

## Amendment to Contract Documents

Agreement Number

01E73902

002-kayleed-S-14

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

## Enterprise Agreement Amendment ID CTM-3

This amendment (the "Amendment") No. 3 is entered into between the parties identified in the signature block. It amends the Enterprise Agreement (the "Agreement") identified above. All terms used but not defined in this Amendment will have the same meanings provided in the Agreement, as previously amended.

Number 4 in amendment No. 2 with Proposal ID "000-kayleed-S-101" is hereby revised and replaced by the following:

- 4) A new section 2(f)(iii) titled "Discounted Pricing and Alternative Promotional Pricing" is hereby added to the Agreement as follows:

**Discounted Pricing and Alternative Promotional Pricing.**

The following additional definitions will apply:

"Aggregate G3 Count" means, as of the date it is measured by Microsoft, the aggregate total of unexpired G3 or Higher USLs licensed through each of the Qualifying State Agencies' Enrollments;

"G3 or Higher USL" means Office 365 Government User Subscription Licenses (G3 USL) or any higher edition Online Service that includes the components of the G3 USL (e.g., G4 or Enterprise Cloud Suite USLs);

"Maximum Aggregate G3 Count" means, for purposes of the Reseller's calculations for any Qualifying State Agencies' invoice under an Enrollment, the highest Aggregate G3 Count measured by Microsoft as of any Volume Determination Date;

"Qualifying State Agencies" means the entities listed below;

<b>Qualifying State Agencies</b>
Agency for State Technology
Agency for Healthcare Administration
Agency for Persons with Disabilities
Department of Agriculture & Consumer Services
Department of Legal Affairs (Attorney General)

Auditor General
Department of Business & Professional Regulation
Department of Children & Families
Department of Citrus
Department of Corrections
Florida Clerks of Court Operations Corporation
Department of Economic Opportunity
Florida Developmental Disabilities Council
Florida Housing Finance Corporation
Space Florida
Department of Education
Department of Elder Affairs
Department of Emergency Management
Department of Environmental Protection
Department of Financial Services
Fish & Wildlife Conservation Commission
Florida Guardian Ad Litem Program
Florida Cabinet
Executive Office of the Governor
Department of Health
Department of Highway Safety & Motor Vehicles
Florida House of Representatives
Department of Juvenile Justice
Department of Law Enforcement
Department of Lottery
Department of Management Services
Department of Military Affairs
Office of Financial Regulation
Office of Insurance Regulation
Office of Legislative
Office of Legislative Information Technology Services
Florida Commission on Offender Review
Public Service Commission
Department of Revenue
Visit Florida
OPPAGA
PERC
Florida Retirement System

Justice Administrative Commission
State Fire Marshall
Enterprise Florida
Florida Senate
Department of State
Division of Administrative Hearings
Florida Commission on Human Relations
Florida State Board of Administration
Florida State Courts
Department of Transportation
Department of Veterans' Affairs

"Volume Determination Date" means: (a) the Initial Billing Date and each date which occurs 30 days prior to a Subsequent Billing Date; and (b) for all other orders and License Reservations for the G3 or Higher USL, each date which occurs 30 days prior to the Subsequent Billing Date.

**Discounted Pricing.**

A. Microsoft is providing Discounted Pricing to Reseller for Qualifying State Agencies whose users who are eligible to purchase the "From SA" G3 User Subscription Licenses ("From SA G3 USLs) in the following scenarios:

i. From SA G3 USLs may be purchased instead of SA for fully paid, perpetual Licenses with active SA for the Qualifying Products in the table below.

Qualifying Product	Required CAL Suite Bridge
Office Professional Plus and Core CAL Suite	Core CAL Bridge for Office 365 <sup>1,2</sup>
Office Professional Plus and Enterprise CAL Suite	Enterprise CAL Bridge for Office 365 <sup>1,2</sup>

<sup>1</sup>Required for Purchase at enrollment anniversary only.

<sup>2</sup>Purchase not required for users also licensed with Enterprise Mobility + Security.

ii. At their next Enrollment renewal, customers who have licensed G3 USLs prior to August 1, 2014 under a current Enrollment may purchase corresponding From SA G3 USLs to license all respective users including those users added during the remainder of their current Enrollment term.

iii. At their next Enrollment renewal, customers whose effective date of their current Enrollment term occurred on or after August 1, 2014 and whose users have been licensed for G3 USLs for a minimum of three full years as of the expiration date of their Enrollment term may purchase corresponding From SA G3 USLs for the applicable users. New users added mid-term who have not been licensed for G3 USLs for a full three years do not qualify to renew From SA G3 USLs. For the avoidance of doubt, it is possible to renew an Enrollment with a mix of users who qualify for From SA G3 USLs and those who need to license full G3 USLs.

Net new users added mid-term to an Enrollment that has been renewed pursuant to any one of the above three scenarios will always be added with a full G3 USL.

B. The levels of the Discounted Pricing that Microsoft will provide to Enrolled Affiliates via the Reseller for Qualifying State Agencies for the From SA G3 USL are as follows:

- i. The "Sub-50K Level," is equal to Level D, and applies to all payments for which the Maximum Aggregate G3 Count, as of the Volume Determination Date which occurred immediately prior to the payment date, is less than 50,000;
- ii. The "50K Level," is, at a minimum, 5% off Level D, and applies to all payments for which the Maximum Aggregate G3 Count, as of the Volume Determination Date which occurred immediately prior to the payment date, is between 50,000 and 59,999; and
- iii. The "60K Level," is, at a minimum, 10% off Level D, and applies to all payments for which the Maximum Aggregate G3 Count, as of the Volume Determination Date which occurred immediately prior to the payment date, is between 60,000 and 79,999; and
- iv. The "80K" Level," is, at a minimum, 15% off Level D, and applies to all payments for which the Maximum Aggregate G3 Count, as of the Volume Determination Date which occurred immediately prior to the payment date, is equal to or greater than 80,000.

Actual prices for order(s) will be between Enrolled Affiliate and Enrolled Affiliate's Reseller.

Microsoft is under no obligation to continue Discounted Pricing upon expiration of this Agreement.

**Alternative Promotional Pricing for G3.** This promotion expired June 1, 2016 and is no longer applicable to the purchase of licenses for new users.

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

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

**Microsoft Internal Use Only:**

FL DMS Amend No. 3x.docx	CTM	CTM-CTC-ENR	BD
--------------------------	-----	-------------	----

**Program Signature Form**

MBA/MBSA number

002-kayleed-S-14

Agreement number

01E73902


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

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



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

Contract Document	Number or Code
<Choose Agreement>	Document Number or Code
<Choose Agreement>	Document Number or Code
<Choose Agreement>	Document Number or Code
<Choose Agreement>	Document Number or Code
<Choose Agreement>	Document Number or Code
<Choose Enrollment/Registration>	Document Number or Code
<Choose Enrollment/Registration>	Document Number or Code
<Choose Enrollment/Registration>	Document Number or Code
<Choose Enrollment/Registration>	Document Number or Code
<Choose Enrollment/Registration>	Document Number or Code
Amendment	CTM-CTC-ENR (01E73902)
Document Description	Document Number or Code
Document Description	Document Number or Code
Document Description	Document Number or Code
Document Description	Document Number or Code

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

Customer	
Name of Entity (must be legal entity name)	Florida Department of Management Services
Signature*	
Printed First and Last Name*	David Zarkov
Printed Title	Chief of Staff
Signature Date*	3/27/2018
Tax ID	

\* Indicates required field

<b>Microsoft Affiliate</b>	
Microsoft Corporation	
Signature 	 <b>Microsoft</b> Microsoft Corporation <b>MAR 28 2018</b> Elizabeth Uzueta Duly Authorized on behalf of Microsoft Corporation
Printed First and Last Name	
Printed Title	
Signature Date (date Microsoft Affiliate countersigns)	
Agreement Effective Date <u>2/1/2015</u> (may be different than Microsoft's signature date)	

Optional 2<sup>nd</sup> Customer signature or Outsourcer signature (if applicable)

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

\* indicates required field

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

\* indicates required field

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

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

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

Amendment to Contract Documents

Enterprise Agreement

Amendment ID CTM-2

Agreement number

01E73902

000-kayleed-S-101

This amendment (the "Amendment") No. 2 is entered into between the parties identified in the signature block. It amends the Enterprise Agreement (the "Agreement") identified above. All terms used but not defined in this Amendment will have the same meanings provided in the Agreement, as previously amended.

1) Section 6a, "Term", is hereby amended and restated as follows:

a. **Term.** The term of this Agreement will be 60 full calendar months from the Effective date unless terminated by either party as described below. Each Enterprise Enrollment ("Enrollment") will have the term provided in that Enrollment.

2) Section 1 is amended to add the following definitions:

"Level D" means the volume price level that applies to the Customer's Enrolled Affiliate's when those Enrolled Affiliates collectively have 15,000 or more devices/users.

"Price Level" is the volume pricing that applies to the number of devices/users in a specified range. There are four price levels as follows:

- Level A = 250-2,399 devices/users
- Level B = 2,400-5,999 devices/users
- Level C = 6,000-14,999 devices/users
- Level D = 15,000+ devices/users

3) Section 2(f)(i), "Establishing Price Levels", is hereby amended to read as follows:

1. Each Enrolled Affiliate's Price Level will be Level D for all Enterprise Products, Enterprise Online Services, Online Services and Additional Products ordered under any Enrollment.

2. **State Reseller Price List ("SRPL").** In addition to 1 above, for the perpetual on-premises licenses for the Enterprise Products named in the table below, Microsoft will provide the Reseller the corresponding discounts through June 30, 2016.

a. Microsoft periodically validates volumes associated with the SRPL. Microsoft's last validation occurred on April 3, 2014. As Microsoft reviewed the licensed quantities to prepare for another volume price adjustment in April 2016, it determined that the volume of perpetual on-premises licenses have significantly declined. Therefore, Microsoft will be discontinuing the SRPL for Enrollments with an effective date on or after July 1, 2016.

Enterprise Product	Discount Level
Office Professional/Standard	Level D minus 7.5%

Windows Operating System	Level D minus 7.5%
Core/Enterprise Client Access License Suites	Level D minus 9%

- 4) A new section 2(f)(iii) titled "Discounted Pricing and Alternative Promotional Pricing" is hereby added to the Agreement as follows:

**Discounted Pricing and Alternative Promotional Pricing.**

The following additional definitions will apply:

"Aggregate G3 Count" means, as of the date it is measured by Microsoft, the aggregate total of unexpired G3 or Higher USLs licensed through each of the Qualifying State Agencies' Enrollments;

"G3 or Higher USL" means Office 365 Government User Subscription Licenses (G3 USL) or any higher edition Online Service that includes the components of the G3 USL (e.g., G4 or Enterprise Cloud Suite USLs);

"Maximum Aggregate G3 Count" means, for purposes of the Reseller's calculations for any Qualifying State Agencies' invoice under an Enrollment, the highest Aggregate G3 Count measured by Microsoft as of any Volume Determination Date;

"Qualifying State Agencies" means the entities listed below;

<b>Qualifying State Agencies</b>
Agency for State Technology
Agency for Healthcare Administration
Agency for Persons with Disabilities
Department of Agriculture & Consumer Services
Department of Legal Affairs (Attorney General)
Auditor General
Department of Business & Professional Regulation
Department of Children & Families
Department of Citrus
Department of Corrections
Florida Clerks of Court Operations Corporation
Department of Economic Opportunity
Florida Developmental Disabilities Council
Florida Housing Finance Corporation
Space Florida
Department of Education
Department of Elder Affairs
Department of Emergency Management
Department of Environmental Protection
Department of Financial Services
Fish & Wildlife Conservation Commission



Florida Guardian Ad Litem Program
Florida Cabinet
Executive Office of the Governor
Department of Health
Department of Highway Safety & Motor Vehicles
Florida House of Representatives
Department of Juvenile Justice
Department of Law Enforcement
Department of Lottery
Department of Management Services
Department of Military Affairs
Office of Financial Regulation
Office of Insurance Regulation
Office of Legislative
Office of Legislative Information Technology Services
Florida Commission on Offender Review
Public Service Commission
Department of Revenue
Visit Florida
OPPAGA
PERC
Florida Retirement System
Justice Administrative Commission
State Fire Marshall
Enterprise Florida
Florida Senate
Department of State
Division of Administrative Hearings
Florida Commission on Human Relations
Florida State Board of Administration
Florida State Courts
Department of Transportation
Department of Veterans' Affairs

"Volume Determination Date" means: (a) the Initial Billing Date and each date which occurs 30 days prior to a Subsequent Billing Date; and (b) for all other orders and License Reservations for the G3 or Higher USL, each date which occurs 30 days prior to the Subsequent Billing Date.

**Discounted Pricing.** Qualifying State Agencies shall receive Discounted Pricing through Reseller via an Enrollment renewal of the G3 USL. Discounted Pricing applies to a specific part number for customers who previously invested in Software Assurance. Enrolled Affiliate's ability to receive the Discounted Pricing is dependent on them owning Office Professional Plus and either the Core CAL Suite or the Enterprise CAL Suite licenses.

The levels of the Discounted Pricing that Microsoft will provide to Enrolled Affiliates via the Reseller for Qualifying State Agencies for the G3 USL are as follows:

- i. The "Sub-50K Level," is equal to Level D, and applies to all payments for which the Maximum Aggregate G3 Count, as of the Volume Determination Date which occurred immediately prior to the payment date, is less than 50,000;
- ii. The "50K Level," is, at a minimum, 5% off Level D, and applies to all payments for which the Maximum Aggregate G3 Count, as of the Volume Determination Date which occurred immediately prior to the payment date, is between 50,000 and 59,999; and
- iii. The "60K Level," is, at a minimum, 10% off Level D, and applies to all payments for which the Maximum Aggregate G3 Count, as of the Volume Determination Date which occurred immediately prior to the payment date, is between 60,000 and 79,999; and
- iv. The "80K" Level," is, at a minimum, 15% off Level D, and applies to all payments for which the Maximum Aggregate G3 Count, as of the Volume Determination Date which occurred immediately prior to the payment date, is equal to or greater than 80,000.

Microsoft is under no obligation to continue Discounted Pricing upon expiration of this Agreement.

**Alternative Promotional Pricing for G3.** Those entities listed on the table on page 2 who do not qualify for the Discounted Pricing shall receive 15% off Level D for the full G3 USL for purchases on or before June 1, 2016. Enrolled Affiliate's actual final price will be established by a separate agreement between Enrolled Affiliate and its Reseller.

Microsoft is under no obligation to continue this alternative promotional pricing after June 1, 2016.

- 5) A new Section 2(f)(iv) titled "Enterprise Cloud Suite Pricing" (ECS) is hereby added to the Agreement as follows:

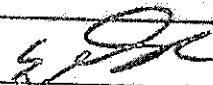

**ECS Pricing.** Qualifying State Agencies who own licenses that include Office Professional Plus, either the Core CAL Suite or the Enterprise CAL Suite, and the Enterprise Mobility Suite are eligible to renew ECS at pricing that reflects their previous investment in Software Assurance. Specifically, they can purchase the "ECS from SA" SKU and Microsoft is offering promotional pricing for this SKU at 15% off of Level D until June 1, 2016.

- a. Those entities listed on the table on page 2 who do not qualify for the "ECS from SA" promotional pricing offer, Microsoft is offering 15% off of Level D for the full User Subscription License for ECS if a purchase is made by June 1, 2016. Enrolled Affiliate will obtain final pricing from its Reseller.

Microsoft is under no obligation to continue this promotional pricing after June 1, 2016.

This amendment is valid until expiration of the current term of this Agreement.

Except for changes made by this amendment, all terms of this Agreement remain unchanged. By signing below, the parties agree to be bound by the terms of this amendment.

Name of Entity *	Florida Department of Management Services	Microsoft Corporation
Signature *		
Printed Name *	Erin Rove	Microsoft Corporation
Printed Title *	Deputy Secretary	MAR 14 2016 Kyle Perez
Signature Date *	3-14-16	Duly Authorized on behalf of Microsoft Corporation <small>(date Microsoft affiliate countersigns)</small>
		Effective Date 3/14/2016 <small>(may be different than our signature date)</small>

\* indicates required field

Please sign this amendment and send to Customer's Reseller. Customer's Reseller must submit to the following address. When the amendment is fully signed, Customer will receive a confirming copy.

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

Prepared By: Kaylee Deegan, LE

**Microsoft Internal Use Only:**

FL EA amendment No.2 3.10.15 FINALS	CTM	CTM-CTC-AGR	BD
--	-----	-------------	----

Enterprise Agreement

Amendment ID CTM

Agreement number

01E73214  
01E73902

000-kaylaed-S-070

This amendment (the "Amendment") is entered into between the parties identified in the signature block. It amends the Enterprise Agreement (the "Agreement") identified above. All terms used but not defined in this Amendment will have the same meanings provided in the Agreement, excluding any definitions provided in documents or websites stated in the Agreement as incorporated by reference, but by way of this Amendment, not incorporated.

Notwithstanding anything to the contrary in the Agreement as amended, including the two documents incorporated by reference, or in any Enrollment, the parties agree to amend the Agreement as follows:

- 1) The third paragraph on the first page is hereby amended to read as follows:

*This Agreement, for purposes of the relationship between Microsoft and Customer, consists of these Agreement terms and conditions, including any amendments.*

*This Agreement, for purposes of the Enrolled Affiliates, consists of (1) these Agreement terms and conditions, including any amendment and the signature form and all attachments identified therein, (2) the Product List, (3) the Use Rights applicable to Products licensed under this Agreement, (4) any Affiliate Enrollment entered into under this Agreement, and (5) any order submitted under this Agreement.*

- 2) The fourth paragraph on the first page is hereby amended to read as follows:

*Please note: Documents referenced in this Agreement but not attached to the signature form may be found at <http://www.microsoft.com/licensing/contracts>.*

- 3) The following additional paragraph is hereby added to the first page under the title "Terms and Conditions" and before Section 1, "Definitions":

*The acronyms, titles, words and phrases herein shall be construed according to their plain meaning, in light of the context and subject matter, unless expressly defined otherwise in the Agreement as amended.*

- 4) The definition of "Affiliate" is hereby amended to read as follows:

"Affiliate"

- a. with regard to Customer is subject to Rule 60A-1.005 of the Florida Administrative Code,
- (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;

5) The definition of "Trade Secret" is hereby amended to read as follows:

*"Trade Secret" is as defined under section 812.081, Florida Statutes.*

6) The definition of "Reseller" is hereby amended to read as follows:

*"Reseller" means a Licensing Solutions Provider authorized by Microsoft to resell Licenses pursuant to the terms of this Agreement and selected by the Customer to resell Licenses to Enrolled Affiliates;*

7) Section 2.d. of the Agreement, "How Enrolled Affiliates acquire Licenses", is hereby amended to read as follows:

*How Enrolled Affiliates acquire Licenses. An Enrolled Affiliate will acquire its Licenses through its chosen Reseller. Customer will provide Reseller with regular updates indicating Reseller products approved for purchase by Enrolled Affiliates, and identify these products on the Customer's website. Orders will be made out to and submitted to the Enrolled Affiliate's Reseller. Microsoft will invoice that Reseller according to the terms in the applicable Enrollment.*

8) Section 2.e. of the Agreement, "Choosing and maintaining a Reseller", is hereby amended to read as follows:

*Choosing and maintaining a Reseller. Customer must choose and maintain a Reseller or multiple Resellers authorized in the United States. Enrolled Affiliate must use the Reseller(s) Customer has authorized to service this Agreement.*

9) Section 6.c. of the Agreement, "Mid-term termination for non-appropriation of Funds", is hereby amended to read as follows:

*Mid-term termination for non-appropriation of Funds. Customer may terminate this Agreement or an Enrolled Affiliate an Enrollment without liability, penalty or further obligation to make payments if funds to make payments under the Agreement or Enrollment are not appropriated or allocated by the Customer or the Enrolled Affiliate for such purpose. Per section 287.0582, Florida Statutes, the State of Florida's performance and obligation to pay under this contract is contingent upon an annual appropriation by the Legislature.*

10) The second paragraph of Section 6.d. of the Agreement, "Termination for cause", is hereby amended to read as follows:

*Termination for cause. If Microsoft gives such notice to an Enrolled Affiliate, Microsoft also will give Customer a copy of that notice and Customer agrees to help try to resolve the breach. If the breach affects other Enrollments and cannot be resolved between Microsoft and Enrolled Affiliate, together with Customer's help, within a reasonable period of time, Microsoft may terminate the affected Enrollment(s) that gave rise to the breach. If an Enrolled Affiliate ceases to be Customer's Affiliate, it must promptly notify Microsoft, and Microsoft may terminate the former Affiliate's Enrollment. If an Enrolled Affiliate terminates its Enrollment as a result of a breach by Microsoft, or if Microsoft terminates an Enrollment because Enrolled Affiliate ceases to be Customer's Affiliate, then Enrolled Affiliate will have the early termination rights described below.*

11) Section 6.f.(i) of the Agreement, "Effect of termination or expiration" is hereby amended to read as follows:

- (l) Enrolled Affiliate must order Licenses for all copies of Products it has run for which it has not previously submitted an order. Any and all unpaid payments or any order of any kind, including subscription services, remain due and payable. Except as provided in the subsection titled "Early termination," all unpaid payments for Licenses immediately become due and payable *subject to the Enrolled Affiliate's agreement with the Reseller.*

- 12) Section 7.e. of the Agreement, "Restrictions on use", is hereby amended to read as follows:

*Restrictions on use. Enrolled Affiliate must not (and must not attempt to) reverse engineer, decompile, or disassemble any Product or Fix. Except as expressly permitted in this agreement, Enrolled Affiliates must not (1) separate and run parts of a Product on more than one computer, upgrade or downgrade parts of a Product at different times, or transfer parts of a Product separately; or (2) distribute, sublicense, rent, lease, lend, or host any Product, or Fix.*

- 13) Section 8 of the Agreement, "Confidentiality", the first paragraph is hereby amended to read as follows:

*The terms and conditions of this Agreement are not confidential.*

*"Confidential Information" is non-public information that is designated "confidential", proprietary, or "trade secret" by Microsoft or an Enrolled Affiliate and which is protected from unlawful disclosure by applicable federal law or applicable state law. Confidential Information does not include information that (a) becomes publicly available without a breach of this agreement, (b) was lawfully known or received by the receiving party without an obligation to keep it confidential, (c) is independently developed, or (d) is a comment or suggestion one party volunteers about the other's business, products or services.*

- 14) A new Section 9.a., entitled "Location of Customer Data at Rest" is hereby added to the Agreement:

*Location of Customer Data at Rest. Microsoft will store Customer Data at rest within certain major geographic areas (each, a Geo) as follows:*

- *Office 365 Services. If Customer provisions its tenant in the United States or the EU, Microsoft will store the following Customer Data at rest within that Geo: (1) Exchange Online mailbox content (e-mail body, calendar entries, and the content of e-mail attachments) and (2) SharePoint Online site content and the files stored within that site.*
- *Microsoft Intune Online Services. When Customer provisions a tenant account, Customer selects an available Geo where Customer Data at rest will be stored. Microsoft will not transfer the Customer Data outside of Customer's selected Geo except as noted in the "Data Location" section of the Microsoft Intune Trust Center.*
- *Microsoft Azure Core Services. If Customer configures a particular service to be deployed within a Geo then, for that service, Microsoft will store Customer Data at rest within the specified Geo. Certain services may not enable Customer to configure deployment in a particular Geo or outside the United States and may store backups in other locations, as detailed in the Microsoft Azure Trust Center (which Microsoft may update from time to time, but Microsoft will not add exceptions for existing Services in general release).*
- *Microsoft Dynamics CRM Online Services. For entities managed by the Microsoft Dynamics CRM Online Service, if Customer provisions its tenant in the United States or EU, Microsoft will store Customer Data at rest in the United States or EU, as applicable.*

*Microsoft does not control or limit the regions from which Customer or Customer's end users may access or move Customer Data.*

- 15) Section 11 a. of the Agreement, the paragraph entitled "Defense of third party claims by Microsoft", is hereby amended and restated in its entirety as follows:

By Microsoft. Microsoft will defend Enrolled Affiliate against any claims made by an unaffiliated third party (1) that any Product or Fix infringes its patent, copyright, or trademark or makes unlawful use of its Trade Secret; or (2) that arises from Microsoft's provision of an Online Service in violation of subsection (a) of the section titled "Compliance and applicable laws, privacy, and security" above. Microsoft will pay the amount of any resulting adverse final judgment or approved settlement. Microsoft's obligations under this section 11.a will not apply to the extent that the claim or award is based on:

- (i) Customer Data
- (ii) non-Microsoft software;
- (iii) modifications to a Product or Fix Enrolled Affiliate makes or any specifications or materials Enrolled Affiliate provides;
- (iv) Enrolled Affiliate's combination of the Product or Fix with (or damages based on the value of) a non-Microsoft product, data, or business process;
- (v) Enrolled Affiliate's use of a Microsoft trademark without express, written consent or the use or redistribution of a Product or Fix in violation of this Agreement;
- (vi) Enrolled Affiliate's use of a Product or Fix after Microsoft notifies Enrolled Affiliate to discontinue that use due to a third party claim;
- (vii) Products or Fixes provided free of charge;
- (viii) Any Trade Secret claim, where Customer or Enrolled Affiliate 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;
- (ix) 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
- (x) Customer's or its Enrolled Affiliate's violation of subsection (a) of the section titled, "Compliance and applicable laws, privacy, and security" above; a violation of the legal rights of others; or unauthorized access to or disruption of any service, data, account, or network in connection with the use of the Online Services.

In addition, Customer agrees that:

- (a) Any Customer Data or non-Microsoft software that Microsoft hosts will not infringe on any third party's patent, copyright, or trademark nor make intentional unlawful use of any third party's Trade Secret; and
- (b) Customer or its Enrolled Affiliate will not violate its obligations of subsection (a) of the section titled, "Compliance and applicable laws, privacy, and security" above.
- (c) Customer will not:
  - (i) Provide or make available Customer Data, non-Microsoft software, modifications Enrolled Affiliate makes to a Product or Fix that infringes a third party's patent, copyright, or trademark or makes intentional unlawful use of its Trade Secret;
  - (ii) Combine a Product or Fix with a non-Microsoft product, service, data or business process;
  - (iii) Modify any Product or Fix;
  - (iv) Redistribute the Product or Fix, or use such Product or Fix for the benefit of any unaffiliated third party, except as expressly permitted by this Agreement and the Online Services Terms;
  - (v) Use our trademark(s) without our express written consent to do so; and
  - (vi) Intentionally use or disclose a third party's Trade Secret.

*Any violation of the foregoing will be deemed a material breach of this Agreement and the Online Services Terms.*

16) Section 11.b. of the Agreement, "Defense of third party claims By Enrolled Affiliate" is stricken in its entirety. The section number is reserved.

17) Section 13.c. of the Agreement, "Verifying compliance -- Remedies for non-compliance", is amended to read as follows:

**Remedies for non-compliance.** If verification or self-audit reveals any unlicensed use or distribution, then within 60 days, (1) Enrolled Affiliate must order sufficient licenses to cover that use or distribution, and (2) if unlicensed use or distribution is 5% or more, Enrolled Affiliate must reimburse Microsoft for the cost Microsoft has incurred in verification and acquire the necessary additional licenses at 125% of the price based on the then-current price list and Enrolled Affiliate price level. The unlicensed use percentage is based on the total number of licenses purchased compared to actual install base. *For clarity, Enrolled Affiliate's use of Products or Online Services in accordance with true-up requirements as set forth in the Enterprise Enrollment is not unlicensed use.* If there is no unlicensed use, Microsoft will not undertake another verification of the same Enrolled Affiliate for at least one year. By exercising the rights and procedures described above, Microsoft does not waive its rights to enforce this Agreement or to protect its intellectual property by any other means permitted by law.

18) Section 14.f. of the Agreement, "Applicable law; dispute resolution" is hereby amended to read as follows:

**Applicable law; dispute resolution.** The terms of this Agreement will be governed by the laws of Customer's state, without giving effect to its conflict of laws jurisprudence. Disputes relating to this Agreement will be subject to applicable dispute resolution laws of Customer's state. *The exclusive venue of any legal or equitable action that arises out of or relates to the Agreement shall be an appropriate state court in Leon County, Florida.*

19) Section 14.i. of the Agreement, "Order of precedence", is hereby amended to read as follows:

**Order of precedence.** Solely regarding the relationship between Microsoft and an Enrolled Affiliate per section 1), above, in the case of a conflict between any documents in the Agreement, as amended, the terms will control in the following order of descending priority: (1) this Agreement as amended, (2) any Enrollment as amended, (3) the Product List and Use Rights incorporated by reference at <http://www.microsoft.com/licensing/contracts>, or successor site (4) orders submitted under this Agreement, and (5) any other documents incorporated by reference into an Enrollment at <http://www.microsoft.com/licensing/contracts>, or successor site. Terms in an amendment control over the amended document and any prior amendments concerning the same subject matter.

20) A new Section 14.s. entitled, "Cooperation with the Inspector General", is hereby added to the Agreement:

**Cooperation with the Inspector General.** Pursuant to section 20.055(5), Florida Statutes, contractor and any subcontractors understand and will comply with their duty to cooperate with the Inspector general in any investigation, audit, inspection, review, or hearing directly and reasonably related to this Agreement.

For the avoidance of doubt, this provision will, to the extent permitted by Florida law, not be construed to permit the Inspector general, Customer, or any Affiliates the right to investigate, audit, inspect, or review any Microsoft data center(s) or any confidential records or other information that may exist between Microsoft and its partners pertaining to this Agreement.

21) A new Section 14.i. entitled, "No financial obligation" is hereby added to the Agreement:

**No financial obligation.** No financial obligation of any kind is created as a result of the Agreement.



- 22) A new Section 14.u. entitled, "Inability to Indemnify or Hold Harmless" is hereby added to the Agreement:

**Inability to Indemnify or Hold Harmless.** Customer and all Enrolled Affiliates that are state agencies or subdivisions, as defined in section 788.28, Florida Statutes, have no statutory authority to indemnify or hold harmless. Nothing in this Agreement as amended shall be construed as an obligation for Customer or an Affiliate to hold Microsoft harmless, to indemnify Microsoft, or to defend Microsoft and its suppliers from and against any claims or lawsuits, including attorney's fees for any reason whatsoever. Nothing in this Agreement as amended shall be construed to be a waiver of sovereign immunity by the Customer or the Enrolled Affiliate to which sovereign immunity applies. Nothing in this Agreement as amended shall be construed as consent by a state agency or subdivision of the State of Florida to be sued by third parties in any matter.

- 23) A new Section 14.v. entitled, "Public Records" is hereby added to the Agreement:

**Public Records.**

- a. Florida law governs the responsibilities and obligations related to maintaining records marked by Microsoft as "trade secret," "proprietary" or as "confidential" information ("Confidential Information"). Such responsibilities and obligations related to Confidential Information will continue so long as the Customer or Enrolled Affiliate possess Confidential Information of Microsoft. Only documents marked as trade secret, proprietary, or as confidential information will be protected from unlawful disclosure by the Customer and Enrolled Affiliate as trade secret, proprietary, or as confidential.
- b. Microsoft will be solely responsible for defending their claims of trade secret, proprietary or confidentiality. Customer and/or Enrolled Affiliate will provide reasonable non-monetary assistance in defending claims arising under this paragraph.
- c. The parties understand that Microsoft is not acting on behalf of Customer or Enrolled Affiliates under this Agreement as that is understood under section 119.0701, Florida Statutes, nor that services are being supplied under this Agreement.

- 24) A new Section 14.w. entitled, "Ownership" is hereby added to the Agreement:

**Ownership.** Intellectual property ownership of preexisting software used by an Enrolled Affiliate pursuant to an Enrollment will remain with Microsoft.

- 25) A new Section 14.x. entitled, "Responsibility" is hereby added to the Agreement:

**Responsibility.** The Customer and Enrolled Affiliates are only responsible for costs or damages that arise from the acts or omissions of their employees, and only to the extent allowable under Florida law.

- 26) A new Section 14.y. entitled, "Indemnification" is hereby added to the Agreement:

**Indemnification.** The Customer does not indemnify any entity as a result of executing the Agreement and Enrolled Affiliates do not indemnify any entity as a result of executing any Enrollments that arise from the Agreement.

- 27) A new Section 14.z. entitled, "Void Provisions" is hereby added to the Agreement:

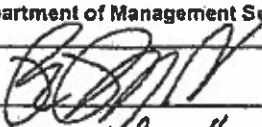
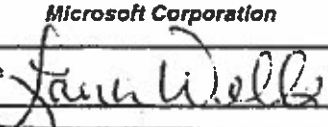

**Void Provisions.** Provisions of the Agreement that are prohibited under Florida constitutional or statutory provision, or Florida judicial decision, are void.

- 28) A new Section 14.a.a. entitled, "Qualifying State Agency Pricing", is hereby added to the Agreement:

**Qualifying State Agency Pricing.** As to Qualifying State Agencies that have executed an Enterprise Enrollment prior to expiration of Enterprise Agreement No. 01E73214, the monthly per-user Reseller price and payment terms for Q365 G3 will remain set at

the 70K Level pricing through expiration of the Enrolled Affiliates' Enterprise Enrollment.

Except for changes made by this amendment, all terms of this Agreement remain unchanged. By signing below, the parties agree to be bound by the terms of the Enterprise Agreement for State and Local with the Document Code of X20-10207 as modified by this amendment.

Name of Entity *	Florida Department of Management Services	Microsoft Corporation
Signature *		
Printed Name	Chad Poppell	
Printed Title *	Secretary	Microsoft Corporation DEC 28 2015
Signature Date *	12/28/15	Laura Wells Duty Authorized on behalf of Microsoft Corporation 12/28/2015 <small>(may be different than our signature date)</small>

\* Indicates required field

Please sign this amendment and send to Customer's Reseller. Customer's Reseller must submit to the following address. When the amendment is fully signed, Customer will receive a confirming copy.

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

Prepared By: Keylee Deegan, LE

Microsoft Internal Use Only:

FL EA amendment 12.3 FINAL	CTM-CTC-AGR- OST-OTC	BD
----------------------------	-------------------------	----

# Enterprise Agreement

# State and Local

Not for Use with Microsoft Business Agreement or Microsoft Business and Services Agreement

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

**Effective date.** The effective date of this Agreement is the earliest effective date of any Enrollment entered into under this Agreement or the date Microsoft accepts this Agreement, whichever is earlier. Any reference in this Agreement or an Enrollment to a “day” means a calendar day, except references that specify “business day”.

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

**Please note:** Documents referenced in this Agreement but not attached to the signature form may be found at <http://www.microsoft.com/licensing/contracts> and are incorporated in this Agreement by reference, including the Product List and Use Rights. These documents may contain additional terms and conditions for Products licensed under this Agreement and may be changed from time to time. Customer should review such documents carefully, both at the time of signing and periodically thereafter, and fully understand all terms and conditions applicable to Products licensed.

## Terms and Conditions

### 1. Definitions.

“Affiliate” means

- a. with regard to Customer,
  - (i) any government agency, department, office, instrumentality, division, unit or other entity of the state or local government that is supervised by or is part of Customer, or which supervises Customer or of which Customer is a part, or which is under common supervision with Customer;
  - (ii) any county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality established by the laws of Customer’s state and located within Customer’s state jurisdiction and geographic boundaries; and
  - (iii) any other entity in Customer’s state expressly authorized by the laws of Customer’s state to purchase under state contracts; provided that a state and its Affiliates shall not, for purposes of this definition, be considered to be Affiliates of the federal government and its Affiliates; and
- b. with regard to Microsoft, any legal entity that Microsoft owns, that owns Microsoft, or that is under common ownership with Microsoft;

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

“Customer” means the legal entity that has entered into this Agreement with Microsoft;

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

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

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

“Enterprise” means an Enrolled Affiliate and the Affiliates for which it is responsible and chooses on its Enrollment to include in its enterprise;

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

“License” means the right to download, install, access and use a Product. For certain Products, a License may be available on a fixed term or subscription basis (“Subscription License”). Licenses for Online Services will be considered Subscription Licenses;

“Microsoft” means the Microsoft Affiliate that has entered into this Agreement or an Enrollment and its Affiliates;

“Online Service” means the Microsoft-hosted services identified as Online Services in the Product List.

“Product” means all products identified in the Product List, such as all Software, Online Services and other web-based services, including pre-release or beta versions.

“Product List” means the statement published by Microsoft from time to time at the Volume Licensing Site. The Product List includes Product-specific conditions or limitations on the acquisition of licenses for Products.

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

“SLA” means Service Level Agreement, which specifies the standards to which Microsoft agrees to adhere and by which it measures the level of service for an Online Service. The SLA is available at the Volume Licensing Site.

“Software” means licensed copies of Microsoft software identified on the Product List. Software does not include Online Services, but Software may be part of an Online Service;

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

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

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

“Use Rights” means, with respect to any licensing program, the use rights or terms of service for each Product and version published for that licensing program at the Volume Licensing Site or at a successor site. The Use Rights supersede the terms of any end user license agreement (on-screen or otherwise) that accompanies a Product. The Use Rights for Software are published by Microsoft in the Product Use Rights. The Use Rights for Online Services are published in the Online Services Terms. “Volume Licensing Site” means <http://www.microsoft.com/licensing/contracts> or a successor site.

## **2. How the Enterprise program works.**

- a. General.** The Enterprise program consists of the terms and conditions on which an Enrolled Affiliate may acquire Product Licenses. Under the Enterprise program, Customer and its Affiliates may order Licenses for Products by entering into Enrollments.
- b. Enrollments.** The Enterprise program gives Customer and/or its Affiliates the ability to enter into one or more Enrollments to order Products. Subscription Enrollments may be available for some of these Enrollments. Notwithstanding any other provision of this Agreement, only Enrolled Affiliates identified in an Enrollment will be responsible for complying with the terms

of that Enrollment, including the terms of this Agreement incorporated by reference in that Enrollment.

- c. **Licenses.** The types of Licenses available are (1) Licenses obtained under Software Assurance (L&SA), and (2) Subscription Licenses. These License types, as well as additional License Types, are further described in the Product List.
- d. **How Enrolled Affiliates acquire Licenses.** An Enrolled Affiliate will acquire its Licenses through its chosen Reseller. Orders will be made out to and submitted to the Enrolled Affiliate's Reseller. Microsoft will invoice that Reseller according to the terms in the applicable Enrollment.
- e. **Choosing and maintaining a Reseller.** Each Enrolled Affiliate must choose and maintain a Reseller authorized in the United States.
- f. **Pricing.**
  - (i) **Establishing Price Levels.** Enrolled Affiliate's Price Level will be Level D for all Enterprise Products, Enterprise Online Services, Online Services and Additional Products ordered under any Enrollment.
  - (ii) **Placing Orders through Reseller.** Orders under an Enrollment will be made to the Reseller. Microsoft will invoice the Reseller according to the terms in the applicable Enrollment. Throughout this Agreement the term "price" refers to reference price. The Reseller and the Enrolled Affiliate will determine the Enrolled Affiliate's actual price and payment terms.
- g. **Order Requirements.** Order Requirements are outlined in each Enrollment.
- h. **Management and Reporting.** Customer and/or Enrolled Affiliate may manage account details (e.g., contacts, orders, Licenses, software downloads) on Microsoft's Volume Licensing Service Center ("VLSC") web site (or successor site) at: <https://www.microsoft.com/licensing/servicecenter>. Upon the effective date of this Agreement and any Enrollments, the contact(s) identified for this purpose will be provided access to this site and may authorize additional users and contacts.

### 3. **Licenses for Products.**

- a. **License Grant.** Microsoft grants the Enterprise a non-exclusive, worldwide and limited right to download, install and use software Products, and to access and use the Online Services, each in the quantity ordered under an Enrollment. The rights granted are subject to the terms of this Agreement, the Use Rights and the Product List. Microsoft reserves all rights not expressly granted in this Agreement.
- b. **Duration of Licenses.** Subscription Licenses and most Software Assurance rights are temporary and expire when the applicable Enrollment is terminated or expires, unless the Enrolled Affiliate exercises a buy-out option, which is available for some Subscription Licenses. Except as otherwise noted in the applicable Enrollment or Use Rights, all other Licenses become perpetual only when all payments for that License have been made and the initial Enrollment term has expired.
- c. **Applicable Use Rights.**
  - (i) **Products (other than Online Services).** The Use Rights in effect on the effective date of the Enrollment will apply to Enterprise's use of the version of each Product that is current at the time. For future versions and new Products, the Use Rights in effect when those versions and Products are first released will apply. Changes Microsoft makes to the Use Rights for a particular version will not apply unless the Enrolled Affiliate chooses to have those changes apply.
  - (ii) **Online Services.** For Online Services, the Use Rights in effect on the subscription start date will apply for the subscription term as defined in the Product List,

- d. **Downgrade rights.** Enrolled Affiliate may use an earlier version of a Product other than Online Services than the version that is current on the effective date of the Enrollment. In that case, the Use Rights for the current version apply to the use of the earlier version. If the earlier Product version includes features that are not in the new version, then the Use Rights applicable to the earlier version apply with respect to those features.
- e. **New Version Rights under Software Assurance.** Enrolled Affiliate must order and maintain continuous Software Assurance coverage for each License ordered. With Software Assurance coverage, Enterprise automatically has the right to use a new version of a licensed Product as soon as it is released, even if Enrolled Affiliate chooses not use the new version immediately.
  - (i) Except as otherwise permitted under an Enrollment, use of the new version will be subject to the new version's Use Rights.
  - (ii) If the License for the earlier version of the Product is perpetual at the time the new version is released, the License for the new version will also be perpetual. Perpetual Licenses obtained through Software Assurance replace any perpetual Licenses for the earlier version.
- f. **License confirmation.** This Agreement, the applicable Enrollment, Enrolled Affiliate's order confirmation, and any documentation evidencing transfers of perpetual Licenses, together with proof of payment, will be Enrolled Affiliate's evidence of all Licenses obtained under an Enrollment.
- g. **Reorganizations, consolidations and privatizations.** If the number of Licenses covered by an Enrollment changes by more than ten percent as a result of (1) a reorganization, consolidation or privatization of an entity or an operating division, (2) a privatization of an Affiliate or an operating division of Enrolled Affiliate or any of its Affiliates, or (3) a consolidation including a merger with a third party that has an existing agreement or Enrollment, Microsoft will work with Enrolled Affiliate in good faith to determine how to accommodate its changed circumstances in the context of this Agreement.

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

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

- (ii) The Product, language, version, and components of the copies made must be identical to the Product, language, version, and 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) re-imaged must be identical to the Product type licensed from the separate source.
- (iv) Enrolled Affiliate must adhere to any Product-specific processes or requirements for re-imaging identified in the Product List.

Re-imaged Products remain subject to the terms and use rights of the License acquired from the separate source. This subsection does not create or extend any Microsoft warranty or support obligation.

## **5. Transferring and reassigning Licenses.**

- a. **License transfers.** Enrolled Affiliate may transfer fully-paid perpetual Licenses to:
  - (i) an Affiliate or
  - (ii) an unaffiliated third party in connection with (A) a privatization of an Affiliate or agency or of an operating division of Enrolled Affiliate or an Affiliate, (B) a reorganization, or (C) a consolidation.
- b. **Notification of License Transfer.** Enrolled Affiliate must notify Microsoft of a License transfer by completing a license transfer form, which can be obtained from <http://www.microsoft.com/licensing/contracts> and sending the completed form to Microsoft before the License transfer. No License transfer will be valid unless Enrolled Affiliate provides to the transferee, and the transferee accepts in writing, the applicable Use Rights, use restrictions, limitations of liability (including exclusions and warranty provisions), and the transfer restrictions described in this section. Any License transfer not made in compliance with this section will be void.
- c. **Internal Assignment of Licenses and Software Assurance.** Licenses and Software Assurance must be assigned to a single user or device within the Enterprise. Licenses and Software Assurance may be reassigned within the Enterprise as described in the Use Rights.

## **6. Term and termination.**

- a. **Term.** The term of this Agreement will be 36 full calendar months from the Effective date unless terminated by either party as described below. Each Enrollment will have the term provided in that Enrollment.
- b. **Termination without cause.** Either party may terminate this Agreement, without cause, upon 60 days written notice. In the event of termination, new Enrollments will not be accepted, but any existing Enrollment will continue for the term of such Enrollment and will continue to be governed by this Agreement.
- c. **Mid-term termination for non-appropriation of Funds.** Enrolled Affiliate may terminate this Agreement or an Enrollment without liability, penalty or further obligation to make payments if funds to make payments under the Agreement or Enrollment are not appropriated or allocated by the Enrolled Affiliate for such purpose.
- d. **Termination for cause.** Without limiting any other remedies it may have, either party may terminate an Enrollment if the other party materially breaches its obligations under this Agreement, including any obligation to submit orders or pay invoices. Except where the breach is by its nature not curable within 30 days, the terminating party must give the other party 30 days' notice of its intent to terminate and an opportunity to cure the breach.

If Microsoft gives such notice to an Enrolled Affiliate, Microsoft also will give Customer a copy of that notice and Customer agrees to help resolve the breach. If the breach affects other Enrollments and cannot be resolved between Microsoft and Enrolled Affiliate, together with Customer's help, within a reasonable period of time, Microsoft may terminate this Agreement and all Enrollments under it. If an Enrolled Affiliate ceases to be Customer's Affiliate, it must promptly notify Microsoft, and Microsoft may terminate the former Affiliate's Enrollment. If an Enrolled Affiliate terminates its Enrollment as a result of a breach by Microsoft, or if Microsoft terminates an Enrollment because Enrolled Affiliate ceases to be Customer's Affiliate, then Enrolled Affiliate will have the early termination rights described in the Enrollment.

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

(i) It may immediately pay the total remaining amount due, including all installments, in which case, the Enrolled Affiliate will have perpetual rights for all Licenses it has ordered; or

(ii) It may pay only amounts due as of the termination date, in which case the Enrolled Affiliate will have perpetual Licenses for:

- 1) all copies of Products (including the latest version of Products ordered under SA coverage in the current term) for which payment has been made in full, and
- 2) the number of copies of Products it has ordered (including the latest version of Products ordered under Software Assurance coverage in current term) that is proportional to the total of installment payments paid versus total amounts due (paid and payable) if the early termination had not occurred.

(iii) In the case of Early Termination under Subscription Enrollments, Enrolled Affiliate will have the following options:

- 1) For eligible products Enrolled Affiliate may obtain perpetual Licenses as described in the section titled "Buy-out option," provided that Microsoft receives the buy-out order for those Licenses within 60 days after Enrolled Affiliate provides notice of termination.
- 2) Where not exercising buy-out option, in the event of breach by Microsoft, Microsoft will issue Reseller a credit for any amount paid in advance that would apply after the date of termination.

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

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

(i) Enrolled Affiliate must order Licenses for all copies of Products it has run for which it has not previously submitted an order. Any and all unpaid payments or any order of any kind, including subscription services, remain due and payable. Except as provided in the subsection titled "Early termination," all unpaid payments for Licenses immediately become due and payable.

(ii) Enrolled Affiliate's right to Software Assurance benefits under this Agreement ends if it does not renew Software Assurance.

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



- h. **Program updates.** Microsoft may make changes to this program that will make it necessary for Customer and its Enrolled Affiliates to enter into new agreements and Enrollments.

## **7. Use, ownership, and restrictions.**

- a. **Products.** Unless otherwise specified in a supplemental agreement, use of any Product is governed by the Use Rights specific to each Product and version and by the terms of the applicable supplemental agreement.
- b. **Fixes.** Each Fix is licensed under the same terms as the Product to which it applies. If the Fix is not provided for a specific Product, any use terms Microsoft provides with the Fix will apply. If no use terms are provided, Enrolled Affiliate shall have a non-exclusive, perpetual, fully paid-up license to use and reproduce the Fix solely for its internal business use. Enrolled Affiliate may not modify, change the file name or combine any Fix with any non-Microsoft computer code, except as expressly permitted in another agreement.
- c. **Non-Microsoft software and technology.** Enrolled Affiliate is solely responsible for any non-Microsoft software or technology that it installs or uses with the Products or Fixes. Enrolled Affiliate may not install or use non-Microsoft software or technology in any way that would subject Microsoft's intellectual property or technology to obligations beyond those included in this agreement.
- d. **Sample Code.** Upon payment in full, Microsoft grants the Enterprise a non-exclusive, perpetual, non-transferable, license to use and modify any software code that Microsoft provides for purposes of illustration ("Sample Code") and to reproduce and distribute the object code form of the Sample Code for Enrolled Affiliate's internal business purposes only and not to any unaffiliated third party.
- e. **Restrictions on use.** Enrolled Affiliate must not (and must not attempt to) reverse engineer, decompile, or disassemble any Product or Fix. Except as expressly permitted in this agreement, Customer must not (1) separate and run parts of a Product on more than one computer, upgrade or downgrade parts of a Product at different times, or transfer parts of a Product separately; or (2) distribute, sublicense, rent, lease, lend, or host any Product, or Fix.
- f. **Reservation of rights.** All rights not expressly granted are reserved to Microsoft.
- g. **Supportability of Products.** Support for Products is available under the terms of a supplemental agreement, a separate Statement of Services or under the terms set forth at <http://support.microsoft.com/> or a successor site. Premier Support Services, Microsoft Consulting Services, and other professional services may only be purchased under a Microsoft Services Agreement.

## **8. Confidentiality.**

"Confidential Information" is non-public information that is designated "confidential" or that a reasonable person should understand to be confidential, including Customer Data. Confidential Information does not include information that (a) becomes publicly available without a breach of this agreement, (b) was lawfully known or received by the receiving party without an obligation to keep it confidential, (c) is independently developed, or (d) is a comment or suggestion one party volunteers about the other's business, products or services.

Each party will take reasonable steps to protect the other party's Confidential Information and will use the other party's Confidential Information only for purposes of the parties' business relationship under this agreement. Neither party will disclose that information to third parties, except to its employees, Affiliates, contractors, advisors and consultants (collectively, "Representatives") and then only on a need-to-know basis under nondisclosure obligations at least as protective as this agreement. Each party remains responsible for the use of the Confidential Information by its Representatives and, in the event of the discovery of any unauthorized use or disclosure, must promptly notify the other party.

A party may disclose the other party's Confidential Information if required by law; but only after it notifies the other party (if legally permissible) to enable the other party to seek a protective order.

Neither party is required to restrict work assignments of Representatives who have had access to Confidential Information. 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.

These obligations apply for Customer Data until it is deleted from the Online Services, and for all other Confidential Information, for a period of five years after the Confidential Information is received.

## **9. Compliance and applicable laws, privacy, and security.**

- a.** Microsoft and Enrolled Affiliate each will comply with all applicable laws and regulations (including applicable security breach notification law). However, Microsoft is not responsible for compliance with any laws applicable to Enrolled Affiliate or Enrolled Affiliate's industry or government function that are not also generally applicable to information technology services providers.
- b.** Enrolled Affiliate consents to the processing of personal information by Microsoft and its agents to facilitate the subject matter of this Agreement. Enrolled Affiliate will obtain all required consents from third parties under applicable privacy and data protection law before providing personal information to Microsoft.
- c.** Personal information collected through Products (i) may be transferred, stored and processed in the United States or any other country in which Microsoft or its contractors maintain facilities and (ii) will be subject to the privacy terms specified in the Use Rights. Microsoft abides by the EU Safe Harbor and the Swiss Safe Harbor frameworks as set forth by the U.S. Department of Commerce regarding the collection, use, and retention of data from the European Union, the European Economic Area, and Switzerland.
- d. U.S. export jurisdiction.** Products and Fixes are subject to U.S. export jurisdiction. Enrolled Affiliate must comply with all applicable international and national laws, including the U.S. Export Administration Regulations and International Traffic in Arms Regulations, and end-user, end use and destination restrictions issued by U.S. and other governments related to Microsoft products, services and technologies. For additional information related to Microsoft compliance with export rules, see <http://www.microsoft.com/exporting>.

## **10. Warranties.**

### **a. Limited warranties and remedies.**

- (i) Software.** Microsoft warrants that each version of the Software will perform substantially as described in the applicable Microsoft user documentation for one year from the date Enrolled Affiliate is first licensed for that version. If it does not and Enrolled Affiliate notifies Microsoft within the warranty term, then Microsoft will, at its option (1) return the price paid by Enrolled Affiliate for the Software license, or (2) repair or replace the Software.
- (ii) Online Services.** Microsoft warrants that each Online Service will perform in accordance with the applicable SLA during Enrolled Affiliate's use. Enrolled Affiliate's remedies for breach of this warranty are in the SLA.

The remedies above are Customer's sole remedies for breach of the warranties in this section.

- b. Exclusions.** The limited warranties in this section titled "Warranties" do not cover problems caused by accident, abuse, or use in a manner inconsistent with this Agreement, including failure to meet minimum system requirements. These warranties do not apply to free, trial, pre-

release, or beta Products, or to components of Products that Enrolled Affiliate is permitted to redistribute.

- c. **DISCLAIMER.** Microsoft provides no other warranties or conditions and disclaims any other express, implied, or statutory warranties, including warranties of merchantability, fitness for a particular purpose, satisfactory quality, title, and non-infringement.

## 11. **Defense of third party claims.**

- a. **By Microsoft.** Microsoft will defend Enrolled Affiliate against any claims made by an unaffiliated third party (1) that any Product or Fix infringes its patent, copyright, or trademark or makes unlawful use of its Trade Secret; or (2) that arises from Microsoft's provision of an Online Service in violation of subsection (a) of the section titled "Compliance and applicable laws, privacy, and security" above. Microsoft will pay the amount of any resulting adverse final judgment or approved settlement. This does not apply to:

- (i) Customer Data;
- (ii) non-Microsoft software;
- (iii) modifications to a Product or Fix Enrolled Affiliate makes or any specifications or materials Enrolled Affiliate provides;
- (iv) Enrolled Affiliate's combination of the Product or Fix with (or damages based on the value of) a non-Microsoft product, data, or business process;
- (v) Enrolled Affiliate's use of a Microsoft trademarks without express, written consent or the use or redistribution of a Product or Fix in violation of this Agreement;
- (vi) Enrolled Affiliate's use of a Product or Fix after Microsoft notifies Enrolled Affiliate to discontinue that use due to a third party claim; or
- (vii) Products or Fixes provided free of charge.

- b. **By Enrolled Affiliate.** Enrolled Affiliate will defend Microsoft against any claims made by an unaffiliated third party that:

- (i) any Customer Data or non-Microsoft software Microsoft hosts on Enrolled Affiliate's behalf infringes the third party's patent, copyright, or trademark or makes unlawful use of its Trade Secret;
- (ii) arises from violation of subsection (a) of the section titled "Compliance and applicable laws, privacy, and security" above; a violation of the legal rights of others; or unauthorized access to or disruption of any service, data, account, or network in connection with the use of the Online Services; or
- (iii) are based on items excluded from Microsoft's defense obligations in the subsection titled "By Microsoft" above.

Enrolled Affiliate will pay the amount of any adverse final judgment or approved settlement resulting from a claim covered by this section titled "By Enrolled Affiliate."

- c. **Rights and remedies in case of possible infringement or misappropriation.** If Microsoft reasonably believes that a claim under this section may result in a legal bar prohibiting Enrolled Affiliate's use of the Product or Fix, Microsoft will seek to obtain the right for Enrolled Affiliate to keep using it or modify or replace it with a functional equivalent, in which case Enrolled Affiliate must discontinue use of the prior version immediately. If these options are not commercially reasonable, Microsoft may terminate Enrolled Affiliate's right to the Product or Fix and refund any amounts Enrolled Affiliate has paid for those rights to Software or Fixes and, for Online Services, any amount paid for a usage period after the termination date.

- d. **Other terms.** The party being defended under this section titled "Defense of third party claims" must notify the other party promptly of any claim subject to the subsection titled "By Microsoft,"

give the other party sole control over the defense or settlement, and 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. Any settlement must be approved in writing by the defending party. The remedies provided in this section titled "Defense of third party claims" are the exclusive remedies for the claims described in this section.

## **12. Limitation of liability.**

- a. General.** The total liability of each party, including its Affiliates and contractors, for claims arising under this Agreement is limited to direct damages up to the following amounts (1) for each Product other than Online Services, the amount Enrolled Affiliate was required to pay for the Product under this Agreement, and (2) for Online Services, the amount Enrolled Affiliate paid for the Online Service during the prior 12 months before the cause of action arose; but in no event will a party's aggregate liability for any Online Service exceed the total amount paid for that Online Service under this Agreement. In the case of Products provided free of charge, previews, or code that Enrolled Affiliate is authorized to redistribute to third parties without separate payment to Microsoft, Microsoft's liability is limited to direct damages up 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.
- b. Affiliates and contractors.** Microsoft and Enrolled Affiliate each agree not to 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 be responsible for its actions in the event of any breach of this provision.
- c. EXCLUSION OF CERTAIN DAMAGES.** Neither party nor their 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 in connection with this agreement, even if advised of the possibility of such damages or if such possibility was reasonably foreseeable.
- d. Limits.** The limits and exclusions in this section titled "Limitation of liability" do not apply to either party's (1) obligations under the section titled "Defense of third party claims", or (2) liability for violation of its confidentiality obligations (except obligations related to Customer Data) or the other party's intellectual property rights.

## **13. Verifying compliance.**

- a. Right to verify compliance.** Enrolled Affiliate must keep accurate and complete records relating to all use and distribution of Products by Enrolled Affiliate and its Affiliates. Microsoft has the right, to the extent permitted by applicable law, to verify Enrolled Affiliate and its Affiliates' compliance with the license terms for Products, at Microsoft's expense.
- b. Verification process and limitations.** Microsoft will provide Enrolled Affiliate at least 30 days' notice of its intent to verify compliance. Verification will take place during normal business hours and in a manner that does not interfere unreasonably with Enrolled Affiliate's operations. Microsoft will engage an independent auditor, which will be subject to a confidentiality obligation. Enrolled Affiliate must promptly provide the independent auditor with any information the auditor reasonably requests in furtherance of the verification, including access to systems running the Products and evidence of Licenses for Products Enrolled Affiliate hosts, sublicenses, or distributes to third parties. Enrolled Affiliate agrees to complete Microsoft's self-audit process, which Microsoft may require as an alternative to a third party audit. Any information collected in the self-audit will be used solely for purposes of determining compliance.

- c. Remedies for non-compliance.** If verification or self-audit reveals any unlicensed use or distribution, then within 30 days, (1) Enrolled Affiliate must order sufficient licenses to cover that use or distribution, and (2) if unlicensed use or distribution is 5% or more, Enrolled Affiliate must reimburse Microsoft for the cost Microsoft has incurred in verification and acquire the necessary additional licenses at 125% of the price based on the then-current price list and Enrolled Affiliate price level. The unlicensed use percentage is based on the total number of licenses purchased compared to actual install base. If there is no unlicensed use, Microsoft will not undertake another verification of the same Enrolled Affiliate for at least one year. By exercising the rights and procedures described above, Microsoft does not waive its rights to enforce this Agreement or to protect its intellectual property by any other means permitted by law.

## 14. *Miscellaneous.*

- a. Notices.** Notices to Microsoft must be sent to the Microsoft address on the signature form with a copy sent to the address below. Notices must be in writing and will be treated as delivered on the date shown on the return receipt or on the courier or fax confirmation of delivery. Microsoft may provide information to Enrolled Affiliate about upcoming ordering deadlines, services, and subscription information in electronic form, including by email to contacts provided by Enrolled Affiliate. Emails will be treated as delivered on the transmission date.

**A copy of each notice should be sent to:**

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

- b. Assignment.** Either party may assign this Agreement to an Affiliate, but must notify the other party in writing of the assignment. Any other assignment of rights must be approved by the other party in writing. Assignment will not relieve the assigning party of its obligations under the assigned agreement. Any attempted assignment without required approval will be void.
- c. Severability.** If any provision in this agreement is found unenforceable, the balance of the agreement will remain in full force and effect.
- d. Use of contractors.** Microsoft may use contractors to perform services, but will be responsible for their performance subject to the terms of this Agreement.
- e. Waiver.** Failure to enforce any provision of this agreement will not constitute a waiver. Any waiver must be in writing and signed by the waiving party.
- f. Applicable law; dispute resolution.** The terms of this Agreement will be governed by the laws of Customer's state, without giving effect to its conflict of laws. Disputes relating to this Agreement will be subject to applicable dispute resolution laws of Customer's state.
- g. This Agreement is not exclusive.** Customer and its Affiliates are free to enter into agreements to license, use or promote non-Microsoft software.

- h. Entire agreement.** This Agreement, the Product List, all Enrollments under this Agreement, and the Use Rights constitute the entire agreement concerning the subject matter and supersede any prior or contemporaneous communications.
- i. Order of precedence.** In the case of a conflict between any documents in this Agreement that is not expressly resolved in those documents, their terms will control in the following order of descending priority: (1) this Enterprise Agreement, (2) any Enrollment, (3) the Product List, (4) the Use Rights, (5) orders submitted under this Agreement, and (6) any other documents in this Agreement. Terms in an amendment control over the amended document and any prior amendments concerning the same subject matter.
- j. Survival.** Provisions regarding ownership and license rights, fees, Use Rights, restrictions on use, evidence of perpetual licenses, transfer of licenses, warranties, defense of third party claims, limitations of liability, confidentiality, compliance verification, obligations on termination or expiration and the other provisions in this section entitled "Miscellaneous" will survive termination or expiration of this Agreement.
- k. No transfer of ownership.** Microsoft does not transfer any ownership rights in any licensed Product. The Products are protected by copyright and other intellectual property rights laws and international treaties.
- l. Free Products.** It is Microsoft's intent that the terms of this Agreement and the Use Rights be in compliance with all applicable federal law and regulations. Any free Product provided to Enrolled Affiliate is for the sole use and benefit of the Enrolled Affiliate, and is not provided for use by or personal benefit of any specific government employee.
- m. Amendments.** Any amendment to this Agreement must be executed by both parties, except that Microsoft may change the Product List and the Use Rights in accordance with the terms of this Agreement. Any conflicting terms and conditions contained in a purchase order will not apply. Microsoft may require Customer to sign a new agreement or an amendment before an Enrolled Affiliate enters into an Enrollment under this agreement.
- n. 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.
- o. Voluntary Product Accessibility Templates.** Microsoft supports the government's obligation to provide accessible technologies to its citizens with disabilities as required by Section 508 of the Rehabilitation Act of 1973, and its state law counterparts. The Voluntary Product Accessibility Templates ("VPATs") for the Microsoft technologies used in providing the online services can be found at Microsoft's VPAT page. Further information regarding Microsoft's commitment to accessibility can be found at <http://www.microsoft.com/enable>.
- 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.
- q. Copyright violation.** Except as set forth in the section above entitled "Transferring and reassigning Licenses", the Enrolled Affiliate agrees to pay for, and comply with the terms of this Agreement and the Use Rights, for the Products it uses. Except to the extent Enrolled 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.
- r. Calendar days.** Any reference in this Agreement or an Enrollment to a "day" means a calendar day, except references that specify "business day".