

Program Signature Form

MBA/MBSA number	U5815978	000-TSOWA-S-17012
Agreement number		

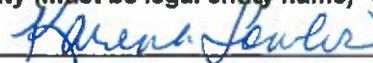
Note: Enter the applicable active numbers associated with the documents below. Microsoft requires the associated active number be indicated here, or listed below as new.

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

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

Contract Document	Number or Code
<Choose Agreement>	Document Number or Code
<Choose Agreement>	Document Number or Code
<Choose Agreement>	Document Number or Code
<Choose Agreement>	Document Number or Code
<Choose Agreement>	Document Number or Code
<Choose Enrollment/Registration>	Document Number or Code
<Choose Enrollment/Registration>	Document Number or Code
<Choose Enrollment/Registration>	Document Number or Code
<Choose Enrollment/Registration>	Document Number or Code
<Choose Enrollment/Registration>	Document Number or Code
Amendment	CTM (U5815978)

By signing below, Customer and the Microsoft Affiliate agree that both parties (1) have received, read and understand the above contract documents, including any websites or documents incorporated by reference and any amendments and (2) agree to be bound by the terms of all such documents.

Customer
Name of Entity (must be legal entity name)* State of New York Office of General Services Signature*  Printed First and Last Name* Karen Fowler Printed Title Director, Procurement Services Signature Date* 9/22/2016
Tax ID

* indicates required field

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

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

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

** indicates required field*

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

** indicates required field*

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

After this signature form is signed by the Customer, send it and the Contract Documents to Customer's channel partner or Microsoft account manager, who must submit them to the following address. When the signature form is fully executed by Microsoft, Customer will receive a confirmation copy.

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

Custom Business Agreement for State of New York Amendment ID CTM

Agreement Number
Microsoft to Complete

U5815978

Proposal ID

000-TSOWA-S-
17012

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

1. The parties agree that the term of the Microsoft Custom Business Agreement for State of New York Number U5815978 (State of New York Microsoft Contract PS66034), the Enterprise Agreement, Campus and School Agreement, Select Plus License Program Agreement and Academic Select Plus Agreement incorporated therein, will remain in effect for an additional 18 months through June 30, 2018.
2. For informational and operational purposes only, Microsoft lists the following numbers for the Agreements referenced in paragraph 1 above: Enterprise Agreement Number 01E73483; Campus and School Agreement Number 01C36180; Select Plus License Program Agreement Number 8124850; and Academic Select Plus Agreement Number 6789556.

Except for changes made by this Amendment, the Agreement identified above, as previously amended, remains unchanged and in full force and effect. If there is any conflict between any provision in this Amendment and any provision in the Agreement identified above, this Amendment shall control.

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

Program Signature Form

MBA/MBSA number	U5815978	000-TSOWA-S-16108
Agreement number		

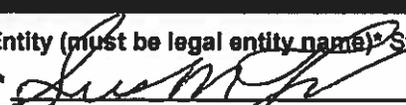
Note: Enter the applicable active numbers associated with the documents below. Microsoft requires the associated active number be indicated here, or listed below as new.

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

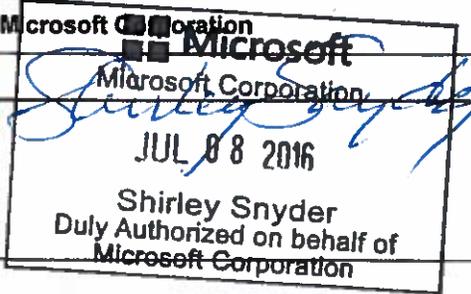
This signature form and all contract documents identified in the table below are entered into between the Customer and the Microsoft Affiliate signing, as of the effective date identified below.

Contract Document	Number or Code
<Choose Agreement>	Document Number or Code
<Choose Agreement>	Document Number or Code
<Choose Agreement>	Document Number or Code
<Choose Agreement>	Document Number or Code
<Choose Agreement>	Document Number or Code
<Choose Enrollment/Registration>	Document Number or Code
<Choose Enrollment/Registration>	Document Number or Code
<Choose Enrollment/Registration>	Document Number or Code
<Choose Enrollment/Registration>	Document Number or Code
Document Description	Document Number or Code
Document Description	Document Number or Code
Amendment	CTM (U5815978)
Document Description	Document Number or Code
Document Description	Document Number or Code

By signing below, Customer and the Microsoft Affiliate agree that both parties (1) have received, read and understand the above contract documents, including any websites or documents incorporated by reference and any amendments and (2) agree to be bound by the terms of all such documents.

Customer	
Name of Entity (must be legal entity name)*	State of New York Office of General Services
Signature*	
Printed First and Last Name*	Susan M. Filburn
Printed Title	Deputy CPO
Signature Date*	6/29/2016
Tax ID	

* indicates required field

Microsoft Affiliate	
Signature _____	 <p>Microsoft Corporation Microsoft Corporation JUL 08 2016 Shirley Snyder Duly Authorized on behalf of Microsoft Corporation</p>
Printed First and Last Name _____	
Printed Title _____	
Signature Date _____ (date Microsoft Affiliate countersigns)	
Agreement Effective Date _____ (may be different than Microsoft's signature date)	

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

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

* indicates required field

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

* indicates required field

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

After this signature form is signed by the Customer, send it and the Contract Documents to Customer's channel partner or Microsoft account manager, who must submit them to the following address. When the signature form is fully executed by Microsoft, Customer will receive a confirmation copy.

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

Custom Business Agreement for State of New York Amendment ID CTM

Agreement Number
Microsoft to Complete

U5815978

Proposal ID

000-TSOWA-S-
16108

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

1. The parties agree that the first optional 12-month extension provided for in Section 4.1, Centralized Contract Term, of the Microsoft Custom Business Agreement for State of New York U5815978 (State of New York Microsoft Contract PS66034) may be exercised in increments of less than 12 months.
2. The parties agree that the term of the Microsoft Custom Business Agreement for State of New York Number U5815978 (State of New York Microsoft Contract PS66034), the Enterprise Agreement, Campus and School Agreement, Select Plus License Program Agreement and Academic Select Plus Agreement incorporated therein, will remain in effect for an additional six months through December 31, 2016.
3. For informational and operational purposes only, Microsoft lists the following numbers for the Agreements referenced in paragraph 2 above: Enterprise Agreement Number 01E73483; Campus and School Agreement Number 01C36180; Select Plus License Program Agreement Number 8124850; and Academic Select Plus Agreement Number 6789556.

Except for changes made by this Amendment, the Agreement identified above, as previously amended, remains unchanged and in full force and effect. If there is any conflict between any provision in this Amendment and any provision in the Agreement identified above, this Amendment shall control.

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

Custom Program Signature Form

MBA/MBSA number

001-jendunn-S-901

Agreement number

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

For the purposes of this form, "Customer" means the signing entity (New York State Office of General Services) entering into a volume licensing program agreement.

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

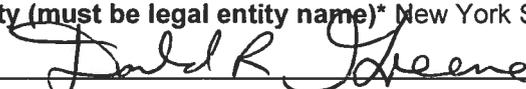
Contract Document	Number or Code
Microsoft Business Agreement for State of New York	CTM-A (New)
Enterprise Agreement	CTM-B (New)
Select Plus Agreement State and Local	CTM-C (New)
Academic Select Plus Agreement	CTM-D (New)
Campus and School Agreement	CTM-E (New)
Supplemental Contact Information Form	CTM-F (New)

THIS AGREEMENT (hereinafter "Centralized Contract", "Agreement" or "Contract") is made by and between the New York State Office of General Services (individually referred as "OGS" or "State" hereinafter) and Microsoft Licensing, GP (individually referred as "Microsoft" or "Contractor" hereinafter); collectively referred to as "the Parties." Hereinafter, this Centralized Contract shall be referenced as the Microsoft Business Agreement or "MBA".

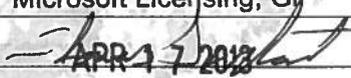
By signing below, OGS and the Microsoft Affiliate agree that both Parties (1) have received, read and understand the above contract documents, including any websites or documents incorporated by reference and any amendments and (2) agree to be bound by the terms of all such documents.

IN WITNESS WHEREOF, the Parties therefore hereby execute their mutual agreement to the terms of this Centralized Contract. This Centralized Contract shall be executed and shall be a binding contract between the Parties as set forth in this document. The State further warrants that, where Contractor is asked to execute multiple original copies of this signature page along with a complete original copy of the Centralized Contract, the approved signature page(s) will be affixed by the State, to additional copies of this Centralized Contract which conform exactly to the complete original copy as submitted by Contractor and executed simultaneously therewith.

The acknowledgment must be fully and properly executed by an authorized person. By signing you certify your express authority to sign on behalf of yourself, your company, or other entity and full knowledge and acceptance of this Agreement, Appendix A (Standard Clauses For New York State Contracts), Appendix B (OGS General Specifications), and State Finance Law §139-j and §139-k (Procurement Lobbying), and that all information provided is complete, true and accurate. By signing, Contractor affirms that it understands and agrees to comply with the OGS procedures relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).

Customer	
Name of Entity (must be legal entity name)*	New York State Office of General Services
Signature*	
Printed First and Last Name*	
Printed Title*	
Signature Date*	
Tax ID	

* indicates required field

Microsoft Affiliate	
Microsoft Licensing, GP	 Microsoft Licensing, GP
Signature	
Printed First and Last Name	Thomas Swihart
Printed Title	Duly Authorized on behalf of Microsoft Licensing, GP
Signature Date (date Microsoft Affiliate countersigns)	APR 17 2013
Effective Date July 1, 2013 (may be different than Microsoft's signature date)	
Tax ID 880443249	
State of New York Vendor identification number 1100005370	

000-jendunn-S-901 A

Custom Business Agreement for State of New York

Contents

1. Background	2
2. Scope	2
3. Definitions	3
4. Contract Administration	6
5. Responsibilities	9
6. Terms and Conditions	9
7. Agreement and Program Agreement Term	9
8. Appendix B Amendments	9
9. Confidentiality	9
10. Termination	13
11. Warranties	15
12. Defense of infringement, misappropriation, and third party claims	16
13. Limitation of liability	17
14. Verifying compliance	20
15. Miscellaneous	29

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

This Agreement consists of the: (1) Business Agreement with Appendixes A,B,C,D and J (2) Enterprise Agreement with Appendix E; (3) Select Plus Agreement State and Local with Appendix F; (4) Academic Select Plus Agreement with Appendix G; (5) Campus and School Agreement with Appendix H; (6) the Product List; (7) the Product Use Rights ("PUR") applicable to the Products licensed under the Agreement; (8) any Enrollment or Affiliate Registration entered under this Agreement; and (9) any order submitted under this Agreement. In the event of a conflict between the terms and conditions in any of the documents identified above, such conflict shall be resolved by giving precedence in the following order:

1. Appendix A – Standard Clauses (12/12 version)
2. Business Agreement
3. Appendix B - General Specifications (7/06 version)
4. Appendix C – Contract Modification Procedure
5. Appendix J - Qualified Educational User Definition
6. The following Program Agreements: Enterprise Agreement Program Agreement, Select Plus License Program Agreement (both Academic and State and Local Government), and Campus and School Agreement, also to include appendixes with applicable sample Enrollment and amendments
7. Product List 60
8. Product Use Rights
9. Any executed and accepted Select Plus Affiliate Registration Forms or Enrollments
10. Any orders
11. Appendix D – Contractor Administration

Collectively, the foregoing is referred to as the "Agreement".

BACKGROUND

WHEREAS, since taking office in January, Governor Andrew Cuomo has committed his administration to implementing enterprise-wide changes that will utilize modern business practices in running New York State government.

WHEREAS, New Yorkers need a government in which they can take pride, and this comprehensive overhaul of operations will help accomplish that goal.

WHEREAS, as part of Governor Cuomo's Procurement Transformation, the Office of General Services undertook the development of this centralized contract to acquire Microsoft Products. New York State Agencies, local governments and others authorized by law to use OGS centralized contracts may obtain Microsoft Products through this Centralized Contract.

WHEREAS, there is a substantial pre-existing install base of Microsoft software Product within New York State Authorized Users. OGS determined that Authorized Users may need additional Products, and has determined it is in the best interest of Authorized Users to establish this single source centralized contract.

WHEREAS, Contractor does not sell directly to government customers, but rather sells exclusively through its authorized reseller network. The Parties acknowledge that OGS shall issue a competitive solicitation to acquire the services of one authorized reseller to fulfill its needs and that such authorized reseller shall be certified by Contractor as both an Authorized Education Reseller (AER) and Large Account Reseller (LAR).

WHEREAS, since the Contractor does not sell directly to governmental customers, it does not set the actual price paid by governmental customers. In order to allow "comparison shopping" it provides a "reference price".

WHEREAS, OGS provided notification of its intention to enter into a single source contract with Contractor by placing a notice in the March 27, 2013 edition of the New York State Contract Reporter;

WHEREAS, Contractor agrees to the terms and conditions set forth in this Centralized Contract, and

WHEREAS, the State has determined that the Contractor reference pricing and terms and conditions are equal to or better than similarly situated government entities. The Contractor is willing to provide the products as set forth herein to the reseller.

NOW THEREFORE, in consideration of the terms hereinafter mentioned and also the mutual covenants and obligations moving to each party hereto from the other, the Parties hereby agree as follows:

SECTION 1. SCOPE OF AGREEMENT

Effective Date. The effective date of this Agreement and the Program Agreements shall be July 1, 2013.

The OGS contract number (unique identifier) is PS66034.

1.1 Scope

The Agreement, including all Appendices and the associated Program Agreements, establish a Customer's overall licensing framework and the applicable terms and conditions. Under the Program Agreements, Customer may License Products by entering into Enrollments and/or Affiliate Registration forms and placing orders with the reseller. The Parties acknowledge the actual Products available for acquisition by an Authorized User will be set forth in the contract between OGS and a reseller that results from a separate competitive procurement by OGS to establish a reseller.

The Agreement and these Program Agreements may be updated at the mutual agreement of the Parties in accordance with the contractual terms and conditions to incorporate new offerings, make price level revisions, modify terms and conditions and delete items. Further, the Parties reserve the right to amend the Centralized Contract to add new and other offerings. If Contractor requests amendment of the Program Agreement, Enrollment or Registered Affiliate Form and the Parties do

not reach mutual agreement, such Product cannot be acquired under the Centralized Contract. Microsoft reserves the right to not accept an Enrollment, Affiliate Registration, or an Order for valid business reasons.

Contractor asserts and the State acknowledges that (1) no direct payment shall be made by an Authorized User directly to Contractor under this Agreement, and (2) under this Agreement, Contractor does not engage in direct sales of its Products with an Authorized User.

At Agreement execution, Contractor's offering under the Agreement does not include the provision of hardware products. Unless and until the Parties agree to amend the Agreement to include the provision of hardware products hereunder, Appendix B sections 51, 53 and 72 (e) are reserved.

1.2 Acquiring Contractor Product and Payments/Pricing

An Authorized User acquires Contractor Product under this Centralized Contract through a contract that will be established by a separate competitive procurement by OGS to establish its Reseller. The Reseller and the Customer will determine the Enrolled Customer's actual price and payment terms.

Prices shall be calculated and paid in accordance with terms of the separate, definitive agreement with OGS's named reseller in effect at the time of order placement.

1.3. Centralized Contract Amendment

During the term of the Centralized Contract, the Centralized Contract may be amended. OGS reserves the right to consider amendments which are not specifically covered by the terms of the Centralized Contract, but are judged to be in the best interest of the State. OGS, an Authorized User, or the Contractor may suggest amendments. Except as specifically provided herein, amendments or modifications to the terms and conditions set forth herein may only be made with mutual written agreement of the Parties.

1.4. Out-of-Scope Work

The Parties agree that the following are expressly excluded from the scope of this Centralized Contract unless the Parties agree to amend the scope of this Contract:

- Hardware
- Consulting services, which includes deliverable and hourly-based
- Technical support services
- Premier support services
- Supplies
- Development or customization work
- Systems or projects

The Parties also agree that no public works or building services work can be provided by the Contractor under this Centralized Contract. Further, the Parties agree that no remanufactured, recycled, recyclable or recovered materials can be provided by the Contractor under this Centralized Contract.

1.5 Definitions

The terms used in this Microsoft Business Agreement shall be defined in accordance with Appendix B (Part 1, §5 Definitions). In addition, the following definitions shall apply. Additional definitions are set forth in the attached Program Agreements.

"Affiliate" means

A. with regard to Customer

- i) any government agency, department, office, instrumentality, division, unit or other entity of the state or local government that is supervised by or is part of Customer, or which supervises Customer or of which Customer is a part, or which is under common supervision with Customer;
- ii) any county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality established by the laws of Customer's state and located within Customer's state jurisdiction and geographic boundaries; and
- iii) any other entity in Customer's state expressly authorized by the laws of Customer's state to purchase under state contracts; provided that a state and its Affiliates shall not, for purposes of this definition, be considered to be Affiliates of the federal government and its Affiliates (for clarity details on other entities can located here, or a successor site: <http://www.ogs.ny.gov/purchase/snt/othersuse.asp>); and

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

C. with regard to Institution for the purpose of Academic Program Agreements,

- i) for a non-public entity, any qualified educational user identified in Appendix J, that Institution owns and/or controls, that owns and/or controls Institution, or that is under common ownership and/or control with Institution; "ownership" means, for purposes of this definition, more than 50% ownership, and
- ii) for a state or local government entity,
 - (1) any qualified educational user identified in Appendix J, as of the effective date of this agreement that is an agency, department, office, bureau, division, or entity of the state or local government, and
 - (2) any qualified educational user expressly authorized by the laws of the state to purchase under state education contracts; provided that the state and its Affiliates shall not, for purposes of this definition, be considered to be Affiliates of the federal government and its Affiliates; and

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

"Customer" means: (1) for the purpose of the Select Plus License Program Agreement and Enterprise Agreement Program Agreement, the entity that has entered into a Program Agreement and its Affiliates; (2) for the purpose of the Academic Select Plus License Program Agreement and Campus and School Program Agreement, "Customer" means the Institution that has entered into a Program Agreement or its Affiliates that has entered into an Enrollment under a Program Agreement; and (3) for Appendix A and/or Appendix B, "Customer" means the Authorized User that has entered into such transaction and its Affiliates.

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

"Enrolled Customer" means an entity, Customer or anyone of Customer's Affiliates that has entered into an Enrollment or Affiliate Registration Form.

"Enterprise" shall mean with respect to the Enterprise Agreement Program only, the Enrolled Affiliate and the Affiliates it chooses on its Enrollment to include in its enterprise;

"Executive Agency" or **"Executive Agencies"** shall mean all state departments, offices or institutions but, for the purposes of this Centralized Contract, excludes the State University of New York and excludes City University of New York. Furthermore, such term shall not include the legislature and the judiciary. For the sake of clarity, the term "Executive Agency" does not include any public benefit corporation, public authority, or local government entity.

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

"Hot fixes" means a fix that Contractor makes available to a specific Authorized User to address a specific problem that is unique to said Authorized User. Sometimes Contractor makes the hotfix available to other customers if they report the same problem. If a large number of customers report the same problem, the hotfix can get elevated to a General Distribution Release (Service Pack).

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

"May" denotes the permissive in a contract clause or specification. Also see "Will."

"Microsoft" means the Microsoft Affiliate that has entered into this Agreement or a Program Agreement and its Affiliates, as appropriate;

"Must" denotes the imperative in a contract clause or specification. Also see "Shall."

"NYS Holidays: refers to the legal holidays for State Employees in the Classified Service of the Executive Branch, as more particularly specified on the website of the NYS Department of Civil Service. This includes the following: New Year's Day; Martin Luther King Day; Washington's Birthday (observed); Memorial Day; Independence Day; Labor Day; Columbus Day; Veteran's Day; Thanksgiving Day; and Christmas Day. A copy of the NYS Holidays for 2013 is available at http://www.cs.ny.gov/attendance_leave/2013_legal_holidays.cfm.

"New York State Procurement (NYSPRO)" shall mean a division of the New York State Office of General Services which is authorized by law to issue centralized, statewide contracts for use by New York agencies, political subdivisions, schools, libraries and others authorized by law to participate in such contracts.

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

"Product" means all software, Online Services and other web-based services identified on the Product List.

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

"Program Agreements" shall mean the following Agreements, with applicable appendices, which contain terms and conditions that apply solely to Enrollments and Affiliate Registration forms made pursuant to the Contractor's License programs to which they apply. The program agreements that are included herewith, as of the effective date, are as follows:

- Enterprise Agreement Program Agreement
- Select Plus License Program Agreement, (State and Local and Academic)
- Campus and School Agreement Program Agreement

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

"Reseller" means a large account reseller authorized by Microsoft to resell Product and Software Assurance in an Enrolled Customer's region under this Agreement;

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

"Shall" denotes the imperative in a contract clause or specification. Also see "Must."

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

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

"Will" denotes the permissive in a contract clause or specification. Also see "May."

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

SECTION 2. CONTRACT ADMINISTRATION

2.1 Contract Administrator

Contractor must provide a dedicated Contract administrator to support the updating and management of the Centralized Contract on a timely basis. Information regarding the Contract administrator shall be set forth in Appendix D, Contract Administration.

2.2 Contract Modifications

The Contractor shall submit all requests to add Products in the form and format contained in Appendix C, Contract Modification Procedure. In connection with any Contract modification, OGS reserves the right to: request additional information, reject Contract updates, remove Products from Contract updates, and request additional discounts for new or existing Products.

The form contained within Appendix C is subject to change at the sole discretion of OGS.

2.3 Price Level Changes

A Price level change that results in price increases are processed as an amendment. A Price level change that results in a price decrease is processed as an update. The Parties agree that price level changes that result in price increases can only occur once a year. The Parties agree that the price level cannot result in a price increase during the first year of the Centralized Contract. A Price level change that results in a price increase shall be effective thirty days after the date on which OGS approves.

2.4. Dispute Resolution Policy

INFORMAL DISPUTE RESOLUTION PROCESS

A. It is the policy of OGS New York State Procurement (NYSPro) to provide vendors with an opportunity to administratively resolve disputes, complaints or inquiries related to NYSPro bid solicitations or contract awards. If the Parties are not able to resolve their dispute between themselves as set forth below, NYSPro encourages vendors to seek resolution of disputes through consultation with NYSPro staff. Such consultation is voluntary. All such matters will be accorded impartial and timely consideration. Interested parties may also file formal written disputes. A copy of the Dispute Resolution Procedures for Vendors may be obtained by contacting the person shown above under "Notices" or through the OGS website (www.ogs.ny.gov).

B. 1. In the event there is a dispute or controversy under this Centralized Contract, the Contractor, OGS and Authorized User agree to exercise their best efforts to resolve the dispute as soon as possible. The Contractor, OGS and Authorized User shall, without delay, continue to perform their respective obligations under this Centralized Contract which are not affected by the dispute. Primary responsibility for resolving any dispute arising under this Centralized Contract shall rest with the Authorized User's Contractor Coordinators and the Contractor's Account Executive and the State & Local Government Regional General Manager.

2. In the event the Authorized User is dissatisfied with the Contractor's Products provided under this Centralized Contract, the Authorized User shall notify the Contractor in writing pursuant to Section 4.18 (Notices). In the event the Contractor has any disputes with the Authorized User, the Contractor shall so notify the Authorized User in writing. If either party notifies the other of such dispute or controversy, the other party shall then make good faith efforts to solve the problem or settle the dispute amicably, including meeting with the party's representatives to attempt diligently to reach a satisfactory result.

3. If negotiation between such persons fails to resolve any such dispute to the satisfaction of the parties within 14 business days or as otherwise agreed to by the Contractor and Authorized User, of

such notice, then the matter shall be submitted to the State's Contract Administrator and the Contractor's senior officer of the rank of Vice President or higher as its representative. Such representatives shall meet in person and shall attempt in good faith to resolve the dispute within the next 14 business days or as otherwise agreed to by the parties. This meeting must be held before either party may seek any other method of dispute resolution, including judicial or governmental resolutions. Notwithstanding the foregoing, this section shall not be construed to prevent either party from seeking and obtaining temporary equitable remedies, including injunctive relief.

4. The Contractor shall extend the dispute resolution period for so long as the Authorized User continues to make reasonable efforts to cure the breach, except with respect to disputes about the breach of payment of fees or infringement of its or its licensors' intellectual property rights.

C. This Section 2.4 does not apply to any breach by an Authorized User of Contractor's or its licensor's intellectual property rights.

FORMAL DISPUTES

A. Definitions

1. Filed means the complete receipt of any document by NYSPRO before its close of business.
2. Dispute means a written objection by Contractor to any of the following:
 - a. A solicitation or other request by NYSPRO for offers for a contract for the procurement of commodities or services.
 - b. The cancellation of the solicitation or other request by NYSPRO.
 - c. An award or proposed award of the contract by NYSPRO.
 - d. A termination or cancellation of an award of the contract by NYSPRO.
 - e. Changes in the Scope of the Centralized Contract by the Commissioner of OGS.
 - f. Determination of "materiality" in an instance of nonperformance or contractual breach.
 - g. An equitable adjustment in the Centralized Contract terms and/or pricing made by the Commissioner during a force majeure event.

B. Submission of Disputes

1. A formal dispute by Contractor must be filed in writing to NYSPRO by mail, email or facsimile.
2. The dispute must include:
 - a. Name, address, e-mail address, fax and telephone numbers of the filer.
 - b. Solicitation or contract number.
 - c. Detailed statement of the legal and factual grounds for the dispute, including a description of resulting prejudice to the filer.
 - d. Copies of relevant documents.
 - e. Request for a ruling by the agency.
 - f. Statement as to the form of relief requested.
 - g. All information establishing that the filer is an interested party for the purpose of filing a dispute.

- h. All information establishing the timeliness of the dispute.

Disputes must be filed with the Director of NYSPRO at the following address:

New York State Office of General Services

Director, NYSPRO

38th Floor, Corning Tower

Empire State Plaza

Albany, NY 12242

Facsimile: (518) 486-6099

3. Disputes concerning the administration of the contract after award must be filed within twenty (20) business days by Contractor after the Authorized User and Contractor fails to reach resolution through the Informal Dispute Resolution Process.

C. Agency Response

1. OGS will consider all information relevant to the dispute, and may, at its discretion, suspend, modify, or cancel the disputed procurement/contract action prior to issuance of a formal dispute decision.
2. OGS reserves the right to require the Contractor to meet or participate in a conference call with OGS to discuss the dispute when, in its sole judgment, circumstances so warrant.
3. OGS reserves the right to waive or extend the time requirements for decisions and final determination on appeals herein prescribed when, in its sole judgment, circumstances so warrant.
4. NYSPRO reserves the right to consider or reject the merits of any dispute.
5. Notice of Decision: A copy of the decision, stating the reason(s) upon which it is based and informing the filer of the right to appeal an unfavorable decision to the Chief Procurement Officer shall be sent to the filer or its agent by regular mail within thirty (30) business days of receipt of the dispute.

D. Appeals

1. Should the filer be dissatisfied with the dispute determination, a written appeal may be directed to:

Chief Procurement Officer

New York State Office of General Services

NYSPRO

38th Floor, Corning Tower

Empire State Plaza

Albany, NY 12242

Facsimile: (518) 486-9166

2. Written notice of appeal of a determination must be received at the above address no more than ten (10) business days after the date the decision is received by the filer. The decision of the Director of NYSPRO shall be a final and conclusive agency determination unless appealed to the Chief Procurement Officer within such time period.

3. The Chief Procurement Officer shall hear and make a final determination on all appeals or may designate a person or persons to act on his/her behalf. The final determination on the appeal shall be issued within twenty (20) business days of receipt of the appeal.

4. An appeal of the decision of the Director of NYSPRO shall not include new facts and information unless requested in writing by the Chief Procurement Officer.

5. The decision of the Chief Procurement Officer shall be a final and conclusive agency determination.

E. Legal Appeals

Nothing contained in these provisions is intended to limit or impair the rights of Contractor to seek and pursue remedies of law through the judicial process.

SECTION 3. RESPONSIBILITIES

3.1 Internet Access To Centralized Contract & Pricing Information

Access by Authorized Users to Centralized Contract terms and pricing information shall be made available and posted on the Internet by OGS. Contractor does not currently post the Centralized Contract on its Internet site.

3.2 Determination Of Compliance With Statutory And Regulatory Requirements

It is the responsibility of each Authorized User to evaluate the Contract offerings and determine if an offering complies with its statutory and regulatory requirements prior to acquisition. Contractor shall provide Contractor-specific available information, as appropriate, to the Authorized User in order to facilitate such determination. This includes, but is not limited to, Microsoft's data protection and privacy protocols.

SECTION 4. TERMS AND CONDITIONS

4.1 Centralized Contract Term

Term. This Agreement and the Program Agreements will remain in effect for thirty-six (36) full calendar months, with the option of two twelve (12) full calendar month extensions, unless it is terminated by either party as described in Termination (Appendix B section 60 as amended). OGS and Microsoft acknowledge that from a system's limitation perspective, the Agreement will not automatically expire after 36 months. The term for the Program Agreement Enrollment or Affiliate Registration Form will be determined by the applicable Program Agreement Enrollment or Affiliate Registration Form.

4.2 Appendix B Amendments

Appendix B is amended as follows:

1. Section 4, Conflict of Terms, is hereby deleted and replaced with the following:

Intentionally omitted.

2. The definition of "Product" set forth in Section 5, Definitions, is hereby deleted.

3. Section 14, Confidential/Trade Secret Materials, is hereby deleted and replaced with the following:

Appendix B §14 Confidential/Trade Secret Materials.

This provision is subject to NYS Freedom of Information Law (Public Officers Law Article 6), specifically §87 and §89, which authority would take precedence over this provision should there be any conflict.

a. As used in this Section, "Disclosing Party" means the State or an Authorized User when disclosing its Confidential Information (defined below) to the Contractor, or the Contractor when disclosing its Confidential Information to the State or an Authorized User, and "Receiving Party" means the State or an Authorized User when receiving disclosure of Confidential Information from the Contractor, or the Contractor when receiving disclosure of Confidential Information from the State or an Authorized User. "Confidential Information" means all confidential information disclosed by a party (the "Disclosing Party") to the other party (the "Receiving Party") either orally, visually, written or electronically after the effective date of this Contract including, without limitation, information relating to the Disclosing Party's operations, processes, plans or intentions, know-how, design rights, trade secrets or business affairs. Information when disclosed to Receiving Party shall be considered Confidential Information only to the extent marked or otherwise identified by Disclosing Party as "confidential," "proprietary," "restricted" or similar designation at the time of original disclosure. Confidential Information shall be clearly marked as "confidential," "proprietary," "restricted" or some similar designation. Except as provided in this Contract and specifically in clause 14(d) hereunder, the Receiving Party further agrees that any Confidential Information obtained by the Receiving Party from the Disclosing Party, its agents, subcontractors, officers, or employees in the course of performing its obligations, including without limitation, security procedures, business operations information, or commercial proprietary information in the possession of the Disclosing Party hereunder, will not be divulged to any third parties. The State and the Authorized User acknowledge that the Source Code to the Licensed Software and the Documentation are Confidential Information of Contractor.

b. The Receiving Party:

- i. may not use any Confidential Information for any purpose other than in accordance with, and in the performance of, its obligations under this Contract;
- ii. may not disclose any Confidential Information to any person except with the prior written consent of the Disclosing Party or in accordance with Clause 14(d); and
- iii. shall make every reasonable effort to prevent the use or disclosure, other than as expressly permitted herein, of Confidential Information.

The Receiving Party's confidential obligation shall end five years after time of original disclosure, to the extent permitted by applicable law. Receiving Party shall comply with record retention requirements to the extent Confidential Information is subject to State audit requirements.

c. The Receiving Party may disclose information which would otherwise be Confidential Information if and to the extent that:

- i. it is required by law (such as the New York State Freedom of Information Law);
- ii. the information has come into the public domain, otherwise than through (a) a breach of this Clause by the Receiving Party, (b) a third party's breach of any duty of confidentiality owed to the Disclosing Party of which the Receiving Party was aware, or (c) a violation of law;
- iii. it was in the Receiving Party's lawful possession prior to the disclosure and had not been obtained by the Receiving Party either directly or indirectly from the Disclosing Party;
- iv. it is required by existing contractual obligations of which the Disclosing Party is aware;

- v. it is independently developed by the Receiving Party without reliance on the Confidential Information;
- vi. it is required by any securities exchange or regulatory or governmental body to which it is subject or by judicial process;
- vii. it is otherwise obtained under the Freedom of Information Law or other applicable New York State laws or regulations; or
- viii. the disclosure is to its professional advisers, auditors or banker; or to any of its directors, other officers, employees and sub-contractors (a "Recipient") to the extent that disclosure is reasonably necessary for the purposes of this Contract.

d. Suggestions and Feedback. Either party may provide suggestions, comments or other feedback to the other with respect to the other's products or services. Feedback is voluntary and the party receiving feedback may use it for any purpose without obligation of any kind except that the party receiving feedback will not disclose the source of feedback without the consent of the party providing it.

e. Knowledge Base. Contractor may use any technical information derived from providing services related to Contractor's products for problem resolution, troubleshooting, product functionality enhancements and fixes, for Contractor's knowledge base. Contractor agrees not to identify the Authorized User or disclose any of Authorized User's confidential information in any item in the knowledge base.

4. Section 17 (Prevailing Wages) is deleted and replaced with the following language:

Intentionally omitted.

5. Section 22 (Remanufactured, Recycled, Recyclable or Recovered Materials) is deleted and replaced with the following language:

Intentionally omitted.

6. Section 23 (Products Manufactured in Public Institutions) is deleted and replaced with the following language:

Intentionally omitted.

7. Section 24 (Pricing) is deleted and replaced with the following language:

Intentionally omitted

8. Section 27 (Procurement Card) is deleted and replaced with the following language:

Intentionally omitted.

9. Section 34 (Performance and Responsibility Qualifications) is deleted and replaced with the following language:

34. PERFORMANCE AND RESPONSIBILITY QUALIFICATIONS The Commissioner reserves the right to investigate or inspect at any time whether or not the Product, services, qualifications or facilities offered by the Bidder/Contractor meet the requirements set forth in the Bid Specifications/Contract or as set forth during Contract negotiations. Notwithstanding the foregoing, Microsoft does not agree to nor will Microsoft permit Commissioner or any of Commissioner's designees to investigate or inspect any Microsoft facilities, including Microsoft data centers, associated internal systems and applications related to its performance under this Agreement. Contractor shall at all times during the Contract term remain responsible and responsive. A Bidder/Contractor must be prepared, if requested by the Commissioner, to present evidence of legal authority to do business in New York State, integrity, experience, ability, prior performance, organizational and financial capacity as well as where applicable, a statement as to supply, plant, machinery and capacity of the manufacturer or source for the production, distribution and servicing of the Product offered/Bid. If the Commissioner

determines that the conditions and terms of the Bid Documents, Bid Specifications or Contract are not complied with, or that subject to the warranty provisions, Product proposed to be furnished do not meet the specified requirements, or that the legal authority, integrity experience, ability, prior performance, organization and financial capacity or facilities are not satisfactory, the Commissioner may reject such Bid or terminate the Contract.

10. Section 38 (Contract Creation/Execution) is deleted and replaced with the following language:

Intentionally omitted.

11. Section 40 (Modification of Contract Terms) is deleted and replaced with the following language:

The terms and conditions set forth in the Contract shall govern all transactions by Authorized User(s) under this Contract. The Contract may only be modified or amended upon mutual written agreement of the Commissioner and Contractor.

The Contractor may, however, offer Authorized User(s) more advantageous pricing, payment, or other terms and conditions than those set forth in the Contract. In such event, a copy of such terms shall be furnished to the Authorized User(s) and Commissioner by the Contractor at the time of such offer.

Other than where such terms are more advantageous for the Authorized User(s) than those set forth in the Contract, no alteration or modification of the terms of the Contract, including substitution of Product, shall be valid or binding against Authorized User(s) unless authorized by the Commissioner or specified in the Contract Award Notification. No such alteration or modification shall be made by unilaterally affixing such terms to Product upon delivery (including, but not limited to, attachment or inclusion of standard pre-printed order forms, product literature, "shrink wrap" terms accompanying software upon delivery, or other documents) or by incorporating such terms onto order forms, purchase orders or other documents forwarded by the Contractor for payment, notwithstanding Authorized User's subsequent acceptance of Product, or that Authorized User has subsequently processed such document for approval or payment.

The Product List and Product Use Rights referenced in the Program Agreements, but not attached to the Program Signature Form, may be found at: <http://www.microsoft.com/licensing/contracts> and are incorporated by reference. The Enrolled Customer agrees to be bound by and accept all provisions in the Product List and Product Use Rights (as changed from time to time), to the extent such provisions do not conflict with the provisions set forth in the Agreement.

12. Section 45 (Product Delivery) is deleted and replaced with the following language:

The software downloads associated with product delivery for Customers and/or Authorized Users for products on orders will be made available in accordance with terms of the associated Program Agreement. Within 30 days after the effective date of the Program Agreement Enrollment or Affiliate Registration Form, the contact(s) identified for this purpose will be provided access to Microsoft's Volume Licensing Service Center ("VLSC") web site (or successor site) at: <https://www.microsoft.com/licensing/servicecenter>.

The decision of the Commissioner as to compliance with delivery terms shall be final. Such decision shall be reasonable and not delayed, withheld, or conditioned. In all instances of a potential or actual delay in delivery, the Contractor shall immediately notify the Commissioner and the Authorized User, and confirm in writing the explanation of the delay, and take appropriate action to avoid any subsequent late deliveries. Any extension of time for delivery must be requested in writing by the Contractor and approved in writing by the Authorized User. Failure to meet such delivery time schedule may be grounds for cancellation of the order or, in the Commissioner's discretion, the Contract.

The media associated with product delivery for Enrolled Customers for products on orders will be made available in accordance with terms of the associated Program Agreement. The software downloads and product delivery for Student and Work at Home Media will be made available in accordance with terms of the associated Program Agreement.

13. Section 46 (Weekend and Holiday deliveries) is deleted and replaced with the following language:

Intentionally omitted

14. Section 47 (Shipping/Receipt of Product) is deleted and replaced with the following language:

Contractor does not set pricing for media shipping charges, and all shipping charges, if applicable, will be determined by your Reseller. Student and Work at Home Media with regards to packaging and receipts will be made available in accordance with terms of the associated Program Agreement.

15. Section 48 (Title and Risk of Loss) is deleted and replaced with the following language:

Notwithstanding the form of shipment, title or other property interest, risk of loss shall not pass from the Contractor to the Authorized User until the Products have been received, inspected and accepted by the receiving entity. Acceptance shall occur within a reasonable time or in accordance with such other defined acceptance period as may be specified in the Bid Specifications or Purchase Order.

Notwithstanding the foregoing, any delivery of Product that does not comply with the Contract terms and conditions, as it relates to how the product performs is subject to the warranties section.

Any delivery of Product that does not comply with the Contract terms and conditions, may be rejected or accepted on an adjusted price basis as determined between the Commissioner and the Reseller in the associated Program Agreement.

16. Section 51 (Rejected Product) is deleted and replaced with the following language:

Intentionally omitted.

17. Section 53 (Repaired or Replaced Parts / Components) is deleted and replaced with the following language:

Intentionally omitted.

18. Section 55 (Employee, Subcontractors & Agents) is deleted and replaced with the following language:

55. EMPLOYEES, SUBCONTRACTORS & AGENTS All employees, Subcontractors or agents performing work under the Contract must be trained staff or technicians who meet or exceed the professional, technical and training qualifications set forth in the Bid Specifications or the Bid Documents, whichever is more restrictive, and must comply with all facilities security and administrative requirements of the Authorized User; provided, however, that any Microsoft employees, subcontractors, and agents (collectively, "Microsoft") are (1) may request to review such facilities security and administrative requirements in advance, and (2) permitted to request a waiver from the Authorized User for those specific requirements to which Microsoft is unable to comply. The Commissioner reserves the right to conduct a security background check or otherwise approve any employee, Subcontractor or agent furnished by Contractor and to refuse access to or require replacement of any personnel for cause based on, including but not limited to, professional, technical or training qualifications, quality of work or change in security status or non-compliance with Authorized User's security or other requirements. Such approval shall not relieve the Contractor of the obligation to perform all work in compliance with the Contract terms. The Commissioner reserves the right to reject and/or bar from the facility for cause any employee, Subcontractor, or agents of the Contractor.

19. Section 59 (Suspension of Work)) is deleted and replaced with the following language:

Intentionally omitted.

20. Section 60 (Termination) is deleted and replaced with the following language:

a. Termination without cause. (i) Either Party may terminate this Agreement, without cause, upon 60 days written notice. Such termination will merely terminate both Parties and its Affiliates' ability to

enter into new Program Agreements, Enrollments, or Affiliate Registrations Forms under this Agreement. Such termination will not affect any Enrollment, Affiliate Registrations or orders not otherwise terminated, and any terms of this Agreement applicable to any Enrollment, Affiliate Registrations or orders not otherwise terminated will continue in effect. (ii) An Enrolled Customer may terminate an Enrollment or Affiliate Registration Form without liability, penalty or further obligation to make payments if funds to make payments under the Enrollment or Affiliate Registrations Form are not appropriated or allocated for such purpose.

b. Termination for cause. (i) Either Party to this Agreement or a Program Agreement may terminate it if the other party materially breaches its obligations under this Agreement, including any obligation to submit orders or pay invoices. Except where the breach is by its nature not curable within 60 days, the terminating party must give the other party 60 days' notice and opportunity to cure. (ii) Either Microsoft or Enrolled Customer may terminate an Enrollment or Affiliate Registration if the other party materially breaches its obligations under this Agreement, including any obligation to submit orders or pay invoices. Except where the breach is by its nature not curable within 60 days, the terminating party must give the other party 60 days' notice and opportunity to cure.

If Microsoft gives such notice to an Enrolled Customer, Microsoft will, at the same time it gives notice to Enrolled Customer, give OGS a copy of that notice as well and OGS agrees to assist in attempting to resolve the breach. If the breach also affects other Enrollments or Affiliate Registration Forms, Microsoft shall give such notice to each affected Enrolled Customer and so advise OGS. If the breach cannot be resolved between Microsoft and Customer within a reasonable period of time, Microsoft may terminate all the affected Enrollment(s) that received actual notification.

If an Enrolled Affiliate ceases to be Customer's Affiliate, Customer must promptly notify Microsoft, and Microsoft may terminate its Enrollment.

Microsoft and OGS agree that this termination for cause provision is subject to the Dispute resolution section set forth above.

c. Enrolled Customer Termination. Additional Terms and Conditions for an Enrolled Customer's expiration, early termination, and termination and for an Enrollment or Affiliate Registration are set forth in the applicable Program Agreement.

d. For Violation of the Sections 139-j and 139-k of the State Finance Law: The Commissioner reserves the right to terminate the Contract in the event it is found that the certification filed by Contractor in accordance with Section 139-k of the State Finance Law was intentionally false or intentionally incomplete. Upon such finding, the Commissioner may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms of the Contract.

e. For Violation of Revised Tax Law 5a: The Commissioner reserves the right to terminate the contract in the event it is found that the certification filed by the Contractor in accordance with §5-a of the Tax Law is not timely filed during the term of the Contract or the certification furnished was intentionally false or intentionally incomplete. Upon such finding, the Commissioner may exercise its termination right by providing written notification to the Contractor.

f. For Failure to Provide Required Documentation: The Commissioner reserves the right to terminate the contract in the event Microsoft fails to provide OGS with proof of its exemption from disability insurance coverage in New York, as it does not have employees in NYS, within 120 days of execution of the Contract. Upon such finding, the Commissioner may exercise its termination right by providing written notification to the Contractor.

21. Section 62 (Contract Billings) is deleted and replaced with the following language:

Intentionally omitted.

22. Section 63 (Default – Authorized User) is hereby deleted and replaced with the following:

Intentionally omitted.

23. Section 64 (Interest on Late Payments) is hereby deleted and replaced with the following:

Intentionally omitted.

24. Section 65 (Remedies for Breach) is deleted and replaced with the following language:

Intentionally omitted.

25. Section 69 (Security) is deleted and replaced with the following language:

Privacy and security. Microsoft and Enrolled Affiliate will each comply with all applicable privacy and data protection laws and regulations (including applicable security breach notification law). However, Microsoft is not responsible for compliance with any laws applicable to Enrolled Affiliate or Enrolled Affiliate's industry that are not also generally applicable to information technology services providers. Enrolled Affiliate consents to the processing of personal information by Microsoft and its agents to facilitate the subject matter of this agreement. Enrolled Affiliate may choose to provide personal information to Microsoft on behalf of third parties (including Enrolled Affiliate's contacts, resellers, distributors, administrators, and employees) as part of this agreement. Enrolled Affiliate will obtain all required consents from third parties under applicable privacy and data protection law before providing personal information to Microsoft. The personal information Enrolled Affiliate provides in connection with this agreement will be processed according to the privacy statement available at <https://www.microsoft.com/licensing/servicecenter>, except that Product-specific privacy statements are in the Product use rights. Personal data collected through Products may be transferred, stored and processed in the United States or any other country in which Microsoft or its service providers maintain facilities. By using the Products, Customer consents to the foregoing. Microsoft abides by the EU Safe Harbor and the Swiss Safe Harbor frameworks as set forth by the U.S. Department of Commerce regarding the collection, use, and retention of data from the European Union, the European Economic Area, and Switzerland. For Online Services, additional privacy and security details are in the Product use rights.

26. Section 72 (Product Performance) is hereby deleted and replaced with the following:

Warranties.

a. Limited warranty. Microsoft warrants that:

- (i) Online Services will perform in accordance with the applicable Service Level Agreement;
- (ii) Products other than Online Services will perform substantially as described in the applicable Product List and Product Use Rights; and
- (iii) The Contractor represents and warrants that Product contains no known viruses. Contractor is not responsible for viruses introduced at Enrolled Customer's site.

b. Limited warranty term. The limited warranty for:

- (i) Online Services is for the duration of Customer's or Institution's use of the Online Service, subject to the notice requirements in the applicable Service Level Agreement;
- (ii) Products other than Online Services is one year from the date Customer first uses the Product; and

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

- (i) any implied warranties, guarantees or conditions not able to be disclaimed as a matter of law last for one year from the start of the limited warranty;
- (ii) the limited warranty does not cover problems caused by accident, abuse or use in a manner inconsistent with this Agreement or the Product Use Rights, or resulting from events beyond Microsoft's reasonable control;
- (iii) the limited warranty does not apply to components of Products that Customer or Institution is permitted to redistribute;

- (iv) the limited warranty does not apply to free, trial, pre-release, or beta products; and
- (v) the limited warranty does not apply to problems caused by the failure to meet minimum system requirements as identified at <http://technet.microsoft.com/en-us/library/jj134246.aspx> or at a successor site.

d. **Remedies for breach of limited warranty.** If Microsoft fails to meet any of the above limited warranties and Customer notifies Microsoft within the warranty term, then Microsoft will:

- (i) for Online Services, provide the remedies identified in the Service Level Agreement for the affected Online Service;
- (ii) for Products other than Online Services, at its option either (1) return the price paid or (2) repair or replace the Product; and

These are Customer's or Institution's only remedies for breach of the limited warranty, unless other remedies are required to be provided under applicable law.

e. **DISCLAIMER OF OTHER WARRANTIES. OTHER THAN THIS LIMITED WARRANTY, MICROSOFT PROVIDES NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS. MICROSOFT DISCLAIMS ANY IMPLIED REPRESENTATIONS, WARRANTIES OR CONDITIONS, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE OR NON-INFRINGEMENT. THESE DISCLAIMERS WILL APPLY UNLESS APPLICABLE LAW DOES NOT PERMIT THEM.**

27. Section 73 (Legal Compliance) is hereby deleted and replaced with the following:

Contractor represents and warrants that it shall secure all notices and comply with all laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the Contract generally applicable to information technology services providers. Prior to award and during the Contract term and any renewals thereof, Contractor must establish to the satisfaction of the Commissioner that it meets or exceeds all requirements of the Bid and Contract and any applicable laws, including but not limited to, permits, licensing, and shall provide such proof as required by the Commissioner. Failure to comply or failure to provide proof may constitute grounds for the Commissioner to cancel or suspend the Contract, in whole or in part, or to take any other action deemed necessary by the Commissioner. Contractor also agrees to disclose information and provide affirmations and certifications to comply with Sections 139-j and 139-k of the State Finance Law.

28. Section 74 (Indemnification) is hereby deleted and replaced with the following:

Intentionally omitted.

29. Section 75 (Indemnification Relating to Third Party Rights) is deleted and replaced with the following language:

Defense of infringement, misappropriation, and third party claims.

- a. **Microsoft's agreement to protect.** Microsoft will defend Customer against any claims made by an unaffiliated third party that any Product or Fix that is made available by Microsoft for a fee infringes that party's patent, copyright, or trademark or makes unlawful use of its Trade Secret. Microsoft will also pay the amount of any resulting adverse final judgment (or settlement to which Microsoft consents). This section provides Customer's or Institution's exclusive remedy for these claims.
- b. **Limitations on defense obligation.** Microsoft's obligations will not apply to the extent that the claim or award is based on:
 - (i) Customer Data, non-Microsoft software, modifications Customer makes to, a Product or Fix;

- (ii) Customer's combination of the Product or Fix with a non-Microsoft product, data or business process; or damages based on the use of a non-Microsoft product, data or business process;
- (iii) Customer's use of either Microsoft Trademarks or the use or redistribution of a Product or Fix in violation of this Agreement incorporating its terms or;
- (iv) Customer's use of a Product or Fix after Microsoft notifies Customer and Enrolled Customer to discontinue that use due to a third party claim.

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

- c. **Customer's agreement to protect.** To the extent authorized by applicable law and, to the extent applicable, subject to lawful appropriations and consistent with Section 8 of the New York State Court of Claims Act, Customer will hold harmless and indemnify Microsoft and its Affiliates against any claims made by an unaffiliated third party that:
 - (i) any Customer Data or non-Microsoft software Microsoft hosts on Customer's behalf infringes the unaffiliated third party's patent, copyright, or trademark or makes unlawful use of its Trade Secret; or
 - (ii) Arises from violation of the Acceptable Use Policy, which is described in the Product Use Rights.

Customer will be responsible for the amount of any resulting adverse final judgment (or settlement to which Customer consents). This Section provides Microsoft's exclusive remedy for these claims.

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

- (i) **Microsoft's offerings.** If Microsoft reasonably believes that a Product or Fix may infringe or misappropriate an unaffiliated third-party's intellectual property rights, Microsoft will seek to: (1) procure for Customer the right to continue to use the Product or Fix; or (2) modify or replace it with a functional equivalent to make it non-infringing and notify Customer and Enrolled Customer to discontinue use of the prior version, which Customer must do immediately. If the foregoing options are not commercially reasonable for Microsoft, or if required by a valid judicial or government order, Microsoft may terminate Customer's license or access rights in the Product or Fix. In such a case, Microsoft will provide Customer and Enrolled Customer with notice and refund any amounts Enrolled Customer has paid for those rights to the Product or Fix (or for Online Services, any amount Enrolled Customer has paid in advance for unused Online Services).
- (ii) **Customer Data or use of non-Microsoft software with Online Services.** If an unaffiliated third party asserts that Customer Data or non-Microsoft software or any other non-Microsoft technology used by Customer with the Online Services violates their intellectual property rights, Microsoft may ask Customer to remove the allegedly infringing item. If Enrolled Customer fails to do so within a reasonable period of time, Microsoft may suspend or terminate the Online Service to which the Customer Data or non-Microsoft software relates.
- e. **Obligations of protected party.** Customer must notify Microsoft promptly in writing of a claim subject to the Subsection titled "Microsoft's agreement to protect" and Microsoft must notify Customer promptly in writing of a claim subject to the Subsection titled "Customer's agreement to protect." The party invoking its right to protection must: (1) give the other party sole control over the defense or settlement; and (2) provide reasonable assistance in defending the claim. The party providing the protection will reimburse the other party for reasonable out of pocket expenses that it incurs in providing assistance. Notwithstanding the above, the State and the Authorized User reserve the right to join an action, at its sole expense, when it determined there is an issue involving a significant public interest.

30. Section 76 (**Limitation of Liability**) is deleted and replaced with the following:

- a. **Limitation on liability.** To the extent permitted by applicable law, the liability of Microsoft and Enrolled Customer, their respective Affiliates and Vendors arising under this agreement is limited to direct damages up to (1) for Products other than Online Services, two times (2x) the amount Enrolled Customer was required to pay for the Product giving rise to that liability and (2) for Online Services, other than Office 365 Services, the amount Enrolled Customer paid

for the Online Service giving rise to that liability during the prior 12 months. In the case of Products provided free of charge, or code that Enrolled Customer is authorized to redistribute to third parties without separate payment to Microsoft, Microsoft's liability is limited to U.S. \$5,000. These limitations apply regardless of whether the liability is based on breach of contract, tort (including negligence), strict liability, breach of warranties, or any other legal theory. However, these monetary limitations will not apply to:

- (i) Microsoft's and Enrolled Customer's obligations under the section titled "Defense of infringement, misappropriation, and third party claims";
 - (ii) liability (including damage to real or personal tangible property) for damages caused by either party's gross negligence or willful misconduct, or that of its employees or its agents, and awarded by a court of final adjudication (provided that, in jurisdictions that do not recognize a legal distinction between "gross negligence" and "negligence," "gross negligence" as used in this subsection shall mean "recklessness");
 - (iii) liabilities arising out of any breach by either party of its obligations under the section entitled "Confidentiality", except that Microsoft's liability arising out of or in relation to Customer Data shall in all cases be limited to the amount Enrolled Affiliate paid for the Online Service giving rise to that liability during the prior 12 months;
 - (iv) liability for personal injury or death caused by either party's negligence, or that of its employees or agents, or for fraudulent misrepresentation; and
 - (v) violation by either party of the other party's intellectual property rights.
- b. EXCLUSION OF CERTAIN DAMAGES. TO THE EXTENT PERMITTED BY APPLICABLE LAW, WHATEVER THE LEGAL BASIS FOR THE CLAIM, NEITHER PARTY, NOR ANY OF ITS AFFILIATES, OR VENDORS, WILL BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, OR INCIDENTAL DAMAGES, OR DAMAGES FOR LOST PROFITS, REVENUES, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION ARISING IN CONNECTION WITH THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH POSSIBILITY WAS REASONABLY FORESEEABLE. HOWEVER, THIS EXCLUSION DOES NOT APPLY TO EITHER PARTY'S LIABILITY TO THE OTHER FOR VIOLATION OF ITS CONFIDENTIALITY OBLIGATIONS (EXCEPT TO THE EXTENT THAT SUCH VIOLATION RELATES TO CUSTOMER DATA), THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, OR THE PARTIES' RESPECTIVE OBLIGATIONS IN THE SECTION TITLED "DEFENSE OF INFRINGEMENT, MISAPPROPRIATION, AND THIRD PARTY CLAIMS."**
- c. Affiliates and Vendors.** Neither Microsoft nor Enrolled Customer shall bring any action against the other's Affiliates or Vendors in respect of any matter disclaimed on their behalf in this Agreement.
- d. Limitation of Liability for Office 365 Services.**

The following additional definitions shall apply to this Section 13(d):

- (i) "Covered Data Loss," means loss of Customer Data that is not (a) attributable to the instructions, acts or omissions of Enrolled Affiliate or its users or (b) within the published recovery point objective for the Office 365 Services published in the "Service Continuity Management" section of the Office 365 Service Descriptions; and
- (ii) "Covered Disclosure," means disclosure of Customer Data as a result of a successful Security Incident, as defined in Section 2 of the Office 365 Security Incident Notification amendment (M91).

Solely for purposes of clarity related to the Office 365 Services, Section 76(a) of this Agreement, above, titled "Limitation of Liability," is hereby amended as follows.

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

the maximum amount of either party's liability to the other for direct damages associated with the Office 365 Services will be the amount Enrolled Customer paid for the Online Service giving rise

to that liability during the prior 24 months (subject to the exclusions set forth above in Section 76 b).

For purposes of this Section 76d, the following shall be deemed to be "direct damages" not subject to the exclusion of indirect or consequential damages set forth above in Section 76b:

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

- a. Authorized User's reasonable costs in notifying affected individuals of Covered Disclosure in which the data subjects' personally-identifiable information has been disclosed;
- b. Credit monitoring for up to twelve (12) months for affected individuals;
- c. Damages and fines assessed against Enrolled Customer by a court of competent jurisdiction and awarded to individuals whose Personally Identifiable Information is subject to a Covered Disclosure.
- d. Any additional reasonable and documented costs of any mitigation, remedies or plans to the extent that such mitigation, remedies or plans are customary, reasonable, and expected to be paid by Authorized Users, given the nature and scope of the Security Incident involving a Customer Data breach of PII, as validated by an independent accounting firm chosen by both entities .

In all other respects, the Limitation of Liability section of the MBA shall continue to apply as written.

31. Section 78 (**Software License Grant**) is deleted and replaced with the following language:

- a. **License Scope.** Customer rights to run the current version of the ordered Product is temporary until it has paid the Reseller for that License in full. Thereafter, Customer shall have a perpetual license to run the number of copies ordered in the version ordered. Perpetual Licenses received through Software Assurance supersede and replace the underlying perpetual Licenses for which Software Assurance coverage was ordered. Some Products may be licensed on a fixed term or subscription basis. The right to use products licensed on a Subscription basis terminates upon expiration if it is not renewed. Subscription Licenses are not perpetual under any circumstance. The use rights for Enrolled Customers on orders will be made available in accordance with terms of the associated Program Agreement.
- b. **License Term.** The license term shall commence upon the License Effective Date, provided, however, that where an acceptance or trial period applies to the Product, the License Term shall be extended by the time period for testing, acceptance or trial.
- c. **Licensed Documentation.** Customer may acquire the quantity of media as necessary to distribute the Products for use in accordance with the Program Agreement. In certain cases, re-imaging is permitted using the Product media. Re-imaging is conditional upon compliance with applicable terms in the Program Agreement.
- d. **Product Technical Support & Maintenance.** Licensee shall have the option of electing Software Assurance as set forth in the applicable Program Agreement. Software Assurance coverage and any renewal(s) thereof are independent of the expiration of the Centralized Contract term and will not automatically renew. Software Assurance shall include Fixes, new version rights, and may include other benefits including 24x7 Problem Resolution Support for Products as further described in the Product List. In the Select Plus Program Agreement Customer shall not be required to purchase maintenance for use of Product, and may discontinue maintenance at the end of any current maintenance term upon notice to Contractor.
- e. **Permitted License Transfers.** License Transfer for fully-paid perpetual Licenses are sometimes permitted and are conditional upon compliance with applicable terms in the Program Agreement.
- f. **Restricted Use by Outsourcers / Facilities Management, Service Bureaus / or Other Third Parties.** Outsourcers, facilities management or service bureaus retained by Licensee shall have the right to use the Product to maintain Licensee's business operations, including data processing, for the time period that they are engaged in such activities, provided that: 1) Licensee gives notice to Contractor of such party, site of intended use of the Product, and means of access; and 2) such party has executed, or agrees to execute, the Product manufacturer's standard nondisclosure or restricted use agreement which executed agreement shall be accepted by the Contractor ("Non-Disclosure Agreement"); and 3) if such party is engaged in the business of

facility management, outsourcing, service bureau or other services, such third party will maintain a logical or physical partition within its computer system so as to restrict use and access to the program to that portion solely dedicated to beneficial use for Licensee. In no event shall Licensee assume any liability for third party's compliance with the terms of the Non-Disclosure Agreement, nor shall the Non-Disclosure Agreement create or impose any liabilities on the State or Licensee.

- g. Archival Back-Up and Disaster Recovery.** Customers with Software Assurance for qualifying server products and related CALs are eligible for complimentary server licenses for those products for disaster recovery (DR) purposes.

For each qualifying server license (i) a customer has enrolled in SA and (ii) for which the customer has all related CALs (if required by the product) enrolled in SA, the customer will be deemed to have a second server license under which it may deploy the same product on a "cold" back-up server solely for DR purposes during the term of its Software Assurance coverage. Customers' deployment and use of software under the DR licenses is subject to the terms and conditions of their license agreement.

- h. Confidentiality Restrictions.** The Product is a trade secret, copyrighted and proprietary product. Licensee and its employees will keep the Product strictly confidential, and Licensee will not disclose or otherwise distribute or reproduce any Product to anyone other than as authorized under the terms of Contract. Licensee will not remove or destroy any proprietary markings of Contractor.

- i. Restricted Use by Licensee.** Enrolled Customer must not:

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

Additional Restricted Use requirements will be made available in accordance with terms of the associated Program Agreement.

32. Section 79 (Product Acceptance) is deleted and replaced with the following language:

Intentionally omitted.

33. Section 80 (Audit of Licensed Product Usage) is deleted and replaced with the following language:

Verifying compliance.

- a. **Right to verify compliance.** Enrolled Customer must keep records relating to the Products it and its Affiliates use or distribute. Microsoft has the right, to the extent permitted by applicable law, to verify compliance with the license terms for Products, at Microsoft's expense.
- b. **Verification process and limitations.** Microsoft will provide Enrolled Customer at least 30 days' written notice of its intent to verify compliance. Microsoft will engage a nationally recognized independent auditor, which will be subject to a confidentiality obligation. Verification will take place during normal business hours and in a manner that does not interfere unreasonably with Customer's operations. Customer must promptly provide the independent auditor with any information it reasonably requests in furtherance of the verification, including access to systems running the Products and evidence of licenses for Products. Microsoft shall permit the Customer to have complete visibility into the independent auditor's access to Customer's systems to validate the auditor's actions. Customer hosts, sublicenses, or distributes to third parties. As an alternative, Microsoft may require Customer to complete Microsoft's self-audit process relating to the Products Customer and any of its Affiliates use or distribute. Such information will be used solely for purposes of determining compliance.

c. Remedies for non-compliance. If verification or self-audit reveals any unlicensed use, Customer must within 30 days order sufficient licenses to cover its use. If there is no unlicensed use, Microsoft will not undertake another verification of the same Customer for at least one year. By exercising the rights and procedures described above, Microsoft does not waive its rights to enforce this Agreement or to protect its intellectual property by any other means permitted by law. Once such additional licenses are purchased, Enrolled Customer shall be deemed to be in compliance with its obligations under the Agreement to be properly licensed, and Enrolled Customer shall have no further financial liability with respect to the unlicensed use, for the Product paid in full.

d. Additional Terms and Conditions for Enrolled Customers compliance for Users is set forth in the applicable Program Agreement.

34. Section 81, Ownership/Title to Project Deliverables, is deleted and replaced with the following language:

Intentionally omitted.

35. Section 82 (Proof of License) is deleted and replaced with the following language:

This Agreement and applicable Program Agreement (soft copy or web link to location is acceptable), the applicable Enrollment or Affiliate Registration Form(soft copy is acceptable), the Enrolled Customer's order confirmation, and any documentation evidencing transfers of Licenses, together with proof of payment, will be the Enrolled Customer's evidence of all Licenses obtained.

36. Section 83 (Product Version) is deleted and replaced with the following language:

Intentionally omitted.

37. Section 84 (Changes to Product Support or Service Offerings) is deleted and replaced with the following language:

Supportability. Contractor may add support for new products or discontinue support for existing products from time-to-time. If Contractor discontinues support for a product, Contractor will inform Authorized User six months in advance of the discontinuation by posting the information at <http://support.microsoft.com> or any successor site. If Contractor sells a product to another company, Contractor will give Authorized User notice of the sale and at the time of such notice will either (i) arrange for the other company to continue the support; or (ii) continue support itself for 90 days to give Authorized User time to make alternative arrangements.

Contractor shall offer a minimum of 10 years of support for MS products. Mainstream Support for MS products shall be provided for 5 years or for 2 years after the successor product (N+1) is released, whichever is longer. Pursuant to the terms of the Centralized Contract, Contractor shall also provide Extended Support for the 5 years following Mainstream support or for 2 years after the second successor product (N+2) is released, whichever is longer. Finally, most MS products will receive at least 10 years of online self-help support.

4.6 Short Term Extension

In the event the replacement Centralized Contract has not been issued, any contract let and awarded hereunder by the State, may be extended mutual by the State for an additional period of up to one month upon notice to the Contractor with the same terms and conditions as the original contract including, but not limited to, quantities (prorated for such one month extension), prices, and delivery requirements. With the concurrence of the Contractor, the extension may be for a period of up to three months in lieu of one month. However, this extension terminates should the replacement contract be issued in the interim.

4.7 Performance and Bid Bonds

There are no bonds for this Centralized Contract. In accordance with Appendix B, Clause 58 "Performance/Bid Bond," the Commissioner of OGS has determined that no performance, payment or Bid bond, or negotiable irrevocable letter of credit or other form of security for the faithful performance

of the Centralized Contract shall be required at any time during the Initial Term, or any renewal term, for this Centralized Contract. The Parties reserve the right to amend this clause when consulting services or technical services are added to the scope of contract.

4.8 Non-State Agencies Participation in Centralized Contracts And Extension Of Use

New York State political subdivisions and others authorized by New York State law may participate in Contracts resulting from this solicitation. These include, but are not limited to local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations. See State Finance Law §§160(9) and 163(1) (k). For purchase orders issued by the Port Authority of New York and New Jersey (or any other authorized entity that may have delivery locations adjacent to New York State), services to be provided may include locations adjacent to New York State.

4.9 Contractor Requirements And Procedures For Business Participation Opportunities For New York State Certified Minority And Women-Owned Business Enterprises And Equal Employment Opportunities For Minority Group Members And Women

New York State Law

Pursuant to New York State Executive Law Article 15-A, OGS recognizes its obligation under the law to promote opportunities for maximum feasible participation of certified minority and women-owned business enterprises and the employment of minority group members and women in the performance of OGS contracts.

In 2006, the State of New York commissioned a disparity study to evaluate whether minority and women-owned business enterprises had a full and fair opportunity to participate in state contracting. The findings of the study were published on April 29, 2010, under the title "The State of Minority and Women-Owned Business Enterprises: Evidence from New York" ("Disparity Study"). The report found evidence of statistically significant disparities between the level of participation of minority and women-owned business enterprises in state procurement contracting versus the number of minority and women-owned business enterprises that were ready, willing and able to participate in state procurements. As a result of these findings, the Disparity Study made recommendations concerning the implementation and operation of the statewide certified minority and women-owned business enterprises program. The recommendations from the Disparity Study culminated in the enactment and the implementation of New York State Executive Law Article 15-A, which requires, among other things, that OGS establishes goals for maximum feasible participation of New York State Certified minority and women-owned business enterprises ("MWBE") and the employment of minority groups members and women in the performance of New York State contracts.

Equal Employment Opportunity Requirements

Contractor agrees with all of the terms and conditions of Appendix A including Clause 12 - Equal Employment Opportunities for Minorities and Women. The Contractor is required to ensure that it and any subcontractors awarded a subcontract over \$25,000 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor, shall undertake or continue programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status. For these purposes, equal opportunity shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) work, goods, or services unrelated to the Contract; or (ii) employment outside New York State.

Contractor further agrees to submit a staffing plan on Form EEO 100 identifying the anticipated work force to be utilized on the Contract and if awarded a Contract, will, upon request, submit to OGS, a workforce utilization report identifying the workforce actually utilized on the Contract if known.

Further, pursuant to Article 15 of the Executive Law (the "Human Rights Law"), all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor and sub-contractors will not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status or domestic violence victim status, and shall also follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal conviction and prior arrest.

Business Participation Opportunities for MWBEs

For purposes of this procurement, OGS has conducted a comprehensive search and has determined that the Contract does not offer sufficient opportunities to set goals for participation by MWBEs as subcontractors, service providers and suppliers to the awarded Contractors. Contractors are, however, encouraged to make every good faith effort to promote and assist the participation of MWBEs on this Contract for the provision of services and materials. To locate MWBEs, the Directory of Certified Businesses can be viewed at: <http://www.esd.ny.gov/MWBE/directorySearch.html>

Please Note: Failure to comply with the foregoing requirements may result in a finding of non-responsiveness, non-responsibility and/or a breach of the Contract, leading to the withholding of funds, suspension or termination of the Contract or such other actions or enforcement proceedings as allowed by the Contract.

ALL FORMS ARE AVAILABLE AT: <http://www.ogs.ny.gov/MWBE/Forms.asp>

4.10 New York State Vendor File Registration

Prior to being awarded a Contract, the Contractor and any designated authorized reseller(s) who accept payment directly from the State must be registered in the New York State Vendor File (Vendor File) administered by the OSC. This is a central registry for all vendors who do business with New York State Agencies and the registration must be initiated by a State Agency. Following the initial registration, a unique New York State ten-digit vendor identification number (Vendor ID) will be assigned to your company and Vendor IDs will be assigned to each of your authorized resellers (if any) for usage on all future transactions with New York State. Additionally, the Vendor File enables vendors to use the Vendor Self-Service application to manage certain vendor information in one central location for all transactions related to the State of New York.

If the Contractor is already registered in the Vendor File, the Contractor must enter its ten-digit Vendor ID on this Contract.

If the Contractor is not currently registered in the Vendor File, it must request assignment of a Vendor ID number from OGS. Complete the OSC Substitute W-9 Form (http://www.osc.state.ny.us/vendors/forms/ac3237_fe.pdf) and submit the form to OGS. Please send this document to the Designated Contact in the solicitation. In addition, if an authorized reseller(s) is to be used that does not have a Vendor ID, an OSC Substitute W-9 form (http://www.osc.state.ny.us/vendors/forms/ac3237_fe.pdf) should be completed by each designated authorized reseller and submitted to OGS. The OGS will initiate the vendor registration process for all companies and their authorized resellers. Once the process is initiated, registrants will receive an e-mail identifying their unique ten-digit Vendor ID and instructions on how to enroll in the online Vendor Self-Service application. For more information on the Vendor File please visit the following website: http://www.osc.state.ny.us/vendor_management/.

4.11 New York State Vendor Responsibility Questionnaire For-Profit Business Entity

OGS conducts a review of Bidders to provide reasonable assurances that the Bidder is responsive and responsible. A New York State Vendor Responsibility Questionnaire For-Profit Business Entity (hereinafter the "Questionnaire") is used for non-construction Contracts and is designed to provide

information to assess a Bidder's responsibility to conduct business in New York based upon financial and organizational capacity, legal authority, business integrity, and past performance history. By submitting a proposal, the Contractor agrees to fully and accurately complete the Questionnaire. The Contractor acknowledges that the State's execution of the Contract will be contingent upon the State's determination that the Contractor is responsible, and that the State will be relying upon the Contractor's responses to the Questionnaire when making its responsibility determination.

OGS recommends each Contractor file the required Questionnaire online via the New York State VendRep System. To enroll in and use the VendRep System, please refer to the VendRep System Instructions and User Support for Vendors available at OSC's website, http://www.osc.state.ny.us/vendrep/vendor_index.htm or to enroll, go directly to the VendRep System online at <https://portal.osc.state.ny.us>.

Please note that a Vendor ID is required to enroll in the VendRep System. Please see section 4.10 for information on how to obtain a Vendor ID. Allow up to four (4) business days to accommodate the verification process associated with assigning a Vendor ID and updating the OSC Online Services portal to allow a vendor to enroll to use the VendRep System.

OSC provides direct support for the VendRep System through user assistance, documents, online help, and a help desk. The OSC Help Desk contact information is located at <http://www.osc.state.ny.us/portal/contactbuss.htm>. A Contractor that opts to complete the paper questionnaire can access this form and associated definitions via the OSC website at: http://www.osc.state.ny.us/vendrep/forms_vendor.htm.

In order to assist the State in determining the responsibility of the Contractor, the Contractor must complete and certify (or recertify) the Questionnaire no more than six (6) months prior to the execution date. A Questionnaire cannot be viewed by OGS until the Contractor has certified the Questionnaire.

The Contractor agrees that if it is found by the State that the Contractor's responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, OGS may terminate the Contract. In no case shall such termination of the Contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

4.12 Tax Law §5-A

Tax Law §5-a requires certain Contractors awarded state Contracts for commodities, services and technology valued at more than \$100,000 to certify to DTF that they are registered to collect New York State and local sales and compensating use taxes. The law applies to Contracts where the total amount of such Contractors' sales delivered into New York State are in excess of \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any affiliates and subcontractors whose sales delivered into New York State exceeded \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made.

A Contractor is required to file the completed and notarized Form ST-220-CA with OGS certifying that the Contractor filed the ST-220-TD with NYS Department of Taxation and Finance (DTF). Note: NYS DTF receives the completed Form ST-220-TD, not OGS. OGS ONLY receives the Form ST-220-CA. Form ST-220-CA must be filed with the bid and submitted to the procuring covered Agency certifying that the Contractor filed the ST-220-TD with DTF. Contractor should complete and return the certification forms within five (5) business days of request (if the forms are not completed and returned with bid submission). Failure to make either of these filings may render a Contractor non-responsive and non-responsible. Contractor shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law.

Website links to the Contractor certification forms and instructions are provided below. Form No. ST-220-TD must be filed with and returned directly to DTF and can be found at http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf Unless the information upon which the ST-220-TD is based changes, this form only needs to be filed once with DTF. If the information changes for the Contractor, its affiliate(s), or its subcontractor(s), a new Form ST-220-TD must be filed with DTF.

Form ST-220-CA must be submitted to OGS. This form provides the required certification that the Contractor filed the ST-220-TD with DTF. This form can be found at http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf

Vendors may call DTF at 518-485-2889 for any and all questions relating to Section 5-a of the Tax Law and relating to a company's registration status with DTF. For additional information and frequently asked questions, please refer to the DTF web site: <http://www.tax.ny.gov/>.

4.13 Summary of Policy and Prohibitions on Procurement Lobbying

Pursuant to State Finance Law §§139-j and 139-k, this solicitation includes and imposes certain restrictions on communications between OGS and a Bidder during the procurement process. A Bidder is restricted from making contacts from the earliest notice of intent to solicit offers/bids through final award and approval of the Procurement Contract by OGS and, if applicable, the Office of the State Comptroller ("restricted period") to other than designated staff unless it is a contact that is included among certain statutory exceptions set forth in State Finance Law §139-j (3) (a). Designated staff, as of the date hereof, is identified on the first page of this solicitation. OGS employees are also required to obtain certain information when contacted during the restricted period and make a determination of the responsibility of the Bidder pursuant to these two statutes. Certain findings of non-responsibility can result in rejection for contract award and in the event of two findings within a four-year period; the Bidder is debarred from obtaining governmental Procurement Contracts. Further information about these requirements can be found on the OGS website:

<http://www.ogs.ny.gov/aboutOgs/regulations/defaultAdvisoryCouncil.html>

4.14 Iran Divestment Act

By entering into this Contract, Contractor certifies that it is not on the "Entities Determined To Be Non-Responsive Bidders/Offerers Pursuant to The New York State Iran Divestment Act of 2012" list ("Prohibited Entities List") posted on the OGS website at: <http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf> and further certifies that it will not utilize on such Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of the Contract will be required to certify that it is not on the Prohibited Entities List before OGS may approve a request for Assignment of Contract.

During the term of the Contract, should OGS receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, OGS will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then OGS shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, seeking compliance, recovering damages, or declaring the Contractor in default. OGS reserves the right to reject any request for renewal, extension, or assignment for an entity that appears on the Prohibited Entities List prior to the renewal, extension, or assignment of the Contract, and to pursue a responsibility review with Contractor should it appear on the Prohibited Entities List hereafter.

4.15 Insurance

The Contractor shall procure at its sole cost and expense, and shall maintain in force at all times during the term of this Contract, a program of self-insurance or policies of insurance as herein below set forth, written by companies licensed or authorized by the New York State Department of Financial Services to issue insurance in the State of New York ("Authorized Carriers") with an A.M. Best Company rating of "A-" Class "VII" or better. If, during the term of the policy, an Authorized Carrier's rating falls below "A-" Class "VII", the insurance must be replaced no later than the renewal date of the policy with an insurer acceptable to the New York State Office of General Services ("OGS") and rated at least "A-" Class "VII" or better in the most recently published Best's Insurance Report.

The Contractor shall deliver to OGS evidence of such policies in a form acceptable to OGS. These policies must be written in accordance with the requirements of the paragraphs below, as applicable. Acceptance and/or approval by OGS does not and shall not be construed to relieve Contractor of any obligations, responsibilities or liabilities under the Contract.

4.15.1 General Conditions

A. Conditions Applicable to Insurance

All policies of insurance required by this Contract must meet the following requirements:

1. Coverage Types and Policy Limits. The types of coverage and policy limits required from the Contractor are specified in Paragraph B Insurance Requirements below.
2. Policy Forms. Except as may be otherwise specifically provided herein or agreed in writing by OGS, policies must be written on an occurrence basis.
3. Certificates of Insurance/Notices. Contractor shall provide a Certificate or Certificates of Insurance, in a form satisfactory to OGS, upon award, and thereafter within fifteen (15) business days of request. Certificates shall reference the Contract Number. As applicable, the requested forms must name the New York State Office of General Services, Procurement Services Group, 38th Floor, Corning Tower, Albany, New York 12242 as the entity requesting proof of coverage (the entity being listed as the Certificate Holder). Certificates shall be submitted to the Office of General Services, Procurement Services Group, Corning Tower- 38th Floor, Empire State Plaza, Albany, NY 12242.

Unless otherwise agreed, policies shall be written so as to include a provision that the policy will not be canceled, materially changed, or not renewed without at least thirty (30) days prior written notice, or in the case of cancellation or non-renewal due to non-payment notice shall be provided as required by law, to OGS. The Contractor shall not take any action, or omit to take any action that would suspend or invalidate any of the required coverages during the period of time such coverages are required to be in effect. Not less than thirty (30) days prior to the expiration date or renewal date, the Contractor shall supply OGS updated replacement Certificates of Insurance, and amendatory endorsements.

Certificates of Insurance shall:

- Be in the form approved by OGS;
- Refer to this Contract by number and any other attachments on the face of the certificate; and
- Be signed by an authorized representative of the insurance carrier or producer.

Only original documents (Certificates of Insurance and other attachments) will be accepted.

4. Primary Coverage. All insurance policies shall provide that the required coverage shall apply on a primary and not on an excess or contributing basis as to any other insurance that may be available to OGS or any Authorized User for any claim arising from the Contractor's work under this Contract, or as a result of the Contractor's activities. Any other insurance maintained by OGS or any Authorized User shall be excess of and shall not contribute with the Contractor's insurance regardless of the "other insurance" clause contained in OGS or the Authorized User's own policy of insurance.

5. Policy Renewal/Expiration. Thirty (30) days after the expiration of any policy required by this Contract, evidence of renewal of insurance with terms no less favorable to OGS than the expiring policies shall be delivered to OGS in the manner required for service of notice in the above paragraph

entitled "Certificates of Insurance/Notices". If, at any time during the term of this Contract, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in the Contract or proof thereof is not provided to OGS, the Contractor shall immediately cease work. The Contractor shall not resume work until authorized to do so by OGS. Any delay, time lost, or additional cost incurred as a result of the Contractor not having insurance required by the Contract or not providing proof of same in a form acceptable to OGS, shall not give rise to a delay claim or any other claim against OGS. Should the Contractor fail to provide or maintain any insurance required by this Contract, or proof thereof is not provided, OGS or the Authorized Users may withhold further contract payments, treat such failure as a breach or default of the contract. Contractor may at its option, meet the insurance requirements set forth in this Centralized Contract via commercial insurance, self insurance, alternative risk financing solutions or a combination of these options.

6. Self-Insured Retention/Deductibles. The Contractor shall be solely responsible for all claim expenses and loss payments within the deductible or self-insured retention.

7. Subcontractors. Should the Contractor engage a Subcontractor, the Contractor shall require all Subcontractors, prior to commencement of an agreement between Contractor and the Subcontractor, to secure and keep in force during the term of this Contract the insurance requirements of this document on the Subcontractor, as applicable. Required insurance limits should be determined commensurate with the work of the Subcontractor. Proof thereof shall be supplied to OGS.

B. Insurance Requirements

The Contractor, throughout the term of this Contract, or as otherwise required by this Contract, shall obtain and maintain in full force and effect a program of self-insurance or the following insurance with limits not less than those described below and as required by the terms of this Contract, or as required by law, whichever is greater (limits may be provided through a combination of primary and umbrella/excess policies):

a) Commercial General Liability Insurance with a limit of not less than \$2,000,000 each occurrence. Such liability shall be written on the ISO occurrence form CG 00 01 01 96, or a substitute form providing equivalent coverages and shall cover liability arising from premises operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, liability assumed in a contract (including the tort liability of another assumed in a contract) and explosion, collapse & underground coverage.

1. For construction contracts only: If such insurance contains an aggregate limit, it shall apply separately on a per job basis.

2. Policy shall include bodily injury, property damage and broad form contractual liability coverage.

- General Aggregate \$3,000,000
- Personal and Advertising Injury \$1,000,000
- Each Occurrence \$3,000,000

Coverage shall include, but not be limited to, the following:

- Premises liability;
- Independent contractors;
- Blanket contractual liability, including tort liability of another assumed in a contract;
- Defense and/or indemnification obligations, including obligations assumed under this contract;
- Cross liability for additional insureds;
- Explosion, collapse and underground hazards; and

- Contractor means and methods.

The following ISO forms must be endorsed to the policy:

- a) CG 00 01 01 96 or an equivalent Commercial General Liability Coverage Form;

Limits may be provided through a combination of primary and umbrella/excess liability policies. The CGL aggregate shall be endorsed to apply on a per project basis for construction contracts.

- b) Comprehensive Business Automobile Liability Insurance with a limit of not less than \$1,000,000.00 each accident. Such insurance shall cover liability arising out of any automobile including owned, leased, hired and non-owned automobiles.

- c) Professional Liability: The Contractor shall maintain errors and omissions liability insurance with a limit of not less than \$2,000,000 per loss.

1. Such insurance shall apply to professional errors, acts, or omissions arising out of the scope of services covered by this Contract.

2. If coverage is written on a claims-made policy, the Contractor warrants that any applicable retroactive date precedes the start of work; and that continuous coverage will be maintained, or an extended discovery period exercised, throughout the performance of the services and for a period of not less than three years from the time work under this Contract is completed. Written proof of this extended reporting period must be provided to OGS prior to the policy's expiration or cancellation.

3. The policy shall cover professional misconduct or lack of ordinary skill for those positions defined in the Scope of Services of this contract.

Each Claim \$1,000,000

Annual Aggregate \$2,000,000

- d) Crime Insurance Policy Limit \$50,000.00

1. The policy shall include coverage for all directors, officers, agents and employees of the Contractor.

2. The policy shall include coverage for extended theft and mysterious disappearance.

3. The policy shall not contain a condition requiring an arrest and conviction.

4. Policies shall be endorsed to provide coverage for computer crime/fraud.

C. Workers' Compensation Insurance and Disability Benefits Requirements

Workers' Compensation Law (WCL) §57 & §220 requires the heads of all municipal and state entities to ensure that businesses applying for permits, licenses or contracts document it has appropriate workers' compensation and disability benefits insurance coverage. These requirements apply to both original contracts and renewals, whether the governmental agency is having the work done or is simply issuing the permit, license or contract. Failure to provide proof of such coverage or a legal exemption will result in OGS not executing the contract

1. Proof of Compliance with Workers' Compensation Coverage Requirements:

An ACORD form (certificate of insurance) is NOT acceptable proof of workers' compensation coverage. In order to provide proof of compliance with the requirements of the Workers' Compensation Law pertaining to workers' compensation coverage, a Contractor shall:

- A) Be legally exempt from obtaining Workers' Compensation insurance coverage; or
- B) Obtain such coverage from an insurance carrier; or
- C) Be a Workers' Compensation Board-approved self-insured employer or participate in an authorized self-insurance plan.

A Contractor seeking to enter into a contract with the State of New York shall provide one of the following forms to the Office of General Services at the time of bid submission or shortly after the opening of bids:

A) Form CE-200, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required, which is available on the Workers' Compensation Board's website (www.wcb.state.ny.us); (Reference applicable RFP and Group #s on the form.)

B) Certificate of Workers' Compensation Insurance:

1) Form C-105.2 (9/07) if coverage is provided by the Contractor's insurance carrier, Contractor must request its carrier to send this form to the New York State Office of General Services, or

2) Form U-26.3 if coverage is provided by the State Insurance Fund, Contractor must request that the State Insurance Fund send this form to the New York State Office of General Services.

C) Form SI-12, Certificate of Workers' Compensation Self-Insurance available from the New York State Workers' Compensation Board's Self-Insurance Office.

D) Form GSI-105.2, Certificate of Participation in Workers' Compensation Group Self-Insurance available from the Contractor's Group Self-Insurance Administrator. Workers' Compensation Insurance and Disability Benefits Requirements

2. Proof of Compliance with Disability Benefits Coverage Requirements:

In order to provide proof of compliance with the requirements of the Workers' Compensation Law pertaining to disability benefits, a Contractor shall:

- A) Be legally exempt from obtaining disability benefits coverage; or
- B) Obtain such coverage from an insurance carrier; or
- C) Be a Board-approved self-insured employer.

A Contractor seeking to enter into a contract with the State of New York shall provide one of the following forms to the Office of General Services before the Contract can take effect:

- a. Form CE-200, Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required, which is available on the Workers' Compensation Board's website (www.wcb.state.ny.us); (Reference applicable RFP and Group #s on the form.)
- b. Form DB-120.1, Certificate of Disability Benefits Insurance. Contractor must request its business insurance carrier to send this form to the New York State Office of General Services; or
- c. Form DB-155, Certificate of Disability Benefits Self-Insurance. The Contractor must call the Board's Self-Insurance Office at 518-402-0247 to obtain this form.

Miscellaneous

4.16 Entire Agreement

This Centralized Contract and the referenced appendices constitute the entire agreement between the Parties thereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and the Centralized Contract shall not be changed, modified or altered in any manner except by an instrument in writing executed by the Parties hereto, except as otherwise provided herein. Authorized Users shall not have the authority to modify the terms of the Centralized Contract, except as to better terms and pricing for a particular procurement than those set forth herein. No preprinted terms or conditions on a Purchase Order issued by an Authorized User, which seek to vary the terms of this Centralized Contract or impose new duties or obligations on the Contractor, shall have any force or effect.

4.17 Notices

Notices to the State: All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to this Contract shall be in writing and shall be validly given when mailed by registered or certified mail, or hand delivered, to the State, addressed to the State at its address set forth below. The Parties may from time to time, specify any address in the United States as its address for purpose of notices under this Contract by giving fifteen (15) days written notice to the other party. The Parties agree to mutually designate individuals as their respective representatives for purposes of this Contract. The New York State Contract Administrator for this Contract is:

OFFICE OF GENERAL SERVICES

Vivian Basile, Contract Administrator

38th Floor, Corning Tower

Empire State Plaza

Albany, NY 12242

Email: Vivian.basile@ogs.ny.gov

Phone: (518) 402-9400 Fax: (518) 486-6867

Supplemental Contact Form: This form provides the primary notice contact to Microsoft for administering the Business Agreement and the Program Agreements.

Notices to the Enrolled Customers: All notices, authorizations, and requests given or made in connection with this Centralized Contract must be sent by post, express courier, facsimile or email to the addresses indicated on the Enrollment or Affiliate Registration Form from the applicable Program Agreement. Notices will be deemed delivered on the date shown on the postal return receipt or on the courier, or facsimile or email confirmation of delivery.

Notices to the Contractor: If to Contractor, addressed to Contract Administrator at the address set forth in Appendix D (Contract Administration). Appendix D provides Contractor contact information to support the updating and management of the Centralized Contract on a timely basis. The Parties may from time to time, specify any address in the United States as its address for purpose of notices under this Contract by giving fifteen (15) days written notice to the other party. The Parties agree to mutually designate individuals as their respective representatives for purposes of this Contract.

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

Copies should be sent to:

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

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

4.18 Captions. The captions contained in this Centralized Contract are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision thereof.

4.19 Waiver. No waiver of any breach of this Centralized Contract shall be deemed 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.

4.20 Subcontractors. Microsoft may use Vendors to perform and support Online Services. Microsoft will be responsible for their performance subject to the terms of this agreement.

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

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

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

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

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

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

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

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

4.29 Copyright violation. Except as set forth in the applicable Program Agreement entitled "Transferring and reassigning Licenses", the Enrolled Customer agrees to pay for, and comply with

the terms of this agreement and the Product Use Rights, for the Products it uses. Except to the extent Enrolled Customers licensed under this agreement, it will be responsible for its breach of this contract and violation of Microsoft's copyright in the Products, including payment of License fees specified in this agreement for unlicensed use.

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

4.31 How to know what Product Use Rights apply

- a. **Product Use Rights.** The Product Use Rights in effect on the effective date of the Agreement will apply to Customer's use of then-current versions of each Product (excluding Online Services). For future versions, the Product Use Rights in effect when those future versions are first released will apply. In both cases, subsequent changes made by Microsoft to the Product Use Rights for a particular version will not apply to Customer's use of that version, unless Enrolled Affiliate chooses to have such changes apply. The use rights for Online Services and the process for updating them as the Online Services evolve are detailed in the Product Use Rights.
- b. **Product Use Rights for earlier versions (downgrade).** If Customer runs an earlier version of a Product than the version that was current on the Agreement effective date, the Product Use Rights for the version licensed, not the version being run, will apply. However, if the earlier version includes components that are not part of the licensed version, any Product Use Rights specific to those components will apply to Customer's use of those components.
- c. **Reservation of rights.** All rights not expressly granted are reserved.

Additional use rights and restrictions are set forth in the applicable Program Agreements.

4.32 Non-Microsoft Software or Technology

Enrolled Affiliate is solely responsible for any non-Microsoft software or technology that it installs or uses with the Products or Fixes. Microsoft is not a party to and is not bound by any terms governing Enrolled Affiliate's use of non-Microsoft software or technology.

If Enrolled Affiliate installs or uses any non-Microsoft software or technology with the Products or Fixes, it directs and controls the installation in and use of such software or technology in the Products or Fixes, through its actions (e.g., through Enrolled Affiliate's use of application programming interfaces and other technical means that are part of the Online Services). Microsoft will not run or make any copies of such non-Microsoft software or technology outside of its relationship with Enrolled Affiliate.

If Enrolled Affiliate installs or uses any non-Microsoft software or technology with the Products or Fix, it may not do so in any way that would subject Microsoft's intellectual property or technology to obligations beyond those included in the agreement.

Proposal ID	001-jendunn-S-901 B
-------------	---------------------

Enterprise Agreement Custom Program Agreement Terms and Conditions

State and Local

Contents

1. Definitions.	1
2. How the Enterprise and Enterprise Subscription program works.	3
3. Licenses for Products.	3
4. How to know what Product Use Rights apply.	4
5. Making copies of Products and re-imaging rights.	4
6. Transferring and reassigning Licenses.	5
7. Term and termination.	6
8. Restrictions on use.	7
9. Non-Microsoft Software or Technology.	7
10. Confidentiality.	7
11. Warranties.	8
12. Defense of infringement, misappropriation, and third party claims.	8
13. Limitation of liability.	8
14. Verifying compliance.	8
15. Miscellaneous.	8

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

Effective date. *Intentionally omitted, this section is included in the associated Microsoft Business Agreement.*

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

Please note: Several documents referenced in this Program Agreement but not attached to the signature form may be found at: <http://www.microsoft.com/licensing/contracts> and are incorporated by reference, including the Product List and Product Use Rights. These documents may contain additional terms and conditions for Products licensed under this Program Agreement and may be changed from time to time in accordance with Appendix B, §40. Customer and/or its Affiliates should review such documents carefully, both at the time of signing and periodically, to ensure a full understanding of all terms and conditions applicable to Products licensed.

Terms and Conditions

1. Definitions.

"Affiliate" means

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

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

(iii) any other entity in Customer's state expressly authorized by the laws of Customer's state to purchase under state contracts; provided that a state and its Affiliates shall not, for purposes of this definition, be considered to be Affiliates of the federal government and its Affiliates (for clarity details on other entities can located here, or a successor site: <http://www.ogs.ny.gov/purchase/snt/othersuse.asp>); and

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

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

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

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

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

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

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

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

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

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

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

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

"Product" means all software, Online Services and other web-based services, identified on the Product List.

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

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

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

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

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

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

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

2. **How the Enterprise and Enterprise Subscription program works.**

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

- a. **Enrollments.** The Enterprise program gives Customer and/or its Affiliates the ability to enter into one or more Enrollments to order Products. Subscription Enrollments may be available for some of these Enrollments.
- b. **Licenses.** The types of Licenses available are L&SA, Licenses obtained under Software Assurance and Subscription Licenses. These License types as well as additional License Types are defined in the Product List.
- c. **How Enrolled Affiliates acquire Licenses.** An Enrolled Affiliate will acquire its Licenses through its chosen Reseller. Orders will be made out to and submitted to the Enrolled Affiliate’s Reseller. Microsoft will invoice that Reseller according to the terms in the applicable Enrollment.
- d. **Choosing and maintaining a Reseller.** Each Enrolled Affiliate must choose and maintain a Reseller authorized in the Enrolled Affiliate’s location.
- e. **Pricing.**

- (i) **Establishing Price Levels.** Each Product generally is assigned to a Product pool (e.g. applications, systems, or servers). With the exception of Enterprise Products listed the Discount Level table below and purchased under the Enterprise Agreement only, each Product pool will be assigned Level D. Enrolled Customer Price Level will be Level D for Enterprise Online Services, Online Services and Additional Products ordered under any Enrollment.

The following Price Level Discounts are established for 36 months after the effective date of this Program Agreement:

Enterprise Product Pools	Discount Level
Applications (Office Pro/Office Standard)	Level D less 7.5%
System (Windows Operating System & MDOP)	Level D less 9%
Servers (Core &, Enterprise Client Access License Suites)	Level D less 9%

The Discount Levels were determined by the amount of Enrolled Affiliates desktops and/or users with Enterprise Products from the following table:

Desktop and/or User Count	Level Discount
Below 40,000	none
40,000-59,999	2.00%
60,000- 79,999	4.00%
80,000-119,000	6.00%
120,000-299,999	7.50%
300,000-499,999	9.00%

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

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

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

3. **Licenses for Products.**

a. **General.** Enrolled Affiliate will have the number of Licenses ordered for the latest version of a Product, and may use prior versions as permitted in the Product Use Rights, so long as Microsoft receives timely orders from Reseller for all required Licenses for such Products and complies with applicable license terms. The Licenses obtained under an Enrollment are not related to any order or fulfillment of software media. The ability to use a Product ordered may be affected by minimum hardware or software requirements.

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

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

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

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

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

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

- d. **Perpetual Licenses through Software Assurance.** Perpetual Licenses received through Software Assurance supersede and replace the underlying perpetual Licenses for which Software Assurance coverage was ordered. In the case of Early Termination, the terms in Section 7 titled "Term and Termination will apply."
- e. **License confirmation.** This Program Agreement (*soft copy or web link to location is acceptable*), the applicable Enrollment (*soft copy is acceptable*), the Enrolled Affiliate's order confirmation, and any documentation evidencing transfers of Licenses, together with proof of payment, will be the Enrolled Affiliate's evidence of all Licenses obtained under its Enrollment.
- f. **Reorganizations, consolidations, and privatizations.** If the number of Qualified Devices or Qualified Users covered by an Enrollment changes by more than ten percent as a result of a reorganization, consolidation, or privatization of an Enrolled Affiliate, Microsoft will work with the Enrolled Affiliate in good faith to determine how to accommodate its changed circumstances in the context of this Program Agreement. If an Enrolled Affiliate consolidates with a third party with an existing Agreement or enrollment, Microsoft will work with the Enrolled Affiliate in good faith to accommodate its changed circumstances in the context of this Program Agreement.

4. How to know what Product Use Rights apply.

Intentionally omitted, this section is included in the associated Microsoft Business Agreement

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

- a. **General.** Enrolled Affiliate may make as many copies of Products, if applicable, as it needs to distribute them within its organization. Copies must be true and complete (including copyright and trademark notices) from master copies obtained from a Microsoft approved fulfillment source. Enrolled Affiliate may use a third party to make these copies, but Enrolled Affiliate agrees it will be responsible for any third party's actions. Enrolled Affiliate agrees to use reasonable efforts to notify its employees, agents, and any other individuals who use the Products that the Products are licensed from Microsoft and subject to the terms of this Agreement.
- b. **Copies for training/evaluation and back-up.** For all Products other than Online Services, Enrolled Affiliate may: (1) use up to 20 complimentary copies of any licensed Products in a dedicated training facility on its premises for purposes of training on that particular Product, (2) use up to 10 complimentary copies of any Products for a 60 day evaluation period, and (3) use one complimentary copy of any licensed Product for back-up or archival purposes for each of its distinct geographic locations. Trials for Online Services may be available if specified in the Product Use Rights.
- c. **Right to re-image.** In certain cases, re-imaging is permitted using the Product media. If the Microsoft Product is licensed (1) from an original equipment manufacturer (OEM), (2) as a full packaged Product through a retail source, or (3) under another Microsoft program, then media provided under this Program Agreement may generally be used to create images for use in place of copies provided through that separate source. This right is conditional upon the following:
 - (i) Separate Licenses must be owned from the source for each Product that is re-imaged.
 - (ii) The Product, language, version, and components of the copies made must be identical to the Product, language, version, and all components of the copies they replace and the number of copies or instances of the re-imaged Product permitted remains the same.

- (iii) Except for copies of an operating system and copies of Products licensed under another Microsoft program, the Product type (e.g., upgrade or full License) must be identical to the Product type from the separate source.
- (iv) Enrolled Affiliate must adhere to any Product-specific processes or requirements for re-imaging identified in the Product List.
- (v) Re-images made under this subsection remain subject to the terms and use rights provided with the License from the separate source.
- (vi) This subsection does not create or extend any warranty or support obligation.

6. **Transferring and reassigning Licenses.**

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

7. **Term and termination.**

- a. **Term.** *Intentionally omitted, this section is included in the associated Microsoft Business Agreement.*
- b. **Termination without cause.** *Intentionally omitted, this section is included in the associated Microsoft Business Agreement.*
- c. **Mid-term termination for non-appropriation of Funds.** *Intentionally omitted, this section is included in the associated Microsoft Business Agreement.*
- d. **Termination for cause.** *Intentionally omitted, this section is included in the associated Microsoft Business Agreement.*

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

- (i) It may immediately pay the total remaining amount due, including all installments, in which case, the Enrolled Affiliate will have perpetual rights for all Licenses it has ordered; or
- (ii) It may pay only amounts due as of the termination date, in which case the Enrolled Affiliate will have perpetual Licenses for:
 - 1) all copies of Products (including the latest version of Products ordered under SA coverage in the current term) for which payment has been made in full, and
 - 2) the number of copies of Products it has ordered (including the latest version of Products ordered under Software Assurance coverage in current term) that is proportional to the total of installment payments paid versus total amounts due (paid and payable) if the early termination had not occurred.
- (iii) In the case of Early Termination under Subscription Enrollments, Enrolled Affiliate will have the following options:
 - 1) For eligible products Enrolled Affiliate may obtain perpetual Licenses as described in the section titled "Buy-out option," provided that Microsoft receives the buy-out order for those Licenses within 60 days after Enrolled Affiliate provides notice of termination.
 - 2) Where not exercising buy-out option, in the event of breach by Microsoft, Microsoft will issue Reseller a credit for any amount paid in advance that would apply after the date of termination.

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

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

- (i) Enrolled Affiliate must order Licenses for all copies of Products it has run for which it has not previously submitted an order. Any and all unpaid payments or any order of any kind, including subscription services, remain due and payable. Except as provided in the subsection titled "Early termination," all unpaid payments for Licenses immediately become due and payable.
- (ii) Enrolled Affiliate's right to Software Assurance benefits under this Agreement ends if it does not renew Software Assurance.

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

8. **Restrictions on use.** *Intentionally omitted, this section is included in the associated Microsoft Business Agreement.*
9. **Non-Microsoft software or technology.** *Intentionally omitted, this section is included in the associated Microsoft Business Agreement.*
10. **Confidentiality.** *Intentionally omitted, this section is included in the associated Microsoft Business Agreement.*
11. **Warranties.** *Intentionally omitted, this section is included in the associated Microsoft Business Agreement.*
12. **Defense of infringement, misappropriation, and third party claims.** *Intentionally omitted, this section is included in the associated Microsoft Business Agreement.*
13. **Limitation of liability.** *Intentionally omitted, this section is included in the associated Microsoft Business Agreement.*
14. **Verifying compliance.** *Intentionally omitted, this section is included in the associated Microsoft Business Agreement.*
15. **Miscellaneous.** *All of the following sections are intentionally omitted, and are included in the associated Microsoft Business Agreement.*
 - a. **Notices to Microsoft.**
 - b. **Assignment.**
 - c. **Severability.**
 - d. **Waiver.**
 - e. **Applicable law; Dispute resolution.**
 - f. **This Agreement is not exclusive.**
 - g. **Survival.**
 - h. **No transfer of ownership.**
 - i. **Free Products.**
 - j. **Amending the Agreement.**
 - k. **Resellers and other third parties cannot bind Microsoft.**
 - l. **Privacy and security.**
 - m. **Voluntary Product Accessibility Templates.**
 - n. **Natural disaster.**
 - o. **Copyright violation.**
 - p. **U.S. export jurisdiction.**

Appendix F- Sample Custom EA Enrollment



Volume Licensing

Enterprise Enrollment number <i>(Microsoft to complete)</i>		Proposal ID/Framework ID	NY001
Previous Enrollment number <i>(Reseller to complete)</i>		Earliest expiring previous Enrollment end date ¹	

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

This Microsoft Enterprise Enrollment is entered into between the entities as identified in the signature form as of the effective date. Enrollment Affiliate represents and warrants it is the same Customer, or an Affiliate of the Customer, that entered into the Enterprise Agreement identified on the program signature form.

This Enrollment consists of: (1) the terms and conditions of the Agreement, (2) the terms of the Enterprise Program Agreement identified on the signature form, (3) the terms and conditions of this Enrollment, (4) the Product Selection Form, (5) any supplemental contact information form or Previous Program Agreement/Enrollment form that may be required, and (6) any order submitted under this Enrollment.

Effective date. If Enrolled Affiliate is renewing Software Assurance or Subscription Licenses from one or more previous Enrollments or Program Agreements, then the effective date will be the day after the first prior Enrollment or Program Agreement expires or terminates. Otherwise, the effective date will be the date this Enrollment is accepted by Microsoft. If renewing Software Assurance, the Reseller will need to insert the previous enrollment or Program Agreement number and end date in the respective boxes above.

Term. This Enrollment will expire on the last day of the month, 36 full calendar months from the effective date unless otherwise renewed. Any reference in this Enrollment to "day" will be a calendar day.

Product order. The Reseller will provide Enrolled Affiliate with Enrolled Affiliate's Product pricing and order. Prices and billing terms for all Products ordered will be determined by agreement between Enrolled Affiliate and the Reseller. The Reseller will provide Microsoft with the order separately from this Enrollment.

Prior Enrollment(s). If renewing Software Assurance or Subscription Licenses from another Enrollment or Program Agreement, the previous Enrollment or Program Agreement number and end date must be identified in the respective boxes above. If renewing from multiple Enrollments or Program Agreements, or transferring Software Assurance or MSDN details, the Previous Program Agreement/Enrollment form must be used.

Terms and Conditions

1. Definitions.

Terms used but not defined in this Enrollment will have the definition in the Enterprise Program Agreement. The following definitions are used in this Enrollment:

"Additional Product" means any Product identified as such in the Product List and chosen by Enrolled Affiliate under this Enrollment.

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

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

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

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

"Qualified Device" means any device that is used by or for the benefit of Enrolled Affiliate's Enterprise and is: (1) a personal desktop computer, portable computer, workstation, or similar device capable of running Windows Professional locally (in a physical or virtual operating system environment), OR (2) a device used to access a virtual desktop infrastructure ("VDI"). Qualified Devices do not include any device that is: (1) designated as a server and not used as a personal computer, OR (2) an Industry Device, OR (3) not managed (as defined in the Product List at the start of the applicable initial or renewal term of the Enrollment) as part of Enrolled Affiliate's Enterprise. At its option, the Enrolled Affiliate may designate any device excluded above (e.g., Industry Device) as a Qualified Device for all or a subset of Enterprise Products or Online Services the Enrolled Affiliate has selected.

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

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

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

"Transition Period" means the time between the Transition and the next Enrollment anniversary date for which the Transition is reported.

2. Purpose.

This Enrollment enables Enrolled Affiliate's Enterprise to obtain, or subscribe to, Licenses for Enterprise Products, Enterprise Online Services, and Additional Products. Enrolled Affiliate may choose between on-premise software and Online Services as well as the ability to transition Licenses to Online Services while maintaining Enterprise-wide coverage. Additionally, Enterprise Online Services may be purchased without Enterprise-wide coverage.

3. **Product Use Rights, Qualifying Systems Licenses and Transitions.**

In addition to applicable terms of the Enterprise Program Agreement, the following terms apply to this Enrollment:

- a. **Product Use Rights.** For Enterprise Products, if a new Product version has more restrictive use rights than the version that is current at the start of the applicable initial or renewal term of the Enrollment, those more restrictive use rights will not apply to the Enrolled Affiliate's use of that Product during the term.
- b. **Qualifying systems Licenses.** The operating system Licenses granted under this program is upgrade Licenses only. Full operating system Licenses are not available under this program. If Enrolled Affiliate selects any Desktop Platform, Windows Desktop Operating System Upgrade, or Windows Intune, all Qualified Devices on which Enrolled Affiliate expects to run the Windows Desktop Operating System Upgrade must be licensed to run, and have installed on them, one of the qualifying operating systems identified in the Product List. Note that the list of operating systems that qualify for the Windows Desktop Operating System Upgrade varies with the circumstances of the order. That list is more extensive at the time of the initial order than it is for some subsequent orders and system refreshes during the term of this Enrollment. Exclusions are subject to change when new versions of Windows are released.

For example: The following are not considered qualifying operating systems: (1) ANY Windows Home or Starter edition; (2) Embedded Systems; and (3) Linux. These are examples of exclusions only and may change. Please see Product List for all current qualifying operating systems.

- c. **Transitions.** The following requirements apply to Transitions:
 - (i) Licenses with active Software Assurance or Subscription Licenses may be Transitioned at any time if permitted in the Product List. While Enrolled Affiliate may Transition any time, it will not be able to reduce Licenses or associated Software Assurance prior to the end of the Transition Period.
 - (ii) Enrolled Affiliate must order the Licenses to which it is transitioning for the year(s) following the Transition Period
 - (iii) If a Transition is made back to a License that had active Software Assurance as of the date of Transition, then Software Assurance will need to be re-ordered for all such Licenses on a prospective basis following the Transition Period. Software Assurance coverage may not exceed the quantity of perpetual Licenses for which Software Assurance was current at the time of any prior Transition. Software Assurance may not be applied to Licenses transferred by Enrolled Affiliate.
 - (iv) If a device-based License is Transitioned to a user-based License, all users of the device must be licensed as part of the Transition.
 - (v) If a user-based License is Transitioned to a device-based License, all devices accessed by the user must be licensed as part of the Transition.
- d. **Effect of Transition on Licenses.** Transition will not affect Enrolled Affiliate's rights in perpetual Licenses paid in full.
 - (i) New version rights will be granted for perpetual Licenses covered by Software Assurance up to the end of the Transition Period.
 - (ii) For L&SA not paid in full at the end of the Transition Period, Enrolled Affiliate will have perpetual Licenses for a proportional amount equal to the total of installments paid versus total amounts due (paid and payable) for the Transitioned Product.

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

4. Pricing.

- a. **Price Levels.** For both the initial and any renewal term Enrolled Affiliate's Price Level for all Products ordered under this Enrollment will be set at the Agreement Program Level.
- b. **Setting Prices.** Enrolled Affiliate's prices for each Product will be established by its Reseller. Microsoft's prices for Resellers are fixed throughout the Enrollment term based upon current prices at the time of the initial order for the Product. This includes the following:
 - (i) Any future pricing (if applicable); and
 - (ii) Prices for Transitions, including any prices related to the use of a Product during the Transition Period (if applicable).

5. Order requirements.

- a. **Minimum Order Requirements.** Enrolled Affiliate's Enterprise must have a minimum of 250 Qualified Users or Qualified Devices.
 - (i) **Initial Order.** Initial order must include at least 250 Licenses from one of the four groups outlined in the Product Selection Form.
 - (ii) **If choosing Enterprise Products.** If choosing Enterprise Products in a specific group outlined in the Product Selection Form, Enrolled Affiliate's initial order must include an Enterprise-wide selection of one or more Enterprise Products or a mix of Enterprise Products and corresponding Enterprise Online Services for that group.
 - (iii) **Additional Products.** Upon satisfying the minimum order requirements above, Enrolled Affiliate may order Additional Products.
 - (iv) **Country of Usage.** Enrolled Affiliate must specify the countries where Licenses will be used on its initial order and on any additional orders.
- b. **Adding Products.**
 - (i) **Adding new Products not previously ordered.** Enrolled Affiliate may add new Enterprise Products by entering into a new Enrollment or as part of a renewal. New Enterprise Online Services may be added by contacting a Reseller. New Additional Products, other than Online Services, may be used if an order is placed in the month the Product is first used. For Additional Products that are Online Services, an initial order for the Online Service is required prior to use.
 - (ii) **Adding Licenses for previously ordered Products.** Additional Licenses for previously ordered Products must be included in the next true-up order. Enrolled Affiliate must order Licenses for Online Services prior to use, unless the Online Services are (1) identified as eligible for true-up in the Product List or (2) included as part of other Licenses (e.g., Enterprise CAL).
- c. **True-up orders.** Enrolled Affiliate must submit an annual true-up order that accounts for changes since the initial order or last true-up order, including: (1) any increase in Licenses, including any increase in Qualified Devices or Qualified Users and Reserved Licenses; (2) Transitions (if permitted); or (3) Subscription License quantity reductions (if permitted). Microsoft, at its discretion and as permitted by applicable law, may validate the customer true-up data submitted through a formal product deployment assessment, using an approved Microsoft partner, as set forth in Appendix B, §80.

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

- (i) **Enterprise Products.** Enrolled Affiliate must determine the current number of Qualified Devices and Qualified Users (if ordering user-based Licenses) and order the License difference (if any), including any Enterprise Online Services.
- (ii) **Additional Products.** For Products which have been previously ordered, Enrolled Affiliate must determine the Additional Products used and order the License difference (if any).
- (iii) **Online Services.** For Online Services identified as eligible for true-up orders in the Product List, Enrolled Affiliate must first reserve the additional Licenses prior to use. Microsoft will provide a report of Reserved Licenses in excess of existing orders to Enrolled Affiliate and its Reseller. Reserved Licenses will be invoiced retroactively for the prior year based upon the month in which they were reserved.
- (iv) **Late true-up order.** If the true-up order is not received when due:
 - 1) Microsoft will invoice Reseller for all Reserved Licenses not previously ordered.
 - 2) Transitions and Subscription License reductions cannot be reported until the following Enrollment anniversary date (or at Enrollment renewal, as applicable).
- (v) **Transitions.** Enrolled Affiliate must report all Transitions. Transitions may result in an increase in Licenses to be included on the true-up order and a reduction of Licenses for prior orders. Reductions in Licenses will be effective at end of the Transition Period. Associated invoices will also reflect this change. For Licenses paid upfront, Microsoft will issue a credit for the remaining months of Software Assurance or Subscription Licenses that were reduced as part of the Transition.
- (vi) **Subscription License Reductions.** Enrolled Affiliate may reduce the quantity of Subscription Licenses on a prospective basis if permitted in the Product List as follows:
 - 1) For Subscription Licenses part of an Enterprise-wide commitment, Licenses may be reduced if the total quantity of Licenses and Software Assurance for an applicable group meets or exceeds the quantity of Qualified Devices identified on the Product Selection Form. Step-up Licenses do not count towards this total count.
 - 2) For Enterprise Online Services not a part of an Enterprise-wide commitment, Licenses can be reduced as long as the initial order minimum requirements are maintained.
 - 3) For Additional Products available as Subscription Licenses, Enrolled Affiliate may reduce the Licenses. If the License count is reduced to zero, then Enrolled Affiliate's use of the applicable Subscription License will be cancelled.Invoices will be adjusted to reflect any reductions in Subscription Licenses at the true-up order Enrollment anniversary date and effective as of such date.
- (vii) **Update statement.** An update statement must be submitted instead of a true-up order if, as of the initial order or last true-up order, Enrolled Affiliate's Enterprise has not: (1) changed the number of Qualified Devices and Qualified Users licensed with Enterprise Products or Enterprise Online Services; and (2) increased its usage of Additional Products. This update statement must be signed by Enrolled Affiliate's authorized representative. The update statement must be received by Microsoft between 60 and 30 days prior to the Enrollment anniversary date. The last update statement is due at least 30 days prior to the Expiration Date.

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

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

6. Payment terms.

For the initial or renewal order, Enrolled Affiliate may pay upfront or elect to spread its payments over the applicable Enrollment term. If spread payments are elected, unless indicated otherwise, Microsoft will invoice Enrolled Affiliate's Reseller in three equal annual installments. The first installment will be invoiced upon Microsoft's acceptance of this Enrollment and on each Enrollment anniversary date. Subsequent orders are invoiced upon acceptance of the order and Enrolled Affiliate may elect to pay annually or upfront for Online Services and upfront for all other Licenses.

7. End of Enrollment term and termination.

- a. **General.** At the Expiration Date, Enrolled Affiliate must immediately order and pay for Licenses for Products it has used but has not previously submitted an order, except as otherwise provided in this Enrollment.
- b. **Renewal Option.** At the Expiration Date, Enrolled Affiliate can renew Products by renewing the Enrollment for one additional 36 full calendar month term or signing a new Enrollment. Microsoft must receive a Product Selection Form and renewal order prior to or at the Expiration Date. The renewal term will start on the day following the Expiration Date. Microsoft will not unreasonably reject any renewal.
- c. **If Enrolled Affiliate elects not to renew.**
 - (i) **Software Assurance.** If Enrolled Affiliate elects not to renew Software Assurance for any Product under its Enrollment, then Enrolled Affiliate will not be permitted to order Software Assurance later without first acquiring L&SA.
 - (ii) **Online Services eligible for an Extended Term.** For Online Services identified as eligible for an Extended Term in the Product List, the following options are available at the end of the Enrollment initial or renewal term.
 - 1) **Extended Term.** Licenses for Online Services will automatically expire in accordance with the terms of the Enrollment. An extended term feature that allows Online Services to continue month-to-month ("Extended Term") is available. During the Extended Term, Online Services will be invoiced monthly at the then-current published price for Enrolled Affiliate's price level as of the Expiration Date plus a 3% administrative fee for up to one year. If Enrolled Affiliate does want an Extended Term, Reseller must submit a request to Microsoft. Microsoft must receive the request not less than 30 days prior to the Expiration Date.
 - 2) **Cancellation during Extended Term.** If Enrolled Affiliate has opted for the Extended Term and later determines not to continue with the Extended Term, Reseller must

submit a notice of cancellation for each Online Service. Cancellation will be effective at the end of the month following 30 days after Microsoft has received the notice.

(iii) Online Services not eligible for an Extended Term. If Online Services are not identified as eligible for an Extended Term in the Product List, the Licenses will be cancelled and will terminate as of the Expiration Date. Any associated media must be uninstalled and destroyed and Enrolled Affiliate's Enterprise must discontinue use. Microsoft may request written certification to verify compliance.

(iv) Customer Data. Upon expiration or termination of a License for Online Services, Enrolled Affiliate must tell Microsoft whether to:

- 1) disable its account and then delete its Customer Data ("Data Deletion"); or
- 2) retain its Customer Data in a limited function account for at least 90 days after expiration or termination of the License for such Online Service (the "Retention Period") so that Enrolled Affiliate may extract its Customer Data.
- 3) *If Enrolled Affiliate indicates Data Deletion, Enrolled Affiliate will not be able to extract its Customer Data. If Enrolled Affiliate indicates it wants a Retention Period, Microsoft will initiate a Retention Period and Enrolled Affiliate will be able to perform its extraction of its Customer Data at any time during the Retention Period using Microsoft's provided self-serve Online Service features for Customer Data download. Customer acknowledges that it is advised that data download time is dependent on Internet speeds, quantity of data and other technical factors and that End Users will not have access to Online Service features during the Retention Period and that it should plan accordingly. The duration of the Retention Period is a technical Online Service feature and cannot be adjusted by Microsoft. If Enrolled Affiliate does not indicate either Data Deletion or a Retention Period, Microsoft will retain Enrolled Affiliate's Customer Data in accordance with the Retention Period.*
- 4) Following the expiration of the Retention Period, Microsoft will disable Enrolled Affiliate's account and then delete its Customer Data.
- 5) Enrolled Affiliate agrees that, other than as described above, Microsoft has no obligation to continue to hold, export or return Enrolled Affiliate's Customer Data. Enrolled Affiliate agrees Microsoft has no liability whatsoever for deletion of Enrolled Affiliate's Customer Data pursuant to these terms.

d. Termination for cause. Any termination for cause of this Enrollment will be subject to the "Termination for cause" Section of the Agreement.

e. Early termination. Any Early termination of this Enrollment will be subject to the "Early Termination" Section of the Enterprise Agreement.

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

Enrollment Details

1. Enrolled Affiliate's Enterprise.

Use this section to identify which Agency Affiliates are included in the Enterprise. (Required) Enrolled Affiliate's Enterprise must consist of entire offices, bureaus, agencies, departments or other entities of Enrolled Affiliate, not partial offices, bureaus, agencies, or departments, or other partial entities. Enrolled Affiliate's organization includes . Check only one box in this section:

Enrolled Affiliate

Enrolled Affiliate and the following Affiliate(s):

Enrolled Affiliate and all Affiliates, with following Affiliate(s) excluded:

Please indicate whether the Enrolled Affiliate's Enterprise will include all new Affiliates acquired after the start of this Enrollment: <Choose One>

2. Contact information.

Each party will notify the other in writing if any of the information in the following contact information page(s) changes. The asterisks (*) indicate required fields. By providing contact information, Enrolled Affiliate consents to its use for purposes of administering this Enrollment by Microsoft, its Affiliates, and other parties that help administer this Enrollment. The personal information provided in connection with this Enrollment will be used and protected in accordance with the privacy statement available at <https://www.microsoft.com/licensing/servicecenter>.

- a. **Primary contact.** This contact is the primary contact for the Enrollment from within Enrolled Affiliate's Enterprise. This contact is also an Online Administrator for the Volume Licensing Service Center and may grant online access to others.

Name of entity (must be legal entity name)*

Contact name* First Last

Contact email address*

Street address*

City*

State/Province*

Postal code* -

(For U.S. addresses, please provide the zip + 4, e.g. xxxxx-xxxx)

Country*

Phone*

Tax ID

** indicates required fields*

- b. **Notices contact and Online Administrator.** This contact (1) receives the contractual notices, (2) is the Online Administrator for the Volume Licensing Service Center and may grant online access to others, and (3) is authorized for applicable Online Services to add or reassign Licenses, step-up, and initiate Transitions prior to a true-up order.

Same as primary contact

Name of entity*

Contact name* First Last

Contact email address*

Street address*

City*

State/Province*

Postal code*

(For U.S. addresses, please provide the zip + 4, e.g. xxxxx-xxxx)

Country*

Phone*

Language preference. Choose the language for notices. English

This contact is a third party (not the Enrolled Affiliate). Warning: This contact receives personally identifiable information of the Customer and its Affiliates.

** indicates required fields*

- c. **Microsoft Account Manager.** Microsoft Account Manager for this Enrolled Affiliate is:

Microsoft account manager name:

Microsoft account manager email address:

- d. **Online Services Manager.** This contact is authorized to manage the Online Services ordered under the Enrollment and (for applicable Online Services) to add or reassign Licenses, step-up, and initiate Transitions prior to a true-up order.

Same as notices contact and Online Administrator

Name of entity*

Contact name*: First Last

Contact email address*

Street address*

City*

State/Province*

Postal code*

Country*

Phone*

This contact is from a third party organization (not the entity). Warning: This contact receives personally identifiable information of the entity.

** indicates required fields*

e. **Reseller information.** Reseller contact for this Enrollment is:

Reseller company name*

Street address (PO boxes will not be accepted)*

City*

State/Province*

Postal code*

Country*

Contact name*

Phone*

Contact email address*

** indicates required fields*

The undersigned confirms that the information is correct.

Name of Reseller*

Signature* _____

Printed name*

Printed title*

Date*

** indicates required fields*

Changing a Reseller. *Intentionally omitted, this section is included in the associated Microsoft Business Agreement*

If Enrolled Affiliate requires a separate contact for any of the following, attach the Supplemental Contact Information form. *Otherwise, the notices contact and Online Administrator remains the default.*

- (i) Additional notices contact
- (ii) Software Assurance manager
- (iii) Subscriptions manager
- (iv) Customer Support Manager (CSM) contact

3. Financing elections.

Is a purchase under this Enrollment being financed through MS Financing? No

Enterprise and Enterprise Subscription Enrollment Product Selection Form – State and Local

Enrollment Number
 Microsoft to complete for initial term
 Reseller to complete for renewal

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

Enterprise Products. Choose platform option: <Choose One>

Qualified Devices:

Qualified Users:

Enterprise Online Services¹

Step 2. Select the Products and Quantities Enrolled Affiliate is ordering on its initial Enrollment Order. Quantity may not include any Licenses which Enrolled Affiliate has selected for optional future use, or to which it is transitioning or stepping up within enrollment term. Products for which the Enrolled Affiliate has an option to transition or step-up should be listed in Step 3.

Products ²	Quantity
Office Professional Plus	
Office Pro Plus	
Office Pro Plus for Office 365	
Office Standard	
Office 365 Plans¹	
Office 365 (Plan E1)	
Office 365 (Plan E2)	
Office 365 (Plan E3)	
Office 365 (Plan E4)	

Products ²	Quantity
Client Access License (CAL). Choose 1 option for either Core CAL or Enterprise CAL	
<input type="checkbox"/> Core CAL, including Bridge CAL's (if applicable)	
Core CAL	
Core CAL Bridge for Office 365	
Core CAL Bridge for Windows Intune	
Core CAL Bridge for Office 365 and Windows Intune	
<input type="checkbox"/> Enterprise CAL (ECAL)	
ECAL	
ECAL Bridge for Office 365	
ECAL Bridge for Windows Intune	
ECAL Bridge for Office 365 and Windows Intune	
The Client Access License selection must be the same across the Enterprise. Specify whether licensing CAL per Device or User: User	
Enterprise Product Components. Choose 1 or multiple Components	
<input type="checkbox"/> Windows CAL	
<input type="checkbox"/> Exchange Standard CAL	
<input type="checkbox"/> SharePoint Standard CAL	
<input type="checkbox"/> Lync Server Standard CAL	
<input type="checkbox"/> System Center Configuration Manager Client ML	
<input type="checkbox"/> Forefront End Point Protection	
<input type="checkbox"/> Windows Remote Desktop Services CAL	
<input type="checkbox"/> Exchange Enterprise CAL	
<input type="checkbox"/> SharePoint Enterprise CAL	
<input type="checkbox"/> Lync Server Enterprise CAL	
<input type="checkbox"/> System Center Client Management Suite ML	
<input type="checkbox"/> Forefront Protection Suite	
<input type="checkbox"/> Forefront Unified Access Gateway CAL	
The Client Access License selection must be the same across the Enterprise. Specify whether licensing CAL per Device or User: User	
Windows Desktop	
Windows OS Upgrade	
Windows VDA	
Windows Intune	
Windows Intune	
Windows Intune Add-on ³	

Products ²	Quantity
Other Enterprise Products	
Microsoft Desktop Optimization Pack (MDOP) ⁴	

If selecting Windows Desktop or Windows Intune option, Enrolled Affiliate acknowledges the following:

- a. The Windows Desktop Operating System Upgrade licenses offered through this Enrollment are not full licenses. The Enrolled Affiliate and any included Affiliates have qualifying operating system licenses for all devices on which the Windows Desktop Operating System Upgrade or Windows Intune licenses are run.
- b. In order to use a third party to reimage the Windows Operating System Upgrade, Enrolled Affiliate must certify that Enrolled Affiliate has acquired qualifying operating system licenses. See the Product List for details.

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

Products ²
<input type="checkbox"/> Office Pro Plus for Office 365
<input type="checkbox"/> Office 365 (Plan E1)
<input type="checkbox"/> Office 365 (Plan E2)
<input type="checkbox"/> Office 365 (Plan E3)
<input type="checkbox"/> Office 365 (Plan E4)
<input type="checkbox"/> Enterprise CAL (ECAL) Step-up, including Bridge CALs
<input type="checkbox"/> Windows Intune
<input type="checkbox"/> Windows Intune Add-on ³

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

Select Plus License Program Agreement State and Local Custom Program Agreement Terms and Conditions

Contents

1.	Definitions.	1
2.	How the Select Plus License program works.	3
3.	How to establish price level.	3
4.	License grant — what Registered Affiliates are licensed to run.	3
5.	How to know what Product Use Rights apply.	5
6.	How to order Product Licenses.	5
7.	Making copies of Products and re-imaging rights.	6
8.	Transferring and reassigning Licenses.	6
9.	Term and termination.	7
10.	How to renew an Order.	8
11.	Restrictions on use.	8
12.	Confidentiality.	8
13.	Warranties.	8
14.	Defense of infringement, misappropriation, and third party claims.	8
15.	Limitation of liability.	8
16.	Verifying compliance.	8
17.	Non-Microsoft Software or Technology.	8
18.	Miscellaneous.	8

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

Effective date. *Intentionally omitted, this section is included in the associated Microsoft Business Agreement*

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

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

Terms and Conditions

1. Definitions.

In this Program Agreement, the following definitions apply:

“Affiliate” means

a. with regard to Customer

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

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

(iii) any other entity in Customer's state expressly authorized by the laws of Customer's state to purchase under state contracts; provided that a state and its Affiliates shall not, for purposes of this definition, be considered to be Affiliates of the federal government and its Affiliates (for clarity details on other entities can located here, or a successor site: <http://www.ogs.ny.gov/purchase/snt/othersuse.asp>); and

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

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

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

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

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

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

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

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

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

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

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

"Product" means all software, Online Services and other web-based services, identified on the Product List.

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

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

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

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

"Reseller" means a large account reseller authorized by Microsoft to resell Licenses in a Registered Affiliate's region under this program;

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

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

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

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

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

2. How the Select Plus License program works.

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

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

3. How to establish price level.

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

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

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

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

- a. **General.** At any time after their registration has been accepted by Microsoft, a Registered Affiliate may run for its own benefit as many copies as it chooses, of any available Products it chooses, provided that it submits Orders for all copies in the month in which those copies are first run.
- b. **Use by Affiliates.** A Registered Affiliate may sublicense the right to use the Products ordered under this Program Agreement to any of its Affiliates, but Affiliates may not sublicense these rights and their use must be consistent with the License terms contained in this Program Agreement.
- c. **When Licenses become perpetual.**
- (i) **License only.** Registered Affiliate's right to run copies of any Product for which it orders only a License is temporary until the Registered Affiliate has paid for that License in full and Microsoft has collected such payment. Thereafter, Registered Affiliate will have a perpetual License to run the number of copies ordered in the version ordered.
- (ii) **L&SA or Software Assurance.** Registered Affiliate's right to run copies of any Product for which it orders L&SA or Software Assurance is temporary until:
- 1) the Registered Affiliate has paid all installments of the price for such coverage and the Order or renewal term during which such Product Licenses were ordered has expired or been renewed or
 - 2) the Registered Affiliate is otherwise eligible for perpetual Licenses as provided in this agreement.
- Thereafter, the Registered Affiliate will have perpetual Licenses to run the Products ordered in the latest versions available as of the date of expiration, renewal, or termination (or any prior version) for the number of copies ordered or renewed.
- (iii) **Subscription Licenses.** Subscription Licenses are not perpetual under any circumstances.
- d. **Perpetual Licenses through Software Assurance.** Any perpetual Licenses received through Software Assurance supersede and replace the underlying perpetual Licenses for which that Software Assurance coverage was ordered. All perpetual Licenses acquired under this Program Agreement remain subject to the terms of this Program Agreement and the applicable Product Use Rights.
- e. **Non-Perpetual Licenses.** Some Products may be licensed on a fixed term or subscription basis. The right to Use Products licensed on a subscription basis terminates upon expiration of the subscription agreement if it is not renewed.
- f. **License confirmation.** This Program Agreement (*soft copy or web link to location is acceptable*), the applicable Order, the Registered Affiliate's Order confirmation, and any documentation evidencing transfers of Licenses, together with proof of payment, will be the Registered Affiliate's evidence of all Licenses obtained under its Order as described in this Program Agreement.
- g. **Prior version rights.** A Registered Affiliate may run prior versions of any Product it Licenses under this Program Agreement. A Registered Affiliate may run different language versions of any Product it Licenses under this Program Agreement, provided that the License, L&SA, or Software Assurance for that different language version is available at the same, or lower price, than the price paid for the language version ordered of the same Product and License type.

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

Intentionally omitted, this section is included in the associated Microsoft Business Agreement

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

- a. **Placing Orders.** Registered Affiliate may purchase Licenses and Online Services Microsoft makes available under this program by placing Orders with Registered Affiliate's authorized Reseller. The price and payment terms for all Orders will be determined by agreement between Registered Affiliate and its Reseller. When placing orders, a Registered Affiliate must specify the country or countries where the Registered Affiliate will use the Licenses.
- b. **When is the Registered Affiliate eligible to order just Software Assurance?** A Registered Affiliate may order Software Assurance for copies of a Product, without the need to simultaneously order a new License for those copies, in each of the following circumstances:
 - (i) Registered Affiliate may order Software Assurance for copies of Products for which the Registered Affiliate has previously obtained perpetual Licenses through Upgrade Advantage, Software Assurance, or any similar upgrade protection, so long as the Order for Software Assurance under this Program Agreement becomes effective no later than one day following the expiration of that upgrade protection, and (2) Registered Affiliate submits an order for another term of Software Assurance for those Licenses prior to or at the expiration of the previous term.
 - (ii) During the term of the Program Agreement (including any renewal term), a Registered Affiliate may be eligible to order Software Assurance for copies of certain Products licensed through retail sources or from an original equipment manufacturer ("OEM"), provided that the Registered Affiliate places its Order within the required time frame. The Product List at <http://www.microsoft.com/licensing/contracts> identifies those Products that may be enrolled in Software Assurance and the applicable time frame for placing an Order.
 - (iii) A Registered Affiliate may also order Software Assurance in any other circumstances expressly permitted in the Product List.
 - (iv) A Registered Affiliate may renew Software Assurance ordered under this Program Agreement at the time it renews its Order as described in the section titled "How to renew an Order."
- c. **How to confirm Orders.** Information about Orders, including an electronic confirmation of each Order, will be provided in a password-protected site on the World Wide Web at <https://www.microsoft.com/licensing/servicecenter/> or a successor site that will be identified. Upon Microsoft's acceptance of this agreement, Registered Affiliate's contact identified for this purpose will be provided access to this site.
- d. **Invoices and payments.** For any Orders for Software Assurance or L&SA, if the Registered Affiliate elects to spread its payments over three years rather than payment in a lump sum, it may make this election with its Reseller. In such cases, Microsoft will invoice the Registered Affiliate's Reseller in installments, the first installment upon receipt of the Order and subsequent installments on each anniversary of the Order or the Affiliate anniversary month. Any amounts for Licenses only (i.e. without accompanying Software Assurance) will be invoiced to the Registered Affiliate's Reseller in full upon receipt of the Order.
- e. **Changing a Reseller.** If Microsoft or the Reseller chooses to discontinue doing business with one another, Customer must choose a replacement Reseller. If Registered Affiliate or Reseller intends to terminate their relationship, the initiating party must notify Microsoft and the other using a form provided by Microsoft at least 90 days prior to the date on which the change is to take effect.

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

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

8. Transferring and reassigning Licenses.

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

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

- (i) if you are an agency of a state or local government to: (a) any other government agency, department, instrumentality, division, unit or other office of your state or local government that is supervised by or is part of you, or which supervises you or of which you are a part, or which is under common supervision with you; (ii) any county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality established by the laws of your state and located within your state's jurisdiction and geographic boundaries; and (iii) any other entity expressly authorized by the laws of your state to purchase under state contracts, or (b) an unaffiliated third party in connection with a privatization of an affiliate of agency as set forth in (a) above or of an operating division of the Enrolled Affiliate or one of its affiliates as set forth in (a) above, a reorganization, or a consolidation.

Customer must notify Microsoft of a transfer of license by completing a transfer notice form, which can be obtained from <http://www.microsoft.com/licensing/contracts> and send the completed form to Microsoft before the license transfer. No License transfer will be valid unless Customer provides to the transferee, and the transferee accepts in writing, the applicable Product Use Rights, use restrictions, limitations of liability (including exclusions and warranty provisions), and the transfer restrictions described in this section. Any license transfer not made in compliance with this section will be void.

b. Internal Reassignment of Licenses and Software Assurance.

- (i) **For Products other than the desktop operating system upgrade.** For Products other than the desktop operating system upgrade, Registered Affiliate may internally reassign Licenses to an Affiliate. However, Registered Affiliate may not reassign Licenses on a short-term basis (90 days or less), or reassign Software Assurance or other upgrade coverage separately from the underlying License, except as provided otherwise in this agreement.
- (ii) **For desktop operating systems.** The Registered Affiliate may not reassign desktop operating system upgrade Licenses from one computer to another. The Registered Affiliate may internally reassign Software Assurance coverage on desktop operating systems upgrades from the original computer to a replacement computer internally, as long as (1) the replacement computer is licensed to run the latest version of that operating system, and (2) the Registered Affiliate removes any desktop operating system upgrades from the original computer.

9. Term and termination.

- a. **Term.** *Intentionally omitted, this section is included in the associated Microsoft Business Agreement*
- b. **Termination without cause.** *Intentionally omitted, this section is included in the associated Microsoft Business Agreement*
- c. **Mid-term termination for non-appropriation of Funds.** *Intentionally omitted, this section is included in the associated Microsoft Business Agreement*
- d. **Termination for cause.** *Intentionally omitted, this section is included in the associated Microsoft Business Agreement*
- e. **Affiliate termination.** If (1) a Registered Affiliate terminates its registration as a result of a breach by Microsoft, or (2) if Microsoft terminates Registered Affiliate's registration because it has ceased to be an Affiliate of Customer, or (3) Registered Affiliate terminates a registration for non-appropriation of funds, or (4) Microsoft terminates a registration for non-payment due to non-appropriation of funds, then the Registered Affiliate will have the following options with regard to any Orders it has under the Program Agreement:
 - (i) For Licenses available on a perpetual basis, it may immediately pay the total remaining amount due, including all installments, in which case the Registered Affiliate will have perpetual Licenses for all copies of the Products it has ordered, or
 - (ii) It may pay only amounts due as of the termination date, in which case the Registered Affiliate will have perpetual Licenses for:
 - 1) all copies of all Products for which payment has been made in full (including the latest version of Products under Software Assurance coverage), and
 - 2) the number of copies of Products it has ordered (including the latest version of Products under Software Assurance) for which payment has been made in installments that is proportional to the total of payments made versus total amounts due if the early termination had not occurred.

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

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

10. How to renew an Order.

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

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

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

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

11. **Restrictions on use.** *Intentionally omitted, this section is included in the associated Microsoft Business Agreement*
12. **Confidentiality.** *Intentionally omitted, this section is included in the associated Microsoft Business Agreement*
13. **Warranties.** *Intentionally omitted, this section is included in the associated Microsoft Business Agreement*
14. **Defense of infringement, misappropriation, and third party claims.** *Intentionally omitted, this section is included in the associated Microsoft Business Agreement*
15. **Limitation of liability.** *Intentionally omitted, this section is included in the associated Microsoft Business Agreement*
16. **Verifying compliance.** *Intentionally omitted, this section is included in the associated Microsoft Business Agreement*
17. **Non-Microsoft Software or Technology.** *Intentionally omitted, this section is included in the associated Microsoft Business Agreement*
18. **Miscellaneous.** *All of the following sections are intentionally omitted, and are included in the associated Microsoft Business Agreement*
 - a. Notices to Microsoft.
 - b. Assignment.
 - c. Severability.
 - d. Waiver.
 - e. Applicable law; Dispute resolution.
 - f. This Agreement is not exclusive.
 - g. Survival.
 - h. No transfer of ownership.
 - i. Free Products.
 - j. Amending the Agreement.
 - k. Resellers and other third parties cannot bind Microsoft.
 - l. Privacy and security.
 - m. Voluntary Product Accessibility Templates.
 - n. Natural disaster.
 - o. Copyright violation.
 - p. U.S. export jurisdiction.

Appendix F- Sample Custom Affiliate Registration Form

Proposal ID	NY002
-------------	-------

Select Plus Affiliate Registration Form

State and Local

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

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

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

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

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

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

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

19. Primary Contact Information.

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

Name of entity*
Contact name*: First Last
Contact email address*
Street address*
City*
State*
Postal code*
Country*
Phone*
Tax ID

* indicates required fields

20. Notices and online administrator.

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

Same as primary contact

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

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

* indicates required fields

21. Language preference.

Select the language for notices. English

4. Reseller information.

Reseller company name*
Street address (PO boxes will not be accepted)*
City*
State*
Postal code*
Country*
Contact name*
Phone*

Contact email address*
* indicates required fields

The undersigned confirms that the information is correct.

Name of Reseller*
Signature* _____
Printed name*
Printed title*
Date*

* indicates required fields

- a. **Changing a Reseller.** *Intentionally omitted, this section is included in the associated Program Agreement and Microsoft Business Agreement*

5. Supplemental Contacts.

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

6. Software Assurance Membership Election.

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

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

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

Only valid if attached to a signature form.

Academic Select Plus Agreement

Custom Program Agreement Terms and Conditions

Contents

1. Definitions.	1
2. How the Academic Select Plus License program works.	3
3. How to establish price level.	3
4. License grant — what Registered Affiliates are licensed to run.	4
5. How to know what Product Use Rights apply.	5
6. How to order Product Licenses.	6
7. Making copies of Products and re-imaging rights.	7
8. Work at home Product use rights.	8
9. Distributing media.	9
10. Transferring and reassigning Licenses.	9
11. Term and termination.	10
12. How to renew an Order.	11
13. Restrictions on Use.	11
14. Confidentiality.	11
15. Warranties.	11
16. Defense of infringement, misappropriation, and third party claims.	11
17. Limitation of liability.	11
18. Verifying compliance.	12
19. Miscellaneous.	12

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

Effective date. The effective date of this agreement is July 1, 2013.

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

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

Terms and Conditions

A Note on Section Summaries. Some sections of this Program Agreement have a summary at the beginning. These summaries are intended for ease of reference and are not part of the Program Agreement. If any summary conflicts with the section it is summarizing, the section of the Program Agreement, and not the summary, controls.

1. Definitions.

In this Program Agreement, "Institution or Institution's Affiliate" means the entity that is a qualified educational user identified at <http://www.microsoft.com/licensing/contracts> as of the effective date of this

Program Agreement and that has entered into this Program Agreement with Microsoft by submitting an Affiliate registration form, and "Microsoft" means the Microsoft entity that has entered into this Program Agreement by accepting Institution's registration and its Affiliates, as appropriate. In addition, the following definitions apply:

Affiliate" means

- a. with regard to Institution,
 - (i) if Institution is a non-public entity, any qualified educational user identified at Appendix J that Institution owns and/or controls, that owns Institution and/or controls Institution, or that is under common ownership and/or control with Institution; "ownership" means, for purposes of this definition, more than 50% ownership, and
 - (ii) if Institution is a state or local government entity,
 - any other qualified educational user identified at Appendix J as of the effective date of this Program Agreement that is an agency, department, office, bureau, division, or other entity of Institution's state or local government, and
 - any other qualified educational user expressly authorized by the laws of Institution's state to purchase under state education contracts;provided that Institution and its Affiliates shall not, for purposes of this definition, be considered to be Affiliates of the federal government and its Affiliates; and
- b. with regard to Microsoft, any legal entity that Microsoft owns, that owns Microsoft, or that is under common ownership with Microsoft;

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

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

"Institution" means the entity that is a qualified educational user identified at <http://www.microsoft.com/licensing/contracts> as of the effective date of this Program Agreement and that has entered into this Program Agreement with Microsoft;

"License" means, for any one of the Products identified in the Product List (including standard Licenses, and upgrades for desktop operating systems), the right to run the version of the Product ordered;

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

"Order" means the document Institution or Institution's Affiliate submits under this Program Agreement to acquire Licenses or Online Services;

"Product" means all software, Online Services and other web-based services identified on the Product List.

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

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

"Qualifying Contract," means a Campus or School Enrollment under a Microsoft Campus and School Program Agreement or an Academic Select Agreement.

"Qualified Desktop" means any personal desktop computer, portable computer, workstation, or similar device that is used by or for the benefit of Institution's organization (or by or for the benefit of Students

enrolled in Institution's organization, if applicable) and that meets the minimum requirements for running any of the Desktop Platform Products. Qualified Desktops do not include: (1) any computers that are designated as servers and not used as a personal computer, (2) Industry Devices, or (3) any devices running an embedded operating system (e.g. Windows Vista for embedded, Windows XP embedded) that do not access a virtual desktop infrastructure;

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

"Reseller" means a large account reseller authorized by Microsoft to resell Product and Software Assurance in an Enrolled Customer's region under this Agreement;

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

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

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

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

Summary: Under the Academic Select Plus License Program Agreement, Institution and its Affiliates can license Products at discount pricing based on the volume of Licenses they purchase.

The Academic Select Plus License Program Agreement allows Registered Affiliates to acquire Licenses and services at discount pricing. Institution and Institution's Affiliate can participate in this program if Institution or Institution's Affiliate (1) submits an Order meeting the initial minimum order quantity, (2) maintains at least one active Qualifying Contract, or (3) purchased the minimum order quantity during the 12 months preceding the effective date of this Program Agreement. Regarding public qualified educational users, only Registered Affiliates identified in a registration will be responsible for complying with the terms of that registration, including the terms of this Program Agreement incorporated by reference in that registration. Online services are provided as subscription services and are subject to unique terms set forth in the Product Use Rights and the Product List.

3. *How to establish price level.*

Summary: Institution's price level for each Product category is based on their purchase volume for that category. Price levels will be reviewed each year on the anniversary of this Program Agreement.

- a. **Price level.** Each Product offering is assigned a point value on the Product List and is assigned to one of the following pools: applications, systems, and servers. In order for Registered Affiliates to qualify for academic level pricing and be eligible to acquire Licenses from any particular pool under this Program Agreement, Institution must represent to Microsoft that Institution reasonably expects its Registered Affiliates, in the aggregate, to acquire from that pool, during the initial term of this Program Agreement. Institution's price level will be used to determine the prices Microsoft will invoice each Registered Affiliate's Reseller for Product Licenses that Registered Affiliate orders.
- b. **Compliance check.** Each calendar year, on the Program Agreement anniversary date, Microsoft will review Institution's purchases to count the number of points earned by all Registered Affiliates for each pool during the preceding term.

If Institution does not maintain a Qualifying Contract or earn enough points during an annual term to qualify for program participation, Registered Affiliates will not be able to place

additional Orders under this Program Agreement until Institution has placed a minimum qualifying Order.

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

Summary: Registered Affiliate can use the latest version of the Products ordered, or choose to use any earlier version. Except for subscription licenses, use rights become permanent once Registered Affiliate has completed all payments. At that time, Registered Affiliate will have perpetual Licenses for the number of desktops, users, or copies for which Registered Affiliate submitted Orders during the term.

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

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

- a. General.** At any time after its registration has been accepted by Microsoft, a Registered Affiliate may run copies of available Products, provided that it submits Orders for all Licenses in the month in which those copies are first run.
- b. Use by Affiliates.** A Registered Affiliate may sublicense the right to use the Products ordered under this Program Agreement to any of its Affiliates, but Affiliates may not sublicense these rights and their use must be consistent with the license terms contained in this Program Agreement.
- c. When Licenses become perpetual.** The right to run any Product licensed under an Order is temporary until the applicable License, Software Assurance, or L&SA are paid for in full. Thereafter, a perpetual License is granted to run the number of copies ordered in the version ordered (or the latest version in the case of Software Assurance).
- d. Perpetual Licenses through Software Assurance.** Any perpetual Licenses received through Software Assurance supersede and replace the underlying perpetual Licenses for which that Software Assurance coverage was ordered. All perpetual Licenses acquired under this Program Agreement remain subject to the terms of this Program Agreement and the applicable Product Use Rights.
- e. Non-Perpetual Licenses.** Some Products may be licensed on a fixed term or subscription basis. The right to use Products licensed on a subscription basis terminates upon expiration of the subscription Program Agreement if it is not renewed.
- f. License confirmation.** This Program Agreement (*soft copy or web link to location is acceptable*), the applicable Enrollment (*soft copy is acceptable*), the Enrolled Affiliate's order confirmation, and any documentation evidencing transfers of Licenses, together with proof of payment, will be the Enrolled Affiliate's evidence of all Licenses obtained under its Enrollment.
- g. Benefits limited to qualified educational user.** Products licensed under this Program Agreement may be used only by and for the benefit of a qualified educational user. Client Access Licenses that the Registered Affiliates acquire solely to enable their students to access their servers are, for the purposes of this restriction, deemed to be used by and for the benefit of a qualified educational user. For each such student Client Access License the Registered Affiliate acquires, it does not need to acquire a separate Client Access License for the parent(s) or legal guardian(s) of the licensed student user. Licenses obtained under this Program Agreement may not be transferred, sublicensed, rented, leased, or loaned to any person or entity that is not a qualified educational user.
- h. Prior version rights.** A Registered Affiliate may run prior versions of any Product it licenses under this Program Agreement. A Registered Affiliate may run different language versions of

any Product it Licenses under this Program Agreement, provided that the License, L&SA, or Software Assurance for that different language version is available at the same, or lower price, than the price paid for the language version ordered of the same Product and License type.

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

Summary: Generally, Microsoft agrees to lock-in the Product Use Rights at the start of the Program Agreement, for current versions, and on the date of first release, for new versions, so that any subsequent changes Microsoft makes to the Product Use Rights will not affect any Registered Affiliates. A special rule applies in the case of downgrades, as described below.

- a. **Product Use Rights** *Intentionally omitted, this section is included in the associated Microsoft Business Agreement*
 - (i) **Product Use Rights for current and future versions of Products.** *Intentionally omitted, this section is included in the associated Microsoft Business Agreement*
 - (ii) **Product Use Rights for earlier versions (downgrade).** *Intentionally omitted, this section is included in the associated Microsoft Business Agreement*
- b. **Alternative Product use rights: deploying licenses in academic settings.** For each copy of Microsoft Developer Products a Registered Affiliate licenses for instructional purposes in connection with a class or other educational program, the Registered Affiliate may, as an alternative to deploying the Product pursuant to the licensing model described in the Product Use Rights, either
 - (i) permit an unlimited number of its student users to run the Product on a single computer or similar device, provided that all such users comply with all other terms of this Program Agreement; or
 - (ii) if the Registered Affiliate has licensed multiple copies of the Product, then, at any time, its students or faculty may run as many copies of the Product as it has licensed, provided that those users comply with all other terms of this Program Agreement. If the anticipated number of users of the Product will exceed the number of copies the Registered Affiliate has licensed, it must have a reasonable mechanism or process in place to ensure that the number of persons running the product at any given point in time does not exceed the number of copies licensed.
- c. **Redistribution of Software Updates to students.**
 - (i) **License grant.** From time to time Microsoft may make available to the general public additional or replacement code of any portion of our licensed Products without a fee ("Software Updates"). Microsoft grants Institution a limited, non-exclusive, royalty-free, non-assignable, non-transferable, revocable License to distribute the Software Updates to Institution's students in accordance with the terms of this Section 5(d). Institution's students must use the Software Updates solely for their personal benefit in accordance with the end-user license Program Agreement with Microsoft ("EULA") included with each Software Update.
 - (ii) **Redistribution of Software Updates.** Institution may redistribute Software Updates to Institution's students by electronic means provided that Institution's method of electronic distribution is adequately licensed and incorporates access control and security measures designed to prevent modification of the Software Updates and prevent access by the general public, or, where available, through acquiring authorized copies on fixed media from a fulfillment source approved by Microsoft.
- d. **Limitations.** Institution may not: (1) produce or replicate Software Updates onto CDs or other distributable storage media; (2) combine the Software Updates with other non-Microsoft

software; (3) distribute any Software Updates as a stand-alone component via email attachment; (4) charge for the Software Updates, but Institution may recover any reasonable costs incurred in providing the updates to Institution's students; (5) remove, modify, or interfere with the EULA or the EULA acceptance functionality included by Microsoft with any Software Update; or (6) alter the Software Updates in any way. Microsoft is not responsible for any cost related to the acquisition, distribution, or recall of the Software Updates.

- e. **Tracking and recall; replacement Software Updates.** Institution must track the quantity and method of distribution of the Software Updates by means that will allow Institution to provide notice of a recall and offer replacements as provided in this subsection. Institution agrees to stop redistributing Software Updates within 10 days of receipt of a notice of recall from Microsoft, and within 30 days of that notice, Registered Affiliate agrees to (1) return to Microsoft or destroy all copies of Software Updates in Registered Affiliate's possession, and (2) notify Registered Affiliate's students of the recall by same or similar means in which they were notified of the availability of the Software Updates.

If Microsoft makes available to Registered Affiliate a replacement Software Update, Registered Affiliate agrees to make the replacement available to its students within 10 days of receipt and in the same quantity and method of distribution as Registered Affiliate made the original Software Update available. Institution's distribution of replacement Software Updates is subject to the same conditions and restrictions as Software Updates under this section.

- f. **No warranties; exclusion of indirect, special, incidental, consequential and certain other damages.** Notwithstanding anything to the contrary in this Program Agreement, and to the extent permitted by law, Software Updates that Registered Affiliate redistributes to Institution's students are provided "as-is" without any warranties. Institution and its Registered Affiliates acknowledge that the provisions of this paragraph with regard to the Software Updates are reasonable based on, among other things, the fact that they are complex computer software and their performance will vary depending upon hardware, platform and software interactions and configurations.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL MICROSOFT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, CONSEQUENTIAL, OR INDIRECT DAMAGES THAT ARISE OUT OF OR ARE IN ANY WAY RELATED TO INSTITUTION'S REDISTRIBUTION OF THE SOFTWARE UPDATES TO INSTITUTION'S STUDENTS. FURTHERMORE, IN NO EVENT SHALL MICROSOFT BE LIABLE FOR ANY SUCH DAMAGES BASED DIRECTLY OR INDIRECTLY UPON THE PROVISION OF SOFTWARE UPDATES OR UNAVAILABILITY OF SOFTWARE UPDATES -- INCLUDING WITHOUT LIMITATION, DAMAGES DUE TO BUSINESS INTERRUPTION, LOSS OF PROFITS, REVENUE OR BUSINESS OPPORTUNITY, LOSS OF DATA AND THE LIKE, FAILURE TO MEET ANY DUTY, OR NEGLIGENCE.

- (i) **Limitation of liability.** With respect to Registered Affiliate's redistribution of the Software Updates, the Limitation of Liability provisions in Section 17 of this Program Agreement shall apply in those situations in which Institution or a Registered Affiliate have a right to claim damages or payment from Microsoft.

- (ii) **No support.** Software Updates that Registered Affiliate redistributes to its students are provided without any support obligation by Microsoft, including any benefits accruing from Software Assurance.

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

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

Summary: Registered Affiliate must place Orders with an authorized Reseller who will determine price and other payment terms. Registered Affiliate Order information can be found at a dedicated

website. For Orders that include Software Assurance, Microsoft may invoice Registered Affiliate's Reseller in three annual payments.

- a. **Placing Orders.** Registered Affiliate may purchase Licenses and services Microsoft makes available under this program by placing Orders with Registered Affiliate's authorized Reseller. The price and payment terms for all Orders will be determined by Program Agreement between Registered Affiliate and Registered Affiliate's Reseller. When placing Orders, a Registered Affiliate must specify the country or countries where the Registered Affiliate will use the Licenses.
- b. **How to confirm Orders.** Information about Orders, including an electronic confirmation of each Order, will be provided in a password-protected site on the World Wide Web at <https://licensing.microsoft.com> or a successor site that will be identified. Upon Microsoft's acceptance of this Program Agreement, Registered Affiliate's contact identified for this purpose will be provided access to this site.
- c. **Invoices and payments.** For any Orders for Software Assurance or L&SA, if the Registered Affiliate elects to spread its payments over three years rather than payment in a lump sum, it may make this election with its Reseller. In such cases, Microsoft will invoice the Registered Affiliate's Reseller in installments, the first installment upon receipt of the Order, and subsequent installments on each anniversary of the Order or on the Affiliate anniversary month, whichever the Registered Affiliate chooses. Any amounts for Licenses only (i.e. without accompanying Software Assurance) will be invoiced to the Registered Affiliate's Reseller in full upon receipt of the Order.
- d. **When is Registered Affiliate eligible to only order Software Assurance?** Registered Affiliate may order Software Assurance for copies of a Product without the need to simultaneously order a new License for those copies in each of the following circumstances:
 - (i) Registered Affiliate may order Software Assurance for copies of Products for which the Registered Affiliate has previously obtained perpetual Licenses through Upgrade Advantage, Software Assurance, or any similar upgrade protection, so long as the Order for Software Assurance under this Program Agreement becomes effective no later than one day following the expiration of that upgrade protection.
 - (ii) During the term of the Program Agreement (including any renewal term), Registered Affiliate may be eligible to order Software Assurance on behalf of Registered Affiliates for copies of certain Products licensed through retail sources or from an original equipment manufacturer ("OEM"), provided that the Registered Affiliate places the Order within the required time frame. The Product List at <http://www.microsoft.com/licensing/contracts> identifies those Products that may be enrolled in Software Assurance and the applicable time frame for placing an Order.
 - (iii) Registered Affiliate may also Order Software Assurance for the benefit of a Registered Affiliate in any other circumstances expressly permitted in the Product List.
 - (iv) Registered Affiliate may renew Software Assurance ordered for the benefit of a Registered Affiliate under this Program Agreement at the time it renews its Order as described in the section titled "How to renew an Order."

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

Summary: Registered Affiliate can make as many copies as it needs. The copies must be complete from master copies obtained from an authorized source. If Registered Affiliate uses third parties to make copies, Registered Affiliate is responsible for them. Registered Affiliate can make a specified number of complimentary copies for training, evaluation, and back-up. In certain circumstances, Registered Affiliate can use the media that it obtains under this program to make copies of Products that it is licensing through some other channel. Generally, this is only allowed where the Product,

version, language, type, and components that are being copied are identical to those licensed through that other channel.

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

8. *Work at home Product use rights.*

Summary: Generally, the Registered Affiliate's faculty and staff users who are licensed to use Microsoft Office have the right, so long as this Program Agreement is active, to run one additional copy of that Product on another computer they own.

For each copy of Microsoft Office Registered Affiliate licenses, the primary user (who may be any of its faculty, staff, or other employee users but not any student user who is not also an employee user) of the computer or similar device on or from which such Product is run may also run a second copy, so long as this Program Agreement is active, for work-related purposes only from either a laptop or desktop computer that he or she owns or leases.

Registered Affiliates must make reasonable efforts to ensure that faculty, staff, or other employee users delete and remove such copies from the temporary memory (RAM) and permanent memory (e.g., hard disk) of their computers at the end of the term of this Program Agreement.

9. *Distributing media.*

Summary: Media that a Registered Affiliate distributes to its faculty and staff for work-at-home purposes and students under the Select Plus student licensing option must be acquired from a Microsoft-approved source. The Registered Affiliate can also distribute Product to faculty and staff for work-at-home purposes and students as described below.

Access to media by the Registered Affiliate's faculty and staff for work-at-home purposes must be restricted and regulated by the Registered Affiliate. All media for Product distributed to the Registered Affiliate's faculty and staff for work-at-home purposes must be acquired from a Microsoft approved fulfillment source, and such Product may be distributed to such users only in the following ways:

- a. if the Registered Affiliate acquires media for work-at-home, the Registered Affiliate may distribute one copy of such media directly to each authorized work-at-home user. Work-at-home media may contain Product activation features that limit the number of installations; Reseller can identify media and Product that contains Product activation features. The Registered Affiliate can get details on ordering and distributing work-at-home media at <http://www.microsoft.com/education/studentmedia.mspix>;
- b. Registered Affiliate may use volume licensing media to electronically distribute copies via download from secure network server(s) or other storage device(s), provided Registered Affiliate controls the download to ensure that the number of permitted copies is not exceeded and that parties making the download are licensed to do so. Registered Affiliate may engage a Microsoft approved entity to electronically distribute Products on its behalf. If Registered Affiliate uses a third party entity Registered Affiliate must enter into a separate Program Agreement with the entity selected to provide electronic software delivery that is no less protective of Microsoft rights than this Program Agreement; or
- c. utilizing volume licensing media via (1) controlled download from the Registered Affiliate's secure network server(s) or other storage device(s) or (2) manual installation by the Registered Affiliate at a central location that the Registered Affiliate controls.

10. *Transferring and reassigning Licenses.*

Summary: Registered Affiliate can transfer perpetual Licenses to an Affiliate and to third parties in connection with a divestiture, merger, or consolidation — Registered Affiliate only needs to provide notice to Microsoft. Registered Affiliate cannot transfer Licenses to third parties under other circumstances without Microsoft's prior written consent. Transferees must agree to be bound by the applicable terms. License transfers must be permanent; with certain exceptions, SA cannot be transferred but may be reassigned to another device within the same enterprise under certain conditions; all versions of upgrades must be transferred together, desktop operating system Licenses and upgrades must stay with the computer system on which they were first installed. Generally, Registered Affiliate can reassign Licenses internally, from one user to another, or from one desktop device to another. Resale of Licenses is prohibited.

- a. **Transferring Licenses to third parties.** License transfers are not permitted except as explicitly set forth in this section.
 - (i) **Right to transfer.** Registered Affiliate may transfer fully-paid perpetual Licenses to (1) a Registered Affiliate, or (2) another unaffiliated third party in connection with a divestiture of an Affiliate or of an operating division of the Registered Affiliate or one of its Affiliates, or a merger or consolidation. To do so, the Registered Affiliate must complete and send to Microsoft a transfer notice in a form which can be obtained from <http://www.microsoft.com/licensing/contracts> before the transfer. No License transfer will be valid unless the Registered Affiliate provides to the transferee, and the transferee accepts in writing, the applicable Product Use Rights, use restrictions, limitations of

liability, and the transfer restrictions described in this section. Any transfer not made in compliance with this section will be void and Registered Affiliate must either return or destroy the licensed copies.

(ii) **Limitations.** Even in the event of a merger, consolidation or divestiture, the following types of transfers are not permitted:

- Licenses on a short-term basis (90 days or less);
- temporary rights to use Products;
- Software Assurance coverage;
- 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 obtained;
- an upgrade License 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;
- full version desktop operating system licenses, unless transferred with the sale of the device for which it operates; or
- any Software Assurance benefits or online services.

(iii) **No resale.** The resale of Licenses including any transfer by a Customer or its Affiliate with a primary purpose to enable the transfer of those Licenses to an unaffiliated third party is prohibited.

b. Internal reassignment of Licenses and Software Assurance.

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

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

11. Term and termination.

- a. **Term.** *This section is intentionally omitted and is included in the associated Microsoft Business Agreement*
- b. **Termination without cause.** *This section is intentionally omitted and is included in the associated Microsoft Business Agreement*
- c. **Termination for breach.** *This section is intentionally omitted and is included in the associated Microsoft Business Agreement*
- d. **Effect of termination.** When this Program Agreement is terminated, Registered Affiliate must order Licenses for all copies of Products it has run for which it has not previously

submitted an Order. Any and all unpaid payments or any order of any kind, including subscription services, remain due and payable.

12. How to renew an Order.

Summary: Registered Affiliate can place Orders for Software Assurance for additional terms at its option. Orders for Software Assurance must be received prior to or on the expiration of the previous term.

Microsoft will provide prior notice of expiration of any Software Assurance ordered under the Program Agreement advising Institution of its Software Assurance renewal options.

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

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

Renewing Software Assurance. If Institution is placing an Order for Software Assurance for a Registered Affiliate from multiple Select Plus programs or is consolidating multiple previous registration or Program Agreements into this Program Agreement, please complete the multiple previous registration form and attach it to this Program Agreement. The date of the earliest expiring order/registration/Program Agreement that contains Software Assurance will be the effective date of the new Software Assurance coverage.

13. Restrictions on Use.

This section is intentionally omitted and is included in the associated Microsoft Business Agreement.

14. Confidentiality.

This section is intentionally omitted and is included in the associated Microsoft Business Agreement.

15. Warranties.

This section is intentionally omitted and is included in the associated Microsoft Business Agreement.

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

This section is intentionally omitted and is included in the associated Microsoft Business Agreement.

17. Limitation of liability.

This section is intentionally omitted and is included in the associated Microsoft Business Agreement.

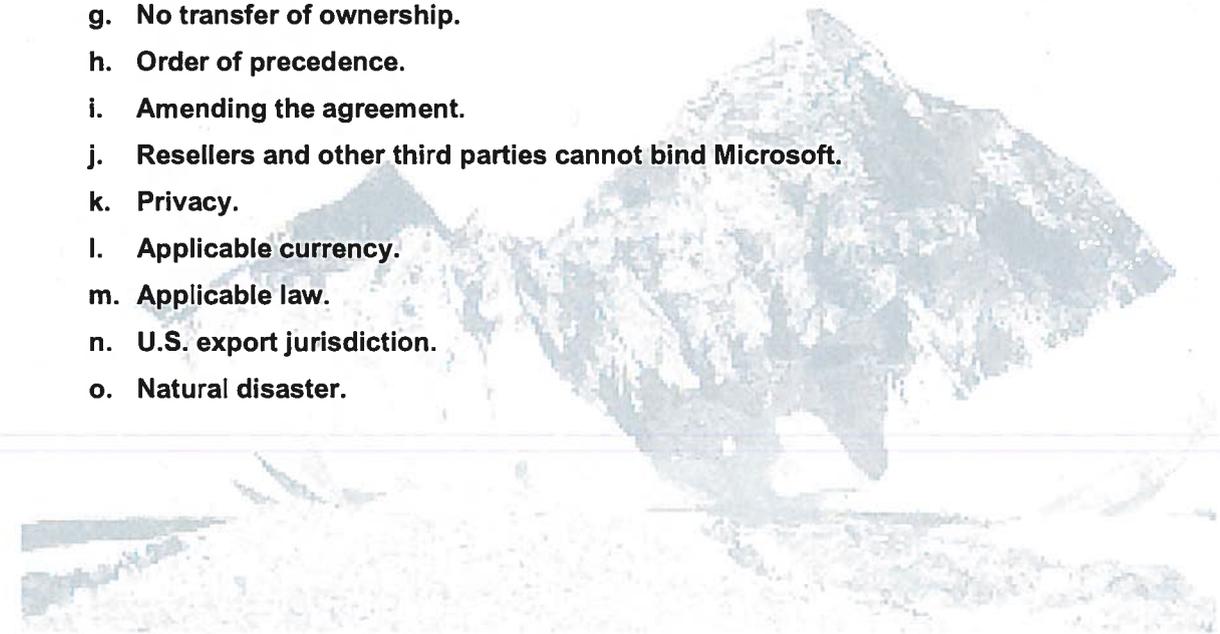
18. Verifying compliance.

This section is intentionally omitted and is included in the associated Microsoft Business Agreement.

19. Miscellaneous.

All of the following sections are intentionally omitted, and are included in the associated Microsoft Business Agreement.

- a. **Notices to Microsoft.**
- b. **Assignment.**
- c. **Severability**
- d. **Waiver.**
- e. **Force Majeure.**
- f. **Non-exclusivity.**
- g. **No transfer of ownership.**
- h. **Order of precedence.**
- i. **Amending the agreement.**
- j. **Resellers and other third parties cannot bind Microsoft.**
- k. **Privacy.**
- l. **Applicable currency.**
- m. **Applicable law.**
- n. **U.S. export jurisdiction.**
- o. **Natural disaster.**



Appendix G - Sample Custom Affiliate Registration Form

Select Plus Affiliate Registration Form

Registration Type <i>Reseller to complete</i>	Lead Affiliate <input type="checkbox"/> Additional Affiliate <input type="checkbox"/>	Organization Type <i>Reseller to complete</i>	Business <input type="checkbox"/> Government <input type="checkbox"/> Academic <input type="checkbox"/>
Additional Affiliate Public Customer Number (PCN) <i>Reseller to complete</i>		Lead Affiliate Public Customer Number (PCN) <i>Reseller to complete</i>	
Qualifying Contract <i>Reseller to complete</i>		Change Affiliate Anniversary Month <i>Reseller to complete</i>	<Choose Month>
Agreement Number <i>Microsoft or Reseller to complete</i>		Proposal ID/Framework	NY003

By registering, Registered Affiliate accepts and agrees to be bound by the terms of the Agreement and any applicable attachments (the "Agreement"), and will be allowed to acquire Licenses and services in accordance with the Agreement. If Registered Affiliate selects an Organization Type above other than Business, then the Qualifying Government Entity Form or Qualified Educational User Definition, as appropriate, is incorporated by reference. These are located at <http://www.microsoft.com/licensing/contracts>.

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

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

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

1. Primary contact information.

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

Name of entity*

Contact name* First Last

Contact email address*

Street address*

City * State/Province* Postal code*

Country*

Phone* Fax

Tax ID

2. Notices contact and online administrator.

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

Same as primary contact

Name of entity*

Contact name* First Last

Contact email address*

Street address*

City* State/Province* Postal code*

Country*

Phone* Fax

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

3. Language preference.

Select the language for notices. English

4. Media delivery contact.

If media election form is not completed, provide a ship to/download to location for applying sales tax.

Same as notices contact

Name of entity*

Contact name* First Last

Contact email address (required for online access)*

Street address (no PO boxes accepted)*

City* State/Province* Postal code*

County Country*

Phone* Fax

In City Limits?

Estimated Tax Rate

5. Reseller information.

Reseller company name*

Street address (PO boxes will not be accepted)*

City* State/Province* Postal code*

Country*

Contact name*

Phone* Fax

Contact email address*

The undersigned confirms that the information is correct.

Name of Reseller*

Signature* _____

Printed name*

Printed title*

Date*

Changing a Reseller. *Intentionally omitted, this section is included in the associated Program Agreement and Microsoft Business Agreement*

6. Supplemental Contacts.

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

7. Software Assurance Membership Election.

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

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

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

Only valid if attached to a signature form

Proposal ID	001-jendunn-S-901 E
-------------	---------------------

Campus and School Agreement

Custom Program Agreement Terms and Conditions

Contents

1.	Definitions	2
2.	How the Campus and School program works	3
3.	Subscription price	3
4.	License grant — what Institution and its Users are licensed to run.....	4
5.	Use rights and restrictions	4
6.	Making copies of Products and re-imaging rights.....	5
7.	Distributing media	6
8.	Redistribution of software updates to Students	7
9.	Transfer and reassigning Licenses.....	8
10.	Confidentiality	8
11.	Options upon completion of a Licensed Period	8
12.	Term and termination.....	99
13.	Warranties.....	100
14.	Defense of infringement, misappropriation, and third party claims	100
15.	Limitation of liability.....	100
16.	Verifying compliance.....	100
17.	Miscellaneous	111

This *Campus and School Program Agreement* is entered into between the entities identified on the signature form.

Effective Date. *This section is intentionally omitted and is included in the associated Microsoft Business Agreement.*

This Program Agreement consists of (1) the associated Microsoft Business Agreement and these Agreement Program terms and conditions and the signature form and all attachments identified therein, (2) the Product List, (3) the Product use rights, (4) any Enrollment entered into under this Program Agreement, (5) any order submitted under this agreement, and (6) the eligibility criteria for Campus and School Agreement at Appendix J as of the effective date of this Program Agreement.

Please note: Documents referenced in this Program Agreement but not attached to the signature form may be found at <http://www.microsoft.com/licensing/contracts> and are incorporated by reference, including the Product List, Product use rights and the Qualified Educational User definition. These documents may contain additional terms and conditions for Products licensed under this Program Agreement and may be changed from time to time. Institution should review such documents carefully, both at the time of signing and periodically, to ensure a full understanding of all terms and conditions applicable to Products licensed.

Terms and Conditions

1. Definitions.

In this agreement, the following definitions apply:

"Affiliate" means

- a. with regard to Institution,
 - (i) for a non-public entity, any qualified educational user identified at *Appendix J* that Institution owns and/or controls, that owns and/or controls Institution, or that is under common ownership and/or control with Institution; "ownership" means, for purposes of this definition, more than 50% ownership, and
 - (ii) for a state or local government entity,
 - 1) any qualified educational user identified at *Appendix J*, as of the effective date of this agreement that is an agency, department, office, bureau, division, or entity of the state or local government, and
 - 2) any qualified educational user expressly authorized by the laws of the state to purchase under state education contracts;

provided that the state and its Affiliates shall not, for purposes of this definition, be considered to be Affiliates of the federal government and its Affiliates; and

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

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

"Enrollment" means the form that Institution submits under this agreement to sign up for this program;

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

"Institution" means the entity that is a qualified educational user identified at *Appendix J* as of the effective date of this agreement that has entered into this agreement with Microsoft or the Institution's Affiliate that has entered into an Enrollment under this agreement. If Institution is a school district, "Institution" includes all participating schools in the same district;

"License" means Institution's right to run the quantity of a Product ordered. Under this agreement, Licenses are available only on a subscription basis ("Subscription License"). Licenses for Online Services will be considered Subscription Licenses under this Program Agreement;

"Licensed Period" means the period of time beginning on the effective date specified in Institution's Enrollment and continuing for the period of time specified in Institution's Enrollment (either 12 or 36 calendar months);

"Microsoft" means the Microsoft Affiliate that has entered into this Agreement or a Program Agreement and its Affiliates, as appropriate;

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

"Product" means all software, Online Services and other web-based services identified on the Product List.

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

"Product use rights" means the use rights or terms of service for each Product and version at <http://www.microsoft.com/licensing/contracts> or at a successor site;

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

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

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

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

"Users" means Institution, faculty, staff, and students designated on the Enrollment to run the Products, and members of the public who access devices located in Institution's open access labs or libraries.

2. How the Campus and School program works.

The Campus and School Agreement allows Institution to license one or more Products on a subscription basis. To license Products on a subscription basis means that the right to run the Product is non-perpetual and continues only during the Licensed Period.

Institution can participate in this program by submitting an Enrollment. This program allows a one-year Licensed Period or a three-year Licensed Period. The choice is indicated in the Enrollment.

One-year Licensed Period. An order must be submitted to indicate the Products Institution chooses to run. Thereafter, extension orders are submitted to continue the subscription each year. If an extension order is not received, the Enrollment will expire.

Three-year Licensed Period. An order must be submitted to indicate the Products Institution chooses to run. Thereafter, Institution must submit anniversary orders on the first and second anniversaries of the effective date of its Enrollment.

3. Subscription price.

This provision shall not apply to Products licensed to Institution at special promotion prices to distributor or reseller, as applicable.

One-year Licensed Period. Microsoft will not increase the License prices charged to the reseller for an annual extension order by more than ten percent (10%) (as determined with reference to U.S. funds, regardless of the currency in which amounts are invoiced or payment is made) over the License prices charged for the immediately preceding 12-month Licensed Period if (1) Institution submits an extension order prior to the expiration of the Enrollment and (2) such order is confirmed for the same Products in the same quantities as ordered in the expiring Licensed Period.

Three-year Licensed Period. If Institution chooses this option and complies with the ordering requirements in the agreement, for any Products ordered during the Licensed Period, the price Microsoft charges the Distributor or Reseller on each anniversary order will be the same as the price for the Products when they are first ordered except for step-ups.

4. License grant — what Institution and its Users are licensed to run.

On the date of Microsoft's letter to Institution confirming Microsoft's acceptance of the Enrollment, Institution is temporarily licensed to have Users run the Products as permitted in the Product use rights located at <http://www.microsoft.com/licensing/contracts>.

The Institution's right to have its Users run the Products, *and* Fixes is expressly limited to the rights described in this agreement, including the following limitations:

- a. Neither Institution nor its Users may separate the components of Products made up of multiple components 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.
- b. Neither Institution nor its Users may rent, lease, commercially host or lend any copy of the Products or Fixes, except where agreed by separate agreement.
- c. Neither Institution nor its Users may reverse engineer, decompile or disassemble the Products, or Fixes - except to the extent expressly permitted by applicable law despite this limitation.
- d. Neither Institution nor its Users may make copies of the Products, Fixes or Services Deliverables and distribute them on media to student Users.
- e. The components of the Products may vary by platform. Institution may run only the components of the Products that are included on the platform Institution chooses to deploy.

Neither Institution nor its Users will be entitled to free telephone support for the Products, except as specified in writing in connection with Software Assurance membership or other Software Assurance offerings.

Institution may only sublicense the right to run Products to Affiliates that are included in its defined organization.

These rights apply to the Licenses obtained under an Enrollment and are not related to any order or fulfillment of media. The ability to run current or later versions of a Product licensed under this agreement could be affected by minimum system requirements or other factors (e.g. hardware or other Products).

The right to run any Product under this agreement is temporary unless Institution elects to obtain perpetual Licenses under the buy-out option.

5. Use rights and restrictions.

- a. **Product use rights.** The Product use rights in effect on the effective date of an Enrollment will apply to use of then-current versions of each Product (excluding Online Services). For future versions, the Product use rights in effect when those future versions are first released will apply. In both cases, subsequent changes made by Microsoft to the Product use rights for a particular version will not apply to use of that version, unless Institution chooses to have such changes apply.

The use rights for Online Services and the process for updating them as the Online Services evolve are detailed in the Product use rights.

- b. **Product use rights for earlier versions (downgrade).** If Institution runs an earlier version of a Product than the version that was current on the Enrollment effective date, the Product use rights for the version licensed, not the version being run, will apply. However, if the earlier version includes components that are not part of the licensed version, any Product use rights specific to those components will apply to Institution's use of those components.
- c. **Use rights for different language version.** Institution may run Products in any available language version. If Institution is using any different language version of any Product

licensed under its agreement, Institution's use of the different language version will be governed by the Product use rights for the version licensed under this agreement.

- d. **Fixes.** Use of any Fixes is defined by the Product use rights for the affected Products or, if the Fix is not provided for specific Products, any other use terms Microsoft provides. All Fixes are licensed, not sold.
- e. **FERPA.** Upon receipt of a judicial order or lawfully issued subpoena requiring the disclosure of personally identifiable information from education records related to Institution in Microsoft's possession, Microsoft or an Affiliate of Microsoft will attempt to redirect the request to Institution. If compelled to disclose personally identifiable information from education records related to Institution to a third party, Microsoft will use commercially reasonable efforts to notify Institution in advance of a disclosure unless legally prohibited. Institution understands that Microsoft may have no or limited contact information for Institution's students and students' parents in its possession. Consequently, Institution will convey notification on behalf of Microsoft to students (or, with respect to a student under 18 years of age and not in attendance at a postsecondary institution, to the student's parent) of such an order or subpoena as may be required under applicable law.
- f. **Non-Microsoft software and technology.** *This section is intentionally omitted and is included in the associated Microsoft Business Agreement*

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

- a. **General.** Institution may make as many copies of the Products licensed as necessary to distribute the Products within its organization. All copies of any Product must be true and complete copies (including copyright and trademark notices) from master copies obtained from a Microsoft approved fulfillment source. Institution may also have a third party make or distribute copies but Institution is responsible for such third party's actions. Institution agrees to make reasonable efforts to notify its employees, agents, and other individuals running a Product that the Product is licensed from Microsoft and subject to the terms of this agreement.
- b. **Copies for evaluation.** During the term of its Enrollment, Institution may run up to 10 complimentary copies of any Product for a 60 day evaluation period.
- c. **Re-imaging rights.** In certain cases, re-imaging is permitted using the Product media. If the Microsoft Product(s) is licensed (1) from an original equipment manufacturer (OEM), or (2) as a full packaged Product through a retail source, then media provided under this agreement may generally be used to create images for use in place of copies provided through that separate source. This right is conditional upon the following:
 - (i) Separate Licenses must be owned from the separate source for each Product that is re-imaged.
 - (ii) The Product, language, version, and components of the copies made must be identical to the Product, language, version, and components of the copies they replace and the number of copies or instances of the re-imaged Product permitted remains the same.
 - (iii) Except for copies of an operating system and copies of Products licensed under another Microsoft program, the Product type (e.g., upgrade or full License) must be identical to the Product type from the separate source.
 - (iv) Any Product-specific processes or requirements for re-imaging identified in the Product List.
 - (v) Re-images made under this subsection remain subject to the terms and use rights provided with the License from the separate source. This subsection does not create or extend any warranty or support obligation.

7. **Distributing media.**

- a. To Faculty and Staff.** Institution may acquire the quantity of media as necessary to distribute the Products to Faculty and Staff for use in accordance with the agreement. All media for a particular Product must be acquired from a Microsoft-approved fulfillment source for that Product. Institution may also copy volume licensing media acquired from a Microsoft-approved fulfillment source for distribution to Faculty and Staff Users only. All copies must be true and complete copies (including copyright and trademark notices). Institution must maintain the security of any volume licensing keys provided with volume licensing media in accordance with applicable Product use rights and other restrictions and may disclose them only to employees authorized to engage in the installation and support of the Products. Institution may not disclose volume licensing keys to Faculty and Staff work-at-home Users or to Students or to any other unauthorized third party.
- b. To Faculty and Staff work at home Users and to Student licensing option Users.** If Institution exercises Faculty and Staff work at home rights for selected Products or selects the Student licensing option in an Enrollment, access to media by Faculty and Staff for work at home purposes and by Students must be restricted and regulated by Institution. All media for Products distributed to Faculty and Staff for work at home purposes and to Students must be acquired from a Microsoft-approved fulfillment source, and such Products may be distributed to such Users only in the following ways:
- (i) if individual student-media CD-ROM or disk sets (collectively, "Student Media") is purchased for a particular Product, Institution may distribute one copy of such Student media directly to each authorized work at home User or Student (Student Media may contain Product activation features that limit the number of installations); the reseller can identify media and Products that contain Product activation features. Details on ordering and distributing Student Media, including a list of the Products for which Student Media is currently available, is at <http://www.microsoft.com/education/StudentMedia.aspx>; or
 - (ii) for Products for which a volume licensing key is not required, using volume licensing media acquired pursuant to this agreement via (1) controlled download from a secure network server(s), (2) manual installation at a central location that Institution controls or (3) a system of controlled short-term checkout of applicable volume licensing media solely for purposes of individual user installation.
 - (iii) Institution may also use a Microsoft-approved entity selected by Institution to electronically distribute copies via download from secure network server(s) or other storage device(s), provided Institution or the Microsoft-approved entity controls the download to ensure that the number of permitted copies is not exceeded and those making the download are licensed to do so. For more information on this download option, Institution is advised to contact its reseller who may manage this on Institution's behalf.
- c. To Students.** Institution may order media to distribute the Products to Students for use in accordance with this agreement. Institution's order for media must specify version number and country of usage. Institution may only use the media received under its Enrollment to transfer Products to eligible Student Users. Products may only be transferred in the same media format that Institution receives under its Enrollment. Orders must be placed with the reseller named on the Enrollment. Institution may use a third party to complete and process eligible Student Users' orders for media under its Enrollment and to distribute media to eligible Student Users. Institution is responsible for the third party's actions. Price and payment terms for media ordered are determined by agreement with Institution's designated reseller. Institution's designated reseller is authorized to purchase media Products from the Microsoft-authorized replicator identified by Microsoft from time to time solely for the purpose of fulfilling orders placed under the Enrollment. Institution's designated reseller may purchase from Microsoft-authorized replicators media and documentation only for those Products available under the Enrollment.

8. **Redistribution of software updates to Students.**

- a. **License grant.** From time to time, Microsoft may make available to the general public additional or replacement code of any portion of Microsoft's licensed Products without a fee ("software updates"). Microsoft grants Institution a limited, non-exclusive, royalty-free, non-assignable, non-transferable, revocable License to distribute the software updates to Institution's Students in accordance with the terms of this section. Institution's Students must use the software updates solely for their personal benefit in accordance with the end-user License Agreement with Microsoft ("EULA") included with each software update.
- b. **Redistribution of software updates.** Institution may redistribute software updates to its Students (1) by electronic means provided that Institution's method of electronic distribution is adequately licensed and incorporates access control and security measures designed to prevent modification of the software updates and access by the general public or (2) through acquiring authorized copies on fixed media from a fulfillment source approved by Microsoft.
- c. **Limitations.** Institution may not (1) produce or replicate software updates on to CDs or other distributable storage media, (2) combine the software updates with other non-Microsoft software, (3) distribute any software updates as a stand-alone component via email attachment, (4) charge for the software updates, other than to recover any reasonable costs incurred in providing the updates to its Students; (5) remove, modify, or interfere with the EULA or the EULA acceptance functionality included by Microsoft with any software update; or (6) alter the software updates in any way. Microsoft is not responsible for any cost related to the acquisition, distribution, or recall of the software updates.
- d. **Tracking and recall, replacement software updates.** Institution must track the quantity and method of distribution of the software updates by means that will allow it to provide notice of a recall and offer replacements as provided in this subsection. Institution agrees to stop redistributing software updates within 10 days of receipt of a notice of recall from Microsoft and within 30 days of that notice Institution agrees to (1) return to Microsoft or destroy all copies of software updates in Institution's possession and (2) notify Institution's Students of the recall by the same or similar means in which they were notified of the availability of the software updates.

If Microsoft makes available to Institution a replacement software update, Institution agrees to make the replacement available to its Students, within 30 days of receipt in the same quantity and method(s) of distribution, if available, as Institution made the original software update available. The distribution of replacement software updates is subject to the same conditions and restrictions as software updates under this section.

- e. **No warranties, exclusion of indirect, special, incidental, consequential, and certain other damages.** Notwithstanding anything to the contrary in this agreement, and to the extent permitted by law, software updates that Institution redistributes to its Students are provided "as is" without any warranties. Institution acknowledges that the provisions of this paragraph with regard to the software updates are reasonable having regard to, among other things, the fact that they are complex computer Products, and their performance will vary depending upon hardware, platform and Products interactions, and configurations.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL MICROSOFT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, CONSEQUENTIAL, OR INDIRECT DAMAGES THAT ARISE OUT OF OR ARE IN ANY WAY RELATED TO INSTITUTION'S REDISTRIBUTION OF THE SOFTWARE UPDATES TO ITS STUDENTS. FURTHERMORE, IN NO EVENT SHALL MICROSOFT BE LIABLE FOR ANY SUCH DAMAGES BASED DIRECTLY OR INDIRECTLY UPON THE PROVISION OF SOFTWARE UPDATES OR UNAVAILABILITY OF SOFTWARE UPDATES INCLUDING WITHOUT LIMITATION, DAMAGES DUE TO BUSINESS INTERRUPTION, LOSS OF PROFITS, REVENUE OR BUSINESS OPPORTUNITY, LOSS OF DATA AND THE LIKE, FAILURE TO MEET ANY DUTY, OR NEGLIGENCE.

- f. **Limitation of liability.** With respect to Institution's redistribution of the software updates, the limitation of liability provisions in this agreement shall apply in those situations in which Institution or its Users have a right to claim damages or payment from Microsoft.
- g. **No support.** Software updates that Institution redistributes to its students are provided without any support obligation by Microsoft, including any benefits accruing from Software Assurance.
- h. **Applicability.** The provisions of this section shall not apply to distribution of Fixes to Students so long as (1) those Students are licensed under the Student licensing option, and (2) the Fix provided to those Students is for Products licensed to them under Student licensing option. All other redistribution to Students of additional or replacement code is subject to the provisions of this section.

9. **Transfer and reassigning Licenses.**

- a. **License transfers.** License transfers are not permitted, except that Institution may transfer fully-paid perpetual licenses to:
 - (i) an Affiliate, or
 - (ii) a third party solely in connection with the transfer of hardware or employees to whom the licenses have been assigned as part of (1) a divestiture of an Affiliate or a division of an Affiliate or (2) a merger involving Institution or an Affiliate.

Institution must notify Microsoft of a transfer of license by completing a transfer notice form, which can be obtained from <http://www.microsoft.com/licensing/contracts> and send the completed form to Microsoft before the license transfer. No License transfer will be valid unless Institution provides to the transferee, and the transferee accepts in writing, the applicable Product use rights, use restrictions, limitations of liability (including exclusions and warranty provisions), and the transfer restrictions described in this section. Any license transfer not made in compliance with this section will be void.

- b. **Internal Assignment of Licenses and Software Assurance.** Licenses and Software Assurance must be assigned to a single user or device with the organization. Licenses may be reassigned within the organization as described in the Product use rights.

10. **Confidentiality.**

This section is intentionally omitted and is included in the associated Microsoft Business Agreement.

11. **Options upon completion of a Licensed Period.**

Microsoft will provide prior written notice of expiration of an Enrollment. The notice will advise Institution of the option to: (1) extend the Enrollment, (2) submit a new Enrollment, (3) exercise the buy-out option, or (4) allow the Enrollment to expire. Microsoft will not unreasonably reject any extension order or new Enrollment. Each Licensed Period will start the day following the expiration of the prior Licensed Period:

- a. **One-year Licensed Period.** Institution may elect to extend an initial one-year Licensed Period for either (1) up to five consecutive terms of 12 full calendar months by submitting an extension order for each such extension term or (2) one term of 36 full calendar months.
- b. **Three-year Licensed Period.** Institution may elect to extend an initial three-year Licensed Period for either (1) up to three consecutive terms of 12 full calendar months or (2) one term of 36 full calendar months.
- c. **Buy-out option.** Institution may elect to obtain perpetual Licenses for Products licensed under the Enrollment provided it has licensed such Products under one or more Enrollments (including any extensions) under the Agreement (or a predecessor agreement) for at least 36

full calendar months immediately preceding expiration of the Enrollment. Institution must submit a buy-out order at least 30 days prior to expiration of the Enrollment. The buy-out option is not available for Products licensed under the Student licensing option. The Enrollment may provide further information regarding the buy-out order.

- d. **License confirmation.** *This section is intentionally omitted and is included in the associated Microsoft Business Agreement.*
- e. **Allow the Enrollment to expire.** Institution may allow the Enrollment to expire. If the Enrollment expires, all Products must be deleted as provided in section titled "Term and termination."

Except as specifically provided otherwise in the Product use rights, perpetual Licenses acquired through the buy-out option are device Licenses. For example, a License is required for each PC on which Institution desires to run Office.

Because all Licenses acquired under this agreement are temporary, Institution will not be eligible to obtain Software Assurance for those Licenses under any other Microsoft volume licensing program without first acquiring a perpetual License or License and Software Assurance (L&SA).

12. **Term and termination.**

- a. **Term.** *This section is intentionally omitted and is included in the associated Microsoft Business Agreement.*
- b. **Termination of the agreement.** *This section is intentionally omitted and is included in the associated Microsoft Business Agreement.*
- c. **Termination of an Enrollment.** Either party may terminate any Enrollment(s) if the other party is in material breach of any obligation, which breach is not cured within 30 days written notice of such breach. Microsoft may terminate this agreement and any Enrollment(s) immediately if Institution fails to continue to qualify as a qualified educational user as identified at Appendix J. If no orders are received under an Enrollment, the Enrollment will be terminated 30 calendar days after the effective date of the Enrollment.
- d. **Effect of termination and Licensed Period expiration.** Users may only run the Products and Fixes according to the terms of this agreement. Users are only licensed to run the Products and Fixes during the Licensed Period. If this agreement is terminated, or if no extension or anniversary order is submitted prior to the expiration of the Licensed Period or the purchase of perpetual Licenses for the Products, then all Products and Fixes that run as a result of this agreement must be deleted when the Licensed Period expires or is otherwise earlier terminated.

Similarly, if Institution stops ordering any Products or Product quantities decrease upon an extension of a Licensed Period, it must delete those Products prior to the beginning of the extended Licensed Period. Institution must make reasonable efforts to ensure that Faculty and Staff work-at-home Users (1) delete and remove Products and Fixes copies from the temporary ram (RAM) and permanent memory (e.g., hard disk) of their home PCs, and (2) disconnect access to any server Products at the end of the Licensed Period.

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

- f. **Program updates.** *This section is intentionally omitted and is included in the associated Microsoft Business Agreement*

13. Warranties.

This section is intentionally omitted and is included in the associated Microsoft Business Agreement.

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

This section is intentionally omitted and is included in the associated Microsoft Business Agreement.

15. Limitation of liability.

This section is intentionally omitted and is included in the associated Microsoft Business Agreement.

16. Verifying compliance.

- a. **Right to verify compliance.** *This section is intentionally omitted and is included in the associated Microsoft Business Agreement.*
- b. **Verification process and limitations.** *This section is intentionally omitted and is included in the associated Microsoft Business Agreement*
- c. **Remedies for noncompliance.** *This section is intentionally omitted and is included in the associated Microsoft Business Agreement.*
- d. Additionally, Institution must use reasonable efforts to make Users aware of the terms and conditions upon which they are allowed to run the Products. Accordingly, Institution must:
- (i) Notify all Users in advance of running the Products that:
 - 1) their use of the Products is subject to the terms of this agreement, including but not limited to limitations on liability, disclaimer of warranties and exclusion of remedies;
 - 2) they are allowed to run the Products only during the Licensed Period;
 - 3) if this agreement is terminated, or Institution does not submit an Enrollment or extension order prior to the expiration of the Licensed Period or purchase perpetual Licenses for the Products, then all Products run under this agreement must be deleted when the Licensed Period expires or is otherwise earlier terminated, whichever is first;
 - (ii) Periodically publish in an Institution wide publication and applicable web sites a reference to the location (either physical or on a computer network) where they can view the Product List and Product use rights. Microsoft publishes a copy of the Product List and Product use rights at <http://www.microsoft.com/licensing/>;
 - (iii) Notify Microsoft immediately if Institution becomes aware of any actual or potential violation of this agreement; and
 - (iv) Provide all reasonable assistance and cooperation as requested by Microsoft to investigate and remedy any unauthorized use of the Products by Users.

If Institution complies with this section, Institution will not be responsible for Student Users' failure to comply with the terms of this agreement.

17. *Miscellaneous* All of the following sections are intentionally omitted, and are included in the associated Microsoft Business Agreement

- a. **Notices to Microsoft.**
- b. **No transfer of ownership.**
- c. **Severability.**
- d. **Waiver.**
- e. **Resellers and other third parties cannot bind Microsoft.**
- f. **This agreement is not exclusive.**
- g. **Entire agreement.**
- h. **Assignment.**
- i. **Survival.**
- j. **Applicable law, venue, and jurisdiction.**
- k. **U.S. export.**
- l. **Privacy and security.**
- m. **Subcontractors.**
- n. **Natural disaster.**



Appendix H- Sample Custom EES Enrollment

Microsoft | Volume Licensing

Enrollment for Education Solutions

Enrollment Number <i>Microsoft to complete</i>		Qualifying Enrollment Number (if applicable) <i>Partner to complete</i>	
Previous Enrollment Number (if applicable) <i>Partner to complete</i>		Proposal ID/Framework	NY004

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

Please note that by entering into this Enrollment for Education Solutions ("Enrollment") Institution, regardless of whether it is a primary/secondary school or a higher/further education entity, becomes part of the Campus Program. Institution's reseller will use the Campus Program tools and pricing infrastructure to register Institution for this Enrollment. All communications from Microsoft will indicate that Institution is part of the Campus Program.

This Enrollment is entered into between the entities identified in, and as of the effective date listed in, the signature form ("Enrollment Effective Date"). Institution represents and warrants that it is the same Institution that entered into the Campus and School Agreement identified on the signature form ("Agreement") or an Affiliate of Institution.

This Enrollment consists of (1) this document and the signature form, (2) the associated Microsoft Business Agreement and these Program Agreement terms and conditions and all attachments identified therein and (3) any supplemental contact information form.

Enrollment Term. This Enrollment will expire either 12 or 36 full calendar months from the Enrollment Effective Date, depending on Institution's election below and may be terminated earlier as provided in the Agreement. *Please select **only one** initial Enrollment term option:*

<input type="checkbox"/>	12 Full Calendar Months	<input type="checkbox"/>	36 Full Calendar Months
--------------------------	-------------------------	--------------------------	-------------------------

Prior Enrollment. If renewing Subscription Licenses from a Previous Enrollment or Agreement, the Previous Enrollment or Agreement number must be identified in the designated box above.

1. **Contact information.**

Each party will notify the other in writing if any of the information in the following contact information page(s) changes. *The asterisk ("*") indicates required fields.* Microsoft may disclose contact information as necessary to administer this Enrollment.

- a. **Primary contact information.** Institution must identify an individual from inside its organization to serve as the primary contact. This contact is also the default online administrator for this Enrollment and will receive all notices unless Institution provides Microsoft written notice of a change. The online administrator may appoint other administrators and grant others access to online information.

Name of entity (must be legal entity name)*

Contact name*: First Last

Contact email address*

Street address*

City*
State/Province*
Postal code*
Country*
Phone
Tax ID

** indicates required fields*

- b. **Notices and online access contact information.** Complete this only if Institution wants to designate a notices and online contact different from the primary contact. This contact will become the default online administrator for this Enrollment and receive all notices. This contact may appoint other administrators and grant others access to online information.

Same as primary contact

Name of entity*

Contact name*: First Last

Contact email address*

Street address*

City*

State/Province*

Postal code*

Country*

Phone

This contact is a third party (not Institution)

Warning: This contact receives personally identifiable information of Institution.

** indicates required fields*

- c. **Online Services Manager.** This person will receive communications concerning registration for Online Services ordered under this Enrollment. This contact may appoint other administrators and grant others access to online information.

Same as primary contact

Name of entity*

Contact name*: First Last

Contact email address*

Street address*

City*

State/Province*

Postal code*

Country*

Phone

** indicates required fields*

- d. **Language preference.** Select the language for notices. English

- e. **Microsoft account manager.** Provide the Microsoft account manager contact for Institution.

Microsoft account manager name:

Microsoft account manager email address:

- f. **Reseller information.**

Reseller company name*

Street address (PO boxes will not be accepted)*

City*

State/Province*

Postal code*

Country*
Contact name*
Phone
Contact email address*
** indicates required fields*

The undersigned confirms that the information is correct

Name of Reseller*
Signature* _____
Printed name*
Printed title*
Date*

** indicates required fields*

Changing a reseller. *This section is intentionally omitted and is included in the associated Microsoft Business Agreement*

2. Definitions.

Capitalized terms used but not defined in this Enrollment shall have the meaning given to them in the Agreement.

"Additional Product" means any Product other than a Desktop Platform Product that Institution chooses to license under this Enrollment;

"Alumni" means any Graduate, or former Student, Faculty or Staff of the Institution.

"Desktop Platform Product" means any Product identified on the Product List as such and that Institution chooses to license under this Enrollment (Desktop Platform Products may only be licensed on an Organization-wide basis under this program);

"Faculty" means any employees, contractors and volunteers who teach or perform research for Institution and use an Institution Qualified Desktop;

"Graduate" means a Student who has completed (1) a grade or a level in a school or an educational institution in Institution's Organization that qualifies the Student for enrollment into college or university or (2) a diploma or degree from a college or university in Institution's Organization;

"Organization" means the organization as defined by Institution in the section of this Enrollment titled "Defining Institution's Organization";

"Organization-wide Count" means the total quantity of Faculty and Staff in Institution's Organization as listed in the table in the section of this Enrollment titled "Choosing licensing options; license grant.";

"Platform Online Service" means any Online Service identified on the Product List as such and that Institution chooses to license under this Enrollment. Platform Online Services are treated as Online Services, except as noted;

"Previous Enrollment or Agreement" means a School Subscription Enrollment, a Campus Subscription Enrollment, an Enrollment for Education Solutions, or an Open Value Subscription Agreement for Education Solutions;

"Qualified Desktop" means a device that is owned, leased or controlled by Institution (other than a Student Qualified Desktop) that is used for the benefit of Institution's Organization (or by or for the benefit of Students enrolled in Institution's Organization, if applicable) and is: (1) a personal desktop computer, portable computer, workstation, or similar device capable of running Windows Professional locally (in a physical or virtual operating system environment), or (2) a device used to access a virtual desktop infrastructure ("VDI"). Qualified Desktops do not include any device that is: (1) designated as a server

and not used as a personal computer or (2) an Industry Device or (3) not managed (as defined in the Product List at the start of the applicable initial or renewal term of the Enrollment) as part of Institution's Organization.

"Qualified User" means a User who (1) is a user of a Qualified Desktop or (2) accesses any server software or online services licensed within Institution's Organization. It does not include a person who accesses server software or online services solely under a license identified in the Qualified User Exemptions in the Product List;

"Qualifying Enrollment" means an Enrollment for Education Solutions, the minimum requirements of which were met (i.e., a Qualifying Enrollment was not used) and which was entered into by Institution or Institution's Affiliate, each active and valid upon signing of this Enrollment. Institution must have been included in the Organization under an Enrollment for Education Solutions that is used as the Qualifying Enrollment;

"Staff" means any non-Faculty employees, contractors and volunteers who perform work for Institution and use an Institution Qualified Desktop;

"Student" means any student enrolled in any educational institution that is part of Institution's Organization, whether on a full-time or part-time basis;

"Student Count" means the total quantity of Students in Institution's Organization as listed in the table in the section titled "Licensing options; license grant."; and

"Student Qualified Desktop" means a Qualified Desktop owned or leased by a Student or that is owned or leased by Institution's Organization and assigned for individual, dedicated use by a Student.

For the avoidance of doubt, the term "Customer" as used in certain supplemental forms (for example the program signature form) has the same meaning as "Institution."

3. Overview of the Enrollment for Education Solutions.

This Enrollment allows Institution to license Products on a subscription basis across its Organization. Institution determines how it defines its Organization. Institution can select from two different licensing options, Faculty and Staff or Students, depending on the Users it wishes to cover.

The minimum requirements for this Enrollment are as follows:

Institution must order at least one Desktop Platform Product for Organization-wide Count of at least 250 OR

Institution must order at least one Platform Online Service for Staff / Faculty in a quantity of 250 OR

Institution must order at least one Desktop Platform Product for Student Count of at least 250 OR

Institution must order at least one Platform Online Service for Students in a quantity of 250

The minimum requirements listed above are waived if Institution has a Qualifying Enrollment.

Microsoft may refuse to accept this Enrollment if it has a business reason for doing so. At the end of the applicable term, Institution has the option to extend the Enrollment, enter into a new Enrollment, let the Enrollment expire, or, if applicable, buy out perpetual Licenses.

4. Defining Institution's Organization.

Define the Organization by choosing one of the options below. *Please select only one option.*

Institution must provide an Organization-wide Count and/or Student FTE count even if only ordering Platform Online Services to meet Enrollment minimum requirements.

Category Licensed	Institution's Selection	Organization-wide Count and/or Student Count, as applicable
1. Faculty and Staff	<input type="checkbox"/>	
2. Students	<input type="checkbox"/>	

License grant. So long as Institution places orders pursuant to the agreement and this Enrollment for any required Licenses and pays per the agreement with its reseller, Institution (and/or its Students, as applicable) will have the following rights during the term of this Enrollment:

If the Faculty and Staff option is chosen, each Qualified User in Institution's Organization (including Students and public users of Qualified Desktops in an open lab) may run the Desktop Platform Products, and the Additional Products licensed on an Organization-wide basis, on any Institution Qualified Desktops. Institution is not required to count members of the public who access PCs that remain in Institution's open access lab(s) or libraries. Institution may not permit remote access to software installed on PCs in open access labs or libraries.

In the case of CALs, Institution may assign (1) a device CAL to each Institution Qualified Desktop and (2) a user CAL to each Faculty and Staff member, in both cases to access Institution's associated server software.

If the Student option is chosen, each Student in the Organization may run one license of the Desktop Platform Products, and one license of the Additional Products licensed Organization-wide, on a Student Qualified Desktop. In the case of CALs, Institution may assign a user CAL to each Student to access Institution's associated server software.

Institution may run as many copies of other Additional Product(s) it wishes so long as it places an order pursuant to the agreement and this Enrollment for required Licenses and pays per the agreement with its reseller. Order quantities must be equal to the number of copies Institution runs.

If Institution is licensing Office 2010 and SharePoint Server 2010 CAL (Enterprise or Standard) for Faculty and Staff in its Organization under this Enrollment, then Institution's Students and their parents may use Office Web Applications at no charge for the purpose of Students' education at Institution. There is no buy-out option for Office Web Applications.

6. Price levels and prices.

Price levels. Institution's Organization-wide Count determines the price level of Desktop Platform Products ordered under the Faculty and Staff option. Institution's Student Count determines the price level of Desktop Platform Products ordered under the Student option. If Institution chooses to extend this Enrollment, the price level will be reset at the start of the extension term based on Institution's Organization-wide Count and/or Student Count at the time the extension order is placed. There are no price levels for Additional Products. Institution's price level does not change during the term of the Enrollment.

Select Price Level that Applies to Faculty and Staff Option	Organization Wide Count	Price level (Only Applicable For Desktop Platform products)
<input type="checkbox"/>	250	A
<input type="checkbox"/>	3,000	B
<input type="checkbox"/>	10,000	C
<input type="checkbox"/>	25,000	D

Select Price Level that Applies to Student Option	Student Count	Price level (Only Applicable For Desktop Platform products)
<input type="checkbox"/>	250	A
<input type="checkbox"/>	3,000	B
<input type="checkbox"/>	10,000	C
<input type="checkbox"/>	25,000	D

Prices. Institution's actual prices will be determined by agreement between Institution and its reseller. However, Microsoft will provide the reseller with pricing at the outset of this Enrollment and agrees that it will not increase the prices that it charges the reseller for the Products during the term of the Enrollment from when they order the product for the first time under the enrollment.

7. **How to order Products.**

- a. **Price and payment terms.** Price and payment terms for all Licenses ordered will be determined by agreement between Institution and its reseller.
- b. **Placing the initial order.** Orders must be submitted within 30 days of the Enrollment Effective Date.
 - (i) The initial order under the Enrollment must contain at least one Desktop Platform Product for Organization-wide Count or Student Count OR at least one Platform Online Service for 250 licenses for either Faculty / Staff or Students
 - (ii) Orders for Desktop Platform Products and all component products that are part of the Desktop Platform Products must be for Institution's then-current Organization-wide Count.
 - (iii) Orders for Platform Online Services must be for at least 250 and must be ordered in the exact quantity needed.
 - (iv) Once the enrollment minimum requirements have been met, Other Online Services for Faculty/Staff must be ordered in the exact quantity (in any quantity).
 - (v) Additional Products must be ordered in exact quantities needed (in any quantity.) Certain Additional Products may instead be ordered for the Organization-wide Count, as described in the Product List.
 - (vi) Products offered under the Student Offering must be ordered for the full Student Count except Online Services. Once the enrollment minimum requirements have been met, Other Online Services under the Student Offering must be ordered in the exact quantity needed (in any quantity).
- c. **Adding new Products not previously ordered (non-anniversary).** Orders can be submitted for Products that were not part of the initial order. The order must be placed in the month in which copies of the Product(s) are first run.
 - (i) Orders for Desktop Platform Products and all component products that are part of the Desktop Platform Products must be for Institution's then-current Organization-wide Count.
 - (ii) Orders for Platform Online Services must be for at least 250 and must be ordered in the exact quantity needed.
 - (iii) Once the enrollment minimum requirements have been met, Other Online Services for Faculty/Staff must be ordered in the exact quantity (in any quantity).

- (iv) Additional Products must be ordered in exact quantities needed (in any quantity.) Certain Additional Products may instead be ordered for the Organization-wide Count, as described in the Product List.
- (v) Products offered under the Student Offering must be ordered for the full Student Count except Online Services. Once the enrollment minimum requirements have been met, Other Online Services under the Student Offering must be ordered in the exact quantity needed (in any quantity).

The Licensed Period for additional orders will be the same as the Enrollment Licensed Period.

d. Adding more copies of Products previously ordered (non-anniversary).

- (i) For Desktop Platform Products, and Additional Products licensed Organization-wide, Institution does not need to submit orders to increase the number of copies run. However, increases in Organization-wide Count and/or Student Count, as applicable, must be reported at each anniversary of the Enrollment Effective Date.
- (ii) Except as provided in subsection d(i) above, Additional Products and Online Services are licensed based on the number of Licenses acquired. At any time during the Licensed Period (including any extension), Institution may run additional copies of any previously ordered Additional Products, provided it submits orders for such copies. The order must be placed in the month in which those copies are first run.

Microsoft will invoice the reseller for the Products ordered on a pro-rated basis corresponding to the number of full calendar months remaining in the Licensed Period to a minimum of 6 months. Online Services will be invoiced on a pro-rated basis corresponding to the full calendar months remaining in the Licensing Period to a minimum of 1 month. Microsoft will use the price list in effect on the date of the invoice to charge Institution's reseller for the additional Licenses. When adding more copies of products previously ordered, Microsoft will use the pricelist in effect when the product was initially ordered to charge Institution's reseller for the additional Licenses.

e. Extension orders and subsequent annual orders. Institution must submit orders based on the following:

- (i) **One-year Licensed Period.** An extension order must be submitted to extend the Enrollment for another Licensed Period. The extension order must be received by Microsoft prior to the expiration of the Licensed Period. The Product selection and quantity ordered can be changed at each extension order.
- (ii) **Three-year Licensed Period.** An anniversary order must be received by Microsoft prior to each anniversary of the Enrollment Effective Date of the three-year Licensed Period, and a subsequent extension order must be received by Microsoft prior to the expiration of the initial three-year Licensed Period. Each anniversary order must be for at least the same Product selection and total quantity as ordered during the one-year period in which the Product was first ordered, except for step-ups.

f. Buy-out order. If a buy-out option is available, a buy-out order quantity for Licenses for Desktop Platform Products, and Additional Products licensed Organization-wide, shall be at least equal to the Organization-wide Count but shall not exceed the total quantity of Qualified Desktops in Institution's Organization on the date of the buy-out order. The buy-out order quantity for other Additional Products shall be the lowest total quantity of copies ordered during any of the three 12 month periods immediately preceding expiration of the Enrollment.

g. How to confirm orders. Microsoft will publish information about orders placed by Institution, including an electronic confirmation of each order on a password-protected site on the World Wide Web at <https://www.microsoft.com/licensing/servicecenter> or a successor site. Upon Microsoft's acceptance of this Enrollment, the contact identified for this purpose will be provided access to this site.

- h. **Step up to a higher Product edition.** If a previously ordered Product has multiple editions, Institution may migrate to the higher edition by stepping up (e.g. from Core CAL to Enterprise CAL or from SQL Server Standard Edition to SQL Server Enterprise Edition.) The order requirements set forth in subsection 7c above apply.

8. Work at home rights.

During the Licensed Period, Faculty and Staff members who are the primary users of an Institution Qualified Desktop running a Product licensed by Institution may run one copy of that Product on a home PC that they own or lease (or, for work at home rights for a Client Access License, to access the server Product(s) licensed by Institution from a home PC that they own or lease), for work-related purposes only; provided that in the case of work at home rights for Desktop Platform Products and Additional Products licensed Organization-wide the total number of Faculty and Staff members exercising work at home rights may not exceed Institution's Organization-wide Count and for other Additional Products the total number of Faculty and Staff members may not exceed the number of Licenses acquired for such Additional Products. If Institution upgrades the Product on the Qualified Desktop used by the Faculty or Staff member, the latter may upgrade the corresponding copy on the home PC. If the Faculty or Staff member leaves Institution, the work at home rights for such member end and the copy of the Product must be removed from the home PC. Though Microsoft may offer both work at home rights and home use program rights under Software Assurance for a Product, Institution must choose either work at home rights or home use program rights for such Product.

9. Perpetual Licenses for Graduates.

For any Students licensed to run any Products on a Student Qualified Desktop, Institution may at any time during the Enrollment term transfer to any Graduate the perpetual right to run each such Product. Institution must provide each such Graduate with a license agreement in the form provided by Microsoft. Institution must secure the Graduate's acceptance of the terms of the license agreement. Upon acceptance of the license agreement, the Graduate's right to run the Products identified in the license confirmation becomes perpetual. These rights do not apply to access licenses, including CALs, or to Online Services.

10. Education Server Platform Licensing Option.

If Institution licenses one or more of the CAL Products and the corresponding Server Platform Product(s) listed in the table below, Institution may run unlimited instances of any available edition of the corresponding server Products that constitute the Server Platform Products.

Institution must license each selected CAL Product and corresponding Server Platform Product for the aggregate of Institution's Organization-wide Count (at least 1000) and Student Count (at least 1000) as listed in the section entitled "Licensing options; license grant" above.

Unless Institution chooses to step up to a higher Product edition, Institution must include the Products selected from the table below with each anniversary order. If there is an increase in Product quantity used, Institution must submit an order for all CAL and Server Platform Products used but not ordered during the previous Enrollment year. Institution may aggregate CAL Product quantities acquired under a Qualifying Enrollment to meet quantity requirements of this Enrollment, provided that such Qualifying Enrollment or its successor is valid and in effect during the term of this Enrollment.

Server Platform Products licensed under this licensing option may only be used by Faculty, Staff and Student Users in Institution's Organization and by licensed external users using the Server Platform Products for the benefit of Institution's Organization.

Products Licenses acquired under this section may not be transferred to Graduates. Institution may buy out CAL Products but not Server Platform Products Licenses acquired under these terms. Institution is prohibited from transferring Licenses acquired under this section.

Institution agrees that Institution's use of the server Products that constitute the Server Platform Products is subject to the Product Use Rights.

Product Selection			
	CAL Product Selected	Server Platform Product Selected	Server Product included for Unlimited Deployment
<input type="checkbox"/>	SQL Server CALs	SQL Server Platform Academic	Unlimited Licenses for all editions of the corresponding server Products, plus all editions of BizTalk Server and associated external connectors.
<input type="checkbox"/>	Core CALs (acquired standalone or as part of a platform)	Core Server Platform Academic	Unlimited Licenses for all editions of the corresponding server Products, and associated external connectors.
<input type="checkbox"/>	Enterprise CALs (acquired standalone, as a step-up, or as part of a platform)	Enterprise Server Platform Academic	Unlimited Licenses for all editions of the corresponding server Products and external connectors, plus FAST search for Share Point, Forefront TMG Servers, and associated server management software.

11. Qualifying systems Licenses.

The desktop operating system Licenses granted under this program are upgrade Licenses only. Full desktop operating system Licenses are not available under this program. If Institution selects the Windows Desktop Operating System Upgrade, all Qualified Desktops on which Institution runs the Windows Desktop Operating System Upgrade must be licensed to run one of the qualifying operating systems identified in the Product List at <http://www.microsoft.com/licensing/contracts>. Note that the list of operating systems that qualify for the Windows Desktop Operating System Upgrade varies with the circumstances of the order. That list is more extensive at the time of the initial order than it is for some system refreshes during the term of this Enrollment. Exclusions are subject to change when new versions of Windows are released.

For example: The following are not considered qualifying operating systems: (1) embedded operating systems; (2) Linux; and (3) OS/2. These are examples of exclusions only. Please see Product List for all current qualifying operating systems.

12. Options upon completion of a Licensed Period.

Microsoft will provide prior written notice of expiration of the Enrollment. The notice will advise Institution of the option to: (1) extend the Enrollment, (2) submit a new Enrollment, (3) exercise the buy-out option, or (4) allow the Enrollment to expire. Microsoft will not unreasonably reject any extension order or new Enrollment. Each Licensed Period will start the day following the expiration of the prior Licensed Period:

- a. **One-year Licensed Period.** Institution may elect to extend an initial one-year Licensed Period for either (1) up to five consecutive terms of 12 full calendar months by submitting an extension order for each such extension term or (2) one term of 36 full calendar months.
- b. **Three-year Licensed Period.** Institution may elect to extend an initial three-year Licensed Period for either (1) up to three terms of 12 full calendar months or (2) one term of 36 full calendar months.

- c. **Buy-out option.** Institution may elect to obtain perpetual Licenses for Products licensed under this Enrollment provided it has licensed such Products under one or more Enrollments (including any extensions) under the Agreement (or a predecessor agreement) for at least 36 full calendar months immediately preceding expiration of this Enrollment. Institution must submit a buy-out order at least 30 days prior to expiration of this Enrollment. The buy-out option is not available for Products licensed under the Student option.

Except as specifically provided otherwise in the Product use rights, perpetual Licenses acquired through this buy-out option are device Licenses. The license grant in the section entitled "License options; license grant" above does not apply to such perpetual Licenses. For example, a License is required for each Qualified Desktop on which Institution desires to run Office.



Appendix J

The *Qualified Education User Definition*, identifies the *Qualified Education Users* who are eligible to participate under the *Academic Select Plus and Campus and School Program Agreement (Enrollment for Education Solutions)*. All other *Eligible Programs* listed within the *Qualified Educational User Definition* are not covered under this *Microsoft Business Agreement*.

Microsoft Qualified Educational User Definition (US Only)

All Microsoft eligible education customers must be located or reside in the United States. Qualified Educational Users are those entities that both have an educational purpose or mission and meet the criteria specified below. If a controversy exists as to an organization's eligibility, Microsoft retains the right to determine in its sole discretion the eligibility of the organization for the specific transaction in question. The following are eligible to acquire Microsoft Academic Edition (AE) products in the programs indicated and are defined as qualified educational users:

QUALIFIED EDUCATIONAL USERS:	ELIGIBLE PROGRAMS:
<p>A) Educational Institutions Defined as an accredited institution organized and operated exclusively for the purpose of teaching its enrolled students ("Educational Institutions"). An accredited institution must be:</p> <p>1. A public or private K-12, vocational school, correspondence school, junior college, college, university, or scientific or technical school that is either institutionally accredited by an accrediting agency nationally recognized by the U.S. Secretary of Education or, in the case of public K-12 institutions only, recognized or approved by the Department of Education of the State in which it is located. OR</p> <p>2. A preschool meeting all of the following criteria: (i) is an early childhood program incorporated for the purpose of providing educational services to children between two and five years of age, and which serves minimum of ten such children; and (ii) has been in operation for at least one year.</p>	<p>AE Full Packaged Product Academic Open Academic Select Plus</p> <p>Campus Agreement (includes new enrollment under Campus Agreement : Enrollment For Education Solutions) (Both K12 Ed or Preschool & Higher Ed) School Agreement (K12 Ed or Preschool Only) Open Value Subscription – Education Solutions (Both K12 Ed or Preschool & Higher Ed) Get Genuine Windows Agreement - Academic</p>
<p>B) Administrative Offices or Boards of Education Defined as (a) district, regional and state administrative offices of public Educational Institutions. (b) administrative entities organized and operated exclusively for the administration of private Educational Institutions, or (c) other state or local government entities nearly all of whose activities consist of administrative support, of a nature that advances academic learning, for public Educational Institutions.</p>	<p>AE Full Packaged Product Academic Open Academic Select Plus Campus Agreement (includes new enrollment under Campus Agreement : Enrollment For Education Solutions) (Both K12 Ed or Preschool & Higher Ed) School Agreement (K12 Ed or Preschool Only) Open Value Subscription – Education Solutions (Both K12 Ed or Preschool & Higher Ed) Get Genuine Windows Agreement - Academic</p>
<p>C) Full and Part Time Faculty and Staff Defined as all full and part time faculty and staff of Educational Institutions.</p>	<p>AE Full Packaged Product Only</p>
<p>D) Full and Part Time Enrolled Students Defined as full and part time enrolled students of Educational Institutions.</p>	<p>AE Full Packaged Product Only</p>
<p>E) Public Libraries Must meet all of the following criteria: (i) primarily provide general library services without</p>	<p>AE Full Packaged Product Academic Open</p>

	charge to all residents of a given community, district or region; (ii) supported by public or private funds; (iii) make its basic collections and basic services available to the population of its legal service area without charges to individual users, but may impose charges on users outside its legal service area; and (iv) may or may not provide products and services, beyond its basic services, to the public at large with or without individual charges.	Academic Select Plus School Agreement Get Genuine Windows Agreement - Academic
F)	Public Museums Must meet all the following criteria: (i) are a public or private agency or institution organized on a permanent basis for essentially education or aesthetic purposes; (ii) utilize a professional staff; and (iii) own or utilize tangible objects, care for them and exhibit them to the public on a regular basis.	AE Full Packaged Product Academic Open Academic Select Plus School Agreement Get Genuine Windows Agreement - Academic
G)	Home-School Program Defined as a home-schooling program which provides K-12 education to a student or students and which is able to provide written proof that it either (i) belongs to a nationally-recognized home-schooling organization, or (ii) is expressly recognized by a local school district as an acceptable alternative to an accredited or state-recognized/approved educational institution.	AE Full Packaged Product

All United States territories such as Puerto Rico, Guam, Virgin Islands are not eligible under this definition.

Special note regarding Hospitals, Healthcare Systems and Research Laboratories:

Hospitals, Healthcare Systems and Research Laboratories (including independent Research Laboratories or Research Laboratories affiliated with the Department of Defense or the Department of Energy) are NOT eligible to acquire AE products unless they are wholly owned and operated by a qualified Educational Institution as defined above in Sections A and B "Wholly owned and operated" means that the Educational Institution is the sole owner of said hospital, healthcare system or research laboratory and the only entity exercising control over the said institution's day-to-day operations. Additional information on determining if an entity is wholly owned and operated by an Educational Institution can be found at: www.microsoft.com/education/?ID=Eligible. Note that hospitals, healthcare systems, and research laboratories are NOT eligible to purchase School Agreement and are not eligible to be included as part of an Educational Institution's School Agreement even if they are wholly owned and operated by the Educational Institution.

Proposal ID	001-jendunn-S-901 F
-------------	---------------------

Custom Supplemental Contact Information Form

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

- This form applies to:
- Business Agreement and Program Agreements
 - Enrollment/Affiliate Registration Form

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

Contact information.

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

1. Additional notices contact.

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

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

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

2. Software Assurance manager.

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

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

Country*

Phone* Fax

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

3. **Subscriptions manager.**

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

Name of Entity*

Contact name*: **First Last**

Contact email*

Street address*

City* State* Postal code*

Country*

Phone* Fax

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

4. **Online Services manager.**

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

Name of Entity*

Contact name*: **First Last**

Contact email*

Street address*

City* State* Postal code*

Country*

Phone* Fax

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

5. **Customer Support Manager (CSM):**

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

Name of Entity*

Contact name*: **First Last**

Contact email*

Street address*

City* State* Postal code*

Country*

Phone* Fax

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

6. **Primary contact information:**

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

Name of Entity* State of New York Office of General Services
Contact name*: First Vivian Last Basile
Contact email* Vivian.basile@ogs.ny.gov
Street address* 38th Floor, Corning Tower (Empire State Plaza)
City* Albany **State*** NY **Postal code*** 12242
Country*: United States
Phone* (518) 402-9400 **Fax** (518) 486-6867

7. Notices contact and online administrator information:

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

Same as primary contact

Name of Entity*

Contact name*: First Last

Contact email*

Street address*

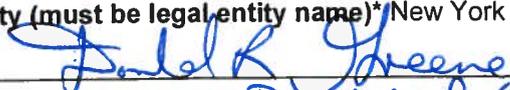
City* **State*** **Postal code***

Country*:

Phone* **Fax**

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

The acknowledgment must be fully and properly executed by an authorized person. By signing you certify your express authority to sign on behalf of yourself, your company, or other entity and full knowledge and acceptance of this Agreement, Appendix A (Standard Clauses For New York State Contracts), Appendix B (OGS General Specifications), and State Finance Law §139-j and §139-k (Procurement Lobbying), and that all information provided is complete, true and accurate. By signing, Contractor affirms that it understands and agrees to comply with the OGS procedures relative to permissible contacts as required by State Finance Law §139-j (3) and §139-j (6) (b).

Customer	
Name of Entity (must be legal entity name)*	New York State Office of General Services
Signature*	
Printed First and Last Name*	DONALD R GREENE
Printed Title*	DIRECTOR
Signature Date*	6/27/13
Tax ID	146013200

* indicates required field

Microsoft Affiliate	
Microsoft Licensing, GP	
Signature	 Microsoft Licensing, GP JUN 26 2013  Michelle Frantz Duly Authorized on behalf of Microsoft Licensing, GP
Printed First and Last Name	
Printed Title	
Signature Date (date Microsoft Affiliate countersigns)	
Effective Date July 1, 2013 (may be different than Microsoft's signature date)	
Tax ID	880443249
State of New York Vendor identification number 1100005370	

CORPORATE ACKNOWLEDGMENT

STATE OF Nevada }
COUNTY OF Washoe : ss.: }

On the 26th day of June in the year 2013, before me personally came: Michelle Frantz, to me known, who, being by me duly sworn, did depose and say that he/she/they reside(s) in Sparks, Nevada; that he/she/they is (are) Team Manager (the President or other officer or director or attorney in fact duly appointed) of Microsoft Licensing GP, the corporation described in and which executed the above instrument; and that he/she/they signed his/her/their name(s) thereto by authority of the board of directors of said corporation.

Shirley Snyder



Signature and Office of Person Taking Acknowledgment

After this signature form is signed by the Customer, send it and the Contract Documents to Customer's channel partner or Microsoft account manager, who must submit them to the following address. When the signature form is fully executed by Microsoft, Customer will receive a confirmation copy.

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

Prepared By: Jennifer Kelleher
jennifer.kelleher@microsoft.com

Custom Business Agreement for State of New York Amendment ID CTM

001-jendunn-S-920

For the purposes of this First Amendment, "Customer" means the signing entity (New York State Office of General Services) entering into a volume licensing program agreement. Notwithstanding anything to the contrary or in addition to any terms in the Agreement, the Agreement is amended as follows:

1. On page 1 of the MBA the paragraph entitled "This Agreement consists of" is hereby amended and restated in its entirety as follows:

This Agreement consists of the: (1) Business Agreement with Appendixes A,B,C,D and J (2) Enterprise Agreement with Appendix E and K; (3) Select Plus Agreement State and Local with Appendix F; (4) Academic Select Plus Agreement with Appendix G; (5) Campus and School Agreement with Appendix H and L; (6) the Product List; (7) the Product Use Rights ("PUR") applicable to the Products licensed under the Agreement; (8) any Enrollment or Affiliate Registration entered under this Agreement; and (9) any order submitted under this Agreement. In the event of a conflict between the terms and conditions in any of the documents identified above, such conflict shall be resolved by giving precedence in the following order:

1. Appendix A – Standard Clauses (12/12 version)
2. Business Agreement
3. Appendix B - General Specifications (7/06 version)
4. Appendix C – Contract Modification Procedure
5. Appendix J - Qualified Educational User Definition
6. The following Program Agreements: Enterprise Agreement Program Agreement, Select Plus License Program Agreement (both Academic and State and Local Government), and Campus and School Agreement, also to include appendixes with applicable sample Enrollment and amendments
7. Product List
8. Product Use Rights
9. Any executed and accepted Select Plus Affiliate Registration Forms or Enrollments
10. Any orders
11. Appendix D – Contractor Administration

Collectively, the foregoing is referred to as the "Agreement".

2. Microsoft and OGS agree Appendix K is hereby added to the Enterprise Agreement Program Agreement. Appendix K includes sample Amendments and forms including: Online Services Security Amendment, B122 ("Security Amendment"), Office 365 Security Incident Notification Amendment, M91 ("Incident Notification Amendment"), Government Community Cloud Amendment ("GCC Amendment"), Government Community Cloud Product Selection Form ("GCC PSF"), Business Associate Enterprise Enrollment Amendment, M176 ("BAA"), Business Associate Agreement Amendment ("BAA Amendment"), and the Microsoft Online Services Criminal Justice Information Services Amendment ("CJIS Amendment"). The following additional notes apply to these sample Amendments included in Appendix K:
 - The Security Amendment and Incident Notification Amendment should be included with the Enterprise Enrollment for Affiliates when ordering Office 365 Online Services.

- The GCC Amendment and GCC PSF must be included with the Enterprise Enrollment for Affiliates in order to order Office 365 for Government Online Services. Affiliates must work with Microsoft to validate eligibility to purchase Office 365 for Government Online Services.
- The BAA and BAA Amendment should be both be included as part of the Enrollment for Affiliates that purchase Office 365 Online Services if the Affiliate is governed by HIPAA.
- The CJIS Amendment should be signed as part of the Enrollment for Affiliates that purchase Office 365 if the Affiliate is governed by CJIS.
- All of the Amendments below are included for reference only. Final copies of each Amendment must be provided by Microsoft for each applicable Enrollment.

3. Microsoft and OGS agree Appendix L is hereby added to the Campus and School Agreement Program Agreement. Appendix L includes the following sample Amendment: Business Associate Enrollment for Education Solutions Amendment, EES16 ("EES-BAA"). The following additional notes apply to these sample Amendments included in Appendix K:

- The BAA should be included as part of the Enrollment for Education Solutions for Affiliates that purchase Office 365 Online Services if the Affiliate is governed by HIPAA.
- The Amendment below is included for reference only. Final copies of each Amendment must be provided by Microsoft for each applicable Enrollment for Education Solutions.

Appendix K

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

1. Online Services Security Amendment, B122

Enterprise Enrollment Microsoft Online Services Security Amendment Amendment ID CTM

Enterprise Enrollment
number
Microsoft to complete

Proposal ID

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

Defined Terms

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

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

"Dynamics CRM Online Services" means Dynamics CRM Online volume licensing SKUs such as DynCRMOnIn ALNG SubsVL MVL PerUsr (DSD-00001). Dynamics CRM Online Services does not include the Dynamics CRM Mobile service.

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

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

"Office 365 Services" means Office 365 Plans E1, E2, E3, E4, K1 and K2; Exchange Online Plan 1, Plan 2 and Kiosk; Exchange Online Archiving; SharePoint Online Plans 1 and 2; Office Web Apps Plans 1 and 2; and Lync Online Plans 1 and 2.

1. **Privacy**

- a. **Privacy practices.** Microsoft will comply with all laws and regulations applicable to its provision of the Microsoft Online Services (including applicable security breach notification law). However, Microsoft is not responsible for compliance with any laws applicable to Customer or Customer's industry that are not generally applicable to information technology services providers.
- b. **Customer Data.** Microsoft will process Customer Data in accordance with the provisions of this Amendment and, except as stated in the Enrollment and this Amendment, Microsoft (a) will acquire no rights in Customer Data and (b) will not use or disclose Customer Data for any purpose other than stated below. Microsoft's use of Customer Data is as follows:

- (i) Customer Data will be used only to provide Customer the Microsoft Online Services. This may include troubleshooting aimed at preventing, detecting and repairing problems affecting the operation of the Microsoft Online Services and the improvement of features that involve the detection of, and protection against, emerging and evolving threats to the user (such as malware or spam).
- (ii) Microsoft shall not disclose Customer Data to a third party unless required by law.

Should a third party contact Microsoft with a demand for Customer Data, and unless compelled by law or other legally binding authority to take different actions, fewer actions or actions in a different order, Microsoft shall take actions as follows below in this paragraph:

- 1) First, Microsoft will attempt to redirect the third party to request Customer Data directly from Enrolled Affiliate;
- 2) Second, Microsoft shall notify the Enrolled Affiliate of the request. (As part of this effort, Microsoft may provide Enrolled Affiliate's basic contact information to the third party requester.) While this notification shall be prompt, and without undue delay, in cases where there is any of the following: legal risk of non-compliance by Microsoft with legally binding orders; legal risks for individual Microsoft employees of non-compliance with legally binding orders; risks of disclosure or release of Customer Data belonging to other Enrolled Affiliates or to data of customers of any Microsoft technical service; or risks to the continued operation of any Microsoft technical or Microsoft online service; then Microsoft may have already abandoned attempts to redirect the third party by the time this notification is possible.

If ultimately compelled to disclose Customer Data to a third party, including law enforcement, Microsoft shall notify the Enrolled Affiliate, and use reasonable efforts to notify Enrolled Affiliate in advance of such a disclosure.

To the extent applicable to the Online Services set forth in the Agreement, Microsoft and Customer agree that Customer's execution of this Amendment does not constitute consent for the release of Customer Data, as that phrase is used in the Federal Electronic Communications Privacy Act or the Stored Communications Act.

- c. **Customer Data deletion or return.** Upon expiration or termination of Customer's use of the Microsoft Online Services, Customer may extract Customer Data and Microsoft will delete Customer Data, each in accordance with the Product Use Rights.
- d. **End User requests.** Microsoft will not independently respond to requests from Customer's End Users without Customer's prior written consent, except where required by applicable law.
- e. **Microsoft personnel.** Microsoft personnel will not process Customer Data without authorization. Microsoft personnel are obligated to maintain the confidentiality of any Customer Data and this obligation continues even after their engagement ends.
- f. **Subcontractor; transfer.** Microsoft may hire other companies to provide limited services on its behalf, such as providing customer support. Any such subcontractors will be permitted to obtain Customer Data only to deliver the services Microsoft has retained them to provide, and they are prohibited from using Customer Data for any other purpose. Microsoft remains responsible for its subcontractors' compliance with the obligations of this Amendment. Any subcontractors to whom Microsoft transfers Customer Data, even those used for storage purposes, will have entered into written agreements with Microsoft requiring that the subcontractor abide by terms no less protective than this Amendment. Customer consents to Microsoft's transfer of Customer Data to subcontractors as described in this Amendment. Except as set forth above, or as Customer may otherwise authorize, Microsoft will not transfer to any third party (not even for storage purposes) personal data Customer provides to Microsoft through the use of the Microsoft Online Services.

2. *Customer responsibilities.*

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

3. **Security**

- a. **General practices.** Microsoft has implemented and will maintain appropriate technical and organizational measures, internal controls, and information security routines intended to protect Customer Data against accidental loss, destruction, or alteration; unauthorized disclosure or access; or unlawful or unauthorized destruction as follows:
 - i. **Domain: organization of information security**
 1. **Security ownership.** Microsoft has appointed one or more security officers responsible for coordinating and monitoring the security rules and procedures.
 2. **Security roles and responsibilities.** Microsoft personnel with access to Customer Data are subject to confidentiality obligations.
 3. **Risk management program.** Microsoft performed a risk assessment before processing the Customer Data or launching the Microsoft Online Services Service.
 4. Microsoft retains its security documents pursuant to its retention requirements after they are no longer in effect.
 - ii. **Domain: asset management**
 1. **Asset inventory.** Microsoft maintains an inventory of all media on which Customer Data is stored. Access to the inventories of such media is restricted to Microsoft personnel authorized in writing to have such access.
 2. **Asset handling.**
 - a. Microsoft classifies Customer Data to help identify it and to allow for access to it to be appropriately restricted (e.g., through encryption).
 - b. Microsoft imposes restrictions on printing Customer Data and has procedures for disposing of printed materials that contain Customer Data.
 - c. Microsoft personnel must obtain Microsoft authorization prior to storing Customer Data on portable devices, remotely accessing Customer Data, or processing Customer Data outside Microsoft's facilities. This includes removing media (e.g., USB sticks and CD ROMs) and documents containing Customer Data from Microsoft's facilities.
 - iii. **Domain: human resources security**
 1. **Security training.**
 - a. Microsoft informs its personnel about relevant security procedures and their respective roles. Microsoft also informs its personnel of possible consequences of breaching the security rules and procedures.
 - b. Microsoft will only use anonymous data in training.
 - iv. **Domain: physical and environmental security**
 1. **Physical access to facilities.** Microsoft limits access to facilities where information systems that process Customer Data are located to identified authorized individuals.
 2. **Physical access to components.** Microsoft maintains records of the incoming and outgoing media containing Customer Data, including the kind of media, the authorized sender/recipients, date and time, the number of media and the types of Customer Data they contain.

3. **Protection from disruptions.** Microsoft uses a variety of industry standard systems to protect against loss of data due to power supply failure or line interference.
4. **Component disposal.** Microsoft uses industry standard processes to delete Customer Data when it is no longer needed.

v. **Domain: communications and operations management**

1. **Operational policy.** Microsoft maintains security documents describing its security measures and the relevant procedures and responsibilities of its personnel who have access to Customer Data.
2. **Data recovery procedures.**
 - a. On an ongoing basis, but in no case less frequently than once a week (unless no Customer Data has been updated during that period), Microsoft maintains multiple copies of Customer Data from which Customer Data can be recovered.
 - b. Microsoft stores copies of Customer Data and data recovery procedures in a different place from where the primary computer equipment processing the Customer Data is located.
 - c. Microsoft has specific procedures in place governing access to copies of Customer Data.
 - d. Microsoft reviews data recovery procedures at least every six months.
 - e. Microsoft logs data restoration efforts, including the person responsible, the description of the restored data and which data (if any) had to be input manually in the data recovery process.
3. **Malicious software.** Microsoft has anti-malware controls to help avoid malicious software gaining unauthorized access to Customer Data, including malicious software originating from public networks.
4. **Data beyond boundaries.**
 - a. Microsoft encrypts Customer Data that is transmitted over public networks.
 - b. Microsoft restricts access to Customer Data in media leaving its facilities (e.g., through encryption).
5. **Event Logging.**
 - A. Microsoft logs the use of our data-processing systems.
 - B. Microsoft logs access and use of information systems containing Customer Data, registering the access ID, time, authorization granted or denied, and relevant activity.

vi. **Domain: access control**

1. **Access policy.** Microsoft maintains a record of security privileges of individuals having access to Customer Data.
2. **Access authorization.**
 - a. Microsoft maintains and updates a record of personnel authorized to access Microsoft systems that contain Customer Data.
 - b. Microsoft deactivates authentication credentials that have not been used for a period of time not to exceed six months.
 - c. Microsoft identifies those personnel who may grant, alter or cancel authorized access to data and resources.
 - d. Microsoft ensures that where more than one individual has access to systems containing Customer Data, the individuals have separate identifiers/log-ins.

3. Least privilege.

- a. Technical support personnel are only permitted to have access to Customer Data when needed.
- b. Microsoft restricts access to Customer Data to only those individuals who require such access to perform their job function.

4. Integrity and confidentiality.

- a. Microsoft instructs Microsoft personnel to disable administrative sessions when leaving premises Microsoft controls or when computers are otherwise left unattended.
- b. Microsoft stores passwords in a way that makes them unintelligible while they are in force.

5. Authentication.

- a. Microsoft uses industry standard practices to identify and authenticate users who attempt to access information systems.
- b. Where authentication mechanisms are based on passwords, Microsoft requires that the passwords are renewed regularly.
- c. Where authentication mechanisms are based on passwords, Microsoft requires the password to be at least eight characters long.
- d. Microsoft ensures that de-activated or expired identifiers are not granted to other individuals.
- e. Microsoft monitors repeated attempts to gain access to the information system using an invalid password.
- f. Microsoft maintains industry standard procedures to deactivate passwords that have been corrupted or inadvertently disclosed.
- g. Microsoft uses industry standard password protection practices, including practices designed to maintain the confidentiality and integrity of passwords when they are assigned and distributed, and during storage.

6. **Network design.** Microsoft has controls to avoid individuals assuming access rights they have not been assigned to gain access to Customer Data they are not authorized to access.

vii. **Domain: information security incident management**

1. Incident response process.

- a. Microsoft maintains a record of security breaches with a description of the breach, the time period, the consequences of the breach, the name of the reporter, and to whom the breach was reported, and the procedure for recovering data.
- b. Microsoft tracks disclosures of Customer Data, including what data has been disclosed, to whom, and at what time.

2. **Service Monitoring.** Microsoft security personnel verify logs at least every six months to propose remediation efforts if necessary.

viii. **Domain: Business Continuity Management**

- 1. Microsoft maintains emergency and contingency plans for the facilities in which Microsoft information systems that process Customer Data are located.
- 2. Microsoft's redundant storage and its procedures for recovering data are designed to attempt to reconstruct Customer Data in its original state from before the time it was lost or destroyed.

- ix. The security measures described in this Section 4 are Microsoft's only responsibility with respect to the security of Customer Data. For Customer Data, these measures

replace any confidentiality obligations contained in the Enrollment or any other non-disclosure agreement between Microsoft and Customer.

b. Certifications and audits

- i. Microsoft has established and agrees to maintain a data security policy that complies with the ISO 27001 standards for the establishment, implementation, control, and improvement of the Information Security Management System and the ISO/IEC 27002 code of best practices for information security management ("*Microsoft Online Information Security Policy*"). On a confidential need-to-know basis, and subject to Customer's agreement to non-disclosure obligations Microsoft specifies, Microsoft will make the Microsoft Online Information Security Policy available to Customer, along with other information reasonably requested by Customer regarding Microsoft security practices and policies. Customer is solely responsible for reviewing the Microsoft Online Information Security Policy, making an independent determination as to whether the Microsoft Online Information Security Policy meets Customer's requirements, and for ensuring that Customer's personnel and consultants follow the guidelines they are provided regarding data security.
- ii. Microsoft will audit the security of the computers and computing environment that it uses in processing Customer Data (including personal data) on the Microsoft Online Services and the physical data centers from which Microsoft provides the Microsoft Online Services. This audit: (a) will be performed at least annually; (b) will be performed according to ISO 27001 standards; (c) will be performed by third party security professionals at Microsoft's selection and expense; (d) will result in the generation of an audit report ("*Microsoft Audit Report*"), which will be Microsoft's confidential information; and (e) may be performed for other purposes in addition to satisfying this Section (e.g., as part of Microsoft's regular internal security procedures or to satisfy other contractual obligations).
- iii. If Customer requests in writing, Microsoft will provide Customer with a confidential summary of the Microsoft Audit Report ("*Summary Report*") so that Customer can reasonably verify Microsoft's compliance with the security obligations under this Amendment. The Summary Report is Microsoft confidential information. The Summary Report will not be written so as to frustrate or prevent Customer's ability to understand any substantive issues raised within the Microsoft Audit Report.

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

4. Additional Terms

- a. **Data Location.** Microsoft will provide Office 365 for Government Services from data centers in the United States. In connection with the Office 365 for Government Services, storage of the following customer data at rest will be located in data centers only in the United States: (i) Exchange Online mailbox content (e-mail body, calendar entries, and the content of e-mail attachments), and (ii) SharePoint Online site content and the files stored within that site.
- b. **Use of Customer Data.** In providing Office 365 Services, Microsoft shall use Customer Data only to provide and maintain the Online Service for the customer. Office 365 Services shall not capture, maintain, scan, index, share or use Customer Data stored or transmitted by the Online Service, or otherwise use any data-mining technology, for any non-authorized activity or non-government purpose. Office 365 Services shall not use Customer Data stored or transmitted by the Online Service for any advertising or other commercial purpose of Microsoft or any third party. The Office 365 Services will be logically separate from Microsoft's consumer Online Services. Customer Data, data in Microsoft's consumer Online Services, and data created by or resulting from Microsoft's

scanning, indexing, or data-mining activities, will not be commingled unless expressly approved by Customer in advance.

- c. **Background Checks.** Microsoft performs the following background checks on all US personnel who have potential to access Customer Data. Such background checks will be performed in accordance with the Fair Credit Reporting Act and will consist of Social Security Number trace, seven (7) year felony and misdemeanor criminal records check of federal, state, or local records (as applicable) for job related crimes, Office of Foreign Assets Control List (OFAC) check, Bureau of Industry and Security List (BIS) check and Office of Defense Trade Controls Debarred Persons List (DDTC) check. Only personnel who have satisfactorily completed these background checks are able to request and obtain time-limited logical access to the customer data stored at rest as described in Section 4(a).

- d. **NIST.** Microsoft agrees that, during the term of Enrolled Affiliate's subscription for Office 365 for Government, Microsoft shall maintain compliance with the NIST Special Publication 800-53 Revision 3 Moderate-Impact System Baseline or its successor.

- e. **Suspension of an Online Service.** If Enrolled Affiliate acquires Office 365 for Government Services, the following terms and conditions replace the "Suspension of an Online Service" section of the Product Use Rights (or a future section of the Product Use Rights that covers the suspension of an Online Service):
 - (i) **Online Service suspension.** Microsoft may suspend an Online Service in whole or in part in the following circumstances:
 1. if Microsoft believes that Customer's use of the Online Service represents a direct or indirect threat to Microsoft's network function or integrity or anyone else's use of the Online Service;
 2. if reasonably necessary to prevent unauthorized access to Customer Data;
 3. to the extent necessary to comply with legal requirements; or
 4. if Customer does not abide by the Acceptable Use Policy section of the Online Services use rights or violates other terms of Customer's volume licensing agreement.

 - (ii) **Our suspension promise.** Any suspension of an Online Service pursuant to this section shall apply to the minimum necessary portion of the Online Service and will only be in effect for as long as reasonably necessary to address the issues giving rise to the suspension.

 - (iii) **Notice of suspension.** Microsoft will provide advance notice before suspending an Online Service, except where Microsoft reasonably believes an immediate suspension is required. Microsoft will provide at least 30 days' notice before suspending an Online Service for non-payment.

 - (iv) **Microsoft's right to terminate the Online Service.** If Customer does not fully address the reasons for the suspension within 60 days after Microsoft suspends Customer's Online Service, Microsoft may terminate Customer's Subscription and reserve the right to delete Customer's Customer Data without any retention period.

5. *Miscellaneous*

- a. **Term and termination.** This Amendment shall automatically terminate upon any termination or expiration of the Enrollment.

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

2. Office 365 Security Incident Notification Amendment, M91

Enterprise Enrollment Amendment ID CTM

Proposal ID

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

1. **Definitions**

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

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

"Office 365 Services" means Office 365 Plans E1, E2, E3, E4, K1 and K2; Exchange Online Plan 1, Plan 2 and Kiosk; SharePoint Online Plans 1 and 2; Office Web Apps Plans 1 and 2; and Lync Online branded services.

2. **Security Incident Notification**

- a. If Microsoft becomes aware of any unlawful access to any Customer Data stored on Microsoft's equipment or in Microsoft's facilities, or unauthorized access to such equipment or facilities resulting in loss, disclosure, or alteration of Customer Data (each a "Security Incident"), Microsoft will: (a) promptly notify Customer of the Security Incident; (b) investigate the Security Incident and provide Customer with detailed information about the Security Incident; and (c) take reasonable steps to mitigate the effects and to minimize any damage resulting from the Security Incident.
- b. Customer agrees that:
 - (i) An unsuccessful Security Incident will not be subject to this Section. An unsuccessful Security Incident is one that results in no unauthorized access to Customer Data or to any of Microsoft's equipment or facilities storing Customer Data, and may include, without limitation, pings and other broadcast attacks on firewalls or edge servers, port scans, unsuccessful log-on attempts, denial of service attacks, packet sniffing (or other unauthorized access to traffic data that does not result in access beyond IP addresses or headers) or similar incidents; and
 - (ii) Microsoft's obligation to report or respond to a Security Incident under this Section is not and will not be construed as an acknowledgement by Microsoft of any fault or liability with respect to the Security Incident.
- c. Notification(s) of Security Incidents, if any, will be delivered to one or more of Customer's administrators by any means Microsoft selects, including via email. It is Customer's sole responsibility to ensure Customer's administrators maintain accurate contact information on the Online Services portal at all times.

3. *Miscellaneous*

- d. **Term and termination.** This Office 365 SI Notice Addendum shall automatically terminate upon any termination or expiration of the Enrollment.
- e. **Entire Agreement.** Except for changes made by this Office 365 SI Notice Addendum, the Enrollment remains unchanged and in full force and effect.

3. Government Community Cloud Amendment

Enterprise Enrollment - Office 365 for Government-- Amendment ID (CTM)

Proposal ID

For the purposes of this Amendment, "Entity" can mean the signing entity, Customer, Enrolled Affiliate, Government Partner, Institution, or other party entering into a volume licensing program agreement. The following set of Terms applies to Entity when ordering Office 365 for Government Online Services.

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

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

2. **Office 365 for Governments Terms**

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

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

Remainder of page intentionally left blank

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

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

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

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

3. Office 365 for Government Customer Requirements.

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

4. Government Community Cloud Product Selection Form

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

Proposal ID

Enrollment Number <i>Microsoft to complete for initial term Reseller to complete for renewal</i>

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

Enterprise Products. Choose platform option: <Choose One>

Qualified Devices:

Qualified Users:

Office 365 for Government Online Services

Step 2. Select the Products and Quantities Enrolled Affiliate is ordering on its initial Enrollment Order. Quantity may not include any Licenses which Enrolled Affiliate has selected for optional future use, or to which it is transitioning or stepping up within enrollment term. Products for which the Enrolled Affiliate has an option to transition or step-up should be listed in Step 3.

Products ¹	Quantity
Office Professional Plus	
Office Pro Plus	
Office Pro Plus for Office 365 G	
Office 365 Plans¹	
Office 365 (Plan G1)	
Office 365 (Plan G2)	
Office 365 (Plan G3)	
Office 365 (Plan G4)	
Client Access License (CAL). Choose 1 Option.	
<input type="checkbox"/> Core CAL, including Bridge CAL's (if applicable)	
Core CAL	
Core CAL Bridge for Office 365	
Core CAL Bridge for Windows Intune	
Core CAL Bridge for Office 365 and Windows Intune	
<input type="checkbox"/> Enterprise CAL (ECAL)	
ECAL	
ECAL Bridge for Office 365	
ECAL Bridge for Windows Intune	
ECAL Bridge for Office 365 and Windows Intune	
The Client Access License selection must be the same across the Enterprise. Specify whether licensing CAL per Device or User: <Choose One>	
Windows Desktop	
Windows OS Upgrade	
Windows VDA	
Windows Intune	
Windows Intune	
Windows Intune Add-on ³	
Other Enterprise Products	
Microsoft Desktop Optimization Pack (MDOP) ²	

If selecting Windows Desktop, Enrolled Affiliate acknowledges the following:

- a. The Windows Desktop Operating System Upgrade licenses offered through this Enrollment are not full licenses. The Enrolled Affiliate and any included Affiliates have qualifying operating system licenses for all devices on which the Windows Desktop Operating System Upgrade or Windows Intune licenses are run.
- b. In order to use a third party to reimage the Windows Operating System Upgrade, Enrolled Affiliate must certify that Enrolled Affiliate has acquired qualifying operating system licenses. See the Product List for details.

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

Products ²
<input type="checkbox"/> Office Pro Plus for Office 365 G
<input type="checkbox"/> Office 365 (Plan G1)
<input type="checkbox"/> Office 365 (Plan G2)
<input type="checkbox"/> Office 365 (Plan G3)
<input type="checkbox"/> Office 365 (Plan G4)
<input type="checkbox"/> Enterprise CAL (ECAL) Step-up, including Bridge CALs
<input type="checkbox"/> Windows Intune
<input type="checkbox"/> Windows Intune Add-on ³

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

Products	Price Group	Qty from above	Qty	Price Level
Office Professional Plus + Office Professional Plus for Office 365 + Office 365 G (Plans G2-G4)	1	0	250 and Above	D
Client Access License + Office 365 (Plans G1-G4)	2	0		
Client Access License + Windows Intune Add-on G + Windows Intune	3	0		
Windows Desktop Upgrade + Windows VDA + Windows Intune	4	0		
Product Offering/Pool				Price Level
Enterprise Products and Enterprise Online Services: Set price level using the highest quantity from Groups 1 through 4				D
Additional Product Application Pool: Set price level using quantity from Group 1				D
Additional Product Server Pool: Set price level using the highest quantity from Group 2 or 3				D
Additional Product Systems Pool: Set price level using quantity from Group 4				D

¹ Additional Products may be included on the order, but are not selected on this form.

² Windows Intune Add-on requires purchase of Windows OS Upgrade or Windows VDA.

³ MDOP requires purchase of Windows OS Upgrade, Windows VDA, or Windows Intune.

5. Business Associate Enterprise Enrollment Amendment

Business Associate Enterprise Enrollment Amendment Amendment ID M176

Proposal ID

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

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

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

1. **Definitions.**

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

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

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

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

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

"Dynamics CRM Online Services" means Dynamics CRM Online volume licensing SKUs such as DynCRMOnIn ALNG SubsVL MVL PerUsr (DSD-00001). Dynamics CRM Online Services does not include the Dynamics CRM Mobile service.

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

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

"Office 365 Services" means (a) Exchange Online, Exchange Online Archiving, SharePoint Online, Lync Online, and Office Web Apps included in Office 365 Enterprise Plans E1, E2, E3, E4, K1, and K2; Office 365 Midsize Business; Office 365 Small Business; and Office 365 Small Business Premium, and (b) Exchange Online Plans 1, 2, Basic, and Kiosk; SharePoint Online Plans 1 and 2; Office Web Apps Plans 1 and 2; and Lync Online Plans 1, 2, and 3. Office 365 Services do not

include Office 365 ProPlus or any separately branded service made available with an Office 365-branded plan or suite.

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

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

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

"Windows Azure Core Services" include only the following features of Windows Azure Services: Cloud Services (web and worker roles), Virtual Machines, Storage (Blobs, Tables, Queues), and Networking (Windows Azure Connect, Traffic Manager, Virtual Network).

2. Permitted Uses and Disclosures of Protected Health Information.

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

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

- a. **Microsoft's Responsibilities.** To the extent Microsoft is acting as a Business Associate, Microsoft agrees to the following:
 - (i) **Limitations on Use and Disclosure.** Microsoft shall not Use and/or Disclose the Protected Health Information other than as permitted or required by the Enrollment and/or this Amendment or as otherwise Required by Law; provided that any such Use or Disclosure would not violate HIPAA if done by Customer, unless expressly permitted for Business Associates under HIPAA. Microsoft shall make reasonable efforts to Use, Disclose, and/or request the minimum necessary Protected Health Information to accomplish the intended purpose of such Use, Disclosure, or request.
 - (ii) **Safeguards.** Microsoft shall: (1) use reasonable and appropriate safeguards to prevent inappropriate Use and Disclosure of Protected Health Information other than as provided for in this Amendment; and (2) comply with the applicable requirements of 45 CFR Part 164 Subpart C of the Security Rule.
 - (iii) **Reporting.** Microsoft shall report to Customer: (1) any Use and/or Disclosure of Protected Health Information that is not permitted or required by this Amendment of which Microsoft becomes aware; (2) any Security Incident of which it becomes aware, provided that notice is hereby deemed given for Unsuccessful Security Incidents and no further notice of such Unsuccessful Security Incidents shall be given; and/or (3) any Breach of Customer's Unsecured Protected Health Information that Microsoft may discover (in accordance with 45 CFR § 164.410 of the Breach Notification Rule). Notification of a Breach will be made without unreasonable delay, but in no event more than thirty (30) calendar days after discovery of a Breach. Taking into account the level of risk reasonably likely to be presented by the Use, Disclosure, Security

Incident, or Breach, the timing of other reporting will be made consistent with Microsoft's and Customer's legal obligations.

For purposes of this Section, "Unsuccessful Security Incidents" mean, without limitation, pings and other broadcast attacks on Microsoft's firewall, port scans, unsuccessful log-on attempts, denial of service attacks, and any combination of the above, as long as no such incident results in unauthorized access, acquisition, Use, or Disclosure of Protected Health Information. Notification(s) under this Section, if any, will be delivered to contacts identified by Customer pursuant to Section 3b(ii) (Contact Information for Notices) of this Amendment by any means Microsoft selects, including through e-mail. Microsoft's obligation to report under this Section is not and will not be construed as an acknowledgement by Microsoft of any fault or liability with respect to any Use, Disclosure, Security Incident, or Breach.

- (iv) **Subcontractors.** In accordance with 45 CFR §§ 164.502(e)(1)(ii) and 164.308(b)(2) of HIPAA, Microsoft shall require its Subcontractors who create, receive, maintain, or transmit Protected Health Information on behalf of Microsoft to agree in writing to: (1) the same or more stringent restrictions and conditions that apply to Microsoft with respect to such Protected Health Information; (2) appropriately safeguard the Protected Health Information; and (3) comply with the applicable requirements of 45 CFR Part 164 Subpart C of the Security Rule.
- (v) **Disclosure to the Secretary.** Microsoft shall make available its internal practices, records, and books relating to the Use and/or Disclosure of Protected Health Information received from Customer to the Secretary of the Department of Health and Human Services for purposes of determining Customer's compliance with HIPAA, subject to attorney-client and other applicable legal privileges.
- (vi) **Access.** If Microsoft maintains Protected Health Information in a Designated Record Set for Customer, then Microsoft, at the request of Customer, shall make access to such Protected Health Information available to Customer in accordance with 45 CFR § 164.524 of the Privacy Rule.
- (vii) **Amendment.** If Microsoft maintains Protected Health Information in a Designated Record Set for Customer, then Microsoft, at the request of Customer, shall make available such Protected Health Information to Customer for amendment and incorporate any reasonably requested amendment in the Protected Health Information in accordance with 45 CFR § 164.526 of the Privacy Rule.
- (viii) **Accounting of Disclosure.** Microsoft, at the request of Customer, shall make available to Customer such information relating to Disclosures made by Microsoft as required for Customer to make any requested accounting of Disclosures in accordance with 45 CFR § 164.528 of the Privacy Rule.
- (ix) **Performance of a Covered Entity's Obligations.** To the extent Microsoft is to carry out a Covered Entity obligation under the Privacy Rule, Microsoft shall comply with the requirements of the Privacy Rule that apply to Customer in the performance of such obligation.

b. Customer Responsibilities.

- (i) **No Impermissible Requests.** Customer shall not request Microsoft to Use or Disclose Protected Health Information in any manner that would not be permissible under HIPAA if done by a Covered Entity (unless permitted by HIPAA for a Business Associate).
- (ii) **Contact Information for Notices.** Customer hereby agrees that any reports, notification, or other notice by Microsoft pursuant to this Amendment may be made electronically. Customer shall provide contact information to MSO-HIPAA@microsoft.com or such other location or method of updating contact information as Microsoft may specify from time to time and shall ensure that Customer's contact information remains up to date during the term of this Amendment. Contact information must include name of individual(s) to be contacted, title of individual(s) to be contacted, e-mail address of individual(s) to be contacted,

name of Customer organization, and, if available, either contract number or subscriber identification number.

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

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

4. *Applicability of Amendment.*

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

5. *Term and Termination.*

- a. **Term.** This Amendment shall continue in effect until the earlier of (1) termination by a Party for breach as set forth in Section 5b, below, or (2) expiration of Customer's Enrollment
- b. **Termination for Breach.** Either Party immediately may terminate the Enrollment if the other Party is in material breach or default of any obligation in this Amendment that is not cured within thirty (30) calendar days written notice of such breach or default.
- c. **Return, Destruction, or Retention of Protected Health Information Upon Termination.** Upon expiration or termination of this Amendment, Microsoft shall return or destroy all Protected Health Information in its possession, if it is feasible to do so, and as set forth in the applicable termination provisions of the Product Use Rights and/or Enrollment. If Microsoft determines that it is not feasible to return or destroy any portions of the Protected Health Information upon termination of this Amendment, then Microsoft shall extend the protections of this Amendment, without limitation, to such Protected Health Information and limit any further Use or Disclosure of the Protected Health Information to those purposes that make the return or destruction infeasible for the duration of the retention of the Protected Health Information.

6. *Miscellaneous.*

- a. **Interpretation.** The Parties intend that this Amendment be interpreted consistently with their intent to comply with HIPAA and other applicable federal and state law. Except where this Amendment conflicts with the Enrollment, all other terms and conditions of the Enrollment remain unchanged. The Parties agree that, in the event an inconsistency exists between the Enrollment and this Amendment, the provisions of this Amendment

will control to the extent of such inconsistency. Any captions or headings in this Amendment are for the convenience of the Parties and shall not affect the interpretation of this Amendment.

- b. Amendments; Waiver.** This Amendment may not be modified or amended except in a writing duly signed by authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, as a bar to, or as a waiver of any right or remedy as to subsequent events.
- c. No Third Party Beneficiaries.** Nothing express or implied in this Amendment is intended to confer, nor shall anything in this Amendment confer, upon any person other than the Parties, and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.
- d. Counterparts.** This Amendment may be executed in counterparts, each of which shall be deemed an original.
- e. Severability.** In the event that any provision of this Amendment is found to be invalid or unenforceable, the remainder of this Amendment shall not be affected thereby, but rather the remainder of this Amendment shall be enforced to the greatest extent permitted by law.



6. Business Associate Agreement Amendment

Enterprise Enrollment – State and Local Amendment ID CTM

Proposal ID

This Enterprise Enrollment Amendment ("Amendment") is entered into between the entities and as of the effective date identified in the Signature Form. The terms and conditions in this Amendment supersede any conflicting terms and conditions in the Agreement and Enrollment.

Clarifications to HIPAA Business Associates Agreement

The following provisions apply solely with respect to the HIPAA Business Associates Agreement between the entities ("BAA"), as executed concurrent with this Amendment.

Subsection 3(a)(i) of the BAA is amended and restated as follows:

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

7. Microsoft Online Services Criminal Justice Information Services Amendment

Enterprise Enrollment – State and Local

Microsoft Online Services Criminal Justice Information Services (CJIS) Amendment

Amendment ID CTM

Proposal ID

This Microsoft Online Services Criminal Justice Information Services (CJIS) Amendment (“Amendment”) is entered into between the customer entity (“Enrolled Affiliate”) and the Microsoft entity (“Microsoft”) identified on the signature form for the Enrollment amended hereby (“Enrollment”), under which Enrolled Affiliate is purchasing Covered Services (as defined below). The entities agree that the Amendment supplements the Enrollment and applies to only the Covered Services Enrolled Affiliate buys under the Enrollment.

Defined Terms.

Capitalized terms used but not defined in this Amendment will have the meanings provided in the Agreement. The following definitions are used in this Amendment:

“**Covered Services**” means Exchange Online, SharePoint Online, Exchange Online Archiving, Exchange Online Protection, and Office Web Apps, only when purchased as part of Office 365 Government Plans (G1, G2, G3, G4, K1, K2) or as standalone Government Community Cloud plans. Without limitation, Covered Services do not include Office 365 ProPlus, Lync Online or other Office 365-branded or separately branded Online Services.

“**CSA**” means the New York State Police, or a successor agency as determined by the State of New York, acting in its capacity as the CJIS Systems Agency for the State of New York.

“**End User**” means an individual that accesses the Covered Services.

Term and Conditions.

1. CJIS Security Addendum

The Covered Services are multi-tenant cloud services offered as a “community cloud” as defined in the National Institute of Standards and Technology (NIST) Special Publication 800-145. Subject to the Agreement, this Amendment, and agreement reached with the CSA, Microsoft will deliver the Covered Services subject to the CJIS Security Addendum as set forth in the CJIS Policy, version 5.1, dated July 31, 2012.

2. Role of CSA

At the CSA’s request, Microsoft will enter into an agreement with the CSA, including the CJIS Security Addendum, to facilitate use of Covered Services by public entities in the State of New York that are subject to the Criminal Justice Information Services (CJIS) Security Policy. Enrolled Affiliate will rely on the CSA, acting in its capacity as the CJIS Systems Officer (CSO) for the State of New York, to perform personnel screening of Microsoft personnel engaged in the delivery of the Covered Services and to exercise certain other functions under the CJIS Policy as described in this Amendment.

3. Enrolled Affiliate Responsibilities

3.1 Enrolled Affiliate acknowledges that the Covered Services enable End Users optionally to access and use a variety of additional resources, applications, or services that are (a) provided by third parties, or (b) provided by Microsoft subject to their own terms of use or

privacy policies (collectively, for convenience, “add-ons”), as described in services documentation and/or in the portal through which Enrolled Affiliate’s administrator(s) will manage and configure the Covered Services.

3.2 Enrolled Affiliate is responsible to review Office 365 services documentation and CJIS implementation guidance. Enrolled Affiliate is responsible to establish, adopt and implement such policies and practices for its End Users’ use of Covered Services, together with any add-ons, as Enrolled Affiliate determines are appropriate to ensure Enrolled Affiliate’s compliance with the CJIS Policy or other legal or regulatory requirements applicable to Enrolled Affiliate and not generally applicable to Microsoft as an IT service provider. Enrolled Affiliates’ compliance with the CJIS Policy will be dependent, in part, upon Enrolled Affiliate’s configuration of the services and Enrolled Affiliate’s compliance with authoritative guidance from sources other than Microsoft (e.g., NCIC 2000 Operating Manual). Enrolled Affiliate is responsible to confirm the Covered Services environment is prepared and appropriate for CJJ prior to its processing or storing such data in the Covered Services.

3.3 Enrolled Affiliate acknowledges that only Covered Services will be delivered subject to the terms of this Amendment. Microsoft does not recommend processing and storage of Criminal Justice Information (“CJI,” as such term is defined in Appendix A to the CJIS Policy) in other services. Without limiting the foregoing, data that Enrolled Affiliate elects to provide to the Microsoft technical support organization, if any, or data provided by or on behalf of Enrolled Affiliate to Microsoft’s billing or commerce systems in connection with purchasing/ordering Covered Services, if any, is not subject to the provisions of this Amendment or the CJIS Addendum.

4. Approach to Compliance with CJIS Security Policy

This Section 4 contains additional information about how certain requirements of the CJIS Policy will be fulfilled. For convenient reference, provisions are numbered to conform to section numbering in the CJIS Policy (ver. 5.1, dated July 31, 2012). Microsoft and Enrolled Affiliate will each rely on the CSA to perform certain functions as described below, and Enrolled Affiliate is responsible to confirm the approach with the CSA to the extent Enrolled Affiliate deems appropriate.

4.1 CJIS Section 5.2 Policy Area 2: Security Awareness Training

Microsoft will supplement its existing security training program as required to meet the requirements of Section 5.2 of the CJIS Policy. Required training will be delivered to personnel identified as in scope for CJIS Personnel Screening within six (6) months of the later of (1) the date the first customer in the State of New York who is a purchaser of Covered Services subject to this Amendment (or a similar amendment executed by the applicable Enrolled Affiliate) notifies Microsoft it is introducing CJI into the Covered Services, or (2) the date the CSA notifies Microsoft that personnel have passed required personnel screening. Microsoft will refresh training for in scope personnel on at least a biennial basis thereafter.

Microsoft will maintain training records, which will be available to the CSA upon written request.

4.2 CJIS Section 5.3 Policy Area 3: Incident Response

In the event of an information security incident affecting the Covered Services, Microsoft will address such incident with Enrolled Affiliate as follows:

- (a) If Microsoft becomes aware of any unlawful access to any Customer Data stored on Microsoft’s equipment or in Microsoft’s facilities, or unauthorized access to such facilities or equipment resulting in loss, disclosure or alteration of Customer Data (each a

to information generated by Microsoft's regular monitoring of security, privacy, and operational controls in place to afford applicable customers an ongoing view into effectiveness of such controls, and the CSA may communicate with Microsoft subject matter experts. In the event the CSA reasonably determines this information is not sufficient for the CSA's or Enrolled Affiliate's audit objectives, then, upon the CSA's written request, Microsoft will provide the CSA or its qualified third party auditor the opportunity to communicate with Microsoft's auditor at the CSA's or Enrolled Affiliate's expense and, if required, a direct right to examine the Covered Services, including examination on premises. The CSA or its auditor may only access data belonging to Enrolled Affiliate or other entities in the State of New York that have purchased the Covered Services and rely on the CSA for purposes of audit. Enrolled Affiliate will be responsible for Microsoft's reasonable additional costs associated with any examination it requests or appoints the CSA to perform, unless the CSA agrees to pay for such costs on Enrolled Affiliate's behalf.

- (c) Confidentiality of Audit Materials. Information provided by Microsoft to the FBI CJIS Division or CSA in connection with audit activities will consist of highly confidential proprietary or trade secret information of Microsoft. It is not expected that Enrolled Affiliate will require access to such information, and Microsoft may request reasonable assurances, written or otherwise, that information will be maintained as confidential and/or trade secret prior to providing such information to Enrolled Affiliate. If provided, Enrolled Affiliate will ensure Microsoft's audit materials, or report(s) created by Enrolled Affiliate based on a CSA audit of the Covered Services, are afforded the highest level of confidentiality available under applicable law.

4.4 CJIS Section 5.12 Policy Area 12: Personnel Security

- (a) Enrolled Affiliate appoints the CSA to perform, and will rely upon CSA's completion of, personnel screening (i.e., background checks) for personnel in scope pursuant to Section 5.12 of the CJIS Policy. Enrolled Affiliate is responsible to confirm directly with the CSA that such personnel screening as the CSA or Enrolled Affiliate determines is required has been completed prior to initial processing of CJ Data in the Covered Services. Screening will be performed by the CSA on behalf of all entities in the State of New York that onboard to the Covered Services. Adjudication by Enrolled Affiliate or other counties, cities, or other subdivisions or agencies of state government will not be permitted. To facilitate efficient and effective personnel screening:
- The CSA will define adjudication criteria for personnel screening.
 - Microsoft and the CSA will jointly define the process by which Microsoft will deliver to the CSA relevant information regarding personnel who may in the anticipated scope of their duties have logical or physical access to CJ in the Covered Services.
 - It is not anticipated that the CSA will deliver to Enrolled Affiliate confidential personal information pertaining to Microsoft personnel. However, if Enrolled Affiliate receives such confidential personal information it will be afforded the highest level of confidentiality available under applicable law.
 - If Enrolled Affiliate elects to obtain services from Microsoft in addition to the Covered Services (e.g. consulting services in connection with Enrolled Affiliates' migration and onboarding to the Covered Services), such personnel will not be included in scope for personnel screening by the CSA unless separately agreed by Enrolled Affiliate, the CSA, and Microsoft.
- (b) In the event the CSA approves a process under which a federal law enforcement agency or other suitable body conducts screening of personnel who have access to Customer

Data in the Covered Services compliant with requirements of the CJIS Policy in lieu of CSA-conducted screening, Enrolled Affiliate will abide by the CSA's approval of personnel screening being conducted in this manner.

4.5 NCIC 2000 Operating Manual

Enrolled Affiliate acknowledges that the current NCIC 2000 Operating Manual consists of guidance and/or requirements for Enrolled Affiliate's use of the Covered Services. In the event Enrolled Affiliate determines the NCIC 2000 Operating Manual imposes obligations with respect to the Covered Services that can, in Enrolled Affiliate's opinion, only be satisfied via changes in the manner in which the Covered Services are operated or delivered to Enrolled Affiliate, Enrolled Affiliate may request that the CSA provide Microsoft with written notification of the specific changes it believes are required of Microsoft in order to enable Enrolled Affiliate's compliance with the NCIC 2000 Operating Manual, and Microsoft agrees to consider any such request(s) relayed to Microsoft by the CSA in good faith.

4.6 Notices

Any notices in connection with the Covered Services will be delivered to Enrolled Affiliate by Microsoft. Enrolled Affiliate will determine whether these or any other notices regarding the Covered Services are required to be delivered to the FBI, CJIS Division, as contemplated in Section 6.05 of the Security Addendum and, if required, deliver such notices.

Appendix L

The following Enrollment for Education Solutions amendment is included for reference. The terms and conditions of the document included below are not binding unless it is signed as part of an Enrollment for Education Solutions.

1. Business Associate Enrollment for Education Solutions Amendment, EES16

Business Associate Enrollment for Education Solutions Amendment Amendment ID EES16

Proposal ID

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

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

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

1. **Definitions.**

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

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

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

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

"Institution" means the Institution identified on the signature form.

"Dynamics CRM Online Services" means Dynamics CRM Online volume licensing SKUs such as DynCRMONIn ALNG SubsVL MVL PerUsr (DSD-00001). Dynamics CRM Online Services does not include the Dynamics CRM Mobile service.

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

Act and the Genetic Information Nondiscrimination Act; Other Modifications to the HIPAA Rules; Final Rule.

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

"Office 365 Services" means Office 365 Academic Plans A2, A3, A4, K1 and K2; Exchange Online Plans 1, 2, and Kiosk; SharePoint Online Plans 1 and 2; Office Web Apps Plans 1 and 2; and Lync Online branded services.

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

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

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

"Windows Azure Core Services" include only the following features of Windows Azure Services: Cloud Services (web and worker roles), Virtual Machines, Storage (Blobs, Tables, Queues), and Networking (Windows Azure Connect, Traffic Manager, Virtual Network).

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

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

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

- a. **Microsoft's Responsibilities.** To the extent Microsoft is acting as a Business Associate, Microsoft agrees to the following:
 - (i) **Limitations on Use and Disclosure.** Microsoft shall not Use and/or Disclose the Protected Health Information other than as permitted or required by the Enrollment and/or this Amendment or as otherwise Required by Law; provided that any such Use or Disclosure would not violate HIPAA if done by Institution, unless expressly permitted for Business Associates under HIPAA. Microsoft shall make reasonable efforts to Use, Disclose, and/or request the minimum necessary Protected Health Information to accomplish the intended purpose of such Use, Disclosure, or request.
 - (ii) **Safeguards.** Microsoft shall: (1) use reasonable and appropriate safeguards to prevent inappropriate Use and Disclosure of Protected Health Information other than as provided for in this Amendment; and (2) comply with the applicable requirements of 45 CFR Part 164 Subpart C of the Security Rule.
 - (iii) **Reporting.** Microsoft shall report to Institution: (1) any Use and/or Disclosure of Protected Health Information that is not permitted or required by this Amendment of which Microsoft becomes aware; (2) any Security Incident of which it becomes aware, provided that notice is hereby deemed given for Unsuccessful Security Incidents and

no further notice of such Unsuccessful Security Incidents shall be given; and/or (3) any Breach of Institution's Unsecured Protected Health Information that Microsoft may discover (in accordance with 45 CFR § 164.410 of the Breach Notification Rule). Notification of a Breach will be made without unreasonable delay, but in no event more than thirty (30) calendar days after discovery of a Breach. Taking into account the level of risk reasonably likely to be presented by the Use, Disclosure, Security Incident, or Breach, the timing of other reporting will be made consistent with Microsoft's and Institution's legal obligations.

For purposes of this Section, "Unsuccessful Security Incidents" mean, without limitation, pings and other broadcast attacks on Microsoft's firewall, port scans, unsuccessful log-on attempts, denial of service attacks, and any combination of the above, as long as no such incident results in unauthorized access, acquisition, Use, or Disclosure of Protected Health Information. Notification(s) under this Section, if any, will be delivered to contacts identified by Institution pursuant to Section 3b(ii) (Contact Information for Notices) of this Amendment by any means Microsoft selects, including through e-mail. Microsoft's obligation to report under this Section is not and will not be construed as an acknowledgement by Microsoft of any fault or liability with respect to any Use, Disclosure, Security Incident, or Breach.

- (iv) **Subcontractors.** In accordance with 45 CFR §§ 164.502(e)(1)(ii) and 164.308(b)(2) of HIPAA, Microsoft shall require its Subcontractors who create, receive, maintain, or transmit Protected Health Information on behalf of Microsoft to agree in writing to: (1) the same or more stringent restrictions and conditions that apply to Microsoft with respect to such Protected Health Information; (2) appropriately safeguard the Protected Health Information; and (3) comply with the applicable requirements of 45 CFR Part 164 Subpart C of the Security Rule.
- (v) **Disclosure to the Secretary.** Microsoft shall make available its internal practices, records, and books relating to the Use and/or Disclosure of Protected Health Information received from Institution to the Secretary of the Department of Health and Human Services for purposes of determining Institution's compliance with HIPAA, subject to attorney-client and other applicable legal privileges.
- (vi) **Access.** If Microsoft maintains Protected Health Information in a Designated Record Set for Institution, then Microsoft, at the request of Institution, shall make access to such Protected Health Information available to Institution in accordance with 45 CFR § 164.524 of the Privacy Rule.
- (vii) **Amendment.** If Microsoft maintains Protected Health Information in a Designated Record Set for Institution, then Microsoft, at the request of Institution, shall make available such Protected Health Information to Institution for amendment and incorporate any reasonably requested amendment in the Protected Health Information in accordance with 45 CFR § 164.526 of the Privacy Rule.
- (viii) **Accounting of Disclosure.** Microsoft, at the request of Institution, shall make available to Institution such information relating to Disclosures made by Microsoft as required for Institution to make any requested accounting of Disclosures in accordance with 45 CFR § 164.528 of the Privacy Rule.
- (ix) **Performance of a Covered Entity's Obligations.** To the extent Microsoft is to carry out a Covered Entity obligation under the Privacy Rule, Microsoft shall comply with the requirements of the Privacy Rule that apply to Institution in the performance of such obligation.

b. Institution Responsibilities.

- (i) **No Impermissible Requests.** Institution shall not request Microsoft to Use or Disclose Protected Health Information in any manner that would not be permissible under HIPAA if done by a Covered Entity (unless permitted by HIPAA for a Business Associate).
- (ii) **Contact Information for Notices.** Institution hereby agrees that any reports, notification, or other notice by Microsoft pursuant to this Amendment may be made electronically. Institution shall provide contact information to MSO-

HIPAA@microsoft.com or such other location or method of updating contact information as Microsoft may specify from time to time and shall ensure that Institution's contact information remains up to date during the term of this Amendment. Contact information must include name of individual(s) to be contacted, title of individual(s) to be contacted, e-mail address of individual(s) to be contacted, name of Institution organization, and, if available, either contract number or subscriber identification number.

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

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

4. *Applicability of Amendment.*

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

5. *Term and Termination.*

- a. **Term.** This Amendment shall continue in effect until the earlier of (1) termination by a Party for breach as set forth in Section 5b, below, or (2) expiration of Institution's Enrollment
- b. **Termination for Breach.** Either Party immediately may terminate the Enrollment if the other Party is in material breach or default of any obligation in this Amendment that is not cured within thirty (30) calendar days written notice of such breach or default.
- c. **Return, Destruction, or Retention of Protected Health Information Upon Termination.** Upon expiration or termination of this Amendment, Microsoft shall return or destroy all Protected Health Information in its possession, if it is feasible to do so, and as set forth in the applicable termination provisions of the Product Use Rights and/or Enrollment. If Microsoft determines that it is not feasible to return or destroy any portions of the Protected Health Information upon termination of this Amendment, then Microsoft shall extend the protections of this Amendment, without limitation, to such Protected Health Information and limit any further Use or Disclosure of the Protected Health Information to those purposes that make the return or destruction infeasible for the duration of the retention of the Protected Health Information.

6. *Miscellaneous.*

- a. **Interpretation.** The Parties intend that this Amendment be interpreted consistently with their intent to comply with HIPAA and other applicable federal and state law. Except where this Amendment conflicts with the Enrollment, all other terms and conditions of the Enrollment remain unchanged. The Parties agree that, in the event an inconsistency exists between the Enrollment and this Amendment, the provisions of this Amendment will control to the extent of such inconsistency. Any captions or headings in this Amendment are for the convenience of the Parties and shall not affect the interpretation of this Amendment.
- b. **Amendments; Waiver.** This Amendment may not be modified or amended except in a writing duly signed by authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, as a bar to, or as a waiver of any right or remedy as to subsequent events.
- c. **No Third Party Beneficiaries.** Nothing express or implied in this Amendment is intended to confer, nor shall anything in this Amendment confer, upon any person other than the Parties, and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.
- d. **Counterparts.** This Amendment may be executed in counterparts, each of which shall be deemed an original.
- e. **Severability.** In the event that any provision of this Amendment is found to be invalid or unenforceable, the remainder of this Amendment shall not be affected thereby, but rather the remainder of this Amendment shall be enforced to the greatest extent permitted by law.

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

Program Signature Form

MBA/MBSA number	U5815978	000-dmills-s-1157
Agreement number	01E73483	

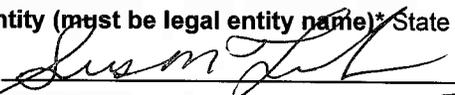
Note: Enter the applicable active numbers associated with the documents below. Microsoft requires the associated active number be indicated here, or listed below as new.

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

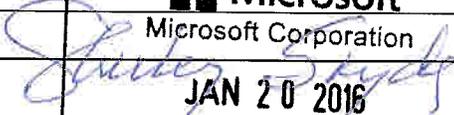
This signature form and all contract documents identified in the table below are entered into between the Customer and the Microsoft Affiliate signing, as of the effective date identified below.

Contract Document	Number or Code
<Choose Agreement>	Document Number or Code
<Choose Agreement>	Document Number or Code
<Choose Agreement>	Document Number or Code
<Choose Agreement>	Document Number or Code
<Choose Agreement>	Document Number or Code
<Choose Enrollment/Registration>	Document Number or Code
<Choose Enrollment/Registration>	Document Number or Code
<Choose Enrollment/Registration>	Document Number or Code
<Choose Enrollment/Registration>	Document Number or Code
<Choose Enrollment/Registration>	Document Number or Code
Document Description	Document Number or Code
Document Description	Document Number or Code
MBA Amendment	CTM (U5815978)
Document Description	Document Number or Code
Document Description	Document Number or Code

By signing below, Customer and the Microsoft Affiliate agree that both parties (1) have received, read and understand the above contract documents, including any websites or documents incorporated by reference and any amendments and (2) agree to be bound by the terms of all such documents.

Customer	
Name of Entity (must be legal entity name)*	State of New York Office of General Services
Signature*	
Printed First and Last Name*	Susan M. Filburn
Printed Title	Deputy CPO
Signature Date*	1/18/2016
Tax ID	

* indicates required field

Microsoft Affiliate	
	
Signature _____	 Microsoft Corporation JAN 20 2016 Shirley Snyder Duly Authorized on behalf of Microsoft Corporation
Printed First and Last Name _____	
Printed Title _____	
Signature Date _____ (date Microsoft Affiliate countersigns)	
Agreement Effective Date (may be different than Microsoft's signature date)	

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

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

* indicates required field

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

* indicates required field

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

After this signature form is signed by the Customer, send it and the Contract Documents to Customer's channel partner or Microsoft account manager, who must submit them to the following address. When the signature form is fully executed by Microsoft, Customer will receive a confirmation copy.

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

Custom Business Agreement for State of New York Amendment ID CTM

000-dmills-s-1157

This Second Amendment hereby supersedes and replaces the First Amendment with Microsoft Amendment ID CTM 001-jendunn-S-920 in its entirety.

For the purposes of this Second Amendment, "Customer" means the signing entity (New York State Office of General Services) entering into a volume licensing program agreement. Notwithstanding anything to the contrary or in addition to any terms in the Agreement, the Agreement is amended as follows:

1. On page 1 of the MBA the paragraph entitled "This Agreement consists of" is hereby amended and restated in its entirety as follows:

This Agreement consists of the: (1) Business Agreement with Appendixes A,B,C,D and J; (2) Enterprise Agreement with Appendix E and K; (3) Select Plus Agreement State and Local with Appendix F; (4) Academic Select Plus Agreement with Appendix G; (5) Campus and School Agreement with Appendix H and L; (6) the Product List; (7) the Product Use Rights ("PUR") applicable to the Products licensed under the Agreement; (8) any Enrollment or Affiliate Registration entered under this Agreement; and (9) any order submitted under this Agreement. In the event of a conflict between the terms and conditions in any of the documents identified above, such conflict shall be resolved by giving precedence in the following order:

1. Appendix A – Standard Clauses for New York State Contracts (1/14 version)
2. Business Agreement
3. Appendix B - General Specifications (7/06 version)
4. Appendix C – Contract Modification Procedure
5. Appendix J - Qualified Educational User Definition
6. The following Program Agreements: Enterprise Agreement Program Agreement, Select Plus License Program Agreement (both Academic and State and Local Government), and Campus and School Agreement, also to include appendixes with applicable sample Enrollment and amendments
7. Product List (see Section 5 of this Second Amendment, below)
8. Product Use Rights (see Section 5 of this Second Amendment, below)
9. Any executed and accepted Select Plus Affiliate Registration Forms or Enrollments
10. Any orders
11. Appendix D – Contractor Administration

Collectively, the foregoing is referred to as the "Agreement".

2. Microsoft and OGS agree Appendix K is hereby added to the Enterprise Agreement Program Agreement. Appendix K includes sample Amendments and forms including: (1) Online Services Security Amendment, B122 ("Security Amendment"), (2) Applicable Services Security Incident Notification Amendment, M91 ("Applicable Services Incident Notification Amendment"), (3) Office 365 Government Community Cloud Amendment ("Office 365 GCC Amendment"), (4) Government Community Cloud Product Selection Form – CTM Office 365 for Government ("Office 365 GCC PSF"), (5) Azure Government-branded Services Amendment, M271 ("Azure GCC Amendment"), (6) Microsoft Dynamics CRM Online for Government Amendment, M277 ("Dynamics CRM Online GCC Amendment"); (7) Business Associate Enterprise Enrollment

Amendment, (8) M176 ("BAA"), Business Associate Agreement Amendment ("BAA Amendment"), and the (9) Microsoft Online Services Criminal Justice Information Services Amendment ("CJIS Amendment"). The following additional notes apply to these sample Amendments included in Appendix K:

- The Applicable Services Security Amendment and Incident Notification Amendment should be included with the Enterprise Enrollment for Affiliates when ordering Office 365 Online Services, Microsoft Intune, Dynamics CRM Online Services, or Azure Online Services.
 - The GCC Amendment applicable to each applicable Product type (Office 365, Azure, Dynamics CRM Online) and GCC PSF must be included with the Enterprise Enrollment for Affiliates in order to order Government Community Cloud Services (as defined in the Security Amendment) for each such Product type. Affiliates must work with Microsoft to validate eligibility to purchase Government Community Cloud Services.
 - The BAA and BAA Amendment should be both be included as part of the Enrollment for Affiliates that purchase Office 365 Online Services or Azure Online Services if the Affiliate is governed by HIPAA.
 - The CJIS Amendment should be signed as part of the Enrollment for Affiliates that purchase Office 365 Government-branded Services if the Affiliate is governed by CJIS.
 - All of the Amendments below are included for reference only. Final copies of each Amendment must be provided by Microsoft for each applicable Enrollment.
3. Microsoft and OGS agree Appendix L is hereby added to the Campus and School Agreement Program Agreement. Appendix L includes the following sample Amendment: Business Associate Enrollment for Education Solutions Amendment, EES16 (EES-BAA). The following additional notes apply to these sample Amendments included in Appendix L:
- The BAA should be included as part of the Enrollment for Education Solutions for Affiliates that purchase Office 365 Online Services if the Affiliate is governed by HIPAA.
 - The Amendment below is included for reference only. Final copies of each Amendment must be provided by Microsoft for each applicable Enrollment for Education Solutions.
4. Appendix A, Standard Clauses For New York State Contracts, dated December 2012 is hereby deleted in its entirety and replaced with the attached Appendix A, Standard Clauses For New York State Contracts, dated January 2014.

5. Product Use Rights and Product List.

The following definitions are hereby amended and restated:

"Product Use Rights" means, with respect to any licensing program, the use rights or terms of service for each Product and version published for that licensing program at <http://www.microsoft.com/licensing/contracts> or at a successor site. **Update:** As of July 1, 2015:

- The content of the Product Use Rights for Online Services has been moved to the **Online Services Terms** at <http://www.microsoft.com/licensing/contracts> or at a successor site; and
- The content of the Product Use Rights for all other Products has been moved to the **Product Terms** at <http://www.microsoft.com/licensing/contracts> or at a successor site.

"Product List" means, with respect to any licensing program, the statement published by Microsoft from time to time on the World Wide Web at <http://www.microsoft.com/licensing/contracts>, or at a successor site that Microsoft identifies, which identifies the Products that are or may be made available under the program (which availability may vary by region) and any Product-specific conditions or limitations on the acquisition of licenses for those Products. **Update:** As of July 1, 2015, the content of

Product List has been moved to the **Product Terms** at <http://www.microsoft.com/licensing/contracts> or at a successor site.

6. **Limitation of Liability.** Section 4.2 (30) of the MBA ("Limitation of Liability") is hereby amended and restated in its entirety, as follows:

30. Section 76 (**Limitation of Liability**) is deleted and replaced with the following:

For the purposes of this Section 76, "DPT Services" means, collectively, each of the following, as they are defined in the Data Processing Terms section of the Online Services Terms: (a) Office 365 Services; (b) Microsoft Azure Core Services; (c) Microsoft Dynamics CRM Online Services; and (d) Microsoft Intune Services.

- a. **Limitation on liability.** To the extent permitted by applicable law, the liability of Microsoft and Enrolled Customer, their respective Affiliates and Vendors arising under this agreement is limited to direct damages up to (1) for Products other than Online Services, two times (2x) the amount Enrolled Customer was required to pay for the Product giving rise to that liability and (2) for Online Services, other than DPT Services, the amount Enrolled Customer paid for the Online Service giving rise to that liability during the prior 12 months. In the case of Products provided free of charge, or code that Enrolled Customer is authorized to redistribute to third parties without separate payment to Microsoft, Microsoft's liability is limited to U.S. \$5,000. These limitations apply regardless of whether the liability is based on breach of contract, tort (including negligence), strict liability, breach of warranties, or any other legal theory. However, these monetary limitations will not apply to:
- (i) Microsoft's and Enrolled Customer's obligations under the section titled "Defense of infringement, misappropriation, and third party claims";
 - (ii) liability (including damage to real or personal tangible property) for damages caused by either party's gross negligence or willful misconduct, or that of its employees or its agents, and awarded by a court of final adjudication (provided that, in jurisdictions that do not recognize a legal distinction between "gross negligence" and "negligence," "gross negligence" as used in this subsection shall mean "recklessness");
 - (iii) liabilities arising out of any breach by either party of its obligations under section 4.2(3) of the Agreement entitled "Appendix B §14 Confidential/Trade Secret Materials", except that Microsoft's liability arising out of or in relation to Customer Data shall in all cases be limited to the amount Enrolled Affiliate paid for the Online Service giving rise to that liability during the (a) prior 24 months, for DPT Services (as defined herein); or (b) prior 12 months, for all other Online Services;
 - (iv) liability for personal injury or death caused by either party's negligence, or that of its employees or agents, or for fraudulent misrepresentation; and
 - (v) violation by either party of the other party's intellectual property rights.
- b. **EXCLUSION OF CERTAIN DAMAGES. TO THE EXTENT PERMITTED BY APPLICABLE LAW, WHATEVER THE LEGAL BASIS FOR THE CLAIM, NEITHER PARTY, NOR ANY OF ITS AFFILIATES, OR VENDORS, WILL BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, OR INCIDENTAL DAMAGES, OR DAMAGES FOR LOST PROFITS, REVENUES, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION ARISING IN CONNECTION WITH THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH POSSIBILITY WAS REASONABLY FORESEEABLE. HOWEVER, THIS EXCLUSION DOES NOT APPLY TO EITHER PARTY'S LIABILITY TO THE OTHER FOR VIOLATION OF ITS CONFIDENTIALITY OBLIGATIONS (EXCEPT TO THE EXTENT THAT SUCH VIOLATION RELATES TO CUSTOMER DATA), THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, OR THE PARTIES' RESPECTIVE OBLIGATIONS IN THE SECTION TITLED "DEFENSE OF INFRINGEMENT, MISAPPROPRIATION, AND THIRD PARTY CLAIMS."**

- c. **Affiliates and Vendors.** Neither Microsoft nor Enrolled Customer shall bring any action against the other's Affiliates or Vendors in respect of any matter disclaimed on their behalf in this Agreement.
- d. **Limitation of Liability for DPT Services.**

The following additional definitions shall apply to this Section 76(d):

- (i) "Covered Data Loss," means loss of Customer Data that is not attributable to (a) the instructions, acts or omissions of Enrolled Affiliate or its users or (b) the most recent 90 minutes' worth of customer data; and
- (ii) "Covered Disclosure," means disclosure of Customer Data as a result of a successful Security Incident, as defined in Section 2 of the Applicable Services Security Incident Notification amendment (M91).

Solely for purposes of clarity related to the DPT Services, Section 76(a) of this Agreement, above, titled "Limitation of Liability," is hereby amended as follows.

- a. the revision to the monetary limitation of liability for the DPT Services will apply to Microsoft's liability arising out of or in relation to its breach of its obligations under this Agreement related to Customer Data;

The maximum amount of either party's liability to the other for direct damages associated with the DPT Services will be the amount Enrolled Customer paid for the Online Service giving rise to that liability during the prior 24 months (subject to the exclusions set forth above in Section 76 (b)).

For purposes of this Section 76(d), the following shall be deemed to be "direct damages" not subject to the exclusion of indirect or consequential damages set forth above in Section 76(b):

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

- a. Authorized User's reasonable costs in notifying affected individuals of Covered Disclosure in which the data subjects' personally-identifiable information has been disclosed;
- b. Credit monitoring for up to twelve (12) months for affected individuals;
- c. Damages and fines assessed against Enrolled Customer by a court of competent jurisdiction and awarded to individuals whose Personally Identifiable Information is subject to a Covered Disclosure.
- d. Any additional reasonable and documented costs of any mitigation, remedies or plans to the extent that such mitigation, remedies or plans are customary, reasonable, and expected to be paid by Authorized Users, given the nature and scope of the Security Incident involving a Customer Data breach of PII, as validated by an independent accounting firm chosen by both entities .
- In all other respects, the Limitation of Liability section of the MBA shall continue to apply as written.

- (2) The following additional costs related to each applicable Enrolled Affiliate's obligations under any applicable open records laws due to Covered Data Loss:

- a. Government fines and penalties assessed against an Enrolled Affiliate for failure to comply with such open records laws, where such failure is attributable solely to Covered Data Loss; and
- b. Damages assessed against an Enrolled Affiliate by a court of competent jurisdiction and awarded to third parties based solely on

the Enrolled Affiliate's failure to provide information to them under such open records acts, where such failure is attributable solely to a Covered Data Loss.

- 7. Inapplicability of European Terms.** In the Online Services Terms, neither the Additional European Terms nor the Standard Contractual Clauses shall apply.

Remainder of page intentionally left blank

Appendix K

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

1. Online Services Security Amendment, B122

Enterprise Enrollment Microsoft Online Services Security Amendment Amendment ID CTM

Enterprise Enrollment
number
Microsoft to complete

Proposal ID

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

Defined Terms

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

"Core Platform Services" means only the following features of Azure Online Services: Cloud Services (web and worker roles), Virtual Machines (including with SQL Server), Storage (Blobs, Tables, Queues), Virtual Network, Traffic Manager, Batch, Web Sites, BizTalk Services, Media Services, Mobile Services, Service Bus, Notification Hub, Workflow Manager, Express Route, Scheduler, Multi-Factor Authentication, Active Directory, Rights Management Service, SQL Database and any other features identified as included on the Microsoft Azure Trust Center.

"Customer Data" means all data, including all text, sound, or image files that are provided to Microsoft by, or on behalf of, Customer through Customer's use of the Microsoft Online Services. Log files and telemetry and other information generated by Microsoft are not Customer Data. However any Personally Identifiable Information (PII) that is within such log files or telemetry information will at all times be protected by Microsoft pursuant to the terms and conditions of the Enrollment amended hereby.

"Dynamics CRM Online Services" means Dynamics CRM Online volume licensing SKUs such as DynCRMOnln ALNG SubsVL MVL PerUsr (DSD-00001). Dynamics CRM Online Services does not include the Dynamics CRM Mobile service.

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

"Azure-branded Online Services" means any Online Service identified in the Product List as Windows Azure (or Microsoft Azure).

"Applicable Services" for this Amendment only, means Office 365 Online Services, Dynamics CRM Online Services, Core Platform Services, and no other Microsoft Online Services. Additionally:

- Where a specific Online Services product family (e.g. Office 365 Online Services, Dynamics CRM Online Services, and/or Azure-branded Services) or a subset thereof (e.g. Core Platform Services, which is a subset of Azure-branded Services) is specified in a statement or

provision, the applicable statement or provision shall be deemed to apply only to that specific Online Service product family or subset thereof.

- Otherwise, except as provided by the preceding sentence, this Amendment shall apply solely to Applicable Services.
- Online Services not included in the above definition of "Applicable Services" shall not be subject to the terms and conditions of this Amendment.

"Community" means the community consisting of one or more of the following: (1) a Government, (2) an Enrolled Affiliate using eligible Government Community Cloud Services to provide solutions to a Government or a qualified member of the Community, or (3) a Customer with Customer Data that is subject to Government regulations for which Customer determines and Microsoft agrees that the use of Government Community Cloud Services is appropriate to meet Customer's regulatory requirements. Membership in the Community is ultimately at Microsoft's discretion, which may vary by Government Community Cloud Service.

"Federal Agency" means a bureau, office, agency, department or other entity of the United States Government.

"Government" means a Federal Agency, State/Local Entity, or Tribal Entity acting in its governmental capacity.

"Government Community Cloud Services" means Microsoft Online Services that are provisioned in Microsoft's multi-tenant data centers for exclusive use by or for the Community and offered in accordance with the National Institute of Standards and Technology (NIST) Special Publication 800-145. Microsoft Online Services that are Government Community Cloud Services are designated as such in the Online Services Terms and Product Terms available at <http://www.microsoft.com/licensing/contracts> or a successor site.

"Office 365 Online Services" means The following services, each as a standalone service or as included in an Office 365-branded plan or suite: (where "suites" include Office 365 Plans E1 (and Government E1), E3 (and Government E3), E4 (and Government E4), E5 (and Government E5, when available), K1 (and Government K1): Exchange Online (Plan 1, Plan 2 and Kiosk); Exchange Online Archiving; Exchange Online Protection, Advanced Threat Protection, SharePoint Online (Plans 1 and 2); OneDrive for Business; Sway, Office Online (Plans 1 and 2); Delve Analytics, Customer Lockbox, Project Online, Yammer Enterprise, and Skype for Business (Plans 1 and 2). Office 365 Services do not include Office 365 ProPlus, any portion of PSTN Services that operate outside of Microsoft's control, any client software, or any separately branded service made available with an Office 365-branded plan or suite, such as a Bing or a service branded "for Office 365."

"State/Local Entity" means (1) any agency of a state or local government in the United States, or (2) any United States county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality established by the laws of Customer's state and located within Customer's state's jurisdiction and geographic boundaries.

"Tribal Entity" means a federally-recognized tribal entity performing tribal governmental functions and eligible for funding and services from the U.S. Department of Interior by virtue of its status as an Indian tribe.

1. **Privacy**

- Privacy practices.** Microsoft will comply with all laws and regulations applicable to its provision of the Microsoft Online Services (including applicable security breach notification law). However, Microsoft is not responsible for compliance with any laws applicable to Customer or Customer's industry that are not generally applicable to information technology services providers.
- Customer Data.** Microsoft will process Customer Data in accordance with the provisions of this Amendment and, except as stated in the Enrollment and this Amendment, Microsoft (a) will acquire no rights in Customer Data and (b) will not use or disclose Customer Data for any purpose other than stated below. Microsoft's use of Customer Data is as follows:

- (i) Customer Data will be used only to provide Customer the Applicable Services. This may include troubleshooting aimed at preventing, detecting and repairing problems affecting the operation of the Applicable Services and the improvement of features that involve the detection of, and protection against, emerging and evolving threats to the user (such as malware or spam).
- (ii) Microsoft shall not disclose Customer Data to a third party unless required by law.

Should a third party contact Microsoft with a demand for Customer Data, and unless compelled by law or other legally binding authority to take different actions, fewer actions or actions in a different order, Microsoft shall take actions as follows below in this paragraph:

- 1) First, Microsoft will attempt to redirect the third party to request Customer Data directly from Enrolled Affiliate;
- 2) Second, Microsoft shall notify the Enrolled Affiliate of the request. (As part of this effort, Microsoft may provide Enrolled Affiliate's basic contact information to the third party requester.) While this notification shall be prompt, and without undue delay, in cases where there is any of the following: legal risk of non-compliance by Microsoft with legally binding orders; legal risks for individual Microsoft employees of non-compliance with legally binding orders; risks of disclosure or release of Customer Data belonging to other Enrolled Affiliates or to data of customers of any Microsoft technical service; or risks to the continued operation of any Microsoft technical or Microsoft online service; then Microsoft may have already abandoned attempts to redirect the third party by the time this notification is possible.

If ultimately compelled to disclose Customer Data to a third party, including law enforcement, Microsoft shall notify the Enrolled Affiliate, and use reasonable efforts to notify Enrolled Affiliate in advance of such a disclosure.

To the extent applicable to the Online Services set forth in the Agreement, Microsoft and Customer agree that Customer's execution of this Amendment does not constitute consent for the release of Customer Data, as that phrase is used in the Federal Electronic Communications Privacy Act or the Stored Communications Act.

- c. **Customer Data deletion or return.** Upon expiration or termination of Customer's use of the Applicable Services, Customer may extract Customer Data and Microsoft will delete Customer Data, each in accordance with the Product Use Rights.
- d. **End User requests.** Microsoft will not independently respond to requests from Customer's End Users without Customer's prior written consent, except where required by applicable law.
- e. **Microsoft personnel.** Microsoft personnel will not process Customer Data without authorization. Microsoft personnel are obligated to maintain the confidentiality of any Customer Data and this obligation continues even after their engagement ends.
- f. **Subcontractor; transfer.** Microsoft may hire other companies to provide limited services on its behalf, such as providing customer support. Any such subcontractors will be permitted to obtain Customer Data only to deliver the services Microsoft has retained them to provide, and they are prohibited from using Customer Data for any other purpose. Microsoft remains responsible for its subcontractors' compliance with the obligations of this Amendment. Any subcontractors to whom Microsoft transfers Customer Data, even those used for storage purposes, will have entered into written agreements with Microsoft requiring that the subcontractor abide by terms no less protective than this Amendment. Customer consents to Microsoft's transfer of Customer Data to subcontractors as described in this Amendment. Except as set forth above, or as Customer may otherwise authorize, Microsoft will not transfer to any third party (not even for storage purposes) personal data Customer provides to Microsoft through the use of the Applicable Services.
- g. **Additional provisions and restrictions for Azure-branded Services.** The terms and conditions of this Subsection apply solely to Azure-branded Services (and not to Office 365 Online Services or Dynamics CRM Services).

Customer Data that Microsoft processes on Customer's behalf may be transferred to, and stored and processed in, the United States, subject to the following restrictions:

(i) Microsoft may transfer Customer Data within a major geographic region (for example, within the United States) for data redundancy or other purposes. Microsoft will not transfer Customer Data outside the major geographic region Customer specifies (for example, from the United States to Asia or from Europe to the United States) except:

1) where Customer configures the account to enable this, including through use of features that may not enable regional selection or may use multiple regions, as specified in the Microsoft Azure Trust Center (which Microsoft may update from time to time but Microsoft will not add exceptions for existing features in general release); or

2) where necessary to provide customer support, to troubleshoot the service or to comply with legal requirements.

Microsoft does not control or limit the regions from which Customer or End Users may access or move Customer Data.

2. Customer responsibilities.

Customer must comply with applicable legal requirements for privacy, data protection, and confidentiality of communications related to its use of Applicable Services. Customer is wholly responsible for implementing and maintaining privacy protections and security measures within any applications, configuration settings, or virtual machines that Customer uses with Azure-branded Services.

3. Security

a. General practices.

Except as further delineated below, this subsection applies solely to Office 365 Online Services, Dynamics CRM Online Services, and Core Platform Services (and not to other Azure-branded Services).

Microsoft has implemented and will maintain appropriate technical and organizational measures, internal controls, and information security routines intended to protect Customer Data against accidental loss, destruction, or alteration; unauthorized disclosure or access; or unlawful or unauthorized destruction as follows:

i. Domain: organization of information security

1. **Security ownership.** Microsoft has appointed one or more security officers responsible for coordinating and monitoring the security rules and procedures.
2. **Security roles and responsibilities.** Microsoft personnel with access to Customer Data are subject to confidentiality obligations.
3. **Risk management program.** Microsoft performed a risk assessment before processing the Customer Data or launching the Office 365 Online Services, Dynamics CRM Online Services, and Core Platform Services.
4. Microsoft retains its security documents pursuant to its retention requirements after they are no longer in effect.

ii. Domain: asset management

1. **Asset inventory.** Microsoft maintains an inventory of all media on which Customer Data is stored. Access to the inventories of such media is restricted to Microsoft personnel authorized in writing to have such access.
2. **Asset handling.**
 - a. Specifically for Office 365 Online Services and Dynamics CRM Online Services, Microsoft classifies Customer Data to help identify it and to allow for access to

it to be appropriately restricted (e.g., through encryption). Specifically for Core Platform Services, Microsoft restricts access to Customer Data, and Customer may implement encryption of Customer Data within Customer's application.

- b. Microsoft imposes restrictions on printing Customer Data and has procedures for disposing of printed materials that contain Customer Data.
- c. Microsoft personnel must obtain Microsoft authorization prior to storing Customer Data on portable devices, remotely accessing Customer Data, or processing Customer Data outside Microsoft's facilities. This includes removing media (e.g., USB sticks and CD ROMs) and documents containing Customer Data from Microsoft's facilities.

iii. **Domain: human resources security**

1. **Security training.**

- a. Microsoft informs its personnel about relevant security procedures and their respective roles. Microsoft also informs its personnel of possible consequences of breaching the security rules and procedures.
- b. Microsoft will only use anonymous data in training.

iv. **Domain: physical and environmental security**

1. **Physical access to facilities.** Microsoft limits access to facilities where information systems that process Customer Data are located to identified authorized individuals.
2. **Physical access to components.** Microsoft maintains records of the incoming and outgoing media containing Customer Data, including the kind of media, the authorized sender/recipients, date and time, the number of media and the types of Customer Data they contain.
3. **Protection from disruptions.** Microsoft uses a variety of industry standard systems to protect against loss of data due to power supply failure or line interference.
4. **Component disposal.** Microsoft uses industry standard processes to delete Customer Data when it is no longer needed.

v. **Domain: communications and operations management**

1. **Operational policy.** Microsoft has implemented, and will maintain for the Applicable Services, security documents describing its security measures and the relevant procedures and responsibilities of its personnel who have access to Customer Data.
2. **Data recovery procedures specific to Azure-branded Services.**

Azure Online Services include replication features that facilitate recovery of Customer Data in the event a particular machine or cluster within a Microsoft data center fails. Customer is responsible for taking additional steps to provide added fault tolerance, such as creating historical backups of Customer Data, storing backups of Customer Data off the platform, deploying redundant compute instances within and across data centers, or backing up state and data within a virtual machine.
3. **Data recovery procedures applicable to all Applicable Services.**
 - a. On an ongoing basis, but in no case less frequently than once a week (unless no Customer Data has been updated during that period), Microsoft maintains multiple copies of Customer Data from which Customer Data can be recovered.
 - b. Microsoft stores copies of Customer Data and data recovery procedures in a different place from where the primary computer equipment processing the Customer Data is located.

- c. Microsoft has specific procedures in place governing access to copies of Customer Data.
 - d. Microsoft reviews data recovery procedures at least every six months.
 - e. Microsoft logs data restoration efforts, the description of the restored data, and where applicable (when the restoration effort was requested by a person rather than an automated process), the person responsible, and which data (if any) had to be input manually in the data recovery process.
4. **Malicious software.** Microsoft has anti-malware controls to help avoid malicious software gaining unauthorized access to Customer Data, including malicious software originating from public networks.
5. **Data beyond boundaries.**
- a. Specifically as it pertains to Office 365 Online Services and Dynamics CRM Online Services, Microsoft encrypts Customer Data that is transmitted over public networks. Specifically as it pertains to Core Platform Services, Microsoft provides Customer the option of encrypting Customer Data that is transmitted to and from Microsoft data centers over public networks. Microsoft uses encryption for replication of Customer Data between Microsoft data centers. The foregoing may exclude certain technically logical scenarios, such as where the intended purpose of the Microsoft Azure Core Service in use is to make public the Customer Data being transmitted
 - b. Microsoft restricts access to Customer Data in media leaving its facilities (e.g., through encryption).
6. **Event Logging.**
- A. Specifically as it pertains to Office 365 Online Services and Dynamics CRM Online Services, Microsoft (i) logs the use of Microsoft's data processing systems; and (ii) logs access and use of information systems containing Customer Data, registering the access ID, time, authorization granted or denied, and relevant activity.
 - B. Specifically as it pertains to Core Platform Services, Microsoft logs or enables Customer to log access and use of information systems containing Customer Data, registering the access ID, time, authorization granted or denied, and relevant activity.

vi. **Domain: access control**

- 1. **Access policy.** Microsoft maintains a record of security privileges of individuals having access to Customer Data.
- 2. **Access authorization.**
 - a. Microsoft maintains and updates a record of personnel authorized to access Microsoft systems that contain Customer Data.
 - b. Microsoft deactivates authentication credentials that have not been used for a period of time not to exceed six months.
 - c. Microsoft identifies those personnel who may grant, alter or cancel authorized access to data and resources.
 - d. Microsoft ensures that where more than one individual has access to systems containing Customer Data, the individuals have separate identifiers/log-ins.
- 3. **Least privilege.**
 - a. Technical support personnel are only permitted to have access to Customer Data when needed.
 - b. Microsoft restricts access to Customer Data to only those individuals who require such access to perform their job function.
- 4. **Integrity and confidentiality.**

- a. Microsoft instructs Microsoft personnel to disable administrative sessions when leaving premises Microsoft controls or when computers are otherwise left unattended.
- b. Microsoft stores passwords in a way that makes them unintelligible while they are in force.

5. Authentication.

- a. Microsoft uses industry standard practices to identify and authenticate users who attempt to access information systems.
- b. Where authentication mechanisms are based on passwords, Microsoft requires that the passwords are renewed regularly.
- c. Where authentication mechanisms are based on passwords, Microsoft requires the password to be at least eight characters long.
- d. Microsoft ensures that de-activated or expired identifiers are not granted to other individuals.
- e. Specifically as it pertains to Office 365 Online Services and Dynamics CRM Online Services, Microsoft monitors repeated attempts to gain access to the information system using an invalid password.
- f. Specifically as it pertains to Core Platform Services, Microsoft monitors or enables Customer to monitor repeated attempts to gain access to the Customer Data using an invalid password.
- g. Microsoft maintains industry standard procedures to deactivate passwords that have been corrupted or inadvertently disclosed.
- h. Microsoft uses industry standard password protection practices, including practices designed to maintain the confidentiality and integrity of passwords when they are assigned and distributed, and during storage.

6. **Network design.** Microsoft has controls to avoid individuals assuming access rights they have not been assigned to gain access to Customer Data they are not authorized to access.

vii. Domain: information security incident management

1. Incident response process.

- a. Microsoft maintains a record of security breaches with a description of the breach, the time period, the consequences of the breach, the name of the reporter, and to whom the breach was reported, and the procedure for recovering data.
 - b. Specifically as it pertains to Office 365 Online Services and Dynamics CRM Online Services, Microsoft tracks disclosures of Customer Data, including what data has been disclosed, to whom, and at what time.
 - c. Specifically as it pertains to Core Platform Services, Microsoft tracks, or enables Customer to track, disclosures of Customer Data, including what data has been disclosed, to whom, and at what time.
2. **Service Monitoring.** Microsoft security personnel verify logs at least every six months to propose remediation efforts if necessary.

viii. Domain: Business Continuity Management

1. Microsoft maintains emergency and contingency plans for the facilities in which Microsoft information systems that process Customer Data are located.
2. Specifically as it pertains to Office 365 Online Services and Dynamics CRM Online Services, Microsoft's redundant storage and its procedures for recovering data are designed to attempt to reconstruct Customer Data in its original state from before the time it was lost or destroyed.

3. Specifically as it pertains to Core Platform Services, Microsoft's redundant storage and its procedures for recovering data are designed to attempt to reconstruct Customer Data to its last replicated state from before the time it was lost or destroyed. Recovery of virtual machines may be to their original image.
- ix. The security measures described in this Section 4 are Microsoft's only responsibility with respect to the security of Customer Data. For Customer Data, these measures replace any confidentiality obligations contained in the Enrollment or any other non-disclosure agreement between Microsoft and Customer.

b. Certifications and audits

- i. Microsoft has established and agrees to maintain the following data security policies (collectively, the "**Microsoft Security Policies**") that (a) governs Microsoft's handling of Customer Data, and (b) complies with the ISO 27001 standards for the establishment, implementation, control, and improvement of the Information Security Management System and the ISO/IEC 27002 code of best practices for information security management:
 - For Office 365 Online Services and Dynamics CRM Online Services, this document is the "**Microsoft Online Information Security Policy**" and
 - For Core Platform Services, this document is the "**Windows Azure Information Security Policy.**"

On a confidential need-to-know basis, and subject to Customer's agreement to non-disclosure obligations Microsoft specifies, Microsoft will make each of the above-referenced Microsoft Security Policies available to Customer, along with other information reasonably requested by Customer regarding Microsoft security practices and policies. Customer is solely responsible for reviewing the Microsoft Security Policies, making an independent determination as to whether the Microsoft Security Policies meet Customer's requirements, and for ensuring that Customer's personnel and consultants follow the guidelines they are provided regarding data security.

- ii. Microsoft will audit the security of (A) the computers and computing environment that it uses in processing Customer Data (including personal data) on the Office 365 Online Services, Dynamics CRM Online Services, and Core Platform Services, and (B) the physical data centers from which Microsoft provides the Office 365 Online Services, Dynamics CRM Online Services, and Azure-branded Services except for the Content Delivery Network. This audit: (a) will be performed at least annually; (b) will be performed according to ISO 27001 standards or other applicable industry standards; (c) will be performed by third party security professionals at Microsoft's selection and expense; (d) will result in the generation of an audit report ("**Microsoft Audit Report**"), which will be Microsoft's confidential information; and (e) may be performed for other purposes in addition to satisfying this Section (e.g., as part of Microsoft's regular internal security procedures or to satisfy other contractual obligations).
 - iii. If Customer requests in writing, Microsoft will provide Customer with a confidential copy of the Microsoft Audit Report or at Microsoft's option a summary thereof ("*Summary Report*") so that Customer can reasonably verify Microsoft's compliance with the security obligations under this Amendment. The Summary Report is Microsoft confidential information. The Summary Report will not be written so as to frustrate or prevent Customer's ability to understand any substantive issues raised within the Microsoft Audit Report.
 - iv. Microsoft will make good faith, commercially reasonable efforts to remediate (a) any errors identified in a Microsoft Audit Report that could reasonably be expected to have an adverse impact on Customer use of the Microsoft Online Services and (b) material control deficiencies identified in the Microsoft Audit Report.
- c. Customer responsibility for Azure-branded Services.** Customer is wholly responsible for implementing and maintaining security within any applications, configuration settings, or virtual machines that Customer uses with Windows Azure- branded Services.

4. **Additional Terms**

a. **Data Location.**

Office 365 Government-branded Services

Microsoft will provide Office 365 Government-branded Services from data centers in the United States. In connection with the Office 365 Government-branded Services, storage of the following customer data at rest will be located in data centers only in the United States: (i) Exchange Online mailbox content (e-mail body, calendar entries, and the content of e-mail attachments), and (ii) SharePoint Online site content and the files stored within that site.

Dynamics CRM Online Services

In connection with the Dynamics CRM Online Services, storage of Dynamics CRM Online Services content at rest will be located in data centers only in the United States. Except for Customer Data necessary to authenticate access to the Applicable Services (i.e. user names), Dynamics CRM Online Services content includes Customer Data limited to entities managed by the Dynamics CRM Online Service.

Azure Core Platform Services

If a particular service is configured by Customer to be deployed within the United States then, for that service, Microsoft will store Customer Data at rest within the United States.

- b. **Use of Customer Data.** In providing Applicable Services, Microsoft shall use Customer Data only to provide and maintain the Applicable Services for the Customer. Applicable Services shall not capture, maintain, scan, index, share or use Customer Data stored or transmitted by the Online Service, or otherwise use any data-mining technology, for any non-authorized activity or non-government purpose. Applicable Services shall not use Customer Data stored or transmitted by the Applicable Service for any advertising or other commercial purpose of Microsoft or any third party. The Applicable Services will be logically separate from Microsoft's consumer Online Services. Customer Data, data in Microsoft's consumer Online Services, and data created by or resulting from Microsoft's scanning, indexing, or data-mining activities, will not be commingled unless expressly approved by Customer in advance.
- c. **Background Checks.** Microsoft performs the following background checks on all US personnel who have potential to access Customer Data. Such background checks will be performed in accordance with the Fair Credit Reporting Act and will consist of Social Security Number trace, seven (7) year felony and misdemeanor criminal records check of federal, state, or local records (as applicable) for job related crimes, Office of Foreign Assets Control List (OFAC) check, Bureau of Industry and Security List (BIS) check and Office of Defense Trade Controls Debarred Persons List (DDTC) check. Only personnel who have satisfactorily completed these background checks are able to request and obtain time-limited logical access to the Customer Data stored at rest as described in Section 4(a).
- d. **NIST 800-53 and FedRAMP.** Government Community Cloud Services are operated in accordance with a written data security policy and control framework that are consistent with the requirements of NIST 800-53, or successor standards and guidelines (if any), established to support Federal Risk and Authorization Management Program (FedRAMP) accreditation at a Moderate Impact level. Microsoft intends for Government Community Cloud Services to support FedRAMP ATO's and Microsoft will use commercially

reasonable efforts to obtain an Authority to Operate (ATO) from a Federal agency, and to maintain such an ATO by conducting regular FedRAMP audits and through continuous monitoring processes.

- e. **Suspension of an Online Service.** If Enrolled Affiliate acquires Applicable Services, the following terms and conditions replace the "Suspension of an Online Service" section of the Product Use Rights (or a future section of the Product Use Rights that covers the suspension of an Online Service):
- (i) **Online Service suspension.** Microsoft may suspend an Online Service in whole or in part in the following circumstances:
 - 1. if Microsoft believes that Customer's use of the Online Service represents a direct or indirect threat to Microsoft's network function or integrity or anyone else's use of the Online Service;
 - 2. if reasonably necessary to prevent unauthorized access to Customer Data;
 - 3. to the extent necessary to comply with legal requirements; or
 - 4. if Customer does not abide by the Acceptable Use Policy section of the Online Services use rights or violates other terms of Customer's volume licensing agreement.
 - (ii) **Our suspension promise.** Any suspension of an Online Service pursuant to this section shall apply to the minimum necessary portion of the Online Service and will only be in effect for as long as reasonably necessary to address the issues giving rise to the suspension.
 - (iii) **Notice of suspension.** Microsoft will provide advance notice before suspending an Online Service, except where Microsoft reasonably believes an immediate suspension is required. Microsoft will provide at least 30 days' notice before suspending an Online Service for non-payment.
 - (iv) **Microsoft's right to terminate the Online Service.** If Customer does not fully address the reasons for the suspension within 60 days after Microsoft suspends Customer's Online Service, Microsoft may terminate Customer's Subscription and reserve the right to delete Customer's Customer Data without any retention period.

5. **Miscellaneous**

- a. **Term and termination.** This Amendment shall automatically terminate upon any termination or expiration of the Enrollment.
- b. **Entire agreement.** Except for changes made by this Amendment, the Enrollment remains unchanged and in full force and effect.

2. Applicable Services Security Incident Notification Amendment, M91

Enterprise Enrollment Amendment ID CTM

Proposal ID

This Applicable Services Security Incident Notification amendment ("Applicable Services SI Notice Addendum") is entered into between the entities identified on the signature form for the enrollment identified above ("Enrollment"). The entities agree that the Applicable Services SI Notice Addendum supplements the Enrollment and applies to only the Applicable Services, defined below, Customer buys under the Enrollment.

1. **Definitions**

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

"Applicable Services" for this Amendment only, means Office 365 Online Services, and /or Dynamics CRM Online Services, Azure-branded Services, Microsoft Intune, and no other Microsoft Online Services.

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

"Dynamics CRM Online Services" means Dynamics CRM Online volume licensing SKUs such as DynCRMOnln ALNG SubsVL MVL PerUsr (DSD-00001). Dynamics CRM Online Services does not include the Dynamics CRM Mobile service.

"Azure-branded Services" means any Online Service identified in the Product List as Windows Azure (or Microsoft Azure).

"Office 365 Online Services" means The following services, each as a standalone service or as included in an Office 365-branded plan or suite: (where "suites" include Office 365 Plans E1 (and Government E1), E3 (and Government E3), E4 (and Government E4), E5 (and Government E5, when available), K1 (and Government K1): Exchange Online (Plan 1, Plan 2 and Kiosk); Exchange Online Archiving; Exchange Online Protection, Advanced Threat Protection, SharePoint Online (Plans 1 and 2); OneDrive for Business; Sway, Office Online (Plans 1 and 2); Delve Analytics, Customer Lockbox, Project Online, Yammer Enterprise, and Skype for Business (Plans 1 and 2). Office 365 Services do not include Office 365 ProPlus, any portion of PSTN Services that operate outside of Microsoft's control, any client software, or any separately branded service made available with an Office 365-branded plan or suite, such as a Bing or a service branded "for Office 365."

Microsoft Intune means the cloud service portion of Microsoft Intune such as the Microsoft Intune Add-on Product or a management service provided by Microsoft Intune such as Mobile Device Management for Office 365.

2. **Security Incident Notification**

- a. If Microsoft becomes aware of any unlawful access to any Customer Data stored on Microsoft's equipment or in Microsoft's facilities, or unauthorized access to such equipment or facilities resulting in loss, disclosure, or alteration of Customer Data (each a "Security Incident"), Microsoft will: (a) promptly notify Customer of the Security Incident; (b) investigate the Security Incident and provide Customer with detailed information about the

Security Incident; and (c) take reasonable steps to mitigate the effects and to minimize any damage resulting from the Security Incident.

- b. Customer agrees that:
 - (i) An unsuccessful Security Incident will not be subject to this Section. An unsuccessful Security Incident is one that results in no unauthorized access to Customer Data or to any of Microsoft's equipment or facilities storing Customer Data, and may include, without limitation, pings and other broadcast attacks on firewalls or edge servers, port scans, unsuccessful log-on attempts, denial of service attacks, packet sniffing (or other unauthorized access to traffic data that does not result in access beyond IP addresses or headers) or similar incidents; and
 - (ii) Microsoft's obligation to report or respond to a Security Incident under this Section is not and will not be construed as an acknowledgement by Microsoft of any fault or liability with respect to the Security Incident.
- c. Notification(s) of Security Incidents, if any, will be delivered to one or more of Customer's administrators by any means Microsoft selects, including via email. It is Customer's sole responsibility to ensure Customer's administrators maintain accurate contact information on the Online Services portal at all times.

3. **Miscellaneous**

- d. **Term and termination.** This Applicable Services SI Notice Addendum shall automatically terminate upon any termination or expiration of the Enrollment.
- e. **Entire Agreement.** Except for changes made by this Applicable Services SI Notice Addendum, the Enrollment remains unchanged and in full force and effect.

3. Office 365 Government Community Cloud Amendment

Enterprise Enrollment - Office 365 Government-branded Services - Amendment ID (CTM)

Proposal ID

For the purposes of this Amendment, "Entity" can mean the signing entity, Customer, Enrolled Affiliate, Government Partner, Institution, or other party entering into a volume licensing program agreement. The following set of Terms applies to Entity when ordering Office 365 Government-branded Services.

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

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

2. **Office 365 Government-branded Services Terms**

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

- a. Office 365 Government-branded Services component Online Services- Equivalent Online Services Mapping

Remainder of page intentionally left blank

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

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

Office 365 Government-branded Services - Equivalent "Enterprise Online Services" Suites ¹	Office 365 Enterprise Online Services
Office 365 Plan Government E1	Office 365 Plan E1
Office 365 Plan Government E3	Office 365 Plan E3
Office 365 Plan Government E4	Office 365 Plan E4
Office 365 Plan K1 G	Office 365 Plan K1
Office 365 Plan K2 G	Office 365 Plan K2

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

3. Office 365 Government-branded Services Customer Requirements.

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

4. Government Community Cloud Product Selection Form

Enterprise and Enterprise Subscription Enrollment Product Selection Form – CTM Office 365 Government- branded Services

Proposal ID

Enrollment Number <i>Microsoft to complete for initial term Reseller to complete for renewal</i>

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

Enterprise Products. Choose platform option: <Choose One>

Qualified Devices: **Qualified Users:**

Office 365 Government-branded Online Services

Step 2. Select the Products and Quantities Enrolled Affiliate is ordering on its initial Enrollment Order. Quantity may not include any Licenses which Enrolled Affiliate has selected for optional future use, or to which it is transitioning or stepping up within enrollment term. Products for which the Enrolled Affiliate has an option to transition or step-up should be listed in Step 3.

Products ¹	Quantity
Office Professional Plus	
Office Pro Plus	
Office 365 ProPlus G	
Office 365 Plans¹	
Office 365 (Plan Government E1)	
Office 365 (Plan Government E3)	
Office 365 (Plan Government E4)	
Client Access License (CAL). Choose 1 Option.	
<input type="checkbox"/> Core CAL, including Bridge CAL's (if applicable)	
Core CAL	
Core CAL Bridge for Office 365	
Core CAL Bridge for Windows Intune	
Core CAL Bridge for Office 365 and Windows Intune	
<input type="checkbox"/> Enterprise CAL (ECAL)	
ECAL	
ECAL Bridge for Office 365	
ECAL Bridge for Windows Intune	
ECAL Bridge for Office 365 and Windows Intune	
The Client Access License selection must be the same across the Enterprise. Specify whether licensing CAL per Device or User: <Choose One>	
Windows Desktop	
Windows OS Upgrade	
Windows VDA	
Windows Intune	
Windows Intune	
Windows Intune Add-on ³	
Other Enterprise Products	
Microsoft Desktop Optimization Pack (MDOP) ²	

If selecting Windows Desktop, Enrolled Affiliate acknowledges the following:

- a. The Windows Desktop Operating System Upgrade licenses offered through this Enrollment are not full licenses. The Enrolled Affiliate and any included Affiliates have qualifying operating system licenses for all devices on which the Windows Desktop Operating System Upgrade or Windows Intune licenses are run.
- b. In order to use a third party to reimagine the Windows Operating System Upgrade, Enrolled Affiliate must certify that Enrolled Affiliate has acquired qualifying operating system licenses. See the Product List for details.

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

Products ²
<input type="checkbox"/> Office 365 ProPlus G
<input type="checkbox"/> Office 365 (Plan Government E1)
<input type="checkbox"/> Office 365 (Plan Government E3)
<input type="checkbox"/> Office 365 (Plan Government E4)
<input type="checkbox"/> Enterprise CAL (ECAL) Step-up, including Bridge CALs
<input type="checkbox"/> Windows Intune
<input type="checkbox"/> Windows Intune Add-on ³

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

Products	Price Group	Qty from above	Qty	Price Level
Office Professional Plus + Office 365 ProPlus G+ Office 365 G (Plans Government E3-E4)	1	0	250 and Above	D
Client Access License + Office 365 (Plans Government E1-E4)	2	0		
Client Access License + Windows Intune Add-on G + Windows Intune	3	0		
Windows Desktop Upgrade + Windows VDA + Windows Intune	4	0		
Product Offering/Pool				Price Level
Enterprise Products and Enterprise Online Services: Set price level using the highest quantity from Groups 1 through 4				D
Additional Product Application Pool: Set price level using quantity from Group 1				D
Additional Product Server Pool: Set price level using the highest quantity from Group 2 or 3				D
Additional Product Systems Pool: Set price level using quantity from Group 4				D

¹ Additional Products may be included on the order, but are not selected on this form.

² Windows Intune Add-on requires purchase of Windows OS Upgrade or Windows VDA.

³ MDOP requires purchase of Windows OS Upgrade, Windows VDA, or Windows Intune.

5. **Azure GCC Amendment M271**

Enterprise Enrollment Azure Government-branded Services Amendment ID (CTM)

Enrollment Number
Microsoft to complete for initial term
Partner to complete for renewal

Proposal ID

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

The entities agree that the Enrollment is amended as follows:

1. Section 1 ("Definitions") of the Enrollment is hereby amended by adding the following:

"Azure Online Services" means any Online Service identified in the Product List as Windows Azure (or Microsoft Azure).

"Azure Government-branded Services" means one or more of the services or features Microsoft makes available to Enrolled Affiliate under this Enrollment and identified at <http://azure.microsoft.com/en-us/regions/#services>, which are provisioned in dedicated multi-tenant data centers for exclusive use by or for the Community.

"Community" means the community consisting of one or more of the following: (1) a Government, (2) an Enrolled Affiliate using Azure Government-branded Services to provide solutions to a Government or a qualified member of the Community, or (3) a Customer with Customer Data that is subject to Government regulations for which Customer determines and Microsoft agrees that the use of Azure Government-branded Services, and not other Azure Online Services, is the appropriate Microsoft service to meet Customer's regulatory requirements.

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

"Federal Agency" means a bureau, office, agency, department or other entity of the United States Government.

"Government" means a Federal Agency, State/Local Entity, or Tribal Entity acting in its governmental capacity.

"State/Local Entity" means (1) any agency of a state or local government in the United States, or (2) any United States county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality established by the laws of Customer's state and located within Customer's state's jurisdiction and geographic boundaries.

"Tribal Entity" means a federally recognized tribal entity eligible for funding and services from the U.S. Department of Interior by virtue of its status as an Indian tribe.

"Use Rights," means, with respect to any licensing program, the use rights or terms of service for each Product and version published for that licensing program at the Volume Licensing Site. The Use Rights for Software are published by Microsoft in the Product Terms at <http://www.microsoft.com/licensing/contracts>. The Use Rights for Online Services are published in the Online Services Terms at <http://www.microsoft.com/licensing/contracts>.

“Volume Licensing Site” means <http://www.microsoft.com/licensing/contracts> or a successor site.

2. The following sentence is added to the end of Section 7(d) of the Enrollment (“Termination for cause”):

In addition, it shall be a breach of this Enrollment if Enrolled Affiliate or any Affiliate in the Enterprise fails to maintain its status as a member of the Community.

3. The following new Section 8 is hereby added to the Enrollment:

8. Azure Government-branded Services

- a. **Terms and conditions applicability.** All terms and conditions applicable to Azure Online Services also apply to Azure Government-branded Services, except as otherwise noted in the Product List and this Amendment.
- b. **Community Use Rights.** Enrolled Affiliate certifies that it is a member of the Community and agrees to use Azure Government-branded Services solely in its capacity as a member of the Community and for the benefit of End Users that are members of the Community. Use of Azure Government-branded Services by an entity that is not a member of the Community or to provide services to non-Community members for non-government purposes is strictly prohibited and could result in termination of Enrolled Affiliate's license(s) for Azure Government-branded Services without notice. Enrolled Affiliate acknowledges that only Community members may use Azure Government-branded Services.
- c. **Use Rights for Azure Government-branded Services.** For Azure Government-branded Services, notwithstanding anything to the contrary in the Use Rights:
 - i. Customer Data will be stored and processed solely within the continental United States.
 - ii. Azure Government-branded Services will be offered only within the United States.
 - iii. Additional European Terms, as set forth in the Use Rights, will not apply.
 - iv. In the event that a Government regulator or other Government body with equivalent legal or regulatory authority over Enrolled Affiliate (“Regulator”) formally requests to access the Azure Government-branded Services operations and controls, Enrolled Affiliate will attempt in good faith to resolve that request directly with the Regulator through use of information and resources Microsoft makes generally available to Customers. Enrolled Affiliate will at all times have access to its Customer Data (but not Customer Data of other Community members) using the standard features of the service and may delegate such access to representatives of the Regulator.
 - v. In the event the Regulator determines that information available through these mechanisms is insufficient to address the Regulator's stated objectives, and provided that Enrolled Affiliate and Microsoft have not otherwise agreed upon an inspection or audit process, upon Enrolled Affiliate's written confirmation that the Regulator has legal or regulatory authority over Enrolled Affiliate to make such a request, Microsoft will provide the Regulator with the opportunity to communicate with Microsoft's auditor at Enrolled Affiliate's expense and, if required by the Regulator, a direct right to examine the Azure Government-branded Services, including examination on premises. Regulator only will be allowed to access information about Enrolled

Affiliate. For clarity, Microsoft and Enrolled Affiliate are committed to working together in good faith to resolve a Regulator request through discussion and interaction between Enrolled Affiliate, Microsoft, and the Regulator. In the event that Enrolled Affiliate and Microsoft have agreed upon a separate inspection or audit process, such process shall apply in lieu of this right.

- vi. In addition, the "Certifications and Audits" section of the Use Rights is replaced with the following:

Microsoft will seek to secure and use commercially reasonable efforts to maintain a provisional Authority to Operate (ATO) from the Federal Risk and Authorization Management Program (FedRAMP) Joint Authorization Board (JAB) or Federal Agency for the Azure Government-branded Services that are listed at <http://azure.microsoft.com/en-us/support/trust-center/compliance/>, but are not provided as "Preview," "Beta," or other pre-release. Such ATO would be based upon the NIST 800-53 Moderate specification. On a confidential need-to-know basis, and subject to Enrolled Affiliate's non-disclosure obligations to Microsoft and additional obligations required by the Government, Microsoft will make the system security plan available to Enrolled Affiliate and/or Government customers, along with other information reasonably requested by Government end customers regarding Microsoft security practices and policies (collectively, the "Security Policy"); provided, however, that Microsoft may redact information from the Security Policy if such information would compromise the security of Microsoft's information technology environment or the confidentiality of any third-party's confidential information. Enrolled Affiliate is solely responsible for reviewing the Security Policy, making an independent determination as to whether the Security Policy meets Customer's requirements, and for ensuring that Enrolled Affiliate's personnel and consultants follow the guidelines they are provided regarding data security.

Except for changes made by this Amendment, the Enrollment identified above remains unchanged and in full force and effect. If there is a conflict between any provision in this Amendment and any provision in the Enrollment identified above, this Amendment shall control.

6. Dynamics CRM Online GCC Amendment M277

Enterprise Enrollment (Indirect) Microsoft Dynamics CRM Online for Government Amendment ID M277

Enrollment Number
Microsoft to complete for initial term
Partner to complete for renewal

Proposal ID

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

1. Section 1 ("Definitions") of the Enrollment is hereby amended by adding the following:

"CRM Online for Government" means the Microsoft Dynamics CRM Online services provisioned in multi-tenant data centers for exclusive use by or for the Community, excluding (1) Microsoft Dynamics CRM for supported devices, which includes but is not limited to Microsoft Dynamics CRM Online services for tablets and/or smartphones; and (2) all separately-branded services made independently available with Dynamics CRM Online. Separately-branded services that may be made available with or in addition to CRM Online for Government are not offered for the exclusive use of the Community. In addition to the Security Policy referred to in Section 7, Technical and configuration information about CRM Online for Government is available in the service documentation located at <http://go.microsoft.com/fwlink/?LinkID=523874>, or a successor location as communicated by Microsoft.

"Community" means the community consisting of one or more of the following: (1) a Government, (2) an Enrolled Affiliate using CRM Online for Government to provide solutions to a Government or a qualified member of the Community, or (3) an Enrolled Affiliate with Customer Data that is subject to Government regulations for which the Enrolled Affiliate determines the use of CRM Online for Government is the appropriate Microsoft service to meet the Enrolled Affiliate's regulatory requirements.

"Enrollment" means the Enterprise Enrollment Form for State and Local ID# NY001.

"Federal Agency" means a bureau, office, agency, department or other entity of the United States Government.

"Government" means a Federal Agency, State/Local Entity, or Tribal Entity acting in its governmental capacity.

"State/Local Entity" means (1) any agency of a state or local government in the United States, or (2) any United States county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality established by the laws of Customer's state and located within Customer's state's jurisdiction and geographic boundaries.

"Tribal Entity" means a federally recognized tribal entity eligible for funding and services from the U.S. Department of Interior by virtue of its status as an Indian tribe.

"Use Rights" means, with respect to any licensing program, the use rights or terms of service for each Product and version published for that licensing program at the Volume Licensing Site. Use Rights supersede the terms of any end user license agreement (on-screen or otherwise) that accompanies a Product. The Use Rights for Software are published by Microsoft in the Product Terms at <http://www.microsoft.com/licensing/contracts>. The Use Rights for Online Services are published in the Online Services Terms at <http://www.microsoft.com/licensing/contracts>.

"Volume Licensing Site" means <http://www.microsoft.com/licensing/contracts> or a successor site.

2. The following sentence is added to the end of Section 6(d) of the Enrollment ("Termination for cause"):

In addition, it shall be a breach of this Enrollment if Enrolled Affiliate or any Affiliate in the Enterprise that is not a Government fails to maintain its status as a member of the Community.

3. The following new Section 7 is hereby added to the Enrollment:

7. CRM Online for Government

- a. Terms and conditions applicability.** All terms and conditions applicable to Dynamics CRM Online Services also apply CRM Online for Government, except as otherwise noted in the Product Terms and this Amendment.
- b. Community Use Rights.** Enrolled Affiliate certifies that it is a member of the Community and agrees to use CRM Online for Government solely in its capacity as a member of the Community and for the benefit of end users that are members of the Community. Use of CRM Online for Government by an entity that is not a member of the Community or to provide services to non-Community members is strictly prohibited and could result in termination of Enrolled Affiliate's license(s) for CRM Online for Government. Enrolled Affiliate acknowledges that only Community members may use CRM Online for Government.
- c. Use Rights for CRM Online for Government.** For CRM Online for Government, notwithstanding anything to the contrary in the Use Rights:
- (i) Customer Data will be stored and processed solely within the continental United States.
 - (ii) CRM Online for Government will be offered only within the United States.
 - (iii) Additional European Terms, as set forth in the Use Rights, will not apply.
 - (iv) In the event that a Government regulator or other Government body with equivalent legal or regulatory authority over an Enrolled Affiliate ("Regulator") formally requests to access the CRM Online for Government operations and controls, Enrolled Affiliate will attempt in good faith to resolve that request directly with the Regulator through use of information and resources Microsoft makes generally available to customers. Enrolled Affiliate will at all times have access to its Customer Data (but not Customer Data of other Community members) using the standard features of the service and may delegate such access to representatives of the Regulator.
 - (v) In the event the Regulator determines that information available through these mechanisms is insufficient to address the Regulator's stated objectives, and provided that Enrolled Affiliate and Microsoft have not otherwise agreed upon an inspection or audit process, upon Enrolled Affiliate's written confirmation that the Regulator has legal or regulatory authority over Enrolled Affiliate to make such a request, Microsoft will provide the Regulator with the opportunity to communicate with Microsoft's auditor at Customer's expense and, if required by the Regulator, a direct right to examine the Azure Government Services, including examination on premises. Regulator only will be allowed to access information about Enrolled Affiliate. For clarity, Microsoft and Enrolled Affiliate are committed to working together in good faith to resolve a Regulator request through discussion and interaction between Enrolled Affiliate, Microsoft, and the Regulator. In the event that Enrolled Affiliate and Microsoft have agreed upon a separate inspection or audit process, such process shall apply in lieu of this right.
 - (vi) In addition, the "Certifications and Audits" section of the Use Rights is replaced with the following:
Microsoft will seek to secure and use commercially reasonable efforts to maintain a provisional Authority to Operate (ATO) from the Federal Risk and Authorization Management Program (FedRAMP) Joint Authorization Board (JAB) or Federal Agency for CRM Online for Government. On a confidential need-to-know basis, and subject to Enrolled Affiliate's non-disclosure obligations to Microsoft and additional obligations required by the Government, Microsoft will make the system security plan available to Enrolled Affiliate and/or Government end customers, along with other information reasonably requested by Government end customers regarding Microsoft security practices and policies (collectively, the "Security Policy"); provided, however, that Microsoft may redact information from the Security Policy or provide a summary

thereof if such information would compromise the security of Microsoft's information technology environment or the confidentiality of any third-party's confidential information. Customer is solely responsible for reviewing the Security Policy, making an independent determination as to whether the Security Policy meets Customer's requirements, and for ensuring that Customer's personnel and consultants follow the guidelines they are provided regarding data security.

Except for changes made by this Amendment, the Enrollment identified above remains unchanged and in full force and effect. If there is a conflict between any provision in this Amendment and any provision in the Enrollment identified above, this Amendment shall control.



7. Business Associate Enterprise Enrollment Amendment

Business Associate Enterprise Enrollment Amendment Amendment ID M176

Proposal ID

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

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

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

1. ***Definitions.***

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

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

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

"Core Platform Services" include only the following features of Windows Azure Services: Cloud Services (web and worker roles), Virtual Machines (including with SQL Server), Storage (Blobs, Tables, Queues), Virtual Network, Traffic Manager, Batch, Web Sites, BizTalk Services, Media Services, Mobile Services, Service Bus, Notification Hub, Workflow Manager, Express Route, Scheduler, Multi-Factor Authentication, Active Directory, Rights Management Service, SQL Database and any other features identified as included on the Microsoft Azure Trust Center.

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

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

"Dynamics CRM Online Services" means Dynamics CRM Online volume licensing SKUs such as DynCRMOnln ALNG SubsVL MVL PerUsr (DSD-00001). Dynamics CRM Online Services does not include the Dynamics CRM Mobile service.

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

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

"Office 365 Online Services" means (a) Exchange Online, Exchange Online Archiving, SharePoint Online, Skype for Business (formerly Lync Online), and Office Online (formerly Office Web Apps) included in Office 365 Plans E1, Government E1 (formerly G1), E3, Government E3 (formerly G3), E4, Government E4 (formerly G4), K1, and K2; and (b) Exchange Online Plans 1, 2, and Kiosk; SharePoint Online Plans 1 and 2; Office Online (formerly Office Web Apps) Plans 1 and 2; and Skype for Business (formerly Lync Online) Plans 1, 2, and 3. Office 365 Online Services do not include Office 365 ProPlus or any separately branded service made available with an Office 365-branded plan or suite.

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

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

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

"Windows Intune Online Services" means the cloud service portion of Windows Intune such as the Windows Intune Add-on Product. It does not include any on-premises software made available with a Windows Intune subscription.

2. Permitted Uses and Disclosures of Protected Health Information.

- a. Performance of the Enrollment for Microsoft Online Services.** Microsoft may Not Use or Disclose Protected Health Information for, or on behalf of, Customer unless explicitly specified in the Enrollment.
- b. Management, Administration, and Legal Responsibilities.** Except as otherwise limited in this Amendment, Microsoft may Use and Disclose Protected Health Information for the proper management and administration of Microsoft and/or to carry out the legal responsibilities of Microsoft, provided that any Disclosure may occur only if: (1) Required by Law; or (2) Microsoft obtains written reasonable assurances from the person to whom the Protected Health Information is Disclosed that it will be held confidentially and Used or further Disclosed only as Required by Law or for the purpose for which it was Disclosed to the person, and the person notifies Microsoft of any instances of which it becomes aware in which the confidentiality of the Protected Health Information has been breached.

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

- a. Microsoft's Responsibilities.** To the extent Microsoft is acting as a Business Associate, Microsoft agrees to the following:
 - (i) Limitations on Use and Disclosure.** Microsoft shall not Use and/or Disclose the Protected Health Information other than as permitted or required by the Enrollment and/or this Amendment or as otherwise Required by Law; provided that any such Use or Disclosure would not violate HIPAA if done by Customer, unless expressly permitted for Business Associates under HIPAA. Microsoft shall make reasonable efforts to Use, Disclose, and/or request the minimum necessary Protected Health Information to accomplish the intended purpose of such Use, Disclosure, or request.
 - (ii) Safeguards.** Microsoft shall: (1) use reasonable and appropriate safeguards to prevent inappropriate Use and Disclosure of Protected Health Information other than as provided for in this Amendment; and (2) comply with the applicable requirements of 45 CFR Part 164 Subpart C of the Security Rule.

(iii) Reporting. Microsoft shall report to Customer: (1) any Use and/or Disclosure of Protected Health Information that is not permitted or required by this Amendment of which Microsoft becomes aware; (2) any Security Incident of which it becomes aware, provided that notice is hereby deemed given for Unsuccessful Security Incidents and no further notice of such Unsuccessful Security Incidents shall be given; and/or (3) any Breach of Customer's Unsecured Protected Health Information that Microsoft may discover (in accordance with 45 CFR § 164.410 of the Breach Notification Rule). Notification of a Breach will be made without unreasonable delay, but in no event more than thirty (30) calendar days after discovery of a Breach. Taking into account the level of risk reasonably likely to be presented by the Use, Disclosure, Security Incident, or Breach, the timing of other reporting will be made consistent with Microsoft's and Customer's legal obligations.

For purposes of this Section, "Unsuccessful Security Incidents" mean, without limitation, pings and other broadcast attacks on Microsoft's firewall, port scans, unsuccessful log-on attempts, denial of service attacks, and any combination of the above, as long as no such incident results in unauthorized access, acquisition, Use, or Disclosure of Protected Health Information. Notification(s) under this Section, if any, will be delivered to contacts identified by Customer pursuant to Section 3b(ii) (Contact Information for Notices) of this Amendment by any means Microsoft selects, including through e-mail. Microsoft's obligation to report under this Section is not and will not be construed as an acknowledgement by Microsoft of any fault or liability with respect to any Use, Disclosure, Security Incident, or Breach.

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

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

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

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

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

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

b. Customer Responsibilities.

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

- (ii) **Contact Information for Notices.** Customer hereby agrees that any reports, notification, or other notice by Microsoft pursuant to this Amendment may be made electronically. Customer shall provide contact information to MSO-HIPAA@microsoft.com or such other location or method of updating contact information as Microsoft may specify from time to time and shall ensure that Customer's contact information remains up to date during the term of this Amendment. Contact information must include name of individual(s) to be contacted, title of individual(s) to be contacted, e-mail address of individual(s) to be contacted, name of Customer organization, and, if available, either contract number or subscriber identification number.
- (iii) **Safeguards and Appropriate Use of Protected Health Information.** Customer is responsible for implementing appropriate privacy and security safeguards to protect its Protected Health Information in compliance with HIPAA. Without limitation, it is Customer's obligation to:
- 1) Not include Protected Health Information in: (1) information Customer submits to technical support personnel or to community support forums; and (2) Customer's address book or directory information. In addition, Microsoft does not act as, or have the obligations of, a Business Associate under HIPAA with respect to Customer Data once it is sent to or from Customer outside Microsoft Online Services over the public Internet.
 - 2) Implement privacy and security safeguards in the systems, applications, and software Customer controls, configures, and uploads into the Microsoft Online Services.

4. Applicability of Amendment.

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

5. Term and Termination.

- a. **Term.** This Amendment shall continue in effect until the earlier of (1) termination by a Party for breach as set forth in Section 5b, below, or (2) expiration of Customer's Enrollment
- b. **Termination for Breach.** Either Party immediately may terminate the Enrollment if the other Party is in material breach or default of any obligation in this Amendment that is not cured within thirty (30) calendar days written notice of such breach or default.
- c. **Return, Destruction, or Retention of Protected Health Information Upon Termination.** Upon expiration or termination of this Amendment, Microsoft shall return or destroy all Protected Health Information in its possession, if it is feasible to do so, and as set forth in the applicable termination provisions of the Product Use Rights and/or Enrollment. If Microsoft determines that it is not feasible to return or destroy any portions of the Protected Health Information upon termination of this Amendment, then Microsoft shall extend the protections of this Amendment, without limitation, to such Protected Health Information and limit any further Use or Disclosure of the Protected Health Information to those purposes that make the return or destruction infeasible for the duration of the retention of the Protected Health Information.

6. Miscellaneous.

- a. Interpretation.** The Parties intend that this Amendment be interpreted consistently with their intent to comply with HIPAA and other applicable federal and state law. Except where this Amendment conflicts with the Enrollment, all other terms and conditions of the Enrollment remain unchanged. The Parties agree that, in the event an inconsistency exists between the Enrollment and this Amendment, the provisions of this Amendment will control to the extent of such inconsistency. Any captions or headings in this Amendment are for the convenience of the Parties and shall not affect the interpretation of this Amendment.
- b. Amendments; Waiver.** This Amendment may not be modified or amended except in a writing duly signed by authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, as a bar to, or as a waiver of any right or remedy as to subsequent events.
- c. No Third Party Beneficiaries.** Nothing express or implied in this Amendment is intended to confer, nor shall anything in this Amendment confer, upon any person other than the Parties, and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.
- d. Counterparts.** This Amendment may be executed in counterparts, each of which shall be deemed an original.
- e. Severability.** In the event that any provision of this Amendment is found to be invalid or unenforceable, the remainder of this Amendment shall not be affected thereby, but rather the remainder of this Amendment shall be enforced to the greatest extent permitted by law.

8. **Business Associate Agreement Amendment**

Enterprise Enrollment – State and Local Amendment ID CTM

Proposal ID

This Enterprise Enrollment Amendment (“Amendment”) is entered into between the entities and as of the effective date identified in the Signature Form. The terms and conditions in this Amendment supersede any conflicting terms and conditions in the Agreement and Enrollment.

Clarifications to HIPAA Business Associates Agreement

The following provisions apply solely with respect to the HIPAA Business Associates Agreement between the entities (“BAA”), as executed concurrent with this Amendment.

Subsection 3(a)(i) of the BAA is amended and restated as follows:

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

9. **Microsoft Online Services Criminal Justice Information Services Amendment**

Enterprise Enrollment – State and Local

Microsoft Online Services Criminal Justice Information Services (CJIS) Amendment

Amendment ID CTM

Proposal ID

This Microsoft Online Services Criminal Justice Information Services (CJIS) Amendment (“Amendment”) is entered into between the customer entity (“Enrolled Affiliate”) and the Microsoft entity (“Microsoft”) identified on the signature form for the Enrollment amended hereby (“Enrollment”), under which Enrolled Affiliate is purchasing Covered Services (as defined below). The entities agree that the Amendment supplements the Enrollment and applies to only the Covered Services Enrolled Affiliate buys under the Enrollment.

Defined Terms.

Capitalized terms used but not defined in this Amendment will have the meanings provided in the Agreement. The following definitions are used in this Amendment:

- (1) **“Covered Services”** means Exchange Online, SharePoint Online, Exchange Online Archiving, Exchange Online Protection, and Office Online (formerly Office Web Apps), only when purchased as part of Office 365 Government Plans Government E1 (formerly, G1), Government E3 (formerly G3), Government E4 (formerly G4), and Government K1, or as standalone Government Community Cloud plans. Without limitation, Covered Services do not include Office 365 ProPlus, Skype for Business (formerly Lync Online) or other Office 365-branded or separately branded Online Services.

“CSA” means the New York State Police, or a successor agency as determined by the State of New York, acting in its capacity as the CJIS Systems Agency for the State of New York.

“End User” means an individual that accesses the Covered Services.

Term and Conditions.

1. CJIS Security Addendum

The Covered Services are multi-tenant cloud services offered as a “community cloud” as defined in the National Institute of Standards and Technology (NIST) Special Publication 800-145. Subject to the Agreement, this Amendment, and agreement reached with the CSA, Microsoft will deliver the Covered Services subject to the CJIS Security Addendum as set forth in the CJIS Policy, version 5.4, dated October 6, 2015 or its successor policy.

2. Role of CSA

At the CSA’s request, Microsoft will enter into an agreement with the CSA, including the CJIS Security Addendum, to facilitate use of Covered Services by public entities in the State of New York that are subject to the Criminal Justice Information Services (CJIS) Security Policy. Enrolled Affiliate will rely on the CSA, acting in its capacity as the CJIS Systems Officer (CSO) for the State of New York, to perform personnel screening of Microsoft personnel engaged in the delivery of the Covered Services and to exercise certain other functions under the CJIS Policy as described in this Amendment.

3. Enrolled Affiliate Responsibilities

- 3.1** Enrolled Affiliate acknowledges that the Covered Services enable End Users optionally to access and use a variety of additional resources, applications, or services that are (a) provided by third parties, or (b) provided by Microsoft subject to their own terms of use or privacy policies (collectively, for convenience, “add-ons”), as described in services documentation and/or in the portal through which Enrolled Affiliate’s administrator(s) will manage and configure the Covered Services.
- 3.2** Enrolled Affiliate is responsible to review Office 365 services documentation and CJIS implementation guidance. Enrolled Affiliate is responsible to establish, adopt and implement such policies and practices for its End Users’ use of Covered Services, together with any add-ons, as Enrolled Affiliate determines are appropriate to ensure Enrolled Affiliate’s compliance with the CJIS Policy or other legal or regulatory requirements applicable to Enrolled Affiliate and not generally applicable to Microsoft as an IT service provider. Enrolled Affiliates’ compliance with the CJIS Policy will be dependent, in part, upon Enrolled Affiliate’s configuration of the services and Enrolled Affiliate’s compliance with authoritative guidance from sources other than Microsoft (e.g., NCIC 2000 Operating Manual). Enrolled Affiliate is responsible to confirm the Covered Services environment is prepared and appropriate for CJI prior to its processing or storing such data in the Covered Services.
- 3.3** Enrolled Affiliate acknowledges that only Covered Services will be delivered subject to the terms of this Amendment. Microsoft does not recommend processing and storage of Criminal Justice Information (“CJI,” as such term is defined in Appendix A to the CJIS Policy) in other services. Without limiting the foregoing, data that Enrolled Affiliate elects to provide to the Microsoft technical support organization, if any, or data provided by or on behalf of Enrolled Affiliate to Microsoft’s billing or commerce systems in connection with purchasing/ordering Covered Services, if any, is not subject to the provisions of this Amendment or the CJIS Addendum.

4. Approach to Compliance with CJIS Security Policy

This Section 4 contains additional information about how certain requirements of the CJIS Policy will be fulfilled. For convenient reference, provisions are numbered to conform to section numbering in the CJIS Policy (ver. 5.4, dated October 6, 2015). Microsoft and Enrolled Affiliate will each rely on the CSA to perform certain functions as described below, and Enrolled Affiliate is responsible to confirm the approach with the CSA to the extent Enrolled Affiliate deems appropriate.

4.1 CJIS Section 5.2 Policy Area 2: Security Awareness Training

Microsoft will supplement its existing security training program as required to meet the requirements of Section 5.2 of the CJIS Policy. Required training will be delivered to personnel identified as in scope for CJIS Personnel Screening within six (6) months of the later of (1) the date the first customer in the State of New York who is a purchaser of Covered Services subject to this Amendment (or a similar amendment executed by the applicable Enrolled Affiliate) notifies Microsoft it is introducing CJI into the Covered Services, or (2) the date the CSA notifies Microsoft that personnel have passed required personnel screening. Microsoft will refresh training for in scope personnel on at least a biennial basis thereafter.

Microsoft will maintain training records, which will be available to the CSA upon written request.

4.2 CJIS Section 5.3 Policy Area 3: Incident Response

In the event of an information security incident affecting the Covered Services, Microsoft will address such incident with Enrolled Affiliate as follows:

- (a) If Microsoft becomes aware of any unlawful access to any Customer Data stored on Microsoft's equipment or in Microsoft's facilities, or unauthorized access to such facilities or equipment resulting in loss, disclosure or alteration of Customer Data (each a "Security Incident"), Microsoft will promptly: (i) notify Enrolled Affiliate of the Security Incident; (ii) investigate the Security Incident and provide Enrolled Affiliate with detailed information about the Security Incident; and (iii) take reasonable steps to mitigate the effects and to minimize any damage resulting from the Security Incident.
- (b) An unsuccessful Security Incident will not be subject to this Section. An "Unsuccessful Security Incident" is one that results in no unauthorized access to Customer Data or to any Microsoft equipment or facilities storing Customer Data, and may include, without limitation, pings and other broadcast attacks on firewalls or edge servers, port scans, unsuccessful log-on attempts, denial of service attacks, packet sniffing (or other unauthorized access to traffic data that does not result in access beyond IP addresses or headers) or similar incidents.
- (c) Microsoft's obligation to report or respond to a Security Incident is not and will not be construed as an acknowledgement by Microsoft of any fault or liability with respect to the Security Incident.
- (d) Notification of Security Incidents, if any, will be delivered to one or more of Enrolled Affiliate's administrators by any means Microsoft selects, including via email. It is Enrolled Affiliate's sole responsibility to ensure Enrolled Affiliate's administrators maintain accurate contact information on the Online Services portal at all times.
- (e) Effective investigation or mitigation of a Security Incident may be dependent upon information or services configurations within Enrolled Affiliate's control. Accordingly, compliance with CJIS Policy Incident Response requirements will be a joint obligation of Microsoft and Enrolled Affiliate.
- (f) In the event Microsoft reasonably anticipates that a Security Incident may require legal action against involved individual(s), or where the Security Incident involves either civil or criminal action, Microsoft will conduct its investigative activities under guidance of legal staff and in accordance with general evidentiary principles, to the extent consistent with the primary incident response objectives of containing, resolving, and mitigating the impact of a Security Incident to customers including Enrolled Affiliate.

4.3 CJIS Section 5.11 Policy Area 11: Formal Audits

- (a) Audits by FBI CJIS Division. In the event the FBI CJIS Division desires to perform an audit of the Office 365 Services, Microsoft will cooperate with such audit in good faith. The FBI may be permitted to access Customer Data belonging to Enrolled Affiliate in connection with such audit, but not data belonging to other customers in the multi-tenant environment from which the Covered Services are delivered. If the FBI identifies what it believes to be deficiencies in the Covered Services as a result of an audit, Microsoft is committed to working in good faith to resolve the FBI's concerns through discussion and interaction between Microsoft, the CSA, and the FBI. Enrolled Affiliate will assist in this process if and as requested, but will otherwise rely on the CSA to act on behalf of all similarly situated entities that have purchased the Covered Services.
- (b) Audits by Enrolled Affiliate. In the event that Enrolled Affiliate desires to audit the Covered Services pursuant to the CJIS Policy, Enrolled Affiliate appoints the CSA to act on Enrolled Affiliate's behalf to conduct such audit activities, and Enrolled Affiliate agrees to rely on the CSA's audit in full satisfaction of any right to audit the Covered Services.

Enrolled Affiliate acknowledges the CSA will exercise this right by attempting to satisfy its requirements for information via reference to Microsoft's services documentation, including audit reports prepared by Microsoft's qualified third party auditors. Along with other customers for the Covered Services, the CSA will be provided quarterly access to information generated by Microsoft's regular monitoring of security, privacy, and operational controls in place to afford applicable customers an ongoing view into effectiveness of such controls, and the CSA may communicate with Microsoft subject matter experts. In the event the CSA reasonably determines this information is not sufficient for the CSA's or Enrolled Affiliate's audit objectives, then, upon the CSA's written request, Microsoft will provide the CSA or its qualified third party auditor the opportunity to communicate with Microsoft's auditor at the CSA's or Enrolled Affiliate's expense and, if required, a direct right to examine the Covered Services, including examination on premises. The CSA or its auditor may only access data belonging to Enrolled Affiliate or other entities in the State of New York that have purchased the Covered Services and rely on the CSA for purposes of audit.

- (c) Confidentiality of Audit Materials. Information provided by Microsoft to the FBI CJIS Division or CSA in connection with audit activities will consist of highly confidential proprietary or trade secret information of Microsoft. It is not expected that Enrolled Affiliate will require access to such information, and Microsoft may request reasonable assurances, written or otherwise, that information will be maintained as confidential and/or trade secret prior to providing such information to Enrolled Affiliate. If provided, Enrolled Affiliate will ensure Microsoft's audit materials, or report(s) created by Enrolled Affiliate based on a CSA audit of the Covered Services, are afforded the highest level of confidentiality available under applicable law.

4.4 CJIS Section 5.12 Policy Area 12: Personnel Security

- (a) Enrolled Affiliate appoints the CSA to perform, and will rely upon CSA's completion of, personnel screening (i.e., background checks) for personnel in scope pursuant to Section 5.12 of the CJIS Policy. Enrolled Affiliate is responsible to confirm directly with the CSA that such personnel screening as the CSA or Enrolled Affiliate determines is required has been completed prior to initial processing of CJI Data in the Covered Services. Screening will be performed by the CSA on behalf of all entities in the State of New York that onboard to the Covered Services. Adjudication by Enrolled Affiliate or other counties, cities, or other subdivisions or agencies of state government will not be permitted. To facilitate efficient and effective personnel screening:

- The CSA will define adjudication criteria for personnel screening.
- Microsoft and the CSA will jointly define the process by which Microsoft will deliver to the CSA relevant information regarding personnel who may in the anticipated scope of their duties have logical or physical access to CJI in the Covered Services.
- It is not anticipated that the CSA will deliver to Enrolled Affiliate confidential personal information pertaining to Microsoft personnel. However, if Enrolled Affiliate receives such confidential personal information it will be afforded the highest level of confidentiality available under applicable law.
- If Enrolled Affiliate elects to obtain services from Microsoft in addition to the Covered Services (e.g. consulting services in connection with Enrolled Affiliates' migration and onboarding to the Covered Services), such personnel will not be included in scope for personnel screening by the CSA unless separately agreed by Enrolled Affiliate, the CSA, and Microsoft.

- (b) In the event the CSA approves a process under which a federal law enforcement agency or other suitable body conducts screening of personnel who have access to Customer Data in the Covered Services compliant with requirements of the CJIS Policy in lieu of CSA-conducted screening, Enrolled Affiliate will abide by the CSA's approval of personnel screening being conducted in this manner.

4.5 NCIC 2000 Operating Manual

Enrolled Affiliate acknowledges that the current NCIC 2000 Operating Manual consists of guidance and/or requirements for Enrolled Affiliate's use of the Covered Services. In the event Enrolled Affiliate determines the NCIC 2000 Operating Manual imposes obligations with respect to the Covered Services that can, in Enrolled Affiliate's opinion, only be satisfied via changes in the manner in which the Covered Services are operated or delivered to Enrolled Affiliate, Enrolled Affiliate may request that the CSA provide Microsoft with written notification of the specific changes it believes are required of Microsoft in order to enable Enrolled Affiliate's compliance with the NCIC 2000 Operating Manual, and Microsoft agrees to consider any such request(s) relayed to Microsoft by the CSA in good faith.

4.6 Notices

Any notices in connection with the Covered Services will be delivered to Enrolled Affiliate by Microsoft. Enrolled Affiliate will determine whether these or any other notices regarding the Covered Services are required to be delivered to the FBI, CJIS Division, as contemplated in Section 6.05 of the Security Addendum and, if required, deliver such notices.

Appendix L

The following Enrollment for Education Solutions amendment is included for reference. The terms and conditions of the document included below are not binding unless it is signed as part of an Enrollment for Education Solutions.

1. Business Associate Enrollment for Education Solutions Amendment, EES16

Business Associate Enrollment for Education Solutions Amendment Amendment ID EES16

Proposal ID

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

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

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

1. **Definitions.**

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

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

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

"Core Platform Services" include only the following features of Azure Online Services: Cloud Services (web and worker roles), Virtual Machines (including with SQL Server), Storage (Blobs, Tables, Queues), Virtual Network, Traffic Manager, Batch, Web Sites, BizTalk Services, Media Services, Mobile Services, Service Bus, Notification Hub, Workflow Manager, Express Route, Scheduler, Multi-Factor Authentication, Active Directory, Rights Management Service, SQL Database and any other features identified as included on the Microsoft Azure Trust Center.

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

"Institution" means the Institution identified on the signature form.

"Dynamics CRM Online Services" means Dynamics CRM Online volume licensing SKUs such as DynCRMOnIn ALNG SubsvL MVL PerUsr (DSD-00001). Dynamics CRM Online Services does not include the Dynamics CRM Mobile service.

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

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

"Office 365 Online Services" means (a) Exchange Online, Exchange Online Archiving, SharePoint Online, Skype for Business (formerly Lync Online), and Office Online (formerly Office Web Apps) included in Office 365 Plans Education E1 (formerly A1), Education E3 (formerly A3), Education E4 (formerly A4), K1, and K2; and (b) Exchange Online Plans 1, 2, and Kiosk; SharePoint Online Plans 1 and 2; Office Online (formerly Office Web Apps) Plans 1 and 2; and Skype for Business (formerly Lync Online) Plans 1, 2, and 3. Office 365 Online Services do not include Office 365 ProPlus or any separately branded service made available with an Office 365-branded plan or suite.

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

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

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

"Windows Intune Online Services" means the cloud service portion of Windows Intune such as the Windows Intune Add-on Product. It does not include any on-premises software made available with a Windows Intune subscription.

2. Permitted Uses and Disclosures of Protected Health Information.

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

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

- a. **Microsoft's Responsibilities.** To the extent Microsoft is acting as a Business Associate, Microsoft agrees to the following:
 - (i) **Limitations on Use and Disclosure.** Microsoft shall not Use and/or Disclose the Protected Health Information other than as permitted or required by the Enrollment and/or this Amendment or as otherwise Required by Law; provided that any such Use or Disclosure would not violate HIPAA if done by Institution, unless expressly permitted for Business Associates under HIPAA. Microsoft shall make reasonable efforts to Use,

Disclose, and/or request the minimum necessary Protected Health Information to accomplish the intended purpose of such Use, Disclosure, or request.

- (ii) **Safeguards.** Microsoft shall: (1) use reasonable and appropriate safeguards to prevent inappropriate Use and Disclosure of Protected Health Information other than as provided for in this Amendment; and (2) comply with the applicable requirements of 45 CFR Part 164 Subpart C of the Security Rule.
- (iii) **Reporting.** Microsoft shall report to Institution: (1) any Use and/or Disclosure of Protected Health Information that is not permitted or required by this Amendment of which Microsoft becomes aware; (2) any Security Incident of which it becomes aware, provided that notice is hereby deemed given for Unsuccessful Security Incidents and no further notice of such Unsuccessful Security Incidents shall be given; and/or (3) any Breach of Institution's Unsecured Protected Health Information that Microsoft may discover (in accordance with 45 CFR § 164.410 of the Breach Notification Rule). Notification of a Breach will be made without unreasonable delay, but in no event more than thirty (30) calendar days after discovery of a Breach. Taking into account the level of risk reasonably likely to be presented by the Use, Disclosure, Security Incident, or Breach, the timing of other reporting will be made consistent with Microsoft's and Institution's legal obligations.

For purposes of this Section, "Unsuccessful Security Incidents" mean, without limitation, pings and other broadcast attacks on Microsoft's firewall, port scans, unsuccessful log-on attempts, denial of service attacks, and any combination of the above, as long as no such incident results in unauthorized access, acquisition, Use, or Disclosure of Protected Health Information. Notification(s) under this Section, if any, will be delivered to contacts identified by Institution pursuant to Section 3b(ii) (Contact Information for Notices) of this Amendment by any means Microsoft selects, including through e-mail. Microsoft's obligation to report under this Section is not and will not be construed as an acknowledgement by Microsoft of any fault or liability with respect to any Use, Disclosure, Security Incident, or Breach.

- (iv) **Subcontractors.** In accordance with 45 CFR §§ 164.502(e)(1)(ii) and 164.308(b)(2) of HIPAA, Microsoft shall require its Subcontractors who create, receive, maintain, or transmit Protected Health Information on behalf of Microsoft to agree in writing to: (1) the same or more stringent restrictions and conditions that apply to Microsoft with respect to such Protected Health Information; (2) appropriately safeguard the Protected Health Information; and (3) comply with the applicable requirements of 45 CFR Part 164 Subpart C of the Security Rule.
- (v) **Disclosure to the Secretary.** Microsoft shall make available its internal practices, records, and books relating to the Use and/or Disclosure of Protected Health Information received from Institution to the Secretary of the Department of Health and Human Services for purposes of determining Institution's compliance with HIPAA, subject to attorney-client and other applicable legal privileges.
- (vi) **Access.** If Microsoft maintains Protected Health Information in a Designated Record Set for Institution, then Microsoft, at the request of Institution, shall make access to such Protected Health Information available to Institution in accordance with 45 CFR § 164.524 of the Privacy Rule.
- (vii) **Amendment.** If Microsoft maintains Protected Health Information in a Designated Record Set for Institution, then Microsoft, at the request of Institution, shall make available such Protected Health Information to Institution for amendment and incorporate any reasonably requested amendment in the Protected Health Information in accordance with 45 CFR § 164.526 of the Privacy Rule.
- (viii) **Accounting of Disclosure.** Microsoft, at the request of Institution, shall make available to Institution such information relating to Disclosures made by Microsoft as required for Institution to make any requested accounting of Disclosures in accordance with 45 CFR § 164.528 of the Privacy Rule.
- (ix) **Performance of a Covered Entity's Obligations.** To the extent Microsoft is to carry out a Covered Entity obligation under the Privacy Rule, Microsoft shall comply with the

requirements of the Privacy Rule that apply to Institution in the performance of such obligation.

b. Institution Responsibilities.

- (i) **No Impermissible Requests.** Institution shall not request Microsoft to Use or Disclose Protected Health Information in any manner that would not be permissible under HIPAA if done by a Covered Entity (unless permitted by HIPAA for a Business Associate).
- (ii) **Contact Information for Notices.** Institution hereby agrees that any reports, notification, or other notice by Microsoft pursuant to this Amendment may be made electronically. Institution shall provide contact information to MSO-HIPAA@microsoft.com or such other location or method of updating contact information as Microsoft may specify from time to time and shall ensure that Institution's contact information remains up to date during the term of this Amendment. Contact information must include name of individual(s) to be contacted, title of individual(s) to be contacted, e-mail address of individual(s) to be contacted, name of Institution organization, and, if available, either contract number or subscriber identification number.
- (iii) **Safeguards and Appropriate Use of Protected Health Information.** Institution is responsible for implementing appropriate privacy and security safeguards to protect its Protected Health Information in compliance with HIPAA. Without limitation, it is Institution's obligation to:
 - 1) Not include Protected Health Information in: (1) information Institution submits to technical support personnel or to community support forums; and (2) Institution's address book or directory information. In addition, Microsoft does not act as, or have the obligations of, a Business Associate under HIPAA with respect to Institution Data once it is sent to or from Institution outside Microsoft Online Services over the public Internet.
 - 2) Implement privacy and security safeguards in the systems, applications, and software Institution controls, configures, and uploads into the Microsoft Online Services.

4. Applicability of Amendment.

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

5. Term and Termination.

- a. **Term.** This Amendment shall continue in effect until the earlier of (1) termination by a Party for breach as set forth in Section 5b, below, or (2) expiration of Institution's Enrollment
- b. **Termination for Breach.** Either Party immediately may terminate the Enrollment if the other Party is in material breach or default of any obligation in this Amendment that is not cured within thirty (30) calendar days written notice of such breach or default.
- c. **Return, Destruction, or Retention of Protected Health Information Upon Termination.** Upon expiration or termination of this Amendment, Microsoft shall return or destroy all Protected Health Information in its possession, if it is feasible to do so, and as set forth in the applicable termination provisions of the Product Use Rights and/or Enrollment. If

Microsoft determines that it is not feasible to return or destroy any portions of the Protected Health Information upon termination of this Amendment, then Microsoft shall extend the protections of this Amendment, without limitation, to such Protected Health Information and limit any further Use or Disclosure of the Protected Health Information to those purposes that make the return or destruction infeasible for the duration of the retention of the Protected Health Information.

6. **Miscellaneous.**

- a. **Interpretation.** The Parties intend that this Amendment be interpreted consistently with their intent to comply with HIPAA and other applicable federal and state law. Except where this Amendment conflicts with the Enrollment, all other terms and conditions of the Enrollment remain unchanged. The Parties agree that, in the event an inconsistency exists between the Enrollment and this Amendment, the provisions of this Amendment will control to the extent of such inconsistency. Any captions or headings in this Amendment are for the convenience of the Parties and shall not affect the interpretation of this Amendment.
- b. **Amendments; Waiver.** This Amendment may not be modified or amended except in a writing duly signed by authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, as a bar to, or as a waiver of any right or remedy as to subsequent events.
- c. **No Third Party Beneficiaries.** Nothing express or implied in this Amendment is intended to confer, nor shall anything in this Amendment confer, upon any person other than the Parties, and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.
- d. **Counterparts.** This Amendment may be executed in counterparts, each of which shall be deemed an original.
- e. **Severability.** In the event that any provision of this Amendment is found to be invalid or unenforceable, the remainder of this Amendment shall not be affected thereby, but rather the remainder of this Amendment shall be enforced to the greatest extent permitted by law.

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