Department of Administration
Purchasing Division
2019 Washington Street East
Post Office Box 50130
Charleston, WV 25305-0130

State of West Virginia
Master Agreement

Order Date: 12-22-2020

CORRECT ORDER NUMBER MUST APPEAR ON ALL PACKAGES, INVOICES, AND SHIPPING PAPERS. QUESTIONS CONCERNING THIS ORDER SHOULD BE DIRECTED TO THE DEPARTMENT CONTACT.

Order Number:	CMA 0212 0212 MSMENTPRZ 2	**Procurement Folder:**	687835
Document Name:	Microsoft Master Services Agreement "Enterprise"	**Reason for Modification:**	
Document Description:	Microsoft Master Services Agreement "Enterprise"	Change Order No.2 - to extend the terms agreement under the same terms and conditions per the attached documentation.	
Procurement Type:	Central Master Agreement		
Buyer Name:			
Telephone:			
Email:			
Shipping Method:	Best Way	**Effective Start Date:**	2014-03-14
Free on Board:	FOB Dest, Freight Prepaid	**Effective End Date:**	2025-05-31

VENDOR	DEPARTMENT CONTACT
Vendor Customer Code: 000000230239 MICROSOFT CORPORATION 1 MICROSOFT WAY REDMOND WA 98052-6399 US **Vendor Contact Phone:** 202-895-2033 **Extension:**	**Requestor Name:** Mark A Atkins **Requestor Phone:** (304) 558-2307 **Requestor Email:** mark.a.atkins@wv.gov

Discount Details:

	Discount Allowed	Discount Percentage	Discount Days
#1	No	0.0000	0
#2	No		
#3	No		
#4	No		

INVOICE TO	SHIP TO
ALL STATE AGENCIES VARIOUS LOCATIONS AS INDICATED BY ORDER No City WV 99999 US	VARIOUS AGENCY LOCATIONS AS INDICATED BY ORDER No City WV 99999 US

Total Order Amount:	Open End

AGENCY COPY

R 12/22/2020

PURCHASING DIVISION AUTHORIZATION	ATTORNEY GENERAL APPROVAL AS TO FORM	ENCUMBRANCE CERTIFICATION
DATE: ELECTRONIC SIGNATURE ON FILE	DATE: ELECTRONIC SIGNATURE ON FILE 1/4/2021	DATE: *Beverly Toler* ELECTRONIC SIGNATURE ON FILE JAN - 5 2021

Extended Description:

Change Order No. 2 - to extend the terms agreement until 05/31/2025 per the attached documentation.

Software, Master Agreement "Enterprise"

This blanket Master Services Agreement is comprised of the attached agreement.

This agreement does not contain product or pricing of product. Agency shall use resale agreement in place at time of purchase for products.

Original purchase order attached for reference.

No other changes.

Line	Commodity Code	Manufacturer	Model No	Unit	Unit Price
1	43230000			EA	0.000000
	Service From	Service To			

Commodity Line Description: Software, Master Agreement "Enterprise"

Extended Description:
This blanket Master Services Agreement is comprised of the attached agreement. This agreement does not contain product or pricing of product. Agency shall use resale agreement in place at time of purchase for products.

Microsoft

Amendment to Contract Documents

Agreement Number | 01E73657 | 000-jegraham-S-187

This amendment ("Amendment") is entered into between the parties identified on the attached program signature form. It amends the Enrollment or Agreement identified above. All terms used but not defined in this Amendment will have the same meanings provided in that Enrollment or Agreement.

Enterprise Agreement
Custom Terms CTM

The term of the Agreement 01E73657 is extended to expire May 31, 2025.
Except for changes made by this Amendment, the Enrollment or Agreement identified above remains unchanged and in full force and effect. If there is any conflict between any provision in this Amendment and any provision in the Enrollment or Agreement identified above, this Amendment shall control.

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

Microsoft Internal Use Only:

WV EA Agreement Extension through May 31 2025 (CTM).docx	CTM	CTM-CTC-CTL	BD

Microsoft

Volume Licensing

Program Signature Form

MBA/MBSA number	
Agreement number	01E73657

000-jegraham-S-187

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>	Document Number or Code
<Choose Agreement>	Document Number or Code
<Choose Agreement>	Document Number or Code
<Choose Agreement>	Document Number or Code
<Choose Agreement>	Document Number or Code
<Choose Enrollment/Registration>	Document Number or Code
<Choose Enrollment/Registration>	Document Number or Code
<Choose Enrollment/Registration>	Document Number or Code
<Choose Enrollment/Registration>	Document Number or Code
<Choose Enrollment/Registration>	Document Number or Code
Amendment	CTM-CTC-CTL (01E73657)
Document Description	Document Number or Code
Document Description	Document Number or Code
Document Description	Document Number or Code
Document Description	Document Number or Code

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)* State of West Virginia	
Signature*	
Printed First and Last Name* FRANK WHITTAKER	
Printed Title ASSISTANT DIRECTOR	
Signature Date* 12/22/20	
Tax ID	

* indicates required field

Microsoft Affiliate
Microsoft Corporation
Signature _____
Printed First and Last Name
Printed Title
Signature Date (date Microsoft Affiliate countersigns)
Agreement Effective Date (may be different than Microsoft's signature date)

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

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

* indicates required field

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

* indicates required field

If Customer requires 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 Corporation
Dept. 551, Volume Licensing
6880 Sierra Center Parkway
Reno, Nevada 89511
USA

Microsoft

Alternative Acceptance Form (Microsoft Only)

Due to the extraordinary impact of the coronavirus (COVID-19), Microsoft has implemented steps to protect personnel and the communities in which they live and work, including conducting business from remote locations and/or using different processes. As a result, Microsoft is utilizing this Alternative Acceptance Form in place of signing a Program Signature Form.

Microsoft's authorized representative is accepting the contract documents shown on the Program Signature Form bearing the Proposal ID shown below ("Contract Documents") by typing their name and entering the date of acceptance on this Alternative Acceptance Form. The Agreement Effective Date shown below is the Agreement Effective Date shown on the Program Signature Form.

For the purposes of this Alternative Acceptance Form, "Customer" means the Customer entity identified on the Program Signature Form bearing the same Proposal ID that appears on this form, and "Microsoft" means the Microsoft entity or entities identified below on this form.

|	
MBA/MBSA number:	
Agreement number:	01E73657
Enrollment number:	
Proposal ID:	000-jegraham-S-187
Opportunity ID (if applicable):	
Agreement Effective Date:	
Customer Name:	State of West Virginia

To indicate Microsoft's agreement, Microsoft's duly authorized representative will complete this form by entering their name and the date of Microsoft's acceptance below. Upon completion of this form, Microsoft agrees that it (1) has received, read and understands this Alternative Acceptance Form, the Program Signature Form, and all Contract Documents, including any websites or documents incorporated by reference and any amendments, and (2) agrees to be bound by the terms of all such documents, as of the Agreement Effective Date. This Alternative Acceptance Form, when completed, will be incorporated into the Agreement noted above.

Acceptance by Microsoft	
Enter applicable Microsoft Affiliate: Microsoft Corporation	
Name of Microsoft authorized representative:	David Kanasoot
Acceptance date:	12/21/2020

The above person is duly authorized on behalf of Microsoft to accept these Contract Documents. Microsoft will not challenge the enforceability or validity of the agreement formed by this alternative process or any of the Contract Documents based on its acceptance using this Alternative Acceptance Form.

Optional Confirmation of Acceptance on Customer Request

Once Microsoft returns to its normal business processes, if Customer requests a Microsoft signature, an authorized representative of Microsoft will sign and deliver a copy of this Alternative Acceptance Form below to confirm the effectiveness of the agreement as of the Agreement Effective Date shown above.

Optional Microsoft Confirmation of Acceptance	
Enter applicable Microsoft Affiliate: <choose one>	
By signature of its duly authorized representative below, Microsoft hereby acknowledges, ratifies and confirms that the agreement referenced on this Alternative Acceptance Form was duly accepted, and is effective as of the Agreement Effective Date shown above.	
Signature:	sign your complete name
Printed First and Last Name:	print your complete name
Printed Title:	print your title
Signature Date:	enter the date you signed this form
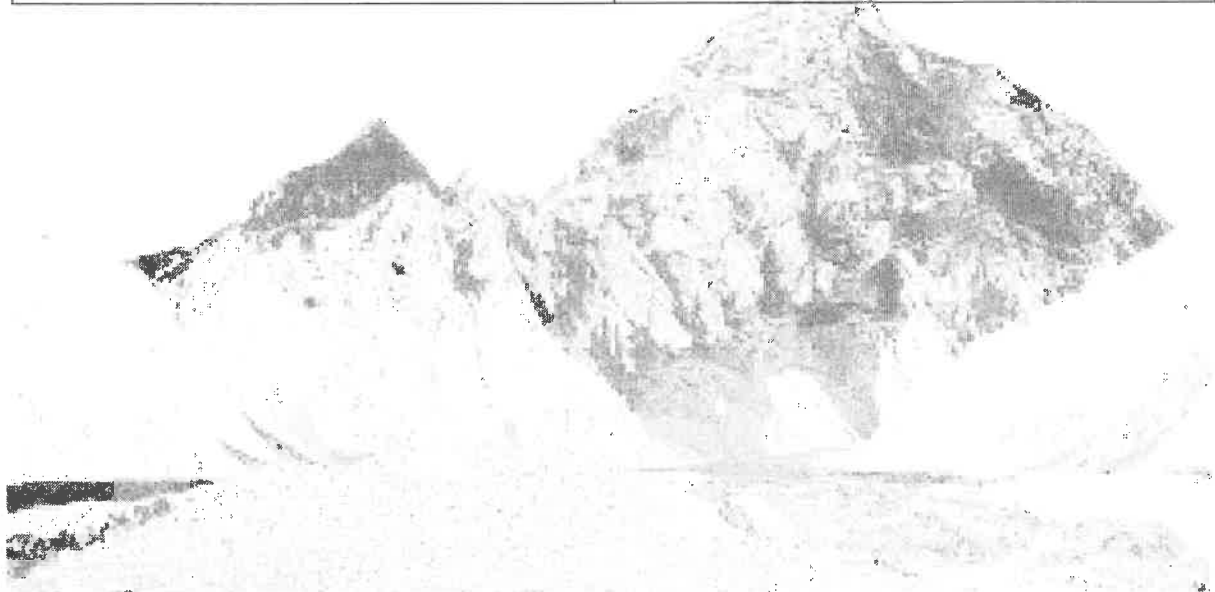
Purchase Order

State of West Virginia
Department of Administration
Purchasing Division
2019 Washington Street East
Post Office Box 50130
Charleston, WV 25305-0130

PURCHASE ORDER NO.	PAGE
MSMENTPRZ	1

BLANKET RELEASE
00

CORRECT PURCHASE ORDER NUMBER MUST APPEAR ON ALL PACKAGES, INVOICES, AND SHIPPING PAPERS. QUESTIONS CONCERNING THIS PURCHASE ORDER SHOULD BE DIRECTED TO THE BUYER AS NOTED BELOW.

INVOICE TO:
ALL STATE AGENCIES
AND POLITICAL SUBDIVISIONS
VARIOUS LOCALES AS INDICATED
BY ORDER

CHANGE ORDER

14

FILE LOCATION 27728

VENDOR:
*709065415 01   800-426-9400
MICROSOFT CORPORATION
ONE MICROSOFT WAY

REDMOND WA   98052

SHIP TO:
ALL STATE AGENCIES
AND POLITICAL SUBDIVISIONS
VARIOUS LOCALES AS INDICATED
BY ORDER

DATE PRINTED	TERMS OF SALE	EEIN/SSN	FUND
03/12/2014	NET 30	911144442	

SHIP VIA	F.O.B	FREIGHT TERMS	ACCOUNT NUMBER
BEST WAY	DESTINATION	PREPAID	NUL-MUL

LINE	QUANTITY / DELIVERY DATE	UOP / CAT.NO.	VENDOR ITEM NO. / ITEM NUMBER	UNIT PRICE	AMOUNT

Purchasing Division's File Copy

MICROSOFT MASTER SERVICES AGREEMENT " ENTERPRISE"

03/13/2014   099-00-01-100
SOFTWARE, MASTER AGREEMENT "ENTERPRISE"

THIS BLANKET MASTER SERVICES AGREEMENT IS
COMPRISED OF THE ATTACHED AGREEMENT.

THIS AGREEMENT DOES NOT CONTAIN PRODUCT OR
PRICING OF PRODUCT. AGENCY SHALL USE RESALE
AGREEMENT IN PLACE AT TIME OF PURCHASE FOR
PRODUCTS.

RETURNED TO BUYER
DATE: MAR 1 4 2014

ENTERED

PURCHASING DIVISION
CERTIFIED ENCUMBERED

MAR 1 4 2014

Beverly Toler

IF APPROVAL AS TO FORM IS REQUIRED BY ATTORNEY GENERAL, CHECK HERE ☐

3-12-14

**APPROVED AS TO FORM BY
ASSISTANT ATTORNEY GENERAL**

3/12/2014

BY _____ GUY NISBET

OPEN END

TOTAL

304-558-2596

PURCHASING DIVISION AUTHORIZED SIGNATURE

MEMORANDUM

TO: Agencies Purchasing Microsoft 365

FROM: Purchasing Division

DATE: February 14, 2014

RE: Special Instructions for State Agencies Purchasing Microsoft 365 Products

Special Instructions for State Agencies Purchasing Microsoft 365 Products

1. Enterprise Agreement Only: Microsoft 365 products can only be purchased under the Microsoft Enterprise Agreement software licensing ("Enterprise Agreement"). The terms and conditions that govern the Microsoft 365 software have not been included in the Microsoft Select Agreement and purchases of Microsoft 365 under that agreement are not permitted.

2. GCC Form: Any agency (or government entity) purchasing Microsoft 365 must ensure that the Government Community Cloud Amendment and Product Selection form ("GCC Form") contained in Appendix A is signed by Microsoft and the agency at the time of agency's enrollment in Microsoft 365. The agency must also ensure that the GCC Form provided by Microsoft or the license reseller matches the form attached as Appendix A.

3. BAA Form: Any agency (or government entity) subject to the requirements of the Health Insurance Portability and Accountability Act ("HIPAA") purchasing Microsoft 365 must ensure that the Business Associate Enterprise Enrollment Amendment ("BAA Form") contained in Appendix A is signed by Microsoft and the agency at the time of agency's enrollment in Microsoft 365. The agency must also ensure that the BAA Form provided by Microsoft or the license reseller matches the form attached as Appendix A.

Microsoft

Volume Licensing

Program Signature Form

MBA/MBSA number	
Agreement number	

000-rudyg-036

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
Enterprise Agreement	X20-03196
<Choose Agreement>	Document Number or Code
<Choose Agreement>	Document Number or Code
<Choose Agreement>	Document Number or Code
<Choose Agreement>	Document Number or Code
<Choose Enrollment/Registration>	Document Number or Code
<Choose Enrollment/Registration>	Document Number or Code
<Choose Enrollment/Registration>	Document Number or Code
<Choose Enrollment/Registration>	Document Number or Code
<Choose Enrollment/Registration>	Document Number or Code
Amendment	CTM-a (New)
Amendment	CTM-b (New)
Amendment	CTM-c (New)
Amendment	CTM-d (New)
Document Description	Document Number or Code

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)* State of West Virginia

Signature* _~~(signature)~~_

Printed First and Last Name* Robert PAULSON

Printed Title GENERAL COUNSEL, WV DOA

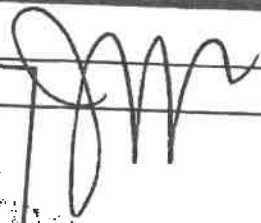Signature Date* MARCH 11, 2014

Tax ID

Robert P. Paulson
General Counsel
WV Department of Administration

* indicates required field

Microsoft Affiliate

Microsoft Licensing, GP

Signature	
Printed First and Last Name	**Microsoft**
Printed Title	Microsoft Licensing, GP
Signature Date	MAR 0 6 2014
(date Microsoft Affiliate countersigns)	Jessica Voice
Agreement Effective Date	Duly Authorized on behalf of
(may be different than Microsoft's signature date)	Microsoft Licensing, GP

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

Customer

Name of Entity (must be legal entity name)*

Signature* _____

Printed First and Last Name* _____

Printed Title

Signature Date* _____

* Indicates required field

Outsourcer

Name of Entity (must be legal entity name)*

Signature* _____

Printed First and Last Name* _____

Printed Title

Signature Date* _____

* indicates required field

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

After this signature form is signed by the Customer, send it and the Contract Documents to Customer's channel partner or Microsoft account manager, who must submit them to the following

address. When the signature form is fully executed by Microsoft, Customer will receive a confirmation copy.

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

Microsoft

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

State and Local

Contents

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

Effective date. The effective date of this agreement is the effective date of the first Enrollment or the date Microsoft accepts this agreement, whichever is earlier. Any reference in this agreement or an Enrollment to "day" will be a calendar day.

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

Please note: Several 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 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 and/or its Affiliates should review such documents carefully, both at the time of signing and periodically, to ensure a full understanding of all terms and conditions applicable to Products licensed.

Terms and Conditions

1. Definitions.

"Affiliate" means

    a. with regard to Customer,

          (i) any government agency, department, office, instrumentality, division, unit or other entity of the state or local government that is supervised by or is part of Customer, or which supervises Customer or of which Customer is a part, or which is under common supervision with Customer;

          (ii) any county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality established by the laws of

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

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

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

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

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

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

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

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

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

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

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

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

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

"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.

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

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

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

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

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

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

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

2. How the Enterprise and Enterprise Subscription program works.

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

a. **Enrollments.** The Enterprise program gives Customer and/or its Affiliates the ability to enter into one or more Enrollments to order Products. Subscription Enrollments may be available for some of these Enrollments.

b. **Licenses.** The types of Licenses available are L&SA, Licenses obtained under Software Assurance and Subscription Licenses. These License types as well as additional License Types are defined in the Product List.

c. **How Enrolled Affiliates acquire Licenses.** An Enrolled Affiliate will acquire its Licenses through its chosen Reseller. Orders will be made out to and submitted to the Enrolled Affiliate's Reseller. Microsoft will invoice that Reseller according to the terms in the applicable Enrollment.

d. **Choosing and maintaining a Reseller.** Each Enrolled Affiliate must choose and maintain a Reseller authorized in the Enrolled Affiliate's location.

e. **Pricing.**

(i) **Establishing Price Levels.** Each Product generally is assigned to a Product pool (e.g., applications, systems, or servers). Each Product pool will be assigned one of four price levels (A, B, C, and D). Enrolled Affiliate's Price Level will be Level D for all Enterprise Products, Enterprise Online Services, Online Services and Additional Products ordered under any Enrollment.

(ii) **Placing Orders through Reseller.** Orders under an Enrollment will be made to the Reseller. Microsoft will invoice the Reseller according to the terms in the applicable Enrollment. Throughout this agreement the term "price" refers to reference price. The Reseller and the Enrolled Affiliate will determine the Enrolled Affiliate's actual price and payment terms.

f. **Order Requirements.** Order Requirements are outlined in each Enrollment.

g. **Management and Reporting.** Customer and/or Enrolled Affiliate may manage account details (e.g., contacts, orders, Licenses, software downloads) on Microsoft's Volume Licensing Service Center ("VLSC") web site (or successor site) at: https://www.microsoft.com/licensing/servicecenter. Upon the effective date of this agreement and any Enrollments, the contact(s) identified for this purpose will be provided access to this site and may authorize additional users and contacts.

3. Licenses for Products.

a. **General.** Enrolled Affiliate will have the number of Licenses ordered for the latest version of a Product, and may use prior versions as permitted in the Product Use Rights, so long as Microsoft receives timely orders from Reseller for all required Licenses for such Products and complies with applicable license terms. The Licenses obtained under an Enrollment are not

related to any order or fulfillment of software media. The ability to use a Product ordered may be affected by minimum hardware or software requirements.

b. **Use by Affiliates.** The Enrolled Affiliate may sublicense the right to use the Products to any Affiliates covered under its Enrollment, but Affiliate recipient of these Licenses may not sublicense these rights and their use must be consistent with the License terms contained in this agreement.

c. **When Licenses become perpetual.** The right to run any Product licensed under an Enrollment is temporary unless and until it becomes perpetual as follows:

(i) A License is temporary until Enrolled Affiliate's Reseller has paid for a License in full and the applicable initial Enrollment or renewal term during which the License was ordered must have expired or been terminated as permitted in this agreement.

(ii) Subscription Licenses are never perpetual. If a buy-out option is available, Enrolled Affiliate may obtain a perpetual License by exercising the buy-out option and paying for the License in full.

(iii) Enrolled Affiliate will have perpetual Licenses to use the Products ordered in the latest version available (or any prior version) as of the date of expiration, termination, or renewal.

(iv) All perpetual Licenses acquired under this agreement remain subject to the terms of this agreement and such terms survive expiration or termination of this agreement or an Enrollment.

d. **Perpetual Licenses through Software Assurance.** Perpetual Licenses received through Software Assurance supersede and replace the underlying perpetual Licenses for which Software Assurance coverage was ordered. In the case of Early Termination, the terms in Section 7 titled "Term and Termination will apply."

e. **License confirmation.** This agreement, the applicable Enrollment, the Enrolled Affiliate's order confirmation, and any documentation evidencing transfers of Licenses, together with proof of payment, will be the Enrolled Affiliate's evidence of all Licenses obtained under its Enrollment.

f. **Reorganizations, consolidations, and privatizations.** If the number of Qualified Devices or Qualified Users covered by an Enrollment changes by more than ten percent as a result of a reorganization, consolidation, or privatization of an Enrolled Affiliate, Microsoft will work with the Enrolled Affiliate in good faith to determine how to accommodate its changed circumstances in the context of this agreement. If an Enrolled Affiliate consolidates with a third party with an existing agreement or enrollment, Microsoft will work with the Enrolled Affiliate in good faith to accommodate its changed circumstances in the context of this agreement.

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

a. **Product Use Rights.** The Product Use Rights in effect on the effective date of an Enrollment will apply to Enrolled Affiliate's use of then-current versions of each Product (excluding Online Services). For future versions, the Product Use Rights in effect when those future versions are first released will apply. In both cases, subsequent changes made by Microsoft to the Product Use Rights for a particular version will not apply to Enrolled Affiliate's use of that version, unless Enrolled Affiliate chooses to have such changes apply. The use rights for Online Services and the process for updating them as the Online Services evolve are detailed in the Product Use Rights.

b. **Product Use Rights for earlier versions (downgrade).** If Enrolled Affiliate runs an earlier version of a Product than the version that was current on the Enrollment effective date, the Product Use Rights for the version licensed, not the version being run, will apply. However, if

the earlier version includes components that are not part of the licensed version, any Product Use Rights specific to those components will apply to Enrolled Affiliate's use of those components.

c. **Reservation of rights.** All rights not expressly granted are reserved.

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

a. **General.** Enrolled Affiliate may make as many copies of Products, if applicable, as it needs to distribute them within its organization. Copies must be true and complete (including copyright and trademark notices) from master copies obtained from a Microsoft approved fulfillment source. Enrolled Affiliate may use a third party to make these copies, but Enrolled Affiliate agrees it will be responsible for any third party's actions. Enrolled Affiliate agrees to use reasonable efforts to notify its employees, agents, and any other individuals who use the Products that the Products are licensed from Microsoft and subject to the terms of this agreement.

b. **Copies for training/evaluation and back-up.** For all Products other than Online Services, Enrolled Affiliate may: (1) use up to 20 complimentary copies of any licensed Products in a dedicated training facility on its premises for purposes of training on that particular Product, (2) use up to 10 complimentary copies of any Products for a 60 day evaluation period, and (3) use one complimentary copy of any licensed Product for back-up or archival purposes for each of its distinct geographic locations. Trials for Online Services may be available if specified in the Product Use Rights.

c. **Right to re-image.** In certain cases, re-imaging is permitted using the Product media. If the Microsoft Product is licensed (1) from an original equipment manufacturer (OEM), (2) as a full packaged Product through a retail source, or (3) under another Microsoft program, then media provided under this agreement may generally be used to create images for use in place of copies provided through that separate source. This right is conditional upon the following:

   (i) Separate Licenses must be owned from the source for each Product that is re-imaged.

   (ii) The Product, language, version, and components of the copies made must be identical to the Product, language, version, and all components of the copies they replace and the number of copies or instances of the re-imaged Product permitted remains the same.

   (iii) Except for copies of an operating system and copies of Products licensed under another Microsoft program, the Product type (e.g., upgrade or full License) must be identical to the Product type from the separate source.

   (iv) Enrolled Affiliate must adhere to any Product-specific processes or requirements for re-imaging identified in the Product List.

   (v) Re-images made under this subsection remain subject to the terms and use rights provided with the License from the separate source.

   (vi) This subsection does not create or extend any warranty or support obligation.

6. *Transferring and reassigning Licenses.*

a. **License transfers.** You may transfer fully-paid perpetual Licenses:

   (i) if you are an agency of the U.S. Government, to another agency of the U.S. Government or to an unaffiliated third party in connection with (i) a privatization of the government agency or of an operating division of an Enrolled Affiliate or one of its government agency affiliates, (ii) a reorganization, or (iii) a consolidation; or

(ii) 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 Enrolled Affiliate or one if its affiliates as set forth in (a) above, a reorganization, or a consolidation.

b. Customer must notify Microsoft of a transfer of license by completing a transfer notice form, which can be obtained from http://www.microsoft.com/licensing/contracts and send the completed form to Microsoft before the license transfer. No License transfer will be valid unless Customer 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 Assignment of Licenses and Software Assurance.** Licenses and Software Assurance must be assigned to a single user or device within the Enterprise. Licenses may be reassigned within the Enterprise as described in the Product Use Rights.

7. Term and termination.

a. **Term.** The term of this agreement will be 36 months from the Effective date unless terminated by either party as described below. Each Enrollment will have the term provided in that Enrollment.

b. **Termination without cause.** Either party may terminate this agreement, without cause, upon 60 days written notice. Such termination will merely terminate either party's and its Affiliates' ability to enter into new Enrollments under this agreement. Such termination will not affect any Enrollment or order not otherwise terminated, and any terms of this agreement applicable to any Enrollment or order not otherwise terminated will continue in effect with respect to that Enrollment or order. An Enrolled Affiliate may terminate an Enrollment without liability, penalty or further obligation to make payments if funds to make payments under the Enrollment are not appropriated or allocated for such purpose.

c. **Mid-term termination for non-appropriation of Funds.** Enrolled Affiliate may terminate this agreement or an Enrollment without liability, penalty or further obligation to make payments if funds to make payments under the agreement or Enrollment are not appropriated or allocated by the Enrolled Affiliate for such purpose.

d. **Termination for cause.** Either party to an Enrollment may terminate it if the other party materially breaches its obligations under this agreement, including any obligation to submit orders or pay invoices. Except where the breach is by its nature not curable within 30 days, the terminating party must give the other party 30 days' notice and opportunity to cure.

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

e. **Early termination.** If (1) an Enrolled Affiliate terminates its Enrollment as a result of a breach by Microsoft, or (2) If Microsoft terminates an Enrollment because the Enrolled Affiliate has ceased to be an Affiliate of Customer, or (3) Enrolled Affiliate terminates an Enrollment for non-appropriation of funds, or (4) Microsoft terminate an Enrollment for non-payment due to non-appropriation of funds, then the Enrolled Affiliate will have the following options:

(i) It may immediately pay the total remaining amount due, including all installments, in which case, the Enrolled Affiliate will have perpetual rights for all Licenses it has ordered; or

(ii) It may pay only amounts due as of the termination date, in which case the Enrolled Affiliate will have perpetual Licenses for:

1) all copies of Products (including the latest version of Products ordered under SA coverage in the current term) for which payment has been made in full, and

2) the number of copies of Products it has ordered (including the latest version of Products ordered under Software Assurance coverage in current term) that is proportional to the total of installment payments paid versus total amounts due (paid and payable) if the early termination had not occurred.

(iii) In the case of Early Termination under Subscription Enrollments, Enrolled Affiliate will have the following options:

1) For eligible products Enrolled Affiliate may obtain perpetual Licenses as described in the section titled "Buy-out option," provided that Microsoft receives the buy-out order for those Licenses within 60 days after Enrolled Affiliate provides notice of termination.

2) Where not exercising buy-out option, in the event of breach by Microsoft, Microsoft will issue Reseller a credit for any amount paid in advance that would apply after the date of termination.

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

f. **Effect of termination or expiration.** When an Enrollment expires or is terminated,

(i) Enrolled Affiliate must order Licenses for all copies of Products it has run for which it has not previously submitted an order. Any and all unpaid payments or any order of any kind, including subscription services, remain due and payable. Except as provided in the subsection titled "Early termination," all unpaid payments for Licenses immediately become due and payable.

(ii) Enrolled Affiliate's right to Software Assurance benefits under this agreement ends if it does not renew Software Assurance.

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

h. **Program updates.** Microsoft may make a change to this program that will make it necessary for Customer and its Enrolled Affiliates to enter into new agreements and Enrollments.

8. Restrictions on use.

Enrolled Affiliate must not:

a. separate and use the components of a Product on two or more computers, upgrade or downgrade components at different times, or transfer components separately, except as provided in the Product Use Rights;

b. reverse engineer, decompile or disassemble any Product or Fix, except where applicable law permits it despite this limitation; or

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

9. Non-Microsoft software or technology.

a. Enrolled 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 Enrolled 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 Enrolled Affiliate under the open source licenses used by the third parties that own such code, not by Microsoft.

b. If Enrolled Affiliate installs or uses any non-Microsoft software or technology with the Products or Fixes, it directs and controls the installation in and use of such software or technology in the Products or Fixes, through its actions (e.g., through Enrolled 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 Enrolled Affiliate.

c. If Enrolled 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.

10. Confidentiality.

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

For the avoidance doubt, the parties acknowledge that this Confidentiality provision recognizes that when there is a business need to do so, Microsoft and Customer 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 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.

a. **What is included.** "Confidential Information" is non-public information, know-how and Trade Secrets in any form that are designated as "confidential" or a reasonable person knows or reasonably should understand to be confidential. It includes non-public information regarding either party's products or customers, marketing and promotions, or the negotiated terms of Microsoft agreements.

b. **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.

c. **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. Before doing so, each party must seek

the highest level of protection available and, when possible, give the other enough prior notice to provide a reasonable chance to seek a protective order.

d. **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.

11. Warranties.

a. **Limited warranty.** Microsoft warrants that:

   (i) Online Services will perform in accordance with the applicable Service Level Agreement;

   (ii) Products other than Online Services will perform substantially as described in the applicable Microsoft user documentation; and

b. **Limited warranty term.** The limited warranty for:

   (i) Online Services is for the duration of Enrolled Affiliate's use of the Online Service, subject to the notice requirements in the applicable Service Level Agreement;

   (ii) Products other than Online Services is one year from the date Enrolled Affiliate first uses the Product; and

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

   (i) any implied warranties, guarantees or conditions not able to be disclaimed as a matter of law last for one year from the start of the limited warranty;

   (ii) the limited warranty does not cover problems caused by accident, abuse, or use in a manner inconsistent with this agreement or the Product Use Rights, or resulting from events beyond Microsoft's reasonable control;

   (iii) the limited warranty does not apply to components or 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 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; 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. **DISCLAIMER OF OTHER WARRANTIES.** OTHER THAN THIS LIMITED WARRANTY, MICROSOFT PROVIDES NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS. MICROSOFT DISCLAIMS ANY IMPLIED REPRESENTATIONS, WARRANTIES OR CONDITIONS, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE OR NON-INFRINGEMENT. THESE DISCLAIMERS WILL APPLY UNLESS APPLICABLE LAW DOES NOT PERMIT THEM.

12. Defense of infringement, misappropriation, and third party claims.

a. **Microsoft's agreement to protect.** Microsoft will defend Enrolled Affiliate against any claims made by an unaffiliated third party that any Product or Fix that is made available by Microsoft for a fee infringes that party's patent, copyright, or trademark or makes unlawful use of its Trade Secret. 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.

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, non-Microsoft software, modifications Enrolled Affiliate makes to, or any specifications or materials Enrolled Affiliate provides or makes available for, a Product or Fix;

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

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

c. **Enrolled Affiliate's agreement to protect.** To the extent permitted by applicable law, Enrolled Affiliate will defend Microsoft and its Affiliates against any claims made by an unaffiliated third party that:

    (i) any Customer Data or non-Microsoft software Microsoft hosts on Customer's behalf infringes the third party's patent, copyright, or trademark or makes unlawful use of its Trade Secret;or

    (ii) Arises from violation of the Acceptable use Policy, which is described in the Product Use Rights.

Customer will be responsible for the amount of any resulting adverse final judgment (or settlement to which it consents). 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 Enrolled 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 Enrolled Affiliate's license or access rights in the Product or Fix. In such a case, Microsoft will provide Enrolled Affiliate with notice and refund any amounts Enrolled Affiliate has paid for those rights to the Product or Fix (or for Online Services, any amount Enrolled 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 Enrolled Affiliate the Online Services violates their intellectual property rights, Microsoft may ask Customer to remove the allegedly infringing item. If

Enrolled 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.** 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 "Customer's agreement to protect." The party invoking its right to protection must (1) give the other party sole control over the defense or settlement; 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.

13. Limitation of liability.

a. **Limitation on liability.** To the extent permitted by applicable law, the liability of Microsoft and Enrolled Affiliate, their respective Affiliates and contractors arising under this agreement is limited to direct damages up to (1) for Products other than Online Services, the amount Enrolled Affiliate was required to pay for the Product giving rise to that liability and (2) for Online Services, the amount Enrolled Affiliate paid for the Online Service giving rise to that liability during the prior 12 months. 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");

(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 to the amount Enrolled Affiliate paid for the Online Service giving rise to that liability during the prior 12 months;

(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.

14. *Verifying compliance.*

a. **Right to verify compliance.** Enrolled Affiliate must keep records relating to the Products it and its Affiliates use or distribute. Microsoft has the right, to the extent permitted by applicable law, to verify compliance with the license terms for Products, at Microsoft's expense.

b. **Verification process and limitations.** 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 normal business hours and in a manner that does not interfere unreasonably with Customer's operations. Customer 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 Customer hosts, sublicenses, or distributes to third parties. As an alternative, Microsoft may require Customer to complete Microsoft's self-audit process relating to the Products Customer 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, Customer must within 30 days order sufficient licenses to cover its use. If there is no unlicensed use, Microsoft will not undertake another verification of the same Customer 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.

15. *Miscellaneous.*

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

Copies should be sent to:
Microsoft Corporation Legal and Corporate Affairs Volume Licensing Group One Microsoft Way Redmond, WA 98052 USA
Via Facsimile: (425) 936-7329

Microsoft may provide information about upcoming Enrollment deadlines and Online Services in electronic form. Such information may be provided by email to contacts provided by Enrolled Affiliate under an Enrollment, or through a web site Microsoft identifies. Notice by email is given as of the transmission date.

b. **Assignment.** Either party may assign this agreement to an Affiliate only. Assignment will not relieve the assigning party of its obligations under the assigned agreement. If either party assigns this agreement, it must notify the other party of the assignment in writing.

c. **Severability.** If a court holds any provision of this agreement to be illegal, invalid or unenforceable, the rest of the document will remain in effect and this agreement will be amended to give effect to the eliminated provision to the maximum extent possible. 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.

d. **Waiver.** A waiver of any breach of this agreement is not a waiver of any other breach. Any waiver must be in writing and signed by an authorized representative of the waiving party.

e. **Applicable law; Dispute resolution.** The terms of this agreement will be governed by the laws of Enrolled Affiliate's state, without giving effect to its conflict of laws. Disputes relating to this agreement will be subject to applicable dispute resolution laws of Enrolled Affiliate's state.

f. **This agreement is not exclusive.** Customer is free to enter into agreements to license, use or promote non-Microsoft software.

g. **Entire agreement.** This agreement, the Product List, all Enrollments under this agreement, and the Product Use Rights constitute the entire agreement concerning the subject matter and supersede any prior or contemporaneous communications. In the case of a conflict between any documents referenced in this agreement that is not expressly resolved in the documents, their terms will control in the following order: (1) these terms and conditions and the accompanying signature form; (2) an Enrollment; (3) the Product List; (4) the Product Use Rights; (5) any other documents; and (6) all orders submitted under this agreement.

h. **Survival.** Provisions regarding ownership and license rights, fees, Product Use Rights, restrictions on use, evidence of perpetual licenses, transfer of licenses, warranties, defense of infringement and misappropriation claims, Microsoft's and Customer's obligations to protect each other, limitations of liability, confidentiality, compliance verification, obligations on termination or expiration and the other provisions in this section entitled "Miscellaneous" will survive termination or expiration of this agreement and of any agreement in which they are incorporated.

i. **No transfer of ownership.** Microsoft does not transfer any ownership rights in any licensed Product.

j. **Free Products.** It is Microsoft's intent that the terms of this agreement and the Product Use Rights be in compliance with all applicable federal law and regulations. Any free Product provided to Enrolled Affiliate is for the sole use and benefit of the Enrolled Affiliate, and is not provided for use by or personal benefit of any specific government employee.

k. **Amending the agreement.** This agreement (except the Product List and the Product Use Rights) can be changed only by an amendment signed by both parties.

l. **Resellers and other third parties cannot bind Microsoft.** Resellers and other third parties do not have authority to bind or impose any obligation or liability on Microsoft.

m. **Privacy and security.** Microsoft and Enrolled Affiliate will each comply with all applicable privacy and data protection laws and regulations (including applicable security breach notification law). However, Microsoft is not responsible for compliance with any laws applicable to Enrolled Affiliate or Enrolled Affiliate's industry that are not also generally applicable to information technology services providers. Enrolled Affiliate consents to the processing of personal information by Microsoft and its agents to facilitate the subject matter of this agreement. Enrolled Affiliate may choose to provide personal information to Microsoft on behalf of third parties (including Enrolled Affiliate's contacts, resellers, distributors, administrators, and employees) as part of this agreement. Enrolled 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 Enrolled 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.

n. **Voluntary Product Accessibility Templates.** Microsoft supports the government's obligation to provide accessible technologies to its citizens with disabilities as required by Section 508 of the Rehabilitation Act of 1973, and its state law counterparts. The Voluntary Product Accessibility Templates ("VPATs") for the Microsoft technologies used in providing the online services can be found at Microsoft's VPAT page. Further information regarding Microsoft's commitment to accessibility can be found at http://www.microsoft.com/enable.

o. **Natural disaster.** In the event of a "natural disaster," Microsoft may provide additional assistance or rights by posting them on http://www.microsoft.com at such time.

p. **Copyright violation.** Except as set forth in the section above entitled "Transferring and reassigning Licenses", the Enrolled Affiliate agrees to pay for, and comply with the terms of this agreement and the Product Use Rights, for the Products it uses. Except to the extent Enrolled Affiliate is licensed under this agreement, it will be responsible for its breach of this contract and violation of Microsoft's copyright in the Products, including payment of License fees specified in this agreement for unlicensed use.

q. **U.S. export jurisdiction.** Products and Fixes are subject to U.S. export jurisdiction. Customer will comply with all U.S. Export Administration Regulations and International Traffic in Arms Regulation requirements as well as all end-user, end-use, and destination restrictions issued by the U.S. and other governments applicable to this agreement. For additional information, see http://www.microsoft.com/exporting.

Microsoft | Volume Licensing

Supplemental Contact Information Form   State and Local

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

This form applies to: ☒ Agreement

☐ Enrollment/Affiliate Registration Form

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

Contact information.

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

1.   Additional notices contact.

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

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

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

2.   Software Assurance manager.

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

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

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

3. Subscriptions manager.

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

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

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

4. Online Services manager.

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

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

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

5. Customer Support Manager (CSM):

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

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

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

6. Primary contact information:

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

Name of Entity* State of West Virginia
Contact name*: First Emily Last Dowdy

Contact email* Emily.C.Dowdy@wv.gov
Street address* 1900 Kanawha Blvd., E
City* Charleston State* WV Postal code* 25305
Country*: USA
Phone* 304 558 8806 Fax 304 558 0006

7. Notices contact and online administrator information:

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

☒ Same as primary contact
Name of Entity*
Contact name*: First   Last
Contact email*
Street address*
City*   State*   Postal code*
Country*:
Phone*   Fax
☐ This contact is a third party (not the Entity). Warning: This contact receives personally identifiable information of the Entity.

Microsoft | Volume Licensing

Enterprise Agreement (Indirect)
Amendment ID CTM

000-rudyg-S-036-a

For the purposes of this Amendment, "Entity" can mean the signing entity, Customer, Enrolled Affiliate, Government Partner, Institution, or other party entering into a volume licensing program agreement. Notwithstanding anything to the contrary or in addition to any terms in the Agreement, the Agreement is amended as follows:

1. The Enterprise Agreement section 4. **How to know what Product Use Rights apply** the following subsection is added:

    d. In lieu of your obligation to indemnify us under various provisions of the product use rights, you will be responsible for any cost or damages *assessed by a court of competent jurisdiction* arising from any claim to which your indemnity obligation would otherwise apply.

2. The Enterprise Agreement, section 7. **Term and termination.** only subsection *b. Termination without cause* is hereby deleted in its entirety and replaced with the following:

    b. Termination without cause. Either party may terminate this agreement, without cause, *upon 30 days written notice.* Such termination will merely terminate either party's and its Affiliates' ability to enter into new Enrollments under this agreement. Such termination will not affect any Enrollment or order not otherwise terminated, and any terms of this agreement applicable to any Enrollment or order not otherwise terminated will continue in effect with respect to that Enrollment or order. An Enrolled Affiliate may terminate an Enrollment without liability, penalty or further obligation to make payments if funds to make payments under the Enrollment are not appropriated or allocated for such purpose.

3. The Enterprise Agreement section 10. **Confidentiality**, the first paragraph is modified as follows:

    This agreement and all associated documents, that are not otherwise exempt under law, are considered public records and will be disclosed to the public in accordance with applicable laws, rules, and policies governing the West Virginia Purchasing Division. Disclosure includes, but is not limited to, publication of this agreement on the Purchasing Division's website immediately upon its execution Applicable laws include, but are not limited to, the Freedom of Information Act found in West Virginia Code section 29B 1 1 et.seq. Notwithstanding the foregoing, neither party will disclose the substance of any discussions that led to the terms 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.

4. The Enterprise Agreement, section 12. **Defense of infringement, misappropriation, and third party claims.** *Subsection c. Enrolled Affiliate's agreement to protect.* is hereby deleted in its entirety and replaced with the following:

    c. **Enrolled Affiliate's agreement to protect.** *To the extent permitted by West Virginia law,* Enrolled Affiliate will defend Microsoft and its Affiliates against any claims made by an unaffiliated third party that:

      (i) any Customer Data or non-Microsoft software Microsoft hosts on Customer's behalf infringes the third party's patent, copyright, or trademark or makes unlawful use of its Trade Secret; or

      (ii) Arises from violation of just the Acceptable use Policy, which is described in the Product Use Rights.

Customer will be responsible for the amount of any resulting adverse final judgment (or settlement to which it consents). This Section provides Microsoft's exclusive remedy for these claims *assessed by a court of competent jurisdiction.*

5. New Subsections 15. (r) Availability of funds. is hereby added to the agreement, as follows:

r. Availability of funds. *Each payment obligation of Customer or Customer's Affiliates is conditioned upon the availability of government funds which are appropriated or allocated for the payment of this obligation. Nothing in the section shall be construed to limit Microsoft's right to terminate one or more enrollments upon non-payment due to non-appropriation of funds, pursuant to section 7. Term and Termination, or to issue partial license confirmations in a quantity proportionate to the amount paid relative to the total prior to such termination, pursuant to subsection 7(d).*

6. The Enterprise Agreement Section 13. Limitation on liability is hereby restated and revised in its entirety

Limitation of liability.

a. **Limitation on liability.** To the extent permitted by applicable law, the liability of Microsoft and Enrolled Customer, their respective Affiliates and contractors arising under this agreement is limited to direct damages up to (1) for Products other than Online Services, two times (2x) the amount Enrolled Customer was required to pay for the Product giving rise to that liability and (2) for Online Services other than Office 365 Services, the amount Enrolled Affiliate paid for the Online Service giving rise to that liability during the prior 12 months. In the case of Products provided free of charge, or code that Enrolled Customer is authorized to redistribute to third parties without separate payment to Microsoft, Microsoft's liability is limited to U.S. $5,000. These limitations apply regardless of whether the liability is based on breach of contract, tort (including negligence), strict liability, breach of warranties, or any other legal theory. However, these monetary limitations will not apply to:

   (i) Microsoft's 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");

   (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 to the amount Enrolled Affiliate paid for the Online Service giving rise to that liability during the prior 12 months;

   (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 Customer 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 this Section 13(d):

(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) within the published recovery point objective for the Office 365 Services;*

(ii) *"Covered Disclosure," means disclosure of Customer Data as a result of a Successful Security Incident; and*

(iii) *"Security Incident" means any unlawful access to any Customer Data stored or transmitted on Microsoft's equipment or in Microsoft's facilities or unauthorized access to such equipment or facilities or transmissions resulting in loss, disclosure, or alteration of Customer Data.*

(iv) *"PII" means information or data, alone or in combination, that (a) identifies or authenticates a particular individual. PII may include, without limitation, name, date of birth, full address (e.g. house number, city, state, and/or zip code), passwords, PINs, biometric data, unique identification numbers (e.g., social security numbers, driver license numbers, credit or debit account numbers, medical record numbers), federal or state tax information, answers to security questions or other personal identifiers or (b) meets the definition ascribed to the term "Personal Information" under §6809(4) of the Gramm-Leach-Bliley Act.*

(v) *"Qualifying State Agencies" mean the West Virginia State Agencies listed in the following table:*

Qualifying State Agencies
WV Department of Administration
WV Office of Technology
Workforce West Virginia
WV Department of Tax and Revenue
WV Division of Rehab Services
WV Department of Military Affairs & Public Safety
WV Department of Environmental Protection
WV Department of Health & Human Resources
WV Department of Commerce
WV Department of Transportation
WV Department of Education and the Arts
WV Development Office

Solely for purposes of clarity related to the Office 365 Services, Section 13a of this Agreement, above, titled "Limitation of Liability," is hereby amended as follows.

(a) *the amendment to the monetary limitation of liability for the Office 365 Services will apply to Microsoft's liability arising out of or in relation to its breach of its obligations under this Agreement related to Customer Data;*

(b) *for Qualifying State Agencies enrolled as Enrolled Affiliates under this Agreement, the liability of each party, its Affiliates and its Contractors arising under an Enrollment shall be limited to direct damages up to the amount the Enrolled Affiliate paid during the prior 12 months for the Office 365 Services that gave rise to the liability. For*

purposes of clarity, notwithstanding the extent to which any component of Office 365 Services (e.g. Exchange Online) gives rise to liability, Microsoft's limitation of liability will be calculated using the whole monthly prices of each Office 365 Services SKU (including the monthly prices of Suites, rather than the components of such Suites) across all Enrollments under which Qualifying State Agencies have placed subscription orders. This change in the monetary limitation of liability for Office 365 Services will also apply to Microsoft's liability arising out of or in relation to Customer Data;

(c) *for all other Enrolled Affiliates, the liability of each party, its Affiliates and its Contractors arising under an Enrollment shall be limited to direct damages up to the amount the Enrolled Affiliate paid during the prior 12 months for the Office 365 Services that gave rise to the liability. For purposes of clarity, notwithstanding the extent to which any component of Office 365 Services (e.g. Exchange Online) gives rise to liability, Microsoft's limitation of liability will be calculated using the whole monthly prices of each Office 365 Services SKU (including the monthly prices of Suites, rather than the components of such Suites) on the impacted Enrollment for which the Enrolled Affiliate has placed subscription orders. This change in the monetary limitation of liability for Office 365 Services will also apply to Microsoft's liability arising out of or in relation to Customer Data.*

For purposes of this Section 13d, the following shall be deemed to be "direct damages" not subject to the exclusion of indirect or consequential damages as set forth above in Section 13b:

(1) *The following costs related to affected individuals whose Personally Identifiable Information (PII) is disclosed pursuant to a Covered Disclosure:*

    a. *Enrolled Affiliate's reasonable costs in notifying affected individuals of Covered Disclosure in which the data subjects' personally-identifiable information has been disclosed;*

    b. *Credit monitoring for up to twelve (12) months for affected individuals;*

    c. *Damages and fines assessed against Enrolled Affiliates 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 expected to be paid by government entities, given the nature and scope of the Security Incident involving a Customer Data breach of PII, as validated by an independent internationally recognized third party industry expert chosen by both parties.*

7. *The Enterprise Agreement Section 15.m. Privacy and Security.*

    m. **Privacy and security.** Microsoft and Enrolled Affiliate will each comply with all applicable privacy and data protection laws and regulations (including applicable security breach notification law). However, Microsoft is not responsible for compliance with any laws applicable to Enrolled Affiliate or Enrolled Affiliate's industry that are not also generally applicable to information technology services providers. Enrolled Affiliate consents to the processing of personal information by Microsoft and its agents to facilitate the subject matter of this agreement. Enrolled Affiliate may choose to provide personal information to Microsoft on behalf of third parties (including Enrolled Affiliate's contacts, resellers, distributors, administrators, and employees) as part of this agreement. Enrolled 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 Enrolled 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.

8. New Subsections 15. (s) **Litigation assistance.** is hereby added to the agreement, as follows:

s. Litigation assistance. *Microsoft shall provide commercially reasonable assistant to agency in the event of formal litigation or administrative proceedings against the Agency, its officers or employees based upon claimed violations of any applicable regulation or law attributable in whole or in part to Microsoft's performance of its obligations under this Enrollment, except to the extent Microsoft is named as an adverse party.*

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

Microsoft

Volume Licensing

Enterprise Agreement
Microsoft Online Services Security Amendment
Amendment ID CTM

Enterprise Agreement number *Microsoft to complete*	

000-AuGyg-S-036-b

This Microsoft Online Services Security Amendment ("*Amendment*") is entered into between the parties identified on the signature form for the agreement identified above ("*Agreement*"). The parties agree that the Amendment supplements the Agreement and applies to only the Microsoft Online Services, defined below, Customer buys under an Enterprise Enrollment under the Agreement.

Defined Terms

Capitalized terms used but not defined in this Amendment will have the meanings provided in the Enterprise Enrollment, Agreement, and applicable Microsoft Business Agreement/Microsoft Business and Services Agreement. The following definitions are used in this Amendment:

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

"Dynamics CRM Online Services" means Dynamics CRM Online volume licensing SKUs such as DynCRMOnln ALNG SubsVL MVL PerUsr (DSD-00001).

"End User" means an individual that accesses the Microsoft Online Services.

"Microsoft Online Services" for this Amendment only, means Office 365 Services and/or Dynamics CRM Online Services.

"Office 365 Services" means (a) Exchange Online, Exchange Online Archiving, SharePoint Online, Lync Online, and Office Web Apps included in Office 365 Enterprise Plans E1, E2, E3, E4, K1 and K2; and (b) Exchange Online Plans 1, 2, Basic and Kiosk; SharePoint Online Plans 1, 2 and 3; Office Web Apps Plans 1 and 2; and Lync Online Plans 1, 2 and 3. Office 365 Services do not include Office 365 ProPlus or any separately branded service made available with an Office 365-branded plan or suite.

1. Privacy

a. **Privacy practices.** Microsoft will comply with all laws and regulations applicable to its provision of the Microsoft Online Services (including applicable security breach notification law). However, Microsoft is not responsible for compliance with any laws applicable to Customer or Customer's industry that are not generally applicable to information technology services providers.

b. **Customer Data.** Microsoft will process Customer Data in accordance with the provisions of this Amendment and, except as stated in the Enrollment and this Amendment, Microsoft (a) will acquire no rights in Customer Data and (b) will not use 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 only to provide Customer the Microsoft Online Services. This may include troubleshooting aimed at preventing, detecting and repairing problems affecting the operation of the Microsoft Online 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, Microsoft will attempt to redirect the law enforcement agency to request that data 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 Microsoft Online Services, Customer may extract Customer Data and Microsoft will delete Customer Data, each in accordance with the Product Use Rights.

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 process Customer Data without authorization from Customer. 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 obligations of this Amendment. Any subcontractors to whom Microsoft transfers Customer Data, even those used for storage purposes, will have entered into written agreements with Microsoft requiring that the subcontractor abide by terms no less protective than this Amendment. Customer consents to Microsoft's transfer of Customer Data to subcontractors as described in this Amendment. Except as set forth above, or as Customer may otherwise authorize, Microsoft will not transfer to any third party (not even for storage purposes) personal data Customer provides to Microsoft through the use of the Microsoft Online Services.

2. Customer responsibilities.

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

3. 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 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 Microsoft Online Services 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).

5) **Event Logging.**

 A. Microsoft logs the use of our data-processing systems.

 B. Microsoft logs access and use of information systems containing Customer Data, registering the access ID, time, authorization granted or denied, and relevant activity.

(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.

 D. Microsoft ensures that where more than one individual has access to systems containing Customer Data, the individuals have separate identifiers/log-ins.

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.

 B. Microsoft stores passwords in a way that makes them unintelligible while they are in force.

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.**

A. 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.

B. Microsoft tracks disclosures of Customer Data, including what data has been disclosed, to whom, and at what time.

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) The security measures described in this Section 4 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.

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 audit the security of the computers and computing environment that it uses in processing Customer Data (including personal data) on the Microsoft Online Services and the physical data centers from which Microsoft provides the Microsoft Online Services. This audit: (a) will be performed at least annually; (b) will be performed according to ISO 27001 standards; (c) will be performed by third party security professionals at Microsoft's selection and expense; (d) will result in the

generation of an audit report ("*Microsoft Audit Report*"), 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 the Microsoft Audit Report ("*Summary Report*") so that Customer can reasonably verify Microsoft's compliance with the security obligations under this Amendment. The Summary Report is Microsoft confidential information.

(iv) Microsoft will make good faith, commercially reasonable efforts to remediate (a) any errors identified in a Microsoft Audit Report that could reasonably be expected to have an adverse impact on Customer use of the Microsoft Online Services and (b) material control deficiencies identified in the Microsoft Audit Report.

4. *Security Incident Notification*

a. If Microsoft becomes 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 promptly: (a) notify Customer of the Security Incident; (b) investigate the Security Incident and provide Customer with detailed information about the Security Incident; and (c) take reasonable steps to mitigate the effects and to minimize any damage resulting from the Security Incident.

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.

5. Additional Terms

a. **Data Location.** 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.

b. **Office 365 Services and Customer Data.** Office 365 Services shall not capture, maintain, scan, index, share or use Customer Data, or otherwise use any data-mining technology, for any activity not authorized under the Agreement. Office 365 Services shall not use Customer Data for any advertising or other commercial purpose of Microsoft or any third party. Office 365 Services will be logically separate from Microsoft's consumer online services. Unless expressly approved by Customer in advance, Customer Data will not be commingled with data in Microsoft's consumer online services or with data created by or resulting from Microsoft's scanning, indexing, or data-mining activities.

6. Miscellaneous

a. **Confidentiality.** Customer will treat the terms and conditions of this Amendment, the contents of the Microsoft Online Information Security Policy, the Microsoft Audit Report and the Summary Report as confidential and shall not disclose them to any third party except for Customer's auditors or consultants that need access to this information for the purpose of this business relationship as articulated in this Amendment and the Agreement.

b. **Term and termination.** This Amendment shall automatically terminate upon any termination or expiration of the Agreement.

c. **Order of precedence.** If there is a conflict between any provision in this Amendment and any provision in the Enterprise Enrollment, Agreement, applicable Microsoft Business Agreement/Microsoft Business and Services Agreement, or the Product Use Rights (including the linked Privacy and Security Supplement) for the Online Services, this Amendment shall control.

d. **Entire agreement.** Except for changes made by this Amendment, the Agreement remains unchanged and in full force and effect.

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

Microsoft

Volume Licensing

Enterprise Agreement
Amendment ID CTM
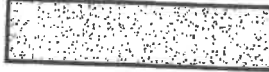
Agreement Number [_____]   [000-rudyg-6-036-c]

This Office 365 Security Incident amendment ("Office 365 SI Addendum") is entered into between the parties identified on the signature form for the agreement identified above ("Agreement"). The parties agree that the Office 365 SI Addendum supplements the Agreement and applies to only the Office 365 Services, defined below, Customer buys under an Enterprise Enrollment under the Agreement.

1. Definitions

Capitalized terms used but not defined in this Office 365 SI Addendum will have the meanings provided in the Enterprise Enrollment, Agreement, and applicable Microsoft Business Agreement/Microsoft Business and Services Agreement. The following definitions are used in this Office 365 SI Addendum:

"Customer Data" means all data, including all text, sound, or image files that are provided to Microsoft by, or on behalf of, Customer through Customer's use of the Office 365 Services.

"Office 365 Services" means Office 365 Plans 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 branded services.

2. Security Incident Notification

a. If Microsoft becomes 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: (i) promptly notify Customer of the Security Incident; (ii) investigate the Security Incident and provide Customer with detailed information about the Security Incident; and (iii) take reasonable steps to mitigate the effects and to minimize any damage resulting from the Security Incident.

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.

3. Limited Reimbursement for Customer Mitigation Costs

To the extent that a Security Incident results from Microsoft's failure to comply with its obligations under this Agreement, and subject to the limitations of liability set forth in this agreement, Microsoft will reimburse Customer for reasonable out-of-pocket remediation costs incurred by Customer in connection with that Security Incident. "Reasonable out-of-pocket remediation costs" are costs that (a) are customary, reasonable and expected to be paid by companies in Customer's industry, given the nature and scope of the Security Incident, (b) do not arise from Customer's violation of (i) laws applicable to Customer or (ii) Customer's obligations to third parties, and (c) in no event include costs arising (i) related to any Payment Card Industry-regulated data (including data covered by the Payment Card Industry Data Security Standard) or (ii) related to compliance with laws applicable to Customer or Customer's industry that are not generally applicable to information technology services providers. Customer must document all such expenditures and, upon Microsoft's request, those expenditures must be validated by an independent, internationally-recognized third party industry expert chosen by both parties. For avoidance of doubt, the costs reimbursed by Microsoft under this paragraph will be characterized as direct damages subject to the limitation on liability in the Master Agreement, and not as special damages excluded under the "EXCLUSION OF CERTAIN DAMAGES" in the Master Agreement.

4. Miscellaneous

a. **Confidentiality.** Customer will treat the terms and conditions of this Office 365 SI Addendum, as confidential and shall not disclose them to any third party except for Customer's auditors or consultants that need access to this information for the purpose of this business relationship as articulated in this Office 365 SI Addendum and the Agreement.

b. **Term and termination.** This Office 365 SI Addendum shall automatically terminate upon any termination or expiration of the Agreement.

c. **Order of Precedence.** If there is a conflict between any provision in this Office 365 SI Addendum and any provision in the Enterprise Enrollment, Agreement, or applicable Microsoft Business Agreement/Microsoft Business and Services Agreement, this Office 365 SI Addendum shall control.

d. **Entire Agreement.** Except for changes made by this Office 365 SI Addendum, the Agreement remains unchanged and in full force and effect.

This Amendment shall automatically terminate upon any termination or expiration of the Agreement. In addition, Microsoft shall have the right to immediately terminate an underlying Enterprise Enrollment in the event that an Enrolled Affiliate breaches any obligation in this Amendment. Except for changes made by this Amendment, the Agreement remains unchanged and in full force and effect.

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

Microsoft | Volume Licensing

Enterprise Agreement (Indirect)
Amendment ID CTM

000-rudyg-S-036-d

For the purposes of this Amendment, "Entity" means the signing entity, Customer, Enrolled Affiliate, Government Partner, Institution, or other party entering into a volume licensing program agreement. Notwithstanding anything to the contrary or in addition to any terms in the Agreement, the Agreement is amended as follows:

Microsoft and Entity agree Appendix A is hereby added to the Enterprise Agreement. Appendix A includes sample Amendments and forms including: Government Community Cloud Amendment and Product Selection Form ("GCC Amendment") and the Business Associate Enterprise Enrollment Amendment, M176 ("BAA"). The following terms and conditions apply to these sample Amendments included in Appendix A:

- The GCC Amendment must be included with the Enterprise Enrollment for Affiliates when ordering Office 365 for Government Online Services. Affiliates must work with Microsoft to validate eligibility to purchase Office 365 for Government Online Services.
- The BAA should be included as part of the Enrollment for Affiliates that purchase Office 365 Online Services if the Affiliate is governed by HIPAA.
- All of the Amendments below are included for reference only. The terms and conditions of the above referenced Amendments have been negotiated previously and cannot be changed without approval by Customer and Microsoft.

Appendix A

The following Enrollment amendments and forms are included for reference. The terms and conditions of the documents included below are not binding unless they are signed as part of an Enterprise Enrollment.

1. __Government Community Cloud Amendment and Product Selection Form__

Enterprise Enrollment (Indirect)
Amendment ID (CTM)

Proposal ID

For the purposes of this Amendment, "Entity" can mean the signing entity, Customer, Enrolled Affiliate, Government Partner, Institution, or other party entering into a volume licensing program agreement. Notwithstanding anything to the contrary or in addition to any terms in the Enrollment, the Enrollment is amended as follows:

Office 365 for Government

The following set of Terms applies to Entity when ordering Office 365 for Government Online Services.

1. ***Definitions:*** The following definitions are used in this Amendment and apply to documents incorporated by reference:

   "Office 365 for Government" means Microsoft's family of Office 365 Products that are provisioned in Microsoft's multi-tenant data centers for exclusive use by eligible US Federal, State, Local, and Tribal Government Customers only and offered in accordance with the "community cloud" definition as defined in the National Institute of Standards and Technology (NIST) Special Publication 800-145.

2. Office 365 for Governments Terms

For purposes of this Amendment Office 365 for Government, tables a and b, below, contains mappings for Office 365 for Government Online Services and their equivalent/corresponding Office 365 for Enterprise Online Services ("Equivalent Online Services." Each Office 365 for Government Online Service shown below is subject to the same terms and conditions as its corresponding Equivalent Online Service, except as otherwise provided in the applicable Product List and this Amendment. Notwithstanding references to Transitions and Reserved Licenses Entity's Enterprise Enrollment, Transitions and Reserved Licenses are not available at this time for Office 365 for Government through the Volume Licensing Service Center but may be available through a manual request process using a License Reservation Form to be provided by Microsoft upon request.

a. Office 365 for Government component Online Services— Equivalent Online Services Mapping

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Office 365 for Government Online Services	Office 365 Equivalent Online Services
Exchange Online Plan 1 G	Exchange Online Plan 1
Exchange Online Plan 2 G	Exchange Online Plan 2
Exchange Online Kiosk G	Exchange Online Kiosk
Exchange Online Archiving Add-On for on-premises servers G	Exchange Online Archiving Add-On for on-premises servers
Lync Online Plan 1 G	Lync Online Plan 1
Lync Online Plan 2 G	Lync Online Plan 2
Lync Online Plan 3 G	Lync Online Plan 3
SharePoint Online Plan 1 G	SharePoint Online Plan 1
SharePoint Online Plan 2 G	SharePoint Online Plan 2
Office Web Apps w/ SharePoint Plan 1 G	Office Web Apps w/ SharePoint Plan 1
Office Web Apps w/ SharePoint Plan 2 G	Office Web Apps w/ SharePoint Plan 2
Office Professional Plus for Office 365 G	Office Professional Plus for Office 365

b. Office 365 for Government Suites – Equivalent Enterprise Online Services Mapping

Office 365 for Government - Equivalent "Enterprise Online Services" Suites [1]	Office 365 Enterprise Online Services
Office 365 Plan G1	Office 365 Plan E1
Office 365 Plan G2	Office 365 Plan E2
Office 365 Plan G3	Office 365 Plan E3
Office 365 Plan G4	Office 365 Plan E4
Office 365 Plan K1 G	Office 365 Plan K1
Office 365 Plan K2 G	Office 365 Plan K2

[1] Office 365 for Government "Equivalent Online Services" Suite Orders (G1-G4) will be captured on a separate Product Selection Form.

3. **Office 365 Office 365 for Government Customer Requirements.**

Entity is a United States Federal, State, Local or Tribal government entity.

Enterprise and Enterprise Subscription Enrollment Product Selection Form – CTM Office 365 for Government

Step 1. Please indicate whether Enrolled Affiliate is ordering Enterprise Products or Office 365 for Government Online Services on the initial enrollment order. Choose both if applicable.

☐ **Enterprise Products.** Choose platform option: <Choose One>

Qualified Devices: **Qualified Users:**

☐ **Office 365 for Government Online Services**

Step 2. Select the Products and Quantities Enrolled Affiliate is ordering on its initial Enrollment Order. Quantity may not include any Licenses which Enrolled Affiliate has selected for optional future use, or to which it is transitioning or stepping up within enrollment

term. Products for which the Enrolled Affiliate has an option to transition or step-up should be listed in Step 3.

Products[1]	Quantity
Office Professional Plus	
Office Pro Plus	
Office Pro Plus for Office 365 G	
Office 365 Plans	
Office 365 (Plan G1)	
Office 365 (Plan G2)	
Office 365 (Plan G3)	
Office 365 (Plan G4)	
Client Access License (CAL). Choose 1 Option.	
☒ Core CAL, including Bridge CAL's (if applicable)	
Core CAL	
Core CAL Bridge for Office 365	
Core CAL Bridge for Windows Intune	
Core CAL Bridge for Office 365 and Windows Intune	
☐ Enterprise CAL (ECAL)	
ECAL	
ECAL Bridge for Office 365	
ECAL Bridge for Windows Intune	
ECAL Bridge for Office 365 and Windows Intune	
The Client Access License selection must be the same across the Enterprise. Specify whether licensing CAL per Device or User: User	
Windows Desktop	
Windows OS Upgrade	
Windows VDA	
Windows Intune	
Windows Intune	
Windows Intune Add-on[3]	
Other Enterprise Products	
Microsoft Desktop Optimization Pack (MDOP)[2]	

If selecting Windows Desktop, Enrolled Affiliate acknowledges the following:

a. The Windows Desktop Operating System Upgrade licenses offered through this Enrollment are not full licenses. The Enrolled Affiliate and any included Affiliates have qualifying operating system licenses for all devices on which the Windows Desktop Operating System Upgrade or Windows Intune licenses are run.

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

Step 3. Indicate new Enterprise Products and Online Services Enrolled Affiliate has selected for optional future use where not selected on the initial enrollment order (above):

Products[2]
☐ Office Pro Plus for Office 365 G
☐ Office 365 (Plan G1)
☐ Office 365 (Plan G2)
☐ Office 365 (Plan G3)
☐ Office 365 (Plan G4)
☐ Enterprise CAL (ECAL) Step-up, including Bridge CALs
☐ Windows Intune
☐ Windows Intune Add-on [3]

Step 4. Establish the Enrolled Affiliate's Price Level. Enrolled Affiliate must first count the quantity of Software Assurance and Licenses in each of the groups as described below by using the quantities entered in the above table. If Enrolled Affiliate does not order an Enterprise Product or Office 365 for Government Online Services associated with an applicable Product pool, the price level for Additional Products in the same pool will be price level "D" throughout the term of the Enrollment. Do not include Bridge CALs, as License quantities are determined by the corresponding Enterprise Online Service(s).

Products	Price Group	Qty from above	Qty	Price Level
Office Professional Plus + Office Professional Plus for Office 365 + Office 365 G (Plans G2–G4)	1		250 and Above	D
Client Access License + Office 365 (Plans G1-G4)	2			
Client Access License + Windows Intune Add-on G + Windows Intune	3			
Windows Desktop Upgrade + Windows VDA + Windows Intune	4			

Product Offering/Pool	Price Level
Enterprise Products and Enterprise Online Services: Set price level using the highest quantity from Groups 1 through 4	D
Additional Product Application Pool: Set price level using quantity from Group 1	D
Additional Product Server Pool: Set price level using the highest quantity from Group 2 or 3	D
Additional Product Systems Pool: Set price level using quantity from Group 4	D

[1] Additional Products may be included on the order, but are not selected on this form.
[2] Windows Intune Add-on requires purchase of Windows OS Upgrade or Windows VDA.
[3] MDOP requires purchase of Windows OS Upgrade, Windows VDA, or Windows Intune.

2. <u>Business Associate Enterprise Enrollment Amendment, M176</u>

Custom Business Associate Enterprise Enrollment Amendment
Amendment ID CTM

Proposal ID

This Amendment (this "Amendment") is entered into between the Parties identified on the signature form (individually, a "Party" and, collectively, the "Parties") for the Enrollment identified above (the "Enrollment").

The Microsoft Online Services provided to Customer require Microsoft to host Customer Data that may contain Protected Health Information. Customer is a Covered Entity or a Business Associate. To the extent Microsoft creates, receives, maintains, or transmits Protected Health Information, Microsoft is a Business Associate of Customer. As such, HIPAA requires Microsoft and Customer to comply with additional obligations under the Privacy Rule, Breach Notification Rule, and Security Rule that relate to the Use, access, and Disclosure of Protected Health Information.

The terms and conditions in this Amendment supersede any conflicting terms and conditions in Customer's Enrollment and supersede and replace any previous Enrollment amendments related to the subject matter of this Amendment. The Parties amend and supplement the Enrollment with the following:

1. Definitions.

Except as otherwise defined in this Amendment, any and all capitalized terms shall have the definitions set forth in HIPAA, and Customer's Enrollment.

"Breach Notification Rule" means the Breach Notification for Unsecured Protected Health Information Final Rule.

"Business Associate" shall have the same meaning as the term "business associate" in 45 CFR § 160.103 of HIPAA.

"Covered Entity" shall have the same meaning as the term "covered entity" in 45 CFR § 160.103 of HIPAA.

"Customer" means the customer identified on the signature form.

"HIPAA" collectively means the administrative simplification provision of the Health Insurance Portability and Accountability Act enacted by the United States Congress, and its implementing regulations, including the Privacy Rule, the Breach Notification Rule, and the Security Rule, as amended from time to time, including by the Health Information Technology for Economic and Clinical Health ("HITECH") Act and by the Modifications to the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules under the Health Information Technology for Economic and Clinical Health Act and the Genetic Information Nondiscrimination Act; Other Modifications to the HIPAA Rules; Final Rule.

"Microsoft Online Services" for this Amendment only, means Office 365 Services.

"Office 365 Services" means (a) Exchange Online, Exchange Online Archiving, SharePoint Online, Lync Online, and Office Web Apps included in Office 365 Enterprise Plans E1, E2, E3, E4, K1, and K2; Office 365 Midsize Business; Office 365 Small Business; and Office 365 Small Business Premium, and (b) Exchange Online Plans 1, 2, Basic, and Kiosk; SharePoint Online Plans 1 and 2; Office Web Apps Plans 1 and 2; and Lync Online Plans 1, 2, and 3. Office 365 Services do not include Office 365 ProPlus or any separately branded service made available with an Office 365-branded plan or suite.

"Privacy Rule" means the Standards for Privacy of Individually Identifiable Health Information.

"Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR § 160.103 of HIPAA, provided that it is limited to such protected health information that is received by Microsoft from, or created, received, maintained, or transmitted by Microsoft on behalf of, Customer.

"Security Rule" means the Security Standards for the Protection of Electronic Protected Health Information.

2. **Permitted Uses and Disclosures of Protected Health Information.**

   a. **Performance of the Enrollment for Microsoft Online Services.** Except as otherwise limited in this Amendment, Microsoft may Use and Disclose Protected Health Information for, or on behalf of, Customer as specified in the Enrollment.

   b. **Management, Administration, and Legal Responsibilities.** Except as otherwise limited in this Amendment, Microsoft may Use and Disclose Protected Health Information for the proper management and administration of Microsoft and/or to carry out the legal responsibilities of Microsoft, provided that any Disclosure may occur only if: (1) Required by Law; or (2) Microsoft obtains written reasonable assurances from the person to whom the Protected Health Information is Disclosed that it will be held confidentially and Used or further Disclosed only as Required by Law or for the purpose for which it was Disclosed to the person, and the person notifies Microsoft of any instances of which it becomes aware in which the confidentiality of the Protected Health Information has been breached.

3. **Responsibilities of the Parties with Respect to Protected Health Information.**

   a. **Microsoft's Responsibilities.** To the extent Microsoft is acting as a Business Associate, Microsoft agrees to the following:

      (i) **Limitations on Use and Disclosure.** Microsoft shall not Use and/or Disclose the Protected Health Information other than as permitted or required by the Enrollment and/or this Amendment or as otherwise Required by Law; provided that any such Use or Disclosure would not violate HIPAA if done by Customer, unless expressly permitted for Business Associates under HIPAA. Microsoft shall make reasonable efforts to Use, Disclose, and/or request the minimum necessary Protected Health Information to accomplish the intended purpose of such Use, Disclosure, or request.

      (ii) **Safeguards.** Microsoft shall: (1) use reasonable and appropriate safeguards to prevent inappropriate Use and Disclosure of Protected Health Information other than as provided for in this Amendment; and (2) comply with the applicable requirements of 45 CFR Part 164 Subpart C of the Security Rule.

      (iii) **Reporting.** Microsoft shall *promptly* report to Customer: (1) any Use and/or Disclosure of Protected Health Information that is not permitted or required by this Amendment of which Microsoft becomes aware; (2) any Security Incident of which it becomes aware, provided that notice is hereby deemed given for Unsuccessful Security Incidents and no further notice of such Unsuccessful Security Incidents shall be given; and/or (3) any Breach of Customer's Unsecured Protected Health Information that Microsoft may discover (in accordance with 45 CFR § 164.410 of the Breach Notification Rule). Notification of a Breach will be made without unreasonable delay, but in no event *more than five (5) business days after Microsoft determines that a Breach of Customer's Unsecured Protected Health Information has occurred.* Taking into account the level of risk reasonably likely to be presented by the Use, Disclosure, Security Incident, or Breach, the timing of other reporting will be made consistent with Microsoft's and Customer's legal obligations.

      For purposes of this Section, "Unsuccessful Security Incidents" mean, without limitation, pings and other broadcast attacks on Microsoft's firewall, port scans,

unsuccessful log-on attempts, denial of service attacks, and any combination of the above, as long as no such Incident results in unauthorized access, acquisition, Use, or Disclosure of Protected Health Information. Notification(s) under this Section, if any, will be delivered to contacts identified by Customer pursuant to Section 3b(ii) (Contact Information for Notices) of this Amendment by any means Microsoft selects, including through e-mail. Microsoft's obligation to report under this Section is not and will not be construed as an acknowledgement by Microsoft of any fault or liability with respect to any Use, Disclosure, Security Incident, or Breach.

As a condition of Microsoft's commitment to provide notification of a Breach no more than five (5) business days after Microsoft determines that a Breach of Customer's Unsecured Protected Health Information has occurred, Customer must provide Microsoft with the following information:

- *Customer's Microsoft Online Direct Routing Domain (MODRD) (i.e. *.onmicrosoft.com);*
- *Current contact information, including email and phone number, of the responsible Customer employee(s) that is to be notified in the case of Breach. This must be an individual or individuals and not a title.*

The contact information must be provided to Microsoft directly through Customer's responsible account manager and not within the Contact Information section of the Enrollment itself, and must remain up-to-date for Microsoft to provide notification as detailed in this section. Customer's account manager will provide the updated contact information to the responsible Microsoft business group through Customer's licensing executive.

(iv) **Subcontractors.** In accordance with 45 CFR §§ 164.502(e)(1)(ii) and 164.308(b)(2) of HIPAA, Microsoft shall require its Subcontractors who create, receive, maintain, or transmit Protected Health Information on behalf of Microsoft to agree in writing to: (1) the same or more stringent restrictions and conditions that apply to Microsoft with respect to such Protected Health Information; (2) appropriately safeguard the Protected Health Information; and (3) comply with the applicable requirements of 45 CFR Part 164 Subpart C of the Security Rule.

(v) **Disclosure to the Secretary.** Microsoft shall make available its internal practices, records, and books relating to the Use and/or Disclosure of Protected Health Information received from Customer to the Secretary of the Department of Health and Human Services for purposes of determining Customer's compliance with HIPAA, subject to attorney-client and other applicable legal privileges.

(vi) **Access.** If Microsoft maintains Protected Health Information in a Designated Record Set for Customer, then Microsoft, at the request of Customer, shall make access to such Protected Health Information available to Customer in accordance with 45 CFR § 164.524 of the Privacy Rule.

(vii) **Amendment.** If Microsoft maintains Protected Health Information in a Designated Record Set for Customer, then Microsoft, at the request of Customer, shall make available such Protected Health Information to Customer for amendment and incorporate any reasonably requested amendment in the Protected Health Information in accordance with 45 CFR § 164.526 of the Privacy Rule.

(viii) **Accounting of Disclosure.** Microsoft, at the request of Customer, shall make available to Customer such information relating to Disclosures made by Microsoft as required for Customer to make any requested accounting of Disclosures in accordance with 45 CFR § 164.528 of the Privacy Rule.

(ix) **Performance of a Covered Entity's Obligations.** To the extent Microsoft is to carry out a Covered Entity obligation under the Privacy Rule, Microsoft shall comply with the requirements of the Privacy Rule that apply to Customer in the performance of such obligation.

b. **Customer Responsibilities.**

(i) **No Impermissible Requests.** Customer shall not request Microsoft to Use or Disclose Protected Health Information in any manner that would not be permissible under HIPAA if done by a Covered Entity (unless permitted by HIPAA for a Business Associate).

(ii) **Contact Information for Notices.** Customer hereby agrees that any reports, notification, or other notice by Microsoft pursuant to this Amendment may be made electronically. *In addition to providing contact information for notices to Customer's Account Manager per Section 3(a)(iii) above,* Customer shall provide *the same* contact information *herein below and shall ensure that Customer's contact information remains up to date during the term of this Amendment by providing updated contract information* to MSO-HIPAA@microsoft.com or such other location or method of updating contact information as Microsoft may specify from time to time and shall ensure that Customer's contact information remains up to date during the term of this Amendment. Contact information must include *Customer's Microsoft Online Direct Routing Domain (MODRD),* name of individual(s) to be contacted, title of individuals(s) to be contacted, e-mail address of individual(s) to be contacted, name of Customer organization, and, if available, either contract number or subscriber identification number.

1) *Customer's Microsoft Online Direct Routing Domain (MODRD):* Click here to enter text.

2) *Name of individual(s) to be contacted:* Click here to enter text.

3) *Title of individual(s) to be contacted:* Click here to enter text.

4) *E-mail address of individual(s) to be contacted:* Click here to enter text.

5) *Name of Customer organization:* Click here to enter text.

6) *Contract number:* Click here to enter text.; *or subscriber identification number:* Click here to enter text.

(iii) **Safeguards and Appropriate Use of Protected Health Information.** Customer is responsible for implementing appropriate privacy and security safeguards to protect its Protected Health Information in compliance with HIPAA. Without limitation, it is Customer's obligation to:

1) Not include Protected Health Information in: (1) information Customer submits to technical support personnel or to community support forums; and (2) Customer's address book or directory information. In addition, Microsoft does not act as, or have the obligations of, a Business Associate under HIPAA with respect to Customer Data once it is sent to or from Customer outside Microsoft Online Services over the public Internet.

2) Implement privacy and security safeguards in the systems, applications, and software Customer controls, configures, and uploads into the Microsoft Online Services.

4. Applicability of Amendment.

As of the effective date of this Amendment, this Amendment is applicable to Microsoft Online Services. At such time as Microsoft is willing to enter into the terms of this Amendment with respect to other current or future Microsoft online services, Microsoft will notify Customer of the effective date that this Amendment will be applicable to such other Microsoft online services. Subsequent to the effective date identified in Microsoft's notice, and provided Customer has by that date entered into an agreement for such other Microsoft online services, this Amendment will apply to Customer's other Microsoft online services without additional action by Customer. Customer acknowledges that this Amendment is not effective as to an applicable Microsoft online service until Microsoft notifies Customer this Amendment is effective as specified in this Section 4. It is Customer's obligation to not store or process Protected Health Information in a Microsoft online service until on or after the date this Amendment is effective as to the applicable service.

5. Term and Termination.

a. **Term.** This Amendment shall continue in effect until the earlier of (1) termination by a Party for breach as set forth in Section 5b, below, or (2) expiration of Customer's Enrollment

b. **Termination for Breach.** Either Party immediately may terminate the Enrollment if the other Party is in material breach or default of any obligation in this Amendment that is not cured within *sixty (60)* calendar days written notice of such breach or default.

c. **Return, Destruction, or Retention of Protected Health Information Upon Termination.** Upon expiration or termination of this Amendment, Microsoft shall return or destroy all Protected Health Information in its possession, if it is feasible to do so, and as set forth in the applicable termination provisions of the Product Use Rights and/or Enrollment. If Microsoft determines that it is not feasible to return or destroy any portions of the Protected Health Information upon termination of this Amendment, then Microsoft shall extend the protections of this Amendment, without limitation, to such Protected Health Information and limit any further Use or Disclosure of the Protected Health Information to those purposes that make the return or destruction infeasible for the duration of the retention of the Protected Health Information.

6. Miscellaneous.

a. **Interpretation.** The Parties intend that this Amendment be interpreted consistently with their intent to comply with HIPAA and other applicable federal and state law. Except where this Amendment conflicts with the Enrollment, all other terms and conditions of the Enrollment remain unchanged. The Parties agree that, in the event an inconsistency exists between the Enrollment and this Amendment, the provisions of this Amendment will control to the extent of such inconsistency. Any captions or headings in this Amendment are for the convenience of the Parties and shall not affect the interpretation of this Amendment.

b. **Amendments; Waiver.** This Amendment may not be modified or amended except in a writing duly signed by authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, as a bar to, or as a waiver of any right or remedy as to subsequent events.

c. **No Third Party Beneficiaries.** Nothing express or implied in this Amendment is intended to confer, nor shall anything in this Amendment confer, upon any person other than the Parties, and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

d. **Counterparts.** This Amendment may be executed in counterparts, each of which shall be deemed an original.

e. **Severability.** In the event that any provision of this Amendment is found to be invalid or unenforceable, the remainder of this Amendment shall not be affected thereby, but rather the remainder of this Amendment shall be enforced to the greatest extent permitted by law.

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