



Commonwealth of Virginia
Virginia Information Technologies Agency

MICROSOFT ENTERPRISE AGREEMENT - STATE AND LOCAL

Optional Use Contract

Date: June 16, 2016

Contract #: VA-121217-MSE

Authorized User: State Agencies and Public Bodies

Contractor: Microsoft
One Microsoft Way
Redmond, WA 98052-6399

FIN: 91-1144442

Contact Person: See page 3 for appropriate representative for State & Local Government and their contact information.

Term: December 17, 2012 – July 31, 2016

Payment: Net 30 days

For Additional Contract Information, Please Contact:

Virginia Information Technologies Agency
Supply Chain Management

Greg Searce
Strategic Sourcing Specialist
Phone: 804-416-6166
E-Mail: gregory.searce@vita.virginia.gov
Fax: 804-416-6361

Doug Crenshaw
Strategic Sourcing Manager
Phone: 804-371-5993
E-Mail: doug.crenshaw@vita.virginia.gov

NOTES: Individual Commonwealth of Virginia employees are not authorized to purchase equipment or services for their personal use from this Contract.

For updates, please visit our Website at <http://www.vita.virginia.gov/procurement/contracts.cfm>

VIRGINIA INFORMATION TECHNOLOGIES AGENCY (VITA): Prior review and approval by VITA for purchases in excess of \$100,000.00 is required for State Agencies and Institutions only.

CONTACTS:

Kevin Mims
4301 Dominion Blvd
Suite 200
Glen Allen, VA 23060
Kevin.mims@microsoft.com
Phone: (703) 673-7740

Microsoft Volume License Site (MVLS)
<https://www.microsoft.com/licensing/servicecenter/default.aspx>

Enterprise User Agreement Guide
<https://www.microsoft.com/licensing/licensing-options/enterprise.aspx>

MS Customer Service Center 888-352-7140

Microsoft Product Use Rights/Product List
<http://www.microsoft.com/licensing/about-licensing/product-licensing.aspx>

NOTE: Microsoft does not sell Enterprise software products except through Large Account Resellers (LARs). To place orders for Microsoft Products, see Contract #VA-131017-SHI. SHI International Corporation is the Large Account Reseller (LAR) for Microsoft products.

SHI Enterprise and Select Contact:
Erik Schroeder
Senior Account Executive
Erik_schroeder@shi.com
800-527-6389 x5648217
Fax: 732-564-8218
Inside Sales Support Team
Virginia@shi.com

Enterprise Agreement Amendment ID CTM

000-TSOWA-S-16094

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.

1. The purpose of this Amendment is to extend the term of Enterprise Agreement 01E73321 through July 31, 2016.

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.



Program Signature Form

MBA/MBSA number		000-TSOWA-S-16094
Agreement number	01E73321	

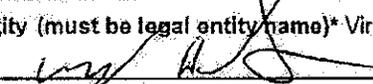
Note: Enter the applicable active numbers associated with the documents below. Microsoft requires the associated active number be indicated here, or listed below as new.

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.

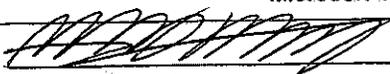
This signature form and all contract documents identified in the table below are entered into between the Customer and the Microsoft Affiliate signing, as of the effective date identified below.

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 (01E73321)
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)* Virginia Information Technologies Agency (VITA)
Signature* 
Printed First and Last Name* Gregory H. Searce
Printed Title Strategic Sourcing Specialist
Signature Date* 5.25.2016
Tax ID 54-1074144

* Indicates required field

Microsoft Affiliate	
Signature 	 Microsoft Microsoft Corporation
Printed First and Last Name	
Printed Title	
Signature Date (date Microsoft Affiliate countersigns)	MAY 26 2016 Alex Vazquez Duly Authorized on behalf of Microsoft Corporation
Agreement Effective Date (may be different than Microsoft's signature date)	5/26/2016

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

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

* indicates required field

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

* indicates required field

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

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

Microsoft Corporation
 Dept. 551, Volume Licensing
 8100 Neil Road, Suite 210
 Reno, Nevada 89511-1137
 USA



**Enterprise Agreement
Amendment ID CTM**

000-TSOWA-S-16081

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.

1. The purpose of this Amendment is to extend the term of Enterprise Agreement 01E73321 through May 31, 2016.

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.

Program Signature Form

MBA/MBSA number

01E73321

000-TSOWA-S-16081

Agreement number

01E73321

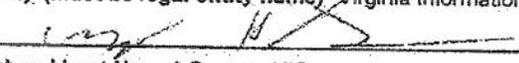
Note: Enter the applicable active numbers associated with the documents below. Microsoft requires the associated active number be indicated here, or listed below as new.

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
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<Choose Enrollment/Registration>	Document Number or Code
<Choose Enrollment/Registration>	Document Number or Code
Amendment	CTM (01E73321)
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)*	Virginia Information Technologies Agency (VITA)
Signature*	
Printed First and Last Name*	Gregory H Searce
Printed Title	Strategic Sourcing Specialist
Signature Date*	4.15.2016
Tax ID 54-1074144	

* Indicates required field

Microsoft Affiliate	
Microsoft Corporation	
Signature _____	 Microsoft Microsoft Corporation APR 15 2016 Kyle Perez Duly Authorized on behalf of Microsoft Corporation
Printed First and Last Name _____	
Printed Title _____	
Signature Date _____ <small>(date Microsoft Affiliate countersigns)</small>	
Agreement Effective Date _____ <small>(may be different than Microsoft's signature date)</small>	4/15/16

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

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

* indicates required field

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

* indicates required field

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

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

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

Program Signature Form

MBA/MBSA number

01E73321

000-TSOWA-S-16067

Agreement number

01E73321

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.

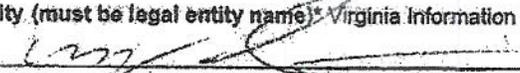
This signature form and all contract documents identified in the table below are entered into between the Customer and the Microsoft Affiliate signing, as of the effective date identified below.

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<Choose Enrollment/Registration>	Document Number or Code
Amendment	CTM (01E73321)
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)* Virginia Information Technologies Agency (VITA)

Signature* 

Printed First and Last Name* Gregory Searce

Printed Title Strategic Sourcing Specialist

Signature Date* 02/12/2016

Tax ID 54-1074144

* Indicates required field

Microsoft Affiliate	
Microsoft Corporation	
Signature _____	 Microsoft Microsoft Corporation FEB 12 2016 Mark Lucas Duty Authorized on behalf of Microsoft Corporation
Printed First and Last Name _____	
Printed Title _____	
Signature Date _____ (date Microsoft Affiliate countersigns)	
Agreement Effective Date _____ (may be different than Microsoft's signature date)	2/12/2016

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

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

* indicates required field

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

* indicates required field

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

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

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



Enterprise Agreement
Amendment ID CTM

000-TSOWA-S-16067

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.

1. The purpose of this Amendment is to extend the term of Enterprise Agreement 01E73321 through March 31, 2016.

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.

Program Signature Form

MBA/MBSA number		000-TSOWA-S-16053
Agreement number	01E73321	

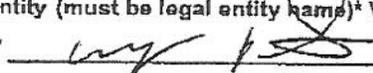
Note: Enter the applicable active numbers associated with the documents below. Microsoft requires the associated active number be indicated here, or listed below as new.

For the purposes of this form, "Customer" can mean the signing entity, Entitled 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
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<Choose Enrollment/Registration>	Document Number or Code
<Choose Enrollment/Registration>	Document Number or Code
Amendment	CTM (01E73321)
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)*	Virginia Information Technologies Agency (VITA)
Signature*	
Printed First and Last Name*	Gregory H Searce
Printed Title	Strategic Sourcing Specialist
Signature Date*	12.22.2015
Tax ID 54-1074144	

* indicates required field

Microsoft Affiliate	
Microsoft Corporation	
Signature _____	 Microsoft Corporation DEC 23 2015 Kyle Perez Duly Authorized on behalf of Microsoft Corporation
Printed First and Last Name _____	
Printed Title _____	
Signature Date _____ (date Microsoft Affiliate countersigns)	
Agreement Effective Date _____ (may be different than Microsoft's signature date)	12-23-15

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

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

* indicates required field

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

* indicates required field

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

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

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

Enterprise Agreement Amendment ID CTM

000-TSOWA-S-16053

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.

1. The purpose of this Amendment is to extend the term of Enterprise Agreement 01E73321 through February 29, 2016.

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.

Enterprise Agreement

State and Local

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

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

Effective date. The effective date of this agreement is the effective date of the first Enrollment or the date Microsoft accepts this agreement, whichever is earlier. Any reference in this agreement or an Enrollment to "day" will be a calendar day.

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

Please note: Several 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 by reference, including the Product List and Product 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 and/or its Affiliates should review such documents carefully, both at the time of signing and periodically, to ensure a full understanding of all terms and conditions applicable to Products licensed.

Terms and Conditions

1. *Definitions.*

"Affiliate" means

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. How the Enterprise and Enterprise Subscription program works.

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

- a. Enrollments.** The Enterprise program gives Customer and/or its Affiliates the ability to enter into one or more Enrollments to order Products. Subscription Enrollments may be available for some of these Enrollments.
- b. Licenses.** The types of Licenses available are L&SA, Licenses obtained under Software Assurance and Subscription Licenses. These License types as well as additional License Types are defined in the Product List.
- c. How Enrolled Affiliates acquire Licenses.** An Enrolled Affiliate will acquire its Licenses through its chosen Reseller. Orders will be made out to and submitted to the Enrolled Affiliate’s Reseller. Microsoft will invoice that Reseller according to the terms in the applicable Enrollment.
- d. Choosing and maintaining a Reseller.** Each Enrolled Affiliate must choose and maintain a Reseller authorized in the Enrolled Affiliate’s location.
- e. Pricing.**
 - (i) Establishing Price Levels.** Each Product generally is assigned to a Product pool (e.g., applications, systems, or servers). Each Product pool will be assigned one of four price levels (A, B, C, and D). 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.
- f. Order Requirements.** Order Requirements are outlined in each Enrollment.
- g. Management and Reporting.** Customer and/or Enrolled Affiliate may manage account details (e.g., contacts, orders, Licenses, software downloads) on Microsoft’s Volume Licensing Service Center (“VLSC”) web site (or successor site) at: <https://www.microsoft.com/licensing/servicecenter>. Upon the effective date of this agreement and any Enrollments, the contact(s) identified for this purpose will be provided access to this site and may authorize additional users and contacts.

3. Licenses for Products.

- a. General.** Enrolled Affiliate will have the number of Licenses ordered for the latest version of a Product, and may use prior versions as permitted in the Product Use Rights, so long as Microsoft receives timely orders from Reseller for all required Licenses for such Products and complies with applicable license terms. The Licenses obtained under an Enrollment are not

related to any order or fulfillment of software media. The ability to use a Product ordered may be affected by minimum hardware or software requirements.

- b. Use by Affiliates.** The Enrolled Affiliate may sublicense the right to use the Products to any Affiliates covered under its Enrollment, but Affiliate recipient of these Licenses may not sublicense these rights and their use must be consistent with the License terms contained in this agreement.
- c. When Licenses become perpetual.** The right to run any Product licensed under an Enrollment is temporary unless and until it becomes perpetual as follows:
 - (i)** A License is temporary until Enrolled Affiliate's Reseller has paid for a License in full and the applicable initial Enrollment or renewal term during which the License was ordered must have expired or been terminated as permitted in this agreement.
 - (ii)** Subscription Licenses are never perpetual. If a buy-out option is available, Enrolled Affiliate may obtain a perpetual License by exercising the buy-out option and paying for the License in full.
 - (iii)** Enrolled Affiliate will have perpetual Licenses to use the Products ordered in the latest version available (or any prior version) as of the date of expiration, termination, or renewal.
 - (iv)** All perpetual Licenses acquired under this agreement remain subject to the terms of this agreement and such terms survive expiration or termination of this agreement or an Enrollment.
- d. Perpetual Licenses through Software Assurance.** Perpetual Licenses received through Software Assurance supersede and replace the underlying perpetual Licenses for which Software Assurance coverage was ordered. In the case of Early Termination, the terms in Section 7 titled "Term and Termination will apply."
- e. License confirmation.** This agreement, the applicable Enrollment, the Enrolled Affiliate's order confirmation, and any documentation evidencing transfers of Licenses, together with proof of payment, will be the Enrolled Affiliate's evidence of all Licenses obtained under its Enrollment.
- f. Reorganizations, consolidations, and privatizations.** If the number of Qualified Devices or Qualified Users covered by an Enrollment changes by more than ten percent as a result of a reorganization, consolidation, or privatization of an Enrolled Affiliate, Microsoft will work with the Enrolled Affiliate in good faith to determine how to accommodate its changed circumstances in the context of this agreement. If an Enrolled Affiliate consolidates with a third party with an existing agreement or enrollment, Microsoft will work with the Enrolled Affiliate in good faith to accommodate its changed circumstances in the context of this agreement.

4. How to know what Product Use Rights apply.

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

the earlier version includes components that are not part of the licensed version, any Product Use Rights specific to those components will apply to Enrolled Affiliate's use of those components.

- c. **Reservation of rights.** All rights not expressly granted are reserved.

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

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

6. Transferring and reassigning Licenses.

- a. **License transfers.** You may transfer fully-paid perpetual Licenses:
 - (i) if you are an agency of the U.S. Government, to another agency of the U.S. Government or to an unaffiliated third party in connection with (i) a privatization of the government agency or of an operating division of an Enrolled Affiliate or one of its government agency affiliates, (ii) a reorganization, or (iii) a consolidation; or

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

7. Term and termination.

- a. **Term.** The term of this agreement will be 36 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. Such termination will merely terminate either party's and its Affiliates' ability to enter into new Enrollments under this agreement. Such termination will not affect any Enrollment or order not otherwise terminated, and any terms of this agreement applicable to any Enrollment or order not otherwise terminated will continue in effect with respect to that Enrollment or order. An Enrolled Affiliate may terminate an Enrollment without liability, penalty or further obligation to make payments if funds to make payments under the Enrollment are not appropriated or allocated for such purpose.
- 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.** Either party to an Enrollment may terminate it if the other party materially breaches its obligations under this agreement, including any obligation to submit orders or pay 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 and opportunity to cure.

If Microsoft gives such notice to an Enrolled Affiliate, Microsoft will give Customer a copy of that notice as well and Customer agrees to assist in attempting to resolve the breach. If the breach also affects other Enrollments and cannot be resolved between Microsoft and Customer within a reasonable period of time, Microsoft may also terminate this agreement and all other Enrollments under it, unless the basis for termination of the Enrollment is non-appropriation of funds to the Enrolled Affiliate, in which event Microsoft may only terminate the affected Enrollment(s). If an Enrolled Affiliate ceases to be Customer's Affiliate, Customer must promptly notify Microsoft, and Microsoft may terminate its 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 terminate an Enrollment for non-payment due to non-appropriation of funds, then the Enrolled Affiliate will have the following options:
- (i) It may immediately pay the total remaining amount due, including all installments, in which case, the Enrolled Affiliate will have perpetual rights for all Licenses it has ordered; or
 - (ii) It may pay only amounts due as of the termination date, in which case the Enrolled Affiliate will have perpetual Licenses for:
 - 1) all copies of Products (including the latest version of Products ordered under SA coverage in the current term) for which payment has been made in full, and
 - 2) the number of copies of Products it has ordered (including the latest version of Products ordered under Software Assurance coverage in current term) that is proportional to the total of installment payments paid versus total amounts due (paid and payable) if the early termination had not occurred.
 - (iii) In the case of Early Termination under Subscription Enrollments, Enrolled Affiliate will have the following options:
 - 1) For eligible products Enrolled Affiliate may obtain perpetual Licenses as described in the section titled "Buy-out option," provided that Microsoft receives the buy-out order for those Licenses within 60 days after Enrolled Affiliate provides notice of termination.
 - 2) Where not exercising buy-out option, in the event of breach by Microsoft, Microsoft will issue Reseller a credit for any amount paid in advance that would apply after the date of termination.
- Nothing in this section shall affect perpetual License rights acquired either in a separate agreement or in a prior term of the terminated Enrollment.
- f. Effect of termination or expiration.** When an Enrollment expires or is terminated,
- (i) Enrolled Affiliate must order Licenses for all copies of Products it has run for which it has not previously submitted an order. Any and all unpaid payments or any order of any kind, including subscription services, remain due and payable. Except as provided in the subsection titled "Early termination," all unpaid payments for Licenses immediately become due and payable.
 - (ii) Enrolled Affiliate's right to Software Assurance benefits under this agreement ends if it does not renew Software Assurance.
- g. Modification or termination of an Online Service for regulatory reasons.** Microsoft may modify or terminate an Online Service where there is any current or future government requirement or obligation that: (1) subjects Microsoft to any regulation or requirement not generally applicable to businesses operating there; (2) presents a hardship for Microsoft to continue operating the Online Service without modification; and/or (3) causes Microsoft to believe these terms or the Online Service may be in conflict with any such requirement or obligation. For example, Microsoft may modify or terminate an Online Service in connection with a government requirement that would cause Microsoft to be regulated as a telecommunications provider.
- h. Program updates.** Microsoft may make a change to this program that will make it necessary for Customer and its Enrolled Affiliates to enter into new agreements and Enrollments.

8. Restrictions on use.

Enrolled Affiliate must not:

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

9. Non-Microsoft software or technology.

- a. Enrolled Affiliate is solely responsible for any non-Microsoft software or technology that it installs or uses with the Products or Fixes. Microsoft is not a party to and is not bound by any terms governing Enrolled Affiliate's use of non-Microsoft software or technology. Without limiting the foregoing, non-Microsoft software or scripts linked to or referenced from any Product website, are licensed to Enrolled Affiliate under the open source licenses used by the third parties that own such code, not by Microsoft.
- b. If Enrolled Affiliate installs or uses any non-Microsoft software or technology with the Products or Fixes, it directs and controls the installation in and use of such software or technology in the Products or Fixes, through its actions (e.g., through Enrolled Affiliate's use of application programming interfaces and other technical means that are part of the Online Services). Microsoft will not run or make any copies of such non-Microsoft software or technology outside of its relationship with Enrolled Affiliate.
- c. If Enrolled Affiliate installs or uses any non-Microsoft software or technology with the Products or Fix, it may not do so in any way that would subject Microsoft's intellectual property or technology to obligations beyond those included in the agreement.

10. Confidentiality.

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.

For the avoidance of doubt, the parties acknowledge that this Confidentiality provision recognizes that when there is a business need to do so, Microsoft and Customer may need to share/exchange their respective Confidential Information with each other to develop a more meaningful business relationship. This section provides Microsoft and Customer with a well-balanced, commercially reasonable and comprehensive set of confidentiality terms that enable both parties to share/exchange a wide range of Confidential Information with each other knowing with confidence that significant confidentiality protections are in place. The confidentiality terms denoted below do not govern Microsoft's handling of Customer Data. In all instances under this Agreement, Microsoft's handling of Customer Data shall be governed as described under various other provisions of this Agreement and by Microsoft's data security policy.

- a. **What is included.** "Confidential Information" is non-public information, know-how and Trade Secrets in any form that are designated as "confidential" or a reasonable person knows or reasonably should understand to be confidential. It includes non-public information regarding either party's products or customers, marketing and promotions, or the negotiated terms of Microsoft agreements.

- b. What is not included.** The following types of information, however marked, are not Confidential Information. Information that:
- (i) is, or becomes, publicly available without a breach of this agreement;
 - (ii) was lawfully known to the receiver of the information without an obligation to keep it confidential;
 - (iii) is received from another source who can disclose it lawfully and without an obligation to keep it confidential;
 - (iv) is independently developed; or
 - (v) is a comment or suggestion one party volunteers about the other's business, products or services.

c. Treatment of Confidential Information.

(i) **In general.** Subject to the other terms of this agreement, each party agrees:

- 1) it will not disclose the other's Confidential Information to third parties; and
- 2) it will use and disclose the other's Confidential Information only for purposes of the parties' business relationship with each other.

(ii) **Security precautions.** Subject to the other terms of this agreement, each party agrees:

- 1) to take reasonable steps to protect the other's Confidential Information -- these steps must be at least as protective as those the party takes to protect its own Confidential Information;
- 2) to notify the other promptly upon discovery of any unauthorized use or disclosure of Confidential Information; and
- 3) to cooperate with the other to help regain control of the Confidential Information and prevent further unauthorized use or disclosure of it.

(iii) **Sharing Confidential Information with Affiliates and representatives.**

- 1) A "Representative" is an employee, contractor, advisor, or consultant of one of the parties or of one of the parties' Affiliates.
- 2) Each party may disclose the other's confidential information to its Representatives (who may then disclose that Confidential Information to other of that party's Representatives) only if those Representatives have a need to know about it for purposes of the parties' business relationship with each other. Before doing so, each party must:
 - A. ensure that Affiliates and Representatives are required to protect the Confidential Information on terms consistent with this agreement; and
 - B. accept responsibility for each Representative's use of Confidential Information.
- 3) 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.

(iv) **Disclosing Confidential Information if required to by law.** Each party may disclose the other's Confidential Information if required to comply with a court order or other government demand that has the force of law. Before doing so, each party must seek

the highest level of protection available and, when possible, give the other enough prior notice to provide a reasonable chance to seek a protective order.

- d. Length of Confidential Information obligations.** Except as permitted above, neither party will use or disclose the other's Confidential Information for five years after it is received. The five-year time period does not apply if applicable law requires a longer period or the Product Use Rights provide a more specific requirement.

11. Warranties.

- a. Limited warranty.** Microsoft warrants that:

- (i) Online Services will perform in accordance with the applicable Service Level Agreement;
- (ii) Products other than Online Services will perform substantially as described in the applicable Microsoft user documentation; and

- b. Limited warranty term.** The limited warranty for:

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

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

- (i) any implied warranties, guarantees or conditions not able to be disclaimed as a matter of law last for one year from the start of the limited warranty;
- (ii) the limited warranty does not cover problems caused by accident, abuse or use in a manner inconsistent with this agreement or the Product Use Rights, or resulting from events beyond Microsoft's reasonable control;
- (iii) the limited warranty does not apply to components of Products that Enrolled Affiliate is permitted to redistribute;
- (iv) the limited warranty does not apply to free, trial, pre-release, or beta products; and
- (v) the limited warranty does not apply to problems caused by the failure to meet minimum system requirements.

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

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

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

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

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

- a. Microsoft's agreement to protect.** Microsoft will defend Enrolled Affiliate against any claims made by an unaffiliated third party that any Product or Fix that is made available by Microsoft for a fee infringes that party's patent, copyright, or trademark or makes unlawful use of its Trade Secret. Microsoft will also pay the amount of any resulting adverse final judgment (or settlement to which Microsoft consents). This section provides Enrolled Affiliate's exclusive remedy for these claims.
- b. Limitations on defense obligation.** Microsoft's obligations will not apply to the extent that the claim or award is based on:
- (i) Customer Data, non-Microsoft software, modifications Enrolled Affiliate makes to, or any specifications or materials Enrolled Affiliate provides or makes available for, a Product or Fix;
 - (ii) Enrolled Affiliate's combination of the Product or Fix with a non-Microsoft product, data or business process; or damages based on the use of a non-Microsoft product, data or business process;
 - (iii) Enrolled Affiliate's use of either Microsoft Trademarks or the use or redistribution of a Product or Fix in violation of this agreement or any agreement incorporating its terms or;
 - (iv) Enrolled Affiliate's use of a Product or Fix after Microsoft identifies Enrolled Affiliate to discontinue that use due to a third party claim.

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

- c. Enrolled Affiliate's agreement to protect.** To the extent permitted by applicable law, Enrolled Affiliate will defend Microsoft and its Affiliates against any claims made by an unaffiliated third party that:
- (i) any Customer Data or non-Microsoft software Microsoft hosts on Customer's behalf infringes the third party's patent, copyright, or trademark or makes unlawful use of its Trade Secret; or
 - (ii) Arises from violation of the Acceptable use Policy, which is described in the Product Use Rights.

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

- d. Rights and remedies in case of possible infringement or misappropriation.**
- (i) **Microsoft's offerings.** If Microsoft reasonably believes that a Product or Fix may infringe or misappropriate a third-party's intellectual property rights, Microsoft will seek to: (1) procure for Enrolled Affiliate the right to continue to use the Product or Fix; or (2) modify or replace it with a functional equivalent to make it non-infringing and notify Enrolled Affiliate to discontinue use of the prior version, which Enrolled Affiliate must do immediately. If the foregoing options are not commercially reasonable for Microsoft, or if required by a valid judicial or government order, Microsoft may terminate Enrolled Affiliate's license or access rights in the Product or Fix. In such a case, Microsoft will provide Enrolled Affiliate with notice and refund any amounts Enrolled Affiliate has paid for those rights to the Product or Fix (or for Online Services, any amount Enrolled Affiliate has paid in advance for unused Online Services).
 - (ii) **Customer Data or use of non-Microsoft software with Online Services.** If an unaffiliated third party asserts that Customer Data or non-Microsoft software or technology used by Enrolled Affiliate the Online Services violates their intellectual property rights, Microsoft may ask Customer to remove the allegedly infringing item. If

Enrolled Affiliate fails to do so within a reasonable period of time, Microsoft may suspend or terminate the Online Service to which the Customer Data or non-Microsoft software relates.

- e. **Obligations of protected party.** Enrolled Affiliate must notify Microsoft promptly in writing of a claim subject to the Subsection titled "Microsoft's agreement to protect" and Microsoft must notify Enrolled Affiliate promptly in writing of a claim subject to the Subsection titled "Customer's agreement to protect." The party invoking its right to protection must (1) give the other party sole control over the defense or settlement; and (2) provide reasonable assistance in defending the claim. The party providing the protection will reimburse the other party for reasonable out of pocket expenses that it incurs in providing assistance.

13. Limitation of liability.

- a. **Limitation on liability.** To the extent permitted by applicable law, the liability of Microsoft and Enrolled Affiliate, their respective Affiliates and contractors arising under this agreement is limited to direct damages up to (1) for Products other than Online Services, the amount Enrolled Affiliate was required to pay for the Product giving rise to that liability and (2) for Online Services, the amount Enrolled Affiliate paid for the Online Service giving rise to that liability during the prior 12 months. In the case of Products provided free of charge, or code that Enrolled Affiliate is authorized to redistribute to third parties without separate payment to Microsoft, Microsoft's liability is limited to U.S. \$5,000. These limitations apply regardless of whether the liability is based on breach of contract, tort (including negligence), strict liability, breach of warranties, or any other legal theory. However, these monetary limitations will not apply to:
 - (i) Microsoft's and Enrolled Affiliate's obligations under the section titled "Defense of infringement, misappropriation, and third party claims";
 - (ii) liability for damages caused by either party's gross negligence or willful misconduct, or that of its employees or its agents, and awarded by a court of final adjudication (provided that, in jurisdictions that do not recognize a legal distinction between "gross negligence" and "negligence," "gross negligence" as used in this subsection shall mean "recklessness");
 - (iii) liabilities arising out of any breach by either party of its obligations under the section entitled "Confidentiality", except that Microsoft's liability arising out of or in relation to Customer Data shall in all cases be limited to the amount Enrolled Affiliate paid for the Online Service giving rise to that liability during the prior 12 months;
 - (iv) liability for personal injury or death caused by either party's negligence, or that of its employees or agents, or for fraudulent misrepresentation; and
 - (v) violation by either party of the other party's intellectual property rights.
- b. **EXCLUSION OF CERTAIN DAMAGES. TO THE EXTENT PERMITTED BY APPLICABLE LAW, WHATEVER THE LEGAL BASIS FOR THE CLAIM, NEITHER PARTY, NOR ANY OF ITS AFFILIATES, OR CONTRACTORS, WILL BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, OR INCIDENTAL DAMAGES, OR DAMAGES FOR LOST PROFITS, REVENUES, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION ARISING IN CONNECTION WITH THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH POSSIBILITY WAS REASONABLY FORESEEABLE. HOWEVER, THIS EXCLUSION DOES NOT APPLY TO EITHER PARTY'S LIABILITY TO THE OTHER FOR VIOLATION OF ITS CONFIDENTIALITY OBLIGATIONS (EXCEPT TO THE EXTENT THAT SUCH VIOLATION RELATES TO CUSTOMER DATA), THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, OR THE PARTIES' RESPECTIVE OBLIGATIONS IN THE SECTION TITLED "DEFENSE OF INFRINGEMENT, MISAPPROPRIATION, AND THIRD PARTY CLAIMS."**

- c. **Affiliates and Contractors.** Neither Microsoft nor Enrolled Affiliate shall bring any action against the other's Affiliates or contractors in respect of any matter disclaimed on their behalf in this agreement.

14. **Verifying compliance.**

- a. **Right to verify compliance.** Enrolled Affiliate must keep records relating to the Products it and its Affiliates use or distribute. Microsoft has the right, to the extent permitted by applicable law, to verify compliance with the license terms for Products, at Microsoft's expense.
- b. **Verification process and limitations.** Microsoft will provide customer at least 30 days' notice of its intent to verify compliance. Microsoft will engage an independent auditor, which will be subject to a confidentiality obligation. Verification will take place during normal business hours and in a manner that does not interfere unreasonably with Customer's operations. Customer must promptly provide the independent auditor with any information it reasonably requests in furtherance of the verification, including access to systems running the Products and evidence of licenses for Products Customer hosts, sublicenses, or distributes to third parties. As an alternative, Microsoft may require Customer to complete Microsoft's self-audit process relating to the Products Customer and any of its Affiliates use or distribute. Such information will be used solely for purposes of determining compliance.
- c. **Remedies for non-compliance.** If verification or self-audit reveals any unlicensed use, Customer must within 30 days order sufficient licenses to cover its use. If there is no unlicensed use, Microsoft will not undertake another verification of the same Customer for at least one year. By exercising the rights and procedures described above, Microsoft does not waive its rights to enforce this agreement or to protect its intellectual property by any other means permitted by law.

15. **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

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

- b. **Assignment.** Either party may assign this agreement to an Affiliate only. Assignment will not relieve the assigning party of its obligations under the assigned agreement. If either party assigns this agreement, it must notify the other party of the assignment in writing.

- c. Severability.** If a court holds any provision of this agreement to be illegal, invalid or unenforceable, the rest of the document will remain in effect and this agreement will be amended to give effect to the eliminated provision to the maximum extent possible. Subcontractors. Microsoft may use contractors to perform Services and support Online Services. Microsoft will be responsible for their performance subject to the terms of this agreement.
- d. Waiver.** A waiver of any breach of this agreement is not a waiver of any other breach. Any waiver must be in writing and signed by an authorized representative of the waiving party.
- e. Applicable law; Dispute resolution.** The terms of this agreement will be governed by the laws of Enrolled Affiliate's state, without giving effect to its conflict of laws. Disputes relating to this agreement will be subject to applicable dispute resolution laws of Enrolled Affiliate's state.
- f. This agreement is not exclusive.** Customer is free to enter into agreements to license, use or promote non-Microsoft software.
- g. Entire agreement.** This agreement, the Product List, all Enrollments under this agreement, and the Product Use Rights constitute the entire agreement concerning the subject matter and supersede any prior or contemporaneous communications. In the case of a conflict between any documents referenced in this agreement that is not expressly resolved in the documents, their terms will control in the following order: (1) these terms and conditions and the accompanying signature form; (2) an Enrollment; (3) the Product List; (4) the Product Use Rights; (5) any other documents; and (6) all orders submitted under this agreement.
- h. Survival.** Provisions regarding ownership and license rights, fees, Product Use Rights, restrictions on use, evidence of perpetual licenses, transfer of licenses, warranties, defense of infringement and misappropriation claims, Microsoft's and Customer's obligations to protect each other, limitations of liability, confidentiality, compliance verification, obligations on termination or expiration and the other provisions in this section entitled "Miscellaneous" will survive termination or expiration of this agreement and of any agreement in which they are incorporated.
- i. No transfer of ownership.** Microsoft does not transfer any ownership rights in any licensed Product.
- j. Free Products.** It is Microsoft's intent that the terms of this agreement and the Product Use Rights be in compliance with all applicable federal law and regulations. Any free Product provided to 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.
- k. Amending the agreement.** This agreement (except the Product List and the Product Use Rights) can be changed only by an amendment signed by both parties.
- l. Resellers and other third parties cannot bind Microsoft.** Resellers and other third parties do not have authority to bind or impose any obligation or liability on Microsoft.
- m. Privacy and security.** Microsoft and Enrolled Affiliate will each comply with all applicable privacy and data protection laws and regulations (including applicable security breach notification law). However, Microsoft is not responsible for compliance with any laws applicable to Enrolled Affiliate or Enrolled Affiliate's industry that are not also generally applicable to information technology services providers. Enrolled Affiliate consents to the processing of personal information by Microsoft and its agents to facilitate the subject matter of this agreement. Enrolled Affiliate may choose to provide personal information to Microsoft on behalf of third parties (including Enrolled Affiliate's contacts, resellers, distributors, administrators, and employees) as part of this agreement. Enrolled Affiliate will obtain all required consents from third parties under applicable privacy and data protection law before providing personal information to Microsoft. The personal information Enrolled Affiliate provides in connection with this agreement will be processed according to the privacy statement available at <https://www.microsoft.com/licensing/servicecenter> (see footer), except

that Product-specific privacy statements are in the Product use rights. Personal data collected through Products or Services may be transferred, stored and processed in the United States or any other country in which Microsoft or its service providers maintain facilities. By using the Products or Services, Customer consents to the foregoing. Microsoft abides by the EU Safe Harbor and the Swiss Safe Harbor frameworks as set forth by the U.S. Department of Commerce regarding the collection, use, and retention of data from the European Union, the European Economic Area, and Switzerland. For Online Services, additional privacy and security details are in the Product use rights.

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

Program Signature Form

MBA/MBSA number

Agreement number

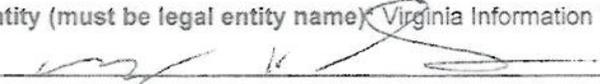
Note: Enter the applicable active numbers associated with the documents below. Microsoft requires the associated active number be indicated here, or listed below as new.

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

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

Contract Document	Number or Code
Enterprise Agreement	X20-03196
<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
EA Agreement Amendment	CTM (New)
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)*	Virginia Information Technologies Agency ("VITA")
Signature*	
Printed First and Last Name*	Gregory H Scearce
Printed Title*	Strategic Sourcing Specialist
Signature Date*	12/17/2012
Tax ID 54-1074144	

* indicates required field

Microsoft Affiliate	
Microsoft Licensing, GP	
Signature _____	 Microsoft Licensing, GP DEC 18 2012 <i>CS</i> Courtney Savage Duly Authorized on behalf of Microsoft Licensing, GP
Printed First and Last Name	
Printed Title	
Signature Date <small>(date Microsoft Affiliate countersigns)</small>	
Effective Date <small>(may be different than Microsoft's signature date)</small>	<i>12/19/2012</i>

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

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

* indicates required field

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

* indicates required field

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

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

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

Prepared By: Name of Preparer
Email of Preparer



Enterprise Agreement (Indirect) Amendment ID CTM

000-jendunn-S-715

For the purposes of this Amendment, "Entity" can mean the signing entity, Customer, Enrolled Affiliate, Government Partner, Institution, or other party entering into a volume licensing program agreement. Notwithstanding anything to the contrary or in addition to any terms in the Agreement, the Agreement is amended as follows:

1. The Enterprise Agreement Section 1. Definitions for "affiliate" a. with regards to Customer, is hereby deleted in its entirety and replaced with the following:

"Affiliate" means

- a. with regard to Customer,
 - (i) any Commonwealth of Virginia public body, as defined in §2.2-4301 and referenced by §2.2-4304 of the Code of Virginia agency, department, office, instrumentality, division, unit or other entity of the state or local government or institutions of higher learning, except those explicitly exempted by the Code of Virginia 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, 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

2. Notwithstanding anything to the contrary, Section 2. a. Establishing price levels of the Enterprise Agreement is hereby amended and replaced in its entirety as follows:

The price levels provided are in accordance with the request of the State of Virginia, and allows for a discount pursuant to the aggregate quantity of 108,295 qualified desktops (and 161,361 qualified users) currently participating under the Virginia Information Technologies Agency ("VITA") Enterprise Agreement.

- a. **Establishing price levels.** Each product is assigned to one of the following pools: applications, systems or servers. An enrolled affiliate's prices are based on the "price level" for which it qualifies in each individual product pool. *Price levels are established for the term of this agreement, for enterprise products at Level D less 7.5% for Servers and D less 6% for Applications and Systems.*

The additional products shall be at level D for all enrollments unless otherwise specified in an amendment to a specific enrollment.

Renewal price levels. Generally, price levels for pools from which an enterprise product has been ordered will be *Level D less 7.5% for Servers, and D less 6% for Applications and Systems for Enterprise products and at the initial order at the time of enrollment.*

Actual pricing and payment terms will be determined by agreement between each enrolled affiliate and its chosen reseller.

3. The Enterprise Agreement page 6, section 7. Term and termination, g. *Program updates*, is hereby deleted in its entirety and replaced with the following:

- g. Program updates.** Microsoft may make a change to this program that will make it necessary for Customer and its Enrolled Affiliates to (i) modify existing agreement and enrollment, or (ii) enter into new agreements and Enrollments.

4. The Enterprise Agreement page 8, section 10. Confidentiality is hereby deleted in its entirety and replaced with the following:

The terms and conditions of this agreement may be posted on the Commonwealth of Virginia's website. To the extent permitted by applicable law, neither party will disclose the substance of any discussions that led this agreement, 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.

For the avoidance doubt, the parties also acknowledge that this Confidentiality provision recognizes that when there is a business need to do so, Microsoft and Customer may need to share/exchange their respective Confidential Information with each other to develop a more meaningful business relationship. This section provides Microsoft and Customer with a well-balanced, commercially reasonable and comprehensive set of confidentiality terms that enable both parties to share/exchange a wide range of Confidential Information with each other knowing with confidence that significant confidentiality protections are in place. The confidentiality terms denoted below do not govern Microsoft's handling of Customer Data. In all instances under this Agreement, Microsoft's handling of Customer Data shall be governed as described under various other provisions of this Agreement and by Microsoft's data security policy.

- a. What is included.** "Confidential Information" is non-public information, know-how and Trade Secrets in any form that:
- (i) are designated as "confidential";
 - (ii) a reasonable person knows or reasonably should understand to be confidential; or
 - (iii) include non-public information regarding either party's products or customers, marketing and promotions, or the negotiated terms of Microsoft agreements.
- b. What is not included.** The following types of information, however marked, are not Confidential Information. Information that:
- (i) is, or becomes, publicly available without a breach of this agreement;
 - (ii) was lawfully known to the receiver of the information without an obligation to keep it confidential;
 - (iii) is received from another source who can disclose it lawfully and without an obligation to keep it confidential;
 - (iv) is independently developed; or
 - (v) is a comment or suggestion one party volunteers about the other's business, products or services.
- c. Treatment of Confidential Information.**
- (i) **In general.** Subject to the other terms of this agreement, each party agrees:
 - it will not disclose the other's Confidential Information to third parties; and
 - it will use and disclose the other's Confidential Information only for purposes of the parties' business relationship with each other.
 - (ii) **Security precautions.** Subject to the other terms of this agreement, each party agrees:
 - to take reasonable steps to protect the other's Confidential Information -- these steps must be at least as protective as those the party takes to protect its own Confidential Information;

- to notify the other promptly upon discovery of any unauthorized use or disclosure of Confidential Information; and
- to cooperate with the other to help regain control of the Confidential Information and prevent further unauthorized use or disclosure of it.

(iii) Sharing Confidential Information with Affiliates and representatives.

- A "Representative" is an employee, contractor, advisor, or consultant of one of the parties or of one of the parties' Affiliates.
- Each party may disclose the other's confidential information to its Representatives (who may then disclose that Confidential Information to other of that party's Representatives) only if those Representatives have a need to know about it for purposes of the parties' business relationship with each other. Before doing so, each party must:
 - 1) ensure that Affiliates and Representatives are required to protect the Confidential Information on terms consistent with this agreement; and
 - 2) Accept responsibility for each Representative's use of Confidential Information.
- 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.

(iv) Disclosing Confidential Information if required to by law. Each party may disclose the other's Confidential Information if required to comply with a court order or other government demand that has the force of law. Before doing so, each party must seek the highest level of protection available and, when possible, give the other enough prior notice to provide a reasonable chance to seek a protective order.

d. Length of Confidential Information obligations. Except as permitted above, neither party will use or disclose the other's Confidential Information for five years after it is received. The five-year time period does not apply if applicable law requires a longer period or the Product Use Rights provide a more specific requirement.

5. The Enterprise Agreement, section 12. **Defense of infringement and misappropriation claims.** *d. Enrolled Affiliate's Responsibility.* and *e. Obligations of protected party* are hereby deleted in its entirety and replaced with the following:

d. Enrolled Affiliate's Responsibility. *Enrolled Affiliate will be responsible for any of its costs or damages, arising from any claims made by an unaffiliated third party that:*

- 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 intentional unlawful use of its Trade Secret; or
- arise from Enrolled Affiliate's or its end user's violation of the Product Use Rights or these Additional Use Right and Restrictions.

Enrolled Affiliate must pay the amount of any resulting adverse final judgment (or settlement to which Enrolled Affiliate consents).

e. Obligations of protected party. Enrolled Affiliate must notify Microsoft promptly in writing of a claim subject to the subsection titled "Microsoft's agreement to protect" and Microsoft must notify Enrolled Affiliate promptly in writing of a claim subject to the subsection titled "Enrolled Affiliate's Responsibility." To the extent permitted by applicable law, where Enrolled Affiliate invokes its right to protection it must (1) give Microsoft sole control over the defense or settlement; and (2) provide reasonable assistance in defending the claim. Microsoft will reimburse Enrolled Affiliate for reasonable out of pocket expenses that it incurs in providing assistance.

To the extent permitted by applicable law, where Enrolled Affiliate invokes its right to protection it must provide reasonable assistance in defending the claim. Microsoft will reimburse Enrolled Affiliate for reasonable out of pocket expenses that it incurs in providing assistance. All settlements on behalf of the Commonwealth must be approved by the Office of the Attorney General.

6. The Enterprise Agreement, section **14. Verifying compliance**, *b. Verification process and limitations* is hereby deleted in its entirety and replaced with the following:

Verification process and limitations. To verify compliance, Microsoft will engage an independent auditor, which will be subject to a confidentiality obligation. Verification will take place upon not fewer than 30 days notice, during normal business hours and in a manner that does not interfere unreasonably with Enrolled Affiliate's operations. Enrolled Affiliate must promptly provide the independent auditor with any License information it reasonably requests in furtherance of the verification, including access to systems running the Products, *as authorized by the Commonwealth of Virginia's security and access standards and policies*, and evidence of Licenses for Products Enrolled Affiliate hosts, sublicenses, or distributes to third parties. As an alternative, Microsoft can require Enrolled Affiliate to complete Microsoft's self-audit questionnaire relating to the Products Enrolled Affiliate and any of Affiliates use or distribute, but reserve the right to use a verification process as set out above.

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

Supplemental Contact Information Form State and Local

This form can be used in combination with Agreement and Enrollment/Registration. However, a separate form must be submitted for each Enrollment/Registration, when more than one is submitted on a signature form. For the purposes of this form, "Entity" can mean the signing Entity, Customer, Enrolled Affiliate, Government Partner, Institution, or other party entering into a Volume Licensing program agreement. Primary and Notices contacts in this form will not apply to Enrollments or Registrations.

This form applies to: Agreement
 Enrollment/Affiliate Registration Form

Insert primary entity name if more than one Enrollment/Registration Form is submitted

Contact information.

Each party will notify the other in writing if any of the information in the following contact information page(s) changes. The asterisks (*) indicate required fields; if the Entity chooses to designate other contact types, the same required fields must be completed for each section. By providing contact information, entity consents to its use for purposes of administering the Enrollment by Microsoft and other parties that help Microsoft administer this Enrollment. The personal information provided in connection with this agreement will be used and protected according to the privacy statement available at <https://licensing.microsoft.com>.

1. Additional notices contact.

This contact receives all notices that are sent from Microsoft. No online access is granted to this individual.

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

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

2. Software Assurance manager.

This contact will receive online permissions to manage the Software Assurance benefits under the Enrollment or Registration.

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

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

3. **Subscriptions manager.**

This contact will assign MSDN, Expression, and TechNet Plus subscription licenses to the individual subscribers under this Enrollment or Registration. Assignment of the subscription licenses is necessary for access to any of the online benefits, such as subscription downloads. This contact will also manage any complimentary or additional media purchases related to these subscriptions.

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

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

4. **Online Services manager.**

This contact will be provided online permissions to manage the Online Services ordered under the Enrollment or Registration.

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

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

5. **Customer Support Manager (CSM):**

This person is designated as the Customer Support Manager (CSM) for support-related activities.

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

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

6. **Primary contact information:**

An individual from inside the organization must serve as the primary contact. This contact receives online administrator permissions and may grant online access to others. This contact also receives all notices unless Microsoft is provided written notice of a change.

Name of Entity* Virginia Information Technologies Agency ("VITA")
Contact name*: First Gregory Last Scearce

Contact email* gregory.scearce@vita.virginia.gov
Street address* 11751 Meadoville Lane
City* Chester State* VA Postal code* 23836
Country*: USA
Phone* (804) 371-5919 Fax

7. Notices contact and online administrator information:

This individual receives online administrator permissions and may grant online access to others. This contact also receives all notices.

Same as primary contact

Name of Entity*

Contact name*: First Last

Contact email*

Street address*

City* State* Postal code*

Country*:

Phone* Fax

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