

Select Plus License Program Agreement State and Local

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

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

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

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

Terms and Conditions

1. Definitions.

In this agreement the following definitions apply:

“Affiliate” means

a. with regard to Customer

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

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

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

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

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

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

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

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

"Customer Data" means all data, including all text, sound, 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 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 entity that has entered into this agreement by accepting Customer's registration;

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

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

"Product" means all software, Online Services and other web-based services, including pre-release or beta versions, identified on the Product List.

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

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

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

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

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

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

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

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

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

2. How the Select Plus License program works.

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

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.*

Choosing and maintaining a Reseller. Each Registered Affiliate must choose and maintain a Reseller authorized in the Registered Affiliate’s region.

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 price level for each pool will be based on the points accumulated (1) for all Orders in that pool from all Registered Affiliates, or (2) via the Qualifying Contract or (3) during the 12 months preceding the effective date of this Agreement. The Customer’s price level for a pool applies to purchases made by all Registered Affiliates under this agreement. The price Microsoft will invoice Reseller will be based on Customer’s price level for the pool of the Product ordered. Customer’s price level will be set to price level “D”. *Throughout this agreement the term “price” refers to reference price.*

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

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

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

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

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

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

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

- d. **Perpetual Licenses through Software Assurance.** Any perpetual Licenses received through Software Assurance supersede and replace the underlying perpetual Licenses for which that Software Assurance coverage was ordered. All perpetual Licenses acquired under this agreement remain subject to the terms of this agreement and the applicable Product Use Rights.
- e. **Non-Perpetual Licenses.** Some Products may be licensed on a fixed term or subscription basis. The right to Use Products licensed on a subscription basis terminates upon expiration of the subscription agreement if it is not renewed.
- f. **License confirmation.** This agreement, the applicable Order, the Registered Affiliate's Order confirmation, and any documentation evidencing transfers of Licenses, together with proof of payment, will be the Registered Affiliate's evidence of all Licenses obtained under its Order as described in this agreement.
- g. **Prior version rights.** A Registered Affiliate may run prior versions of any Product it Licenses under this agreement. A Registered Affiliate may run different language versions of any Product it Licenses under this agreement, provided that the License, L&SA, or Software Assurance for that different language version is available at the same, or lower price, than the price paid for the language version ordered of the same Product and License type.

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

- a. **Product Use Rights.** Microsoft publishes Product Use Rights for each version of each Product. The latest version of the Product Use Rights is available at <http://www.microsoft.com/licensing/contracts>.
 - (i) **Product Use Rights for current and future versions of Products.** The Product Use Rights in effect on the effective date of the agreement will apply to all Registered Affiliates' use of then-current versions of each Product, regardless of the date of the Order. For future versions, the Product Use Rights in effect when those future versions are first released will apply. In both cases, subsequent changes made by Microsoft to the Product Use Rights for a particular version will not apply to Registered Affiliates' use of that version.
 - (ii) **Product Use Rights for earlier versions (downgrade).** If a Registered Affiliate runs an earlier version of a Product than the version that was current on the agreement effective date, the Product Use Rights for the version licensed, not the version being run, will apply. However, if the earlier version includes components that are not part of the

licensed version, any Product Use Rights specific to those components will apply to the Registered Affiliate's use of those components.

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

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

6. How to order Product Licenses.

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

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

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

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

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

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

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

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

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

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

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

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

8. Transferring and reassigning Licenses.

- a. **Transferring Licenses to third parties.** License transfers are not permitted, except as explicitly set for in this section.
 - (i) **Right to transfer.** Registered Affiliate may transfer fully-paid perpetual Licenses to (1) another Registered Affiliate, or to (2) an unaffiliated third party in connection with a privatization of an Affiliate or of an operating division of the Registered Affiliate or one of its Affiliates, reorganization or a 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 privatization, reorganization, or consolidation the following types of transfers are not permitted:

- 1) Licenses on a short-term basis (90 days or less);
- 2) temporary rights to use Products;
- 3) Software Assurance coverage;
- 4) 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;
- 5) 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;
- 6) full version desktop operating system Licenses, unless transferred with the sale of the device for which it operates;
- 7) any Software Assurance benefits or Online Services products; or
- 8) any Licenses for resale to unaffiliated third parties.

(iii) No resale. Resale of Licenses including any transfers by a Registered Affiliate to its Affiliate with the 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 upgrade. For Products other than the desktop operating system upgrade, Registered Affiliate may internally reassign Licenses to an Affiliate. However, Registered Affiliate may not reassign Licenses on a short-term basis (90 days or less), or reassign Software Assurance or other upgrade coverage separately from the underlying License, except as provided otherwise in this agreement.

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

9. Term and termination.

- a. Term.** This agreement will remain in effect unless it is terminated by either party as described below.
- b. Termination without cause.** Either party may terminate this agreement without cause upon 60 days written notice. Such termination will merely terminate either party's and its Registered Affiliates' ability to place Orders under this agreement. Such termination will not affect any Orders not otherwise terminated, and any terms of this agreement applicable to any Orders not otherwise terminated will continue in effect with respect to that Order.
- c. Termination for breach.** Either party to an Order may terminate it if the other party materially breaches its obligations under this agreement, including any obligation to pay amounts owed (even if such non-payment is caused by non-appropriation of funds). Except

where the breach is by its nature not curable within 30 days, the terminating party must give the other party 30 days' notice and opportunity to cure. If Microsoft gives such notice to a Registered Affiliate, Microsoft will give Customer a copy of that notice as well and Customer agrees to assist in attempting to resolve the problem. If the problem also affects other Affiliate registrations and cannot be resolved between Customer and Microsoft within a reasonable period of time, Microsoft may also terminate this agreement and all other Affiliate registrations under it, unless the basis for termination of the registration is non-appropriation of funds to the registered affiliate, in which event Microsoft may only terminate the affected registration(s). If a Registered Affiliate ceases to be an Affiliate of Customer, Customer must promptly notify Microsoft of this fact, and Microsoft may terminate the divested Registered Affiliate's registration.

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

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

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

10. How to renew an Order.

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

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

Consequences of non-renewal. If Registered Affiliate elects not to place another Order for Software Assurance and it otherwise allows Software Assurance for any copies of any Products licensed to lapse,

then the Registered Affiliate will not be permitted to order Software Assurance for those copies later without first acquiring L&SA.

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

11. Restrictions on use.

Registered Affiliate must not:

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

12. Confidentiality.

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

13. Warranties.

- a. **Limited warranty.** Microsoft warrants that:
 - (i) Online Services will perform in accordance with the applicable Service Level Agreement;
 - (ii) Products other than Online Services will perform substantially as described in the applicable Microsoft user documentation; and
- b. **Limited warranty term.** The limited warranty for:
 - (i) Online Services is for the duration of Customer's use of the Online Service, subject to the notice requirements in the applicable Service Level Agreement;
 - (ii) Products other than Online Services is one year from the date Customer first uses the Product; and
- c. **Limited warranty exclusions.** This limited warranty is subject to the following limitations:
 - (i) any implied warranties, guarantees or conditions not able to be disclaimed as a matter of law last for one year from the start of the limited warranty;
 - (ii) the limited warranty does not cover problems caused by accident, abuse or use in a manner inconsistent with this agreement or the Product Use Rights, or resulting from events beyond Microsoft's reasonable control;
 - (iii) the limited warranty does not apply to components of Products that Customer is permitted to redistribute;
 - (iv) the limited warranty does not apply to free, trial, pre-release, or beta products; and
 - (v) the limited warranty does not apply to problems caused by the failure to meet minimum system requirements.

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

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

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

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

14. *Defense of infringement and misappropriation 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 intentional 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 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, code, or materials provided by Customer as part of the use of an Online Service;
- (ii) Customer's use of the Product or Fix after Microsoft notifies it to discontinue that use due to a third party claim;
- (iii) Customer's combination of the Product or Fix with a non-Microsoft product, data or business process;
- (iv) damages attributable to the value of the use of a non-Microsoft product, data or business process;
- (v) modifications that Customer makes to the Product or Fix;
- (vi) Customer's redistribution of the Product, or Fix to, or its use for the benefit of, any unaffiliated third party, except as expressly permitted by a Supplemental Agreement or the Product Use Rights;
- (vii) Customer's use of Microsoft's trademark(s) without express written consent to do so; or
- (viii) any Trade Secret claim, where Customer acquires the Trade Secret (1) through improper means; (2) under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (3) from a person (other than Microsoft or its Affiliates) who owed to the party asserting the claim a duty to maintain the secrecy or limit the use of the Trade Secret.

Customer will reimburse Microsoft for any costs or damages that result from any of these actions.

c. Specific rights and remedies in case of infringement.

- (i) **Microsoft's rights in addressing possible infringement.** If Microsoft receives information concerning an infringement claim related to a Product or Fix, Microsoft may, at its expense and without obligation to do so, either:
- 1) procure for Customer the right to continue to use the allegedly infringing Product or Fixes, or
 - 2) modify the Product or Fix, or replace it with a functional equivalent, to make it non-infringing, in which case Customer will immediately cease use of the allegedly infringing Product or Fix after receiving notice from Microsoft.
- (ii) **Customer's specific remedy in case of injunction.** If, as a result of an infringement claim, Customer's use of a Product or Fix that is made available by Microsoft for a fee is enjoined by a court of competent jurisdiction, Microsoft will, at its option:
- 1) procure the right to continue its use;
 - 2) replace it with a functional equivalent;
 - 3) modify it to make it non-infringing; or
 - 4) refund the amount paid (or, for Online Services, refund any amounts paid in advance for unused Online Services) and terminate the license or right to access the infringing Product or Fix.

d. Customer's agreement to protect. Customer will defend Microsoft against any claims made by an unaffiliated third party that:

- (i) any Customer Data or non-Microsoft software Microsoft hosts on Customer's behalf infringes the third party's patent, copyright, or trademark or makes intentional unlawful use of its Trade Secret; or
- (ii) arise from Customer's or its end user's violation of the terms of this agreement.

Customer must pay the amount of any resulting adverse final judgment (or settlement to which Customer consents). This section provides Microsoft's exclusive remedy for these claims.

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.

15. Limitation of liability.

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

- (i) Microsoft's and Customer's obligations under the section titled "Defense of infringement, misappropriation, and third party claims";

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

16. **Verifying compliance.**

- a. **Right to verify compliance.** Customer must keep records relating to the Products it and its Affiliates use or distribute. Microsoft has the right, to the extent permitted by applicable law, to verify compliance with the license terms for the Products, at Microsoft's expense.
- b. **Verification process and limitations.** To verify compliance, Microsoft will engage an independent auditor, which will be subject to a confidentiality obligation. Verification will take place upon not fewer than 30 days' notice, during normal business hours and in a manner that does not interfere unreasonably with Customer's operations. Customer must promptly provide the independent auditor with any information it reasonably requests in furtherance of the verification, including access to systems running the Products and evidence of licenses for Products Customer hosts, sublicenses, or distributes to third parties. As an alternative, Microsoft can require Customer to complete Microsoft's self-audit questionnaire relating to the Products Customer and any of its Affiliates use or distribute, but reserves the right to use a verification process as set out above.

If Microsoft undertakes verification and does not find material unlicensed use (license shortage of 5% or more per Product), Microsoft will not undertake another verification of the same entity for at least one year. Microsoft and the independent auditors will use the information obtained in compliance verification only to enforce Microsoft's rights and to determine whether Customer is in compliance with the license terms for the Products. By invoking 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.

- c. **Remedies for non-compliance.** If verification or self-audit reveals any unlicensed use, Customer must promptly order sufficient licenses to cover its use. If material unlicensed use is found, Customer must reimburse Microsoft for the costs Microsoft has incurred in verification and acquire the necessary additional licenses at single retail license cost within 30 days.

17. **Open Source License restrictions.**

Certain third party license terms require that computer code be generally (1) disclosed in source code form to third parties; (2) licensed to third parties for the purpose of making derivative works; or (3) redistributable to third parties at no charge (collectively, "Open Source License Terms"). Neither party may use, incorporate, modify, distribute, provide access to, or combine the computer code of the other with any other computer code or intellectual property (collectively, "Provide") in a manner that would subject the other's computer code to Open Source License Terms. Microsoft is not responsible for Customer's upload, use or distribution of Customer's code from the Online Services. Customer may upload code to an Online Service and allow third parties access to use or download Customer's code on the Online Service, provided that (1) such use is not restricted by a Supplemental Agreement or the Product Use Rights and (2) any Open Source License Terms apply solely to Customer and their uploaded code, and not to any code or Products provided by Microsoft. Each party warrants that it will not provide the other party with, or give third parties access through the Online Services to, computer code that is governed by Open Source License Terms, except as described above.

18. **Miscellaneous.**

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

Copies should be sent to:

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

Via Facsimile:(425) 936-7329

- b. **Assignment.** Either party may assign this agreement to an Affiliate only. Assignment will not relieve the assigning party of its obligations under the assigned agreement. If either party assigns this agreement, it must notify the other party of the assignment in writing.
- c. **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.
- d. **Waiver.** A waiver of any breach of this agreement is not a waiver of any other breach. Any waiver must be in writing and signed by an authorized representative of the waiving party.
- e. **Applicable law; dispute resolution.** The terms of this agreement will be governed by the laws of Registered Affiliate's state, without giving effect to its conflict of laws. Disputes relating to this agreement will be subject to applicable dispute resolution laws of Registered Affiliate's state.

- f. **This agreement is not exclusive.** Customer is free to enter into agreements to license, use or promote non-Microsoft software.
- g. **Entire agreement.** This agreement, the Product List, all registrations under this agreement, and the Product Use Rights constitute the entire agreement concerning the subject matter and supersede any prior or contemporaneous communications. In the case of a conflict between any of these documents that is not resolved expressly in the documents, their terms will control in the following order: (1) these terms and conditions and the accompanying signature form; (2) the Product List; (3) the Product Use Rights; (4) all registrations under this agreement; and (5) all Orders submitted under this agreement. The terms of any purchase order or any general terms and conditions Customer maintains do not apply.
- h. **Survival.** Provisions regarding ownership and License rights, fees, Product use rights, restrictions on use, evidence of perpetual Licenses, transfer of Licenses, warranties, defense of infringement and misappropriation claims, limitations of liability, confidentiality, compliance verification, open source license restrictions, obligations on termination or expiration and the other provisions in this section entitled "Miscellaneous" will survive termination or expiration of this agreement and of any agreement in which they are incorporated.
- i. **No transfer of ownership.** Microsoft does not transfer any ownership rights in any licensed Product. Microsoft reserves all rights not specifically granted. The Products are protected by copyright and other intellectual property rights laws and international treaties.
- j. **Free Products.** It is Microsoft's intent that the terms of this agreement and the Product Use Rights be in compliance with all applicable federal law and regulations. Any free Product provided to Registered Affiliate is for the sole use and benefit of the Registered Affiliate, and is not provided for use by or personal benefit of any specific government employee.
- k. **Amending the agreement.** This agreement (except the Product List and the Product Use Rights) can be changed only by an amendment signed by both parties.
- l. **Resellers and other third parties cannot bind Microsoft.** Resellers and other third parties do not have authority to bind or impose any obligation or liability on Microsoft.
- m. **Privacy.** . Microsoft and Customer will comply with all applicable privacy and data protection laws and regulations. Customer may choose to provide personal information to Microsoft on behalf of third parties (including, Customer's contacts, resellers, distributors, and administrators) as part of this agreement. Customer represents and warrants that it has and will comply with any applicable laws to provide notices to or obtain permissions from any such individuals to allow sharing of their personal information with Microsoft for the purpose of allowing Microsoft or its agents to facilitate Customer's agreements. Customer consents to Microsoft's use of the contact information provided by Customer for purposes of administering its agreements, the business relationship with Microsoft's sharing of Customer's information with Customer's designated representatives, resellers, distributors, and administrators for such purposes, including allowing such individuals to update Customer's contact information on Customer's behalf. The personal information Customer provides in connection with this agreement will be used and protected according to the privacy statement available at <https://www.microsoft.com/licensing/servicecenter> to the maximum extent permitted by applicable law. Product-specific privacy commitments are described in the Product Use Rights.
- n. **Natural disasters.** In the event of a "natural disaster", Microsoft may provide additional assistance or rights by posting on <http://www.microsoft.com> at such time.
- o. **Copyright violation.** Except as set forth in section above entitled "Transferring and reassigning Licenses", the Registered Affiliate agrees to pay for, and comply with the terms of this agreement and the Product Use Rights, for the Products it uses. Except to the extent Registered Affiliate is licensed under this agreement, it will be responsible for its breach of this contract and violation of Microsoft's copyright in the Products, including payment of License fees specified in this agreement for unlicensed use.

- p. 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>.

