



# STATE OF ILLINOIS

## CONTRACT APPROVAL SHEET

Request ID: 15-00000092647  
 Agency: CMS-Central Management Services  
 Requester: Sharon L Bausch  
 Proc. Approach: Terms and Conditions  
 Master Contract:  
 Project Title: Microsoft Enterprise Agreement (EA)

Relevant Category: IT  
 Contract Type: Master Contract  
 Initial Term: 07/01/2015 thru 06/30/2018  
 Initial Est. Value: \$0.00  
 Total Award Value: \$0.00

<u>Funding Source</u>	<u>Fiscal Year</u>	<u>Value</u>
9999 - MASTER CONTRACT	2016	\$0.00
9999 - MASTER CONTRACT	2017	\$0.00
9999 - MASTER CONTRACT	2018	\$0.00

<u>Vendor</u>	<u>Vendor Award</u>	<u>Contract Number</u>	<u>Contract Value</u>
Microsoft Corporation	Yes	CMS6926470	\$0.00

**Objective:**

The proposed Microsoft Enterprise Agreement (EA) will assist the State in establishing a consistent desktop/laptop baseline by locking in the prices for three years. These prices are used by the Large Area Reseller agreement to provide our discounted pricing. The EA covers only a select group of products: Windows Pro, Office Pro, and the Core CALs (Client Access Licenses). In addition to the EA, a corresponding Microsoft Select Plus Agreement has been established to cover the remaining Microsoft products and provide an alternate purchase vehicle for the agencies via contract C1C4809700.

Microsoft requires a minimum of three years for an EA. An enterprise agreement is a pricing plan that can only be procured through Microsoft. Microsoft products must be purchased through a reseller, but the pricing agreements may only be procured through Microsoft.

Microsoft provides volume pricing levels on all product pricing to the State if we establish Select Plus and/or Enterprise agreements with Microsoft, which we have done. The agreements provide a deep discount determined by the cumulative volume of procurements by all State and local government entities in Illinois. In order to receive the level discount negotiated with MS, a Large Account Reseller (LAR) must manage the account under a master agreement/contract in an indirect channel model so that all orders are combined under one contract umbrella. Microsoft cannot sell the software and support directly to government entities.

The advantages the Microsoft EA has over the Select Plus include:

- Significantly lower per seat cost
- Ability to obtain all new versions and updates at a lower cost
- Ability to spread initial license cost over multiple years
- Important component of overall desktop strategy for the State.

**GOMB #4:**

The Microsoft Enterprise Agreement (EA) allows State, county, and local government agencies to procure the base desktop/laptop operating platform as a purchase against a Master Contract. With a Master Contract, agencies are not required to bid these procurements. This reduces the time and administrative costs associated with the procurement of products available under the contract.

\* Electronic approval (i.e. PBC/e-mail) may be used in lieu of signature.  
 \*\* Signature Required if > or = to \$250K.



## Program Signature Form

MBA/MBSA number		000-dbeale-S-303
Agreement number		


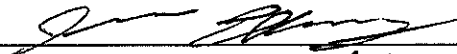
**Note:** Enter the applicable active numbers associated with the documents below. Microsoft requires the associated active number be indicated here, or listed below as new.

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	CTM 000-dbeale-S-303 (new)
<Choose Agreement>	
<Choose Agreement>	
<Choose Agreement>	
<Choose Agreement>	
<Choose Enrollment/Registration>	
<Choose Enrollment/Registration>	
<Choose Enrollment/Registration>	
<Choose Enrollment/Registration>	
<Choose Enrollment/Registration>	

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

Customer	
Name of Entity (must be legal entity name)*	State of Illinois - Central Management Services
Signature*	 by 
Printed First and Last Name*	Tom Farrell by James Ellenberg
Printed Title	Director by ACS PM
Signature Date*	6/30/15
Tax ID	

\* indicates required field

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

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

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

*\* indicates required field*

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

*\* 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 number  
*(Microsoft to complete)*

Proposal ID/Framework ID

000-dbeale-S-303

## Enterprise Agreement

## Custom 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;

"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;

*"Order" means the documents made out and submitted by Enrolled Affiliate to its Reseller for the License of Products under this Agreement and the applicable Enrollment.*

*"Perpetual License" means a License without a fixed end date that continues without limit to time subject to the terms of the License. References as to which Licenses are Perpetual Licenses are made in the Product List and Product Use Rights by use of the terms "perpetual," "perpetual right" and "perpetual licenses".*

*"Price" means reference price, such as, a retail price or estimated retail price.*

"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;

*"Subscription License" means a License available for certain Products on a fixed term or subscription basis. Licenses for Online Services will be considered Subscription Licenses;*

"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. *Within these License types there are additional License Types as 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 (*as defined in the Enrollment*) 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. 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 Licenses* 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. *The rights set forth in this section apply to Perpetual Licenses and Subscription Licenses other than Online Services.*

**e. New Version Rights under Software Assurance.** Enrolled Affiliate must *Order* and maintain continuous Software Assurance coverage for each License *Ordered under this Agreement and an applicable Enrollment.* 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 License* at the time the new version is released, the License for the new version will also be *Perpetual License.* *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* (i.e., there will be no transfer to the transferee and the License remains with the transferor subject to the License and terms of this Agreement).
- 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 60 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. *Following the initial sixty month period, this Agreement may be extended by mutual agreement of the parties for up to five consecutive periods of one year each.*

- 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.** *Customer may terminate this Agreement or an Enrollment, or an Enrolled Affiliate may terminate 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 Enrolled Affiliate, as applicable, 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 amounts owed subject to the terms set forth herein, including *the Illinois Procurement Code (30 ILCS 500) and the State Prompt Payment Act (30 ILCS 540)* . 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 *assist in attempting to resolve the issue*. 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, *subject to applicable laws and regulations with respect to payment in cases of non-appropriation of funds*, 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 *Perpetual 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 Enrollments *that include Subscription Licenses*, 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. *Except for the options provided above in the event of termination of an Enrolled Affiliate's Enrollment, any and all unpaid payments or any Order of any kind, including subscription services, will be required as provided for in this section. Except as provided in the subsection titled "Early termination," all unpaid payments for Licenses immediately will be required as provided for in this section. To the extent applicable to the Enrolled Affiliate, all Orders and payments are subject to the requirements and limitations of, and shall be governed by, the Reseller contract, the Illinois Procurement Code (30 ILCS 500) and the State Prompt Payment Act (30 ILCS 540).*
  - (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. *If there is a termination of an Online Service as provided for in this Section 6.g., Microsoft will issue Reseller a credit for any amount paid in advance for the Online Service that would apply after the date of termination. Microsoft will use commercially reasonable efforts to resolve the regulatory issue without such a termination, to limit the termination to the impacted Online Services to the extent Microsoft is unable to resolve such regulatory issue.*
- h. **Program updates.** Microsoft may make changes to this *Enterprise Agreement* 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" and is exempt from disclosure under the Illinois Freedom of Information Act (5 ILCS 140), 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 Confidential 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 terms 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 or a court order or other governmental demand that has the force of law. Before doing so, when possible, the disclosing party shall notify 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; provided, however, the forgoing shall not limit Microsoft's obligations as expressly

set forth in the Online Services Terms or in an Enrollment (e.g., as set forth in a Business Associates Agreement or other specific terms included as part of the Enrollment).

- 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 *provide such* personal information to Microsoft *in accordance with applicable laws*.
- 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, *subject to in (i) and (ii) in this Section 9.c. above to applicable federal and Illinois law, rule, and regulation*. 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 a third party *not affiliated with Enrolled Affiliate* (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. *These obligations do not apply to the extent that a claim or award is based on:*
  - (i) Customer Data, *if the infringement would not have occurred but for such Customer Data;*

- (ii) non-Microsoft software, if the infringement would not have occurred but for such software;
- (iii) modifications to a Product or Fix Enrolled Affiliate makes or any specifications or materials Enrolled Affiliate provides *if the infringement would not have occurred but for such modifications or specifications*;
- (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 *if the infringement would not have occurred but for such combination*;
- (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, *in writing*, notifies Enrolled Affiliate to discontinue that use due to a third party claim; or
- (vii) Products or Fixes provided free of charge.

**b. Customer Commitments. Customer agrees that:**

- (i) 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
- (ii) Customer will not:
  - (i) Provide or make available Customer Data or non-Microsoft software 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 where such combination infringes a third party's patent, copyright, or trademark or makes intentional unlawful use of its Trade Secret;
  - (iii) Modify any Product or Fix where such modification infringes a third party's patent, copyright, or trademark or makes intentional unlawful use of its Trade Secret;
  - (iv) Redistribute the Product or Fix, or use such Product or Fix for the benefit of any unaffiliated third party;
  - (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.

- b. 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.

- c. **Other terms.** *Enrolled Affiliate* must notify *Microsoft* promptly of any claim subject to the subsection titled "By Microsoft," give *Microsoft* sole control over the defense or settlement, and provide reasonable *cooperation* in defending the claim. *Microsoft* will reimburse *Enrolled Affiliate* for reasonable out of pocket expenses that it incurs in providing *cooperation*. Any settlement must be approved in writing by *Microsoft*. 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; provided, however, the parties understand that neither party can bind or limit the Attorney General from carrying out its responsibilities and whether the Attorney General may bring any action against any person or entity. 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", (2) liability for violation of its confidentiality obligations (except obligations related to Customer Data) or the other party's intellectual property rights, or (3) liability for personal injury or death caused by a party's negligence, or that of its employees or agents, or for fraudulent misrepresentation.

## 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 a *third party* independent auditor *agreed to by the parties*, 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, *after concurrence of such results by Enrolled Affiliate, (1) Enrolled Affiliate must promptly Order sufficient licenses to cover that use or distribution, in accordance with and subject to the requirements and limitations of the Reseller contract and, as applicable to the Enrolled Affiliate, the Illinois Procurement Code and the State Prompt Payment Act and (2) if unlicensed use or distribution is 5% or more, Enrolled Affiliate must, subject to Illinois law, rule and regulation, including the Illinois procurement code reimburse Microsoft for the cost of the third party auditor Microsoft has incurred in verification and acquire the necessary additional licenses at the then-current Level D price.* 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. *Each Enrolled Affiliate will be responsible for compliance under this section and not for the compliance of other Enrolled Affiliates.*

#### 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. *Customer may terminate this agreement in accordance with the Illinois Procurement Code if the assignee Affiliate of Microsoft is a person or entity with which the State of Illinois, through the Chief Procurement Office of the Illinois Executive Ethics Commission, cannot do business.*
- 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.
- 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, *including without limitation any applicable Supplemental Terms on Illinois procurement laws, rules and regulations included as part of the Enrollment*, 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; *provided, however, Customer may enter into additional or different terms with the Reseller that bind the Reseller but not Microsoft.* 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. **Calendar days.** Any reference in this Agreement or an Enrollment to a "day" means a calendar day, except references that specify "business day".