	To be completed by Microsoft
Microsoft Standard Select Agreement Number (included in program agreement being renewed)	**01S62995**
Microsoft Academic Select Agreement Number (included in program agreement being renewed)	**01S62996**
Microsoft Business Agreement Number	**U5654007**
Microsoft Document ID	*CTM-000-jendunn-S-225*
Prepared by	*Jennifer Kelleher, Licensing Executive*

RENEWAL OF SELECT AGREEMENT PROGRAM AGREEMENT PURSUANT TO THE MICROSOFT CUSTOM LICENSE AGREEMENT FOR THE STATE OF NEW YORK

This document (the "Renewal") is made and entered into by and between the undersigned for the purpose of exercising the renewal option for the Microsoft Select Agreement program agreement pursuant to the Microsoft Custom License Agreement for the State of New York (the "Agreement") identified above between the New York State Office of General Services ("OGS") and MICROSOFT LICENSING, GP. All terms used but not defined in this Renewal will have the meanings assigned to such terms in the Agreement.

I. Renewal.

The parties acknowledge that OGS has requested a 36-month extension to the term of the Select Agreement program agreement, pursuant to its option to request such an extension as set forth in Section 10(d) of such program agreement. Therefore, upon the parties' execution of this Renewal, the term of the Select Agreement program agreement shall be extended by an additional 36 full calendar months, such that it shall expire on June 30, 2012, unless it is otherwise either (i) extended for a subsequent term pursuant to the terms and conditions of Section 10(d); or (ii) terminated early, as provided by the terms and conditions of the agreement. Please refer to Section 10(d) for additional terms regarding "placing renewal orders" and "consequences of non-renewal" of Software Assurance.

II. Effect of Renewal.

Except as the term of the Select Agreement program agreement is extended by this Renewal, all provisions of the Agreement identified above shall remain unchanged and in full force and effect. This Renewal is not legally binding until executed by all parties and shall become effective as of July 1, 2009. When this Renewal is fully executed, you will receive a confirming copy.

You must execute and return one (1) copies of this Renewal to the below address in order for the terms and conditions of this Renewal to apply.

MICROSOFT LICENSING, GP
Attn: Dept. 551, Volume Licensing
6100 Neil Road, Suite 210
Reno, NV 89511-1137

Microsoft Licensing, GP

By: Microsoft Management, LLC

By: _____

Name: Mesfin Felleke
Title: Program Manager, Compliance

Date: JAN 2 3 2009
Federal Tax Identification #: 88-0443249

THE PEOPLE OF THE STATE OF NEW YORK

By: _____

Name: Jerry J. Gerard
Title: Director, Procurement Services Group/IRM, OGS
Date: 4/22/09

NA

APPROVED AS TO FORM
ANDREW M. CUOMO
New York State Attorney General

APPROVED:

Thomas P. DiNapoli
Comptroller

APPROVED
DEPT. OF AUDIT & CONTROL
MAY 1 3 2009
FOR THE STATE COMPTROLLER

By: _____

EFFECTIVE DATE: _____

CORPORATE ACKNOWLEDGMENT

STATE OF Nevada }
: **ss.:**

COUNTY OF Washoe }

On the 23 day of January in the year 2009, before me personally came: Mesfin Fekeke, to me known, who, being by me duly sworn, did depose and say that he/she/they reside(s) in Reno; that he/she/they is (are) authorized representative (the President or other officer or director or attorney in fact duly appointed) of Microsoft Management, LLC, the limited liability company described in and which executed the above instrument; and that he/she/they signed his/her/their name(s) thereto by authority of the board of managers of said company.

Rachael Jones

Signature and Office of Person Taking Acknowledgment

RACHAEL JONES
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 07-4755-2 - Expires September 11, 2011

To be completed by Microsoft

Microsoft Standard Enterprise Agreement Number (included in program agreement being renewed)	**01E61940**
Microsoft Standard Campus Agreement Number (included in program agreement being renewed)	**01C31451**
Microsoft Standard School Agreement Number (included in program agreement being renewed)	**01H31423**
Microsoft Business Agreement Number	**U5654007**
Microsoft Document ID	*CTM-000-jendunn-S-226*
Prepared by	*Jennifer Kelleher, Licensing Executive*

RENEWAL OF ENTERPRISE AGREEMENT PROGRAM AGREEMENT, CAMPUS AGREEMENT PROGRAM AGREEMENT, SCHOOL AGREEMENT PROGRAM AGREEMENT PURSUANT TO THE MICROSOFT CUSTOM LICENSE AGREEMENT FOR THE STATE OF NEW YORK

This document (the "Renewal") is made and entered into by and between the undersigned for the purpose of exercising the renewal option for the Microsoft Enterprise Agreement program agreement, Microsoft Campus Agreement program agreement, Microsoft School Agreement program agreement, pursuant to the Microsoft Custom License Agreement for the State of New York (the "Agreement") identified above between the New York State Office of General Services ("OGS") and MICROSOFT LICENSING, GP. All terms used but not defined in this Renewal will have the meanings assigned to such terms in the Agreement.

I. Renewal.

The parties acknowledge that OGS has requested a 24-month extension (Extension Period 2) to the term of the Enterprise Agreement program agreement, pursuant to its option to request such an extension as set forth in Section 11(a) of such program agreement. Therefore, upon the parties' execution of this Renewal, the term of the Enterprise Agreement program agreement shall be extended by an additional 24 full calendar months, such that it shall expire on June 30, 2012, unless it is otherwise either (i) extended for a subsequent term pursuant to the terms and conditions of Section 11(a); or (ii) terminated early, as provided by the terms and conditions of the agreement.

The parties acknowledge that OGS has requested a 24-month extension (Extension Period 2) to the term of the Campus Agreement program agreement, pursuant to its option to request such an extension as set forth in Section 6(a) of such program agreement. Therefore, upon the parties' execution of this Renewal, the term of the Campus Agreement program agreement shall be extended by an additional 24 full calendar months, such that it shall expire on June 30, 2012, unless it is otherwise either (i) extended for a subsequent term pursuant to the terms and conditions of Section 6(a); or (ii) terminated early, as provided by the terms and conditions of the agreement.

The parties acknowledge that OGS has requested a 24-month extension (Extension Period 2) to the term of the School Agreement program agreement, pursuant to its option to request such an extension as set forth in Section 6(a) of such program agreement. Therefore, upon the parties' execution of this Renewal, the term of the School Agreement program agreement shall be extended by an additional 24 full calendar months, such that it shall expire on June 30, 2012, unless it is otherwise either (i) extended for a subsequent term pursuant to the terms and conditions of Section 6(a); or (ii) terminated early, as provided by the terms and conditions of the agreement.

Deborah Moravec
Program Manager, Compliance
MAY 11 2009

II. Effect of Renewal.

Except as the term of the Enterprise Agreement program agreement, the Campus Agreement program agreement, School Agreement program agreement, are extended by this Renewal, all provisions of the Agreement identified above shall remain unchanged and in full force and effect. This Renewal is not legally binding until executed by all parties and shall become effective as of July, 1 2010. When this Renewal is fully executed, you will receive a confirming copy.

You must execute and return one (1) copy of this Renewal to the below address in order for the terms and conditions of this Renewal to apply.

MICROSOFT LICENSING, GP
Attn: Dept. 551, Volume Licensing
6100 Neil Road, Suite 210
Reno, NV 89511-1137

Microsoft Licensing, GP

By: Microsoft Management, LLC

By: _____

Name: Mesfin Felleke
Title: Program Manager, Compliance

Date: JAN 23 2009
Federal Tax Identification #: 88-0443249

THE PEOPLE OF THE STATE OF NEW YORK

By: _____

Name: Jerry J. Gerard
Title: Director, Procurement Services Group/IRM, OGS
Date: 4/22/09

NA

APPROVED AS TO FORM
ANDREW M. CUOMO
New York State Attorney General

APPROVED:

Thomas P. DiNapoli
Comptroller

APPROVED
DEPT. OF AUDIT & CONTROL
MAY 13 2009

By: _____
FOR THE STATE COMPTROLLER

EFFECTIVE DATE:

CORPORATE ACKNOWLEDGMENT

STATE OF Nevada }
: **ss.:**

COUNTY OF Washoe }

On the 23 day of January in the year 2009, before me personally came: Mesfin Felleke, to me known, who, being by me duly sworn, did depose and say that he/she/they reside(s) in Reno; that he/she/they is (are) authorized representative (the President or other officer or director or attorney in fact duly appointed) of Microsoft Management, LLC, the limited liability company described in and which executed the above instrument; and that he/she/they signed his/her/their name(s) thereto by authority of the board of managers of said company.

Rachael Jones

Signature and Office of Person Taking Acknowledgment

RACHAEL JONES
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 07-4755-2 - Expires September 11, 2011

To be completed by Microsoft

Microsoft Standard Enterprise Agreement Number (included in program agreement being renewed)	**01E61940**
Microsoft Standard Campus Agreement Number (included in program agreement being renewed)	**01C31451**
Microsoft Standard School Agreement Number (included in program agreement being renewed)	**01H31423**
Microsoft Business Agreement Number	**U5654007**
Microsoft Document ID	CTM- 000-jendunn-S-121
Prepared by	Jennifer Kelleher, Licensing Executive

RENEWAL OF ENTERPRISE AGREEMENT PROGRAM AGREEMENT, CAMPUS AGREEMENT PROGRAM AGREEMENT, SCHOOL AGREEMENT PROGRAM AGREEMENT PURSUANT TO THE MICROSOFT CUSTOM LICENSE AGREEMENT FOR THE STATE OF NEW YORK

This document (the "Renewal") is made and entered into by and between the undersigned for the purpose of exercising the renewal option for the Microsoft Enterprise Agreement program agreement, Microsoft Campus Agreement program agreement, Microsoft School Agreement program agreement, pursuant to the Microsoft Custom License Agreement for the State of New York (the "Agreement") identified above between the New York State Office of General Services ("OGS") and MICROSOFT LICENSING, GP. All terms used but not defined in this Renewal will have the meanings assigned to such terms in the Agreement.

I. Renewal.

The parties acknowledge that OGS has requested a 24-month extension to the term of the Enterprise Agreement program agreement, pursuant to its option to request such an extension as set forth in Section 11(a) of such program agreement. Therefore, upon the parties' execution of this Renewal, the term of the Enterprise Agreement program agreement shall be extended by an additional 24 full calendar months, such that it shall expire on June 30, 2010, unless it is otherwise either (i) extended for a subsequent term pursuant to the terms and conditions of Section 11(a); or (ii) terminated early, as provided by the terms and conditions of the agreement.

The parties acknowledge that OGS has requested a 24-month extension to the term of the Campus Agreement program agreement, pursuant to its option to request such an extension as set forth in Section 6(a) of such program agreement. Therefore, upon the parties' execution of this Renewal, the term of the Campus Agreement program agreement shall be extended by an additional 24 full calendar months, such that it shall expire on June 30, 2010, unless it is otherwise either (i) extended for a subsequent term pursuant to the terms and conditions of Sectión 6(a); or (ii) terminated early, as provided by the terms and conditions of the agreement.

The parties acknowledge that OGS has requested a 24-month extension to the term of the School Agreement program agreement, pursuant to its option to request such an extension as set forth in Section 6(a) of such program agreement. Therefore, upon the parties' execution of this Renewal, the term of the School Agreement program agreement shall be extended by an additional 24 full calendar months, such that it shall expire on June 30, 2010, unless it is otherwise either (i) extended for a subsequent term pursuant to the terms and conditions of Section 6(a); or (ii) terminated early, as provided by the terms and conditions of the agreement.

II. Effect of Renewal.

Except as the term of the Enterprise Agreement program agreement, the Campus Agreement program agreement, School Agreement program agreement, are extended by this Renewal, all provisions of the Agreement identified above shall remain unchanged and in full force and effect. This Renewal is not legally binding until executed by all parties and shall become effective as of June 27, 2008. When this Renewal is fully executed, you will receive a confirming copy.

You must execute and return three (3) copies of this Renewal to the below address in order for the terms and conditions of this Renewal to apply.

MICROSOFT LICENSING, GP
Attn: Dept. 551, Volume Licensing
6100 Neil Road, Suite 210
Reno, NV 89511-1137

Microsoft Licensing, GP

By: Microsoft Management, LLC

By:_____

Name: Joylene Hill
Title: Contract Administrator

Date:
Federal Tax Identification #: 88-0443249

THE PEOPLE OF THE STATE OF NEW YORK

By:_____

Name: Jerry J. Gerard
Title: Director, Procurement Services Group/IRM, OGS
Date: 5/15/08

NA

APPROVED AS TO FORM
ANDREW M. CUOMO
New York State Attorney General

APPROVED:

Thomas P. DiNapoli
Comptroller

APPROVED
DEPT. OF AUDIT & CONTROL
JUN 02 2008

By:_____

EFFECTIVE FOR THE STATE COMPTROLLER

CORPORATE ACKNOWLEDGMENT

STATE OF Nevada }
: **ss.:**

COUNTY OF Washoe }

On the 17 day of April in the year 2008, before me personally came: Joylene Hill, to me known, who, being by me duly sworn, did depose and say that he/she/they reside(s) in Sparks, NV; that he/she/they is (are) authorized representative (the President or other officer or director or attorney in fact duly appointed) of Microsoft Management, LLC, the limited liability company described in and which executed the above instrument; and that he/she/they signed his/her/their name(s) thereto by authority of the board of managers of said company.

Rachael Jones

Signature and Office of Person Taking Acknowledgment

RACHAEL JONES
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 07-4755-2 - Expires September 11, 2011

To be completed by Microsoft	
Microsoft Standard Select Agreement Number (included in program agreement being renewed)	**01562995**
Microsoft Academic Select Agreement Number (included in program agreement being renewed)	**01562996**
Microsoft Business Agreement Number	**U5654007**
Microsoft Document ID	**CTM 000-dmills-s-0416**
Prepared by	David Mills, Licensing Executive

RENEWAL OF SELECT AGREEMENT PROGRAM AGREEMENT PURSUANT TO THE MICROSOFT CUSTOM LICENSE AGREEMENT FOR THE STATE OF NEW YORK

This document (the "Renewal") is made and entered into by and between the undersigned for the purpose of exercising the renewal option for the Microsoft Select Agreement program agreement pursuant to the Microsoft Custom License Agreement for the State of New York (the "Agreement") identified above between the New York State Office of General Services ("OGS") and MICROSOFT LICENSING, GP. All terms used but not defined in this Renewal will have the meanings assigned to such terms in the Agreement.

I. Renewal.

The parties acknowledge that OGS has requested a 36-month extension to the term of the Select Agreement program agreement, pursuant to its option to request such an extension as set forth in Section 10(d) of such program agreement. Therefore, upon the parties' execution of this Renewal, the term of the Select Agreement program agreement shall be extended by an additional 36 full calendar months, such that it shall expire on June 30, 2009, unless it is otherwise either (i) extended for a subsequent term pursuant to the terms and conditions of Section 10(d); or (ii) terminated early, as provided by the terms and conditions of the agreement. Please refer to Section 10(d) for additional terms regarding "placing renewal orders" and "consequences of non-renewal" of Software Assurance.

II. Effect of Renewal.

Except as the term of the Select Agreement program agreement is extended by this Renewal, all provisions of the Agreement identified above shall remain unchanged and in full force and effect. This Renewal is not legally binding until executed by both parties and shall become effective as of July 1, 2006. When this Renewal is fully executed, you will receive a confirming copy.

You must execute and return three (3) copies of this Renewal to the below address in order for the terms and conditions of this Renewal to apply.

MICROSOFT LICENSING, GP
Attn: Dept. 551, Volume Licensing
6100 Neil Road, Suite 210
Reno, NV 89511-1137

Microsoft Licensing, GP	**THE PEOPLE OF THE STATE OF NEW YORK**
By: Microsoft Management, LLC	
By: _____	**By:** _____
Name:	**Name: Walter Bikowitz**
Title:	**Title: Director, Procurement Services Group/IRM, OGS**
Date:	**Date:**

Federal Tax Identification #: 88-0443249

CORPORATE ACKNOWLEDGMENT

STATE OF _____,
: SS.:

COUNTY OF _____,

On the _____ day of _____ in the year 2004, before me personally came:

_____ to me known, who, being by me duly sworn, did depose and say that he/she/they reside(s) in

_____

that he/she/they is (are) authorized representative (the President or other officer or director or attorney in fact duly appointed) of Microsoft Management, LLC, the limited liability company described in and which executed the above instrument;

and that he/she/they signed his/her/their name(s) thereto by authority of the board of managers of said company.

_____

Signature of Notary Public

To be completed by Microsoft

Microsoft Enterprise Agreement Number	**01E61940**
Microsoft Business Agreement Number	**U5654007**
Microsoft Document ID	**CTX-000-dmills-s-0661**

AMENDMENT TO THE MICROSOFT
CUSTOM LICENSE AGREEMENT FOR THE STATE OF NEW YORK

This amendment ("amendment") is made and entered into by and between the undersigned for the purpose of amending that certain Microsoft Custom License Agreement for the State of New York (the "Agreement") identified above between the New York State Office of General Services and MICROSOFT LICENSING, GP. All terms used but not defined in this amendment will have the meanings assigned to such terms in the enrollment, as amended.

I. Modifications to the Agreement.

1. The following definitions are hereby added to Section 1 of the Microsoft Enterprise Agreement program agreement:

   "Microsoft Enterprise CAL Suite" means the following products, when purchased together as a suite:

   (i) Microsoft Windows Server CAL;

   (ii) Microsoft Exchange Server Standard CAL;

   (iii) Microsoft Exchange Server Enterprise CAL;

   (iv) Microsoft Systems Management Server CML;

   (v) Microsoft Office SharePoint Standard CAL;

   (vi) Microsoft Office SharePoint Enterprise CAL;

   (vii) Microsoft Communications Server Standard CAL;

   (viii) Microsoft Communications Server Enterprise CAL;

   (ix) Microsoft System Center Operations Management License;

   (x) Microsoft Windows Server Rights Management CAL;

   (xi) Microsoft ForeFront Client Security online service subscription;

   "Microsoft Enterprise CAL Suite Software Assurance Step-Up from Core CAL" means the following products, when purchased together as a suite when the authorized user is also licensed with active Software Assurance for Microsoft Core CAL:

   (i) Microsoft Exchange Server Enterprise CAL;

   (ii) Microsoft Office SharePoint Enterprise CAL;

   (iii) Microsoft Communications Server Standard CAL;

   (iv) Microsoft Communications Server Enterprise CAL;

   (v) Microsoft System Center Operations Management License;

   (vi) Microsoft Windows Server Rights Management CAL;

   (vii) Microsoft ForeFront Client Security online service subscription;

2. Each of the following definitions in Section 1 of the Microsoft Enterprise Agreement Program Agreement are hereby amended and restated as follows:

"CAL family" means any of the following client access license ("CAL"), client management license ("CML"), operations management license ("OML"), on online services subscription products, when such products are chosen as enterprise products on an enrollment hereunder:

(i) Microsoft BackOffice CAL *Suite*;

(ii) Microsoft Core CAL *Suite*;

(iii) Microsoft Enterprise CAL Suite;

(iv) *Microsoft Enterprise CAL Suite Software Assurance Step-Up from Core CAL (which requires that the authorized user also be licensed for Microsoft Core CAL)*;

(v) Microsoft Windows Server CAL;

(vi) Microsoft Exchange Server *Standard* CAL *(formerly known as Microsoft Exchange Server CAL)*;

(vii) Microsoft Exchange Server Enterprise CAL with Services (which requires that the authorized user also be licensed with current Software Assurance for Microsoft Exchange Server Standard CAL);

(viii) Microsoft SQL Server CAL;

(ix) Microsoft Systems Management Server *CML (formerly known as Microsoft Systems Management Server CAL)*;

(x) Microsoft Office SharePoint *Standard* CAL *(formerly known as Microsoft SharePoint Portal Server CAL*;

(xi) Microsoft Office SharePoint Enterprise CAL (which requires that authorized user also be licensed for Microsoft Office SharePoint Standard CAL);

(xii) Microsoft Communications Server Standard CAL;

(xiii) Microsoft Communications Server Enterprise CAL (which requires that the authorized user also be licensed for Microsoft Communications Server Standard CAL);

(xiv) Microsoft System Center Operations Management License;

(xv) Microsoft Windows Server Rights Management CAL;

(xvi) Microsoft ForeFront Client Security online service subscription; and

(xvii) *Microsoft Windows Terminal Services CAL.*

"component platform product" means any of the following enterprise products:

(i) Microsoft Office *Enterprise*;

(ii) Microsoft Office Enterprise Software Assurance Step-Up from Office Professional Plus (which requires that the authorized user also be licensed with current Software Assurance for Microsoft Office Professional Plus)

(iii) Microsoft Office Professional *Plus (formerly known as Microsoft Office Professional)*;

(iv) Microsoft Office Standard;

(v) Microsoft Windows XP Professional Operating System Upgrades;

(vi) Microsoft Core CAL;

(vii) Microsoft BackOffice CAL;

(viii) Microsoft Enterprise CAL Suite; and

(ix) *Microsoft Enterprise CAL Suite Software Assurance Step-Up from Core CAL (which requires that the authorized user also be licensed for Microsoft Core CAL).*

"platform enrollment" means any enrollment executed hereunder for which each of the following is a chosen enterprise product:

(i) either (a) Office Standard or (b) Office Professional *Plus or (c) Office Enterprise*; and

(ii) Microsoft Windows Professional desktop operating system; and

(iii) either (d) BackOffice CAL or (e) Core CAL *or (f) Enterprise CAL Suite.*

3. Subsection 12(d)(2)(C) of the Microsoft Enterprise Agreement Program Agreement is hereby amended and restated as follows:

Establishing component initial desktop reference prices for new enrollments. The Government EA Price List provided to resellers generally contains reference prices for the following common enterprise products:

- Microsoft Office Professional;
- Microsoft Windows XP Professional Operating System Upgrades;
- Microsoft Core CAL; and
- Microsoft Desktop Professional (which is a suite composed of the preceding three component products, and the reference price for which is equal to the sum of the three component reference prices less the applicable platform discount).

For the purposes of this program agreement, the Government EA Price List entry for Microsoft Desktop Professional (or any other enterprise product we might add to such price list that is a combination of component products from different product families) shall not apply, since this Section 12(d) provides an alternate and equivalent means by which the component products of such suite shall be priced. Rather, the components of Microsoft Desktop Professional (or other suite of products from different product families) shall be sold as separate line items to the reseller. This is necessary in order that the year 3 desktop reference prices which apply to each of the product families which contain the component products may be adjusted separately, as set forth below in Section 12(d)(2)(G).

On each annual pricing date, we will establish a list of 3-year desktop reference prices, year 1 desktop reference prices, year 2 desktop reference prices, and year 3 desktop reference prices (collectively, "initial desktop reference prices") for each of the most commonly requested enterprise products, plus any other enterprise products for which you may have requested reference prices. We will provide you with a list of such reference prices. We will also provide your reseller(s) with a list of such initial desktop reference prices, along with the corresponding confidential reseller costs.

Such initial desktop reference prices shall apply to all new enrollments signed during the annual pricing period which immediately follows such annual pricing date, but not thereafter, unless different initial prices are agreed upon in writing

between us and an enrolled authorized user (or between us and you) based upon certain exceptions to standard terms including (but not limited to) applied credits and/or uplifts for cost of money in deferred payment schedules.

Initial desktop reference prices and true up desktop reference prices for each enterprise product shall be calculated, using the following formulas, using each such product's standard license Select reference price ("L") (except as noted in the following sentence) and one-year Software Assurance Select reference price ("SA") *and/or 12-month online services subscription reference price ("OLS")* pursuant to the Level D Select reference prices found on the Select Price List which is in effect as of the annual pricing date upon which the determination is being made. For the purposes of determining the value of "L" solely with respect to the Windows Professional Upgrade, one half (1/2) of the Select reference price of such Upgrade shall be used.

(i) for orders of License & Software Assurance on an initial order made pursuant to a non-renewal enrollment, the initial annual reference prices shall be calculated according to the following formulas:

Formula for 3-year desktop reference price:

{ [L + (3 x SA)] x 0.85 }; less (a) an additional premium level discount (if applicable) based on the horizon price level; less (b) a platform discount (if applicable) pursuant to the terms and conditions below governing such additional discounts.

Formula for both year 1 and year 2 desktop reference prices:

{ [L + (3 x SA)] x 0.85 / 3 }; less (a) an additional premium level discount (if applicable) based on the initial price level; less (b) a platform discount (if applicable) pursuant to the terms and conditions below governing such additional discounts.

Formula for year 3 desktop reference price:

{ 3-year desktop reference price – year 1 desktop reference price – year 2 desktop reference price }

(ii) for orders of Software Assurance on an initial order made pursuant to a renewal enrollment, the initial annual reference prices shall be calculated according to the following formulas:

Formula for 3-year desktop reference price:

{ (3 x SA) x 0.95 }; less (a) an additional premium level discount (if applicable) based on the horizon price level; less (b) a platform discount (if applicable) pursuant to the terms and conditions below governing such additional discounts.

Formula for both year 1 and year 2 desktop reference prices:

{ SA x 0.95 }; less (a) an additional premium level discount (if applicable) based on the initial price level; less (b) a platform discount (if applicable) pursuant to the terms and conditions below governing such additional discounts.

Formula for year 3 desktop reference price:

{ 3-year desktop reference price – year 1 desktop reference price – year 2 desktop reference price }

(iii) for orders of online services subscription on an initial order made pursuant to a new or renewal enrollment, the initial annual reference prices shall be calculated according to the following formulas:

Formula for 3-year desktop reference price:

{ (3 x OLS) x 0.95 }; less (a) an additional premium level discount (if applicable) based on the horizon price level; less (b) a platform discount (if applicable) pursuant to the terms and conditions below governing such additional discounts.

Formula for both year 1 and year 2 desktop reference prices:

{ OLS x 0.95 }; less (a) an additional premium level discount (if applicable) based on the initial price level; less (b) a platform discount (if applicable) pursuant to the terms and conditions below governing such additional discounts.

Formula for year 3 desktop reference price:

{ 3-year desktop reference price – year 1 desktop reference price – year 2 desktop reference price }

(iv) for orders of License & Software Assurance on the first anniversary true up order made pursuant to either a renewal enrollment or a non-renewal enrollment, the true up desktop reference price shall be calculated according to the following formula:

{ L + (2.5 x SA) } x 0.85; less an additional premium level discount (if applicable) based upon the initial price level; less a platform discount (if applicable) pursuant to the terms and conditions below governing such additional discounts;

(v) for orders of online services subscription on the first anniversary true up order made pursuant to either a renewal enrollment or a non-renewal enrollment, the true up desktop reference price shall be calculated according to the following formula:

(2.5 x OLS) x 0.95; less an additional premium level discount (if applicable) based upon the initial price level; less a platform discount (if applicable) pursuant to the terms and conditions below governing such additional discounts;

(vi) for orders of License & Software Assurance on the second anniversary true up order made pursuant to either a renewal enrollment or a non-renewal enrollment, the true up desktop reference price shall be calculated according to the following formula:

{ L + (1.5 x SA) } x 0.85; less an additional premium level discount (if applicable) based upon the initial price level; less a platform discount (if applicable) pursuant to the terms and conditions below governing such additional discounts; and

(vii) for orders of online services subscription on the second anniversary true up order made pursuant to either a renewal enrollment or a non-renewal enrollment, the true up desktop reference price shall be calculated according to the following formula:

(1.5 x OLS) x 0.95; less an additional premium level discount (if applicable) based upon the initial price level; less a platform discount (if applicable) pursuant to the terms and conditions below governing such additional discounts;

(viii) for orders of License & Software Assurance on the third anniversary true up order made pursuant to either a renewal enrollment or a non-renewal enrollment, the true up desktop reference price shall be calculated according to the following formula:

{ L + (0.5 x SA) } x 0.85; less an additional premium level discount (if applicable) based upon the initial price level; less a platform discount (if applicable) pursuant to the terms and conditions below governing such additional discounts.

(ix) for orders of online services subscription on the third anniversary true up order made pursuant to either a renewal enrollment or a non-renewal enrollment, the true up desktop reference price shall be calculated according to the following formula:

(0.5 x OLS) x 0.95; less an additional premium level discount (if applicable) based upon the initial price level; less a platform discount (if applicable) pursuant to the terms and conditions below governing such additional discounts;

As an exception to the above terms and conditions, Microsoft Exchange Server Enterprise CAL with Services shall be considered to be a combination of both (1) an License and Software Assurance or Software Assurance component (as applicable, depending upon whether the authorized user is renewing previous Software Assurance coverage); and (2) an online services subscription component (a "hybrid product"). As such, when applying the above formulas to determine the reference price of this hybrid product when sold as an enterprise product, the following shall apply:

- *The annual reference price of the online services portion of the product shall be calculated using the above formula, where OLS is calculated as one-ninth (1/9) of the three-year ("added in year 1") Select Reference Price for Exchange Server Enterprise CAL with services (either License and Software Assurance or Software Assurance, as applicable); and*
- *The annual reference price of the License and Software Assurance or Software Assurance portion of the product shall be calculated using the above formula, where OLS is calculated as one-third (1/3) of the three-year ("added in year 1") Select Reference Price for Exchange Server Enterprise CAL with services (either License and Software Assurance or Software Assurance, as applicable).*

The applicable annual reference price for License and Software Assurance (including both initial and true up orders) and Software Assurance for this hybrid product shall then be calculated by applying the applicable formulas shown above in this Section 12(d)(2)(C)(b) to calculate both the (i) online services subscription portion and (ii) License and Software Assurance or Software Assurance (as applicable) portion of such reference price, then adding these portions together.

We may from time to time introduce other hybrid products to the list of available enterprise products, and in such cases may assign proportional values to the two portions of the applicable reference prices for such new hybrid products which differ from the proportional values shown above for Exchange Server Enterprise CAL with Services.

The results of each of the above calculations will be rounded to the nearest penny.

4. Subsection 12(d)(2)(D)(b) of the Microsoft Enterprise Agreement Program Agreement is hereby amended and restated as follows:

A "platform discount" will be applied to component platform products (e.g. Microsoft Office Professional *Plus*) ordered pursuant to platform enrollments, but not to other enterprise products, if any, in such platform enrollments (e.g. a platform discount would not apply to Microsoft Project). Such *platform* discount (if any) will be applied after applying a premium level discount (if any), and shall be as follows:

Such platform discounts are as follows:

(i) 15% for initial orders of License & Software Assurance on non-renewal enrollments;

(ii) 5% for initial orders (but not true up orders) of Software Assurance for renewal enrollments;

(iii) 15% for true up orders of License & Software Assurance for both renewal enrollments and non-renewal enrollments; *and*

(iv) 5% for both initial orders and true up orders of online services subscriptions for both renewal enrollments and non-renewal enrollments.

For example, if the year 1 desktop reference price of a component product in a non-renewal platform enrollment, after the premium level discount is applied, is $94.00, then a platform discount of 15% will be applied (i.e. 15% of $94.00, or $14.10), so the resulting initial annual reference price will be

{ $94.00 - $14.10 } = $79.90.

The results of each of the above discount calculations will be rounded to the nearest penny.

Platform discounts will be provided so long as they are made generally available to all volume licensing customers. If the amount of such generally available platform discount is either increased, decreased, or eliminated, such increase, decrease or elimination will apply to the annual pricing period which immediately follows such event.

5. A new Subsection 12(d)(2)(D)(c) is hereby added to the Microsoft Enterprise Agreement Program Agreement, as follows:

A "suite discount" may, at our sole discretion, be applied to certain CAL Family products (e.g. to each of the four components of Microsoft Core CAL Suite when sold together). Such suite discount (if any) will be applied before applying platform and/or premium level discount (if any), and may vary for different products sold in different combinations or suites. Suite discounts will be provided so long as they are made generally available to all volume licensing customers. If the amount of such generally available suite discount is either increased, decreased, or eliminated, such increase, decrease or elimination will apply to the annual pricing period which immediately follows such event, unless an earlier change is agreed upon between you and us.

II. Effect of Amendment.

Except as specifically amended by this amendment, all provisions of the Agreement identified above shall remain unchanged and in full force and effect. This amendment is not legally binding until executed by both parties and shall become effective on the date of signature of the Officer of the State Comptroller of New York. When this amendment is fully executed, you will receive a confirming copy.

You must execute and return six (6) copies of this amendment to the below address in order for the terms and conditions of this amendment to apply.

MICROSOFT LICENSING, GP
Attn: Dept. 551, Volume Licensing
6100 Neil Road, Suite 210
Reno, NV 89511-1137

IN WITNESS WHEREOF, the parties therefore hereby execute their mutual agreement to the terms of this contract. This agreement constitutes a binding contract between the parties as of the day and year indicated below that approval of the New York State Comptroller was received. The parties further hereby (i) agree that, where Microsoft Licensing, GP is asked to execute six original copies of this signature page along with a complete original copy of the contract, the approved signature page(s) will be affixed by the State, upon final approval by the NYS Comptroller, to additional copies of this contract which conform exactly to the complete original copy as submitted by Microsoft Licensing, GP and executed simultaneously therewith; and (ii) acknowledge that Microsoft Licensing, GP must receive a fully-executed copy of this contract, and upon receipt assign agreement numbers hereto (which shall be then be noted on the first page hereof) before purchases may be made pursuant to this agreement.

Microsoft Licensing, GP

By: Microsoft Management, LLC

By: Abe Lincoln

Name: Abe Lincoln
Title: Contract Administrator

Date: 5/1/07
Federal Tax Identification #: 88-0443249

THE PEOPLE OF THE STATE OF NEW YORK

By: Jerry J. Gerard

Name: Jerry J. Gerard
Title: Director, Procurement Services Group/IRM, OGS
Date:

APPROVED AS TO FORM
ANDREW M. CUOMO
New York State Attorney General

APPROVED:

Thomas P. DiNapoli
Comptroller

APPROVED
DEPT. OF AUDIT & CONTROL
JUN 04 2007

By:
FOR THE STATE COMPTROLLER

EFFECTIVE DATE:

CORPORATE ACKNOWLEDGMENT

STATE OF NEVADA }
: **ss.:**

COUNTY OF WASHOE }

On the 1ST day of MAY in the year 2005, before me personally came: ABE LINCOLN, to me known, who, being by me duly sworn, did depose and say that he/she/they reside(s) in MICROSOFT MANAGEMENT LLC; that he/she/they is (are) authorized representative (the President or other officer or director or attorney in fact duly appointed) of Microsoft Management, LLC, the limited liability company described in and which executed the above instrument; and that he/she/they signed his/her/their name(s) thereto by authority of the board of managers of said company.

R Dissmore

Signature and Office of Person Taking Acknowledgment

R. DISSMORE
Notary Public - State of Nevada
Appointment Recorded in Washoe County
No: 02-76773-2 - Expires September 8, 2010

New York State Office Of General Services
Procurement Services Group
Corning Tower Building
Empire State Plaza
Albany, New York 12242
http://www.ogs.state.ny.us

PURCHASING MEMORANDUM

BID SOLICITATION UPDATE

IFB/RFP NUMBER: 18766

DATE: April 19, 2004

GROUP: 76304 – Microcomputer Software
Microsoft Corporation

PLEASE ADDRESS INQUIRIES TO:
James Jasiewicz
Purchasing Officer I
(518) 486-5238
james.jasiewicz@ogs.state.ny.us

BID OPENING: Tuesday
May 18th, 2004
11:00AM

SUBJECT: This addendum details the answers to questions asked by potential bidders through the closing date for inquiries of April 12, 2004.

TO PROSPECTIVE BIDDERS:

Bidders are required to sign here acknowledging receipt of this document:

_____ (Company name)_____ (bidder signature)

I acknowledge receipt of Addendum # 1.
When bidding I will include *an original* signed copy of this document with each of the four required original copies of my bid package.

Questions and Answers (Questions are verbatim as asked)

Q. Bidder Qualifications Item # 1-7, 15. Obtaining Quotes
Please define "post".

A. U.S. mail or other courier service.

Q. Bidder Qualifications Item # 1-7, 16. Problem Orders
What defines an "Authorized User", and approximately how many Authorized Users does the State currently have?

A. The State Finance Law section 163 (3) (a) (iv) defines those authorized to make purchases through a centralized contract. The (CLA) Attachment 1 Common Terms and Conditions defines "authorized user" as "affiliate" and further identifies the user groups. The OGS website further identifies the groups and sections of law associated with eligibility of these groups.
For further information please refer to; http://www.ogs.state.ny.us/purchase/snt/othersuse.asp
Though registration through OGS is not a requirement for participation, we estimate that there are over 5000 eligible users.

Q. Bidder Qualifications Item # 8-9, 1. Product Offerings
If bidder does not choose to bid on Items #8 and #9, can bidder still sell these items if they are the selected vendor for Items #1 -#7?

A. Yes, but not as part of this agreement.

Q. General Terms and Conditions, 4. Use of Contract by Others
What is the definition of "Political Subdivision" and can you provide an example?

A. Political Subdivisions are non-state agencies including cities, towns, villages, counties and school districts.

Q. General Terms and Conditions, 9. Procurement Card Purchases
Can you provide a current monthly order volume (number of orders placed) and percentages of ordering method (Purchase Orders hard copy, email orders, web orders, etc.) (approximate)?

A. The answers to this question are based on the current contractors response to the question. The approximate number of monthly orders is 600 - 1000. Each of the ordering methods are used and accepted. The majority method used is Purchase Order by hard copy. The percentages are unknown.

Q. General Terms and Conditions, 9. Procurement Card Purchases
How many orders / value of orders are currently processed using Pcards?

A. The Pcard is currently accepted but the volume and value of orders relating to the Pcard are unknown. Agencies have varying purchase limits under the Pcard program. In addition, the State agencies, through the Office of the State Comptroller may make electronic payments for Pcard or purchase order transactions.

Q. On page 25 (1) Bid Document Item E, the State requests signed and notarized “Signature/Acknowledgment” page in triplicate. Does that mean that you want 3 signed and notarized copies within each of the four original copies of the bid?

A. No. To clarify, one originally signed and notarized “Signature/Acknowledgment” page with each of the four required copies of the bid for a grand total of four.

Q. The State has an existing EA with an anniversary date of June 27, 2004, when an anniversary payment is due. Will that anniversary payment be placed with the winner of the new contract?

A. The EA anniversary payment is to be made to the current contract holder at the time the anniversary payment is due. Using the example date in the question if a contract award is not made prior to June 27, 2004 the payment will be due to the current contractor. If the contracto award is made on or before June 27, 2004 the payment will be made to the winner of the new contract.

Q. On page 27 under heading column D, the State asks for NYS discount information only. Please clarify if that is to equate to the markdown percentage as shown in Example 1.a. on page 23 or is that to be the cost-plus multiplier as shown in example 1.b.? In other words, do you want to see the markup/markdown percentage or the multiplier?

A. Percentage.

Q. On page 15 Item 9, the State may request Contractors to accept Procurement Card purchases. Could you please give us an idea of the number and/or size of transactions the State is planning to place via Procurement Card purchases?

A. There are no specific plans. The number of transactions is unknown and, since the maximum limit under a Pcard differs by agency, the dollar values will vary by user.

Q. Page 14, General Terms & Conditions, #9. The IFB states that Contractors may be requested to accept the Procurement Card as a method of ordering and paying for contract purchases. We interpret this to mean that the Contractor would have the option to accept Procurement Cards but would not be required to do so. Could you please confirm?

A. Yes. Contractor acceptance is optional. The Appendix E Submission 2 Mandatory Questionnaire question 13 is the place to initially designate acceptance or not of the use of the Procurement Card.

Q. Appendix E, Items 1 through 7. Each of the line item descriptions in items 1 through 7 refers to a Microsoft licensing program or a subset of a Microsoft licensing program (e.g. Microsoft Select License Only or Microsoft Enterprise Agreement). However, further description for each item states: Microsoft, Media and Documentation. We are a bit confused by this, especially since Items 8 and 9 of Appendix E specifically address media and documentation. Is it the State's intent that items 1 through 7 refer to licensing programs only?

A. Items 1 through 7 refer to licensing programs including Doc Kits and Disk Kits.

Q. Appendix E, Items #6 and 7. Microsoft uses the same part numbers (e.g. C27-00002, C27-00003, C28-00002 and C28-00003) for both Level A and Level B of the Campus and School Agreements. It is our understanding that although the estimated quantity specified would suggest Level B, the State would like us to use Level A pricing for bid purposes. Could you please confirm?

A. Yes, for bid purposes only Level A is to be used for Item# 6 and Item# 7 as stated at the top of the bid tables for Items 6 and 7 in Appendix E – Submission #3 and in the example for those items in the Method of Award.

State of New York Executive Department
Office of General Services
Procurement Services Group
Corning Tower - 38th Floor
Empire State Plaza
Albany, NY 12242

INVITATION FOR BIDS

IMPORTANT: SEE "NOTICE TO BIDDERS" CLAUSES HEREIN
BIDS MAY BE SENT TO THE ABOVE ADDRESS
(Facsimile and E-Mail Bid Submissions Are NOT Acceptable)

BID OPENING Tuesday **DATE**: **May 18th, 2004** **TIME**: 11:00 AM	**TITLE**: **Group 76304 - Microcomputer Software - Microsoft Corporation** Classification Code(s): 43
INVITATION FOR BIDS NUMBER: 18766	**SPECIFICATION REFERENCE**: As Incorporated in the Invitation For Bids
CONTRACT PERIOD: **Date of OSC Approval (TBD) through End Date of Microsoft Custom License Agreement 18381**	**ADDRESS INQUIRIES TO:** Team 8 James Jasiewicz, Purchasing Officer Telephone No. (518) 486-5238 E-mail address: james.jasiewicz@ogs.state.ny.us

The bid must be fully and properly executed by an authorized person. **By signing you indicate your express authority to sign on behalf of yourself, your company, or other entity and full knowledge and acceptance of this INVITATION FOR BIDS, Appendix A (Standard Clauses For New York State Contracts), Appendix B-1 (OGS General Specifications) and Executive Order 127, and that all information provided is complete, true and accurate.** Bidders are requested to retain Appendix A and Appendix B-1 for future reference. Information on Executive Order 127 may be accessed at: **http://www.ogs.state.ny.us/legal/ExeOrder127/overview.asp**

Name of Company Bidding:			Bidder's Federal Tax Identification No.:	
Street	City	State	Zip	County

Cash Discounts will not be considered in determining low bid, but cash discounts of any size may be considered in awarding tie bids.
_____% Cash Discount for payment within 15 days of delivery and/or receipt of voucher
_____% Cash Discount for payment within 30 days of delivery and/or receipt of voucher

If you are not bidding, place an "x" in the box and return this page only.
☐ WE ARE UNABLE TO BID AT THIS TIME BECAUSE _____
_____.

Bidder's Signature: Title:	Printed or Typed Name: Date:
Phone : ( ) - ext ( ) Fax: ( ) - ext ( ) E-mail Address:	Toll Free Phone : ( ) - ext ( ) Toll Free Fax : ( ) - ext ( ) Company Web Site:

FOR PROCUREMENT SERVICES GROUP USE ONLY

P.R. #	LIT ☐	MEMO ☐	MISSING PAGES
BID #	LET ☐	OTHER ☐	

GENERAL INFORMATION

IMPORTANT NOTICE TO POTENTIAL BIDDERS: Receipt of these bid documents does not indicate that the Office of General Services' Procurement Services Group has pre-determined your company's qualifications to receive a contract award. Such determination will be made after the bid opening and will be based on our evaluation of your bid submission compared to the specific requirements and qualifications contained in these bid documents.

NOTICE TO BIDDERS:
The Commissioner of General Services will receive bids pursuant to the provisions of Article XI of the State Finance Law. The following procedures shall be used for bid submittals:

1. **BID PREPARATION**
Prepare your bid on this form using indelible ink. Print the name of your company on each page of the bid in the block provided. Four original copies of the bid are required, unless otherwise specified herein.

2. **BID DEVIATIONS (Extraneous Terms)**
If your bid differs from the specifications explain such deviation(s) or qualification(s) on attach a separate sheet. See “Extraneous Terms” in Appendix B-1 , OGS General Specifications.

3. **BID DELIVERY**
Bidders assume all risks for timely, properly submitted deliveries. Bidders are strongly encouraged to arrange for delivery of bids to OGS **prior to** the date of the bid opening. **LATE BIDS may be rejected. E-mailed bid submissions are not acceptable and will not be considered.**

- **Bid envelopes**
  An envelope containing a bid should be marked "**BID ENCLOSED**" and state the **Bid Number, Bid Opening Date,** and **Time** on the envelope containing the sealed bid. Failure to complete all information on the bid envelope may necessitate the premature opening of the bid and may compromise confidentiality. See "Bid Submission" in Appendix B, OGS General Specifications. Bids shall be delivered to:

State of New York Executive Department
Office of General Services
Procurement Services Group
Corning Tower - 38th Floor Reception Desk
Empire State Plaza
Albany, NY 12242

- **Hand Deliveries**
  Bidders must allow extra time to comply with the security procedures in effect at the Empire State Plaza when hand delivering bids or using deliveries by independent courier services. **Bidders assume all risks for timely, properly submitted deliveries.**

- **Electronic and Facsimile Bids:**
  Facsimile and electronic bid responses **WILL NOT** be accepted for this bid opening.

4. **LIABILITY FOR BID PREPARATION EXPENSE**
The State is not liable for any costs incurred by a bidder in the preparation and production of a bid or for any work performed before the issuance of a contract or delivery order.

5. **NOTIFICATION OF AWARD**

The successful bidder will be notified by PSG by letter after approval by OSC**.** The contract will be submitted for mandatory review and required approval by:

1. The Attorney General of the State of New York
2. The Comptroller of the State of New York

Public announcements or news releases pertaining to this contract will not be made without prior permission of PSG.

6. **BIDDER DEBRIEFING**

OGS will notify unsuccessful bidders by letter after award.

7. **BID SECURITY**

The content of each bidder's bid submission will be held in strict confidence during the bid evaluation process, and no details of any bid submission will be discussed outside the evaluation process.

8. **IMPORTANT SECURITY PROCEDURES**

Security procedures are in effect at the Empire State Plaza. These procedures govern both parking and admittance to buildings including the Corning Tower. Photo identification is required. These security procedures may change or be modified at any time. Vendors who intend to deliver bids or conduct business with the Procurement Services Group should allow extra time to comply with the security procedures.

9. **NON-COLLUSIVE BIDDING CERTIFICATION:**

(Reference: State Finance Law Section 139-d and Appendix A, Clause 7)

By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief:

(1) The prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;

(2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and

(3) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not submit a bid for the purpose of restricting competition.

10. **DISPUTE RESOLUTION POLICY:**

It is the policy of the Office of General Services Procurement Services Group (PSG) to provide vendors with an opportunity to administratively resolve disputes, complaints or inquiries related to PSG bid solicitations or contract awards. PSG encourages vendors to seek resolution of disputes through consultation with PSG staff. All such matters will be accorded impartial and timely consideration. Interested parties may also file formal written disputes. A copy of PSG's Dispute Resolution Procedures for Vendors may be obtained by contacting the person shown on the front of this Invitation for Bids or through the OGS website (www.ogs.state.ny.us). Click on "For Government - Contracts and Purchasing," then "Seller Information," then " Dispute Resolution Procedures for Vendors.

11. **ELECTRONIC PAYMENTS:**

The Office of the State Comptroller (OSC) offers an "electronic payment" option in lieu of issuing checks. Visit the OSC website to obtain information at www.osc.state.ny.us/epay/index.htm.

12. **APPENDIX A:**
Appendix A, Standard Clauses For New York State Contracts, dated September 2003, attached hereto, is hereby expressly made a part of this Bid Document as fully as if set forth at length herein. **Please retain this document for future reference.**

13. **APPENDIX B-1:**
Appendix B-1, Office of General Services General Specifications (Technology Products and Services), dated January 2004, attached hereto, is hereby expressly made a part of this Bid Document as fully as if set forth at length herein and shall govern any situations not covered by this Bid Document or Appendix A. **Please retain this document for future reference.**

14. **CONFLICT OF TERMS AND CONDITIONS:**
Conflicts between documents shall be resolved in the following order of precedence:

a. Appendix A
b. This Invitation For Bids
c. Attachment 1 – Microsoft Select & Education Select - Microsoft Custom License Agreement (CLA) 18381, hereinafter referred to as Custom License Agreement or (CLA)
d. Appendix B-1
e. Bidder's Bid

15. **FREEDOM OF INFORMATION LAW:**
During the evaluation process, the content of each bid/proposal will be held in confidence and details of any bid/proposal will not be revealed (except as may be required under the Freedom of Information Law or other State law). The Freedom of Information Law provides for an exemption from disclosure for trade secrets or information the disclosure of which would cause injury to the competitive position of commercial enterprises. This exception would be effective both during and after the evaluation process. SHOULD YOU FEEL YOUR FIRM'S BID/PROPOSAL CONTAINS ANY SUCH TRADE SECRETS OR OTHER CONFIDENTIAL OR PROPRIETARY INFORMATION, YOU MUST SUBMIT A REQUEST TO EXCEPT SUCH INFORMATION FROM DISCLOSURE. SUCH REQUEST MUST BE IN WRITING, MUST STATE THE REASONS WHY THE INFORMATION SHOULD BE EXCEPTED FROM DISCLOSURE AND MUST BE PROVIDED AT THE TIME OF SUBMISSION OF THE SUBJECT INFORMATION. **REQUESTS FOR EXEMPTION OF THE ENTIRE CONTENTS OF A BID/PROPOSAL FROM DISCLOSURE HAVE GENERALLY NOT BEEN FOUND TO BE MERITORIOUS AND ARE DISCOURAGED. KINDLY LIMIT ANY REQUESTS FOR EXEMPTION OF INFORMATION FROM DISCLOSURE TO BONA FIDE TRADE SECRETS OR SPECIFIC INFORMATION, THE DISCLOSURE OF WHICH WOULD CAUSE A SUBSTANTIAL INJURY TO THE COMPETITIVE POSITION OF YOUR FIRM.**

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APPENDICES

Appendix A ***Standard Clauses/or NYS Contracts***

Appendix B-1 ***OGS PSG General Conditions for Technology Contracts***

Appendix C ***Contractor's Requirement Under Article 15-A***

Appendix D ***OGS Contract Update Form***

Appendix E ***Contractor Required Submissions***

Submission #1 - ***Bid Completion Check List***

Submission #1-A – References Form

Submission #2 - ***Mandatory Contractor Questionnaire***

Submission #3 - ***Bid Submissions All Items***

ATTACHMENTS

Attachment 1 - Microsoft Custom License Agreement

SCOPE

The Office of General Services will establish one contract with a responsive and responsible bidder, certified by Microsoft as both an Authorized Education Reseller (AER) and Large Account Reseller (LAR) authorized to do the following:

Implement the Microsoft Custom License Agreement (CLA) which is contained herein as Attachment 1, including any updates as posted to the award on the OGS website at;
http://www.ogs.state.ny.us/purchase/snt/awardnotes/7630418381can.HTM

Item#1 - Select License - **license only** without Software Assurance, (Level-D).
Item#2 - Education Select License - **license only** without Software Assurance, (Level-A).
Item#3 - Select License with Software Assurance and Software Assurance only (Level-D) 3-year term effective 06/27/03.
Item#4 - Education Select License with Software Assurance and Software Assurance only (Level-A) 3-year term effective 06/27/03.
Item#5 - Enterprise Agreement (Level-D less applicable discounts). Special EA pricing available by contacting David Mills of Microsoft at Dmills@microsoft.com for the State of NY Custom Channel Price List with reference prices and reseller cost.
Item#6 - Academic Campus Agreement, Standard Program Pricing (Level-A) and (Level-B) at specified FTE volumes of 3000 and up.
Item#7 - Academic School Agreement, Standard Program Pricing (Level-A) and (Level-B) at specified Desktop volumes of 2500 and up.
Item#8 - Provide *Microsoft Press* publications Microsoft Press (Book) Price List. (ERP)
Item#9 - Provide pricing for *Microsoft Volume Licensing Disks and Documentation* hereinafter referred to as *(Fulfillment) Volume Licensing Disks and Documentation*. Refer to Microsoft Fulfillment Price List (formerly referred to as Microsoft Easy Fulfillment Price List or World Wide Fulfillment Price List). (ERP)

One award will be made to the lowest, responsive and responsible Bidder meeting the qualifications. Items# 8 and 9 may be bid at the Bidder's option and be included as part of Bidders price list at bidders proposed discount but will not be factored as part of any bid structure. OGS reserves the right not to award items#8 and/or 9.

IMPORTANT NOTE

This bid solicitation incorporates and will be subject to the terms and conditions of the Custom License Agreement (Attachment 1), and any subsequent amendments to the CLA. The CLA price levels for NY State and Local Government (SLG) Level-D and Academic (EDU) Level-A & Level-B, at certain established volumes, are contained in the Custom License Agreement (Attachment 1 to IFB) and are available from Microsoft. Microsoft Press *Estimated Retail Price* (ERP) and Microsoft (Fulfillment) Volume Licensing Disks and Documentation *Estimated Retail Price* (ERP) are available from Microsoft. Applicable items discount levels are current as of time of bid but, are subject to change in accordance with CLA established between New York State and Microsoft.

BID SUBMISSION

INQUIRIES/ISSUING OFFICE:

All inquiries concerning this specification will be addressed to the following Purchasing Officer and issuing office no later than **04/12/04**:

James Jasiewicz
NYS Office of General Services

Procurement Services Group
Coming Tower - 37th Floor
Empire State Plaza
Albany, New York 12242

Phone No.: (518) 486-5238
FAX No. (518) 486-6867

All questions should be submitted in writing, citing the particular Bid Invitation section. Prospective Bidders should note that all clarifications and exceptions including those relating to the terms and conditions of the contract are to be resolved prior to the submission of a bid. Answers to all questions of a substantive nature will be given to all Prospective Bidders in the form of a formal bid addendum which will be annexed to and become part of the ensuing contract.

KEY EVENTS/DATES

EVENT	DATE	TIME
IFB Release	__03/22/04_____	
Closing Date for Inquiries	__04/12/04_____	
Bid Opening	__05/18/04_____	11:00 AM
Time Estimates/Goals:		
Evaluation and Selection	__06/14/04_____	
Contract Award	__10/01/04_____	

IMPORTANT NOTICE REGARDING DELIVERY OF BIDS:

Security procedures for the Coming Tower require all visitors to provide identification, sign in at a registration desk located on the Concourse level and obtain a visitors pass. Be advised that security procedures are subject to change. Consequently, if you intend to hand deliver a bid to the Procurement Services Group, you must allow extra time to comply with the any security procedures. Bids not received within the Procurement Services Group, or the OGS Mailroom, by the time and date shown on the front page of the bid document will be considered late.

EXTRANEOUS TERMS:

The Bidder's bid response must conform to the terms set forth in this solicitation. Extraneous terms or material deviations may render the bid non-responsive and result in rejection of the bid. No extraneous terms, whether or not deemed "material", shall become a part of the contract unless the State expressly accepts such term(s) in writing. Acceptance of the bid shall not constitute acceptance of Extraneous Term(s). Only those extraneous term(s) (including additional, inconsistent, conflicting or alternative terms) which meet the following requirements will be considered submitted by Bidder as part of the bid:

i. Extraneous term(s) must be specifically enumerated in a separate writing submitted with the bid;
   and
ii. The writing must highlight the contract specification **requirement (if any), which** Bidder rejects or proposes to modify;
   and
iii. The writing shall enumerate each proposed addition, counter offer or deviation and the reasons therefore.

Any extraneous term(s) otherwise included, attached or referenced in the bid package (including, but not limited to standard, pre-printed: product literature, forms, license, contracts or other documents) which are not individually enumerated in a separate writing meeting the above requirements shall be deemed included by Bidder for informational or promotional purposes only and may be disregarded by the Commissioner as not being part of the bid.

QUALIFICATION OF BIDDERS

BIDDER QUALIFICATIONS - Item #'s 1, 2, 3, 4, 5, 6, and 7

Item#1- Microsoft Select, License Only Products,
Item#2- Microsoft Education Select, License Only Products,
Item#3- Microsoft Select License Products, with Software Assurance (SA)
Item#4- Microsoft Education Select License Products, with Software Assurance (SA)
Item#5- Microsoft Enterprise Agreement (EA) Products Only,
Item# 6- Microsoft Academic Campus Agreement (CA) Products Only
Item#7- Microsoft Academic School Agreement (ASA) Products Only

Qualifications - Documentation:

The successful Bidder **must** be able to administer during the contract term, in addition to its existing commercial and public sector accounts, a single contract with an annual magnitude of approximately $32 million. The contractor must be able to handle simultaneous orders from multiple state and local government locations geographically dispersed throughout the entire State of New York.

Bidder **must** demonstrate, to the satisfaction of the Commissioner, its qualifications by submitting the following documentation with the bid:

(a) A list of three (3)-customer references from individual contract(s) of at least $12 million annual magnitude for similar products and services to be bid that are being or were successfully administered by Bidder and sustained over a period of at least two years. Each reference must contain, at a minimum, the following information: company name, address, phone numbers, hours of operation, contact name, e-mail address, contract numbers, term of contract, contract value, type of products supplied and type of services supplied; (References Appendix E Submission 1-A)
The Procurement Services Group may contact the reference contacts on the list. The PSG reserves the right to review and consider other known clients of the bidder in addition to those provided and to disqualify based on unsatisfactory reports and records of services provided.

(b) A copy of the most recent Consolidated Statement of Income and a Consolidated Balance Sheet arrived at by generally accepted accounting principles.

(c) Identify (by name, address, contract manager (liaison) email, phone and fax numbers) and provide the qualifications for a dedicated administrative contract liaison to provide support full-time for the timely updating and management of the contract. The Bidder is required to describe the Microsoft related administrative experience of the individual(s) who will be assigned to this contract. These qualifications must be acceptable to the State and we reserve the right to seek clarification. Contract liaison information must be kept up to date by bidder for the duration of the contract.
Awarded Contractor will be required to keep current;

1. Contract Manager information. The contract manager shall be responsible for overall management, reporting and ensuring adherence to the performance requirements of this Contract;
2. Name of authorized signatory(s) the individual(s) named as signatory authorized to act on behalf of the contractor including to submit Contract Updates;
3. E-mail address, telephone and fax number for contract manager and;
4. Corporate/Individual address and payment information.

For the duration of the Contract and its extensions with the State, notification of changes to Contractor information as described above must be done in writing through the OGS Procurement Services Group Purchasing Officer. Failure to keep this information valid may result in suspension of Contract.

(d) The Contractor must be registered with the New York State Department of State (DOS), www.dos.state.ny.us, and comply with DOS guidelines for doing business in the State pursuant to the Business Corporation Law prior to being awarded a contract (proof of DOS registration required with bid);

(e) Contractor must be in good financial standing and must provide, at their own expense, a Dun & Bradstreet (D&B) Comprehensive Report on the bidders organization, dated no more than 3 months prior to the bid opening date. Bidders report must indicate the following minimum scores or better in order to be considered**; Credit Score Class: 3, Financial Stress Class: 3, and 12-Month D&B PAYDEX®: 50.**

This will require the bidder to obtain a Dunn and Bradstreet (D&B) D-U-N-S number and complete a company profile. The information will assist in the evaluation of the bidders past performance, financial and operational stability. The company profile consists of approximately 60 elements and is available at no cost to the bidder. The Dunn & Bradstreet website URL is: http://www.dnb.com. Bidders should be aware that Dun and Bradstreet produces many different types of reports; submission of reports other than the one listed above is not acceptable. The report may take several weeks to complete. It is a mandatory requirement that the report be submitted prior to the bid opening. It is recommended that Bidders obtain a (D&B) D-U-N-S number and complete a company profile, if necessary and request the required report as soon as possible.

Note: PSG retains the right to request any additional information pertaining to the prospective bidder's ability, qualifications, and procedures used to accomplish all work under this contract, as it deems necessary to ensure safe and satisfactory work.

1. Product Offerings:

Bidder **must** offer pricing for Items 1 through 7 as specified in *Product Offerings* under *Pricing Submissions*.

2. Microsoft LAR and AER Status:

Bids will only be accepted from those certified as both Microsoft LAR's (Large Account Resellers) and AER's (Authorized Education Resellers) who are authorized at the time of the bid opening to sell and administer the Custom License Agreement. It is required that the Bidder be able to provide the entire Microsoft product line available in the Custom License Agreement Programs. Further the Bidder **must** be able to provide Select, Education Select, Software Assurance (SA-Software Assurance / LSA-License Software Assurance / SAM-Software Assurance Membership), EA-Enterprise Agreement / CA-Academic Campus Agreement, and ASA-Academic School Agreement programs, support, documentation and discs. A letter from Microsoft confirming that the Bidder is both a Microsoft LAR and AER authorized to sell and administer the Custom License Agreement **must** be submitted with the bid.

3. Contract Administration "800" or Toll Free Number:

Bidder **must** provide an 800 or toll free telephone number for use by authorized contract users. Contract users will use this number for order tracking/delivery schedule information, contract administration issues, as well as other questions related to the day to day operation and use of the contract other than product support. The number **must** be available Monday through Friday on State business days between the hours of 8 a.m. to 5 p.m., Eastern Standard Time. In addition, the Bidder **must** describe the process they will use to escalate customer problems or complaints.

4. Posting of Contract Pricing:

Bidder **must** be capable of providing to the State a complete schedule of the current and up to date product set on a disk in the format required by this solicitation. This disk will then be used by the State to update the contract on the OGS Web Site.

5. Custom License Agreement:

The State of New York and Microsoft have negotiated the terms and conditions of the attached Microsoft Custom License Agreement which includes the Select, Education Select, Enterprise, Campus and School Agreements, which are hereby incorporated into this solicitation in Attachment 1 for Item #'s 1-7.

6. Enrollment Agreements:

During the contract term, it shall be the responsibility of the successful Bidder and eventual Contractor to provide a separate "Enrollment Agreement" for each authorized user under New York State's Custom License Agreements various program agreements, and **must** forward a copy of each executed enrollment agreement in hard copy form to the authorized user. Microsoft approved "Enrollment Agreement" forms must be provided by the Contractor to all authorized users.

7. Warranty Support:

Is provided directly by Microsoft in accordance with the terms and conditions of the Custom License Agreement, as amended.

8. Additional LARS-AERS:

The State expressly reserves the right to add to this Agreement being implemented additional large account reseller(s) (LARS) for licensed based Microsoft Product at any time during the contract term. Where any Authorized User undertakes an independent procurement during the contract term which includes Microsoft Product ("alternative procurement"), the successful LAR may be authorized *by the State* as an alternate LAR fulfillment agent for purposes of the NYS Custom License Agreement implemented by this solicitation. The State may exercise this right upon the following terms and conditions: a) said Authorized User shall execute an enrollment agreement, b) the successful Bidder under this solicitation shall not be required to honor any special terms, conditions or pricing offered under the alternative procurement, and c) only said Authorized User will be eligible to procure product from such additional LAR using this contract vehicle. In such event, the volume through the additional LAR **is required to be** aggregated and reported separately by the Contractor under this solicitation for sole purposes of determining the applicable price level under the NYS Custom License Agreement implemented by this solicitation.

9. Product Warranties and Guarantees:

Bidder **must** pass through from the manufacturer all product warranties, performance guarantees or other warranties set forth in the Custom License Agreement.

10. Defective Product:

In the event that any software or media is defective, the Contractor **is required to** accept returns of defective software. The Contractor shall replace the software at no charge to either the ordering entity its third party implementers or subcontractors. The shipping costs are the responsibility of the Contractor.

11. Responsibility for assisting customers with MVLS site:

Bidder **must** be available to assist customer in accessing and obtaining information from MVLS site.

12. "True Up" Notification:

Per the Microsoft Enterprise Agreement, Microsoft agrees to take commercially reasonable steps to provide each enrolled authorized user with written notice that a true up order (or statement that the desktop count has not increased) is approaching. Such notice will be sent at least 15 days prior to the applicable anniversary after which such order or statement shall be due. In the event that such notice is not sent at least 15 days prior to such anniversary, then the 30-day period set forth in Section 3(c) of the *Microsoft Enterprise Agreement Program Agreement Terms and Conditions* shall be extended to become 45 days following the enrolled authorized user's receipt of such notice. Such notice may come either from Microsoft or from the reseller on their behalf, and may be in the form of either an email message or a letter delivered by courier, at Microsoft's discretion, The bidder shall be required to issue "true up" notifications on Microsoft's behalf if so instructed by Microsoft.

13. Software Assurance Benefits:

Throughout the term of its enrollment (including any renewal), each enrolled authorized user that commits to obtaining either L&SA, SA or SAM (Software Assurance Membership) are entitled to special benefits. Those authorized users that commit to obtaining either L&SA or SA for all copies of all products licensed within a designated product pool throughout the term of it's enrollment (including any renewal) automatically qualify as a member of Microsoft's Software Assurance Membership program. The successful bidder must act on behalf of the State to assist authorized users in enrolling for such special benefits.

14. Presales Assistance:

Authorized Users will sometimes require advice in selecting appropriate software to meet their entity's needs. These Authorized Users will need assistance in determining the most cost-effective buying strategies and/or best package to meet these needs and in ensuring they are in compliance with the CLA.

The bid should describe the manner in which this support will be provided. This might include: *Support Within a Product Line*- Authorized users may need assistance in determining an effective migration strategy to upgrade existing software. In addition, authorized users planning to change platforms may require assistance in determining the appropriate software configuration to meet their requirements. The Bidder is requested to describe its approach to supporting an existing software product line.

15. Obtaining Quotes:

Bidders must accept requests for quotes by telephone, fax, e-mail, or post and must provide quotes by telephone, fax, e-mail, or post as requested by authorized user.

16. Problem Orders:

If an Authorized Users order is received that cannot be processed without clarification or additional information it will be the responsibility of the bidder to contact the customer in a timely manner and no more than 3 business days in an effort to obtain the information needed to process the order.

17. Guaranteed 30 Day Quote:

The bidder is required to honor all quotes for 30 calendar days, regardless of price increases. If it is known that a price increase will occur during the 30 calendar days following the quote, the bidder may provide two quotes based upon the date the order is placed provided the new pricelist with increase is approved by OGS at time order is placed. If a price decrease takes effect the customer will be responsible to pay the lesser of the quote or the approved pricelist in effect at the time the order is placed. In all cases pricing will be based on approved pricelists.

18. Guaranteed 30 Day Delivery:

Guaranteed delivery for all products is within 30 A/R/O.

BIDDER QUALIFICATIONS - Items #'s 8 and 9

Item#8 - Microsoft Press (Book) Publications
Item #9 - Microsoft (Fulfillment) Volume Licensing Disks and Documentation Products

1. Product Offerings:

Bidder **must** offer pricing for Items 8 and 9 as specified in *Product Offerings* under *Pricing Submissions*.

2. Microsoft LAR and AER Status:

Bids will be accepted only from Microsoft LAR's/AER's, who are authorized, at the time of the bid opening, to sell Microsoft Press (Books) and (Fulfillment) Volume Licensing Disks and Documentation products. A letter from Microsoft confirming that the Bidder is a Microsoft LAR/AER authorized to sell Microsoft Press and (Fulfillment) products **must** be submitted with the bid.

3. Contract Usage Reports:

Bidder **must** provide to the NYS Office of General Services, in a timely manner, the semi-annual reports as outlined in the *"Vendor's Report of Contract Purchases"* clause, below.

4. Products/Pricing:

Successful Bidder **must** offer all new Microsoft Press publications and Microsoft (Fulfillment) Volume Licensing Disks and Documentation products as they become available and **must** maintain the discount offered on all new products and price revisions during the term of the contract (including any extension periods).

5. Guaranty:

For Item#8, Microsoft Press and Item#9, Microsoft (Fulfillment) Volume Licensing Disks and Documentation products, the Bidder guarantees that the product offered is new. Every unit delivered must be guaranteed against faulty material and workmanship. If defective, Bidder **must** replace without any cost to the state including any charges for parts, labor, and transportation.

GENERAL TERMS AND CONDITIONS

All Items

1. Appendix A (Standard Clauses for NYS Contracts):

The terms of Appendix A, "Standard Clauses for NYS Contracts", apply to submission of the bid response and are hereby incorporated and apply to any contract(s) awarded pursuant thereto. During the performance of the contract, the Contractor is required to adhere to the clauses in Appendix A, which include the recent additions of regulations regarding the use of tropical hardwoods, the Omnibus Procurement Act and the MacBride Fair Employment Principles. Bidder is also required to adhere to the terms, conditions, and requirements of all other appendices attached to this Bid Invitation.

2. Appendix B-1 (General Specifications - Technology Products & Services):

The terms of Appendix B-1 are incorporated into and govern the terms of this solicitation, including any contract resulting therefrom, except where superseded, modified or amended by the terms of this document.

3. Contract Term:

It is the intention of the State to enter into a contract(s) for a term of up to five years as indicated on the front sheet of the Invitation. The actual term shall be for a period commencing with the date of approval by Office of the State Comptroller, and co-terminus with the Custom License Agreement 18381 and all of it's extension options, which are contingent on agreement between Microsoft and NYS to extend. The resulting contract(s) may be extended for up to two (2) additional two year periods and one (1) additional one year period or until new term contracts are issued, upon mutual written consent of the State and the contractor.

4. Use of Contract By Others:

By signing the bid contractors are acknowledging that Political subdivisions and others authorized by law may participate in contracts resulting from this bid opening. Contractors are encouraged to voluntarily extend service contracts to those additional entities authorized to utilize commodity contracts under Section 163 (3) (iv) of the Procurement Act of 1995, which would comprise all entities authorized under prior laws. The foregoing shall not prohibit or inhibit the Commissioner's authority regarding State Finance Law, 163 (10) (e) (Piggybacking). See Appendix B-1 clause 39

Upon request, all eligible non-State agencies must furnish contractors with the proper tax exemption certificates.

5. Inconsistencies:

The various documents which comprise this Invitation For Bids and the Bidder's Bid shall prevail in accordance with the precedence established below in the case of any inconsistencies contained in them:

(A) Appendix A - Standard Clauses for NYS Contracts
(B) IFB (This document, the terms of which shall supersede any inconsistent or conflicting terms contained in Appendix B-1)
(C) Attachment 1 Microsoft Select & Education Select - Microsoft Custom License Agreement (CLA) 18381, hereinafter referred to as Custom License Agreement or (CLA)
(D) PSG General Conditions (Appendix B-1)
(E) Bidder's Bid Submission

6. Financing:

Many acquisitions of hardware and software may be financed through OGS' Statewide Lease-Purchase Financing Agreement, Certificates of Participation (COPS) or other personal property financing mechanisms authorized by law. In all cases, acquisitions must have a minimum aggregated purchase price of $250,000 and must be approved in advance by the Division of the Budget

7. Quantities:

Estimated quantity contracts are expressly agreed and understood to be made for only the quantities, if any, actually ordered during the contract term. No guarantee of any estimated quantity(s) is implied or given.

It should be noted that the extension of this contract to political subdivisions and others authorized by law, as indicated in the *"Use of Contract by Others"* clause, may cause the estimated quantities or dollar values to vary considerably. However, the contractor must furnish all quantities or dollar values actually ordered.

8. Purchase Orders:

Purchase orders shall be effective and binding upon the contractor when placed in the mail addressed to the contractor at the address shown on the schedule award.

9. Procurement Card Purchases:

Contractors may be requested to accept the Procurement Card as a method of ordering and paying for contract purchases. The Procurement Card is a corporate type credit card which streamlines ordering and payment, with vendors receiving payment within a few days of fulfilling orders for commodities, services or technology items.

10. Delivery:

Bidder **must** specify a guaranteed delivery time in the bid. Delivery shall be expressed in the number of calendar days required to make delivery after receipt of a purchase order. Guaranteed delivery times in excess of 30 calendar days may be cause for rejection of bid. When contracts are issued. Contractors will be held to the delivery time as stated in their bids. Failure to deliver products within the delivery time as stated in the contract subjects the contractor to penalties or loss of contract.

Delivery shall be made in accordance with instructions on purchase orders from the State Agencies, political subdivisions or others authorized by law.

11. Vendor's Reporting/Monitoring of Contract Performance:

The Contractor shall electronically provide the State with verified semi-annual reports using current technology standards, in accordance to the State's mapping instructions and any format required by the State, showing the dollar volume of any and all sales under this contract for the prior six-month period. Said report shall include an itemized list of participation by individual Authorized Users, including State and non-State governmental entities and others authorized by law with purchases grouped according to State Agencies, Educational Entities and Political Subdivisions. Reports are due no later than the 15th of the month following the close of each semi-annual period of 1/1 to 6/30 and 7/1 to 12/31 respectively. If the contract period begins or ends in a fractional portion of a reporting period only the actual contract sales for this fractional period should be reported in that semi-annual report. Reports are to be submitted to the Purchasing Officer assigned by OGS to administer the contract for the State. This report shall be submitted for all items and shall include an itemized lists of all products sold with purchases grouped further according to each item number awarded. Contractor may submit individual reports but must combine all required information on one comprehensive report as total sales for all items are to be totaled on one report

The reports are to be done in a spreadsheet and provided on diskette in addition **to a single** paper copy. Reports are to be submitted in the following format:

- The heading of all spreadsheets should contain the following:
  1. Vendor's Name
  2. Contract Number
  3. Period covered by the report

- The information to be provided is as follows:
  Total STATE AGENCIES purchases by Item number for the semi-annual period
  Total POLITICAL SUBDIVISIONS purchases by Item number for the semi-annual period
  Total EDUCATIONAL ENTITIES purchases by Item number for the semi-annual period
  Totals for each Item number further broken down by product offering
  (Example; Item#3 Microsoft Select License Products with Software Assurance (SA) and Software Assurance Only totaled separately.)

Failure to submit the required reports may be cause for cancellation of this contract. And may be cause for disqualification of a Bidder for future contracts.

12. Internet Access to Contract & Pricing Information:

It is the intention of the parties to facilitate access by Authorized Users to contract offering and pricing information primarily electronically via the Internet. To that end, OGS's web site shall host and update the Contract terms and conditions throughout the Contract term. Vendor will provide completed pricing sheets to be posted on the OGS site using the Contract Update process.

13.Cancellation for Convenience:

The State of New York in it's sole discretion retains the right to cancel this contract without reason provided that the Bidder is given at least sixty (60) days notice of its intent to cancel per Appendix B-1 clause 59. This provision should not be understood as waiving the State's right to terminate the contract for cause or stop work immediately for unsatisfactory work, but is supplementary to that provision.

14.Termination for Violation of Executive Order Number 127:

For Violation of Executive Order Number 127: The State reserves the right to terminate this contract in the event it is found that the certification filed by the Contractor in accordance with New York State Executive Order Number 127, signed by Governor Pataki on June 16, 2003, was intentionally false or intentionally incomplete. Upon such finding, the State may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms in the contract.

15.Interpretation of Specifications:

The Office of General Services' interpretation of specifications shall be final and binding upon the Vendor.

16. Vendor responsibility for work:

The Vendor shall be completely responsible for their work, including any damages or breakdowns caused by their failure to take appropriate action.

PRICING SUBMISSIONS

PRICE:

Price shall be net, F.O.B. destination any point in the State of New York including delivery inside storeroom door. Net prices derived from discounts or cost plus/minus offered shall include shipping, handling, insurance and associated delivery charges.

Item #'s 1, 2, 3, 4, 5, 6, and 7

Item#1 - Select License - **license only** without Software Assurance, (Level-D).
Item#2 - Education Select License - **license only** without Software Assurance, (Level-A).
Item#3 - Select License with Software Assurance and Software Assurance only (Level-D) 3-year term effective 06/27/03.
Item#4 - Education Select License with Software Assurance and Software Assurance only (Level-A) 3-year term effective 06/27/03.
Item#5 - Enterprise Agreement (Level-D less applicable discounts). Special EA pricing available by contacting David Mills of Microsoft at Dmills@microsoft.com for the State of NY Custom Channel Price List with reference prices and reseller cost.
Item#6 - Academic Campus Agreement, Standard Program Pricing (Level-A) and (Level-B) at specified FTE volumes of 3000 and up.
Item#7 - Academic School Agreement, Standard Program Pricing (Level-A) and (Level-B) at specified Desktop volumes of 2500 and up.

1. Product Offerings:

Bidder **must** offer pricing for Items 1 through 7

Item #1- Microsoft Select, License Only Product based upon the products listed in the *Microsoft Select Price List,* dated **May 2004**, which **must** be attached to the bid.

Item#2- Microsoft Education Select, License Only Products based upon the products listed in the *Microsoft Education Select Price List,* dated **May 2004**, which **must** be attached to the bid.

Item#3- Microsoft Select License Products, with Software Assurance (SA) based upon the products listed in the *Microsoft Select Price List,* dated **May 2004**, which must be attached to the bid

Item#4- Microsoft Education Select License Products, with Software Assurance (SA) based upon the products listed in the *Microsoft Education Select Price List,* dated **May 2004**, which **must** be attached to the bid.

Item#5- Microsoft Enterprise Agreement (EA) Products Only, based upon the State of NY Custom Channel Price List with reseller reference prices (Level-D) available from David Mills at Microsoft, which **must** be attached to the bid.

Item#6- Microsoft Academic Campus Agreement (CA) Products Only based upon the products listed in the *Microsoft Campus Agreement Price List* from *Distributor,* dated **May 2004**, which **must** be attached to the bid.

Item#7- Microsoft Academic School Agreement (ASA) Products Only based upon the products listed in the *Microsoft Education School Agreement Price List* from *Distributor,* dated **May 2004**, which **must** be attached to the bid.

2. Microsoft Select Product Price Level:

Bidder is **required** to obtain a copy of Attachment #1 The Custom License Agreement, which sets forth the product pricing levels applicable to Items # 1, 2, 3, 4, 5, 6, and 7 of this procurement. All pricing submitted in the bid shall be calculated upon and shall not exceed the highest level pricing stated in that amendment as being initially applicable to the State ("Level"), notwithstanding any levels which may be subsequently authorized or stated therein.

3. Cost:

Bidder is **required** to show dealer cost for each product offering based upon the highest applicable Level set forth in the Custom License Agreement. 'Dealer cost' shall be defined as the price Bidder pays Microsoft Corporation or Distributor as applicable, for the software within the applicable Level. Bidder **must** furnish dealer cost pricing obtained from Bidder's License Account Manager at Microsoft or Distributor as applicable, in accordance with the applicable Amendments signed by the Office of General Services and Microsoft.

4. Cost Plus or Minus Markup or Markdown:

Bidder is **required** to quote the percentage by which the final price to the State of New York exceeds or is below the dealer's cost for each product category. Bidder may not bid multiple 'cost plus or minus' percentages within a single Microsoft product category. The cost-plus or minus percentage **will** be fixed for the term of the contract base and extension years. It should be emphasized that the State's cost for the products **may** change over the life of the contract if the published Microsoft or dealer's cost or Distributor cost to dealer's increases or decreases for a given product. However, the percentage over or below dealer's cost, which determines the final price to the State, **will NOT** change over the life of the Contract. This percentage applies to new products added to existing product categories.

5. Net Price:

The net price shall be the price payable by the State, based upon dealer's cost, plus the "cost plus" or minus the "cost minus" percentage as bid for the Microsoft product category. Net price shall be inclusive of all shipping, handling, insurance and associated delivery charges, which must be included in the "cost plus or minus" percentage.

6. Periodic "Cost-Plus or Minus " Verification:

Bidder **will be required** to present, at least on an annual basis, verification reports that certify that the contract is compliant with its dealer cost and "cost-plus" or "cost-minus" percentage. Compliance **must** be certified by Bidder's Chief Financial Officer. In the discretion of the Commissioner, the State reserves the right to require the Bidder to obtain an independent audit to certify compliance in accordance with the following requirements:

- The Bidder is **required** to solicit the services of an auditing/accounting firm to complete verification reports on the cost-plus percentage.
- The Bidder **may not** select firms that have done business with them in the previous two calendar years.
- The Bidder is **required** to recommend three (3) auditing/accounting firms from which the Commissioner will select one (1) auditing/accounting firm.
- The Bidder is **required** to compensate the auditing/accounting firm for all services conducted under this section.
- The Bidder is **required** to suggest a report format, subject to the approval of the Commissioner.

7. Submission:

All product offerings must be submitted in the form required in paragraph #1, above.

Net pricing* for all product offerings for Items 1 thru 7 must be detailed in the exact format outlined below. All net prices **must INCLUDE** all applicable shipping, handling, insurance and associated delivery charges. Bidder **MUST** attach to the bid a listing of the net price payable for all Items 1 thru 7 products, broken out in the required categories, outlined in the Custom License Agreement. The listing shall be submitted in the following presentation format:

Model/Part Number	Description	Dealer Cost	Cost (+) Plus or Cost (-) Minus%*	Net (NYS) Price

"Cost plus" or "cost minus" percentage* for each Microsoft Product Category must be summarized as requested on the Bid Submission Form in this solicitation.

*(Percentages **must** be rounded to the nearest hundredths of a percent and prices to the nearest penny.)

Items#8 *Microsoft Press (Books)* and #9 *Microsoft (Fulfillment) Volume Licensing Disks and Documentation*

Item#8 - Provide *Microsoft Press* publications Microsoft Press (Book) Price List. (ERP)

Item#9 - Provide pricing for *Microsoft (Fulfillment) Volume Licensing Disks and Documentation.* Refer to Microsoft Fulfillment Price List (formerly referred to as Microsoft Easy Fulfillment Price List or World Wide Fulfillment Price List). (ERP)

1. Product Offerings

Item#8 -*Microsoft Press*: Bidder **MUST** offer pricing for all Item# 8 Press products based upon the product listings in the *Microsoft Press Book Price List* Dated January 2004 *for Corporate and Government Customers,* which **must** be attached to the bid. **For submission purposes English version pricelist only must be submitted.**

Item#9 -*Microsoft (Fulfillment) Volume Licensing Disks and Documentation*: Bidder **MUST** offer pricing for all Item# 9 (Fulfillment) Volume Licensing Disks and Documentation products based upon the product listings in the *Microsoft Fulfillment Price List* Dated May 2004 *for Corporate and Government Customers,* which **must** be attached to the bid. **For submission purposes English version pricelist only must be submitted.**

2. List Price:

List price or estimated retail price (ERP) for Item 8 and 9 shall equal the retail price listed in the *Microsoft Press Book Price* Dated January 2004 *List for Corporate and Government Customers* and the *Microsoft Fulfillment Price List* Dated May 2004 *for Corporate and Government Customers,* respectively.

3. Discount from List (ERP):

Bidder is **required** to quote a uniform, firm discount from list for all Microsoft Press and (Fulfillment) Volume Licensing Disks and Documentation products. A range of percentages is not acceptable. Percentages may be rounded to the nearest hundredths and prices to the nearest penny. It should be emphasized that the State's cost for Microsoft Press and (Fulfillment) Volume Licensing Disks and Documentation Products **may** change over the life of the contract if the Microsoft list price for a given product increases or decreases. However, the percentage under list, which determines the final price to the State, **will NOT** change for the term of the contract. This percentage applies to new Microsoft Press and (Fulfillment) Volume Licensing Disks and Documentation Products.

Special (Educational) Discounts and Quantity Discounts should be offered if lower pricing is available. Full details on qualifications for this pricing should be submitted with the bid.

4. Net Price:

The net price shall be the price payable by the State taking the List Price and subtracting a sum equal to the quoted discount from list. All net prices **must INCLUDE** all applicable shipping, handling, insurance and associated delivery charges and such charges must be included in the discount percentage.

5. Submission:

All product offerings must be submitted in the form required in paragraph #1, above.

Net pricing* for all product offerings for Items 8 and 9 must be detailed in the exact format outlined below. All net prices **must INCLUDE** all applicable shipping, handling, insurance and associated delivery charges. Bidder **MUST** attach to the bid a listing of the net price payable for all Items 8 and 9 products, broken out in the required categories. The listing shall be submitted in the following presentation format:

In addition to submission of the *Microsoft Press Book January 2004 Price List for Corporate and Government Customers,* required under paragraph #1 above, Bidder **MUST** attach to the bid the NYS net price for each product offering in the following presentation format:

Product/Part Number	Description	List Price	Discount %	Net (NYS) Price

In addition to submission of the *Microsoft Fulfillment May 2004 Price List for Corporate and Government Customers,* required under paragraph #1 above, Bidder **MUST** attach to the bid the NYS net price for each product offering in the following presentation format:

Product/Part Number	Description	List Price	Discount %	Net (NYS) Price

CHANGES IN PRODUCT OFFERINGS/PRICING:

Contractors shall offer all new Microsoft Select, EA and Academic offerings and Microsoft Press and (Fulfillment) Volume Licensing Disks and Documentation products (if Press and/or (Fulfillment) Volume Licensing Disks and Documentation are awarded) as they become available. It shall be the responsibility of the contractor to submit to the Procurement Services Group all product line changes (additions, deletions, price changes) as soon as Microsoft announces them, in order that the contract can be amended accordingly.

1. Adding New Products or Services Within Existing Price Structure:

Contractor may add new Products or Services to the resulting contracts during the contract term in accordance with the procedures set forth in the "Contract Changes/Update Schedule" section herein for "Auto Add", where such products fall within the established pricing categories and discount structures set forth on the bid form.

2. Adding New Products or Services Using Different Price/Discount Structure:

Where new Products are introduced by Microsoft but do not fall within the existing Microsoft product categories, or new services are introduced which do not fall within the existing pricing structure of the contract, Contractor may seek to add such Products or Services using the procedures set forth in the "Contract Changes/Update Schedule" section for "Regular Add", which require the approval of OGS and the State Comptroller in advance of such product being incorporated into the contract offerings.

3. Existing Products - Modifications to Pricing:

For approved Product or Service offerings under the Custom License Agreement, the pricing set forth shall change as follows:

a. Price Decreases shall take effect automatically during the contract term where:

i) List Price Decreases Where dealer cost or list price decreases, contract pricing shall decrease in accordance with applicable contract cost plus/minus or discount from list of the applicable established pricing categories outlined on the bid form.

Price reductions shall take effect immediately and be applied to all unshipped orders. The State reserves the right to delete, at its discretion, any product or service which increases in price during the contract term or any extension period; or

ii) Special Offers/Promotions Microsoft Corporation, Microsoft Press, Distributor or Bidder makes available commercially to any other similarly situated customer during the term of the contract other more advantageous special promotions or special discount pricing, in which case such maximum discount shall be applied to those offerings under the contract by subtracting from the normally applicable NYS Net Price hereunder the excess of such other special discounts or promotions offered.

In the event the special pricing is not made available, the State reserves the right to place orders directly with alternate sources offering such discounts in accordance with established State procedures for such acquisitions, and/or cancel the contract, whichever is in the best interest of the State.

iii) Special Offers/Promotions to Authorized Users Outside of the Contract Contractor may offer Authorized Users, under either the contract or any other contracting vehicle competitive pricing which is lower than the pricing set forth in the contract at any time during the contract term and such lower pricing shall not be applied as a global price reduction under the contract pursuant to the foregoing paragraph (ii), provided that the Aggregate Annual Sales Order Volume reported under the Custom License Agreement herein by Bidder includes the volume represented in all such offers. In the event that the Contractor does not include the volume of such special pricing offers under the contract Annual Sales Order Volume report, the State shall be entitled to a price reduction under paragraph (ii) above.

b. Price Increases shall take effect during the contract term upon thirty (30) days notice to the State where:

i) Microsoft Dealer Cost as set forth in the bid submissions for Items 1,2,3,4, and/or 5,and/or Authorized Distributor Dealer Cost as set forth in the bid submission for Items 6and/or 7 increase, as certified by Microsoft Corporation or Authorized Distributor as applicable, to the satisfaction of the Commissioner, or

ii) List Price Items 8 and/or 9 increases from the pricing stated in the Microsoft Press or Microsoft (Fulfillment) Volume Licensing Disks and Documentation most recent price list(s), respectively, for Corporate and Government Customers.

METHOD OF AWARD

Custom License Agreement Product Programs - Single Award

Only one award will be made under this IFB. Award will be made to the qualified responsive and responsible bidder that offers the lowest Grand Total Adjusted Price for Items 1 thru 7.

1. **'Lowest Grand Total Adjusted Price'** is defined as: the total "Adjusted Price" for the seven (State and Local Government and Academic) Microsoft Product Categories (Items # 1 through 7).

2. **'Adjusted Price' for Microsoft Product Categories** shall be calculated based on the State's anticipated total estimated Product dollar volume for each Microsoft Product Category* set forth below, multiplied by the cost plus or minus multiplier (1.0 ± x "cost plus or minus" % quoted by Bidder) for categories 1 -5. For categories 6 and 7 the dollar volume has been translated into a quantity of product that is representative of the dollar volume and the cost plus or minus multiplier bid is applied to the bidders cost to create the adjusted price per unit that is multiplied by the estimated contract volume by unit for those categories. A range of percentages within a Product Category* is not acceptable. Bid% for all Microsoft levels within a Category must be equal.

3. **Percentage % Bid or quoted by bidder** must be recorded in "a. Uniform Cost- Plus or Minus Percentage Bid" as a percentage and converted into a decimal in "b. Cost Plus or Minus Multiplier" in order to formulate bid. Example: Bidder quotes 3.12% as "a. Uniform Cost- Plus or Minus Percentage Bid". 3.12% or 3.12 divided by 100 = .0312 which is then used in "b. Cost Plus or Minus Multiplier" as follows 1.0 + .0312= 1.0312

Items # 1 through 7 *Total Estimated Contract Volume: $32 million annually*

By Microsoft Product Categories*

The following tables are for informational purposes only. Bidder is required to enter bids in Appendix E - Submission 3.

Category	% By Estimated Volume	XXXX	a. Uniform Cost plus or minus % Bid	b. Cost % Bid Multiplier (1.0) + (a)	c. Estimated Sales Volume	d.Adjusted NYS Price Per Category (b) *x* (c)
Category #1	28%	XXXX	*X*	1.0+ *x* " cost plus or minus " %	**$ 8.96M**	**=Adjusted Price**
Category #2	15%	XXXX	*X*	1.0+ *x* " cost plus or minus " %	**$ 4.80M**	**=Adjusted Price**
Category #3	6%	XXXX	*X*	1.0+ *x* " cost plus / minus " %	**$ 1.92M**	**=Adjusted Price**
Category #4	1%	XXXX	*X*	1.0+ *x* " cost plus or minus " %	**$ .32M**	**=Adjusted Price**
Category #5	47%	XXXX	*X*	1.0+ *x* "cost plus or minus " %	**$ 15.04M**	**=Adjusted Price**

Category	% By Estimated Volume	a. Cost plus or minus % Bid	b. Cost % Bid Multiplier (1.0) + (a)	c. Bidder Cost Per Unit	d. Adjusted Price Per Unit (b)x(c)	e. Estimated Sales By Product Volume	f. Adjusted NYS Price Per Category (d) *x* (e)
Category #6	1.5%	*X*	1.0+ *x* " cost plus or cost minus " %	*X*	(b) x (c)	**9,999 each ($ .480M)**	**=Adjusted Price**
Category #7	1.5%	*X*	1.0+ *x* " cost plus or cost minus " %	*X*	(b) x (c)	**9,999 each ($ .480M)**	**=Adjusted Price**
Sum of Categories 1-7 = Total Bid Price:				**Total Estimated Contract Volume $32Million**		**Total Adjusted Price Categories 1-7**	

*Microsoft Product Categories

Category#1 - Select License - **license only** without Software Assurance
Category#2 - Education Select License - **license only** without Software Assurance
Category#3 - Select License with Software Assurance and Software Assurance only
Category#4 - Education Select License with Software Assurance and Software Assurance only
Category#5 - Enterprise Agreement
Category#6 - Academic Campus Agreement
Category#7 - Academic School Agreement

EXAMPLE of **"cost minus"** bid on a particular category item 1 thru 5

Item # 1 - Microsoft Select License Only					
Microsoft Product Category	**Description & Percentage of Item #1 Estimated Contract Volume**	**a. Uniform Cost- Plus or Minus Percentage Bid**	**b. Cost-Plus or Minus Multiplier 1.0 ± x% (1.0) + (a)**	**c. Estimated Contract Volume**	**d. Adjusted NYS Price Per Category (b) x (c)**
1.	**Microsoft , Media and Documentation (28%)**	- 3.12%	0.9688	$8,960,000	$8,680,448.00

EXAMPLE of **"cost plus"** bid on a particular category item 1 thru 5

Item # 1 - Microsoft Select License Only					
Microsoft Product Category	**Description & Percentage of Item #1 Estimated Contract Volume**	**a. Uniform Cost- Plus or Minus Percentage Bid**	**b. Cost-Plus or Minus Multiplier 1.0 ± x% (1.0) + (a)**	**c. Estimated Contract Volume**	**d. Adjusted NYS Price Per Category (b) x (c)**
1.	**Microsoft , Media and Documentation (28%)**	+ 3.12%	1.0312	$8,960,000	$9,239,552.00

EXAMPLE of **"cost plus"** bid on a particular product in category item 6 thru 7

Item # 6 - Microsoft Academic Campus Agreement ***For bid purposes only use level-A***							
Microsoft Product Category	**Description & Percentage of Item #6 Estimated Contract Volume**	**a. Uniform Cost- Plus or Minus Percentage Bid**	**b. Cost-Plus or Minus Multiplier 1.0 ± x% (1.0) + (a)**	**c. Bidder Cost Per Unit**	**d. Adjusted Price Per Unit (b) x (c)**	**e. Estimated Contract Volume By Unit**	**f. Adjusted NYS Price Per Category Item (d) x (e)**
C27-00002	**Faculty: Dsktp Campus All languages**	+ 3.12%	1.0312	$48.00	$49.50	3,333	$164,983.50

Items # 8 and 9 *Total Estimated Contract Volume: $50 thousand annually*

NOTE: Items#8 and 9 may be bid but are not part of any bid structure. The State reserves the right to include or not include either of these items in the final contract price list.

EXAMPLE of applying bidders Uniform Discount From ERP to obtain NY Net Price for a particular Item # 8 Press product

Example of converting percentage bid into a decimal.
44.92% Discount bid or 44.92 divided by 100 = .4492,
1.0 minus .4492 equals .5508, which is the Discount Multiplier.

Part Number	Description	a. Uniform Discount % From ERP	b. Discount Multiplier 1.0 (-) x% (1.0) + (a)	c. (ERP) List Price	d. NY Net Price (b) x (c)
0-7356-1891-7	101 Microsoft® Visual Basic® .NET Applications	44.92%	.5508	$39.99	$22.03

EXAMPLE of applying bidders Uniform Discount From ERP to obtain NY Net Price for a particular Item # 9 (Fulfillment) Volume Licensing Disks and Documentation product

Example of converting percentage bid into a decimal.
44.92% Discount bid or 44.92 divided by 100 = .4492,
1.0 minus .4492 equals .5508, which is the Discount Multiplier.

Part Number	Description	a. Uniform Discount % From ERP	b. Discount Multiplier 1.0 (-) x% (1.0) + (a)	c. (ERP) List Price	d. NY Net Price (b) x (c)
077-01278	Access 2000 Win32 English DocKit	44.92%	.5508	$27.00	$14.87

FORMAT AND CONTENT OF BID SUBMITTAL

1. Bidder **MUST** supply **FOUR ORIGINAL COPIES** of the bid.

2. USE INK OR TYPEWRITER WHEN PREPARING YOUR BID.

3. Bid must include all items listed below and use the following format as Bidder's **TABLE OF CONTENTS** for bid submission. Bids are to be submitted in binders with each item listed below as a separate section marked with index tabs as section dividers:

Bidder's Table of Contents

(1) Bid Document

*The submission for this section **should contain:***

*(A) The signed first page of this IFB******

(B) The Completed "Bid Completion Check List"

(C) The Completed "Reference Form"

(D) The Completed "Mandatory Contractor Questionnaire"

(E) The signed and notarized "Signature/Acknowledgment" page in triplicate

*(F) All required **bid form pages;** All pages must have all blanks completed and Bidder's company name in the header on each page*

(* ORIGINAL SIGNATURES FOR THESE DOCUMENTS ARE REQUIRED ON EACH OF THE FOUR COPIES)

(2) Extraneous Terms

This section should contain any exceptions to the terms and conditions listed herein, (see "EXTRANEOUS TERMS" clause)

(3) Qualification of Bidder Requirements

*This section should include a narrative verifying that the Bidder **meets** each of the qualifications outlined in the "QUALIFICATIONS OF BIDDER" clause for each **Item quoted.***

(4) Product Listing

*A listing of all items in the required presentation format, as specified in the "Pricing" clause as follows:**Items 1, 2, 3, 4, 5, 6, and 7 -** all product offerings in the applicable price lists; **Items 8 and 9 -** a listing of all items in the referenced Microsoft Press Book and Microsoft Fulfillment price list for Corporate and Government customers as applicable.*

(5) Pricing Information

*Bidder **must** submit with the bid: **For Items 1, 2, 3, 4, 5, 6, and 7**: Microsoft or Distributor dealer cost pricing obtained from Bidder 's License Account Manager at Microsoft or Distributor as applicable, in accordance with the Custom License Agreement signed by the Office of General Services and Microsoft; and **For all items**: a list of any product, service, or price revisions announced prior to the bid opening date; **For Item#8 :** the Microsoft Press Price List* Dated January 2004 *for Corporate and Government Customers and a list of any product or price revisions announced prior to the bid opening date; **For Item#9 :** the Microsoft Fulfillment Price List* Dated May 2004 *for Corporate and Government Customers and a list of any product or price revisions announced prior to the bid opening date;*

(6) Evidence of Ability/Financial Security

Bidder must submit with the bid:

(A) Contract References (See Qualification of Bidders) Information should include at a minimum, the following information: company name, address, phone numbers, hours of operation, contact name, e-mail address, contract numbers, term of contract, contract value, type of products supplied and type of services supplied;

(B) Copy of the most recent Consolidated Statement of Income and a Consolidated Balance Sheet arrived at by generally accepted accounting principles;

(C) Proof of an organizational structure to handle and process the volume of this procurement, including sales and support staff, and dedicated contract liaison (name, address, email, fax and phone number);

(D) The Contractor must be registered with the New York State Department of State (DOS), www.dos.state.ny.us, and comply with DOS guidelines for doing business in the State pursuant to the Business Corporation Law prior to being awarded a contract (proof of DOS registration required with bid);

*(E) Contractor must be in good financial standing and must provide, at their own expense, a Dun & Bradstreet (D&B) Comprehensive Report on the bidders organization, dated no more than 3 months prior to the bid opening date. Bidders report must indicate the following minimum scores or better in order to be considered**; Credit Score Class: 3, Financial Stress Class: 3, and 12-Month D&B PAYDEX®: 50.***

(7) Dealers/Distributors/VARS Authorization:

Appropriate authorization and documentation from Microsoft Corporation, as outlined in the "QUALIFICATION OF BIDDER" clause.

(8) Detailed Product Specifications

Detailed specifications, circulars and all necessary data on all products (software, publications) and services proposed to be furnished. The State reserves the right to request any additional information deemed necessary for the proper evaluation of bids.

(9) Pricing Information Provided on Magnetic Media

It is required that each Bidder submits with the bid the entire offering on magnetic media. Magnetic media shall be on 3-1/2" floppy disk or CD Rom and must be confirmed virus free in Microsoft Word or compatible format, and clearly labeled with 1) name of Bidder, 2) the Invitation for Bid Number 3) file format, the name and version of the software program. (Acceptable formats are Microsoft Excel). ***The magnetic media is in addition to Item #(4) Product Listing, above.*** *The information provided must be in the same format specified in the "METHOD OF AWARD " and "SUBMISSION OF ELECTRONIC MEDIA " clauses.*

SUBMISSION OF ELECTRONIC MEDIA

In addition to paper copies, all Bidders are required to submit pricing information on diskette or CD Rom with their bid. Diskette or CD Rom is also required in addition to the paper copies when the contractor submits requests to update contract pricing and/or products. Details of the required spreadsheet formatting are explained below:

INSTRUCTIONS FOR PROVIDING CONTRACT PRICING IN A SPREADSHEET

General
Must be in the following format. Microsoft Excel spreadsheet for Windows 2000.

All Cells

- Arial 10 pitch
- Align "top"
- Sequence of part numbers should be the same as the supporting price documentation provided to the State. Examples include: Microsoft Commercial Price List, computerized printouts from the manufacturer's on-line price system, Dealer Cost on official manufacturer's/wholesaler's documentation/letterhead, or any other documentation as required.
-

Column "A"

- Column "A" is reserved for **part numbers only** (no descriptive information should appear in Column "A").
- Cell "Al" must contain the heading - "Part Number".
- Column should be justified "left".

Column "B"

- Column "B" is reserved for **product descriptive text only** (categories, product headings and subheadings must be in **Bold Text).**
- Cell "B 1" must contain the heading - "Product Description".
- Column is to be "left justified" and "wrap text".
- Each cell CANNOT contain more than 256 characters. If additional characters are required for the description, use cells directly below that cell in column "B".
- Use as few cells as possible for the description.
- The use of upper and lower case letters is suggested for readability.

Column "C"

- Column "C" is reserved for **"dealer cost" for items 1-7 and "list" (ERP) for items 8 and 9 pricing information only.**
- Cell "C 1" must contain the heading - "List Price".
- Cells in this column must be justified "right".
- All cells should be in numeric format with commas and two decimal places, and must be values, not formulas.

Column "D"

- Column "D" is reserved for **NYS discount information only.**
- Cell "D 1" must contain the heading - "NYS Discount".
- Cells in this column must be justified "right".
- All cells should be in numeric format with commas and two decimal places, and must be values, not formulas.

Column "E"

- Column "E" is reserved for **net pricing information only.**
- Cell "E 1" must contain the heading - "NYS Price".
- Cells in this column must be justified "right".
- All cells should be in numeric format with commas and two decimal places, and must be values, not formulas.

Other Columns

Additional columns containing information as required should begin in Columns F and continue to the right (G, H, I, etc.)

Additional information Bidder/contractor wishes to provide should be placed in the columns to the right of the last column containing the required contract information. Once a contract is awarded, contractor's prices will be posted on the OGS World Wide Web site.

CONTRACT CHANGES/UPDATE SCHEDULE

It is the intention of the OGS Procurement Services Group (PSG) to amend the contracts let as a result of this IFB as required to reflect changes (new products, price revisions, product deletions) announced by Microsoft or Distributor as applicable, during the contract period. Updates should be submitted as soon as possible after they are announced.

Contractor shall promptly make available to the State each and every new price list (Microsoft dealer cost price lists and Distributor dealer cost price lists for the Custom License Agreement as applicable, and **or** Corporate & Government price list for Microsoft Press and (Fulfillment) Volume Licensing Disks and Documentation as applicable) as such are issued. In addition to paper copies of all contract revisions, an electronic version is also required in the presentation format described in the SUBMISSION OF ELECTRONIC MEDIA clause and the Pricing Section.

Requests for contract updates during the contract period or any extension period should include the following in TRIPLICATE as applicable:

1. A Cover Letter

   a. A cover letter briefly describing the update (i.e.: type of addition, deletions, price revisions). To avoid processing addition of "Auto-Adds" along with "Regular" or "Special" additions, they must be submitted separately (descriptions of types of contract changes are listed at the end of this section). This letter should highlight if Microsoft has in any way revised or has introduced new products which fall into a new group or category that did not exist at the time of the bid opening.

   b. A separate section in the required presentation format for all **additions.** Request must be accompanied by documentation necessary to determine that additions are in accordance with the contract pricing formula.

   c. A separate section of all **deleted models.**

   d. Separate sections for **price increases** and **price decreases** in the required presentation format.

   e. Requests must be accompanied by current pricing (Microsoft dealer cost price lists and Distributor dealer cost price lists for Custom License Agreement as applicable, or Corporate & Government price list for Microsoft Press and Microsoft (Fulfillment) Volume Licensing Disks and Documentation as applicable)

2. Copy of the NYS OGS Contract Update Form (see Appendix D of this IFB) in triplicate with notarized original signatures on all three copies.

3. A revised State Price List incorporating all changes may be submitted with each submission and is required at least on a semi-annual basis. The State reserves the right to require a revised State price list at any time during the contract period and it will be requested if many updates have occurred since the last complete update. This updated list must be either numbered as a version (Version 1, 2 etc.) and/or be dated.

Types of Contract Changes

AUTO-ADD - Auto-adds are contract changes made in accordance with the previously approved contract pricing formula. Examples of "Auto Add" formulas include contract changes with a previously approved "cost plus", "cost minus", "discount from list", and/or GSA pricing. PSG staff will verify that the correct contract discount(s) is/are applied against the correct list prices and discounts will be checked to verify that the net prices are correct in accordance with the contract formula. If found by PSG staff to be in accordance with the terms of the contract, contractor will be notified to update their contract list and proceed with selling products. Contractors should note, however, that all "Auto Adds" approved by PSG are subject to a post audit by the Office of the State Comptroller. Auto-adds will only be processed **once a month.**

REGULAR ADD - Regular adds are products eligible for addition to the contract which do not fall under the discounts or product types previously approved under the contract. This type of addition must be accompanied with justification of reasonableness of price, and is subject to pre-audit by the Office of the State Comptroller. Contractor will be notified to update their contract list and proceed with selling products if the update is approved by OGS PSG and the Office of the State Comptroller.

SPECIAL ADD - Amendments that do not fall into either of the above categories will be processed as special amendments. Special adds address changes which are not specifically covered by the terms of the contract but are judged to be in the best interests of the State to incorporate into the contract. This type of addition must be accompanied with justification of reasonableness of price (and why the contractor believes that it is in the best interest of the State), and is subject to pre-audit by the Office of the State Comptroller. Contractor will be notified to update their contract list and proceed with selling products if the update is approved by OGS PSG and the Office of the State Comptroller .

OGS reserves the right to:

-request additional information
-reject contract updates
-remove products from contracts
-request additional discounts for new or existing products

Appendix A Sept. 2003

Appendix B-1 January 2004

APPENDIX C

Contractor's Executive Law, Article 15-A (M/WBE) Requirements

CONTRACTOR'S REQUIREMENT UNDER ARTICLE 15-A

In July of 1988, Article 15-A of the Executive Law was passed by the New York State Legislature. This legislation provides specific rules, regulations and procedures for minority and women-owned enterprise participation in certain State Contracts.

The Office of General Services (OGS) is required to implement the provisions of Article 15-A for all of its Contracts (1) in excess of $25,000 for labor, services, supplies, equipment, materials, or any combination of the foregoing and (2) for Contracts in excess of $100,000 for real property renovation and construction. For purposes of this Contract, OGS hereby establishes a goal of 0% for minority business enterprises (MBE) participation and 0% for women-owned business enterprises (WBE) participation.

In order to be awarded an OGS Contract, every bidder must comply with the requirements, rules and regulations outlined in Article 15-A.

POLICY AND PROVISIONS

It is the policy of the State of New York to promote equality of economic opportunity for minority and women-owned business enterprises (M/WBEs) in State Contracting. In order to comply with the State's objectives, the Contractors shall use "good faith efforts" to provide meaningful participation by M/WBE Subcontractors or suppliers in the performance of this Contract.

For the purpose of determining a Contractor's good faith effort to comply with the requirements of Article 15-A or to be entitled to a waiver therefrom, the Contracting agency shall consider:

(a) Whether the Contractor has advertised in general circulation media, trade association publications, minority-focus and women-focus media. In such event,

   (i) whether or not certified minority or women-owned businesses which have been solicited by the Contractor exhibited interest in submitting proposals for a particular project by attending a pre-bid conference; and

   (ii) whether certified businesses which have been solicited by the Contractor have responded in a timely fashion to the Contractor's solicitations for timely competitive bid quotations prior to the Contracting agency's bid date; and

(b) Whether there has been written notification to appropriate certified businesses that appear in the Directory of Certified M/WBE prepared pursuant to paragraph (f) of subdivision three of section three hundred eleven of this article; and

(c) Whether the Contractor can reasonably structure the amount of work to be performed under subcontracts in order to increase the likelihood of participation by certified businesses.

A. ***GOALS*** - The MBE and WBE participation goals as stated earlier are based on the availability of M/WBEs currently certified by New York State and geographically located to be able to perform the work in the region where the project is located. The total dollar value of the Contract, scope of work, the supplies and equipment necessary to perform the project, are also considerations used to determine the percentage goals.

B. ***UTILIZATION*** - The Contractor may count as M/WBE participation: subcontracting part of the Contract to certified firms or purchasing supplies and equipment used to perform the terms and conditions of the Contract from certified firms.
Upon a showing by the Contractor of every good faith effort to achieve the goal for M/WBE participation in the work, the State will waive a Contractor's failure to achieve the goal M/WBE participation.

C. ***MINORITY AND WOMEN-OWNED BUSINESS OFFICER*** - The Contractor shall designate a Affirmative Action officer and assign the officer the responsibility and authority to monitor the M/WBE program for this Contract. The OGS' Office of Minority and Women-owned Business Enterprises' staff is available to help in identifying certified M/WBEs.

D. ***REQUIRED REPORTS*** - The Contractor is required to submit a Utilization Plan (BDC-328) to the NYS Office of General Services within five (5) days after the opening of bids for construction Contracts exceeding $100,000 and 14 days after notification of award for commodity and service Contracts exceeding $25,000. The Contractor must also submit the MBE/WBE Letter of Intent to Participate (BDC-49). The Letter MBE/WBE of Intent to Participate is a commitment by the Contractor and the subcontractor/supplier that the terms and conditions for M/WBE participation on this Contract are agreed to. Any modifications or changes to the agreed participation by certified M/WBEs, over the term of the Contract, must be reported on a revised Utilization Plan.

E. ***NONDISCRIMINATION*** - The Contractor agrees not to discriminate on the basis of race, creed, color, national origin, gender, age, disability, or marital status, in any respect, against any potential subcontractor, supplier, other company, firm, or enterprise in any manner relating to the performance of this Contract.

POST AWARD

The Contractor must submit to the Office of Minority and Women-owned Business Enterprises after notification of award, the following forms, by the 10th day of each month:

1. (BDC-58) Cumulative Monthly Payment Statements
2. (BDC-25) Monthly Affirmation of Income Payments

All questions regarding compliance to Article 15-A requirements or copies of the forms should be addressed to:

New York State Office of General Services
Office of Minority and Women-owned Business Enterprises
35th Floor, Room 3580
Corning Tower Building
Empire State Plaza
Albany, NY 12242

The telephone numbers and addresses for New York State Department of Economic Development are as follows:

New York State Empire State Development
633 Third Avenue
New York, NY 10017
Telephone: (212) 803-2414
New York State Empire State Development
Division o f Minority and Women's Business Development
30 South Pearl Street
Albany, New York 12245
Telephone: (518) 292-5250

APPENDIX D

CONTRACT UPDATE FORM

This form is only to be completed to change/update the contract, after a contract is awarded, as outlined in the CONTRACT CHANGES/UPDATE SCHEDULE

STATE OF NEW YORK
EXECUTIVE DEPARTMENT - OFFICE OF GENERAL SERVICES
PROCUREMENT SERVICES GROUP
Corning Tower – 37th Floor
Empire State Plaza
Albany, New York 12242

CONTRACT UPDATE FORM	
OGS CONTRACT NO.:_____	**DATE OF SUBMISSION:_____**
CONTRACT PERIOD: From: _____To: _____ **GROUP NO. & DESCRIPTION:_____** **_____**	**VENDOR CONTACT:** NAME:_____ PHONE NO:_____ FAX NO.:_____ E-MAIL:_____
NOTE: Submission of this FORM does not constitute acceptance by the State of New York until approved by the appropriate New York State representative(s).	

INSTRUCTIONS:

1. ***This form is to be used for all contract updates. The form is to be completed*** *in triplicate* ***and submitted to the OGS Procurement Services Group for final approval. Vendors shall complete, sign, and notarize where indicated, and attach this form to a cover letter written on standard company letterhead. Any submission that is not complete or signed*** *in triplicate* ***will be rejected.***

2. *Contractor may be required to submit the Product and price information for the update in an Excel spreadsheet format in hard copy and on a floppy disk and/or electronically via e-mail to the OGS Purchasing Officer.*

3. *To expedite the processing of updates that qualify as Auto Adds, do not combine Auto Adds with Regular or Special Adds.* ***If more than one type of update is being submitted, they should be submitted as totally separate requests****.*

4. *The list must be dated and the format should be consistent with the format of the price list(s) included in the Pricing Appendix of the Contract.*

5. *The contract update must be accompanied by either the GSA Price List and revised NYS Net Price List incorporating all changes or the US Commercial Price List and revised NYS Net Price List incorporating all changes, whichever is applicable.*

COMPLETE STATEMENTS 1 THROUGH 8 BELOW:

1. This request is an: _____Auto Add _____Regular Add _____Special Add See contract for an explanation of these terms.	2. The intent of this submittal is to: _____Add new products _____Delete products _____Increase pricing _____Reduce pricing
3. All terms and conditions of the contract shall apply to this request. _____Agree _____Disagree	4. All discounts as agreed to in the contract shall apply. _____Agree _____Disagree

5. All discounts are: _____GSA _____Most Favored Nation* *Prices offered are the lowest offered to any similarly situated entity.	6. Attached documentation includes: _____Current approved GSA (labeled "For information only") _____Current commercial price list (labeled "For information only") _____Revised NYS Net Price List
7. If other than an auto-ad, describe the Nature and Purpose of the update: _____ _____	
8. For a regular add, please explain how pricing has been restructured to customers, and/or identify and describe new Products or services, which fall into a new group or category that did not exist at the time of approval of the Contract by the New York State Comptroller. If not applicable, state NA: _____ _____	

The following CORPORATE ACKNOWLEDGEMENT statement is to be included in each of the three original forms. The request must be signed by an individual given the authority to perform this action by the corporation's board of directors and the signature must be notarized. The contractor further certifies that all information provided to the Entity with respect to Executive Order Number 127 is complete, true and accurate. For information regarding Executive Order 127 requirements can be found at: http://www.ogs.state.ny.us/legal/ExeOrder127/overview.asp

_____

Signature of Authorized Vendor Representative:

CORPORATE ACKNOWLEDGMENT

STATE OF }
: **ss.:**
COUNTY OF }

On the_____day of_____in the year 20__, before me personally came: _____, to me known, who, being by me duly sworn, did depose and say that he/she/they reside(s) in _____; that he/she/they is (are) _____ (the President or other officer or director or attorney in fact duly appointed) of _____, the corporation described in and which executed the above instrument; and that he/she/they signed his/her/their name(s) thereto by authority of the board of directors of said corporation.

_____

Signature and Office of Person Taking Acknowledgment

FOR STATE USE ONLY	
OGS APPROVAL: *Approved*_____ *Approved as amended*_____ *Disapproved*_____ *Name:*_____ *Title:*_____ *Date*_____	*OSC APPROVAL:* *Approved*_____ *Disapproved*_____ *Name:*_____ *Title:*_____ *Date*_____

APPENDIX E

BIDDER'S REQUIRED SUBMISSIONS

SUBMISSIONS #1 and 1-A
BID COMPLETION CHECK LIST
[BIDDER MUST ANSWER ALL QUESTIONS]
(3 Pages)

ALL BIDDERS MUST COMPLETE THE FOLLOWING QUESTIONNAIRE:

Address of the plant where items bid on are developed/published:

_____

_____

_____

Guaranteed Delivery:

_____**A/R/O**
(after receipt of purchase order)

Are all prices quoted the same as or lower than those quoted other corporations, institutions or governmental agencies on similar equipment and like quantity?

_____**YES** _____**NO**

If "NO", please explain.

_____

_____

_____

Have you included any deviations from terms and conditions of this solicitation? Deviations and/or standard terms and conditions will not be considered unless specifically referred to as required in the EXTRANEOUS TERMS clause.

If Bidder responds "NO", any "deviations" and/or "standard" terms and conditions of the Bidder which may be included with its bid such as those included as part of a price list, are not applicable to this solicitation.

_____**YES** _____**NO**

THE BIDDER SHALL ACKNOWLEDGE THIS REQUIREMENT AS STATED ABOVE BY SIGNING:

_____
BIDDERS SIGNATURE

DATE: _____

ALL BIDDERS MUST COMPLETE THE FOLLOWING:

The following questions are a check off list to see if you have submitted all required submissions with your bid. The question numbers coincide with the Bidder "Table of Contents"

Have you submitted with your bid . . .

1) All copies of the front page, the Bid Form pages and the Signature/Acknowledgment page?	_____**YES** _____**NO**
2) Any exceptions to the terms and conditions listed herein, as outlined in the "EXTRANEOUS TERMS" clause?	_____**YES** _____**NO**
3) A *narrative verifying that the Bidder meets each of the qualifications outlined in the "QUALIFICATIONS OF BIDDER" clause for each item quoted?*	_____**YES** _____**NO**
4) Product listings as detailed in (4) under Format and Content of Bid Submittal in the required presentation format(s), as specified in the "METHOD OF AWARD" clause?	_____**YES** _____**NO**
5) If applicable appropriate pricing and qualifications for participation in any educational or quantity purchase pricing? (See "SPECIAL DISCOUNTS" and "QUANTITY DISCOUNT" clauses)?	_____**YES** _____**NO**
6) Appropriate Microsoft and/or Bidder price lists as detailed in (5) under Format and Content of Bid Submittal and a list of any product or price revisions announced prior to the bid opening date?	_____**YES** _____**NO**
7) If applicable copies of all applicable support terms and conditions?	_____**YES** _____**NO**
8) Information as detailed in (2) Extraneous Terms under Form and Content of Bid Submittal?	_____**YES** _____**NO**
9) DEALERS/DISTRIBUTORS/VARS ONLY: Appropriate authorization and documentation from Microsoft Corporation as outlined in the "QUALIFICATION OF BIDDER" clause?	_____**YES** _____**NO**

References Form

(1) Reference Company Name: _____

Address: _____

City: _____State: _____

Zip Code: _____

Phone Number: (_____) _____

Fax Number: (_____)_____

Hours of Operation (EST): _____

Main Contact Person: _____

E-Mail Address: _____

Contract Term: _____

Contract Value: _____

Type of Product Supplied: _____

Type of Services Supplied: _____

(2) Reference Company Name: _____

Address: _____

City: _____State: _____

Zip Code: _____

Phone Number: (_____) _____

Fax Number: (_____)_____

Hours of Operation (EST): _____

Main Contact Person: _____

E-Mail Address: _____

Contract Term: _____

Contract Value: _____

Type of Product Supplied: _____

Type of Services Supplied: _____

(3) Reference Company Name: _____

Address: _____

City: _____State: _____

Zip Code: _____

Phone Number: (_____) _____

Fax Number: (_____)_____

Hours of Operation (EST): _____

Main Contact Person: _____

E-Mail Address: _____

Contract Term: _____

Contract Value: _____

Type of Product Supplied: _____

Type of Services Supplied: _____

SUBMISSION #2
MANDATORY BIDDER QUESTIONNAIRE
[BIDDER MUST ANSWER ALL QUESTIONS]

1. Are you a New York State resident business?	**Yes**_____	**No**_____
2. Total number of people employed by your firm:	_____	
3. Total number of people employed by your firm in New York State:	_____	
4. Is your company independently owned and operated?	**Yes**_____	**No**_____
5. Place of manufacture or development of Product(s) offered (Please indicate "Yes" or "No" for A, B or C): A. All NYS manufacture/development? **OR** B. All manufactured/developed outside NYS? **OR** C. Manufactured/developed in NYS and outside NYS?	 **Yes**_____ **Yes** _____ **Yes**_____	 **No**_____ **No**_____ **No**_____
6. Is your firm at least 51% owned and controlled by women, or 51% owned and controlled by minority group members, i.e., Black Hispanic, Asian, Pacific Islander, American Indian, Alaskan Native? **If yes,** _____**Minority Owned** _____**Women Owned** **If yes**, have you been certified or registered? ____**Yes** ____**No** **If yes**, List certification or registration authority: _____ _____	**Yes**_____	**No**_____
7. Do any of the Products offered herein incorporate recycled materials?	**Yes**_____	**No**____ **N/A**___
8. Do any of the Products offered herein contain remanufactured components?	**Yes**_____	**No**____ **N/A** ___
9. Are any of the Products offered herein Energy Star Compliant? If yes, which Products? _____ _____	**Yes**_____	**No**____ **N/A** ___

10. Within the past five years has your firm, any affiliate, any predecessor company or entity, owner, director, officer, partner or proprietor been the subject of:	**(Check any that apply. If "Yes,, describe using additional pages.)**	
a. an indictment, judgment, conviction, or a grant of immunity, including pending actions, for any business-related conduct constituting a crime under local, state or federal law?	**Yes_____**	**No_____**
b. a federal, state, or local government suspension or debarment, rejection of any bid or disapproval of any proposed subcontract, including pending actions, for lack of responsibility, denial or revocation of pre-qualification or a voluntary exclusion agreement?	**Yes_____**	**No_____**
c. any federal or state determination of a violation of any public works law or regulation, or labor law or regulation, or any OSHA violation deemed "serious or willful"?	**Yes_____**	**No_____**
d. a consent order with NYS Department of Environmental Conservation, or a federal or state enforcement determination involving a construction-related violation of federal or state environmental laws?	**Yes_____**	**No_____**
e. a finding of non-responsibility by an agency or authority due to the intentional provision of false or incomplete information as required by Executive Order 127? Executive Order 127 requirements can be found at: *http://www.ogs.state.ny.us/ExecOrder127/overview.asp*	**Yes_____**	**No_____**

If yes to any of above, please provide details regarding the finding.

ENTITY MAKING FINDING:	
YEAR OF FINDING:	
BASIS OF FINDING: (If space to the right is not enough please provide additional sheet with this offer.)	_____ _____ _____ _____ _____

USEFUL INFORMATION MAY BE ACCESSED AT:
http://www.ogs.state.ny.us
AND
http://www.ogs.state.ny.us/legal/ExeOrder127/overview.asp

11. "NONDISCRIMINATION IN EMPLOYMENT IN NORTHERN IRELAND: MacBRIDE FAIR EMPLOYMENT PRINCIPLES" In accordance with Section 165 of the State Finance Law, the Developer, by submission of this contract, certifies that it or any individual or legal entity in which the Developer holds a 10% or greater ownership interest, or any individual or legal entity that holds a 10% or greater ownership interest in the Developer, either: (answer Yes or No to one or both of the following, as applicable), A. have business operations in Northern Ireland: If yes, B. shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles relating to non-discrimination in employment and freedom of workplace opportunity regarding such operations in Northern Ireland, and shall permit independent monitoring of compliance with such Principles.	**A. Yes___** **B. Yes____**	**A. No____** **B. No_____**

12. Are prices quoted the same as or lower than those quoted other corporations, institutions and government agencies (including GSA/VA contracts) on similar products, quantities, terms and conditions? See "Best Pricing Offer" in Appendix B-1 OGS General Specifications. **If "NO", please explain on a separate sheet.**	**Yes**_____	**No**_____
A. Do you have a contract with the General Services Administration (GSA) or Veterans Affairs (VA) for products offered? (Check all that apply.)	**Yes**_____ **GSA**____ **VA** ____	**No**_____
B. If yes, will you offer New York State your GSA or VA pricing or better?	**Yes**_____ **GSA**____ **VA** ____	**No**_____
C. If yes, a copy of the GSA or VA schedule is required. Have you included a copy?	**Yes**_____ **GSA**____ **VA** ____	**No**_____
13. If awarded a contract, will bidder accept the New York State Procurement Card?	**Yes**_____	**No**_____
A. If yes, state any dollar limit on orders for which you will accept the NYS Procurement Card.	Up to **$**_____	
B. Additional discount for purchases made with the NYS Procurement Card:	**Yes**____ _____ %	**No**_____
14. Will you offer a Cash Discount for payment within 15 days of delivery and/or receipt of voucher?	**Yes**____ _____ %	**No**_____
15. Will you offer a Cash Discount for payment within 30 days of delivery and/or receipt of voucher?	**Yes**____ _____ %	**No**_____
*** * * ALL VENDORS PLEASE TAKE NOTICE OF NUMBER 16 BELOW * * ***		

16. NON-COLLUSION CERTIFICATION

By submission of this contract, each contractor and each person signing on behalf of any contractor certifies, and in the case of a joint contract each party thereto certifies as to its own organization, under penalty of perjury, that to the best of its knowledge and belief:

(1) The prices in this contract have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other contractor or with any competitor;

(2) Unless otherwise required by law, the prices which have been quoted in this contract have not been knowingly disclosed by the contractor and will not knowingly be disclosed by the contractor prior to contract award, directly or indirectly, to any other contractor or to any competitor; and

(3) No attempt has been made or will be made by the contractor to induce any other person, partnership or corporation to submit or not to submit a contract for the purpose of restricting competition.

_____

_____

(Bidder's Signature) (Name of Business)

Bidder Disclosure of Contacts

This form shall be completed and submitted with your bid/proposal or offer in accordance with Executive Order Number 127 (EO 127). Failure to complete and submit this form shall result in a determination of non-responsiveness and disqualification of the bid, proposal or offer. If at the time of submission of this form, the specific name of a person authorized to attempt to influence a decision on your behalf is unknown, you agree to provide the specific person's information when it is available. You also agree to update this information during the negotiation or evaluation process of this procurement, and throughout the term of any contract awarded to your company pursuant to this bid/proposal or offer.

****

Is this an initial filing in accordance with Section II, paragraph 1 of EO 127 or an updated filing in accordance with Section II, paragraph 2 of EO 127?:

Initial Filing ☐ Updated Filing ☐

The following person or organization was retained, employed or designated by or on behalf of the Bidder to attempt to influence the procurement process:

Name: _____

Title: _____

Occupation: _____

Company: _____

Address1 _____

Address2 _____

City _____

State _____ Zip _____ Country _____

Telephone Number _____

Does the above named person or organization have a financial interest in the procurement?:

Yes ☐ No ☐

Provide the foregoing information for each person or organization retained, employed or designated by or on behalf of the Bidder to attempt to influence the procurement process:

SUBMISSION #3

BID PAGES

(8 Pages)

Bidder is required to fill out and return all pages in Submission #3 as part of the bid submission.

Microsoft Custom License Agreement Items 1-7

Includes: Select & Education Select

(CLA) Item #'s 1, 2, 3, 4, 5, 6, and 7 Estimated Annual Purchases: $32 Million
(Reference: Attachment 1)

Pricing shall be based on a cost plus or minus percentage bid for the products listed in applicable *Microsoft Price List* specified in Pricing Submissions under Product Offerings.

At the time of contract award contractor will be asked and required to submit to OGS Procurement Service Group both the most current pricelist reflecting contractor cost and updated NYS price list, which will constitute the official State Price List.

Below are examples of *"cost minus" and "cost plus" bids* for Items 1 through 7 *on a particular category* as given in the in the *Method of Award*.

A range of percentages within a Product Category* is not acceptable.

EXAMPLE of **"cost minus"** bid on a particular category item 1 thru 5

Item # 1 - Microsoft Select License Only					
Microsoft Product Category	**Description & Percentage of Item #1 Estimated Contract Volume**	**a. Uniform Cost- Plus or Minus Percentage Bid**	**b. Cost-Plus or Minus Multiplier 1.0 ± x%** **(1.0) + (a)**	**c. Estimated Contract Volume**	**d. Adjusted NYS Price Per Category** **(b) x (c)**
1.	**Microsoft, Media and Documentation (28%)**	- 3.12%	0.9688	$8,960,000	$8,680,448.00

EXAMPLE of **"cost plus"** bid on a particular category item 1 thru 5

Item # 1 - Microsoft Select License Only					
Microsoft Product Category	**Description & Percentage of Item #1 Estimated Contract Volume**	**a. Uniform Cost- Plus or Minus Percentage Bid**	**b. Cost-Plus or Minus Multiplier 1.0 ± x%** **(1.0) + (a)**	**c. Estimated Contract Volume**	**d. Adjusted NYS Price Per Category** **(b) x (c)**
1.	**Microsoft, Media and Documentation (28%)**	+ .3.12%	1.0312	$8,960,000	$9,239,552.00

Item # 1 - Microsoft Select License Only					
Microsoft Product Category	**Description & Percentage of Item #1 Estimated Contract Volume**	**a. Uniform Cost- Plus or Minus Percentage Bid**	**b. Cost-Plus or Minus Multiplier 1.0 ± x% (1.0) + (a)**	**c. Estimated Contract Volume**	**d. Adjusted NYS Price Per Category (b) x (c)**
1.	**Microsoft, Media and Documentation (28%)**	**%**		**$8,960,000**	**$**

Item # 2 - Microsoft Education Select License Only					
Microsoft Product Category	**Description & Percentage of Item #2 Estimated Contract Volume**	**a. Uniform Cost- Plus or Minus Percentage Bid**	**b. Cost-Plus or Minus Multiplier 1.0 ± x% (1.0) + (a)**	**c. Estimated Contract Volume**	**d. Adjusted NYS Price Per Category (b) x (c)**
2.	**Microsoft, Media and Documentation (15%)**	**%**		**$4,800,000**	**$**

Item # 3 - Microsoft Select License with Software Assurance and Software Assurance					
Microsoft Product Category	**Description & Percentage of Item #3 Estimated Contract Volume**	**a. Uniform Cost- Plus or Minus Percentage Bid**	**b. Cost-Plus or Minus Multiplier 1.0 ± x% (1.0) + (a)**	**c. Estimated Contract Volume**	**d. Adjusted NYS Price Per Category (b) x (c)**
3.	**Microsoft, Media and Documentation (6%)**	**%**		**$1,920,000**	**$**

Item # 4 - Microsoft Education Select License with Software Assurance and SA					
Microsoft Product Category	**Description & Percentage of Item #4 Estimated Contract Volume**	**a. Uniform Cost- Plus or Minus Percentage Bid**	**b. Cost-Plus or Minus Multiplier 1.0 ± x% (1.0) + (a)**	**c. Estimated Contract Volume**	**d. Adjusted NYS Price Per Category (b) x (c)**
4.	**Microsoft, Media and Documentation (1%)**	**%**		**$320,000**	**$**

Item # 5 - Microsoft Enterprise Agreement					
Microsoft Product Category	**Description & Percentage of Item #5 Estimated Contract Volume**	**a. Uniform Cost- Plus or Minus Percentage Bid**	**b. Cost-Plus or Minus Multiplier 1.0 ± x% (1.0) + (a)**	**c. Estimated Contract Volume**	**d. Adjusted NYS Price Per Category (b) x (c)**
5.	**Microsoft, Media and Documentation (47%)**	**%**		**$15,040,000**	**$**

EXAMPLE of **"cost plus"** bid on a particular category item 6 thru 7

Item # 6 - Microsoft Academic Campus Agreement ***For bid purposes only use level-A***							
Microsoft Product Category	**Description & Percentage of Item #6 Estimated Contract Volume**	**a. Uniform Cost- Plus or Minus Percentage Bid**	**b. Cost-Plus or Minus Multiplier 1.0 ± x% (1.0) +(a)**	**c. Bidder Cost Per Unit**	**d. Adjusted Price Per Unit (b) x (c)**	**e. Estimated Contract Volume By Unit**	**f. Adjusted NYS Price Per Category Item (d) x (e)**
C27-00002	**Faculty: Dsktp Campus All languages**	+ 3.12%	1.0312	$48.00	$49.50	3,333	$164,983.50

Item # 6 - Microsoft Academic Campus Agreement ***For bid purposes only use level-A***							
Microsoft Product Category	**Description & Percentage of Item #6 Estimated Contract Volume**	**a. Uniform Cost- Plus or Minus Percentage Bid**	**b. Cost-Plus or Minus Multiplier 1.0 ± x% (1.0) +(a)**	**c. Bidder Cost Per Unit**	**d. Adjusted Price Per Unit (b) x (c)**	**e. Estimated Contract Volume By Unit**	**f. Adjusted NYS Price Per Category Item (d) x (e)**
C27-00002	**Faculty: Dsktp Campus All languages Lic/SA MVL**	**%**				**3,333**	
C27-00003	**Faculty: Dsktp Campus All languages Lic/SA MVL**	**%**				**3,333**	
C27-00002	**Student: Dsktp Campus All languages Lic/SA MVL**	**%**				**3,333**	
6.	**Microsoft, Media and Documentation (1.50%)**	XXXXXX	XXXXXX	XXXX	XXXXX	**Total**	**$**

Item # 7 - Microsoft Academic School Agreement ***For bid purposes only use level-A***							
Microsoft Product Category	**Description & Percentage of Item #7 Estimated Contract Volume**	**a. Uniform Cost- Plus or Minus Percentage Bid**	**b. Cost-Plus or Minus Multiplier 1.0 ± x% (1.0) +(a)**	**c. Bidder Cost Per Unit**	**d. Adjusted Price Per Unit (b) x (c)**	**e. Estimated Contract Volume By Unit**	**f. Adjusted NYS Price Per Category Item (d) x (e)**
C28-00002	**Faculty: Dsktp Campus All languages Lic/SA MVL**	**%**				**3,333**	
C28-00003	**Faculty: Dsktp Campus All languages Lic/SA MVL**	**%**				**3,333**	
C28-00002	**Student: Dsktp Campus All languages Lic/SA MVL**	**%**				**3,333**	
7.	**Microsoft, Media and Documentation (1.50%)**	XXXXXX	XXXXXX	XXXX	XXXXX	**Total**	**$**

Total Adjusted Price Summary

1.	**Total Adjusted NYS Price Category Item #1:**	**$**
2.	**Total Adjusted NYS Price Category Item #2:**	**$**
3.	**Total Adjusted NYS Price Category Item #3:**	**$**
4.	**Total Adjusted NYS Price Category Item #4:**	**$**
5.	**Total Adjusted NYS Price Category Item #5:**	**$**
6.	**Total Adjusted NYS Price Category Item #6:**	**$**
7.	**Total Adjusted NYS Price Category Item #7:**	**$**
	Grand Total Adjusted Price Category Items 1 through 7 :	**$**

Item 8 - Microsoft Press

Estimated Annual Purchases: $25,000

Pricing shall be based on the discount from list (ERP) bid for the products listed in applicable *Microsoft Press Price List* specified in Pricing Submissions under Product Offerings. No substitutes are to be offered. US English versions are the only language that need be submitted with bid.

At the time of contract award contractor will be asked and required to submit to OGS Procurement Service Group both the most current pricelist reflecting Microsoft ERP and updated NYS price list, which will constitute the official State Price List.

Below is an example of a *Uniform Discount from (ERP) list* bid on a particular product in Item#8 as given in the *Method of Award*.

EXAMPLE of applying Uniform Discount From ERP bid to obtain NY Net Price for a particular Item # 8 Press product

Part Number	Description	a. Uniform Discount % From ERP	b. Discount Multiplier 1.0 (-) x% (1.0) + (a)	c. (ERP) List Price	d. NY Net Price (b) x (c)
0-7356-1891-7	101 Microsoft® Visual Basic® .NET Applications	44.92%	.5508	$39.99	$22.03

MICROSOFT PRESS PRODUCTS Uniform Discount from (ERP) list:	_____% **Please use decimal point.**

Item 9 - Microsoft (Fulfillment) Volume Licensing Disks and Documentation

Estimated Annual Purchases: $25,000

Pricing shall be based on the discount from list (ERP) bid for the products listed in applicable *Microsoft (Fulfillment) Volume Licensing Disks and Documentation product Price List* specified in Pricing Submissions under Product Offerings. US English versions are the only language that need be submitted with bid.

At the time of contract award contractor will be asked and required to submit to OGS Procurement Service Group both the most current pricelist reflecting Microsoft ERP and updated NYS price list, which will constitute the official State Price List.

Below is an example of a *Uniform Discount from (ERP) list* bid on a particular product in Item#9 as given in the *Method of Award*.

EXAMPLE of applying Uniform Discount From ERP bid to obtain NY Net Price for a particular Item # 9 (Fulfillment) Volume Licensing Disks and Documentation product

Part Number	Description	a. Uniform Discount % From ERP	b. Discount Multiplier 1.0 (-) x% (1.0) + (a)	c. (ERP) List Price	d. NY Net Price (b) x (c)
077-01278	Access 2000 Win32 English DocKit	44.92%	.5508	$27.00	$14.87

MICROSOFT (FULFILLMENT) VOLUME LICENSING DISKS AND DOCUMENTATION PRODUCTS Uniform Discount from (ERP) list:	_____% **Please use decimal point.**

SIGNATURE/ACKNOWLEDGMENT PAGE

IN WITNESS WHEREOF, the parties therefore hereby execute their mutual agreement to the terms of this contract, bearing New York Comptroller's Contract Number _____ *(to be filled in upon final approval of the agreement by the New York State Comptroller*). This agreement constitutes a binding contract between the parties as of the day and year indicated below that approval of the New York State Comptroller was received. The parties further hereby agree that, where Vendor is asked to execute three original copies of this signature page along with a complete original copy of the contract, the approved signature page(s) will be affixed by the State, upon final approval by the NYS Comptroller, to additional copies of this contract which conform exactly to the complete original copy as submitted by Vendor and executed simultaneously therewith.

The contractor further certifies that all information provided to the Entity with respect to Executive Order Number 127 is complete, true and accurate. (For information regarding Executive Order 127 requirements can be found at: http://www.ogs.state.ny.us/legal/ExeOrder127/overview.asp)

VENDOR

By: _____
(Company Name)
Print Name: _____
(Authorized Representative)
Signature: _____
(Original Signature of Authorized Representative)
Title: _____

Federal Tax Identification #:
_____

THE PEOPLE OF THE STATE OF NEW YORK

OGS Procurement Services Group_____

Name: _____

Signature: _____

Title: _____

Date Signed: _____

APPROVED AS TO FORM
ELLIOT SPITZER
New York State Attorney General

APPROVED
ALAN G. HEVESI
New York State Comptroller

INDIVIDUAL , CORPORATE, PARTNERSHIP, OR LLC ACKNOWLEDGMENT

STATE OF }
: **SS.:**
COUNTY OF }

On the ____ day of _____ in the year 20 __ , before me personally appeared _____ , known to me to be the person who executed the foregoing instrument, who, being duly sworn by me did depose and say that _he resides at _____,
Town of _____ ,
County of _____ , State of _____ ; and further that:

[Check One]

(☐ If an individual): _he executed the foregoing instrument in his/her name and on his/her own behalf.

(☐ If a corporation): _he is the _____ of _____ , the corporation described in said instrument; that, by authority of the Board of Directors of said corporation, _he is authorized to execute the foregoing instrument on behalf of the corporation for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said corporation as the act and deed of said corporation.

(☐ If a partnership): _he is the _____ of _____, the partnership described in said instrument; that, by the terms of said partnership, _he is authorized to execute the foregoing instrument on behalf of the partnership for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said partnership as the act and deed of said partnership.

(☐ If a limited liability company): _he is a duly authorized member of _____, LLC, the limited liability company described in said instrument; that _he is authorized to execute the foregoing instrument on behalf of the limited liability company for purposes set forth therein; and that, pursuant to that authority, _he executed the foregoing instrument in the name of and on behalf of said limited liability company as the act and deed of said limited liability company.

_____ **____ / ____ / ___(Expiration Date)**
Notary Public
Registration No._____ **State of:_____**

Attachment 1
Microsoft Select & Education Select
Microsoft Custom License Agreement (CLA) 18381

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

PLEASE RETAIN THIS DOCUMENT
FOR FUTURE REFERENCE.

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1. **Executory Clause**
2. **Non-Assignment Clause**
3. **Comptroller's Approval**
4. **Workers' Compensation Benefits**
5. **Non-Discrimination Requirements**
6. **Wage and Hours Provisions**
7. **Non-Collusive Bidding Certification**
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9. **Set-Off Rights**
10. **Records**
11. **Identifying Information and Privacy Notification**
12. **Equal Employment Opportunities For Minorities and Women**
13. **Conflicting Terms**
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15. **Late Payment**
16. **No Arbitration**
17. **Service of Process**
18. **Prohibition on Purchase of Tropical Hardwoods**
19. **MacBride Fair Employment Principles**
20. **Omnibus Procurement Act of 1992**
21. **Reciprocity and Sanctions Provisions**
22. **Purchases of Apparel**

STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licenser, licensee, lessor, lessee or any other party):

1. EXECUTORY CLAUSE. In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds $15,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds $10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed $30,000 (State Finance Law Section 163.6.a).

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of $50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further warrants that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds $5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor

within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER. All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

(b) PRIVACY NOTIFICATION**.** (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.
(2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in New York State's Central Accounting System by the Director of Accounting Operations, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of $25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of $100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of $100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over $25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State; or (iii) banking services, insurance policies or the sale of securities. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Governor's Office of Minority and Women's Business Development pertaining hereto.

13. CONFLICTING TERMS. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

14. GOVERNING LAW. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165. (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business
30 South Pearl St -- 7th Floor
Albany, New York 12245
Telephone: 518-292-5220

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development
Division of Minority and Women's Business Development
30 South Pearl St -- 2nd Floor
Albany, New York 12245
http://www.empire.state.ny.us

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than $1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

22. PURCHASES OF APPAREL. In accordance with State Finance Law 162 (4-a), the State shall not purchase any apparel from any vendor unable or unwilling to certify that: (i) such apparel was manufactured in compliance with all applicable labor and occupational safety laws, including, but not limited to, child labor laws, wage and hours laws and workplace safety laws, and (ii) vendor will supply, with its bid (or, if not a bid situation, prior to or at the time of signing a contract with the State), if known, the names and addresses of each subcontractor and a list of all manufacturing plants to be utilized by the bidder.

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APPENDIX B-1

GENERAL SPECIFICATIONS

(Technology Products and Services)

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GENERAL

1. APPLICABILITY The terms and conditions set forth in this Appendix B-1 are expressly incorporated in and applicable to all procurements and resulting procurement contracts let by the Office of General Services Procurement Services Group, or let by any other Issuing Entity where incorporated by reference in its Bid Documents. Appendix B-1 shall govern such procurements or contracts unless expressly modified or amended by the terms of a Bid Specification, or a negotiated Contract/Clarification document, if any. Captions are intended as descriptive and are not intended to limit or otherwise restrict the terms and conditions set forth herein.

2 GOVERNING LAW This procurement, the resulting Contract and any purchase orders issued hereunder shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise, and actions or proceedings arising from the Contract shall be heard in a court of competent jurisdiction in the State of New York.

3. APPENDIX A The terms of Appendix A *(Standard Clauses for New York State Contracts)* are expressly incorporated herein.

4. ETHICS COMPLIANCE All Bidders/Contractors and their employees must comply with the requirements of Sections 73 and 74 of the *Public Officers Law*, and other State codes, rules and regulations establishing ethical standards for the conduct of business with New York State. In signing the bid, Bidder certifies full compliance with those provisions for any present or future dealings, transactions, sales, contracts, services, offers, relationships, etc., involving New York State and/or its employees. Failure to comply with those provisions may result in disqualification from the bidding process, termination of Contract, and/or other civil or criminal proceedings as required by law.

5. CONFLICT OF TERMS Conflicts between procurement or Contract documents shall be resolved in the following order of precedence:

a. Appendix A (*Standard Clauses for NYS Contracts*)
b. Contract/Clarification Documents
Writing(s) setting forth the final agreements, clarifications, terms, statement of work and/or modifications between the Bid Documents and Contractor's Bid or Mini-bid.
c. Mini-Bid Project Definition (If any)
d. Bid Documents (Other than Appendix A)
i. Bid Specifications prepared by the Issuing Entity
ii. Appendix B-1 (*General Specifications)*
e. Contractor's Bid or Mini-Bid Proposal

6. DEFINITIONS Terms used in this Appendix B-1 shall have the following meanings:

AGENCY OR AGENCIES The State of New York, acting by or through one or more departments, boards, commissions, offices or institutions of the State of New York.

ATTORNEY GENERAL Attorney General of the State of New York.

AUTHORIZED USER(S) Agencies, or any other entity authorized by the laws of the State of New York to participate in NYS centralized contracts (including but not limited to political subdivisions, public authorities, public benefit corporations and certain other entities set forth in law), or the State of New York acting on behalf of one or more such Agencies or other entities, provided that each such Agency or other entity shall be held solely responsible for liabilities or payments due as a result of its participation.

BID OR BID PROPOSAL An offer or proposal submitted by a Bidder to furnish a described product or a solution or means of achieving a practical end, at a stated price for the stated Contract term.

BIDDER Any individual or other legal entity, (including but not limited to partnership, firm or corporation) which submits a bid in response to a Bid Solicitation. The term Bidder shall also include "offeror." In the case of negotiated contracts, "Bidder" shall refer to the "Contractor".

BID DOCUMENTS Writings setting forth the scope, terms, conditions and technical specifications for a procurement of Product. Such writings typically include, but are not limited to: Invitation for Bids (IFB), Request for Quotation (RFQ), Request for Proposals (RFP), addenda or amendments thereto, and terms and conditions which are incorporated by reference, e.g. Appendix A *(Standard Clauses for NYS Contracts)*, Appendix B-1, *(General Specifications)*. Where these General Specifications are incorporated in negotiated contracts which have not been competitively bid, the term "Bid Documents" shall be deemed to refer to the terms and conditions set forth in the negotiated contract.

BID SOLICITATION The notice or advertisement of an intent to purchase a specified Product by or on behalf of Authorized User(s).

BID SPECIFICATION A written description drafted by the Issuing Entity setting forth the specific terms of the intended procurement, which may include: physical or functional characteristics, the nature of a commodity or construction item, any description of the work to be performed, Products to be provided, the necessary qualifications of the Bidder, the capacity and capability of the Bidder to successfully carry out the proposed contract, or the process for achieving specific results and/or anticipated outcomes or any other requirement necessary to perform work. Where these General Specifications are incorporated in negotiated contracts which have not been competitively bid, the term "Bid Specifications" shall be deemed to refer to the terms and conditions set forth in the negotiated contract.

CERTIFICATES OF PARTICIPATION (COPS) Certificates issued pursuant to Article 5-A of the State Finance Law which represent the right to receive a proportionate share in lease, installment or other periodic payments to be made by any state department, agency or the City University of New York.

COMMISSIONER Commissioner of OGS, or in the case of Bid Specifications issued by an Issuing Entity, the head of such Issuing Entity or their authorized representative.

COMPTROLLER Comptroller of the State of New York.

CONTRACT The writing(s) which contain the agreement of the Commissioner and the Bidder/Contractor setting forth the total legal obligation between the parties as determined by applicable rules of law, and which most typically include the following classifications of public procurements:

a. Agency Specific Contracts Contracts where the specifications for a Product or a particular scope of work are described and defined to meet the needs of one or more Authorized User(s).

b. Centralized Contracts Single or multiple award contracts where the specifications for a Product or general scope of work are described and defined by the Office of General Services to meet the needs of Authorized Users. Centralized Contracts may be awarded on a sole source, single source, emergency or competitive basis. Once established, procurements may be made from the selected Contractor(s) without further competition or mini-bid unless otherwise required by the Bid Specifications or Contract Award Notification.

c. Back-Drop Contracts Multiple award centralized contracts where the Office of General Services defines the specifications for a Product or general scope of work to meet the needs of Authorized Users. Bids may be submitted either at a date and time certain or may be accepted on a continuous recruitment basis, as set forth in the Bid Specifications. Selection of a Contractor from among back-drop contract holders for an actual Product, project or particular scope of work may subsequently be made on a single or sole source basis, or on the basis of a mini-bid among qualified back-drop contract holders, or such other method as set forth in the Bid Document.

d. Piggyback Contract A contract let by any department, agency or instrumentality of the United States government, or any department, agency, office, political subdivision or instrumentality of any state or state(s) which is adopted and extended for use in accordance with the requirements of the *State Finance Law*.

CONTRACT AWARD NOTIFICATION An announcement to Authorized Users that a contract has been established.

CONTRACTOR Any successful Bidder(s) to whom a contract has been awarded by the Commissioner.

DOCUMENTATION The complete set of manuals (e.g., user, installation, instruction or diagnostic manuals) in either hard or electronic copy, which are necessary to enable an Authorized User to properly test, install, operate and enjoy full use of the Product.

EMERGENCY An urgent and unexpected requirement where health and public safety or the conservation of public resources is at risk.

ENTERPRISE The total business operations in the United States of Authorized User (s) without regard to geographic location where such operations are performed or the entity actually performing such operations on behalf of Authorized User.

ENTERPRISE LICENSE A license grant made in accordance with the terms of this Contract of unlimited rights to deploy, access, use and execute Product anywhere within the Enterprise up to the maximum capacity stated on the Purchase Order.

ERROR CORRECTIONS Machine executable software code furnished by Contractor which corrects the Product so as to conform to the applicable warranties, performance standards and/or obligations of the Contractor.

GROUP A classification of Product (services or technology) which is designated by OGS.

INVITATION FOR BIDS (IFB) A type of Bid Document which is most typically used where requirements can be stated and award will be made to the lowest responsive and responsible Bidder(s).

ISSUING ENTITY The Office of General Services or the Authorized User who issues the Bid Documents for a procurement.

LATE BID For purposes of bid openings held and conducted by OGS, a bid not received in such place as may be designated in the Bid Specifications or in the OGS Mailroom located in the Empire State Plaza, Albany, New York 12242, at or before the date and time established in the Bid Specifications for the bid opening. For purposes of bid openings held and conducted by Issuing Entities other than OGS, the term late bid is defined as a bid not received in the location established in the Bid Specifications at or before the date and time specified for the bid opening.

LETTER OF ACCEPTANCE A letter to the successful Bidder(s) indicating acceptance of its bid in response to a solicitation. Unless otherwise specified, the issuance of a Letter of Acceptance forms a contract but is not an order for Product, and Contractor should not take any action with respect to actual Contract deliveries except on the basis of Purchase Orders sent from Authorized User(s).

LICENSED SOFTWARE Software transferred upon the terms and conditions set forth in the Contract. "Licensed Software" includes error corrections, upgrades, enhancements or new releases, and any deliverables due under a maintenance or service contract (e.g. patches, fixes, PTFs, programs, code or data conversion, or custom programming).

LICENSEE One or more Authorized Users who acquire Product from Contractor by issuing a Purchase Order in accordance with the terms and conditions of the Contract; provided that, for purposes of compliance with an individual license, the term "Licensee" shall be deemed to refer separately to the individual Authorized User(s) who took receipt of and who is executing the Product, and who shall be solely responsible for performance and liabilities incurred. In the case of acquisitions by State Agencies, the Licensee shall be the State of New York.

LICENSE EFFECTIVE DATE The date Product is delivered to an Authorized User. Where a License involves Licensee's right to copy a previously licensed and delivered Master Copy of a Program, the license effective date for additional copies shall be deemed to be the date on which the Purchase Order is executed.

LICENSOR A Contractor who transfers rights in proprietary Product to Authorized Users in accordance with the rights and obligations specified in the Contract.

LOGICAL PARTITION A subset of the processing power within a machine which has been divided through hardware and/or software means (i.e., *Processor Resources/System Manager* [PR/SM]) so as to limit the total processing power which is accessible by an operating system image by individual Authorized Users or individual software products.

MINI-BID PROJECT DEFINITION A Bid Document containing project specific bid specifications developed by or for an Authorized User which solicits bids from Contractors previously qualified under a Back-Drop Contract.

MULTIPLE AWARD A determination and award of a contract in the discretion of the Commissioner to more than one responsive and responsible Bidder who meets the requirements of a specification, where the multiple award is made on the grounds set forth in the Bid Document in order to satisfy multiple factors and needs of Authorized Users (e.g., complexity of items, various manufacturers, differences in performance required to accomplish or produce required end results, production and distribution facilities, price, compliance with delivery requirements, geographic location or other pertinent factors).

NEW PRODUCT RELEASES (Product Revisions) Any commercially released revisions to the version of a Product as may be generally offered and available to Authorized Users. New releases involve a substantial revision of functionality from a previously released version of the Product.

OBJECT CODE The machine executable code that can be directly executed by a computer's central processing unit(s).

OGS The New York State Office of General Services

PHYSICAL PARTITION A subset of the processing power within a central electronic complex which has been derived through hardware means so as to limit the total processing power accessible by an operating system image by individual users or individual Products.

PROCUREMENT RECORD Documentation by the Issuing Entity of the decisions made and approach taken during the procurement process.

PRODUCT A deliverable under any Bid or Contract which may include commodities, services and/or technology. The term "Product" includes Licensed Software.

PRODUCT RELEASES - NEW (Product Revisions) Any commercially released revisions to the licensed version of a Product as may be generally offered and available to Authorized Users. New releases involve a substantial revision of functionality from a previously released version of the Product.

PROPRIETARY - Protected by secrecy, patent, copyright or trademark against commercial competition

PURCHASE ORDER The Authorized User's fiscal form or format which is used when making a purchase (e.g., formal written Purchase Order, Procurement Card, electronic Purchase Order, or other authorized instrument).

REQUEST FOR PROPOSALS (RFP) A type of Bid Document which is used for procurements where factors in addition to cost are considered and weighted in awarding the contract and where the method of award is "best value", as defined by the *State Finance Law*.

REQUEST FOR QUOTATION (RFQ) A type of Bid Document which can be used when a formal bid opening is not required (e.g. discretionary, sole source, single source or emergency purchases).

RESPONSIBLE BIDDER A Bidder that is determined to have skill, judgment and integrity, and that is found to be competent, reliable, experienced and qualified financially, as determined by the Commissioner.

RESPONSIVE BIDDER A Bidder meeting the specifications or requirements prescribed in the Bid Document or solicitation, as determined by the Commissioner.

SINGLE SOURCE A procurement where two or more offerors can supply the required Product, and the Commissioner may award the contract to one Bidder over the other.

SITE The location (street address) where Product will be executed or services delivered.

SOLE SOURCE A procurement where only one offeror is capable of supplying the required Product.

SOURCE CODE The programming statements or instructions written and expressed in any language understandable by a human being skilled in the art which are translated by a language compiler to produce executable machine Object Code.

STATE State of New York

TERMS OF LICENSE The terms and conditions set forth in the Contract which are in effect and applicable to a Purchase Order at the time of order placement.

VIRUS Any computer code, whether or not written or conceived by Contractor, which disrupts, disables, harms, or otherwise impedes in any manner the operation of the Product, or any other associated software, firmware, hardware, or computer system (such as local area or wide-area networks), including aesthetic disruptions or distortions, but does not include security keys or other such devices installed by Product manufacturer.

BID SUBMISSION

7. INTERNATIONAL BIDDING All offers (tenders), and all information and Product required by the solicitation or provided as explanation thereof, shall be submitted in English. All prices shall be expressed, and all payments shall be made, in United States Dollars ($ US). Any offers (tenders) submitted which do not meet the above criteria will be rejected.

8. BID OPENING Bids may, as applicable, be opened publicly. The Commissioner reserves the right at any time to postpone or cancel a scheduled bid opening.

9. BID SUBMISSION All bids are to be packaged, sealed and submitted to the location stated in the Bid Specifications. Bidders are solely responsible for timely delivery of their bids to the location set forth in the Bid Specifications prior to the stated bid opening date/time.

A bid return envelope, if provided with the Bid Specifications, should be used with the bid sealed inside. If the bid response does not fit into the envelope, the bid envelope should be taped onto the outside of the sealed box or package with the bid inside. If using a commercial delivery company which requires use of their shipping package or envelope, Bidder's sealed bid, labeled as detailed below, should be placed within the shipper's sealed envelope to ensure that the bid is not prematurely opened.

All bids must have a label on the outside of the package or shipping container outlining the following information:

"BID ENCLOSED (bold print, all capitals)
- Group Number
- IFB or RFP Number
- Bid Submission date and time"

In the event that a Bidder fails to provide such information on the return bid envelope or shipping material, the receiving entity reserves the right to open the shipping package or envelope to determine the proper bid number or Product group, and the date and time of bid opening. Bidder shall have no claim against the receiving entity arising from such opening and such opening shall not affect the validity of the bid or the procurement.

Notwithstanding the receiving agency's right to open a bid to ascertain the foregoing information, Bidder assumes all risk of late delivery associated with the bid not being identified, packaged or labeled in accordance with the foregoing requirements.

10. FACSIMILE SUBMISSIONS Unless specifically prohibited by the terms of the Bid Specifications, facsimile bids may be SUBMITTED AT THE SOLE OPTION AND RISK OF THE BIDDER. Only the FAX number(s) indicated in the Bid Specifications may be used. Access to the facsimile machine(s) is on a "first come, first serve" basis, and the Commissioner bears no liability or responsibility and makes no guarantee whatsoever with respect to the Bidder's access to such equipment at any specific time. Bidders are solely responsible for submission and receipt of the entire facsimile bid by the Issuing Entity prior to bid opening and must include on the first page of the transmission the total number of pages transmitted in the facsimile, including the cover page. Incomplete, ambiguous or unreadable transmissions in whole or in part may be rejected at the sole discretion of the Commissioner. Facsimile bids are fully governed by all conditions outlined in the Bid Documents and must be submitted on forms or in the format required in the Bid Specifications, including the executed signature page and acknowledgment.

11. AUTHENTICATION OF FACSIMILE BIDS The act of submitting a bid by facsimile transmission, including an executed

signature page, shall be deemed a confirming act by Bidder which authenticates the signing of the bid.

12. LATE BIDS Any bid received at the specified location after the time specified will be considered a late bid. A late bid shall not be considered for award unless i) no timely bids meeting the requirements of the Bid Documents are received or, ii) in the case of a multiple award, an insufficient number of timely bids were received to satisfy the multiple award; and acceptance of the late bid is in the best interests of the Issuing Entity. Delays in United States mail deliveries or any other means of transmittal, including couriers or agents of the Issuing Entity, shall not excuse late bid submissions.

13. BID CONTENTS Bids must be complete and legible. All bids must be signed. All information required by the Bid Specifications must be supplied by the Bidder on the forms or in the format specified. No alteration, erasure or addition is to be made to the Bid Documents. Changes may be ignored by the Commissioner or may be grounds for rejection of the bid. Changes, corrections and/or use of white-out in the bid or Bidder's response portion of the Bid Document must be initialed by an authorized representative of the Bidder. Bidders are cautioned to verify their bids before submission, as amendments to bids or requests for withdrawal of bids received by the Commissioner after the time specified for the bid opening, may not be considered.

14. EXTRANEOUS TERMS Bids must conform to the terms set forth in the Bid Documents, as extraneous terms or material deviations (including additional, inconsistent, conflicting or alternative terms) may render the bid non-responsive and may result in rejection. Only those extraneous terms which meet all the following requirements will be considered as having been submitted as part of the Bid:

a. Each proposed extraneous term (addition, counter-offer, deviation, or modification) must be specifically enumerated in a writing which is not part of a pre-printed form; and

b. The writing must identify the particular specification requirement (if any) which Bidder rejects or proposes to modify by inclusion of the extraneous term; and

c. The Bidder shall enumerate the proposed addition, counter offer, modification or deviation from the Bid Document, and the reasons therefore.

Extraneous term(s) submitted on standard, pre-printed forms (including but not limited to: product literature, order forms, license agreements, contracts or other documents), whether or not deemed "material", which are attached or referenced with submissions and which do not meet the above requirements will not be considered part of the bid or resulting Contract, but rather will be deemed to have been included for informational or promotional purposes only. Acceptance and/or processing of the Bid shall not constitute such written acceptance of Extraneous Term(s) or a waiver of the State's rights set forth above.

15. RECORD DISCLOSURE/CONFIDENTIALITY OF PROPRIETARY RECORDS Contractor may preserve proprietary rights as to other confidential or business process information in accordance with procedures established under NYS Public Officers Law, § 89, provided that: (i) Contractor shall inform the Authorized User **upon** submission of its bid, in writing, that such records are going to be furnished, are proprietary and are not to be disclosed; and (ii) said records shall be sufficiently identified; and (iii) Contractor shall state the reasons why the information should be exempted from disclosure; and (iv) designation of said records as exempt from disclosure is reasonable and accepted by the Authorized User. Acceptance of the claimed materials does not constitute a determination on the exemption request, which determination will be made in accordance with statutory procedures.

16. PREVAILING WAGE RATES - PUBLIC WORKS AND BUILDING SERVICES CONTRACTS ***If any portion of work being bid is subject to the prevailing wage rate provisions of the Labor Law, the following shall apply*:**

a. "Public Works" and "Building Services" - Definitions

i. Public Works *Labor Law* Article 8 applies to contracts for public improvement in which laborers, workers or mechanics are employed on a "public works" project (distinguished from public "procurement" or "service" contracts). The State, a public benefit corporation, a municipal corporation (including a school district), or a commission appointed by law must be a party to the Contract. The wage and hours provision applies to any work performed by Contractor or subcontractors.

ii. Building Services *Labor Law* Article 9 applies to contracts for building service work over $1,500 with a public agency, which 1) involve the care or maintenance of an existing building, or 2) involve the transportation of office furniture or equipment to or from such building, or 3) involve the transportation and delivery of fossil fuel to such building, and 4) the principal purpose of which is to furnish services through use of building service employees.

b. Prevailing Wage Rate Applicable to Bid Submissions A copy of the applicable prevailing wage rates to be paid or provided are attached to the solicitation. Bidders must submit bids which are based upon the prevailing hourly wages, and supplements in cash or equivalent benefits (i.e., fringe benefits and any cash or non-cash compensation which are not wages, as defined by law) that equal or exceed the applicable prevailing wage rate(s) for the location where the work is to be performed. Where the Bid Documents require the Bidder to enumerate hourly wage rates in the bid, Bidders may not submit bids based upon hourly wage rates and supplements below the applicable prevailing wage rates as established by the New York State Department of Labor. **Bids which fail to comply with this requirement will be disqualified.**

c. Wage Rate Payments / Changes During Contract Term The wages to be paid under any resulting Contract shall not be less than the prevailing rate of wages and supplements as set forth by law. It is required that the Contractor keep informed of all changes in the Prevailing Wage Rates during the Contract term that apply to the classes of individuals supplied by the Contractor on any projects which result from this Contract which are subject to the provisions of the *Labor Law*. Contractor is solely liable for and must pay such required prevailing wage adjustments during the Contract term as required by law.

d. Public Posting & Certified Payroll Records In compliance with Article 8, Section 220 of the *Labor Law*, as amended by Chapter 565 of the Laws of 1997:

i. Posting The Contractor must publicly post on the work site, in a prominent and accessible place, a legible schedule of the prevailing wage rates and supplements.

ii. Payroll Records Contractors and sub-contractors must keep original payrolls or transcripts subscribed and affirmed as true under the penalties of perjury as required by law. For public works contracts over $25,000 where the Contractor maintains no regular place of business in New York State, such records must be kept at the work site. For building services contracts, such records must be kept at the work site while work is being performed.

iii. Submission of Certified Payroll Transcripts for Public Works Contracts Only Contractors and sub-contractors on public

works projects must submit monthly payroll transcripts to the issuing entity which has prepared or directs the preparation of the plans and specifications for a public works project, as set forth in the Bid Specifications. For mini-bid solicitations, the payroll records must be submitted to the entity preparing the agency mini-bid project specification. For "agency specific" bids, the payroll records should be submitted to the entity issuing the purchase order. For all other OGS centralized contracts, such records should be submitted to the individual agency issuing the purchase order(s) for the work. Upon mutual agreement of the Contractor and the issuing entity, the form of submission may be submitted in a specified disk format acceptable to the Department of Labor provided: 1) the Contractor/subcontractor retains the original records; and, (2) an original signed letter by a duly authorized individual of the Contractor or subcontractor attesting to the truth and accuracy of the records accompanies the disk. **This provision does not apply to building services contracts.**

iv. Records Retention Contractors and subcontractors must preserve such certified transcripts for a period of three years from the date of completion of work on the awarded Contract.

e. Day's Labor - Defined for Article 8, Public Works (For Purposes of Article 8 of the *Labor Law*) No laborer, worker or mechanic in the employ of the Contractor, subcontractor or other person doing or contracting to do all or part of the work contemplated by the Contract shall be permitted or required to work more than eight hours in any one calendar day or more than five days in any one week except in cases of extraordinary emergency including fire, flood or danger to life or property. "Extraordinary emergency" shall be deemed to include situations in which sufficient laborers, workers and mechanics cannot be employed to carry on public work expeditiously as a result of such restrictions upon the number of hours and days of labor and the immediate commencement or prosecution or completion without undue delay of the public work is necessary in the judgment of the NYS Commissioner of Labor for the preservation of the Contract site or for the protection of the life and limb of the persons using the Contract site.

17. TAXES

a. Unless otherwise specified in the Bid Specifications, the quoted bid price includes all taxes applicable to the transaction.

b. Purchases made by the State of New York and certain non-State Authorized Users are exempt from New York State and local sales taxes and, with certain exceptions, federal excise taxes. To satisfy the requirements of the New York State Sales tax exemption, either the Purchase Order issued by a State Agency or the invoice forwarded to authorize payment for such purchases will be sufficient evidence that the sale by the Contractor was made to the State, an exempt organization under Section 1116 (a) (1) of the *Tax Law*. Non-State Authorized Users must offer their own proof of exemption where required. No person, firm or corporation is, however, exempt from paying the State Truck Mileage and Unemployment Insurance or Federal Social Security taxes, which remain the sole responsibility of the Bidder/Contractor.

c. Purchases by Authorized Users other than the State of New York may be subject to such taxes, and in those instances the tax should be computed based on the Contract price and added to the invoice submitted to such entity for payment.

18. EXPENSES PRIOR TO CONTRACT EXECUTION The Issuing Entity is not liable for any costs incurred by a Bidder in the preparation and production of a bid or for any work performed prior to Contract execution.

19. ADVERTISING BID RESULTS A Bidder in submitting a bid agrees not to use the results therefrom as a part of any commercial advertising without the prior written approval of the Commissioner.

20. PRODUCT REFERENCES

a. "Or Equal" In all Bid Specifications the words "or equal" are understood to apply where a copyright brand name, trade name, catalog reference, or patented Product is referenced. References to such specific Product are intended as descriptive, not restrictive, unless otherwise stated. Comparable Product will be considered if proof of compatibility is provided, including appropriate catalog excerpts, descriptive literature, specifications and test data, etc. The Commissioner's decision as to acceptance of the Product as equal shall be final.

b. Discrepancies in References In the event of a discrepancy between the model number referenced in the Bid Specifications and the written description of the Products therein which cannot be reconciled, with respect to such discrepancy, then the written description shall prevail.

21. RECYCLED OR RECOVERED MATERIALS Upon the conditions specified in the Bid Specifications and in accordance with the laws of the State of New York, Contractors are encouraged to use recycled or recovered materials in the manufacture of Products and packaging to the maximum extent practicable without jeopardizing the performance or intended end use of the Product or packaging unless such use is precluded due to health, welfare, safety requirements or in the Bid Specifications. Where such use is not practical, suitable, or permitted by the Bid Specifications, Contractor shall deliver new materials in accordance with the "Warranties" set forth below.

Refurbished or remanufactured components or items may only be accepted at the discretion of the Commissioner, or upon the conditions set forth in the Bid Specifications.

Items with recycled, recovered, refurbished or remanufactured content must be identified in the bid or will be deemed new Product.

22. PRODUCTS MANUFACTURED IN PUBLIC INSTITUTIONS Bids offering Products which are manufactured or produced in public institutions will be rejected.

23. PRICING

a. Unit Pricing If required by the Bid Specifications, the Bidder should insert the price per unit specified and the price extensions in decimals, not to exceed four places for each item, in the bid. In the event of a discrepancy between the unit price and the extension, the unit price shall govern unless, in the sole judgment of the Commissioner, such unit pricing is obviously erroneous.

b. Net Pricing Unless otherwise required by the Bid Specifications, prices shall be net, including transportation, customs, tariff, delivery, and other charges fully prepaid by the Contractor to the destination(s) indicated in the Bid Specifications, subject to the cash discount.

c. "No Charge" Bid When bids are requested on a number of Products as a group or Lot, a Bidder desiring to bid "no charge" on a Product in the grouping or Lot must clearly indicate such. Otherwise, such bid may be considered incomplete and be rejected, in whole or in part, at the discretion of the Commissioner.

d. Educational Pricing All Products to be supplied for educational purposes that are subject to educational discounts shall be identified in the bid and such discounts shall be made available to qualifying institutions.

e. COPS or Third Party Financing If Product acquisitions are financed through Certificates of Participation (COPS) or any other third party financing, Contractor may be required as a condition of Contract award to agree to the terms and conditions of a "Consent & Acknowledgment Agreement" in a form acceptable to the Commissioner.

24. DRAWINGS

a. Drawings Submitted With Bid When the Bid Specifications require the Bidder to furnish drawings and/or plans, such drawings and/or plans shall conform to the mandates of the Bid Documents and shall, when approved by the Commissioner, be considered a part of the bid and of any resulting Contract. All symbols and other representations appearing on the drawings shall be considered a part of the drawing.

b. Drawings Submitted During the Contract Term Where required to develop, maintain and deliver diagrams or other technical schematics regarding the scope of work, Contractor shall do so on an ongoing basis at no additional charge, and must as a condition of payment update drawings and plans during the Contract term to reflect additions, alterations, and deletions, as a condition of payment. Such drawings and diagrams shall be delivered to the Authorized User's representative.

c. Accuracy of Drawings Submitted All drawings shall be neat and professional in manner and shall be clearly labeled as to locations and type of product, connections and components. Drawings and diagrams are to be in compliance with accepted drafting standards. Acceptance or approval of such plans shall not relieve the Contractor from responsibility for design or other errors of any sort in the drawings or plans, or from its responsibility for performing as required, furnishing product, services or installation, or carrying out any other requirements of the intended scope of work.

25. SITE INSPECTION Where a site inspection is required by the Bid Specifications or Project Definition, Bidder shall be required to inspect the site, including environmental or other conditions or pre-existing deficiencies in the installed product, equipment or environment, which may affect Bidder's ability to properly deliver, install or otherwise provide the required Product. All inquiries regarding such conditions shall be made in writing. Bidder shall be deemed to have knowledge of any deficiencies or conditions which such inspection or inquiry might have disclosed. Bidder must provide with its bid a detailed explanation if additional work is required under this clause in order to properly complete the delivery and installation of the required Product.

26. PROCUREMENT CARD The State of New York has entered into agreements for purchasing and travel card services. The Purchasing Card enables Authorized Users to make authorized purchases directly from a Contractor without processing the Purchase Orders or Purchase Authorizations currently required. Purchasing Cards are issued to selected employees authorized to purchase for the Authorized User and having direct contact with Contractors. Cardholders can make purchases directly from any Contractor that accepts the Purchasing Card.

The Contractor shall not process a transaction for payment through the credit card clearinghouse until the purchased Products have been shipped or services performed. Unless the cardholder requests correction or replacement of a unsatisfactory, defective or faulty Product in accordance with other contract requirements, the Contractor shall immediately credit a cardholder's account for Products deemed unsatisfactory, defective or faulty.

27. SAMPLES

a. Standard Samples Bid Specifications may indicate that the Product to be purchased must be equal to a standard sample on display in a place designated by the Commissioner and such sample will be made available to the Bidder for examination prior to the opening date. Failure by the Bidder to examine such sample shall not entitle the Bidder to any relief from the conditions imposed by the Bid Documents.

b. Bidder Supplied Samples The Commissioner reserves the right to request from the Bidder/Contractor a representative sample(s) of the Product offered at any time prior to or after award of a Contract. Unless otherwise instructed, samples shall be furnished within the time specified in the request. Untimely submission of a sample may constitute grounds for rejection of bid or cancellation of the Contract. Samples must be submitted free of charge and be accompanied by the Bidder's name and address, any descriptive literature relating to the Product and a statement indicating how and where the sample is to be returned. Where applicable, samples must be properly labeled with the appropriate bid or NYS contract reference.

A sample may be held by the Commissioner during the entire term of the Contract and for a reasonable period thereafter for comparison with deliveries. At the conclusion of the holding period the sample, where feasible, will be returned as instructed by the Bidder, at the Bidder's expense and risk. Where the Bidder has failed to fully instruct the Commissioner as to the return of the sample (i.e. mode and place of return, etc.) or refuses to bear the cost of its return, the sample shall become the sole property of the receiving entity at the conclusion of the holding period.

c. Enhanced Samples When an approved sample exceeds the minimum specifications, all Product delivered must be of the same enhanced quality and identity as the sample. Thereafter, in the event of a Contractor's default, the Commissioner may procure a commodity substantially equal to the enhanced sample from other sources, charging the Contractor for any additional costs incurred.

d. Conformance with Sample(s) Submission of a sample (whether or not such sample is tested by, or for, the Commissioner) and approval thereof shall not relieve the Contractor from full compliance with all conditions and terms, performance related and otherwise, specified in the Bid Documents. If in the judgment of the Commissioner the sample or product submitted is not in accordance with the specifications or testing requirements prescribed in the Bid Documents, the Commissioner may reject the bid. If an award has been made, the Commissioner may cancel the Contract at the expense of the Contractor.

e. Testing All samples are subject to tests in the manner and place designated by the Commissioner, either prior to or after Contract award. Unless otherwise stated in the Bid Specifications, Bidder Samples consumed or rendered useless by testing will not be returned to the Bidder.

f. Requests For Samples By Authorized Users Requests for samples by Authorized Users require the consent of the Contractor. Where Contractor refuses to furnish a sample, Authorized User may, in its sole discretion, make a determination on the performance capability of the Product or on the issue in question.

BID EVALUATION

28. BID EVALUATION The Commissioner reserves the right to accept or reject any and all bids, or separable portions of offers, and waive technicalities, irregularities, and omissions if the Commissioner determines the best interests of the State will be served. The Commissioner, in his/her sole discretion, may accept or reject illegible, incomplete or vague bids and his/her decision shall be final. A conditional or revocable bid which clearly communicates the terms or limitations of acceptance may be considered and Contract award may be made in compliance with the Bidder's conditional or revocable terms in the offer.

29. CONDITIONAL BID Unless the Bid Specifications provides otherwise, a bid is not rendered non-responsive if the Bidder specifies that the award will be accepted only on all or a specified group of items

or Product included in the specification. It is understood that nothing herein shall be deemed to change or alter the method of award contained in the Bid Documents.

30. CLARIFICATIONS / REVISIONS Prior to award, the Commissioner reserves the right to seek clarifications, request bid revisions, or to request any information deemed necessary for proper evaluation of bids from all Bidders deemed to be eligible for contract award. Failure to provide requested information may result in rejection of the bid.

31. PROMPT PAYMENT DISCOUNTS While prompt payment discounts will not be considered in determining the low bid, the Commissioner may consider any prompt payment discount in resolving bids which are otherwise tied. However, any notation indicating that the price is net, (e.g. net 30 days), shall be understood to mean only that no prompt payment discount is offered by the Bidder. The imposition of service, interest, or other charges, except pursuant to the provisions of Article 11-A of the *State Finance Law*, which are applicable in any case, may render the bid non-responsive and may be cause for its rejection.

32. EQUIVALENT OR IDENTICAL BIDS In the event two offers are found to be substantially equivalent, price shall be the basis for determining the award recipient. If two or more Bidders submit substantially equivalent bids as to pricing or other factors, the decision of the Commissioner to award a contract to one or more of such Bidders shall be final.

33. PERFORMANCE QUALIFICATIONS The Commissioner reserves the right to investigate or inspect at any time whether or not the Product, qualifications or facilities offered by the Bidder/Contractor meet the requirements set forth in the Contract. Contractor shall at all times during the Contract term remain responsible and responsive. A Bidder/Contractor must be prepared, if requested by the Commissioner, to present evidence of experience, ability and financial standing, as well as a statement as to plant, machinery and capacity of the manufacturer for the production, distribution and servicing of the Product offered/bid. If the Commissioner determines that the conditions and terms of the Bid Documents or Contract are not complied with, or that items or Product proposed to be furnished do not meet the specified requirements, or that the qualifications, financial standing or facilities are not satisfactory, or that performance is untimely, the Commissioner may reject such bid or terminate the Contract. Nothing in the foregoing shall mean or imply that it is obligatory upon the Commissioner to make an investigation either before or after award of a Contract, but should such investigation be made, it in no way relieves the Bidder/Contractor from fulfilling all requirements and conditions of the Contract.

34. DISQUALIFICATION FOR PAST PERFORMANCE Bidder may be disqualified from receiving awards if Bidder, or anyone in Bidder's employment, has previously failed to perform satisfactorily in connection with public bidding or contracts.

35. QUANTITY CHANGES PRIOR TO AWARD The Commissioner reserves the right, at any time prior to the award of a specific quantity contract, to alter in good faith the quantities listed in the Bid Specifications to conform with requirements. In the event such right is exercised, the lowest responsible Bidder meeting specifications will be advised of the revised requirements and afforded an opportunity to extend or reduce its bid price in relation to the changed quantities. Refusal by the low Bidder to so extend or reduce its bid price may result in the rejection of its bid and the award of such contract to the lowest responsible Bidder who accepts the revised requirements.

36. RELEASE OF BID EVALUATION MATERIALS Requests concerning the evaluation of bids may be submitted under the *Freedom of Information Law*. Information, other than the Bid Tabulation, shall be released as required by law after Contract award. Written requests should be directed to the Commissioner.

37. TIMEFRAME FOR OFFERS The Commissioner reserves the right to make awards within sixty (60) days after the date of the bid opening, during which period, bids must remain firm and cannot be withdrawn. If, however, an award is not made within the sixty (60) day period, bids shall remain firm until such later time as either a Contract is awarded or the Bidder delivers to the Commissioner written notice of the withdrawal of its bid. Any bid which expressly states therein that acceptance must be made within a shorter specified time, may at the sole discretion of the Commissioner, be accepted or rejected.

TERMS & CONDITIONS

38. CONTRACT CREATION / EXECUTION Except for contracts governed by Article 11-B of the *State Finance Law*, upon receipt of all required approvals a Contract shall be deemed executed and created upon the Commissioner's mailing or electronic communication to the address on the bid of: i) a Letter of Acceptance; ii) a fully executed Contract; or iii) a Purchase Order authorized by the Commissioner.

39. PARTICIPATION IN CENTRALIZED CONTRACTS The following shall not limit or inhibit the OGS Commissioner's authority under *State Finance Law*, Section 163 (10) (e) (Piggybacking):

a. Agencies All State Agencies may utilize and purchase under any state centralized contract let by the Office of General Services Procurement Services Group, unless the Bid Specifications limit purchases to specific State Agencies.

b. Non-State Agency Authorized Users Authorized Users other than state agencies are permitted to make purchases through state centralized contracts where permitted by law, the Contract or the OGS Commissioner.

c. Voluntary Extension Purchase Orders issued against a State centralized contract by any Authorized User not provided for in the Bid Specifications shall be honored by the Contractor at its discretion and only with the approval of the OGS Commissioner and any other approvals required by law. Contractors are encouraged to voluntarily extend service contracts to those additional entities authorized to utilize commodity contracts under Section 163 (3) (a) (iv) of the *State Finance Law*, which would comprise all entities authorized under prior laws.

d. Responsibility for Performance Participation in New York State centralized contracts by Authorized Users is permitted upon the following conditions: a) the responsibility with regard to performance of any contractual obligation, covenant, condition or term thereunder by any Authorized User other than State Agencies shall be borne and is expressly assumed by such Authorized User and not by the State; b) a breach of the Contract by any particular Authorized User shall neither constitute nor be deemed a breach of the Contract as a whole which shall remain in full force and effect, and shall not affect the validity of the Contract nor the obligations of the Contractor thereunder respecting non-breaching Authorized Users, whether State or otherwise; c) for a breach by an Authorized User other than a State Agency, the State specifically and expressly disclaims any and all liability for such breach; and d) each non-state agency Authorized User and Contractor guarantee to save the State, its officers, agents and employees harmless from any liability that may be or is imposed by their failure to perform in accordance with its obligations under the Contract.

40. MODIFICATION OF CONTRACT TERMS The terms and conditions set forth in the Contract govern all transactions by Authorized User(s) under this Contract. The Contract may only be

modified or amended upon mutual written agreement of the Commissioner and Contractor. For individual orders, however, the Contractor may offer Authorized User(s) more advantageous pricing, payment, or other terms and conditions than those set forth in the Contract. In such event, Contractor shall furnish a copy of such better offer to the Commissioner upon request.

Other than where terms are more advantageous for the Authorized User(s) than those set forth in the Contract, no alteration or modification of the terms of the Contract, including substitution of Product, shall be valid or binding against Authorized User(s) unless authorized by the Commissioner or specified in the *Contract Award Notification.* Contractor may not unilaterally modify the terms of the Contract by affixing additional terms to Product upon delivery (e.g., attachment or inclusion of standard pre-printed order forms, product literature, "shrink wrap" terms accompanying or affixed to Product) or by incorporating such terms onto Contractor's order or fiscal forms or other documents forwarded by the Contractor for payment. Acceptance of Product or processing of such documentation on forms furnished by the Contractor for approval or payment does not constitute acceptance of the proposed modification to terms and conditions.

41. SCOPE CHANGES The Commissioner reserves the right, unilaterally, to require, by written order, changes altering, adding to or deducting from the Contract specifications, such changes to be within the general scope of the Contract. The Commissioner may make an equitable adjustment in the Contract price or delivery date if the change affects the cost or time of performance. Such equitable adjustments require the consent of the Contractor, which consent shall not be unreasonably withheld.

42. ESTIMATED / SPECIFIC QUANTITY CONTRACTS Estimated quantity contracts are expressly agreed and understood to be made for only the quantities, if any, actually ordered during the Contract term. No guarantee of any estimated quantity(s) is implied or given. Unless otherwise set forth in the Bid Specifications, contracts for services and technology are completely voluntary as to use, and therefore no quantities are guaranteed.

With respect to any specific quantity stated in the Contract, the Commissioner reserves the right after award to order up to 20% more or less (rounded to the next highest whole number) than the specific quantities called for in the Contract. Notwithstanding the foregoing, the Commissioner may purchase greater or lesser percentages of Contract quantities should the Commissioner and Contractor so agree. Such agreement may include an equitable price adjustment.

43. BEST PRICING OFFER During the Contract term, if substantially the same or a smaller quantity of a Product is sold by the Contractor outside of this Contract vehicle upon the same or similar terms and conditions as that of this Contract at a lower price, the price under this Contract, at the discretion of the Commissioner, shall be immediately reduced to the lower price.

44. PURCHASE ORDERS Unless otherwise authorized in writing by the Commissioner, no Products are to be delivered or furnished by Contractor until transmittal of an official Purchase Order from the Authorized User. Unless terminated or canceled pursuant to the authority vested in the Commissioner, Purchase Orders shall be effective and binding upon the Contractor when placed in the mail or electronically transmitted prior to the termination of the Contract period, addressed to the Contractor at the address for receipt of orders set forth in the Contract or in the Contract Award Notification.

All Purchase Orders issued pursuant to contracts let by the Commissioner must bear the appropriate contract number and, if necessary, required State approvals. Unless otherwise specified, all Purchase Orders against centralized contracts will be placed by Authorized Users directly with the Contractor and shall be deemed to incorporate the terms and conditions set forth in this Contract by reference. Any discrepancy between the terms stated on the Contractor's order form, confirmation or acknowledgment, and the Contract terms shall be resolved in favor of the terms most favorable to the Authorized User.

The Purchase Order shall indicate the address for delivery of the Product. Authorized User shall confirm pricing, supported hardware platforms and model availability with Contractor prior to placement of orders. Contractor's order form shall, at a minimum, contain the NYS Product reference number, license type, price, and must separately itemize quantities for software, documentation, and services. The State reserves the right to require any other information from the Contractor which the State deems necessary in order to verify any Purchase Order placed under the Contract.

If, with respect to an agency specific contract let by the OGS Commissioner, a Purchase Order is not received within two weeks after the issuance of a Contract Award Notification, it is the responsibility of the Contractor to request in writing that the appropriate Authorized User forward a Purchase Order. If, thereafter, a Purchase Order is not received within a reasonable period of time, the Contractor shall promptly notify the appropriate purchasing officer in OGS. Failure to timely notify such officer may, in the discretion of the OGS Commissioner and without cost to the State, result in the canceling of such requirement by the OGS Commissioner with, at the OGS Commissioner's discretion, a corresponding reduction in the Contract quantity and price.

45. PRODUCT DELIVERY Delivery must be made as ordered to the address specified on the Purchase Order and in accordance with the terms of the Contract. Unless otherwise specified in the Bid Specifications, delivery shall be made within thirty calendar days after receipt of a purchase order by the Contractor. The decision of the Commissioner as to compliance with delivery terms shall be final. The burden of proof for delay in receipt of Purchase Order shall rest with the Contractor. In all instances of a potential or actual delay in delivery, the Contractor shall immediately notify the Commissioner and the Authorized User, and confirm in writing the explanation of the delay, and take appropriate action to avoid any subsequent late deliveries. Any extension of the time for delivery must be requested in writing by the Contractor and approved in writing by the Commissioner. Failure to meet such time schedule may be grounds for cancellation of the order or, in the Commissioner's discretion, the Contract.

46. WEEKEND AND HOLIDAY DELIVERIES Unless otherwise specified in the Bid Specifications or by an Authorized User, deliveries will not be scheduled for Saturdays, Sundays or legal holidays observed by the State of New York except of Product for daily consumption or where an emergency exists or the delivery is a replacement or is late, in which event the convenience of the Authorized User shall govern.

47. SHIPPING / RECEIPT OF PRODUCT

a. Packaging Tangible Product shall be securely and properly packed for shipment, storage and stocking in appropriate, clearly labeled shipping containers and according to accepted commercial practice, without extra charge for packing materials, cases or other types of containers. The container shall become and remain the property of the receiving entity.

b. Shipping Charges Unless otherwise stated in the Bid Specifications, all deliveries shall be deemed to be FOB destination to the delivery address specified on the Purchase Order. Even where the specifications permit Product to be purchased at a price FOB shipping point plus transportation charges, it is understood not to relieve the Contractor from responsibility for safe and proper delivery. Contractor

shall be responsible for insuring that the Bill of Lading states "charges prepaid" for all shipments.

c. Receipt of Product The Contractor shall be solely responsible for assuring that deliveries are made to personnel authorized to accept delivery on behalf of the Authorized User. Any losses resulting from the Contractor's failure to deliver Product to authorized personnel shall be borne exclusively by the Contractor.

48. RISK OF LOSS Notwithstanding the form of shipment, risk of loss shall not pass from the Contractor to the Authorized User until the Products have been received, inspected and accepted by the receiving entity. Acceptance shall occur within the acceptance period specified in this Appendix B-1, or such other period of time mutually agreed to by Authorized User and Contractor. Mere acknowledgment by Authorized User personnel of the delivery or receipt of goods (e.g. signed bill of lading) shall not be deemed or construed as acceptance of the Products. Any delivery of Product which is substandard or does not comply with the Contract terms, may be rejected or accepted on an adjusted price basis, as determined by the Commissioner.

49. *(RESERVED)*

50. PRODUCT SUBSTITUTION In the event a specified manufacturer's Product listed in the Contract becomes unavailable or cannot be supplied by the Contractor for any reason (except as provided for in the Savings/Force Majeure Clause below) a Product deemed by the Commissioner to be equal to or better than that specified must be substituted by the Contractor at no additional cost or expense to the Authorized User, subject to the Contractor's approval, which shall not unreasonably be withheld. Unless otherwise specified, any substitution of Product prior to the Commissioner's approval may be cause for cancellation of Contract.

51. REJECTED PRODUCT When Product is rejected, it must be removed by the Contractor from the premises of the receiving entity within ten calendar days of notification of rejection by Authorized User. Upon rejection notification, risk of loss of rejected or non-conforming Product shall remain with Contractor. Rejected items not removed by the Contractor within ten calendar days of notification shall be regarded as abandoned by the Contractor, and the Authorized User shall have the right to dispose of the items as its own property. The Contractor shall promptly reimburse the Authorized User for any and all costs and expenses incurred in storage or effecting removal or disposition.

52. INSTALLATION Where installation is required, Bidder shall be responsible for placing and installing the equipment in the required locations. All materials used in the installation shall be of good quality and shall be free from any and all defects which would mar the appearance of the equipment or render it structurally unsound. Installation includes the furnishing of any equipment, rigging and materials required to install or replace the Product in the proper location. The Contractor shall protect the site from damage for all its work and shall repair damages or injury of any kind caused by the Contractor, its employees, officers or agents. If any alteration, dismantling or excavation, etc. is required to effect installation, the Contractor shall thereafter promptly restore the structure or site to its original condition. Work shall be performed so as to cause the least inconvenience to the Authorized User(s) and with proper consideration for the rights of other Contractors or workers. The Contractor shall promptly perform its work and shall coordinate its activities with those of other Contractors. The Contractor shall clean up and remove all debris and rubbish from its work as required or directed. Upon completion of the work, the building and surrounding area of work shall be left clean and in a neat, unobstructed condition, and everything in satisfactory repair and order.

53. REPAIRED OR REPLACED PARTS / COMPONENTS Where the Contractor is required to repair, replace or substitute parts components under the Contract, the repaired, replaced or substituted products shall be subject to all terms and conditions for new parts and components set forth in the Contract. Replaced or repaired components, or parts shall be new and shall, if available, be replaced by the original manufacturer's component or part. Remanufactured parts or components meeting new product standards may be permitted by the Commissioner or Authorized User. All proposed substitutes for the original manufacturer's installed parts or components must be approved by the Authorized User before installation. The part or component shall be equal to or of better quality than the original part or component being replaced.

54. ON-SITE STORAGE Materials, equipment or supplies may be stored at the Authorized User's site at the Contractor's sole risk and only with the approval of the Authorized User.

55. EMPLOYEES / SUBCONTRACTORS / AGENTS All employees, subcontractors or agents performing work under the Contract must be trained technicians who meet or exceed the technical and training qualifications set forth in the Bid Specifications or the Bid, whichever is better, and must comply with all security and administrative requirements of the Authorized User. The Commissioner reserves the right to conduct a security background check or otherwise approve any employee or agent furnished by Contractor and to refuse access to or require replacement of any personnel for cause, including but not limited to, technical or training qualifications, quality of work or change in security status or non-compliance with Authorized User's security or other requirements. Such approval shall not relieve the Contractor of the obligation to perform all work in compliance with the Contract terms. The Commissioner reserves the right to reject and/or bar from the facility for cause any employee, subcontractor, or agents of the Contractor.

56. ASSIGNMENT / SUBCONTRACTORS Contractor shall not assign, transfer, convey, sublet, or otherwise dispose of the Contract or its right, title or interest therein, or its power to execute such Contract to any other person, company, firm or corporation in performance of the Contract, other than the assignment of the right to receive money due, without the prior written consent of the Issuing Entity. Prior to an assignment of the right to receive money becoming effective, Contractor shall file a written notice of such assignment simultaneously with the NYS Comptroller, the Commissioner, and participating Authorized User(s).

The Commissioner reserves the right to reject any proposed subcontractor, assignee or supplier for bona fide business reasons, which may include, but are not limited to: that the proposed transferee is on the Department of Labor's list of companies with which New York State cannot do business; the Commissioner determines that the company is not qualified; unsatisfactory contract performance or service has been previously provided; or attempts were not made to solicit minority and women's business enterprises (M/WBE) bidders for the subcontract.

57. PERFORMANCE / BID BOND The Issuing Entity reserves the right to require the Bidder/Contractor to furnish without additional cost, a performance, payment or bid bond or negotiable irrevocable letter of credit or other form of security for the faithful performance of the Contract. Where required, such bond or other security shall be in the form prescribed by the Commissioner.

58. SUSPENSION OF WORK The Commissioner, in his/her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, in the best interests of the State or Issuing Entity. In the event of such suspension, the Contractor will be given a formal written notice outlining the particulars of such suspension. Examples of the reason for such suspension include, but are not limited to, a budget freeze on State spending, declaration of emergency, or other such circumstances. Upon issuance of such notice, the Contractor is not to accept any purchase orders, and shall comply with the suspension order.

Activity may resume at such time as the Commissioner issues a formal written notice authorizing a resumption of work.

59. TERMINATION

a. For Cause: For a material breach that remains uncured for more than thirty (30) days after written notice to the Contractor, the Contract or Purchase Order may be terminated by the Commissioner or Authorized User at the Contractor's expense where Contractor becomes unable or incapable of performing, or meeting any requirements or qualifications set forth in the Contract, or for non-performance, or upon a determination that Contractor is non-responsible. In such event, the Commissioner or Authorized User may complete the contractual requirements in any manner as it may deem advisable and pursue available legal or equitable remedies for breach.

If the annual volume of business done by the Contractor is less than the minimum annual volume criteria established for the Contract for two consecutive contract years, the Contract may be terminated for cause. For purposes of this paragraph, contract year is defined as the first full four quarters reported after award, in accordance with the Reporting/Monitoring Contract Performance clause included in the Contract, and each of the same four quarterly periods thereafter until contract termination.

b. For Convenience: This Contract may be terminated at any time by the State for convenience upon sixty (60) days written notice without penalty or other early termination charges due. Such termination shall not affect the validity of Purchase Orders placed prior to termination. Such termination of the Contract shall not affect any project or Purchase Order which has been issued under the Contract prior to the date of such termination.

c. For Violation of Executive Order Number 127: The State reserves the right to terminate this contract in the event it is found that the certification filed by the Contractor in accordance with New York State Executive Order Number 127, signed by Governor Pataki on June 16, 2003, was intentionally false or intentionally incomplete. Upon such finding, the State may exercise its termination right by providing written notification to the Contractor in accordance with the written notification terms in the contract.

60. SAVINGS / FORCE MAJEURE The Contractor shall not be responsible for delay resulting from its failure to perform if neither the fault nor negligence of the Contractor, its officers, employees or agents contributed to such delay and the delay is due directly to acts of God, wars, acts of public enemies, strikes, fires or floods, or other similar cause beyond the control of the Contractor, or for any of the foregoing which affect subcontractors or suppliers and no alternate source of supply is available to the Contractor. In such event, Contractor shall notify the Commissioner, by certified or registered mail, of the delay or potential delay and the cause(s) thereof either (a) within ten (10) calendar days after the cause which creates or will create the delay first arose if the Contractor could reasonably foresee that a delay could occur by reason thereof, or (b) if delay is not reasonably foreseeable, within five (5) calendar days after the date the Contractor first had reason to believe a delay could result. The foregoing shall constitute the Contractor's sole remedy or excuse with respect to such delay. In the event performance is suspended or delayed, in whole or in part, by reason of any of the aforesaid causes or occurrences and proper notification is given the Commissioner, any performance so suspended or delayed shall be performed by the Contractor at no increased cost, promptly after such disabilities have ceased to exist unless it is determined in the sole discretion of the Commissioner that the delay will significantly impair the value of the Contract to the State or to Authorized Users, whereupon the Commissioner may:

a. Accept allocated performance or deliveries from the Contractor. The Contractor, however, hereby agrees to grant preferential treatment to State Agencies with respect to Product subjected to allocation; and/or

b. Purchase from other sources (without recourse to and by the Contractor for the costs and expenses thereof) to replace all or part of the Products which are the subject of the delay, which purchases may be deducted from the Contract quantity; or

c. Terminate the Contract or the portion thereof which is subject to delivery delays, and thereby discharge any unexecuted portion of the Contract or the relative part thereof.

In addition, the Commissioner reserves the right, in his/her sole discretion, to make an equitable adjustment in the Contract terms and/or pricing should extreme and unforeseen volatility in the marketplace affect pricing or the availability of supply. "Extreme and unforeseen volatility in the marketplace" is defined as market circumstances which meet the following criteria: (1) the volatility is due to causes outside the control of Contractor; (2) the volatility affects the marketplace or industry, not just the particular contract source of supply; (3) the effect on pricing or availability of supply is substantial; and (4) the volatility so affects Contractor's performance that continued performance of the Contract would result in a substantial loss.

61. CONTRACT BILLINGS Contractor and the distributors/resellers designated by the Contractor, if any, shall provide complete and accurate billing invoices to each Authorized User in order to receive payment. Billings for Agencies must contain all information required by the Comptroller. The Comptroller shall render payment for Agency purchases, and such payment shall be made in accordance with ordinary State procedures and practices. Payment of Contract purchases made by Authorized Users other than Agencies shall be billed directly by Contractor on invoices/vouchers, together with complete and accurate supporting documentation as required by the Authorized User.

Submission of an invoice and payment thereof shall not preclude the Commissioner from reimbursement or demanding a price adjustment in any case where the Product delivered is found to deviate from the terms and conditions of the Contract.

62. DEFAULT - AUTHORIZED USER An Authorized User's breach shall not be deemed a breach of the centralized Contract. In the event a participating Authorized User fails to make payment to the Contractor for Products delivered, accepted and properly invoiced, within 60 days of such delivery and acceptance, the Contractor may, upon 10 days advance written notice to both the Commissioner and the Authorized User's purchasing official, suspend additional shipments of Product or provision of services to such entity until such time as reasonable arrangements have been made and assurances given by such entity for current and future Contract payments.

Notwithstanding the foregoing, the Contractor shall, at least 10 days prior to declaring a breach of contract by any Authorized User, by certified or registered mail, notify both the Commissioner and the purchasing official of the breaching Authorized User of the specific facts, circumstances and grounds upon which a breach will be declared. It is understood, however, that if the Contractor's basis for declaring a breach is insufficient, the Contractor's declaration of breach and failure to service an Authorized User shall constitute a breach of its Contract and the State or Authorized User may thereafter utilize any remedy available at law or equity.

63. INTEREST ON LATE PAYMENTS

a. State Agencies The payment of interest on certain payments due and owed by a State agency may be made in accordance with Article 11-A of the *State Finance Law* and Title 2 of the New York Code of Rules

and Regulations, Part 18 (Implementation of Prompt Payment Legislation).

b. By Non-State Agencies The terms of Article 11-A apply only to procurements by and the consequent payment obligations of State Agencies. Neither expressly nor by any implication is the statute applicable to non-State Authorized Users. Neither is the Office of General Services nor the Office of the State Comptroller responsible for payments on any purchases made by a Non-State Agency Authorized User.

c. By Contractor Should the Contractor be liable for any payments to the State hereunder, interest, late payment charges and collection fee charges will be determined and assessed pursuant to Section 18 of the *State Finance Law*.

64. REMEDIES FOR BREACH It is understood and agreed that all rights and remedies afforded below shall be in addition to all remedies or actions otherwise authorized or permitted by law:

a. Cover / Substitute Performance In the event of Contractor's material breach, the Commissioner may, with or without formally bidding same:

i. Purchase from other sources; or

ii. If, after making reasonable attempts, under the circumstances then existing, to timely obtain acceptable service or acquire replacement product of equal or comparable quality, the Commissioner is unsuccessful, the Commissioner may acquire acceptable replacement product or service of lesser or greater quality.

Such purchases may, in the discretion of the Commissioner, be deducted from the Contract quantity and payments due Contractor.

b. Withholding of Payment(s) In any case where a question of non-performance by Contractor arises, payment may be withheld in whole or in part at the discretion of the Commissioner. Should the amount withheld be finally paid, a cash discount originally offered may be taken as if no delay in payment had occurred.

c. Reimbursement of Costs Incurred The Contractor agrees to reimburse the State and/or Authorized User promptly for any and all additional costs and expenses incurred for acquiring acceptable services, and/or replacement Product. Should the cost of cover be less than the Contract price, the Contractor shall have no claim to the difference. The Contractor covenants and agrees that in the event suit is successfully prosecuted for any default on the part of the Contractor, all costs and expenses expended or incurred by the State or Authorized User in connection therewith, including reasonable attorney's fees, shall be paid by the Contractor.

Where the Contractor fails to timely deliver pursuant to the guaranteed delivery terms of the Contract, the Commissioner may authorize an ordering Authorized User to rent substitute equipment temporarily. Any sums expended for such rental shall, upon demand, be reimbursed to the Authorized User promptly by the Contractor or deducted by the Authorized User from payments due or to become due the Contractor on the same or another transaction.

d. Deduction / Credit Sums due as a result of these remedies may be deducted or offset by the State or Authorized User from payments due, or to become due, the Contractor on the same or another transaction. If no deduction or only a partial deduction is made in such fashion the Contractor shall pay to the State or Authorized User the amount of such claim or portion of the claim still outstanding, on demand. The Commissioner reserves the right to determine the disposition of any rebates, settlements, restitution, liquidated damages, etc., which arise from the administration of the Contract.

e. Fee Refund In the event that a Purchase Order is cancelled for breach, Authorized User shall be entitled to a refund of any fees paid by Authorized User for usage or services prospectively from the date of breach.

65. ASSIGNMENT OF CLAIM Contractor hereby assigns to the State any and all its claims for overcharges associated with this Contract which may arise under the antitrust laws of the United States, 15 U.S.C. Section 1, et seq. and the antitrust laws of the State of New York, G.B.L. Section 340, et seq.

66. TOXIC SUBSTANCES Each Contractor furnishing a toxic substance as defined by Section 875 of the *Labor Law*, shall provide such Authorized User with not less than two copies of a material safety data sheet, which sheet shall include for each such substance the information outlined in Section 876 of the *Labor Law*.

Before any chemical product is used or applied on or in any building, a copy of the product label and Material Safety Data Sheet must be provided to and approved by the user agency representative.

67. INDEPENDENT CONTRACTOR It is understood and agreed that the legal status of the Contractor, its agents, distributors, resellers, officers and employees under this Contract is that of an independent Contractor, and in no manner shall they be deemed employees of the State or Authorized User, and therefore are not entitled to any of the benefits associated with such employment. The Contractor agrees, during the term of this Contract, to maintain at Contractor's expense those benefits to which its employees would otherwise be entitled by law, including health benefits, and all necessary insurance for its employees, including worker's compensation, disability and unemployment insurance, and to provide the Authorized User with certification of such insurance upon request. The Contractor remains responsible for all applicable federal, state and local taxes, and all FICA contributions.

68. SECURITY / CONFIDENTIALITY Contractor warrants, covenants and represents that it will comply fully with all security procedures of the State and any Authorized User(s) in performance of the Contract.

Contractor further warrants, covenants and represents that any confidential information obtained by Contractor, its agents, distributors, resellers subcontractors, officers, or employees in the course of performing its obligations, including without limitation, security procedures, business operations information, or commercial proprietary information in the possession of the State or any Authorized User hereunder or received from another third party, will not be divulged to any third parties. Contractor shall not be required to keep confidential any such confidential material which is publicly available through no fault of Contractor, independently developed by Contractor without reliance on confidential information of the State or Authorized User, or otherwise obtained under the Freedom of Information Act or other applicable New York State Laws and Regulations. This warranty shall survive termination of this Contract. Contractor further agrees to take appropriate steps as to its personnel, agents, officers and any subcontractors regarding the obligations arising under this clause to insure such confidentiality.

69. COOPERATION WITH THIRD PARTIES The Contractor shall be responsible for fully cooperating with any third party, including but not limited to subcontractors of the Authorized User, relating to delivery of product or coordination of services.

70. CONTRACT TERM - RENEWAL In addition to any stated renewal periods in the Contract, any contract or unit portion thereof let

by the Commissioner may be extended by the Commissioner for an additional period(s) of up to one year (cumulatively) with the written concurrence of the Contractor.

71. WARRANTIES & GUARANTEES Where Contractor or Product manufacturer/developer generally offers additional or more advantageous warranties than set forth below, Contractor shall offer or pass through any such warranties to Authorized Users. Contractor hereby warrants and represents:

a. Product Performance Products delivered pursuant to this Contract conform to the specifications, performance standards and documentation, and the documentation fully describes the proper procedure for using the Products.

b. Title and Ownership Warranty Full ownership, clear title free of all liens, and/or that Contractor has obtained on behalf of Authorized User perpetual license rights to use the Product for the purposes of this Bid or individual Purchase Order. Contractor shall be solely liable for any costs of acquisition associated therewith. Contractor fully indemnifies the State and Authorized User for any loss, damages or actions arising from a breach of said warranty without limitation. Authorized User may require Contractor to furnish appropriate written documentation establishing the above rights and interests as a condition of payment. Authorized User's request or failure to request such documentation shall not relieve Contractor of liability under this warranty.

c. Contractor Compliance To pay, at its sole expense, all applicable permits, licenses, tariffs, tolls and fees and give all notices and comply with all laws, ordinances, rules and regulations of any governmental entity in conjunction with the performance of obligations under the Contract. Prior to award and during the Contract term and any renewals thereof, Contractor must establish to the satisfaction of the Commissioner that it meets or exceeds all requirements of the bid/ Contract and any applicable laws, including but not limited to, permits, insurance coverage, licensing, proof of coverage for workman's compensation, and shall provide such proof as required by the Commissioner. Failure to do so may constitute grounds for the Commissioner to cancel or suspend this Contract, in whole or in part, or to take any other action deemed necessary by the Commissioner.

d. Product Warranty Unless recycled or recovered materials are available in accordance with the "Recycled or Recovered Materials" clause, Product offered shall be standard new equipment, current model or most recent release of regular stock product with all parts regularly used with the type of equipment offered; and no attachment or part has been substituted or applied contrary to the manufacturer's recommendations and standard practice.

Contractor further warrants and represents that components or deliverables specified and furnished by or through Contractor shall individually, and where specified and furnished as a system, be substantially uninterrupted or error-free in operation and guaranteed against faulty material and workmanship for the warranty period, or for a minimum of one (1) year from the date of acceptance, whichever is longer ("Project warranty period"). During the Project warranty period, defects in the materials or workmanship of components or deliverables specified and furnished by or through Contractor shall be repaired or replaced by Contractor at no cost or expense to the Authorized User. Contractor shall extend the Project warranty period for individual component(s), or for the System as a whole, as applicable, by the cumulative period(s) of time, after notification, during which an individual component or the System requires servicing or replacement (down time) or is in the possession of the Contractor, its agents, officers, subcontractors, distributors, resellers or employees ("extended warranty").

Where Contractor, the Independent Software Vendor "ISV", or other third party manufacturer markets any Project Deliverable delivered by or through Contractor with a standard commercial warranty, such standard warranty shall be in addition to, and not relieve the Contractor from, Contractor's warranty obligations during the Project warranty and extended warranty period(s). Where such standard commercial warranty covers all or some of the Project warranty or extended warranty period(s), Contractor shall be responsible for the coordination during the Project warranty or extended warranty period(s) with ISV or other third party manufacturer(s) for warranty repair or replacement of ISV or other third party manufacturer's Product.

Where Contractor, ISV or other third party manufacturer markets any Project Deliverable with a standard commercial warranty which goes beyond the Project warranty or extended warranty period(s), Contractor shall notify the Authorized User and pass through the manufacturer's standard commercial warranty to Authorized User at no additional charge; provided, however, that Contractor shall not be responsible for coordinating services under the third party extended warranty after expiration of the Project warranty and extended warranty period(s).

e. Replacement Parts Warranty If during the regular or extended warranty periods faults develop, the Contractor shall promptly repair or, upon demand, replace the defective unit or component part affected. All costs for labor and material and transportation incurred to repair or replace defective Product during the warranty period shall be borne solely by the Contractor, and the State or Authorized User shall in no event be liable or responsible therefor.

Any part of component replaced by the Contractor under the Contract warranty shall be replaced at no cost to the Authorized User and guaranteed for the greater of: a) the warranty period under paragraph(d) above; or b) if a separate warranty for that part or component is generally offered by the manufacturer, the standard commercial warranty period offered by the manufacturer for the individual part or component.

f. Virus Warranty Licensed Software contains no known viruses. Contractor is not responsible for viruses introduced at Licensee's site.

g. Date/Time Warranty Contractor warrants that Product(s) furnished pursuant to this Contract shall, when used in accordance with the Product documentation, be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) transitions, including leap year calculations. Where a Contractor proposes or an acquisition requires that specific Products must perform as a package or system, this warranty shall apply to the Products as a system.

Where Contractor is providing ongoing services, including but not limited to: i) consulting, integration, code or data conversion, ii) maintenance or support services, iii) data entry or processing, or iv) contract administration services (e.g. billing, invoicing, claim processing), Contractor warrants that services shall be provided in an accurate and timely manner without interruption, failure or error due to the inaccuracy of Contractor's business operations in processing date/time data (including, but not limited to, calculating, comparing, and sequencing) various date/time transitions, including leap year calculations. Contractor shall be responsible for damages resulting from any delays, errors or untimely performance resulting therefrom, including but not limited to the failure or untimely performance of such services.

This Date/Time Warranty shall survive beyond termination or expiration of this contract through: a) ninety (90) days or b) the Contractor's or Product manufacturer/developer's stated date/time warranty term, whichever is longer. Nothing in this warranty statement shall be construed to limit any rights or remedies otherwise available under this Contract for breach of warranty.

h. Workmanship Warranty Contract warrants that all components or deliverables specified and furnished by or through Contractor under the Project Definition/Work Order meet the completion criteria set forth in the Project Definition/Work Order and any subsequent statement(s) of work, and that services will be provided in a workmanlike manner in accordance with industry standards.

i. Survival of Warranties All warranties contained in this Contract shall survive the termination of this Contract.

THE WARRANTIES SET FORTH IN THE CONTRACT ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTIBILITY AND FITNESS FOR A PARTICULAR PURPOSE. Misuse, accident, unsuitable physical or operating environment, modification or operation inconsistent with standard industry practice, or failure caused by a product for which Contractor is not responsible may void the warranties.

72. SOFTWARE LICENSE GRANT Where Product is acquired on a licensed basis the following shall constitute the license grant:

a. License Scope Licensee is granted a non-exclusive, perpetual license to use, execute, reproduce, display, perform, or merge the Product within its business enterprise in the United States up to the maximum licensed capacity stated on the Purchase Order. Product may be accessed, used, executed, reproduced, displayed or performed up to the capacity measured by the applicable licensing unit stated on the Purchase Order (i.e., payroll size, number of employees, CPU, MIPS, MSU, concurrent user, workstation). Licensee shall have the right to use and distribute modifications or customizations of the Product to and for use by any Authorized Users otherwise licensed to use the Product, provided that any modifications, however extensive, shall not diminish Licensor's proprietary title or interest. No license, right or interest in any trademark, trade name, or service mark is granted hereunder.

b. License Term The license term shall commence upon the License Effective Date, provided, however, that where an acceptance period applies to the Product, the License Term shall be extended by the time period for testing and acceptance.

c. Licensed Documentation If commercially available, Licensee shall have the option to require the Contractor to deliver, at Contractor's expense: a) one (1) hard copy and one (1) master electronic copy of the Documentation in diskette or CD-ROM format; or b) hard copies of the Product Documentation by type of license in the following amounts, unless otherwise mutually agreed:

- Individual/Named User License - 1 copy per License
- Concurrent Users - 10 copies per site
- Processing Capacity - 10 copies per site

Software media must be in a format specified by the Authorized User, without requiring any type of conversion (e.g., if unit has a 3½" disk drive, software must be provided on 3½" diskettes).

Contractor hereby grants to Licensee a perpetual license right to make, reproduce (including downloading electronic copies of the Product) and distribute, either electronically or otherwise, copies of Product Documentation as necessary to enjoy full use of the Product in accordance with the terms of license.

d. Product Technical Support & Maintenance Licensee shall have the option of electing the Product technical support and maintenance ("maintenance") set forth in the Contract by giving written notice to Contractor any time during the Centralized Contract term. Maintenance term(s) and any renewal(s) thereof are independent of the expiration of the centralized Contract term and will not automatically renew.

Maintenance shall include, at a minimum, (1) the provision of error corrections, updates, revisions, fixes, upgrade and new releases to Licensee, and (2) Help Desk assistance with locally accessible "800" or toll free, local telephone service, or alternatively on-line Help Desk accessibility. Contractor shall maintain the Products so as to provide Licensee with the ability to utilize the Products in accordance with the Product documentation without significant functional downtime to its ongoing business operations during the maintenance term.

Authorized User shall not be required to purchase maintenance for use of Product, and may discontinue maintenance at the end of any current maintenance term upon notice to Contractor. In the event that Authorized User does not initially acquire or discontinues maintenance of licensed Product, it may, at any time thereafter, reinstate maintenance for Product without any additional penalties or other charges, by paying Contractor the amount which would have been due under the Contract for the period of time that such maintenance had lapsed, or for twelve months, whichever is less, at then-current NYS net maintenance rates.

e. Permitted License Transfers As Licensee's business operations may be altered, expanded or diminished, licenses granted hereunder may be transferred or combined for use at an alternative or consolidated site not originally specified in the license, including transfers between Agencies ("permitted license transfers"). Licensee(s) do not have to obtain the approval of Contractor for permitted license transfers, but must give thirty (30) days prior written notice to Contractor of such move(s) and certify in writing that the Product is not in use at the prior site. There shall be no additional license or other transfer fees due Contractor, provided that: i) the maximum capacity of the consolidated machine is equal to the combined individual license capacity of all licenses running at the consolidated or transferred site (e.g., named users, seats, or MIPS) ; or ii) if the maximum capacity of the consolidated machine is greater than the individual license capacity being transferred, a logical or physical partition or other means of restricting access will be maintained within the computer system so as to restrict use and access to the Product to that unit of licensed capacity solely dedicated to beneficial use for Licensee. In the event that the maximum capacity of the consolidated machine is greater than the combined individual license capacity of all licenses running at the consolidated or transferred site, and a logical or physical partition or other means of restricting use is not available, the fees due Contractor shall not exceed the fees otherwise payable for a single license for the upgrade capacity.

f. Restricted Use By Outsourcers / Facilities Management, Service Bureaus / or Other Third Parties Outsourcers, facilities management or service bureaus retained by Licensee shall have the right to use the Product to maintain Licensee's business operations, including data processing, for the time period that they are engaged in such activities, provided that: 1) Licensee gives notice to Contractor of such party, site of intended use of the Product, and means of access; and 2) such party has executed, or agrees to execute, the Product manufacturer's standard nondisclosure or restricted use agreement which executed agreement shall be accepted by the Contractor ("Non-Disclosure Agreement"); and 3) if such party is engaged in the business of facility management, outsourcing, service bureau or other services, such third party will maintain a logical or physical partition within its computer system so as to restrict use and access to the program to that portion solely dedicated to beneficial use for Licensee. In no event shall Licensee assume any liability for third party's compliance with the terms of the Non-Disclosure Agreement, nor shall the Non-Disclosure Agreement create or impose any liabilities on the State or Licensee.

Any third party with whom a Licensee has a relationship for a state function or business operation, shall have the temporary right to use

Product (e.g., JAVA Applets), provided that such use shall be limited to the time period during which the third party is using the Product for the function or business activity.

g. Archival Back-Up and Disaster Recovery Licensee may use and copy the Product and related Documentation in connection with: 1) reproducing a reasonable number of copies of the Product for archival backup and disaster recovery procedures in the event of destruction or corruption of the Product or disasters or emergencies which require Licensee to restore backup(s) or to initiate disaster recovery procedures for its platform or operating systems; 2) reproducing a reasonable number of copies of the Product and related documentation for cold site storage. "Cold Site" storage shall be defined as a restorable back-up copy of the Product not to be installed until and after the declaration by the Licensee of a disaster; 3) reproducing a back-up copy of the Product to run for a reasonable period of time in conjunction with a documented consolidation or transfer otherwise allowed under this section #73. "Disaster Recovery" shall be defined as the installation and storage of Product in ready-to-execute, back-up computer systems prior to disaster or breakdown which is not used for active production or development.

h. Confidentiality Restrictions The Product is a trade secret, copyrighted and proprietary product. Licensee and its employees will keep the Product strictly confidential, and Licensee will not disclose or otherwise distribute or reproduce any Product to anyone other than as authorized under the terms of Contract. Licensee will not remove or destroy any proprietary markings of Contractor.

i. Restricted Use by Licensee Except as expressly authorized by the terms of license, Licensee shall not:

i. Copy the Product;
ii. Cause or permit reverse compilation or reverse assembly of all or any portion of the Product;
iii. Export the Licensed Software in violation of any U.S. Department of Commerce export administration regulations.

73. PRODUCT ACCEPTANCE Unless otherwise provided by mutual agreement of the Authorized User and the Contractor, Authorized User(s) shall have sixty (60) days from the date of delivery to accept Product unless the Contractor is responsible for installation, in which case the sixty day period shall run from completion of installation. Failure to provide notice of acceptance or rejection by the end of the period provided for under this clause constitutes acceptance by the Authorized User(s) as of the expiration of that period. The License Term shall be extended by the time periods allowed for testing and acceptance.

Unless otherwise provided by mutual agreement of the Authorized User and the Contractor, Authorized User shall have the option to run testing on the Product prior to acceptance, such tests and data sets to be specified by User. Where using its own data or tests, Authorized User must have the tests or representative set of data available upon delivery. This demonstration will take the form of a documented installation test, capable of observation by the Authorized User, and shall be made part of the Contractor's standard documentation. The test data shall remain accessible to the Authorized User after completion of the test.

In the event that the documented installation test cannot be completed successfully within the specified acceptance period, and the Contractor or Product is responsible for the delay, Authorized User shall have the option to cancel the order in whole or in part, or to extend the testing period for another sixty (60) day increment. Authorized User shall notify Contractor of acceptance upon successful completion of the documented installation test. Such cancellation shall not give rise to any cause of action against the State or Authorized User for damages, loss of profits, expenses, or other remuneration of any kind.

Costs and liabilities associated with a failure of the Product to perform in accordance with the functionality tests or product specifications during the acceptance period shall be borne fully by Contractor to the extent that said costs or liabilities shall not have been caused by negligent or willful acts or omissions of the Authorized User's agents or employees. Said costs shall be limited to fees paid to Contractor, if any, or any liability for costs incurred at the direction or recommendation of Contractor.

74. AUDIT OF LICENSED PRODUCT USAGE Contractor shall have the right to periodically audit, no more than annually, at Contractor's expense, use of licensed Product at any site where a copy of the Product resides provided that: i) Contractor gives Licensee(s) at least thirty (30) days advance written notice, ii) such audit is conducted during such party's normal business hours, iii) the audit is conducted by an independent auditor chosen on mutual agreement of the parties. Contractor shall recommend a minimum of three (3) auditing/accounting firms from which the Licensee will select one (1). In no case shall the Business Software Alliance (BSA), Software Publishers Association (SPA) or Federation Against Software Theft (FAST) be used directly or indirectly to conduct audits, or recommended by Contractor; iv) Contractor and Licensee are each entitled to designate a representative who shall be entitled to participate, and who shall mutually agree on audit format, and simultaneously review all information obtained by the audit. Such representatives also shall be entitled to copies of all reports, data or information obtained from the audit; and v) if the audit shows that such party is not in compliance, License shall be required to purchase additional licenses or capacities necessary to bring it into compliance and shall pay for the unlicensed capacity at the NYS Net Price in effect at time of audit, or if none, then at the Contractor's U.S. Commercial list price. Once such additional licenses or capacities are purchased, Licensee shall be deemed to have been in compliance retroactively, and Licensee shall have no further liability of any kind for the unauthorized use of the software.

75. OWNERSHIP / TITLE TO PROJECT DELIVERABLES

a. Definitions

i. "Products" - A deliverable furnished under this Contract by or through Contractor, including existing and custom Products, including, but not limited to: a) components of the hardware environment, b) printed materials (including but not limited to training manuals, system and user documentation, reports, drawings), c) third party software, d) modifications, customizations, custom programs, program listings, programming tools, data, modules, components, and e) any properties embodied therein, whether in tangible or intangible form (including but not limited to utilities, interfaces, templates, subroutines, algorithms, formulas, source code, object code).
ii. "Existing Products" - Tangible Products and intangible licensed Products which exist prior to the commencement of work under the Contract. Contractor retains the burden of proving that a particular product was existing before commencement of the Project. .
iii. "Custom Products" - Products, preliminary, final or otherwise, which are created or developed by Contractor, its subcontractors, partners, employees or agents for Authorized User under the Contract.

b. Title to Project Deliverables Contractor acknowledges that it is commissioned by the Authorized User to perform services detailed in the Purchase Order. Unless otherwise specified in writing in the Bid or Purchase Order, the Authorized User shall have ownership and/or license rights as follows:

i. Existing Products:

1) Hardware - Title and ownership of Existing

Hardware Product shall pass to Authorized User upon acceptance .

2) Software - Title and ownership to Existing Software Product(s) delivered by Contractor under the Contract which is normally commercially distributed on a license basis by the Contractor or other independent software vendor proprietary owner ("Existing Licensed Product"), whether or not embedded in, delivered or operating in conjunction with hardware or Custom Products, shall remain with Contractor or other independent software vendor proprietary owner ("ISV"). Effective upon acceptance, such Product shall be licensed to Authorized User in accordance with the Contractor or ISV owner's standard license agreement, provided, however, that such standard license, must, at a minimum: (a) grant Authorized User a non-exclusive, perpetual license to use, execute, reproduce, display, perform, adapt (unless Contractor advises Authorized User as part of Contractor's proposal that adaptation will violate existing agreements or statutes and Contractor demonstrates such to the Authorized User's satisfaction) and distribute Existing Licensed Product to the Authorized User up to the license capacity stated in the work order with all license rights necessary to fully effect the general business purpose(s) stated in the Bid or Authorized User's work order, including the financing assignment rights set forth in paragraph (c) below; and (b) recognize the State of New York as the licensee where the Authorized User is a state agency, department, board, commission, office or institution. Where these rights are not otherwise covered by the ISV's standard license agreement, the Contractor shall be responsible for obtaining these rights at its sole cost and expense. The Authorized User shall reproduce all copyright notices and any other legend of ownership on any copies authorized under this paragraph.

ii. Custom Products: Effective upon creation of Custom Products, Contractor hereby conveys, assigns and transfers to Authorized User the sole and exclusive rights, title and interest in Custom Product(s), whether preliminary, final or otherwise, including all trademark and copyrights. Contractor hereby agrees to take all necessary and appropriate steps to ensure that the Custom Products are protected against unauthorized copying, reproduction and marketing by or through Contractor, its agents, employees, or subcontractors. Nothing herein shall preclude the Contractor from otherwise using the related or underlying general knowledge, skills, ideas, concepts, techniques and experience developed under a project definition/work order in the course of Contractor's business.

Where a scope of work does not involve COPS or other third party financing, the Authorized User may, by providing written notice thereof to the Contractor, elect in the alternative to take a non-exclusive perpetual license to Custom Products in lieu of Authorized User taking exclusive ownership and title to such Products. In such case, Licensee on behalf of all Authorized Users shall be granted a non-exclusive perpetual license to use, execute, reproduce, display, perform, adapt and distribute Custom Product as necessary to fully effect the general business purpose(s) as stated in paragraph (b)(i)(2), above.

c. Transfers or Assignments to a Third Party Financing Agent It is understood and agreed by the parties that a condition precedent to the consummation of the purchase (s) under the Contract may be the obtaining of acceptable third party financing by the Authorized User. The Authorized User shall make the sole determination of the acceptability of any financing proposal. The Authorized User will make all reasonable efforts to obtain such financing, but makes no representation that such financing has been obtained as of the date of bid receipt. Where financing is used, Authorized User may assign or transfer its rights in Licensed Products (existing or custom) to a third party financing entity or trustee ("Trustee") as collateral where required by the terms of the financing agreement. Trustee's sole rights with respect to transferability or use of Licensed Products shall be to exclusively sublicense to Authorized User all of Lessor's rights under the terms and conditions of the License Agreement; provided, further, however, in the event of any termination or expiration of such sublicense by reason of payment in full, all of Trustee's rights in such Licensed Product shall terminate immediately and Authorized User's prior rights to such Existing Licensed Product shall be revived.

d. Sale or License of Custom Products Involving Tax-Exempt Financing (i.e., Certificates of Participation (COPS) The Authorized User's sale or other transfer of Custom Products which were acquired by the Authorized User using third party, tax-exempt financing may not occur until such Custom Products are, or become, useable. In the event that the Contractor wishes to obtain ownership rights to Custom Product(s), the sale or other transfer shall be at fair market value determined at the time of such sale or other transfer, and must be pursuant to a separate written agreement in a form acceptable to the Authorized User which complies with the terms of this paragraph.

e. Contractor's Obligation with Regard to ISV (Third Party) Product Where Contractor furnishes Existing Licensed Product(s) as a Project Deliverable, and sufficient rights necessary to effect the purposes of this section 76.0 are not otherwise provided in the Contractor or ISV's standard license agreement, Contractor shall be responsible for obtaining from the ISV third party proprietary owner/developer the rights set forth herein to the benefit of the Authorized User at Contractor's sole cost and expense.

76. PROOF OF LICENSE The Contractor must provide to each Licensee who places a Purchase Order either: a) the Product developer's certified License Confirmation Certificates in the name of such Licensee; or b) a written confirmation from the proprietary owner accepting Product invoice as proof of license. Contractor shall submit a sample certificate, or alternatively such written confirmation from the proprietary developer. Such certificates must be in a form acceptable to the Licensee.

77. MIGRATION TO CENTRALIZED CONTRACT Authorized User may obtain additional Product authorized under this Contract, (e.g., licensed capacity upgrades, new releases, documentation, maintenance, consulting or training) whether or not Product was initially obtained independently of this Contract. The Authorized User's election to obtain additional Product shall not operate to diminish, alter or extinguish rights previously granted.

78. PRODUCT VERSION Purchase Orders shall be deemed to reference Manufacturer's most recently released model or version of the Product at time of order, unless an earlier model or version is specifically requested in writing by Authorized User and Contractor is willing to provide such version.

79. CHANGES TO PRODUCT OR SERVICE OFFERINGS

a. Product or Service Discontinuance Where Contractor is the Product Manufacturer/Developer, and Contractor publicly announces to all U.S. customers ("date of notice") that a Product is being withdrawn from the U.S. market or that maintenance service or technical support provided by Contractor ("withdrawn support") is no longer going to be offered, Contractor shall be required to: (1) notify the Commissioner, each Licensee and each Authorized User then under contract for maintenance or technical support in writing of the intended discontinuance; and (2) continue to offer Product or withdrawn support upon the Contract terms previously offered for the greater of: a) the best terms offered by Contractor to any other customer, or b) not less than twelve (12) months from the date of notice; and (3) at Authorized User's option, provided that the Authorized User is under contract for maintenance on the date of notice, either: a) provide the Authorized User with either a Product replacement or migration path with at least equivalent functionality at no additional charge, or b) provide Authorized User with the source code for Licensed Product at no

additional charge to enable Authorized User to continue use and maintenance of the Product.

In the event that the Contractor is not the Product Manufacturer, Contractor shall be required to: (1) provide the notice required under (1), above, to the entities described within five (5) business days of Contractor receiving notice from the Product Manufacturer, and (2) include in such notice the period of time from the date of notice that the Product Manufacturer will continue to provide Product or withdrawn support.

The provisions of this paragraph (a) shall not apply or eliminate Contractor's obligations where withdrawn support is being provided by an independent subcontractor. In the event that such subcontractor ceases to provide service, Contractor shall be responsible for subcontracting such service, subject to state approval, to an alternate subcontractor.

b. Product or Service Re-Bundling* In the event that Contractor is the Product manufacturer and publicly announces to all U.S. customers ("date of notice") that a Product or maintenance or technical support offering is being re-bundled in a different manner from the structure or licensing model of the prior U.S. commercial offering, Contractor shall be required to: (1) notify the State and each Authorized User in writing of the intended change; (2) continue to provide Product or withdrawn support upon the same terms and conditions as previously offered on the then-current NYS Contract for the greater of: a) the best terms offered by Contractor to any other customer, or b) not less than twelve (12) months from the date of notice; and (3) shall submit the proposed rebundling change to the Commissioner for approval prior to its becoming effective for the remainder of the Contract term. *The provisions of this section do not apply if the Contractor is not the Product manufacturer.

80. NO HARDSTOP / PASSIVE LICENSE MONITORING Unless an Authorized User is otherwise specifically advised to the contrary in writing at the time order and prior to purchase, Contractor hereby warrants and represents that the Product and all Upgrades do not and will not contain any computer code that would disable the Product or Upgrades or impair in any way its operation based on the elapsing of a period of time, exceeding an authorized number of copies, advancement to a particular date or other numeral, or other similar self-destruct mechanisms (sometimes referred to as "time bombs", "time locks", or "drop dead" devices) or that would permit Contractor to access the Product to cause such disablement or impairment (sometimes referred to as a "trap door" device). Contractor agrees that in the event of a breach or alleged breach of this provision that Authorized User shall not have an adequate remedy at law, including monetary damages, and that Authorized User shall consequently be entitled to seek a temporary restraining order, injunction, or other form of equitable relief against the continuance of such breach, in addition to any and all remedies to which Authorized User shall be entitled.

81. SOURCE CODE ESCROW FOR LICENSED PRODUCT If source code or source code escrow is offered by either Contractor or Product manufacturer/developer to any other commercial customers, Contractor shall either: i) provide Licensee with the Source Code for the Product; or ii) place the Source Code in a third party escrow arrangement with a designated escrow agent who shall be named and identified to the State, and who shall be directed to release the deposited Source Code in accordance with a standard escrow agreement acceptable to the State; or iii) will certify to the State that the Product manufacturer/developer has named the State, acting by and through the Office of General Services, and the Licensee, as a named beneficiary of an established escrow arrangement with its designated escrow agent who shall be named and identified to the State and Licensee, and who shall be directed to release the deposited Source Code in accordance with the terms of escrow. Source Code, as well as any corrections or enhancements to such source code, shall be updated for each new release of the Product in the same manner as provided above and such updating of escrow shall be certified to the State in writing. Contractor shall identify the escrow agent upon commencement of the Contract term and shall certify annually that the escrow remains in effect in compliance with the terms of this paragraph.

The State may release the Source Code to Licensees under this Contract who have licensed Product or obtained services, who may use such copy of the Source Code to maintain the Product.

82. INDEMNIFICATION & LIMITATION OF LIABILITY

Neither party shall be liable for any delay or failure in performance beyond its control resulting from acts of God or force majeure. The parties shall use reasonable efforts to eliminate or minimize the effect of such events upon performance of their respective duties under Contract.

Contractor shall be fully liable for the actions of its agents, employees, partners or subcontractors and shall fully indemnify and save harmless the State and Authorized User from suits, actions, damages and costs of every name and description relating to personal injury and damage to real or personal tangible property caused by Contractor, its agents, employees, partners or subcontractors, without limitation; provided, however, that the Contractor shall not indemnify for that portion of any claim, loss or damage arising hereunder due to the negligent act or failure to act of the State.

Contractor will indemnify, defend and hold the State and its Authorized Users harmless, ***without limitation***, from and against any and all damages, expenses (including reasonable attorneys' fees), claims, judgments, liabilities and costs which may be finally assessed against the State in any action for infringement of a United States Letter Patent with respect to the Products furnished, or of any copyright, trademark, trade secret or intellectual property right, provided that the State shall give the Contractor: (i) prompt written notice of any action, claim or threat of infringement suit, or other suit, (ii) the opportunity to take over, settle or defend such action, claim or suit at Contractor's sole expense, and (iii) assistance in the defense of any such action at the expense of Contractor. Where a dispute or claim arises relative to a real or anticipated infringement, the State or Authorized User may require Contractor, at its sole expense, to submit such information and documentation, including formal patent attorney opinions, as the Commissioner shall require.

The Contractor shall not be obligated to indemnify that portion of a claim or dispute based upon: i) Authorized User's unauthorized modification or alteration of a Product; ii) Authorized User's use of the Product in combination with other products not furnished by Contractor; iii) Authorized User's use in other than the specified operating conditions and environment.

In addition to the foregoing, if the use of any item(s) or part(s) thereof shall be enjoined for any reason or if Contractor believes that it may be enjoined, Contractor shall have the right, at its own expense and sole discretion as the Authorized User's exclusive remedy to take action in the following order of precedence: (i) to procure for the State the right to continue using such item(s) or part (s) thereof, as applicable; (ii) to modify the component so that it becomes non-infringing equipment of at least equal quality and performance; or (iii) to replace said item(s) or part(s) thereof, as applicable, with non-infringing components of at least equal quality and performance, or (iv) if none of the foregoing is commercially reasonable, then provide monetary compensation to the State up to the dollar amount of the Project Award.

For all other claims against the Contractor under any individual Purchase Order where liability is not otherwise set forth in the Contract as being "without limitation", and regardless of the basis on which the claim is made, Contractor's liability under a Purchase Order **for direct damages shall be the greater of $100,000, the dollar amount of the Contract, or two (2) times the charges rendered by the Contractor under the Contract.** Unless otherwise specifically enumerated herein or in the work order mutually agreed between the parties, neither party shall be liable to the other for special, indirect or consequential damages, including lost data or records (unless the Contractor is required to back-up the data or records as part of the work plan), even if the party has been advised of the possibility of such damages. Neither party shall be liable for lost profits, lost revenue or lost institutional operating savings.

The State and Authorized User may, in addition to other remedies available to them at law or equity and upon notice to the Contractor, retain such monies from amounts due Contractor, or may proceed against the performance and payment bond, if any, as may be necessary to satisfy any claim for damages, penalties, costs and the like asserted by or against them.

Microsoft Initials_____

Microsoft Custom License Agreement for State of New York

(NO SERVICES)

Microsoft Business Agreement Number Microsoft affiliate to complete	**U5654007**	Microsoft Standard Select Agreement Number Microsoft affiliate to complete	**01S62995**
Microsoft Enterprise Agreement Number Microsoft affiliate to complete	**01E61940**	Microsoft Academic Select Agreement Number Microsoft affiliate to complete	**01S62996**
Microsoft School Agreement Number Microsoft affiliate to complete	**01H31423**	Microsoft Campus Agreement Number Microsoft affiliate to complete	**01C31451**
		State of New York Agreement Number OGS to complete	**018381**

This Microsoft Custom License Agreement (to which the Microsoft Business Agreement number above applies) is entered into between the following entities as of the effective date, which shall be the date, identified on the signature page below, upon which the New York State Comptroller executes it. Each party will notify the other in writing if any of the information in the following table changes.

Customer			
Name of Entity	**New York State Office of General Services**	Contact Name (This person receives notices under this agreement) **James Jasiewicz**	
Street Address	**37th Floor, Corning Tower** **The Governor Nelson A. Rockefeller Empire State Plaza**	Contact E-mail Address	**James.Jasiewicz@ogs.state.ny.us**
City **Albany**	State/Province **New York**	Phone **518-486-5328**	
Country **U.S.A.**	Postal Code **12242**	Fax **518-486-6867**	
		Microsoft Account Manager Name	**Bill Branch**
Contracting Microsoft Affiliate			
MSLI, GP - 6100 Neil Road, Suite 210 - Reno, Nevada USA 89511-1137 - Dept. 551, Volume Licensing			

Notices to Microsoft should be sent to:	**Copies should be sent to:**
MSLI, GP 6100 Neil Road, Suite 210 Reno, Nevada USA 89511-1137 Dept. 551, Volume Licensing	Microsoft Law and Corporate Affairs One Microsoft Way Redmond, WA 98052 USA Volume Licensing Group VLG-USA@Microsoft.com (425) 936-7329 fax

This agreement contains terms of the relationship between you (the entity signing the agreement and its authorized users) and us (the Microsoft affiliate signing below and its affiliates). It consists of the following components:

(1) the "cover and signature pages";

(2) "common terms and conditions," which apply to all transactions hereunder (except as otherwise noted in such common terms and conditions);

(3) the Table of Contents

(4) "Appendix A," which contains additional terms and conditions that apply to all contracts to which the State of New York is a party;

(5) Various "program agreements," which contain terms and conditions that apply solely to transactions made pursuant to the Microsoft license programs to which they apply. The program agreements that are included herewith, as of the effective date, are as follows:

   a. Microsoft Select Agreement (Academic and Standard)

   b. Microsoft Enterprise Agreement;

   c. Microsoft Campus Agreement; and

   d. Microsoft School Agreement

(6) "enrollments," which (i) are shown as exhibits 1 through 4 to this Custom License Agreement; (ii) may only be changed in form upon the written agreement of us and OGS pursuant to the "Auto Add" procedure as defined by OGS; and (iii) must be executed by authorized users in order to make purchases pursuant to the Microsoft Select Agreement and Microsoft Enterprise Agreement; and

(7) "Subscription Order Forms," which (i) are shown as exhibits 5 through 6 to this Customer License Agreements (subject to revision); and (ii) must be executed by authorized users in order to make purchases pursuant to the Microsoft Campus Agreement and Microsoft School Agreement.

The parties may decide, during the term hereof, to add other program agreements to this agreement. Except as provided by the following paragraph, in order to do so, the terms of such additional program agreements must be added by amending this agreement. Any implied or express request for changes in or additions to existing agreement terms and conditions, including new terms and conditions associated with a specific Product line being added to the Contract for the first time, requires a formal Contract amendment and requires the approval of OGS, the NYS Attorney General and the NYS Comptroller.

As an exception to the foregoing, the parties agree that the following are not considered changes or additions to the agreement and therefore do not require approval by OGS, the NY Attorney General or the NYS Comptroller:

- price increases or decreases in the Enterprise Agreement program agreement pursuant to the formulas in such program agreement;
- changes in Select Agreement program agreement reference prices, as such changes are submitted to you by the reseller;
- additions to or deletions from the Product List, as such changes are submitted to you by the reseller;
- changes to the Product Use Rights (note that the terms and conditions of each applicable program agreement govern how changes in Product Use Rights are to be applicable);
- changes to the form or applicable reference prices of Subscription Order Forms submitted pursuant to the Campus Agreement and School Agreement program agreements; and
- changes to the online License Rights that are incorporated by reference into the terms and conditions of the Campus Agreement and School Agreement program agreement.

To the extent that any changes to the above items conflict with the terms of this agreement, the applicable "Entire Agreement" section of the applicable program agreement below shall determine how such conflict is to be resolved.

Consulting and Support Services shall not be included in this agreement, but shall instead be covered by separate agreement(s) between the parties.

Each program agreement hereunder shall, with respect to the Microsoft license program associated therewith, stipulate separately which documents, and which component sections of this agreement, constitute the entire agreement related to such license program, and the order in which each document shall control when in conflict with another document. In all program agreements and other sections of this Custom License Agreement, however, Appendix A, as further clarified by specific reference in the common terms and conditions, shall control over all other documents related hereto, followed by (i) the terms of these cover and signature pages and (ii) the common terms and conditions.

Each of the program agreements identified above shall become effective as of the effective date of this Microsoft Custom License Agreement identified below. Separate terms and conditions regarding expiration, termination, and renewal term(s) of each such program agreement, along with the terms governing expiration, termination, and renewal of the applicable enrollments and/or Subscription Order Forms, shall be determined individually pursuant to the applicable terms and conditions of each such program agreement. The effective dates, expiration dates, provisions for termination, and extension options of any program agreement added by amendment hereto shall be stipulated in such amendment.

By signing below, the parties acknowledge that they have read and understood the terms of this agreement, agree to be bound by these terms, and represent and warrant that the information provided on this cover page is accurate.

IN WITNESS WHEREOF, the parties therefore hereby execute their mutual agreement to the terms of this contract. This agreement constitutes a binding contract between the parties as of the day and year indicated below that approval of the New York State Comptroller was received. The parties further hereby (i) agree that, where MSLI, GP is asked to execute six original copies of this signature page along with a complete original copy of the contract, the approved signature page(s) will be affixed by the State, upon final approval by the NYS Comptroller, to additional copies of this contract which conform exactly to the complete original copy as submitted by MSLI, GP and executed simultaneously therewith; and (ii) acknowledge that MSLI, GP must receive a fully-executed copy of this contract, and upon receipt assign agreement numbers hereto (which shall be then be noted on the first page hereof) before purchases may be made pursuant to this agreement.

MSLI, GP

By: Microsoft Management, LLC

By:_____

Name:

Title:

Date:

Federal Tax Identification #: 88-0443249

THE PEOPLE OF THE STATE OF NEW YORK

By: _____

Name: Barrett Russell

Title: Deputy Commissioner, Procurement Services Group/IRM, OGS

Date:

APPROVED AS TO FORM
ELLIOT SPITZER
New York State Attorney General

APPROVED:

Alan G. Hevesi
Comptroller

By: _____

EFFECTIVE DATE:

06/27/03

CORPORATE ACKNOWLEDGMENT

STATE OF }
: **ss.:**

COUNTY OF }

On the _____ day of _____in the year 2003 , before me personally came: _____, to me known, who, being by me duly sworn, did depose and say that he/she/they reside(s) in _____; that he/she/they is (are) authorized representative (the President or other officer or director or attorney in fact duly appointed) of Microsoft Management, LLC, the limited liability company described in and which executed the above instrument; and that he/she/they signed his/her/their name(s) thereto by authority of the board of managers of said company.

_____
Signature and Office of Person Taking Acknowledgment

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Common Terms and Conditions

1. Definitions.

In this agreement, "you" means the entity that has entered into this agreement (and each program agreement under this agreement) and its authorized users, and "we" or "us" means the Microsoft affiliate that has entered into this agreement (or any license agreement under this agreement) and its affiliates. In addition, the following definitions apply to all program agreements hereunder:

"affiliate" means:

(i) with regard to you, subject to Section 9(o), (a) any state department, board, commission, office, or institution of the State of New York which is authorized to participate in New York State centralized contracts; (b) any political subdivision, public authority, or public benefit corporation of the State of New York which is authorized to participate in New York State centralized contracts; (c) any volunteer fire department, Board of Cooperative Education Service, institution for the instruction of the deaf and blind, nonprofit public television corporation, voluntary ambulance service, nonprofit public radio corporation, non-public non-profit elementary and secondary school organized and existing under the laws of the State of New York and operating exclusively therein which is authorized to participate in New York State centralized contracts; and (d) the New York State Association of Counties, Association of Towns of the State of New York, New York State Conference of Mayors and other Municipal Officials, New York State School Boards Association, Inc., New York Planning Federation, the New York State Association of School Business Officials, the New York State Council of School Superintendents, and Association of Fire Districts of the State of New York; provided that each such entity shall accept sole responsibility for performance, liability and payment with respect to such participation. The federal government and its affiliates are not affiliates, and shall not participate in this agreement; and

(ii) with regard to us, any legal entity that we own, which owns us, or which is under common ownership with us;

"Attorney General" means the Attorney General of the State of New York.

"authorized user" means, except as provided by the following sentence, you or one of your affiliates, as defined above. In the event that the term "authorized user" is defined separately in the Product List or Product Use Rights, and such separate definition conflicts with that of "affiliate," then the definition in such Product List or Product Use Rights shall apply when interpreting the terms and conditions of such Product List or Product Use Rights.

"available" means, with respect to a product purchased under a particular program agreement, that we have made licenses for that product available for ordering pursuant to the Microsoft license program associated with such program agreement;

"commercial product" means any product we make available for license for a fee;

"Comptroller" means the Comptroller of the State of New York;

"enrollment" means, with respect to either the Microsoft Select Agreement license program (whether for the Academic or Standard offering) and/or Microsoft Enterprise Agreement license program, the document that you or an authorized user submits under the applicable program agreement hereunder to sign up for such license program;

"enrolled authorized user" means, with respect to a particular program agreement, an authorized user which executes an enrollment or subscription order form thereunder (as applicable to such program agreement);

"fixes" means bug fixes, workarounds, patches, beta fixes and beta builds;

"free product" means any product we make commercially available for license without charge;

"OGS" means the New York State Office of General Services;

"ownership" means, for purposes of the definition of our "affiliates" above, more than 50% ownership;

"pre-release" or "beta" products are products provided prior to commercial release;

"product" means all commercial, free, pre-release and beta products;

"Product List" means, with respect to certain license programs, the statement published by Microsoft from time to time (which statement may vary by region) which identifies the products that are or may be made available under the program and any product-specific conditions or limitations on the acquisition of licenses for those products. In the event that a Product List is not provided pursuant to a particular license program, the terms and conditions of the applicable program agreement shall tell you where a list of products available pursuant to such license program may be found;

"program agreement" means, with respect to a particular Microsoft license program, the section of this Microsoft Custom License Agreement that contains terms and conditions that apply only to such program;

"purchase order" means an authorized user's fiscal form or format which is used when making a purchase from its reseller (e.g., formal written purchase order, procurement card, electronic purchase order, or other authorized instrument);

"reference price" means a number we assign to a product at a particular volume discount level in a particular program agreement, solely for the purposes of comparing the price of a product between agreement types and/or volume discount levels. The actual price paid by enrolled authorized users shall be determined by agreement between you and your reseller and is not set by us. With respect to the Select Agreement, "reference price" shall be synonymous with the terms "Estimated Retail Price" and "ERP," which are commonly used by Microsoft and its resellers in the same context as the term "reference price."

"run" or "use" means to copy, install, use, access, display, run or otherwise interact with;

"State" means the State of New York;

"subscription order form" means, with respect to either the Microsoft Campus Agreement license program or Microsoft School Agreement license program, the document each applicable authorized user submits from time to time under the applicable program agreement to sign up for such License program and therefore to run the applicable software during the "licensed period" (as such term is defined in the applicable program agreement);

"virus" means any computer code, whether or not written or conceived by us, which is intended to disrupt, disable (except as provided by the following sentence), harm, or otherwise impede in any manner the operation of a product, or any other associated software, firmware, hardware, or computer system (such as local area or wide-area networks), including aesthetic disruptions or distortions. Viruses do not include passkeys, code which disables a product after failure to install such passkeys or otherwise register the product, code which disables a product when a subscription has expired or been terminated, or other such devices installed by us.

2. Use and ownership. Unless otherwise specified in a program agreement, use of any product that you license from us is governed by product use rights specific to each product and version and by the terms of the program agreement under which you licensed the product. We will provide you with a copy of the applicable product use rights, or will make them available to you either by publication on the World Wide Web at a site we identify to you or by some other reasonable means. You acknowledge that you have access to the World Wide Web. We do not transfer any ownership rights in any licensed product and we reserve all rights not expressly granted.

OGS agrees that an authorized user has no right to use any product for which it does not pay the applicable license fee and for which it does not comply with applicable license terms. OGS and Microsoft agree that the foregoing provision shall be construed as a clarification to, and not an alteration of, the provisions of State Finance Law Section 41 and Appendix A of this Agreement.

Use of any fixes is defined by the product use rights for the affected product or, if the fix is not provided for a specific product, any other use terms we provide. All fixes are licensed to you.

3. Restrictions on use. You and your authorized users may not:

- Separate the components of a product made up of multiple components by running them on different computers, by upgrading or downgrading them at different times, or by transferring them separately, except as otherwise provided in the product use rights;
- Rent, lease, lend or host products to third parties, except where we agree by separate agreement;
- Reverse engineer, de-compile or disassemble products or fixes, except to the extent expressly permitted by applicable law despite this limitation;
- Transfer licenses to, or sublicense, products or fixes to the U.S. Government.

Products licensed under this agreement are of US-origin unless otherwise indicated by us. You and your authorized users agree to comply with all applicable international and national laws that apply to these products, including the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by U.S. and other governments. For additional information on exporting Microsoft products, see **http://www.microsoft.com/exporting/**.

4. Warranties.

a. Limited product warranty. We warrant that each version of a commercial product will perform substantially in accordance with our product documentation. For the purposes of the preceding sentence, "product documentation" shall mean both (i) any software help files included on the installation media with a commercial product (which are generally accessible by pressing "F1" while running the product); and/or (ii) other user manuals or written information (if any) provided by us for installation or use of a commercial product. This warranty is valid for a period of one year from the date an enrolled authorized user first runs a copy of the version. Any implied warranties concerning the commercial products licensed hereunder are limited to the same one year period. Any replacement software will be warranted for the remainder of the original warranty period, or thirty (30) days, whichever is longer. The limited product warranty is void if failure of the software has resulted from accident, abuse, or misapplication. To the maximum extent permitted by law, any warranties imposed by law concerning the products are limited to the same extent and the same one year period. This warranty does not apply to components of products which authorized users are permitted to redistribute under applicable product use rights, or if failure of the product has resulted from accident, abuse or misapplication by an authorized user, its employees, agents, invitees or contractors. If you notify us within the warranty period that a product does not meet this warranty, then we will, at our option, either (i) return to the reseller the price paid for the product, after which the use of which such refunded product shall be discontinued, or (ii) repair or replace the product within 60 days of your notification. To the maximum extent permitted by law, this is your exclusive remedy for any failure of any commercial product to function as described in this sub-section. We will make bug fixes and product dependency updates for commercial products you have licensed from us available to download

from our website for you and your authorized users at no cost, as they become generally available. Nothing in the preceding sentence shall be construed to obligate us to provide you with free quick engineering fixes, which may be optionally provided for a fee pursuant to a services agreement.

b. Date and time change warranty. Except as provided by the following paragraph, we warrant that commercial products furnished pursuant to this agreement shall, when used in accordance with the product documentation, be able to accurately process date/time data (including, but not limited to, calculating, comparing, and sequencing) various date/time transitions, including leap year calculations, as long as, and only to the extent that, all other information technology used in combination with such product (e.g., software, firmware, hardware) properly exchanges date data with it.. Where our product specification requires that specific commercial products must perform as a package or system with other commercial products obtained hereunder, this warranty shall apply to the products as a system.

This warranty shall not apply to (i) products purchased under previous agreements with us; (ii) versions of product that predate the actual version of the license purchased hereunder; (iii) products combined in a package or system with non-Microsoft products; (iv) user-customized or third party add-on features or products, including items such as macros and custom programming or formatting features; (v) instances where the product's failure is attributable to the hardware upon which it is run; (vi) components of products that an enrolled affiliate is permitted to redistribute under applicable product use rights, or (vii) if failure of the product has resulted from accident, abuse or misapplication by you, your authorized users, or you or your authorized user's employees, agents, subcontractors, or invitees.

This Date/Time Warranty shall survive 90 days beyond termination or expiration of the agreement. Nothing in this warranty statement shall be construed to limit any rights or remedies otherwise available under this agreement for breach of warranty. . If you notify us within the warranty period that a product does not meet this warranty, then we will, at our option, either (i) return the price paid for the product or (ii) repair or replace the product. To the maximum extent permitted by law, this is your exclusive remedy for any failure of any product to function as described in this subsection.

c. Free and beta products. To the maximum extent permitted by law, free and beta products are provided "as-is," without any warranties. You acknowledge that the provisions of this paragraph with regard to pre-release and beta products are reasonable having regard to, among other things, the fact that they are provided prior to commercial release so as to give you the opportunity (earlier than you would otherwise have) to assess their suitability for your business, and without full and complete testing by us.

d. NO OTHER WARRANTIES. TO THE EXTENT PERMITTED BY APPLICABLE LAW, WE DISCLAIM AND EXCLUDE ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED OR STATUTORY, OTHER THAN THOSE IDENTIFIED EXPRESSLY IN THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO WARRANTIES OR CONDITIONS OF TITLE, NON-INFRINGEMENT, SATISFACTORY QUALITY, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE PRODUCTS, AND RELATED MATERIALS. WE WILL NOT BE LIABLE FOR ANY NON-MICROSOFT PRODUCTS PROVIDED BY THIRD PARTY VENDORS, DEVELOPERS OR CONSULTANTS IDENTIFIED OR REFERRED TO YOU BY US UNLESS SUCH NON-MICROSOFT THIRD PARTY PRODUCTS ARE PROVIDED UNDER WRITTEN AGREEMENT BETWEEN YOU AND US, AND THEN ONLY TO THE EXTENT EXPRESSLY PROVIDED IN SUCH AGREEMENT.

5. Defense of infringement claim.

a. Duty to Defend. We agree to defend any enrolled authorized user against and, subject to Section 5(e) of the common terms and conditions, pay the amount of any adverse final judgment (or settlement to which we consent) resulting from third party claim(s) (hereinafter "indemnified claims") that any commercial product infringes any copyright or trademark enforceable in any included jurisdiction (defined in Section 5(d) of these common terms and conditions, below) or any U.S. patent issued and enforceable as of the effective date of this agreement, or misappropriates any trade secret (as the terms "misappropriation" and "trades secret" are defined in the Uniform Trade Secrets Act) protected under the laws of any of the United States; provided that we are notified promptly in writing of the indemnified claim and have sole control over its defense or settlement, and the enrolled authorized user provides reasonable assistance in the defense of the same. We shall reimburse any enrolled authorized user for amounts paid to third parties which are incurred as the result of providing such reasonable assistance at our request; provided, however, that such expenses are approved by us in advance. The enrolled authorized user shall not be required to incur any such expenses until we have approved them. For any intellectual property claim for which a defense is not provided in this Section 5, we will, in our sole discretion, either (a) notify the enrolled authorized user, within a reasonably prompt period, of our intention not to defend such claim, or (b) elect to treat such intellectual property claim as an "indemnified claim" as defined herein.

b. Opportunity to Cure. In the event that we receive information concerning an intellectual property infringement claim (including an indemnified claim) related to a commercial product, we will exercise commercially reasonable efforts to either (i) procure for the enrolled authorized user and other authorized users to which it has sublicensed the allegedly infringing commercial product the right to continue to use the allegedly infringing commercial product, or (ii) replace or modify the commercial product to make it non-infringing, in which case, the enrolled authorized user and all authorized users to which it has sublicensed the allegedly infringing commercial product shall thereupon cease distribution and use of the allegedly infringing commercial product.

c. Exceptions to Duty. We shall have no liability for any intellectual property claim to the extent that such claim is based on an enrolled authorized user's or an authorized user's (i) copying, distribution or use of any commercial product after our notice that the enrolled authorized user and all authorized users to which the enrolled authorized user has sublicensed commercial products should cease copying, distribution and use of the allegedly infringing commercial product due to such a claim; (ii)

combination of a commercial product with a non-Microsoft product, program or data; (iii) adaptation or modification of any commercial product; (iv) use of our trademark(s) without our express written consent to do so; or (v) acquisition of a trade secret: (A) through improper means; (B) under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (C) from a person (other than us or one of our affiliates) who owed to the party asserting the claim a duty to maintain the secrecy or limit the use of the trade secret. To the maximum extent permitted by applicable law, for all claims described in this Section 5(c), subject to Section 5(e), you agree to indemnify our affiliates and suppliers from and against all damages, costs and expenses, including reasonable attorney's fees.

d. Geographic Scope. We shall have no obligation to any enrolled authorized user for any indemnified claims relating to allegations of copyright infringement which arise outside the geographical boundaries of the United States, Canada, Japan or the European Union ("included jurisdictions"), or any indemnified claims relating to patent infringement or trade secret misappropriation which occur outside the geographical boundaries of the United States.

e. Proportionate Responsibility. For any intellectual property claim attributable in part to a commercial product and in part to one or more other products, programs or data with which the commercial product is combined, we and you each agree to contribute to any liability resulting from such intellectual property claim in proportion to such party's comparative responsibility in causing such liability.

6. Limitation of liability.

a. Limitation. Our total liability (and that of our affiliates) to enrolled authorized users and their permitted sublicensing authorized users, excluding (i) our obligation to defend and indemnify such enrolled authorized users against certain claims of infringement pursuant to Section 5 and (ii) to defend against a claim of bodily injury, death or damage to tangible real or personal property pursuant to Section 9(n), shall be limited to one hundred percent (100%) of the amount having actually been paid by such enrolled authorized user for licenses obtained hereunder for the product giving rise to such liability. In the case of both (i) our obligation to defend and indemnify such enrolled authorized user against certain claims of infringement as described in Section 5 above; and (ii) our responsibilities with respect to claims of bodily injury, death or damage to tangible property, such obligations and responsibilities will not be subject to the preceding limitations.

b. No liability for certain damages. To the maximum extent permitted by applicable law, neither party nor any of its affiliates or suppliers will be liable for any indirect damages (including, without limitation, consequential, special or incidental damages, damages for loss of profits or revenues, business interruption, or loss of business information) arising in connection with any license agreement or product, even if advised of the possibility of such damages or if such possibility was reasonably foreseeable. For the purpose of this agreement, "suppliers" shall mean suppliers of stand-alone products or components or products licensed under this agreement. This exclusion of liability does not apply to either party's liability to the other for violation of the other party's intellectual property rights.

7. Verifying compliance. Each enrolled authorized user pursuant to each program agreement hereunder must keep records relating to the products it and any authorized user participating under its enrollment(s) and/or subscription order forms run. In the case of the Campus Agreement and School Agreement license programs, each enrolled authorized user must also keep records relating to the running of the software by its individual users. We have the right to verify compliance with any program agreement, at our expense, during the term of the program agreement and any enrollment or subscription order form and for a period of one year thereafter. To do so, we will engage an independent accountant from a nationally recognized public accounting firm, 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 the authorized user's operations. As an alternative, we may require an enrolled authorized user to accurately complete our self-audit questionnaire relating to the products it and any authorized users participating under its enrollment or subscription order form use. You will have the right to conduct a self-audit prior to any third-party audit if (a) the governor of your state has issued an executive order (or state legislation exists) or the state chief information officer issues a directive requiring software licensing compliance statewide and for state-funded agencies (including local governments), and (b) your state has adopted and implemented a statewide licensing compliance software asset management program reasonably acceptable to Microsoft. If verification or self-audit reveals unlicensed use of products, the enrolled authorized user must promptly order sufficient licenses, at current contract pricing, to permit all product usage disclosed. If material unlicensed use is found (license shortage of 5% or more), the enrolled authorized user must also reimburse us for the commercially reasonable costs we have incurred in verification within 60 days following its receipt of the invoice from us for such costs. If we undertake such verification and do not find material unlicensed use of products, we will not undertake another verification of the same entity for at least one year. We and our auditors will use the information obtained in compliance verification only to enforce our rights and to determine whether you are in compliance with the terms of the applicable program agreement. By invoking the rights and procedures described above, we do not waive our rights to enforce this agreement or to protect our intellectual property by any other means permitted by law.

8. Term and Termination. Unless extended as provided below, these common terms and conditions will remain in effect until the earlier of (i) the day upon which the last program agreement hereunder expires or is otherwise terminated pursuant to the terms of such program agreement (which such date shall be no earlier than the last day of the sixtieth (60th) full calendar month following the effective date hereof); or (ii) the day it is otherwise terminated, as set forth in this Section 8. Terms and conditions regarding the expiration, termination, and renewal of program agreements hereunder are set forth separately in the terms and conditions of each such program agreement.

You may terminate these terms and conditions at any time by giving at least 60 days written notice. Termination of these common terms and conditions will not, by itself, result in the termination of any program agreements previously entered into under this agreement, or the enrollments and/or subscription order forms related thereto, and any of the common terms and conditions of this agreement incorporated by reference into such program agreements and related enrollments and/or subscription order forms will

continue in effect unless and until that program agreement itself (or such related enrollments and/or subscription order forms) is (or are) terminated or expire(s). The sole effect of terminating this agreement will be to terminate the ability of either party to enter into subsequent program agreements under this agreement.

Either party may terminate this agreement or any program agreement, enrollment, or subscription order form (collectively, the related documents"), if the other party of the related document to be terminated materially breaches its obligations under such related document. Except where the breach is by its nature not curable within 30 days, the terminating party must give the other party 30 days written notice and an opportunity to cure prior to termination.

Provided that these common terms and conditions are not otherwise terminated early as provided above, these common terms and conditions shall be extended as necessary to accommodate the extension and/or renewal of one or more program agreements hereunder, as provided pursuant to the individual terms and conditions of such program agreements.

9. Miscellaneous.

a. Notices. All notices, authorizations, and requests given or made in connection with (i) this agreement; (ii) a program agreement; (iii) a license; or (iii) an enrollment or subscription order form, must be sent by post, express courier, facsimile, or email to the addresses and numbers indicated in both (a) this agreement and (b) the applicable enrollment(s) or subscription order form(s). Any notice of termination of this agreement, or any program agreement hereunder, must be sent by post, express, courier, facsimile or email to the addresses and numbers indicated in the cover page to this agreement. Notices will be deemed delivered on the date shown on the postal return receipt or on the courier, facsimile or email confirmation of delivery.

b. Assignment.

Microsoft may assign its rights and obligations under this agreement (including the program agreements associated herewith and any enrollment or subscription order form hereunder), to an entity owning, owned by, or under common ownership with Microsoft Corporation, subject to the consent of the OGS, which consent shall not be unreasonably withheld. Microsoft will notify OGS of any such assignment within 60 days of such assignment. If OGS elects not to consent to such assignment, OGS may terminate the applicable assigned agreement, program agreement(s), enrollment(s) and/or subscription order forms(s) (collectively, the "assigned agreement(s)") subject to the termination provisions of the applicable assigned agreement(s). Assignment to any other entity must be upon notice pursuant to the provisions set forth in Section 9a of these common terms and conditions, and shall be subject to OGS consent, which consent shall not be unreasonably withheld. OGS and Microsoft agree that the foregoing provisions shall be construed as a clarification to, and not an alteration of, the provisions of State Finance Law Section 138 and Appendix A of this Agreement.

This agreement, and the program agreements associated herewith, may be assigned by the Office of General Services without the consent of Microsoft, to another agency or subdivision of the State pursuant to a governmental reorganization or assignment of functions under which the pertinent functions of OGS as an Agency is transferred to a successor Agency or subdivision of the State or to an Agency which assumes OGS' responsibilities.

All provisions in assigned agreements shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and assigns of the parties hereto to the same extent as if each such successor or assign were named a party hereto. Any assignment will not relieve the assigning party of its obligations under the assigned agreement.

c. Severability. If a court holds any provision of this agreement to be illegal, invalid or unenforceable, the remaining provisions will remain in full force and effect and the parties will amend the agreement to give effect to the stricken clause to the maximum extent possible.

d. Waiver. No waiver of any breach of this agreement shall be a waiver of any other breach, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party.

e. Force Majeure. To the extent that either party's performance is prevented or delayed, either totally or in part, for reasons beyond that party's control, then that party will not be liable, so long as it resumes performance as soon as practicable after the reason preventing or delaying performance no longer exists. The parties shall use reasonable efforts to eliminate or minimize the effect of such events upon performance of their respective duties.

f. Survival. Provisions regarding product use rights, restrictions on use, evidence of perpetual licenses, transfer of licenses, warranties, limitations of liability, compliance verification, disabling mechanisms, and obligations on termination or expiration will survive termination or expiration of this agreement and of any program agreements, enrollments, and subscription order forms in which they are incorporated.

g. Applicable law. The terms of this agreement will be governed by the laws of The State of New York, without giving effect to its conflict of laws.

h. Cost or pricing data. We will not, under any circumstance, accept any enrollment or subscription order form that would require the submission of cost or pricing data from us.

i. Product Type Qualifications. Notwithstanding any changes that may occur to the Product List prior to the expiration or early termination hereof, the following qualifications shall apply for all products obtained hereunder, in their respective product classes as indicated below. For new product classes introduced following the effective date hereof, the applicable program agreement or Product List shall govern the qualifications thereof.

- **Standard License**

Available in the Select License (all agreement versions), Open License 6.0 and Enterprise Subscription Agreement 6.0 (available for buy-out orders only) programs. There are no pre-requisites for a customer to purchase a Standard License in the Select License and Open License programs. Refer to the Enterprise Subscription Agreement 6.0 for the eligibility rules for ordering a perpetual standard license for buy-out orders.

- **Upgrade (available for the Windows Desktop Operating System Only)**

  Available in the Select License (all agreement versions), Open License 6.0 and Enterprise Subscription Agreement 6.0 (available for buy-out orders only) programs. The customer has to have the eligible underlying desktop operating system license before it may purchase the Windows Desktop Operating System Upgrade license. Additionally, customers with devices running an embedded operating system (e.g. Windows 9.x for embedded, Windows XP embedded) do not qualify to purchase the Windows Desktop Operating System Upgrade in Volume Licensing for those devices. See the systems product section of the Product List for a list by product of desktop operating system products which are eligible for the Windows Desktop Operating Systems Upgrade.

- **Software Assurance**

  Eligibility rules:

  Introduced with the License 6.0 programs. Available in the Select License, Open License and Enterprise Agreement 6.0 programs. Except as provided below for products purchased from the Retail Channel or from an Original Equipment Manufacturer (OEM), Software Assurance acquired through all volume licensing programs may only be purchased at the time of purchasing the License or upon renewal of an existing Software Assurance term. Refer to the specific program agreement for the eligibility rules for acquiring Software Assurance. For customers wishing to enroll licenses purchased from the Retail channel (full packaged product) or from an OEM in Software Assurance, they may do so in the Select License or the Open License programs as long as the license was purchased within 90 days of enrolling that license into Software Assurance. Application products licensed through Retail and OEM are not eligible to be enrolled in Software Assurance.

  Transfers:

  Third Party Transfers A Select customer may not transfer (i) Software Assurance coverage during the term of the enrollment under which the Software Assurance was ordered; Or (ii) perpetual licenses for any version of a product acquired through Software Assurance separately from the underlying perpetual licenses for which that Software Assurance coverage was ordered. The customer should consult its Select agreement for other restrictions regarding the transfer of licenses.

  Internal Transfers A customer may reassign Software Assurance coverage for a desktop operating system product to a replacement computer so long as (i) that replacement computer is licensed to run the latest version of the desktop operating system available as of the date of the reassignment, and (ii) the customer removes from the original computer any desktop operating system upgrades that were installed pursuant to the reassigned Software Assurance coverage. A customer may not otherwise separate Software Assurance coverage from the underlying license for which it is ordered. For purposes of this discussion regarding the right to reassign upgrade protection to replacement computers, “Software Assurance” includes Upgrade Advantage.

  Consequences of non-renewal:

  In order to maintain Software Assurance coverage, a customer must purchase Software Assurance at the time of purchasing a License or within 90 days upon termination or expiration of an existing Software Assurance term (subject to the terms of the applicable license agreement). If a customer does not purchase Software Assurance at the time of purchasing the License, or with 90 days of termination or expiration of an existing Software Assurance term, they must purchase a new License or License & Software Assurance in order to upgrade their License at a later date. (for Windows Desktop Operating System, the options are an Upgrade or Upgrade & Software Assurance).

- **License & Software Assurance**

  Introduced with the License 6.0 programs. Available in the Select License, Open License and Enterprise Agreement 6.0 programs. There are no pre-requisites to acquire the License. Software Assurance must be purchased at the time of purchasing the corresponding License, or upon renewal of an existing Software Assurance term. Through all volume licensing programs, where the customer does not meet the Software Assurance eligibility criteria and wishes to purchase Software Assurance, the customer will purchase the License & Software Assurance offering.

- **Upgrade & Software Assurance**

  Introduced with the License 6.0 programs. Available in the Select License, Open License and Enterprise Agreement 6.0 programs.

  The customer must have the eligible underlying desktop operating system license before it may acquire the Upgrade. Software Assurance must be purchased at the time of purchasing the corresponding Upgrade, or upon renewal of an existing Software Assurance term. Through all volume licensing programs, where the customer does not meet the Software Assurance eligibility criteria and wishes to purchase Software Assurance, the customer will purchase the Upgrade & Software Assurance offering (for the Windows Desktop Operating System only).

- **Work at Home Licenses**

  Available in Select License (all agreement versions) and Enterprise Agreement 6.0. The customer must have a Standard License for the equivalent product. A Work at Home license may only be acquired in connection with a product licensed to run on an At Work desktop. The Work at Home offering is not an employee purchase plan offering. The Select or Enterprise Agreement customer (not the employee) retains the rights to the Work at Home license.

j. **Ethics Compliance**. We and our employees will comply with the requirements of NYS Public Officers Law, (§ 73 & 74) and other State codes, rules and regulations establishing ethical standards for the conduct of business with New York State. In signing this Agreement, we certify that, to the best of our knowledge, we are currently and will remain in compliance with those provisions for any present or future dealings, transactions, sales, contracts, services, offers, relationships, etc., involving New York State and/or its employees. We understand that failure to comply with those provisions may result in Agreement termination, and/or other civil or criminal proceedings as required by law.

k. **Security.** We agree to comply fully with all security procedures of the State and any Authorized Users in performance of the contract as a condition of being granted access to applicable facilities.

l. **Disabling mechanisms.** In no event will we withhold passkeys or other devices needed for operation of the products or utilize any mechanism or other ability to disable any products to enforce any rights, expressed, implied, alleged, assumed, disputed, or otherwise, except by court order or other legal process.

   As an exception to the preceding sentence, we may reasonably refuse to provide such passkeys or other devices in the event that a renewal order is not placed by an authorized user with respect to a subscription or non-perpetual license program, such as the Campus Agreement program, School Agreement program, or Enterprise Subscription Agreement (collectively, "non-perpetual licensing agreements"), in accordance with the terms and conditions contained within such non-perpetual licensing agreements. We reserve the right to include in the software provided for such non-perpetual licensing agreements any proactive technical disabling mechanisms that would enable us, with a timed device, to disable the software (e.g. the software is no longer operable once the licensed period has expired or is terminated). As a result, all authorized users should please be advised that they would likely suffer data loss or other system errors or malfunctions if they continue to run the software after the termination or expiration of the applicable licensed period.

m. **Viruses.** We represent that we will take commercially reasonable efforts to ensure that the CDs and other installation media with which we provide the software licensed herein are free from viruses.

n. **Defense for Bodily Injury, Death, and Damage to Tangible Property.** Each party agrees to defend the other against any claim by an unaffiliated third party of bodily injury, death or damage to tangible real or personal property caused by or arising out of a negligent or willful act or omission of the defending party's employee(s) or agent(s) in connection with the performance of this agreement, and will pay the amount of any resulting adverse final judgment (or settlement to which the defending party consents).

   The party seeking defense must notify the other party promptly in writing of the claim and give the other party control over its defense or settlement. The party seeking defense agrees to provide the defending party with reasonable assistance in defending the claim, and the defending party will reimburse the other for reasonable out of pocket expenses that incurred in providing that assistance.

o. **Eligibility of certain classes of authorized users to enroll in program agreements, and enrollments or subscription order forms.** Notwithstanding the definitions of "affiliate" and "authorized user," you acknowledge and agree that certain program agreements and/or enrollments or subscription order forms hereunder are intended solely for the use of one or more types of educational institutions, according to criteria based upon educational status set forth in each such program agreement. Such criteria may distinguish between educational institutions that serve elementary, secondary, and/or higher-education students.

p. **Advertising/Press Releases.** We agree we will not use the contract or any parts thereof as a part of any commercial advertising without the prior written approval of the Commissioner of General Services.

q. For the purposes of Section 20 of Appendix A, the **Omnibus procurement Act of 1992** goals for this contract are set at 0%

r. **Feature packs.** In the event that Microsoft makes available one or more product updates intended to add features or functionality to a particular version and edition of commercial product for which an enrolled authorized user owns a licensed copy (herein, a "feature pack"), and provided that such licensed copy is enrolled in unexpired Software Assurance as of the date such feature pack is made available, then such feature pack will be made available to such authorized user to be applied to such licensed copy at no additional cost. The foregoing provision shall not apply to new features and/or functionality that Microsoft provides solely pursuant to a different edition of such product than the edition of the licensed copy (for example, new features intended to apply to an Enterprise Edition or Advanced Edition of a product would not apply to a Standard Edition of the same product).

s. **Copyright Violation.** Except to the extent each enrolled authorized user is licensed under an applicable program agreement hereunder, it will be responsible for its violation of our copyright in the products, including payment of license fees specified in this Microsoft Custom License Agreement for unlicensed use.

APPENDIX A

STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS

STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licenser, licensee, lessor, lessee or any other party):

1. EXECUTORY CLAUSE. In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

The Microsoft Business Agreement may be assigned by the Office of General Services without the consent of Microsoft, to another agency or subdivision of the State pursuant to a governmental reorganization or assignment of functions under which the pertinent functions of OGS as an Agency is transferred to a successor Agency or subdivision of the State or to an Agency which assumes OGS' responsibilities.

All provisions in the Master Business Agreement shall be binding upon, inure to the benefit of, and be enforceable by the respective successors and assigns of the parties hereto to the same extent as if each such successor or assign were named a party hereto.

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds $15,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds $10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office. Comptroller's approval of contracts let by the Office of General Services is required when such contracts exceed $30,000 (State Finance Law Section 163.6.a).

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. NON-DISCRIMINATION REQUIREMENTS. In accordance with Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of $50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further warrants that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds $5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER. All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

(b) PRIVACY NOTIFICATION**.** (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

(2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in New York State's Central Accounting System by the Director of Accounting Operations, Office of the State Comptroller, AESOB, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of $25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of $100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of $100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over $25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State; or (iii) banking services,

insurance policies or the sale of securities. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Governor's Office of Minority and Women's Business Development pertaining hereto.

13. CONFLICTING TERMS. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

14. GOVERNING LAW. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

18. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS. The Contractor certifies and warrants that all wood products to be used under this contract award will be in accordance with, but not limited to, the specifications and provisions of State Finance Law §165. (Use of Tropical Hardwoods) which prohibits purchase and use of tropical hardwoods, unless specifically exempted, by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the responsibility of the contractor to establish to meet with the approval of the State.

In addition, when any portion of this contract involving the use of woods, whether supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in §165 State Finance Law. Any such use must meet with the approval of the State; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the responsibility of the Contractor to meet with the approval of the State.

19. MACBRIDE FAIR EMPLOYMENT PRINCIPLES. In accordance with the MacBride Fair Employment Principles (Chapter 807 of the Laws of 1992), the Contractor hereby stipulates that the Contractor either (a) has no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations in Northern Ireland in accordance with the MacBride Fair Employment Principles (as described in Section 165 of the New York State Finance Law), and shall permit independent monitoring of compliance with such principles.

20. OMNIBUS PROCUREMENT ACT OF 1992. It is the policy of New York State to maximize opportunities for the participation of New York State business enterprises, including minority and women-owned business enterprises as bidders, subcontractors and suppliers on its procurement contracts.

Information on the availability of New York State subcontractors and suppliers is available from:

NYS Department of Economic Development
Division for Small Business
30 South Pearl St -- 7th Floor
Albany, New York 12245
Telephone: 518-292-5220

A directory of certified minority and women-owned business enterprises is available from:

NYS Department of Economic Development
Division of Minority and Women's Business Development
30 South Pearl St -- 2nd Floor
Albany, New York 12245
http://www.empire.state.ny.us

The Omnibus Procurement Act of 1992 requires that by signing this bid proposal or contract, as applicable, Contractors certify that whenever the total bid amount is greater than $1 million:

(a) The Contractor has made reasonable efforts to encourage the participation of New York State Business Enterprises as suppliers and subcontractors, including certified minority and women-owned business enterprises, on this project, and has retained the documentation of these efforts to be provided upon request to the State;

(b) The Contractor has complied with the Federal Equal Opportunity Act of 1972 (P.L. 92-261), as amended;

(c) The Contractor agrees to make reasonable efforts to provide notification to New York State residents of employment opportunities on this project through listing any such positions with the Job Service Division of the New York State Department of Labor, or providing such notification in such manner as is consistent with existing collective bargaining contracts or agreements. The Contractor agrees to document these efforts and to provide said documentation to the State upon request; and

(d) The Contractor acknowledges notice that the State may seek to obtain offset credits from foreign countries as a result of this contract and agrees to cooperate with the State in these efforts.

21. RECIPROCITY AND SANCTIONS PROVISIONS. Bidders are hereby notified that if their principal place of business is located in a country, nation, province, state or political subdivision that penalizes New York State vendors, and if the goods or services they offer will be substantially produced or performed outside New York State, the Omnibus Procurement Act 1994 and 2000 amendments (Chapter 684 and Chapter 383, respectively) require that they be denied contracts which they would otherwise obtain. NOTE: As of May 15, 2002, the list of discriminatory jurisdictions subject to this provision includes the states of South Carolina, Alaska, West Virginia, Wyoming, Louisiana and Hawaii. Contact NYS Department of Economic Development for a current list of jurisdictions subject to this provision.

Microsoft Select Agreement
Program Agreement Terms and Conditions

The following terms and conditions of the Microsoft Select Agreement Program Agreement shall apply solely with respect to applicable standard Select enrollments and academic Select enrollments:

1. **Definitions.**

In addition to the definitions in Section 1 of the common terms and conditions, the following definitions apply solely with respect to the Microsoft Select Agreement Program Agreement:

"Academic Select enrollment" means an enrollment submitted hereunder by an eligible education authorized user;

"Academic Select license" means a License, Software Assurance, or L&SA for a product that is (i) ordered pursuant to an Academic Select enrollment; and (ii) is not otherwise identified on the Product List as not being offered pursuant to Academic Select agreements;

"Academic Select agreement number" means the agreement number we assign, on the cover page above, to the academic offering pursuant to this Microsoft Select Agreement Program Agreement for the purpose of associating Academic Select enrollments herewith;

"eligible education authorized user" means any authorized user which is a qualified educational user pursuant to the terms and conditions of Schedule A to this program agreement, below, and which is therefore eligible to (i) enter into an Academic Select enrollment hereunder, and (ii) license and use products under the Academic Select License program;

"License" means any one of those offerings identified in the Product List (including standard licenses, and upgrades for desktop operating systems) that provides the right to run the version of the product for which it is ordered;

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

"order" means an order on a form that is acceptable to the reseller;

"qualified desktop" means, solely with respect to an academic Select Enrollment for which the discount offer set forth in Section 11(e)(2)(B) of this program agreement is elected, any personal desktop computer, portable computer, workstation or similar device that is used by or for the benefit of an enrolled authorized user or any authorized user to which it sublicenses, including those devices that are provided for use in an included authorized user's employee's home, pursuant to the Americans with Disabilities Act, and that meets the minimum requirements for running any of the qualifying products. Qualified desktops do not include: (i) any computer that is designated as a server and not used as a personal computer, (ii) any system dedicated to run ONLY line-of-business software (e.g., an accounting or bookkeeping program used by an accountant, or a computer-aided design program used by an engineer or architect); or (iii) any system running an embedded operating system (e.g. Windows 9.x for embedded, Windows XP embedded);

"qualifying product" means, solely with respect to an academic Select Enrollment for which the discount offer set forth in Section 11(e)(2)(B) of this program agreement is elected, a product which an enrolled authorized user has chosen to order for all of its qualified desktops;

"renewal order" means the order that an enrolled authorized user submits at the beginning of any renewal term to renew Software Assurance coverage for products previously ordered under its enrollment;

"reseller" means (i) pursuant to a standard Select enrollment, a large account reseller authorized by us to resell licenses in an enrolled authorized user's area under the standard Select License program; and (ii) pursuant to an Academic Select enrollment, a large account reseller authorized by us or one of our affiliates to resell licenses in an enrolled authorized user's area under the Academic Select License program

"Software Assurance" means, for any underlying licensed product for which it is ordered, the right to upgrade to, and run, the latest version of that product that we make available during the covered period. Other than the cost of Software Assurance, the costs of the underlying license(s), and the costs (if any) which may be assessed for installation media, no additional fees will be charged for such right.

"standard Select enrollment" means an enrollment submitted hereunder by an authorized user other than an eligible education authorized user;

"standard Select license" means a License, Software Assurance, or L&SA for a product that is (i) ordered pursuant to a standard Select enrollment; and (ii) is not otherwise identified on the Product List as only being offered pursuant to Academic Select agreements; and

"standard Select agreement number" means the agreement number we assign, on the cover page above, to this program agreement for the purpose of associating standard Select enrollments herewith.

2. How the Microsoft Select License program works.

The Select license program allows customers to license our products at discount pricing based on the volume of their license purchases. You and your authorized users can participate in this program by submitting one or more enrollments under this agreement. Once enrolled, the enrolled authorized user will receive master copies of products it intends to license and may run as many copies as it wishes during the term of its enrollment, provided it places monthly orders for those additional copies for which it has

not previously obtained licenses. We may choose to accept an enrollment, or may reject it for bona fide commercial reasons. We will not unreasonably refuse to accept an enrollment.

a. **Establishing price levels.** Your price levels are established by the terms and conditions of Section 11(e) of this program agreement, below, in which we have based your initial price level on orders made under our Enterprise Agreement program. Your price level will be used to determine the prices we will use to invoice each enrolled authorized user's reseller for product licenses that enrolled authorized user orders.

b. **Choosing and maintaining a reseller.** Each enrolled authorized user must choose and maintain a reseller authorized in the enrolled authorized user's area. Enrolled authorized users agree (i) to accept OGS's choice of reseller when executing enrollments hereunder, and (ii) to change resellers, subject to the terms of the following paragraph, upon receipt of written notice from OGS instructing them to do so. Resellers are authorized to resell our product licenses, but act independently and have no authority to bind us.

c. **Changing a reseller.** If an entity ceases to be a reseller, we will notify the enrolled authorized user in writing of such event, and the enrolled authorized user must choose a replacement within 90 days following its receipt of such notice. If an enrolled authorized user intends to change its reseller, the enrolled authorized user must notify us and the former reseller in writing, on a form that we provide, at least 30 days prior to the date on which the change is to take effect. Such change of reseller will be effected 30 days following the former reseller's receipt of such notice (the "change date"), and any installments or true up orders that are due prior to such change date shall be owed by the enrolled authorized user to the former reseller. For the purposes of determining when an installment or true up is due, the terms of the applicable enrollment shall control, notwithstanding the payment terms the former reseller provided to the enrolled authorized user. In case of a change of reseller, the enrolled authorized user is responsible for ensuring that all its obligations to the former reseller are met.

We do not anticipate any change in our policy to sell Select enrollments to State and local governments through resellers, rather than directly to such government customers. In the unlikely event that such policy changes, (i) we will agree to allow resellers to fulfill their obligations though the remaining term of each enrollment that was executed prior to such change in policy; and (ii) the parties agree to work in good faith to modify this agreement to accommodate such changed policy with respect to enrollments executed after such change in policy.

3. **How to order product licenses.**

a. **Placing orders.** Each enrolled authorized user must submit orders for all copies of any products it or authorized users to which it sublicenses run under its enrollment. Orders must be submitted in the month in which those copies are first run. Unless the enrolled authorized user is eligible to order just Software Assurance as described below, each order must be for either a License or L&SA. Each enrolled authorized user must make out and submit orders to the enrolled authorized user's reseller. Price (but not price level, which is determined pursuant to section 11(e) of this program agreement) and payment terms for all licenses ordered will be determined by agreement between the enrolled authorized user and its chosen reseller.

When is the enrolled authorized user eligible to order just Software Assurance? An enrolled authorized user may order Software Assurance for copies of a product, without the need to simultaneously order a new License for those copies, in the following circumstances:

- At the beginning of a new enrollment, the enrolled authorized user may order Software Assurance for copies of products for which the enrolled authorized user has previously obtained perpetual licenses through Upgrade Advantage, Software Assurance or any similar upgrade protection, so long as (i) the new enrollment becomes effective no later than one day following the expiration of that upgrade protection, and (ii) the enrolled authorized user places its Software Assurance order at the time it submits its new enrollment to its reseller. If an enrolled authorized user wishes to renew Software Assurance for any licenses previously covered under Upgrade Advantage, Software Assurance or any similar upgrade protection, it must submit an order for Software Assurance for the entire renewal term within 90 days after the previous term expired. The effective date of such renewal shall be one day following the expiration of the prior upgrade protection.
- During the term of its enrollment (including any renewal term), an enrolled authorized user may be eligible to order Software Assurance under its enrollment for copies of certain products licensed through retail sources or from an original equipment manufacturer (OEM), provided that the enrolled authorized user places its order within the required time frame. The Product List identifies those products that may be enrolled in Software Assurance as described in this subsection and the applicable time frame for placing an order.
- An enrolled authorized user may also order Software Assurance in any other circumstances expressly permitted in the Product List.
- An enrolled authorized user may renew Software Assurance ordered under its enrollment at the time it renews that enrollment, as described in subsection 10(d) of this program agreement (How to renew this agreement).

b. **Invoices and payments.** The prices at which we will invoice each enrolled authorized user's reseller will be based upon the applicable price level under this program agreement. For any orders for Software Assurance or L&SA, if the enrolled authorized user elects to spread its payments over the applicable initial enrollment or renewal term rather than paying in a lump sum, it may make this election with its reseller. In such cases, we will invoice the enrolled authorized user's reseller in equal installments, the first installment upon receipt of the order and subsequent installments on each remaining anniversary of the effective date of this program agreement occurring during the initial enrollment or renewal term in which the order was

placed. Any amounts for Licenses only (i.e. without accompanying Software Assurance) will be invoiced to the enrolled authorized user's reseller in full upon receipt of the order.

c. **Reporting country of use.** On all orders, the enrolled authorized user must report the countries where the enrolled authorized user or other authorized users run the products licensed under this program agreement and the approximate number of copies run in each of those countries. This information is for our internal use only.

d. **Privatization.** If an enrolled authorized user intends to transfer more than ten percent of its computers in connection with privatization of governmental operations, and as a result it would like to transfer the copies of the products running on those computers prior to the expiration of its enrollment, we will work with that enrolled authorized user in good faith to arrange for acceleration of any remaining payments for the those copies run pursuant to Software Assurance or L&SA and to allow for the transfer of perpetual licenses for such copies as described in section 9 of this program agreement (Transferring licenses). Any perpetual licenses obtained as described in this paragraph will be for the latest version of the products available as of the date on which the enrolled authorized user has completed payment.

4. How to confirm orders.

We will publish information about orders placed by each enrolled authorized user, including an electronic confirmation of each order, in a secure site on the World Wide Web at **http://licensing.microsoft.com** or a successor site that we identify.

5. License grant – what your enrolled authorized users are licensed to run.

At any time after its enrollment effective date, each enrolled authorized user may run as many copies as it chooses, of any available products it chooses, provided that it submits orders for all such copies as required in subsection 3(a) of this program agreement (Placing orders). Each enrolled authorized user may run in place of any product version it licenses under this agreement a prior version or different language version (so long as that different language version is available at the same or a lower reference price than the reference price for the version ordered) of the same product. If an authorized user runs copies of products under an enrolled authorized user's enrollment, those copies are sublicensed from that enrolled authorized user subject to the terms of this program agreement (including but not limited to Section 11(e)(2)).

License only. An enrolled authorized user's right under this program agreement to run copies of any product for which it orders only a License is temporary until the enrolled authorized user has paid for that License in full. Thereafter, the enrolled authorized user will have a perpetual license to run the number of copies ordered in the version ordered.

L&SA or Software Assurance. An enrolled authorized user's right under this program agreement to run copies of any product for which it orders L&SA or Software Assurance is temporary until one of the following occurs:

(i) the enrolled authorized user has paid all installments of the price for such coverage, and the applicable initial enrollment or renewal term during which such product licenses were ordered has expired or been renewed; or

(ii) the enrolled authorized user is otherwise entitled to perpetual licenses upon early termination as provided in subsection 10(c) of this program agreement (Effect of termination or expiration).

Thereafter, the enrolled authorized user will have perpetual licenses to run the latest version available as of such date of expiration, renewal or termination (or any prior version), for the number of copies ordered during the applicable initial enrollment term or renewal term. In the case of early termination as provided in subsection 10(b) of this program agreement (Termination), if an enrolled authorized user chooses only to pay amounts due and payable as of the termination date, then the enrolled authorized user will instead have perpetual licenses for the number of copies specified in subsection 10(c) of this program agreement (Effect of termination or expiration). Any perpetual licenses received through Software Assurance supersede and replace the underlying perpetual licenses for which that Software Assurance coverage was ordered.

All perpetual licenses acquired under this program agreement remain subject to the terms of this program agreement and the applicable product use rights.

License Confirmation. This program agreement, the applicable enrollment, the enrolled authorized user's order confirmation described in section 4 (How to confirm orders) above, and any documentation evidencing transfers of licenses as described in subsection 9(a) of this program agreement (How to transfer), together with originating purchase order to the reseller, will be the enrolled authorized user's evidence of all licenses obtained under its enrollment.

6. How to know what product use rights apply.

The product use rights applicable to products licensed under each enrollment are as follows.

a. **For latest versions available as of an enrollment effective date.** For the latest version of any product available on or before the enrollment effective date, the product use rights in effect on the enrollment effective date for that product and version apply.

b. **For versions and products that become available after an enrollment effective date.** For any version of any existing product, or any new product, first made available after the enrollment effective date, the product use rights in effect on the date on which the version or product first becomes available apply.

c. **For versions of a product that predate the latest version available as of an enrollment effective date.** If an enrolled authorized user is using a version of any product licensed under its enrollment that became available prior to the version that was current on the enrollment effective date, the enrolled authorized user's use of the earlier version will be governed by the

product use rights that would apply if the enrolled authorized user were using the version licensed under the enrollment, or in the case of Software Assurance or L&SA, the latest version that is or becomes available at any time during its enrollment.

d. Cross-language use rights. If an enrolled authorized user is using any different language version of any product licensed under its enrollment, the enrolled authorized user's use of the different language version will be governed by the product use rights for the version licensed under the enrollment.

e. Right to reassign Software Assurance coverage to replacement computers. An enrolled authorized user may reassign Software Assurance coverage ordered for an underlying desktop operating system product installed on one computer to a replacement computer so long as (i) that replacement computer is licensed to run the latest version of the desktop operating system available as of the date of the reassignment, and (ii) the enrolled authorized user removes from the original computer any desktop operating system upgrades that were installed under the transferred Software Assurance coverage. An enrolled authorized user may not otherwise separate Software Assurance coverage from the underlying license for which it is ordered.

f. Microsoft's commitment on use rights. We will not change an enrolled authorized user's product use rights for any version of a product after it becomes available to that enrolled authorized user under its enrollment.

g. Alternative product use rights for Academic Select enrollments. The following alternative product use rights apply solely with respect to Academic Select enrollments hereunder:

(i) **Deploying licenses in Academic settings.** For each copy of Microsoft Encarta Reference Suite, Microsoft Encarta Deluxe, any title from the Microsoft Mastering Series, Microsoft Visual Basic (Learning, Professional and Enterprise Editions), Microsoft Visual C++ (Standard, Professional and Enterprise Editions), Microsoft Visual FoxPro, Microsoft Visual J++ (Standard and Professional Editions), Microsoft Visual Studio (Professional and Enterprise Editions), Microsoft Office Developer and Microsoft Visual InterDev an enrolled eligible education authorized user licenses for instructional purposes in connection with a class or other educational program, the enrolled authorized user may, as an alternative to deploying the product pursuant to the licensing model described in the product use rights, either (i) permit an unlimited number of student users at its educational institution to run the product on a single computer or similar device, provided that all such users comply with all other terms of this agreement; or (ii) if the enrolled eligible education authorized user has licensed multiple copies of the product, then, at any time, its students or faculty may run as many copies of the product as it has licensed copies, provided that those users comply with all other terms of this program agreement. If the anticipated number of users of the product will exceed the number of copies the enrolled eligible education authorized user has licensed, it must have a reasonable mechanism or process in place to ensure that the number of persons running the product at any given point in time does not exceed the number of copies licensed.

(ii) **Deploying licenses in Per Mailbox Mode.** For each copy of Microsoft Exchange Server an enrolled eligible education authorized user licenses, it may, as an alternative to deploying the product pursuant to the licensing model described in the product use rights, use the product in "Per Mailbox Mode". Per Mailbox Mode requires the enrolled eligible education authorized user to dedicate one Microsoft Exchange Client Access License ("CAL") to each unique mailbox accessing or utilizing the services of Microsoft Exchange Server. If an enrolled authorized user chooses to deploy the product in Per Mailbox Mode, it may not later redeploy the product in Per Seat Mode. If an enrolled authorized user initially elects to deploy the product in the Per Seat Mode, it may transition one time only to the Per Mailbox Mode, but then this choice is permanent. Except as otherwise specified in this subsection (ii), all other terms and conditions governing use of the product in the Per Seat Mode govern use of the product in Per Mailbox Mode.

h. Use of redistributable code. In lieu of any obligation to indemnify us under various provisions of the product use rights, each enrolled authorized user, by enrolling hereunder, covenants and warrants that neither it, nor other authorized user which sublicenses from it, nor any employees or agents of it or its sublicensing authorized users, shall distribute any such redistributables to unaffiliated third parties, whether or not in conjunction with or as part of a software application product developed using any such redistributables.

7. Software Assurance Membership.

Each enrolled authorized user that commits to obtaining either L&SA or Software Assurance for all copies of all products licensed within a designated product pool throughout the term of its enrollment (including any renewal) qualifies for Software Assurance Membership. Membership may entitle the enrolled authorized user to special benefits. Enrolled authorized users that make the commitment for more than one pool may be entitled to further benefits. Each enrolled authorized user that elects to become a Software Assurance Member must indicate its selection of the Software Assurance Membership option, and the product pool(s) for which it is making the required commitment, on its enrollment. A description of Software Assurance Membership benefits and additional details are available from the enrolled authorized user's reseller or Microsoft account manager.

8. Making copies of software.

a. Copies necessary for internal deployment. Each enrolled authorized user may make as many copies of the products licensed as necessary to distribute the products to its users. Its users may include both employees and non-employee contract workers who perform work for the authorized user and run the applicable licenses on the authorized user's computers, exclusively for the benefit of the authorized user. All copies of any product must be true and complete copies (including copyright and trademark notices) and be made from CD-ROMs, disk sets or a network source, acquired from or made available by your reseller or a Microsoft approved fulfillment source for that product. Each enrolled authorized user may also have a third party make or distribute copies in its place, but the enrolled authorized user is responsible for third-party actions to the same extent it would be if the third party were its employee. You and your authorized users must make

reasonable efforts to make employees, agents and other individuals running a product aware that the product is licensed from us and may only be run or transferred subject to the terms of this agreement.

b. Copies for training, evaluation and back-up. During the term of its enrollment (including any renewal), each enrolled authorized user and any authorized user to which it sublicenses may (i) run up to 40 complimentary copies of any product in a dedicated training facility on their premises; (ii) run up to 10 complimentary copies of any product for a 60-day evaluation period; and (iii) make and retain one complimentary copy of any licensed product for back-up or archival purposes for each of their distinct geographic locations.

c. Re-imaging rights. If an enrolled authorized user or any authorized user to whom it sublicenses has licensed products from an original equipment manufacturer (OEM), through a retail source or under any Microsoft program other than this Select License program, it may use copies made from the media provided under the enrolled authorized user's enrollment in place of any copies made from the media provided through that separate source, so long as it complies with the following restrictions.

(i) The enrolled authorized user must have obtained a separate license from the separate source for each copy being replaced.

(ii) The product, language, version and all components (in the case of product suites, such as Office) of the copies made from the media provided under its enrollment must be identical to the product, language, version and all components of the copies they replace.

(iii) In the case of copies licensed from an original equipment manufacturer (OEM) or through a retail source, in addition to the other conditions outlined in this subsection 8(c), the product type (e.g. upgrade or full license) of the copies made from the media provided under its enrollment must be identical to the product type of the copies they replace. However, an enrolled authorized user may use copies of an operating system made from the media provided under its enrollment in place of copies of the same operating system obtained from a separate source, even though they may be of different types (i.e. one may be an upgrade and the other a full license), provided that the product, language and version are identical.

The use of any copies made under this subsection 8(c) is subject to the terms and use rights provided with the copies being replaced, and nothing in this subsection creates or extends any warranty or support obligation.

9. Transferring licenses.

a. How to transfer. Subject to the terms and conditions of Section 11(g) of this program agreement for Academic Select enrollments, an enrolled authorized user may transfer its perpetual licenses to an authorized user, or to an unaffiliated third party in connection with a reorganization, consolidation or privatization, as long as the enrolled authorized user provides prior written and signed notice, on a form that we provide, that includes: (i) the applicable enrollment number; (ii) the quantity of licenses being transferred by product and version; (iii) the name, address and contact information of the transferee; and (iv) any other information that we may reasonably request.

For all other transfers of licenses, our written consent is required. We will not withhold our consent unreasonably. No license transfer will be valid unless the transferee accepts in writing the applicable product use rights, use restrictions, limitations of liability, and the transfer restrictions of this section 9. Any transfer made in violation of the requirements or restrictions in this section will be void.

b. When transfers are not permitted. An enrolled authorized user may not transfer (i) licenses on a short-term basis, (ii) temporary rights to use products, (iii) Software Assurance coverage during the term of the enrollment under which it is ordered (except internally as permitted in subsection 6(e) of this program agreement (Right to reassign Software Assurance coverage to replacement computers)), (iv) perpetual licenses for any version of any product acquired through Software Assurance separately from the underlying perpetual licenses for which that Software Assurance coverage was ordered; (v) upgrade licenses for a desktop operating system product separately from the underlying operating system license or from the computer system on which the product was first installed; and (vi) Academic Licenses to entities other than eligible education authorized users.

10. Term, termination and renewal.

a. Term. This agreement will remain in effect for 36 full calendar months following the effective date unless it is renewed or terminated earlier as described below. All enrollments entered into under this agreement will expire or terminate upon the expiration or termination of this agreement, unless terminated earlier as described below.

b. Termination. 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, except as provided by the next paragraph, pay amounts owed.

If an authorized user is temporarily unable to pay an installment amount owed (other than the first such installment) for a product that is paid in installments because approved funds for such payment have not been appropriated, then such authorized user's enrollment shall not terminate, provided that (i) the authorized user notifies us and the reseller in writing of such temporary inability to pay; and (ii) payment of such installment amount (including any interest applicable pursuant to Article 11-A of the State Finance Law) is ultimately made within 60 days following passage of the subsequent New York State budget. If such amount is not ultimately paid within 60 days following passage of the subsequent New York State budget, then such authorized user's enrollment shall terminate immediately.

If we terminate the enrollments of three or more authorized users which are State Agencies under the control of the Chief Information Officer of the State of New York as a result of their uncured breach (but not pursuant to the terms and conditions of the preceding paragraph), then we may also terminate this program agreement and all other enrollments under it. If we terminate the enrollments of three or more authorized users which are not State Agencies (e.g. local governments and/or political subdivisions), then we may require that no other such non-State Agency authorized users be allowed to enroll. Except where the breach is by its nature not curable within 30 days, the terminating party must give the other party 30 days written notice and opportunity to cure prior to termination. If we give such notice to an enrolled authorized user, we will give OGS a copy of that notice as well. If an enrolled authorized user ceases to qualify as an authorized user, pursuant to the definition thereof, you must promptly notify us of this fact, and we may terminate its enrollment.

c. Effect of termination or expiration. Upon expiration or termination of this agreement or any enrollment, the enrolled authorized user must order licenses for all copies of products it or other authorized users to which it sublicenses have run under its enrollment for which the enrolled authorized user has not previously submitted an order. Except as provided in the next two paragraphs, in the event of termination all unpaid installments of the price for any licenses will immediately become due and payable, and the enrolled authorized user will be entitled to perpetual licenses only after all such payments have been made.

If (i) an enrolled authorized user terminates its enrollment as a result of our breach, or (ii) we terminate an enrolled authorized user's enrollment because it has ceased to be an authorized user, then the enrolled authorized user will have the following options. It may immediately pay the total remaining amount due, including all installments, in which case the enrolled authorized user will have perpetual licenses for all copies of the products it has ordered. As an alternative, it may pay only amounts due and payable as of the termination date, in which case the enrolled authorized user will have perpetual licenses for (i) all copies of all products for which payment has been made in full, and (ii) the number of copies of products for which payment has been made in installments that is proportional to the amount that has been paid as of the termination date.

If we terminate an enrollment pursuant to the terms and conditions of Section 10(b) of this program agreement, the enrolled authorized user will have perpetual licenses for (i) all copies of all products for which payment has been made in full, and (ii) the number of copies of products for which payment has been made in installments that is proportional to the amount that has been paid as of the date the unpaid installment payment was due, for the version of such products that was current as of such payment due date.

d. How to renew this agreement. We will provide OGS with 60 days prior written notice of expiration of the initial program agreement or renewal term, and advising OGS of its renewal options. Provided both that (i) this program agreement is not otherwise terminated early as provided above, and (ii) the Microsoft Custom License Agreement with which this program agreement is associated is not otherwise terminated early pursuant to the common terms and conditions, OGS may request that this program agreement may be extended for one or more successive terms of 12, 24, or 36 full calendar months. When you renew this program agreement all enrollments under this agreement are automatically renewed. We and our affiliates will not unreasonably refuse to renew this program agreement or reject any renewal order. We will not deny the first such request to extend this agreement for one 12-month or 24-month period, but we may reasonably deny any subsequent requests (or a request to extend for 36 months) in the event that we have significantly changed (or plan to change) the terms of the Microsoft Select license program and therefore choose not to continue licensing under the terms hereof for such longer (or additional) period, in which case we will work with OGS in good faith to negotiate the terms of a subsequent program agreement under which renewal orders may be placed. Perpetual licenses will be available for enrolled authorized users to purchase during any such period during which this agreement has been extended, but not necessarily pursuant to the terms of a subsequent program agreement under which renewal orders may be placed.

Placing renewal orders. If an enrolled authorized user wishes to renew Software Assurance for any copies previously covered under its enrollment, it must submit a renewal order for those copies for the entire renewal term within 90 days after the previous term expired. The effective date of such renewal order shall be the day following the expiration of the previous term. Upon renewal of this agreement, an enrolled authorized user will not be eligible to order Software Assurance coverage for any copies of any products for which it obtained only a License without first acquiring L&SA.

Consequences of non-renewal. If you elect not to renew this program agreement, or if an enrolled authorized user fails to renew Software Assurance coverage for any copies of any product licensed under an enrollment, and if the enrolled authorized user otherwise allows Software Assurance for those copies to lapse, then the enrolled authorized user will not be permitted to order Software Assurance for those copies later, but may order Software Assurance solely when combined with a new License by acquiring L&SA.

11. Miscellaneous.

a. Entire agreement. Except as provided below with respect to the Student select Enrollment, the terms and conditions of the following documents (i) constitute the entire agreement concerning the subject matter of this program agreement, (ii) supersede any prior or contemporaneous communications, and (iii) control in the following order:

(1) Appendix A, as further clarified by specific reference in the common terms and conditions; (2) the Cover Page to the Microsoft Custom License Agreement (including any amendments thereto); (3) the common terms and conditions of this Microsoft Custom License Agreement (including any amendments thereto); (4) these Microsoft Select Agreement Program Agreement terms and conditions (including any amendments thereto); (5) the Product List; (6) the product use rights; and (7) all other enrollments under this program agreement (including any amendments thereto).

In the event of a conflict between the terms and conditions of this Custom License Agreement and the terms and conditions of a Student Select Enrollment, the terms of such Student Select Enrollment shall control, except that the terms and conditions of Appendix A shall control in all cases. The terms of any purchase order or any general terms and conditions you or your authorized users maintain, other than those mandatory terms required by statute or regulation, do not apply. This program agreement (except the Product List and the product use rights) can be changed only by an amendment signed by both parties.

b. Survival. Provisions regarding product use rights, restrictions on use, evidence of perpetual licenses, transfer of licenses, warranties, limitations of liability, confidentiality, compliance verification and obligations on termination or expiration will survive termination or expiration of this program agreement or any enrollment.

c. Independent contractors. Resellers are independent contractors who act in their own name and for their own account; they have no authority to bind or impose any obligation or liability upon us.

d. Home use. For the purposes of this Section 11(d), the following additional definitions shall apply:

"at-work computer" means a computer or other similar device which is owned or leased by you or an authorized user and which is normally located on your or your authorized user's premises;

"disabled user" means a person, who is employed by you or an authorized user, and who has a disability, as "disability" is defined by the Americans with Disabilities Act;

"employee-owned home computer" means a computer or other similar device that is owned or leased by an employee of you or an authorized user, and which is located at the home of such employee;

"employer-owned home computer" means a computer or other similar device which is owned or leased by you or an authorized user, but which is located at the home of an your or such authorized user's employee;

"non-disabled user" means any person, who is employed by you or an authorized user, other than a disabled user; and

"primary user" means, with respect to a computer or similar device, a person who uses such device more than fifty percent (50%) of the total time such computer or similar device is in use.

The following shall apply with respect to this program agreement, in addition to any other secondary use rights set forth in the Product Use Rights:

(i) Except as provided by the following sentence, a disabled user who is the primary user of an at-work computer for which a license for a product has been obtained hereunder; and who is unable, because of his or her disability, to operate a portable computer, and who would otherwise be issued a portable computer (as demonstrated by his or her employer's provision of portable computers to other non-disabled employees of equivalent positions), may run, on his or her employer-owned home computer, a second copy of any such product for which a valid license was obtained hereunder for his or her at-work computer;

(ii) Both disabled users and non-disabled users who are the primary users of an at-work computer for which a license for either Microsoft Office or Microsoft Office Professional has been obtained hereunder on or before to October 31, 2004 (but not thereafter) may run, on either such employee's employer-owned home computer or employee-owned home computer, a second copy of such software (a "secondary copy") for his or her exclusive use on such home computer; provided, however, that the total number of secondary copies made by such employees does not exceed the total number of licenses for such product acquired by the enrolled authorized user which is his or her employer. The provisions of this paragraph (i) shall not apply to such desktop operating system upgrades or Software Assurance purchased hereunder, and (ii) do not apply to Academic Select Enrollments hereunder, for which certain home use is provided pursuant to Section 11(g) of this program agreement;

(iii) Either a disabled user or a non-disabled user may, if such user does <u>not</u> otherwise qualify for home use rights pursuant to Sections 11(d)(i) and 11(d)(ii), run a product on a employer-owned home computer, provided that their employer purchases a separate license for such product for such user's exclusive use on such employer-owned home computer; and

(iv) Nothing in this Section 11(d) shall be construed to negate any other secondary use right set forth in the applicable Product Use Rights.

e. Determination of price levels.

(1) For standard Microsoft Select licenses. The following terms and conditions of this Section 11(e)(1) shall apply only to licenses purchased pursuant to standard Select enrollments:

In recognition of the number of qualified desktops enrolled in Enterprise Enrollments pursuant to the State's Enterprise Agreement Programs, you will not be subject to forecast checks or releveling during the initial term hereof, and the following shall apply for each product pool:

A. Until October 31, 2003, we will charge your reseller a price for each standard Select license ordered hereunder that is equal to the then-current Level D reseller price, minus two percent (2%);

B. Beginning November 1, 2003, we will charge your reseller a price for each standard Select license ordered hereunder that is based on the then-current Level D reseller price, with no additional discount; and

C. In the event that (i) the parties agree to renew this program agreement pursuant to Selection 10(d); and (ii) at such time of renewal the State has fewer than 15,000 qualified desktops enrolled in one or more product families pursuant to its unexpired Enterprise Enrollments; then as a condition of such renewal we may require that this program agreement be amended to add a forecast requirement in order to determine the volume discount level for the product pools which correspond to the product families under which fewer than 15,000 qualified desktops are enrolled.

(2) For academic Microsoft Select licenses. The following terms and conditions of this Section 11(e)(2) shall apply only to licenses purchased pursuant to academic Select enrollments:

A. There is only one level (academic level A) provided for Academic Select licenses; and

B. For each product ("qualifying product") that an enrolled authorized user, on a single purchase order which must be submitted to its reseller within 10 days following the effective date of its academic Select enrollment, chooses to purchase License & Software Assurance for all of its qualified desktops and the qualified desktops of the authorized users (if any) to which it sublicenses, we will (i) discount the reference price of such qualifying product to an amount that is 10% below the then-current academic level A reference price; and (ii) thereafter, through the expiration or termination of such enrollment, discount the reference price of subsequent purchases of License and Software Assurance for such product to an amount that is 10% below the academic level A reference price in effect as of the date of each such purchase. Such discount shall not apply to (a) purchases of License without Software Assurance; (b) to renewal purchases of Software Assurance only; or (c) to purchases of any product not designated on such enrollment as a qualifying product. As a condition of obtaining such discounted reference price for qualifying products, each such enrolled authorized user that chooses to make such a discounted purchase will be required, on its academic Select enrollment, to

(i) certify and warrant the total number of qualified desktops that both it and the authorized users to which it sublicenses (if any) possess as of the effective date of its enrollment;

(ii) list the names of the authorized users (if any) to which it sublicenses products; and

(iii) represent and warrant that it will not sublicense qualifying products purchased pursuant to its enrollment to any authorized users other than those (if any) it has listed on its enrollment (and for which it has purchased the applicable qualifying products for each of their qualified desktops).

f. Pricing for Work At Home licenses. For all Work At Home licenses that are listed on the Product List, the following shall apply:

In the event that you or one of your authorized users notifies Microsoft in writing that the Estimated Retail Price for such Work At Home License has changed such that it is less than 25% below the Select reference price for a standard license for the product to which the Work At Home license applies, then we agree that we will adjust such Select reference price for such Work At Home license to be 25% below the then-current Select reference price for such standard license. Such adjustment shall not apply retroactively to any purchases made under this agreement earlier than fifteen (15) business days following such written notice. In the event that, following such adjustment, Microsoft changes the Select reference price of such standard license, then the Select reference price of the corresponding Work At Home license shall also change proportionately. Microsoft reserves the right to discontinue offering Work At Home licenses

g. Special terms for Academic Select enrollments. The following shall apply solely with respect to Academic Select enrollments hereunder:

(i) **Use and benefit.** Products licensed under Academic Select enrollments may be used only by and for the benefit of an eligible education authorized user, and may not be transferred, sublicensed, rented, leased or loaned to any person or entity that is not an eligible education authorized user. Client Access Licenses that eligible education authorized users acquire solely to enable their students to access their servers are, for purposes of this restriction, deemed to be "used by and for the benefit of an eligible education authorized user."

(ii) Work at home product use rights. For each copy of Microsoft Office Standard and Microsoft Office Professional an enrolled authorized user licenses, any of its faculty, staff or other employee users (but not any student user who is not also an employee user) of the computer or similar device on or from which such product is run may also run a second copy, during the term of this agreement (including any renewals) for work-related purposes only, from either a laptop or desktop computer that he or she owns or leases.

For each copy of (i) Microsoft Windows 2000 Professional or Terminal Services Client Access License and (ii) Windows 2000 Server Client Access License or Microsoft BackOffice Server 2000 Client Access License, or their successor products, an enrolled authorized user licenses, any of its faculty, staff or other employee users (but not any student user who is not also an employee user) of the computer or similar device on or from which such product is run may also access the Terminal Services of a Windows 2000 Server, Terminal Server Edition during the term of this agreement for work-related purposes only, from either a laptop or desktop computer that he or she owns or leases.

Each enrolled authorized user and other authorized users who sublicense from it must make reasonable efforts to ensure that faculty, staff or other employee users delete and remove such copies from the temporary memory (RAM) and permanent memory (e.g. hard disk) of their computers at the end of the term of this agreement.

h. **Minimum points per enrollment.** Except as provided by the following sentence, each enrolled authorized user shall be required to purchase 750 points during the term of its enrollment. This minimum shall be waived in the event that we and the enrolled authorized user agree, by written amendment, that the enrolled authorized user shall forego receipt of free CD ROMs.

Schedule A To Microsoft Select Agreement Program Agreement

Microsoft Qualified Educational User Definition (US Only)

All Microsoft eligible education authorized users must be located or reside in the United States[1]. The following are eligible to acquire Microsoft Academic Edition (AE) products in the programs indicated and are defined as qualified educational users:

	QUALIFIED EDUCATIONAL USERS:	ELIGIBLE PROGRAMS:
A)	**Educational Institutions** Defined as an accredited K-12 education institution or higher education institution organized and operated exclusively for purpose of teaching its students. An accredited institution must be: **1.** A public or private K-12, vocational school, correspondence school, junior college, college, university, or scientific or technical school meeting all of the following criteria: (i) organized and operated exclusively for purpose of teaching its K-12 or higher education students; and (ii) institutionally accredited by a Regional Institutional Accrediting Agency recognized by the U.S. Secretary of Education. Note: Accreditation by a National Institutional and Specialized Accrediting Body alone does not qualify an end user as a qualified educational user. **OR** **2.** An accredited preschool meeting all of the following criteria: (i) is an early childhood program that serves a minimum of ten children between two and five years of age; (ii) has been in operation for at least one year; (iii) provides educational services, and (iv) is incorporated for the purpose of providing education services to children between two and five years of age**.**	AE Full Packaged Product Academic Open Academic Select Campus Agreement (Higher Ed Only) School Agreement (K12 Ed Only)
B)	**Administrative Offices or Boards of Education of Educational Institutions** Defined as district, regional and state administrative offices of the Educational Institutions defined in Section A above.	AE Full Packaged Product Academic Open Academic Select Campus Agreement (Higher Ed Only) School Agreement (K12 Ed Only)
C)	**Full and Part Time Faculty and Staff of Educational Institutions** Defined as all full and part time faculty and staff of Educational Institutions defined in Section A above.	AE Full Packaged Product Only
D)	Full and Part Time Students of Higher Education Institutions Defined as full and part time students of a higher education institution defined as a public or private, vocational school, correspondence school, junior college, college, university, or scientific or technical institution meeting all criteria defined in Section A (1) above. **Full and Part Time Students of K-12 are NOT Qualified Educational Users**.	AE Full Packaged Product Only
E)	**Public Libraries** Must meet all of the following criteria: (i) provide general library services without charge to all residents of a given community, district or region; (ii) are supported by public or private funds; (iii) make its basic collections and basic services available to the population of its legal service area without charges to individual users, but may impose charges on users outside its legal service area; and (iv) may or may not provide the products and services, beyond its basic services, to the public at large with or without individual charges.	AE Full Packaged Product Academic Open Academic Select
F)	**Public Museums** Must meet all the following criteria: (i) are a public or private agency or institution organized on a permanent basis for essentially education or aesthetic purposes; (ii) utilize a professional staff; and (iii) own or utilize tangible objects, care for them and exhibit them to the public on a regular basis.	AE Full Packaged Product Academic Open Academic Select

[1] All United States territories such as Puerto Rico, Guam, Virgin Islands are not eligible under this definition.

Special note regarding Hospitals, Healthcare Systems and Research Laboratories:

Hospitals, Healthcare Systems and Research Laboratories (including independent Research Laboratories or Research Laboratories affiliated with the Department of Defense or the Department of Energy) are NOT eligible to acquire AE products unless they are wholly owned and operated by a qualified Educational Institution as defined above in Section A. "Wholly owned and operated" means that the Educational Institution is the sole owner of said hospital, healthcare system or research laboratory and the only entity exercising control over the hospital's day-to-day operations. Additional information on determining if an entity is wholly owned and operated by an Educational Institution can be found at: http://www.microsoft.com/education/downloads/licensing/HospitalDefinition.doc

Microsoft Enterprise Agreement
Program Agreement Terms and Conditions

The following terms and conditions of the Microsoft Enterprise Agreement Program Agreement shall apply solely with respect to applicable enterprise enrollments:

1. Definitions.

In addition to the definitions in Section 1 of the common terms and conditions, the following definitions apply solely with respect to the Microsoft Enterprise Agreement Program Agreement:

"1st anniversary price level" means the volume discount level that is calculated for each product family with respect to certain enrollments pursuant to the terms and conditions of Section 12(d)(2)(F) of this program agreement, which such level shall be used in conjunction with the initial price level and 2nd anniversary price level applicable to such enrollments to determine whether the year 3 desktop reference price should be lowered for such enrollments pursuant to the terms and conditions of Section 12(d)(2)(G) of this program agreement;

"2nd anniversary price level" means the volume discount level that is calculated for each product family with respect to certain enrollments pursuant to the terms and conditions of Section 12(d)(2)(F) of this program agreement, which such level shall be used in conjunction with the initial price level and 1st anniversary price level applicable to such enrollments to determine whether the year 3 desktop reference price should be lowered for such enrollments pursuant to the terms and conditions of Section 12(d)(2)(G) of this program agreement;

"3-year desktop reference price" means, with respect to an enterprise product on an enrollment, the sum of the reference prices of all installment payments for such product during the initial 3-year term of such enrollment;

"additional product" means any product other than an enterprise product that an enrolled authorized user chooses to license under its enrollment;

"adjustment multiplier" means, with respect to a product family on the second anniversary of the effective date of an enrollment for which it is determined, a number by which the originally calculated year 3 desktop reference price is multiplied in order to determine the adjusted year 3 desktop reference price, pursuant to the terms and conditions of Section 12(d)(2)(G) of this program agreement;

"aggregate family desktop count" means, with respect to a particular product family as of a particular annual pricing date, the aggregate number of qualified desktops under all unexpired enrollments for which one or more products in such family are chosen as enterprise products as of such date, including both (i) the original qualified desktops ordered under such unexpired enrollments, plus (ii) any additional qualified desktops added pursuant to true up orders, plus (iii) any additional "education equivalent qualified desktops" added to such number pursuant to the terms and conditions of Section 12(d)(2)(H) of this program agreement;

"annual pricing date" means each of the following:

(i) the effective date of this program agreement (the "first annual pricing date");

(ii) the first day of the eleventh (11th) full calendar month following such first annual pricing date (the "second annual pricing date"); and

(iii) the first day of the calendar month that occurs every 12 months following the second annual pricing date, until the last enrollment executed hereunder expires or is otherwise terminated.

For example, if the first annual pricing date is May 1, 2003, then the second annual pricing date shall be April 1, 2004, and each subsequent annual pricing date shall occur on April 1 of each successive calendar year until the last enrollment hereunder expires or is otherwise terminated;

"annual price level" means, with respect to a particular product family and as of a particular annual pricing period, the volume discount level, determined based on the aggregate family desktop count for such family pursuant to the terms and conditions of Section 12(d) of this program agreement, by which each of the following shall be determined, based upon the aggregate family desktop count for such product family as of the annual pricing date upon which such the determination of such level for such period is made:

(i) the initial annual reference prices of enterprise products in such product family for new enrollments with effective dates which occur in such annual pricing period;

(ii) the 1st anniversary and 2nd anniversary price levels for certain enrollments; and

(iii) the adjustment multiplier with respect to the year 3 desktop reference price for enterprise products in such product family for previously-executed enrollments whose second anniversary falls in such annual pricing period;

"annual pricing period" means each period which:

(i) begins on the first annual pricing date, or any anniversary thereof; and

(ii) ends twelve (12) full calendar months following the day it begins.

For example, if the first annual pricing date is May 1, 2003, then: the first annual pricing period will run from May 1, 2003 to April 30, 2004; the second annual pricing period will run from May 1, 2004 to April 30, 2005; and so forth.

Note that, with the exception of the first annual pricing period, each annual pricing period begins one month following the annual pricing date upon which the annual price level for such period is determined pursuant to Section 12(d) of this program agreement. Such one-month period is necessary for us to calculate the annual price levels and reference prices for the subsequent annual pricing period, and to implement adjustments, if any, to the reference prices of year 3 desktop reference prices for enrollments whose second anniversary falls in such subsequent period.

"CAL family" means any of the following client access license ("CAL") products, when such products are chosen as enterprise products on an enrollment hereunder:

(i) Microsoft BackOffice CAL;

(ii) Microsoft Core CAL;

(iii) Microsoft Windows Server CAL;

(iv) Microsoft Exchange Server CAL;

(v) Microsoft SQL Server CAL;

(vi) Microsoft Systems Management Server CAL; or

(vii) Microsoft SharePoint Portal Server CAL;

"Campus Agreement" means a Microsoft Campus Agreement;

"component platform product" means any of the following enterprise products:

(i) Microsoft Office Professional;

(ii) Microsoft Office Standard;

(iii) Microsoft Windows XP Professional Operating System Upgrades;

(iv) Microsoft Core CAL; and

(v) Microsoft BackOffice CAL;

"education equivalent qualified desktop" means, with respect to a product family as of an annual pricing date, a number that shall be included in the calculation of the aggregate family desktop count for such family as of such date, based upon the number of FTEs enrolled in unexpired subscription order forms pursuant to Campus Agreements, pursuant to the terms and conditions of Section 12(d)(2)(H) of this program agreement;

"ending price level" means, with respect to an enterprise product ordered pursuant to a particular enrollment, the volume discount level that is used to determine the adjustment multipliers applied to apply to the year 3 desktop reference price, pursuant to the terms and conditions of Subsection 12(d)(2)(G) of this program agreement.

"enterprise" means the enrolled authorized user and the authorized users it chooses on its enrollment to include in its enterprise;

"Enterprise agreement number" means the agreement number we assign, on the cover page above, to this program agreement for the purpose of associating enrollments herewith.

"enterprise product" means any product that we designate as an enterprise product and that an enrolled authorized user chooses to license under its enrollment (enterprise products may only be licensed on an enterprise-wide basis under the Enterprise Agreement program);

"Government EA Price List" means the Microsoft State and Local Government Enterprise Agreement Price List that is provided on a monthly basis to each reseller, which contains the standard reference prices for both enterprise products and additional products;

"horizon desktop count" means, with respect to a product family on an annual pricing date, the number of qualified desktops that is equal to (i) the total number of qualified desktops enrolled, as of such annual pricing date, in unexpired enterprise enrollments containing an enterprise product belonging to such product family ("current enrollments"), minus (ii) the number of qualified desktops enrolled under such current enrollments that are scheduled to expire before the following annual pricing date, if such enrollments are not otherwise renewed. For example, if, as of a particular annual pricing date, there are 100,000 qualified desktops in unexpired enterprise enrollments for a product family, and if one or more such enrollments containing a total of 35,000 qualified desktops will expire before the following annual pricing date if not otherwise renewed, then the horizon desktop count with respect to the annual pricing date and product family for which the determination is made shall be 65,000;

"horizon price level" means, with respect to a product family during an annual pricing period, the volume discount level that is used to determine the 3-year desktop reference price of each enterprise product in such product family for enrollments whose effective dates fall during such period, based on the horizon desktop count, pursuant to the terms of Section 12(d)(2)(A) of this program agreement;

"initial desktop count" means, with respect to a product family in which an enterprise product on an enrollment is included, the aggregate family desktop count for such product family as of the annual pricing date which immediately precedes the annual pricing period during which the effective date of such enrollment occurs;

"initial price level" means, with respect to a product family during an annual pricing period, the volume discount level that is used to determine the year 1 desktop reference price and year 2 desktop reference price of each enterprise product in such product family, pursuant to the terms of Section 12(d)(2)(B) of this program agreement;

"License" means any one of those offerings identified in the Product List (including standard licenses, and upgrades for desktop operating systems) that provides the right to run the version of the product for which it is ordered;

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

"Microsoft BackOffice Client Access License" and "BackOffice CAL" means each of the following client access license products, when purchased together as a suite:

(i) Windows CAL;

(ii) Exchange CAL;

(iii) SQL CAL; and

(iv) SMS CAL

"Microsoft Core Client Access License" and "Core CAL" means each of the following client access license products, when purchased together as a suite:

(i) Windows CAL;

(ii) Exchange CAL;

(iii) SharePoint CAL; and

(iv) SMS CAL;

"non-renewal enrollment" means any enrollment executed hereunder that is not a renewal enrollment;

"Office family" means either of the following enterprise products: (i) Microsoft Office Professional; or (ii) Microsoft Office Standard;

"order" means an order on a form that is acceptable to the reseller;

"platform discount" means a discount factor applied when calculating the reference prices for products sold pursuant to platform enrollments, pursuant to the terms of Section 12(d) of this program agreement;

"platform enrollment" means any enrollment executed hereunder for which <u>each</u> of the following is a chosen enterprise product:

(i) either (a) Office Standard or (b) Office Professional; and

(ii) Microsoft Windows Professional desktop operating system; and

(iii) either (c) BackOffice CAL or (d) Core CAL;

"premium level discount" means a discount factor applied when calculating the reference prices for products during an annual pricing period for which the initial desktop count and/or horizon desktop count are 40,000 or more, pursuant to the terms of Section 12(d) of this program agreement;

"product family" means any of the following collections of enterprise products, as defined herein: (i) Office family; (ii) Windows family; and/or (iii) CAL family;

"qualified desktop" means any personal desktop computer, portable computer, workstation or similar device that is used by or for the benefit of an enrolled authorized user or any authorized user included in its enterprise (collectively, "included authorized users"), including those devices that are provided for use in an included authorized user's employee's home, pursuant to the Americans with Disabilities Act, and that meets the minimum requirements for running any of the enterprise products. Qualified desktops do not include: (i) any computer that is designated as a server and not used as a personal computer, (ii) any system dedicated to run ONLY line-of-business software (e.g., an accounting or bookkeeping program used by an accountant, or a computer-aided design program used by an engineer or architect); or (iii) any system running an embedded operating system (e.g. Windows 9.x for embedded, Windows XP embedded);

"renewal enrollment" means an enrollment executed hereunder pursuant to which a renewal order for enterprise products is made;

"renewal order" means the order that an enrolled authorized user submits at the beginning of any renewal term to renew Software Assurance coverage for products previously ordered under its enrollment;

"reseller" means a large account reseller authorized by us to resell licenses in an enrolled authorized user's area under the Enterprise Agreement program; and

"Select Price List" means the Microsoft Select Agreement Price List that is provided on a monthly basis to each reseller, which contains the reference prices for products made available pursuant to the Microsoft select program (herein, "Select reference prices");

"Software Assurance" means, for any underlying licensed product for which it is ordered, the right to upgrade to, and run, the latest version of that product that we make available during the covered period. Other than the cost of Software Assurance, the costs of the

underlying license(s), and the costs (if any) which may be assessed for installation media, no additional fees will be charged for such right.

"true up desktop reference price" means, with respect to an enterprise product at the first, second or third anniversaries of an enrollment, respectively, the per-additional-desktop unit reference price for the true up order due within 30 days following such anniversary, as determined at the effective date of such enrollment pursuant to Section 12(d) of this program agreement;

"unexpired enrollment" means, with respect to an annual pricing date, an enterprise enrollment under either (i) this program agreement; or (ii) another Microsoft Enterprise Agreement to which either you or one of your authorized users is party, provided that such enrollment shall not have expired or been terminated prior to such annual pricing date;

"Windows family" means the following enterprise product: Microsoft Windows XP Professional desktop operating system (or its successor);

"year 1 desktop reference price" means, with respect to an enterprise product on an enrollment, the per-desktop reference price that applies to the first of three annual installment payments for such product;

"year 2 desktop reference price" means, with respect to an enterprise product on an enrollment, the per-desktop reference price that applies to the second of three annual installment payments for such product; and

"year 3 desktop reference price" means, with respect to an enterprise product on an enrollment, the per-desktop reference price that applies to the third of three annual installment payments for such product.

2. How the Microsoft Enterprise Agreement program works.

The Enterprise Agreement license program gives customers that wish to license one or more of Microsoft's platform products across their enterprise the means to ensure that their entire enterprise will be licensed. You and your authorized users can participate in this program by submitting one or more enrollments under this agreement. On the enrollment, the enrolled authorized user will designate the scope of its enterprise and make the initial selection of enterprise products and any additional products it wishes to license. Each enrollment must include at least one of those products that we make available to license as an enterprise product. We may choose to accept an enrollment, or may reject it for bona fide commercial reasons. We will not unreasonably refuse to accept an enrollment.

a. **Establishing price levels.** The method by which price levels are determined is set forth in Section 12(d) of this program agreement.

b. **Deriving prices from price levels.** The enrolled authorized user's reference prices shall be determined as set forth in Section 12(d) of this program agreement.

c. **How your enrolled authorized users acquire licenses.** Depending on your procurement policies and procedures, an enrolled authorized user may acquire its licenses by executing an enrollment under which it acquires its licenses through its chosen reseller. Orders will be made out to and submitted to the enrolled authorized user's reseller. We will invoice that reseller according to the terms in the applicable enrollment. While such enrollment will contain reference prices, the reseller and the enrolled authorized user will determine the enrolled authorized user's actual price and payment terms.

d. **Choosing and maintaining a reseller.** Each enrolled authorized user that signs an enrollment must choose and maintain a reseller in the enrolled authorized user's area. Enrolled authorized users agree (i) to accept OGS's choice of reseller when executing enrollments hereunder, and (ii) to change resellers, subject to the terms of the following paragraph, upon receipt of written notice from OGS instructing them to do so. Resellers are authorized to resell our product licenses, but act independently and have no authority to bind us.

e. **Change of reseller.** If an entity ceases to be a reseller, we will notify the enrolled authorized user in writing of such event, and the enrolled authorized user must choose a replacement within 90 days following its receipt of such notice. To change a reseller, the enrolled authorized user must notify us and the former reseller in writing, on a form that we provide, at least 30 days prior to the anniversary on which the change is to take effect. Such change of reseller will be effected 30 days following the former reseller's receipt of such notice (the "change date"), and any installments or true up orders that are due prior to such change date shall be owed by the enrolled authorized user to the former reseller. For the purposes of determining when an installment or true up is due, the terms of the applicable enrollment shall control, notwithstanding the payment terms the former reseller provided to the enrolled authorized user. In the case of a change of reseller, the enrolled authorized user is responsible for ensuring that all its obligations to the former reseller are met.

   We do not anticipate any change in our policy to sell enterprise enrollments to State and local governments through resellers, rather than directly to such government customers. In the unlikely event that such policy changes, (i) we will agree to allow resellers to fulfill their obligations though the remaining term of each enrollment that was executed prior to such change in policy; and (ii) the parties agree to work in good faith to modify this program agreement to accommodate such changed policy with respect to enrollments executed after such change in policy.

f. **Reporting country of use.** On each order (initial, subsequent, true up or renewal), an enrolled authorized user must report to us:

   - **For enterprise products** – the countries where its qualified desktops covered by that order are located and the approximate number of such qualified desktops in each of those countries, and

- **For additional products** – the countries where the enrolled authorized user or its included authorized users run those copies of the additional products covered by that order and the approximate number of copies run in each of those countries.

This information is for our internal use only and does not change the prices we provide for the products licensed under this program agreement.

3. How to order enterprise product licenses.

a. Placing the initial order. Each enrolled authorized user must submit an initial order for the enterprise products it selects on its enrollment. Except as provided in the following paragraph, the order must be for L&SA for all enterprise products.

When is the enrolled authorized user eligible to order only Software Assurance for an enterprise product? An enrolled authorized user may order Software Assurance for the enterprise products it selects without the need to simultaneously order a License if the enrolled authorized user or any of the included authorized users in its enterprise have obtained perpetual licenses for that product on an enterprise-wide basis (specifically, perpetual licenses for 100% of the authorized user's qualified desktops) under a previous "Enterprise Enrollment" (defined below), and the new enrollment becomes effective no later than the day following the date of expiration of that "Enterprise Enrollment." The Software Assurance order must be for the number of qualified desktops covered as of the expiration of that "Enterprise Enrollment." For all other qualified desktops included in an enrollment submitted under this agreement, the enrolled authorized user must order L&SA.

The term "Enterprise Enrollment," as used in this section 3, means (i) a Microsoft Enterprise Select Agreement; (ii) an enterprise enrollment under a separate Microsoft Select Master Agreement or Microsoft Enterprise Agreement; (iii) any enterprise subscription enrollment entered into under a separate Microsoft Enterprise Subscription Agreement; or (iv) any other enrollment submitted under this Microsoft Enterprise Agreement program agreement.

b. Adding new enterprise products. An enrolled authorized user may only add new enterprise products by entering into a new enrollment.

c. Placing annual "true up" orders to account for additional desktops. Each enrolled authorized user must determine the current number of qualified desktops in its enterprise: (i) at each anniversary of the effective date of its enrollment (including anniversaries during any renewal); and, (ii) at the expiration or early termination of its enrollment.

- **If the desktop count has increased.** If the number of qualified desktops has increased, the enrolled authorized user must submit an order for L&SA covering those additional desktops. The enrolled authorized user must place the order within 30 days following the anniversary of the enrollment effective date, expiration or termination.
- **If the desktop count has not increased.** If the number has not increased, the enrolled authorized user must submit an update statement confirming this fact on the form we provide within that 30-day period.

We agree that we will take commercially reasonable steps to provide each enrolled authorized user with written notice that a true up order (or statement that the desktop count has not increased) is approaching. Such notice will be sent at least 15 days prior to the applicable anniversary after which such order or statement shall be due. In the event that we fail to send such notice at least 15 days prior to such anniversary, then the 30-day period set forth above in this Section 3(c) shall be extended to become 45 days following the enrolled authorized user's receipt of such notice. Such notice may come either from us or from the reseller on our behalf, and may be in the form of either an email message or a letter delivered by courier, at our discretion,

d. Reorganizations, Consolidations, and Privatizations. If the number of qualified desktops in an enterprise changes by more than ten percent as a result of a reorganization, consolidation or privatization, we will work with the enrolled authorized user in good faith to determine how to accommodate its changed circumstances in the context of this program agreement. If an enrolled authorized user consolidates with a customer with an existing "Enterprise Enrollment," we will work with the enrolled authorized user in good faith to accommodate its changed circumstances in the context of this agreement.

If the number of desktops in an enterprise is reduced by more than ten percent, then we will issue a number of perpetual licenses, equal to the number of qualified desktops that were eliminated from the enterprise, for the then-current version of each enterprise product on the applicable enrollment, provided that the enrolled authorized user immediately pays all remaining installment payments for such qualified desktops.

4. How to order additional product licenses.

a. Placing the initial order. Each enrolled authorized user must submit an initial order for the additional products it has selected, if any, on its enrollment. Except as provided in the following paragraph, the order must be for L&SA for all copies of those additional products.

When is the enrolled authorized user eligible to order only Software Assurance for an additional product? An enrolled authorized user may order Software Assurance for additional products it selects without the need to simultaneously order a License if the enrolled authorized user or any of the authorized users it includes in its enterprise has obtained perpetual licenses for those products with Upgrade Advantage, Software Assurance or any similar upgrade protection, and the new enrollment becomes effective no later than one day following the expiration of that upgrade protection. The order may be for up to the number of copies covered by such upgrade protection. An enrolled authorized user may also order

Software Assurance alone in any other circumstances expressly permitted in the Product List. For all other copies included in an enrollment submitted under this program agreement, the enrolled authorized user must order L&SA.

b. Adding new additional products not previously ordered. Each enrolled authorized user may, during the remainder of the applicable initial enrollment or renewal term, run new additional products under its enrollment that were not part of the initial order. To do so, the enrolled authorized user must order L&SA in the month in which the product is first run, covering all copies of that product run as of the date of the order. For any additional copies of that product run after the date of that order, the enrolled authorized user must submit orders as described in subsection 4(c) of this program agreement (Placing annual "true up" orders to account for additional copies) below.

c. Placing annual "true up" orders to account for additional copies. Each enrolled authorized user may, during the remainder of the applicable initial enrollment or renewal term, run additional copies of those additional products it previously ordered under subsections (a) and (b), provided that the enrolled authorized user places a true up order for L&SA for those additional copies. The enrolled authorized user must submit an order within 15 days after the next anniversary of the effective date of the enrollment (including anniversaries occurring during any renewal) following the date on which those copies were first run. For additional copies first run in the year in which an enrollment expires or is terminated, the enrolled authorized user must submit an order within 15 days following the expiration or termination date.

d. Update statements. Each enrolled authorized user must submit an update statement within 15 days following each anniversary of the effective date of its enrollment, and after expiration or termination of its enrollment, on a form we provide, unless that enrolled authorized user (i) is running only enterprise products under its enrollment, and (ii) it is not otherwise required to submit an update statement under subsection 3(c) (Placing "true up" orders to account for additional desktops) above.

***5.* How to confirm orders.**

We will publish information about orders placed by each enrolled authorized user, including an electronic confirmation of each order, on a secure site on the World Wide Web at **http://licensing.microsoft.com** or a successor site that we identify.

6. License grant – what your enrolled authorized users are licensed to run.

Upon our acceptance of the enrollment, the enrolled authorized user has the following rights during the term of its enrollment.

- **For enterprise products.** The enrolled authorized user may run one copy of the latest version (or any prior version) of each enterprise product, on each qualified desktop. By including other authorized users in its enterprise, the enrolled authorized user sublicenses this right to each of them subject to the terms of this program agreement.
- **For additional products.** The enrolled authorized user may run the number of copies of each additional product ordered in the latest version (or any prior version). If an authorized user included in any enrolled authorized user's enterprise runs any copies of an additional product under this agreement, those copies are sublicensed from that enrolled authorized user subject to the terms of this program agreement.

The right to run any product licensed under an enrollment is temporary until:

(i) the enrolled authorized user has paid all installments of the price for that product license and the applicable initial enrollment or renewal term during which that product license was ordered has expired or been renewed, or

(ii) the enrolled authorized user is otherwise entitled to perpetual licenses upon early termination as provided in subsection 11(c) of this program agreement (Termination of an enrollment).

Thereafter, the enrolled authorized user will have perpetual licenses to run the latest version available as of such date of expiration, renewal or termination (or any prior version), of each enterprise product in a number of copies equal to the total number of qualified desktops covered by the enrollment; and each additional product in the number of copies ordered during the applicable initial enrollment term or renewal term. In the case of early termination as provided in subsection 11(c) of this program agreement (Termination of an enrollment), if an enrolled authorized user chooses only to pay amounts due and payable as of the termination date, then the enrolled authorized user will instead have perpetual licenses for the number of copies specified in subsection 11(d) of this program agreement (Effect of termination or expiration).

Any perpetual licenses received through Software Assurance supersede and replace the underlying perpetual licenses for which that Software Assurance coverage was ordered. All perpetual licenses acquired under this program agreement remain subject to the terms of this program agreement and the applicable product use rights.

License Confirmation. This program agreement, the applicable enrollment, the enrolled authorized user's order confirmation described in section 5 (How to confirm orders) above, and any documentation evidencing transfers of licenses as described in subsection 10(a) of this program agreement (How to transfer), together with originating purchase order to the reseller, will be the enrolled authorized user's evidence of all licenses obtained under its enrollment.

7. How to know what product use rights apply.

The product use rights applicable to products licensed under each enrollment are as follows.

a. For latest versions available as of an enrollment effective date. For the latest version of any product available on or before the enrollment effective date, the product use rights in effect on the enrollment effective date for that product and version apply.

b. **For versions and products that become available after an enrollment effective date.** For any version of any existing product, or any new product, first made available after the enrollment effective date, the product use rights in effect on the date on which the version or product first becomes available apply (subject to our commitment on use rights below).

c. **For versions of a product that predate the latest version available as of an enrollment effective date.** If an enrolled authorized user is using a version of any product licensed under its enrollment that became available prior to the version that was current on the enrollment effective date, the enrolled authorized user's use of the earlier version will be governed by the product use rights that would apply if the enrolled authorized user were using the version licensed under the enrollment, or in the case of Software Assurance or L&SA, the latest version that is or becomes available at any time during its enrollment.

d. **Microsoft's commitment on use rights.**

For all products – use rights fixed by version. We will not change an enrolled authorized user's product use rights under this program agreement for any version of a product after it becomes available to that enrolled authorized user under its enrollment.

For enterprise products – no detrimental use right changes in new versions.

(i) **For new versions made available during the initial enrollment term.** If we make available a new version of any enterprise product during the initial enrollment term and that new version is subject to certain use rights that you or your authorized users believe to be more restrictive than those that applied to a prior version under an enrollment that was or became available during the initial enrollment term, the enrolled authorized user may run that new version without being subject to those certain more restrictive use rights.

(ii) **For new versions made available during each renewal term.** Upon each renewal of Software Assurance for an enterprise product, an enrolled authorized user's use of that product will be governed by the use rights that apply to the latest version of that product available as of the date of that renewal, including any terms that are more restrictive than those that applied to a previous version of that product licensed by that enrolled authorized user under its enrollment during the preceding term. However, if during a renewal term we make available a new version of that same enterprise product with certain use rights more restrictive than those use rights that applied to a prior version licensed under an enrollment that was or became available during that same term, the enrolled authorized user may run the new version without being subject to those certain more restrictive use rights.

(iii) **New features or functionality.** The right described in subsections (i) and (ii) above does not apply to product use rights that relate specifically to new features or functionality added to a new version.

(iv) **Pre-licensed versions.** As an exception to the above terms and conditions, in the event that an enrolled authorized user entering into an enrollment hereunder (a "new enrollment") was running a certain number of previously licensed copies of product prior to executing such new enrollment, the product use rights that previously applied to such previously licensed copies shall continue to apply until such copies are later upgraded pursuant to such new enrollment, at which time the applicable product use rights shall then be determined by subsections 7(d)(i) through 7(d)(iii) above.

e. **Use of redistributable code.** In lieu of any obligation to indemnify us under various provisions of the product use rights, each enrolled authorized user, by enrolling hereunder, covenants and warrants that neither it, nor other authorized user which sublicenses from it, nor any employees or agents of it or its sublicensing authorized users, shall distribute any such redistributables to unaffiliated third parties, whether or not in conjunction with or as part of a software application product developed using any such redistributables.

8. Software Assurance Membership.

Throughout the term of its enrollment (including any renewal), each enrolled authorized user automatically qualifies as a member of Microsoft's Software Assurance Membership program. Membership may entitle the enrolled authorized users to special benefits. For a description of these benefits, an enrolled authorized user should consult its reseller or Microsoft account manager.

9. Making copies of software.

a. **Copies necessary for internal deployment.** Each enrolled authorized user may make as many copies of the products licensed under its enrollment as necessary to distribute the products to the users within its enterprise. Its users may include both employees and non-employee contract workers who perform work for authorized user and run the applicable licenses on the authorized user's computers, exclusively for the benefit of the authorized user. All copies of any product must be true and complete copies (including copyright and trademark notices) and be made from CD-ROMs, disk sets or a network source, acquired from or made available by your reseller or a Microsoft approved fulfillment source for that product. Each enrolled authorized user may also have a third party make and distribute copies in its place, but the enrolled authorized user is responsible for third-party actions to the same extent it would be if the third party were its employee. You and your authorized users must make reasonable efforts to make employees, agents and other individuals running a product aware that the product is licensed from us and may only be run or transferred subject to the terms of this agreement.

b. **Copies for training, evaluation and back-up.** During the term of its enrollment (including any renewal), each enrolled authorized user and any authorized user included in its enterprise may (i) run up to 40 complimentary copies of any additional product in a dedicated training facility on their premises; (ii) run up to 10 complimentary copies of any product that we make available to license as an additional product for a 60-day evaluation period; and (iii) make and retain one complimentary copy of any licensed product for back-up or archival purposes for each of their distinct geographic locations.

c. Re-imaging rights. If an enrolled authorized user or any authorized user included within its enterprise has licensed products from an original equipment manufacturer (OEM), through a retail source or under any Microsoft program other than this Enterprise Agreement program, it may use copies made from the media provided under the enrolled authorized user's enrollment in place of any copies made from the media provided through that separate source, so long as it complies with the following restrictions.

(i) The enrolled authorized user must have obtained a separate license from the separate source for each copy being replaced.

(ii) The product, language, version and all components (in the case of product suites, such as Office) of the copies made from the media provided under an enrollment must be identical to the product, language, version and all components of the copies they replace.

(iii) In the case of copies licensed from an original equipment manufacturer (OEM) or through a retail source, in addition to the other conditions outlined in this subsection 9(c), the product type (e.g. upgrade or full license) of the copies made from the media provided under an enrollment must be identical to the product type of the copies they replace. However, an enrolled authorized user may use copies of a desktop operating system made from the media provided under its enrollment in place of copies of the same desktop operating system obtained from a separate source, even though they may be of different types (i.e. one may be an upgrade and the other a full license), provided that the product, language and version are identical.

The use of any copies made under this subsection 9(c) is subject to the terms and use rights provided with the copies being replaced, and nothing in this section creates or extends any warranty or support obligation.

10. Transferring licenses.

a. How to transfer. An enrolled authorized user may transfer perpetual licenses ordered under an enrollment to an authorized user, or to an unaffiliated third party in connection with a privatization, as long as the enrolled authorized user provides us with prior written and signed notice, on a form that we provide, that includes: (i) the applicable enrollment number; (ii) the quantity of licenses being transferred by product and version; (iii) the name, address and contact information of the transferee; and (iv) any other information that we may reasonably request.

For all other transfers of licenses, our written consent is required. We will not withhold our consent unreasonably. No license transfer will be valid unless the transferee accepts in writing the applicable product use rights, use restrictions, limitations of liability, and the transfer restrictions in this section 10. Any transfer made in violation of the requirements or restrictions of this section will be void.

b. When transfers are not permitted. An enrolled authorized user may not transfer (i) licenses on a short-term basis, (ii) temporary rights to use products, (iii) Software Assurance coverage, (iv) perpetual licenses for any version of any product acquired through Software Assurance separately from the underlying perpetual licenses for which that Software Assurance coverage was ordered; or (v) upgrade licenses for a desktop operating system product separately from the underlying desktop operating system license or from the computer system on which the product is first installed.

11. Term, termination and renewal.

a. Term of program agreement. Unless extended as provided below, this program agreement will remain in effect until the earlier of (i) the last day of the sixtieth (60th) full calendar month following the effective date of the Microsoft Custom License Agreement associated herewith; or (ii) the day it is otherwise terminated, as set forth in Section 11(b) of this program agreement**.**

Provided both that (i) this program agreement is not otherwise terminated early as provided above, and (ii) the Microsoft Custom License Agreement associated herewith is not otherwise terminated early pursuant to the common terms and conditions, this program agreement may be extended up to three times, as follows, provided that (i) both parties agree in writing to such extension(s) prior to the first day of each accepted extension period; (ii) extension period 2 may not be accepted if extension period 1 was not previously accepted; and (iii) extension period 3 may not be accepted if extension period 2 was not previously accepted:

- Extension period 1, for the period beginning on the first day of the sixty-first (61st) full calendar month following the effective date of Microsoft Custom License Agreement associated herewith and ending on the last day of the eighty-fourth (84th) full calendar month following such effective date;
- Extension period 2, for the period beginning on the first day of the eighty-fifth (85th) full calendar month following the effective date of Microsoft Custom License Agreement associated herewith and ending on the last day of the one hundred eighth (108th) full calendar month following such effective date; and
- Extension period 3, for the period beginning on the first day of the one hundred ninth (109th) full calendar month following the effective date of Microsoft Custom License Agreement associated herewith and ending on the last day of the one hundred twentieth (120th) full calendar month following such effective date.

This program agreement will remain in effect until it expires, as provided above, unless it is terminated as described below. Each enrollment will have the term provided in that enrollment.

b. Termination of this program agreement. You may terminate this program agreement for any reason upon 60 days written notice. Either party may terminate this program agreement if the other party materially breaches its obligations under this program agreement or the applicable common terms and conditions. Except where the breach is by its nature not curable within 30 days, the terminating party must give the other party 30 days written notice and opportunity to cure prior to termination.

Effect of termination. Such termination will merely terminate either party's and its affiliates' (or authorized user's) ability to enter into new enrollments under this program agreement. Such termination will not affect any enrollment not otherwise terminated, and any terms of this program agreement applicable to any enrollment not otherwise terminated will continue in effect with respect to that enrollment.

c. Term and termination of an enrollment.

Each enrollment will expire after a term that is set forth in the enrollment. This term will typically be 36 full calendar months following the enrollment effective date, although this term may be different for some enrollments pursuant to written agreement between us and the enrolled authorized user. Termination or expiration of this program agreement shall not result in the early termination or expiration of enrollments, and some enrollments may expire after the expiration or termination of this program agreement, depending upon the effective dates of such enrollments. For example, if the effective date of a 36-month enrollment occurs on the first day of the last calendar month of the term of this program agreement, then such enrollment shall expire 35 months following the expiration of this program agreement. Enrollments may be executed until the last day of the term of this program agreement.

Either party to an enrollment may terminate it if the other party materially breaches its obligations under this program agreement, including any obligation to submit orders or, except as provided by the next paragraph, pay amounts owed.

If an authorized user is temporarily unable to pay an amount owed because approved funds for such payment have not been appropriated, then such authorized user's enrollment shall not terminate, provided that (i) the authorized user notifies us and the reseller in writing of such temporary inability to pay; and (ii) payment of such amount (including any interest applicable pursuant to Article 11-A of the State Finance Law) is ultimately made within 60 days following passage of the subsequent New York State budget. If such amount is not ultimately paid within 60 days following passage of the subsequent New York State budget, then such authorized user's enrollment shall terminate immediately.

If we terminate the enrollments of three or more authorized users which are State Agencies under the control of the Chief Information Officer of the State of New York as a result of their uncured breach (but not pursuant to the terms and conditions of the preceding paragraph), then we may also terminate this program agreement and all other enrollments under it. If we terminate the enrollments of three or more authorized users which are not State Agencies (e.g. local governments and/or political subdivisions), then we may require that no other such non-State Agency authorized users be allowed to enroll. Except where the breach is by its nature not curable within 30 days, the terminating party must give the other party 30 days written notice and opportunity to cure prior to termination. If we give such notice to an enrolled authorized user, we will give OGS a copy of that notice as well. If an enrolled authorized user ceases to qualify as an authorized user, pursuant to the definition thereof, you must promptly notify us of this fact, and we may terminate its enrollment.

d. Effect of termination or expiration. Upon expiration or termination of any enrollment, the enrolled authorized user must order licenses for all copies of products it or its included authorized users have run under its enrollment for which the enrolled authorized user has not previously submitted an order. Except as provided in the next two paragraphs, in the event of termination, all unpaid installments of the purchase price for any licenses will immediately become due and payable, and the enrolled authorized user will be entitled to perpetual licenses only after all such payments have been made.

If (i) an enrolled authorized user terminates its enrollment as a result of our breach, or (ii) we terminate an enrolled authorized user's enrollment because it has ceased to be an authorized user, then the enrolled authorized user will have the following options. It may immediately pay the total remaining amount due, including all installments, in which case the enrolled authorized user will have perpetual licenses for all copies of the products it has ordered. As an alternative, it may pay only amounts due and payable as of the termination date, in which case the enrolled authorized user will have perpetual licenses for (i) all copies of all products for which payment has been made in full, and (ii) the number of copies of products for which payment has been made in installments that is proportional to the amount that has been paid as of the termination date.

If we terminate an enrollment pursuant to the terms and conditions of Section 11(c) of this program agreement, the enrolled authorized user will have perpetual licenses for (i) all copies of all products for which payment has been made in full, and (ii) the number of copies of products for which payment has been made in installments that is proportional to the amount that has been paid as of the date the unpaid installment payment was due, for the version of such products that was current as of such payment due date.

e How to renew an enrollment. We will provide each enrolled authorized user with 60 days prior written notice of expiration of its enrollment or renewal term advising it of its renewal options. An enrolled authorized user may have the option to renew its enrollment for successive terms of 12 or 36 full calendar months. We and our affiliates will not unreasonably reject any renewal order. However, we may make a change to the Enterprise Agreement license program that will make it necessary for you and your enrolled authorized users to enter into a new program agreement and enrollments in order to renew. Notwithstanding the date of the renewal order, pursuant to the following paragraph, the effective date of any renewal enrollment shall be no later than one day following the expiration of the original enrollment.

Placing renewal orders. To renew, the enrolled authorized user must submit a renewal order within 90 days after the previous term expired. The effective date of such renewal order shall be the day following the expiration of the previous term. The renewal order must be for Software Assurance for (i) all enterprise products previously ordered for all qualified desktops in the enrolled authorized user's enterprise as of the date of each renewal order, and (ii) all copies of additional products for which the enrolled authorized user elects to renew Software Assurance. An enrolled authorized user may not add new enterprise products not previously ordered during the initial term as part of its renewal; to license new enterprise products it must submit a new enrollment.

Consequences of non-renewal. If the enrolled authorized user elects not to renew its enrollment or Software Assurance for any additional product under its enrollment, and it otherwise allows Software Assurance for any copies of any products licensed under its enrollment to lapse, then the enrolled authorized user will not be permitted to order Software Assurance for such previously-licensed copies later, but may order Software Assurance solely when combined with a new License by acquiring L&SA.

12. Miscellaneous.

a. Entire agreement. The terms and conditions of the following documents (i) constitute the entire agreement concerning the subject matter of this program agreement, (ii) supersede any prior or contemporaneous communications, and (iii) control in the following order:

(1) Appendix A, as further clarified by specific reference in the common terms and conditions; (2) the Cover Page to the Microsoft Custom License Agreement (including any amendments thereto); (3) the common terms and conditions of this Microsoft Custom License Agreement (including any amendments thereto); (4) these Microsoft Enterprise Agreement Program Agreement terms and conditions (including any amendments thereto); (5) the Product List; (6) the product use rights; and (7) all other enrollments under this program agreement (including any amendments thereto).

The terms of any purchase order or any general terms and conditions you or your authorized users maintain, other than those mandatory terms required by statute or regulation, do not apply. This program agreement (except the Product List and the product use rights) can be changed only by an amendment signed by both parties.

b. Survival. Provisions regarding product use rights, restrictions on use, evidence of perpetual licenses, transfer of licenses, warranties, limitations of liability, confidentiality, compliance verification and obligations on termination or expiration will survive termination or expiration of this program agreement or any enrollment.

c. Independent contractors. Resellers are independent contractors who act in their own name and for their own account; they have no authority to bind or impose any obligation or liability upon us.

d. Determination of reference prices. Reference prices for additional products and enterprise products shall be determined as follows:

(1) Determination of pricing for additional products.

During the term of each enrollment executed hereunder, and provided that you are party to a Microsoft Select Agreement program agreement (or its successor) during such term, the volume discount level for each additional product ordered pursuant to such enrollment in each product pool shall be "Level D."

(2) Determination of pricing for enterprise products.

(A) <u>Determination of horizon price level</u>. For each product family and for each annual pricing period, we will determine a horizon price level that shall apply to all enrollments containing enterprise products in such product family which have effective dates that fall during such pricing period, pursuant to Table 1 in Addendum A, by matching the horizon desktop count for such family (as of the annual pricing date which immediately precedes such annual pricing period) with the column marked "Annual Price Level Name."

For example if, as of the annual price date upon which the determination of horizon price level for an annual pricing period is to be made, the horizon desktop count for the Office family is calculated to be between 60,000 and 79,999 qualified desktops, then the horizon price level for the Office family for such annual pricing period shall be the "60K Premium Level."

(B) <u>Determination of initial price level</u>. For each product family and for each annual pricing period, we will determine an initial price level that shall apply to all enrollments containing enterprise products in such product family which have effective dates that fall during such annual pricing period, pursuant to Table 1 in Addendum A, by matching the aggregate family desktop count for such family (as of the annual pricing date which immediately precedes such annual pricing period) with the column marked "Annual Price Level Name."

For example if, as of the annual price date upon which the determination of initial price level for an annual pricing period is to be made, the aggregate family desktop count for the Office family is calculated to be between 80,000 and 119,999 qualified desktops, then the initial price level for the Office family for such annual pricing period shall be the "80K Premium Level."

(C) <u>Establishing component initial desktop reference prices for new enrollments</u>. The Government EA Price List provided to resellers generally contains reference prices for the following common enterprise products:

- Microsoft Office Professional;
- Microsoft Windows XP Professional Operating System Upgrades;
- Microsoft Core CAL; and
- Microsoft Desktop Professional (which is a suite composed of the preceding three component products, and the reference price for which is equal to the sum of the three component reference prices less the applicable platform discount).

For the purposes of this program agreement, the Government EA Price List entry for Microsoft Desktop Professional (or any other enterprise product we might add to such price list that is a combination of component products from different product families) shall not apply, since this Section 12(d) provides an alternate and equivalent means by which the component products of such suite shall be priced. Rather, the components of Microsoft Desktop Professional (or other suite of products from different product families) shall be sold as separate line items to the reseller. This is necessary in order that the year 3 desktop reference prices which apply to each of the product families which contain the component products may be adjusted separately, as set forth below in Section 12(d)(2)(G).

On each annual pricing date, we will establish a list of 3-year desktop reference prices, year 1 desktop reference prices, year 2 desktop reference prices, and year 3 desktop reference prices (collectively, "initial desktop reference prices") for each of the most commonly requested enterprise products, plus any other enterprise products for which you may have requested reference prices. We will provide you with a list of such reference prices. We will also provide your reseller(s) with a list of such initial desktop reference prices, along with the corresponding confidential reseller costs.

Such initial desktop reference prices shall apply to all new enrollments signed during the annual pricing period which immediately follows such annual pricing date, but not thereafter, unless different initial prices are agreed upon in writing between us and an enrolled authorized user (or between us and you) based upon certain exceptions to standard terms including (but not limited to) applied credits and/or uplifts for cost of money in deferred payment schedules.

Initial desktop reference prices and true up desktop reference prices for each enterprise product shall be calculated, using the following formulas, using each such product's standard license Select reference price ("L") (except as noted in the following sentence) and one-year Software Assurance Select reference price ("SA") pursuant to the Level D Select reference prices found on the Select Price List which is in effect as of the annual pricing date upon which the determination is being made. For the purposes of determining the value of "L" solely with respect to the Windows Professional Upgrade, one half (1/2) of the Select reference price of such Upgrade shall be used.

(i) for orders of License & Software Assurance on an initial order made pursuant to a non-renewal enrollment, the initial annual reference prices shall be calculated according to the following formulas:

Formula for 3-year desktop reference price:

{ [L + (3 x SA)] x 0.85 }; less (a) an additional premium level discount (if applicable) based on the horizon price level; less (b) a platform discount (if applicable) pursuant to the terms and conditions below governing such additional discounts.

Formula for both year 1 and year 2 desktop reference prices:

{ [L + (3 x SA)] x 0.85 / 3 }; less (a) an additional premium level discount (if applicable) based on the initial price level; less (b) a platform discount (if applicable) pursuant to the terms and conditions below governing such additional discounts.

Formula for year 3 desktop reference price:

{ 3-year desktop reference price – year 1 desktop reference price – year 2 desktop reference price }

(ii) for orders of Software Assurance on an initial order made pursuant to a renewal enrollment, the initial annual reference prices shall be calculated according to the following formulas:

Formula for 3-year desktop reference price:

{ (3 x SA) x 0.95 }; less (a) an additional premium level discount (if applicable) based on the horizon price level; less (b) a platform discount (if applicable) pursuant to the terms and conditions below governing such additional discounts.

Formula for both year 1 and year 2 desktop reference prices:

{ SA x 0.95 }; less (a) an additional premium level discount (if applicable) based on the initial price level; less (b) a platform discount (if applicable) pursuant to the terms and conditions below governing such additional discounts.

Formula for year 3 desktop reference price:

{ 3-year desktop reference price – year 1 desktop reference price – year 2 desktop reference price }

(iii) for orders of License & Software Assurance on the first anniversary true up order made pursuant to either a renewal enrollment or a non-renewal enrollment, the true up desktop reference price shall be calculated according to the following formula:

{ L + (2.5 x SA) } x 0.85; less an additional premium level discount (if applicable) based upon the initial price level; less a platform discount (if applicable) pursuant to the terms and conditions below governing such additional discounts;

(iv) for orders of License & Software Assurance on the second anniversary true up order made pursuant to either a renewal enrollment or a non-renewal enrollment, the true up desktop reference price shall be calculated according to the following formula:

{ L + (1.5 x SA) } x 0.85; less an additional premium level discount (if applicable) based upon the initial price level; less a platform discount (if applicable) pursuant to the terms and conditions below governing such additional discounts; and

(v) for orders of License & Software Assurance on the third anniversary true up order made pursuant to either a renewal enrollment or a non-renewal enrollment, the true up desktop reference price shall be calculated according to the following formula:

{ L + (0.5 x SA) } x 0.85; less an additional premium level discount (if applicable) based upon the initial price level; less a platform discount (if applicable) pursuant to the terms and conditions below governing such additional discounts.

The results of each of the above calculations will be rounded to the nearest penny.

(D) <u>Additional discounts applied to initial prices for components</u>. After calculating initial prices for each component enterprise product pursuant to the above formulas, the following additional discounts may be applied to such prices, subject to the terms and conditions below:

(a) A "premium level discount" will be applied to an enterprise product, provided that the aggregate family desktop count that applies to such product is equal to or greater than 40,000 qualified desktops. The amount of such premium level discount with respect to initial price levels shall be determined according to Table 1 in Addendum A, by matching the initial desktop count for the applicable product family (as of the annual pricing date which immediately precedes such annual pricing period) with the applicable column under the heading "Premium Level Discount." The amount of such premium level discount with respect to horizon price levels shall be determined according to Table 1 in Addendum A, by matching the horizon desktop count for the applicable product family (as of the annual pricing date which immediately precedes such annual pricing period) with the applicable column under the heading "Premium Level Discount." Such premium level discount (if any) will be applied before applying a platform discount (if any).

For example, if the year 1 annual reference price of a component product in a non-renewal enrollment, before a premium level discount and/or platform discount is applied, is $100.00, and if the initial price level for the product family for the applicable annual pricing period is determined to be the 80K premium level, then a corresponding premium level discount of 6% will be applied (i.e. a discount of 6 percent of $100.00, or $6.00), such that the resulting initial annual reference price before the platform discount is applied will be:

{ $100.00 – $6.00 } = $94.00.

For another example, if the 3-year desktop reference price of a component product in a non-renewal enrollment, before a premium level discount and/or platform discount is applied, is $300.00, and if the horizon price level for the product family for the applicable annual pricing period is determined to be the 60K premium level, then a corresponding premium level discount of 4% will be applied (i.e. a discount of 4 percent of $300.00, or $12.00), so the resulting 3-year desktop reference price before the platform discount is applied will be:

{ $300.00 – $12.00 } = $288.00.

(b) A "platform discount" will be applied to component platform products (e.g. Microsoft Office Professional) ordered pursuant to platform enrollments, but not to other enterprise products, if any, in such platform enrollments (e.g. a platform discount would not apply to Microsoft Project). Such premium level discount (if any) will be applied after applying a premium level discount (if any), and shall be as follows:

Such platform discounts are as follows:

(i) 15% for initial orders of License & Software Assurance on non-renewal enrollments;

(ii) 5% for initial orders (but not true up orders) of Software Assurance for renewal enrollments; and

(iii) 15% for true up orders of License & Software Assurance for both renewal enrollments and non-renewal enrollments.

For example, if the year 1 desktop reference price of a component product in a non-renewal platform enrollment, after the premium level discount is applied, is $94.00, then a platform discount of 15% will be applied (i.e. 15% of $94.00, or $14.10), so the resulting initial annual reference price will be

{ $94.00 - $14.10 } = $79.90.

The results of each of the above discount calculations will be rounded to the nearest penny.

Platform discounts will be provided so long as they are made generally available to all volume licensing customers. If the amount of such generally available platform discount is either increased, decreased, or eliminated, such increase, decrease or elimination will apply to the annual pricing period which immediately follows such event.

(E) Annual provision of reference prices. Table 3 in Addendum A shows the initial desktop reference prices, year 1 desktop reference prices, and year 2 desktop reference prices that shall apply during the first annual pricing period hereunder. Table 4 in Addendum A shows the true up desktop reference prices that shall apply during the first annual pricing period hereunder. We will provide you with new initial annual reference prices on or before the first day of each subsequent annual pricing period.

(F) Determination of 1st anniversary, 2nd anniversary, and ending price levels. Upon each annual pricing date, and for each product family, we will both:

(i) determine a volume discount level by matching the aggregate family desktop count for such family (as of such annual pricing date) with the column marked "Annual Price Level Name." pursuant to Table 1 in Addendum A. Such volume discount level shall:

- be referred to hereafter as the "1st anniversary price level" with respect to enrollments (if any) for which the first anniversary of their effective dates falls during the annual pricing period which immediately follows such annual pricing date; and
- be referred to hereafter as the "2nd anniversary price level" with respect to enrollments (if any) for which the second anniversary of their effective dates falls during the annual pricing period which immediately follows such annual pricing date; and

(ii) determine an "ending price level" with respect to enrollments for which the second anniversary of their effective dates falls during the annual pricing period which immediately follows such annual pricing date. Such ending price level shall be determined according to the relationship between initial price level, 1st anniversary price level, and 2nd anniversary price level, respectively, according to the following table:

Annual Price Level Criteria:			Examples with sample price levels:			
If the 1st anniversary price level is:	**And the 2nd anniversary price level is:**	**then the ending price level will be:**	**Initial Annual Price level**	**1st Anniversary Annual Price Level**	**2nd Anniversary Annual Price Level**	**Ending Price Level**
the same as the initial price level	any level	The initial price level	80K	80K	Any Level	80K
Higher than the initial price level	the same or higher than the first anniversary price level	The first anniversary price level	80K	120K or higher	120K or higher	120K
Higher than the initial price level	lower than the first anniversary price level but higher than the initial level	the second anniversary price level	60K	120K	80K	80K
Higher than the initial price level	the same as or lower than the initial price level	The initial price level	80K	120K	80K or 60K	80K
Lower than the initial price level	the same or lower than the first anniversary price level	The first anniversary price level	60K	40K	40K or D	40K
Lower than the initial price level	higher than the first anniversary price level but lower than the initial level	the second anniversary price level	60K	D	40K	40K
Lower than the initial price level	the same as or higher than the initial price level	The initial price level	60K	D or 40K	60K or 80K	60K

For the purposes of the above table, one annual price level is "higher" than another volume level if the minimum aggregate family desktop count requirement for such level is greater than that for the second level, and one annual price level is "lower" than another volume level if the minimum aggregate family desktop count requirement for such level is lower than that for the second level. For example, the 40K Premium Level is lower than the 60K Premium Level, but is higher than Level D.

(G) <u>Adjustments to year 3 desktop reference prices upon sustained increase of annual price level</u>.

The year 3 desktop reference prices of each enterprise product in each enrollment is subject to reduction, provided that the ending price level for the applicable product family has increased, relative to the horizon price level.

Such reduction in year 3 desktop reference price will be determined separately for each product family, prior to the second anniversary of each enrollment's effective date, based upon adjustment multipliers determined pursuant to Table 2 in Addendum A. The adjustment multiplier for each applicable product family on an enrollment is determined pursuant to such table by finding the intersection of (i) the column which corresponds to the combination of initial price level and horizon price level, and (ii) the line which corresponds to the ending price level.

To determine the adjusted year 3 desktop reference price for an enterprise product, the adjustment multiplier applicable to each enterprise product will be multiplied by the originally calculated year 3 desktop reference price for such product, and the resulting amount shall be rounded to the nearest Penny.

(H) Counting of SUNY and CUNY Campus Agreements toward attainment of volume discount levels. The Chief Information Officer of the State of New York is empowered to oversee, direct and coordinate the establishment of information technology policies, protocols and standards for State government, including the State University of New York ("SUNY") and the City University of New York ("CUNY"). Therefore, subject to the terms and conditions below, the following shall apply:

At each annual pricing date, we will count the then-current number of Full Time Equivalent Faculty Members, Staff Members, and Students of SUNY and/or CUNY (collectively, "FTE") who are enrolled as of such date under unexpired Campus Agreements. Such FTE count shall be measured separately with respect to each product family, based upon which products are enrolled for such FTEs under each Campus Agreement.

Subject to the terms and conditions of the following paragraph, for every four (4) FTEs counted in each product family as of such annual pricing date, we will add one (1) "education equivalent qualified desktop" to the aggregate family desktop counts used to determine each of the following with respect to such product family: (i) the initial price level, pursuant to the terms of Section 12(d)(2)(B); (ii) the horizon price level, solely with respect to FTEs enrolled under multi-year Campus Agreement subscription order forms which will not have expired (if not otherwise renewed) as of the following annual pricing date, pursuant to the terms and conditions of Section 12(d)(2)(A); and (iii) the 1st and 2nd anniversary price levels, pursuant to the terms of Section 12(d)(2)(F).

No more than 40% of the minimum aggregate family desktop count for any volume discount level shall be contributed to by such education equivalent qualified desktops.

For example, with respect to the 120K Premium Discount Level for the Office family (for which a minimum aggregate family desktop count of 120,000 would apply), a maximum of 48,000 (i.e. 40% of 120,000) education equivalent qualified desktops may be contributed to the applicable aggregate family desktop count, based on a count of 192,000 (since 192,000 divided by 4 equals 48,000) or more FTEs pursuant to unexpired SUNY and/or CUNY Campus Agreements under which Office and/or Office Standard Professional is licensed for all FTEs. A FTE count of greater than 192,000 will not contribute more than 48,000 toward such qualified desktop goal, and a FTE count of less than 192,000 would contribute a proportionately smaller amount of qualified desktops toward such goal (based on a ratio of 4 FTEs to 1 education equivalent qualified desktop).

(I) Additional terms and conditions. You acknowledge and agree that there may be certain instances in which the reference prices of certain enterprise products in certain enrollments executed by authorized users, whether under this Enterprise Agreement program agreement or otherwise under a separate Enterprise Agreement or Enterprise Subscription agreement, may be adjusted in ways that vary from the adjustments agreed upon in Section 12(d)(2)(G), pursuant to separate agreement between the enrolled authorized user and us. Such instances may include, but are not limited to, those enrollments: (i) that were executed prior to this enterprise agreement; (ii) that contain other enterprise products than those in the three product families defined herein; (iii) for which we negotiate a special payment schedule or ramped installment payments upon the condition that the reference price of such enrollment be uplifted to account for the time value of money; and (iv) for which a special price is negotiated to match the equivalent Select reference price for sufficient licenses, such as to account for unexpired Upgrade Advantage and/or Software Assurance.

Reference prices are provided only for the purpose of comparison. Actual pricing and payment terms will be determined by agreement between each enrolled authorized user and its chosen reseller. All adjustments to reference prices defined herein will correspond to a proportional adjustment we will make to the reseller's confidential cost.

You agree to assist us in making eligible authorized users aware of the general terms, conditions, and benefits of entering into an Enrollment, by:

(i) posting such information on a website accessible to each authorized user; and

(ii) participating, upon our request and as your schedule reasonably permits, in conference calls and/or meetings with such prospective enrolled authorized user, to discuss such terms, conditions, and benefits.

e. Changes to enterprise agreement program. Changes that Microsoft may make to its Enterprise Agreement license program during the term of this agreement may not change the terms, conditions, or agreed-upon reference prices (or method for determining reference prices) for any enrollment hereunder.

f. Messaging promotional offer. If the Chief Information Officer of the State of New York ("CIO"), in the exercise of such CIO's statutory authority, requires authorized users under such CIO's control to purchase licenses for Exchange CAL (and in some cases Windows CAL, pursuant to the note below) as part of the Statewide Mail Centralization Project, then the following shall apply solely for enrollments executed on or before June 30, 2004 (the "messaging offer deadline"):

1. Special Messaging CAL pricing and eligibility:

Provided both that (i) the applicable enrolled authorized user was previously licensed on all of its qualified desktops for any version of either Microsoft Exchange Server CAL, Lotus Notes, Novell GroupWise, and/or any other competitive email product deployed by such authorized user; and (ii) the enrollment includes Exchange CAL and optionally Windows Server CAL (collectively, the "Messaging CALs"), then for the purposes of determining the reference price for such Messaging CALs pursuant to such enrollment, Software Assurance-only renewal pricing shall apply, notwithstanding the normal requirements to obtain such renewal pricing.

Note: A Windows Server CAL, version 2000 (or later), is required in addition to an Exchange CAL version 2000 (or later), in order to access an Exchange 2000 server from a client device. However, such Windows Server CAL need not be purchased solely pursuant to the messaging offer contained in this Section 12(f), and may instead be purchased pursuant to a separate Select enrollment, enterprise enrollment, or other legitimate licensing agreement.

However, please note that future versions of Exchange Server may require upgrading the Windows Server operating system (and therefore also the Windows Server CALs) to a version later than version 2000. You therefore acknowledge that, upon upgrading a qualified desktop to access a newer version of Exchange Server pursuant to Software Assurance for Exchange CAL, if such upgrade also requires an upgrade to a newer version Windows Server operating system (and therefore also a newer version of Windows Server CAL), and if the previously licensed Windows CAL for such qualified desktop was not enrolled in Software Assurance (pursuant to this offer or other legitimate agreement) at the time the newer version was released and is therefore not otherwise eligible to be upgraded to the required version pursuant to Software Assurance for such Windows CAL, then the applicable authorized user will be required to purchase a new license for the applicable version of Windows Server CAL for such qualified desktop concurrent with performing the upgrade to the new version of Exchange Server.

2. Optional deferred payments for Messaging CALs:

Upon our receipt of a request by a prospective enrolled authorized user prior to execution of its enrollment, we will amend such enrollment to modify the payment amounts for the Messaging CALs, such that the full 3-year desktop reference price for Exchange CAL and Windows CAL (as such 3-year desktop reference price is calculated pursuant to the formula in Section 12(d)(2)(C)(ii)) will be billable in two equal installments ("deferred payments"), to be paid on the first and second anniversaries, respectively, of such enrollment.

The desktop reference prices that shall apply to such deferred payments for Messaging CALs shall be as follows:

	Non-Platform Enrollments				Platform Enrollments			
	3-Year Desktop Reference Price	Year 1 Desktop Reference Price	Year 2 Desktop Reference Price	Year 3 Desktop Reference Price	3-Year Desktop Reference Price	Year 1 Desktop Reference Price	Year 2 Desktop Reference Price	Year 3 Desktop Reference Price
Exchange CAL:	35.57	0.00	17.79	17.79	33.79	0.00	16.90	16.90
Windows CAL:	16.42	0.00	8.21	8.21	15.60	0.00	7.80	7.80

You agree that, in the event that an enrolled authorized user elects such deferred payments in lieu of the normal payment amounts set forth in Section 12(d), the adjustment multipliers listed in the following table shall apply in lieu of the adjustment multipliers in Table 2 of Addendum A, solely with respect to the Year 3 Desktop reference prices for Messaging CALs based upon the applicable ending price level:

Ending Price Level:	60K	80K	120K	300K	500K
Adjustment Multiplier:	1.000	0.958	0.926	0.895	0.874

3. Extension of messaging offer deadline:

Within 30 days prior to the June 30, 2004 messaging offer deadline, we will extend such messaging offer deadline to be June 30, 2005, solely for the benefit of State agencies which have been designated by the CIO to be part of the Mail Centralization Project (and not for other authorized users), provided that one of the following two conditions applies:

a. New York's General Fund budget for the State's fiscal year which ends in March, 2005 must have been reduced by at least 5% relative to the prior fiscal year; and/or

b. Technical issues that arise prior to June 30, 2004 have prevented completion of the Statewide Mail Centralization Project prior to June 30, 2004, provided that the State and IBM must both have worked in good faith with Microsoft to try to resolve such technical issues for this condition to apply.

You agree to each of the following, as conditions of such extension of the messaging offer deadline:

(i) The State will work in good faith with Microsoft and IBM toward the successful roll-out of Microsoft Exchange as part of the Statewide Mail Centralization Project; and

(ii) The State will include the appropriate Microsoft personnel in regular project update meetings related to the Statewide Mail centralization Project, and will include Microsoft on all project status reports.

4. Scope:

The special terms in this Section 12(f) above regarding renewal pricing and payment amounts shall apply solely to Exchange CAL and Windows CAL, and not to any other enterprise products and/or additional products ordered pursuant to such enrollment.

g. Minimum enrollment size. Except as provided by the following sentence, each enrollment shall be for a minimum of 250 qualified desktops. This minimum shall be lowered to 100 in the event that we and the enrolled authorized user agree, by written amendment, that the enrolled authorized user shall forego receipt of free CD ROMs.

Addendum A to Microsoft Enterprise Agreement Program Agreement

Table 1: Volume Level Determinations

Horizon Desktop Count or Initial Desktop Count	Annual Price Level Name	EA / Select Price List Volume Level	Premium Level Discount
Below 40,000	Level D	Level D	N/A
40,000 - 59,999	40K Premium Level	Level D	2.0%
60,000 - 79,999	60K Premium Level	Level D	4.0%
80,000 - 119,999	80K Premium Level	Level D	6.0%
120,000 - 299,999	120K Premium Level	Level D	7.5%
300,000 - 499,999	300K Premium Level	Level D	9.0%
500,000 or more	500K Premium Level	Level D	10.0%

Table 2: Multipliers to apply to "ramped" Year 3 price:

	Initial Price Level	**D**	**40K**	**40K**	**60K**	**60K**	**60K**	**80K**
	Horizon Price Level	**D**	**D**	**40K**	**D**	**40K**	**60K**	**D**
Ending Price Level	**Level D**	1.000	1.000	1.000	1.000	1.000	1.000	1.000
	40K Premium Level	0.940	0.942	1.000	0.944	1.000	1.000	0.946
	60K Premium Level	0.880	0.885	0.939	0.889	0.941	1.000	0.893
	80K Premium Level	0.820	0.827	0.878	0.833	0.882	0.938	0.839
	120K Premium Level	0.775	0.784	0.832	0.792	0.838	0.891	0.799
	300K Premium Level	0.730	0.740	0.786	0.750	0.794	0.844	0.759
	500K Premium Level	0.700	0.712	0.755	0.722	0.765	0.813	0.732
	Initial Price Level	**80K**	**80K**	**80K**	**120K**	**120K**	**120K**	**120K**
	Horizon Price Level	**40K**	**60K**	**80K**	**D**	**40K**	**60K**	**80K**
Ending Price Level	**Level D**	1.000	1.000	1.000	1.000	1.000	1.000	1.000
	40K Premium Level	1.000	1.000	1.000	0.948	1.000	1.000	1.000
	60K Premium Level	0.943	1.000	1.000	0.896	0.945	1.000	1.000
	80K Premium Level	0.887	0.940	1.000	0.843	0.890	0.942	1.000
	120K Premium Level	0.844	0.895	0.952	0.804	0.849	0.898	0.954
	300K Premium Level	0.802	0.850	0.904	0.765	0.807	0.854	0.907
	500K Premium Level	0.774	0.820	0.872	0.739	0.780	0.825	0.876
	Initial Price Level	**120K**	**300K**	**300K**	**300K**	**300K**	**300K**	**300K**
	Horizon Price Level	**120K**	**D**	**40K**	**60K**	**80K**	**120K**	**300K**
Ending Price Level	**Level D**	1.000	1.000	1.000	1.000	1.000	1.000	1.000
	40K Premium Level	1.000	0.949	1.000	1.000	1.000	1.000	1.000
	60K Premium Level	1.000	0.898	0.946	1.000	1.000	1.000	1.000
	80K Premium Level	1.000	0.847	0.893	0.943	1.000	1.000	1.000
	120K Premium Level	1.000	0.809	0.853	0.901	0.955	1.000	1.000
	300K Premium Level	0.951	0.771	0.813	0.858	0.910	0.953	1.000
	500K Premium Level	0.919	0.746	0.786	0.830	0.880	0.921	0.967
	Initial Price Level	**500K**	**500K**	**500K**	**500K**	**500K**	**500K**	**500K**
	Horizon Price Level	**D**	**40K**	**60K**	**80K**	**120K**	**300K**	**500K**
Ending Price Level	**Level D**	1.000	1.000	1.000	1.000	1.000	1.000	1.000
	40K Premium Level	0.950	1.000	1.000	1.000	1.000	1.000	1.000
	60K Premium Level	0.900	0.947	1.000	1.000	1.000	1.000	1.000
	80K Premium Level	0.850	0.895	0.944	1.000	1.000	1.000	1.000
	120K Premium Level	0.813	0.855	0.903	0.956	1.000	1.000	1.000
	300K Premium Level	0.775	0.816	0.861	0.912	0.954	1.000	1.000
	500K Premium Level	0.750	0.789	0.833	0.882	0.923	0.968	1.000

Addendum A (Continued)

Table 3: Per-Desktop Reference Prices for Initial Orders Under Enrollments During the 1st Annual Pricing Period

The following reference prices are calculated pursuant to Section 12(d), using an 80K Initial Price Level and an 60K Horizon Price Level, which are based on the following desktop counts as of the 1st annual pricing date:

	Office	Windows	CAL
From Enterprise Enrollments:	99,427	99,427	99,427
Education Equivalent Qualified Desktops *	13,665	11,484	11,484
Total	113,092	110,911	110,911
* Education Equlivalent Qualified Desktops are based on 25% of the following FTE Counts:	54,661	45,936	45,936

	Non-Platform Enrollments							
	Non-Renewal Enrollments				Renewal Enrollments			
	3-Year Desktop Reference Price	Year 1 Desktop Reference Price	Year 2 Desktop Reference Price	Year 3 Desktop Reference Price **	3-Year Desktop Reference Price	Year 1 Desktop Reference Price	Year 2 Desktop Reference Price	Year 3 Desktop Reference Price **
BackOffice CAL	306.82	100.14	100.14	106.54	147.74	48.22	48.22	51.30
Core CAL	221.14	72.18	72.18	76.78	106.70	34.83	34.83	37.04
Exchange CAL	74.26	24.24	24.24	25.78	35.57	11.61	11.61	12.35
Office Pro	545.90	178.18	178.18	189.54	284.54	92.87	92.87	98.80
Office Std	452.88	147.82	147.82	157.24	235.30	76.80	76.80	81.70
SharePoint CAL	79.15	25.83	25.83	27.49	38.30	12.50	12.50	13.30
SMS CAL	45.70	14.91	14.91	15.88	21.89	7.14	7.14	7.61
SQL CAL	164.83	53.80	53.80	57.23	79.34	25.90	25.90	27.54
Windows CAL	33.46	10.92	10.92	11.62	16.42	5.36	5.36	5.70
Windows Professional	165.24	53.93	53.93	57.38	117.65	38.40	38.40	40.85

	Platform Enrollments							
	Non-Renewal Enrollments				Renewal Enrollments			
	3-Year Desktop Reference Price	Year 1 Desktop Reference Price	Year 2 Desktop Reference Price	Year 3 Desktop Reference Price **	3-Year Desktop Reference Price	Year 1 Desktop Reference Price	Year 2 Desktop Reference Price	Year 3 Desktop Reference Price **
BackOffice CAL	260.80	85.12	85.12	90.56	140.35	45.81	45.81	48.73
Core CAL	187.97	61.35	61.35	65.27	101.37	33.09	33.09	35.19
Exchange CAL	63.12	20.60	20.60	21.92	33.79	11.03	11.03	11.73
Office Pro	464.02	151.45	151.45	161.12	270.31	88.23	88.23	93.85
Office Std	384.95	125.65	125.65	133.65	223.54	72.96	72.96	77.62
SharePoint CAL	67.28	21.96	21.96	23.36	36.39	11.88	11.88	12.63
SMS CAL	38.85	12.67	12.67	13.51	20.80	6.78	6.78	7.24
SQL CAL	140.11	45.73	45.73	48.65	75.37	24.61	24.61	26.15
Windows CAL	28.44	9.28	9.28	9.88	15.60	5.09	5.09	5.42
Windows Professional	140.45	45.84	45.84	48.77	111.77	36.48	36.48	38.81

** Note that the Year 3 Desktop reference Price is subject to reduction in certain cases, pursuant to the terms and conditions of Section 12(d).

Table 4: Per Desktop True Up Reference Prices for Enrollments Under Enrollments During the 1st Annual Pricing Period

	Non-Platform Enrollments			Platform Enrollments		
	1st Anniversary True Up Desktop Reference Price	2nd Anniversary True Up Desktop Reference Price	3rd Anniversary True Up Desktop Reference Price	1st Anniversary True Up Desktop Reference Price	2nd Anniversary True Up Desktop Reference Price	3rd Anniversary True Up Desktop Reference Price
BackOffice CAL	278.85	235.71	192.56	237.02	200.35	163.68
Core CAL	200.95	169.79	138.63	170.81	144.32	117.84
Exchange CAL	67.52	57.13	46.74	57.39	48.56	39.73
Office Pro	492.98	409.89	326.79	419.03	348.41	277.77
Office Std	409.09	340.37	271.66	347.73	289.31	230.91
SharePoint CAL	71.91	60.72	49.54	61.12	51.61	42.11
SMS CAL	41.55	35.16	28.76	35.32	29.89	24.45
SQL CAL	149.81	126.64	103.47	127.34	107.64	87.95
Windows CAL	30.36	25.57	20.77	25.81	21.73	17.65
Windows Professional	144.62	110.26	75.91	122.93	93.72	64.52

Microsoft Campus Agreement
Program Agreement Terms and Conditions

The following terms and conditions of the Microsoft Campus Agreement Program Agreement shall apply solely with respect to applicable Microsoft Campus Agreement Subscription Order Forms executed by eligible education authorized users:

1. **Definitions.**

In addition to the definitions in Section 1 of the common terms and conditions, the following definitions apply solely with respect to the Microsoft Campus Agreement Program Agreement:

"Campus agreement number" means the agreement number we assign, on the cover page above, to this program agreement for the purpose of associating subscription order forms herewith.

"eligible education authorized user" means any authorized user which qualifies to enter into a subscription order form and therefore license and use products under this Campus Agreement pursuant to the terms and conditions of the applicable license rights found at **www.microsoft.com/education/license/terms.asp**;

"General Terms and Conditions," when such term is used in a Subscription Order Form, refers to the terms and conditions of both this Microsoft Campus Agreement program agreement and the common terms and conditions of this Microsoft Custom License Agreement.

"individual users" means an eligible education authorized user's faculty, staff, and students whom it designates on its subscription order form to run the software.

"licensed period" means the period of time beginning on the date of our confirmation letter to an enrolled authorized user confirming its software order and continuing for the period of time specified in its subscription order form (typically twelve full calendar months).

"license rights" means, with respect to a subscription order form executed hereunder, the document located at **www.microsoft.com/education/license/terms.asp** as of the date such subscription order form is submitted to us;

"reseller" means a reseller authorized by us or one of our affiliates to resell licenses pursuant to the Campus Agreement program;

"software" means the most current or any prior version of the Microsoft software products an enrolled authorized user selects on its subscription order form. Software may be in any available language and either a Macintosh or Windows version. In order to have its individual users run an upgrade version of a Microsoft Windows operating system, an enrolled authorized user must ensure that there is a valid license for a Microsoft Windows operating system on each PC running the software.

2. How the Campus Agreement program works.

The Campus Agreement program gives enrolled authorized users the rights, during the licensed period, to have its individual users run the software on PCs used exclusively by such individual users and on PCs that remain in the enrolled authorized users' open access lab(s). An enrolled authorized user may choose to enroll less than its entire institution in the Campus Agreement program. If it does so, its individual users may run the software only on the PCs that are controlled and operated by the departments it designates on the subscription order form.

3. How to enroll.

To enroll in the Campus Agreement program, an enrolled authorized user must submit two original copies of its subscription order form to its reseller. Upon approval, we will process such authorized user's order through its reseller and provide it with a confirmation letter. Should the authorized user wish to place additional orders, it is necessary to submit additional subscription order forms every time. Upon approval, we will process each order through the reseller, as indicated above, and provide the enrolled authorized user with another confirmation letter.

By signing a subscription order form, each enrolled authorized user i) represents that the information on the subscription order form(s) it submits is accurate and correct, and ii) acknowledges and agrees that it has read and understood the terms and conditions of this program agreement, all of which are incorporated by this reference, and iii) agrees to be bound by the same.

4. Notice to individual users.

Each authorized user must use reasonable efforts to make its individual users aware of the terms and conditions upon which they are allowed to run the software.

Accordingly, each enrolled authorized user must:

a. Notify all individual users in advance of running the software that: (i) their use of the software is subject to the terms of this agreement, including but not limited to limitations on liability, disclaimer of warranties and exclusion of remedies; (ii) they are allowed to run the software only during the licensed period; and (iii) if this agreement is terminated, or the authorized user does not submit a subscription order form prior to the expiration of the licensed period or purchase perpetual licenses for the software, then all software run under the applicable subscription order form must be deleted when the licensed period expires or is otherwise earlier terminated, whichever is first; and,

b. Publish the then-current use terms at a location where they can be reviewed, such as a web site or physical location, on each anniversary of the effective date of their Subscription Order Form; and,

c. Notify us immediately if it becomes aware of any actual or potential violation of this agreement; and,

d. Provide all reasonable assistance and cooperation as requested by us to investigate and remedy any unauthorized use of the software by its individual users.

If an enrolled authorized user complies with this section, it will not be responsible for its student individual users' failure to comply with the terms of this agreement.

5. No support services. Authorized users will not be entitled to free telephone support for the software.

6. Term and termination of agreement.

a. Term. Unless extended as provided below, this program agreement will remain in effect until the earlier of (i) the last day of the sixtieth (60th) full calendar month following the effective date of the Microsoft Custom License Agreement associated herewith; or (ii) the day it is otherwise terminated, as set forth in Section 6(b) of this program agreement**.**

Provided both that (i) this program agreement is not otherwise terminated early as provided above, and (ii) the Microsoft Custom License Agreement associated herewith is not otherwise terminated early pursuant to the common terms and conditions, this program agreement may be extended up to three times, as follows, provided that (i) both parties agree in writing to such extension(s) prior to the first day of each accepted extension period; (ii) extension period 2 may not be accepted if extension period 1 was not previously accepted; and (iii) extension period 3 may not be accepted if extension period 2 was not previously accepted:

- Extension period 1, for the period beginning on the first day of the sixty-first (61st) full calendar month following the effective date of the Microsoft Custom License Agreement associated herewith and ending on the last day of the eighty-fourth (84th) full calendar month following such effective date;
- Extension period 2, for the period beginning on the first day of the eighty-fifth (85th) full calendar month following the effective date of Microsoft Custom License Agreement associated herewith and ending on the last day of the one hundred eighth (108th) full calendar month following such effective date; and
- Extension period 3, for the period beginning on the first day of the one hundred ninth (109th) full calendar month following the effective date of Microsoft Custom License Agreement associated herewith and ending on the last day of the one hundred twentieth (120th) full calendar month following such effective date.

This program agreement will remain in effect until it expires, as provided above, unless it is terminated as described below. Each subscription order form will have the term provided in that subscription order form. The term of any subscription order form(s) and the license rights will be for the licensed period as specified in such subscription order form(s).

b. Termination of this program agreement. You may terminate this program agreement for any reason upon 60 days written notice. Either party may terminate this program agreement if the other party materially breaches its obligations under this program agreement or the applicable common terms and conditions. Except where the breach is by its nature not curable within 30 days, the terminating party must give the other party 30 days written notice and opportunity to cure prior to termination.

Effect of termination. Such termination will merely terminate either party's and its affiliates' (or authorized user's) ability to enter into new subscription order forms under this program agreement. Such termination will not affect any subscription order form not otherwise terminated, and any terms of this program agreement applicable to any subscription order form not otherwise terminated will continue in effect with respect to that subscription order form.

c. Termination of a subscription order form. Either of us may terminate any subscription order form(s) if the other party is in material breach or default of any obligation, which breach or default is not cured within thirty (30) days of receipt of written notice of such breach. We may terminate any subscription order form(s) with immediate effect upon written notice if the applicable enrolled authorized user loses its educational accreditation by the applicable governmental regulatory agency.

7. Miscellaneous

a. Entire agreement. The terms and conditions of the following documents (i) constitute the entire agreement concerning the subject matter of this program agreement, (ii) supersede any prior or contemporaneous communications, and (iii) control in the following order:

(1) Appendix A, as further clarified by specific reference in the common terms and conditions; (2) the Cover Page to the Microsoft Custom License Agreement (including any amendments thereto); (3) the common terms and conditions of this Microsoft Custom License Agreement (including any amendments thereto); (4) these Microsoft Campus Agreement Program Agreement terms and conditions (including any amendments thereto); (5) the license rights that are in effect during the licensed period and related product use rights; and (6) all other subscription order forms under this program agreement (including any amendments thereto).

The terms of any purchase order or any general terms and conditions you or your authorized users maintain, other than those mandatory terms required by statute or regulation, do not apply. This program agreement (except the product use rights) can be changed only by an amendment signed by both parties.

b. Survival. The product use rights and provisions regarding restrictions on use, warranties, limitations of liability, compliance verification, notice to individual uses, and obligations on termination or expiration will survive termination or expiration of this program agreement or any subscription order form.

c. Independent contractors. Resellers are independent contractors who act in their own name and for their own account; they have no authority to bind or impose any obligation or liability upon us.

Microsoft School Agreement
Program Agreement Terms and Conditions

The following terms and conditions of the Microsoft School Agreement Program Agreement shall apply solely with respect to applicable Microsoft School Agreement Subscription Order Forms executed by eligible education authorized users:

1. Definitions.

In addition to the definitions in Section 1 of the common terms and conditions, the following definitions apply solely with respect to the Microsoft School Agreement Program Agreement:

"eligible education authorized user" means any authorized user which qualifies to enter into a subscription order form and therefore license and use products under this School Agreement pursuant to the terms and conditions of the applicable license rights found at **www.microsoft.com/education/license/terms.asp**;

"eligible PCs" means all of the Pentium, PowerMac, iMac, or equivalent or better, PCs in an enrolled authorized user's institution, plus any additional PCs on which it chooses to run any of the software.

"General Terms and Conditions," when such term is used in a Subscription Order Form, refers to the terms and conditions of both this Microsoft School Agreement program agreement and the common terms and conditions of this Microsoft Custom License Agreement.

"individual users" means an eligible education authorized user's teachers, staff, administrators, and students whom it designates on its subscription order form to run the software.

"licensed period" means the period of time beginning on the date of our confirmation letter to an enrolled authorized user confirming its software order and continuing for the period of time specified in its subscription order form (typically twelve full calendar months).

"license rights" means, with respect to a subscription order form executed hereunder, the document located at **www.microsoft.com/education/license/terms.asp** as of the date such subscription order form is submitted to us;

"reseller" means a reseller authorized by us or one of our affiliates to resell licenses pursuant to the School Agreement program;

"School agreement number" means the agreement number we assign, on the cover page above, to this program agreement for the purpose of associating subscription order forms herewith.

"software" means the most current or any prior version of the Microsoft software products an enrolled authorized user selects on its subscription order form. Software may be in any available language and either a Macintosh or Windows version. In order to have its users run an upgrade version of a Microsoft Windows operating system, an enrolled authorized user must ensure that there is a valid license for a Microsoft Windows operating system on each PC running the software.

2. How the School Agreement program works.

The School Agreement program gives enrolled authorized users the rights, during the licensed period, to have its individual users run the software on eligible PCs used exclusively by such individual users.

3. How to enroll.

To enroll in the School Agreement program, an enrolled authorized user must submit two original copies of its subscription order form to its reseller. Upon approval, we will process such authorized user's order through its reseller and provide it with a confirmation letter. Should the authorized user wish to place additional orders, it is necessary to submit additional subscription order forms every time. Upon approval, we will process each order through the reseller, as indicated above, and provide the enrolled authorized user with another confirmation letter.

By signing a subscription order form, each enrolled authorized user i) represents that the information on the subscription order form(s) it submits is accurate and correct, and ii) acknowledges and agrees that it has read and understood the terms and conditions of this program agreement, all of which are incorporated by this reference, and iii) agrees to be bound by the same.

4. Notice to individual users.

Each authorized user must use reasonable efforts to make its individual users aware of the terms and conditions upon which they are allowed to run the software.

Accordingly, each enrolled authorized user must:

a. Notify all individual users in advance of running the software that: (i) their use of the software is subject to the terms of this agreement, including but not limited to limitations on liability, disclaimer of warranties and exclusion of remedies; (ii) they are allowed to run the software only during the licensed period; and (iii) if this agreement is terminated, or the authorized user does not submit a subscription order form prior to the expiration of the licensed period or purchase perpetual licenses for the software, then all software run under the applicable subscription order form must be deleted when the licensed period expires or is otherwise earlier terminated, whichever is first; and,

b. Publish the then-current license rights at a location where they can be reviewed, such as a web site or physical location, on each anniversary of the effective date of the Subscription Order Form; and,

c. Notify us immediately if it becomes aware of any actual or potential violation of this agreement; and,

d. Provide all reasonable assistance and cooperation as requested by us to investigate and remedy any unauthorized use of the software by its individual users.

If an enrolled authorized user complies with this section, it will not be responsible for its student individual users' failure to comply with the terms of this agreement.

5. No support services. Authorized users will not be entitled to free telephone support for the software.

6. Term and termination of agreement.

a. Term. Unless extended as provided below, this program agreement will remain in effect until the earlier of (i) the last day of the sixtieth (60th) full calendar month following the effective date of the Microsoft Custom License Agreement associated herewith; or (ii) the day it is otherwise terminated, as set forth in Section 6(b) of this program agreement**.**

Provided both that (i) this program agreement is not otherwise terminated early as provided above, and (ii) the Microsoft Custom License Agreement associated herewith is not otherwise terminated early pursuant to the common terms and conditions, this program agreement may be extended up to three times, as follows, provided that (i) both parties agree in writing to such extension(s) prior to the first day of each accepted extension period; (ii) extension period 2 may not be accepted if extension period 1 was not previously accepted; and (iii) extension period 3 may not be accepted if extension period 2 was not previously accepted:

- Extension period 1, for the period beginning on the first day of the sixty-first (61st) full calendar month following the effective date of the Microsoft Custom License Agreement associated herewith and ending on the last day of the eighty-fourth (84th) full calendar month following such effective date;
- Extension period 2, for the period beginning on the first day of the eighty-fifth (85th) full calendar month following the effective date of Microsoft Custom License Agreement associated herewith and ending on the last day of the one hundred eighth (108th) full calendar month following such effective date; and
- Extension period 3, for the period beginning on the first day of the one hundred ninth (109th) full calendar month following the effective date of Microsoft Custom License Agreement associated herewith and ending on the last day of the one hundred twentieth (120th) full calendar month following such effective date.

This program agreement will remain in effect until it expires, as provided above, unless it is terminated as described below. Each subscription order form will have the term provided in that subscription order form. The term of any subscription order form(s) and the license rights will be for the licensed period as specified in such subscription order form(s).

b. Termination of this program agreement. You may terminate this program agreement for any reason upon 60 days written notice. Either party may terminate this program agreement if the other party materially breaches its obligations under this program agreement or the applicable common terms and conditions. Except where the breach is by its nature not curable within 30 days, the terminating party must give the other party 30 days written notice and opportunity to cure prior to termination.

Effect of termination. Such termination will merely terminate either party's and its affiliates' (or authorized user's) ability to enter into new subscription order forms under this program agreement. Such termination will not affect any subscription order form not otherwise terminated, and any terms of this program agreement applicable to any subscription order form not otherwise terminated will continue in effect with respect to that subscription order form.

c. Termination of a subscription order form. Either of us may terminate or any subscription order form(s) if the other party is in material breach or default of any obligation, which breach or default is not cured within thirty (30) days of receipt of written notice of such breach. We may terminate any subscription order form(s) with immediate effect if the applicable enrolled authorized user loses its educational accreditation by the applicable governmental regulatory agency.

7. Miscellaneous

a. Entire agreement. The terms and conditions of the following documents (i) constitute the entire agreement concerning the subject matter of this program agreement, (ii) supersede any prior or contemporaneous communications, and (iii) control in the following order:

(1) Appendix A, as further clarified by specific reference in the common terms and conditions; (2) the Cover Page to the Microsoft Custom License Agreement (including any amendments thereto); (3) the common terms and conditions of this Microsoft Custom License Agreement (including any amendments thereto); (4) these Microsoft School Agreement Program Agreement terms and conditions (including any amendments thereto); (5) the license rights that are in effect during the licensed period and related product use rights; and (6) all other subscription order forms under this program agreement (including any amendments thereto).

The terms of any purchase order or any general terms and conditions you or your authorized users maintain, other than those mandatory terms required by statute or regulation, do not apply. This program agreement (except the product use rights) can be changed only by an amendment signed by both parties.

b. Survival. The product use rights and provisions regarding restrictions on use, warranties, limitations of liability, facilitating compliance, and obligations on termination or expiration will survive termination or expiration of this program agreement or any subscription order form.

c. Independent contractors. Resellers are independent contractors who act in their own name and for their own account; they have no authority to bind or impose any obligation or liability upon us.

Custom Microsoft Enterprise *Enrollment*

for the State of New York

Customer purchase order number *Reseller to complete*		Microsoft Business Agreement number *Reseller to complete*	
Enterprise Agreement number *Reseller to complete*		Previous Enterprise Enrollment number *Reseller to complete*	
Enrollment number *Microsoft affiliate to complete*		Previous Enterprise Enrollment end date *Reseller to complete*	

This Microsoft Enterprise Enrollment is entered into between the following entities. Each party will notify the other in writing if any of the information in the following table changes.

Customer (Authorized User of State of New York)		
Name of Entity		Contact Name (This person handles access to online information and receives order confirmations. This person also receives true up, renewal and other notices, unless a different contact for notice is provided in the notices section below.)
Street Address		Contact E-mail Address
City	State/Province	Phone
Country	Postal code	Fax
		Microsoft Account Manager Name
Contracting Microsoft Affiliate		
MSLI, GP - 6100 Neil Road, Suite 210 - Reno, Nevada USA 89511-1137 - Dept. 551, Volume Licensing		

If notices should be sent to someone or some place other than above, complete the relevant portions below:		
Name of Entity		Contact Name
Street address		Contact E-mail Address
City	State/Province	Phone
Country	Postal Code	Fax

Notices to Microsoft should be sent to:	Copies should be sent to:
MSLI, GP 6100 Neil Road, Suite 210 Reno, Nevada USA 89511-1137 Dept. 551, Volume Licensing	Microsoft Law and Corporate Affairs One Microsoft Way Redmond, WA 98052 USA Volume Licensing Group VLG-USA@Microsoft.com (425) 936-7329 fax

Definitions. As used in this enrollment, "you" refers to the entity that signs this enrollment with us, and "we" or "us" refers to the Microsoft entity that signs this enrollment.

All other definitions in the Microsoft Enterprise Agreement identified above, and the related Microsoft Custom License Agreement with the State of New York (to which the Microsoft Business Agreement Number above applies), apply here.

Effective Date. If you are renewing Software Assurance from one or more previous "Enterprise Enrollments" (as defined in subsection 3(a) (Placing the initial order) of the Microsoft Enterprise Agreement identified above), then the effective date will be the day after the expiration of the first of those Enterprise Enrollments to expire. Otherwise the effective date will be the date this enrollment is signed by us. Where a previous Enterprise Enrollment is being used, your reseller will require the Enterprise Enrollment number and end date to complete the applicable boxes above.

Term. This enrollment will expire 36 full calendar months from the effective date indicated below unless terminated earlier or renewed as provided in the Microsoft Enterprise Agreement program agreement. We will provide you with written notice 60 days prior to expiration of the initial enrollment or renewal term advising you of your renewal options. For a description of renewal options, see subsection 10(e) of the Microsoft Enterprise Agreement program agreement (How to renew an enrollment), which is part of the Microsoft Custom License Agreement with the State of New York..

Representations and Warranties. By signing this enrollment, the parties agree to be bound by the terms of this enrollment, and you represent and warrant that: (i) you have read and understood the Microsoft Enterprise Agreement program agreement, including the common terms and conditions incorporated thereby and any amendments thereto, and the product use rights, and agree to be bound by those terms; (ii) you are an authorized user of the State of New York, (as such term is defined in the common terms and conditions of the Microsoft Custom License Agreement with the State of New York); (iii) you have 250 or more qualified desktops**; and (iv) the information that you provide on this cover page and each of the attached forms is accurate.

** The 250 qualified desktop minimum may be lowered to 100 by amendment, provided that you do not require receiving free CD-ROM kits. Please ask your reseller for details.

This enrollment consists of (1) this cover page, (2) the Enterprise Order Form, (3) the Shipping Information Form, (4) the Reseller Information Form, and (5) the Enterprise Update Statement.

Customer (Authorized User)	*Contracting Microsoft Affiliate*
Name	**MSLI, GP**
Signature	Signature
Printed Name	Printed Name
Printed Title	Printed Title

Signature Date	Signature Date (date Microsoft affiliate countersigns)
	Effective Date (may be different than our signature date)

Enterprise Order Form

(To be completed with your reseller or Microsoft account manager) Microsoft Initials_____

1. Defining your enterprise.

Use this section to identify which authorized users will be included in your enterprise. Your enterprise must consist of entire government agencies, departments or legal jurisdictions, not partial government agencies, departments, or legal jurisdictions. Each authorized user must be entirely "in" or entirely "out." All authorized users with which your organization is merged after the effective date of this enrollment that are not party to an Enterprise Enrollment of their own will automatically be included unless you fill in part b below (when we refer to an Enterprise Enrollment in this section 1, we mean either (i) a Microsoft Enterprise Select Agreement; (ii) an enterprise enrollment entered into under a separate Microsoft Select Master Agreement or Microsoft Enterprise Agreement; (iii) an enterprise subscription enrollment under a separate Microsoft Enterprise Subscription Agreement; or (iv) any other enrollment submitted under the Microsoft Enterprise Agreement program agreement identified on the cover page).

a. Use this part (a) to determine which current authorized users will be included in your enterprise. Check only one of the boxes in part (a).	
☐	Only you will be participating
☐	You and the following authorized users will be participating (attach a list of names on a separate piece of paper if more than 5 authorized users are being included):
1	
2	
3	
4	
5	
b. Use this part (b) to indicate whether authorized users with which you merge after the enrollment effective date will be included. Unless you check the box below, all authorized users with which you merge after the enrollment effective date that are not party to an Enterprise Enrollment of their own will automatically be included.	
☐	Exclude all authorized users which the enrolled authorized user merges after the enrollment effective date that are not party to an Enterprise Enrollment of their own.

2. Selecting your language option.

Your selection below will determine the languages in which you may run the products licensed under this enrollment. If you select "Listed Languages," you may run (i) all copies of each of your products in any of the languages identified as "Listed Languages" below, and (ii) up to 10% of the copies of each of your products in any of the languages identified as "Restricted Languages" below. If you select "All Languages," you may run all copies of your products in any of the "Listed Languages" and any of the "Restricted Languages."

Check only one of the boxes below to indicate your language option

X **Listed Languages**

☐ **All Languages**

"Listed Languages"	
Arabic	Korean
Simplified Chinese	Japanese
Traditional Chinese	Polish
Czech	Portuguese (Brazil)
English[1]	Russian
French Canadian	Turkish
Hebrew	Thai
Hungarian	Spanish[2]

"Restricted Languages"	
Danish	Greek
Dutch	Italian
English[3]	Norwegian
Finnish	Portuguese (Portugal)
French	Spanish[4]
German	Swedish

[1] English is a "Listed Language," except when restricted as described in the "Restricted Languages" list (see footnote 3)

[2] Spanish is a "Listed Language," only if this enrollment is signed in Latin America

[3] English is a "Restricted Language" if this enrollment is signed in Austria, Belgium, Denmark, France, Finland, Germany, Ireland, Italy, Luxembourg, Netherlands, Norway, Portugal, United Kingdom, Switzerland, Sweden, or Spain

[4] Spanish is a "Restricted Language" unless this enrollment is signed in Latin America

3. Language allocation.

Provide us with your good faith estimate of the specific languages in which you will run all copies of all products and the approximate percentage of those copies you will run in each language. Information that you provide here does not limit your future use of products under this enrollment in any permitted language within the language group you select above. Attach a separate sheet if more space is needed.

Language	Percentages
	%
	%
	%
	%

4. Applicable currency.

The currency we accept is based on the country in which you are located. All payments must be made under this enrollment in the accepted currency.

Find your accepted currency in the Currency Table below and fill in this box.
Type of currency: U.S. Dollars

Currency Table:

Currency	Accepted in Country
Australian Dollars	Australia
Canadian Dollars	Canada
Danish Krone	Denmark
EUROs	Austria, Belgium, Denmark, Finland, France, Germany, Ireland, Italy, Luxembourg, Netherlands, Norway, Portugal, Spain, Switzerland, Sweden, and United Kingdom
Japanese Yen	Japan
Korean Won	Korea
New Zealand Dollars	New Zealand
Norwegian Krone	Norway
Pounds Sterling	United Kingdom
Swedish Krona	Sweden
Swiss Francs	Switzerland
Taiwan Dollars	Taiwan
US Dollars	United States, Latin America, Asia (except Japan, Korea, and Taiwan), Greece, Eastern Europe, Middle East, Africa

5. Establishing your price level and qualified desktop count.

The price levels for both enterprise products and additional products is set forth in Section 12(d) of the Microsoft Enterprise Agreement program agreement associated herewith. Unless otherwise agreed upon by the parties, the reference prices shown in Section 6 shall be determined pursuant to the terms and conditions of Section 12(d) of the Enterprise Agreement.

Qualified Desktops: You represent that the total number of qualified desktops in your enterprise is, or will be increased to, this number during the initial term of this enrollment. (This number must be equal to at least 250 desktops.)	

6. Enterprise Product Orders.

The prices stated below are for your reference only. Your prices and payment terms for all products ordered will be determined by agreement between you and your reseller.

a. Initial order for enterprise products.

The per-desktop reference prices for each of the three annual installment payments for the enterprise products covered by your initial order are set forth in the table below. Either we or your reseller will fill in the table below based upon your choice of enterprise product(s).

We will invoice your reseller for each qualified desktop on your initial order in three annual installments that are proportional to these reference prices. The first installment will be invoiced upon our acceptance of this enrollment;

the remaining installments will be invoiced at the next two anniversaries of the enrollment effective date. The year 3 per-desktop reference price may or may not be subject to reduction, pursuant to the terms and conditions of section 12(d) of the Microsoft Enterprise Agreement program agreement.

You must order at least one of the individual enterprise products listed in the table below before selecting any additional products in section 7 (Additional product orders) of this enrollment below.

Enterprise Product Selection and Per-Desktop Reference Price Table (reseller or Microsoft to complete):

Enterprise Product	√	Product Family (Office, Windows, CAL)	Product Type (L&SA or SA-Only)	Year 1 Desktop Reference Price	Year 2 Desktop Reference Price	Year 3 Desktop reference Price
Office Professional						
Office Standard						
Windows Operating System Upgrades						
Core CAL						
Windows Server CAL						
Exchange Server CAL						
SharePoint Portal Server CAL						
Systems Management Server CAL						
SQL Server CAL						
Total per-desktop reference price each year:						
Total annual reference price (number of qualified desktops multiplied by each per-desktop reference price):						

Because all operating system licenses under this program will be upgrade licenses, if you select this product, all new or replacement qualified desktops purchased from an Original Equipment Manufacturer during the term of this enrollment on which you will run the Windows operating system must be licensed for one of the following: Windows 95, Windows 98, Window NT Workstation, Windows 2000 Professional, Windows XP Professional, or successor products to Windows XP Professional.

b. True up orders for enterprise products.

The reference price for the enterprise products covered by any true up orders submitted during the initial term is set forth below. Either we or your reseller will fill in the table below based upon your choice of enterprise product(s). Each true up reference price is determined pursuant to the terms and conditions of Section 12(d) of the Microsoft enterprise Agreement program agreement referenced above. We will invoice your reseller in total upon our acceptance of each true up order.

Enterprise Product True Up Reference Price Table (reseller or Microsoft to complete):

1 Enterprise Product	2 First year true up reference price	3 Second year true up reference price	4 Third year true up reference price
Office Professional			
Office Standard			
Windows Operating System Upgrades			
Core CAL			
Windows Server CAL			
Exchange Server CAL			
SharePoint Portal Server CAL			
Systems Management Server CAL			
SQL Server CAL			
Total reference price per additional desktop:			

7. Additional Product Orders.

The prices stated below are for your reference only. Your prices and payment terms for all products ordered will be determined by agreement between you and your reseller.

a. Initial order for additional products.

The reference prices for each additional product covered by your initial order are listed in the table below. Either we or your reseller will fill in the table below based upon your choice of additional product(s). We will invoice your reseller in three equal annual installments. The first installment will be invoiced upon our acceptance of this enrollment; the remaining installments will be invoiced at the next two anniversaries of the enrollment effective date. You may license additional products by entering the names and quantities for the products of your choice in the Additional Product Selection table. For a list of the available additional products, contact your reseller.

Additional Product Selection Table (reseller or Microsoft to complete):

Additional Product	_____	Product Pool	Price Level	Quantity	Annual additional product per license reference price	Annual additional product reference price	Total additional product reference price
			D				
			D				
			D				
			D				
			D				
			D				
			D				
			D				
			D				
			D				
Total Initial Annual Additional Product Reference Price:						**9**	

b. Subsequent additional product orders.

The reference price for any new additional product not initially included in your enrollment will be the then current reference price for your price level for that product as of the date of your order. We will invoice your reseller in total upon our acceptance of your order. Once you have placed the first order for copies of a new additional product, you may run additional copies of that product at any time and order them as described in subsection 7(c) (True Up Orders for Additional Products).

c. True up orders for additional products.

The reference price for additional products initially included in your enrollment and covered by any true up order submitted during the initial term is set forth below. Either we or your reseller will fill in the table below based upon your choice of additional product(s). That reference price is based on the State's price level, and is based on the Microsoft Government Enterprise Agreement Price List as of the date of your initial order. The true up reference price for any new additional products will be the then current true up reference price for that product from such price list, based on the State's price level, as of the date of your first order for that product. We will invoice your reseller in total upon our acceptance of your true up order.

Additional Product True Up Price Table (reseller or Microsoft to complete):

1 _____	2 **First-year true up reference price**	3 **Second-year true up reference price**	4 **Third-year true up reference price**

8. Renewal orders.

For any 36-month renewal, your renewal order will be invoiced to your reseller in three annual installments. The first installment will be invoiced upon our acceptance of the renewal order; the remaining installments will be invoiced at the next two anniversaries of the effective date of that renewal term. For any 12-month renewal and for any true up orders, we will invoice your reseller in total upon our acceptance of your order.

Shipping Information Form

(To be completed with your reseller or Microsoft account manager) Microsoft Initials_____

CD-ROM subscriptions will be shipped to the following address.

CD Kit Ship To Information (If different from address on the cover page)	
Customer name	Customer contact name
Street address	Contact email address
City and State / Province	Contact phone
Country and Postal Code	Contact fax

Unless you mark one of the boxes below, upon our acceptance of this enrollment we will ship your starter CD kit for each product group you designate in the table below containing products in the language(s) you select. We will provide updates in the form of CDs, or upon reasonable notice by electronic download or similar other means. If you need additional CD kits and updates, you may order these through your reseller for a fee.

☐ I do not wish to receive a CD kit or kit updates.

☐ I do not need another complete set, but would like to receive kit updates.

For each language and group you wish to receive, mark the corresponding box with an X.

Pool/Group / Language	Applications Pool				Systems Pool	Servers Pool	
	Office Family	**Developer Tools**	**Training and Learning**	**Products for Macintosh**	**Windows Client: Business**	**Windows Servers**	**Server Applications**
English							
Int'l English/Multi-							
Arabic							
Brazilian Portuguese							
Chinese-Simplified							
Chinese-Traditional							
English, both							
Czech							
Danish							
Dutch							
Finnish							
French							
German							
Greek							
Hebrew							
Hungarian							
Italian							
Japanese							
Korean							
Norwegian							
Polish							
Portuguese							
Russian							
Spanish							
Swedish							
Thai							
Turkish							

= Not available

Reseller Information Form

Microsoft Initials_____

Your reseller should complete the following sections and sign this form where indicated.

General information

Reseller Company Name:
Street Address and/or Post Office Box:
City and State / Province and Postal Code:
Country:
Contact Name:
Phone Number:
Fax Number:
Email Address:

The undersigned confirms that the reseller information is correct.

Name of Reseller
Signature
Printed Name
Printed Title
Date

Enterprise Update Statement

Microsoft Initials_____

Complete within 15 days following each anniversary of the enrollment effective date as described in subsections 3(c) (Placing annual "true up" orders to account for additional desktops) and 4(d) (Placing annual "true up" orders to account for additional copies) of the Microsoft Enterprise Agreement program agreement. Submit an original to your reseller.

Enterprise Agreement Number	
Enrollment Number	
Customer (enrolled authorized user) Name	
Anniversary of Enrollment Effective Date	

An Enterprise Update Statement must be submitted unless (a) the number of your qualified desktops has increased during the previous year and you have placed a true up order covering those desktops; and (b) you are running only enterprise products under your enrollment.

Enterprise products. If there has been no increase in your qualified desktop count, confirm this by marking the first box below.

Additional products. For any additional product for which a true up order has not been placed, confirm that there has been no increase in the number of copies of that product run under your enrollment by marking the second box below.

☐ I confirm that there has been no increase in the number of qualified desktops in my enterprise.

☐ I confirm that there has been no increase in the number of copies of any additional product run under this enrollment other than those for which a true up order has been submitted.

Statement completed by:

Name of customer
Authorized signature
Name
Title
Date

(Exhibit 2 to Custom License Agreement) Microsoft Initials_____

Custom Microsoft Standard (non-Academic) Select *Enrollment* for the State of New York

Microsoft Business Agreement number *Reseller to complete*		Enrollment number *Microsoft affiliate to complete*	
Select Agreement number *Reseller to complete*		Previous Select enrollment number *Reseller to complete*	
Select Agreement Expiration Date *Reseller to complete*		Previous Select enrollment end date *Reseller to complete*	

This Microsoft Select Enrollment is entered into between the following entities. Each party will notify the other in writing if any of the information in the following table changes.

Customer (Authorized User of the State of New York)		
Name of Entity		Contact Name (This person handles access to online information. This person also receives notices unless a different contact for notices is provided in the notices section below.)
Street address		Contact E-mail Address (required for online access)
City	State/Province	Phone
Country	Postal code	Fax
		Microsoft Account Manager Name
Contracting Microsoft Affiliate		
MSLI, GP - 6100 Neil Road, Suite 210 - Reno, Nevada USA 89511-1137 - Dept. 551, Volume Licensing		

If notices should be sent to someone or some place other than above, complete this section:		
Name of Entity		Contact name
Street address		Contact e-mail address
City	State/Province	Phone
Country	Postal code	Fax

Notices to Microsoft should be sent to:	Copies should be sent to:
MSLI, GP 6100 Neil Road, Suite 210 Reno, Nevada USA 89511-1137 Dept. 551, Volume Licensing	Microsoft Law and Corporate Affairs One Microsoft Way Redmond, WA 98052 USA Volume Licensing Group VLG-USA@Microsoft.com (425) 936-7329 fax

Definitions. When used in this enrollment, "you" refers to the entity that signs this enrollment with us and "we" or "us" refers to the Microsoft entity that signs this enrollment.

All other definitions in the Microsoft Select Agreement identified above, and the related Microsoft Custom License Agreement with the State of New York (to which the Microsoft Business Agreement Number above applies), apply here.

Effective date. If you are renewing Software Assurance coverage (or similar upgrade protection) from one or more previous Microsoft agreements, then the effective date of this enrollment will be the day after the earliest expiration of such coverage. Otherwise the effective date will be the date this enrollment is signed by us. Where a previous Microsoft agreement is being used, your reseller will require the enrollment number and enrollment end date to complete the applicable boxes above.

Term. This enrollment will expire on the date on which the Microsoft Select Agreement program agreement expires, unless it is terminated earlier as provided for in that program agreement.

Representations and warranties. By signing this enrollment, the parties agree to be bound by the terms of this enrollment, and you represent and warrant that: (i) you have read and understood the Microsoft Select Agreement program agreement, including the common terms and conditions incorporated thereby and any amendments thereto, and the product use rights, and agree to be bound by those terms; (ii) you are an authorized user of the State of New York, (as such term is defined in the common terms and conditions of the Microsoft Custom License Agreement with the State of New York); (iii) during the initial term of this enrollment you expect to purchase licenses equal to at least 750 points**; and (iv) the information that you provide on each of the attached forms is accurate.

** The 750 point minimum may be waived by amendment, provided that you do not require receiving free CD-ROM kits. Please ask your reseller for details.

This enrollment consists of (1) this cover page, (2) the Shipping Information Form, (3) the Software Assurance Renewal Election form, and (4) the Reseller Information Form.

Customer (Authorized User)	*Contracting Microsoft Affiliate*
Name of Entity	**MSLI, GP**
Signature	Signature
Printed name	Printed name
Printed title	Printed title
Signature date	Signature date *(date Microsoft affiliate countersigns)*
	Effective Date *(may be different than our signature date)*

Shipping Information Form

Select CD-ROM subscriptions will be shipped to the following address.

Initial Fulfillment Kit/CD-ROM Ship-to Information ***(If different from address on the cover page)***	
Customer name	Contact name
Street address	Contact email address
City and State / Province	Contact phone
Country and Postal Code	Contact fax

Unless you mark one of the boxes below, upon the acceptance of this enrollment we will ship your starter CD kit for each product group you designate in the table below containing products in the language(s) you select. We will provide updates in the form of CDs, or upon reasonable notice by electronic download or similar other means. If you need additional CD kits and updates, you may order these through your reseller for a fee. For a complete list of the contents of any kit offering, go to http://selectug.mslicense.com/

☐ I do not wish to receive a CD kit or kit updates.

☐ I do not need another complete set, but would like to receive kit updates.

For each language and group you wish to receive, mark the corresponding box with an X

	Applications Pool					Systems Pool	Servers Pool	
Language	Office Family	Mapping *	Developer Tools	Training and Learning	Products for Macintosh	Windows Client: Business	Windows Servers	Server Applications
English	☐	☐	☐	☐	☐	☐	☐	☐
Intl English/MultiLanguage	☐					☐	☐	☐
Arabic	☐					☐		☐
Brazilian	☐			☐		☐	☐	☐
Chinese Simplified	☐		☐			☐	☐	☐
Chinese Traditional	☐		☐			☐	☐	☐
Chinese Traditional (Hong Kong)						☐	☐	
Czech	☐		☐			☐	☐	☐
Danish	☐					☐		☐
Dutch	☐		☐	☐		☐	☐	☐
Finnish	☐					☐		☐
French	☐	☐	☐	☐	☐	☐	☐	☐
German	☐	☐	☐	☐	☐	☐	☐	☐
Greek	☐					☐		☐
Hebrew	☐					☐		☐
Hungarian	☐					☐	☐	☐
Italian	☐	☐	☐	☐		☐	☐	☐
Japanese	☐		☐	☐	☐	☐	☐	☐
Korean	☐		☐			☐	☐	☐
Norwegian	☐					☐		☐
Pan Chinese	☐							☐
Polish	☐					☐	☐	☐
Portuguese	☐					☐	☐	☐
Russian	☐		☐			☐	☐	☐
Spanish	☐	☐	☐	☐	☐	☐	☐	☐
Swedish	☐		☐	☐	☐	☐	☐	☐
Thai	☐							
Turkish	☐					☐	☐	☐

* Mapping Kit is not available for use in or shipment to, India, Morocco, Pakistan, China, Hong Kong SAR, Macau SAR, and Turkey
= Not Available

Software Assurance Election Form

1. Software Assurance Membership election:

To become a Software Assurance Member, you must agree to purchase and maintain Software Assurance for all copies of all products licensed under this enrollment from at least one product pool. For a description of benefits resulting from marking one or more boxes below and additional details regarding the Software Assurance Membership program, please consult your reseller or Microsoft account manager.

Mark the applicable box(es) next to each product pool for which you are committing to purchase and maintain Software Assurance for all copies of all products licensed from that pool under this enrollment.

Product Pools	√
Applications Pool	☐
Systems Pool	☐
Servers Pool	☐

2. Election to renew Software Assurance (or similar upgrade protection):

If you are renewing Software Assurance (or similar upgrade protection) from a previous Microsoft agreement, mark the box below and provide your previous enrollment number and enrollment end date or Microsoft Open License Authorization Number and end date to your reseller for it to complete the applicable boxes at the top of the cover page of this enrollment.

For an explanation of the circumstances under which you may renew, see subsection 3(a) (Placing orders) of the Select Agreement program agreement.

☐ Yes, I am renewing Software Assurance.

Reseller Information Form

Use this form to identify your selected reseller and have your reseller complete the information below and acknowledge your selection by signing below.

Reseller Information:
Reseller Company Name
Street address and/or post office box
City and State/Province and Postal Code
Country
Contact name
Phone
Fax
Email address

The undersigned confirms that the Reseller information is correct.

Name of Reseller
Signature
Printed name
Printed title
Date

Custom Microsoft Academic Select *Enrollment*

for the State of New York

Academic Select Agreement number *Reseller to complete*		Microsoft Business Agreement number *Reseller to complete*	
Academic Select Agreement Expiration Date *Reseller to complete*		Previous Academic Select enrollment number *Reseller to complete*	
Enrollment number *Microsoft affiliate to complete*		Previous Academic Select enrollment end date *Reseller to complete*	

This Microsoft Academic Select Enrollment is entered into between the following entities. Each party will notify the other in writing if any of the information in the following table changes.

Customer (Authorized User of the State of New York)		
Name of Entity		Contact Name (This person handles access to online information. This person also receives notices unless a different contact for notices is provided in the notices section below.)
Street Address		Contact Email Address
City	State/Province	Phone
Country	Postal Code	Fax
		Microsoft Account Manager Name
Contracting Microsoft Affiliate		
MSLI, GP - 6100 Neil Road, Suite 210 - Reno, Nevada USA 89511-1137 - Dept. 551, Volume Licensing		

If notices should be sent to someone or some place other than above, complete the relevant portions below:		
Name of Entity		Contact Name
Street Address		Contact Email Address
City	State/Province	Phone
Country	Postal Code	Fax

Notices to Microsoft should be sent to:	Copies should be sent to:
MSLI, GP 6100 Neil Road, Suite 210 Reno, Nevada USA 89511-1137 Dept. 551, Volume Licensing	Microsoft Law and Corporate Affairs One Microsoft Way Redmond, WA 98052 USA Volume Licensing Group VLG-USA @Microsoft.com (425) 936-7329 fax

Definitions. When used in this enrollment, "you" refers to the entity that signs this enrollment with us and "we" or "us" refers to the Microsoft entity that signs this enrollment.

All other definitions in the Microsoft Academic Select Agreement identified above, and the related Microsoft Custom License Agreement with the State of New York (to which the Microsoft Business Agreement Number above applies), apply here.

Effective date. If you are renewing Software Assurance coverage (or similar upgrade protection) from one or more previous Microsoft agreements, then the effective date of this enrollment will be the day after the earliest expiration of such coverage. Otherwise the effective date will be the date this enrollment is signed by us. Where a previous Microsoft agreement is being used, your reseller will require the agreement number and agreement end date to complete the applicable boxes above.

Term. This enrollment will expire on the date on which the Microsoft Academic Select Agreement program agreement expires, unless it is terminated earlier as provided for in that Agreement.

Representations and warranties. By signing this enrollment, the parties agree to be bound by the terms of this enrollment, and you represent and warrant that: (i) you have read and understood the Microsoft Select Agreement program agreement, including the common terms and conditions incorporated thereby and any amendments thereto, and the product use rights, and agree to be bound by those terms; (ii) you are an eligible education authorized user (as such term is defined in the Microsoft Select Agreement program agreement referenced above); (iii) during the initial term of this enrollment you expect to purchase licenses equal to at least 750 points; and (iv) the information that you provide on each of the attached forms is accurate.

This enrollment consists of (1) this cover page, (2) the Shipping Information Form, (3) the Qualified product Discount Election Form; (3) the Software Assurance Election Form, and (4) the Reseller Information Form.

Customer (Authorized User)	*Contracting Microsoft Affiliate*
Name of Entity	**MSLI, GP**
Signature	Signature
Printed Name	Printed Name
Printed Title	Printed Title
Signature Date	Signature Date (date Microsoft affiliate countersigns)
	Effective Date (may be different than our signature date)

Shipping Information Form

Select CD-ROM subscriptions will be shipped to the following address.

Initial Fulfillment Kit/CD-ROM Ship-to Information ***(If different from address on the cover page)***	
Customer Name	Customer Contact Name
Street Address	Contact Email Address
City and State / Province	Contact Phone Number
Country and Postal Code	Contact Fax Number

Unless you mark one of the boxes below, upon the acceptance of this enrollment we will ship your starter CD kit for each product group you designate in the table below containing products in the language(s) you select. We will provide updates in the form of CDs, or upon reasonable notice by electronic download or similar other means. If you need additional CD kits and updates, you may order these through your reseller for a fee.

☐ I do not wish to receive a CD kit or kit updates.

☐ I do not need another complete set, but would like to receive kit updates.

For each language and group you wish to receive, mark the corresponding box with an X.

Pool/Group / Language	Applications Pool				Systems Pool	Servers Pool	
	Office Family	**Developer Tools**	**Training and Learning**	**Products for Macintosh**	**Windows Client: Business**	**Windows Servers**	**Server Applications**
English							
Int'l English/Multi-language							
Arabic							
Brazilian Portuguese							
Chinese-Simplified							
Chinese-Traditional							
English, both							
Czech							
Danish							
Dutch							
Finnish							
French							
German							
Greek							
Hebrew							
Hungarian							
Italian							
Japanese							
Korean							
Norwegian							
Polish							
Portuguese							
Russian							
Spanish							
Swedish							
Thai							
Turkish							

= Not available

Qualifying Product Discount Election Form

To receive a ten percent (10%) discount on one or more available qualifying products, pursuant to Section 11(e)(2)(B) of the Select Program Agreement, check the applicable boxes below which correspond to the qualifying product(s) you wish to receive such discount on, and complete all other applicable blanks in this section. By doing so, you represent and warrant that:

i) The number of qualified desktops in your institution, as of the effective date of this enrollment, is

_____

ii) The following table lists the names and accurate qualified desktop count of every authorized user (if any) to which you plan to sublicense or transfer qualified products, and that you will not sublicense or transfer qualified products to any authorized user or third party listed in this table without our prior written consent:

Name of Authorized User	*Number of Qualified Desktops Owned by Authorized User*

Note: If you will be sublicensing or transferring licenses to more than 4 authorized users, please attach a separate document with the names and qualified desktop counts of each such authorized user.

iii) The total number of qualified desktops for which you will order License & Software Assurance for qualifying products on your initial order is therefore (add the number of qualified desktops in (i) and (ii) above):

_____ ; and

iv) The qualifying products which you have chosen to purchase for all qualified desktops are (check all that apply):

Qualifying Products	√
Office Professional	☐
Core Client Access License	☐
Windows Professional desktop operating system upgrade	☐

Software Assurance Election Form

1. Software Assurance Membership election:

To become a Software Assurance Member, you must agree to purchase and maintain Software Assurance for all copies of all products licensed under this enrollment from at least one product pool. For a description of benefits resulting from marking one or more boxes below and additional details regarding the Software Assurance Membership program, please consult your reseller or Microsoft account manager.

Mark the applicable box(es) next to each product pool for which you are committing to purchase and maintain Software Assurance for all copies of all products licensed from that pool under this enrollment.

Product Pools	√
Applications Pool	☐
Systems Pool	☐
Servers Pool	☐

2. Election to renew Software Assurance (or similar upgrade protection):

If you are renewing Software Assurance (or similar upgrade protection) from a previous Microsoft agreement, mark the box below and provide your previous enrollment number and enrollment end date or Microsoft Open License authorization number and end date to your reseller for it to complete the applicable boxes at the top of the cover page of this enrollment.

For an explanation of the circumstances under which you may renew, see subsection 3(a) (Placing orders) of the Select Agreement program agreement.

☐ Yes, I am renewing Software Assurance.

Reseller Information Form

Use this form to identify your selected reseller and have your reseller complete the information below and acknowledge your selection by signing below.

Reseller Information:
Reseller Company Name
Street Address and/or Post Office Box
City and State/Province and Postal Code
Country
Contact Name
Phone
Fax
Email Address

The undersigned confirms that the Reseller information is correct.

Name of Reseller
Signature
Printed Name
Printed Title
Date

(Exhibit 4 to Custom License Agreement) Microsoft Initials_____

Custom Microsoft Academic Student Select *Enrollment*

for the State of New York

Academic Select Agreement number *Reseller to complete*		Microsoft Business Agreement number *Microsoft affiliate to complete*	
Academic Select Agreement Expiration Date *Reseller to complete*		Enrollment number *Microsoft affiliate to complete*	

This Microsoft Academic Student Select Enrollment is entered into between the following entities. Each party will notify the other in writing if any of the information in the following table changes.

Customer (Authorized User of the State of New York)		
Name of Entity		Contact Name (This person handles access to online information. This person also receives notices unless a different contact for notices is provided in the notices section below.)
Street Address		Contact E-mail Address
City	State/Province	Phone
Country	Postal Code	Fax
		Microsoft Account Manager Name
Contracting Microsoft Affiliate		
MSLI, GP - 6100 Neil Road, Suite 210 - Reno, Nevada USA 89511-1137 - Dept. 551, Volume Licensing		

If notices should be sent to someone or some place other than above, complete the relevant portions below:		
Name of Entity		Contact Name
Street Address		Contact E-mail Address
City	State/Province	Phone
Country	Postal Code	Fax

Notices to Microsoft should be sent to:	Copies should be sent to:
MSLI, GP 6100 Neil Road, Suite 210 Reno, Nevada USA 89511-1137 Dept. 551, Volume Licensing	Microsoft Law and Corporate Affairs One Microsoft Way Redmond, WA 98052 USA Volume Licensing Group VLG-USA@Microsoft.com (425) 936-7329 fax

Definitions. When used in this enrollment, except in the Microsoft Student Select License Agreement, "you" refers to the entity that signs this enrollment with us. In the Microsoft Student Select License Agreement, "you" refers to the student who is governed by such Microsoft Student Select License Agreement. "We" or "us," in both this enrollment and the Microsoft Student Select License Agreement, refers to the Microsoft entity that signs this enrollment.

All other definitions in the Microsoft Academic Select Agreement identified above, and the related Microsoft Custom License Agreement with the State of New York (to which the Microsoft Business Agreement Number above applies), apply here.

Effective date. The effective date of this enrollment will be the date this enrollment is signed by us.

Term. This enrollment will expire on the date on which the Microsoft Academic Select Agreement program agreement expires, unless it is terminated earlier as provided for in that Agreement.

Representations and warranties. By signing this enrollment, the parties agree to be bound by the terms of this enrollment, and you represent and warrant that: (i) you have read and understood the Microsoft Select Agreement program agreement, including the common terms and conditions incorporated thereby and any amendments thereto, and the product use rights, and agree to be bound by those terms; (ii) you are an eligible education authorized user (as such term is defined in the Microsoft Select Agreement program agreement referenced above); (iii) during the initial term of this enrollment you expect to purchase Licenses equal to at least 750 points; and (iv) the information that you provide on each of the attached forms is accurate. You further acknowledge and agree that Licenses obtained under this enrollment may not be counted for purposes of satisfying the minimum point requirement set forth in section 2 of the Microsoft Academic Select Agreement program agreement (How the Academic Select License program works).

This enrollment consists of (1) this cover page, (2) the Reseller Information Form, (3) the attached terms and conditions, and (4) the Student Select License Agreement. Where inconsistent with the Microsoft Academic Select Agreement program agreement, this enrollment supercedes the terms of the Microsoft Academic Select Agreement.

Customer (Authorized User)	*Contracting Microsoft Affiliate*
Name of Entity	**MSLI, GP**
Signature	Signature
Printed Name	Printed Name
Printed Title	Printed Title
Signature Date	Effective Date *(date Microsoft affiliate countersigns)*

Reseller Information Form

Use this form to identify your selected reseller and large account distributor (if any) and have your reseller complete the information below and acknowledge your selection by signing below.

Reseller Information:	*Large Account Distributor Information (if applicable):*
Reseller Company Name	Distributor Company Name
Street Address and/or Post Office Box	Street Address and/or Post Office Box
City and State/Province and Postal Code	City and State/Province and Postal Code
Country	Country
Contact Name	Contact Name
Phone	Phone
Fax	Fax
Email Address	Email Address

The undersigned confirms that the Reseller and Large Account Distributor information is correct.

Name of Reseller
Name of Large Account Distributor (if applicable)
Signature
Printed Name
Printed Title
Date

Terms and Conditions

1. *How the Academic Student Select Enrollment program works.*

The Academic Student Select Enrollment allows you to obtain Licenses for the following products for your students under the Microsoft Academic Select Agreement program agreement at discount prices based on the volume of your license purchases under such program agreement: Windows XP Upgrade, Office XP Professional, and Office XP Standard, all of which must be in the English language. Additional products may be made available at our discretion. Each License obtained under this enrollment must be transferred or assigned to a current student in accordance with this enrollment. You may not transfer or assign any License obtained under this enrollment to any person or entity other than as expressly provided in this enrollment. Once a License is transferred or assigned to your student, that License becomes the property of the student to whom it has been transferred or assigned, and will not terminate or expire simply by virtue of the termination, suspension or other interruption of that person's status as your student. The License cannot be assigned or transferred, in whole or in part, by the student back to you or to any other third party. You may not transfer or assign to any student more than one (1) License with respect to any version of any product. Despite any terms to the contrary in the Microsoft Academic Select Agreement program agreement, the Product List or in any other materials published by Microsoft or its affiliates describing the Academic Select License program, students are not granted the right to run different language versions of a product licensed under this enrollment.

2. *How to order product licenses.*

You may order Licenses and media starting on the effective date of this enrollment. Each order will be for a License for each product selected. Orders for Licenses and media must be submitted in minimum quantities of 25 Licenses per product, per order. Orders for media must be in quantities equal to the order for Licenses. Your order for Licenses and media must specify version number and in-country usage. You may use only the media received under this enrollment to transfer or assign products to students. Products may only be transferred or assigned in the same CD-ROM media format that you receive under this enrollment. Orders must be placed with the reseller named on this enrollment. You may use a third party to complete and process students' orders for Licenses and media under this enrollment and to distribute media to students, but the third party must complete its work while physically located at your facility and you remain responsible for the third party's actions to the same extent you would be if the third party was your employee. Price and payment terms for all Licenses and media ordered are determined by agreement with your designated reseller. Your designated reseller is authorized to purchase media products from the Microsoft authorized replicator identified below or as otherwise identified by Microsoft from time to time (the "Microsoft Authorized Replicator(s)") solely for the purpose of fulfilling orders placed under this enrollment. Your designated reseller may purchase from the Microsoft Authorized Replicators media and documentation only for those products expressly identified in section 1 above.

iLogistix
Studentfulfillment@iLogistix.com
48105 Warm Springs Blvd.
Fremont, CA 94539
Tel: 800-550-6782
Fax: 510-498-7193

3. *Running and making copies.*

You may not run or copy any products licensed under this enrollment.

4. Student Select License Agreement.

As a condition to each transfer or assignment of a License to one of your students as permitted and anticipated by this enrollment, you shall require each student to sign and return to you a Student Select License Agreement in the form attached to this enrollment. The product use rights are incorporated by reference in the Student Select License Agreement, and you shall provide a copy of the current version of the product use rights applicable to the Licenses being transferred or assigned with each Student Select License Agreement prior to the signature of the student. Each Student Select License Agreement shall identify the Licenses transferred or assigned to the student by product name and version number, in the space provided for that purpose, and the date on which the Student Select License Agreement was signed and returned to you. The student must show personal identification to establish and document the student's right to use such versions of the products transferred. Each Student Select License Agreement will also include the student identification number issued by you in the space provided for that purpose. The student should be directed to keep a copy of the executed Student Select License Agreement as evidence of what that student is licensed to run.

5. Records.

You must maintain all records an enrolled affiliate is required to keep pursuant to the Microsoft Academic Select Agreement, including without limitation, student confirmation of the Student Select License Agreement terms you are required to obtain pursuant to section 4 above, as well as an accurate database that identifies (a) by name and student identification number each student to whom Licenses obtained under this enrollment are transferred or assigned, (b) the date on which each such transfer or assignment occurred, (c) your distribution point from which each such transfer or assignment occurred, and (d) by product name and version number, the Licenses provided to each such student. These records will indicate the name and version of each product run on each such device. You may use a third party to maintain the records required to be kept under this section, but such records must be physically maintained at your location and you remain responsible for the third party's actions to the same extent you would be if the third party was your employee. During the term of the Microsoft Academic Select Agreement and for a period of one year thereafter, we may audit your records to the same extent, and subject to the same limitations, as we might audit any enrolled affiliate under section 7 (Verifying Compliance) of the Common Terms and Conditions of the Custom License Agreement. In the event any such audit discloses material unlicensed use of Microsoft software, and such discrepancy can be reasonably attributed to some failure in or shortcoming of your existing distribution and/or tracking mechanisms, you shall implement an agreed upon corrective action. Continued material unlicensed use of Microsoft software constitutes a material breach of this enrollment. We shall use the information obtained or observed in the audit solely for the purpose of determining whether you have complied with the terms of this enrollment. We will hold all such information in confidence.

6. Limited warranty.

The Student Select License Agreement contains the Limited Warranty set forth below. You acknowledge and agree to comply with the student remedies as set forth in such Limited Warranty. If any Software Product (as such term is defined in the Student Select License Agreement) does not meet Microsoft's Limited Warranty, as set forth in the Student Select License Agreement, and a student returns such Software Product to you together with a copy of his or her receipt, then, at our option, you shall either (a) return to such student the price paid, if any, for the Software Product, or (b) replace the Software Product. If we elect the refund alternative, we shall credit or refund you or your Large Account Reseller the amount owing or paid to us by you or your Large Account Reseller for such Software Product. If the media on which any Software Product has been distributed to any student fails, and such student returns the Software Product to you with a copy of his or her receipt any time prior to the expiration of the one year day warranty period, at your option, you shall either (a) return to such student the price paid for the Software Product, if any, or (b) replace the flawed media.

LIMITED WARRANTY

LIMITED WARRANTY. Microsoft warrants that (a) the Software Product will perform substantially in accordance with the applicable user documentation published by Microsoft for a period of one year from the date you first acquired the Software Product, and (b) any Support Services provided by Microsoft shall be substantially as described in the applicable user documentation published by Microsoft, and Microsoft support engineers will make commercially reasonable efforts to solve any problem issues. Some states and jurisdictions do not allow limitations on duration of an implied warranty, so the above limitation may not apply to you. To the extent allowed by applicable law, implied warranties on the Software Product, if any, are limited to one year. Notwithstanding the foregoing, Microsoft under no circumstances warrants the media on which the Software Product has been distributed to you.

CUSTOMER REMEDIES. Microsoft's, its suppliers' and your school's entire liability and your exclusive remedy shall be, at Microsoft's option, either (a) your school's return to you of the price paid, if any, or (b) their replacement of the Software Product that does not meet Microsoft's Limited Warranty and which is returned to your school with a copy of your receipt. This Limited Warranty is void if failure of the Software Product has resulted from accident, abuse, or misapplication. Any replacement Software Product will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer. If the media on which the Software Product has been distributed to you fails, you should return the Software Product to your school with a copy of your receipt any time prior to the expiration of the one year warranty period for (a) refund from your school of the price paid, if any, or (b) their replacement of the flawed media."

7. Confidentiality.

The confidentiality obligations contained in section 9(j) (Ethics Compliance) of the Common Terms and Condition of the Custom License Agreement will not apply to you to the extent disclosure is required by applicable law.

8. No Software Assurance.

Despite any terms to the contrary in the Microsoft Academic Select Agreement, the Product List or in any other materials published by Microsoft or its affiliates describing the Academic Select License program, Licenses ordered under this enrollment are not eligible for enrollment in Software Assurance.

Microsoft Student Select License Agreement

Academic Select Agreement number *Customer to complete*	
Name of Student signing Academic Select License Agreement	

Academic Student Select Enrollment number *Customer to complete*	
Date of Issuance *Customer to complete*	
Student Identification Number *Customer to complete*	

IMPORTANT—READ CAREFULLY: This Microsoft Student Select License Agreement ("Student EULA") is issued to you, the student, and documents the transfer of the product license(s) listed below pursuant to your school's volume licensing agreement with Microsoft. The issuance of this Student EULA is conditioned upon your current status as a student at such school at the time this Student EULA is issued. This Student EULA is a legal agreement between you and MSLI, GP ("Licensor"). For purposes of this Student EULA, the term "Software Product" shall mean the product(s) identified in Section 1 below, and the term "License" shall mean the right to make, use or access a particular copy of the Software Product. The Software Product is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. The Software Product is licensed, not sold. By signing below and installing, copying, or otherwise using the Software Product, you agree to be bound by the terms of this Student EULA.

SOFTWARE PRODUCT LICENSE

1. GRANT OF LICENSE.

Licensor hereby grants you the right to use one copy of the version number of the Software Product(s) identified below. Your right to use each Software Product shall be governed by and subject to the relevant section(s) of the most current product use rights as set forth in your school's volume licensing agreement with Microsoft. A copy of such use terms is attached to and incorporated by reference into this Student EULA.

Product Description	*Version No.*	*Language*
		English
		English
		English

2. DESCRIPTION OF OTHER RIGHTS AND LIMITATIONS.

a. ***Limitations on Reverse Engineering, Decompilation, and Disassembly.*** You may not reverse engineer, decompile, or disassemble the Software Product, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation.

b. ***Separation of Components.*** The Software Product is licensed as a single product. Its component parts, if any, may not be separated for use on more than one computer unless expressly stated otherwise in the use terms.

c. ***Rental.*** You may not rent, lease, or lend the Software Product.

d. ***Support Services.*** Customers acquiring software under the Microsoft Select License program are not entitled to free telephone support. Since you have acquired the Software Product under your school's Select volume licensing agreement, you shall not be entitled to free telephone support with respect to the Software Product. Subject to that exception, Microsoft may provide you with the same free product support services, if any, as are generally available from Microsoft to retail customers in the area in which your school is located. Any supplemental software code provided to you as part of such support services shall be considered part of the Software Product and subject to the terms and conditions of this Student EULA. With respect to technical information you provide to Microsoft as part of any such support services, Microsoft may use such information for its business purposes, including for product support and development. Microsoft will not utilize such technical information in a form that personally identifies you.

e. ***Software Transfer.*** Notwithstanding any terms to the contrary in your school's volume licensing agreement with Microsoft, you may not sell, assign or otherwise transfer your rights under this Student EULA. In view of the fact that you have acquired the right to use the Software Product under special terms pursuant to your school's volume licensing agreement with Microsoft, any transfer of your rights under this Student EULA is strictly prohibited.

f. ***Termination.*** Without prejudice to any other rights, Microsoft may terminate this Student EULA if you fail to comply with the terms and conditions of this Student EULA. In such event, you must destroy all copies of the Software Product and all of its component parts.

3. UPGRADES.

If the Software Product is labeled as an upgrade, you must be properly licensed to use a product identified by Microsoft as being eligible for the upgrade to use the Software Product. A Software Product labeled as an upgrade replaces and/or supplements the product that formed the basis for your eligibility for the upgrade. You may use the resulting upgraded product only in accordance with the terms of this Student EULA. If the Software Product is an upgrade of a component of a package of software programs that you licensed as a single product, the Software Product may be used only as part of that single product package and may not be separated for use on more than one computer.

4. COPYRIGHT.

All title and copyrights in and to the Software Product (including but not limited to any images, photographs, animations, video, audio, music, text, and "applets" incorporated into the Software Product), and any copies of the Software Product are owned by Microsoft or its suppliers. The Software Product is protected by copyright laws and international treaty provisions. Therefore, you must treat the Software Product like any other copyrighted material except that you may install the Software Product on a single computer provided you keep the original solely for backup or archival purposes.

5. U.S. GOVERNMENT RESTRICTED RIGHTS.

The Software Product is provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software—Restricted Rights at 48 CFR 52.227-19, as applicable. Manufacturer is Microsoft Corporation/One Microsoft Way/Redmond, WA 98052-6399.

6. LIMITED WARRANTY

LIMITED WARRANTY. Microsoft warrants that (a) the Software Product will perform substantially in accordance with the applicable user documentation published by Microsoft for a period of one year from the date you first acquired the Software Product, and (b) any Support Services provided by Microsoft shall be substantially as described in the applicable user documentation published by Microsoft, and Microsoft support engineers will make commercially reasonable efforts to solve any problem issues. Some states and jurisdictions do not allow limitations on duration of an implied warranty, so the above limitation may not apply to you. To the extent allowed by applicable law, implied warranties on the Software Product, if any, are limited to one year. Notwithstanding the foregoing, Microsoft under no circumstances warrants the media on which the Software Product has been distributed to you.

CUSTOMER REMEDIES. Microsoft's, its suppliers' and your school's entire liability and your exclusive remedy shall be, at Microsoft's option, either (a) your school's return to you of the price paid, if any, or (b) their replacement of the Software Product that does not meet Microsoft's Limited Warranty and which is returned to your school with a copy of your receipt. This Limited Warranty is void if failure of the Software Product has resulted from accident, abuse, or misapplication. Any replacement Software Product will be warranted for the remainder of the original warranty period or thirty (30) days, whichever is longer. If the media on which the Software Product has been distributed to you fails, you should return the Software Product to your school with a copy of your receipt any time prior to the expiration of the one year warranty period for (a) refund from your school of the price paid, if any, or (b) their replacement of the flawed media

NO OTHER WARRANTIES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, MICROSOFT AND ITS SUPPLIERS DISCLAIM ALL OTHER WARRANTIES AND CONDITIONS, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, WITH REGARD TO THE SOFTWARE PRODUCT, AND THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES. THIS LIMITED WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS. YOU MAY HAVE OTHERS, WHICH VARY FROM STATE TO STATE.

LIMITATION OF LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL MICROSOFT OR ITS SUPPLIERS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, OR CONSEQUENTIAL DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE PRODUCT OR THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES, EVEN IF MICROSOFT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN ANY CASE, MICROSOFT'S ENTIRE LIABILITY UNDER ANY PROVISION OF THIS STUDENT EULA SHALL BE LIMITED TO THE GREATER OF THE AMOUNT ACTUALLY PAID BY YOU FOR THE SOFTWARE PRODUCT OR U.S.$5.00. BECAUSE SOME STATES AND JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY, THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

7. MISCELLANEOUS.

a. Choice of law. This Student EULA is governed by the laws of the State of New York.

b. Questions. Should you have any questions concerning this Student EULA, or if you desire to contact Microsoft for any reason, please write: Microsoft Sales Information Center/One Microsoft Way/Redmond, WA 98052-6399.

By signing below, you agree to be bound by the terms of this Student EULA:

Student Signature
Printed Student Name
Printed Student Identification Number
Date

Attachment : Microsoft Product Use Rights

Microsoft Initials_____

Master Campus Agreement Number *(to be completed by reseller)*	
Subscription/Confirmation Number *(to be completed by Microsoft affiliate)*	

(Exhibit 5 to Custom License Agreement)

Your agreement is comprised of the overview page, general terms and conditions, the subscription order form(s), and license rights. The terms of these parts are incorporated by this reference. Except as otherwise defined, terms used in this subscription order form have the meanings assigned in the overview page or elsewhere in your agreement.

Campus Agreement – Subscription Order Form

This subscription order form is part of your agreement and allows you to have your users run software during the licensed period according to the terms of your agreement. Complete and submit two original copies of the subscription order form with your purchase order number to your reseller and keep a copy of this order for your records. We will process your order when received from your reseller and then we will send you a letter with i) your subscription/confirmation number, ii) the number of full-time equivalent ("FTE") faculty/staff you have enrolled, iii) the number of FTE students you have enrolled, iv) the products you have identified, and v) the licensed period. Your distributor will invoice your reseller, and you will pay your reseller the amount on their invoice.

) you represent that the information you provide on this order form is accurate and correct,

ledge and agree that you have read and understood the terms of this order form and of the

parts which are incorporated by the reference in the box left, and iii) you agree to be bound by the same.

Your Institution's Name	
By: *(Signature)*	Date:
Name: *(Print)*	Title:

1. Notices Information (For you to complete)

We will send any notices to the contact information listed below. You will notify us in writing if your contact name or address changes. Should you need to contact us, our contact information is located in the license rights section of this agreement.

Your Institution's Name	Contact Name
Your Purchase Order Number	Contact Title
Street Address	Phone Number
City and State / Province	Fax Number
Country and Postal Code	Email Address (Required - This person will receive regular updates from us)

☐ Check if you are renewing coverage

☐ Enter Previous Agreement Number

2. Designating Users (For you to complete)

Check the portion of your organization that is participating in this order below:

☐ My entire institution is participating in this order below.

☐ One or more departments are participating in this order below.

In cases where you are enrolling less than the entire institution, attach a list of department names and their respective FTE count on a separate piece of paper. Include all segments of a department -- e.g., a business school should include the business library.

Faculty and Staff FTE Calculation Table. Count all of the part-time and full-time faculty/staff. Use this table to calculate the total number of faculty/staff in FTEs. You may exclude non-PC users such as maintenance, groundskeepers, cafeteria, etc. Round faculty/staff FTEs to the nearest whole number.

1	Full Time Faculty		
2	Full Time Staff		
3	Part Time Faculty		
a	*Divide the number on row 3 by 3 (/ 3)*		
4	Part Time Staff		
a	*Divide the number on row 4 by 2 (/ 2)*		
5	**Total FTE Faculty & Staff (Add rows 1, 2, 3a and 4a)**		

Student Option FTE Calculation Table. In order to qualify for this student option, you must first license the institution or departments that enroll your students on this order form, as instructed above. To license your students for the right to run certain software on their own PCs or institution-owned PCs that are assigned for individual, dedicated student use, you must count all the students, based on fall enrollment, in the institution or departments identified above. Use this table to calculate the total number of students in FTEs. Round student FTEs to the nearest whole number.

1	Full Time Students		
2	Part Time Students		
a	*Divide the number on row 2 by 3 (/ 3)*		
3	**Total FTE Students (Add rows 1 and 2a)**		

If you choose this student option, students graduating from the institution during the licensed period will receive a perpetual right to run the version of the software that is installed on their PC at the time they

graduate. You will be responsible for ensuring that the students graduating from your institution receive a student license confirmation (attached as Exhibit 1), as required by the license rights.

3. Software Products (For you to complete)
This agreement grants you the right during the licensed period to run copies of the software products selected below. The selection of products for faculty/staff may differ from the selection for students, but the selection for each must separately meet a minimum of 300 units for us to accept this order.

a. Primary Software Products Table**.**

Place an **X** by the products in the box below you wish to run during the licensed period for the total number of faculty/staff and students that you designated in section 2. If you wish to select work at home rights for a selected product, place an **X** in the corresponding box in the WAH column.

Products	Faculty/Staff Users	Student Users	WAH
*Microsoft Campus Desktop (consisting of Office Pro, Windows Upgrade and Core CAL)			
Microsoft Office Professional			
Microsoft Windows Operating System Upgrade			
Microsoft Core Client Access License			
Microsoft FrontPage			
Microsoft Project			
Microsoft Publisher			
Microsoft Visual Studio Academic			
Microsoft Windows Pro Step by Step Interactive Press			
Microsoft Web Publishing Step by Step Interactive Press			
Microsoft Encarta Reference Library or Encarta Online			
Microsoft Visio Professional			
Microsoft SQL Client Access License			
Microsoft Windows Terminal Server Client Access License			

1	**Total Products:** Add the total number of products selected above		
2	**Total Users**: Enter the FTE faculty/staff and FTE student count from Section 2		
3	**Total Units**: Multiply total products by total users *(multiply row 1 by row 2)*		

*If you choose all three products, check this one instead of the three individual products.

b. Server Software Products Table (for faculty/staff use only)

Identify the products you wish to run during the licensed period by designating your desired quantity of each in the Number of Orders column. Complete the Total Units column by multiplying the Number of Orders by the Unit Value for each selected product.

ItemName	Unit Value	Number of Orders	Total Units
Microsoft Exchange Server Enterprise	30		
Microsoft Exchange Server	15		
Microsoft SharePoint Portal Server	65		
Microsoft SQL Server Enterprise Edtn (1 Processor License)	125		
Microsoft SQL Server Enterprise Edtn	30		
Microsoft SQL Server Standard Edtn (1 Processor License)	50		
Microsoft SQL Server Standard Edtn	15		
Microsoft Sys Mgmt Server	15		
Microsoft Windows Advanced Server	30		
Microsoft Windows Server	15		
Microsoft Host Integration Server (1 Processor License)	25		
Microsoft ISA Server (1 Processor License)	25		
Microsoft ISA Server Ent Edtn (1 Processor License)	75		
Microsoft BizTalk Server (1 Processor License)	50		
Microsoft BizTalk Server Enterprise	200		
		Total Server Units	

c. Unit Summary Table

1	**Total number of Server Product Units** (Sum of Total Units column)	
2	**Total FTE faculty/staff units** (from row 3 of Section 3a (first column))	
3	*** Total FTE faculty/staff units and Server Product Units** (sum rows 1 and 2 above)	
4	*** Total FTE student units** (from row 3 of section 3a (second column)) Note: Complete this only if you selected the Student Option in Section 2.	

* The number of units must equal or exceed 300 units to process this order

4. Term

Licensed Period. This subscription order form will remain in effect during the licensed period, provided that the provisions in Section 5 below will survive for the duration and purposes of any follow-up subscription orders placed as part of a three-year subscription option (as described in Section 5). The licensed period begins on the date of our letter to you accepting this subscription order form and expires twelve full calendar months later, unless earlier terminated as provided in the general terms and conditions.

5. Three-year subscription option

The three-year subscription option allows you to elect to subscribe for two additional consecutive twelve-month licensed periods. If you choose this option and comply with the ordering requirements identified below, we will not change the prices we charge your distributor for the software products that you originally ordered in either of the two additional licensed periods.

By selecting this three-year subscription option, you commit to submitting follow-up subscription orders prior to the first and second anniversaries of this original subscription order. Each follow-up subscription order must, at a minimum, include an order for the same software products that you ordered in this original subscription order in a quantity that is no less than the quantity ordered in the immediately preceding subscription order (regardless of whether your actual FTE faculty/staff and/or student counts have decreased in the interim). In addition, you must order an additional quantity of licenses for such software products (other than server products identified in Section 3(b)) that is equal to the amount, if any, by which your total number of FTE faculty/staff and/or students has increased since the date of the preceding order. To illustrate, if your total number of FTE faculty/staff and/or students increases during the first year, you must order a quantity of licenses for the originally-identified software products equal to the number in this original order plus the number by which your then-total number of FTE faculty/staff and/or students has increased; if your total number of FTE faculty/staff and/or students again increases during the second year, you must similarly order a quantity of licenses for the originally-identified software products equal to the number in your first follow-up subscription order plus the number by which your then-total number of FTE faculty/staff and/or students has further increased. The individual license prices we charge your distributor with respect to such additional FTE faculty/staff and/or students will be the same prices that we charged in relation to your original order. Note that license prices under the three-year option will not change even if an increase in your FTE faculty/staff and/or student counts would otherwise qualify you for a different price level.

You may also order any software product that was not part of your original order in any follow-up subscription order (such order must be for your then-current total number of FTE faculty/staff and students, except in the case of server products identified in Section 3(b)). The license prices we charge your distributor for any such additional software products will be determined upon the effective date of the follow-up subscription order in which you first place the order for such software products. If such order is placed in the second year, we will not change the license prices we charge your distributor for such additional software products for the third year, provided that you must order at that time a quantity of each additional software product which is at least equal to the quantity ordered in the second year plus, with respect to any product identified in Section 3(a), the amount by which your total number of FTE faculty/staff and students has increased during the second year, if any. You may run the additional products beginning at the start of the new license period.

By selecting this three-year subscription option, you agree to complete and submit a follow-up subscription order form prior to the first and second anniversaries of the initial licensed period. In addition to any other remedies that may be available to us, if you fail to timely submit a follow-up subscription order you will be precluded from placing any further follow-up subscription orders pursuant to this three-year option, and your rights under this agreement will terminate as of the date of expiration of the expiring licensed period.

☐ Check if you are electing the three-year subscription option

6. Media Kit (For you to complete.)

We will automatically ship one media kit, including updates, for the software in **up to two languages** you designate in the table below. For each language you wish to receive, mark the corresponding box with an **X**. Complete the shipment contact information address section to identify who will receive the media kit.

- Your media kit may include software that you are not licensed to have your users run.
- You may install only the software that your users are licensed to run during the licensed period.
- Not all software products are available in all languages.
- Your media kit may not include all the software that your users are licensed to run. For a complete list of the contents of the kit, go to **http://selectug.mslicense.com/.**
- If you would like to receive additional media kits, you may order them through your reseller for a fee.

Note: If you select the three year option, you will receive only one media kit for the three year period

☐ Check here if you already have the current media and do NOT wish to receive a new set. You will continue to receive updates for this new licensed period.

Shipment Contact Information	
Customer Name	Contact Name
Street Address	Contact Email Address
City and State/Province	Contact Phone Number
Country and Postal Code	Contact Fax Number

For Each language and group you wish to receive, mark the corresponding box with an X. Choose 1 or 2 languages only

Language	Campus & School Kit	Reference Pack *
English	☐	☐
Intl English/MultiLanguage	☐	☐
Arabic	☐	
Brazilian	☐	☐
Chinese Simplified	☐	
Chinese Traditional	☐	
Chinese Traditional HongKong/Pan-Chinese	☐	
Czech	☐	
Danish	☐	
Dutch	☐	☐
Finnish	☐	
French	☐	☐
German	☐	☐
Greek	☐	
Hebrew	☐	
Hungarian	☐	
Italian	☐	☐
Japanese	☐	☐
Korean	☐	
Norwegian	☐	
Polish	☐	
Portuguese	☐	
Russian	☐	
Spanish	☐	☐
Swedish	☐	

Thai	☐	[redacted]
Turkish	☐	[redacted]
*Reference Pack not available for use or shipment to, India, Hong Kong SAR, Macau SAR, China, Morocco, Pakistan, and Turkey		

[redacted]	= Not Available

7. Resellers and Distributors

You must choose a reseller in your area. A reseller is an Authorized Education Reseller ("AER") that we have authorized to distribute software under your agreement in your region. If, at any time during the licensed period you wish to terminate the relationship with your designated reseller, or if we discontinue the reseller's status as a reseller, you must choose another reseller. If you intend to change your reseller, you must notify us and the current reseller, in writing, at least 30 days in advance.

a. Reseller and Distributor Information (For the reseller and distributor to complete.)

Reseller to complete this column	Distributor to complete this column
Reseller Name	Distributor Name
Headquarters Street Address	Headquarters Street Address
City and State / Province	City and State / Province
Country and Postal Code	Country and Postal Code
Contact Name and Title	Contact Name and Title
Phone Number	Phone Number
Fax Number	Fax Number
Email Address	Email Address
Indirect Partner Purchase Order Number	

b. Billing Information: (For the distributor to complete)

Direct Partner Purchase Order Number:

Direct Partner Billing Customer Number:

Part Number and Price Information:
Insert the Microsoft part number and price information to be billed for the TOTAL number of FTE faculty/staff and FTE students identified in section 2 of the subscription order form or, for server products identified in Section 3(b) the TOTAL number of units identified in such Section 3(b). The part number and price level information required below is available to the Direct Partner on the Campus Agreement price list.

Microsoft Part Number	Price Level	Product Description	Number of Orders Faculty	Students

The above price level will be extended to your distributor during the licensed period. The distributor signature below acknowledges that the above price level has been reviewed and agreed to by your distributor, subject to the terms and conditions of its agreement with us.

c. Confirmation

The undersigned confirms that the reseller and distributor information is correct.
(For the reseller and/or distributor to complete and sign.)

Name of Reseller:	Name of Distributor:
By: _____ *(signature)*	By: _____ *(signature)*
Name: _____ *(printed)*	Name: _____ *(printed)*
Title: _____ *(printed)*	Title: _____ *(printed)*
Date: _____	Date: _____

Microsoft Initials_____

Campus Agreement -- Exhibit "1" to Subscription Order Form

Please complete the following:

Master Campus Agreement Number	
End Date of Subscription Order Form	
Name of Education Institution	
Student Name	
Student Identification Number	
Today's Date	

CAMPUS AGREEMENT STUDENT LICENSE CONFIRMATION

1. Grant of License. Licensor hereby grants you the right to run one copy of the version number and language of the software identified below which you have installed on your PC per the right granted to you by the institution under the Campus Agreement program. Your right to use the software shall be governed by and subject to the relevant section(s) of the most current license rights which you may view at **www.microsoft.com/education/license/terms.asp**.

Product Description

2. Description of Other Rights and Limitations.

- **Limitations on Reverse Engineering, Decompilation, and Disassembly.** You may not reverse engineer, decompile, or disassemble the software, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation.
- **Separation of Components.** The software is licensed as a single product. Its component parts, if any, may not be separated for use on more than one computer.
- **Rental.** You may not rent, lease, or lend the software.
- **Support Services.** Customers acquiring software under the Campus Agreement program are not entitled to free telephone support.
- **Software Transfer.** Notwithstanding any terms to the contrary in your institution's Campus Agreement, you may not sell, assign or otherwise transfer your rights under this student license confirmation. In view of the fact that you have acquired the right to use the software under special terms pursuant to your institution's Campus Agreement, any transfer of your rights under this student license confirmation is strictly prohibited.

3. Copyright. All title and copyrights in and to the software (including but not limited to any images, photographs, animations, video, audio, music, text, and "applets" incorporated into the software), and any copies of the software are owned by Microsoft or its suppliers. The software is protected by copyright laws and international treaty provisions. Therefore, you must treat the software like any other copyrighted material except that you may install the software on a single computer provided you keep the original solely for backup or archival purposes.

4. Disabling Mechanisms and No Support Services. We reserve the right to include in the software any proactive technical disabling mechanisms that would enable us, with a timed device, to disable the software. Additionally, you will not be entitled to free telephone support for the software.

5. Limited Warranty and Disclaimers. You are provided with a 90-day product warranty, the terms of which are in the license rights. EXCEPT FOR THE LIMITED WARRANTY PROVIDED IN THE PRECEDING SENTENCE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WE DISCLAIM ON OUR OWN BEHALF AND ON BEHALF OF OUR SUPPLIERS ALL WARRANTIES, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE PRODUCTS AND RELATED MATERIALS. THERE MAY BE SITUATIONS IN WHICH YOU HAVE A RIGHT TO CLAIM DAMAGES FROM US. WHATEVER THE BASIS FOR YOUR CLAIM (SUCH AS BREACH OF CONTRACT OR TORT), OUR LIABILITY WILL BE LIMITED TO DIRECT DAMAGES UP TO THE AMOUNT YOU HAVE PAID UNDER THIS AGREEMENT WITH RESPECT TO THE PRODUCT GIVING RISE TO YOUR CLAIM. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL WE OR ANY OF OUR SUPPLIERS BE LIABLE FOR ANY INDIRECT DAMAGES (INCLUDING, WITHOUT LIMITATION, CONSEQUENTIAL DAMAGES, DAMAGES FOR LOSS OF PROFITS OR REVENUES, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR OTHER LOSS) ARISING IN CONNECTION WITH THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

Master School Agreement Number *(to be completed by reseller)*	
Subscription/Confirmation Number *(to be completed by Microsoft affiliate)*	

(Exhibit 6 to Custom License Agreement)

School Agreement – Subscription Order Form

Your agreement is comprised of the overview page, general terms and conditions, the subscription order form(s), and license rights. The terms of these parts are incorporated by this reference. Except as otherwise defined, terms used in this subscription order form have the meanings assigned in the overview page or elsewhere in your agreement.

This subscription order form is part of your agreement and allows you to have your users run software during the licensed period according to the terms of your agreement. Complete and submit two original copies of the subscription order form with your purchase order number to your reseller and keep a copy of this order for your records. We will process your order when received from your reseller and then we will send you a letter with i) your Subscription/confirmation number, ii) the number of eligible PCs you have enrolled, iii) the number of students you have enrolled, iv) the products you have identified, and v) the licensed period. Your distributor will invoice your reseller, and you will pay your reseller the amount on their invoice..

By signing below, i) you represent that the information you provide on this order form is accurate and correct, and ii) you acknowledge and agree that you have read and understood the terms of this order form and of the parts which are incorporated by the reference in the box left, and iii) you agree to be bound by the same.

Your Institution's Name	
By: *(Signature)*	Date:
Name: *(Print)*	Title:

1. Notices Information (For you to complete)

We will send any notices to the contact information listed below. You will notify us in writing if your contact name or address changes. Should you need to contact us, our contact information is located in the license rights section of this agreement.

Your Institution's Name	Contact Name
Your Purchase Order Number	Contact Title
Street Address	Phone Number

City and State / Province	Fax Number
Country and Postal Code	Email Address (Required - This person will receive regular updates from us)

☐ Check if you are renewing coverage

☐ Enter Previous Agreement Number

2. Designating Users (For you to complete)

Your users may consist of all teachers, staff, administrators, and students who have access to the eligible PCs.

Check the portion of your organization that is participating in this order below:

☐ My entire school is participating in this order below.

☐ One or more schools in a district are participating in this order below.

In cases where you are enrolling one or more schools in a district, attach a list of school names and their respective eligible PC counts on a separate piece of paper.

Eligible PC Calculation Table. Use this table to calculate the total number of eligible PCs in your institution. You must count all of the PCs on line 1 below. For line 2 you need only count those PCs that you choose to run the software on.

1	100% of all Pentium, PowerMac, iMac (or equivalent or better)	
2	286, 386, 486, other Apple, Unix or devices that you will run the software on	
3	**Total Eligible PCs** (Add rows 1 & 2)	

Student Option. In order to qualify for this student option, you must first license the school(s) that enroll your students on this order form, as instructed above. To license your students the right to run the software on their own PCs or school-owned PCs that are assigned for individual, dedicated student use, you must specify the number of students you wish to enroll in the table below. You may not change the number of students enrolled during the licensed period.

Total number of students:	

3. Software Products (For you to complete)
This agreement grants you the right during the licensed period to run copies of the software products selected below. The selection of products for eligible PCs may differ from the selection for students, but the selection for each must separately meet a minimum of 300 units for us to accept this order.

a. Primary Software Products Table.
Place an **X** by the products in the box below you wish to run during the licensed period for the total number of eligible PCs and students that you designated in section 2. If you wish to select work at home rights for a selected product, place an **X** in the corresponding box in the WAH column.

Products	Eligible PCs	Students	WAH
*Microsoft School Desktop (consisting of Office Pro, Windows Upgrade and Core CAL)			
Microsoft Office Professional			
Microsoft Windows Operating System Upgrade			
Microsoft Core Client Access License			
Microsoft FrontPage			
Microsoft Project			
Microsoft Publisher			
Microsoft Visual Studio Academic			
Microsoft Windows Pro Step by Step Interactive Press			
Microsoft Web Publishing Step by Step Interactive Press			
Microsoft Encarta Reference Library or Encarta Online			
Microsoft Visio Professional			
Microsoft Class Server Student License			
Scholastics Magic School Bus (Number of Titles _____)**			
Microsoft SQL Client Access License			
Microsoft Windows Terminal Server Client Access License			

1	**Total Products:** Add the total number of products selected above		
2	**Total Users**: Enter the eligible PC and student count from Section 2		
3	**Total Units**: Multiply total products by total users *(multiply row 1 by row 2)*		

* If you choose all three products, check this one instead of the three individual products.

** Scholastics Magic School Bus contains several separate titles, each being priced separately. Indicate the total number of separate titles that you are selecting hereunder. The actual titles that you select must be identified in the billing information table in Section 7(b), and the total number of titles identified may not exceed the number that you designate in this box.

b. Server Software Products Table (not for individual student use)

Identify the products you wish to run on servers in your participating organization during the licensed period by designating your desired quantity of each in the Number of Orders column. Complete the Total Units column by multiplying the Number of Orders by the Unit Value for each selected product.

ItemName	Unit Value	Number of Orders	Total Units
Microsoft Class Server	50		
Microsoft Exchange Server Enterprise	30		
Microsoft Exchange Server	15		
Microsoft SharePoint Portal Server	65		
Microsoft SQL Server Enterprise Edtn (1 Processor License)	125		
Microsoft SQL Server Enterprise Edtn	30		
Microsoft SQL Server Standard Edtn (1 Processor License)	50		
Microsoft SQL Server Standard Edtn	15		
Microsoft Sys Mgmt Server	15		
Microsoft Windows Advanced Server	30		
Microsoft Windows Server	15		
Microsoft Host Integration Server (1 Processor License)	25		
Microsoft ISA Server (1 Processor License)	25		
Microsoft ISA Server Ent Edtn (1 Processor License)	75		
Microsoft BizTalk Server (1 Processor License)	50		
Microsoft BizTalk Server Enterprise (1 Processor License)	200		
		Total Server Units	

c. Unit Summary Table

1	**Total number of Server Products Units** (Sum of Total Units column)	
2	**Total Eligible PC units** (from row 3 of Section 3a (first column))	
3	*** Total PC and Server units** (sum rows 1 and 2 above)	
4	*** Total FTE student units** (from row 3 of section 3a (second column)) Note: Complete this only if you selected the Student Option in Section 2.	

* The number of units must equal or exceed 300 units to process this order

4. Term

Licensed Period. This subscription order form will remain in effect during the licensed period, provided that the provisions in Section 5 below will survive for the

duration and purposes of any follow-up subscription orders placed as part of a three-year subscription option (as described in Section 5). The licensed period begins on the date of our letter to you confirming this subscription order form and expires twelve full calendar months later, unless earlier terminated as provided in the general terms and conditions.

5. Three-year subscription option

The three-year subscription option allows you to elect to subscribe for two additional consecutive twelve-month licensed periods. If you choose this option and comply with the ordering requirements identified below, we will not change the prices we charge your distributor for the software products that you originally ordered in either of the two additional licensed periods.

By selecting this three-year subscription option, you commit to submitting follow-up subscription orders prior to the first and second anniversaries of this original subscription order. Each follow-up subscription order must, at a minimum, include an order for the same software products that you ordered in this original subscription order in a quantity that is no less than the quantity ordered in the immediately preceding subscription order (regardless of whether your actual eligible PC count has decreased in the interim). In addition, you must order an additional quantity of licenses for such software products (other than server products identified in Section 3(b)) that is equal to the amount, if any, by which your total number of eligible PCs has increased since the date of the preceding order (if you selected the student option in your original order, you may also increase, but not decrease, the number of students included in your student option). To illustrate, if your total number of eligible PCs increases during the first year, you must order a quantity of licenses for the originally-identified software products equal to the number in this original order plus the number by which your then-total number of eligible PCs has increased; if your total number of eligible PCs again increases during the second year, you must similarly order a quantity of licenses for the originally-identified software products equal to the number in your first follow-up subscription order plus the number by which your then-total number of eligible PCs has further increased. The individual license prices we charge your distributor with respect to all additional eligible PCs (and students that you choose to add) will be the same prices that we charged in relation to your original order. Note that license prices under the three-year option will not change even if an increase in your eligible PC and/or student counts would otherwise qualify you for a different price level.

You may also order any software product that was not part of your original order in any follow-up subscription order (such order must be for your then-current total number of eligible PCs and/or included students, except in the case of server products identified in Section 3(b)). The license prices we charge your distributor for any such additional software products will be determined upon the effective date of the follow-up subscription order in which you first place the order for such software products. If such order is placed in the second year, we will not change the license prices we charge your distributor for such additional software products for the third year, provided that you must order at that time a quantity of each additional software product which is at least equal to the quantity ordered in the second year plus, with respect to any product identified in Section 3(a), the amount by which your total number of eligible PCs and/or included students has increased during the second year, if any. You may run the additional products beginning at the start of the new licensed period.

By selecting this three-year subscription option, you agree to complete and submit a follow-up subscription order form prior to the first and second anniversaries of the initial licensed period. In addition to any other remedies that may be available to us, if you fail to timely submit a follow-up subscription order you will be precluded from placing any further follow-up subscription orders pursuant to this three-year option, and your rights under this agreement will terminate as of the date of expiration of the expiring licensed period.

☐ Check if you are electing the three-year subscription option

6. Media Kit (For you to complete.)

We will automatically ship one media kit, including updates, for the software in **up to two languages** you designate in the table below. For each language you wish to receive, mark the corresponding box with an **X**. Complete the shipment contact information address section to identify who will receive the media kit.

- Your media kit may include software that you are not licensed to have your users run.
- You may install only the software that your users are licensed to run during the licensed period.
- Not all software titles are available in all languages.
- Your media kit may not include all the software that your users are licensed to run. For a complete list of the contents of the kit, go to **http://selectug.mslicense.com/.**
- If you would like to receive additional media kits, you may order them through your reseller for a fee.

Note: If you select the three year option, you will receive only one media kit for the three year period.

☐ Check here if you already have the current media and do NOT wish to receive a new set. You will continue to receive updates for this new licensed term.

Shipment Contact Information	
Customer Name	Contact Name
Street Address	Contact Email Address
City and State/Province	Contact Phone Number
Country and Postal Code	Contact Fax Number

For Each language and group you wish to receive, mark the corresponding box with an X. Choose 1 or 2 languages only		
Language	Campus & School Kit	Reference Pack *
English	☐	☐
Intl English/MultiLanguage	☐	☐
Arabic	☐	
Brazilian	☐	☐
Chinese Simplified	☐	
Chinese Traditional	☐	
Chinese Traditional HongKong/Pan-Chinese	☐	
Czech	☐	
Danish	☐	
Dutch	☐	☐
Finnish	☐	
French	☐	☐
German	☐	☐
Greek	☐	
Hebrew	☐	
Hungarian	☐	
Italian	☐	☐
Japanese	☐	☐
Korean	☐	
Norwegian	☐	
Polish	☐	
Portuguese	☐	
Russian	☐	
Spanish	☐	☐
Swedish	☐	
Thai	☐	
Turkish	☐	
*Reference Pack not available for use in or shipment to India, Hong Kong SAR Macau SAR, China, Morocco, Pakistan, and Turkey		
	= Not Available	

7. Resellers and Distributors

You must choose a reseller in your area. A reseller is an Authorized Education Reseller ("AER") that we have authorized to distribute software under your agreement in your region. If, at any time during the licensed period you wish to terminate the relationship with your designated reseller, or if we discontinue the reseller's status as a reseller, you must choose another reseller. If you intend to change your reseller, you must notify us and the current reseller, in writing, at least 30 days in advance.

a. Reseller and Distributor Information (For the reseller and distributor to complete.)

Reseller to complete this column	Distributor to complete this column
Reseller Name	Distributor Name
Headquarters Street Address	Headquarters Street Address
City and State / Province	City and State / Province
Country and Postal Code	Country and Postal Code
Contact Name and Title	Contact Name and Title
Phone Number	Phone Number
Fax Number	Fax Number
Email Address	Email Address
Indirect Partner Purchase Order Number	

b. Billing Information: (For the distributor to complete)

Direct Partner Purchase Order Number:

Direct Partner Billing Customer Number:

Part Number and Price Information:

Insert the Microsoft part number and price information to be billed for the TOTAL number of eligible PCs and students entered in section 2 of the subscription order form or, for server products identified in Section 3(b) the TOTAL number of units identified in such Section 3(b). The part number and price level information required below is available to the Direct Partner on the School Agreement price list.

Microsoft Part Number	Price Level	Product Description	Number of Orders Faculty	Students

The above price level will be extended to your distributor during the licensed period. The distributor signature below acknowledges that the above price level has been reviewed and agreed to by your distributor, subject to the terms and conditions of its agreement with us.

c. Confirmation

The undersigned confirms that the reseller and distributor information is correct.
(For the reseller and distributor to complete and sign.)

Name of Reseller:	Name of Distributor:
By: _____ *(signature)*	By: _____ *(signature)*
Name: _____ *(printed)*	Name: _____ *(printed)*
Title: _____ *(printed)*	Title: _____ *(printed)*
Date: _____	Date: _____

To be completed by Microsoft

Microsoft Enterprise Agreement Number	**01E61940**
Microsoft Select Agreement Number	**01S62995**
Microsoft Business Agreement Number	**U5654007**
Microsoft Document ID	

AMENDMENT No. 2 TO THE MICROSOFT
CUSTOM LICENSE AGREEMENT FOR THE STATE OF NEW YORK

This amendment ("amendment") is made and entered into by and between the undersigned for the purpose of amending that certain Microsoft Custom License Agreement for the State of New York (the "Agreement" or "CLA") identified above between the New York State Office of General Services and MICROSOFT LICENSING, GP ("MLGP"). All terms used but not defined in this amendment will have the meanings assigned to such terms in the enrollment, as amended.

I. Modifications to the Agreement.

1. A new Subsection "h" is hereby added to Section 12. "Miscellaneous," of the Microsoft Enterprise Agreement Program Agreement, as follows:

Microsoft Dynamics GP US Government Packaging (Pilot Program):

The term of the pilot program is from May 1, 2008 through June 30, 2009. Once a Dynamics GP order has been placed during the initial pilot term, Authorized User may continue to order additional Dynamics GP products until the end of its Enrollment. In case of Select orders, the New York State Select agreement ends on June 30, 2009. After June 30, 2009 no additional orders under the Select Agreement will be accepted. In the case of the Enterprise Agreement, the end date would be 3 years (36 months) after participating Authorized Users enrollment start date. Authorized User must True-Up Dynamics GP Products added during the term of the Enterprise Enrollment.

Authorized User acknowledges and agrees that Microsoft may change the program or terminate Authorized User's participation at any time and that there is no guarantee that Microsoft will decide to continue the program following the pilot. Authorized User may continue to purchase additional Microsoft Dynamics GP products or users through Microsoft's normal partner channel in the event of the expiration or early termination of this program. Termination of participation in this pilot shall not affect Licenses ordered prior to such termination, and all remaining payments (if any) for such previously-ordered Licenses remain due and payable. Authorized User will retain the perpetual License for the Microsoft Dynamics GP products they purchased.

A. Microsoft Dynamics GP Products

Product name:
Microsoft Dynamics GP Server Business Essentials Edition
Microsoft Dynamics GP Server Advanced Management Edition
Microsoft Dynamics GP Server User CAL
Microsoft Dynamics GP Server Device CAL
Microsoft Dynamics GP Server Business Essentials Additive CAL
Microsoft Dynamics GP Server Advanced Management Additive CAL
Microsoft Dynamics GP Server External Connector
Microsoft Dynamics GP Server Step Up
Microsoft Dynamics GP Server CAL Step Up
Microsoft Dynamics GP Development User Toolkit
Dynamics GP Svr 10.0 English Disk Kit MVL US Only CD

B. Amendment to the Product Use Rights

The following sections of the Product Use Rights entitled, **Microsoft Servers – Server/CAL** and **Microsoft Developer Tools**, are hereby amended by including Microsoft Dynamics GP as follows:

Microsoft Dynamics GP Server 10.0 Business Essentials Edition
Microsoft Dynamics GP Server 10.0 Advanced Management Edition

1. General License Terms. You have the rights below for each software license you acquire.

a.) Assigning the License to the Server.

i.) Before you run any instance of the server software under a software license, you must assign that license to one of your servers. That server is the licensed server for that particular license. You may assign other software licenses to the same server, but you may not assign the same license to more than one server. A hardware partition or blade is considered to be a separate server.

ii.) You may reassign a software license, but not on a short-term basis (i.e., not within 90 days of the last assignment). You may reassign a software license sooner if you retire the licensed server due to permanent hardware failure. If you reassign a license, the server to which you reassign the license becomes the new licensed server for that license.

b.) Running Instances of the Server Software. For each server software license you assign, you may run, at any one time, one instance of the server software in one physical or virtual operating system environment on the licensed server.

c.) Running Instances of the Additional Software. You may run or otherwise use any number of instances of the additional software listed in the table below in physical

or virtual operating system environments on any number of devices. You may use the additional software only with the server software directly or indirectly through other additional software.

Product	List of Additional Software
Microsoft Dynamics GP Server 10.0 Business Essentials Edition	• Analysis Cubes for SQL 2000 • Dynamics Messaging Service • eConnect Runtime • Integration Manager • MS Office SharePoint Server Wizard • MS SQL Server Reporting Wizard • Personal Data Keeper • Business Portal • Catalog Maintenance • Continuum • Dexterity • Dynamics GP SDK • Web Services • Web Services Management Tools • Workflow
Microsoft Dynamics GP Server 10.0 Advanced Management Edition	• Analysis Cubes for SQL 2000 • Dynamics Messaging Service • eConnect Runtime • Integration Manager • Microsoft Office SharePoint Server Wizard • Microsoft SQL Server Reporting Wizard • Personal Data Keeper • Business Portal • Catalog Maintenance • Continuum • Dexterity • Dynamics GP SDK • Web Services • Web Services Management Tools • Workflow

2. Creating and Storing Instances on Your Servers or Storage Media. You have the additional rights below for each software license you acquire.

   a.) You may create any number of instances of the server software and additional software.

   b.) You may store instances of the server software and additional software on any of your servers or storage media.

   c.) You may create and store instances of the server software and additional software solely to exercise your right to run instances of the server software under any of your software licenses as described above (e.g., you may not distribute instances to third parties).

3. Additional Licensing Requirements and/or Use Rights.

   a.) Client Access Licenses (CALs).

   i.) You must acquire and assign a CAL to each device or user that accesses your instances of the server software directly or indirectly. A hardware partition or blade is considered to be a separate device. The appropriate CAL for each product is listed in the table below.

   ii.) You do not need CALs for:

   A.) any of your servers licensed to run instances of the server software, and

   B.) up to two devices or users to access your instances of the server software only to administer those instances.

   iii.) Your CALs permit access to your instances of earlier versions, but not later versions, of the server software, unless stated in the table below.

   iv.) Some server software functionality requires additional CALs as listed in the table below.

Product or Functionality	**List of CALs**
MS Dynamics GP Server 10.0 Business Essentials Edition	• Microsoft Dynamics GP Server 10.0 CAL
MS Dynamics GP Server 10.0 Advanced Management Edition	• Microsoft Dynamics GP Server 10.0 CAL
MS Dynamics GP Server 10.0 Business Essentials Edition Payroll functionality	• Microsoft Dynamics GP Server 10.0 Business Essentials Additive CAL
MS Dynamics GP Server 10.0 Advanced Management Edition Business Intelligence Human	• Microsoft Dynamics GP Server 10.0 Advanced Management Additive CAL

Resources functionality	

b.) Types of CALs. There are two types of CALs: one for devices and one for users. Each device CAL permits one device, used by any user, to access instances of the server software on your licensed servers. Each user CAL permits one user, using any device, to access instances of the server software on your licensed servers. You may use a combination of device and user CALs.

c.) Reassignment of CALs. You may:

i.) permanently reassign your device CAL from one device to another, or your user CAL from one user to another, or

ii.) temporarily reassign your device CAL to a loaner device while the first device is out of service, or your user CAL to a temporary worker while the user is absent.

d.) External Connector Licenses. You must assign each external connector license you acquire to a server licensed to run one or more instances of the server software. A hardware partition or blade is considered to be a separate server. Each external connector license assigned to a server permits any number of external users to access instances of the server software on that server. You do not need CALs for those users. "External users" means users that are not either (i) your or your affiliates' employees, or (ii) your or your affiliates' onsite contractors or agents.

i.) The appropriate external connector license for each product is listed in the table below.

ii.) External connector licenses permit access to your instances of earlier versions, but not later versions, of the server software, unless stated in the table below.

iii.) If you choose to license access under external connector licenses, note that some server software functionality requires additional external connector licenses, as listed in the table below.

Product or Functionality	**List of External Connector Licenses**
Microsoft Dynamics GP Server 10.0 Business Essentials Edition	• Microsoft Dynamics GP Server 10.0 External Connector
Microsoft Dynamics GP Server 10.0 Advanced Management Edition	• Microsoft Dynamics GP Server 10.0 External Connector

e.) Reassignment of External Connector Licenses. You may reassign an external connector license, but not on a short-term basis (i.e., not within 90 days of the last

assignment). You may reassign an external connector license sooner if you retire the server to which it was assigned due to permanent hardware failure.

f.) Distributable Code. You may use Distributable Code as described in the Universal License Terms.

g.) Microsoft Operations Manager (MOM) Management Packs. The software may contain MOM Management Packs. The license terms for MOM in the Server – Management Server section of these product use rights applies to your use of these MOM Management Packs.

C. Amendment to the Product List

This section covers the following product:
Microsoft Dynamics GP Developer User Toolkit

The following section of the Product List, entitled Appendix 5 – software assurance (SA) BENEFITS, is hereby amended by including Microsoft Dynamics GP as follows:

1. Step-up License Availability.
Authorized Users may migrate from a lower level edition to a higher level edition of certain products with a Step-Up License. Authorized Users must have a license with active upgrade protection coverage (e.g., Software Assurance, Upgrade Advantage, or Enterprise Agreement) for the qualifying product in order to acquire a Step-Up License. The Step-Up License must be acquired, and is valid only when acquired, under the Enterprise or Select enrollment under which upgrade protection coverage for the qualifying product was originally acquired. The Authorized User's right to the use of software under a Step-Up license is conditioned on their having and retaining a License for the qualifying product. Authorized Users cannot transfer the License for the qualifying product separately from the Step-Up license. Authorized Users' perpetual rights under the Step-Up License supersede and replace the underlying license for the qualifying product. For more details, please see the Enterprise Edition Step-up License Volume Licensing Brief: www.microsoft.com/licensing

Step-up from	Step-up to
Microsoft Dynamics GP® Server 10.0 Business Essentials Edition	Microsoft Dynamics GP® Server 10.0 Advanced Management Edition
Microsoft Dynamics GP® Server 10.0 Business Essentials Edition Additive CAL	Microsoft Dynamics GP® Server 10.0 Advanced Management Edition Additive CAL

D. Software advisor fee.

Software Advisor Fee; Authorized User Consent. Microsoft utilizes and pays a fee to third party software advisors for the provision of pre- and post-transaction advisory assistance in connection with this pilot program. The software advisor fee amount increases with the size of the order Authorized User places under this Enrollment. By executing this Enrollment, Authorized User consents to Microsoft's payment of the software advisor fee on your behalf. You and the Software Advisor may or may not enter into a separate contract for the Software Advisor's provision to you of additional services.

II. Effect of Amendment.

Except as specifically amended by this amendment, all provisions of the Agreement identified above shall remain unchanged and in full force and effect. This amendment is not legally binding until executed by both parties and shall become effective on the date of signature of the Officer of the State Comptroller of New York. When this amendment is fully executed, you will receive a confirming copy.

You must execute and return one (1) fully executed copy of this amendment to the below address in order to acknowledge your acceptance of the terms and conditions of this amendment.

MICROSOFT LICENSING, GP
Attn: Dept. 551, Volume Licensing
6100 Neil Road, Suite 210
Reno, NV 89511-1137

IN WITNESS WHEREOF, the parties therefore hereby execute their mutual agreement to the terms of this contract. This agreement constitutes a binding contract between the parties as of the day and year indicated below that approval of the New York State Comptroller was received. The parties further hereby (i) agree that, where Microsoft Licensing, GP is asked to execute six original copies of this signature page along with a complete original copy of the contract, the approved signature page(s) will be affixed by the State, upon final approval by the NYS Comptroller, to additional copies of this contract which conform exactly to the complete original copy as submitted by Microsoft Licensing, GP and executed simultaneously therewith; and (ii) acknowledge that Microsoft Licensing, GP must receive a fully-executed copy of this contract, and upon receipt assign agreement numbers hereto (which shall be then be noted on the first page hereof) before purchases may be made pursuant to this agreement.

Microsoft Licensing, GP

By: Microsoft Management, LLC

By:

Name:

Title:

Date:

Federal Tax Identification #: 88-0443249

THE PEOPLE OF THE STATE OF NEW YORK

By:

Name: Jerry J. Gerard

Title: Acting Director,

OGS Procurement Services Group

Date:

APPROVED AS TO FORM
ANDREW M. CUOMO
New York State Attorney General

APPROVED:

Thomas P. DiNapoli
Comptroller

By:

EFFECTIVE DATE:

CORPORATE ACKNOWLEDGMENT

STATE OF }
: **ss.:**
COUNTY OF }

On the _____ day of _____in the year 2008, before me personally came:

_____, to me known, who, being by me duly sworn, did depose and say that he/she/they reside(s) in

_____; that he/she/they is (are)

_____ (the President or other officer or director or attorney in fact duly appointed) of Microsoft Management, LLC, the limited liability company described in and which executed the above instrument; and that he/she/they signed his/her/their name(s) thereto by authority of the board of managers of said company.

_____
Signature and Office of Person Taking Acknowledgment

To be completed by Microsoft

Microsoft Enterprise Agreement Number	**01E61940**
Microsoft Select Agreement Number	**01S62995**
Microsoft Business Agreement Number	**U5654007**
Microsoft Document ID	CTM-000-jendunn-S-313

AMENDMENT No. 3 TO THE MICROSOFT CUSTOM LICENSE AGREEMENT FOR THE STATE OF NEW YORK

This amendment ("amendment") is made and entered into by and between the undersigned for the purpose of amending that certain Microsoft Custom License Agreement for the State of New York (the "Agreement" or "CLA") identified above between the New York State Office of General Services and MICROSOFT LICENSING, GP ("MLGP"). All terms used but not defined in this amendment will have the meanings assigned to such terms in the enrollment, as amended.

I. Modifications to the Agreement.

1. Section 12 h. entitled, **Microsoft Dynamics GP US Government Packaging (Pilot Program) ,** of the Microsoft Enterprise Agreement Program Agreement, the term is hereby deleted and restated to be from May 1, 2008 through June 30, 2010. In case of Select orders, the New York State Select agreement ends on June 30, 2012. After June 30, 2010 no new orders of Dynamic products under the Select Agreement will be accepted.

II. Effect of Amendment.

Except as specifically amended by this amendment, all provisions of the Agreement identified above shall remain unchanged and in full force and effect. This amendment is not legally binding until executed by both parties and shall become effective on the date of signature of the Officer of the State Comptroller of New York. When this amendment is fully executed, you will receive a confirming copy.

You must execute and return one (1) fully executed copy of this amendment to the below address in order to acknowledge your acceptance of the terms and conditions of this amendment.

MICROSOFT LICENSING, GP
Attn: Dept. 551, Volume Licensing
6100 Neil Road, Suite 210
Reno, NV 89511-1137

IN WITNESS WHEREOF, the parties therefore hereby execute their mutual agreement to the terms of this contract. This agreement constitutes a binding contract between the parties as of the day and year indicated below that approval of the New York State Comptroller was received. The parties further hereby (i) agree that, where Microsoft Licensing, GP is asked to execute six original copies of this signature page along with a complete original copy of the contract, the approved signature page(s) will be affixed by the State, upon final approval by the NYS Comptroller, to additional copies of this contract which conform exactly to the complete original copy as submitted by Microsoft Licensing, GP and executed simultaneously therewith; and (ii) acknowledge that Microsoft Licensing, GP must receive a fully-executed copy of this contract, and upon receipt assign agreement numbers hereto (which shall be then be noted on the first page hereof) before purchases may be made pursuant to this agreement.

Microsoft Licensing, GP

By: Microsoft Management, LLC

By:

Name:

Title:

Date:

Federal Tax Identification #: 88-0443249

THE PEOPLE OF THE STATE OF NEW YORK

By:

Name: Jerry J. Gerard

Title: Acting Director,

OGS Procurement Services Group

Date:

APPROVED AS TO FORM
ANDREW M. CUOMO
New York State Attorney General

APPROVED:

Thomas P. DiNapoli
Comptroller

By:

EFFECTIVE DATE:

CORPORATE ACKNOWLEDGMENT

STATE OF }
: **ss.:**
COUNTY OF }

On the _____ day of _____in the year 2008, before me personally came:

_____, to me known, who, being by me duly sworn, did depose and say that he/she/they reside(s) in

_____; that he/she/they is (are)

_____ (the President or other officer or director or attorney in fact duly appointed) of Microsoft Management, LLC, the limited liability company described in and which executed the above instrument; and that he/she/they signed his/her/their name(s) thereto by authority of the board of managers of said company.

_____
Signature and Office of Person Taking Acknowledgment

To be completed by Microsoft

Microsoft Enterprise Agreement Number	**01E61940**
Microsoft Select Agreement Number	**01S62995**
Microsoft Business Agreement Number	**U5654007**
Microsoft Document ID	CTM-000-jendunn-S-330

AMENDMENT No. 3 TO THE MICROSOFT CUSTOM LICENSE AGREEMENT FOR THE STATE OF NEW YORK

This amendment ("amendment") is made and entered into by and between the undersigned for the purpose of amending that certain Microsoft Custom License Agreement for the State of New York (the "Agreement" or "CLA") identified above between the New York State Office of General Services and MICROSOFT LICENSING, GP ("MLGP"). All terms used but not defined in this amendment will have the meanings assigned to such terms in the enrollment, as amended.

I. Modifications to the Agreement.

1. **One Time Special Order:**

Notwithstanding anything to the contrary in the Select Enrollment, and Prior to February 28, 2010, Customer may submit a renewal order, so long as the effective date of Customer's renewal order starts one day following the expiration of the previous term.

In the absence of this amendment or an on-time renewal order, customer loses opportunity to renew Software Assurance, and subscription offerings may be impacted, including any online services, fulfillment and Software Assurance Benefits.

2. It is understood by the parties that future changes to the Microsoft Custom License Agreement that require any amendment offering its affiliates more favorable or advantageous pricing, terms conditions will not require prior approval of Attorney General or OSC but shall require notification to OGS. Microsoft Amendments that pertain to price corrections due to a misquote by LAR/AER will not require approval by any of the aforementioned parties.

II. Effect of Amendment.

Except as specifically amended by this amendment, all provisions of the Agreement identified above shall remain unchanged and in full force and effect. This amendment is not legally binding until executed by both parties and shall become effective on the date of signature of the Officer of the State Comptroller of New York. When this amendment is fully executed, you will receive a confirming copy.

You must execute and return one (1) fully executed copy of this amendment to the below address in order to acknowledge your acceptance of the terms and conditions of this amendment.

MICROSOFT LICENSING, GP
Attn: Dept. 551, Volume Licensing
6100 Neil Road, Suite 210
Reno, NV 89511-1137

IN WITNESS WHEREOF, the parties therefore hereby execute their mutual agreement to the terms of this contract. This agreement constitutes a binding contract between the parties as of the day and year indicated below that approval of the New York State Comptroller was received. The parties further hereby (i) agree that, where Microsoft Licensing, GP is asked to execute six original copies of this signature page along with a complete original copy of the contract, the approved signature page(s) will be affixed by the State, upon final approval by the NYS Comptroller, to additional copies of this contract which conform exactly to the complete original copy as submitted by Microsoft Licensing, GP and executed simultaneously therewith; and (ii) acknowledge that Microsoft Licensing, GP must receive a fully-executed copy of this contract, and upon receipt assign agreement numbers hereto (which shall be then be noted on the first page hereof) before purchases may be made pursuant to this agreement.

Microsoft Licensing, GP

By: Microsoft Management, LLC

By:

Name:

Title:

Date:

Federal Tax Identification #: 88-0443249

THE PEOPLE OF THE STATE OF NEW YORK

By:

Name: Jerry J. Gerard

Title: Acting Director,

OGS Procurement Services Group

Date:

APPROVED AS TO FORM
ANDREW M. CUOMO
New York State Attorney General

APPROVED:

Thomas P. DiNapoli
Comptroller

By:

EFFECTIVE DATE:

CORPORATE ACKNOWLEDGMENT

STATE OF }
: **ss.:**
COUNTY OF }

On the _____ day of _____in the year 2008, before me personally came:

_____, to me known, who, being by me duly sworn, did depose and say that he/she/they reside(s) in

_____; that he/she/they is (are)

_____ (the President or other officer or director or attorney in fact duly appointed) of Microsoft Management, LLC, the limited liability company described in and which executed the above instrument; and that he/she/they signed his/her/their name(s) thereto by authority of the board of managers of said company.

_____
Signature and Office of Person Taking Acknowledgment

Microsoft Business Agreement Number	**U5654007**
Microsoft Select Agreement Program Agreement Number	**01S62995**
Microsoft Education Select Agreement Program Agreement Number	**01S62996**
Microsoft Document ID	000-jendunn-S-348

AMENDMENT No. 5 TO THE MICROSOFT CUSTOM LICENSE AGREEMENT FOR THE STATE OF NEW YORK

This amendment ("amendment") is made and entered into by and between the undersigned for the purpose of amending that certain Microsoft Custom License Agreement for the State of New York (the "Agreement" or "CLA") identified above between the New York State Office of General Services and MICROSOFT LICENSING, GP ("MLGP"). All terms used but not defined in this amendment will have the meanings assigned to such terms in the enrollment, as amended.

I. Modifications to the Agreement.

All parties agree based on the customer's request to the following changes to invoices:

1. Notwithstanding anything to the contrary, all invoices for June 27, 2010 Select Agreement enrollments will invoice to the reseller on June 26, 2010.

II. Effect of Amendment.

Except as specifically amended by this amendment, all provisions of the Agreement identified above shall remain unchanged and in full force and effect. This amendment is not legally binding until executed by both parties and shall become effective on the date of signature of the Officer of the State Comptroller of New York. When this amendment is fully executed, you will receive a confirming copy.

You must execute and return one (1) fully executed copy of this amendment to the below address in order to acknowledge your acceptance of the terms and conditions of this amendment.

MICROSOFT LICENSING, GP
Attn: Dept. 551, Volume Licensing
6100 Neil Road, Suite 210
Reno, NV 89511-1137

IN WITNESS WHEREOF, the parties therefore hereby execute their mutual agreement to the terms of this contract. This agreement constitutes a binding contract between the parties as of the day and year indicated below that approval of the New York State Comptroller was received. The parties further hereby (i) agree that, where Microsoft Licensing, GP is asked to execute six original copies of this signature page along with a complete original copy of the contract, the approved signature page(s) will be affixed by the State, upon final approval by the NYS Comptroller, to additional copies of this contract which conform exactly to the complete original copy as submitted by Microsoft Licensing, GP and executed simultaneously therewith; and (ii) acknowledge that Microsoft Licensing, GP must receive a fully-executed copy of this contract, and upon receipt assign agreement numbers hereto (which shall be then be noted on the first page hereof) before purchases may be made pursuant to this agreement.

Microsoft Licensing, GP

By: Microsoft Management, LLC

By:

Name: Mesfin Felleke

Title: Program Manager, Compliance

Date: JUN 0 2 2010

Federal Tax Identification #: 88-0443249

THE PEOPLE OF THE STATE OF NEW YORK

By:

Name: Jerry J. Gerard

Title: Acting Director,

OGS Procurement Services Group

Date: 6/8/10

APPROVED AS TO FORM
ANDREW M. CUOMO
New York State Attorney General

APPROVED:

Thomas P. DiNapoli
Comptroller

APPROVED
DEPT. OF AUDIT & CONTROL
JUN 1 0 2010

By:

FOR THE STATE COMPTROLLER

EFFECTIVE DATE:

CORPORATE ACKNOWLEDGMENT

STATE OF Nevada }
: **ss.:**
COUNTY OF Washoe }

On the 2nd day of June in the year 2010 ~~2008~~, before me personally came:

Meefin Felleke, to me known, who, being by me duly sworn, did depose and say that he/she/they reside(s) in Washoe County NV.; that he/she/they is (are) Program Manager, Compliance ~~(the~~ President or other officer or director or attorney in fact duly appointed) of Microsoft Management, LLC, the limited liability company described in and which executed the above instrument; and that he/she/they signed his/her/their name(s) thereto by authority of the board of managers of said company.

Deborah J. Moravec

Signature and Office of Person Taking Acknowledgment

DEBORAH J. MORAVEC
Notary Public - State of Nevada
Appointment Recorded in Lyon County
No: 09-11466-12 - Expires September 30, 2013

JUN 02 2010