Fix that is made available by Microsoft for a fee infringes that party's patent, copyright, or trademark or makes unlawful use of its Trade Secret, or (ii) arising from Microsoft provision of an Online Service in violation of laws applicable to Microsoft as a service provider. Clause (ii) will not apply to (A) any laws or regulations applicable to Customer or Customer's industry that are not also generally applicable to information technology security providers, and (B) any violations of laws or regulations related to a claim covered under clause (i). Microsoft will also pay the amount of any resulting adverse final judgment (or settlement to which Microsoft consents). This section provides Registered Affiliate's exclusive remedy for these claims.
- b. **Limitations on defense obligation.** Microsoft's obligations will not apply to the extent that the claim or award is based solely on:
- (i) Customer Data, non-Microsoft software, modifications Registered Affiliate makes to, or any specifications or materials Registered Affiliate provides or makes available for, a Product or Fix. ;
  - (ii) Registered Affiliate's combination of the Product or Fix with a non-Microsoft product, data or business process; or damages based on the use of a non-Microsoft product, data or business process. ;
  - (iii) Registered Affiliate's use of either Microsoft Trademarks or the use or redistribution of a Product or Fix in violation of this Agreement or any agreement incorporating its terms or;

- (iv) Registered Affiliate's use of a Product or Fix after Microsoft identifies Registered Affiliate to discontinue that use due to a third party claim.

To the extent permitted by applicable law, Registered Affiliate will be responsible for any costs or damages that result from any of the above actions.

- c. **Registered Affiliate's Responsibility.** Registered Affiliate agrees that it 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 Customer's behalf infringing a third party's patent, copyright, or trademark or makes unlawful use of its Trade Secret; or
  - (ii) Arise from violation of the Acceptable use Policy, which is described in the Product Use Rights.

This Section provides Microsoft's exclusive remedy for these claims

- d. **Rights and remedies in case of possible infringement or misappropriation.**

- (i) **Microsoft's offerings.** If Microsoft reasonably believes that a Product or Fix may infringe or misappropriate a third-party's intellectual property rights, Microsoft will seek to: (1) procure for Registered Affiliate the right to continue to use the Product or Fix; or (2) modify or replace it with a functional equivalent to make it non-infringing and notify Enrolled Affiliate to discontinue use of the prior version, which Enrolled Affiliate must do immediately. If the foregoing options are not commercially reasonable for Microsoft, or if required by a valid judicial or government order, Microsoft may terminate Registered Affiliate's license or access rights in the Product or Fix. In such a case, Microsoft will notify Registered Affiliate with notice and refund any amounts Registered Affiliate has paid for those rights to the Product or Fix (or for Online Services, any amount Registered Affiliate has paid in advance for unused Online Services).

- (ii) **Customer Data or use of non-Microsoft software with Online Services.** If an unaffiliated third party asserts that Customer Data or non-Microsoft software or technology used by Registered Affiliate with the Online Services violates their intellectual property rights, Microsoft may ask Customer to remove the allegedly infringing item. If Registered Affiliate fails to do so within a reasonable period of time, Microsoft may suspend or terminate the Online Service to which the Customer Data or non-Microsoft software relates.

- e. **Obligations of protected party.** Registered Affiliate must notify Microsoft promptly in writing of a claim subject to the Subsection titled "Microsoft's agreement to protect" and Microsoft must notify Registered Affiliate promptly in writing of a claim subject to the Subsection titled "Registered 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. The party invoking its right to protection must (1) give the other party sole control over the defense or settlement; except that in the case of the State of Washington, such sole control is subject to authorization of the Office of Attorney General of Washington ("OAG") and will be provided to the extent of such authorization. In the event that the OAG does not authorize sole control to Microsoft over any claims that may arise under this subsection, then the parties agree that Registered Affiliate will encourage the OAG to grant Microsoft authorization to equally participate in any proceeding subject to this subsection; and (2) provide reasonable assistance in defending the claim. The party providing the protection will reimburse the other party for reasonable out of pocket expenses that it incurs in providing assistance.

#### **14. Limitation of liability.**

- a. **Limitation on liability.** To the extent permitted by applicable law, the total liability of each party, including its Affiliates, and its Contractors, for all claims arising under this Agreement is limited to direct damages up to the following amounts: (1) for each Product other than Online Services, the amount Customer paid for the Product under this Agreement (2) for Online Services, the monthly amount Customer is required to pay for the Online Service multiplied by 12. In the case of Products provided free of charge, or code that Customer is authorized to redistribute to third parties without separate payment to Microsoft, Microsoft's liability is limited to U.S. \$5,000. These limitations apply regardless of whether the asserted liability is based on breach of contract, tort (including negligence), strict liability, breach of warranties, or any other legal theory. However, the limitation in this section (a) will not apply to:
- (i) Microsoft's and Customer'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");
  - (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 in all cases be limited as provided above for the applicable Online Service; and
  - (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 Customer shall bring any action against the other's Affiliates or Contractors in respect of any matter disclaimed on their behalf in this Agreement. Each party agrees that in the event the other party breaches this provision, the non-breaching party shall have a contract claim against the breaching party.

#### **15. Verifying compliance.**

- a. **Right to verify compliance.** Customer 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 the Products, at Microsoft's expense, during the term of use or distribution of the applicable Products and for a period of one year thereafter.
- b. **Verification process and limitations.** Microsoft will provide customer at least 30 days' notice of its intent to verify compliance. Microsoft will engage an independent auditor,

which will be subject to a confidentiality obligation. Verification will take place during Registered Affiliate's normal business hours and in a manner that does not interfere unreasonably with Registered Affiliate's operations. Registered 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 Registered Affiliate hosts, sublicenses, or distributes to third parties. As an alternative, Microsoft may require Registered Affiliate to complete Microsoft's self-audit process relating to the Products Registered Affiliate and any of its Affiliates use or distribute. Such information will be used solely for purposes of determining compliance.

- c. **Remedies for non-compliance.** If verification or self-audit reveals any unlicensed use, Registered Affiliate must within 30 days order sufficient licenses to cover its use. If there is no material unlicensed use (License shortage of 5% or more), Microsoft will not undertake another verification of the same Registered Affiliate for at least one year. By exercising the rights and procedures described above, Microsoft does not waive its rights to enforce this Agreement or to protect its intellectual property by any other means permitted by law.

## **16. Non-Microsoft Software or Technology.**

- a. Registered Affiliate is solely responsible for any non-Microsoft software or technology that it installs or uses with the Products or Fixes. Microsoft is not a party to and is not bound by any terms governing Registered Affiliate's use of non-Microsoft software or technology. Without limiting the foregoing, non-Microsoft software or scripts linked to or referenced from any Product website, are licensed to Registered Affiliate under the open source licenses used by the third parties that own such code, not by Microsoft.
- b. If Registered Affiliate chooses to install or use any non-Microsoft software or technology with the Products or Fixes, it is solely responsible for directing and controlling the installation and use of such non-Microsoft software or technology in the Products or Fixes (e.g., through Registered Affiliate's use of application programming interfaces and other technical means that are part of the Online Services). Microsoft will not run or make any copies of such non-Microsoft software or technology outside of its relationship with Registered Affiliate.
- c. If Registered Affiliate installs or uses any non-Microsoft software or technology with the Products or Fix, it may not do so in any way that would subject Microsoft's intellectual property or technology to obligations beyond those included in the Agreement or as otherwise agreed to in writing by Microsoft.

## **17. Miscellaneous.**

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

### **Copies should be sent to:**

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

Microsoft may provide information about Online Services by email to contacts provided by Registered Affiliate or through a web site Microsoft identifies. Notice by email is given as of the transmission date.

- b. **Clerical errors.** Microsoft may correct clerical errors in this Agreement, and any documents submitted with or under this Agreement, by providing notice by email and a reasonable opportunity for Customer or Registered Affiliate, as applicable, to object to the correction. Clerical errors include minor mistakes, unintentional additions and omissions. This provision does not apply to material terms, such as the identity, quantity or price of a Product ordered.
- c. **Assignment.** Either party may assign this Agreement to an Affiliate, but it must notify the other party in writing of the assignment. Any assignment will not relieve the assigning party of its obligations under the assigned agreement. Any attempted assignment without required approval will be void; provided, however, that this Agreement may be assigned by Lead Affiliate to an Affiliate in connection with a consolidation or division of Lead Affiliate, or change in Lead Affiliate's statutory authority.
- d. **Subcontractors.** Microsoft may use Contractors to perform Services and support Online Services. Microsoft will be responsible for their performance subject to the terms of this Agreement.
- e. **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.
- f. **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.
- g. **Applicable law; dispute resolution.** The terms of this Agreement will be governed by the laws of Registered 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 Registered Affiliate's state.
- h. **This Agreement is not exclusive.** Customer is free to enter into agreements to license, use or promote non-Microsoft software or services.
- i. **Entire agreement.** This Agreement, the Product List, all registrations under this Agreement, the Product Use Rights, and any Order submitted under this Agreement constitute the entire agreement concerning the subject matter and supersede any prior or contemporaneous communications.
- j. **Order of precedence.** In the case of a conflict between any of these documents in this Agreement that is not resolved expressly in those documents, their terms will control in the following order of descending priority: (1) these terms and conditions and the accompanying signature form; (2) any Affiliate Registration Form, (3) the Product List; (4) the Product Use Rights; (4) any Order submitted under this Agreement, and (6) any other documents in this Agreement. Terms in an amendment control over the amended document and any prior amendments concerning the same subject matter.
- k. **Survival.** Provisions regarding ownership and License rights, fees, Product use rights, restrictions on use, evidence of perpetual Licenses, transfer of Licenses, warranties, defense of infringement and misappropriation claims, limitations of liability, confidentiality, compliance verification, open source license restrictions, 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.
- l. **No transfer of ownership.** Microsoft does not transfer any ownership rights in any licensed Product.
- m. **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 Registered Affiliate is for the sole use and benefit of the Registered

Affiliate, and is not provided for use by or personal benefit of any specific government employee.

- n. **Amending the Agreement.** This Agreement may be amended only by a formal written agreement signed by both parties. The Product List and Product Use Rights (including any documents referenced therein) may be changed by Microsoft in accordance with the terms of this Agreement. Any terms and conditions contained in a purchase order that contradict these terms and conditions will not apply.
- o. **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.
- p. **Privacy and Security.** Microsoft and Registered Affiliate will each comply with all applicable laws and regulations (including applicable security breach notification law). However, Microsoft is not responsible for compliance with any laws applicable to Registered Affiliate or Registered Affiliate's industry that are not also generally applicable to information technology services providers. Registered Affiliate consents to the processing of personal information by Microsoft and its agents to facilitate the subject matter of this Agreement. Registered Affiliate may choose to provide personal information to Microsoft on behalf of third parties (including Registered Affiliate's contacts, resellers, distributors, administrators, and employees) as part of this Agreement. Registered Affiliate will obtain all required consents from third parties under applicable privacy and data protection law before providing personal information to Microsoft.

The personal information Registered Affiliate provides in connection with this Agreement will be processed according to the privacy statement available at <https://www.microsoft.com/licensing/servicecenter> (see footer), except that Product-specific privacy statements are in the Product Use Rights. Personal data collected through Products or Services may be transferred, stored and processed in the United States or any other country in which Microsoft or its service providers maintain facilities. By using the Products or Services, Customer consents to the foregoing. Microsoft abides by the EU Safe Harbor and the Swiss Safe Harbor frameworks as set forth by the U.S. Department of Commerce regarding the collection, use, and retention of data from the European Union, the European Economic Area, and Switzerland.

For Online Services, additional privacy and security details are in the Product use rights.

- q. **Natural disasters.** In the event of a "natural disaster", Microsoft may provide additional assistance or rights by posting on <http://www.microsoft.com> at such time.
- r. **Copyright violation.** Except as set forth in section above entitled "Transferring and reassigning Licenses", the Registered 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 Registered 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.
- s. **Section headings.** All section and subsection headings used in this Agreement are for convenience only and shall not affect the interpretation of this Agreement.
- t. **U.S. export jurisdiction.** Products and Fixes are subject to U.S. export jurisdiction. Customer must comply with all applicable international and national laws, including the U.S. Export Administration Regulations, the International Traffic in Arms Regulation requirements as well as all end-user, end use and destination restrictions U.S. and other governments related to Microsoft products, services and technologies. For additional information, see <http://www.microsoft.com/exporting>. Customer will notify Microsoft at [cmec@microsoft.com](mailto:cmec@microsoft.com) as to any regulatory or legal controls on the use, access or transfer of Customer's software or technology prior to such use, access or transfer to/by Microsoft. Customer will provide sufficient information to permit Microsoft to comply with applicable controls on Customer's software or technology.



# Select Plus Affiliate Registration Form State and Local

Registration Type <i>Reseller to complete</i>	Lead Affiliate <input checked="" type="checkbox"/> Additional Affiliate <input type="checkbox"/>	Lead Affiliate Public Customer Number (PCN) <i>Reseller to complete</i>	977623FE
Agreement Number Microsoft or Reseller to complete		Additional Affiliate Public Customer Number (PCN) <i>Reseller to complete</i>	
Qualifying Contract <i>Reseller to complete</i>		Change Affiliate Anniversary Month <i>Reseller to complete</i>	June

By registering, Registered Affiliate accepts and agrees to be bound by the terms of the agreement and any applicable attachments (the "Agreement"), and will be allowed to acquire Products in accordance with the Agreement.

If Registered Affiliate registers as an Additional Affiliate, Registered Affiliate represents that the Additional Affiliate is an eligible entity of the Lead Affiliate identified above.

This registration is valid when accepted by Microsoft and until it is terminated. Registered Affiliate will receive an acceptance notification confirming the effective date of this registration. Microsoft may refuse to accept a registration if there is a business reason for doing so. Either party may terminate this registration for any reason with 60 days advance written notice. Terminating this registration will terminate the Registered Affiliate's ability to place Orders under the Agreement.

Each Registered Affiliate may qualify for and receive additional benefits by electing Software Assurance membership. By electing Software Assurance membership, the Registered Affiliate is committing to include Software Assurance with every eligible Order. To make this election, complete and submit the Select Plus Software Assurance Membership Election Form.

In order to use a third party to reimaging the Windows Operating System Upgrade, Registered Affiliate must certify that it has acquired qualifying operating system licenses. See the Product List for details.

## 1. Primary Contact Information.

Registered Affiliate must identify an individual from inside its organization to serve as the primary contact. This contact is also an Online Administrator for the Volume Licensing Service Center and may grant online access to others.

**Name of entity\*** Department of Enterprise Services  
**Contact name\***: First Mike Last Dombrowsky  
**Contact email address\*** mike.dombrowsky@des.wa.gov  
**Street address\*** 1500 Jefferson St., SE  
**City\*** Olympia  
**State\*** WA  
**Postal code\*** 98501-2355  
**Country\*** United States  
**Phone\*** 360-407-8717  
**Tax ID**

\* indicates required fields

## 2. Notices contact and online administrator.

This individual receives contractual notices. They are also the online Administrator for the Volume Licensing Service Center and may grant online access to others.

Same as primary contact

**Name of entity\***  
**Contact name\***: First Last

Contact email address\*  
Street address\*  
City\*  
State\*  
Postal code\*  
Country\*  
Phone\*

This contact is a third party (not the Registered Affiliate). Warning: This contact receives personally identifiable information of the Registered Affiliate.  
\* indicates required fields

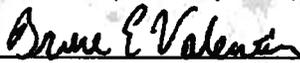
### 3. Language preference.

Select the language for notices. English

### 4. Reseller information.

Reseller company name\* CompuCom Systems, Inc.  
Street address (PO boxes will not be accepted)\* 7171 Forest Lane  
City\* Dallas  
State\* Texas  
Postal code\* 75230-2306  
Country\* United States  
Contact name\* Bruce Valentin  
Phone\* 972-856-4617  
Contact email address\* msadmin@compucom.com  
\* indicates required fields

The undersigned confirms that the information is correct.

Name of Reseller* CompuCom Systems, Inc.
Signature* 
Printed name* Bruce E. Valentin
Printed title* Microsoft Licensing Specialist
Date* 5/23/2014

\* indicates required fields

**Changing a Reseller.** If Microsoft or Reseller chooses to discontinue doing business with one another, Registered Affiliate must choose a replacement Reseller. If Registered Affiliate or Resellers intends to terminate their relationship, the initiating party it must notify Microsoft and the other party, using a form provided by Microsoft at least 90 days prior to the date on which the change is to take effect.

### 5. Supplemental Contacts.

Customer's Notices Contact identified above is the default contact for administrative and other communications. However, Customer may designate additional contacts using the Supplemental Contact Information form.

### 6. Software Assurance Membership Election.

Each Registered Affiliate may qualify for and receive additional benefits with Software Assurance membership. By electing Software Assurance membership below, Registered Affiliate is committing for a minimum period of one year to include Software Assurance with every eligible Order, and to maintain Software Assurance for all copies of Products licensed under this program for at least one Product pool.

Product pools	Yes	No
Applications	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Systems	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Servers	<input type="checkbox"/>	<input checked="" type="checkbox"/>

**Note:** If "Yes" is marked, orders for Licenses without Software Assurance will not be accepted.

**Only valid if attached to a signature form.**






## Program Signature Form

MBA/MBSA number



Agreement number

6013310

**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
Select Plus Agreement	CTM (NEW)
<Choose Agreement>	
Select Plus Affiliate Registration Form	X20-11591
<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*	
Printed Title	
Signature Date*	Dale Colbert Procurement Unit Mgr
Tax ID	5-27-14

\* indicates required field

Microsoft Affiliate	
Signature	
Printed First and Last Name	Microsoft Licensing, GP
Printed Title	
Signature Date	MAY 27 2014
(date Microsoft Affiliate countersigns)	Jessica Voce Duly Authorized on behalf of Microsoft Licensing, GP
Agreement Effective Date	
(may be different than Microsoft's signature date)	

Optional 2<sup>nd</sup> Customer signature or Outsourcer signature (if applicable)

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

\* indicates required field

Outsourcer
Name of Entity (must be legal entity name)* N/A
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

