



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

# Purchase Order

PURCHASE ORDER NO. MSMSELECT
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PAGE 1
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BLANKET RELEASE 00
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CORRECT PURCHASE ORDER NUMBER  
 MUST APPEAR ON ALL PACKAGES,  
 INVOICES, AND SHIPPING PAPERS.  
 QUESTIONS CONCERNING THIS PUR-  
 CHASE ORDER SHOULD BE DIRECTED  
 TO THE BUYER AS NOTED BELOW.

CHANGE ORDER
--------------

INVOICE TO

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

## AGENCY COPY

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		FEIN/SSN		FUND	
12/06/2013		NET 30		911144442			
SHIP VIA		F.O.B		FREIGHT TERMS		ACCOUNT NUMBER	
BEST WAY		DESTINATION		PREPAID		MUL-MUL	
LINE	QUANTITY	UOP	VENDOR ITEM NO.		UNIT PRICE	AMOUNT	
	DELIVERY DATE	CAT.NO.	ITEM NUMBER				
			MICROSOFT MASTER SERVICES AGREEMENT "SELECT"				
	12/06/2013		099-00-01-100				
	SOFTWARE, MASTER AGREEMENT SELECT						
	THIS BLANKET MASTER SERVICES AGREEMENT IS COMPRISED OF THE ATTACHED AGREEMENT.						
	THE AGREEMENT DOES NOT CONTAIN PRODUCT OR PRICING OF PRODUCT. AGENCY SHALL USE RESALE AGREEMENT IN PLACE AT TIME OF PURCHASE FOR PRODUCTS.						
PURCHASING DIVISION CERTIFIED ENCUMBERED  DEC 10 2013  <i>Beverly Toler</i>							

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

OPEN END

TOTAL

GUY NISBET

304-558-2596

BY

PURCHASING DIVISION AUTHORIZED SIGNATURE

APPROVED AS TO FORM BY  
 ASSISTANT ATTORNEY GENERAL



# Program Signature Form

MBA/MBSA number

Agreement number

014-jendunn-S-935

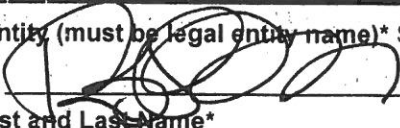
**Note:** Enter the applicable active numbers associated with the documents below. Microsoft requires the associated active number be indicated here, or listed below as new.

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

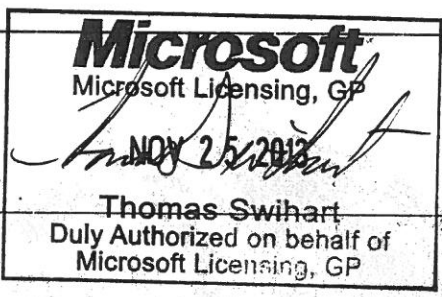
This signature form and all contract documents identified in the table below are entered into between the Customer and the Microsoft Affiliate signing, as of the effective date identified below.

Contract Document	Number or Code
Select Plus Agreement	X20-04874
<Choose Agreement>	Document Number or Code
<Choose Agreement>	Document Number or Code
<Choose Agreement>	Document Number or Code
<Choose Agreement>	Document Number or Code
Select Plus Affiliate Registration Form	X20-04921
<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 (New)
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 reviewed 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* 	Robert P. Paulson
Printed First and Last Name*	General Counsel
Printed Title	WV Department of Administration
Signature Date* 12/3/2013	
Tax ID	

\* indicates required field

Microsoft Affiliate	
Microsoft Licensing, GP	
Signature _____	 <p>Microsoft Microsoft Licensing, GP NOV 25 2013 Thomas Swihart Duly Authorized on behalf of Microsoft Licensing, GP</p>
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 2<sup>nd</sup> Customer signature or Outsourcer signature (if applicable)

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

\* indicates required field

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

\* indicates required field

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

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

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

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



## Select Plus License Program Agreement Amendment ID CTM

014-jendunn-S-935

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 Select Plus Agreement paragraph entitled "**Effective Date.**" is hereby amended and restated in its entirety as follows:

**Effective Date.** *The effective date of this Agreement is one day following the expiration of the previous Select Agreement, October 1, 2013.*

2. The Select Plus Agreement section 5. **How to know what Product Use Rights apply** the subsection **b. Reservation of rights**, is deleted and restated as follows:

**b. Reservation of rights.** All rights not expressly granted are reserved by Microsoft.

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

3. The Select Plus Agreement section Subsection 9. **(b) Termination without cause**, is deleted and restated as follows:

**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.

4. The Select Plus Agreement section 12. **Confidentiality**, the following is added:

*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.*

5. The Select Plus Agreement, section 14. **Defense of infringement and misappropriation 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 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.*

6. The Select Plus Agreement, **Section 18. Miscellaneous.** new subsections are hereby added to the agreement, as follows:

r. **Availability of funds.** *Each payment obligation of yours or your affiliate 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 our right to terminate one or more enrollments upon non-payment due to non-appropriation of funds, pursuant to section 9. 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 9(d).*

s. **Software Assurance Renewal orders.** *Notwithstanding anything to the contrary in the Select Plus Agreement or the Select Plus Affiliate Registration Form, Customer may submit a renewal orders for Software Assurance purchased under the prior Microsoft Select Agreement no later than December 30, 2013 so long as the effective date of Customer's usage date of that order starts one day following the expiration of the previous active Software Assurance coverage.*

7. The Select Plus Agreement Select Plus Affiliate Registration Form, page 1, the third (3<sup>rd</sup>) paragraph is deleted and replaced with the following:

*The registration form is valid when accepted by Microsoft and until it is terminated. Registered Affiliate will receive an acceptance notification confirming the effective date of this registration. Microsoft may refuse to accept a registration if there is a business reason for doing so. Either party may terminate this registration for any reason with 30 days advance written notice. Terminating this registration will terminate the Registered Affiliate's ability to place Orders under the agreement.*

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



# Select Plus Affiliate Registration Form

# State and Local

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

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

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

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

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

**Qualifying systems Licenses.** The operating system Licenses granted under this program are upgrade Licenses only. *Full operating system Licenses are not available under this program.* If Customer selects the Windows Desktop Operating System Upgrade, all qualified desktops on which the Customer runs the Windows Desktop Operating System Upgrade must be licensed to run one of the qualifying operating systems identified in the Product List at <http://www.microsoft.com/licensing/contracts>. Exclusions are subject to change when new versions of Windows are released.

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

## 1. Primary Contact Information.

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

- Name of entity\* State of West Virginia
- Contact name\*: First Last
- Contact email address\*
- Street address\*
- City\*
- State\*
- Postal code\*
- Country\*
- Phone\*

**Tax ID**

\* indicates required fields

**2. Notices and online administrator.**

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

 Same as primary contact
**Name of entity\*****Contact name\*: First Last****Contact email address\*****Street address\*****City\*****State\*****Postal code\*****Country\*****Phone\***

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

\* indicates required fields

**3. Language preference.**

Select the language for notices. English

**4. Reseller information.****Reseller company name\*** SHI International Corp**Street address (PO boxes will not be accepted)\*** 290 Davidson Ave**City\*** Somerset**State\*** NJ**Postal code\*** 08873**Country\*** USA**Contact name\*** Hunter Forsman**Phone\*** 888 764 8888**Contact email address\*** msteam@shi.com

\* indicates required fields

The undersigned confirms that the information is correct.

**Name of Reseller\*** SHI International Corp**Signature\*** **Printed name\*** Hunter Forsman**Printed title\*** Licensing Specialist**Date\***

\* indicates required fields

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



### 5. **Supplemental Contacts.**

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

### 6. **Software Assurance Membership Election.**

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

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

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

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



# Select Plus License Program Agreement State and Local

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

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

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

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

## Terms and Conditions

### 1. Definitions.

In this agreement the following definitions apply:

"Affiliate" means

a. with regard to Customer

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

(ii) any county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality established by the laws of Customer's state and located within Customer's state jurisdiction and geographic boundaries; and

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

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

"available" means, with respect to a Product, that Microsoft has made Licenses for that Product available for ordering under a particular licensing program;

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

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

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

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

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

"License" means Registered 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 entity that has entered into this agreement by accepting Customer's registration;

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

"Online Services" 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, with respect to any licensing program, 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 the program (which availability may vary by region) and any Product-specific conditions or limitations on the acquisition of licenses for those Products;

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

"Qualifying Contract," means (1) an Enterprise Enrollment under a Microsoft Enterprise Agreement; (2) any Enterprise Subscription Enrollment entered into under a Microsoft Enterprise Subscription Agreement, or a Select Agreement.

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

"Reseller" means a large account reseller authorized by Microsoft to resell Licenses in a Registered Affiliate's region 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 annuity offering that provides new version rights and other benefits for Products as described in the Product List;

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

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

## 2. **How the Select Plus License program works.**

The Select Plus License program allows Registered Affiliates to acquire Licenses at discount pricing. Customer and Customer's Affiliates can participate in this program if Customer or Customer's Affiliate (1) submits an Order meeting the initial minimum order quantity, (2) maintains at least one active Qualifying Contract, or (3) has purchased the minimum order quantity during the 12 months preceding the effective date of this agreement. Notwithstanding any other provision of this agreement, only Registered Affiliates identified in a Registration Form will be responsible for complying with the terms of that registration, including the terms of this agreement incorporated by reference in that registration.

- a. **How Registered Affiliates acquire Licenses.** A Registered Affiliate will acquire its Licenses through its chosen Reseller. Orders will be made out to and submitted to the Registered Affiliate's Reseller. Microsoft will invoice that Reseller according to the terms in the applicable registration. *The Reseller and the Registered Affiliate will determine the Registered Affiliate's actual price and payment terms.*
- b. **Choosing and maintaining a Reseller.** Each Registered Affiliate must choose and maintain a Reseller authorized in the Registered Affiliate's region.
- c. **Online Services.** Online Services are provided as subscription services and are subject to the unique terms set forth in the Product Use Rights and the Product List.

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

**Establishing price levels.** Each Product offering is assigned a point value on the Product List and is assigned to a Product pool. The Customer's price level for a pool applies to purchases made by all Registered Affiliates under this agreement. Throughout the term of this agreement, the Customer's price level for each Product and its associated Pool (Applications, Systems and Servers) will be level "D." Customer does not need to acquire Products in all pools. The price Microsoft will invoice Reseller will be based on Customer's price level for the pool of the Product ordered. *Throughout this agreement the term "price" refers to reference price.*

## 4. **License grant — what Registered Affiliates are licensed to run.**

Registered Affiliates have the rights below once their registration is accepted by Microsoft. These rights apply to the Licenses obtained under this agreement and are not related to any order of, or fulfillment of, software media.

The ability to run current or later versions of a Product licensed under this agreement could be affected by minimum system requirements or other factors (e.g., hardware or other software).

- a. **General.** At any time after their registration has been accepted by Microsoft, a Registered Affiliate may run for its own benefit as many copies as it chooses, of any available Products it chooses, provided that it submits Orders for all copies in the month in which those copies are first run.
- b. **Use by Affiliates.** A Registered Affiliate may sublicense the right to use the Products ordered under this agreement to any of its Affiliates, but Affiliates may not sublicense these rights and their use must be consistent with the License terms contained in this agreement.



**c. When Licenses become perpetual.**

- (i) **License only.** Registered Affiliate's right to run copies of any Product for which it orders only a License is temporary until the Registered Affiliate has paid for that License in full and Microsoft has collected such payment. Thereafter, Registered Affiliate will have a perpetual License to run the number of copies ordered in the version ordered.
- (ii) **L&SA or Software Assurance.** Registered Affiliate's right to run copies of any Product for which it orders L&SA or Software Assurance is temporary until:
  - 1) the Registered Affiliate has paid all installments of the price for such coverage and the Order or renewal term during which such Product Licenses were ordered has expired or been renewed or
  - 2) the Registered Affiliate is otherwise eligible for perpetual Licenses as provided in this agreement.

Thereafter, the Registered Affiliate will have perpetual Licenses to run the Products ordered in the latest versions available as of the date of expiration, renewal, or termination (or any prior version) for the number of copies ordered or renewed.

- (iii) **Subscription Licenses.** Subscription Licenses are not perpetual under any circumstances.

**d. Perpetual Licenses through Software Assurance.** Any perpetual Licenses received through Software Assurance supersede and replace the underlying perpetual Licenses for which that Software Assurance coverage was ordered. All perpetual Licenses acquired under this agreement remain subject to the terms of this agreement and the applicable Product Use Rights.

**e. Non-Perpetual Licenses.** Some Products may be licensed on a fixed term or subscription basis. The right to Use Products licensed on a subscription basis terminates upon expiration of the subscription agreement if it is not renewed.

**f. License confirmation.** This agreement, the applicable Order, the Registered Affiliate's Order confirmation, and any documentation evidencing transfers of Licenses, together with proof of payment, will be the Registered Affiliate's evidence of all Licenses obtained under its Order as described in this agreement.

**g. Prior version rights.** A Registered Affiliate may run prior versions of any Product it Licenses under this agreement. A Registered Affiliate may run different language versions of any Product it Licenses under this agreement, provided that the License, L&SA, or Software Assurance for that different language version is available at the same, or lower price, than the price paid for the language version ordered of the same Product and License type.

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

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

- (i) **Product Use Rights for current and future versions of Products.** The Product Use Rights in effect on the effective date of the agreement will apply to all Registered Affiliates' use of then-current versions of each Product, regardless of the date of the Order. 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 Registered Affiliates' use of that version.

- (ii) **Product Use Rights for earlier versions (downgrade).** If a Registered Affiliate runs an earlier version of a Product than the version that was current on the agreement effective

date, the Product Use Rights for the version licensed, not the version being run, will apply. However, if the earlier version includes components that are not part of the licensed version, any Product Use Rights specific to those components will apply to the Registered Affiliate's use of those components.

- b. **Reservation of rights.** All rights not expressly granted are reserved by Microsoft. In lieu of Customer's obligation to indemnify Microsoft under various provisions of the Product Use Rights, Customer will be responsible for any cost or damages arising from any claim to which Customer's indemnity obligation would otherwise apply.

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

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

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

- b. **When is the Registered Affiliate eligible to order just Software Assurance?** A Registered Affiliate may order Software Assurance for copies of a Product without the need to simultaneously order a new License for those copies, in each of the following circumstances:

(i) Registered Affiliate may order Software Assurance for copies of Products for which the Registered Affiliate has previously obtained perpetual Licenses through Upgrade Advantage, Software Assurance, or any similar upgrade protection, so long as the Order for Software Assurance under this Agreement becomes effective no later than one day following the expiration of that upgrade protection, and (2) Registered Affiliate submits an order for another term of Software Assurance for those Licenses prior to or at the expiration of the previous term.

(ii) During the term of the Agreement (including any renewal term), a Registered Affiliate may be eligible to order Software Assurance for copies of certain Products licensed through retail sources or from an original equipment manufacturer ("OEM"), provided that the Registered Affiliate places its Order within the required time frame. The Product List at <http://www.microsoft.com/licensing/contracts> identifies those Products that may be enrolled in Software Assurance and the applicable time frame for placing an Order.

(iii) A Registered Affiliate may also order Software Assurance in any other circumstances expressly permitted in the Product List.

(iv) A Registered Affiliate may renew Software Assurance ordered under this Agreement at the time it renews its Order as described in the section titled "How to renew an Order."

- c. **How to confirm Orders.** Information about Orders, including an electronic confirmation of each Order, will be provided in a password-protected site on the World Wide Web at <https://www.microsoft.com/licensing/servicecenter/> or a successor site that will be identified. Upon Microsoft's acceptance of this agreement, Registered Affiliate's contact identified for this purpose will be provided access to this site.

- d. **Invoices and payments.** For any Orders for Software Assurance or L&SA, if the Registered Affiliate elects to spread its payments over three years rather than payment in a lump sum, it may make this election with its Reseller. In such cases, Microsoft will invoice the Registered Affiliate's Reseller in installments, the first installment upon receipt of the Order and subsequent installments on each anniversary of the Order or the Affiliate anniversary month. Any amounts for Licenses only (i.e. without accompanying Software Assurance) will be invoiced to the Registered Affiliate's Reseller in full upon receipt of the Order.

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

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

- a. **General.** The Registered Affiliate may make as many copies of the Products as it needs to distribute them within its organization. Copies must be true and complete (including copyright and trademark notices), from master copies obtained from a Microsoft approved fulfillment source. The Registered Affiliate may use a third party to make these copies, but the Registered Affiliate agrees that it will be responsible for that third party's actions. The Registered Affiliate agrees to use reasonable efforts to make its employees, agents and any other individuals that it allows to use the Products aware that the Products are licensed from Microsoft and can only be transferred subject to the terms of this agreement.
- b. **Copies for training, evaluation, and back-up.** The Registered Affiliate may (1) use up to 20 complimentary copies of any Product in a dedicated training facility on its premises, (2) use up to 10 complimentary copies of any Product for a 60-day evaluation period, and (3) use one complimentary copy of any licensed Product for back-up or archival purposes for each of its distinct geographic locations.
- c. **Right to "re-image."** In certain cases, re-imaging is permitted using the volume licensing program Product media. If the Microsoft Product(s) is licensed (1) from an original equipment manufacturer (OEM), (2) as full packaged Product through a retail source, or (3) under another Microsoft program, then media provided under this agreement may be generally used to create images for use in place of copies provided through that separate source. This right is conditional upon the following:
- (i) Separate Licenses must be owned from the source for each Product that is re-imaged.
  - (ii) The Product, language, version and components of the copies made must be identical to the Product, language, version and all components of the copies they replace and the number of copies or instances of the re-imaged Product permitted remains the same.
  - (iii) Except for copies of an operating system and copies of Products licensed under another Microsoft program, the Product type (e.g., upgrade or full License) must be identical to the Product type from the separate source.
  - (iv) Any Product-specific requirements for re-imaging identified in the Product List.
  - (v) Re-images made under this subsection remain subject to the terms and use rights provided with the License from the separate source. This subsection does not create or extend any warranty or support obligation.

## 8. **Transferring and reassigning Licenses.**

- a. **License transfers.** License transfers are not permitted, except that Customer may transfer fully-paid perpetual licenses to:

**Transferring Licenses to third parties.** You may transfer fully-paid perpetual Licenses:

- (i) if you are an agency of a state or local government to: (a) any other government agency, department, instrumentality, division, unit or other office of your state or local government that is supervised by or is part of you, or which supervises you or of which you are a part, or which is under common supervision with you; (ii) any county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality established by the laws of your state and located within



your state's jurisdiction and geographic boundaries; and (iii) any other entity expressly authorized by the laws of your state to purchase under state contracts, or (b) an unaffiliated third party in connection with a privatization of an affiliate of agency as set forth in (a) above or of an operating division of the Enrolled Affiliate or one of its affiliates as set forth in (a) above, a reorganization, or a consolidation.

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.

**b. Internal Reassignment of Licenses and Software Assurance.**

(i) **For Products other than the desktop operating system upgrade.** For Products other than the desktop operating system upgrade, Registered Affiliate may internally reassign Licenses to an Affiliate. However, Registered Affiliate may not reassign Licenses on a short-term basis (90 days or less), or reassign Software Assurance or other upgrade coverage separately from the underlying License, except as provided otherwise in this agreement.

(ii) **For desktop operating systems.** The Registered Affiliate may not reassign desktop operating system upgrade Licenses from one computer to another. The Registered Affiliate may internally reassign Software Assurance coverage on desktop operating systems upgrades from the original computer to a replacement computer internally, as long as: (1) the replacement computer is licensed to run the latest version of that operating system, and (2) the Registered Affiliate removes any desktop operating system upgrades from the original computer.

**9. Term and termination.**

a. **Term.** This agreement will remain in effect unless it is terminated by either party as described below.

b. **Termination without cause.** Either party may terminate this agreement without cause upon 60 days written notice. Such termination will merely terminate either party's and its Registered Affiliates' ability to place Orders under this agreement. Such termination will not affect any Orders not otherwise terminated, and any terms of this agreement applicable to any Orders not otherwise terminated will continue in effect with respect to that Order.

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 breach.** Either party to an Order may terminate it if the other party materially breaches its obligations under this agreement, including any obligation to pay amounts owed. 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 a Registered Affiliate, Microsoft will give Customer a copy of that notice as well and Customer agrees to assist in attempting to resolve the problem. If the problem also affects other Affiliate registrations and cannot be resolved between Customer and Microsoft within a reasonable period of time, Microsoft may also terminate this agreement and all other Affiliate registrations under it, unless the basis for termination of the registration is non-appropriation of funds to the registered affiliate, in which event Microsoft may only terminate the affected registration(s). If a Registered Affiliate ceases to be an



Affiliate of Customer, Customer must promptly notify Microsoft of this fact, and Microsoft may terminate the divested Registered Affiliate's registration.

- e. **Affiliate termination.** If (1) a Registered Affiliate terminates its registration as a result of a breach by Microsoft, or (2) if Microsoft terminates Registered Affiliate's registration because it has ceased to be an Affiliate of Customer, or (3) Registered Affiliate terminates a registration for non-appropriation of funds, or (4) Microsoft terminates a registration for non-payment due to non-appropriation of funds, then the Registered Affiliate will have the following options with regard to any Orders it has under the agreement:
- (i) For Licenses available on a perpetual basis, it may immediately pay the total remaining amount due, including all installments, in which case the Registered Affiliate will have perpetual Licenses for all copies of the Products it has ordered, or
  - (ii) It may pay only amounts due as of the termination date, in which case the Registered Affiliate will have perpetual Licenses for:
    - 1) all copies of all Products for which payment has been made in full (including the latest version of Products under Software Assurance coverage), and
    - 2) the number of copies of Products it has ordered (including the latest version of Products under Software Assurance) for which payment has been made in installments that is proportional to the total of payments made versus total amounts due if the early termination had not occurred.

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

- f. **Effect of termination.** When this agreement, a registration or an Order is terminated:
- (i) Each affected Registered Affiliate must order Licenses for all copies of Products it has run for which it has not previously submitted an Order. Except for the options provided above in the event of termination of a Registered Affiliate's registration, any and all unpaid payments or any order of any kind, including subscription services, immediately become due and payable.
  - (ii) Registered Affiliate's right to Software Assurance benefits under this agreement ends for all Software Assurance for which payment has not been made in full.

## **10. How to renew an Order.**

Microsoft will provide prior notice of expiration of any Software Assurance ordered under the agreement advising Customer of its Software Assurance renewal options. Microsoft may make a change to this program that will make it necessary for Customer to enter into a new agreement to renew Software Assurance.

To maintain Software Assurance coverage for any copies previously ordered under this agreement, Registered Affiliate must submit an Order for another term of Software Assurance for those Licenses prior to or on the expiration of the previous term.

**Consequences of non-renewal.** If Registered Affiliate elects not to place another Order for Software Assurance and it otherwise allows Software Assurance for any copies of any Products licensed to lapse, then the Registered Affiliate will not be permitted to order Software Assurance for those copies later without first acquiring L&SA.

**Renewing Software Assurance.** If Registered Affiliate is placing an Order for Software Assurance from multiple Select programs or is consolidating multiple previous Enrollments or agreements into this agreement, please complete the multiple previous Enrollment form.

## 11. **Restrictions on use.**

### Registered Affiliate must not:

- a. separate and use the components of a Product on two or more computers, upgrade or downgrade components at different times, or transfer components separately, except as provided in the Product Use Rights;
- b. reverse engineer, decompile or disassemble any Product or Fix, except where applicable law permits it despite this limitation; or
- c. distribute, sublicense, rent, lease, lend, or host any Product or Fix except as permitted by this Agreement, the Product Use Rights, or in a separate written agreement

## 12. **Confidentiality.**

To the extent permitted by applicable law, the terms and conditions of this Agreement is 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.

### 13. **Warranties.**

- a. **Limited warranty.** Microsoft warrants that:
  - (i) Online Services will perform in accordance with the applicable Service Level Agreement;
  - (ii) Products other than Online Services will perform substantially as described in the applicable Microsoft user documentation; and
- b. **Limited warranty term.** The limited warranty for:
  - (i) Online Services is for the duration of Customer's use of the Online Service, subject to the notice requirements in the applicable Service Level Agreement;

- (ii) Products other than Online Services is one year from the date Customer first uses the Product; and
- c. **Limited warranty exclusions.** This limited warranty is subject to the following limitations:
  - (i) any implied warranties, guarantees or conditions not able to be disclaimed as a matter of law last for one year from the start of the limited warranty;
  - (ii) the limited warranty does not cover problems caused by accident, abuse or use in a manner inconsistent with this agreement or the Product Use Rights, or resulting from events beyond Microsoft's reasonable control;
  - (iii) the limited warranty does not apply to components of Products that Customer 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 Customer notifies Microsoft within the warranty term, then Microsoft will:
  - (i) for Online Services, provide the remedies identified in the Service Level Agreement for the affected Online Service;
  - (ii) for Products other than Online Services, at its option either (1) return the price paid or (2) repair or replace the Product; and

These are Customer'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.**

#### **14. 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.

## 15. **Limitation of liability.**

- a. **Limitation on liability.** To the extent permitted by applicable law, the liability of each party, its Affiliates, and its Contractors arising under this agreement is limited to direct damages up to (1) for Products other than Online Services, the amount Customer paid for the Product giving rise to that liability and (2) for Online Services, the amount Customer was required to pay 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 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 Customer's obligations under the section titled "Defense of infringement, misappropriation, and third party claims";
  - (ii) liability for damages caused by either party's gross negligence or willful misconduct, or that of its employees or its agents, and awarded by a court of final adjudication (provided that, in jurisdictions that do not recognize a legal distinction between "gross negligence" and "negligence," "gross negligence" as used in this subsection shall mean "recklessness");
  - (iii) liabilities arising out of any breach by either party of its obligations under the section entitled "Confidentiality", except that Microsoft's liability arising out of or in relation to Customer Data shall in all cases be limited to the amount Customer 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 Customer shall bring any action against the other's Affiliates or Contractors in respect of any matter disclaimed on their behalf in this agreement. Each party will indemnify the other in the event of any breach of this provision.

## 16. *Verifying compliance.*

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

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

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

## 18. *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 in this agreement. Notices will be treated as delivered on the date shown on the return receipt or on the courier or fax confirmation of delivery.

### Copies should be sent to:

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

Via Facsimile:(425) 936-7329

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



- f. **Applicable law; dispute resolution.** The terms of this agreement will be governed by the laws of Registered Affiliate's state, without giving effect to its conflict of laws. Disputes relating to this agreement will be subject to applicable dispute resolution laws of Registered Affiliate's state.
- g. **This agreement is not exclusive.** Customer is free to enter into agreements to license, use or promote non-Microsoft software.
- h. **Entire agreement.** This agreement, the Product List, all registrations under this agreement, and the Product Use Rights constitute the entire agreement concerning the subject matter and supersede any prior or contemporaneous communications. In the case of a conflict between any of these documents that is not resolved expressly in the documents, their terms will control in the following order: (1) these terms and conditions and the accompanying signature form; (2) the Product List; (3) the Product Use Rights; (4) all registrations under this agreement; and (5) all Orders submitted under this agreement. The terms of any purchase order or any general terms and conditions Customer maintains do not apply.
- i. **Survival.** Provisions regarding ownership and License rights, fees, Product use rights, restrictions on use, evidence of perpetual Licenses, transfer of Licenses, warranties, defense of infringement and misappropriation claims, limitations of liability, confidentiality, compliance verification, open source license restrictions, obligations on termination or expiration and the other provisions in this section entitled "Miscellaneous" will survive termination or expiration of this agreement and of any agreement in which they are incorporated.
- j. **No transfer of ownership.** Microsoft does not transfer any ownership rights in any licensed Product. Microsoft reserves all rights not specifically granted. The Products are protected by copyright and other intellectual property rights laws and international treaties.
- k. **Free Products.** It is Microsoft's intent that the terms of this agreement and the Product Use Rights be in compliance with all applicable federal law and regulations. Any free Product provided to Registered Affiliate is for the sole use and benefit of the Registered Affiliate, and is not provided for use by or personal benefit of any specific government employee.
- l. **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.
- m. **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.
- n. **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.

- o. Natural disasters.** In the event of a “natural disaster”, Microsoft may provide additional assistance or rights by posting on <http://www.microsoft.com> at such time.
- p. Copyright violation.** Except as set forth in section above entitled “Transferring and reassigning Licenses”, the Registered Affiliate agrees to pay for, and comply with the terms of this agreement and the Product Use Rights, for the Products it uses. Except to the extent Registered Affiliate is licensed under this agreement, it will be responsible for its breach of this contract and violation of Microsoft’s copyright in the Products, including payment of License fees specified in this agreement for unlicensed use.
- 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>.