



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

**Request for
 Quotation**

RFQ NUMBER
ENTPRZ08

PAGE
1

ADDRESS CORRESPONDENCE TO ATTENTION OF
**JO ANN ADKINS
 304-558-8802**

VENDOR

**RFQ COPY
 TYPE NAME/ADDRESS HERE**

SHIP TO

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

DATE PRINTED 05/08/2008	TERMS OF SALE	SHIP VIA	F.O.B.	FREIGHT TERMS
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BID OPENING DATE: **06/03/2008** BID OPENING TIME **01:30PM**

LINE	QUANTITY	UOP	CAT. NO.	ITEM NUMBER	UNIT PRICE	AMOUNT
0001	1	EA		099-00-01-001		
<p>LARGE ACCOUNT RESELLER FOR MICROSOFT ENTERPRISE AGMT</p> <p>REQUEST FOR QUOTATION</p> <p>FOR BLANKET OPEN-END STATEWIDE CONTRACT TO SUPPLY MICROSOFT PRODUCTS UNDER THE MICROSOFT ENTERPRISE AGREEMENT.</p> <p>THIS REQUEST FOR QUOTATION IS PER THE ATTACHED:</p> <p>1. REQUEST FOR QUOTATION - ENTPRZ08 SPECIFICATIONS (1 PAGE)</p> <p>2. MICROSOFT STATE AND LOCAL GOVERNMENT ENTERPRISE AGREEMENT - AMENDMENT 001, 15 PAGES.</p> <p>3. MICROSOFT ENTERPRISE AGREEMENT, 15 PAGES.</p> <p>4. ENTPRZ08 COST SHEET, 1 PAGE.</p> <p>***** INQUIRIES</p> <p>WRITTEN QUESTIONS SHALL BE ACCEPTED THROUGH CLOSE OF BUSINESS ON TUESDAY, MAY 20, 2008. QUESTIONS MAY BE SENT VIA USPS, FAX, COURIER OR EMAIL. IN ORDER TO ASSURE NO VENDOR RECEIVES AN UNFAIR ADVANTAGE, NO SUBSTANTIVE QUESTIONS WILL BE ANSWERED ORALLY. IF POSSIBLE, E-MAIL QUESTIONS ARE PREFERRED.</p> <p>ADDRESS INQUIRIES TO:</p>						

SEE REVERSE SIDE FOR TERMS AND CONDITIONS

SIGNATURE	TELEPHONE	DATE
TITLE	FEIN	ADDRESS CHANGES TO BE NOTED ABOVE

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<p>JO ANN ADKINS DEPARTMENT OF ADMINISTRATION PURCHASING DIVISION 2019 WASHINGTON STREET, EAST CHARLESTON, WV 25305 FAX: 304-558-4115 E-MAIL: JO.A.ADKINS@WV.GOV</p> <p>COST SHALL BE ENTERED ON THE ATTACHED COST SHEET, AND ALL REQUESTED INFORMATION SHOULD BE SUPPLIED WITH THE BID.</p> <p>EXHIBIT 3</p> <p>LIFE OF CONTRACT: THIS CONTRACT BECOMES EFFECTIVE ON AND EXTENDS FOR A PERIOD OF ONE (1 YEAR OR UNTIL SUCH "REASONABLE TIME" THEREAFTER AS IS NECESSARY TO OBTAIN A NEW CONTRACT OR RENEW THE ORIGINAL CONTRACT. THE "REASONABLE TIME" PERIOD SHALL NOT EXCEED TWELVE (12) MONTHS. DURING THIS "REASONABLE TIME" THE VENDOR MAY TERMINATE THIS CONTRACT FOR ANY REASON UPON GIVING THE DIRECTOR OF PURCHASING 30 DAYS WRITTEN NOTICE.</p> <p>UNLESS SPECIFIC PROVISIONS ARE STIPULATED ELSEWHERE IN THIS CONTRACT DOCUMENT, THE TERMS, CONDITIONS AND PRICING SET HEREIN ARE FIRM FOR THE LIFE OF THE CONTRACT.</p> <p>RENEWAL: THIS CONTRACT MAY BE RENEWED UPON THE MUTUAL WRITTEN CONSENT OF THE SPENDING UNIT AND VENDOR, SUBMITTED TO THE DIRECTOR OF PURCHASING THIRTY (30) DAYS PRIOR TO THE EXPIRATION DATE. SUCH RENEWAL SHALL BE IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THE</p>						

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<p>ORIGINAL CONTRACT AND SHALL BE LIMITED TO TWO (2) ONE (1) YEAR PERIODS.</p> <p>CANCELLATION: THE DIRECTOR OF PURCHASING RESERVES THE RIGHT TO CANCEL THIS CONTRACT IMMEDIATELY UPON WRITTEN NOTICE TO THE VENDOR IF THE COMMODITIES AND/OR SERVICE SUPPLIED ARE OF AN INFERIOR QUALITY OR DO NOT CONFORM TO THE SPECIFICATIONS OF THE BID AND CONTRACT HEREIN.</p> <p>OPEN MARKET CLAUSE: THE DIRECTOR OF PURCHASING MAY AUTHORIZE A SPENDING UNIT TO PURCHASE ON THE OPEN MARKET, WITHOUT THE FILING OF A REQUISITION OR COST ESTIMATE, ITEMS SPECIFIED ON THIS CONTRACT FOR IMMEDIATE DELIVERY IN EMERGENCIES DUE TO UNFORESEEN CAUSES (INCLUDING BUT NOT LIMITED TO DELAYS IN TRANSPORTATION OR AN UNANTICIPATED INCREASE IN THE VOLUME OF WORK.)</p> <p>QUANTITIES: QUANTITIES LISTED IN THE REQUISITION ARE APPROXIMATIONS ONLY, BASED ON ESTIMATES SUPPLIED BY THE STATE SPENDING UNIT. IT IS UNDERSTOOD AND AGREED THAT THE CONTRACT SHALL COVER THE QUANTITIES ACTUALLY ORDERED FOR DELIVERY DURING THE TERM OF THE CONTRACT, WHETHER MORE OR LESS THAN THE QUANTITIES SHOWN.</p> <p>ORDERING PROCEDURE: SPENDING UNIT(S) SHALL ISSUE A WRITTEN STATE CONTRACT ORDER (FORM NUMBER WV-39) TO THE VENDOR FOR COMMODITIES COVERED BY THIS CONTRACT. THE ORIGINAL COPY OF THE WV-39 SHALL BE MAILED TO THE VENDOR AS AUTHORIZATION FOR SHIPMENT, A SECOND COPY MAILED TO THE PURCHASING DIVISION, AND A THIRD COPY RETAINED BY THE SPENDING UNIT.</p> <p>BANKRUPTCY: IN THE EVENT THE VENDOR/CONTRACTOR FILES FOR BANKRUPTCY PROTECTION, THIS CONTRACT IS AUTOMATICALLY NULL AND VOID, AND IS TERMINATED WITHOUT FURTHER</p>						

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<p>ORDER.</p> <p>THE TERMS AND CONDITIONS CONTAINED IN THIS CONTRACT SHALL SUPERSEDE ANY AND ALL SUBSEQUENT TERMS AND CONDITIONS WHICH MAY APPEAR ON ANY ATTACHED PRINTED DOCUMENTS SUCH AS PRICE LISTS, ORDER FORMS, SALES AGREEMENTS OR MAINTENANCE AGREEMENTS, INCLUDING ANY ELECTRONIC MEDIUM SUCH AS CD-ROM.</p> <p>REV. 04/11/2001</p> <p>PURCHASING CARD ACCEPTANCE: THE STATE OF WEST VIRGINIA CURRENTLY UTILIZES A VISA PURCHASING CARD PROGRAM WHICH IS ISSUED THROUGH A BANK. THE SUCCESSFUL VENDOR MUST ACCEPT THE STATE OF WEST VIRGINIA VISA PURCHASING CARD FOR PAYMENT OF ALL ORDERS PLACED BY ANY STATE AGENCY AS A CONDITION OF AWARD.</p> <p>VENDOR PREFERENCE CERTIFICATE</p> <p>CERTIFICATION AND APPLICATION* IS HEREBY MADE FOR PREFERENCE IN ACCORDANCE WITH WEST VIRGINIA CODE, 5A-3-37 (DOES NOT APPLY TO CONSTRUCTION CONTRACTS).</p> <p>A. APPLICATION IS MADE FOR 2.5% PREFERENCE FOR THE REASON CHECKED:</p> <p>() BIDDER IS AN INDIVIDUAL RESIDENT VENDOR AND HAS RESIDED CONTINUOUSLY IN WEST VIRGINIA FOR FOUR (4) YEARS IMMEDIATELY PRECEDING THE DATE OF THIS CERTIFICATION; OR</p> <p>() BIDDER IS A PARTNERSHIP, ASSOCIATION OR CORPORA-</p>						

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<p>TION RESIDENT VENDOR AND HAS MAINTAINED ITS HEAD- QUARTERS OR PRINCIPAL PLACE OF BUSINESS CONTINUOUSLY IN WEST VIRGINIA FOR FOUR (4) YEARS IMMEDIATELY PRECEDING THE DATE OF THIS CERTIFICATION; OR 80% OF THE OWNERSHIP INTEREST OF BIDDER IS HELD BY ANOTHER INDIVIDUAL, PARTNERSHIP, ASSOCIATION OR CORPORATION RESIDENT VENDO WHO HAS MAINTAINED ITS HEADQUARTERS OR PRINCIPAL PLACE OF BUSINESS CONTINUOUSLY IN WEST VIRGINIA FOR FOUR (4) YEARS IMMEDIATELY PRECEDING THE DATE OF THIS CERTIFICATION; OR</p> <p>() BIDDER IS A CORPORATION NONRESIDENT VENDOR WHICH HAS AN AFFILIATE OR SUBSIDIARY WHICH EMPLOYS A MINIMUM OF ONE HUNDRED STATE RESIDENTS AND WHICH HAS MAINTAINED ITS HEADQUARTERS OR PRINCIPAL PLACE OF BUSINESS WITHIN WEST VIRGINIA CONTINUOUSLY FOR THE FOUR (4) YEARS IMMEDIATELY PRECEDING THE DATE OF THIS CERTIFICATION.</p> <p>B. APPLICATION IS MADE FOR 2.5% PREFERENCE FOR THE REASON CHECKED:</p> <p>() BIDDER IS A RESIDENT VENDOR WHO CERTIFIES THAT, DURING THE LIFE OF THE CONTRACT, ON AVERAGE AT LEAST 75% OF THE EMPLOYEES WORKING ON THE PROJECT BEING BID ARE RESIDENTS OF WEST VIRGINIA WHO HAVE RESIDED IN THE STATE CONTINUOUSLY FOR THE TWO YEARS IMMEDIATELY PRECEDING SUBMISSION OF THIS BID; OR</p> <p>() BIDDER IS A NONRESIDENT VENDOR EMPLOYING A MINIMUM OF ONE HUNDRED STATE RESIDENTS OR IS A NONRESIDENT VENDOR WITH AN AFFILIATE OR SUBSIDIARY WHICH MAINTAINS ITS HEADQUARTERS OR PRINCIPAL PLACE OF BUSINESS WITHIN WEST VIRGINIA EMPLOYING A MINIMUM OF ONE HUNDRED STATE RESIDENTS WHO CERTIFIES THAT, DURING THE LIFE OF THE CONTRACT, ON AVERAGE AT LEAST</p>						

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<p>75% OF THE EMPLOYEES OR BIDDERS' AFFILIATE'S OR SUBSIDIARY'S EMPLOYEES ARE RESIDENTS OF WEST VIRGINIA WHO HAVE RESIDED IN THE STATE CONTINUOUSLY FOR THE TWO YEARS IMMEDIATELY PRECEDING SUBMISSION OF THIS BID.</p> <p>BIDDER UNDERSTANDS IF THE SECRETARY OF TAX & REVENUE DETERMINES THAT A BIDDER RECEIVING PREFERENCE HAS FAILED TO CONTINUE TO MEET THE REQUIREMENTS FOR SUCH PREFERENCE, THE SECRETARY MAY ORDER THE DIRECTOR OF PURCHASING TO: (A) RESCIND THE CONTRACT OR PURCHASE ORDER ISSUED; OR (B) ASSESS A PENALTY AGAINST SUCH BIDDER IN AN AMOUNT NOT TO EXCEED 5% OF THE BID AMOUNT AND THAT SUCH PENALTY WILL BE PAID TO THE CONTRACTING AGENCY OR DEDUCTED FROM ANY UNPAID BALANCE ON THE CONTRACT OR PURCHASE ORDER.</p> <p>BY SUBMISSION OF THIS CERTIFICATE, BIDDER AGREES TO DISCLOSE ANY REASONABLY REQUESTED INFORMATION TO THE PURCHASING DIVISION AND AUTHORIZES THE DEPARTMENT OF TAX AND REVENUE TO DISCLOSE TO THE DIRECTOR OF PURCHASING APPROPRIATE INFORMATION VERIFYING THAT BIDDER HAS PAID THE REQUIRED BUSINESS TAXES, PROVIDED THAT SUCH INFORMATION DOES NOT CONTAIN THE AMOUNTS OF TAXES PAID NOR ANY OTHER INFORMATION DEEMED BY THE TAX COMMISSIONER TO BE CONFIDENTIAL.</p> <p>UNDER PENALTY OF LAW FOR FALSE SWEARING (WEST VIRGINIA CODE 61-5-3), BIDDER HEREBY CERTIFIES THAT THIS CERTIFICATE IS TRUE AND ACCURATE IN ALL RESPECTS; AND THAT IF A CONTRACT IS ISSUED TO BIDDER AND IF ANYTHING CONTAINED WITHIN THIS CERTIFICATE CHANGES DURING THE TERM OF THE CONTRACT, BIDDER WILL NOTIFY THE PURCHASING DIVISION IN WRITING IMMEDIATELY.</p> <p>BIDDER: -----</p>						

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<p>DATE: -----</p> <p>SIGNED: -----</p> <p>TITLE: -----</p> <p>* CHECK ANY COMBINATION OF PREFERENCE CONSIDERATION(S) IN EITHER "A" OR "B", OR BOTH "A" AND "B" WHICH YOU ARE ENTITLED TO RECEIVE. YOU MAY REQUEST UP TO THE MAXIMUM 5% PREFERENCE FOR BOTH "A" AND "B". (REV. 12/00)</p> <p style="text-align: center;">NOTICE</p> <p>A SIGNED BID MUST BE SUBMITTED TO:</p> <p style="text-align: center;">DEPARTMENT OF ADMINISTRATION PURCHASING DIVISION BUILDING 15 2019 WASHINGTON STREET, EAST CHARLESTON, WV 25305-0130</p> <p>THE BID SHOULD CONTAIN THIS INFORMATION ON THE FACE OF THE ENVELOPE OR THE BID MAY NOT BE CONSIDERED:</p> <p>SEALED BID</p>						

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LINE	QUANTITY	UCP	CAT NO	ITEM NUMBER	UNIT PRICE	AMOUNT
BUYER:				FILE 42		
RFQ. NO.:				ENTPRZ08		
BID OPENING DATE:				JUNE 3, 2008		
BID OPENING TIME:				1:30PM		
PLEASE PROVIDE A FAX NUMBER IN CASE IT IS NECESSARY TO CONTACT YOU REGARDING YOUR BID:						

CONTACT PERSON (PLEASE PRINT CLEARLY):						

***** THIS IS THE END OF RFQ ENTPRZ08 ***** TOTAL: _____						

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SPECIFICATIONS

LARGE ACCOUNT RESELLER FOR MICROSOFT ENTERPRISE AGREEMENT

Purpose: To contract with a Microsoft Large Account Reseller for the procurement of Microsoft products under the Microsoft Enterprise Agreement. A Large Account Reseller is defined by Microsoft as a reseller authorized by Microsoft or one of its affiliates to resell licenses in an enrolled affiliate's area under the Microsoft Enterprise Agreement.

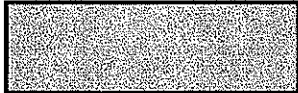
The Contract will establish unit pricing for all Microsoft products in all product pools, for both standard perpetual licenses as well as for Upgrade Advantage licenses. The prices will be based upon the percentage discounted from the Microsoft ERP prices. Vendors must propose discounts for each product pool. If Microsoft Corporation introduces new products, the discounts established by this RFQ and Contract will be applied to new product prices to determine product pricing under the State's Enterprise Agreement.

1. Vendor must be an authorized Large Account Reseller recognized by Microsoft.
2. The Vendor must have a minimum of 24 months experience as a LAR in servicing Microsoft Enterprise and Select Agreements in state government in the past three years.
3. Within the past 5 years, the Vendor must have a minimum of 24 months experience providing comprehensive account management services similar to those described below to its Select and Enterprise customers.
4. Account Management Services to be provided by the LAR must include, at least, the following:
 - Orientation and planning sessions regarding enrollment benefits, terms and conditions, service elements;
 - Work directly with enrollees to satisfy compliance verification requirements;
 - Ad hoc reporting;
 - Availability of a Select/Enterprise/Academic licensing expert that can be contacted by telephone;
 - Value added services (e.g. training and instruction on licensing of products and services, announcement on new products and their uses, presentations, etc.)

Microsoft State and Local Government

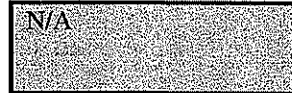
Enterprise **Agreement – Amendment 001**

Enterprise Agreement number
Microsoft affiliate to complete



Microsoft Business Agreement number
(if applicable)
Reseller or software advisor to complete

N/A



This amends the Microsoft State and Local Government Enterprise Agreement identified above (the "agreement") between **State of West Virginia** and Microsoft Licensing, GP. Any terms that are used but not defined in this amendment will have the same meanings as in the agreement.

I. Amendment.

1. The following definitions are hereby added to Section 1 of the agreement

"aggregate family desktop count" means, with respect to a particular product family as of a particular annual pricing date, the aggregate number of qualified desktops under all unexpired enrollments for which one or more products in such family are chosen as enterprise products as of such date, including both (i) the original qualified desktops ordered under such unexpired enrollments, plus (ii) any additional qualified desktops added pursuant to true up orders;

"adjustment multiplier" means, with respect to a product family on the second anniversary of the effective date of an enrollment for which it is determined, a number by which the initial annual reference price is multiplied in order to determine the reference price, for the third annual installment payment, pursuant to the terms and conditions of Section 18(m);

"annual pricing date" means each of the following:

- (i) The effective date of this agreement (the "first annual pricing date");;
- (ii) the first day of the eleventh (11th) full calendar month following such first annual pricing date (the "second annual pricing date"); and
- (iii) the first day of the calendar month that occurs every 12 months following the second annual pricing date, until the last enrollment executed hereunder expires or is otherwise terminated.

For example, if first annual pricing date is October 1, 2004, then the second annual pricing date shall be September 1, 2005, and each subsequent annual pricing date shall occur on September 1 of each successive calendar year until the last enrollment hereunder expires or is otherwise terminated;

"annual price level" means, with respect to a particular product family and as of a particular annual pricing period, the volume discount level, determined pursuant to the terms and conditions of Section 18(m), by which each of the following shall be determined, based upon the aggregate family desktop count for such product family as of the annual pricing date upon which such the determination of such level for such period is made:

- (i) the initial annual reference prices of enterprise products in such product family for new enrollments with effective dates which occur in such annual pricing period; and

(ii) the adjustment multiplier with respect to enterprise products in such product family for previously-executed enrollments (i) which have effective dates on or after the first annual pricing date and (i) for which the second anniversary falls in such annual pricing period;

“annual pricing period” means each period which:

- (i) begins on the first annual pricing date, or any anniversary thereof; and
- (ii) ends twelve (12) full calendar months following the day it begins.

For example, because first annual pricing date is October 1, 2004, then: the first annual pricing period will run from October 1, 2004 to September 30, 2005; the second annual pricing period will run from October 1, 2005 to September 30, 2006; and so forth.

Note that, with the exception of the first annual pricing period, each annual pricing period begins one month following the annual pricing date upon which the annual price level for such period is determined pursuant to Section 18(m). Such one-month period is necessary for us to: (i) count the aggregate number of qualified desktops enrolled by West Virginia state and local government entities in enterprise enrollments, (ii) calculate the annual price levels and reference prices for the subsequent annual pricing period, and (iii) implement adjustments, if any, to the reference prices of third year installment payments for enrollments whose second anniversary falls in such subsequent period.

“CAL family” means any of the following client access license (“CAL”) products, when such products are chosen as enterprise products on an enrollment: (i) Microsoft Core CAL; (ii) Microsoft Windows Server CAL; (iii) Microsoft Exchange Server CAL; (iv) Microsoft SQL Server CAL; (v) Microsoft Systems Management Server CAL; or (vi) Microsoft SharePoint Portal Server CAL;

“component platform product” means any of the following enterprise products:

- (i) Microsoft Office Professional;
- (ii) Microsoft Office Standard;
- (iii) Microsoft Windows XP Professional Operating System Upgrades; and
- (iv) Microsoft Core CAL (or, when purchased together under a single enrollment, the following: (Microsoft Windows Server CAL, Microsoft Exchange CAL; Microsoft Systems Management CAL, and Microsoft SharePoint Portal Server CAL).

“ending price level” means, with respect to an enterprise product ordered pursuant to a particular enrollment, the volume discount level used to determine the adjustment multipliers applied to apply to the third year installments payment, second anniversary true up payment, and third anniversary true up payment, respectively, pursuant to the terms and conditions of Subsection 18(m)(4).

“Government EA Price List” means the Microsoft State and Local Government Enterprise Agreement Price List that is provided on a monthly basis to each reseller, which contains the reference prices for both enterprise products and additional products.

“initial annual reference price” means, with respect to an enterprise product ordered pursuant to a particular enrollment, the annual per-desktop unit reference price for the first and second annual payments.;

“initial price level” means, with respect to each enterprise product licensed pursuant to a an enrollment executed hereunder, the volume discount level used to determine the initial annual reference price for such enterprise product;

"Microsoft Core Client Access License" and "Core CAL" means each of the following client access license products, when purchased together as a suite: (i) Windows CAL; (ii) Exchange CAL; (iii) SharePoint CAL; and (iv) SMS CAL;

"non-renewal enrollment" means any enrollment executed hereunder that is not a renewal enrollment;

"Office family" means either of the following enterprise products: (i) Microsoft Office Professional; or (ii) Microsoft Office Standard;

"original true up reference price" means, with respect to an enterprise product at the first, second or third anniversaries of an enrollment, respectively, the original per-additional-desktop unit reference price for the true up order due at such anniversary, as determined at the effective date of such enrollment pursuant to Section 18(m);

"platform enrollment" means any enrollment executed hereunder for which each of the following is a chosen enterprise product:

- (i) either (a) Office Standard or (b) Office Professional; and
- (ii) Microsoft Windows Professional desktop operating system; and
- (iii) Microsoft Core CAL;

"product family" means any of the following collections of enterprise products, as defined above: (i) Office family; (ii) Windows family; and/or (iii) CAL family;

"renewal enrollment" means an enrollment executed hereunder pursuant to which a renewal order for enterprise products is made;

"Select Price List" means the Microsoft Select Agreement Price List that is provided on a monthly basis to each reseller, which contains the estimated retail prices for products made available pursuant to the Microsoft select program;

"unexpired enrollment" means, with respect to an annual pricing date, an enterprise enrollment under either (i) this agreement; or (ii) another Microsoft Enterprise Agreement to which either you or one of your affiliates is party, provided that such enrollment shall not have expired or been terminated prior to such annual pricing date; and

"Windows family" means the following enterprise product: Microsoft Windows XP Professional desktop operating system (or its successor).

2. The last paragraph in Section 7 is hereby amended and restated as follows:

We will provide each enrolled affiliate with a copy of the applicable product use rights or will make them available either by publication on the World Wide Web, at <http://microsoft.com/licensing> or at a successor site that we identify, or by some other reasonable means. You acknowledge that you and your affiliates have access to the World Wide Web. We do not transfer any ownership rights in any licensed product, and we reserve all rights not expressly granted. 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.

3. Section 13 is hereby amended and restated in its entirety as follows:

The terms and conditions of this agreement shall be disclosed only in accordance with the requirements and procedures of the West Virginia Freedom of Information Act.

4. The second paragraph of Section 15 is hereby amended and restated as follows:

Our obligations will not apply to the extent that the claim or adverse final judgment is based on (i) your running of the product or fix after we notify you to discontinue running due to such a claim; (ii) your combining the product or fix with a non-Microsoft product, data or business process; (iii) damages attributable to the value of the use of a non-Microsoft product, data or business process; (iv) your altering the product or fix; (v) your distribution of the product or fix to, or its use for the benefit of, any third party; (vi) your use of our trademark(s) without express written consent to do so; or (vii) for any trade secret claim, your acquiring a trade secret (a) through improper means; (b) under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (c) from a person (other than us or our affiliates) who owed to the party asserting the claim a duty to maintain the secrecy or limit the use of the trade secret. You will be responsible for any costs or damages *assessed by a court of competent jurisdiction* that result from these actions.

5. A new Subsection 16(d) is hereby added to the agreement, as follows:

No services. *Notwithstanding the foregoing, you represent that you are unable to release Microsoft from any liability for bodily injury and/or personal property damage resulting from negligent or intentional acts or omissions of its employees performing services, if any, set forth under this Agreement to the extent that such actions or omissions were not caused by you or an enrolled affiliate. You acknowledge and agree that this agreement governs the license of software products only and we do not provide any services under this agreement.*

6. A new Subsection 18(l) is hereby added to the agreement, as follows:

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 this 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 subsection 10(b), 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 10(c).*

7. A new Section 18(m) is hereby added to the agreement, as follows:

Determination of pricing for enterprise products.

(1) Annual price levels. For each product family and for each annual pricing period, we will determine an annual price level, pursuant to Table 1 in Addendum A, by matching the aggregate family desktop count for such family (as of the annual pricing date which immediately precedes such annual pricing period) with the column marked "Annual Price Level Name."

For example, the annual price level for the Office family during an annual pricing period that runs between October 1, 2005 and September 30, 2006, shall be determined according to Table 1 in Addendum A by counting the aggregate number of qualified desktops, in unexpired enrollments which contain Microsoft Office or Microsoft Office Professional as enterprise products, as of September 1, 2005. If such aggregate count is less than 14,999 qualified desktops, the annual price level will be "Level C"; and if the count is between 15,000 and 39,999, the annual price level will be the "Level D," and so forth.

(2) Establishing component product reference prices for new enrollments. The Government EA Price List provided to resellers generally contains reference prices for the following common enterprise products:

- Microsoft Office Professional;
- Microsoft Windows XP Professional Operating System Upgrades;
- Microsoft Core CAL; and
- Microsoft Desktop Professional (which is a suite composed of the preceding three component products, and the reference price for which is equal to the sum of the three component reference prices less the applicable platform discount).

For the purposes of the agreement, the Government EA Price List entry for Microsoft Desktop Professional shall not apply, since this section 18(m) provides an alternate and equivalent means by which the three component products thereof shall be priced. Rather, the components of Microsoft Desktop Professional shall be sold as separate line items to the reseller. This is necessary in order that the annual price levels which apply to each of the three product families which contain the components may be adjusted separately, as set forth below.

On each annual pricing date, we will establish a list of initial annual reference prices and original true up reference prices for enterprise products (collectively, "initial reference prices") for each of the most commonly requested enterprise products, plus any other enterprise products for which you may have requested reference prices. We will provide you and your reseller(s) with such initial reference prices, and will also provide your reseller(s) with the corresponding confidential reseller costs which correspond to such initial reference prices

Such initial reference prices shall apply to all new enrollments with effective dates during the annual pricing period which immediately follows such annual pricing date, but not to enrollments with effective dates thereafter, unless different initial reference prices are agreed upon in writing between us and an enrolled affiliate (or you) based upon certain exceptions to standard terms including (but not limited to) applied credits and/or consideration for unexpired Software Assurance owned by the enrolled affiliate as of the effective date of its enrollment.

Initial reference prices for each enterprise product shall be calculated, using the following formulas, using such product's standard license estimated retail price ("L") (except as noted in the following sentence) and one-year Software Assurance estimated retail price ("SA") pursuant to the Select Price List which is in effect as of the annual pricing date upon which the determination

is being made. For the purposes of determining the value of "L" solely with respect to the Windows Professional Upgrade, sixty percent (60%) of the Select estimated retail price of such Upgrade shall be used. The Select volume discount level to be used for such L and SA price (level C or D) shall be determined pursuant to Table 1 in Addendum A by matching the aggregate family desktop count for the applicable product family (as of the annual pricing date which immediately precedes such annual pricing period) with the column marked "EA / Select Price List Volume Level."

- (i) for orders of License & Software Assurance on an initial order made pursuant to a non-renewal enrollment, the initial annual reference price shall be calculated according to the following formula:

$\{ [L + (3 \times SA)] \times 0.85$, divided by 3 }, less an additional premium level discount (if applicable) and/or platform discount (if applicable) pursuant to the terms and conditions below governing such additional discounts.

- (ii) for orders of Software Assurance on an initial order made pursuant to a renewal enrollment, the initial annual reference price shall be calculated according to the following formula:

$SA \times 0.95$, less an additional premium level discount (if applicable) and/or platform discount (if applicable) pursuant to the terms and conditions below governing such additional discounts;

- (iii) for orders of License & Software Assurance on the first anniversary true up order made pursuant to either a renewal enrollment or a non-renewal enrollment, the original true up reference price shall be calculated according to the following formula:

$\{ L + (2.5 \times SA) \} \times 0.85$, less an additional premium level discount (if applicable) and/or platform discount (if applicable) pursuant to the terms and conditions below governing such additional discounts;

- (iv) for orders of License & Software Assurance on the second anniversary true up order made pursuant to either a renewal enrollment or a non-renewal enrollment, the original true up reference price shall be calculated according to the following formula:

$\{ L + (1.5 \times SA) \} \times 0.85$, less an additional premium level discount (if applicable) and/or platform discount (if applicable) pursuant to the terms and conditions below governing such additional discounts; and

- (v) for orders of License & Software Assurance on the third anniversary true up order made pursuant to either a renewal enrollment or a non-renewal enrollment, the original true up reference price shall be calculated according to the following formula:

$\{ L + (0.5 \times SA) \} \times 0.85$, less an additional premium level discount (if applicable) and/or platform discount (if applicable) pursuant to the terms and conditions below governing such additional discounts.

The results of each of the above calculations will be rounded to the nearest penny.

For example, if, at the annual pricing date which immediately precedes an annual pricing period, the standard license estimated retail price (L) for an enterprise product is \$100.00 per desktop, and the one-year Software Assurance estimated retail price is \$25.00 per desktop, then:

- The initial annual reference price for License & Software Assurance for a non-renewal enrollment during such annual pricing period will be:

$\{ [\$100.00 + (3 \times \$25.00)] \times 0.85, \text{ divided by } 3 \} = \49.58 per desktop per year, less platform discount (if any), less premium level discount (if any);

- The initial annual reference price for Software Assurance for a renewal enrollment during such annual pricing period will be:

$\$25.00 \times 0.95 = \23.75 per desktop per year, less platform discount (if any), less premium level discount (if any);

- The original true up reference price for License & Software Assurance at the first anniversary of the effective date of either a renewal or non-renewal enrollment during such annual pricing period will be:

$\{ \$25.00 + (2.5 \times \$25.00) \} \times 0.85 = \138.13 per desktop, less platform discount (if any), less premium level discount (if any);

- The original true up reference price for License & Software Assurance at the second anniversary of the effective date of either a renewal or non-renewal enrollment during such annual pricing period will be:

$\{ \$100.00 + (1.5 \times \$25.00) \} \times 0.85 = \116.88 per desktop, less platform discount (if any), less premium level discount (if any);

- The original true up reference price for License & Software Assurance at the third anniversary of the effective date of either a renewal or non-renewal enrollment during such annual pricing period will be: and

$\{ \$100.00 + (0.5 \times \$25.00) \} \times 0.85 = \96.63 per desktop, less platform discount (if any), less premium level discount (if any).

(3) Additional discounts applied to initial reference prices for components. After calculating initial reference prices for each component enterprise product pursuant to the above formulas, the following additional discounts may be applied to such prices, subject to the terms and conditions below:

- (A) A "platform discount" will be applied to component platform products (e.g. Microsoft Office Professional) ordered pursuant to platform enrollments, but not to other enterprise products, if any (e.g. Microsoft Project), in such platform enrollments. Such platform discounts are as follows:
 - (i) 15% for initial orders of License & Software Assurance on non-renewal enrollments;
 - (ii) 5% for initial orders (but not true up orders) of Software Assurance for renewal enrollments; and
 - (iii) 15% for true up orders of License & Software Assurance for both renewal enrollments and non-renewal enrollments.

For example, if the initial annual reference price of a component product in a non-renewal platform enrollment, before the platform discount is applied, is \$100.00, the platform discount will be \$15.00, and the resulting initial annual reference price will be:

$\{ \$100.00 - \$15.00 \} = \$85.00.$

- (B) A "premium level discount" will be applied to an enterprise product, provided that the aggregate family desktop count that applies to such product is equal to or greater than 40,000 qualified desktops. The amount of such premium level

discount shall be determined according to Table 1 in Addendum A, by matching the aggregate family desktop count for the applicable product family (as of the annual pricing date which immediately precedes such annual pricing period) with the applicable column under the heading "Premium Level Discount." Such premium level discount (if any) will be applied before applying a platform discount (if any).

For example, if the initial annual reference price of a component product in a non-renewal platform enrollment, before the platform discount and premium level discount are applied, is \$100.00, and the aggregate desktop count for the product family is 40,000 qualified desktops, then a corresponding premium level discount of 2% will be applied (i.e. a discount of \$2.00), so the resulting initial annual reference price before the platform discount is applied will be:

$$\{ \$100.00 - \$2.00 \} = \$98.00.$$

The platform discount applied will be 15% of \$98.00, which is \$14.70, so the resulting annual reference price after the platform discount is applied will be

$$\{ \$98.00 - 14.70 \} = \$83.30.$$

The results of each of the above discount calculations will be rounded to the nearest penny. Such discounts will be provided so long as they are made generally available to all volume licensing customers. If the amount of either such generally available discount is increased, decreased, or eliminated, such increase, decrease or elimination will apply to the annual pricing period which immediately follows such event.

Table 4 and 5 in Addendum A show the initial annual reference prices and original true up reference prices, respectively, that shall apply during the first annual pricing period. We will provide you with new initial annual reference prices on or before the first day of each subsequent annual pricing period.

(4) Price adjustments for third annual installment and true up payments upon sustained change of annual price level.

The unit reference prices of the following payments (collectively, the "adjustable payments") are subject to change ("adjustment"), provided that the state's annual price level has increased or decreased, relative to the initial price level, as of both the first and second anniversaries of an enrollment:

- (i) the third annual installment payment for the qualified desktops ordered pursuant to the initial order;
- (ii) additional qualified desktops (if any) ordered pursuant the second anniversary true up order; and
- (iii) additional qualified desktops (if any) ordered pursuant the second anniversary true up order.

Such adjustment in unit reference price will be determined separately for each product family, pursuant to Tables 2 and 3 in Addendum A. The adjustment multiplier for each applicable product family on an enrollment is determined in such table by finding the intersection of (i) the column which corresponds to the initial price level, and (ii) the line which corresponds to the ending price level. The adjustment multiplier applicable to each product family will then be multiplied by the initial annual reference price for each applicable enterprise product in such product family, in order to determine the new reference prices for the adjustable payments.

For the purposes of this Subsection 18(m)(4), one annual price level is "higher" than another volume level if the minimum aggregate family desktop count requirement for such level is greater than that for the second level, and one annual price level is "lower" than another volume level if the minimum aggregate family desktop count requirement for such level is lower than that for the second level. For example, Level D is higher than Level C, but is lower than the 40K Premium Level.

In the event that your annual price level becomes lower in one annual pricing period than in the previous year, we (or the reseller on our behalf) will send a written notice to each enrolled affiliate that executed an enrollment with an effective date occurring during the previous annual pricing period, advising such enrolled affiliate that a price increase may occur for the third annual installment payment pursuant to its enrollment in the event that the subsequent annual price level has not increased to a level equal to or greater than the initial annual price level. Such notice will be delivered at least 12 months prior to the date upon which such third annual installment payment will become due.

The ending price level shall be determined for each product family on each enrollment according to the relationship between initial price level and the annual price levels for the first and second anniversaries, respectively, according to the following table:

Annual Price Level Criteria:			Examples with sample price levels:			
If the first anniversary price level is:	and the second anniversary price level is:	then the ending price level will be:	Initial Annual Price level	First Anniversary Annual Price Level	Second Anniversary Annual Price Level	Ending Price Level
the same as the initial price level	any level	The initial price level	C	C	Any Level	C
Higher than the initial price level	the same or higher than the first anniversary price level	The first anniversary price level	C	D	D	D
Higher than the initial price level	lower than the first anniversary price level but higher than the initial level	the second anniversary price level	C	D	C	C
Higher than the initial price level	the same as or lower than the initial price level	The initial price level	D	40K Premium Level	C or D	D
Lower than the initial price level	the same or lower than the first anniversary price level	The first anniversary price level	40K Premium Level	D	C or D	D
Lower than the initial price level	Higher than the first anniversary price level but lower than the initial level	the second anniversary price level	40K Premium Level	C or D	D	D
Lower than the initial price level	the same as or higher than the initial price level	The initial price level	D	C	D or 40K Premium Level	D

(5) Price level for enrollments executed during the first annual pricing period ("year 1 enrollments").

The parties agree that the initial price level for each product family for the first annual pricing period shall be Level C, based aggregate family desktop counts in each Product Family of less than 15,000 desktops.

(6) Additional terms and conditions

You acknowledge, on behalf of your enrolled affiliates, that the reference prices for the third annual payment of certain enrollments, along with true up payments due at their second and third anniversaries, respectively, may increase pursuant to the terms of this Section 18(m). It is recommended that affiliates not enter into enrollments hereunder unless (a) they are aware of such possibility that their price may increase as stated above; and (b) they anticipate that sufficient budget will be approved to cover such increased payment amount.

You acknowledge and agree that there may be certain instances in which the reference prices of certain enterprise products in certain enrollments executed by your affiliates, whether under this Enterprise Agreement or otherwise under a separate Enterprise Agreement or Enterprise Subscription agreement, may be adjusted in ways that vary from the adjustments agreed upon in this Section 18(m), pursuant to separate agreement between the enrolled affiliate and us. Such instances may include, but are not limited to, those enrollments: (i) that were executed prior to this enterprise agreement; (ii) that contain other enterprise products than those in the three product families defined herein; (iii) for which we negotiate a special payment schedule or ramped installment payments; and (iv) for which a special price is negotiated to match the equivalent Microsoft Select estimated retail price for sufficient licenses, such as to account for unexpired Upgrade Advantage and/or Software Assurance.

Reference prices are provided only for the purpose of comparison. Actual pricing and payment terms will be determined by agreement between each enrolled affiliate and its chosen reseller. All adjustments to reference prices defined herein will correspond to a proportional adjustment we will make to the reseller's confidential cost.

You agree to assist us in making existing and prospective enrolled affiliates aware of the general terms, conditions, and benefits of entering into an Enrollment, by:

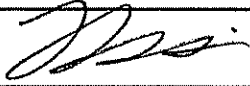
- (i) posting such information a website accessible to each such affiliate;
- (ii) participating, upon our request and as your schedule reasonably permits, in conference calls with prospective enrolled affiliates, to discuss such terms, conditions, and benefits.

II. Effect of Amendment.

Except as specifically amended by this amendment, all provisions of the enrollment shall remain unchanged and in full force and effect. You must execute and return 2 copies of this amendment to the address below on or before October 1, 2004 in order for the terms and conditions of this amendment to be considered by Microsoft Licensing, GP.

This amendment is not legally binding until executed by Microsoft Licensing, GP and shall become effective on that date. When this amendment is fully executed, you will receive a confirming copy.

Microsoft Licensing, GP
Attn: Dept. 551, Volume Licensing
6100 Neil Road, Suite 210
Reno, NV 89511-1137

Customer	Contracting Microsoft Affiliate
Name State of West Virginia	Microsoft Licensing, GP
Signature	Signature 
Printed Name	Printed Name Brandon Pickard
Printed Title	Printed Title Contract Administrator
Signature Date	Effective Date

Prepared by: David Mills

Table 1: Volume Level Determinations			
Aggregate Family Desktop Count	Annual Price Level Name	EA/ Select Price List Volume Level	Premium Level Discount
Below 15,000	Level C	Level C	N/A
15,000 - 39,999	Level D	Level D	N/A
40,000 - 59,999	40K Premium Level	Level D	2%

Table 2: Multipliers to apply to Year 3 price:				
Ending Price Level	Initial Price Level	C	D	40K
	Level C	1.000	1.070	1.070
	Level D	0.833	1.000	1.040
	40K Premium Level	0.789	0.959	1.000

Table 3: Initial Annual reference Prices for Component Enterprise Products in enrollments executed during first annual reference period

Annual pricing for initial order

Product Description	Part Number (SKU)	1st Annual Payment (\$/desktop)		2nd Annual Payment (\$/desktop)		3rd Annual Payment (\$/desktop)	
		Platform	Non-Platform	Platform	Non-Platform	Platform	Non-Platform
Office Pro Win32 Listed Languages Lic/SA Pack MVL	289-05924	173.41	204.00	173.41	204.00	173.41	204.00
Office Pro Win32 Listed Languages SA MVL	289-05925	100.79	106.10	100.79	106.10	100.79	106.10
Office Win32 Listed Languages Lic/SA Pack MVL	021-05654	144.01	169.42	144.01	169.42	144.01	169.42
Office Win32 Listed Languages SA MVL	021-05655	83.70	88.10	83.70	88.10	83.70	88.10
Core CAL Listed Languages Lic/SA Pack MVL	W06-00020	63.95	75.24	63.95	75.24	63.95	75.24
Core CAL Listed Languages SA MVL (Only if transitioning from BackOffice CAL EA)	W06-00019	38.04	40.04	38.04	40.04	38.04	40.04
Core CAL Listed Languages SA MVL (Only if renewing previous Core CAL EA)	W06-00019	49.48	49.43	49.48	49.43	49.48	49.43
Exchange CAL Listed Languages Lic/SA Pack MVL (Only if all 4 components of Core CAL are selected)	381-01647	22.86	28.01	22.86	28.01	22.86	28.01
Exchange CAL Listed Languages SA MVL (Only if all 4 components of Core CAL are selected)	381-01648	12.27	13.44	12.27	13.44	12.27	13.44
SharePoint Portal CAL Listed Languages Lic/SA Pack MVL (Only if all 4 components of Core CAL are selected)	H05-00266	24.59	26.89	24.59	26.89	24.59	26.89
SharePoint Portal CAL Listed Languages SA MVL (Only if all 4 components of Core CAL are selected)	H05-00267	13.15	12.91	13.15	12.91	13.15	12.91
SQL CAL Listed Languages Lic/SA Pack MVL (Only if all 4 components of Core CAL are selected)	359-00851	49.96	30.13	49.96	30.13	49.96	30.13
SQL CAL Listed Languages SA MVL (Only if all 4 components of Core CAL are selected)	359-00852	26.79	14.42	26.79	14.42	26.79	14.42
Sys Mgmt CAL Listed Languages Lic/SA Pack MVL (Only if all 4 components of Core CAL are selected)	355-00837	13.47	28.92	13.47	28.92	13.47	28.92
Sys Mgmt CAL Listed Languages SA MVL (Only if all 4 components of Core CAL are selected)	355-00838	7.21	13.84	7.21	13.84	7.21	13.84
Windows CAL Listed Languages Lic/SA Pack MVL (Only if all 4 components of Core CAL are selected)	C78-01061	10.11	61.23	10.11	61.23	10.11	61.23
Windows CAL Listed Languages SA MVL (Only if all 4 components of Core CAL are selected)	C78-01062	5.44	29.37	5.44	29.37	5.44	29.37
Windows Pro Listed Languages Upg/SA Pack MVL	B23-03192	55.84	58.78	55.84	58.78	55.84	58.78
Windows Professional Listed Languages SA MVL	E85-01014	41.33	28.19	41.33	28.19	41.33	28.19
Windows Terminal Services CAL Listed Languages Lic/SA Pack MVL (Only if all 4 components of Core CAL are selected)	R19-00094	27.32	16.49	27.32	16.49	27.32	16.49
Windows Terminal Services CAL Listed Languages SA MVL (Only if all 4 components of Core CAL are selected)	R19-00050	14.63	7.90	14.63	7.90	14.63	7.90

Table 4: Original True Up Reference Prices for Component Enterprise Products in enrollments executed during first annual reference period

True-Up pricing for initial order

Product Description	Part Number (SKU)	1st Annu. True-Up		2nd Annu. True-Up		3rd Annu. True-Up	
		Platform	Non-Platform	Platform	Non-Platform	Platform	Non-Platform
Office Pro Win32 Listed Languages Lic/SA Pack MVL	289-05924	479.86	564.54	399.17	469.60	318.47	374.67
Office Win32 Listed Languages Lic/SA Pack MVL	021-05654	398.53	468.86	331.52	390.03	264.53	311.21
Core CAL Listed Languages Lic/SA Pack MVL	W06-00020	178.10	209.53	150.71	177.31	123.32	145.08
Exchange CAL Listed Languages Lic/SA Pack MVL (Only if all 4 components of Core CAL are selected)	381-01647	63.66	78.02	53.87	66.01	44.04	53.98
SharePoint Portal CAL Listed Languages Lic/SA Pack MVL (Only if all 4 components of Core CAL are selected)	H05-00266	68.47	74.90	57.95	63.37	47.44	51.82
SQL CAL Listed Languages Lic/SA Pack MVL (Only if all 4 components of Core CAL are selected)	359-00851	139.17	83.91	117.72	71.03	96.29	58.13
Sys Mgmt CAL Listed Languages Lic/SA Pack MVL (Only if all 4 components of Core CAL are selected)	355-00837	37.48	80.55	31.72	68.18	25.93	55.81
Windows CAL Listed Languages Lic/SA Pack MVL (Only if all 4 components of Core CAL are selected)	C78-01061	28.17	170.54	23.82	144.27	19.47	117.99
Windows Pro Listed Languages Upg/SA Pack MVL	B23-03192	150.96	163.72	117.89	138.50	84.80	113.27
Windows Terminal Services CAL Listed Languages Lic/SA Pack MVL (Only if all 4 components of Core CAL are selected)	R19-00094	76.09	45.92	64.39	38.86	52.68	31.79



Microsoft Enterprise **Agreement** – State and Local

(NOT FOR USE WITH MICROSOFT BUSINESS AGREEMENT)

Enterprise Agreement number
Microsoft affiliate to complete

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This Microsoft Enterprise Agreement is entered into between the following entities as of the effective date identified below. Each party will notify the other in writing if any of the information in the following table changes.

Customer		
Name of Entity	State of West Virginia	Contact Name <small>(This person handles access to online information and receives notices unless a different contact is provided below.)</small>
Street Address		Contact E-mail Address (required for online access)
City	State/Province	Phone
Country	Postal Code	Fax
Microsoft Account Manager Name		Microsoft Account Manager Email
Contracting Microsoft Affiliate		
Microsoft Licensing, GP - 6100 Neil Road, Suite 210 - Reno, Nevada USA 89511-1137 - Dept. 551, Volume Licensing		

If online access and notices should be provided to someone or some place other than above, complete this section:		
Name of Entity		Contact Name
Street address		Contact E-mail Address
City	State/Province	Phone
Country	Postal Code	Fax

If duplicate electronic contractual notices should be provided to someone or some place in addition to the above, complete this section:

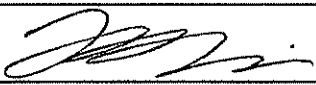
Name of Entity		Contact Name
Street address		Contact Email Address (required for electronic notice)
City	State/Province	Phone
Country	Postal Code	Fax

This agreement consists of (1) this cover page, (2) the attached terms and conditions, (3) the Product List, (4) the product use rights applicable to products licensed under this agreement, and (5) any enrollment entered into under this agreement.

Effective date. If the first enrollment entered into under this agreement is given an effective date that is earlier than the date this agreement is signed by us, the effective date of this agreement will be that earlier date. Otherwise, this agreement will be effective on the date it is signed by us.

Notices to Microsoft should be sent to:	Copies should be sent to:
Microsoft Licensing, GP 6100 Neil Road, Suite 210 Reno, Nevada USA 89511-1137 Dept. 551, Volume Licensing	Microsoft Law and Corporate Affairs One Microsoft Way Redmond, WA 98052 USA Volume Licensing Group (425) 936-7329 fax

By signing below, the parties agree to be bound by the terms of this agreement, and you represent that the information you have provided on this cover page is accurate.

Customer	Contracting Microsoft affiliate
Name of Entity State of West Virginia	Microsoft Licensing, GP
Signature	Signature 
Printed Name	Printed Name Brandon Pickard
Printed Title	Printed Title Contract Administrator
Signature Date	Signature Date (date Microsoft affiliate countersigns) 9-9-04
	Effective Date (may be different than our signature date)

Terms and Conditions

1. Definitions.

In this agreement, "you" means the entity that has entered into this agreement with us, and "we" or "us" means the Microsoft entity that has entered into this agreement or an enrollment. In addition, the following definitions apply:

"additional product" means any product other than an enterprise product that an enrolled affiliate chooses to license under its enrollment;

"affiliate" means (a) with regard to you, (i) any 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 in your state expressly authorized by the laws of your 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 us, any legal entity that we own, that owns us, or that is under common ownership with us;

"available" means, with respect to a product, that we have made licenses for that product available for ordering under the Enterprise Agreement program;

"enrolled affiliate" means an entity, either you or any one of your affiliates, that has entered into an enrollment under this agreement;

"enrollment" means the document that you or your affiliate submits under this agreement to sign up for the Enterprise Agreement program and make an initial selection of products;

"fix(es)" means product service packs and other fixes that we release generally;

"enterprise" means the enrolled affiliate and the affiliates it chooses on its enrollment to include in its enterprise;

"enterprise product" means any product that we designate as an enterprise product and that an enrolled affiliate chooses to license under its enrollment (enterprise products may only be licensed on an enterprise-wide basis under the Enterprise Agreement program);

"License" means any one of those offerings identified in the Product List (including standard licenses, and upgrades for desktop operating systems) that provides the right to run the version of the product for which it is ordered;

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

"order" means an order on a form that is acceptable to the reseller;

"product" means any product available to license as described 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://microsoft.com/licensing>, or at a successor site that we identify, that identifies the products that are or may be made available under each of the volume licensing programs, and identifies which products are available to Enterprise Agreement program customers and any product-specific conditions or limitations on the acquisition of licenses for those products;

"qualified desktop" means any personal desktop computer, portable computer, workstation or similar device that is used by or for the benefit of an enrolled affiliate or any affiliate included in its enterprise and that meets the minimum requirements for running any of the enterprise products. Qualified desktops do not include: (i) any computer that is designated as a server and not used as a personal computer, (ii) any

system dedicated to run ONLY line-of-business software (e.g., an accounting or bookkeeping program used by an accountant, or a computer-aided design program used by an engineer or architect); or (iii) any system running an embedded operating system (e.g. Windows 9.x for embedded, Windows XP embedded);

“renewal order” means the order that an enrolled affiliate submits at the beginning of any renewal term to renew Software Assurance coverage for products previously ordered under its enrollment;

“reseller” means a large account reseller authorized by us to resell licenses in an enrolled affiliate’s area under the Enterprise Agreement program;

“run” or “use” means to copy, install, use, access, display, run other otherwise interact with; and

“Software Assurance” means, for any underlying licensed product for which it is ordered, the right to upgrade to, and run, the latest version of that product that we make available during the covered period.

2. How the Enterprise Agreement program works.

The Enterprise Agreement program gives customers that wish to license one or more of Microsoft’s platform products across their enterprise the means to ensure that their entire enterprise will be licensed. You and your affiliates can participate in this program by submitting one or more enrollments under this agreement. On the enrollment, the enrolled affiliate will designate the scope of its enterprise and make the initial selection of enterprise products and any additional products it wishes to license. Each enrollment must include at least one of those products that we make available to license as an enterprise product. We may refuse to accept an enrollment if we have a business reason for doing so. Notwithstanding any other provision of this agreement, only enrolled affiliates identified in an enrollment will be responsible for complying with the terms of that enrollment, including the terms of this agreement incorporated by reference in that enrollment.

a. Establishing price levels. Each product is assigned to one of the following pools: applications, systems or servers. An enrolled affiliate’s reference prices are based on the “price level” for which it qualifies in each individual product pool. Price levels are established separately for each enrollment as described in this subsection.

Product pools from which an enterprise product has been ordered. For each product pool from which an enrolled affiliate orders an enterprise product, the price level throughout the initial term of the enrollment for any enterprise products or additional products ordered from that pool will be the price level for which the enrolled affiliate qualifies based on its initial number of qualified desktops (the enrolled affiliate will be provided with a table in its enrollment to determine its initial price level).

Product pools from which no enterprise product has been ordered. For any product pool from which the enrolled affiliate does not order an enterprise product, the price level for additional products within that pool will be price level “A” throughout the term of the enrollment (including any renewals).

Renewal price levels. Price levels for pools from which an enterprise product has been ordered will be reset for each renewal term based upon the enrolled affiliate’s total number of qualified desktops as of the date of the renewal order for that renewal term.

b. Deriving prices from price levels. The enrolled affiliate’s reference prices are determined as follows.

For products covered by the initial order. For each product covered by an enrolled affiliate’s initial order, the enrolled affiliate’s reference price for all copies of that product made at any time during the initial enrollment term (including copies ordered by true up as described in subsections 3(c) (Placing annual “true up” orders to account for additional desktops) and 4(c) (Placing annual “true up” orders to account for additional copies)) will be provided in the enrollment and will not change throughout the initial enrollment term.

For additional products added after the initial order. For each new additional product first added after signing of the enrollment, the enrolled affiliate's reference price for all copies of that product made at any time during the initial enrollment term (including copies ordered by true up) will be that price (including the true up price) in effect for the enrolled affiliate's price level for that product as of the date of its first order for that product.

For products renewed in a renewal order. Prices are re-established at the beginning of each renewal term. For each enterprise product and each additional product being renewed, the enrolled affiliate's renewal price for all copies of that product made during the renewal term (including copies ordered by true up) will be the price (including the true up price) in effect for the enrolled affiliate's renewal price level for that product as of the date of the renewal order.

For additional products added during a renewal term. For each new additional product first added during a renewal term, the enrolled affiliate's reference price for all copies of that product made at any time during that particular renewal term (including copies ordered by true up) will be the price (including the true up price) in effect for the enrolled affiliate's renewal price level in effect for that product as of the date of the enrolled affiliate's first order for that product.

How your enrolled affiliates acquire licenses. An enrolled affiliate will acquire its licenses by executing an enrollment under which it acquires its licenses through its chosen reseller. Orders under an enrollment will be made out to and submitted to the enrolled affiliate's reseller. We will invoice that reseller according to the terms in the applicable enrollment. While such enrollment will contain reference prices, the reseller and the enrolled affiliate will determine the enrolled affiliate's actual price and payment terms.

c. Choosing and maintaining a reseller.

Resellers. Each enrolled affiliate that signs an enrollment must choose and maintain a reseller in the enrolled affiliate's area. Resellers are authorized to resell our product licenses, but act independently and have no authority to bind us.

Change of reseller. If an entity ceases to be a reseller, the enrolled affiliate must choose a replacement. If an enrolled affiliate intends to change its reseller, a change will only be effected on the next anniversary of the enrollment effective date. To change a reseller, the enrolled affiliate must submit written notice to us and the former reseller, on a form that we provide, at least 30 days prior to the anniversary on which the change is to take effect. In the case of a change of reseller, the enrolled affiliate is responsible for ensuring that all its obligations to the former reseller are met.

e. Reporting country of use. On each order (initial, subsequent, true up or renewal), an enrolled affiliate must report to us:

- **For enterprise products** – the countries where its qualified desktops covered by that order are located and the approximate number of such qualified desktops in each of those countries, and
- **For additional products** – the countries where the enrolled affiliate or its affiliates run those copies of the additional products covered by that order and the approximate number of copies run in each of those countries.

This information is for our internal use only and does not change the prices we provide for the products licensed under this agreement.

3. How to order enterprise product licenses.

- a. Placing the initial order.** Each enrolled affiliate must submit an initial order for the enterprise products it selects on its enrollment. Except as provided in the following paragraph, the order must be for L&SA for all enterprise products.

When is the enrolled affiliate eligible to order only Software Assurance for an enterprise product? An enrolled affiliate may order Software Assurance for the enterprise products it selects without the need to simultaneously order a License if the enrolled affiliate or any of the affiliates in its enterprise have obtained perpetual licenses for that product on an enterprise-wide basis under a previous "Enterprise Enrollment" (defined below), and the new enrollment becomes effective no later than the day following the date of expiration of that "Enterprise Enrollment." The Software Assurance order must be for the number of qualified desktops covered as of the expiration of that "Enterprise Enrollment." For all other qualified desktops included in an enrollment submitted under this agreement, the enrolled affiliate must order L&SA.

The term "Enterprise Enrollment," as used in this section 3, means (i) a Microsoft Enterprise Select Agreement; (ii) an enterprise enrollment under a separate Microsoft Select Master Agreement or Microsoft Enterprise Agreement; (iii) any enterprise subscription enrollment entered into under a separate Microsoft Enterprise Subscription Agreement; or (iv) any other enrollment submitted under the Microsoft Enterprise Agreement identified on the cover page.

- b. Adding new enterprise products.** An enrolled affiliate may only add new enterprise products by entering into a new enrollment.
- c. Placing annual "true up" orders to account for additional desktops.** Each enrolled affiliate must determine the current number of qualified desktops in its enterprise: (i) at each anniversary of the effective date of its enrollment (including anniversaries during any renewal); and, (ii) at the expiration or early termination of its enrollment.
- **If the desktop count has increased.** If the number of qualified desktops has increased, the enrolled affiliate must submit an order for L&SA covering those additional desktops. The enrolled affiliate must place the order within 15 days following the anniversary of the enrollment effective date, expiration or termination.
 - **If the desktop count has not increased.** If the number has not increased, the enrolled affiliate must submit an update statement confirming this fact on the form we provide within that 15-day period.
- d. Reorganizations, Consolidations, and Privatizations.** If the number of qualified desktops in an enterprise changes by more than ten percent as a result of a reorganization, consolidation, or privatization of an enrolled affiliate, we 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 customer with an existing "Enterprise Enrollment," we will work with the enrolled affiliate in good faith to accommodate its changed circumstances in the context of this agreement.

4. How to order additional product licenses.

- a. Placing the initial order.** Each enrolled affiliate must submit an initial order for the additional products it has selected, if any, on its enrollment. Except as provided in the following paragraph, the order must be for L&SA for all copies of those additional products.

When is the enrolled affiliate eligible to order only Software Assurance for an additional product? An enrolled affiliate may order Software Assurance for additional products it selects without the need to simultaneously order a License if the enrolled affiliate or any of the affiliates it includes in its enterprise has obtained perpetual licenses for those products with Upgrade Advantage, Software Assurance or any similar upgrade protection, and the new enrollment becomes effective no later than one day following the expiration of that upgrade protection. The order may be for up to the number of copies covered by such upgrade protection. An enrolled affiliate may also order Software Assurance alone in any other circumstances expressly permitted in the Product List. For all other copies included in an enrollment submitted under this agreement, the enrolled affiliate must order L&SA.

- b. Adding new additional products not previously ordered.** Each enrolled affiliate may, during the remainder of the applicable initial enrollment or renewal term, run new additional products under its enrollment that were not part of the initial order. To do so, the enrolled affiliate must order L&SA in the month in which the product is first run, covering all copies of that product run as of the date of the order. For any additional copies of that product run after the date of that order, the enrolled affiliate must submit orders as described in subsection 4(c) (Placing annual "true up" orders to account for additional copies) below.
- c. Placing annual "true up" orders to account for additional copies.** Each enrolled affiliate may, during the remainder of the applicable initial enrollment or renewal term, run additional copies of those additional products it previously ordered under subsections (a) and (b), provided that the enrolled affiliate places a true up order for L&SA for those additional copies. The enrolled affiliate must submit an order within 15 days after the next anniversary of the effective date of the enrollment (including anniversaries occurring during any renewal) following the date on which those copies were first run. For additional copies first run in the year in which an enrollment expires or is terminated, the enrolled affiliate must submit an order within 15 days following the expiration or termination date.
- d. Update statements.** Each enrolled affiliate must submit an update statement within 15 days following each anniversary of the effective date of its enrollment, and after expiration or termination of its enrollment, on a form we provide, unless that enrolled affiliate (i) is running only enterprise products under its enrollment, and (ii) it is not otherwise required to submit an update statement under subsection 3(c) (Placing "true up" orders to account for additional desktops) above.

5. How to confirm orders.

We will publish information about orders placed by each enrolled affiliate, including an electronic confirmation of each order, on a password-protected site on the World Wide Web at <http://licensing.microsoft.com> or a successor site that we identify. Upon our acceptance of this agreement and enrollments entered into under this agreement, the contact identified for this purpose on the cover page will be provided access to this site.

6. License grant -- what your enrolled affiliates are licensed to run.

Upon our acceptance of the enrollment, the enrolled affiliate has the following rights during the term of its enrollment. These rights apply to the licenses obtained under an enrollment and are not related to any order or fulfillment of software media.

- **For enterprise products.** The enrolled affiliate may run one copy of the latest version (or any prior version) of each enterprise product, on each qualified desktop. By including affiliates in its enterprise, the enrolled affiliate sublicenses this right to each of them subject to the terms of this agreement.
- **For additional products.** The enrolled affiliate may run for its own benefit the number of copies of each additional product ordered in the latest version (or any prior version). If an affiliate included in any enrolled affiliate's enterprise runs any copies of an additional product under this agreement, those copies are sublicensed from that enrolled affiliate subject to the terms of this agreement.

The right to run any product licensed under an enrollment is temporary until:

- (i) the enrolled affiliate has paid all installments of the price for that product license and the applicable initial enrollment or renewal term during which that product license was ordered has expired or been renewed, or
- (ii) the enrolled affiliate is otherwise entitled to perpetual licenses upon early termination as provided in subsection 11(c) (Termination of an enrollment).

Thereafter, the enrolled affiliate will have perpetual licenses to run the latest version available as of such date of expiration, renewal or termination (or any prior version), of each enterprise product in a number of copies equal to the total number of qualified desktops covered by the enrollment; and each additional product in the number of copies ordered during the applicable initial enrollment term or renewal term. In the case of early termination as provided in subsection 11(c) (Termination of an enrollment), if an enrolled affiliate chooses only to pay amounts due and payable as of the termination date, then the enrolled affiliate will instead have perpetual licenses for the number of copies specified in subsection 11(e) (Effect of termination or expiration).

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.

This agreement, the applicable enrollment, the enrolled affiliate's order confirmation described in section 5 (How to confirm orders) above, and any documentation evidencing transfers of licenses as described in subsection 10(a) (How to transfer), together with proof of payment, will be the enrolled affiliate's evidence of all licenses obtained under its enrollment.

7. How to know what product use rights apply.

Except as otherwise described below, an enrolled affiliate's use of any product that it licenses from us is governed by product use rights specific to each product and version. The product use rights applicable to products licensed under each enrollment are as follows.

- a. For latest versions available as of an enrollment effective date.** For the latest version of any product available on or before the enrollment effective date, the product use rights in effect on the enrollment effective date for that product and version apply.
- b. For versions and products that become available after an enrollment effective date.** For any version of any existing product, or any new product, first made available after the enrollment effective date, the product use rights in effect on the date on which the version or product first becomes available apply (subject to our commitment on use rights below).
- c. For versions of a product that predate the latest version available as of an enrollment effective date.** If an enrolled affiliate is using a version of any product licensed under its enrollment that became available prior to the version that was current on the enrollment effective date, the enrolled affiliate's use of the earlier version will be governed by the product use rights that would apply if the enrolled affiliate were using the version licensed under the enrollment, or in the case of Software Assurance or L&SA, the latest version that is or becomes available at any time during its enrollment.
- d. Microsoft's commitment on use rights.**

For all products – use rights fixed by version. We will not change an enrolled affiliate's product use rights under this agreement for any version of a product after it becomes available to that enrolled affiliate under its enrollment.

For enterprise products – no detrimental use right changes in new versions.

- (i) **For new versions made available during the initial enrollment term.** If we make available a new version of any enterprise product during the initial enrollment term and that new version is subject to certain use rights that are more restrictive than those that applied to a prior version under an enrollment that was or became available during the initial enrollment term, the enrolled affiliate may run that new version without being subject to those certain more restrictive use rights.
- (ii) **For new versions made available during each renewal term.** Upon each renewal of Software Assurance for an enterprise product, an enrolled affiliate's use of that product will

be governed by the use rights that apply to the latest version of that product available as of the date of that renewal, including any terms that are more restrictive than those that applied to a previous version of that product licensed by that enrolled affiliate under its enrollment during the preceding term. However, if during a renewal term we make available a new version of that same enterprise product with certain use rights more restrictive than those use rights that applied to a prior version licensed under an enrollment that was or became available during that same term, the enrolled affiliate may run the new version without being subject to those certain more restrictive use rights.

- (iii) **New features or functionality.** The right described in subsections (i) and (ii) above does not apply to product use rights that relate specifically to new features or functionality added to a new version.

We will provide each enrolled affiliate with a copy of the applicable product use rights or will make them available either by publication on the World Wide Web at <http://microsoft.com/licensing> or at a successor site that we identify, or by some other reasonable means. You acknowledge that you and your affiliates have access to the World Wide Web. We do not transfer any ownership rights in any licensed product, and we reserve all rights not expressly granted. 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 arising from any claim to which your indemnity obligation would otherwise apply.

8. Software Assurance Membership.

Throughout the term of its enrollment (including any renewal), each enrolled affiliate automatically qualifies as a member of Microsoft's Software Assurance Membership program. Membership may entitle the enrolled affiliates to special benefits. These benefits may be subject to additional terms and conditions. For a description of these benefits, an enrolled affiliate should consult its reseller or Microsoft account manager.

9. Making copies of software.

- a. Copies necessary for internal deployment.** Each enrolled affiliate may make as many copies of the products licensed under its enrollment as necessary to distribute the products to the users within its enterprise. All copies of any product must be true and complete copies (including copyright and trademark notices) and be made from CD-ROMs, disk sets or a network source, acquired from or made available by a Microsoft approved fulfillment source for that product. Each enrolled affiliate may also have a third party make and distribute copies in its place, but the enrolled affiliate is responsible for third-party actions to the same extent it would be if the third party were its employee. You and your affiliates must make reasonable efforts to make employees, agents and other individuals running a product aware that the product is licensed from us and may only be run or transferred subject to the terms of this agreement.
- b. Copies for training, evaluation and back-up.** During the term of its enrollment (including any renewal), each enrolled affiliate and any affiliate included in its enterprise may (i) run up to 20 complimentary copies of any additional product in a dedicated training facility on their premises; (ii) run up to 10 complimentary copies of any product that we make available to license as an additional product for a 60-day evaluation period; and (iii) make and retain one complimentary copy of any licensed product for back-up or archival purposes for each of their distinct geographic locations.
- c. Re-imaging rights.** If an enrolled affiliate or any affiliate included within its enterprise has licensed products from an original equipment manufacturer (OEM), through a retail source or under any Microsoft program other than this Enterprise Agreement program, it may use copies made from the media provided under the enrolled affiliate's enrollment in place of any copies made from the media provided through that separate source, so long as it complies with the following restrictions.

- (i) The enrolled affiliate must have obtained a separate license from the separate source for each copy being replaced.
- (ii) The product, language, version and all components (in the case of product suites, such as Office) of the copies made from the media provided under an enrollment must be identical to the product, language, version and all components of the copies they replace.
- (iii) In the case of copies licensed from an original equipment manufacturer (OEM) or through a retail source, in addition to the other conditions outlined in this subsection 9(c), the product type (e.g. upgrade or full license) of the copies made from the media provided under an enrollment must be identical to the product type of the copies they replace. However, an enrolled affiliate may use copies of a desktop operating system made from the media provided under its enrollment in place of copies of the same desktop operating system obtained from a separate source, even though they may be of different types (i.e. one may be an upgrade and the other a full license), provided that the product, language and version are identical.

The use of any copies made under this subsection 9(c) is subject to the terms and use rights provided with the copies being replaced, and nothing in this section creates or extends any warranty or support obligation.

10. Transferring licenses.

- a. How to transfer.** An enrolled affiliate may transfer perpetual licenses ordered under an enrollment to an affiliate, or to an unaffiliated third party in connection with a privatization of the enrolled affiliate, as long as the enrolled affiliate provides us with prior written and signed notice, on a form that we provide, that includes: (i) the applicable enrollment number; (ii) the quantity of licenses being transferred by product and version; (iii) the name, address and contact information of the transferee; and (iv) any other information that we may reasonably request.

For all other transfers of licenses, our written consent is required. We will not withhold our consent unreasonably. No license transfer will be valid unless the enrolled affiliate provides to the transferee, and the transferee accepts in writing the applicable product use rights (as provided in subsection 7(a) (For latest versions available as of an enrollment effective date) and (b) (For versions and products that become available after an enrollment effective date), use restrictions, limitations of liability, and the transfer restrictions in this section 10. Any transfer made in violation of the requirements or restrictions of this section will be void.

- b. When transfers are not permitted.** An enrolled affiliate may not transfer (i) licenses on a short-term basis (either to third parties or by reassignment to different users or devices internally), (ii) temporary rights to use products, (iii) Software Assurance coverage, (iv) perpetual licenses for any version of any product acquired through Software Assurance separately from the underlying perpetual licenses for which that Software Assurance coverage was ordered; or (v) upgrade licenses for a desktop operating system product separately from the underlying desktop operating system license or from the computer system on which the product is first installed.

11. Term, termination and renewal.

- a. Term.** This agreement will remain in effect unless it is terminated by either party as described below. Each enrollment will have the term provided in that enrollment.
- b. Termination of this agreement.** Either party may terminate this agreement for any reason upon 60 days written notice.

Effect of termination. 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 not otherwise terminated, and any terms of this agreement applicable to any enrollment not otherwise terminated will continue in effect with respect to that enrollment.

- c. Termination of an enrollment - general.** 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 amounts owed (even if such non-payment is caused by non-appropriation of funds). Except where the breach is by its nature not curable within 30 days, the terminating party must give the other party 30 days notice and opportunity to cure. If we give such notice to an enrolled affiliate, we will give you a copy of that notice as well and you agree to assist in attempting to resolve the problem. If the problem also affects other enrollments and cannot be resolved between you and us within a reasonable period of time, we 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 we may only terminate the affected enrollment(s). If an enrolled affiliate ceases to be your affiliate, you must promptly notify us of this fact, and we may terminate its enrollment.
- d. Termination of enrollment – non-appropriation of funds.** 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, subject to Section 11(e), below (Effect of expiration or termination).
- e. Effect of termination or expiration.** Upon expiration or termination of any enrollment, the enrolled affiliate must order licenses for all copies of products it or its affiliates have run under its enrollment for which the enrolled affiliate has not previously submitted an order. Except as provided in the next paragraph, in the event of termination, all unpaid installments of the purchase price for any licenses will immediately become due and payable, and the enrolled affiliate will be entitled to perpetual licenses only after all such payments have been made.

If (i) an enrolled affiliate terminates its enrollment as a result of our breach, (ii) we terminate an enrolled affiliate's enrollment because it has ceased to be your affiliate, or (iii) you terminate an enrollment for non-appropriation of funds, or (iv) we terminate an enrollment for non-payment due to non-appropriation of funds, then the enrolled affiliate will have the following options: It may immediately pay the total remaining amount due, including all installments, in which case the enrolled affiliate will have perpetual licenses for all copies of the products it has ordered. As an alternative, it may pay only amounts due and payable as of the termination date, in which case the enrolled affiliate will have perpetual licenses for (i) all copies of all products for which payment has been made in full, and (ii) the number of copies of products for which payment has been made in installments that is proportional to the amount that has been paid as of the termination date.

- e. How to renew an enrollment.** We will provide each enrolled affiliate with 60 days prior written notice of expiration of its enrollment or renewal term advising it of its renewal options. An enrolled affiliate may have the option to renew its enrollment for successive terms of 12 or 36 full calendar months. We and our affiliates will not unreasonably reject any renewal order. However, we may make a change to the Enterprise Agreement program that will make it necessary for you and your enrolled affiliates to enter into new agreements and enrollments.

Placing renewal orders. To renew, the enrolled affiliate must submit a renewal order within 30 days after the previous term expired. The renewal order must be for Software Assurance for (i) all enterprise products previously ordered for all qualified desktops in the enrolled affiliate's enterprise as of the date of that renewal order, and (ii) all copies of additional products for which the enrolled affiliate elects to renew Software Assurance. Each renewal term will start the day following expiration of the prior term. An enrolled affiliate may not add new enterprise products not previously ordered during the initial term as part of its renewal; to license new enterprise products it must submit a new enrollment.

Consequences of non-renewal. If the enrolled affiliate elects not to renew its enrollment or Software Assurance for any additional product under its enrollment, and it otherwise allows Software Assurance for any copies of any products licensed under its enrollment to lapse, then

the enrolled affiliate will not be permitted to order Software Assurance for such copies later without first acquiring L&SA.

12. Restrictions on use.

An enrolled affiliate may not:

- Separate the components of a product made up of multiple components (in the case of product suites, such as Office) by running them on different computers, by upgrading or downgrading them at different times, or by transferring them separately, except as otherwise provided in the product use rights;
- Rent, lease, lend or host products, except where we agree by separate agreement;
- Reverse engineer, de-compile or disassemble products, except to the extent expressly permitted by applicable law despite this limitation; or
- Transfer licenses to, or sublicense, products to the U.S. Government.

Products licensed under this agreement are subject to U.S. export jurisdiction. You agree to comply with all applicable international and national laws that apply to these products, including the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by U.S. and other governments. For additional information, see <http://www.microsoft.com/exporting>.

13. Confidentiality.

Subject to the requirements of your public records law, if any, the terms and conditions of this agreement are confidential. Neither you nor we will disclose such terms and conditions, or the substance of any discussions that led to them, to any third party other than your or our affiliates or agents, or to your designated or prospective resellers who: (a) have a need to know such information to assist in carrying out this agreement; and (b) have been instructed by you or us that all such information is to be handled in strict confidence.

14. Warranties.

- Limited product warranty.** We warrant that each version of a product will perform substantially in accordance with our user documentation. This warranty is valid for a period of one year from the date an enrolled affiliate first runs a copy of the version. To the maximum extent permitted by law, any warranties imposed by law concerning the products are limited to the same extent and the same one-year period. This warranty does not apply to components of products that an enrolled affiliate is permitted to redistribute under applicable product use rights, or if failure of the product has resulted from accident, abuse or misapplication. If you notify us within the warranty period that a product does not meet this warranty, then we will, at our option, either (i) return the price paid for the product or (ii) repair or replace the product. To the maximum extent permitted by law, this is your exclusive remedy for any failure of any product to function as described in this subsection.
- NO OTHER WARRANTIES.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, WE DISCLAIM AND EXCLUDE ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED OR STATUTORY, OTHER THAN THOSE IDENTIFIED EXPRESSLY IN THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO WARRANTIES OR CONDITIONS OF TITLE, NON-INFRINGEMENT, SATISFACTORY QUALITY, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE PRODUCTS OR RELATED MATERIALS. WE WILL NOT BE LIABLE FOR ANY SERVICES OR PRODUCTS PROVIDED BY THIRD PARTY VENDORS, DEVELOPERS OR CONSULTANTS IDENTIFIED OR REFERRED TO YOU BY US UNLESS SUCH THIRD-PARTY PRODUCTS OR SERVICES ARE PROVIDED UNDER WRITTEN AGREEMENT BETWEEN

YOU AND US, AND THEN ONLY TO THE EXTENT EXPRESSLY PROVIDED IN SUCH AGREEMENT.

15. Defense of infringement and misappropriation claims.

We will defend you against any claim made by an unaffiliated third party that any product or fix infringes its patent, copyright, or trademark or misappropriates its trade secret, and will pay the amount of any resulting adverse final judgment (or settlement to which we consent). You must notify us promptly in writing of the claim and give us sole control over its defense or settlement. You agree to provide us with reasonable assistance in defending the claim, and we will reimburse you for reasonable out of pocket expenses that you incur in providing that assistance. The terms "misappropriation" and "trade secret" are used as defined in the Uniform Trade Secrets Act.

Our obligations will not apply to the extent that the claim or adverse final judgment is based on (i) your running of the product or fix after we notify you to discontinue running due to such a claim; (ii) your combining the product or fix with a non-Microsoft product, data or business process; (iii) damages attributable to the value of the use of a non-Microsoft product, data or business process; (iv) your altering the product or fix; (v) your distribution of the product or fix to, or its use for the benefit of, any third party; (vi) your use of our trademark(s) without express written consent to do so; or (vii) for any trade secret claim, your acquiring a trade secret (a) through improper means; (b) under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (c) from a person (other than us or our affiliates) who owed to the party asserting the claim a duty to maintain the secrecy or limit the use of the trade secret. . You will be responsible for any costs or damages that result from these actions.

If we receive information concerning an infringement claim related to a product or fix, we may, at our expense and without obligation to do so, either (i) procure for you the right to continue to run the allegedly infringing product or fix, or (ii) modify the product or fix or replace it with a functional equivalent, to make it non-infringing, in which case you will stop running the allegedly infringing product or fix immediately. If, as a result of an infringement claim, your use of a product or fix is enjoined by a court of competent jurisdiction, we will, at our option, either procure the right to continue its use, replace it with a functional equivalent, modify it to make it non-infringing, or refund the amount paid and terminate the license for the infringing product or fix..

If any other type of third party claim is brought against you regarding our intellectual property, you must notify us promptly in writing. We may, at our option, choose to treat these claims as being covered by this section. This Section 15 provides your exclusive remedy for third party infringement and trade secret misappropriation claims.

16. Limitation of liability.

a. Limitation. There may be situations in which you or an enrolled affiliate have a right to claim damages or payment from us. Except as otherwise specifically provided in this subsection, whatever the legal basis for the claims, our liability will be limited, to the maximum extent permitted by applicable law, to direct damages up to the amount you or the enrolled affiliate have paid for the product giving rise to the claims. In the case of free product or code you or an enrolled affiliate are authorized to redistribute to third parties without separate payment to Microsoft, our total liability to you or the enrolled affiliate will not exceed US\$5000. The limitations contained in this subsection will not apply with respect to the following in connection with the performance of this agreement:

(i) our obligations under Section 15 to defend third party claims of patent, copyright or trademark infringement or trade secret misappropriation, and to pay damages resulting from any final adjudication (or settlement to which we consent) of such claims;

(ii) our liability for damages for gross negligence or willful misconduct, to the extent caused by us or our agent and awarded by a court of final adjudication; and

(iii) our obligations under section 13 (confidentiality).

b. No liability for certain damages. To the maximum extent permitted by applicable law, neither party nor any of its affiliates or suppliers will be liable for any indirect damages (including, without limitation, consequential, special or incidental damages, damages for loss of profits or revenues, business interruption, or loss of business information) arising in connection with any agreement, product, fix or service, even if advised of the possibility of such damages or if such possibility was reasonably foreseeable. This exclusion of liability does not apply to either party's liability to the other for violation of its confidentiality obligation or of the other party's intellectual property rights.

c. Application. Except as specified expressly in this Section 16, the limitations on and exclusions of liability for damages in this agreement 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.

17. Verifying Compliance.

You must keep records relating to the products you and any affiliate run. We have the right to verify compliance, at our expense, during the term of this agreement and for a period of one year thereafter. To do so, we will engage an independent accountant from a nationally recognized public accounting firm, which will be subject to a confidentiality obligation. Verification will take place upon not fewer than 30 days notice, during normal business hours and in a manner that does not interfere unreasonably with your operations. As an alternative, we may require you to accurately complete our self-audit questionnaire relating to the products you and any affiliates use. You will have the right to conduct a self-audit prior to any third-party audit if (a) the governor of your state has issued an executive order (or state legislation exists) requiring software licensing compliance statewide and for state-funded agencies (including local governments), and (b) your state has adopted and implemented a statewide licensing compliance software asset management program reasonably acceptable to Microsoft. If verification or self-audit reveals unlicensed use of products, you must promptly order sufficient licenses to permit all product usage disclosed. If material unlicensed use is found (license shortage of 5% or more), you must reimburse us for the costs we have incurred in verification and acquire the necessary additional licenses as single retail licenses within 30 days. If we undertake such verification and do not find material unlicensed use of products, we will not undertake another verification of the same entity for at least one year. We and our auditors will use the information obtained in compliance verification only to enforce our rights and to determine whether you are in compliance with the terms of this agreement. By invoking the rights and procedures described above, we do not waive our rights to enforce this agreement or to protect our intellectual property by any other means permitted by law.

18. Miscellaneous.

a. Notices. All notices, authorizations, and requests given or made in connection with this agreement must be sent by post, express courier, facsimile, or email to the addresses and numbers indicated in the applicable cover page to this agreement. Notices will be deemed delivered on the date shown on the postal return receipt or on the courier, facsimile or email confirmation of delivery.

b. Assignment. This agreement may be assigned by either party only to an affiliate, but assignment will not relieve the assigning party of its obligations under the assigned agreement. If either party assigns this agreement or any enrollment, 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 remaining provisions will remain in full force and effect and the parties will amend this agreement to give effect to the stricken clause to the maximum extent possible.
- d. Waiver.** No waiver of any breach of this agreement shall be a waiver of any other breach, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party.
- e. Force Majeure.** To the extent that either party's performance is prevented or delayed, either totally or in part, for reasons beyond that party's control, then that party will not be liable, so long as it resumes performance as soon as practicable after the reason preventing or delaying performance no longer exists.
- f. Non-exclusivity.** This agreement and all enrollments under it are non-exclusive. Nothing contained in this agreement or any such enrollment requires you to license, use or promote Microsoft software or services exclusively. You may, if you choose, enter into agreements with other parties to license, use or promote non-Microsoft software or services
- g. Entire agreement.** The documents identified on the cover page to this agreement 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: (i) these terms and conditions and the accompanying cover page; (ii) the Product List; (iii) the product use rights; and (iv) all enrollments under this agreement. The terms of any purchase order or any general terms and conditions you or your affiliates maintain, other than those mandatory terms required by statute or regulation, do not apply. This agreement (except the product use rights and the Product List) can be changed only by an amendment signed by both parties.
- h. Survival.** Provisions regarding product use rights, restrictions on use, evidence of perpetual licenses, transfer of licenses, warranties, limitations of liability, confidentiality, compliance verification and obligations on termination or expiration will survive termination or expiration of this agreement or any enrollment.
- i. Independent contractors.** Resellers are independent contractors who act in their own name and for their own account; they have no authority to bind or impose any obligation or liability upon us.
- j. Applicable law; Dispute resolution.** The terms of this agreement will be governed by the laws of your state, without giving effect to its conflict of laws. Disputes relating to this agreement will be subject to applicable dispute resolution laws of your state.
- k. Copyright Violation.** Except to the extent you are licensed under this agreement, you will be responsible for your violation of our copyright in the products, including payment of license fees specified in this agreement for unlicensed use.

STATE OF WEST VIRGINIA
Purchasing Division

PURCHASING AFFIDAVIT

West Virginia Code §5A-3-10a states: No contract or renewal of any contract may be awarded by the state or any of its political subdivisions to any vendor or prospective vendor when the vendor or prospective vendor or a related party to the vendor or prospective vendor is a debtor and the debt owed is an amount greater than one thousand dollars in the aggregate

DEFINITIONS:

“Debt” means any assessment, premium, penalty, fine, tax or other amount of money owed to the state or any of its political subdivisions because of a judgment, fine, permit violation, license assessment, defaulted workers’ compensation premium, penalty or other assessment presently delinquent or due and required to be paid to the state or any of its political subdivisions, including any interest or additional penalties accrued thereon.

“Debtor” means any individual, corporation, partnership, association, limited liability company or any other form or business association owing a debt to the state or any of its political subdivisions. “Political subdivision” means any county commission; municipality; county board of education; any instrumentality established by a county or municipality; any separate corporation or instrumentality established by one or more counties or municipalities, as permitted by law; or any public body charged by law with the performance of a government function or whose jurisdiction is coextensive with one or more counties or municipalities. “Related party” means a party, whether an individual, corporation, partnership, association, limited liability company or any other form or business association or other entity whatsoever, related to any vendor by blood, marriage, ownership or contract through which the party has a relationship of ownership or other interest with the vendor so that the party will actually or by effect receive or control a portion of the benefit, profit or other consideration from performance of a vendor contract with the party receiving an amount that meets or exceed five percent of the total contract amount.

EXCEPTION: The prohibition of this section does not apply where a vendor has contested any tax administered pursuant to chapter eleven of this code, workers’ compensation premium, permit fee or environmental fee or assessment and the matter has not become final or where the vendor has entered into a payment plan or agreement and the vendor is not in default of any of the provisions of such plan or agreement.

LICENSING: Vendors must be licensed and in good standing in accordance with any and all state and local laws and requirements by any state or local agency of West Virginia, including, but not limited to, the West Virginia Secretary of State’s Office, the West Virginia Tax Department, West Virginia Insurance Commission, or any other state agencies or political subdivision. Furthermore, the vendor must provide all necessary releases to obtain information to enable the Director or spending unit to verify that the vendor is licensed and in good standing with the above entities.

CONFIDENTIALITY: The vendor agrees that he or she will not disclose to anyone, directly or indirectly, any such personally identifiable information or other confidential information gained from the agency, unless the individual who is the subject of the information consents to the disclosure in writing or the disclosure is made pursuant to the agency’s policies, procedures and rules. Vendors should visit www.state.wv.us/admin/purchase/privacy for the Notice of Agency Confidentiality Policies.

Under penalty of law for false swearing (West Virginia Code, §61-5-3), it is hereby certified that the vendor acknowledges the information in this said affidavit and are in compliance with the requirements as stated.

Vendor’s Name: _____

Authorized Signature: _____ Date: _____

COST SHEET

The Cost Evaluation will be based upon the software costs of the composite of products listed in Cost Sheet A. This list is comprised of Application, Server and System Pool products to be provided at Level D pricing for the Microsoft Enterprise Agreement using the Vendor's Discount provided in Cost Sheet B.

COST SHEET A

QTY		Product Pool	Lic /SA	ERP Unit Cost	% DISCOUNT	EXTENDED COST***
250	Office Professional	Application	L/SA			
250	Windows Pro	Systems	L/SA			
250	Exchange Server Client Access License	Servers	L/SA			
250	SharePoint Portal Server Client Access License	Servers	L/SA			
250	Systems Management Server Client Access License	Servers	L/SA			
250	Windows Server Client Access License	Servers	L/SA			
	Total:					

***Extended Cost = ERP Unit Cost – (ERP Unit Cost times % Discount)

The Vendor is to complete the Vendor's Discount for each of the Product Pools.

COST SHEET B

	Vendor's Discount
Vendor Discount on Application Pool Products	
Vendor Discount on Server Pool Products	
Vendor Discount on System Pool Products	