

Academic Select Plus Agreement

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This Microsoft Academic 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 the signature form, (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

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

1. *Definitions.*

In this 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 agreement and that has entered into this agreement with Microsoft by submitting an Affiliate registration form, and “Microsoft” means the Microsoft entity that has entered into this 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 <http://www.microsoft.com/licensing/contracts> 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 <http://www.microsoft.com/licensing/contracts> as of the effective date of this 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, with respect to a Product, that Microsoft has made Licenses for that Product available for ordering under a particular licensing program;

“Fix(es)” means Product fixes, modifications, or enhancements or their derivatives that Microsoft either releases generally (such as commercial product service packs) or that Microsoft provides to Institution when performing services to address a specific issue. ;

“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 agreement and that has entered into this 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 agreement to acquire Licenses or services;

“Product” means any product Microsoft makes available for license for a fee, including online services and other web based services;

“Product List” means, with respect to the Academic Select Plus License 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 to qualified educational users (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 a Campus or School Enrollment under a Microsoft Campus and School 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 agreement;

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

“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, Institution and its Affiliates can license Products at discount pricing based on the volume of Licenses they purchase.

The Academic Select Plus License program 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 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 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 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 agreement, Institution must select that pool on the attached Academic Select Volume Forecast Form and represent to Microsoft that Institution reasonably expects its Registered Affiliates, in the aggregate, to acquire from that pool, during the initial term of this 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 agreement’s 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 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 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 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 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.** 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 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. **Benefits limited to qualified educational user.** Products licensed under this 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 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 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.***

Summary: Generally, Microsoft agrees to lock-in the Product Use Rights at the start of the 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.** Microsoft publishes Product Use Rights for each version of each Product.
 - (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. **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 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 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 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 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 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. Microsoft reserves the right to refuse an Order and make changes to the program. 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 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.

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

- 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 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 agreement becomes effective no later than one day following the expiration of that upgrade protection.
 - (ii)** During the term of the 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 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 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 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 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 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 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.aspx>;
- 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 agreement with the entity selected to provide electronic software delivery that is no less protective of Microsoft rights than this 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 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.

Summary: This agreement continues until terminated. Either party can terminate the agreement on notice, which will not affect any existing Orders. Generally, this agreement may be terminated if either party breaches and does not cure the breach in 30 days. If this agreement is terminated early,

Registered Affiliate must order Licenses for copies of Products it has been using but has not yet placed Orders for.

- 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 (even if such non-payment is caused by non-appropriation of funds if Institution is a public eligible education Institution.) Such termination will merely end 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 may terminate this agreement if the other party materially breaches its obligations under this agreement, including any obligation to pay amounts owed. Except where the breach is by its nature not curable within 30 days, the terminating party must give the other party 30 days notice and opportunity to cure. If Microsoft gives such notice to a Registered Affiliate, Microsoft will give Institution a copy of that notice, as well, and Institution agrees to assist in attempting to resolve the problem. If the problem also affects other Affiliate registrations and cannot be resolved between Institution and Microsoft within a reasonable period of time, Microsoft may 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. If a Registered Affiliate ceases to be an Affiliate of Institution or ceases to be a qualified educational user, Institution must promptly notify Microsoft of this fact, and Microsoft may terminate the divested Affiliate's registration.
- d. **Effect of termination.** When this 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 agreement advising Institution of its Software Assurance renewal options. Microsoft may make a change to this program that will make it necessary for Institution 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 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 agreements into this agreement, please complete the multiple previous registration form and attach it to this agreement. The date of the earliest expiring order/registration/agreement that contains Software Assurance will be the effective date of the new Software Assurance coverage.

13. *Restrictions on Use.*

Summary: This section describes several restrictions that apply generally to Registered Affiliate's use of any software Microsoft provides to Registered Affiliate (e.g., prohibitions on renting or hosting the software, or reverse engineering it).

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 to or for third parties any Product or Fix, except as permitted by this agreement or in a separate written agreement.

14. *Confidentiality.*

Summary: Each party agrees not to disclose the terms of this agreement except as provided below. Feedback a party gives about the other party's products or services is not confidential and can be used by the receiving party.

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

If one party provides suggestions for changes or improvements, or other feedback, to the other party about the other party's products or services, the party receiving the feedback may use it for any purpose without obligation of any kind, except that the receiving party will not disclose the source of feedback without the consent of the party providing it.

Neither party is required to restrict work assignments of representatives who have had access to confidential information. Neither party can control the incoming information the other will disclose to it in the course of working together, or what that party's representatives will remember, even without notes or other aids. Each party agrees that use of information in representatives' unaided memories in the development or deployment of the parties' respective products or services does not create liability under this agreement or Trade Secret law, and each party agrees to limit what it discloses to the other accordingly.

15. *Warranties.*

Summary: Microsoft warrants that its Products will work as described in the accompanying documentation. If not, Microsoft will provide replacement Product or a refund. Microsoft warrants that services will be performed with professional care and skill. Microsoft disclaims all other warranties.

- a. **Limited warranty.** Microsoft warrants that each version of a Product licensed by Institution will perform substantially as described in the applicable Microsoft user documentation. This warranty is subject to the following limitations:
 - (i) the warranty applies for one year from the date Institution first runs a copy of the Product;
 - (ii) any implied warranties, guarantees, or conditions last only during the term of the limited warranty, except where local law does not permit such a limitation;

- (iii) the limited warranty does not cover problems caused by accident, abuse or use of the Products in a manner inconsistent with this agreement or the Product Use Rights, or resulting from events beyond Microsoft's reasonable control;
 - (iv) the limited warranty does not apply to components of Products that Institution is permitted to redistribute;
 - (v) the limited warranty does not apply to free, trial, pre-release, or beta Products; and
 - (vi) the limited warranty does not apply to problems caused by the failure to meet minimum system requirements.
- b. Remedies for breach of limited warranty.** If Microsoft fails to meet any of the limited warranties above and Institution notifies Microsoft within the warranty period, then Microsoft will, at its option, either (1) return the price paid for the Product, or (2) repair or replace the Product. These are Institution's only remedies for breach of the limited warranty, unless other remedies are required to be provided under applicable law.
- c. Services.** Microsoft warrants that all services will be performed with professional care and skill.
- d. DISCLAIMER OF OTHER WARRANTIES. OTHER THAN THIS LIMITED WARRANTY, MICROSOFT PROVIDES NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS. MICROSOFT DISCLAIMS ANY IMPLIED 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.**

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

Summary: Microsoft agrees to defend Institution against claims that Microsoft software infringes someone else's intellectual property, and pay any damages awarded by a court or in a settlement. There are several exceptions which limit Microsoft's obligations in cases where Institution has contributed in some way to the claim. If something Institution has done caused the claim and Microsoft is damaged, Institution must reimburse Microsoft.

If Microsoft believes that it is necessary to avoid an infringement claim, Microsoft may replace or modify the Products Institution is using. If someone enjoins Institution's use of one of the Products, Microsoft will replace the Product, modify it to make it non-infringing, obtain the rights Institution needs to keep using it, and refund Institution's money.

- a. Agreement to protect.** Microsoft will defend Institution and its Affiliates against any claims made by an unaffiliated third party that any Product, Fix, or Service Deliverable 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 Institution's exclusive remedy for these claims.
- b. What the Institution must do.** Institution must notify Microsoft promptly in writing of the claim and give Microsoft sole control over its defense or settlement. Institution must also provide Microsoft with reasonable assistance in defending the claim. Microsoft will reimburse Institution for reasonable out of pocket expenses that it incurs in providing that assistance.
- c. Limitations on defense obligation.** Microsoft's obligations will not apply to the extent that the claim or award is based on:
 - (i) specifications Institution provides to Microsoft for the Service Deliverables;
 - (ii) code or materials provided by Institution as part of Service Deliverables;
 - (iii) Institution's use of the Product, Fix, or Service Deliverables after Microsoft notifies it to discontinue that use due to a third party claim;

- (iv) Institution's combination of the Product, Fix or Service Deliverables with a non-Microsoft product, data or business process;
- (v) damages attributable to the value of the use of a non-Microsoft product, data or business process;
- (vi) modifications that Institution makes to the Product, Fix or Service Deliverables;
- (vii) Institution's redistribution of the Product, Fix or Service Deliverables to, or its use for the benefit of, any unaffiliated third party;
- (viii) Institution's use of Microsoft's trademark(s) without express written consent to do so; or
- (ix) any Trade Secret claim, acquiring the Trade Secret (1) through improper means; or (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 Microsoft's Affiliates) who owed to the party asserting the claim a duty to maintain the secrecy or limit the use of the Trade Secret.

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

d. 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, Fix, or Service Deliverable, Microsoft may, at its expense and without obligation to do so, either:
 - procure for Institution the right to continue to run the allegedly infringing Product, Fix, or Service Deliverable, or
 - modify the Product, Fix, or Service Deliverable, or replace it with a functional equivalent, to make it non-infringing, in which case Institution will immediately stop using the allegedly infringing Product, Fix, or Service Deliverables after receiving notice from Microsoft.
- (ii) **Institution's specific remedy in case of injunction.** If, as a result of an infringement claim, Institution's use of a Product, Fix or Service Deliverable is enjoined by a court of competent jurisdiction, Microsoft will, at its option, either
 - procure the right to continue its use, or
 - replace it with a functional equivalent, or
 - modify it to make it non-infringing, or
 - refund the amount paid and terminate the license for (and, as applicable to certain service deliverables, Institution's ownership rights in) the infringing Product, Fix or Service Deliverable.

17. Limitation of liability.

Summary: Microsoft limits its and its contractors' liability to Institution and its Affiliates to the amount of money Institution has paid under this agreement to Microsoft for the Product or service giving rise to the claim. This limit does not apply, however, to Microsoft's obligations under the section entitled "Defense of infringement and misappropriation claims," or to damages Institution or Registered Affiliates incurs because of Microsoft's breach of its confidentiality obligations or because of Microsoft's gross negligence or willful misconduct.

Each party agrees that it will not be liable to the other for consequential, indirect, punitive, or special damages, except those that result from a breach of confidentiality or from one party violating the other's intellectual property rights.

- 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 the amount Institution was required to pay under this agreement for the Product or services giving rise to that liability. In the case of free Product, services provided free of charge, or code that Institution or its Affiliates are 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 obligations under the section entitled "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; or
 - (iii) liabilities arising out of any breach by either party of its obligations under the section entitled "Confidentiality";
 - (iv) liability for personal injury or death caused by either party's negligence or that of its employees or agents or for fraudulent misrepresentation; or
 - (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 LIMITATION, 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 OR OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS.**
- c. Affiliates and contractors.** Neither Microsoft nor Institution shall bring any action against the other's Affiliates or contractors in respect of any matter which is disclaimed on their behalf in this Section. Each party will indemnify the other in the event of any breach of this provision.

18. Verifying compliance.

Summary: Microsoft has the right to review Institution's and its Registered Affiliates' records or conduct an onsite audit through an independent auditor. Microsoft will pay for the costs of the audit unless it reveals a material noncompliance.

- a. Right to verify compliance.** Institution and its Registered Affiliates must keep records relating to the Products it and its Affiliates use or distributed under any license agreement. Microsoft has the right to verify compliance with the agreement and licenses terms for the Products, at Microsoft's expense.
- b. Verification process and limitations.** To verify compliance, Microsoft will engage an independent auditor. 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 Institution's or its Registered Affiliates' operations. Institution 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 Institution hosts, sublicenses, or distributes to third parties. As an alternative, Microsoft can require Institution to complete Microsoft's self-audit questionnaire relating to the products Institution and any of

its Affiliates use under this agreement, but reserves the right to use to 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 Microsoft's auditors will use the information obtained in compliance verification only to enforce Microsoft's rights and to determine whether Institution or its Registered Affiliates are in compliance with the license terms for 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, Institution must promptly order sufficient licenses to cover its use. If material unlicensed use is found, Institution 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.

19. **Miscellaneous.**

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

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

- b. **Assignment.** This agreement may be assigned by either party only to an Affiliate, but assignment will not relieve the assigning party of its obligations under the assigned agreement. If either party assigns this agreement or any registration, it must notify the other party of the assignment in writing.
- c. **Severability.** If a court holds any provision of this agreement to be illegal, invalid, or unenforceable, the remaining provisions will remain in full force and effect and the parties will amend this agreement to give effect to the stricken clause to the maximum extent possible.
- d. **Waiver.** No waiver of any breach of this agreement shall be a waiver of any other breach, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party.
- e. **Force Majeure.** To the extent that either party's performance is prevented or delayed, either totally or in part, for reasons beyond that party's control, then that party will not be liable, so long as it resumes performance as soon as practicable after the reason preventing or delaying performance no longer exists.
- f. **Non-exclusivity.** This agreement and all registrations under it are non-exclusive. Nothing contained in this agreement or any such registration requires Institution to license, use, or promote Microsoft software or services exclusively. Institution may, if Institution chooses, enter into agreements with other parties to license, use or promote non-Microsoft software or services.

- g. 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.
- h. Order of precedence.** In the case of a conflict between any documents identified in the first page that is not resolved expressly in the documents, their terms will control in the following order: (1) the terms and conditions of this agreement; (2) these terms and conditions and the accompanying signature form; (3) the Product list; (4) the Product Use Rights; and (5) all Orders submitted under this agreement.
- i. 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.
- j. 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.
- k. Privacy.** Microsoft and Institution, and their Affiliates, will comply with all applicable privacy and data protection laws and regulations. Institution and its Affiliates may choose to provide personal information to Microsoft on behalf of third parties (including Institution's or its Affiliates' contacts, resellers, distributors, and administrators) as part of this agreement. Institution represents and warrants that it and its Affiliates have 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 purposes of allowing Microsoft or its agents to facilitate Institution's and its Affiliates' agreements and related services. Institution consents to Microsoft's and its agents' use of the contact information provided by Institution for purpose of administering its agreements, the business relationship and related services and with Microsoft's sharing of Institution's and its Affiliates' information with Institution's designated representatives, resellers, distributors, and administrators for such purposes, including allowing such individuals to update Institution's contact information on Institution's behalf. Any personal information Institution provides in connection with this agreement will be used and protected according to the privacy statement available at <https://licensing.microsoft.com>.
- l. Applicable currency.** Any payments made to Microsoft must be in the approved currency for the respective locale. For details, please see: <http://www.microsoft.com/licensing/contracts>.
- m. Advisor fee.** Microsoft, or its Affiliates, sometimes pays fees to software advisors, or other third parties authorized by Microsoft or one of its Affiliates. The fees are in exchange for their advisory services. The payment of fees depends upon several factors, including the type of agreement under which Registered Affiliate orders Licenses, which Licenses Registered Affiliate orders, and whether Registered Affiliate chooses to use an advisor. The fee amounts increase with the size of the orders placed under this agreement.
- n. Applicable law.** This agreement shall be interpreted in accordance with and governed by the laws of the State of Washington, unless Institution is a public qualified educational user, in which event this agreement shall be interpreted in accordance with and governed by the laws of Institution's state, in either case without giving effect to conflicts of law provisions. This choice of law does not prevent either party from seeking injunctive relief with respect to a violation of intellectual property rights or confidentiality obligations in any appropriate jurisdiction.
- o. U.S. export jurisdiction.** Products, Fixes, and services deliverables are subject to U.S. export jurisdiction. Institution must comply with all applicable laws including the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by U.S. and other governments. For additional information, see <http://www.microsoft.com/exporting/>.
- p. 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.