



**CENTRALIZED CONTRACT FOR THE ACQUISITION  
OF  
MICROSOFT PRODUCTS (STATEWIDE)**

**Custom Microsoft Business Agreement**

THIS CONTRACT (hereinafter “Contract” or “Centralized Contract”) is made between the People of the State of New York, acting by and through the Commissioner of the Office of General Services (hereinafter “OGS”) whose principal place of business is the 41<sup>st</sup> Floor, Corning Tower, The Governor Nelson A. Rockefeller Empire State Plaza, Albany, New York 12242 and Microsoft Corporation (hereinafter “Contractor” or “Microsoft”), with offices at One Microsoft Way, Redmond, WA 98052. The State of New York and Contractor are collectively referred to as the “Parties.”

**WHEREAS**, the State of New York and Contractor are parties to a certain Custom Business Agreement for State of New York (Contract No. PS66034) which establishes an overall licensing framework and applicable terms and conditions governing the acquisition of Microsoft Products by Authorized Users; and

**WHEREAS**, said Contract No. PS66034 will expire by its terms on July 31, 2018; and

**WHEREAS**, because Authorized Users continue to maintain a substantial install base of Microsoft Products, and may need additional such Products, it is in the best interest of the State of New York and Authorized Users to establish this new Centralized Contract (“Contract”) to succeed Contract No. PS66034; and

**WHEREAS**, Contractor does not sell directly to government customers under the Program Agreements hereunder, but rather sells exclusively through its authorized Reseller network, and therefore it does not set the actual price paid by governmental customers. In order to allow “comparison shopping” it provides a “reference price”; and

**WHEREAS**, OGS is the New York State agency authorized under Article 11 of the State Finance Law to establish centralized contracts to meet the requirements of Authorized Users; and

**WHEREAS**, it is the intention of OGS to issue a competitive solicitation to acquire the services of one or more authorized Microsoft Resellers to, among other things, fulfill orders for Microsoft Products pursuant to the overall licensing framework and applicable terms and conditions set forth in this Contract; and

**WHEREAS**, pursuant to this Contract the Contractor is willing to sell its Products to Authorized Users through its authorized Reseller network; and

**WHEREAS**, OGS provided notification of the State of New York's intention to enter into a single source contract with Contractor by placing a notice in the February 15, 2018 edition of the New York State Contract Reporter.

**NOW THEREFORE**, in consideration of the terms hereinafter mentioned and also the mutual covenants and obligations moving to each party hereto from the other, the Parties hereby agree as follows:

## **PART 1. SCOPE OF AGREEMENT**

**Effective Date.** The effective date of this Contract shall be August 1, 2018.

The OGS contract number (unique identifier) is PS67984.

**1.1 Scope.** This Contract, which includes all of the attached Appendices, Program Agreements, Enrollments, Affiliate Registration Form and other documents, establishes the overall licensing framework and the applicable terms and conditions. Under the Program Agreements, Authorized Users may license Products by entering into Enrollments and/or Affiliate Registration Forms and placing orders with the Reseller. The Parties acknowledge the actual Products available for acquisition by an Authorized User will be set forth in the contract between the State of New York and a Reseller that results from a separate competitive procurement by OGS to establish one or more Resellers.

Contractor asserts, and the State of New York acknowledges that (1) no direct payment shall be made by an Authorized User directly to Contractor under this Contract, and (2) under this Contract, Contractor does not engage in direct sales of its Products with an Authorized User pursuant to this Contract.

**1.2 Acquiring Contractor Product and Payments/Pricing.** An Authorized User will acquire Contractor Product pursuant to the terms and conditions of this Contract through a separate contract that will be established via a separate competitive procurement by OGS to engage one or more qualified Microsoft Resellers. The Reseller(s) and the Enrolled Customer will determine the Enrolled Customer's actual price and payment terms.

The price levels which Contractor will use to invoice the Reseller(s) who directly sell Products pursuant to the terms of this Contract are as follows:

- For State and Local Government Enrolled Customers under the Enterprise Agreement and the Select Plus Program Agreement, price level will be Level D.
- For Education Enrolled Customers under the Select Plus Agreement, price level will be level A.
- For Education Enrolled Customers under the Campus and School Agreement, price levels will vary according to the number of Knowledge Worker and Student users. Education Enrolled Customers may purchase Education Platform Products and Additional Products.

There is no price level for Additional Products (i.e. there is only one price point for each Additional Product). The following are the Education price levels for Education Platform Products:

| <b>Knowledge Worker Option</b> |  |
|--------------------------------|--|
| <b>Organization Wide Count</b> | <b>Price level (Only Applicable For Education Platform Products)</b> |
| 250                            | A  |
| 3,000                          | B  |
| 10,000                         | C  |
| 25,000                         | D  |

| <b>Student Option</b> |  |
|-----------------------|--|
| <b>Student Count</b>  | <b>Price level (Only Applicable For Education Platform Products)</b> |
| 250                   | A  |
| 3,000                 | B  |
| 10,000                | C  |
| 25,000                | D  |

Pricing to the Reseller for Additional Products will be based on Contractor’s published price list.

**1.3 Placing Orders through Reseller.** Orders under an Enrollment or Affiliate Registration Form will be made to the Reseller. Microsoft will invoice the Reseller according to the terms in the applicable Enrollment or Affiliate Registration Form and pursuant to the applicable “Net Reseller Cost” for the SKUs on the invoice. The Reseller and the Enrolled Customer will determine the Enrolled Customer’s actual price and payment terms.

Price levels set forth in Section 1.2 shall not be increased during the term of the Contract, but Contractor may decrease Price Levels. The Parties acknowledge that Reference Prices may change on a monthly basis. Contractor will confirm to OGS, upon request, the percentage changes in Reference Prices. Except for Online Services designated in the Product Terms as being exempt from fixed pricing, Contractor’s prices for Resellers

for each Product or Service ordered under an Enrollment (Enterprise Enrollment, Enterprise Subscription Enrollment, Enterprise Server and Cloud Enrollment or Enrollment for Education Solutions) will be fixed throughout the applicable initial or renewal Enrollment term. Contractor's prices to Resellers are reestablished at the beginning of the renewal Enrollment term.

#### **1.4 Change of Reseller.**

(1) Change of Reseller at Contract renewal:

- Change in Reseller must be requested by OGS.
- OGS will notify Microsoft of new Reseller.
- Microsoft will work with new Reseller to ensure they receive all applicable Program Agreements, Enrollments and Affiliate Registration Forms.
- All billings under Contract renewal will be issued to and paid by the new Reseller.

(2) Change of Reseller During Contract Term:

- Change in Reseller must be requested by OGS.
- Requires adequate notice from OGS to the Contractor.
- Change in Reseller will be made effective 90 days from the OGS signature date on the Contractor's Change of Channel Partner (COCP) Form.
- Change in Reseller can be made effective in less than 90 days from the OGS signature date on the Contractor's Change of Channel Partner (COCP) Form, but requires both Resellers' signed agreement to waive 90-day timeframe.
- The COCP Form must be sent to Contractor no later than 10 calendar days from the OGS signature date.
- All billings due will be paid/issued to the previous Reseller if they are due prior to the effective date of the COCP Form.
- All billings will be paid/issued to the new Reseller if they are due on or after the effective date of the same COCP Form.

**1.5 Indefinite Delivery/Indefinite Quantity.** To the extent applicable to this Contract, Contractor acknowledges that the separate contract ("Reseller Contract") between the State of New York and a Microsoft Reseller authorized to accept orders pursuant to the Contractor's licensing framework and terms and conditions set forth therein, will be an indefinite delivery/indefinite quantity contract ("IDIQ"). For purposes of clarity, the IDIQ Reseller Contract, is expressly agreed and understood to be made for only the quantities, if any, actually ordered during the term thereof by Authorized Users. Contractor further acknowledges that OGS, in its sole discretion, has the right to determine which Contractor Products may or may not be purchased at any given time under the Reseller Contract, and that no guarantee to Contractor of any quantity of orders or sales of its Products is implied or given.

**1.6 Centralized Contract Amendment.** This Contract and any of its Appendices, Program Agreements, Enrollments, Affiliate Registration Forms and other attachments may be amended at the mutual agreement of the Parties to, among other things,

incorporate new and other offerings, make Price Level revisions, modify terms and conditions and delete items. If Contractor requests amendment of a Program Agreement, Enrollment or Affiliate Registration Form and the Parties do not reach mutual agreement, such amended Program Agreement, Enrollment or Affiliate Registration Form cannot be used under the Contract.

During the term of this Contract OGS reserves the right to consider amendments which are not specifically covered by the terms of the Contract, but are judged to be in the best interest of the State of New York. OGS, an Authorized User, or the Contractor may suggest amendments. The Parties agree to work cooperatively to discuss any amendments, which may include addressing changes in law, regulation, security policy or changes in Contractor's business model. OGS may request Contract amendments by notifying Contractor's Contract Administrator, and Contractor may request Contract amendments by contacting the OGS Contract Manager for this Contract. The Parties agree to confer no less frequently than every six months for the purposes of discussing this Contract, including the need for any amendments thereto.

Program Updates: Contractor may make material changes to a program that will make it necessary for Customer to enter into a new Program Agreement or for an Enrolled Customer to enter into a new Enrollment at the time of an Enrollment renewal. Any new Program Agreements or Enrollments to be used for this purpose shall be mutually agreed upon by Contractor and the State of New York and added to this Contract through an amendment before being presented to an Affiliate or Enrolled Customer.

**1.7 Out-of-Scope Work and Products.** The Parties agree that the following are expressly excluded from the scope of this Contract unless the Parties agree to amend the scope of this Contract:

- Hardware
- Consulting services, which includes deliverable and hourly-based
- Technical support services, other than technical support services included with the purchase of the Product
- Premier support services
- Supplies
- Development or customization work
- Systems or projects

The Parties also agree that no public works or building services work can be provided by the Contractor under this Contract. Further, the Parties agree that no remanufactured, recycled, recyclable or recovered materials can be provided by the Contractor under this Contract.

**1.8 Definitions.** The terms used in this Contract shall be defined in accordance with Appendix B (Section 2 Definitions). In addition, the following definitions shall apply. Additional definitions are set forth in the attached Program Agreements.

**“Affiliate”** (which for purposes of this Contract shall define the scope of Authorized Users purchasing hereunder) means

- A. with regard to Customer
  - i) any New York government agency, department, office, instrumentality, division, unit or other entity of the state or local government that is supervised by or is part of Customer, or which supervises Customer or of which Customer is a part, or which is under common supervision with Customer;
  - ii) any county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality established by the laws of New York and located within New York state jurisdiction and geographic boundaries; and
  - iii) any other entity in New York expressly authorized by the laws of New York to purchase under state contracts; provided that a state and its Affiliates shall not, for purposes of this definition, be considered to be Affiliates of the federal government and its Affiliates; and
- B. with regard to Microsoft, any legal entity that Microsoft owns, that owns Microsoft, or that is under common ownership with Microsoft
- C. For the purpose of Academic Program Agreements, Affiliate shall have the following definition:
  - a) If Institution is a non-public entity, then, with regard to Institution, "Affiliate" means any Qualified Educational User (as defined in Appendix E, Qualified Educational User Definition) that controls, is controlled by, or is under common control with Institution.
  - b) If Institution is a public entity, then, with regard to Institution, "Affiliate" means, any Qualified Educational User that is:
    - (i) within the administrative control or supervision of Institution, or
    - (ii) expressly authorized by Institution to purchase as its affiliate.
  - c) with regard to Microsoft, any entity that controls, is controlled by, or is under common control with Microsoft.

For purposes of this definition, **except with regard to hospitals, healthcare systems, and research laboratories** (collectively, “Healthcare Institutions”), “control” means ownership of more than a 50% interest of voting securities in an entity or the power to direct the management and policies of an entity. For Healthcare Institutions, “control” means that Institution is the sole owner of the Healthcare Institution or the only entity with the power to direct the management and policies of the Healthcare Institution’s day-to-day operations.

**“Affiliate Registration Form (ARF)”** means the Select Plus Affiliate Registration Form incorporated in Appendix C which may be executed by a Registered Affiliate.

**“Available”** means Microsoft has made Licenses for that Product available in the Product Terms for ordering under a particular licensing program.

**“Consortium”** means an organization of qualified educational users that enrolls in a Campus & School Agreement on behalf of its individual members.

**“Customer”** (1) when used in this document, “the State of New York”; (2) when used in the Enterprise Agreement Program Agreement State and Local, the Select Plus License Program Agreement State and Local, and the Academic Select Plus Agreement, “the State of New York”; (3) when used in the Enterprise Enrollment, Enterprise Subscription Enrollment, Server and Cloud Enrollment, and the Select Plus Affiliate Registration Form, the “Enrolled Customer” as defined below; and (4) when used in the Product Terms and the Online Services Terms, the “Enrolled Customer” as defined below.

**“Customer Data”** means all data, including all text, sound, video, software, or image files that are provided to Microsoft by, or on behalf of, Enrolled Customer through Enrolled Customer’s use of the Online Services. Log files and telemetry and other information generated by Microsoft are not Customer Data. However, all data (including all text, sound, video, software, or image files that are provided to Microsoft by, or on behalf of, Enrolled Customer through Enrolled Customer’s use of the Online Services) that is within such log files or telemetry information will at all times be protected by Microsoft pursuant to the terms and conditions of this Contract and will not be shared with third parties without the express permission of the Enrolled Customer.

**“Enrolled Customer”** means an Affiliate that has entered into an Enrollment or Affiliate Registration Form. Please note that an Enrolled Customer could be referred to as an Enrolled Affiliate or Registered Affiliate in the Program Agreements, Enrollments and Affiliate Registration Forms, or as a Participant in the Consortia Amendment to the Campus and School Agreement.

**“Enterprise”** shall mean with respect to the Enterprise Agreement Program Agreement only, the Enrolled Affiliate and the Affiliates it chooses on its Enrollment to include in its enterprise.

**“Fixes”** means Product fixes, Error Corrections, modifications or enhancements, or their derivatives, that Microsoft either releases generally (such as Product service packs) or provides to Enrolled Customer to address a specific issue.

**“Government Community Cloud Services”** means Microsoft Online Services that are provisioned in Microsoft’s multi-tenant data centers for exclusive use by or for the Community and offered in accordance with the National Institute of Standards and Technology (NIST) Special Publication 800-145. Microsoft Online Services that are Government Community Cloud Services are designated as such in the Use Rights and Product Terms.

**“Hotfixes”** means a Fix that Contractor makes available to a specific Authorized User (pursuant to a professional services agreement) to address a specific problem that is unique to said Authorized User. Sometimes Contractor makes the hotfix available to other customers if they report the same problem. If a large number of customers report the same problem, the hotfix can get elevated to a General Distribution Release (Service Pack).

**“Institution”** means the entity that is (1) a Qualified Educational User (as defined in Appendix E, Qualified Educational User Definition) as of the effective date of this Contract

that has entered into a Campus and School Agreement or Academic Select Plus Agreement with Microsoft or (2) an Affiliate of Institution that has entered into an Enrollment under a Campus and School Agreement or an Affiliate Registration Form under an Academic Select Plus Agreement. If Institution is a school district, "Institution" includes all participating schools in the same district.

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

**"Licensing Site"** means <http://www.microsoft.com/licensing/contracts> or a successor site.

**"May"** denotes the permissive in a contract clause or specification. Also see "Will."

**"Must"** denotes the imperative in a contract clause or specification. Also see "Shall."

**"NYS Holidays:** refers to the legal holidays for State Employees in the Classified Service of the Executive Branch, as more particularly specified on the website of the NYS Department of Civil Service. This includes the following: New Year's Day; Martin Luther King Day; Washington's Birthday (observed); Memorial Day; Independence Day; Labor Day; Columbus Day; Veteran's Day; Thanksgiving Day; and Christmas Day. A copy of the NYS Holidays for 2018 is available at [https://www.cs.ny.gov/attendance\\_leave/2018\\_legal\\_holidays.cfm](https://www.cs.ny.gov/attendance_leave/2018_legal_holidays.cfm)

**"Net Reseller Cost"** means the confidential price Contractor charges its Reseller(s) for a SKU.

**"New York State Procurement Services (Procurement Services)"** shall mean a division of the New York State Office of General Services which issues centralized, statewide contracts for use by New York agencies, political subdivisions, schools, libraries and others authorized by law to participate in such contracts.

**"Online Service"** means the Microsoft-hosted services identified in the Online Services section of the Product Terms, and for which certain applicable terms are included in the Online Services Terms.

**"Online Services Terms"** means the additional terms that apply to Enrolled Customer's use of Online Services published on the Licensing Site and updated from time to time.

**"Personally Identifiable Information (PII)"** means any information about an individual maintained by an agency, including (1) any information that can be used to distinguish or trace an individual's identity, such as name, social security number, date and place of birth, mother's maiden name, or biometric records; and (2) any other information that is linked or linkable to an individual, such as medical, educational, financial, and employment information.

**"Product"** means all products identified in the Product Terms, such as all software and Online Services.



**“Product Terms”** means the document which describes the availability of Products through the Microsoft Volume Licensing Programs (previously conveyed through the Product List), as well as the use rights for software Products (previously conveyed through the Product Use Rights) published by Microsoft from time to time on the Licensing Site.

**“Program Agreements”** shall mean the documents attached as Appendix C, which contain terms and conditions that apply solely to Enrollments and Affiliate Registration forms made pursuant to the Contractor’s License programs to which they apply. The Program Agreements that are included herewith, as of the effective date, are as follows:

- Enterprise Agreement Program Agreement
- Select Plus Agreement Program Agreement, (State and Local)
- Academic Select Plus Program Agreement
- Campus and School Agreement Program Agreement

The Enrollments and Affiliate Registration Forms which apply to the Program Agreements are also attached as part of Appendix C.

**“Product Use Rights”** means the now-obsolete document which preceded both the Product Terms and Online Services Terms.

**“Reference Price”** shall mean the non-confidential price Microsoft uses to represent the relative prices of one SKU vs. another, or between a discounted vs. undiscounted SKU. For clarity:

- Reference Price is higher than Net Reseller Cost, by an amount which is confidential between Microsoft and its Resellers.
- Reference Price is proportionate to Net Reseller Cost. So, for example, subject to rounding error, an X% reduction in Reference Price shall correspond to an X% reduction in Net Reseller Cost.

Microsoft does not set an Authorized User’s price or payment terms. All such prices and payment terms must be agreed separately between Reseller and the Authorized User (or the State or New York on behalf of Authorized Users).

**“Regional Information Centers or BOCES”** as used in the Consortia Amendment means Boards of Cooperative Educational Services (BOCES) which are established pursuant to New York State Education Law §1950. A BOCES may provide any educational service that is requested by two or more component districts and approved by the commissioner of education according to need and practicality in a regional context. There are currently 37 BOCES in New York State.

Regional Information Centers (RICs) are organized under the Board of Cooperative Educational Services (BOCES) and serve several BOCES within their region. The RICs make a wider range of technology services available to school districts, no matter the size of the district. These relationships increase the buying power of a district and promote consistent technical standards. There are currently 12 RICs in New York State, as follows:

Central New York (CNY) RIC; Eastern Suffolk (SUFF) RIC; EduTech RIC; Greater Southern Tier (GST) RIC; Lower Hudson (LH) RIC; Mid Hudson (MH) RIC; Mohawk (Mo) RIC; Monroe RIC; Nassau RIC; Northeastern (NE) RIC; South Central (SC) RIC; and Western New York (WNY) RIC.

**“Reseller”** means a large account reseller authorized by Microsoft to resell Product and Software Assurance under this Contract.

**“Service Level Agreement”** means the document specifying the standards Microsoft agrees to adhere to and by which it measures the level of service for an Online Service. The Service Level Agreement applicable to an Authorized User’s use of an Online Service is the one posted to the Licensing Site at the time such Authorized User initiates or renews its subscription License, in accordance with the terms and conditions therein.

**“Shall”** denotes the imperative in a contract clause or specification. Also see “Must.”

**“SKU”** (also known as Stock Keeping Unit) shall mean the part number that Contractor assigns to a Product. For clarity, a single Product may have more than one SKU associated with it, e.g., different SKUs for education vs. non-education pricing, or different SKUs for promotions, Software Assurance vs. License and Software and Assurance vs. License Only, etc.

**“Software Assurance”** means an annuity offering that provides new version rights and other benefits for Products as described in the Product Terms.

**“Subscription License”** means, for purposes of the Enrollment, a fixed term license that expires when the Enrollment expires or is terminated unless the buyout option is exercised. Any License ordered under the Enrollment is a Subscription License, even if it is otherwise designated on the purchase order.

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

**“Use Rights”** means (1) in the case of Products other than Online Services, the use rights or terms of service identified in the Product Terms, and (2) in the case of Online Services, the Online Services Terms. The Use Rights supersede the terms of any end user license agreement that accompanies a Product.

**“Will”** denotes the permissive in a contract clause or specification. Also see “May.”

For clarity, the definitions of “OGS” and “State” in Appendix B shall apply only to the language in Appendix B, as amended.

## **PART 2. CONTRACT ADMINISTRATION**

**2.1 Contract Administrator.** Contractor must provide a dedicated Contract Administrator to support the updating and management of the Contract on a timely basis. Information regarding the Contract Administrator shall be set forth in **Appendix D, Contract Administration.**

## **PART 3. RESPONSIBILITIES**

**3.1 Internet Access To Contract & Pricing Information.** Access by Authorized Users to Contract terms and pricing information shall be made available and posted on the internet by OGS. Contractor does not currently post the Contract on its internet site.

**3.2 Authorized User Determination Of Compliance With Statutory And Regulatory Requirements.** It is the responsibility of each Authorized User to evaluate the Contract offerings and determine if a Product complies with its statutory and regulatory requirements prior to acquisition. The Authorized User is responsible for determining and understanding all the terms and conditions that make up its agreement with Microsoft for the Products purchased pursuant to the terms of this Contract. The Authorized User's agreement with Microsoft will include the terms and conditions of this Contract, the applicable Program Agreement, Enrollment or Affiliate Registration Form, the Product Terms, the Online Services Terms, as applicable, any applicable Service Level Agreements (SLAs) and any additional Amendments, forms or schedules attached and made a part of the Program Agreement or Enrollment or Affiliate Registration Form. Authorized Users are advised to print off and maintain all applicable documents making up their agreements with Microsoft for future reference.

Contractor shall provide Contractor-specific available information, as appropriate, to the Authorized User in order to facilitate the Authorized User's determination as to whether a Product complies with the Authorized User's statutory and regulatory requirements, and to facilitate the Authorized User's understanding of the terms and conditions making up its agreement with Microsoft for the Product. This includes, but is not limited to, Microsoft's data protection and privacy protocols and the applicable Product Terms, Online Services Terms and SLAs.

Contractor shall also assist the incumbent Reseller, OGS, Authorized Users and any successor Reseller(s) with the efficient and timely migration of any Enrollments or Affiliate Registration Forms to a new Reseller.

## **PART 4. TERMS AND CONDITIONS**

**4.1 Term.** Based on Customer's request, this Contract and the Program Agreements incorporated herein (Enterprise Agreement, Campus and School Agreement, SLG Select Plus Agreement or Academic Select Plus Agreement) will remain in effect for sixty (60) full calendar months, unless terminated by either party as described in Termination (Appendix B Section 43 as amended by Section 4.6, Appendix B Modifications, of this Contract). The term for an Enrollment or Affiliate Registration Form will be stated in the applicable Enrollment or Affiliate Registration Form. The Parties acknowledge that upon the termination or expiration of this Contract, new Enrollments or Affiliate Registration Forms may no longer be signed, but that Enrollments or Affiliate Registration Forms signed prior to such termination or expiration will continue to incorporate the terms of this Contract through the Enrollment or Affiliate Registration Form's natural expiration. The Parties further acknowledge that due to limitations in Contractor's systems for tracking expiration dates of Master Business Agreements and Program Agreements, the expiration dates reflected in Contractor's systems may not reflect actual expiration dates.

**4.2 Short Term Extension.** This section shall apply in addition to any rights set forth in Section 23 of Appendix B (Contract Term – Extension). In the event a replacement Contract has not been issued:

- (a) The term of this Contract, Enterprise Agreement Program Agreement, and Campus and School Agreement Program Agreement hereunder may be extended unilaterally upon OGS' request (which shall not unreasonably be denied) for an additional period of up to 30 calendar days upon notice to the Contractor with the same terms and conditions as the original Contract and any approved modifications. The Parties will execute a written Amendment, to be provided by Microsoft and subject to OGS approval, to memorialize such extension. For clarity, the term of each Enrollment is not extended automatically by such an extension, but during the applicable extension period: (i) new Enrollments (each with their own typically 3-year term) may be executed; and (ii) Enrollments which expire prior to the end of the extension period may be renewed for full renewal terms.
- (b) With the concurrence of the Contractor, the above-referenced extension(s) may be for a period of up to 90 calendar days in lieu of 30 calendar days. However, this extension automatically terminates should a replacement Contract be issued in the interim. The Parties will execute a written Amendment, to be provided by Contractor and subject to OGS approval, to memorialize such extension.
- (c) The Parties acknowledge that the term of the Select Plus Program Agreement (including the education version thereof), including but not limited to Software Assurance coverage periods, may only be extended in Microsoft's systems by increments that are multiples of 12 months. Microsoft will agree upon OGS' request and provide an amendment (subject to OGS approval) for the purpose of memorializing a 12-month extension. For clarity, OGS may instruct the State of New York's Reseller to restrict acceptance of new Purchase Orders from Authorized Users to a shorter period (e.g. 30 days). Software Assurance (including all Software Assurance Benefits, such as new version rights) purchased during such shorter period shall be for a 12 month period and Contractor shall invoice Reseller for 12 months of Software Assurance.

**4.3 Contract Documents/Conflicts in Terms.** This Contract consists of: (1) this document with Appendices A (Standard Clauses For New York State Contracts - January 2014 version); B (Office of General Services General Specifications - April 2016 version), as modified by Section 4.6 of this document; C (Program Agreements, Enrollment Forms and Affiliate Registration Form), which is comprised of the Enterprise Agreement with the Enterprise Enrollment, Enterprise Subscription Enrollment, Server and Cloud Enrollment, the Select Plus Agreement State and Local with the Select Plus Affiliate Registration Form, the Academic Select Plus Agreement with the Select Plus Affiliate Registration Form, the Campus and School Agreement with Enrollment for Education Solutions and FOR USE BY BOARDS OF COOPERATIVE EDUCATIONAL SERVICES ("BOCES") ONLY, a Consortia Amendment, Participation Agreement and Consortia Participation Form; D (Contract Administration); E (Qualified Educational User Definition); and the Microsoft Business Associate Agreement described in the Online Services Terms; (2) the Online Services Terms, subject to periodic change except as set forth in this Contract (including Program Agreements); (3) the Product Terms, subject to periodic change except as set forth in this Contract (including Program Agreements); (4) any Enrollment or Affiliate Registration Form entered under this Contract; and (5) any order submitted

under this Contract. In the event of a conflict between the terms and conditions in any of the documents identified above, such conflict shall be resolved by giving precedence in the following order:

1. Appendix A – Standard Clauses For New York State Contracts (January 2014 version)
2. This document
3. Appendix B – Office of General Services General Specifications (April 2016 version)
4. Appendix E – Qualified Educational User Definition
5. Appendix C – Program Agreements, Enrollment Forms, Affiliate Registration Forms and FOR USE BY BOCES ONLY, a Consortia Amendment, Participation Agreement, and Consortia Participation Form
6. Online Services Terms
7. Product Terms
8. Microsoft Business Associate Agreement described in the Online Services Terms
9. Any orders
10. Appendix D – Contract Administration

Collectively, the foregoing are referred to as the “Contract”.

**4.4 APPENDIX A.** Appendix A, Standard Clauses For New York State Contracts, dated January 2014, is attached hereto and made a part of this Contract.

**4.5 APPENDIX B.** Appendix B, Office of General Services General Specifications, dated April 2016, is attached hereto and made a part of this Contract, subject to the amendments set forth in section 4.6, below.

**4.6 APPENDIX B MODIFICATIONS.** The following Appendix B clauses are hereby modified, as amended below, for the purposes of this Contract:

**A. The definition of “Contract” in subsection (f) of Section 2, Definitions** is hereby deleted.

**B. The definition of “Licensed Software” in subsection (o) of Section 2, Definitions** is amended and restated as follows:

“Licensed Software” shall mean software that is (a) procured by Authorized Users and (b) licensed to an Authorized User by Contractor under the Contract. Contractor may provide licenses on either perpetual and/or subscription licenses, at Contractor’s option, in accordance with the terms and conditions of the Contract.

Licensed Software:

- Shall include any Fixes, upgrades, enhancements or new releases an Authorized User is entitled to receive pursuant to the terms and conditions of the Contract.
- Shall not include Hotfixes, workarounds, patches, programs, code, data conversion, custom programming, or other service-related deliverables provided pursuant to a separate agreement for professional services.

C. **The definition of “Products” set forth in subsection (v) of Section 2, Definitions,** is hereby deleted.

D. **The definition of “Purchase Order” set forth in subsection (w) of Section 2, Definitions,** is hereby amended and restated, as follows:

**Purchase Order.** The Authorized User’s fiscal form or format that is used when making a purchase (e.g., formal written Purchase Order, Procurement Card, electronic Purchase Order, or other authorized instrument). Each Authorized User’s form of Purchase Order will be issued to a Reseller by the Authorized User.

E. **The definition of “Virus” in subsection (ll) of Section 2, Definitions** is hereby amended and restated, as follows:

**Virus.** Any computer code, whether or not written or conceived by Contractor, that 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. Virus shall also include any malware, adware, or other computer code, whether or not written or conceived by Contractor, that allows data or metrics to be copied, redirected, or modified without the express consent of the Authorized User. Collection and redirection of metadata or modification of metrics by Contractor related to contracted services shall not be considered a Virus.

F. **Sections 3 (International Bidding), 4 (Bid Opening) and 5 (Late Bids)** are deleted.

G. **Section 6 (Confidential/Trade Secrets)** is deleted and replaced with the following language:

**Confidential/Trade Secret Materials.** This provision is subject to NYS Freedom of Information Law (Public Officers Law Article 6), specifically §87 and §89, which authority would take precedence over this provision should there be any conflict.

a. As used in this Section, “Disclosing Party” means the State of New York or an Authorized User when disclosing its Confidential Information (defined below) to the Contractor, or the Contractor when disclosing its Confidential Information to the State of New York or an Authorized User, and “Receiving Party” means the State of New York or an Authorized User when receiving disclosure of Confidential Information from the Contractor, or the Contractor when receiving disclosure of Confidential Information from the State of New York or an Authorized User. “Confidential Information” means all confidential information disclosed by a party (the “Disclosing Party”) to the other party (the “Receiving Party”) either orally, visually, written or electronically after the effective date of this Contract including, without limitation, information relating to the Disclosing Party’s operations, processes, plans or intentions, know-how, design rights, trade secrets or business affairs. Information when disclosed to Receiving Party shall be considered

Confidential Information only to the extent marked or otherwise identified by Disclosing Party as “confidential,” “proprietary,” “restricted” or similar designation at the time of original disclosure. Confidential Information shall be clearly marked as “confidential,” “proprietary,” “restricted” or some similar designation. Except as provided in this Contract and specifically in clause 6(d) hereunder, the Receiving Party further agrees that any Confidential Information obtained by the Receiving Party from the Disclosing Party, its agents, 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 Disclosing Party hereunder, will not be divulged to any third parties. The State of New York and the Authorized User acknowledge that the Source Code to the Licensed Software and the Documentation are Confidential Information of Contractor.

b. The Receiving Party:

- i. may not use any Confidential Information for any purpose other than in accordance with, and in the performance of, its obligations under this Contract;
- ii. may not disclose any Confidential Information to any person except with the prior written consent of the Disclosing Party or in accordance with Clause 6(d); and
- iii. shall make every reasonable effort to prevent the use or disclosure, other than as expressly permitted herein, of Confidential Information.

The Receiving Party’s confidential obligation shall end five years after time of original disclosure, to the extent permitted by applicable law. Receiving Party shall comply with record retention requirements to the extent Confidential Information is subject to New York State audit requirements.

c. The Receiving Party may disclose information which would otherwise be Confidential Information if and to the extent that:

- i. it is required by law (such as the New York State Freedom of Information Law);
- ii. the information has come into the public domain, otherwise than through (a) a breach of this Clause by the Receiving Party, (b) a third party’s breach of any duty of confidentiality owed to the Disclosing Party of which the Receiving Party was aware, or (c) a violation of law;
- iii. it was in the Receiving Party’s lawful possession prior to the disclosure and had not been obtained by the Receiving Party either directly or indirectly from the Disclosing Party;
- iv. it is required by existing contractual obligations of which the Disclosing Party is aware;

- v. it is independently developed by the Receiving Party without reliance on the Confidential Information;
- vi. it is required by any securities exchange or regulatory or governmental body to which it is subject or by judicial process;
- vii. it is otherwise obtained under the Freedom of Information Law or other applicable New York State laws or regulations; or
- viii. the disclosure is to its professional advisers, auditors or banker; or to any of its directors, other officers, employees and sub-contractors (a "Recipient") to the extent that disclosure is reasonably necessary for the purposes of this Contract.

d. **Suggestions and Feedback.** Either party may provide suggestions, comments or other feedback to the other with respect to the other's products or services. Feedback is voluntary and the party receiving feedback may use it for any purpose without obligation of any kind except that the party receiving feedback will not disclose the source of feedback without the consent of the party providing it.

e. **Knowledge Base.** Contractor may use any technical information derived from providing services related to Contractor's products for problem resolution, troubleshooting, product functionality enhancements and fixes, for Contractor's knowledge base. Contractor agrees not to identify the Authorized User or disclose any of Authorized User's confidential information in any item in the knowledge base.

**H. Section 7 (Prevailing Wage Rates – Public Works and Building Services Contracts)** is deleted.

**I. Sections 9 (Expenses Prior to Contract Execution), 10 (Product References), 11 (Remanufactured, Recycled, Recyclable, or Recovered Materials), 12 (Products Manufactured in Public Institutions), 13 (Pricing), 14 (Site Inspection), 15 (Purchasing Card), 16 (Bid Evaluation), 17 (Tie Bids), 18 (Quantity Changes Prior to Award), 19 (Timeframe for Offers) and 20 (Debriefings)** are deleted.

**J. Section 22 (Contract Creation/Execution)** is deleted.

**K. Subsection (d)(iv) of Section 25 (Responsibility for Performance)** is deleted and replaced with the following language:

"(iv) each non-state agency Authorized User guarantees to save the State, its officers, agents and employees harmless from any liability that may be or is imposed by their failure to comply in accordance with their obligations under the Contract.

**L. Subsection (e) of Section 25 (Contract Migration)** is deleted.

**M. Section 26 (Modification of Contract Terms)** is deleted and replaced with the following language:



**26. Modification of Terms.** The terms and conditions set forth in the Contract shall 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.

The Contractor (working through its Resellers) may, however, offer Authorized User(s) more advantageous pricing, payment, or may offer an Authorized User an amendment with other terms and conditions than those set forth in the Contract, provided such terms and conditions are not less advantageous than those set forth in the Contract, including the Program Agreements. In such event, a copy of such executed terms shall be furnished via electronic mail to the Authorized User(s) by the Contractor at the time of execution. A copy of such terms shall be furnished via electronic mail to the OGS Contract Administrator within 45 calendar days of copy being provided to the Authorized User(s).

Other than where such 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. No such alteration or modification shall be made by unilaterally affixing such terms to Product upon delivery (including, but not limited to, attachment or inclusion of standard pre-printed order forms, product literature, “shrink wrap”, “click wrap” or “browse wrap” terms accompanying software upon delivery, or other documents) or by incorporating such terms onto order forms, purchase orders or other documents forwarded by the Contractor for payment or signature, notwithstanding Authorized User’s subsequent acceptance of Product, or that Authorized User has subsequently processed such document for approval or payment or signed such document. For clarity, the administrative portals used by an Authorized User’s administrative personnel to manage Online Services may present such personnel with website terms of service which must be accepted by clicking, but such website terms of service shall not modify the terms and conditions of the Contract including the Program Agreements, Enrollments or Affiliate Registration Form.

N. **Section 27 (Scope Changes)** is deleted.

O. **Section 30 (Purchase Orders)** is hereby amended and restated as follows:

Unless otherwise authorized in writing by the Commissioner, except for free trials or free proofs of concept, no Product is to be delivered or furnished by Contractor until transmittal of an official Purchase Order from the Authorized User to its chosen Reseller.

P. **Section 31 (Product Delivery)** is deleted and replaced with the following language:

**31. Product Delivery.** The software downloads associated with product delivery for software ordered by Authorized Users will be made available in accordance with terms of the associated Program Agreement. Within 30 days after the effective date of the Enrollment or Affiliate Registration Form, the contact(s) identified for this purpose will

be provided access to Microsoft's Volume Licensing Service Center ("VLSC") web site (or successor site) at: <https://www.microsoft.com/licensing/servicecenter>. Upon purchase and provisioning of Online Services, an Authorized User may access the Online Services by utilizing the Authorized User's assigned log-in credentials.

The software downloads and Product delivery for Student Media will be made available in accordance with terms of the associated Program Agreement.

Q. **Section 32 (Weekend and Holiday Deliveries)** is deleted.

R. **Section 33 (Shipping/Receipt of Product)** is deleted and replaced with the following language:

**33. Shipping/Receipt of Product.** Contractor does not set pricing for media shipping charges, and all shipping charges, if applicable, will be determined by your Reseller. Student Media with regards to packaging and receipts, if applicable, will be made available in accordance with the terms of the associated Program Agreement.

S. **Section 34 (Title and Risk of Loss for Products Other than Technology Products)** is deleted.

T. **Sections 35 (Product Substitution), 36 (Rejected Product), 37 (Installation) and 38 (Repaired or Replaced Products, Parts, or Components)** are deleted.

U. **Section 39 (Employees, Subcontractors and Agents)** is deleted and replaced with the following language:

**39. Employees, Subcontractors and Agents.** To the extent that Contractor employees, Subcontractors, or agents perform onsite work under the Contract, they must have the requisite qualifications for the onsite work to be performed and must comply with all facilities, physical security and administrative requirements of the Authorized User provided, however, that any such Contractor employees, Subcontractors, and agents (1) are provided the opportunity to review any such requirements at least forty-eight (48) hours in advance of any onsite visit, and (2) may request a waiver from the Authorized User for those specific requirements with which any such Contractor employee, Subcontractor or agent is unable to comply. The Authorized User reserves the right to reject and/or bar from the facility for cause any employee, Subcontractor or agent of the Contractor performing on-site work for the Authorized User.

Contractor shall perform background checks on all Contractor employees, Subcontractors or agents, including those performing onsite work under the Contract and those who have actual or potential access to Customer Data or Support Data. Such background checks shall be performed in accordance with the Fair Credit Reporting Act and shall include at minimum: (1) Social Security Number trace, (2) seven (7) year felony and misdemeanor criminal records check of federal, state, or local records (as applicable) for job related crimes, (3) Office of Foreign Assets Control List (OFAC) check, (4) Bureau of Industry and Security List (BIS) check and (5) Office

of Defense Trade Controls Debarred Persons List (DDTC) check. Only Contractor employees, Subcontractors or agents who have satisfactorily completed these background checks, and such other more stringent background checks as may be required by Contractor, shall have the ability to request and obtain time-limited logical access to the Customer Data or Support Data stored at rest as described in the Online Services Terms.

V. **Section 42 (Suspension of Work)** is deleted.

W. **Section 43 (Termination)** is deleted and replaced with the following language:

#### **43. TERMINATION**

- a. **Termination of this Contract.** Either Party may terminate this Contract without cause upon 60 days written notice, or for cause if the other party materially breaches its obligations hereunder. For termination for cause, except where the breach is by its nature not curable within 60 days, the terminating party must give the other party 60 days written notice and an opportunity to cure.

The termination of this Contract will terminate the ability of Affiliates to enter into new Enrollments or Affiliate Registration Forms under this Contract. However, the termination of this Contract will not affect any Enrollment, Affiliate Registration Form or order not otherwise expired or terminated on the Contract termination effective date, and any terms of this Contract applicable to any such Enrollment, Affiliate Registration Form or order will continue in effect.

The State of New York reserves the following termination rights in addition to any other termination rights specified in this Contract:

1. **For Violation of Sections 139-j and 139-k of the State Finance Law.** The State of New York reserves the right to terminate the Contract in the event it is found that the certification filed by the Contractor in accordance with Section 139-k of the State Finance Law was intentionally false or intentionally incomplete. Upon such finding, the Commissioner of OGS may exercise this termination right by providing written notification to the Contractor in accordance with the written notification terms of this Contract.
2. **For Violation of Section 5-a of the New York State Tax Law.** The State of New York reserves the right to terminate the Contract in the event it is found that the certification filed by the Contractor in accordance with Section 5-a of the Tax Law is not timely filed during the term of the Contract or the certification furnished was intentionally false or intentionally incomplete. Upon such finding, the Commissioner of OGS may exercise this termination right by providing written notification to the Contractor in accordance with the written notification terms of this Contract.
3. **Upon Conviction of Certain Crimes.** The State of New York reserves the right to terminate the Contract in the event it is found that a member, partner, director or officer of Contractor is convicted of one or more of the following:

Bribery Involving Public Servants and Related Offenses as defined in Article 200 of the New York State Penal Law; Corrupting the Government as defined in Article 496 of the New York State Penal Law; or Defrauding the Government as defined in Section 195.20 of the New York State Penal Law. Upon such finding, the Commissioner of OGS may exercise this termination right by providing written notification to the Contractor in accordance with the written notification terms of this Contract.

- b. **Termination of a Program Agreement.** Either Party may terminate a Program Agreement incorporated in this Contract (a) without cause, upon 60 days written notice, or (b) for cause if the other party materially breaches its obligations under such Program Agreement. For termination for cause, except where the breach is by its nature not curable within 60 days, the terminating party must give the other party 60 days written notice and an opportunity to cure.

The termination of a Program Agreement without cause, or for cause, will terminate the ability of Affiliates to enter into new Enrollments or Affiliate Registration Forms under the terminated Program Agreement. However, the termination of the Program Agreement will not affect any Enrollment, Affiliate Registration Form or order not otherwise expired or terminated on the Program Agreement termination effective date, and any terms of this Contract and the terminated Program Agreement applicable to any such Enrollment, Affiliate Registration Form or order will continue in effect. The Contract, including any Program Agreements not terminated, will continue in effect in accordance with its terms.

- c. **Additional Termination Rights for an Enrollment or Affiliate Registration Form.**

1. **Mid-term termination for non-appropriation of Funds.** Enrolled Customer may terminate an Enrollment or Affiliate Registration Form without liability, penalty or further obligation to make payments if funds to make payments under the Program Agreement, Enrollment or Affiliate Registration Form are not appropriated or allocated by the Enrolled Customer for such purpose.
2. Additional terms and conditions relating to the expiration or termination of an Enrollment or Affiliate Registration Form, and Enrolled Customer rights upon expiration or termination, are set forth in the applicable Program Agreement, Enrollment or Affiliate Registration Form.

- d. **Modification or termination of an Online Service for regulatory reasons.** Contractor may modify or terminate an Online Service where there is any current or future government requirement or obligation that: (1) subjects Contractor to any regulation or requirement not generally applicable to businesses operating in the jurisdiction; (2) presents a hardship for Contractor to continue operating the Online Service without modification; and/or (3) causes Contractor to believe these terms or the Online Service may conflict with any such requirement or obligation. For Subscription Licenses, if Contractor terminates an Online Service for regulatory reasons, Contractor will issue Enrolled Customer's Reseller a credit for any amount paid in advance for the period after termination.

X. **Section 44 (Savings/Force Majeure)** is deleted and replaced with the following language:

**Savings/Force Majeure.** A force majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled and is not due to the negligence or willful misconduct of the affected party. Force majeure includes, but is not limited to, acts of God, acts of war, acts of public enemies, terrorism, strikes, fires, explosions, actions of the elements, floods, or other similar causes beyond the control of the Contractor or the Commissioner in the performance of the Contract where non-performance, by exercise of reasonable diligence, cannot be prevented.

The affected party shall provide the other party with written notice of any force majeure occurrence as soon as the delay is known and provide the other party with a written contingency plan to address the force majeure occurrence, including, but not limited to, specificity on quantities of materials, tooling, people, and other resources that will need to be redirected to another facility and the process of redirecting them. Furthermore, the affected party shall use its commercially reasonable efforts to resume proper performance within an appropriate period of time. Notwithstanding the foregoing, if the force majeure condition continues beyond 30 days, the parties to the Contract shall jointly decide on an appropriate course of action that will permit fulfillment of the parties' objectives under the Contract.

The Contractor agrees that in the event of a delay or failure of performance by the Contractor under the Contract due to a force majeure occurrence:

- a. The Commissioner may 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 quantities without penalty or liability to the State of New York, or
- b. The Contractor will provide Authorized Users with access to Products first in order to fulfill orders placed before the force majeure event occurred. The Commissioner agrees that Authorized Users shall accept allocated performance or deliveries during the occurrence of the force majeure event.

Neither the Contractor nor the Commissioner shall be liable to the other for any delay in or failure of performance under the Contract due to a force majeure occurrence. Any such delay in or failure of performance shall not constitute default or give rise to any liability for damages. The existence of such causes of such delay or failure shall extend the period for performance to such extent as determined by the Contractor and the Commissioner to be necessary to enable complete performance by the Contractor if reasonable diligence is exercised after the cause of delay or failure has been removed.

Notwithstanding the above, at the discretion of the Commissioner where the delay or failure will significantly impair the value of the Contract to the State of New York or to Authorized Users, the Commissioner may terminate the Contract or the portion thereof which is subject to delays, and thereby discharge any unexecuted portion of the Contract or the relative part thereof.

Y. **Sections 45 (CONTRACT INVOICING), 46 (DEFAULT – AUTHORIZED USER), 47 (PROMPT PAYMENTS) and 48 (REMEDIES FOR BREACH)** are deleted.

Z. **Section 50 (TOXIC SUBSTANCES)** is deleted.

AA. **Section 52 (SECURITY)** is renamed, deleted and replaced with the following language:

**Privacy and Security.**

- a. Generally. Contractor and Enrolled Customer will each comply with all applicable privacy and data protection laws and regulations (including applicable security breach notification laws). However, Contractor is not responsible for compliance with any laws applicable to Enrolled Customer Affiliate or Enrolled Customer's industry that are not also generally applicable to information technology service providers.

Personal information collected through Products will be transferred, stored and processed in the United States. For Online Services, additional privacy and security details are in the Use Rights.

- b. Personal information contained in Enrollments or Affiliate Registration Forms (ARFs). By entering into an Enrollment or ARF, Enrolled Customer consents to the processing of personal information contained in an Enrollment or ARF that is provided to Contractor and its agents to facilitate the subject matter of this Contract. Enrolled Customer may choose to provide personal information to Contractor in an Enrollment or ARF on behalf of third parties (including Enrolled Customer's contacts, resellers, distributors, administrators, and employees) as part of this Contract. Enrolled Customer will obtain all required consents from third parties under applicable privacy and data protection laws before providing personal information to Contractor. Such personal information will be processed according to the privacy statement available at <https://www.microsoft.com/licensing/servicecenter>, except that Product-specific privacy statements are in the Use Rights.

- c. By using the Products, Enrolled Customer consents to the foregoing.

BB. **Section 54 (Warranties)** is deleted and replaced with the following language:

Warranties.

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

- (i) Online Services will perform in accordance with the applicable Service Level Agreement;
- (ii) Products other than Online Services will perform substantially as described in the applicable Product Terms; and
- (iii) The Products contain no known Viruses. Contractor is not responsible for Viruses introduced at Enrolled Customer's site.

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

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

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

- (i) any implied warranties, guarantees or conditions not able to be disclaimed as a matter of law last for one year from the start of the limited warranty;
- (ii) the limited warranty does not cover problems caused by accident, abuse or use in a manner inconsistent with this Contract or the Use Rights, or resulting from events beyond Contractor's reasonable control;
- (iii) the limited warranty does not apply to components of Products that Enrolled Customer is permitted to redistribute;
- (iv) the limited warranty does not apply to free, trial, pre-release, or beta products; and
- (v) the limited warranty does not apply to problems caused by the failure to meet minimum system requirements for the Product as identified at <https://support.microsoft.com/en-us/lifecycle/selectindex> or at a successor site.

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

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

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

**DISCLAIMER OF OTHER WARRANTIES. OTHER THAN THIS LIMITED WARRANTY, MICROSOFT PROVIDES NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS. MICROSOFT DISCLAIMS ANY IMPLIED REPRESENTATIONS, WARRANTIES OR CONDITIONS, INCLUDING**

**WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE OR NON-INFRINGEMENT. THESE DISCLAIMERS WILL APPLY UNLESS APPLICABLE LAW DOES NOT PERMIT THEM.**

CC. **Section 55 (Legal Compliance)** is deleted and replaced with the following language:

Contractor represents and warrants that it shall secure 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 generally applicable to information technology services providers. Prior to award and during the Contract term and any renewals thereof, Contractor must establish to the reasonable satisfaction of the Commissioner that it meets or exceeds all requirements of the Contract and any applicable laws, including but not limited to, permits, licensing, and shall provide such proof as required by the Commissioner. Failure to comply or failure to provide proof may constitute grounds for the Commissioner to cancel or suspend the Contract, in whole or in part, or to take any other action deemed necessary by the Commissioner. Contractor also agrees to disclose information and provide affirmations and certifications to comply with Sections 139-j and 139-k of the State Finance Law.

DD. **Section 56 (INDEMNIFICATION)** is deleted.

EE. **Section 57 INDEMNIFICATION RELATING TO INFRINGEMENT** is renamed, deleted and replaced with the following language:

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

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



- (iv) Enrolled Customer's use of a Product or Fix after Microsoft notifies Customer and Enrolled Customer to discontinue that use due to a third party claim.

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

**c. Enrolled Customer's agreement to protect.** To the extent authorized by applicable law and, to the extent applicable, subject to lawful appropriations and consistent with Section 8 of the New York State Court of Claims Act, Enrolled Customer will hold harmless and indemnify Microsoft and its Affiliates against any claims made by an unaffiliated third party that:

- (i) any Customer Data or non-Microsoft software Microsoft hosts on Enrolled Customer's behalf infringes the unaffiliated third party's patent, copyright, or trademark or makes unlawful use of its Trade Secret; or
- (ii) Arises from violation of the Acceptable Use Policy, which is described in the Online Services Terms.

Enrolled Customer will be responsible for the amount of any resulting adverse final judgment (or settlement to which the State of New York and Enrolled Customer consent). This Section provides Microsoft's exclusive remedy for these claims.

**d. Rights and remedies in case of possible infringement or misappropriation.**

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

**(ii) Customer Data or use of non-Microsoft software with Online Services.** If an unaffiliated third party asserts that Customer Data or non-Microsoft software or any other non-Microsoft technology used by Enrolled Customer with the Online Services violates their intellectual property rights, Microsoft may ask Enrolled Customer to remove the allegedly infringing item. If Enrolled Customer fails to do so within a reasonable period of time, Microsoft may suspend or terminate the Online Service to which the Customer Data or non-Microsoft software relates.

**e. Obligations of protected party.** Enrolled Customer must notify Microsoft promptly in writing of a claim subject to the Subsection titled “Microsoft’s agreement to protect” and Microsoft must notify Enrolled Customer promptly in writing of a claim subject to the Subsection titled “Enrolled Customer’s agreement to protect.” The party invoking its right to protection must: (1) give the other party sole control over the defense or settlement; and (2) provide reasonable assistance in defending the claim. The party providing the protection will reimburse the other party for reasonable out of pocket expenses that it incurs in providing assistance. Notwithstanding the above, the State of New York and the Authorized User reserve the right to join an action, at its sole expense, when it determines there is an issue involving a significant public interest.

FF. **Section 58 (Limitation of Liability)** is deleted and replaced with the following:

**a. Definitions.** The following terms shall be defined as follows for purposes of this section:

- (1) “Online Services” as defined under Section 1.8, Definitions, above.
- (2) “Core Online Services” means, collectively, each of the Microsoft Online Services identified as Core Online Services in the Online Services Terms.
- (3) “Covered Data Loss” means loss of Customer Data that is not attributable to the instructions, acts or omissions of Enrolled Customer or its users.
- (4) “Covered Disclosure” means disclosure of Customer Data as a result of a Security Incident.
- (5) “Security Incident” means any unlawful access to or unlawful transmission or use of any Customer Data stored or transmitted on the equipment or facilities of Contractor, or unauthorized access to such equipment or facilities or transmissions resulting in loss, disclosure, or alteration of Customer Data. For purposes of this Section, “the equipment or facilities of Contractor” includes, without reservation, all Subcontractor equipment and facilities that are processing or storing Customer Data.

**b. Limitation of Liability.** To the extent permitted by applicable law, the liability of Contractor and Enrolled Customers, their respective Affiliates and Subcontractors arising under the Contract is limited to direct damages up to:

- (1) For Products other than Online Services, two times (2x) the amount Enrolled Customer was required to pay for the Product giving rise to that liability; and
- (2) For Online Services other than Core Online Services, the amount Enrolled Customer paid for the Online Service giving rise to that liability during the prior 12 months, or the cost of purchasing 12 months of the Online Service, whichever is greater; and

(3) Core Online Services:

(a) For Core Online Services other than the Office 365 Core Online Services (the “Non-Office 365 Core Online Services”), the amount Enrolled Customer paid for the Non-Office 365 Core Online Service giving rise to that liability during the prior 24 months, or the cost of purchasing 24 months of the Non-Office 365 Core Online Service, whichever is greater; and

(b) For the Office 365 Core Online Services only, the amount Enrolled Customer paid for the Office 365 Core Online Service giving rise to that liability during the prior 36 months, including damages described in 58(d) below, or the cost of purchasing 36 months of the Office 365 Core Online Service, whichever is greater, provided that the following shall be deemed to be “direct damages” not subject to the exclusion of indirect or consequential damages set forth in 58(d) below:

(1) The following costs related to affected individuals whose Personally Identifiable Information (PII) is disclosed pursuant to a Covered Disclosure:

- a. Enrolled Customer’s reasonable costs in notifying affected individuals of Covered Disclosure in which the data subjects’ Personally Identifiable Information has been disclosed;
- b. Credit monitoring for up to twelve (12) months for affected individuals;
- c. Damages and fines assessed against Enrolled Customer by a court of competent jurisdiction and awarded to individuals whose Personally Identifiable Information is subject to a Covered Disclosure; and
- d. Any additional reasonable and documented costs of any mitigation, remedies or plans to the extent that such mitigation, remedies or plans are customary, reasonable, and expected to be paid by Enrolled Customers, given the nature and scope of the Security Incident involving a Customer Data breach of Personally Identifiable Information, as validated by an independent accounting firm chosen by both entities.

(2) The following additional costs related to each applicable Enrolled Customer’s obligations under any applicable open records laws due to Covered Data Loss:

- a. Government fines and penalties assessed against an Enrolled Customer for failure to comply with such open records laws, where such failure is attributable solely to Covered Data Loss; and
- b. Damages assessed against an Enrolled Customer by a court of competent jurisdiction and awarded to third parties based solely on the Enrolled Customer’s failure to provide information to them under such open records acts, where such failure is attributable solely to a Covered Data Loss.

(c) The monetary limitation of liability for Core Online Services will apply to Contractor's liability arising out of or in relation to its breach of its obligations under this Contract related to Customer Data.

- (4) For Products provided free of charge, or code that Enrolled Customer is authorized to redistribute to third parties without separate payment to Contractor, liability is limited to U.S. \$5,000.00; and
- (5) For technical support as described in sections 4.12.4 and 4.12.6 of this Contract, the amount Enrolled Customer was required to pay for the technical support, or the limitation of liability for the Online Service for which the technical support was provided, whichever is greater.

These limitations apply regardless of whether the liability is based on breach of contract, tort (including negligence), strict liability, breach of warranties, or any other legal theory.

c. Notwithstanding the Limitations of Liability in subsection (b) above, and to the extent permitted by applicable law, Contractor and Enrolled Customer remain liable, without limitation, for the following:

- (1) Contractor's and Enrolled Customer's obligations under the section titled "Defense of infringement, misappropriation, and third-party claims";
- (2) Liability (including damage to real or personal tangible property) for damages caused by either party's gross negligence or willful misconduct, or that of its employees or its agents, and awarded by a court of final adjudication (provided that, in jurisdictions that do not recognize a legal distinction between "gross negligence" and "negligence," "gross negligence" as used in this subsection shall mean "recklessness");
- (3) Liabilities arising out of any breach by either party of its obligations under section 4.6(G) of the Contract entitled "Appendix B § 6 Confidential/Trade Secret Materials", except that Microsoft's liability arising out of or in relation to Customer Data shall in all cases be limited to the limitation of liability for the Online Service giving rise to that liability, as set forth in subsection (b);
- (4) liability for personal injury or death caused by either party's negligence, or that of its employees or agents, or for fraudulent misrepresentation; and
- (5) violation by either party of the other party's intellectual property rights.

**d. EXCLUSION OF CERTAIN DAMAGES. TO THE EXTENT PERMITTED BY APPLICABLE LAW, WHATEVER THE LEGAL BASIS FOR THE CLAIM, NEITHER PARTY, NOR ANY OF ITS AFFILIATES, OR SUBCONTRACTORS, WILL BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, OR INCIDENTAL DAMAGES, OR DAMAGES FOR LOST PROFITS, REVENUES, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION ARISING IN**

**CONNECTION WITH THIS CONTRACT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH POSSIBILITY WAS REASONABLY FORESEEABLE. HOWEVER, THIS EXCLUSION DOES NOT APPLY TO EITHER PARTY'S LIABILITY TO THE OTHER FOR VIOLATION OF ITS CONFIDENTIALITY OBLIGATIONS (EXCEPT TO THE EXTENT THAT SUCH VIOLATION RELATES TO CUSTOMER DATA), THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, THE PARTIES' RESPECTIVE OBLIGATIONS IN THE SECTION TITLED "DEFENSE OF INFRINGEMENT, MISAPPROPRIATION, AND THIRD PARTY CLAIMS," OR AS PROVIDED IN SUBSECTION (c) 2 AND (c) 4 ABOVE.**

**e. Affiliates and Subcontractors.** Neither Contractor nor Enrolled Customer shall bring any action against the other's Affiliates or Subcontractors in respect of any matter disclaimed on their behalf in this Contract.

**GG. Section 59 (Dispute Resolution Procedures)** is deleted and replaced with the following:

Informal Dispute Resolution Process

1. In the event there is a dispute under this Contract, the Contractor, OGS and Authorized User agree to exercise their best efforts to resolve the dispute as soon as possible. The Contractor, OGS and Authorized User shall, without delay, continue to perform their respective obligations under this Contract which are not affected by the dispute. Primary responsibility for resolving any dispute arising under this Contract shall rest with the Authorized User's Contractor Coordinators and the Contractor's Account Executive and the State & Local Government Regional General Manager.
2. In the event the Authorized User is dissatisfied with the Contractor's Products provided under this Contract, the Authorized User shall notify the Contractor in writing pursuant to the terms of the Contract. In the event the Contractor has any disputes with the Authorized User, the Contractor shall so notify the Authorized User in writing. If either party notifies the other of such dispute, the other party shall then make good faith efforts to solve the problem or settle the dispute amicably, including meeting with the party's representatives to attempt diligently to reach a satisfactory result through negotiation.

Nothing contained in these provisions is intended to limit or impair the rights of the Authorized User or Contractor to seek and pursue remedies of law through the judicial process.

**HH. Section 60 (SOFTWARE LICENSE GRANT)** is deleted and replaced with the following:

- a. License Scope.** Enrolled Customer's rights to run the current version of the ordered Product are temporary until it has paid the Reseller for that License in full. Thereafter, Enrolled Customer shall have a perpetual license to run the number of copies ordered

in the version ordered and such other rights as may be specified in the applicable Program Agreement. Perpetual Licenses received through Software Assurance supersede and replace the underlying perpetual Licenses for which Software Assurance coverage was ordered. Some Products may be licensed on a fixed term or subscription basis. The right to use products licensed on a Subscription basis terminates upon expiration if it is not renewed. Subscription Licenses are not perpetual under any circumstance. The use rights for Enrolled Customers on orders will be made available in accordance with terms of the associated Program Agreement.

- b. License Term.** The license term shall commence upon the License Effective Date, provided, however, that where an acceptance or trial period applies to the Product, the License Term shall be extended by the time period for testing, acceptance or trial.
- c. Licensed Documentation.** Enrolled Customer may acquire the quantity of media as necessary to distribute the Products for use in accordance with the Program Agreement. In certain cases, re-imaging is permitted using the Product media. Re-imaging is conditional upon compliance with applicable terms in the Program Agreement.
- d. Product Technical Support & Maintenance.** Licensee shall have the option of electing Software Assurance as set forth in the applicable Program Agreement. Software Assurance coverage and any renewal(s) thereof are independent of the expiration of the Centralized Contract term and will not automatically renew. Software Assurance shall include Fixes, new version rights, and may include other benefits including 24x7 Problem Resolution Support for Products as further described in the Product List. In the Select Plus Program Agreement, Enrolled Customer 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.
- e. Permitted License Transfers.** License Transfer for fully-paid perpetual Licenses are sometimes permitted and are conditional upon compliance with applicable terms in the Program Agreement.
- f. Restricted Use By Third Parties.** Third parties 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 third party, Site of intended use of the Product, and means of access; and (ii) such third 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 (iii) such third party maintains 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 of New York or Licensee.

- g. Archival Back-Up and Disaster Recovery.** Please reference the Product Terms for terms relating to archival back-up and disaster recovery.
- 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.** Enrolled Customer must not (and is not licensed to) (1) reverse engineer, decompile, or disassemble any Product or Fix; (2) install or use non-Microsoft software or technology in any way that would subject Microsoft's intellectual property or technology to any other license terms; or (3) work around any technical limitations in a Product or Fix or restrictions in Product documentation. Enrolled Customer must not (and is not licensed to) (i) separate and run parts of a Product or Fix on more than one device, upgrade or downgrade parts of a Product or Fix at different times, or transfer parts of a Product or Fix separately; or (ii) distribute, sublicense, rent, lease, lend any Products or Fixes, in whole or in part, or use them to offer hosting services to a third party.

**II. Section 61 (PRODUCT ACCEPTANCE)** is deleted and replaced with the following language:

An Authorized User shall have 30 calendar days from the date of delivery to accept Products under this Contract. The Authorized User's failure to provide notice of acceptance or rejection to the Contractor within 30 calendar days from the date of delivery shall constitute deemed acceptance by the Authorized User as of the expiration of that period.

**JJ. Section 62 (AUDIT OF LICENSED PRODUCT USAGE)** is deleted and replaced with the following language:

**Verifying compliance.**

- a. Right to verify compliance.** Enrolled Customer must keep records relating to the Products it and its Affiliates use or distribute. Microsoft has the right, to the extent permitted by applicable law, to verify compliance with the license terms for Products, at Microsoft's expense.
- b. Verification process and limitations.** Microsoft will provide Enrolled Customer at least 30 days' written notice of its intent to verify compliance. Microsoft will engage a nationally recognized independent auditor, which will be subject to a confidentiality obligation. Verification will take place during normal business hours and in a manner that does not interfere unreasonably with Enrolled Customer's operations. Enrolled Customer must promptly provide the independent auditor

with any information it reasonably requests in furtherance of the verification, including access to systems running the Products and evidence of licenses for Products Enrolled Customer hosts, sublicenses, or distributes to third parties. Microsoft shall permit the Enrolled Customer to have complete visibility into the independent auditor's access to Enrolled Customer's systems to validate the auditor's actions. As an alternative, Microsoft may require Enrolled Customer to complete Microsoft's self-audit process relating to the Products Enrolled Customer and any of its Affiliates use or distribute. Such information will be used solely for purposes of determining compliance.

- c. Remedies for non-compliance. If verification or self-audit reveals any unlicensed use, Enrolled Customer must within 30 days order sufficient licenses to cover its use. If there is no unlicensed use, Microsoft will not undertake another verification of the same Enrolled Customer for at least one year. By exercising the rights and procedures described above, Microsoft does not waive its rights to enforce this Contract or to protect its intellectual property by any other means permitted by law. Once such additional licenses are purchased, Enrolled Customer shall be deemed to be in compliance with its obligations under this Contract and to be properly licensed, and Enrolled Customer shall have no further financial liability with respect to the unlicensed use, for the Product paid in full.
- d. Additional Terms and Conditions for Enrolled Customers compliance for Users is set forth in the applicable Program Agreement.

**KK. Section 63 (No Hardstop or Passive License Monitoring)** is deleted and replaced with the following language:

**Data Retention.** At all times during the term of Enrolled Customer's subscription, Enrolled Customer will have the ability to access and extract Customer Data stored in each Online Service. Except for free trials and LinkedIn services, Microsoft will retain Customer Data stored in the Online Service in a limited function account for 90 days (or such longer period as may be specified in the Online Services Terms) after expiration or termination of Enrolled Customer's subscription so that Enrolled Customer may extract the data. After any such retention period ends, Microsoft will disable Enrolled Customer's account and delete the Customer Data.

**LL. Section 64 (OWNERSHIP/TITLE TO PROJECT DELIVERABLES)** is deleted.

**MM. Section 65 (PROOF OF LICENSE)** is deleted and replaced with the following language:

**65.** This Contract and applicable Program Agreement (soft copy or web link to location is acceptable), the applicable Enrollment or Affiliate Registration Form (soft copy is acceptable), the Enrolled Customer's order confirmation, and any documentation evidencing transfers of Licenses, together with proof of payment, will be the Enrolled Customer's evidence of all Licenses obtained.

**NN. Section 66 (CHANGES TO PRODUCT OR SERVICE OFFERINGS)** is deleted and replaced with the following language:



**66. Supportability.** Contractor may add support for new Products or discontinue support for existing Products from time-to-time. If Contractor discontinues support for a Product, Contractor will inform Authorized User six months in advance of the discontinuation by posting the information at <http://support.microsoft.com> or any successor site. If Contractor sells a Product to another company, Contractor will give Authorized User notice of the sale and at the time of such notice will either (i) arrange for the other company to continue the support; or (ii) continue support itself for 90 days to give Authorized User time to make alternative arrangements.

Contractor shall offer a minimum of 10 years of support for Contractor Products. Mainstream Support for Contractor Products shall be provided for 5 years or for 2 years after the successor product (N+1) is released, whichever is longer. Pursuant to the terms of the Centralized Contract, Contractor shall also provide Extended Support for the 5 years following Mainstream support or for 2 years after the second successor product (N+2) is released, whichever is longer. Finally, qualifying Contractor products will receive at least 10 years of online self-help support (see <https://support.microsoft.com/en-us>).

**4.7 PROGRAM AGREEMENTS, ENROLLMENT FORMS AND AFFILIATE REGISTRATION FORMS.** The following Program Agreements, Enrollment Forms and Affiliate Registration Forms are attached hereto as **Appendix C** and hereby made a part of this Contract.

**a. Enterprise Agreement State and Local (EA2016Agr(US)SLG(ENG)(Nov2016)).**

For informational purposes, this document allows Affiliates as described in Subsection A of Section 1.8 definition of "Affiliate" to submit Enterprise Enrollments, Enterprise Subscription Enrollments, and Server and Cloud Enrollments (subject to the rules therein) to purchase Products.

**b. Enterprise Enrollment State and Local (EA2016EnrGov(US)SLG(ENG)(Nov2016)).**

For informational purposes, this document is used for a minimum of 250 Qualified Users or 250 Qualified Devices, subject to other purchasing requirements in the Enterprise Agreement Program Agreement (e.g. requirement to either (1) purchase of Enterprise Products for all Qualified Devices or Qualified Users; or (2) purchase at least 250 licenses for Enterprise Online Services, where applicable) and is to be executed by an Affiliate as described in Subsection A of Section 1.8 definition of "Affiliate" when purchasing Enterprise Products or Enterprise Online Services (and optional Additional Products, once the preceding requirement is fulfilled) from the Enrolled Customer's Microsoft Reseller.

**c. Enterprise Subscription Enrollment State and Local EAS2016EnrGov(US)SLG(ENG)(Nov2016)**

For informational purposes, this document is used for a minimum of 250 Qualified Users or 250 Qualified Devices, subject to other purchasing requirements in the Enterprise Agreement Program Agreement (e.g. requirement to either (1) purchase Enterprise Products for all Qualified Devices or Qualified Users; or (2) purchase at least 250 licenses for Enterprise Online Services, where applicable) and is to be executed by an Affiliate as

described in Subsection A of Section 1.8 definition of “Affiliate” when purchasing Enterprise Products or Enterprise Online Services (and optional Additional Products, once the preceding requirement is fulfilled) where the Enrolled Customer wishes to purchase software Products that do not provide perpetual license rights upon expiration unless the Enrolled Customer submits a buy-out order.

**d. Server and Cloud Enrollments State and Local  
SCE2016EnrGov(US)SLG(ENG)(Nov2016)**

For informational purposes, this document has unique terms and conditions for the purchase of certain Microsoft server products and Microsoft Azure.

**e. Select Plus License Program Agreement State and Local  
(SelectPlus2013AgrGov(US)SLG(ENG)(Oct2013)).**

For informational purposes, this document allows Affiliates as described in Subsection A of Section 1.8 definition of “Affiliate” to submit Affiliate Registration Forms (subject to the rules therein) to purchase Products other than Online Services.

**f. Select Plus Affiliate Registration Form State and Local  
(SelectPlus2013ARFGov(US)SLG(ENG)(Oct2013)).**

For informational purposes, this document is used for any number of users or devices, and is executed by an Affiliate as described in Subsection A of Section 1.8 definition of “Affiliate” when purchasing Products other than Online Services from the Enrolled Customer’s Microsoft Reseller.

**g. Academic Select Plus Agreement  
AcSelectPlus2013Agr(NA)US(ENG)(Oct2013)).** For informational purposes, this document allows Affiliates as described in Subsection C of Section 1.8 definition of “Affiliate” (which must be Qualified Education Users, as defined in Appendix E) to submit Affiliate Registration Forms (subject to the rules therein) to purchase Products other than Online Services.

**h. Campus and School Agreement (CASA2017Agr(NA)US(ENG)(Oct2017)**

For informational purposes, this document allows Affiliates as described in Subsection C of Section 1.8 definition of “Affiliate” (which must be Qualified Education Users, as defined in Appendix E) to submit Enrollments for Education Solutions (subject to the rules therein) to purchase Products.

**i. Consortia Amendment, Participation Agreement, and Consortia Participation Form (FOR USE BY BOCES ONLY)**

For informational purposes, the Consortia Amendment modifies the Campus and School Agreement to set up a Consortium. The Participation Agreement sets forth the terms that the Participants, as defined therein, must adhere to. The Consortia Participation Form includes Participant information and is used to set up the Enrollments under the Campus and School Agreement as modified by the Consortia Amendment.

**j. Enrollment for Education Solutions EES2017Enr(NA)(ENG)(Oct2017)**

For informational purposes, this document is used for a minimum of 250 Qualified Users and is to be executed by an Affiliate as described in Subsection C of Section 1.8 definition

of “Affiliate” and (which must be Qualified Education Users, as defined in Appendix E) when purchasing Online Services and Products other than Online Services from the Enrolled Customer’s Microsoft Reseller.

The documents attached as Appendix C are to be used for sales of Products by the Enrolled Customer’s Reseller pursuant to this Contract.

**4.8 RESERVED.**

**4.9 APPENDIX D.** Appendix D, Contract Administration, is attached hereto and made a part of this Contract.

**4.10 APPENDIX E.** Appendix E, Qualified Educational User Definition, is attached hereto and made a part of this Contract.

**4.11 SERVICE CREDITS FOR ONLINE SERVICES.** In order for Contractor to consider a claim for service credit, the Authorized User must submit the claim to its Reseller and the Reseller will file the claim with Contractor’s customer support on the Authorized User’s behalf. The claim must include all information necessary for Contractor to validate the claim, including but not limited to: (i) a detailed description of the Incident; (ii) information regarding the time and duration of the Downtime; (iii) the number and location(s) of affected users (if applicable); and (iv) descriptions of your attempts to resolve the Incident at the time of occurrence. In the event Contractor grants a claim for service credit, the Authorized User will receive that service credit directly from its Reseller.

**4.12 ADDITIONAL CLAUSES SPECIFIC TO PROVIDING CLARIFICATION TO SECTIONS IN THE ONLINE SERVICES TERMS.** For the avoidance of doubt, and solely as it pertains to Online Services contained in the Online Services Terms, the following clarifications are applicable:

**4.12.1** The term, Customer Data, shall have the meaning set forth in Section 1.8 Definitions above.

**4.12.2** The language in the section titled “Processing of Customer Data; Ownership” is clarified as follows: Customer Data will be used or otherwise processed only to provide Enrolled Customer the Online Services, including purposes compatible with providing those services. Microsoft will not use or otherwise process Customer Data or derive information from it for any advertising or similar commercial purposes. As between the parties, Enrolled Customer retains all right, title and interest in and to Customer Data. Microsoft acquires no rights in Customer Data, other than the rights Enrolled Customer grants to Microsoft to provide the Online Services to Enrolled Customer. This paragraph does not affect Microsoft’s rights in software or services Microsoft licenses to Enrolled Customer.

**4.12.3** The section titled “Disclosure of Customer Data” is clarified as follows: Microsoft will not disclose Customer Data outside of Microsoft or its controlled subsidiaries and affiliates except (1) as Enrolled Customer directs, or (2) as required by law.

Microsoft will not disclose Customer Data to law enforcement unless required by law. If law enforcement contacts Microsoft with a demand for Customer Data, Microsoft will attempt to redirect the law enforcement agency to request that data directly from Enrolled Customer. If compelled to disclose Customer Data to law enforcement, Microsoft will promptly notify Enrolled Customer and provide a copy of the demand unless legally prohibited from doing so.

Upon receipt of any other third-party request for Customer Data, Microsoft will promptly notify Enrolled Customer unless prohibited by law. Microsoft will reject the request unless required by law to comply. If the request is valid, Microsoft will attempt to redirect the third party to request the data directly from Enrolled Customer.

Microsoft will not provide any third party: (a) direct, indirect, blanket or unfettered access to Customer Data; (b) platform encryption keys used to secure Customer Data or the ability to break such encryption; or (c) access to Customer Data if Microsoft is aware that the data is to be used for purposes other than those stated in the third party's request.

In support of the above, Microsoft may provide Enrolled Customer's basic contact information to the third party.

To the extent applicable to Online Services, the language in this section does not constitute consent for the release of Customer Data, as that phrase is used in the Federal Electronic Communications Privacy Act or the Stored Communications Act.

**4.12.4** The Parties agree that the provision of technical support pursuant to this Contract constitutes an engagement with Microsoft for Professional Services within the meaning of the Online Services Terms, and that the Support Data provisions of the Online Services Terms apply to Support Data created as a result of any such provision of technical support.

**4.12.5** The language in the section titled "Acceptable Use Policy" is clarified as follows: For purposes of the Acceptable Use Policy set forth in the Online Services Terms, examples of an "application or situation where failure of the Online Service could lead to the death or serious bodily injury of any person, or to severe physical or environmental damage" include, but are not limited to: aircraft or other modes of human mass transportation, nuclear or chemical facilities, life support systems, implantable medical equipment, motor vehicles, or weaponry systems.

Violation of the Acceptable Use Policy in the Online Services Terms may result in suspension of the Online Service. Microsoft will suspend the Online Service only to the extent reasonably necessary. Unless Microsoft believes an immediate suspension is required, Microsoft will provide reasonable notice before suspending an Online Service. Microsoft will provide at least 30 days' notice and an opportunity to cure before suspending an Online Service for non-payment.

**4.12.6** The only Professional Services within the scope of this Contract are technical support services included with the purchase of Online Services. For purposes of clarity, consulting services are out of scope. The Limitation of Liability for

such technical support services is set forth in Section 4.6(FF) above. The Limitation of Liability pertaining to Professional Services in the Online Services Terms is not applicable to this Contract.

OGS reserves the right to request additional clarifications with respect to the Online Services Terms.

#### 4.13 Government Community Cloud Services

Office 365 US Government Community Cloud (GCC) services are provided only from data centers physically located within the United States. The following Customer Data is stored at rest in data centers physically located within the United States:

- Exchange Online mailbox content (email bodies, calendar entries, and the content of e-mail attachments);
- SharePoint Online site content and the files stored within that site; and
- Skype for Business archived conversations, uploaded documents, and whiteboarding session.

References to geographic areas in the Use Rights with respect to the location of Customer Data at rest, as set forth in the Use Rights, refer only to the United States. Customer Data will be logically segregated from customer content in Microsoft's commercial Office 365 Services. Additional European Terms, as set forth in the Use Rights, will not apply to GCC Services.

Access to Customer Data in the GCC by Microsoft personnel is restricted to personnel who are US citizens. These personnel undergo the following background investigations in accordance with relevant government standards.

| <b>Background Screening</b>                  | <b>GCC</b> | <b>GCC High and DoD</b> |
|--|------------|-------------------------|
| Verification of US Citizenship               | Yes        | Yes                     |
| Employment History Check                     | Yes        | Yes                     |
| Education Verification                       | Yes        | Yes                     |
| Social Security Number (SSN) Search          | Yes        | Yes                     |
| Criminal History Check (7 year)              | Yes        | Yes                     |
| Office of Foreign Assets Control List (OFAC) | Yes        | Yes                     |
| Bureau of industry and security List (BIS)   | Yes        | Yes                     |

|   |     |                         |
|---|-----|-------------------------|
| Fingerprint-based check of FBI criminal databases | Yes | Yes                     |
| CJIS Criminal Background Check                    | Yes | No                      |
| DOD IT-2 based on OPM Tier 3 Investigation        | No  | DOD SRG L5 Tenants Only |

NIST 800-53 and FedRAMP. Government Community Cloud Services are operated in accordance with a written data security policy and control framework that are consistent with the requirements of NIST 800-53, or successor standards and guidelines (if any), established to support Federal Risk and Authorization Management Program (FedRAMP) accreditation at a Moderate Impact level (except that Azure Government supports accreditation at a High Impact Level). Microsoft intends for Government Community Cloud Services to support FedRAMP ATO's and Microsoft will use commercially reasonable efforts to obtain an Authority to Operate (ATO) from a Federal agency, and to maintain such an ATO by conducting regular FedRAMP audits and through continuous monitoring processes.

**4.14 HIPAA Business Associate Agreement.** The then-current provisions of the Microsoft Business Associate Agreement (“BAA”) described in the Online Services Terms will constitute the HIPAA BAA between Contractor and Authorized Users. Certain Authorized Users may be subject to New York State or Federal laws regarding patient information that require protections in addition to those included in the BAA. An Authorized User may request that Contractor enter into amendments to the BAA in order to facilitate the Authorized User’s compliance with such laws, provided that Contractor shall not be required to comply with any such law or portion thereof that is not applicable to Information Technology service providers.

**4.15 NON-STATE AGENCIES PARTICIPATION IN CENTRALIZED CONTRACTS.** New York State political subdivisions and other entities described in State Finance Law section 163(1)(k) may participate in Centralized Contracts. These include, but are not limited to, local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations. See Appendix B, Participation in Centralized Contracts. For Purchase Orders issued by the Port Authority of New York and New Jersey (or any other authorized entity that may have delivery locations adjacent to New York State), the terms of the Price clause shall be modified to include delivery to locations adjacent to New York State.

Upon request, all eligible non-State agencies must furnish Contractors with the proper tax exemption certificates and documentation certifying eligibility to use New York State contracts. A list of categories of eligible entities is available on the OGS web site (<http://www.ogs.state.ny.us/purchase/snt/othersuse.asp>). Questions regarding an organization’s eligibility to purchase from New York State Contracts may also be directed to NYS Procurement Services Customer Services at 518-474-6717.

#### **4.16 CONTRACTOR REQUIREMENTS AND PROCEDURES FOR PARTICIPATION BY NEW YORK STATE CERTIFIED MINORITY- AND WOMEN-OWNED BUSINESS ENTERPRISES AND EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITY GROUP MEMBERS AND WOMEN**

##### **I. New York State Law**

Pursuant to New York State Executive Law Article 15-A and Parts 140-145 of Title 5 of the New York Codes, Rules and Regulations (“NYCRR”), the New York State Office of General Services (“OGS”) is required to promote opportunities for the maximum feasible participation of New York State-certified Minority- and Women-Owned Business Enterprises (“MWBES”) and the employment of minority group members and women in the performance of OGS contracts.

##### **II. General Provisions**

- A. OGS is required to implement the provisions of New York State Executive Law Article 15-A and 5 NYCRR Parts 140-145 (“MWBE Regulations”) for all State contracts as defined therein, with a value (1) in excess of \$25,000 for labor, services, equipment, materials, or any combination of the foregoing or (2) in excess of \$100,000 for real property renovations and construction.
- B. The Contractor agrees, in addition to any other nondiscrimination provision of the Contract and at no additional cost to OGS, to fully comply and cooperate with OGS in the implementation of New York State Executive Law Article 15-A and the regulations promulgated thereunder. These requirements include equal employment opportunities for minority group members and women (“EEO”) and contracting opportunities for MWBEs. Contractor’s demonstration of “good faith efforts” pursuant to 5 NYCRR § 142.8 shall be a part of these requirements. These provisions shall be deemed supplementary to, and not in lieu of, the nondiscrimination provisions required by New York State Executive Law Article 15 (the “Human Rights Law”) or other applicable federal, State, or local laws.
- C. Failure to comply with all of the requirements herein may result in a finding of non-responsiveness, a finding of non-responsibility, breach of contract, withholding of funds, suspension or termination of the Contract, and/or such other actions or enforcement proceedings as allowed by the Contract and applicable law.

##### **III. Equal Employment Opportunity (EEO)**

- The provisions of Article 15-A of the Executive Law and the rules and regulations promulgated thereunder pertaining to equal employment opportunities for minority group members and women shall apply to all Contractors, and any subcontractors, awarded a subcontract over \$25,000 for labor, services, including legal, financial and other professional services, travel, supplies, equipment, materials, or any combination of the foregoing, to be performed for, or rendered or furnished to, the contracting State agency (the “Work”) except where the Work is for the beneficial use of the Contractor.
  - Contractor and subcontractors shall undertake or continue existing EEO programs to ensure that minority group members and women are afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability, or marital status. For these purposes,

- EEO shall apply in the areas of recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, and rates of pay or other forms of compensation. This requirement does not apply to: (i) the performance of work or the provision of services or any other activity that is unrelated, separate, or distinct from the Contract; or (ii) employment outside New York State.
- By entering into this Contract, Contractor certifies that the text set forth in clause 12 of Appendix A, attached hereto and made a part hereof, is Contractor's equal employment opportunity policy. In addition, Contractor agrees to comply with the Non-Discrimination Requirements set forth in clause 5 of Appendix A.
  - Form EEO 100 – Staffing Plan  
To ensure compliance with this section, the Contractor agrees to submit, or has submitted with the Bid, a staffing plan on Form EEO 100 to OGS to document the composition of the proposed workforce to be utilized in the performance of the Contract by the specified categories listed, including ethnic background, gender, and federal occupational categories.
  - Form EEO - 101 - Workforce Utilization Reporting Form (Commodities and Services) (“Form EEO-101-Commodities and Services”)
    - The Contractor shall submit, and shall require each of its subcontractors to submit, a Form EEO-101-Commodities and Services to OGS to report the actual workforce utilized in the performance of the Contract by the specified categories listed including ethnic background, gender, and Federal occupational categories. The Form EEO-101-Commodities and Services must be submitted electronically to OGS at [EEO\\_CentCon@ogs.ny.gov](mailto:EEO_CentCon@ogs.ny.gov) on a quarterly basis during the term of the Contract by the 10th day of April, July, October, and January.
    - Separate forms shall be completed by Contractor and all subcontractors.
    - In limited instances, the Contractor or subcontractor may not be able to separate out the workforce utilized in the performance of the Contract from its total workforce. When a separation can be made, the Contractor or subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided relates to the actual workforce utilized on the Contract. When the workforce to be utilized on the Contract cannot be separated out from the Contractor's or subcontractor's total workforce, the Contractor or subcontractor shall submit the Form EEO-101-Commodities and Services and indicate that the information provided is the Contractor's or subcontractor's total workforce during the subject time frame, not limited to work specifically performed under the Contract.
  - Contractor shall comply with the provisions of the Human Rights Law and all other State and federal statutory and constitutional non-discrimination provisions. Contractor and subcontractors shall not discriminate against any employee or applicant for employment because of race, creed (religion), color, sex, national origin, sexual orientation, military status, age, disability, predisposing genetic characteristic, marital status, or domestic violence victim status, and shall also



follow the requirements of the Human Rights Law with regard to non-discrimination on the basis of prior criminal and conviction and prior arrest.

#### IV. Contract Goals

A. For purposes of this procurement, OGS conducted a comprehensive search and determined that the Contract does not offer sufficient opportunities to set goals for participation by MWBEs as subcontractors, service providers, or suppliers to Contractor. Contractor is, however, encouraged to make every good faith effort to promote and assist the participation of MWBEs on this Contract for the provision of services and materials. The directory of New York State Certified MWBEs can be viewed at: <https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp?TN=ny&XID=2528>. Additionally, following Contract execution, Contractor is encouraged to contact the Division of Minority and Women's Business Development ((518) 292-5250; (212) 803-2414; or (716) 846-8200) to discuss additional methods of maximizing participation by MWBEs on the Contract.

#### B. Good Faith Efforts

Pursuant to 5 NYCRR § 142.8, evidence of good faith efforts shall include, but not be limited to, the following:

1. A list of the general circulation, trade, and MWBE-oriented publications and dates of publications in which the Contractor solicited the participation of certified MWBEs as subcontractors/suppliers, copies of such solicitations, and any responses thereto.
2. A list of the certified MWBEs appearing in the Empire State Development ("ESD") MWBE directory that were solicited for this Contract. Provide proof of dates or copies of the solicitations and copies of the responses made by the certified MWBEs. Describe specific reasons that responding certified MWBEs were not selected.
3. Descriptions of the Contract documents/plans/specifications made available to certified MWBEs by the Contractor when soliciting their participation and steps taken to structure the scope of work for the purpose of subcontracting with, or obtaining supplies from, certified MWBEs.
4. A description of the negotiations between the Contractor and certified MWBEs for the purposes of complying with the MWBE goals of this Contract.
5. Dates of any pre-bid, pre-award, or other meetings attended by Contractor, if any, scheduled by OGS with certified MWBEs whom OGS determined were capable of fulfilling the MWBE goals set in the Contract.
6. Other information deemed relevant to the request.

#### V. Fraud

Any suspicion of fraud, waste, or abuse involving the contracting or certification of MWBEs shall be immediately reported to ESD's Division of Minority and Women's Business Development at (855) 373-4692.

**ALL FORMS ARE AVAILABLE AT:** <http://www.ogs.ny.gov/MWBE/Forms.asp>

**4.17 INSURANCE.** Contractor shall be required to procure, at its sole cost and expense, all insurance required herein. For all required insurance, evidence of insurance must be provided in the form acceptable to OGS as specified herein.

Contractor shall provide proof of all insurance after renewal or upon request, according to the timelines set forth in Section A.14 below.

Contractor is required to procure, at its sole cost and expense, and shall maintain in force at all times during the term of any Contract, policies of insurance as required herein. All insurance required herein shall be written by companies that have an A.M. Best Company rating of "A-," Class "VII" or better. In addition, companies writing insurance intended to comply with the requirements herein should be licensed or authorized by the New York State Department of Financial Services to issue insurance in the State of New York. OGS may, in its sole discretion, accept policies of insurance written by a non-authorized carrier or carriers when certificates and/or other policy documents are accompanied by a completed Excess Lines Association of New York (ELANY) affidavit or other documents demonstrating the company's strong financial rating. If, during the term of a policy, the carrier's A.M. Best rating falls below "A-," Class "VII," the insurance must be replaced, on or before the renewal date of the policy, with insurance that meets the requirements above.

Contractor shall deliver to OGS evidence of the insurance required herein in a form satisfactory to OGS. Policies must be written in accordance with the requirements of the paragraphs below, as applicable. While acceptance of insurance documentation shall not be unreasonably withheld, conditioned or delayed, acceptance and/or approval by OGS does not, and shall not be construed to, relieve Contractor of any obligations, responsibilities or liabilities under this Contract.

The Contractor shall not take any action, or omit to take any action, that would suspend or invalidate any of the required coverages during the term of the Contract.

**A. General Conditions Applicable to Insurance.** All policies of insurance required by this Solicitation or any Contract resulting from this Solicitation shall comply with the following requirements:

**1. Coverage Types and Policy Limits.** The types of coverage and policy limits required from Contractor are specified in Section B-*Insurance Requirements* below.

**2. Policy Forms.** Except as otherwise specifically provided herein, or agreed to in writing by OGS, all policies of insurance required herein shall be written on an occurrence basis.

**3. Certificates of Insurance/Notices.** Contractor shall provide OGS with a Certificate or Certificates of Insurance, in the form satisfactory to OGS (e.g., an ACORD certificate), upon request. Certificates shall reference the award number and shall name "The New York State Office of General Services, Procurement Services, Empire State Plaza, Corning Tower, 38th Floor, Albany New York, 12242" as the certificate holder.

Certificates of Insurance shall:

- Be in the form acceptable to OGS and in accordance with the New York State Insurance Law (e.g., an ACORD certificate);
- Disclose any deductible, self-insured retention, aggregate limit or exclusion to the policy that materially changes the coverage required by this Contract;
- Refer to this Contract by award number;
- Be signed by an authorized representative of the referenced insurance carriers; and contain the following language in the Description of Operations / Locations / Vehicles section: The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees are included as an additional insured on endorsement CG 20 10 11 85 (or endorsements that provide equivalent coverage, such as the combination of CG 20 10 04 13 (covering ongoing operations) and CG 20 37 04 13 (covering completed operations)), and General liability coverage is provided on the current edition of Commercial General Liability Coverage Form CG 00 01 (or a form that provides equivalent coverage). Additional insured protection afforded is on a primary and non-contributory basis. A waiver of subrogation is granted in favor of the additional insured.

Only original documents (certificates and any endorsements and other attachments) or electronic versions of the same that can be directly traced back to the insurer, agent or broker via e-mail distribution or similar means will be accepted.

Except for (i) Data Breach and Privacy/Cyber Liability coverage, (ii) Technology Errors and Omissions, and (iii) Crime insurance coverages, OGS generally requires contractors to submit only certificates of insurance and additional insured endorsements, although OGS reserves the right to request other proof of insurance. Contractor is requested to refrain from submitting entire insurance policies, unless specifically requested by OGS. If an entire insurance policy is submitted but not requested, OGS shall not be obligated to review and shall not be chargeable with knowledge of its contents. In addition, submission of an entire insurance policy not requested by OGS does not constitute proof of compliance with the insurance requirements and does not discharge Contractor from submitting the requested insurance documentation.

**4. Forms and Endorsements.** For Data Breach and Privacy/Cyber Liability, Technology Errors and Omissions, and certain Crime Insurance coverages (those containing Cyber theft coverage), Contractor shall provide a Schedule of Forms and Endorsements and, upon request, all Forms and Endorsements, unless otherwise agreed to in writing by OGS. The Forms and Endorsements shall provide evidence of compliance with the requirements herein. Only original documents or electronic versions of the same that can be directly traced back to the insurer, agent or broker via e-mail distribution or similar means will be accepted.

**5. Primary Coverage.** All insurance policies shall provide that the required coverage shall be primary and non-contributory to other insurance available to the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees. Any other insurance maintained by the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and

their officers, agents, and employees shall be excess of and shall not contribute with the Contractor's insurance.

**6. Breach for Lack of Proof of Coverage.** The failure to comply with the requirements herein at any time during the term of the Contract shall be considered a breach of the terms of the Contract and shall allow the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees to avail themselves of all remedies available under the Contract or at law or in equity.

**7. Self-Insured Retention/Deductibles.** Certificates of Insurance must indicate the applicable deductibles/self-insured retentions for each listed policy. Deductibles or self-insured retentions above \$100,000.00 are subject to approval from OGS. Such approval shall not be unreasonably withheld, conditioned or delayed. The Contractor shall be solely responsible for all claim expenses and loss payments with the deductibles or self-insured retentions. If the Contractor is providing the required insurance through self-insurance, evidence of the financial capacity to support the self-insurance program along with a description of that program, including, but not limited to, information regarding the use of a third-party administrator shall be provided upon request.

**8. Subcontractors.** Prior to the commencement of any work by a Subcontractor, the Contractor shall require such Subcontractor to procure policies of insurance as required herein and maintain the same in force during the term of any work performed by that Subcontractor.

**9. Waiver of Subrogation.** For the Commercial General Liability Insurance and Comprehensive Business Automobile Liability Insurance required below, the Contractor shall cause to be included in each of its policies a waiver of the insurer's right to recovery or subrogation against the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees. A Waiver of Subrogation Endorsement evidencing such coverage shall be provided to OGS upon request. A blanket Waiver of Subrogation Endorsement evidencing such coverage is also acceptable.

**10. Additional Insured.** For the Commercial General Liability Insurance and Comprehensive Business Automobile Liability Insurance required below, the Contractor shall cause to be included in each of its policies ISO form CG 20 10 11 85 (or a form or forms that provide equivalent coverage, such as the combination of CG 20 10 04 13 and CG 20 37 04 13) and form CA 20 48 10 13 (or a form or forms that provide equivalent coverage) naming as additional insured: The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use the Contract and their officers, agents, and employees. Additional Insured Endorsements shall be provided upon request to:

The New York State Office of General Services  
Procurement Services - 22802  
38th Floor, Corning Tower  
Empire State Plaza  
Albany, New York 12242

A blanket Additional Insured Endorsement evidencing such coverage is also acceptable. For Contractors who are self-insured, Contractor shall be obligated to defend and indemnify the above-named additional insured with respect to Commercial General Liability and Comprehensive Business Automobile Liability, in the same manner that Contractor would have been required to pursuant to this Attachment had Contractor obtained such insurance policies.

As clarification, “The People of the State of New York” means the State of New York and its subsidiary governmental entities. This is the name in which the State, as a governmental entity, enters into contracts, takes title to property, and initiates legal actions. Using the term “People” does not mean that the insurer is insuring all residents of New York State; rather, it means that the State government is being insured.

**11. Excess/Umbrella Liability Policies.** Required insurance coverage limits may be provided through a combination of primary and excess/umbrella liability policies. If coverage limits are provided through excess/umbrella liability policies, then a Schedule of underlying insurance listing policy information for all underlying insurance policies (insurer, policy number, policy term, coverage and limits of insurance), including proof that the excess/umbrella insurance follows form must be provided upon request.

**12. Notice of Cancellation or Non-Renewal.** Policies shall be written so as to include the requirements for notice of cancellation or non-renewal in accordance with the New York State Insurance Law. Within five (5) business days of receipt of any notice of cancellation or non-renewal of insurance, the Contractor shall provide OGS with a copy of any such notice received from an insurer together with proof of replacement coverage that complies with the insurance requirements of the Contract.

**13. Policy Renewal/Expiration.** Upon policy renewal/expiration, evidence of renewal or replacement of coverage that complies with the insurance requirements set forth in the Contract shall be delivered to OGS. If, at any time during the term of the Contract, the coverage provisions and limits of the policies required herein do not meet the provisions and limits set forth in the Contract, or proof thereof is not provided to OGS, the Contractor shall immediately cease work. The Contractor shall not resume work until authorized to do so by OGS.

**14. Deadlines for Providing Insurance Documents after Renewal or Upon Request.** During the term of the Contract, as set forth herein, certain insurance documents must be provided to the OGS Procurement Services contact identified in the Contract Award Notice after renewal or upon request. This requirement means that the Contractor shall provide the applicable insurance document to OGS as soon as possible but in no event later than the following time periods:

- For certificates of insurance: 5 business days
- For information on self-insurance or self-retention programs: 15 calendar days
- For additional insured and waiver of subrogation endorsements: 30 calendar days
- For schedules of forms and endorsements and all forms and endorsements: 60 calendar days

Notwithstanding the foregoing, if the Contractor shall have promptly requested the insurance documents from its broker or insurer and shall have thereafter diligently taken all steps necessary to obtain such documents from its insurer and submit them to OGS, OGS shall extend the time period for a reasonable period under the circumstances, but in no event shall the extension exceed 30 calendar days.

**B. Insurance Requirements:** Contractor shall obtain and maintain in full force and effect, throughout the term of the Contract, at its own expense, the following insurance with limits not less than those described below and as required by the Contract, or as required by law, whichever is greater.

**PLEASE NOTE**  
Depending upon the risk, Authorized Users may require the Contractor to provide additional insurance and/or increased insurance coverages.

**1. Commercial General Liability Insurance:** Commercial General Liability Insurance with a limit of not less than \$2,000,000 each occurrence. Such liability shall be written on the current edition of ISO occurrence form CG 00 01, or a substitute form providing equivalent coverage and shall cover liability arising from bodily injury, premises operations, independent contractors, products-completed operations, broad form property damage, personal & advertising injury, cross liability coverage, liability assumed in a Contract (including the tort liability of another assumed in a contract) and explosion, collapse & underground coverage.

| <b>Minimum Insurance Coverage</b>         |             |
|---|-------------|
| General Aggregate                         | \$2,000,000 |
| Products – Completed Operations Aggregate | \$2,000,000 |
| Personal and Advertising Injury           | \$1,000,000 |
| Each Occurrence                           | \$2,000,000 |
| Damage to Rented Premises                 | \$50,000    |
| Medical Expenses                          | \$5,000     |

Aggregate limits shall apply on a per location basis, or as otherwise agreed to in writing by OGS. This aggregate limit applies separately to each location at which the insured works.

Coverage shall include, but not be limited to, the following:

- Premises liability;
- Independent contractors;
- Blanket contractual liability, including tort liability of another assumed in the Contract;
- Defense and/or indemnification obligations, including obligations assumed under the Contract;
- Cross liability for additional insureds; and
- Explosion, collapse and underground hazards.

**2. Comprehensive Business Automobile Liability Insurance** covering liability arising out of any automobile used in connection with performance under the Contract, including owned, leased, hired and non-owned automobiles bearing or, under the circumstances under which they are being used, required by the Motor Vehicles Laws of the State of New York to bear, license plates. Such policy shall have a combined single limit for Bodily Injury and Property Damage of at least \$2,000,000.00 each accident. The limits may be provided through a combination of primary and umbrella liability policies.

In the event that the Contractor does not own, lease or hire any automobiles used in connection with performance under the Contract, the Contractor does not need to obtain Comprehensive Business Automobile Liability Insurance, but must attest to the fact that the Contractor does not own, lease or hire any automobiles used in connection with performance under the Contract on a form provided by OGS. If, however, during the term of the Contract, the Contractor acquires, leases or hires any automobiles that will be used in connection with performance under the Contract, the Contractor must obtain Comprehensive Business Automobile Liability Insurance that meets all of the requirements herein and provide proof of such coverage to OGS in accordance with the insurance requirements of the Contract.

In the event that the Contractor does not own or lease any automobiles used in connection with performance under the Contract, but the Contractor does hire and/or utilize non-owned automobiles in connection with performance under the Contract, the Contractor must: (i) obtain Comprehensive Business Automobile Liability Insurance as required by this Solicitation or the Contract, except that such insurance may be limited to liability arising out of hired and/or non-owned automobiles, as applicable; and (ii) attest to the fact that the Contractor does not own or lease any automobiles used in connection with performance under the Contract, on a form provided by OGS. If, however, during the term of the Contract, the Contractor acquires or leases any automobiles that will be used in connection with performance under the Contract, the Contractor must obtain Comprehensive Business Automobile Liability Insurance that meets all of the requirements herein and provide proof of such coverage to OGS in accordance with the insurance requirements of the Contract.

**3. Data Breach and Privacy/Cyber Liability:** Contractor is required to maintain during the term of the Contract and as otherwise required herein, Data Breach and Privacy/Cyber Liability Insurance, including coverage for failure to protect confidential information and failure of the security of the Contractor's computer systems or the Authorized Users' systems due to the actions of the Contractor which results in unauthorized access to the Authorized User(s) or their data. Said insurance shall be maintained in the following limits:

| <b>Minimum Insurance Coverage</b>       |              |
|---|--------------|
| Data Breach and Privacy/Cyber Liability | \$10,000,000 |

Said insurance shall provide coverage for damages arising from, but not limited to the following:

- Breach of duty to protect the security and confidentiality of nonpublic proprietary corporate information;
- Personally identifiable nonpublic information (e.g., medical, financial, or personal in nature in electronic or non-electronic form);
- Privacy notification costs;
- Regulatory defense and penalties;
- Website media liability; and
- Cyber theft of customer’s property, including but not limited to money and securities.

If the policy is written on a claims made basis, Contractor must provide upon request an Endorsement providing proof that the policy provides the option to purchase an Extended Reporting Period (“tail coverage”) providing coverage for no less than one (1) year after work is completed in the event that coverage is cancelled or not renewed. This requirement applies to both primary and excess liability policies, as applicable.

**4. Technology Errors and Omissions:** Contractor is required to maintain during the term of the Contract and as otherwise required herein, Technology Errors and Omissions Insurance. Said insurance shall be maintained in the following limits:

| Minimum Insurance Coverage      |              |
|---------------------------------|--------------|
| Technology Errors and Omissions | \$10,000,000 |

Said insurance shall provide coverage for damages arising from computer related services including but not limited to the following:

1. Consulting;
2. Data processing;
3. Programming;
4. System integration;
5. Hardware or software development;
6. Installation;
7. Distribution or maintenance;
8. Systems analysis or design;
9. Training;
10. Staffing or other support services; and
11. Manufactured, distributed, licensed, marketed or sold cloud computing services.

The policy shall include coverage for third party fidelity including cyber theft.

If the policy is written on a claims made basis, Contractor must include upon request an Endorsement providing proof that the policy provides the option to purchase an Extended Reporting Period (“tail coverage”) providing coverage for no less than one (1) year after work is completed in the event that coverage is cancelled or not renewed. This requirement applies to both primary and excess liability policies, as applicable.

**5. Crime Insurance:** Contractor is required to maintain during the term of the Contract and as otherwise required herein, Crime Insurance. Said insurance shall be maintained in the following limits:



|                                   |              |
|-----------------------------------|--------------|
| <b>Minimum Insurance Coverage</b> |              |
| Crime Insurance                   | \$10,000,000 |

Crime Insurance on a “loss sustained form” or “loss discovered form” providing coverage for Third Party Fidelity.

In addition to the coverage above:

- The policy must allow for reporting of circumstances or incidents that might give rise to future claims.
- The policy must include an extended reporting period of no less than one (1) year with respect to events which occurred but were not reported during the term of the policy.
- Any warranties required by the Contractor’s insurer as a result of this Contract must be disclosed and complied with. Said insurance shall extend coverage to include the principals (all directors, officers, agents and employees) of the Contractor as a result of the Contract.
- The policy shall include coverage for third party fidelity, including cyber theft if not provided as part of Cyber Liability, and name the People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use this Contract as an Authorized User and their officers, agents, and employees as “Loss Payees” for all Third Party coverage secured. An Endorsement naming as Loss Payees “The People of the State of New York, the New York State Office of General Services, any entity authorized by law or regulation to use this Contract as an Authorized User and their officers, agents and employees” shall be provided upon request. A blanket Loss Payee Endorsement evidencing such coverage is also acceptable. This requirement applies to both primary and excess liability policies, as applicable.
- The policy shall not contain a condition requiring an arrest and conviction.

**6. Workers’ Compensation Insurance & Disability Benefits Coverage:** Sections 57 and 220 of the New York State Workers’ Compensation Law require the heads of all municipal and state entities to ensure that businesses applying for contracts have appropriate workers’ compensation and disability benefits insurance coverage. These requirements apply to both original contracts and renewals. **Failure to provide proper proof of such coverage or a legal exemption will result in a rejection of a any contract renewal.** Proof of workers’ compensation and disability benefits coverage, or proof of exemption must be submitted to OGS at the time of policy renewal, contract renewal and upon request. Proof of compliance must be submitted on one of the following forms designated by the New York State Workers’ Compensation Board. **An ACORD form is not acceptable proof of New York State workers’ compensation or disability benefits insurance coverage.**

Proof of Compliance with the Workers’ Compensation Coverage Requirements:

- Form CE-200, *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers’ Compensation and/or*

*Disability Benefits Insurance Coverage is Not Required*, which is available on the New York State Workers' Compensation Board's website ([www.wcb.ny.gov](http://www.wcb.ny.gov));

- Form C-105.2 (9/07), *Certificate of Workers' Compensation Insurance*, sent to OGS by the Contractor's insurance carrier upon request, or if coverage is provided by the New York State Insurance Fund, they will provide Form U-26.3 to OGS upon request from the Contractor; or
- Form SI-12, *Certificate of Workers' Compensation Self-Insurance*, available from the New York State Workers' Compensation Board's Self-Insurance Office, or Form GSI-105.2, *Certificate of Participation in Workers' Compensation Group Self-Insurance*, available from the Contractor's Group Self-Insurance Administrator.

Proof of Compliance with the Disability Benefits Coverage Requirements:

- Form CE-200, *Certificate of Attestation for New York Entities With No Employees and Certain Out of State Entities, That New York State Workers' Compensation and/or Disability Benefits Insurance Coverage is Not Required*, which is available on the New York State Workers' Compensation Board's website ([www.wcb.ny.gov](http://www.wcb.ny.gov));
- Form DB-120.1, *Certificate of Disability Benefits Insurance*, sent to OGS by the Contractor's insurance carrier upon request; or
- Form DB-155, *Certificate of Disability Benefits Self-Insurance*, available from the New York State Workers' Compensation Board's Self-Insurance Office.
- An instruction manual clarifying the New York State Workers' Compensation Law requirements is available for download at the New York State Workers' Compensation Board's website, <http://www.wcb.ny.gov>. Once on the site, click on the Employers/Businesses tab and then click on Employers' Handbook.

**4.18 NYS VENDOR RESPONSIBILITY.** The Contractor shall at all times during the Contract term remain responsible. The Contractor agrees, if requested by the Commissioner of OGS, to present evidence of its continuing legal authority to do business in New York State, integrity, experience, ability, prior performance, and organizational and financial capacity.

The Commissioner of OGS, in his or her sole discretion, reserves the right to suspend any or all activities under this Contract, at any time, when he or she discovers information that calls into question the responsibility of the Contractor. In the event of such suspension, the Contractor will be given written notice outlining the particulars of such suspension. Upon issuance of such notice, the Contractor must comply with the terms of the suspension order. Contract activity may resume at such time as the Commissioner of OGS issues a written notice authorizing a resumption of performance under the Contract.

The Contractor agrees that if it is found by the State of New York that Contractor's responses to the Questionnaire were intentionally false or intentionally incomplete, on such finding, the Commissioner may terminate the Contract.

Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate OGS officials or staff, the Contract may be terminated by the Commissioner of OGS at the Contractor's expense where the Contractor is determined by the Commissioner of OGS to be non-responsible. In such event, the Commissioner of OGS

may complete the contractual requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

In no case shall such termination of the Contract by the State of New York be deemed a breach thereof, nor shall the State of New York be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

**4.19 NYS TAX LAW SECTION 5-A.** Tax Law § 5-a requires certain Contractors awarded New York State Contracts for commodities, services and technology valued at more than \$100,000 to certify to NYS Department of Taxation and Finance (DTF) that they are registered to collect New York State and local sales and compensating use taxes. The law applies to Contracts where the total amount of such Contractors' sales delivered into New York State is in excess of \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made, and with respect to any affiliates and Subcontractors whose sales delivered into New York State exceeded \$300,000 for the four quarterly periods immediately preceding the quarterly period in which the certification is made.

A Contractor is required to file the completed and notarized Form ST-220-CA with the Bid to OGS certifying that the Contractor filed the ST-220-TD with DTF. Only the Form ST-220-CA is required to be filed with OGS. The ST-220-CA can be found at [http://www.tax.ny.gov/pdf/current\\_forms/st/st220ca\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220ca_fill_in.pdf). The ST-220-TD can be found at [http://www.tax.ny.gov/pdf/current\\_forms/st/st220td\\_fill\\_in.pdf](http://www.tax.ny.gov/pdf/current_forms/st/st220td_fill_in.pdf). Contractor should complete and return the certification forms within five (5) business days of request (if the forms are not completed and returned with Bid submission). Failure to make either of these filings may render a Contractor non-responsive and non-responsible. Contractor shall take the necessary steps to provide properly certified forms within a timely manner to ensure compliance with the law. The ST-220-TD only needs to be filed once with DTF, unless the information changes for the Contractor, its affiliates, or its Subcontractors.

Contractor may call DTF at 518-485-2889 with questions or visit the DTF web site at <http://www.tax.ny.gov/> for additional information.

## **MISCELLANEOUS**

**4.20 Subcontractors.** Contractor may use Subcontractors to perform and support Online Services. Contractor will be responsible for their Subcontractors' compliance with the terms of this Contract. For clarity, the definition of Subcontractor for purposes of this Contract shall include Subprocessors used by Contractor.

**4.21 Resellers and other third parties cannot bind Microsoft.** Resellers and other third parties do not have authority to bind or impose any obligation or liability on Microsoft.

**4.22 Free Products.** It is Microsoft's intent that the terms of this Contract and the Product Terms and Online Services Terms be in compliance with all applicable federal law and regulations. Any free Product provided to Enrolled Customer is for the sole use and benefit of the Enrolled Customer and is not provided for use by or personal benefit of any specific government employee.

**4.23 No transfer of ownership.** Microsoft does not transfer any ownership rights in any licensed Product.

**4.24 Voluntary Product Accessibility Templates.** Microsoft supports the government's obligation to provide accessible technologies to its citizens with disabilities as required by Section 508 of the Rehabilitation Act of 1973, and its state law counterparts. The Voluntary Product Accessibility Templates ("VPATs") for the Microsoft technologies used in providing the online services can be found at Microsoft's VPAT page. Further information regarding Microsoft's commitment to accessibility can be found at <http://www.microsoft.com/enable>.

**4.25 Natural disaster.** In the event of a "natural disaster," Microsoft may provide additional assistance or rights by posting them on <http://www.microsoft.com> at such time.

**4.26 Copyright violation.** Except as set forth in the applicable Program Agreement entitled "Transferring and reassigning Licenses", the Enrolled Customer agrees to pay for, and comply with the terms of this Contract and the Use Rights, for the Products it uses. Except to the extent Enrolled Customer is licensed under this Contract, it will be responsible for its breach of this Contract and violation of Microsoft's copyright in the Products, including payment of License fees specified in this Contract for unlicensed use.

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

**4.28 Survival.** Provisions regarding ownership and license rights, fees, Use Rights, restrictions on use, evidence of perpetual licenses, transfer of licenses, warranties, defense of infringement and misappropriation claims, Microsoft's and Enrolled Customer's obligations to protect each other, limitations of liability, confidentiality, compliance verification, obligations on termination or expiration and the other provisions in this section entitled "Miscellaneous" will survive termination or expiration of this Contract and of any agreement in which they are incorporated.

**4.29 This Contract is not exclusive.** Customer and Enrolled Customer are free to enter into agreements to license, use or promote non-Microsoft software.

**4.30 Waiver.** No waiver of any breach of this Centralized Contract shall be deemed 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.

**4.31 Applicable Use Rights.**

(a) Products (other than Online Services). The Use Rights in effect on the effective date of the applicable Enrollment term will apply to Enrolled Customer's use of the version of each Product that is current at the time. For future versions and new Products, the Use

Rights in effect when those versions and Products are first released will apply. Changes Microsoft makes to the Use Rights for a particular version will not apply unless the Enrolled Customer chooses to have those changes apply. The Use Rights applicable to perpetual Licenses that were acquired under a previous agreement or Enrollment are determined by the Agreement or Enrollment under which they were acquired. Renewal of Software Assurance does not change which Use Rights apply to those Licenses.

(b) Online Services. For Online Services, the Use Rights in effect on the subscription start date will apply for the subscription term as defined in the Product Terms.

(c) Reservation of Rights. Products and Fixes are protected by copyright and other intellectual property rights laws and international treaties. Microsoft reserves all rights not expressly granted in this Contract. No rights will be granted or implied by waiver or estoppel. Rights to access or use software on a device do not give Enrolled Customer any right to implement Microsoft patents or other Microsoft intellectual property in the device itself or in any other software or devices.

**4.32 Downgrade Rights.** Enrolled Customer may use an earlier version of a Product other than Online Services than the version that is current on the effective date of the Enrollment. For Licenses acquired in the current Enrollment term, the Use Rights for the current version apply to the use of the earlier version. If the earlier Product version includes features that are not in the new version, then the Use Rights applicable to the earlier version apply with respect to those features.

**4.33 Non-Microsoft Software or Technology.**

Enrolled Customer is solely responsible for any non-Microsoft software or technology that it installs or uses with the Products or Fixes.

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

**4.34 Management and Reporting.** Customer and/or Enrolled Customer may manage account details (e.g., contacts, orders, Licenses, software downloads) on Microsoft's Volume Licensing Service Center ("VLSC") web site (or successor site) at: <https://www.microsoft.com/licensing/servicecenter>. Upon the effective date of this Contract and any Affiliate Registration Forms or Enrollments, the contact(s) identified for this purpose will be provided access to this site and may authorize additional users and contacts.

**4.35 Notices.**

Notices to the State of New York: All notices, demands, designations, certificates, requests, offers, consents, approvals and other instruments given pursuant to this Contract shall be in writing and shall be validly given when mailed by registered or certified mail, or hand delivered, to the State of New York, addressed to OGS on behalf of the State of New York at its address set forth below. The Parties may from time to time, specify any address in the United States as its address for purpose of notices under this Contract by giving fifteen (15) days written notice to the other party. The Parties agree to mutually designate individuals as their respective representatives for purposes of this Contract. The New York State Contract Administrator for this Contract is:

OFFICE OF GENERAL SERVICES  
Jordan Flores, Contract Administrator  
38th Floor, Corning Tower  
Empire State Plaza  
Albany, NY 12242  
Email: Jordan.Flores@ogs.ny.gov  
Phone: (518) 474-3166

Supplemental Contact Form: This form provides the primary notice contact to Microsoft for administering this Contract and the Program Agreements.

Notices to the Enrolled Customers: All notices, authorizations, and requests given or made in connection with this Centralized Contract must be sent by post, express courier, facsimile or email to the addresses indicated on the Enrollment or Affiliate Registration Form from the applicable Program Agreement. Notices will be deemed delivered on the date shown on the postal return receipt or on the courier, or facsimile or email confirmation of delivery.

Notices to the Contractor: If to Contractor, notices should be addressed to Contract Administrator at the address set forth in Appendix D (Contract Administration). Appendix D provides Contractor contact information to support the updating and management of the Centralized Contract on a timely basis. The Parties may from time to time, specify any address in the United States as its address for purpose of notices under this Contract by giving fifteen (15) days written notice to the other party. The Parties agree to mutually designate individuals as their respective representatives for purposes of this Contract.

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

**Copies should be sent to:**

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

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

**4.36 Captions.** The captions contained in this Centralized Contract are intended for convenience and reference purposes only and shall in no way be deemed to define or limit any provision thereof.

**4.37 Severability.** If a court holds any provision of this Contract to be illegal, invalid or unenforceable, the rest of the document will remain in effect and this Contract will be amended to give effect to the eliminated provision to the maximum extent possible.

**4.37A Data Mining.** Online Services shall not, for any non-authorized activity or non-government purpose, use any data-mining technology, capture, maintain, scan, index, share or use Customer Data or Support Data stored or transmitted by the Online Service.

For all Online Services, Customer Data shall be logically separated from other customers' Customer Data. For Office 365 Government Community Cloud, Customer Data shall not be co-mingled with other customers' Customer Data, other customers' Support Data, or data created by or resulting from Microsoft's scanning, indexing, or data mining activities, unless expressly approved by Enrolled Customer in advance.

**4.38 Entire Agreement.** This Centralized Contract and the referenced appendices, Program Agreements, Enrollments and Affiliate Registration Forms referenced in section 4.3 above constitute the entire agreement between the Parties thereto and no statement, promise, condition, understanding, inducement or representation, oral or written, expressed or implied, which is not contained herein shall be binding or valid and the Centralized Contract shall not be changed, modified or altered in any manner except by an instrument in writing executed by the Parties hereto, except as otherwise provided herein. Authorized Users shall not have the authority to modify the terms of the Centralized Contract, except as to better terms and pricing for a particular procurement than those set forth herein. No preprinted terms or conditions on a Purchase Order issued by an Authorized User, which seek to vary the terms of this Centralized Contract or impose new duties or obligations on the Contractor, shall have any force or effect.

**APPENDIX A**

**STANDARD CLAUSES FOR NEW YORK STATE CONTRACTS**

**PLEASE RETAIN THIS DOCUMENT  
FOR FUTURE REFERENCE.**



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## **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 State's previous written consent, and attempts to do so are null and void. Notwithstanding the foregoing, such prior written consent of an assignment of a contract let pursuant to Article XI of the State Finance Law may be waived at the discretion of the contracting agency and with the concurrence of the State Comptroller where the original contract was subject to the State Comptroller's approval, where the assignment is due to a reorganization, merger or consolidation of the Contractor's business entity or enterprise. The State retains its right to approve an assignment and to require that any Contractor demonstrate its responsibility to do business with the State. The Contractor may, however, assign its right to receive payments 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 \$50,000 (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 \$85,000 (State Finance Law Section 163.6-a). However, such pre-approval shall not be required for any contract established as a centralized contract through the Office of General Services or for a purchase order or other transaction issued under such centralized contract.

**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 (including gender identity or expression), national origin, sexual orientation, military status, age, disability, predisposing genetic characteristics, marital status or domestic violence victim 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. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the State of any State approved sums due and owing for work done upon the project.

**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 affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms 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) Identification Number(s). Every invoice or New York State Claim for Payment submitted to a New York State agency by a payee, for payment for the sale of goods or services or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. The number is any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Failure to include such number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or Claim for Payment, 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 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 the Statewide Financial System by the Vendor Management Unit within the Bureau of State Expenditures, 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 and 5 NYCRR 143, 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 the following shall apply and by signing this agreement the Contractor certifies and affirms that it is Contractor's equal employment opportunity policy that:

(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, shall make and document its conscientious and active efforts to employ and utilize minority group members and women in its work force on State contracts 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. 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 Department of Economic Development's Division 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 Section 165 of the State Finance Law, (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  
Albany, New York 12245  
Telephone: 518-292-5100  
Fax: 518-292-5884  
email: [opa@esd.ny.gov](mailto:opa@esd.ny.gov)

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  
633 Third Avenue  
New York, NY 10017  
212-803-2414  
email: [mwbecertification@esd.ny.gov](mailto:mwbecertification@esd.ny.gov)  
<https://ny.newnycontracts.com/FrontEnd/VendorSearchPublic.asp>

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. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.** Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa; State Technology Law Section 208).

**23. COMPLIANCE WITH CONSULTANT DISCLOSURE LAW.** If this is a contract for consulting services, defined for purposes of this requirement to include analysis, evaluation, research, training, data processing, computer programming, engineering, environmental, health, and mental health services, accounting, auditing, paralegal, legal or similar services, then, in accordance with Section 163 (4-g) of the State Finance Law (as amended by Chapter 10 of the Laws of 2006), the Contractor shall timely, accurately and properly comply with the requirement to submit an annual employment report for the contract to the agency that awarded the contract, the Department of Civil Service and the State Comptroller.

**24. PROCUREMENT LOBBYING.** To the extent this agreement is a "procurement contract" as defined by State Finance Law Sections 139-j and 139-k, by signing this agreement the contractor certifies and affirms that all disclosures made in accordance with State Finance Law

Sections 139-j and 139-k are complete, true and accurate. In the event such certification is found to be intentionally false or intentionally incomplete, the State may terminate the agreement by providing written notification to the Contractor in accordance with the terms of the agreement.

a contract and appears on the Prohibited Entities list after contract award.

**25. CERTIFICATION OF REGISTRATION TO COLLECT SALES AND COMPENSATING USE TAX BY CERTAIN STATE CONTRACTORS, AFFILIATES AND SUBCONTRACTORS.**

To the extent this agreement is a contract as defined by Tax Law Section 5-a, if the contractor fails to make the certification required by Tax Law Section 5-a or if during the term of the contract, the Department of Taxation and Finance or the covered agency, as defined by Tax Law 5-a, discovers that the certification, made under penalty of perjury, is false, then such failure to file or false certification shall be a material breach of this contract and this contract may be terminated, by providing written notification to the Contractor in accordance with the terms of the agreement, if the covered agency determines that such action is in the best interest of the State.

**26. IRAN DIVESTMENT ACT.** By entering into this Agreement, Contractor certifies in accordance with State Finance Law §165-a that it is not on the “Entities Determined to be Non-Responsive Bidders/Offerers pursuant to the New York State Iran Divestment Act of 2012” (“Prohibited Entities List”) posted at:

<http://www.ogs.ny.gov/about/regs/docs/ListofEntities.pdf>

Contractor further certifies that it will not utilize on this Contract any subcontractor that is identified on the Prohibited Entities List. Contractor agrees that should it seek to renew or extend this Contract, it must provide the same certification at the time the Contract is renewed or extended. Contractor also agrees that any proposed Assignee of this Contract will be required to certify that it is not on the Prohibited Entities List before the contract assignment will be approved by the State.

During the term of the Contract, should the state agency receive information that a person (as defined in State Finance Law §165-a) is in violation of the above-referenced certifications, the state agency will review such information and offer the person an opportunity to respond. If the person fails to demonstrate that it has ceased its engagement in the investment activity which is in violation of the Act within 90 days after the determination of such violation, then the state agency shall take such action as may be appropriate and provided for by law, rule, or contract, including, but not limited to, imposing sanctions, seeking compliance, recovering damages, or declaring the Contractor in default.

The state agency reserves the right to reject any bid, request for assignment, renewal or extension for an entity that appears on the Prohibited Entities List prior to the award, assignment, renewal or extension of a contract, and to pursue a responsibility review with respect to any entity that is awarded

**APPENDIX B**

**GENERAL SPECIFICATIONS**

NOTE: Some of the terms in this document have been modified for purposes of OGS Contract No. PS67984. See section 4.6 of the OGS Contract No. PS67984.

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**GENERAL**

**1. ETHICS COMPLIANCE** All Bidders/Contractors and their employees must comply with the requirements of Sections 73 and 74 of the Public Officers Law, other State codes, rules, regulations and executive orders 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.

**2. DEFINITIONS** Terms used herein shall have the following meanings:

**a. AUTHORIZED USER** Authorized User shall have the meaning set forth in State Finance Law Section 163(1)(k) and includes, but is not limited to, New York State Agencies, political subdivisions, local governments, public authorities, public school and fire districts, public and nonprofit libraries, and certain other nonpublic/nonprofit organizations.

**b. BID** A response to the Solicitation submitted by a Bidder to provide Products.

**c. BIDDER** Any person or entity who submits a response to the Solicitation. At the time that a Bidder executes a Contract with the State, the Bidder shall become a "Contractor." See also "Contractor."

**d. BID SPECIFICATIONS** A written description drafted by OGS or an Authorized User setting forth the specific terms of the intended procurement, which may include: physical or functional characteristics, the nature of a Product, 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 this Appendix B is incorporated in negotiated Contracts that have not been competitively solicited, the term "Bid Specifications" shall be deemed to refer to the terms and conditions set forth in the negotiated Contract and associated documentation.

**e. COMMISSIONER** The Commissioner of OGS or his or her designee, or, in the case of Bid Specifications issued by an Authorized User, the head of such Authorized User or his or her authorized representative.

**f. CONTRACT** The writings that contain the agreement of the Commissioner and the 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:

- 1. Agency Specific Contracts** Contracts where the written description for a Product or a particular scope of work is described and defined to meet the needs of one or more Authorized Users.
- 2. Centralized Contracts** Single- or multiple-award Contracts where the written description for a Product or general scope of work is described and defined by OGS to meet the needs of Authorized Users. Centralized Contracts may be awarded through multiple awards or through adoption of another

jurisdiction's contract or on a sole source, single source, emergency, or competitive basis. Once established, procurements may be made from the selected Contractors without further competition or Mini-Bid unless otherwise required by the Contract.

**3. Back-Drop Contracts** Multiple-award Centralized Contracts where OGS provides a written description 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 or periodic recruitment basis, as set forth in the Solicitation. Selection of a Contractor from among Back-Drop contract holders for an actual Product, project or particular scope of work may be subsequently made as set forth in the Contract.

**4. 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 group of states that is adopted and extended for use by OGS in accordance with the requirements of the State Finance Law.

**5. Contract Award Letter** A letter to the successful Bidder 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 the Contractor should not take any action with respect to actual Contract deliveries except on the basis of Purchase Orders sent from Authorized Users.

**g. CONTRACT AWARD NOTIFICATION** An announcement to Authorized Users that a Contract has been established.

**h. CONTRACTOR** Any successful Bidder to whom a Contract has been awarded by the Commissioner.

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

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

**k. ENTERPRISE LICENSE** A license grant of unlimited rights to deploy, access, use and execute Product anywhere within the Enterprise up to the maximum capacity stated on the Purchase Order or in the Contract.

**l. 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.

**m. GROUP** A classification of a Product that is designated by OGS.

**n. INVITATION FOR BIDS (IFB)** A type of Solicitation that is most typically used for procurements where requirements can be stated and award will be made based on lowest price to the responsive and responsible Bidder or Bidders.

**o. LICENSED SOFTWARE** Software transferred upon the terms and conditions set forth in the Contract. "Licensed Software" includes Error Corrections, upgrades, or enhancements, and any deliverables due under a technical support/maintenance or service contract (e.g., Patches, programs, code or data conversion, or custom programming).

**p. LICENSEE** An Authorized User who acquires 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 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.

**q. 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.

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

**s. MINI-BID** A document used by an Authorized User containing transaction-specific requirements soliciting responses from Contractors previously qualified under a Centralized Contract for such Products.

**t. OGS** The New York State Office of General Services.

**u. PATCH** Software designed to update, fix, or improve the Product or its supporting data. This includes fixing security vulnerabilities and other bugs, including hot fixes, to improve usability or performance.

**v. PRODUCTS** Items or deliverables under any Solicitation or Contract and may include commodities, services and/or technology.

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

**x. REQUEST FOR PROPOSALS (RFP)** A type of Solicitation that is used for procurements where factors in addition to cost are considered and weighted in awarding the contract and where the award will be made based on "best value," as defined by the State Finance Law, to one or more responsive and responsible Bidders.

**y. REQUEST FOR QUOTATION (RFQ)** A procurement method that can be used in situations such as discretionary, sole source, single source, or emergency purchases and certain Centralized Contracts.

**z. RESPONSIBLE BIDDER** A Bidder that is determined to have financial and organizational capacity, legal authority, satisfactory previous performance, skill, judgment and integrity, and that is found to be competent, reliable and experienced, as determined by the Commissioner. For purposes of being deemed responsible, a Bidder must also be determined to be in compliance with Sections 139-j and 139-k of the State Finance Law relative to restrictions on contacts during the procurement process and disclosure of contacts and prior findings of non-responsibility under these statutes.

**aa. RESPONSIVE BIDDER** A Bidder meeting the specifications or requirements prescribed in the Solicitation, as determined by the OGS Commissioner.

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

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

**dd. SOLE SOURCE** A procurement where only one Bidder is capable of supplying the required Product.

**ee. SOLICITATION** Writings by the State setting forth the scope, terms, conditions and technical specifications for a procurement of Product. The procurement may be undertaken on a competitive or non-competitive basis. Such writings typically include, but are not limited to: Invitation for Bids (IFB), Request for Quotations (RFQ), Request for Proposals (RFP), addenda or amendments thereto, and terms and conditions that are incorporated by reference, including but not limited to Appendix A (Standard Clauses for NYS Contracts), Appendix B (General Specifications), and identified attachments. Where the procurement is undertaken on a non-competitive basis, the term "Solicitation" shall be deemed to refer to all the terms and conditions identified by the State.

**ff. 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.

**gg. STATE** State of New York.

**hh. STATE 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.

**ii. SUBCONTRACTOR** Any individual or legal entity (including but not limited to sole proprietor, partnership, limited liability company, firm or corporation) who has entered into a contract, express or implied, for the performance of a portion of a Contract with a Contractor.

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

**kk. THIRD-PARTY SOFTWARE** Any software that is developed independently of Contractor and which may be governed by a separate license.

**ll. VIRUS** Any computer code, whether or not written or conceived by Contractor, that 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. Virus shall also include any malware, adware, or other computer code, whether or not written or conceived by Contractor, that allows data or metrics to be copied, redirected, or modified without the express consent of the Authorized User.

**BID SUBMISSION**

**3. INTERNATIONAL BIDDING** All Bids, including 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 Bids submitted which do not meet the above criteria will be rejected.

**4. 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.

**5. LATE BIDS** Bids must be received at the location designated in the Solicitation at or before the date and time established in the Solicitation for the Bid opening or receipt of Bids.

Any Bid received at the designated location after the established time will be considered a Late Bid. A Late Bid may be rejected and disqualified from award. Notwithstanding the foregoing, a Late Bid may be accepted in the Commissioner's sole discretion where (i) no timely Bids meeting the requirements of the Solicitation are received, (ii) in the case of a multiple award, an insufficient number of timely Bids are received to satisfy the multiple award, or (iii) the Bidder has demonstrated to the satisfaction of the Commissioner that the Late Bid was caused solely by factors outside the control of the Bidder. However, in no event shall the Commissioner be under any obligation to accept a Late Bid.

The basis for any determination to accept a Late Bid shall be documented in the procurement record.

**6. CONFIDENTIAL/TRADE SECRET MATERIALS**

**a. BIDDER/CONTRACTOR** Confidential, trade secret or proprietary materials as defined by the laws of the State of New York must be clearly marked and identified as such upon submission by the Bidder/Contractor. Marking the Bid as "confidential" or "proprietary" on its face or in the document header or footer shall not be considered by the Commissioner or Authorized User to be sufficient without specific justification as to why disclosure of particular information in the Bid would cause substantial injury to the competitive position of the Bidder/Contractor. Bidders/Contractors intending to seek an exemption from disclosure of these materials under the Freedom of Information Law must request the exemption in writing, setting forth the reasons for the claimed exemption. The Commissioner's or Authorized User's receipt/acceptance of the claimed materials does not constitute a determination on the exemption request, which determination will be made in accordance with statutory procedures. Properly identified information that has been designated confidential, trade secret, or proprietary by the Bidder/Contractor will not be disclosed except as may be required by the Freedom of Information Law or other applicable State and federal laws.

**b. COMMISSIONER OR AUTHORIZED USER** Contractor warrants, covenants and represents that any confidential information obtained by Contractor, its agents, Subcontractors, officers, distributors, resellers 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 without the written consent of the Commissioner or Authorized User. Contractor shall not be required to keep confidential any such material that is publicly available through no fault of Contractor, independently developed by Contractor without reliance on confidential information

of the Authorized User, or otherwise obtained under the Freedom of Information Law or other applicable New York State laws and regulations. This warranty shall survive termination of this Contract. Contractor further agrees to take commercially reasonable steps to inform its agents, Subcontractors, officers, distributors, resellers or employees of the obligations arising under this clause to ensure such confidentiality.

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

**a. PREVAILING WAGE RATE APPLICABLE TO BIDS** A copy of the applicable prevailing wage rate schedule is incorporated into the Solicitation and may also be obtained by visiting [www.labor.ny.gov](http://www.labor.ny.gov) and typing in the search box: Prevailing Wage Schedule Request. Bidders must submit Bids which are based upon the prevailing hourly wages, and supplements in cash or equivalent benefits (e.g., 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 rates for the location where the work is to be performed. 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 that fail to comply with this requirement will be disqualified.

**b. 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 resulting from this Contract, 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 for its employees as required by law and is responsible for ensuring any Subcontractors utilized on the Contract also comply with the prevailing wage provisions of the New York State Labor Law.

**c. ARTICLE 8 CONSTRUCTION/PUBLIC WORKS CONTRACTS** In compliance with Article 8, Section 220 of the New York State Labor Law:

**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 Subcontractors 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 the 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 Subcontractors on public works Contracts must submit monthly payroll transcripts to the Authorized User issuing the Purchase Order for the work. This provision does not apply to Article 9 of the Labor Law building services contracts.

**iv. Day's Labor** No laborers, workmen or mechanics 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 calendar 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.

**d. ARTICLE 9 BUILDING SERVICES CONTRACTS** In compliance with Article 9, Section 230 of the New York State Labor Law:

**i. Payroll Records** Contractors and Subcontractors must keep original payrolls or transcripts subscribed and affirmed as true under the penalties of perjury as required by law. Where the Contractor or Subcontractor maintains no regular place of business in New York State, such records must be kept at the work Site while work is being performed.

**ii. Overtime** Employees of Contractors and Subcontractors who work in excess of eight hours in a day or forty hours in a week shall be paid at the overtime rate identified by the New York State Department of Labor.

#### **8. TAXES**

**a.** Unless otherwise specified in the Solicitation, Bid Specifications or Contract, 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 upon request. 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 certain taxes which were not included in the Bid price, 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.

**9. EXPENSES PRIOR TO CONTRACT EXECUTION** The Commissioner and any Authorized Users are not liable for any costs incurred by a Bidder or Contractor in the preparation and production of a Bid, Mini-Bid, cost proposal revision, or for any work performed prior to Contract execution.

#### **10. PRODUCT REFERENCES**

**a. "Or Equal"** In all Solicitations or Bid Specifications, the words "or equal" are understood to apply where a copyrighted, 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 Solicitation or Bid Specifications and the written description of the Products that cannot be reconciled, then the written description shall prevail.

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

Items with recycled, recyclable, recovered, refurbished, or remanufactured content must be identified in the Bid or Bidder will be deemed to be offering new Product.

#### **12. PRODUCTS MANUFACTURED IN PUBLIC INSTITUTIONS**

Bids offering Products that are manufactured or produced in public institutions will be rejected.

#### **13. PRICING**

**a. Unit Pricing** If required by the Solicitation, the Bidder should insert the price per unit specified and the price extensions in decimals, not to exceed four places, for each item unless otherwise specified in the Solicitation. 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 Solicitation, prices shall be net, including transportation, customs, tariff, delivery and other charges fully prepaid by the Contractor to the destination indicated in the Solicitation or Purchase Order.

**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 Group 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. Third Party Financing** If Product acquisitions are financed through any 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.

**f. Specific price decreases:**

(i) **GSA Changes:** Where net pricing under the Contract is based on an approved GSA schedule, price decreases shall take effect automatically during the Contract term and apply to Purchase Orders submitted on or after the date the approved GSA schedule pricing decreases during the Contract term; or

(ii) **Commercial Price List Reductions:** Where net pricing under the Contract is based on a discount from Contractor’s list prices, price decreases shall take effect automatically during the Contract term and apply to Purchase Orders submitted on or after the date Contractor lowers its pricing on its commercial price lists during the Contract term; or

(iii) **Special Offers/Promotions Generally:** Where Contractor generally offers more advantageous special price promotions or special discount pricing to other customers during the Contract term for a similar quantity, and the maximum price or discount associated with such offer or promotion is better than the discount or net pricing otherwise available under this Contract, such better price or discount shall apply for similar quantity transactions under this Contract for the life of such general offer or promotion; and

(iv) **Special Offers/Promotions to Authorized Users:** Contractor may offer Authorized Users, under either this Contract or any other contracting vehicle, competitive pricing which is lower than the net pricing set forth herein 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 (iii).

Unless otherwise specified in the Solicitation, Contractor may offer lower prices or better terms (see Modification of Contract Terms) on any specific Purchase Order from any Authorized User without being in conflict with, or having any obligation to comply on a global basis with, the terms of this clause.

**g. Cost Proposal Revisions** A Contractor may be solicited prior to Contract award to propose the best possible offer for the Product being bid on, in accordance with State Finance Law Section 163(9)(c). A cost proposal revision must be a lower price than the initial price.

**14. SITE INSPECTION** Where a Site inspection is required, Bidder shall be required to inspect the Site, including environmental or other conditions, for pre-existing deficiencies that may affect the installed Product or that 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 that such inspection or inquiry might have disclosed. Bidder must provide a detailed explanation with its Bid if additional work is required under this clause in order to properly provide the required Product.

**15. PURCHASING CARD** The State’s Purchasing Card program is designed to be an efficient and cost effective way to expedite purchases. The Purchasing Card (also referred to as the Procurement Card) is a credit card that enables Authorized Users to make authorized purchases directly from a Contractor without processing formal Purchase Orders. Purchasing Cards are issued to selected employees who are authorized to make purchases for the Authorized

User. Cardholders can make purchases directly from any Contractor that accepts the Purchasing Card.

**BID EVALUATION**

**16. BID EVALUATION** The Commissioner reserves the right to accept or reject any and all Bids, or separable portions of Bids, and waive technicalities, irregularities, and omissions if the Commissioner determines the best interests of the State will be served. The Commissioner, in his or her sole discretion, may accept or reject illegible, incomplete or vague Bids, and the Commissioner’s 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 Bid.

**17. TIE BIDS** In the event two Bids are found to be substantially equivalent, price shall be the basis for determining the award recipient. 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. 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.

**18. 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 Solicitation. In the event such right is exercised, the lowest responsible Bidder meeting the Solicitation requirements will be advised of the revised quantities 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 qualifications.

**19. TIMEFRAME FOR OFFERS** The Commissioner reserves the right to make awards within 60 days after the date of the Bid opening or such other period of time as set forth in the Solicitation. The Bids must remain firm until a Contract is awarded, but if a Contract is not awarded within 60 days or other time period set forth in the Solicitation, the Bidder may withdraw its Bid any time thereafter by delivering to the Commissioner written notice of the withdrawal of its Bid.

**20. DEBRIEFINGS** Pursuant to Section 163(9)(c) of the State Finance Law, any unsuccessful Bidder may request a debriefing regarding the reasons that the Bid submitted by the Bidder was not selected for award. Requests for a debriefing must be made within 15 calendar days of notification by OGS that the Bid submitted by the Bidder was not selected for award. Requests should be submitted in writing to a designated contact identified in the Solicitation.

**21. CONTRACT PUBLICITY** Any Contractor press or media releases, advertisements, or promotional literature, regardless of the medium, referring to an awarded Contract must be reviewed and approved by the Commissioner prior to issuance. In addition, Contractor shall not use, for any purpose, the New York State of Opportunity registered trademark or the New York State coat of arms without prior written approval from the State.

**TERMS & CONDITIONS**

**22. CONTRACT CREATION/EXECUTION** Except for contracts governed by Article 11-B of the State Finance Law, subject to and upon receipt of all required approvals as set forth in the Solicitation, a Contract shall be deemed executed and created with the successful Bidders upon the Commissioner's mailing or electronic communication to the address on the Bid/Contract of: (i) the final Contract Award Notice; (ii) a fully executed Contract; or (iii) a Purchase Order authorized by the Commissioner.

**23. CONTRACT TERM - EXTENSION** In addition to any stated extension periods in the Contract, any Contract or portion thereof awarded by the Commissioner may be extended by mutual agreement of the Commissioner and the Contractor for an additional period of up to one year. Such extension for up to an additional one-year period may be exercised on a month-to-month basis or in other stated periods of time.

**24. OFFICIAL USE ONLY/NO PERSONAL USE** The Contract is only for official use by Authorized Users. Use of the Contract for personal or private purposes is strictly prohibited.

**25. PARTICIPATION IN CENTRALIZED CONTRACTS**

**a. State Agencies** All State Agencies may utilize and purchase under any Centralized Contract let by the Commissioner, unless the Solicitation limits purchases to specific State Agencies.

**b. Non-State Agency Authorized Users** Authorized Users other than State Agencies are permitted to make purchases through Centralized Contracts where permitted by law, the Contract or the Commissioner.

**c. Voluntary Extension** Purchase Orders issued against a Centralized Contract by any Authorized User not provided for in the Contract 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.

**d. Responsibility for Performance** Participation in Centralized Contracts by Authorized Users is permitted upon the following conditions: (i) 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; (ii) 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; (iii) 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 (iv) each non-State Agency Authorized User and Contractor guarantees to hold the State, its officers, agents and employees harmless from any liability that may be or is imposed by the non-State Agency Authorized User's or Contractor's failure to perform in accordance with its obligations under the Contract.

**e. Contract Migration** Authorized Users holding individual Contracts with a Contractor at the time that Contractor is awarded a Centralized Contract for the same Products shall be permitted to migrate to that Centralized Contract effective with its commencement date. Such migration shall not operate to diminish, alter or eliminate

any right that the Authorized User otherwise had under the terms and conditions of their individual Contract.

**26. MODIFICATION OF CONTRACT TERMS** The terms and conditions set forth in the Contract shall govern all transactions by Authorized Users under this Contract. The Contract may only be modified or amended upon mutual written agreement of the Commissioner and Contractor.

The Contractor may, however, offer any Authorized User more advantageous pricing, payment, or other terms and conditions than those set forth in the Contract. In such event, a copy of such terms shall be furnished to the Authorized User and Commissioner by the Contractor at the time of such offer.

Other than where such terms are more advantageous for the Authorized User 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 an Authorized User unless authorized by the Commissioner or specified in the Contract Award Notification. No such alteration or modification shall be made by unilaterally affixing such terms to Product upon delivery (including, but not limited to, attachment or inclusion of standard pre-printed order forms, product literature, "shrink wrap" terms accompanying software upon delivery, or other documents) or by incorporating such terms onto order forms, Purchase Orders or other documents forwarded by the Contractor for payment, notwithstanding Authorized User's subsequent acceptance of Product, or that Authorized User has subsequently processed such document for approval or payment.

**27. SCOPE CHANGES** The Commissioner reserves the right to require, by written order, changes to the scope of the Contract, provided that such changes do not materially alter the general scope of the Contract. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under the Contract, whether or not changed by the order, the Commissioner shall, upon notice from Contractor as hereafter stated, make an equitable adjustment in the Contract price, the delivery schedule or both and shall modify the Contract. The Contractor must assert its right to an adjustment under this clause within 30 days from the date of receipt of the written order. However, if the Commissioner decides that the facts justify it, the Commissioner may provide an adjustment without receipt of a notice from Contractor. In the event of a dispute between the Contractor and the Commissioner, such dispute shall be resolved in accordance with the OGS Dispute Resolution Procedures; provided, however, that nothing in this clause shall excuse the Contractor from proceeding with the Contract as changed.

**28. ESTIMATED/SPECIFIC QUANTITY CONTRACTS**

Estimated quantity contracts, also referred to as indefinite delivery/indefinite 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 quantity is implied or given.

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.

**29. EMERGENCY CONTRACTS** In the event that a disaster emergency is declared by Executive Order under Section 28 of Article

2-B of the Executive Law, or the Commissioner determines pursuant to his or her authority under Section 163(10)(b) of the State Finance Law that an emergency exists requiring the prompt and immediate delivery of Product, the Commissioner reserves the right to obtain such Product from any source, including but not limited to this Contract, as the Commissioner in his or her sole discretion determines will meet the needs of such emergency. Contractor shall not be entitled to any claim for lost profits for Product procured from other sources pursuant to this clause. The reasons underlying the finding that an emergency exists shall be included in the procurement record.

**30. PURCHASE ORDERS** Unless otherwise authorized in writing by the Commissioner, no Product is to be delivered or furnished by Contractor until transmittal of an official Purchase Order from the Authorized User. Unless terminated or cancelled pursuant to the authority vested in the Commissioner, Purchase Orders shall be effective and binding upon the Contractor (i) in the case of formal written Purchase Orders, when placed in the mail prior to the termination of the Contract and addressed to the Contractor at the address for receipt of orders set forth in the Contract or in the Contract Award Notification or (ii) in the case of electronic Purchase Orders or Purchasing Card purchases, when electronically transmitted to the Contractor prior to the termination of the Contract.

All Purchase Orders issued pursuant to a Contract let by the Commissioner must be identified with the appropriate Contract number and, if necessary, required State approvals. As deemed necessary, the Authorized User may confirm pricing and other Product information with the Contractor prior to placement of the Purchase Order. The State reserves the right to require any other information from the Contractor which the State deems necessary in order to complete any Purchase Order placed under the Contract. Unless otherwise specified, all Purchase Orders against Centralized Contracts will be placed by Authorized Users directly with the Contractor and 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. Should an Authorized User add written terms and conditions to the Purchase Order that conflict with the terms and conditions of the Contract, the Contractor has the option of rejecting the Purchase Order within five business days of its receipt but shall first attempt to negotiate the additional written terms and conditions in good faith with the Authorized User, or fulfill the Purchase Order. Notwithstanding the above, the Authorized User reserves the right to dispute any discrepancies arising from the presentation of additional terms and conditions with the Contractor.

If, with respect to an Agency Specific Contract let by the Commissioner, a Purchase Order is not received by the Contractor 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 in writing 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 cancellation of such requirement by the OGS Commissioner with a corresponding reduction in the Contract quantity and price.

**31. 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. Delivery shall be made within 30 calendar days after receipt of a Purchase Order by the Contractor, unless otherwise agreed to by the Authorized User and 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 a 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 time for delivery must be requested in writing by the Contractor and approved in writing by the Authorized User. If compliance with the delivery time schedule is a material term of the Contract, failure to meet such delivery time schedule may be grounds for cancellation of the order or, in the Commissioner's discretion, the Contract.

**32. WEEKEND AND HOLIDAY DELIVERIES** Unless otherwise specified in the Contract or by an Authorized User, deliveries will be scheduled for ordinary business hours, Monday through Friday (excluding legal holidays observed by the State of New York). Deliveries may be scheduled by mutual agreement for Saturdays, Sundays or legal holidays observed by the State of New York where the Product is for daily consumption, an emergency exists, the delivery is a replacement, delivery is late, or other reasonable circumstance in which event the convenience of the Authorized User shall govern.

**33. SHIPPING/RECEIPT OF PRODUCT**

**a. Packaging** 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 any extra charges for packing materials, cases or other types of containers. The container shall become and remain the property of the Authorized User unless otherwise specified in the Contract documents.

**b. Shipping Charges** Unless otherwise stated in the Contract, all deliveries shall be deemed to be freight on board (F.O.B.) destination tailgate delivery at the dock of the Authorized User. Unless otherwise agreed, items purchased at a price F.O.B. shipping point plus transportation charges shall not relieve the Contractor from responsibility for safe and proper delivery notwithstanding the Authorized User's payment of transportation charges. Contractor shall be responsible for ensuring 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 the locations and/or personnel specified by the Authorized User in the Purchase Order. Any losses or delays resulting from the Contractor's failure to deliver Product to the specified locations or personnel shall be borne exclusively by the Contractor.

**34. TITLE AND RISK OF LOSS FOR PRODUCTS OTHER THAN TECHNOLOGY PRODUCTS**

Notwithstanding the form of shipment, title or other property interest, risk of loss for Products other than technology Products 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 a reasonable time or in accordance with such other defined acceptance period as may be specified in the Contract or Purchase Order. 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 received. Any delivery of Product that is substandard or does not comply with the Contract may be rejected or accepted on an adjusted price basis, as determined by the Commissioner. Title, risk of loss, and acceptance for technology Products shall be governed by the Product Acceptance clause.

**35. PRODUCT SUBSTITUTION** In the event a specified 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), a Product deemed in writing by the Commissioner to be equal to or better than the specified Product must be substituted by the Contractor at no additional cost or expense to the Authorized User. Unless otherwise specified, any substitution of Product prior to the Commissioner's written approval may be cause for termination of Contract.

**36. REJECTED PRODUCT** When Product is rejected, it must be removed by the Contractor from the premises of the Authorized User within ten calendar days of notification of rejection by the Authorized User. Upon notification of rejection, 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 Product 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 after the ten-calendar-day period.

**37. INSTALLATION** Where installation is required, Contractor shall be responsible for placing and installing the Product in the required locations. All materials used in the installation shall be of good quality and shall be free from any and all defects that would mar the Product or render it unsound. Installation includes the furnishing of any equipment, rigging and materials required to install or place 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. Work shall be performed to cause the least inconvenience to the Authorized User 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.

**38. REPAIRED OR REPLACED PRODUCTS, PARTS, OR COMPONENTS** Where the Contractor is required to repair, replace or substitute Product or parts or components of the Product 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 including warranties, as set forth in the Warranties clause herein. Replaced or repaired Product or parts and components of such Product 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. Before installation, all proposed substitutes for the original manufacturers' installed parts or components must be approved by the Authorized User. The part or component shall be equal to or of better quality than the original part or component being replaced.

**39. EMPLOYEES, SUBCONTRACTORS AND AGENTS** All employees, Subcontractors, or agents of the Contractor performing work under the Contract must be trained staff or technicians who meet or exceed the professional, technical, and training qualifications set forth in the Contract or the Purchase Order, and must comply with all security and administrative requirements of the Authorized User that are communicated to the Contractor. The Commissioner and the Authorized

User reserve the right to conduct a security background check or otherwise approve any employee, Subcontractor, or agent furnished by Contractor and to refuse access to or require replacement of any personnel for cause based on professional, 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 or the Purchase Order. The Commissioner and the Authorized User reserve the right to reject and/or bar from any facility for cause any employee, Subcontractor, or agent of the Contractor.

**40. ASSIGNMENT** In accordance with Section 138 of the State Finance Law, the 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 without the prior written consent of the Commissioner or Authorized User (as applicable); provided, however, any consent shall not be unreasonably withheld, conditioned, delayed or denied. The Commissioner may waive the requirement that such consent be obtained in advance where the Contractor verifies that the assignment, transfer, conveyance, sublease, or other disposition is due to, but not necessarily limited to, a reorganization, merger, or consolidation of the Contractor's business entity or enterprise.

Notwithstanding the foregoing, the State shall not hinder, prevent or affect assignment of money by a Contractor for the benefit of its creditors. Prior to a consent to assignment of monies becoming effective, the Contractor shall file a written notice of such monies assignments with the State Comptroller. Prior to a consent to assignment of a Contract, or portion thereof, becoming effective, the Contractor shall submit the request for assignment to the Commissioner and seek written agreement from the Commissioner which will be filed with the State Comptroller. Commissioner shall use reasonable efforts to promptly respond to any request by Contractor for an assignment, provided that Contractor supplies sufficient information about the party to whom the Contractor proposes to assign the Contract.

Upon notice to the Contractor, the Contract may be assigned without the consent of the Contractor to another State Agency or subdivision of the State pursuant to a governmental reorganization or assignment of functions under which the functions are transferred to a successor Agency or to another Agency that assumes OGS responsibilities for the Contract.

**41. SUBCONTRACTORS AND SUPPLIERS** The Commissioner reserves the right to reject any proposed Subcontractor or supplier for bona fide business reasons, including, but not limited to: the company failed to solicit New York State certified minority- and women-owned business enterprises as required in prior OGS Contracts; the fact that such Subcontractor or supplier is on the New York State Department of Labor's list of companies with which New York State cannot do business; the Commissioner's determination that the company is not qualified or is not responsible; or the fact that the company has previously provided unsatisfactory work or services.

**42. SUSPENSION OF WORK** The Commissioner, in his or her sole discretion, reserves the right to suspend any or all activities under the Contract, at any time, in the best interests of the Authorized User. 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 or reduction in State spending, declaration of emergency, contract compliance issues or other 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 performance under the Contract.

An Authorized User may issue a formal written notice for the suspension of work for which it has engaged the Contractor for reasons specified in the above paragraph. The written notice shall set forth the reason for such suspension and a copy of the written notice shall be provided to the Commissioner.

#### **43. TERMINATION**

**a. For Cause** For a material breach that remains uncured for more than 30 calendar days or other longer period as specified by written notice to the Contractor, the Contract or Purchase Order may be terminated by the Commissioner or Authorized User respectively. Neither the State nor an Authorized User shall be liable for any of Contractor's costs arising from the failure to perform or the termination, including without limitation costs incurred after the date of termination. Such termination shall be upon written notice to the Contractor. In such event, the Commissioner or Authorized User may complete the contractual requirements in any manner it may deem advisable and pursue available legal or equitable remedies for breach.

**b. For Convenience** This Contract may be terminated at any time by the Commissioner for convenience upon 60 calendar days or other longer period as specified by written notice, without penalty or other early termination charges due. Such termination of the Contract shall not affect any project or Purchase Order that has been issued under the Contract prior to the date of such termination. If the Contract is terminated pursuant to this subdivision, the Authorized User shall remain liable for all accrued but unpaid charges incurred through the date of the termination. Contractor shall use due diligence and fulfill any outstanding Purchase Orders.

**c. For Violation of Sections 139-j and 139-k of the State Finance Law** The Commissioner reserves the right to terminate the Contract in the event it is found that the certification filed by the Bidder in accordance with Section 139-k of the State Finance Law was intentionally false or intentionally incomplete. Upon such finding, the Commissioner may exercise his or her termination right by providing written notification to the Contractor in accordance with the written notification terms of the Contract.

**d. For Violation of Section 5-a of the New York State Tax Law** The Commissioner reserves the right to terminate the Contract in the event it is found that the certification filed by the Contractor in accordance with Section 5-a of the Tax Law is not timely filed during the term of the Contract or the certification furnished was intentionally false or intentionally incomplete. Upon such finding, the Commissioner may exercise his or her termination right by providing written notification to the Contractor in accordance with the written notification terms of the Contract.

**e. For Non-Responsibility** The Bidder agrees that if it is found by the State that the Bidder's responses to the Vendor Responsibility Questionnaire were intentionally false or intentionally incomplete, on such finding, the Commissioner may terminate the Contract.

Upon written notice to the Contractor, and a reasonable opportunity to be heard with appropriate OGS officials or staff, the Contract may be terminated by the Commissioner at the Contractor's expense where the Contractor is determined by the Commissioner to be non-responsible. In such event, the Commissioner may complete the contractual

requirements in any manner he or she may deem advisable and pursue available legal or equitable remedies for breach.

In no case shall such termination of the Contract by the State be deemed a breach thereof, nor shall the State be liable for any damages for lost profits or otherwise, which may be sustained by the Contractor as a result of such termination.

**f. Upon Conviction of Certain Crimes** The Commissioner reserves the right to terminate the Contract in the event it is found that a member, partner, director or officer of Contractor is convicted of one or more of the following: Bribery Involving Public Servants and Related Offenses as defined in Article 200 of the New York State Penal Law; Corrupting the Government as defined in Article 496 of the New York State Penal Law; or Defrauding the Government as defined in Section 195.20 of the New York State Penal Law.

**44. SAVINGS/FORCE MAJEURE** A force majeure occurrence is an event or effect that cannot be reasonably anticipated or controlled and is not due to the negligence or willful misconduct of the affected party. Force majeure includes, but is not limited to, acts of God, acts of war, acts of public enemies, terrorism, strikes, fires, explosions, actions of the elements, floods, or other similar causes beyond the control of the Contractor or the Commissioner in the performance of the Contract where non-performance, by exercise of reasonable diligence, cannot be prevented.

The affected party shall provide the other party with written notice of any force majeure occurrence as soon as the delay is known and provide the other party with a written contingency plan to address the force majeure occurrence, including, but not limited to, specificity on quantities of materials, tooling, people, and other resources that will need to be redirected to another facility and the process of redirecting them. Furthermore, the affected party shall use its commercially reasonable efforts to resume proper performance within an appropriate period of time. Notwithstanding the foregoing, if the force majeure condition continues beyond 30 days, the parties to the Contract shall jointly decide on an appropriate course of action that will permit fulfillment of the parties' objectives under the Contract.

The Contractor agrees that in the event of a delay or failure of performance by the Contractor under the Contract due to a force majeure occurrence:

- a. The Commissioner may 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 quantities without penalty or liability to the State, or
- b. The Contractor will provide Authorized Users with access to Products first in order to fulfill orders placed before the force majeure event occurred. The Commissioner agrees that Authorized Users shall accept allocated performance or deliveries during the occurrence of the force majeure event.

Neither the Contractor nor the Commissioner shall be liable to the other for any delay in or failure of performance under the Contract due to a force majeure occurrence. Any such delay in or failure of performance shall not constitute default or give rise to any liability for damages. The existence of such causes of such delay or failure shall extend the period for performance to such extent as determined by the Contractor and the Commissioner to be necessary to enable complete performance by the Contractor if reasonable diligence is exercised after the cause of delay or failure has been removed.

Notwithstanding the above, at the discretion of the Commissioner where the delay or failure will significantly impair the value of the Contract to the State or to Authorized Users, the Commissioner may terminate the Contract or the portion thereof which is subject to delays, and thereby discharge any unexecuted portion of the Contract or the relative part thereof.

In addition, the Commissioner reserves the right, in his or 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: (i) the volatility is due to causes outside the control of Contractor; (ii) the volatility affects the marketplace or industry, not just the particular Contract source of supply; (iii) the effect on pricing or availability of supply is substantial; and (iv) the volatility so affects Contractor's performance that continued performance of the Contract would result in a substantial loss to the Contractor. In the event of a dispute between the Contractor and the Commissioner, such dispute shall be resolved in accordance with the OGS Dispute Resolution Procedures; provided, however, that nothing in this clause shall excuse the Contractor from performing in accordance with the Contract as changed.

#### **45. CONTRACT INVOICING**

**a. Invoicing** Contractor and the dealers/distributors/resellers designated by the Contractor, if any, shall provide complete and accurate billing invoices to each Authorized User in order to receive payment. Billing invoices submitted to an Authorized User must contain all information required by the Contract and the State Comptroller or other appropriate fiscal officer.

Contractor shall provide, upon request of the Commissioner, any and all information necessary to verify the accuracy of the billings. Such information shall be provided in a commercially reasonable manner as requested by the Commissioner. The Commissioner may direct the Contractor to provide the information to the State Comptroller or to any Authorized User of the Contract.

**b. Payment of Contract Purchases made by an Authorized User when the State Comptroller is responsible for issuing such payment** The Authorized User and Contractor agree that payments for invoices submitted by the Contractor shall only be rendered electronically unless payment by paper check is expressly authorized by the Commissioner, in the Commissioner's sole discretion, due to extenuating circumstances. Such electronic payments shall be made in accordance with ordinary State procedures and practices. The Contractor shall comply with the State Comptroller's procedures to authorize electronic payments. Authorization forms are available at the State Comptroller website at [www.osc.state.ny.us](http://www.osc.state.ny.us), by e-mail at [HelpDesk@sfs.ny.gov](mailto:HelpDesk@sfs.ny.gov), or by telephone at (518) 457-7737 or toll free (877) 737-4185. Contractor acknowledges that it will not receive payment on any invoices submitted under this Contract that are payable by the State Comptroller if it does not comply with the State Comptroller's electronic payment procedures, except where the Commissioner has expressly authorized payment by paper check as set forth above.

**c. Payment of Contract Purchases made by an Authorized User when the State Comptroller is not responsible for issuing such payment** The Authorized User and Contractor agree that payments for such Contract purchases shall be billed directly by Contractor on invoices/vouchers, together with complete and accurate supporting documentation as required by the Authorized User. Such payments shall be as mandated by the appropriate governing law from the receipt

of a proper invoice. Such Authorized User and Contractor are strongly encouraged to establish electronic payments.

#### **46. DEFAULT – AUTHORIZED USER**

**a. Breach by Authorized User** An Authorized User's breach shall not be deemed a breach of the Centralized Contract; rather, it shall be deemed a breach of the Authorized User's performance under the terms and conditions of the Centralized Contract.

**b. Failure to Make Payment** In the event a participating Authorized User fails to make payment to the Contractor for Products delivered, accepted and properly invoiced, within 30 calendar days of such delivery and acceptance, the Contractor may, upon five business days advance written notice to both the Commissioner and the Authorized User's purchasing official, suspend additional provision of Products to such entity until such time as reasonable arrangements have been made and assurances given by such entity for current and future Contract payments.

**c. Notice of Breach** Notwithstanding the foregoing, the Contractor shall, at least 10 business 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.

**d. Insufficient basis** If the Contractor's basis for declaring a breach is insufficient, the Contractor's declaration of breach and failure to provide Products to an Authorized User may constitute a breach of the Contract, and the Authorized User may thereafter seek any remedy available at law or equity.

#### **47. PROMPT PAYMENTS**

**a. By State Agencies** Upon acceptance of Product or as otherwise provided by Contract, Contractor may invoice for payment. The required payment date shall be 30 calendar days, excluding legal holidays, from the receipt of a proper invoice, as determined in accordance with State Finance Law Section 179-f(2) and 2 NYCRR Part 18. The payment of interest on certain payments due and owed by the State Agency may be made in accordance with State Finance Law Sections 179-d et seq. and the implementing regulations (2 NYCRR § 18.1 et seq.).

**b. By Non-State Agencies** Upon acceptance of Product or as otherwise provided by Contract, Contractor may invoice for payment. The required payment date shall be 30 calendar days, excluding legal holidays, or as mandated by the appropriate governing law from the receipt of a proper invoice. The terms of Article 11-A of the State Finance Law 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 agency Authorized Users. Neither OGS nor the State Comptroller is 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.

**48. REMEDIES FOR BREACH** Unless otherwise specified by the Authorized User in a Mini-Bid or Purchase Order, in the event that Contractor fails to observe or perform any term or condition of the Contract and such failure remains uncured after 15 calendar days following written notice by the Commissioner or an Authorized User,

the Commissioner or an Authorized User may exercise all rights and remedies available at law or in equity. Notwithstanding the foregoing, if such failure is of a nature that it cannot be cured completely within 15 calendar days and Contractor shall have commenced its cure of such failure within such period and shall thereafter diligently prosecute all steps necessary to cure such failure, such 15-day period may, in the sole discretion of the Commissioner or the Authorized User, be extended for a reasonable period in no event to exceed 60 calendar days. It is understood and agreed that the rights and remedies available to the Commissioner and Authorized Users in the event of breach shall include but not be limited to the following:

**a. Cover/Substitute Performance** In the event of Contractor's material, uncured breach, the Commissioner or Authorized User may, with or without issuing a formal Solicitation: (i) purchase from other sources; or (ii) if the Commissioner or Authorized User is unsuccessful after making reasonable attempts, under the circumstances then-existing, to timely obtain acceptable replacement Product of equal or comparable quality, the Commissioner or Authorized User may acquire acceptable replacement Product of lesser or greater quality. Such purchases may be deducted from the Contract quantity without penalty or liability to the State.

**b. Withhold Payment** In any case where a reasonable question of material, uncured non-performance by Contractor arises, payment may be withheld in whole or in part at the discretion of the Authorized User.

**c. Bankruptcy** In the event that the Contractor files, or there is filed against Contractor, a petition under the U.S. Bankruptcy Code during the term of this Centralized Contract, Authorized Users may, at their discretion, make application to exercise their right to set-off against monies due the debtor or, under the doctrine of recoupment, be credited the amounts owed by the Contractor arising out of the same transactions.

**d. Reimbursement of Costs Incurred** The Contractor agrees to reimburse the Authorized User promptly for any and all additional costs and expenses incurred for acquiring acceptable 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, 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 ordering Authorized User may obtain replacement Product temporarily and the cost of the replacement Product shall be deducted from the Contract quantity without penalty or liability to the State.

**e. Deduction/Credit** Sums due as a result of these remedies may be deducted or offset by the 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 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, damages, etc., that arise from the administration of the Contract.

**49. ASSIGNMENT OF CLAIM** Contractor hereby assigns to the State any and all claims for overcharges associated with this Contract that may arise under the antitrust laws of the United States, 15 USC

Section 1, et seq. and the antitrust laws of the State of New York, General Business Law Section 340, et seq.

**50. 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 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 Safety Data Sheet must be provided to and approved by the Authorized User.

**51. INDEPENDENT CONTRACTOR** It is understood and agreed that the legal status of the Contractor, its Subcontractors, agents, officers and employees under this Contract is that of an independent contractor, and in no manner shall they be deemed employees of the Authorized User, and therefore are not entitled to any of the benefits associated with such employment.

**52. SECURITY** Contractor warrants, covenants and represents that, in the performance of the Contract, Contractor, its agents, Subcontractors, officers, distributors, resellers and employees will comply fully with all security procedures of the Authorized User set forth in the Contract or Purchase Order or otherwise communicated in advance to the Contractor including but not limited to physical, facility, documentary and cyber security rules, procedures and protocols.

**53. COOPERATION WITH THIRD PARTIES** The Contractor shall be responsible for fully cooperating with any third party, including but not limited to other Contractors or Subcontractors of the Authorized User, as necessary to ensure delivery or performance of Product.

**54. WARRANTIES**

**a. Product Performance** Contractor hereby warrants and represents that the Products acquired by the Authorized User under this Contract conform to the manufacturer's specifications, performance standards and Documentation and that the Documentation fully describes the proper procedure for using the Products.

**b. Title and Ownership** Contractor warrants and represents that it has (i) full ownership, clear title free of all liens, or (ii) the right to transfer or deliver specified license rights to any Products acquired by Authorized User under this Contract. Contractor shall be solely liable for any costs of acquisition associated therewith. Contractor shall indemnify Authorized Users and hold Authorized Users harmless from any damages and liabilities (including reasonable attorneys' fees and costs) arising from any breach of Contractor's warranties as set forth herein.

**c. Product Warranty** Contractor further warrants and represents that Products, components or parts specified and furnished by or through Contractor, whether specified and furnished individually or as a system, shall be substantially free from defects in material and workmanship and will conform to all requirements of the Contract for the manufacturer's standard commercial warranty period, if applicable, or for a minimum of one year from the date of acceptance, whichever is longer (the "Product warranty period").

During the Product warranty period, defects in the materials or workmanship of Products, components, or parts specified and furnished by or through Contractor, whether specified and furnished

individually or as a system, shall be repaired or replaced by Contractor at no cost or expense to the Authorized User. Contractor shall extend the Product warranty period for individual Products, or for the system as a whole, as applicable, by the cumulative periods of time, after notification, during which an individual Product, or the system as a whole, requires repairs or replacement resulting in down time or is in the possession of the Contractor, its agents, officers, Subcontractors, distributors, resellers or employees (“extended warranty”).

Any component or part replaced by the Contractor under the Contract warranties shall be guaranteed for the greater of: (i) the Product warranty period set forth herein; or (ii) the manufacturer’s standard commercial warranty period offered for the component or part, if applicable.

All costs for materials, labor, and transportation incurred to repair or replace Products, parts, components, or systems as a whole 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.

Where Contractor, the Third-Party Software vendor, or other third-party manufacturer markets any Product 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 Product warranty and extended warranty periods. Where such standard commercial warranty covers all or some of the Product warranty or extended warranty periods, Contractor shall be responsible for the coordination during the Product warranty or extended warranty periods with Third-Party Software vendor or other third-party manufacturers for warranty repair or replacement of Third-Party Software vendor or other third-party manufacturer’s Product.

Where Contractor, Third-Party Software vendor, or other third-party manufacturer markets any Product with a standard commercial warranty that goes beyond the Product warranty or extended warranty periods, Contractor shall notify the Authorized User and pass through the standard commercial warranty to Authorized User at no additional charge; provided, however, that Contractor shall not be responsible for coordinating services under the standard commercial warranty after expiration of the Product warranty and extended warranty periods.

Unless recycled, recyclable, or recovered materials are available in accordance with the Remanufactured, Recycled, Recyclable, 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. Contractor further warrants and represents that no component or part has been substituted or applied contrary to the manufacturer’s recommendations and standard practice.

Contractor shall not be responsible for any modification of the Products made by an Authorized User without Contractor’s approval.

**d. Virus Warranty** The Contractor represents and warrants that any Product acquired under the Contract by the Authorized User does not contain any known Viruses. Contractor is not responsible for Viruses introduced at an Authorized User’s Site.

**e. Date/Time Warranty** Contractor warrants that Product 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.

**f. Workmanship Warranty** Contractor warrants that the services acquired under this Contract will be provided in a professional and workmanlike manner in accordance with the applicable industry standards, if any. The Authorized User must notify Contractor of any services warranty deficiencies within 90 calendar days from performance of the services that gave rise to the warranty claim.

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

**h. Prompt Notice of Breach** The Authorized User shall promptly notify the Contractor and the Commissioner in writing of any claim of breach of any warranty provided herein.

**i. Additional Warranties** Where Contractor, Product manufacturer or service provider generally offers additional or more advantageous warranties than those set forth herein, Contractor shall offer or pass through any such warranties to Authorized Users.

**j. No Limitation of Rights** The rights and remedies of the State and the Authorized Users provided in this clause are in addition to and do not limit any rights afforded to the State and the Authorized Users by any other clause of the Contract.

**55. LEGAL COMPLIANCE** Contractor represents and warrants that it shall secure all notices and comply with all applicable 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 extensions thereof, Contractor must establish to the satisfaction of the Commissioner that it meets or exceeds all requirements of the Solicitation and Contract and any applicable laws, including but not limited to, permits, licensing, and shall provide such proof as required by the Commissioner. Failure to comply or failure to provide proof may constitute grounds for the Commissioner to terminate or suspend the Contract, in whole or in part, or to take any other action deemed necessary by the Commissioner. Contractor also agrees to disclose information and provide affirmations and certifications to comply with Sections 139-j and 139-k of the State Finance Law.

**56. INDEMNIFICATION** Contractor shall be fully liable for the actions of its agents, employees, partners or Subcontractors and shall fully defend, indemnify and hold the Authorized Users harmless from suits, actions, proceedings, claims, losses, damages, and costs (including reasonable attorney fees) of every name and description relating to personal injury and damage to real or personal tangible property caused by any intentional act or negligence of Contractor, its agents, employees, partners or Subcontractors, which shall arise from or result directly or indirectly from this Contract, without limitation;

provided, however, that the Contractor shall not be obligated to indemnify an Authorized User for any claim, loss or damage arising hereunder to the extent caused by the negligent act, failure to act, gross negligence or willful misconduct of the Authorized User.

The Authorized User shall give Contractor: (i) prompt written notice of any action, claim or threat of suit, or other suit for which Contractor is required to fully indemnify an Authorized User, (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, claim or suit at the expense of Contractor. Notwithstanding the foregoing, the State reserves the right to join such action, at its sole expense, if it determines there is an issue involving a significant public interest.

In the event that an action or proceeding at law or in equity is commenced against the Authorized User arising out of a claim for death, personal injury or damage to real or personal tangible property caused by any intentional or willful act, gross negligence, or negligence of Contractor, its agents, employees, partners or Subcontractors, which shall arise from or result directly or indirectly from the Products supplied under this Contract, and Contractor is of the opinion that the allegations in such action or proceeding in whole or in part are not covered by the indemnification and defense provisions set forth in the Contract, Contractor shall immediately notify the Authorized User and the New York State Office of the Attorney General in writing and shall specify to what extent Contractor believes it is obligated to defend and indemnify under the terms and conditions of the Contract and to what extent it is not so obligated to defend and indemnify. Contractor shall in such event protect the interests of the Authorized User and attempt to secure a continuance to permit the State and the Authorized User to appear and defend their interests in cooperation with Contractor, as is appropriate, including any jurisdictional defenses the State and Authorized User may have. In the event of a dispute regarding the defense, the Contractor and the Attorney General shall try to reach an amicable resolution, but the Attorney General shall have the final determination on such matters.

#### **57. INDEMNIFICATION RELATING TO INFRINGEMENT**

The Contractor shall also defend, indemnify and hold the Authorized Users harmless from all suits, actions, proceedings, claims, losses, damages, and costs of every name and description (including reasonable attorney fees), relating to a claim of infringement of a patent, copyright, trademark, trade secret or other proprietary right provided such claim arises solely out of the Products as supplied by the Contractor, and not out of any modification to the Products made by the Authorized User or by someone other than Contractor at the direction of the Authorized User without Contractor's approval; provided, however, that the Contractor shall not be obligated to indemnify an Authorized User for any claim, loss or damage arising hereunder to the extent caused by the negligent act, failure to act, gross negligence or willful misconduct of the Authorized User.

The Authorized User shall give Contractor: (i) prompt written notice of any action, claim or threat of suit alleging infringement, (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, claim or suit at the expense of Contractor. Notwithstanding the foregoing, the State reserves the right to join such action, at its sole expense, if it determines there is an issue involving a significant public interest.

If usage of a Product 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 to take action in the following order of precedence: (i) to procure for the Authorized User the right to continue usage (ii) to modify the service or Product so that usage becomes non-infringing, and is of at least equal quality and performance; or (iii) to replace such Product or parts thereof, as applicable, with non-infringing Product of at least equal quality and performance. If the above remedies are not available, the parties shall terminate the Contract, in whole or in part as necessary and applicable, provided that the Authorized User is given a refund for any amounts paid for the period during which usage was not feasible.

In the event that an action or proceeding at law or in equity is commenced against the Authorized User arising out of a claim that the Authorized User's use of the Product under the Contract infringes any patent, copyright, trademark, trade secret or proprietary right, and Contractor is of the opinion that the allegations in such action or proceeding in whole or in part are not covered by the indemnification and defense provisions set forth in the Contract, Contractor shall immediately notify the Authorized User and the New York State Office of the Attorney General in writing and shall specify to what extent Contractor believes it is obligated to defend and indemnify under the terms and conditions of the Contract and to what extent it is not so obligated to defend and indemnify. Contractor shall in such event protect the interests of the Authorized User and attempt to secure a continuance to permit the State and the Authorized User to appear and defend their interests in cooperation with Contractor, as is appropriate, including any jurisdictional defenses the State and Authorized User may have. In the event of a dispute regarding the defense, the Contractor and the Attorney General shall try to reach an amicable resolution, but the Attorney General shall have the final determination on such matters. This constitutes the Authorized User's sole and exclusive remedy for infringement of a patent, copyright, trademark, trade secret, or other proprietary right.

**58. LIMITATION OF LIABILITY** Except as otherwise set forth in the Indemnification clause and the Indemnification Relating to Infringement clause, the limit of liability shall be as follows:

**a.** Contractor's liability for any claim, loss or liability arising out of, or connected with the Products provided, and whether based upon default, or other liability such as breach of contract, warranty, negligence, misrepresentation or otherwise, shall in no case exceed direct damages in: (i) an amount equal to two (2) times the charges specified in the Purchase Order for the Products forming the basis of the Authorized User's claim or (ii) five hundred thousand dollars (\$500,000), whichever is greater.

**b.** The Authorized User may retain such monies from any amount due Contractor as may be necessary to satisfy any claim for damages, costs and the like asserted against the Authorized User unless Contractor at the time of the presentation of claim shall demonstrate to the Authorized User's satisfaction that sufficient monies are set aside by the Contractor in the form of a bond or through insurance coverage to cover associated damages and other costs.

**c.** Notwithstanding the above, neither the Contractor nor the Authorized User shall be liable for any consequential, indirect or special damages of any kind which may result directly or indirectly from such performance, including, without limitation, damages resulting from loss of use or loss of profit by the Authorized User, the Contractor, or by others.

#### **59. DISPUTE RESOLUTION PROCEDURES**

It is the policy of OGS to provide interested parties, as defined in the OGS Dispute Resolution Procedures, with an opportunity to

administratively resolve disputes, complaints or inquiries related to Solicitations, contract awards and contract administration. OGS encourages interested parties to seek resolution of disputes through consultation with OGS staff. All such matters shall be accorded impartial and timely consideration. Interested parties may also file formal written disputes. A copy of the OGS Dispute Resolution Procedures may be obtained by contacting the designated contact for the Solicitation, the Contract manager, or at the OGS website. OGS reserves the right to change the procedures set forth in the Dispute Resolution Procedures without seeking a Contract amendment.

*To the extent the scope of the Solicitation or Contract includes the sale, development, maintenance, or use of information technology Products such as software, computer components, systems, or networks for the processing, and distribution, or storage, or storage of data, the following clauses shall govern, as applicable.*

**60. 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 (e.g., payroll size, number of employees, CPU, MIPS, MSU, concurrent user, workstation, virtual partition). Licensee shall have the right to use those modifications or customizations of the Product that have been purchased by Licensee and to distribute such modifications or customizations for use by any Authorized Users otherwise licensed to use the Product, provided that any modifications or customizations, 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.

Licensee and Contractor may agree to alternative licensing rights (e.g., subscription, term, virtual) for specific Products used by the Contractor in performing the services, provided such agreement is reached prior to Bid, Mini-Bid, RFQ, or Contract award, as applicable. Such licensing rights will be specified in an applicable Purchase Order or other document approved by Licensee and Contractor.

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

**c. Product Documentation** Contractor shall provide Product Documentation electronically to Licensee at no charge. If Product Documentation is made available to customers in hard copy, Contractor shall provide at no charge one hard copy.

Contractor hereby grants to Licensee a non-exclusive, fully paid-up, royalty-free perpetual license in the Product Documentation to make, reproduce, and distribute, either electronically or otherwise, copies of the Product Documentation as necessary to enjoy full use of the Product in accordance with the Contract.

**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. Contractor shall fully disclose all terms and conditions of maintenance available to Licensee, including the extent to which updates, upgrades, revisions, and new releases are included in maintenance. Maintenance terms and any renewals thereof are independent of the expiration of the Centralized Contract term and shall not automatically renew.

Unless otherwise provided by written agreement between the Contractor and Licensee, maintenance offered shall include, at a minimum, (i) the provision of Error Corrections, updates, enhancements, revisions, Patches, and upgrades to Licensee, and (ii) help desk assistance at no additional cost, either by toll-free telephone

or on-line functionality. Contractor shall maintain the Product so as to provide Licensee with the ability to utilize the Product in accordance with the Product Documentation without significant functional downtime to its ongoing business operations during the maintenance term.

Licensee 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 Licensee 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 that would have been due under the Contract for the period of time that such maintenance had lapsed, at then current NYS net maintenance rates. Contractor shall submit written notification to Licensees of the upcoming maintenance end date no later than 60 calendar days prior to such maintenance end date.

**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 within Agencies, between Agencies, and pursuant to governmental restructuring or reorganization ("permitted license transfers"). Licensees do not have to obtain the approval of Contractor for permitted license transfers, but must give 30 days prior written notice to Contractor of such moves 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 Third Parties** Third parties 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: (i) Licensee gives notice to Contractor of such third party, Site of intended use of the Product, and means of access; and (ii) such third 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 (iii) such third party maintains 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.

**g. Archival Back-Up and Disaster Recovery** Licensee may use and copy the Product and related Documentation in connection with: (i) reproducing a reasonable number of copies of the Product for

archival backup and disaster recovery procedures; (ii) reproducing a reasonable number of copies of the Product and related Documentation for cold site storage; (iii) 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 herein. The phrase "cold site storage" means a restorable back-up copy of the Product not to be installed until the need for disaster recovery arises. The phrase "disaster recovery" means 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. Contractor shall fully disclose all archival back-up and disaster recovery options available to Licensee (e.g., cold, warm, and hot back-up), including all terms and conditions, additional charges, or use authorizations associated with such options.

**h. Confidentiality Restrictions** If any portion of the Product or Product Documentation contains confidential, proprietary, or trade secret information, the Contractor shall identify such information in writing to the Licensee. The terms of Licensee's use and disclosure of such information shall be governed by a written agreement between the Contractor and the Licensee, which, in the case of Licensees that are State or local governmental entities, recognizes that they are subject to the New York Freedom of Information Law.

**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; or (iii) export the Licensed Software in violation of the Export Administration Regulations (EAR) or the International Traffic in Arms Regulations (ITAR).

**61. PRODUCT ACCEPTANCE** Unless otherwise provided by mutual agreement of the Authorized User and the Contractor, an Authorized User shall have 30 days from the date of delivery to accept hardware Products and 60 days from the date of delivery to accept all other Product. Where the Contractor is responsible for installation, acceptance shall be from completion of installation. Title or other property interest and risk of loss shall not pass from Contractor to the Authorized User until the Products have been accepted. Failure to provide notice of acceptance or rejection or a deficiency statement to the Contractor by the end of the period provided for under this clause constitutes acceptance by the Authorized User as of the expiration of that period. The license term shall be extended by the time periods allowed for trial use, 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 to be specified by Authorized User. Where using its own data or tests, Authorized User must have the tests or data available upon delivery. This demonstration will take the form of a documented installation test, capable of observation by the Authorized User, which shall be made part of the Contractor's standard documentation and shall be covered by the Product warranty. 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 an additional 30 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 Authorized User for damages, loss of profits, expenses, or other remuneration of any kind.

Unless otherwise provided by mutual agreement of the Authorized User and the Contractor, if the Authorized User elects to provide a deficiency statement specifying how the Product fails to meet the specifications within the testing period, Contractor shall have 30 days to correct the deficiency, and the Authorized User shall have an additional 60 days to evaluate the Product as provided herein.

If the Product does not meet the specifications at the end of the extended testing period, Authorized User, upon prior written notice to Contractor, may then reject the Product and return all defective Product to Contractor, and Contractor shall refund any monies paid by the Authorized User to Contractor therefor. 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 the amounts set forth in the Limitation of Liability clause for any liability for costs incurred at the direction or recommendation of Contractor. When Product is not accepted, it must be removed by the Contractor from the premises of the Authorized User within ten calendar days of notification of non-acceptance by the Authorized User. Rejected items not removed by the Contractor within the ten calendar day period shall be regarded as abandoned by the Contractor and the Authorized User shall have the right to dispose of Product as its own property. The Contractor shall promptly reimburse the Authorized User for any costs incurred in storage or effecting removal or disposition after the ten calendar day period.

**62. 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. Contractor may conduct such audits remotely or on Site. If conducted remotely and if Contractor makes a license management program available, the Licensee agrees to install such program and use it within a reasonable period of time, provided such program meets Licensee's security or other requirements. If conducted on Site: (i) Contractor shall give Licensee at least 30 days advance written notice, (ii) such audit shall be conducted during Licensee's normal business hours, (iii) the audit shall be conducted by an independent auditor chosen on mutual agreement of the parties. Contractor shall recommend a minimum of three auditing/accounting firms from which the Licensee will select one; and (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. If the audit shows that such party is not in compliance, Licensee shall be required to purchase additional licenses or capacities necessary to bring it into compliance and shall pay for the unlicensed capacity at the net pricing in effect under the Contract 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.

In the event of an on-Site audit, the Software Alliance, Software Publishers Association (SPA), Software and Industry Information Association (SIIA) or Federation Against Software Theft (FAST) may not be used directly or indirectly to conduct such audit, nor may such entities be recommended by Contractor.

**63. NO HARDSTOP OR PASSIVE LICENSE MONITORING** Unless otherwise expressly agreed to by the Licensee, the Product and all upgrades shall 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). Any Contractor access to the Product agreed to by Licensee as provided above shall be in accordance with Licensee's security or other requirements. Contractor agrees that in the event of a breach of this provision that Licensee shall not have an adequate remedy at law, including monetary damages, and that Licensee 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 Licensee shall be entitled.

**64. OWNERSHIP/TITLE TO PROJECT DELIVERABLES**

This clause shall apply where Contractor is commissioned by the Authorized User to furnish project deliverables as detailed in the Purchase Order.

**a. Definitions**

(i) For purposes of this clause, "Products" means deliverables 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), whether printed in hard copy or maintained on electronic media 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) For purposes of this clause, "Existing Products" means tangible Products and intangible licensed Products that exist prior to the commencement of work under the Contract. Contractor bears the burden of proving that a particular product was in existence prior to the commencement of the project.

(iii) For purposes of this clause, "Custom Products" means Products, preliminary, final, or otherwise, that are created or developed by Contractor, its Subcontractors, partners, employees, or agents for Authorized User under the Contract.

**b. Title to Project Deliverables** Unless otherwise specified in writing in the Purchase Order, the Authorized User shall have ownership and license rights as follows:

**(i) Existing Products:**

**1. Hardware** - Title and ownership of Existing hardware Products shall pass to Authorized User upon acceptance.

**2. Software** - Title and ownership to Existing software Products delivered by Contractor under the Contract that is normally commercially distributed on a license basis by the Contractor or other Third-Party Software vendor ("Existing Licensed Product"), whether or not embedded in, delivered or operating in conjunction with hardware or Custom Products, shall remain with Contractor or the Third-Party Software vendor. Effective upon acceptance, such Product shall be licensed to Authorized User in accordance with the Contractor or Third-Party Software vendor'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 Purchase Order or work order with all license rights necessary to fully effect the general business purposes stated in the Solicitation or Authorized User's Purchase Order or 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 Third-Party Software vendor'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 clause.

**(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 Products, 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 Purchase Order, project definition or work order in the course of Contractor's business. 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 purposes 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 purchases 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 its Licensee'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 Products, 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 clause.

**e. Contractor's Obligation with Regard to Third-Party Software** Where Contractor furnishes Existing Licensed Products as a project deliverable, and sufficient rights necessary to effect the purposes of this section are not otherwise provided in the Contractor or the Third-Party Software vendor's standard license agreement, Contractor shall be responsible for obtaining from the Third-Party Software proprietary owner/developer the rights set forth herein to the benefit of the Authorized User at Contractor's sole cost and expense.

**65. PROOF OF LICENSE** The Contractor must provide to each Licensee who places a Purchase Order either: (i) the Product developer's certified license confirmation certificates in the name of such Licensee; (ii) a written confirmation from the proprietary owner accepting Product invoice as proof of license; or (iii) other similar proof of license. All proofs of license must be in a form acceptable to the Licensee.

**66. 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: (i) notify the Commissioner and each Licensee then under contract for maintenance or technical support in writing of the intended discontinuance; and (ii) 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 similarly situated, supported customer, or (b) not less than 12 months from the date of notice; and (iii) at Licensee's option, and in order to enable Licensee to continue the use and maintenance of the Product, provide Licensee with a Product replacement or migration path with at least equivalent functionality at no additional charge, provided that Licensee is under contract for maintenance on the date of notice and Contractor is offering such replacement or migration path to all of its similarly situated, supported customers without additional charge.

In the event that the Contractor is not the Product manufacturer, Contractor shall be required to: (i) provide the notice required under the paragraph above, to the entities described within five business days of Contractor receiving notice from the Product manufacturer, and (ii) include in such notice the period of time from the date of notice that the Product manufacturer will continue to provide Product or withdraw support.

The provisions of this subdivision (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: (i) notify the Commissioner and each Licensee in writing of the intended change; (ii) 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 similarly situated, supported customer, or (b) not less than 12 months from the date of notice; and (iii) 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.

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# Enterprise Agreement

# State and Local

## Custom Program Agreement Terms and Conditions

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

**Effective date.** The effective date of this Agreement is the effective date of any Enrollment entered into under this Agreement or the date Microsoft accepts this Agreement, whichever is earlier.

This Agreement consists of (1) the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984) and these Program Agreement terms and conditions, including any amendments and the signature form and all attachments identified therein, (2) the Product Terms applicable to Products licensed under this Agreement, (3) the Online Services Terms, (4) any Affiliate Enrollment entered into under this Agreement, and (5) any order submitted under this Agreement.

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

### ***Terms and Conditions***

#### **1. Definitions.**

“Affiliate” shall have the definition as set forth in Section 1.8(A) and (B) of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

“Customer” shall have the definition as set forth in Section 1.8 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

“Customer Data” shall have the definition as set forth in Section 1.8 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

“day” means a calendar day, except for references that specify “business day”.

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

“Enrollment” means the document that an Enrolled Affiliate submits under this Agreement to place orders for Products.

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

“Fixes” shall have the definition as set forth in Section 1.8 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

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

“Microsoft” means the Microsoft Affiliate that has entered into this Agreement or an Enrollment and its Affiliates, as appropriate.

“Online Services” shall have the definition as set forth in Section 1.8 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

“Online Services Terms” means the additional terms that apply to Enrolled Customer’s use of Online Services published on the Volume Licensing Site and updated from time to time.

“Product” shall have the definition as set forth in section 1.8 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

“Product Terms” shall have the definition as set forth in Section 1.8 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

“SLA” means Service Level Agreement, which shall have the definition as set forth in Section 1.8 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

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

“Software Assurance” shall have the definition as set forth in Section 1.58 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

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

“Use Rights” shall have the definition as set forth in Section 1.8 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

“Volume Licensing Site” shall have the same meaning as “Licensing Site” in the Custom Microsoft Business Agreement (OGS Contract No. PS67984).

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

- a. **General.** The Enterprise program consists of the terms and conditions on which an Enrolled Affiliate may acquire Product Licenses. Under the Enterprise program, Customer and its Affiliates may order Licenses for Products by entering into Enrollments.
- b. **Enrollments.** The Enterprise program gives Customer and/or its Affiliates the ability to enter into one or more Enrollments to order Products. Subscription Enrollments may be available for some of these Enrollments. Notwithstanding any other provision of this Agreement, only Enrolled Affiliates identified in an Enrollment will be responsible for complying with the terms of that Enrollment, including the terms of this Agreement incorporated by reference in that Enrollment.
- c. **Licenses.** The types of Licenses available are (1) Licenses obtained under Software Assurance (L&SA), and (2) Subscription Licenses. These License types, as well as additional License Types, are further described in the Product Terms.

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

- a. **License Grant.** Microsoft grants the Enterprise a non-exclusive, worldwide and limited right to download, install and use software Products, and to access and use the Online Services, each in the quantity ordered under an Enrollment. The rights granted are subject to the terms of this Agreement, the Use Rights and the Product Terms. Microsoft reserves all rights not expressly granted in this Agreement.
- b. **Duration of Licenses.** Subscription Licenses and most Software Assurance rights are temporary and expire when the applicable Enrollment is terminated or expires, unless the Enrolled Affiliate exercises a buy-out option, which is available for some Subscription Licenses. Except as otherwise noted in the applicable Enrollment or Use Rights, all other Licenses

become perpetual only when all payments for that License have been made and the initial Enrollment term has expired.

- c. **Applicable Use Rights.** This section is intentionally omitted and is included in Section 4.31 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).
- d. **Downgrade rights.** This section is intentionally omitted and is included in Section 4.32 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).
- e. **New Version Rights under Software Assurance.** Enrolled Affiliate must order and maintain continuous Software Assurance coverage for each License ordered. With Software Assurance coverage, Enterprise automatically has the right to use a new version of a licensed Product as soon as it is released, even if Enrolled Affiliate chooses not to use the new version immediately.
  - (i) Except as otherwise permitted under an Enrollment, use of the new version will be subject to the new version's Use Rights.
  - (ii) If the License for the earlier version of the Product is perpetual at the time the new version is released, the License for the new version will also be perpetual. Perpetual Licenses obtained through Software Assurance replace any perpetual Licenses for the earlier version.
- f. **License confirmation.** This Agreement, the applicable Enrollment, Enrolled Affiliate's order confirmation, and any documentation evidencing transfers of perpetual Licenses, together with proof of payment, will be Enrolled Affiliate's evidence of all Licenses obtained under an Enrollment.
- g. **Reorganizations, consolidations and privatizations.** If the number of Licenses covered by an Enrollment changes by more than ten percent as a result of (1) a reorganization, consolidation or privatization of an entity or an operating division, (2) a privatization of an Affiliate or an operating division of Enrolled Affiliate or any of its Affiliates, or (3) a consolidation including a merger with a third party that has an existing agreement or Enrollment, Microsoft will work with Enrolled Affiliate in good faith to mutually determine how to accommodate its changed circumstances in the context of this Agreement.

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

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

- (i) Separate Licenses must be acquired from the separate source for each Product that is re-imaged.
- (ii) The Product, language, version, and components of the copies made must be identical to the Product, language, version, and all components of the copies they replace and the number of copies or instances of the re-imaged Product permitted remains the same.
- (iii) Except for copies of an operating system and copies of Products licensed under another Microsoft program, the Product type (e.g., Upgrade or full License) re-imaged must be identical to the Product type licensed from the separate source.
- (iv) Enrolled Affiliate must adhere to any Product-specific processes or requirements for re-imaging identified in the Product Terms.

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

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

- a. **License transfers.** License transfers are not permitted, except that Enrolled Affiliate may transfer only fully-paid perpetual Licenses to:
  - (i) an Affiliate, or
  - (ii) a third party solely in connection with the transfer of hardware or employees to whom the Licenses have been assigned as part of (A) a privatization of an Affiliate or agency or of an operating division of Enrolled Affiliate or an Affiliate, (B) a reorganization, or (C) a consolidation.

Upon such transfer, Enrolled Affiliate must uninstall and discontinue using the licensed Product and render any copies unusable.

- b. **Notification of License Transfer.** Enrolled Affiliate must notify Microsoft of a License transfer by completing a license transfer form, which can be obtained from <http://www.microsoft.com/licensing/contracts> and sending the completed form to Microsoft before the License transfer. No License transfer will be valid unless Enrolled Affiliate provides to the transferee, and the transferee accepts in writing, documents sufficient to enable the transferee to ascertain the scope, purpose and limitations of the rights granted by Microsoft under the licenses being transferred (including the applicable Use Rights, use and transfer restrictions, warranties and limitations of liability). Any License transfer not made in compliance with this section will be void.
- c. **Internal Assignment of Licenses and Software Assurance.** Licenses and Software Assurance must be assigned to a single user or device within the Enterprise. Licenses and Software Assurance may be reassigned within the Enterprise as described in the Use Rights.

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

- a. **Term.** This section is intentionally omitted and is included in Section 4.1 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).
- b. **Termination without cause.** This section is intentionally omitted and is included in Section 4.6(W) of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).
- c. **Mid-term termination for non-appropriation of Funds.** This section is intentionally omitted and is included in Section 4.6(W) of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).
- d. **Termination for cause.** Without limiting any other remedies it may have, either Enrolled Affiliate or Microsoft may terminate an Enrollment if the other party materially breaches its

obligations under the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984), including any obligation to submit orders or pay invoices. Except where the breach is by its nature not curable within 30 days, the terminating party must give the other party 30 days' notice of its intent to terminate and an opportunity to cure the breach.

If Microsoft gives such notice to an Enrolled Affiliate, Microsoft also will give OGS a copy of that notice and OGS agrees to help resolve the breach. If the breach affects other Enrollments, Microsoft shall give such notice to each Enrolled Affiliate and so advise OGS. If the breach cannot be resolved between Microsoft and Enrolled Affiliate, together with OGS's help, within a reasonable period of time, Microsoft may terminate all the affected Enrollments that received actual notification. If an Enrolled Affiliate ceases to be an "Affiliate" of the State of New York, it must promptly notify Microsoft, and Microsoft may terminate the former Affiliate's Enrollment. If an Enrolled Affiliate terminates its Enrollment as a result of a breach by Microsoft, or if Microsoft terminates an Enrollment because Enrolled Affiliate ceases to be such an Affiliate, then Enrolled Affiliate will have the early termination rights described in the Enrollment.

- e. Early termination.** If (1) an Enrolled Affiliate terminates its Enrollment as a result of a breach by Microsoft, or (2) if Microsoft terminates an Enrollment because the Enrolled Affiliate has ceased to be an Affiliate of Customer, or (3) Enrolled Affiliate terminates an Enrollment for non-appropriation of funds, or (4) Microsoft terminates an Enrollment for non-payment due to non-appropriation of funds, then the Enrolled Affiliate will have the following options:
- (i) It may immediately pay the total remaining amount due, including all installments, in which case, the Enrolled Affiliate will have perpetual rights for all Licenses it has ordered; or
  - (ii) It may pay only amounts due as of the termination date, in which case the Enrolled Affiliate will have perpetual Licenses for:
    - 1) all copies of Products (including the latest version of Products ordered under Software Assurance coverage in the current term) for which payment has been made in full, and
    - 2) the number of copies of Products it has ordered (including the latest version of Products ordered under Software Assurance coverage in current term) that is proportional to the total of installment payments paid versus total amounts due (paid and payable) if the early termination had not occurred.
  - (iii) In the case of early termination under subscription Enrollments, Enrolled Affiliate will have the following options:
    - 1) For eligible Products, Enrolled Affiliate may obtain perpetual Licenses as described in the section of the Enrollment titled "Buy-out option," provided that Microsoft receives the buy-out order for those Licenses within 60 days after Enrolled Affiliate provides notice of termination.
    - 2) In the event of a breach by Microsoft, if Customer chooses not to exercise a buy-out option, Microsoft will issue Enrolled Affiliate a credit for any amount paid in advance for Subscription Licenses that the Enterprise will not be able to use due to the termination of the Enrollment.

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

- f. Effect of termination or expiration.** When an Enrollment expires or is terminated,
- (i) Enrolled Affiliate must order Licenses for all copies of Products it has run for which it has not previously submitted an order. Any and all unpaid payments for any order of any kind remain due and payable. Except as provided in the subsection titled "Early termination," all unpaid payments for Licenses immediately become due and payable.
  - (ii) Enrolled Affiliate's right to Software Assurance benefits under this Agreement ends if it does not renew Software Assurance.



- g. Modification or termination of an Online Service for regulatory reasons.** This section is intentionally omitted and is included in Section 4.6(W) of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).
- h. Program updates.** This section is intentionally omitted and is included in Section 1.6 of the associated Custom Master Business Agreement (OGS Contract No. PS67984).

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

- a. Products.** Unless otherwise specified in a supplemental agreement, use of any Product is governed by the Use Rights specific to each Product and version and by the terms of the applicable supplemental agreement.
- b. Fixes.** Each Fix is licensed under the same terms as the Product to which it applies. If a Fix is not provided for a specific Product, any use rights Microsoft provides with the Fix will apply.
- c. Non-Microsoft software and technology.** This section is intentionally omitted and is included in Section 4.33 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).
- d. Restrictions.** This section is intentionally omitted and is included in Section 4.6(HH) of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).
- e. Reservation of rights.** This section was intentionally omitted and is included in Section 4.31(c) of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

**8. Confidentiality.** This section is intentionally omitted and is included in Section 4.6(G) of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

**9. Privacy and compliance with laws.**

- a.** This section is intentionally omitted and is included in Section 4.6(AA) of the associated Custom Microsoft Business Agreement (Contract No. PS67984).
- b.** This section is intentionally omitted and is included in Section 4.6(AA) of the associated Custom Microsoft Business Agreement (Contract No. PS67984).
- c. U.S. export.** This Section is intentionally omitted and is included in Section 4.27 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

**10. Warranties.** This section is intentionally omitted and is included in Section 4.6(BB) of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

**11. Defense of third party claims.** This section is intentionally omitted and is included in Section 4.6(EE) of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

**12. Limitation of liability.** This section is intentionally omitted and is included in Section 4.6(FF) of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

**13. Verifying compliance.** This section is intentionally omitted and is included in Section 4.6(JJ) of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

## **14. *Miscellaneous.***

- a. **Use of contractors.** This section is intentionally omitted and is included in Section 4.20 of the associated Custom Microsoft Business Agreement (Contract No. PS67984).
- b. **Microsoft as independent contractor.** This section is intentionally omitted and is included in Section 51 of Appendix B to the associated Custom Microsoft Business Agreement (Contract No. PS67984).
- c. **Notices.** This section is intentionally omitted and is included in Section 4.35 of the associated Custom Microsoft Business Agreement (Contract No. PS67984).
- d. **Agreement not exclusive.** This section is intentionally omitted and is included in Section 4.29 of the associated Custom Microsoft Business Agreement (Contract No. PS67984).
- e. **Amendments.** This section is intentionally omitted and is included in Section 1.6 of the associated Custom Microsoft Business Agreement (Contract No. PS67984).
- f. **Assignment.** This section is intentionally omitted and is included in Appendix A Section 2 and Appendix B Section 40 to the associated Custom Microsoft Business Agreement (Contract No. PS67984).
- g. **Applicable law; dispute resolution.** This section is intentionally omitted and is included in Appendix A Section 14, and section 4.6(GG) of the associated Custom Microsoft Business Agreement (Contract No. PS67984).
- h. **Severability.** This section is intentionally omitted and is included in Section 4.37 of the associated Custom Microsoft Business Agreement (Contract No. PS67984).
- i. **Waiver.** This section is intentionally omitted and is included in Section 4.30 of the associated Custom Microsoft Business Agreement (Contract No. PS67984).
- j. **No third-party beneficiaries.** Intentionally omitted.
- k. **Survival.** This section is intentionally omitted and is included in Section 4.28 of the associated Custom Microsoft Business Agreement (Contract No. PS67984).
- l. **Management and Reporting.** This section is intentionally omitted and is included in Section 4.34 of the associated Custom Microsoft Business Agreement (Contract No. PS67984).
- m. **Order of precedence.** This section is intentionally omitted and is included in Section 4.3 of the associated Custom Microsoft Business Agreement (Contract No. PS67984).
- n. **Free Products.** This section is intentionally omitted and is included in Section 4.22 of the associated Custom Microsoft Business Agreement (Contract No. PS67984).
- o. **Voluntary Product Accessibility Templates.** This section is intentionally omitted and is included in Section 4.24 of the associated Custom Microsoft Business Agreement (Contract No. PS67984).
- p. **Natural disaster.** This section is intentionally omitted and is included in Section 4.25 of the associated Custom Microsoft Business Agreement (Contract No. PS67984).
- q. **Copyright violation.** This section is intentionally omitted and is included in Section 4.26 of the associated Custom Microsoft Business Agreement (Contract No. PS67984).

## **15. *Microsoft Online Services Criminal Justice Information Services (CJIS) Language for Covered Services.***

The following language is incorporated in any Enrollment issued hereunder where an Enrolled Affiliate uses Covered Services, as defined below, to process and/or store Criminal Justice Information.

Note: Future modifications to the language below shall supersede any previous versions of such language, and shall become effective as to any Enrollment previously executed hereunder on the date that such modifications are formalized through an amendment with Microsoft to OGS Contract No. PS67984.

The following Microsoft Online Services Criminal Justice Information Services (CJIS) for Covered Services language is entered into between the customer entity (“Enrolled Affiliate”) and the Microsoft entity (“Microsoft”) identified on the signature form for the Enrollment amended hereby, under which Enrolled Affiliate is purchasing Covered Services (as defined below). The entities agree that the following language supplements the Enrollment and applies to only the Covered Services Enrolled Affiliate buys under the Enrollment.

## **Defined Terms.**

Capitalized terms used but not defined in this Section will have the meanings provided in the Agreement. The following definitions are used in this Section:

“**Azure**” means each of the Azure Government-branded services listed as being in the scope of the CJIS Policy at <http://azure.microsoft.com/en-us/support/trust-center/services>.

“**Covered Services**” means the following multi-tenant government “community” cloud services:

Each of the following Office 365-branded services: Exchange Online, SharePoint Online, Exchange Online Archiving, and Office Web Apps when delivered as part of Office 365 Government Plans E1 (formerly G1), E2 (formerly G2), E3 (formerly G3), E4 (formerly G4), K1, K2 or as standalone Government Community Cloud plans. Without limitation, Covered Services do not include Office 365 ProPlus, Lync Online or other Office 365-branded or separately branded Online Services.

Azure is included in this definition of Covered Services only to the extent it is needed to run and operate the Office 365-branded services referenced above.

“**CRM**” means each of the CRM Online Government-branded services described at <http://go.microsoft.com/fwlink/?LinkID=523874>, which covers the Microsoft Dynamics CRM Online services provisioned for eligible government community cloud entities, excluding (a) Microsoft Dynamics CRM for supported devices, which includes but is not limited to Microsoft Dynamics CRM Online services for tablets and/or smartphones; and (b) all separately-branded services made independently available with or in addition to CRM Online Government.

“**CSA**” means the New York State Police, or a successor agency as determined by the State of New York, acting in its capacity as the CJIS Systems Agency for the State of New York.

“**End User**” means an individual that accesses the Covered Services.

## **Term and Conditions.**

### **1. CJIS Security Addendum**

The Covered Services are multi-tenant cloud services offered as a “community cloud” as defined in the National Institute of Standards and Technology (NIST) Special Publication 800-145. Subject to the Agreement, this Amendment, and agreement reached with the CSA, Microsoft will deliver the Covered Services subject to the CJIS Security Addendum as set forth in any version of the CJIS Policy which becomes applicable during the term of the Enrollment amended hereby.

Enrolled Affiliate acknowledges the following restrictions on the use of the Covered Services for the processing and storage of Criminal Justice Information:

**Office 365-branded services (“O365”).** The use of O365 is fully in scope without any limitations on use; and

**Azure.** In recognition of the CSA’s current resource constraints, the use of Azure under this Amendment is limited to the minimum extent necessary to run and operate the O365 services. Such restricted use shall remain applicable until the CSA approves the use of Azure for the storage and processing of CJJ under this Amendment; and

**CRM.** Solely in recognition of the CSA’s current resource constraints, the use of CRM under this Amendment is currently out of scope until the CSA approves the use of CRM for the storage and processing of CJJ under this Amendment.

Enrolled Affiliate is responsible for its compliance with the restrictions on use described in this Section 1.

## **2. Role of CSA**

At the CSA’s request, Microsoft has entered into an agreement with the CSA, including the CJIS Security Addendum, to facilitate use of Covered Services by public entities in the State of New York that are subject to the Criminal Justice Information Services (CJIS) Security Policy. Enrolled Affiliate will rely on the CSA, acting in its capacity as the CJIS Systems Officer (CSO) for the State of New York, to perform personnel screening of Microsoft personnel engaged in the delivery of the Covered Services and to exercise certain other functions under the CJIS Security Policy as described in this Amendment. Enrolled Affiliate acknowledges and agrees that CSA’s role is limited only to facilitating CJIS Security Policy compliance and Enrolled Affiliate is solely responsible for its compliance with other laws or policies that mandate greater or different requirements than CJIS Security Policy.

## **3. Enrolled Affiliate Responsibilities**

**3.1** Enrolled Affiliate acknowledges that the Covered Services enable End Users optionally to access and use a variety of additional resources, applications, or services that are (a) provided by third parties, or (b) provided by Microsoft subject to their own terms of use or privacy policies (collectively, for convenience, “add-ons”), as described in services documentation and/or in the portal through which Enrolled Affiliate’s administrator(s) will manage and configure the Covered Services.

**3.2** Enrolled Affiliate is responsible to review Office 365 services documentation and CJIS implementation guidance. Enrolled Affiliate is responsible to establish, adopt and implement such policies and practices for its End Users’ use of Covered Services, together with any add-ons, as Enrolled Affiliate determines are appropriate to ensure Enrolled Affiliate’s compliance with the CJIS Security Policy or other legal or regulatory requirements applicable to Enrolled Affiliate and not generally applicable to Microsoft as an IT service provider. Enrolled Affiliates’ compliance with the CJIS Security Policy will be dependent, in part, upon Enrolled Affiliate’s configuration of the services and Enrolled Affiliate’s compliance with authoritative guidance from sources other than Microsoft (e.g., NCIC 2000 Operating Manual). Enrolled Affiliate is responsible to confirm the Covered Services environment is prepared and appropriate for CJJ prior to its processing or storing such data in the Covered Services.

**3.3** Enrolled Affiliate acknowledges that only Covered Services will be delivered subject to the terms of this Amendment. Microsoft does not recommend processing and storage of Criminal Justice Information (“CJI,” as such term is defined in Appendix A to the CJIS Security Policy) in other services. Without limiting the foregoing, data that Enrolled Affiliate elects to provide to the Microsoft technical support organization, if any, or data provided by or on behalf of Enrolled Affiliate to Microsoft’s billing or commerce systems in connection with purchasing/ordering Covered Services, if any, is not subject to the provisions of this Amendment or the CJIS Addendum.

#### **4. Approach to Compliance with CJIS Security Policy**

Enrolled Affiliate agrees to comply with all requirements of the CJIS Security Policy. Microsoft agrees to comply with only those requirements applicable to it as a contractor or cloud services provider. This Section 4 contains additional information about how certain requirements of the CJIS Security Policy will be fulfilled. For convenient reference, provisions are numbered to conform to section numbering in the CJIS Security Policy (ver. 5.6, dated June 5, 2017). Microsoft and Enrolled Affiliate will each rely on the CSA to perform certain functions as described below, and Enrolled Affiliate is responsible to confirm the approach with the CSA to the extent Enrolled Affiliate deems appropriate.

##### **4.1 CJIS Security Policy Section 5.2 Policy Area 2: Security Awareness Training**

Microsoft will supplement its existing security training program as required to meet the requirements of Section 5.2 of the CJIS Security Policy. Required training will be delivered to personnel identified as in scope for CJIS Personnel Screening within six (6) months of the later of (1) the date the first customer in the State of New York who is a purchaser of Covered Services subject to this Amendment (or a similar amendment executed by the applicable Enrolled Affiliate) notifies Microsoft it is introducing CJI into the Covered Services, or (2) the date the CSA notifies Microsoft that personnel have passed required personnel screening. Microsoft will refresh training for in scope personnel on at least a biennial basis thereafter.

Microsoft will maintain training records, which will be available to the CSA upon written request.

##### **4.2 CJIS Security Policy Section 5.3 Policy Area 3: Incident Response**

In the event of an information security incident affecting the Covered Services, Microsoft will address such incident with Enrolled Affiliate as follows:

- (a) If Microsoft becomes aware of any unlawful access to any Customer Data stored on Microsoft's equipment or in Microsoft's facilities, or unauthorized access to such facilities or equipment resulting in loss, disclosure or alteration of Customer Data (each a "Security Incident"), Microsoft will promptly: (i) notify Enrolled Affiliate of the Security Incident; (ii) investigate the Security Incident and provide Enrolled Affiliate with detailed information about the Security Incident; and (iii) take reasonable steps to mitigate the effects and to minimize any damage resulting from the Security Incident.
- (b) An unsuccessful Security Incident will not be subject to this Section. An "Unsuccessful Security Incident" is one that results in no unauthorized access to Customer Data or to any Microsoft equipment or facilities storing Customer Data, and may include, without limitation, pings and other broadcast attacks on firewalls or edge servers, port scans, unsuccessful log-on attempts, denial of service attacks, packet sniffing (or other unauthorized access to traffic data that does not result in access beyond IP addresses or headers) or similar incidents.
- (c) Microsoft's obligation to report or respond to a Security Incident is not and will not be construed as an acknowledgement by Microsoft of any fault or liability with respect to the Security Incident.
- (d) Notification of Security Incidents, if any, will be delivered to one or more of Enrolled Affiliate's administrators by any means Microsoft selects, including via email. It is Enrolled Affiliate's sole responsibility to ensure Enrolled Affiliate's administrators maintain accurate contact information on the Online Services portal at all times.
- (e) Effective investigation or mitigation of a Security Incident may be dependent upon information or services configurations within Enrolled Affiliate's control. Accordingly, compliance with CJIS Security Policy Incident Response requirements will be a joint obligation of Microsoft and Enrolled Affiliate.
- (f) In the event Microsoft reasonably anticipates that a Security Incident may require legal action against involved individual(s), or where the Security Incident involves either civil or criminal action, Microsoft will take measures to contain, resolve, and mitigate the impact of a Security Incident to Enrolled Affiliate and conduct its investigative activities under guidance of legal staff and in accordance with general evidentiary principles.

#### **4.3 CJIS Security Policy Section 5.11 Policy Area 11: Formal Audits**

- (a) Audits by FBI CJIS Division. In the event the FBI CJIS Division desires to perform an audit of the Covered Services, Microsoft will cooperate with such audit in good faith. The FBI may be permitted to access Customer Data belonging to Enrolled Affiliate in connection with such audit, but not data belonging to other customers in the multi-tenant environment from which the Covered Services are delivered. If the FBI identifies what it believes to be deficiencies in the Covered Services as a result of an audit, Microsoft is committed to working in good faith to resolve the FBI's concerns through discussion and interaction between Microsoft, the CSA, and the FBI. Enrolled Affiliate will assist in this process if and as requested, but will otherwise rely on the CSA to act on behalf of all similarly situated entities that have purchased the Covered Services.
- (b) Audits by Enrolled Affiliate. In the event that Enrolled Affiliate desires to audit the Covered Services pursuant to the CJIS Security Policy, Enrolled Affiliate appoints the CSA to act on Enrolled Affiliate's behalf to conduct such audit activities, and Enrolled Affiliate agrees to rely on the CSA's audit in full satisfaction of any right to audit the Covered Services. Enrolled Affiliate acknowledges and agrees that all audit requests are subject to CSA's approval or denial, and Enrolled Affiliate further agrees that it will request an audit of the Covered Services by the CSA only if it determines, in good faith, that such audit is reasonably necessary for the Enrolled Affiliate to satisfy a valid legal obligation it is subject to.

Enrolled Affiliate acknowledges that either CSA or a third party auditor selected by CSA will exercise this right by attempting to satisfy its requirements for information via reference to Microsoft's services documentation, including audit reports prepared by Microsoft's qualified third party auditors. Along with other customers for the Covered Services, the CSA will be provided quarterly access to information generated by Microsoft's regular monitoring of security, privacy, and operational controls in place to afford applicable customers an ongoing view into effectiveness of such controls, and the CSA or its auditor may communicate with Microsoft subject matter experts. In the event the CSA reasonably determines this information is not sufficient for the CSA's or Enrolled Affiliate's audit objectives, then, upon the CSA's written request, Microsoft will provide the CSA or its qualified third party auditor the opportunity to communicate with Microsoft's auditor at the CSA's or Enrolled Affiliate's expense and, if required by CSA, a direct right to examine the Covered Services, including examination on premises. The CSA or its auditor may only access data belonging to Enrolled Affiliate or other entities in the State of New York that have purchased the Covered Services and rely on the CSA for purposes of audit.

- (c) Confidentiality of Audit Materials. Information provided by Microsoft to the FBI CJIS Division or CSA in connection with audit activities will consist of highly confidential proprietary or trade secret information of Microsoft. It is not expected that Enrolled Affiliate will require access to such information, and Microsoft may request reasonable assurances, written or otherwise, that information will be maintained as confidential and/or trade secret prior to providing such information to Enrolled Affiliate. If provided, Enrolled Affiliate will ensure Microsoft's audit materials, or report(s) created by Enrolled Affiliate based on a CSA audit of the Covered Services, are afforded the highest level of confidentiality available under applicable law.

#### **4.4 CJIS Security Policy Section 5.12 Policy Area 12: Personnel Security**

- (a) Enrolled Affiliate appoints the CSA to perform, and will rely upon CSA's completion of, personnel screening (i.e., background checks) for personnel in scope pursuant to Section 5.12 of the CJIS Security Policy. Enrolled Affiliate acknowledges and agrees that personnel screening determinations made by CSA are binding, and Enrolled Affiliate shall accept such decision as final. Enrolled Affiliate is responsible to confirm directly with the CSA that such personnel screening as the CSA or Enrolled Affiliate determines is required has been

completed prior to initial processing of CJJ Data in the Covered Services, and whenever rescreening shall be required under CJIS Security Policy. Adjudication by Enrolled Affiliate or other counties, cities, or other subdivisions or agencies of state government will not be permitted. To facilitate efficient and effective personnel screening:

- The CSA will define adjudication criteria for personnel screening.
  - Microsoft will deliver to the CSA relevant information regarding Microsoft personnel in scope pursuant to Section 5.12 of the CJIS Security Policy.
  - Microsoft and the CSA will jointly define the process by which Microsoft will deliver to the CSA relevant information regarding personnel who may in the anticipated scope of their duties have logical or physical access to CJJ in the Covered Services.
  - It is not anticipated that the CSA will deliver to Enrolled Affiliate confidential personal information pertaining to Microsoft personnel. However, if Enrolled Affiliate receives such confidential personal information it will be afforded the highest level of confidentiality available under applicable law.
  - If Enrolled Affiliate elects to obtain services from Microsoft in addition to the Covered Services (e.g. consulting services in connection with Enrolled Affiliates' migration and onboarding to the Covered Services), such personnel will not be included in scope for personnel screening by the CSA unless separately agreed by Enrolled Affiliate, the CSA, and Microsoft.
- (b) In the event the CSA approves a process under which a federal law enforcement agency or other suitable body conducts screening of personnel who have access to Customer Data in the Covered Services compliant with requirements of the CJIS Security Policy in lieu of CSA-conducted screening, Enrolled Affiliate will abide by the CSA's approval of personnel screening being conducted in this manner.

#### **4.5 CJIS Security Policy Section 5.1.1.2: State and Federal Agency User Agreements**

Microsoft shall design, test and operate the Covered Services to ensure they are free of common security vulnerabilities. Microsoft shall regularly conduct penetration testing to evaluate the security controls at the application, host, and networks layers used to provide the Covered Services. Microsoft shall take commercially reasonable steps to remediate significant weaknesses discovered. Assessment of penetration testing will be done by independent third party auditors and included in the scope of audit relevant to Covered Service certification or accreditation. Neither CSA nor Enrolled Affiliate may conduct penetration testing on such Covered Services. Microsoft agrees to provide the CSA with reports summarizing the test results and status of corrective actions arising from all penetration testing and vulnerability assessments performed by Microsoft and its third party auditors and agents.

#### **4.6 CJIS Security Policy Area 5.10 Policy Section 5.10.1.5: Cloud Computing**

Microsoft will use Customer Data solely to provide the Covered Services, including purposes consistent with the delivery of the Covered Services. Microsoft will not use Customer Data or derive information from it for any advertising or similar commercial purposes.

Microsoft may use subcontractors to perform and support Online Services; including Online Services processing CJJ. Microsoft will be responsible for its own and its subcontractors' compliance with the terms of this CJIS Enrollment. For clarity, the definition of Subcontractor for purposes of this Amendment shall include Subprocessors used by Microsoft

#### **4.7 NCIC Operating Manual**

Enrolled Affiliate acknowledges that the current NCIC 2000 Operating Manual and FBI CJIS Security Policy consist of guidance and/or requirements for Enrolled Affiliate's use of the Covered Services. In the event Enrolled Affiliate determines the NCIC 2000 Operating Manual imposes obligations with respect to the Covered Services that can, in Enrolled Affiliate's opinion, only be

satisfied via changes in the manner in which the Covered Services are operated or delivered to Enrolled Affiliate, Enrolled Affiliate may request that the CSA provide Microsoft with written notification of the specific changes it believes are required of Microsoft in order to enable Enrolled Affiliate's compliance with the NCIC 2000 Operating Manual, and Microsoft agrees to consider any such request(s) relayed to Microsoft by the CSA in good faith.

#### **4.8 Notices**

Any notices in connection with the Covered Services will be delivered to Enrolled Affiliate by Microsoft. Enrolled Affiliate will determine whether these or any other notices regarding the Covered Services are required to be delivered to the FBI, CJIS Division, as contemplated in Section 6.05 of the Security Addendum and, if required, deliver such notices.

#### **4.9 Termination**

Should CSA determine that Microsoft is in material breach of CSA's agreement with Microsoft, titled "CJIS Information Agreement for Covered Services," Enrolled Affiliate may terminate its orders for the Covered Services within 30 days following the determination of such breach where the breach is, by its nature, not curable within 30 days. Enrolled Affiliate must give Microsoft 30 days' notice of its intent to terminate and an opportunity to cure. For up to 90 days following such termination, Enrolled Affiliate may extract its Customer Data from the Covered Services, in a manner that complies with all applicable laws and FBI CJIS Security Policy requirements, subject to the other terms and conditions of the Agreement and Enrollment amended hereby. Enrolled Affiliate will have the ability to access, extract, and delete Customer Data stored in the Online Service in a CJIS Security Policy-compliant manner. Microsoft's obligation to comply with all requirements of the Agreement, this Amendment and the CJIS Security Policy shall survive termination of this Agreement and continue in full force and effect for as long as Microsoft continues to store or retain any Customer Data.



## Custom Enterprise Enrollment

## State and Local

|  |                      |  |                      |
|--|----------------------|--|----------------------|
| Enterprise Enrollment number<br><i>(Microsoft to complete)</i> | <input type="text"/> | Proposal ID/Framework ID<br><i>(if applicable)</i> | <input type="text"/> |
| Previous Enrollment number<br><i>(Reseller to complete)</i>    | <input type="text"/> |  |                      |

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

This Microsoft Enterprise Enrollment is entered into between the entities as identified in the signature form as of the effective date. Enrolled Affiliate represents and warrants it is an Affiliate of the State of New York who entered into the Enterprise Agreement identified on the program signature form.

This Enrollment consists of: (1) the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984) and these Enterprise Enrollment terms and conditions, (2) the terms of the Enterprise Agreement identified on the signature form, (3) the Product Selection Form, (4) the Product Terms, (5) the Online Services Terms, (6) any Supplemental Contact Information Form, Previous Agreement/Enrollment form, and other forms that may be required, and (7) any order submitted under this Enrollment. By entering into this Enrollment, Enrolled Affiliate agrees to be bound by the terms and conditions of the Enterprise Agreement.

If there is a capitalized term in this Enrollment that is not defined elsewhere in the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984), and there is a definition of the capitalized term at the following link, the definition at the link will apply: <http://www.microsoft.com/licensing/contracts>. In the event there is language in the definition at the link which conflicts with OGS Contract No. PS67984, the language of OGS Contract No. PS67984 will control.

**Effective date.** If Enrolled Affiliate is renewing Software Assurance or Subscription Licenses from one or more previous Enrollments or agreements, then the effective date will be the day after the first prior Enrollment or agreement expires or terminates. If this Enrollment is renewed, the effective date of the renewal term will be the day after the Expiration Date of the initial term. Otherwise, the effective date will be the date this Enrollment is accepted by Microsoft. Any reference to “anniversary date” refers to the anniversary of the effective date of the applicable initial or renewal term for each year this Enrollment is in effect.

**Term.** The initial term of this Enrollment will expire on the last day of the month, 36 full calendar months from the effective date of the initial term. The renewal term will expire 36 full calendar months after the effective date of the renewal term.

## ***Terms and Conditions***

### ***1. Definitions.***

Terms used but not defined in this Enrollment will have the definition in the Enterprise Agreement. The following definitions are used in this Enrollment:

“Additional Product” means any Product identified as such in the Product Terms and chosen by Enrolled Affiliate under this Enrollment.

“Community” means the community consisting of one or more of the following: (1) a Government, (2) an Enrolled Affiliate using eligible Government Community Cloud Services to provide solutions to a

Government or a qualified member of the Community, or (3) a Customer with Customer Data that is subject to Government regulations for which Customer determines and Microsoft agrees that the use of Government Community Cloud Services is appropriate to meet Customer's regulatory requirements. Membership in the Community is ultimately at Microsoft's discretion, which may vary by Government Community Cloud Service.

"Enterprise Online Service" means any Online Service designated as an Enterprise Online Service in the Product Terms and chosen by Enrolled Affiliate under this Enrollment. Enterprise Online Services are treated as Online Services, except as noted.

"Enterprise Product" means any Desktop Platform Product that Microsoft designates as an Enterprise Product in the Product Terms and chosen by Enrolled Affiliate under this Enrollment. Enterprise Products must be licensed for all Qualified Devices and Qualified Users on an Enterprise-wide basis under this program.

"Expiration Date" means the date upon which this Enrollment expires.

"Federal Agency" means a bureau, office, agency, department or other entity of the United States Government.

"Government" means a Federal Agency, State/Local Entity, or Tribal Entity acting in its governmental capacity.

"Government Community Cloud Services" means Microsoft Online Services that are provisioned in Microsoft's multi-tenant data centers for exclusive use by or for the Community and offered in accordance with the National Institute of Standards and Technology (NIST) Special Publication 800-145. Microsoft Online Services that are Government Community Cloud Services are designated as such in the Use Rights and Product Terms.

"Industry Device" (also known as line of business device) means any device that: (1) is not useable in its deployed configuration as a general purpose personal computing device (such as a personal computer), a multi-function server, or a commercially viable substitute for one of these systems; and (2) only employs an industry or task-specific software program (e.g. a computer-aided design program used by an architect or a point of sale program) ("Industry Program"). The device may include features and functions derived from Microsoft software or third-party software. If the device performs desktop functions (such as email, word processing, spreadsheets, database, network or Internet browsing, or scheduling, or personal finance), then the desktop functions: (1) may only be used for the purpose of supporting the Industry Program functionality; and (2) must be technically integrated with the Industry Program or employ technically enforced policies or architecture to operate only when used with the Industry Program functionality.

"Managed Device" means any device on which any Affiliate in the Enterprise directly or indirectly controls one or more operating system environments. Examples of Managed Devices can be found in the Product Terms.

"Qualified Device" means any device that is used by or for the benefit of Enrolled Affiliate's Enterprise and is: (1) a personal desktop computer, portable computer, workstation, or similar device capable of running Windows Pro locally (in a physical or virtual operating system environment), or (2) a device used to access a virtual desktop infrastructure ("VDI"). Qualified Devices do not include any device that is: (1) designated as a server and not used as a personal computer, (2) an Industry Device, or (3) not a Managed Device. At its option, the Enrolled Affiliate may designate any device excluded above (e.g., Industry Device) that is used by or for the benefit of the Enrolled Affiliate's Enterprise as a Qualified Device for all or a subset of Enterprise Products or Online Services the Enrolled Affiliate has selected.

"Qualified User" means a person (e.g., employee, consultant, contingent staff) who: (1) is a user of a Qualified Device, or (2) accesses any server software requiring an Enterprise Product Client Access License or any Enterprise Online Service. It does not include a person who accesses server software or an Online Service solely under a License identified in the Qualified User exemptions in the Product Terms.

"Reseller" means an entity authorized by Microsoft to resell Licenses under this program and engaged by an Enrolled Affiliate to provide pre- and post-transaction assistance related to this Agreement;

"Reserved License" means for an Online Service identified as eligible for true-ups in the Product Terms, the License reserved by Enrolled Affiliate prior to use and for which Microsoft will make the Online Service available for activation.

"State/Local Entity" means (1) any agency of a state or local government in the United States, or (2) any United States county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality established by the laws of Customer's state and located within Customer's state's jurisdiction and geographic boundaries.

"Tribal Entity" means a federally-recognized tribal entity performing tribal governmental functions and eligible for funding and services from the U.S. Department of Interior by virtue of its status as an Indian tribe.

"Use Rights" shall have the definition as set forth in Section 1.8 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

"Volume Licensing Site" shall have the same meaning as "Licensing Site" in the Custom Microsoft Business Agreement (OGS Contract No. PS67984).

## **2. Order requirements.**

- a. Minimum order requirements.** Enrolled Affiliate's Enterprise must have a minimum of 250 Qualified Users or Qualified Devices. The initial order must include at least 250 Licenses for Enterprise Products or Enterprise Online Services.
  - (i) Enterprise commitment.** Enrolled Affiliate must order enough Licenses to cover all Qualified Users or Qualified Devices, depending on the License Type, with one or more Enterprise Products or a mix of Enterprise Products and the corresponding Enterprise Online Services (as long as all Qualified Devices not covered by a License are only used by users covered with a user License).
  - (ii) Enterprise Online Services only.** If no Enterprise Product is ordered, then Enrolled Affiliate need only maintain at least 250 Subscription Licenses for Enterprise Online Services.
- b. Additional Products.** Upon satisfying the minimum order requirements above, Enrolled Affiliate may order Additional Products.
- c. Use Rights for Enterprise Products.** For Enterprise Products, if a new Product version has more restrictive Use Rights than the version that is current at the start of the applicable initial or renewal term of the Enrollment, those more restrictive Use Rights will not apply to Enrolled Affiliate's use of that Product during that term.
- d. Country of usage.** Enrolled Affiliate must specify the countries where Licenses will be used on its initial order and on any additional orders.
- e. Resellers.** Enrolled Affiliate must choose and maintain a Reseller authorized in the United States throughout the term of this Enrollment. During the term of any contract between OGS and a Microsoft Reseller for Software and Online Services, Enrolled Affiliate must acquire its Licenses through the OGS-designated Reseller under such contract. Orders must be submitted to the Reseller who will transmit the order to Microsoft. The Reseller and Enrolled Affiliate determine pricing and payment terms as between them, and Microsoft will invoice the Reseller based on those terms. Resellers and other third parties do not have authority to bind or impose any obligation or liability on Microsoft.
- f. Adding Products.**
  - (i) Adding new Products not previously ordered.** New Enterprise Products or Enterprise Online Services may be added at any time by contacting a Microsoft Account Manager or Reseller. New Additional Products, other than Online Services, may be used if an order is

placed in the month the Product is first used. For Additional Products that are Online Services, an initial order for the Online Service is required prior to use.

- (ii) **Adding Licenses for previously ordered Products.** Additional Licenses for previously ordered Products other than Online Services may be added at any time but must be included in the next true-up order. Additional Licenses for Online Services must be ordered prior to use, unless the Online Services are (1) identified as eligible for true-up in the Product Terms or (2) included as part of other Licenses.
- g. True-up requirements.** Enrolled Affiliate must submit an annual true-up order that accounts for any changes since the initial order or last order. If there are no changes, then an update statement must be submitted instead of a true-up order.

  - (i) **Enterprise Products.** For Enterprise Products, Enrolled Affiliate must determine the number of Qualified Devices and Qualified Users (if ordering user-based Licenses) at the time the true-up order is placed and must order additional Licenses for all Qualified Devices and Qualified Users that are not already covered by existing Licenses, including any Enterprise Online Services.
  - (ii) **Additional Products.** For Additional Products that have been previously ordered under this Enrollment, Enrolled Affiliate must determine the maximum number of Additional Products used since the latter of the initial order, the last true-up order, or the prior anniversary date and submit a true-up order that accounts for any increase.
  - (iii) **Online Services.** For Online Services identified as eligible for true-up in the Product Terms, Enrolled Affiliate may place a reservation order for the additional Licenses prior to use and payment may be deferred until the next true-up order. Microsoft will provide a report of Reserved Licenses ordered but not yet invoiced to Enrolled Affiliate and its Reseller. Reserved Licenses will be invoiced retroactively to the month in which they were ordered.
  - (iv) **Subscription License reductions.** Enrolled Affiliate may reduce the quantity of Subscription Licenses at the Enrollment anniversary date on a prospective basis if permitted in the Product Terms, as follows:

    - 1) For Subscription Licenses that are part of an Enterprise-wide purchase, Licenses may be reduced if the total quantity of Licenses and Software Assurance for an applicable group meets or exceeds the quantity of Qualified Devices and Qualified Users (if ordering user-based Licenses) identified on the Product Selection Form, and includes any additional Qualified Devices and Qualified Users added in any prior true-up orders. Step-up Licenses do not count towards this total count.
    - 2) For Enterprise Online Services that are not a part of an Enterprise-wide purchase, Licenses can be reduced as long as the initial order minimum requirements are maintained.
    - 3) For Additional Products available as Subscription Licenses, Enrolled Affiliate may reduce the Licenses. If the License count is reduced to zero, then Enrolled Affiliate's use of the applicable Subscription License will be cancelled.

Invoices will be adjusted to reflect any reductions in Subscription Licenses at the true-up order Enrollment anniversary date and effective as of such date.
  - (v) **Update statement.** An update statement must be submitted instead of a true-up order if, since the initial order or last true-up order, Enrolled Affiliate's Enterprise: (1) has not changed the number of Qualified Devices and Qualified Users licensed with Enterprise Products or Enterprise Online Services; and (2) has not increased its usage of Additional Products. This update statement must be signed by Enrolled Affiliate's authorized representative.
  - (vi) **True-up order period.** The true-up order or update statement must be received by Microsoft between 60 and 30 days prior to each Enrollment anniversary date. The third-

year true-up order or update statement is due within 30 days prior to the Expiration Date, and any license reservations within this 30-day period will not be accepted. Enrolled Affiliate may submit true-up orders more often to account for increases in Product usage, but an annual true-up order or update statement must still be submitted during the annual order period.

- (vii) Late true-up order.** If the true-up order or update statement is not received when due, Microsoft will invoice Reseller for all Reserved Licenses not previously invoiced and Subscription License reductions cannot be reported until the following Enrollment anniversary date (or at Enrollment renewal, as applicable).
- h. Step-up Licenses.** For Licenses eligible for a step-up under this Enrollment, Enrolled Affiliate may step-up to a higher edition or suite as follows:

  - (i)** For step-up Licenses included on an initial order, Enrolled Affiliate may order according to the true-up process.
  - (ii)** If step-up Licenses are not included on an initial order, Enrolled Affiliate may step-up initially by following the process described in the Section titled “Adding new Products not previously ordered,” then for additional step-up Licenses, by following the true-up order process.
- i. Clerical errors.** Microsoft may correct clerical errors in this Enrollment, and any documents submitted with or under this Enrollment, by providing notice by email and a reasonable opportunity for Enrolled Affiliate to object to the correction. Clerical errors include minor mistakes, unintentional additions and omissions. This provision does not apply to material terms, such as the identity, quantity or price of a Product ordered.
- j. Verifying compliance.** Microsoft may, in its discretion and at its expense, verify compliance with this Enrollment as set forth in the Enterprise Agreement.

### **3. Pricing.**

- a. Price Levels.** For both the initial and any renewal term Enrolled Affiliate’s Price Level for all Products ordered under this Enrollment will be Level “D” throughout the term of the Enrollment.
- b. Setting Prices.** Enrolled Affiliate’s prices for each Product or Service will be established by its Reseller. Except for Online Services designated in the Product Terms as being exempt from fixed pricing, Microsoft’s prices for Resellers for each Product or Service ordered will be fixed throughout the applicable initial or renewal Enrollment term. Microsoft’s prices to Resellers are reestablished at the beginning of the renewal term.

### **4. Payment terms.**

For the initial or renewal order, Enrolled Affiliate may pay upfront or elect to spread its payments over the applicable Enrollment term. If an upfront payment is elected, Microsoft will invoice Enrolled Affiliate’s Reseller in full upon acceptance of this Enrollment. If spread payments are elected, Microsoft will invoice Enrolled Affiliate’s Reseller in three equal annual installments. The first installment will be invoiced upon Microsoft’s acceptance of this Enrollment and remaining installments will be invoiced on each subsequent Enrollment anniversary date. Subsequent orders are invoiced upon acceptance of the order and Enrolled Affiliate may elect to pay annually or upfront for Online Services and upfront for all other Licenses.

### **5. End of Enrollment term and termination.**

- a. General.** At the Expiration Date, Enrolled Affiliate must immediately order and pay for Licenses for Products it has used but has not previously submitted an order for, except as otherwise provided in this Enrollment.

- b. Renewal option.** At the Expiration Date of the initial term, Enrolled Affiliate can renew Products by renewing this Enrollment for one additional 36-month term or by signing a new Enrollment. Microsoft must receive a Renewal Form, Product Selection Form, and renewal order prior to or at the Expiration Date. Microsoft will not unreasonably reject any renewal.
- c. If Enrolled Affiliate elects not to renew.**
- (i) Software Assurance.** If Enrolled Affiliate elects not to renew Software Assurance for any Product under its Enrollment, then Enrolled Affiliate will not be permitted to order Software Assurance later without first acquiring a new License with Software Assurance.
- (ii) Online Services eligible for an Extended Term.** For Online Services identified as eligible for an Extended Term in the Product Terms, the following options are available at the end of the Enrollment initial or renewal term.
- 1) Extended Term.** Licenses for Online Services will automatically expire in accordance with the terms of the Enrollment. An extended term feature that allows Online Services to continue month-to-month (“Extended Term”) for up to one year, unless designated in the Product Terms to continue until cancelled, is available. During the Extended Term, Online Services will be invoiced monthly at the then-current published price as of the Expiration Date. If Enrolled Affiliate wants an Extended Term, Enrolled Affiliate must submit a request to Microsoft at least 30 days prior to the Expiration Date.
- 2) Cancellation during Extended Term.** At any time during the first year of the Extended Term, Enrolled Affiliate may terminate the Extended Term by submitting a notice of cancellation to Microsoft for each Online Service. Thereafter, either party may terminate the Extended Term by providing the other with a notice of cancellation for each Online Service. Cancellation will be effective at the end of the month following 30 days after Microsoft has received or issued the notice.
- (iii) Subscription Licenses and Online Services not eligible for an Extended Term.** If Enrolled Affiliate elects not to renew, the Licenses will be cancelled and will terminate as of the Expiration Date. Any associated media must be uninstalled and destroyed and Enrolled Affiliate’s Enterprise must discontinue use. Microsoft may request written certification to verify compliance.
- d. Termination for cause.** Any termination for cause of this Enrollment will be subject to the “Termination for cause” section of the Enterprise Agreement Program Agreement. In addition, it shall be a breach of this Enrollment if Enrolled Affiliate or any Affiliate in the Enterprise that uses Government Community Cloud Services fails to meet and maintain the conditions of membership in the definition of Community.
- e. Early termination.** Any early termination of this Enrollment will be subject to the “Early Termination” Section of the Enterprise Agreement.
- For Subscription Licenses, in the event of a breach by Microsoft, or if Microsoft terminates an Online Service for regulatory reasons, Microsoft will issue Reseller a credit for any amount paid in advance for the period after termination.

## **6. Government Community Cloud.**

- a. Community requirements.** If Enrolled Affiliate purchases Government Community Cloud Services, Enrolled Affiliate certifies that it is a member of the Community and agrees to use Government Community Cloud Services solely in its capacity as a member of the Community and, for eligible Government Community Cloud Services, for the benefit of end users that are members of the Community. Use of Government Community Cloud Services by an entity that is not a member of the Community or to provide services to non-Community members is strictly prohibited and could result in termination of Enrolled Affiliate’s license(s) for Government Community Cloud Services without notice. Enrolled Affiliate acknowledges that only Community members may use Government Community Cloud Services.

- b. All terms and conditions applicable to non-Government Community Cloud Services also apply to their corresponding Government Community Cloud Services, except as otherwise noted in the Use Rights, Product Terms, and this Enrollment.
- c. Enrolled Affiliate may not deploy or use Government Community Cloud Services and corresponding non-Government Community Cloud Services in the same domain.
- d. **Use Rights for Government Community Cloud Services.** For Government Community Cloud Services, notwithstanding anything to the contrary in the Use Rights:
  - (i) Government Community Cloud Services will be offered only within the United States.
  - (ii) Additional European Terms, as set forth in the Use Rights, will not apply.
  - (iii) References to geographic areas in the Use Rights with respect to the location of Customer Data at rest, as set forth in the Use Rights, refer only to the United States.

**7. *Microsoft Online Services Criminal Justice Information Services (CJIS) Language for Covered Services.***

**Reminder:** Enrolled Affiliates using Online Services to process and/or store Criminal Justice Information are subject to the provisions of Section 15 of the Enterprise Agreement Program Agreement.



## **Enrollment Details**

### **1. Enrolled Affiliate's Enterprise.**

- a. Identify which Enrolled Affiliates are included in the Enterprise. (Required) Enrolled Affiliate's Enterprise must consist of entire offices, bureaus, agencies, departments or other entities of Enrolled Affiliate, not partial offices, bureaus, agencies, or departments, or other partial entities. Check only one box in this section. If no boxes are checked, Microsoft will deem the Enterprise to include the Enrolled Affiliate only. If more than one box is checked, Microsoft will deem the Enterprise to include the largest number of Affiliates:

Enrolled Affiliate only

Enrolled Affiliate and all Affiliates

Enrolled Affiliate and the following Affiliate(s) (Only identify specific affiliates to be included if fewer than all Affiliates are to be included in the Enterprise):

Enrolled Affiliate and all Affiliates, with following Affiliate(s) excluded:

- b. Please indicate whether the Enrolled Affiliate's Enterprise will include all new Affiliates acquired after the start of this Enrollment: <Choose One>

### **2. Contact information.**

Each party will notify the other in writing if any of the information in the following contact information page(s) changes. The asterisks (\*) indicate required fields. By providing contact information, Enrolled Affiliate consents to its use for purposes of administering this Enrollment by Microsoft, its Affiliates, and other parties that help administer this Enrollment. The personal information provided in connection with this Enrollment will be used and protected in accordance with the privacy statement available at <https://www.microsoft.com/licensing/servicecenter>.

- a. **Primary contact.** This contact is the primary contact for this Enrollment from within Enrolled Affiliate's Enterprise. This contact is also an Online Administrator for the Volume Licensing Service Center and may grant online access to others. The primary contact will be the default contact for all purposes unless separate contacts are identified for specific purposes

**Name of entity (must be legal entity name)\***

**Contact name\* First Last**

**Contact email address\***

**Street address\***

**City\***

**State/Province\***



**Postal code\*** -  
(For U.S. addresses, please provide the zip + 4, e.g. xxxxx-xxxx)  
**Country\***  
**Phone\***  
**Tax ID**  
*\* indicates required fields*

- b. Notices contact and Online Administrator.** This contact (1) receives the contractual notices, (2) is the Online Administrator for the Volume Licensing Service Center and may grant online access to others, and (3) is authorized to order Reserved Licenses for eligible Online Services, including adding or reassigning Licenses and stepping-up prior to a true-up order.

Same as primary contact (default if no information is provided below, even if the box is not checked).

**Contact name\* First Last**  
**Contact email address\***  
**Street address\***  
**City\***  
**State/Province\***  
**Postal code\*** -  
(For U.S. addresses, please provide the zip + 4, e.g. xxxxx-xxxx)  
**Country\***  
**Phone\***  
**Language preference.** Choose the language for notices. English  
 This contact is a third party (not the Enrolled Affiliate). Warning: This contact receives personally identifiable information of the Customer and its Affiliates.  
*\* indicates required fields*

- c. Online Services Manager.** This contact is authorized to manage the Online Services ordered under this Enrollment and (for applicable Online Services) to add or reassign Licenses and step-up prior to a true-up order.

Same as notices contact and Online Administrator (default if no information is provided below, even if box is not checked)

**Contact name\*: First Last**  
**Contact email address\***  
**Phone\***  
 This contact is from a third party organization (not the entity). Warning: This contact receives personally identifiable information of the entity.  
*\* indicates required fields*

- d. Reseller information.** Reseller contact for this Enrollment is:

**Reseller company name\***  
**Street address (PO boxes will not be accepted)\***  
**City\***  
**State/Province\***  
**Postal code\***  
**Country\***  
**Contact name\***  
**Phone\***  
**Contact email address\***  
*\* indicates required fields*

By signing below, the Reseller identified above confirms that all information provided in this Enrollment is correct.

|  |
|--|
| <b>Signature*</b> _____<br><b>Printed name*</b><br><b>Printed title*</b><br><b>Date*</b> |
|--|

*\* indicates required fields*

**Changing a Reseller.** This section is intentionally omitted and is included in Section 1.4 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

- e. If Enrolled Affiliate requires a separate contact for any of the following, attach the Supplemental Contact Information form. *Otherwise, the notices contact and Online Administrator remains the default.*
  - (i) Additional notices contact
  - (ii) Software Assurance manager
  - (iii) Subscriptions manager
  - (iv) Customer Support Manager (CSM) contact

### **3. Financing.**

Financing is not available under this Enrollment.



Custom Enterprise Subscription Enrollment  
Local

State and

|   |                      |  |                      |
|---|----------------------|--|----------------------|
| Enterprise Subscription Enrollment number<br><i>(Microsoft to complete)</i> | <input type="text"/> | Proposal ID/Framework ID<br><i>(if applicable)</i> | <input type="text"/> |
| Previous Enrollment number<br><i>(Reseller to complete)</i>                 | <input type="text"/> |  |                      |

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

This Microsoft Enterprise Subscription Enrollment is entered into between the entities identified in the signature form as of the effective date. Enrolled Affiliate represents and warrants that it is an Affiliate of the State of New York, who entered into the Enterprise Agreement on the signature form.

This Enrollment consists of: (1) the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984) and these Enterprise Subscription Enrollment terms and conditions, (2) the terms of the Enterprise Agreement identified on the signature form, (3) the Product Selection Form, (4) the Product Terms, (5) the Online Services Terms, (6) any Supplemental Contact information form(s), previous Agreement/Enrollment form and other forms that may be required, and (7) any order submitted under this Enrollment. By entering into this Enrollment, Enrolled Affiliate agrees to be bound by the terms and conditions of the Enterprise Agreement.

If there is a capitalized term in this Enrollment that is not defined elsewhere in the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984), and there is a definition of the capitalized term at the following link, the definition at the link will apply: <http://www.microsoft.com/licensing/contracts>. In the event there is language in the definition at the link which conflicts with OGS Contract No. PS67984, the language of OGS Contract No. PS67984 will control.

**Effective date.** If Enrolled Affiliate is renewing Subscription Licenses from one or more previous Enrollments or agreements, then the effective date will be the day after the first Enrollment or Agreement expires or terminates. If this Enrollment is renewed, the effective date of the renewal term will be the day after the Expiration Date of the initial term. Otherwise, the effective date will be the date this Enrollment is accepted by Microsoft. Any reference to “anniversary date” refers to the anniversary of the effective date of the applicable initial or renewal term for each year this Enrollment is in effect.

**Term.** The initial term of this Enrollment will expire on the last day of the month, 36 full calendar months from the effective date of the initial term. The renewal term will expire 36 full calendar months after the effective date of the renewal term.

**Product order.** The Reseller will provide Customer with Customer’s Product pricing and order. Prices and billing terms for all Products ordered will be determined by agreement between Customer and the Reseller. The Reseller will provide Microsoft with the order separately from this Enrollment.

## ***Terms and Conditions***

### ***1. Definitions.***

Terms used but not defined in this Enrollment will have the definition in the Enterprise Agreement. The following definitions also apply:

“Additional Product” means any Product identified as such in the Product Terms and chosen by Enrolled Affiliate under this Enrollment.

“Community” means the community consisting of one or more of the following: (1) a Government, (2) an Enrolled Affiliate using eligible Government Community Cloud Services to provide solutions to a Government or a qualified member of the Community, or (3) a Customer with Customer Data that is subject to Government regulations for which Customer determines and Microsoft agrees that the use of Government Community Cloud Services is appropriate to meet Customer’s regulatory requirements. Membership in the Community is ultimately at Microsoft’s discretion, which may vary by Government Community Cloud Service.

“Enterprise Online Service” means any Online Service designated as an Enterprise Online Service in the Product Terms and chosen by Enrolled Affiliate under this Enrollment. Enterprise Online Services are treated as Online Services, except as noted.

“Enterprise Product” means any Desktop Platform Product that Microsoft designates as an Enterprise Product in the Product Terms and chosen by Enrolled Affiliate under this Enrollment. Enterprise Products must be licensed for all Qualified Devices and Qualified Users on an Enterprise-wide basis under this program.

“Expiration Date” means the date upon which this Enrollment expires.

“Federal Agency” means a bureau, office, agency, department or other entity of the United States Government.

“Government” means a Federal Agency, State/Local Entity, or Tribal Entity acting in its governmental capacity.

“Government Community Cloud Services” means Microsoft Online Services that are provisioned in Microsoft’s multi-tenant data centers for exclusive use by or for the Community and offered in accordance with the National Institute of Standards and Technology (NIST) Special Publication 800-145. Microsoft Online Services that are Government Community Cloud Services are designated as such in the Use Rights and Product Terms.

“Industry Device” (also known as line of business device) means any device that: (1) is not useable in its deployed configuration as a general purpose personal computing device (e.g., personal computer), a multi-function server, or a commercially viable substitute for one of these systems; and (2) only employs an industry or task-specific software program (e.g., a computer-aided design program used by an architect or a point of sale program) (“Industry Program”). The device may include features and functions derived from Microsoft software or third-party software. If the device performs desktop functions (e.g., email, word processing, spreadsheets, database, network or Internet browsing, or scheduling, or personal finance), then the desktop functions: (1) may only be used for the purpose of supporting the Industry Program functionality; and (2) must be technically integrated with the Industry Program or employ technically enforced policies or architecture to operate only when used with the Industry Program functionality.

“Managed Device” means any device on which any Affiliate in the Enterprise directly or indirectly controls one or more operating system environments. Examples of Managed Devices can be found in the Product Terms.

“Qualified Device” means any device that is used by or for the benefit of Enrolled Affiliate’s Enterprise and is: (1) a personal desktop computer, portable computer, workstation, or similar device capable of running Windows Pro locally (in a physical or virtual operating system environment), (2) a device used to access a virtual desktop infrastructure (“VDI”). Qualified Devices do not include any device that is: (1) designated as a server and not used as a personal computer, (2) an Industry Device, or (3) not a Managed Device. At its option, the Enrolled Affiliate may designate any device excluded above (e.g., Industry Device) that is used by or for the benefit of the Enrolled Affiliate’s Enterprise as a Qualified Device for all or a subset of Enterprise Products or Online Services the Enrolled Affiliate has selected.

“Qualified User” means a person (e.g., employee, consultant, contingent staff) who: (1) is a user of a Qualified Device, or (2) accesses any server software requiring an Enterprise Product Client Access

License or any Enterprise Online Service. It does not include a person who accesses server software or an Online Service solely under a License identified in the Qualified User exemptions in the Product Terms.

“Reseller” means an entity authorized by Microsoft to resell Licenses under this program and engaged by an Enrolled Affiliate to provide pre- and post-transaction assistance related to this Agreement;

“Reserved License” means for an Online Service identified as eligible for annual orders in the Product Terms, the License reserved by Enrolled Affiliate prior to use and for which Microsoft will make the Online Service available for activation.

“State/Local Entity” means (1) any agency of a state or local government in the United States, or (2) any United States county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality established by the laws of Customer’s state and located within Customer’s state’s jurisdiction and geographic boundaries.

“Subscription License” means, for purposes of this Enrollment, a fixed term license that expires when the Enrollment expires or is terminated, unless the buy-out option is exercised. Any License ordered under this Enrollment is a Subscription License, even if it is otherwise designated on a purchase order.

“Tribal Entity” means a federally-recognized tribal entity performing tribal governmental functions and eligible for funding and services from the U.S. Department of Interior by virtue of its status as an Indian tribe.

“Use Rights” shall have the definition as set forth in Section 1.8 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

“Volume Licensing Site” shall have the same meaning as “Licensing Site” in the Custom Microsoft Business Agreement (OGS Contract No. PS67984).

## **2. Order requirements.**

- a. Minimum order requirements.** Enrolled Affiliate’s Enterprise must have a minimum of 250 Qualified Users or Qualified Devices. The initial order must include at least 250 Subscription Licenses for Enterprise Products or Enterprise Online Services.
  - (i) Enterprise Commitment.** Enrolled Affiliate must order enough Licenses to cover all Qualified Users or Qualified Devices, depending on the license type, with one or more Enterprise Products or a mix of Enterprise Products and the corresponding Enterprise Online Services (as long as all Qualified Devices not covered by a License are only used by users covered with a user License).
  - (ii) Enterprise Online Services only.** If no Enterprise Product is ordered, then Enrolled Affiliate need only maintain at least 250 Subscription Licenses for Enterprise Online Services.
- b. Additional Products.** Upon satisfying the minimum order requirements above, Enrolled Affiliate may order Additional Products and Services.
- c. Use Rights for Enterprise Products.** For Enterprise Products, if a new Product version has more restrictive Use Rights than the version that is current at the start of the applicable initial or renewal term of the Enrollment, those more restrictive Use Rights will not apply to Enrolled Affiliate’s use of that Product during that term.
- d. Country of usage.** Enrolled Affiliate must specify the countries where Licenses will be used on its initial order and on any additional orders.
- e. Resellers.** Enrolled Affiliate must choose and maintain a Reseller authorized in the United States throughout the term of this Enrollment. During the term of any contract between OGS and a Microsoft Reseller for software and Online Services, Enrolled Affiliate must acquire its Licenses through the OGS-designated Reseller under such contract. Orders must be submitted to the Reseller who will transmit the order to Microsoft. The Reseller and Enrolled Affiliate determine pricing and payment terms as between them, and Microsoft will invoice the

Reseller based on those terms. Resellers and other third parties do not have authority to bind or impose any obligation or liability on Microsoft.

**f. Adding Products.**

**(i) Adding new Products not previously ordered.** New Enterprise Products or Enterprise Online Services may be added at any time by contacting a Microsoft Account Manager or Reseller. New Additional Products, other than Online Services, may be used if an order is placed in the month the Product is first used. For Additional Products that are Online Services, an initial order for the Online Service is required prior to use.

**(ii) Adding Licenses for previously ordered Products.** Additional quantities of Additional Products other than Online Services may be used at any time provided an order is placed in the month the Product is first used. Enrolled Affiliate must purchase all Licenses for Online Services prior to use unless the Online Services are (1) identified as eligible for the annual order process in the Product Terms or (2) included as part of other Licenses.

**g. Annual order requirements.** Enrolled Affiliate must submit an annual order that accounts for any changes since the initial order or last annual order.

**(i) Enterprise Products.** For Enterprise Products, Enrolled Affiliate must determine the number of Qualified Devices and Qualified Users (if ordering user-based Licenses) at the time the annual order is placed and must order additional Licenses for all Qualified Devices and Qualified Users that are not already covered by existing Licenses, including any Enterprise Online Services.

**(ii) Additional Products.** For Additional Products that have been previously ordered under this Enrollment, Enrolled Affiliate must order Licenses for any quantities used that are not already covered by existing Licenses.

**(iii) Online Services.** For Online Services identified as eligible for annual orders in the Product Terms, Enrolled Affiliate may place a reservation order for additional Licenses prior to use. Microsoft will provide a report of Reserved Licenses ordered but not yet invoiced to Enrolled Affiliate and its Reseller. Reserved Licenses will be invoiced retroactively to the month in which they were ordered, as well as proactively for the following year (if applicable).

**(iv) Subscription License Reductions.** Enrolled Affiliate may reduce the quantity of Subscription Licenses at the Enrollment anniversary date on a prospective basis as follows:

- 1) For Enterprise Online Services and Enterprise Products, Licenses can be reduced, as long as the initial order minimum requirements are maintained.
- 2) For Additional Products, Enrolled Affiliate may reduce the Licenses. If the License count is reduced to zero, then Enrolled Affiliate's use of the applicable Subscription License will be cancelled.

**(v) Device-based and user-based Licenses.** At each Enrollment anniversary date, if Enrolled Affiliate ordered device-based Licenses in the prior year, it may instead order user-based Licenses or vice versa, provided the Product is available on both a device and user basis in the Use Rights.

**(vi) Annual order period.** The annual order must be received by Microsoft between 60 and 30 days prior to the Enrollment anniversary date. The third year anniversary annual order is due within 30 days prior to the Expiration Date, and any license reservations within this 30 day period will not be accepted. Enrolled Affiliate may order more often than at each Enrollment anniversary date except for Subscription License reductions.

**(vii) Late annual order.** If the annual order is not received when due:

- 1) Microsoft will invoice Reseller for the following year for (1) the quantity of Subscription Licenses ordered in the prior year and (2) Reserved Licenses in excess of the quantity previously invoiced and

- 2) License reductions cannot be reported until the following Enrollment anniversary date (or at Enrollment renewal, as applicable).
- h. **Step-up Licenses.** For Licenses eligible for a step-up under this Enrollment, Enrolled Affiliate may step-up to a higher edition or suite as follows:
    - (i) For Enterprise Products and Online Services eligible for the annual order process, if step-up Licenses are included on an initial order, Enrolled Affiliate may order according to the annual order process.
    - (ii) For Additional Products (and Enterprise Products and Online Services eligible for the annual order process but not included on an initial order), Enrolled Affiliate may step-up by following the process described in the Section titled "Adding Licenses for previously ordered Products."
  - i. **Buy-out option.** Enrolled Affiliate may buy out Subscription Licenses acquired under this Enrollment for Products other than Online Services (if permitted) and acquire perpetual Licenses for the latest version of the Product as of the Expiration Date by placing an order for such Licenses at the buy-out price indicated on the Customer Price Sheet. Microsoft must receive the buy-out order no more than 30 days prior to the Expiration Date. The Expiration Date will be the invoice date for the buy-out order. The buy-out order must include Subscription Licenses for: (1) Qualified Devices and Qualified Users added during the final year of the Enrollment term; and (2) any Additional Products used by Enrolled Affiliate for which it has not yet placed an order; and (3) either or both of the following:
    - (i) For all Enterprise Products that allow buy-out, the number of perpetual Licenses equal to the total number of Enrolled Affiliate's current Qualified Devices or Qualified Users for such Products, and/or
    - (ii) For Additional Products, the number of perpetual Licenses Enrolled Affiliate elects to obtain.
  - j. **Clerical errors.** Microsoft may correct clerical errors in this Enrollment, and any documents submitted with or under this Enrollment, by providing notice by email and a reasonable opportunity for Enrolled Affiliate to object to the correction. Clerical errors include minor mistakes, unintentional additions and omissions. This provision does not apply to material terms, such as the identity, quantity or price of a Product ordered.
  - k. **Verifying compliance.** Microsoft may, in its discretion and at its expense, verify compliance with this Enrollment as set forth in the Enterprise Agreement.

### **3. Pricing.**

- a. **Price Levels.** For both the initial and any renewal term Enrolled Affiliate's Price Level for all Products ordered under this Enrollment will be Level "D" throughout the term of the Enrollment.
- b. **Setting Prices.** Enrolled Affiliate's prices for each Product or Service will be established by its Reseller. Except for Online Services designated in the Product Terms as being exempt from fixed pricing, Microsoft's prices for Resellers for each Product ordered will be fixed throughout the applicable initial or renewal Enrollment term. Microsoft's prices for Resellers are reestablished at the beginning of the renewal term.

### **4. Payment terms.**

Microsoft will invoice Enrolled Affiliate's Reseller in full upon acceptance of each order. Annual orders will be invoiced upon Microsoft's acceptance of this Enrollment and on each Enrollment anniversary date, after receiving each annual order.

## 5. **End of Enrollment term and termination.**

- a. **General.** At the Expiration Date, Enrolled Affiliate must immediately order and pay for Licenses for Products it has used but has not previously submitted an order, except as otherwise provided in this Enrollment.
- b. **Renewal option.** At the Expiration Date of the initial term, Enrolled Affiliate can renew Products by renewing this Enrollment for one additional 36-month term or by signing a new Enrollment. Microsoft must receive a Renewal Form, Product Selection Form, and renewal order prior to or at the Expiration Date. Microsoft will not unreasonably reject any renewal.
- c. **If Enrolled Affiliate elects not to renew.**
  - (i) **Subscription Licenses buy-out.** Enrolled Affiliate may elect to obtain perpetual Licenses as described in the Section titled "Buy-out option" for Licenses in which a buy-out is available.
  - (ii) **Online Services eligible for an Extended Term.** For Online Services identified as eligible for an Extended Term in the Product Terms, the following options are available at the end of the Enrollment initial or renewal term.
    - 1) **Extended Term.** Licenses for Online Services will automatically expire in accordance with the terms of the Enrollment. An extended term feature that allows Online Services to continue month-to-month ("Extended Term") for up to one year, unless designated in the Product Terms to continue until cancelled, is available. During the Extended Term, Online Services will be invoiced monthly at the then-current published price as of the Expiration Date. If Enrolled Affiliate wants an Extended Term, Enrolled Affiliate must submit a request to Microsoft at least 30 days prior to the Expiration Date.
    - 2) **Cancellation during Extended Term.** At any time during the first year of the Extended Term, Enrolled Affiliate may terminate the Extended Term by submitting a notice of cancellation to Microsoft for each Online Service. Thereafter, either party may terminate the Extended Term by providing the other with a notice of cancellation for each Online Service. Cancellation will be effective at the end of the month following 30 days after Microsoft has received or issued the notice.
  - (iii) **Subscription Licenses and Online Services not eligible for an Extended Term.** If Enrolled Affiliate elects not to renew, the Licenses will be cancelled and will terminate as of the Expiration Date. Any associated media must be uninstalled and destroyed and Enrolled Affiliate's Enterprise must discontinue use. Microsoft may request written certification to verify compliance.
- d. **Termination for cause.** Any termination for cause of this Enrollment will be subject to the "Termination for cause" section of the Enterprise Agreement. In addition, it shall be a breach of this Enrollment if Enrolled Affiliate or any Affiliate in the Enterprise that uses Government Community Cloud Services fails to meet and maintain the conditions of membership in the definition of Community.
- e. **Early termination.** Any early termination of this Enrollment will be subject to the "Early Termination" section of the Enterprise Agreement.

## 6. **Government Community Cloud.**

- a. **Community requirements.** If Enrolled Affiliate purchases Government Community Cloud Services, Enrolled Affiliate certifies that it is a member of the Community and agrees to use Government Community Cloud Services solely in its capacity as a member of the Community and, for eligible Government Community Cloud Services, for the benefit of end users that are members of the Community. Use of Government Community Cloud Services by an entity that is not a member of the Community or to provide services to non-Community members is strictly prohibited and could result in termination of Enrolled Affiliate's license(s) for Government



Community Cloud Services without notice. Enrolled Affiliate acknowledges that only Community members may use Government Community Cloud Services.

- b. All terms and conditions applicable to non-Government Community Cloud Services also apply to their corresponding Government Community Cloud Services, except as otherwise noted in the Use Rights, Product Terms, and this Enrollment.
- c. Enrolled Affiliate may not deploy or use Government Community Cloud Services and corresponding non-Government Community Cloud Services in the same domain.
- d. **Use Rights for Government Community Cloud Services.** For Government Community Cloud Services, notwithstanding anything to the contrary in the Use Rights:
  - (i) Government Community Cloud Services will be offered only within the United States.
  - (ii) Additional European Terms, as set forth in the Use Rights, will not apply.
  - (iii) References to geographic areas in the Use Rights with respect to the location of Customer Data at rest, as set forth in the Use Rights, refer only to the United States.

## **7. *Microsoft Online Services Criminal Justice Information Services (CJIS) Language for Covered Services.***

**Reminder:** Enrolled Affiliates using Online Services to process and/or store Criminal Justice Information are subject to the provisions of Section 15 of the Enterprise Agreement Program Agreement.



## **Enrollment Details**

### **1. Enrolled Affiliate's Enterprise.**

- a. Identify which Enrolled Affiliates are included in the Enterprise. Enrolled Affiliate's Enterprise must consist of entire offices, bureaus, agencies, departments or other entities of Enrolled Affiliate, not partial offices, bureaus, agencies, or departments, or other partial entities. Enrolled Affiliate's organization includes.

Check only one box in this section. If no boxes are checked, Microsoft will deem the Enterprise to include the Enrolled Affiliate only. If more than one box is checked, Microsoft will deem the Enterprise to include the largest number of Affiliates.

Enrolled Affiliate only

Enrolled Affiliate and all Affiliates

Enrolled Affiliate and the following Affiliate(s) (Only identify specific affiliates to be included if fewer than all Affiliates are to be included in the Enterprise):

Enrolled Affiliate and all Affiliates, with following Affiliate(s) excluded:

- b. Please indicate whether the Enrolled Affiliate's Enterprise will include all new Affiliates acquired after the start of this Enrollment: <Choose One>

### **2. Contact information.**

Each party will notify the other in writing if any of the information in the following contact information page(s) changes. The asterisks (\*) indicate required fields. By providing contact information, Enrolled Affiliate consents to its use for purposes of administering this Enrollment by Microsoft, its Affiliates, and other parties that help administer this Enrollment. The personal information provided in connection with this Enrollment will be used and protected in accordance with the privacy statement available at <https://www.microsoft.com/licensing/servicecenter>.

- a. **Primary contact.** This contact is the primary contact for the Enrollment from within Enrolled Affiliate's Enterprise. This contact is also an Online Administrator for the Volume Licensing Service Center and may grant online access to others. The primary contact will be the default contact for all purposes unless separate contacts are identified for specific purposes.

**Name of entity (must be legal entity name)\***

**Contact name\* First Last**

**Contact email address\***

**Street address\***

**City\***  
**State/Province\***  
**Postal code\*** -  
(For U.S. addresses, please provide the zip + 4, e.g. xxxxx-xxxx)  
**Country\***  
**Phone\***  
**Tax ID**

*\* indicates required fields*

- b. Notices contact and Online Administrator.** This contact (1) receives the contractual notices, (2) is the Online Administrator for the Volume Licensing Service Center and may grant online access to others, and (3) is authorized to order Reserved Licenses for eligible Online Services, including adding or reassigning Licenses and stepping-up prior to an annual order.

Same as Primary Contact (default if no information is provided below, even if box is not checked)

**Contact name\* First Last**

**Contact email address\***

**Street address\***

**City\***

**State/Province\***

**Postal code\*** -

(For U.S. addresses, please provide the zip + 4, e.g. xxxxx-xxxx)

**Country\***

**Phone\***

**Language preference.** Choose the language for notices. English

This contact is a third party (not the Enrolled Affiliate). Warning: This contact receives personally identifiable information of the Customer and its Affiliates.

*\* indicates required fields*

- c. Online Services Manager.** This contact is authorized to manage the Online Services ordered under the Enrollment and (for applicable Online Services) to add or reassign Licenses and step-up prior to an annual order.

Same as notices contact and Online Administrator (default if no information is provided below, even if box is not checked)

**Contact name\*: First Last**

**Contact email address\***

**Phone\***

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

*\* indicates required fields*

- d. Reseller information.** Reseller contact for this Enrollment is:

**Reseller company name\***

**Street address (PO boxes will not be accepted)\***

**City\***

**State/Province\***

**Postal code\***

**Country\***

**Contact name\***

**Phone\***

**Contact email address\***

*\* indicates required fields*

By signing below, the Reseller identified above confirms that all information provided in this Enrollment is correct.

|  |
|--|
| <b>Signature*</b> _____<br><b>Printed name*</b><br><b>Printed title*</b><br><b>Date*</b> |
|--|

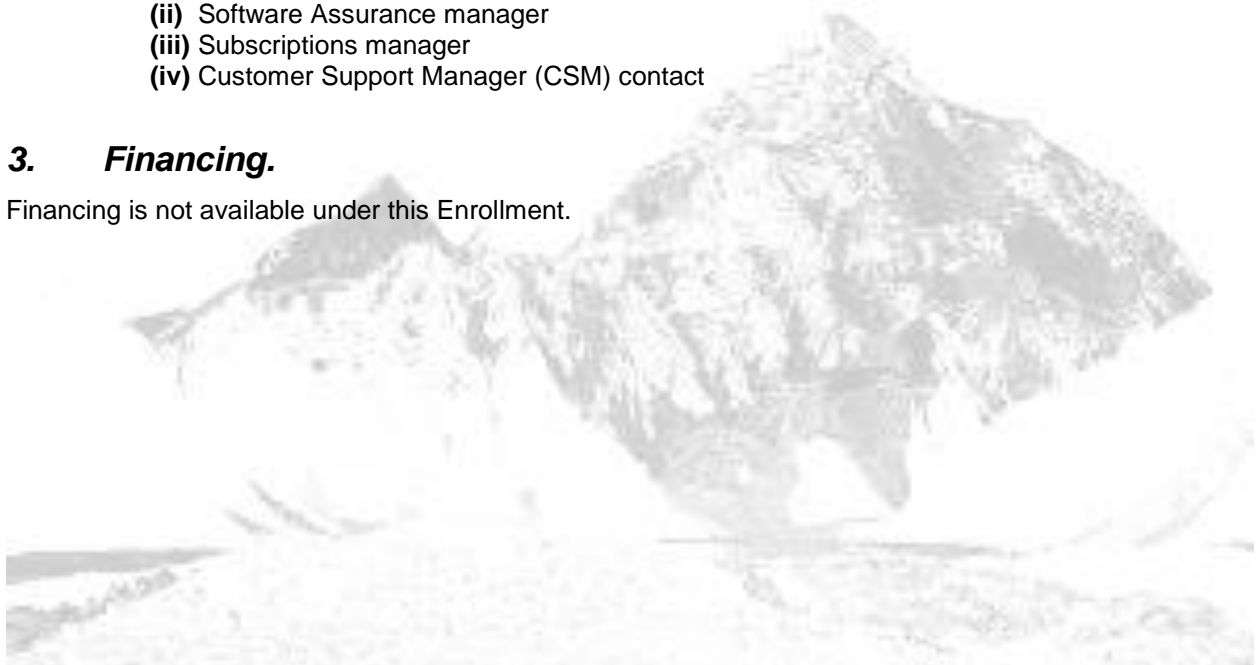
*\* indicates required fields*

**Changing a Reseller.** This section is intentionally omitted and is included in Section 1.4 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

- e. If Enrolled Affiliate requires a separate contact for any of the following, attach the Supplemental Contact Information form. *Otherwise, the Notices Contact and Online Administrator remains the default.*
  - (i) Additional notices contact
  - (ii) Software Assurance manager
  - (iii) Subscriptions manager
  - (iv) Customer Support Manager (CSM) contact

### **3. Financing.**

Financing is not available under this Enrollment.



## Custom Server and Cloud Enrollment and Local

## State

Server and Cloud Enrollment  
number  
*Microsoft to complete*

Previous Enrollment number  
*Reseller to complete*

|  |
|--|
|  |
|  |

Proposal ID/Framework ID  
*(if applicable)*

|  |
|--|
|  |
|--|

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

This Microsoft Server and Cloud Enrollment is entered into between the entities identified on the signature form as of the effective date. Enrolled Affiliate represents and warrants it is an Affiliate of the State of New York, who entered into the Enterprise Agreement identified on the signature form.

This Enrollment consists of: (1) the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984) and these Enterprise Enrollment terms and conditions, (2) the terms of the Enterprise Agreement identified on the signature form, (3) the Product Selection Form, (4) the Product Terms, (5) the Online Services Terms, (6) any Supplemental Contact Information Form, Previous Agreement/Enrollment form, and other forms that may be required, and (7) any order submitted under this Enrollment. By entering into this Enrollment, Enrolled Affiliate agrees to be bound by the terms and conditions of the Enterprise Agreement.

**Effective date.** If Enrolled Affiliate is renewing Software Assurance or Subscription Licenses from one or more previous Enrollments or agreements, then the effective date will be the day after the first prior Enrollment or agreement expires or terminates. If this Enrollment is renewed, the effective date of the renewal term will be the day after the Expiration Date of the initial term. Otherwise, the effective date will be the date this Enrollment is accepted by Microsoft. Any reference to “anniversary date” refers to the anniversary of the effective date of the applicable initial or renewal term for each year this Enrollment is in effect.

**Term.** The initial term of this Enrollment will expire on the last day of the month, 36 full calendar months from the effective date of the initial term. If the Enrollment is renewed, the renewal term will expire on the last day of the month, 36 full calendar months after the effective date of the renewal term.

**Prior Enrollment(s).** If renewing Software Assurance or Subscription Licenses from another Enrollment or agreement, the previous Enrollment or agreement number must be identified in the appropriate box above. If renewing from multiple Enrollments or agreements, or transferring Software Assurance or MSDN (Microsoft Developer Network) details, the Previous Agreement/Enrollment form must be used.

## ***Terms and Conditions***

### ***1. Definitions.***

Terms used but not defined in this Enrollment will have the definition in the Enterprise Agreement. The following definitions also apply:

“Additional Product” means any Product identified as such in the Product Terms, excluding any Server and Tools Product, and chosen by Enrolled Affiliate under this Enrollment.

“Azure Government Services” means one or more of the services or features Microsoft makes available to Enrolled Affiliate under this Enrollment and identified at <http://azure.microsoft.com/en-us/regions/#services>, which are Government Community Cloud Services.

“Baseline Agreements” means all Microsoft license agreements, including, without limitation, volume licensing agreements, OEM licenses and retail licenses, under which any Affiliate in the Enterprise uses the selected Server and Tools Products. Baseline Agreements do not include any Service Provider License Agreements or Independent Software Vendor Royalty License and Distribution Agreements under which the Enterprise has the right to provide software services or unified solutions to unaffiliated end users.

“Baseline Licenses” means Existing Baseline Licenses and New Baseline Licenses, collectively.

“Community” means the community consisting of one or more of the following: (1) a Government, (2) an Enrolled Affiliate using eligible Government Community Cloud Services to provide solutions to a Government or a qualified member of the Community, or (3) a Customer with Customer Data that is subject to Government regulations for which Customer determines and Microsoft agrees that the use of Government Community Cloud Services is appropriate to meet Customer’s regulatory requirements. Membership in the Community is ultimately at Microsoft’s discretion, which may vary by Government Community Cloud Service.

“Existing Baseline Licenses” means all Licenses in use by any Affiliate in the Enterprise for the selected Server and Tools Products that were obtained under any Baseline Agreement before this Enrollment.

“Expiration Date” means the date upon which this Enrollment expires.

“Federal Agency” means a bureau, office, agency, department or other entity of the United States Government.

“Government” means a Federal Agency, State/Local Entity, or Tribal Entity acting in its governmental capacity.

“Government Community Cloud Services” means Microsoft Online Services that are provisioned in Microsoft’s multi-tenant data centers for exclusive use by or for the Community and offered in accordance with the National Institute of Standards and Technology (NIST) Special Publication 800-145. Microsoft Online Services that are Government Community Cloud Services are designated as such in the Use Rights and Product Terms.

“Microsoft Azure Services” means one or more of the Microsoft Azure services or features made available to Enrolled Affiliate under this Enrollment by Microsoft and identified at <http://www.windowsazure.com/en-us/home/features/overview/>, except Microsoft Azure Marketplace (which is governed by separate terms).

“New Baseline Licenses” means the quantity of Licenses for Server and Tools Products ordered under this Enrollment in excess of the Existing Baseline Licenses.

“Product Family” or “Family” means the group of Products designated as a Product Family on the Product Selection Form.

“Product Selection Form” means the document provided by Microsoft or Enrolled Affiliate’s Reseller that (1) identifies all Baseline Licenses, (2) defines the Product Families, (3) establishes the Enrolled Affiliate’s price levels for each Product pool and (4) specifies the minimum quantity of Licenses that must be ordered to qualify for this Enrollment.

“Reseller” means an entity authorized by Microsoft to resell Licenses under this program and engaged by an Enrolled Affiliate to provide pre- and post-transaction assistance related to this agreement.

“Reserved License” means for an Online Service identified as eligible for true-up in the Product Terms, the License reserved by Enrolled Affiliate prior to use and for which Microsoft will make the Online Service available for activation.

“Server and Tools Product” means any Product identified as such in the Product Selection Form and chosen by Enrolled Affiliate to be included under this Enrollment.

“State/Local Entity” means (1) any agency of a state or local government in the United States, or (2) any United States county, borough, commonwealth, city, municipality, town, township, special purpose district,

or other similar type of governmental instrumentality established by the laws of Customer's state and located within Customer's state's jurisdiction and geographic boundaries.

"Tribal Entity" means a federally-recognized tribal entity performing tribal governmental functions and eligible for funding and services from the U.S. Department of Interior by virtue of its status as an Indian tribe.

"Use Rights" shall have the definition as set forth in Section 1.8 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

"Volume Licensing Site" shall have the same meaning as "Licensing Site" in the Custom Microsoft Business Agreement (OGS Contract No. PS67984).

## **2. Product Use Rights and Service Level Agreement.**

Enrolled Affiliate and its Enterprise may download, install and use software Products and access and use Online Services ordered under this Enrollment subject to the terms of this Enrollment, the applicable Use Rights and the Product Terms. In addition to applicable use rights terms of the Enterprise Agreement, the following terms apply to this Enrollment:

- a. All terms and conditions applicable to Microsoft Azure Services also apply to Azure Government Services, except as otherwise noted in the Use Rights and this Enrollment.
- b. **Use Rights for Server and Tools Products.** For Server and Tools Products, if a new Product version has more restrictive Use Rights than the version that is current at the start of the applicable initial or renewal term of the Enrollment, those more restrictive Use Rights will not apply to Enrolled Affiliate's use of that Product during that term.

## **3. Order requirements.**

### **a. Minimum order requirements.**

#### **(i) Server and Tools Products.**

- 1) **Existing Baseline Licenses.** When ordering a Server and Tools Product other than Microsoft Azure, Enrolled Affiliate must identify all Existing Baseline Licenses for the applicable Server and Tools Product Family. Perpetual Licenses owned by the Enterprise but not identified as Existing Baseline Licenses in the applicable Product Family at the start of this Enrollment may not be used during this Enrollment term.
- 2) **Initial Order.** Enrolled Affiliate's initial order must meet the minimum purchase requirements for at least one Product Family. For every applicable Product Family except Microsoft Azure the initial order must also include the following:
  - A. Software Assurance on all perpetual Existing Baseline Licenses that have been continuously covered under Software Assurance;
  - B. License with Software Assurance or Subscription License for each Existing Baseline License that has not been continuously covered under Software Assurance; and
  - C. License with Software Assurance or Subscription Licenses for all New Baseline Licenses.
- 3) **Effect of Subscription License coverage on Existing Baseline Licenses.** If Enrolled Affiliate orders Subscription Licenses for any Existing Baseline Licenses, the following provisions will apply for the duration of this Enrollment, notwithstanding any provisions to the contrary in the Baseline Agreements:
  - A. The Use Rights for those Existing Baseline Licenses will be superseded and replaced by the Use Rights for the Subscription Licenses.

- B. The Existing Baseline Licenses shall be non-transferrable.
  - C. The Enrolled Affiliate and its Affiliates must continue to perform any obligations under their Baseline Agreement(s), including but not limited to making payments for any of the Existing Baseline Licenses.
  - D. When this Enrollment expires or is terminated, the Enrolled Affiliate or its Affiliates, as applicable, will have the rights under the Baseline Agreement(s) that it had as of the effective date of this Enrollment, unless it exercises its buy-out option as provided in this Enrollment.
- b. **Additional Products.** Upon satisfying the minimum order requirements above, Enrolled Affiliate may order Additional Products and Services.
  - c. **Country of Usage.** Enrolled Affiliate must specify the countries where Licenses will be used on its initial order and on any subsequent orders.
  - d. **Resellers.** Enrolled Affiliate must choose and maintain a Reseller authorized in the United States throughout the term of this Enrollment. During the term of any contract between OGS and a Microsoft Reseller for Software and Online Services, Enrolled Affiliate must acquire its Licenses through the OGS-designated Reseller under such contract. Orders must be submitted to the Reseller who will transmit the order to Microsoft. The Reseller and Enrolled Affiliate determine pricing and payment terms as between them, and Microsoft will invoice the Reseller based on those terms.
  - e. **Adding Products.**
    - (i) **Adding new Products not previously ordered.**
      - 1) New Server and Tools Products may be added by contacting a Microsoft Account Manager or Reseller.
      - 2) New Server and Tools Products included in a previously ordered Product Family may be added at any time but must be included in the next annual true-up order.
      - 3) Orders for new Additional Products, other than Online Services, must be placed in the month the Additional Product is first used.
      - 4) Subscription Licenses for new Online Services other than Microsoft Azure Services must be ordered prior to use.
      - 5) Microsoft Azure Services may be added as provided in the Product Terms.
    - (ii) **Adding Licenses for previously ordered Products.**
      - 1) Additional Licenses for previously ordered Products may be added at any time but must be included in the next annual true-up order.
      - 2) Additional Subscription Licenses for Online Services must be ordered prior to use unless the Online Services are (1) identified as eligible for true-up in the Product Terms or (2) included as part of other Licenses.
  - f. **True-up requirements.** Enrolled Affiliate must submit an annual true-up order that accounts for any changes since the initial order or last order. If there are no changes, then an update statement must be submitted instead of a true-up order.
    - (i) **Annual order period.** A true-up order or update statement must be received by Microsoft between 60 and 30 days prior to each Enrollment anniversary date. The third-year true-up order or update statement is due within 30 days prior to the Expiration Date. Enrolled Affiliate may submit true-up orders more often to account for increases in Product usage, but an annual true-up order or update statement must still be received by Microsoft during the annual order period.



**(ii) True-up order.** Enrolled Affiliate must determine the maximum number of Products used since the latter of the initial order, the last true-up order, or the prior anniversary date and submit a true-up order that accounts for any increase. For Subscription Licenses for Products other than Online Services, the true-up order must indicate the initial use date(s) for each additional Subscription License ordered. For Online Services identified as eligible for true-up in the Product Terms, Enrolled Affiliate may place a reservation order for the additional Licenses prior to use, and payment may be deferred until the next true-up order. Microsoft will provide a report of Reserved Licenses ordered but not yet invoiced to Enrolled Affiliate and its Reseller. Reserved Licenses will be invoiced retroactively to the month in which they were ordered.

**(iii) Update statement.** An update statement must be submitted if there has been no change in the number of Products used within Enrolled Affiliate's Enterprise since the latter of the initial order, the last true-up order, or the prior anniversary date. This update statement must be signed by Enrolled Affiliate's authorized representative.

**(iv) Subscription License reductions.** Enrolled Affiliate may reduce the quantity of Subscription Licenses only on the Enrollment anniversary date on a prospective basis if permitted in the Product Terms as follows:

- 1) For Server and Tools Products available as Subscription Licenses, Licenses may be reduced only as long as the minimum order requirements are maintained. If reducing Subscription Licenses that cover Existing Baseline Licenses, Enrolled Affiliate may not use or transfer those Existing Baseline Licenses for the remainder of the term.
- 2) For Online Services available as Additional Product Subscription Licenses, Enrolled Affiliate may reduce the Licenses. If the License count is reduced to zero, the applicable Subscription License will be cancelled.

Subscription Licenses added after the initial order may not be reduced on the anniversary date immediately following the order but must remain in effect at least until the subsequent anniversary date. Notwithstanding the foregoing, Microsoft Azure Monetary Commitment added after the initial order may be reduced on any anniversary date. Invoices will be adjusted to reflect any reductions in Subscription Licenses and will be effective as of the Enrollment anniversary date.

**(v) Late true-up order.** If the annual true-up order is not received when due:

- 1) Microsoft will invoice Enrolled Affiliate's Reseller for the following year for the quantity of Subscription Licenses ordered in the prior year; however, such invoice will not constitute a waiver of the annual order requirement;
- 2) Subscription License reductions will not take effect until the following Enrollment anniversary date (or at Enrollment renewal, as applicable); and
- 3) Microsoft will invoice Enrolled Affiliate's Reseller for all Reserved Licenses not previously invoiced.

**g. Step-up Licenses.** For Licenses eligible for a step-up under this Enrollment, Enrolled Affiliate may step-up to a higher edition or suite as follows:

- (i)** For step-up Licenses included on an initial order, Enrolled Affiliate may order according to the true-up order process.
- (ii)** If step-up Licenses are not included on an initial order, Enrolled Affiliate may step-up initially by following the process described in the Section titled "Adding new Products not previously ordered," then for additional step-up Licenses, by following the true-up order process.

**h. Clerical Errors.** Microsoft may correct clerical errors in this Enrollment, and any documents submitted with or under this Enrollment, by providing notice by email and a reasonable opportunity for Enrolled Affiliate to object to the correction. Clerical errors include minor

mistakes, unintentional additions and omissions. This provision does not apply to material terms, such as the identity, quantity or price of a Product ordered.

- i. **Verifying compliance.** Microsoft may, in its discretion and at its expense, verify compliance with this Enrollment as set forth in the Agreement.

#### **4. Pricing.**

- a. **Price levels.** Each Product is assigned to a Product pool as shown on the Product Terms. Enrolled Affiliate's price level for each Product pool under this Enrollment will be Level D.
- b. **Setting prices.** Enrolled Affiliate's prices for each Product or Service will be established by its Reseller. Microsoft's prices for Resellers for each Product or Service ordered (except for Microsoft Azure Services) are fixed throughout the applicable Enrollment term.

#### **5. Payment terms.**

- a. **License with Software Assurance and Software Assurance.** For the initial and any renewal order for License with Software Assurance and Software Assurance, Enrolled Affiliate may pay upfront or elect to spread its payments over the applicable Enrollment term. If an upfront payment is elected, Microsoft will invoice Enrolled Affiliate's Reseller in full upon acceptance of this Enrollment. If spread payments are elected, Microsoft will invoice Enrolled Affiliate's Reseller in three equal annual installments. The first installment will be invoiced to Enrolled Affiliate's Reseller upon Microsoft's acceptance of this Enrollment and additional installments will be invoiced on each Enrollment anniversary date. Subsequent orders will be invoiced to Enrolled Affiliate's Reseller upon acceptance of the order and must be paid upfront.
- b. **Subscription Licenses (except Microsoft Azure Services).** Microsoft will invoice Enrolled Affiliate's Reseller annually in full upon acceptance of each order. Microsoft will invoice Reseller for annual orders on each Enrollment anniversary date. Subsequent orders are invoiced upon acceptance of the order and Enrolled Affiliate may elect to pay annually or upfront.
- c. **Microsoft Azure services.** Invoicing for Microsoft Azure Services is described in the Product Terms.

#### **6. End of Enrollment term and termination.**

- a. **General.** At the Expiration Date, Enrolled Affiliate must immediately order and pay for Licenses for Products it has used but for which it has not previously submitted an order.
- b. **End of term rights for Server and Tools Products.** Provided Enrolled Affiliate has paid for all required Licenses, including any Baseline Licenses, on the Expiration Date Enrolled Affiliate will have the following rights:
  - (i) **Existing Baseline Licenses with continuous Software Assurance.** For perpetual Existing Baseline Licenses continuously covered by Software Assurance, Enrolled Affiliate will have perpetual Licenses to use the latest version of the Product available (or any prior version) as of the Expiration Date, provided that the Existing Baseline Licenses are fully paid.
  - (ii) **New Baseline Licenses.** For New Baseline Licenses (excluding Subscription Licenses), Enrolled Affiliate will have perpetual Licenses to use the latest version of the Product available (or any prior version) as of the Expiration Date.
- c. **Renewal option.** At the Expiration Date of the initial term, Enrolled Affiliate can renew Products and Services by renewing this Enrollment for one additional 36 full calendar month term or by signing a new Enrollment. Microsoft must receive a Renewal Form, Product

Selection Form and renewal order prior to or at the Expiration Date. Microsoft will not unreasonably reject any renewal.

**d. If Enrolled Affiliate elects not to renew.**

**(i) Software Assurance.** If Enrolled Affiliate elects not to renew Software Assurance for any Product under its Enrollment, then Enrolled Affiliate will not be permitted to order Software Assurance later without first acquiring a new License with Software Assurance.

**(ii) Extended Term for eligible Online Services.** For Online Services identified as eligible for an Extended Term in the Product Terms, the following options are available at the end of the Enrollment initial or renewal term.

**1) Extended Term.** If Enrolled Affiliate does not renew, access to Online Services will automatically continue month-to-month in accordance with the terms of the Enrollment (“Extended Term”) for up to one year, unless designated in the Product Terms to continue until cancelled. For the first twelve months of the Extended Term, Online Services will be invoiced monthly (quarterly for Microsoft Azure Services) at the then-current published price (or Consumption Rate for Microsoft Azure Services) for Enrolled Affiliate’s price level as of the Expiration Date. As of the first day of the thirteenth month of the Extended Term, Online Services that continue until cancelled will be invoiced at the then-current published price. During the Extended Term, the then-current Online Services Terms and Product Terms will apply to Enrolled Affiliate’s use. If Enrolled Affiliate does not want an Extended Term, Microsoft must receive a request not to extend no later than 30 days before the Expiration Date.

**2) Cancellation during Extended Term.** At any time during the first year of the Extended Term, Enrolled Affiliate may terminate the Extended Term by submitting a notice of cancellation to Microsoft for each Online Service. Thereafter, either party may terminate the Extended Term by providing the other with a notice of cancellation for each Online Service. If Enrolled Affiliate does not intend to continue with the Extended Term, Enrolled Affiliate must submit a notice of cancellation for each Online Service. Cancellation will be effective at the end of the month following 30 days after Microsoft has received or issued the notice.

**(iii) Subscription Licenses and Online Services without an Extended Term.** If Enrolled Affiliate elects not to renew or exercise its buy-out rights for Products eligible for buy-out, Subscription Licenses will be cancelled and will terminate as of the Expiration Date. Any associated software must be uninstalled, media must be destroyed and the Enterprise must discontinue use. Microsoft may request written certification to verify compliance.

**e. Buy-out option.**

**(i) For Subscription Licenses.** Enrolled Affiliate may buy out active Subscription Licenses acquired under this Enrollment for Products other than Online Services and acquire perpetual Licenses for the latest version of the Product as of the Expiration Date by placing an order for such Licenses.

**(ii) Buy-out order date.** Microsoft must receive the buy-out order no more than 30 days prior to the Expiration Date. The Expiration Date will be the invoice date for the buy-out order.

**f. Termination for cause.** Any termination for cause of this Enrollment will be subject to the “Termination for cause” Section of the Enterprise Agreement Program Agreement. In addition, the following will constitute a breach of this Enrollment: (1) Enrolled Affiliate or any Affiliate in the Enterprise fails to timely pay for any existing Baseline License, (2) any existing Baseline Agreement is terminated for cause prior to full payment, or (3) Enrolled Affiliate or any Affiliate in the Enterprise that uses Government Community Cloud Services fails to meet and maintain the conditions of membership in the definition of Community.

**g. Early termination.** If Enrolled Affiliate terminates this Enrollment as a result of a breach by Microsoft, or if Microsoft terminates this Enrollment because Enrolled Affiliate has ceased to

be an Affiliate, then Enrolled Affiliate will have the following options for Licenses, excluding Subscription Licenses:

- (i) It may immediately pay the total remaining amount due, including all installments, in which case, Enrolled Affiliate will have perpetual rights (1) for Server and Tools Products, as described in the section entitled “End of Term rights for Server and Tools Products” and (2) for Additional Products, for all Licenses (excluding Subscription Licenses) it has ordered (for the latest version of Products ordered under Software Assurance coverage in an initial or renewal term); or
  - (ii) It may pay only amounts due as of the termination date, in which case Enrolled Affiliate will have perpetual Licenses (for the latest version of Products ordered under Software Assurance coverage in an initial or renewal term) for (1) all copies of Products for which payment has been made in full, and (2) a proportional number of copies of Products it has ordered for which payment has been made.
- h. Early termination for Subscription Licenses.** Notwithstanding anything to the contrary in any of the documents that collectively constitute the Enterprise Agreement, if an Enrolled Affiliate terminates its Enrollment as a result of a breach by Microsoft, or if Microsoft terminates this Enrollment because Enrolled Affiliate has ceased to be an Affiliate, then Enrolled Affiliate will have the following options with respect to Subscription Licenses:
  - (i) Enrolled Affiliate may obtain perpetual Licenses as described in the section entitled “Buy-out option,” provided that Microsoft receives the buy-out order for those Licenses within 60 days after Enrolled Affiliate provides notice of termination.
  - (ii) If not exercising the buy-out option, Enrolled Affiliate will receive a credit for any amount paid in advance that would apply after the date of termination.
- i. Early termination for Online Services.** For Online Services, if an Enrolled Affiliate terminates its Enrollment as a result of a breach by Microsoft, or if Microsoft terminates this Enrollment for regulatory reasons or because Enrolled Affiliate has ceased to be an Affiliate, then Microsoft will issue Reseller a credit for any amount paid in advance for the period after termination.

## **7. Government Community Cloud.**

- a. Community requirements.** If Enrolled Affiliate purchases Government Community Cloud Services, Enrolled Affiliate certifies that it is a member of the Community and agrees to use Government Community Cloud Services solely in its capacity as a member of the Community and, for eligible Government Community Cloud Services, for the benefit of end users that are members of the Community. Use of Government Community Cloud Services by an entity that is not a member of the Community or to provide services to non-Community members is strictly prohibited and could result in termination of Enrolled Affiliate’s license(s) for Government Community Cloud Services without notice. Enrolled Affiliate acknowledges that only Community members may use Government Community Cloud Services.
- b.** All terms and conditions applicable to non-Government Community Cloud Services also apply to their corresponding Government Community Cloud Services, except as otherwise noted in the Use Rights, Product Terms, and this Enrollment.
- c.** Enrolled Affiliate may not deploy or use Government Community Cloud Services and corresponding non-Government Community Cloud Services in the same domain.
- d. Use Rights for Government Community Cloud Services.** For Government Community Cloud Services, notwithstanding anything to the contrary in the Use Rights:
  - (i) Government Community Cloud Services will be offered only within the United States.
  - (ii) Additional European Terms, as set forth in the Use Rights, will not apply.

(iii) References to geographic areas in the Use Rights with respect to the location of Customer Data at rest, as set forth in the Use Rights, refer only to the United States.

**8. *Microsoft Online Services Criminal Justice Information Services (CJIS) Language for Covered Services.***

**Reminder:** Enrolled Affiliates using Online Services to process and/or store Criminal Justice Information are subject to the provisions of Section 15 of the Enterprise Agreement Program Agreement.



## **Enrollment Details**

### **1. Enrolled Affiliate's Enterprise.**

- a. Identify which Enrolled Affiliates are included in the Enterprise. (Required) Enrolled Affiliate's Enterprise must consist of entire offices, bureaus, agencies, departments or other entities of Enrolled Affiliate, not partial offices, bureaus, agencies, or departments, or other partial entities.

Check **only one box** in this section. If no boxes are checked, Microsoft will deem the Enterprise to include the Enrolled Affiliate only. If more than one box is checked, Microsoft will deem the Enterprise to include the largest number of Affiliates.

Enrolled Affiliate only

Enrolled Affiliate and the following Affiliate(s) (Only identify specific Affiliates to be included if fewer than all Affiliates are to be included in the Enterprise):

Enrolled Affiliate and all Affiliates, with following Affiliate(s) excluded:

- b. Please indicate whether Enrolled Affiliate's Enterprise will include all new Affiliates acquired after the start of this Enrollment: <Choose One>

If no selection is made, Microsoft will deem the Enterprise to include all future Affiliates.

### **2. Contact information.**

Each party will notify the other in writing if any of the information in the following contact information page(s) changes. The asterisks (\*) indicate required fields. By providing contact information, Enrolled Affiliate consents to its use for purposes of administering this Enrollment by Microsoft, its Affiliates, and other parties that help administer this Enrollment. The personal information provided in connection with this Enrollment will be used and protected in accordance with the privacy statement available at <https://www.microsoft.com/licensing/servicecenter>.

- a. **Primary contact.** This contact is the primary contact for the Enrollment from within Enrolled Affiliate's Enterprise. This contact is also an Online Administrator for the Volume Licensing Service Center and may grant online access to others. The Primary contact will be the default contact for all purposes unless separate contacts are identified for specific purposes.

**Name of entity (must be legal entity name)\***

**Contact name: First\*                      Last\***

**Contact email address\***

**Street address\***

**City\***

**State/Province\***

**Postal code\*** -

(For U.S. addresses, please provide the zip + 4, e.g. xxxxx-xxxx)

**Country\***

**Phone\***

**Tax ID**

*\* indicates required field*

- b. Notices contact and Online Administrator.** This contact (1) receives the contractual notices, (2) is the Online Administrator for the Volume Licensing Service Center and may grant online access to others, and (3) is authorized to order Reserved Licenses for eligible Online Services, including adding or reassigning Licenses and stepping-up prior to a true-up order.

Same as primary contact (default if no information is provided below, even if box is not checked)

**Name of entity\*:**

**Contact name: First\* Last\***

**Contact email address\***

**Street address\***

**City\***

**State/Province\***

**Postal code\*** -

(For U.S. addresses, please provide the zip + 4, e.g. xxxxx-xxxx)

**Country\***

**Phone\***

**Language preference.** Choose the language for notices. English

This contact is a third party (not Enrolled Affiliate). Warning: This contact receives personally identifiable information of the Customer and its Affiliates.

*\* indicates required field*

- c. Online Services Manager.** This contact is authorized to manage the Online Services ordered under the Enrollment.

Same as notices contact and Online Administrator (default if no information is provided below, even if box is not checked)

**Contact name: First\* Last\***

**Contact email address\***

**Phone\***

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

*\* indicates required field*

- d. Reseller information.** Reseller's contact for this Enrollment is:

**Reseller company name\***

**Street address (PO boxes will not be accepted)\***

**City\***

**State/Province\***

**Postal code\***

**Country\***

**Contact name\***

**Phone\***

**Contact email address\***

*\* indicates required field*

By signing below, the Reseller identified above confirms that all information provided in this Enrollment is correct.

|                          |
|--------------------------|
| <b>Name of Reseller*</b> |
| <b>Signature*</b> _____  |
| <b>Printed name*</b>     |
| <b>Printed title*</b>    |
| <b>Date*</b>             |

*\* indicates required field*

**Changing a Reseller.** This section is intentionally omitted and is included in Section 1.4 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

- e. If Enrolled Affiliate requires a separate contact for any of the following, attach the Supplemental Contact Information form. *Otherwise, the Notices Contact and Online Administrator remains the default.*
- (i) Additional Notices Contact
  - (ii) Software Assurance Manager
  - (iii) Subscriptions Manager
  - (iv) Customer Support Manager (CSM) contact

### **3. Financing.**

Financing is not available for this Enrollment.

### **4. Upfront Payment.**

Does Enrolled Affiliate wish to pay upfront as allowed in the Payment terms section of this Enrollment?

Yes,  No.



Proposal ID 

## Campus and School Agreement

### Custom Program Agreement Terms and Conditions

This agreement is entered into by the entities identified on the signature form.

This agreement consists of (1) the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984), (2) these terms and conditions and the signature form, (3) the Product Terms, (4) the Online Services Terms, (5) any Enrollment entered into under this agreement, and (6) any order submitted under this agreement.

### Terms and Conditions

#### 1. Definitions.

Notwithstanding any other definitions to the contrary described in the Custom Microsoft Business Agreement (OGS Contract No. PS67984), in this Campus and School Agreement the following definitions apply:

“Affiliate” shall have the definition as set forth in Section 1.8(B) and (C) of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

“Customer Data” shall have the definition set forth in Section 1.8 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

“Enrollment” means the document that Institution submits under this agreement to place orders for Products.

“day” means a calendar day.

“Fixes” shall have the definition set forth in Section 1.8 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

“Institution” means the entity that is (1) a Qualified Educational User (as defined in Appendix E to the associated Custom Master Business Agreement (OGS Contract No. PS67984) as of the effective date of this agreement that has entered into this agreement with Microsoft or (2) an Affiliate of Institution that has entered into an Enrollment under this agreement. If Institution is a school district, “Institution” includes all participating schools in the same district.

“Knowledge Worker” has the definition provided in the Enrollment.

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

“Licensed Period” means the period of time beginning on the effective date specified in the Enrollment and continuing for the period of time specified in the Enrollment.

“Licensing Site” means <http://www.microsoft.com/licensing/contracts> or a successor site.

“Microsoft” means the Microsoft Affiliate that has entered into this agreement or an Enrollment and its Affiliates, as appropriate.

“Online Services” shall have the definition set forth in Section 1.8 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

“Online Services Terms” shall have the definition set forth in Section 1.8 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

“Organization” means the organization Institution defines in its Enrollment.

“Product” shall have the definition set forth in Section 1.8 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

“Product Terms” shall have the definition set forth in Section 1.8 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

“Service Level Agreement or SLA” shall have the definition set forth in Section 1.8 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

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

“Software Assurance” shall have the definition set forth in Section 1.8 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

“Software Update” means additional or replacement code for any portion of a Product that Microsoft may make available to the general public without a fee from time to time.

“Student” means any individual enrolled in any educational institution that is part of the Organization, whether on a full-time or part-time basis.

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

“Use Rights” shall have the definition set forth in Section 1.8 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984)

“Users” means Institution, Knowledge Workers, and Students designated on the Enrollment to run the Products, and members of the public who access devices located in Institution’s open access labs or libraries.

## **2. License for Products.**

- a. License Grant.** Microsoft grants the Organization a non-exclusive, worldwide and limited right to download, install and use software Products, and to access and use the Online Services, each in the quantity ordered under an Enrollment. The rights granted are subject to the terms of this agreement, the Use Rights and the Product Terms. Microsoft reserves all rights not expressly granted in this agreement.
- b. Duration of Licenses.** Subscription Licenses and most Software Assurance rights are temporary and expire when the applicable Enrollment is terminated or expires, unless Institution exercises a buy-out option, which is available for some Subscription Licenses.
- c. Applicable Use Rights.** This section is intentionally omitted and is included in Section 4.31 of the associated Custom Master Business Agreement (OGS Contract No. PS67984).
- d. Downgrade Rights.** This section is intentionally omitted and is included in Section 4.32 of the associated Custom Master Business Agreement (OGS Contract No. PS67984).

- e. **License Confirmation.** This section is intentionally omitted and is included in Section 4.6(MM) of the associated Custom Master Business Agreement (OGS Contract No. PS67984).

### 3. Use, ownership, rights, and restrictions.

- a. **Products.** Unless otherwise specified in this agreement, use of any Product is governed by the Use Rights specific to each Product and version and by the terms of the applicable Enrollment.
- b. **Fixes.** Each Fix is licensed under the same terms as the Product to which it applies. If a Fix is not provided for a specific Product, any use rights Microsoft provides with the Fix will apply.
- c. **Non-Microsoft software and technology.** This section is intentionally omitted and is included in Section 4.33 of the associated Custom Master Business Agreement (OGS Contract No. PS67984).
- d. **Restrictions.** This section is intentionally omitted and is included in Section 4.6(HH) of the associated Custom Master Business Agreement (OGS Contract No. PS67984).
- e. **Reservation of rights.** This section is intentionally omitted and is included in Section 4.31(c) of the associated Custom Master Business Agreement (OGS Contract No. PS67984)

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

- a. **General.** Institution may make as many copies of Products as it needs to distribute them within the Organization. Copies must be true and complete (including copyright and trademark notices) from master copies obtained from a Microsoft approved fulfillment source. Institution may use a third party to make these copies, but Institution is agreed it will be responsible for any third party's actions. Institution agrees to make reasonable efforts to notify its Users that the Products are licensed from Microsoft and subject to the terms of this agreement.
- b. **Copies for training/evaluation and back-up.** For all Products other than Online Services, Institution may (1) use up to 20 complimentary copies of any licensed Products in a dedicated training facility on its premises for purposes of training on that particular Product, (2) use up to 10 complimentary copies of any Products for a 60-day evaluation period, and (3) use one complimentary copy of any licensed Product for back-up or archival purposes for each of its distinct geographic locations. Trials for Online Services may be available if specified in the Use Rights.
- c. **Right to re-image.** In certain cases, re-imaging is permitted using the Product media. If the Product is licensed (1) from an original equipment manufacturer (OEM), (2) as a full packaged Product through a retail source, or (3) under another Microsoft program, then media provided under this agreement may generally be used to create images for use in place of copies provided through that separate source. This right is conditional upon the following:
  - (i) Separate Licenses must be acquired from the separate source for each Product that is re-imaged.
  - (ii) The Product, language, version, and components of the copies made must be identical to the Product, language, version, and components of the copies they replace and the number of copies or instances of the re-imaged Product permitted remains the same.
  - (iii) Except for copies of an operating system and copies of Products licensed under another Microsoft program, the Product type (e.g., Upgrade or full License) re-imaged must be identical to the Product type licensed from the separate source.
  - (iv) Institution must adhere to any Product-specific processes or requirements for re-imaging identified in the Product Terms.

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

## 5. Redistribution of Software Updates to Student Users.

- a. **License grant.** Microsoft grants the Organization a limited, non-exclusive, royalty-free, non-assignable, non-transferable, revocable License to distribute Software Updates to Institution's Student Users in accordance with the terms of this section. The Organization's Student Users must use the Software Updates solely for their personal benefit in accordance with the end-user License Agreement ("EULA") with Microsoft included with each Software Update.
- b. **Redistribution of Software Updates.** Institution may redistribute Software Updates to its Student Users (1) by electronic means provided that Institution's method of electronic distribution is adequately licensed and incorporates access control and security measures designed to prevent modification of the Software Updates and access by the general public or (2) by acquiring authorized copies on fixed media from a fulfillment source approved by Microsoft.
- c. **Limitations.** Institution may not (1) produce or replicate Software Updates onto CDs or other distributable storage media, (2) combine the Software Updates with other non-Microsoft software, (3) distribute any Software Updates as a stand-alone component via email attachment, (4) charge for the Software Updates, other than to recover any reasonable costs incurred in providing the updates to its Student Users; (5) remove, modify, or interfere with the EULA or the EULA acceptance functionality included by Microsoft with any Software Update; or (6) alter the Software Updates in any way. Microsoft is not responsible for any cost related to the acquisition, distribution, or recall of the Software Updates.
- d. **Tracking and recall.** Organization must track the quantity and method of distribution of the Software Updates by means that will allow Institution to provide notice of a recall and offer replacements as provided in this subsection. Institution agrees to stop redistributing Software Updates within 10 days of receipt of a notice of recall from Microsoft and within 30 days of that notice Institution agrees to (1) return to Microsoft or destroy all copies of Software Updates in the Organization's possession and (2) notify its Student Users of the recall by the same or similar means in which they were notified of the availability of the Software Updates.
- e. **Replacement Software Updates.** If Microsoft makes a replacement Software Update available, Institution agrees to make the replacement available to its Student Users, within 30 days of receipt in the same quantity and method(s) of distribution, if available, as Institution made the original Software Update available. The distribution of replacement Software Updates is subject to the same conditions and restrictions as other Software Updates under this section.
- f. **No warranties.** Notwithstanding anything to the contrary in this agreement, and to the extent permitted by law, Software Updates that Institution redistributes to its Student Users are provided "as is" without any warranties. Institution acknowledges that the provisions of this paragraph with regard to the Software Updates are reasonable considering, among other things, that the Software Updates are complex computer products. Institution further acknowledges that the performance of the Software Updates will vary depending upon hardware, platform and Products interactions, and configurations.
- g. **Exclusion of damages.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL MICROSOFT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, CONSEQUENTIAL, OR INDIRECT DAMAGES THAT ARISE OUT OF OR ARE IN ANY WAY RELATED TO INSTITUTION'S REDISTRIBUTION OF THE SOFTWARE UPDATES TO ITS STUDENTS. FURTHERMORE, IN NO EVENT SHALL MICROSOFT BE LIABLE FOR ANY SUCH DAMAGES BASED DIRECTLY OR INDIRECTLY UPON THE PROVISION OF SOFTWARE UPDATES OR UNAVAILABILITY OF SOFTWARE

UPDATES—INCLUDING, WITHOUT LIMITATION, DAMAGES DUE TO BUSINESS INTERRUPTION, LOSS OF PROFITS, REVENUE OR BUSINESS OPPORTUNITY, LOSS OF DATA AND THE LIKE, FAILURE TO MEET ANY DUTY, OR NEGLIGENCE.

- h. Limitation of liability.** With respect to Institution's redistribution of the Software Updates, the limitation of liability provisions in this agreement shall apply in those situations in which Institution or any User asserts a right to damages or other compensation from Microsoft.
- i. No support.** Institution understands that Microsoft has no obligation to provide any support for Software Updates that Institution may redistribute to its Student Users, including any benefits accruing from Software Assurance.
- j. Applicability.** The provisions of this section shall not apply to the distribution of Fixes to Student Users so long as the Fix distributed is for a Product the Students are authorized to run under the Student licensing option. All other redistribution of additional or replacement code to Student Users is subject to the provisions of this section.

## 6. Transferring and reassigning Licenses.

- a. License transfers.** License transfers are not permitted, except that Institution may transfer only fully-paid perpetual licenses to:
  - (i)** an Affiliate, or
  - (ii)** a third party solely in connection with the transfer of hardware or employees to whom the Licenses have been assigned as part of (1) a divestiture of part of the Organization or (2) a merger involving any part of the Organization.

Upon such transfer, the divested or merged part of the Organization must uninstall and discontinue using the licensed Products and render any copies unusable.

- b. Notification of License Transfer.** Institution must notify Microsoft of a License transfer by completing a license transfer form, which can be obtained from the Licensing Site, and sending the completed form to Microsoft before the License transfer. No License transfer will be valid unless Institution provides to the transferee, and the transferee accepts in writing, documents sufficient to enable the transferee to ascertain the scope, purpose and limitations of the rights granted by Microsoft under the Licenses being transferred (including, without limitation, the applicable Use Rights, use and transfer restrictions, warranties and limitations of liability). Any License transfer not made in compliance with this section will be void.
- c. Internal Assignment of Licenses and Software Assurance.** Licenses and Software Assurance must be assigned to a single User or device within the Organization. Licenses and Software Assurance may be reassigned within the Organization as described in the Use Rights.

## 7. Confidentiality.

This section is intentionally omitted and is included in section 4.6(G) of the associated Custom Master Business Agreement (OGS Contract No. PS67984).

## 8. Privacy and compliance with laws.

- a.** This section is intentionally omitted and is included in Section 4.6(AA) of the associated Custom Master Business Agreement (OGS Contract No. PS67984).
- b.** This section is intentionally omitted and is included in Section 4.6(AA) of the associated Custom Master Business Agreement (OGS Contract No. PS67984).
- c. U.S. Export.** This section is intentionally omitted and is included in Section 4.27 of the associated Custom Master Business Agreement (OGS Contract No. PS67984).

## 9. Term and termination.

- a. **Effective date.** The effective date of this agreement will be the earlier of either the date the agreement is executed by Microsoft or the effective date of the first Enrollment.
- b. **Term.** This section is intentionally omitted and is included in Section 4.1 of the associated Custom Master Business Agreement (OGS Contract No. PS67984).
- c. **Termination without cause.** This section is intentionally omitted and is included in Section 4.6(W) of the associated Custom Master Business Agreement (OGS Contract No. PS67984).
- d. **Termination for cause.** Without limiting any other remedies it may have, Microsoft and Enrolled Affiliate may terminate an Enrollment if the other party materially breaches its obligations under this agreement, including any obligation to submit orders or pay invoices. Except where the breach is by its nature not curable within 30 days, the terminating party must give the other party 30 days' notice of its intent to terminate and an opportunity to cure the breach. If the breach affects other Enrollments Microsoft shall give such notice to each Enrolled Affiliate and so advise OGS. If the breach cannot be resolved between Microsoft and Enrolled Affiliate within a reasonable period of time, Microsoft may terminate the affected Enrollments that received actual notification. If Enrolled Affiliate terminates an Enrollment as a result of a breach by Microsoft, then Institution will have the early termination rights described in the Enrollment.
- e. **Modification or termination of an Online Service for regulatory reasons.** This section is intentionally omitted and is included in section 4.6(W) of the associated Custom Master Business Agreement (OGS Contract No. PS67984).
- f. **Program updates.** This section is intentionally omitted and is included in Section 1.6 of the associated Custom Master Business Agreement (OGS Contract No. PS67984).

## 10. Warranties.

This section is intentionally omitted and is included in Section 4.6(BB) of the associated Custom Master Business Agreement (OGS Contract No. PS67984).

## 11. Defense of third party claims.

This section is intentionally omitted and is included in Section 4.6(EE) of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

## 12. Limitation of liability.

This section is intentionally omitted and included in Section 4.6(FF) of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

## 13. Verifying compliance.

This section is intentionally omitted and is included in Section 4.6(JJ) of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

## 14. Miscellaneous.

- a. **Use of contractors.** This section is intentionally omitted and included in Section 4.20 of the associated Custom Microsoft Business Agreement (OGS Contract No, PS67984).
- b. **Microsoft as independent contractor.** This section is intentionally omitted and is included in Section 51 of Appendix B of the associated Custom Master Business Agreement (OGS Contract No. PS67984).

- c. **Notices.** This section is intentionally omitted and is included in Section 4.35 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).
- d. **Agreement not exclusive.** This section is intentionally omitted and is included in Section 4.29 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).
- e. **Amendments.** This section is intentionally omitted and is included in Section 1.6 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).
- f. **Assignment.** This section is intentionally omitted and is included in Appendix A Section 2 and Appendix B Section 40 to the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).
- g. **Applicable law.** This section is intentionally omitted and is included in Appendix A Section 14 to the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).
- h. **Dispute resolution.** This section is intentionally omitted and is included in Section 4.6(GG) of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).
- i. **Severability.** This section is intentionally omitted and is included in Section 4.37 of the Custom Microsoft Business Agreement (OGS Contract No. PS67984).
- j. **Waiver.** This section is intentionally omitted and is included in Section 4.30 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).
- k. **No third-party beneficiaries.** Intentionally omitted.
- l. **Survival.** This section is intentionally omitted and is included in Section 4.28 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).
- m. **Taxes.** This section is intentionally omitted and is included in Section 9 of Appendix B to the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).
- n. **Management and reporting.** This section is intentionally omitted and is included in Section 4.34 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).
- o. **Order of precedence.** This section is intentionally omitted and is included in Section 4.3 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).
- p. **FERPA.** Upon receipt of a judicial order or lawfully issued subpoena requiring the disclosure of personally identifiable information from education records related to Institution in Microsoft's possession, Microsoft or an Affiliate of Microsoft will attempt to redirect the request to Institution. If compelled to disclose personally identifiable information from education records related to Institution to a third party, Microsoft will use commercially reasonable efforts to notify Institution in advance of a disclosure unless legally prohibited. Institution understands that Microsoft may have no or limited contact information for Institution's students and students' parents in its possession. Consequently, Institution will convey notification on behalf of Microsoft to students (or, with respect to a student under 18 years of age and not in attendance at a postsecondary institution, to the student's parent) of such an order or subpoena as may be required under applicable law.



Proposal ID/Framework ID

### Custom Enrollment for Education Solutions

|  |                      |   |                      |
|--|----------------------|---|----------------------|
| Enrollment Number<br><i>Microsoft to complete</i>                        | <input type="text"/> | Qualifying Enrollment Number<br>(if applicable)<br><i>Partner to complete</i> | <input type="text"/> |
| Previous Enrollment Number (if applicable)<br><i>Partner to complete</i> | <input type="text"/> |   |                      |

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

This Microsoft Enrollment for Education Solutions is entered into between the entities identified on the signature form as of the effective date.

This Enrollment consists of: (1) the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984) and these terms and conditions, (2) the terms of the Campus and School Agreement identified on the signature form, (3) the Product Terms, (4) the Online Services Terms, (5) any supplemental contact information form, Previous Agreement/Enrollment form and other forms that may be required, and (6) any order submitted under this Enrollment. By entering into this Enrollment, Institution agrees to be bound by the terms and conditions of the Campus and School Agreement.

**Effective date.** If Institution is renewing Software Assurance or Subscription Licenses from one or more previous enrollments or agreements, then the effective date will be the day after the first prior enrollment or agreement expires or terminates. If this Enrollment is renewed, the effective date of the renewal term will be the day after the Expiration Date of the initial term or expiring renewal term, as applicable. Otherwise, the effective date will be the date this Enrollment is accepted by Microsoft. Any reference to "anniversary date" refers to the anniversary of the effective date of the applicable initial or renewal term for each year this Enrollment is in effect.

**Term.** This Enrollment will expire either 12 or 36 full calendar months from the Enrollment Effective Date, depending on Institution's election below, but may be terminated earlier as provided in Institution's Campus and School Agreement. *Please select **only one** initial Enrollment term option:*

|                          |                         |                          |                         |
|--------------------------|-------------------------|--------------------------|-------------------------|
| <input type="checkbox"/> | 12 Full Calendar Months | <input type="checkbox"/> | 36 Full Calendar Months |
|--------------------------|-------------------------|--------------------------|-------------------------|

**Prior Enrollment(s).** If renewing Software Assurance or Subscription Licenses from another enrollment or agreement, the previous enrollment or agreement number must be identified in the respective box above. If renewing from multiple enrollments or agreements, or transferring Software Assurance or MSDN (Microsoft Developer Network) details, the Previous Agreement/Enrollment form must be used.



## ***Terms and Conditions***

### **1. Definitions.**

Terms used but not defined in this Enrollment will have the definition in the Campus and School Agreement. The following definitions also apply:

“Additional Product” means any Product identified as such in the Product Terms and chosen by Institution under this Enrollment.

“Customer” as used in certain supplemental forms (for example, the signature form), means “Enrolled Customer” as defined in Section 1.8 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

“Education Platform Product” means any Product that Microsoft designates as an Education Platform Product in the Product Terms that is chosen by Institution under this Enrollment. Education Platform Products may only be licensed on an Organization-wide basis, or for the full Student Count.

“Expiration Date” means the date upon which the Enrollment expires.

“Institution” means the entity that is (1) a Qualified Educational User (as defined in Appendix E to the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984)) as of the effective date of this agreement that has entered into this agreement with Microsoft or (2) an Affiliate of Institution that has entered into an Enrollment under this agreement. If Institution is a school district, “Institution” includes all participating schools in the same district.

“Knowledge Worker” means any employee (including a Student employee), contractor, or volunteer of or for the Institution who uses a Product or Qualified Device for the benefit of the Institution or within the user’s relationship with the Institution. This definition does not include users of any Product identified in the Product Terms as excluded from the definition of Knowledge Worker.

“Organization-wide Count” means the total number of Knowledge Workers in the Organization as listed in the table in the section of this Enrollment titled “Licensing options; rights and restrictions.”

“Previous Enrollment or Agreement” means a School Subscription Enrollment, a Campus Subscription Enrollment, an Enrollment for Education Solutions, or an Open Value Subscription Agreement for Education Solutions.

“Qualified Device” means any device that is used by or for the benefit of the Organization or by or for the benefit of Students enrolled in the Organization and is: (1) a personal desktop computer, portable computer, workstation, or similar device capable of running Windows Pro locally (in a physical or virtual operating system environment) or (2) a device used to access a virtual desktop infrastructure (“VDI”). Qualified Devices do not include any device that is designated as a server and not used as a personal computer, or not Managed (as defined in the Product Terms at the start of the applicable initial or renewal term of the Enrollment). At its discretion, Institution may designate any device excluded above that is used by or for the benefit of the Organization as a Qualified Device for all or a subset of Education Platform Products or Online Services Institution has selected.

“Qualifying Enrollment” means an Enrollment for Education Solutions, the minimum requirements of which were met and which was entered into by Institution or Institution’s Affiliate, and that is active and valid upon signing of this Enrollment. Institution must have been included in the Organization under an Enrollment for Education Solutions that is used as the Qualifying Enrollment.

“Reseller” means an entity authorized by Microsoft to resell Licenses under this program and engaged by Institution to provide pre- and post-transaction assistance related to this agreement.

“Student Count” means the total number of Students in the Organization as listed in the table in the section titled “Licensing options; license rights and restrictions.”

“Student Qualified Device” means a Qualified Device owned, leased, or controlled by a Student or owned, leased, or controlled by the Organization and assigned for individual, dedicated use by a Student.

## 2. **Order requirements**

**a. Minimum order requirements for Enrollment for Education Solutions.** This Enrollment allows Institution to license Products on a subscription basis across its Organization. Institution defines its Organization and can select from two different licensing options (Knowledge Workers or Students), depending on the Users it wishes to enable to use the Products licensed.

The initial order must include Subscription Licenses for at least:

- (i) One Education Platform Product for an Organization-wide Count of at least 250; OR
- (ii) One Education Platform Product for a Student Count of at least 250.

These minimum requirements are waived if Institution has a Qualifying Enrollment. Institution must submit an order within 30 days of the effective date of the Enrollment.

**b. Additional Products.** Upon satisfying the minimum order requirements above, Institution may order Additional Products. For Additional Products identified in the Product Terms as licensed Organization-wide or for the full Student Count, Institution must order Licenses equal to the Organization-wide Count or Student Count, as applicable.

**c. Use Rights for Education Platform Products.** For Education Platform Products other than Online Services, if a new Product version has more restrictive Use Rights than the version that is current at the start of the applicable initial or renewal term of the Enrollment, those more restrictive Use Rights will not apply to Institution’s use of that Product during that term.

**d. Country of usage.** Institution must specify the countries where Licenses will be used on its initial order and on any additional orders.

**e. Resellers.** Orders must be submitted to an authorized Reseller who will transmit the order to Microsoft. The Reseller and Institution determine pricing and payment terms as between them, and Microsoft will invoice the Reseller based on those terms. Resellers and other third parties do not have authority to bind or impose any obligation or liability on the Microsoft Affiliate that enters into this Enrollment.

**f. Adding Products.**

(i) **Adding new Products not previously ordered.** New Education Platform Products and Additional Products may be added at any time by contacting a Reseller. New Additional Products, other than Online Services, may be used if an order is placed in the month the Product is first used. For Online Services not previously ordered, an initial order for the Online Service is required prior to use.

(ii) **Adding Licenses for previously ordered Products.** For Education Platform Products other than Online Services and for Additional Products licensed Organization-wide or for the full Student Count, Institution is not required to obtain additional Licenses based on increases in the Organization-wide Count or Student Count after the date of the order. Institution must provide Microsoft with an updated Organization-wide Count or Student Count to account for any such increases on each anniversary of the Enrollment Effective Date during the Licensed Period. Additional Licenses for Online Services must be ordered prior to use.

- (iii) Invoicing.** Microsoft will invoice Institution's Reseller for such Products ordered on a pro-rated basis based on the greater of (i) the number of full calendar months remaining in the Licensed Period or (ii) six months. Microsoft will invoice the Reseller for Online Services ordered on a pro-rated basis based on the number of full calendar months remaining in the Licensed Period. If Institution subsequently orders Licenses for Additional Products that were not included on Institution's initial order, Microsoft will use the price list in effect on the date of the invoice to charge Institution's Reseller for the additional Licenses. If Institution subsequently orders additional Licenses for Products that were included in Institution's initial order, Microsoft will use the price list in effect when the product was initially ordered to charge Institution's Reseller for the additional Licenses.
- g. Annual orders.** Institution must submit annual orders as follows:
- (i) Annual order requirements.** If Institution has a three-year Licensed Period, it must submit an annual order that accounts for any changes since the initial order or last annual order, including its updated Organization-wide Count or Student Count. Each annual order must include Licenses for at least the same types and quantities of Products as Institution ordered during the year following the Enrollment Effective Date or last anniversary date, except for permitted reductions, step-ups, add-ons and any Additional Products not ordered Organization-wide.
- (ii) Subscription License Reductions.** Institution may reduce the quantity of Subscription Licenses at the enrollment anniversary date on a prospective basis as follows:
1. For Enterprise Platform Products, Licenses can be reduced, as long as the initial order minimum requirements are maintained
  2. For Additional Products ordered Organization-wide or for the full Student Count, the quantity of Licenses can be reduced provided it remains equal to Institution's Organization-wide Count or Student Count (as applicable).
  3. For other Additional Products, Institution may reduce the Licenses. If the License count is reduced to zero, then Institution's use of the applicable Subscription License will be cancelled.
- (iii) Annual order period.** Microsoft must receive an anniversary order prior to each anniversary of the Enrollment Effective Date of the three-year Licensed Period. Institution may order more often than at each Enrollment anniversary date except for Subscription License reductions.
- h. Buy-out option.** Institution may buy out active Subscription Licenses acquired under this Enrollment for Products other than Online Services (if permitted) and acquire perpetual Licenses for the latest version of the Product as of the Expiration Date by placing an order for such Licenses. A buy-out option is available if Institution has licensed the Products under one or more Enrollments (including any extensions) for at least 36 full calendar months immediately preceding the Expiration Date. To exercise its buy-out option, Institution must submit and Microsoft must receive the buy-out order no more than 30 days prior to the Expiration Date. The Expiration Date will be the invoice date for the buy-out order. Institution may order perpetual Licenses for Education Platform Products and Additional Products licensed Organization-wide in a quantity at least equal to the Organization-wide Count, but not more than the number of Qualified Devices in the Organization on the date of the buy-out order. Institution may order perpetual Licenses for Additional Products in a quantity equal to the lowest number of Licenses ordered during any of the three 12-month periods immediately preceding the expiration of the Enrollment. The buy-out option is not available for Products licensed under the Student licensing option. Except as specifically provided otherwise in the Use Rights, perpetual Licenses acquired through the buy-out option are device Licenses.
- i. How to confirm orders.** Microsoft will publish password-protected information about orders placed by Institution, including an electronic confirmation of each order, at the Volume Licensing Service Center (<https://www.microsoft.com/licensing/servicecenter>) or a successor

site. Upon Microsoft's acceptance of this Enrollment, the individual designated by Institution as its Online Administrator will be granted access to this site.

- j. **Step up licenses.** For Licenses eligible for a step-up under this Enrollment, Institution may step-up to a higher edition or suite. The order requirements set forth in the subsection above titled "Adding Licenses for previously ordered Products" apply to all step-ups.

### 3. Pricing.

- a. **Subscription price.** This section shall not apply to Products licensed to Institution at special promotion prices to distributor or Reseller, as applicable.
  - (i) **One-year Licensed Period.** Microsoft will not increase the price it charges to the Reseller for an annual extension of a License by more than ten percent (10%) (as determined with reference to U.S. funds, regardless of the currency in which amounts are invoiced or payment is made) over the immediately preceding one year Licensed Period if Institution submits an extension order prior to the expiration of the Enrollment for the same Products in the same quantities as ordered in the expiring Licensed Period.
  - (ii) **Three-year Licensed Period.** If Institution chooses a three-year Licensed Period and complies with the ordering requirements in this Enrollment, provided Institution qualifies for the same price level for the entire Licensed Period, for any Products ordered during the Licensed Period, Microsoft will charge the Reseller the same price for a License on each annual order as when Institution first ordered the Product, except for step-ups.
- b. **Price levels.** Institution's Organization-wide Count or Student Count, as applicable, determines the price level for Education Platform Products (A, B, C, or D). If Institution chooses to extend this Enrollment, the price level will be reset at the start of the extension term based on Institution's Organization-wide Count or Student Count at the time the extension order is placed. There are no price levels for Additional Products. Institution's price level does not change during the term of the Enrollment.

| Select Price Level that Applies to Knowledge Worker Option | Organization Wide Count | Price level (Only Applicable For Education Platform Products) |
|--|-------------------------|---|
| <input type="checkbox"/>                                   | 250                     | A   |
| <input type="checkbox"/>                                   | 3,000                   | B   |
| <input type="checkbox"/>                                   | 10,000                  | C   |
| <input type="checkbox"/>                                   | 25,000                  | D   |

| Select Price Level that Applies to Student Option | Student Count | Price level (Only Applicable For Education Platform Products) |
|---|---------------|---|
| <input type="checkbox"/>                          | 250           | A   |
| <input type="checkbox"/>                          | 3,000         | B   |
| <input type="checkbox"/>                          | 10,000        | C   |
| <input type="checkbox"/>                          | 25,000        | D   |

- c. **Setting Prices.** The price Institution will pay to license the Products will be determined by agreement between Institution and its Reseller. However, Microsoft will provide the Reseller with pricing at the outset of this Enrollment and will not increase the prices that it charges the Reseller for the Products during the term of the Enrollment.

#### 4. **Qualifying systems Licenses.**

The desktop operating system Licenses granted under this program are upgrade Licenses only. Full desktop operating system Licenses are not available under this program. If Institution selects the Windows Desktop Operating System Upgrade, all Qualified Devices on which Institution runs the Windows Desktop Operating System Upgrade must be licensed to run one of the qualifying operating systems identified in the Product Terms.

#### 5. **End of Enrollment term and termination.**

- a. **General.** Microsoft will notify Institution in writing prior to the expiration of the Enrollment. The notice will advise Institution of the option to (1) extend the Enrollment, (2) submit a new Enrollment, (3) exercise the buy-out option, or (4) allow the Enrollment to expire. Microsoft will not unreasonably reject any extension order or new Enrollment. Each Licensed Period will start the day following the expiration of the prior Licensed Period.
- b. **Extension orders.** Institution may elect to extend its initial Licensed Period for subsequent terms not to exceed 72 consecutive months from the initial effective date of the Enrollment using any combination of (1) extension terms of 12 full calendar months and (2) one extension term of 36 full calendar months. Institution must submit, and Microsoft must receive, an extension order prior to the expiration of the Licensed Period.
- c. **If Institution elects not to renew.**
- (i) **Subscription Licenses buy-out.** Institution may elect to obtain perpetual Licenses as described in the Section titled "Buy-out option" for Licenses for which a buy-out is available.
  - (ii) **Expiration of Enrollment.** Institution may allow the Enrollment to expire. If the Enrollment expires, the Licenses will be cancelled and will terminate as of the Expiration Date. Any associated media must be uninstalled and destroyed, and Organization must discontinue use. Microsoft may request written certification to verify compliance. Because all Licenses acquired under this agreement are temporary, Institution will not be eligible to obtain Software Assurance for those Licenses under any other Microsoft Volume licensing program without first acquiring a perpetual License or License and Software Assurance (L&SA).
- d. **Termination for cause.** Any termination for cause of this Enrollment will be subject to the "Termination for cause" section of the Campus and School Agreement..

- e. **Early termination.** If Institution terminates its Enrollment as a result of a breach by Microsoft, or if Microsoft terminates an Online Service for regulatory reasons as described in Section 4.6 (W) of the associated Custom Master Business Agreement (OGS Contract No. PS67984), Microsoft will issue Institution's Reseller a credit for any amount paid in advance for the period after termination.



## Enrollment Details

### 1. Defining Institution's Organization.

Define the Organization by choosing one of the options below. *Please select only one option.*

|                          |   |
|--------------------------|---|
| <input type="checkbox"/> | <b>Institution and all of its Affiliates</b> , departments and school locations ( <i>do not</i> list any entity in the below list)  |
| <input type="checkbox"/> | <b>Institution only</b> (including all of its departments and school locations, but not including any Affiliates) ( <i>do not</i> list any entity in the below list)  |
| <input type="checkbox"/> | <b>Institution plus the listed Affiliate(s) and/or department(s), and/or school location(s), or clearly defined User group(s) if Affiliate is a school without departments or school locations</b> (please list the Affiliate(s), department(s), school location(s) or User group(s) of Affiliate(s) below) |
| <input type="checkbox"/> | <b>Institution's (or any Affiliate's) listed department(s), and/or school location(s), or clearly defined User group(s) if Institution or Affiliate is a school without departments or school locations</b> (please list department(s), school location(s) or User group(s) and any Affiliate(s) below)     |

If Institution chooses to enroll specific departments, school locations, and/or clearly defined User groups, Institution must provide the department, school location, and/or defined User group names. If the department, school location, or User group is part of an Affiliate, Institution must also provide the name of the Affiliate. A department includes all segments of a department (e.g., a business school should include the business library). A department must be for educational purposes. Open access labs and other resource support centers do not qualify as separate departments.

**List of participating Affiliates, departments, school locations, and/or clearly defined User groups**

Institution may attach pages to this Enrollment if additional rows are needed.

### 2. Licensing options; license rights and restrictions.

**Choosing a licensing option.** Institution may license Education Platform Products and Additional Products licensed Organization-wide or for the full Student Count for (1) Knowledge Workers and/or (2) Students. Institution must indicate the option(s) it chooses by marking the applicable box below and provide its initial Organization-wide Count and/or Student Count, as applicable. Institution must select at least one licensing option.

#### Licensing Options.

- a. **Knowledge Worker:** If Institution selects this option, Institution's Organization-wide Count must include all Knowledge Workers in its Organization.
- b. **Students:** If Institution selects this option, Institution's Student Count must include all of the Students in its Organization.

| Category             | Institution's Selection  | Organization-wide Count and/or Student Count, as applicable |
|----------------------|--------------------------|---|
| 1. Knowledge Workers | <input type="checkbox"/> |   |
| 2. Students          | <input type="checkbox"/> |   |

**License rights and restrictions.** So long as Institution places orders pursuant to the agreement and this Enrollment for any required Licenses and pays per the agreement with its Reseller, Institution (and/or its Students, as applicable) will have the following rights during the term of this Enrollment:

1. If the Knowledge Worker option is chosen, Institution is not required to count members of the public who access PCs that remain in Institution's open access labs or libraries. Institution may not permit remote access to software installed on PCs in open access labs or libraries. In the case of CALs, Institution may assign (1) a device CAL to each Qualified Device and (2) a user CAL to each Knowledge Worker, in both cases to access Institution's associated server software.
2. If the Student option is chosen, each Student in the Organization may run one instance of the licensed Education Platform Products and one instance of any Additional Product licensed for the Student Count on a Student Qualified Device. In the case of CALs, Institution may assign a user CAL to each Student to access Institution's associated server software. Student's right to use the software shall be governed by and subject to the relevant sections of the most current Product Terms.

### 3. **Contact information.**

Each party will notify the other in writing if any of the information in the following contact information page(s) changes. The asterisks (\*) indicate required fields. By providing contact information, Institution consents to its use for purposes of administering this Enrollment by Microsoft, its Affiliates, and other parties that help administer this Enrollment. The personal information provided in connection with this Enrollment will be used and protected in accordance with the privacy statement available at <https://www.microsoft.com/licensing/servicecenter>.

- a. **Primary contact.** This contact is the primary contact for the Enrollment from within Institution. This contact is also an Online Administrator for the Volume Licensing Service Center and may grant online access to others. The primary contact will be the default contact for all purposes unless separate contacts are identified for specific purposes.

**Name of entity (must be legal entity name) \***

**Contact name: First\*                      Last\***

**Contact email address\***

**Street address\***

**City\***

**State/Province\***

**Postal code\*                      -**

(For U.S. addresses, please provide the zip + 4, e.g. xxxxx-xxxx)

**Country\***

**Phone**

**Tax ID**

*\* indicates required field*



- b. Notices contact and Online Administrator.** This contact (1) receives the contractual notices and (2) is the Online Administrator for the Volume Licensing Service Center and may grant online access to others.

Same as primary contact (default if no information is provided below, even if box is not checked)

**Contact name: First\*                      Last\***

**Contact email address\***

**Street address\***

**City\***

**State/Province\***

**Postal code\*                      -**

(For U.S. addresses, please provide the zip + 4, e.g. xxxxx-xxxx)

**Country\***

**Phone**

**Language preference.** Choose the language for notices. English

This contact is a third party (not Institution). Warning: This contact receives personally identifiable information of the Institution and its Affiliates.

*\* indicates required field*

- c. Online Services Manager.** This contact is authorized to manage the Online Services ordered under the Enrollment

Same as notices contact and Online Administrator (default if no information is provided below, even if box is not checked)

**Contact name: First\*                      Last\***

**Contact email address\***

**Phone**

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

*\* indicates required field*

- d. Reseller information.** Reseller contact for this Enrollment is:

**Reseller company name\***

**Street address (PO boxes will not be accepted) \***

**City\***

**State/Province\***

**Postal code\***

**Country\***

**Contact name: First\*                      Last\***

**Phone**

**Contact email address\***

\* indicates required field

By signing below, the Reseller identified above confirms that all information provided in this Enrollment is correct.

|                       |
|-----------------------|
| <b>Signature*</b>     |
| <b>Printed name*</b>  |
| <b>Printed title*</b> |
| <b>Date*</b>          |

**Changing a Reseller.** This section is intentionally omitted and is included in Section 1.4 of the associated Custom Master Business Agreement (OGS Contract No. PS67984).

- e. If Enrolled Institution requires a separate contact for any of the following, attach the Supplemental Contact Information form. *Otherwise, the notices contact and Online Administrator remains the default.*
- (i) Additional Notices Contact
  - (ii) Software Assurance Manager
  - (iii) Subscriptions Manager
  - (iv) Customer Support Manager (CSM) contact
- f. **Microsoft account manager.** Provide the Microsoft account manager contact for Institution.

**Microsoft account manager name:**

**Microsoft account manager email address:**

# Enrollment for Education Solutions Consortia Amendment Amendment ID EES24

The parties agree to amend the Enrollment as follows:

1. The following new section entitled "Additional Terms" is hereby added.

## **Additional Terms**

- a. **Sublicensing.** Institution may sublicense its Licenses to Products acquired under its Enrollment to Participants as specified in this section.

- (i) **Participants.** A "Participant" means:

- (a) the K-12 school district that has entered into an Enrollment under this Agreement, who is a member of a Regional Information Center or BOCES; or
    - (b) if Participant is a state agency, Participant is any participating school or school district in the state that has entered into an Enrollment under this Agreement.

For the avoidance of doubt, higher education institutions are not eligible to participate under this Agreement.

**Further, Institution acknowledges that Institution and Institution's Reseller, and not Microsoft, is responsible to ensure that only eligible Participants purchase under this Agreement.**

- (ii) **Participation Agreements.** Prior to sublicensing any Licenses to a Participant, Institution will verify that it has received an original, executed Participation Agreement from such Participant. Institution will maintain all original, executed Participation Agreements on its premises during the term of the Enrollment and for one year thereafter. During this time Institution shall make copies of the Participation Agreements available for inspection by Microsoft at Microsoft's request. Institution assumes joint and several liability to Microsoft for any acts or omissions of any Participants which, if taken or omitted by Institution as a licensee, would amount to a breach of the Enrollment.

- (iii) **Communication.** Institution agrees to establish and maintain a website and email distribution alias for the purpose of communicating pertinent information to Participants. Institution agrees that the website will be active within fifteen (15) days after this amendment becomes effective, that it will be reasonably maintained, and that it will be located at the following URL . Institution further agrees that the email alias will be active within thirty (30) days after this amendment becomes effective.

- (iv) **Enrollment.** The section of the Enrollment entitled "Defining Institution's Organization" is hereby replaced with a Participant Form attached to this amendment. The Enrollment will not have an Enrollment number; each Participant will be assigned an individual Participant Enrollment number instead.

- b. Institution does not need to meet the Microsoft definition of Qualified Educational User located at <http://www.microsoft.com/contracts> so long as Institution does not order Products for use by non-Participants (including Institution's own Organization's internal use).

- c. Notwithstanding anything to the contrary elsewhere in the Enrollment, the following is required:

- (i) **Minimum Organization-Wide Count.** The minimum, aggregate Organization-wide Count across Participants for their initial orders is 1000. The minimum Organization-

wide Count for each Participant's initial order is 5. Each Participant is entitled to receive media kits, if requested by Institution.

(ii) **Minimum Order for Platform Online Services.** For Platform Online Services, the minimum, aggregate order across Participants is 1000 licenses for at least M365 A3. The minimum Platform Online Services order for each Participant is 5 licenses for at least M365 A3.

(iii) **Reporting Participants' Organization-wide Count.** Institution will report in the Enrollment the aggregate Organization-wide Count across Participants. In addition, Institution will report each Participant's Organization-wide Count in the Participant Form. Institution will report these counts even if Participants will only order Online Services.

(iv) **Student Option.** For Platform Online Services, the minimum, aggregate order across Participants is 1,000 licenses for Students. The minimum order for Platform Online Services for each Participant's students is 100 licenses. For a Participant electing the Student Option, Institution will report in the Participant Form such Participant's Student Count. Institution will report the Participant's Student Count even if Participants will only order Online Services for their students. If a Participant elects both Knowledge Worker and Staff licensing option and the Student licensing option, Participant must meet the minimum order requirement for one licensing option and there is no minimum order requirement for the other licensing option except for Platform Online Services, which must meet the minimum order requirements outlined above. Order quantities may not be aggregated across licensing options.

(v) **Server Platform Products Licensing Option.** Each Participant electing the Server Platform Products Licensing Option must license each selected CAL Product and corresponding Server Platform Product for the aggregate of Participant's Organization-wide Count (at least 1000) and Student Count (at least 1000).

d. **Participant Form.** Institution must complete the Participant Form attached to this amendment. The aggregate Organization-wide Count and Student Count across Participants listed in the Participant Form must match that in the Enrollment. If Institution is included as a Participant, and Institution otherwise qualifies to participate, then Institution must list itself on the Participant Form as a Participant in order to show accurately the total number of Educational Institutions and Users.

2. The section of the Enrollment entitled "Prices" is hereby replaced with the following:

### ***Price Level.***

All Participants qualify for price level C for Education Platform Products if the Knowledge Worker licensing option and/or Student Option is selected. The price level does not change during the Enrollment term. If Institution chooses to extend this Enrollment, Participants will continue to qualify for price level C. There are no price levels for Additional Products.

**Prices. Participants' actual prices will be determined by agreement between a Participant and its Reseller, as applicable. However, Microsoft will provide the Reseller with pricing at the outset of this Enrollment and agrees that it will not increase the prices that it charges the Reseller for the Products during the term of the Enrollment.**

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

# Participation Agreement for Enrollment for Education Solutions

## Participation Agreement for EES Amendment ID EES26

The parties agree that the Enrollment is amended by adding the following new section:

Undersigned Participant acknowledges that Microsoft Corporation and \_\_\_\_\_ ("Organization") have entered into the Microsoft Campus and School Agreement identified above and the Enrollment for Education Solutions (as amended, modified and supplemented to the date hereof, collectively, the "Agreement") under which Participant desires to sublicense Licenses to Products from and through Organization. All capitalized terms used but not defined herein will have the meanings assigned in the Agreement.

|  |  |
|--|--|
| <b>Name of Participant:</b> <i>(please print)</i>                              |  |
| <b>Street Address</b>  |  |
| <b>City, State/Province, Zip</b>   |  |
| <b>Contact Name</b>  |  |
| <b>Contact e-mail</b>  |  |
| <b>Telephone</b>   |  |
| <b>Contact Fax</b>   |  |
| <b>Microsoft Campus and School Agreement Number (Organization to complete)</b> |  |
| <b>Campus and School Agreement Customer Name</b>                               |  |

|  |  |
|--|--|
| Organization-wide Count for Participant identified above   |  |
| Student Count based on State Year of Enrollment enrollment for Participant identified above <i>(only if electing Student Option)</i> |  |

- 1. Acknowledgment.** Participant hereby acknowledges that it has received and reviewed a copy of the Agreement, which incorporates the Product Terms applicable to the Products acquired under the Agreement, and that it has read and understood the terms and conditions of the foregoing documents.
- 2. Agreement.** Participant agrees to be bound by all Agreement terms and conditions (including without limitation terms relating to Product use, compliance verification, notifications to users, LIMITED Warranty and DISCLAIMERS, limitation of liability, no liability for certain damages) just as if it had executed the Agreement itself as a sole, original licensee of the Products; EXCEPT, however, Participant --

- a. will submit orders using the Enrollment number assigned for such purpose;
- b. will not have the right to submit Enrollments under Organization's Campus and School Agreement;
- c. will be subject to a minimum order requirement of M365 A3 for an Organization-Wide Count of 5 and/or Student Count of 100; alternatively, Participant may meet the minimum order requirement by ordering one Platform Online Service for at least 1000 licenses for faculty and staff or at least 1000 licenses for Students.
- d. will be subject to the Enrollment Licensed Period
- e. will have its Product use based on the Agreement and this Participation Agreement and any expiration or termination thereof;
- f. will notify its Users of the terms of the Agreement and this Participation Agreement;
- g. will not have its own "Participants" as defined in the Agreement nor in any other way act as a sub-licensor under the Agreement;
- h. will not have the right to amend, renew, extend, or terminate the Agreement ; and
- i. will not be liable to Microsoft based solely on the acts or omissions of any other Participants or of the Organization under the Agreement.

**3. Additional Notification.** Participant will notify Microsoft immediately if and when it becomes aware of any actual or potential violation of the Agreement or this Participation Agreement.

**4. Survival.** All sections above except for those providing for use rights shall survive termination or expiration of the Agreement and/or this Participation Agreement. This Participation Agreement shall not survive any termination or expiration of the Agreement.

Participant's violation of the above-referenced terms and conditions shall be deemed to be a breach of this Participation Agreement and shall be grounds for immediate termination of all rights granted hereunder.

| <i>Participant</i> |
|--------------------|
| Name of Entity     |
| Signature          |
| Printed name       |
| Printed title      |
| Signature date     |

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

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

# Enrollment for Education Solutions Participant Form

## Allow Consortia to Sign Agreement

### Amendment ID EES21

| Organization Information                                    |                                    |
|---|------------------------------------|
| Name of Entity  |                                    |
| Agreement Number  |                                    |
| Enrollment Name   | Enrollment for Education Solutions |
| Total Number of Faculty and Staff FTEs                      |                                    |
| If Student Option is selected, Total Number of Student FTEs |                                    |

| 1. Participant  |                        |
|---|------------------------|
| <b>Name of Entity:</b>  |                        |
| <b>Participant Enrollment Details</b>                           |                        |
| Participant Enrollment Number ( <i>Microsoft to complete</i> ): |                        |
| Prior Enrollment Number:  |                        |
| Media to be Shipped (Yes/No): Choose Yes or No                  |                        |
| Number of Faculty & Staff FTE:                                  |                        |
| If Student Option selected, number of student FTE:              |                        |
| <b>Participant Contact Details</b>                              |                        |
| Street Address  | Contact Name:          |
| City      State/Province      Zip Code                          | Contact Email Address: |
| Country   | Contact Phone          |
| 2. Participant  |                        |
| <b>Name of Entity:</b>  |                        |
| <b>Participant Enrollment Details</b>                           |                        |
| Participant Enrollment Number ( <i>Microsoft to complete</i> ): |                        |
| Prior Enrollment Number:  |                        |
| Media to be Shipped (Yes/No): Choose Yes or No                  |                        |
| Number of Faculty & Staff FTE:                                  |                        |
| If Student Option selected, number of student FTE:              |                        |
| <b>Participant Contact Details</b>                              |                        |

|   |                |          |                        |
|---|----------------|----------|------------------------|
| Street Address  |                |          | Contact Name:          |
| City  | State/Province | Zip Code | Contact Email Address: |
| Country   |                |          | Contact Phone          |
| <b>3. Participant</b>   |                |          |                        |
| Name of Entity:   |                |          |                        |
| <b>Participant Enrollment Details</b>                           |                |          |                        |
| Participant Enrollment Number ( <i>Microsoft to complete</i> ): |                |          |                        |
| Prior Enrollment Number:  |                |          |                        |
| Media to be Shipped (Yes/No): Choose Yes or No                  |                |          |                        |
| Number of Faculty & Staff FTE:                                  |                |          |                        |
| If Student Option selected, number of student FTE:              |                |          |                        |
| <b>Participant Contact Details</b>                              |                |          |                        |
| Street Address  |                |          | Contact Name:          |
| City  | State/Province | Zip Code | Contact Email Address: |
| Country   |                |          | Contact Phone          |
| <b>4. Participant</b>   |                |          |                        |
| Name of Entity:   |                |          |                        |
| <b>Participant Enrollment Details</b>                           |                |          |                        |
| Participant Enrollment Number ( <i>Microsoft to complete</i> ): |                |          |                        |
| Prior Enrollment Number:  |                |          |                        |
| Media to be Shipped (Yes/No): Choose Yes or No                  |                |          |                        |
| Number of Faculty & Staff FTE:                                  |                |          |                        |
| If Student Option selected, number of student FTE:              |                |          |                        |
| <b>Participant Contact Details</b>                              |                |          |                        |
| Street Address  |                |          | Contact Name:          |
| City  | State/Province | Zip Code | Contact Email Address: |
| Country   |                |          | Contact Phone          |
| <b>5. Participant</b>   |                |          |                        |
| Name of Entity:   |                |          |                        |
| <b>Participant Enrollment Details</b>                           |                |          |                        |
| Participant Enrollment Number ( <i>Microsoft to complete</i> ): |                |          |                        |
| Prior Enrollment Number:  |                |          |                        |
| Media to be Shipped (Yes/No): Choose Yes or No                  |                |          |                        |
| Number of Faculty & Staff FTE:                                  |                |          |                        |
| If Student Option selected, number of student FTE:              |                |          |                        |
| <b>Participant Contact Details</b>                              |                |          |                        |



|  |                        |
|--|------------------------|
| Street Address                         | Contact Name:          |
| City      State/Province      Zip Code | Contact Email Address: |
| Country                                | Contact Phone          |

**6. Participant**

**Name of Entity:**

**Participant Enrollment Details**

Participant Enrollment Number (*Microsoft to complete*):

Prior Enrollment Number:

Media to be Shipped (Yes/No): Choose Yes or No

Number of Faculty & Staff FTE:

If Student Option selected, number of student FTE:

**Participant Contact Details**

|  |                        |
|--|------------------------|
| Street Address                         | Contact Name:          |
| City      State/Province      Zip Code | Contact Email Address: |
| Country                                | Contact Phone          |

**7. Participant**

**Name of Entity:**

**Participant Enrollment Details**

Participant Enrollment Number (*Microsoft to complete*):

Prior Enrollment Number:

Media to be Shipped (Yes/No): Choose Yes or No

Number of Faculty & Staff FTE:

If Student Option selected, number of student FTE:

**Participant Contact Details**

|  |                        |
|--|------------------------|
| Street Address                         | Contact Name:          |
| City      State/Province      Zip Code | Contact Email Address: |
| Country                                | Contact Phone          |

(make extra copies of this page as needed; insert sequential participant number in the space provided)

|  |                        |
|--|------------------------|
| If Student Option selected, number of student FTE: |                        |
| <b>Participant Contact Details</b>                 |                        |
| Street Address                                     | Contact Name:          |
| City      State/Province      Zip Code             | Contact Email Address: |
| Country  | Contact Phone          |

**. Participant**

**Name of Entity:**

|   |                        |
|---|------------------------|
| <b>Participant Enrollment Details</b>                           |                        |
| Participant Enrollment Number ( <i>Microsoft to complete</i> ): |                        |
| Prior Enrollment Number:  |                        |
| Media to be Shipped (Yes/No): Choose Yes or No                  |                        |
| Number of Faculty & Staff FTE:                                  |                        |
| If Student Option selected, number of student FTE:              |                        |
| <b>Participant Contact Details</b>                              |                        |
| Street Address  | Contact Name:          |
| City      State/Province      Zip Code                          | Contact Email Address: |
| Country   | Phone                  |
| <b>. Participant</b>  |                        |
| <b>Name of Entity:</b>  |                        |
| <b>Participant Enrollment Details</b>                           |                        |
| Participant Enrollment Number ( <i>Microsoft to complete</i> ): |                        |
| Prior Enrollment Number:  |                        |
| Media to be Shipped (Yes/No): Choose Yes or No                  |                        |
| Number of Faculty & Staff FTE:                                  |                        |
| If Student Option selected, number of student FTE:              |                        |
| <b>Participant Contact Details</b>                              |                        |
| Street Address  | Contact Name:          |
| City      State/Province      Zip Code                          | Contact Email Address: |
| Country   | Phone                  |

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

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

Proposal ID

# Select Plus License Program Agreement State and Local Custom Program Agreement Terms and Conditions

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This Microsoft Select Plus Agreement is entered into between the entities identified on the signature form.

**Effective date.** The effective date of this Agreement is the effective date of the first Affiliate Registration Form or the date Microsoft accepts this Agreement, whichever is earlier.

This Agreement consists of (1) the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984) and the terms and conditions of this Agreement and all attachments identified therein, (2) the Product Terms, (3) the Online Services Terms, (4) any Affiliate registration entered into under this Agreement, and (5) any Order submitted under this Agreement.

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

The parties agree to be bound by the terms of this Agreement.

## ***Terms and Conditions***

### **1. Definitions.**

In this Select Plus Agreement the following definitions apply:

“Affiliate” shall have the definition as set forth in Section 1.8(A) and (B) of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

“available” means, with respect to a Product, that Microsoft has made Licenses for that Product available for ordering under a particular licensing program.

"Customer" shall have the definition as set forth in Section 1.8 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

"day" means a calendar day, except for references that specify "business day".

"Fixes" shall have the definition as set forth in Section 1.8 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

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

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

"Microsoft" means the Microsoft Affiliate that has entered into this Agreement or accepted Registered Affiliate's registration form and its Affiliates, as appropriate.

"Online Services" shall have the definition as set forth in Section 1.8 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

"Order" means the document Customer or Customer's Affiliate submits under this Agreement to acquire Licenses.

"Product" shall have the definition as set forth in Section 1.8 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

"Product Terms" shall have the definition as set forth in Section 1.8 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

"Qualifying Contract" means (1) an Enterprise Enrollment under a separate Microsoft Enterprise Agreement; (2) any Enterprise Subscription Enrollment entered into under a Microsoft Enterprise Agreement, or (3) a Select Agreement. Only agreements entered into by a Registered Affiliate may constitute a Qualifying Contract.

"Registered Affiliate" means an entity, either Customer or any one of Customer's Affiliates, identified on an Affiliate Registration Form that has been accepted by Microsoft and has submitted an Order under this Agreement.

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

"Service Level Agreement" shall have the definition as set forth in Section 1.8 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

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

"use" or "run" means to copy, install, use, access, display, run or otherwise interact with.

"Use Rights" shall have the definition as set forth in Section 1.8 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

## **2. How the Select Plus License program works.**

The Select Plus License program allows Registered Affiliates to order Licenses and Services if Registered Affiliate (1) submits a minimum qualifying Order as defined in the Product Terms, (2) identifies and maintains at least one active Qualifying Contract, or (3) identifies an order placed under a separate agreement during the 12 months preceding the effective date of this Agreement that would otherwise have been a minimum qualifying Order.

## **3. How to establish price level.**

**Establishing price levels.** Throughout the term of this Agreement, Enrolled Affiliate's price level for each Product will be level "D". The price Microsoft will invoice Reseller will be based on Customer's price level for the Product ordered.

#### 4. **Licenses for Products.**

- a. **License Grant.** Microsoft grants Registered Affiliate a non-exclusive, worldwide and limited right to download, install and use software Products, and to access and use the Online Services, each in the quantity ordered under this Agreement. The rights granted are subject to the terms of this Agreement and the Use Rights. Microsoft reserves all rights not expressly granted in this Agreement.
- b. **Use by Affiliates.** Registered Affiliate may sublicense the right to use the Products ordered under this Agreement to any Affiliates, but Affiliates may not sublicense these rights and their use must be consistent with the terms of this Agreement.
- c. **Duration of Licenses.** Subscription Licenses and most Software Assurance rights are temporary and expire when the applicable agreement is terminated or expires, unless Registered Affiliate exercises a buy-out option, which is available for some Subscription Licenses. Except as otherwise noted in the applicable agreement or Use Rights, all other Licenses become perpetual only when all payments for that License have been made and any applicable Software Assurance term has expired.
- d. **Applicable Use Rights.** This section is intentionally omitted and is included in Section 4.31 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).
- e. **Downgrade rights.** This section is intentionally omitted and is included in Section 4.32 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).
- f. **New Version Rights under Software Assurance.** With Software Assurance coverage, Registered Affiliates may use a new version of a licensed Product as soon as it is released. New version rights apply to the License automatically upon release of the new version, even if Registered Affiliate chooses not to use the new version immediately.
  - (i) Except as otherwise permitted under a Qualifying Contract, use of the new version will be subject to the new version's Use Rights.
  - (ii) If the License to the earlier version of the Product is perpetual at the time the new version is released, the License for the new version will also be perpetual. Perpetual licenses obtained through Software Assurance replace any perpetual licenses to the earlier version.
- g. **License confirmation.** This Agreement, the applicable Order, any Order confirmation, and any documentation evidencing transfers of perpetual Licenses, together with proof of payment, will be Registered Affiliate's evidence of all Licenses obtained under this Agreement.
- h. **After-acquired Licenses.** At any time after Microsoft has accepted its registration, Registered Affiliate may use any Product as if licensed under the terms of this Agreement, provided it submits an Order for a sufficient number of Licenses to authorize Registered Affiliate's use of the Product in the same calendar month in which the Product is first used.
- i. **Multi-Language Rights.** Registered Affiliate may use different language versions of any Product it Licenses under this agreement, provided that the License, L&SA, or Software Assurance for that different language version is available at the same or lower price than the price paid for the language version ordered of the same Product and License type.

#### 5. **How to order Product Licenses.**

- a. **Placing Orders.** Registered Affiliate may order Licenses and Online Services Microsoft makes available under this program by placing Orders with Registered Affiliate's authorized Reseller. The price and payment terms for all Orders will be determined by agreement between Registered Affiliate and its Reseller. When placing orders, a Registered Affiliate must specify the country or countries where the Registered Affiliate will use the Licenses.  
  
Microsoft may change the Products available under this program.

- b. When is the Registered Affiliate eligible to order just Software Assurance?** A Registered Affiliate may order Software Assurance for a previously-licensed Product without ordering a new License for the Product if:
- (i) Registered Affiliate has previously obtained perpetual Licenses through Upgrade Advantage, Software Assurance, or any similar upgrade protection and, prior to expiration of its existing upgrade protection, orders Software Assurance for the Product to become effective no later than one day following the scheduled expiration of the previous upgrade protection.
  - (ii) Registered Affiliate is eligible to order Software Assurance for Products licensed through retail sources or from an original equipment manufacturer (“OEM”), and places its order within the required time frame. The Product Terms at <http://www.microsoft.com/licensing/contracts> identifies those Products that may be enrolled in Software Assurance and the applicable time frame for placing an order.
  - (iii) The Product Terms expressly permits Registered Affiliate to order Software Assurance without ordering a new License for the Product.
  - (iv) A Registered Affiliate renews Software Assurance as described in the section of this Agreement titled “How to renew Software Assurance.”
- c. How to confirm Orders.** Information about Orders, including an electronic confirmation of each Order, will be provided in a password-protected website at <https://www.microsoft.com/licensing/servicecenter/> or a successor site. Upon Microsoft’s acceptance of this Agreement, the contact Registered Affiliate designates on the Affiliate Registration Form will be provided access to this site.
- d. Invoices and payments.** For any Orders for Software Assurance or L&SA, Registered Affiliate may elect with its Reseller to spread payment over three years rather than making payment in a lump sum. In such cases, Microsoft will invoice the Reseller in installments, the first installment upon receipt of the Order and subsequent installments on each anniversary of the Order or, at Registered Affiliate’s option, on the Affiliate anniversary month. Orders for Licenses without accompanying Software Assurance will be invoiced to the Reseller in full upon receipt of the Order.

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

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

the number of copies or instances of the re-imaged Product permitted remains the same.

(iii) Except for copies of an operating system and copies of Products licensed under another Microsoft program, the Product type (e.g., upgrade or full License) must be identical to the Product type from the separate source.

(iv) Any Product-specific requirements for re-imaging identified in the Product List.

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

## **7. Transferring and reassigning Licenses.**

a. **Transferring Licenses to third parties.** License transfers are not permitted, except that Registered Affiliate may transfer fully-paid perpetual licenses to:

(i) an Affiliate, or

(ii) a third party solely in connection with the transfer of hardware or employees to whom the Licenses have been assigned as part of (A) a privatization of an Affiliate or agency or of an operating division of Enrolled Affiliate or an Affiliate, (B) a reorganization, or (C) a consolidation.

b. **Notification of License Transfer.** Registered Affiliate must notify Microsoft of a License transfer by completing a transfer form, which can be obtained from <http://www.microsoft.com/licensing/contracts> and sending the completed form to Microsoft before the License transfer. No License transfer will be valid unless Registered Affiliate provides to the transferee, and the transferee accepts in writing, the applicable Use Rights, use restrictions, limitations of liability (including exclusions and warranty provisions), and the transfer restrictions described in this section. Any license transfer not made in compliance with this section will be void and Registered Affiliate must either return or destroy the licensed copies.

c. **Internal Reassignment of Licenses and Software Assurance.** Licenses and Software Assurance must be assigned to a single user or device within Registered Affiliate's organization. Licenses and Software Assurance may be reassigned within the organization as described in the Product Terms.

## **8. Term and termination.**

a. **Term.** This section is intentionally omitted and is included in Section 4.1 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

b. **Termination without cause.** This section is intentionally omitted and is included in Section 4.6(W) of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

c. **Mid-term termination for non-appropriation of Funds.** This section is intentionally omitted and is included in Section 4.6(W) of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

d. **Termination for cause.** Without limiting any other remedies it may have, either Microsoft or Registered Affiliate may terminate the Affiliate Registration Form if the other party materially breaches its obligations under this Agreement, including any obligation to pay invoices. Except where the breach is by its nature not curable within 30 days, the terminating party must give the other party 30 days' notice and opportunity to cure the breach. If Microsoft gives such notice to a Registered Affiliate, Microsoft will give OGS a copy of that notice as well and OGS agrees to help resolve the breach. If the breach also affects other Affiliate registrations, Microsoft shall give such notice to each Registered Affiliate and so advise OGS. If the breach cannot be resolved between Microsoft and Registered Affiliate within a reasonable period of time, Microsoft may terminate all the affected Affiliate registrations that received actual notification. If Registered Affiliate ceases to be an 'Affiliate' of the State of New York, Registered Affiliate must promptly notify

Microsoft, and Microsoft may terminate Registered Affiliate's registration under this Agreement.

- e. **Early termination.** If Registered Affiliate terminates the Affiliate Registration Form as a result of a breach by Microsoft, or if Microsoft terminates the Affiliate Registration Form because Registered Affiliate has ceased to be an "Affiliate" of the State of New York, then Registered Affiliate will have the following options for Licenses, excluding Subscription Licenses:
  - (i) It may immediately pay the total remaining amount due, including all installments, in which case, Registered Affiliate will have perpetual rights for all Licenses ordered (for the latest version of Products with Software Assurance coverage); or
  - (ii) It may pay only amounts due as of the termination date, in which case Registered Affiliate will have perpetual Licenses (for the latest version of Products with Software Assurance coverage) for (1) all Licenses for which payment has been made in full, and (2) a proportional number of Licenses it has ordered for which payment has been made.
- f. For Subscription Licenses, in the event of a breach by Microsoft, Registered Affiliate will receive a credit for any amount paid in advance that would apply after the date of termination.
- g. **Modification or termination of an Online Service for regulatory reasons.** This section is intentionally omitted and is included in Section 4.6(W) of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

## 9. **How to renew Software Assurance.**

- a. **Notice of expiration.** Microsoft will provide notice prior to the expiration of Software Assurance coverage and advise Registered Affiliate of its renewal options.
- b. **Renewal Order.** To maintain Software Assurance coverage for any Licenses previously ordered under this Agreement, Registered Affiliate must submit an Order for an additional term of Software Assurance for those Licenses prior to or at the expiration of the previous term.
- c. **Consequences of non-renewal.** If Registered Affiliate allows Software Assurance for any Licenses to lapse, then Registered Affiliate may not order Software Assurance for those Licenses again without first acquiring L&SA.

10. **Restrictions on use.** This section is intentionally omitted and is included in Section 4.6(HH) of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

11. **Confidentiality.** This section is intentionally omitted and is included in Section 4.6(G) of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

12. **Warranties.** This section is intentionally omitted and is included in Section 4.6(BB) of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

13. **Defense of infringement, misappropriation, and third party claims.** This section is intentionally omitted and is included in Section 4.6(EE) of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

14. **Limitation of liability.** This section is intentionally omitted and is included in Section 4.6(FF) of the associated Custom Microsoft Business Agreement (Contract No. PS67984).

15. **Verifying compliance.** This section is intentionally omitted and is included in Section



4.6(JJ) of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

**16. *Non-Microsoft Software or Technology.*** This section is intentionally omitted and is included in Section 4.33 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

**17. *Miscellaneous.***

- a. **Notices.** This section is intentionally omitted and is included in Section 4.35 of the associated Custom Microsoft Business Agreement (Contract No. PS67984).
- b. **Clerical errors.** Microsoft may correct clerical errors in this Agreement, and any documents submitted with or under this Agreement, by providing notice by email and a reasonable opportunity for Customer or Registered Affiliate, as applicable, to object to the correction. Clerical errors include minor mistakes, unintentional additions and omissions. This provision does not apply to material terms, such as the identity, quantity or price of a Product ordered.
- c. **Assignment.** This section is intentionally omitted and is included in Appendix A Section 2 and Appendix B Section 40 of the associated Custom Microsoft Business Agreement (Contract No. PS67984).
- d. **Subcontractors.** This section is intentionally omitted and is included in Section 4.20 of the associated Custom Microsoft Business Agreement (Contract No. PS67984)
- e. **Severability.** This section is intentionally omitted and is included in Section 4.37 of the associated Custom Microsoft Business Agreement (Contract No. PS67984).
- f. **Waiver.** This section is intentionally omitted and is included in Section 4.30 of the associated Custom Microsoft Business Agreement (Contract No. PS67984).
- g. **Applicable law; dispute resolution.** This section is intentionally omitted and is included in section Appendix A Section 14 and Section 4.6(GG) of the associated Custom Microsoft Business Agreement (Contract No. PS67984).
- h. **This Agreement is not exclusive.** This section is intentionally omitted and is included in Section 4.29 of the associated Custom Microsoft Business Agreement (Contract No. PS67984).
- i. **Entire agreement.** This section is intentionally omitted and is included in Section 4.38 of the associated Custom Microsoft Business Agreement (Contract No. PS67984).
- j. **Order of precedence.** This section is intentionally omitted and is included in Section 4.3 of the associated Custom Microsoft Business Agreement (Contract No. PS67984).
- k. **Survival.** This section is intentionally omitted and is included in Section 4.28 of the associated Custom Microsoft Business Agreement (Contract No. PS67984).
- l. **No transfer of ownership.** This section is intentionally omitted and is included in Section 4.23 of the associated Custom Microsoft Business Agreement (Contract No. PS67984).
- m. **Free Products.** This section is intentionally omitted and is included in Section 4.22 of the associated Custom Microsoft Business Agreement (Contract No. PS67984).
- n. **Amending the Agreement.** This section is intentionally omitted and is included in Section 1.6 of the associated Custom Microsoft Business Agreement (Contract No. PS67984).
- o. **Resellers and other third parties cannot bind Microsoft.** This section is intentionally omitted and is included in Section 4.21 of the associated Custom Microsoft Business Agreement (Contract No. PS67984).
- p. **Privacy and Security.** This section is intentionally omitted and is included in Section 4.6(AA) of the associated Custom Microsoft Business Agreement (Contract No. PS67984).
- q. **Natural disasters.** This section is intentionally omitted and is included in Section 4.25 of the associated Custom Microsoft Business Agreement (Contract No. PS67984).

- r. **Copyright violation.** This section is intentionally omitted and is included in Section 4.26 of the associated Custom Microsoft Business Agreement (Contract No. PS67984).
- s. **Section headings.** This section is intentionally omitted and is included in Section 4.36 of the associated Custom Microsoft Business Agreement (Contract No. PS67984).
- t. **U.S. export jurisdiction.** This section is intentionally omitted and is included in Section 4.27 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).



# Academic Select Plus Agreement

## Custom Program Agreement Terms and Conditions

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This Microsoft Academic Select Plus Agreement is entered into between the entities identified on the signature form.

**Effective date.** The effective date of this agreement is the effective date of the first Affiliate Registration Form or the date Microsoft accepts this agreement, whichever is earlier.

This agreement consists of (1) the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984) and these terms and conditions and the signature form, (2) the Product Terms, (3) the Online Services Terms, (4) any Affiliate registration entered into under this agreement, and (5) any Order submitted under this agreement.

**Please note:** Documents referenced in this agreement but not attached to the signature form may be found at <http://www.microsoft.com/licensing/contracts> and are incorporated in this agreement by reference, including the Product Terms, the Online Services Terms, and the Qualified Educational User definition (as defined in Appendix E to the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984)). These documents may contain additional terms and conditions for Products licensed under this agreement and may be changed from time to time. Customer should review such documents carefully, both at the time of signing and periodically thereafter, and fully understand all terms and conditions applicable to Products licensed and Services ordered.

The parties agree to be bound by the terms of this agreement.

### ***Terms and Conditions***

## **1. Definitions.**

In this agreement, "Institution or Institution's Affiliate" means the entity that is a qualified educational user identified in Appendix E to the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984) as of the effective date of this agreement and that has entered into this agreement with Microsoft by submitting an Affiliate Registration Form, and "Microsoft" means the Microsoft entity that has entered into this agreement by accepting Institution's registration and its Affiliates, as appropriate.

Notwithstanding any other definitions to the contrary described in the Custom Microsoft Business Agreement (OGS Contract No. PS67984), in this Select Plus Agreement the following definitions apply:

"Affiliate" shall have the definition as set forth in Section 1.8(B) and (C) of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

"available" means, with respect to a Product, that Microsoft has made Licenses for that Product available for ordering under a particular licensing program.

"Fix" means Product fixes, modifications, or enhancements or their derivatives that Microsoft either releases generally (such as service packs) or that Microsoft provides to Institution when performing Services to address a specific issue.

"Institution" means the entity that is a Qualified Educational User (as defined in Appendix E to the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984)) as of the effective date of this agreement that has entered into this agreement with Microsoft or an Affiliate of Institution that has entered into an Affiliate Registration Form under this Agreement.

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

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

"Online Services" shall have the definition as set forth in Section 1.8 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

"Order" means the document Institution or Institution's Affiliate submits under this agreement to acquire Licenses.

"Product" shall have the definition as set forth in Section 1.8 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

"Product Terms" shall have the definition set forth in Section 1.8 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

"Qualifying Contract" means a Campus or School Enrollment under a Microsoft Campus and School Agreement or an Academic Select Agreement.

"Qualified Desktop" means any device that is used for the benefit of Institution's organization or by or for the benefit of Students enrolled in Institution's organization and is: (1) a personal desktop computer, portable computer, workstation, or similar device capable of running Windows Professional locally (in a physical or virtual operating system environment) or (2) a device used to access a virtual desktop infrastructure ("VDI"). Qualified Desktops do not include any device that is: (1) designated as a server and not used as a personal computer, (2) an Industry Device, or (3) not managed (as defined in the Product Terms at the start of the applicable term) by Institution's organization.

"Registered Affiliate" means an entity, either Institution or any one of Institution's Affiliates, identified on an Affiliate Registration Form that has been accepted by Microsoft under this agreement.

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

"run" or "use" means to copy, install, use, access, display, run, or otherwise interact with.

“Software Assurance” shall have the definition as set forth in Section 1.8 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

“Software Updates” means additional or replacement code for any portion of a Product that Microsoft may make available to the general public without a fee from time to time.

## **2. *How the Academic Select Plus License program works.***

The Academic Select Plus License program allows Registered Affiliates to order Licenses and services at academic pricing. Registered Affiliate can participate in this program if it (1) submits a minimum qualifying Order as defined in the Product Terms, (2) identifies and maintains at least one active Qualifying Contract, or (3) identifies an order placed under a separate agreement during the 12 months preceding the effective date of this agreement that would otherwise have been a minimum qualifying order. For public Qualified Educational Users, only Registered Affiliates identified in a registration will be responsible for complying with the terms of that registration, including the terms of this agreement incorporated by reference in that registration.

## **3. *How to establish price level.***

- a. **Academic Price level.** Each Product is assigned to a Product pool and given a point value per License as shown on the Product Terms. To qualify for academic level pricing and be eligible to order Licenses from any particular pool under this agreement, Registered Affiliates, in the aggregate, must order the quantity of Licenses in that pool each year to accumulate at least the minimum required points for that pool, as shown on the Product Terms.
- b. **Compliance check.** Each year, on the agreement’s anniversary date, Microsoft will review Institution’s purchases to count the number of points earned by all Registered Affiliates for each pool during the preceding 12-month period. If Institution does not maintain a Qualifying Contract or place sufficient Orders to maintain eligibility for this program, Registered Affiliates will not be able to place additional Orders under this agreement until Institution has placed a minimum qualifying Order.

## **4. *License for Products.***

- a. **License Grant.** Microsoft grants Registered Affiliate a non-exclusive, worldwide and limited right to download, install and use software Products, and to access and use the Online Services, each in the quantity ordered. The rights granted are subject to the terms of this agreement, the Use Rights and are granted only for the term specified in the Order. Microsoft reserves all rights not expressly granted in this agreement.
- b. **Use by Affiliates.** Registered Affiliate may sublicense the right to use the Products ordered under this agreement to any Affiliates, but Affiliates may not sublicense these rights and their use must be consistent with the terms of this agreement.
- c. **Duration of Licenses.** Subscription Licenses and most Software Assurance rights are temporary and expire when the applicable agreement is terminated or expires, unless Registered Affiliate exercises a buy-out option, which is available for some Subscription Licenses. Except as otherwise noted in the applicable agreement or Use Rights, all other Licenses become perpetual only when all payments for that License have been made and any applicable Software Assurance term has expired.
- d. **Applicable Use Rights.** This section is intentionally omitted and is included in Section 4.31 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).
- e. **Earlier versions (downgrade rights).** This section is intentionally omitted and is included in Section 4.32 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

- f. **New Version Rights under Software Assurance.** With Software Assurance coverage, Registered Affiliates may use a new version of a licensed Product as soon as it is released. New version rights apply to the License automatically upon release of the new version, even if Registered Affiliate chooses not to use the new version immediately.
- (i) Except as otherwise permitted under a Qualifying Contract, use of the new version will be subject to the new version's Product Use Rights.
  - (ii) If the License to the earlier version of the Product is perpetual at the time the new version is released, the License for the new version will also be perpetual. Perpetual licenses obtained through Software Assurance replace any perpetual licenses to the earlier version.
- g. **Multi-Language rights.** Registered Affiliate may use different language versions of any Product it Licenses under this agreement, provided that the License, L&SA, or Software Assurance for that different language version is available at the same or lower price than the price paid for the language version ordered of the same Product and License type.
- h. **Developer Products.** For each copy of Microsoft Developer Products a Registered Affiliate licenses for instructional purposes in connection with a class or other educational program, the Registered Affiliate may, as an alternative to deploying the product pursuant to the licensing model described in the Product Use Rights, either
- (i) permit an unlimited number of its student users to run the Product on a single computer or similar device, provided that all such users comply with all other terms of this agreement; or
  - (ii) if the Registered Affiliate has licensed multiple copies of the product, then, at any time, its students or faculty may run as many copies of the Product as it has licensed, provided that those users comply with all other terms of this agreement. If the anticipated number of users of the Product will exceed the number of copies the Registered Affiliate has licensed, it must have a reasonable mechanism or process in place to ensure that the number of persons running the product at any given point in time does not exceed the number of copies licensed.
- i. **License confirmation.** This agreement, the applicable Order, any Order confirmation, and any documentation evidencing transfers of perpetual Licenses, together with proof of payment, will be Registered Affiliate's evidence of all Licenses obtained under this agreement.
- j. **After-acquired Licenses.** At any time after Microsoft has accepted its registration, Registered Affiliate may use any Product as if licensed under the terms of this agreement, provided it submits an Order for a sufficient number of Licenses to authorize Registered Affiliate's use of the Product in the same calendar month in which the Product is first used.
- k. **Benefits limited to qualified educational user.** Products licensed under this agreement may be used only by and for the benefit of a qualified educational user. Client Access Licenses that the Registered Affiliates acquire solely to enable their students to access their servers are, for the purposes of this restriction, deemed to be used by and for the benefit of a qualified educational user. For each such student Client Access License the Registered Affiliate acquires, it does not need to acquire a separate Client Access License for the parent(s) or legal guardian(s) of the licensed student user. Licenses obtained under this agreement may not be transferred, sublicensed, rented, leased, or loaned to any person or entity that is not a qualified educational user.

## 5. ***Redistribution of Software Updates to Students.***

- a. **License grant.** Microsoft grants Institution a limited, non-exclusive, royalty-free, non-assignable, non-transferable, revocable License to distribute Software Updates to Institution's students in accordance with the terms of this section. Institution's students must use the Software Updates solely for their personal benefit in accordance with the end-user license agreement with Microsoft ("EULA") included with each Software Update.

- b. Redistribution of Software Updates.** Institution may redistribute Software Updates to Institution's students (1) by electronic means provided that Institution's method of electronic distribution is adequately licensed and incorporates access control and security measures designed to prevent modification of the Software Updates and prevent access by the general public, or (2) by acquiring authorized copies on fixed media from a fulfillment source approved by Microsoft.
- c. Limitations.** Institution may not: (1) produce or replicate Software Updates onto CDs or other distributable storage media; (2) combine the Software Updates with other non-Microsoft software; (3) distribute any Software Updates as a stand-alone component via email attachment; (4) charge for the Software Updates, other than to recover any reasonable costs incurred in providing the updates to Institution's students; (5) remove, modify, or interfere with the EULA or the EULA acceptance functionality included by Microsoft with any Software Update; or (6) alter the Software Updates in any way. Microsoft is not responsible for any cost related to the acquisition, distribution, or recall of the Software Updates.
- d. Tracking and recall.** Institution must track the quantity and method of distribution of the Software Updates by means that will allow Institution to provide notice of a recall and offer replacements as provided in this subsection. Institution agrees to stop redistributing Software Updates within 10 days of receipt of a notice of recall from Microsoft, and within 30 days of that notice, Registered Affiliate agrees to (1) return to Microsoft or destroy all copies of Software Updates in Registered Affiliate's possession, and (2) notify Registered Affiliate's students of the recall by same or similar means in which they were notified of the availability of the Software Updates.
- e. Replacement Software Updates.** If Microsoft makes available to Registered Affiliate a replacement Software Update, Registered Affiliate agrees to make the replacement available to its students within 10 days of receipt and in the same quantity and method of distribution as Registered Affiliate made the original Software Update available. Institution's distribution of replacement Software Updates is subject to the same conditions and restrictions as other Software Updates under this section.
- f. No Warranties.** Notwithstanding anything to the contrary in this agreement, and to the extent permitted by law, Software Updates that Registered Affiliate redistributes to Institution's students are provided "as-is" without any warranties. Institution and its Registered Affiliates acknowledge that the provisions of this paragraph with regard to the Software Updates are reasonable considering, among other things, that the Software Updates are complex computer products. Institution further acknowledges that the performance of the Software Updates will vary depending upon hardware, platform and software interactions and configurations.
- g. Exclusion of Damages.** **TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL MICROSOFT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, CONSEQUENTIAL, OR INDIRECT DAMAGES THAT ARISE OUT OF OR ARE IN ANY WAY RELATED TO INSTITUTION'S REDISTRIBUTION OF THE SOFTWARE UPDATES TO INSTITUTION'S STUDENTS. FURTHERMORE, IN NO EVENT SHALL MICROSOFT BE LIABLE FOR ANY SUCH DAMAGES BASED DIRECTLY OR INDIRECTLY UPON THE PROVISION OF SOFTWARE UPDATES OR UNAVAILABILITY OF SOFTWARE UPDATES -- INCLUDING WITHOUT LIMITATION, DAMAGES DUE TO BUSINESS INTERRUPTION, LOSS OF PROFITS, REVENUE OR BUSINESS OPPORTUNITY, LOSS OF DATA AND THE LIKE, FAILURE TO MEET ANY DUTY, OR NEGLIGENCE.**
- h. Limitation of liability.** With respect to Registered Affiliate's redistribution of the Software Updates, the Limitation of Liability provisions in this agreement shall apply in those situations in which Institution or a Registered Affiliate assert a right to damages or other compensation from Microsoft.
- i. No support.** Institution understands that Microsoft has no obligation to provide any support for Software Updates that Registered Affiliate may redistribute to its students, including any benefits accruing from Software Assurance.

## 6. ***How to order Product Licenses.***

- a. **Placing Orders.** Registered Affiliate may purchase Licenses Microsoft makes available under this program by placing Orders with Registered Affiliate's authorized Reseller. The price and payment terms for all Orders will be determined by agreement between Registered Affiliate and Registered Affiliate's Reseller. When placing Orders, a Registered Affiliate must specify the country in which the Registered Affiliate will use the Licenses.
- b. **How to confirm Orders.** Information about Orders, including an electronic confirmation of each Order, will be provided in a password-protected website at <https://licensing.microsoft.com> or a successor site. Upon Microsoft's acceptance of this agreement, the contact Registered Affiliate designates on the Affiliate Registration Form will be provided access to this site.
- c. **Invoices and payments.** For any Orders for Software Assurance or L&SA, Registered Affiliate may elect with its Reseller to spread its payments over three years rather than payment in a lump sum. In such cases, Microsoft will invoice the Reseller in installments, the first installment upon receipt of the Order, and subsequent installments on each anniversary of the Order or at Registered Affiliate's option, on the Affiliate anniversary month. Orders for Licenses without accompanying Software Assurance will be invoiced to the Reseller in full upon receipt of the Order.
- d. **When is Registered Affiliate eligible to order only Software Assurance?** A Registered Affiliate may add Software Assurance to a previously licensed Product without ordering a new License for the product if:
  - (i) Registered Affiliate previously obtained a perpetual License for a Product through Upgrade Advantage, Software Assurance, or any similar upgrade protection and, prior to the expiration of its existing upgrade protection, orders Software Assurance for the Product to become effective no later than one day following the scheduled expiration of the previous upgrade protection;
  - (ii) Registered Affiliate is eligible to order Software Assurance for Products licensed through retail sources or from an original equipment manufacturer ("OEM") and places its order within the required time frame. The Product Terms at <http://www.microsoft.com/licensing/contracts> identifies those Products that may be enrolled in Software Assurance and the applicable time frame for placing an order;
  - (iii) the Product Terms expressly permits Registered Affiliate to order Software Assurance without ordering a new License for the Product; or
  - (iv) Registered Affiliate renews Software Assurance as described in the section of this agreement titled, "How to renew an Order."

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

- a. **General.** Registered Affiliate may make as many copies of the Products licensed as necessary to distribute the Products within its organization. All copies of any Product must be true and complete copies (including copyright and trademark notices) from master copies obtained from a Microsoft approved fulfillment source. The Registered Affiliate may also have a third party make or distribute copies, but the Registered Affiliate is responsible for such third party's actions. The Registered Affiliate agrees to make reasonable efforts to notify its employees, agents, and other individuals running a Product that the Product is licensed from Microsoft and subject to the terms of this agreement.
- b. **Copies for training, evaluation, and back-up.** The Registered Affiliate may (1) use up to 20 complimentary copies of any Product in a dedicated training facility on its premises, (2) use up to 10 complimentary copies of any Product for a 60-day evaluation period, and (3) use one complimentary copy of any licensed Product for back-up or archival purposes for each of its distinct geographic locations.



- c. Right to re-image.** In certain cases, re-imaging is permitted using the Product media. If the Microsoft Product(s) is licensed (1) from an original equipment manufacturer (OEM), (2) as full packaged Product through a retail source, or (3) under another Microsoft program, then media provided under this agreement may be generally used to create images for use in place of copies provided through that separate source. This right is conditional upon the following:
- (i) Separate Licenses must be acquired from the separate source for each Product that is re-imaged.
  - (ii) The Product, language, version, and components of the copies made must be identical to the Product, language, version, and all components of the copies they replace and the number of copies or instances of the re-imaged Product permitted remains the same.
  - (iii) Except for copies of an operating system and copies of Products licensed under another Microsoft program, the Product type (e.g., upgrade or full License) re-imaged must be identical to the Product type licensed from the separate source.
  - (iv) Any Product-specific requirements for re-imaging identified in the Product Terms.
  - (v) Re-imaged Products remain subject to the terms and use rights provided with the License acquired from the separate source. This subsection does not create or extend any Microsoft warranty or support obligation.

## **8. *Work at home rights. Intentionally Omitted***

## **9. *Distributing media. Intentionally Omitted***

## **10. *Transferring and reassigning Licenses.***

- a. Transferring Licenses to third parties.** License transfers are not permitted, except that Registered Affiliate may transfer full-paid perpetual Licenses to:
- (i) an Affiliate; or
  - (ii) a third party solely in connection with the transfer of hardware or employees to whom the Licenses have been assigned as part of (1) divestiture of an Affiliate or a division of an Affiliate or (2) a merger involving Registered Affiliate or an Affiliate
- b. Notification of License Transfer.** Registered Affiliate must notify Microsoft of a License transfer by completing a license transfer form, which can be obtained from <http://www.microsoft.com/licensing/contracts>, and sending the completed form to Microsoft before the License transfer. No License transfer will be valid unless the Registered Affiliate provides to the transferee, and the transferee accepts in writing, the applicable Use Rights, use restrictions, limitations of liability (including exclusions and warranty provisions), and the transfer restrictions described in this section. Any License transfer not made in compliance with this section will be void and Registered Affiliate must either return or destroy the licensed copies.
- c. Internal Assignment of Licenses and Software Assurance.** Licenses and Software Assurance must be assigned to a single user or device within the organization. Licenses and Software Assurance may be reassigned within the organization as described in the Product Terms.

## **11. *Term and termination.***

- a. Term.** This section is intentionally omitted and is included in Section 4.1 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984)

- b. Termination without cause.** This section is intentionally omitted and is included in Section 4.6(W) of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984)
- c. Termination for breach.** Without limiting any other remedies it may have, Microsoft or Registered Affiliate may terminate the Affiliate Registration Form if the other party materially breaches its obligations under this Agreement, including any obligation to pay invoices. Except where the breach is by its nature not curable within 30 days, the terminating party must give the other party 30 days' notice and opportunity to cure the breach. If Microsoft gives such notice to a Registered Affiliate, Microsoft will give OGS a copy of that notice as well and OGS agrees to help resolve the breach. If the breach also affects other Affiliate registrations, Microsoft shall give such notice to each Registered Affiliate and so advise OGS. If the breach cannot be resolved between Microsoft and Registered Affiliate within a reasonable period of time, Microsoft may terminate all the affected Affiliate registrations that received actual notification. If Registered Affiliate ceases to be an 'Affiliate', Registered Affiliate must promptly notify Microsoft, and Microsoft may terminate Registered Affiliate's registration under this Agreement.
- d. Effect of termination.** When this agreement is terminated, Registered Affiliate must order Licenses for all copies of Products it has run for which it has not previously submitted an Order. Any and all unpaid payments or any order of any kind, including subscription services, remain due and payable.
- e. Modification or termination of an Online Service for regulatory reasons.** This section is intentionally omitted and is included in Section 4.6(W) of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).
- f. Program updates.** This section is intentionally omitted and is included in Section 1.6 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984)

## **12. How to renew Software Assurance.**

- a. Notice of Expiration.** Microsoft will provide notice prior to the expiration of any Software Assurance Registered Affiliate orders under this agreement and advise Registered Affiliate of its Software Assurance renewal options.
- b. Renewal Order.** To maintain Software Assurance coverage for any Licenses previously ordered under this agreement, Registered Affiliate must submit an Order for an additional term of Software Assurance for those Products prior to or at the expiration of the previous term.
- c. Consequences of non-renewal.** If Registered Affiliate allows Software Assurance for any Licenses to lapse, then Registered Affiliate may not renew Software Assurance for those Products again without first acquiring L&SA.

## **13. Restrictions on Use.**

This section is intentionally omitted and is included in Section 4.6(HH) of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984)

## **14. Confidentiality.**

This section is intentionally omitted and is included in Section 4.6(G) of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984)

## **15. Warranties.**

This section is intentionally omitted and is included in Section 4.6(BB) of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984)

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

This section is intentionally omitted and is included in Section 4.6(EE) of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984)

**17. *Limitation of liability.***

This section is intentionally omitted and is included in Section 4.6(FF) of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

**18. *Verifying compliance.***

This section is intentionally omitted and is included in Section 4.6(JJ) of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984)

**19. *Miscellaneous.***

- a. **Notices to Microsoft.** This section is intentionally omitted and is included in Section 4.35 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).
- b. **Clerical errors.** Microsoft may correct clerical errors in this agreement, and any documents submitted with or under this agreement, by providing notice by email and a reasonable opportunity for Registered Affiliate to object to the correction. Clerical errors include minor mistakes, unintentional additions and omissions. This provision does not apply to material terms, such as the identity, quantity or price of a Product ordered.
- c. **Assignment.** This section is intentionally omitted and is included in Appendix A Section 2 and Appendix B Section 40 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).
- d. **No transfer of ownership.** This section is intentionally omitted and is included in Section 4.23 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984)
- e. **Severability.** This section is intentionally omitted and is included in section 4.37 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).
- f. **Waiver.** This section is intentionally omitted and is included in Section 4.30 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).
- g. **Resellers and other third parties cannot bind Microsoft.** This section is intentionally omitted and is included in Section 4.21 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).
- h. **This agreement is not exclusive.** This section is intentionally omitted and is included in Section 4.29 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).
- i. **Entire agreement.** This section is intentionally omitted and is included in Section 4.38 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).
- j. **Order of Precedence.** This section is intentionally omitted and is included in Section 4.3 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).
- k. **Amending the agreement.** This section is intentionally omitted and is included in Section 1.6 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

- l. Compliance with Applicable Laws, Privacy and Security.** This section is intentionally omitted and is included in Section 4.6(AA) to the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).
- m. Applicable currency.** Intentionally omitted.
- n. Survival.** This section is intentionally omitted and is included in Section 4.28 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).
- o. Advisor fee.** Microsoft, or its Affiliates, sometimes pays fees to software advisors, or other third parties authorized by Microsoft or one of its Affiliates. The fees are in exchange for their advisory services. The payment of fees depends upon several factors, including the type of agreement under which Registered Affiliate orders Licenses, which Licenses Registered Affiliate orders, and whether Registered Affiliate chooses to use an advisor. The fee amounts increase with the size of the orders placed under this agreement.
- p. Applicable law.** This section is intentionally omitted and is included in Section 14 of Appendix A to the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).
- q. U.S. export.** This section is intentionally omitted and is included in Section 4.27 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).
- r. Subcontractors.** This section is intentionally omitted and is included in Section 4.20 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).
- s. Natural disaster.** This section is intentionally omitted and is included in Section 4.25 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).
- t. Section headings.** This section is intentionally omitted and is included in Section 4.36 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).
- u. FERPA.** Upon receipt of a judicial order or lawfully issued subpoena requiring the disclosure of personally identifiable information from education records related to Institution in Microsoft's possession, Microsoft or an Affiliate of Microsoft will attempt to redirect the request to Institution. If compelled to disclose personally identifiable information from education records related to Institution to a third party, Microsoft will use commercially reasonable efforts to notify Institution in advance of a disclosure unless legally prohibited. Institution understands that Microsoft may have no or limited contact information for Institution's students and students' parents in its possession. Consequently, Institution will convey notification on behalf of Microsoft to students (or, with respect to a student under 18 years of age and not in attendance at a postsecondary institution, to the student's parent) of such an order or subpoena as may be required under applicable law.

|                          |  |
|--------------------------|--|
| Proposal ID/Framework ID |  |
|--------------------------|--|

## Custom Select Plus Affiliate Registration Form

|  |  |  |  |
|--|--|--|--|
| Registration Type<br><i>Reseller to complete</i>                                 | Lead Affiliate <input type="checkbox"/><br>Additional Affiliate <input type="checkbox"/> | Organization Type<br><i>Reseller to complete</i>                             | Corporate <input type="checkbox"/><br>Government <input type="checkbox"/><br>Academic <input type="checkbox"/> |
| Additional Affiliate Public Customer Number (PCN)<br><i>Reseller to complete</i> |  | Lead Affiliate Public Customer Number (PCN)<br><i>Reseller to complete</i>   |  |
| Qualifying Contract<br><i>Reseller to complete</i>                               |  | Change Affiliate Anniversary Month<br><i>Reseller to complete</i>            | <Choose Month>   |
| Agreement Number<br><i>Microsoft or Reseller to complete</i>                     |  | Previous Enrollment / Registration (Optional)<br><i>Reseller to complete</i> |  |

By registering, Registered Affiliate accepts and agrees to be bound by the terms of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984), the applicable Select Plus Agreement and any applicable attachments (the "Agreement"), and will be allowed to acquire Licenses and services in accordance with the Agreement. If Registered Affiliate selects an Organization Type above other than Corporate, then the Microsoft Government Eligibility Definition or Qualified Educational User Definition identified in Appendix E to the associated Custom Microsoft Business Agreement ((OGS Contract No. PS67984) is incorporated by reference. The Microsoft Government Eligibility Definition is located at <http://www.microsoft.com/licensing/contracts>.

This registration is valid when accepted by Microsoft and until it is terminated. Registered Affiliate will receive an acceptance notification confirming the effective date of this registration. Either party may terminate this registration for any reason with 60 days advance written notice. Terminating this registration will terminate the Registered Affiliate's ability to place Orders under the Agreement.

In order to use a third party to reimage the Windows Operating System Upgrade, Registered Affiliate must certify that it has acquired qualifying operating system licenses. See the Product Terms for details.

### 1. **Primary contact information.**

Registered Affiliate must identify an individual from inside its organization to serve as the primary contact. This contact is also an Online Administrator for the Volume Licensing Service Center and may grant online access to others.

**Name of entity\***  
**Contact name\* First Last**  
**Contact email address\***  
**Street address\***  
**City \* State/Province\* Postal code\***  
**Country\***  
**Phone\* Fax**  
**Tax ID**

### 2. **Notices contact and online administrator.**

This individual receives contractual notices. They are also the Online Administrator for the Volume Licensing Service Center and may grant online access to others.

Same as primary contact

**Name of entity\***

**Contact name\* First Last**

**Contact email address\***

**Street address\***

**City\* State/Province\* Postal code\***

**Country\***

**Phone\* Fax**

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

### **3. Language preference.**

Select the language for notices. English

### **4. Media delivery contact.**

If media election form is not completed, provide a ship to/download to location for applying sales tax.

Same as notices contact

**Name of entity\***

**Contact name\* First Last**

**Contact email address (required for online access)\***

**Street address (no PO boxes accepted)\***

**City\* State/Province\* Postal code\***

**County Country\***

**Phone\* Fax**

**In City Limits?**

**Estimated Tax Rate**

### **5. Reseller information.**

**Reseller company name\***

**Street address (PO boxes will not be accepted)\***

**City\* State/Province\* Postal code\***

**Country\***

**Contact name\***

**Phone\* Fax**

**Contact email address\***

The undersigned confirms that the information is correct.

**Name of Reseller\***

**Signature\*** \_\_\_\_\_

**Printed name\***

**Printed title\***

**Date\***

**Changing a Reseller.** This Section is intentionally omitted and is included in Section 1.4 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

## 6. **Supplemental Contacts.**

Customer's Notices Contact identified above is the default contact for administrative and other communications. However, Customer may designate additional contacts using the Supplemental Contact Information form

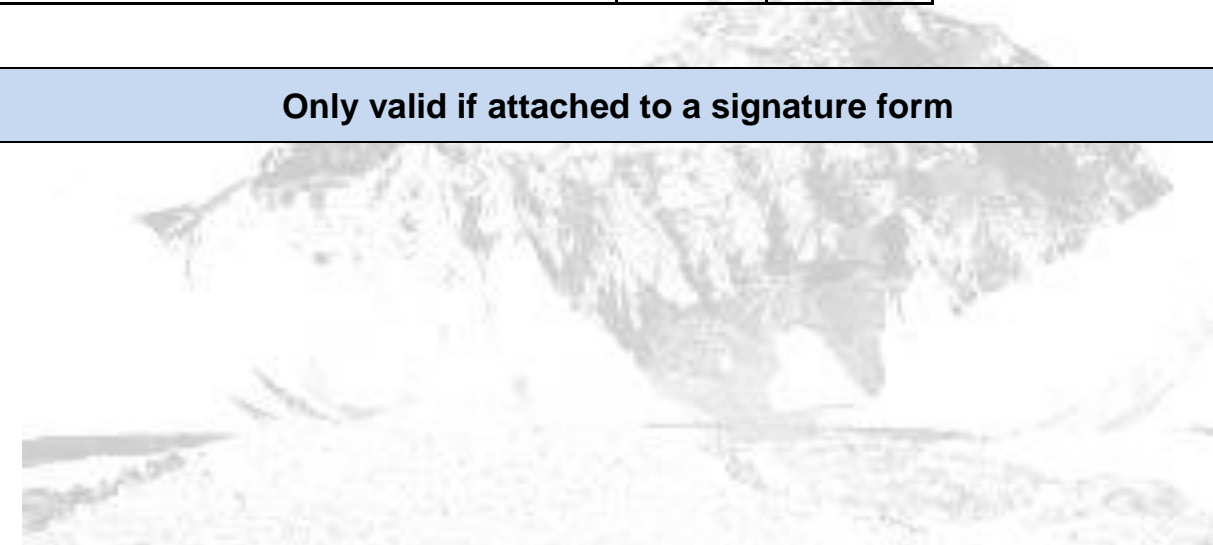
## 7. **Software Assurance Membership Election.**

Each Registered Affiliate may qualify for and receive additional benefits with Software Assurance membership. By electing Software Assurance membership below, Registered Affiliate is committing for a minimum period of one year to include Software Assurance with every eligible Order, and to maintain Software Assurance for all copies of Products licensed under this program for at least one Product pool.

| Product Pools | Yes                      | No                       |
|---------------|--------------------------|--------------------------|
| Applications  | <input type="checkbox"/> | <input type="checkbox"/> |
| Systems       | <input type="checkbox"/> | <input type="checkbox"/> |
| Servers       | <input type="checkbox"/> | <input type="checkbox"/> |

**Note:** If "Yes" is marked, orders for Licenses without Software Assurance will not be accepted.

**Only valid if attached to a signature form**



# Appendix D - CONTRACT ADMINISTRATION

Contractor must provide a dedicated Contract administrator to support the updating and management of the Centralized Contract on a timely basis. Information regarding the Contract administrator is set forth below.

Microsoft has identified the following contacts for questions related to this Centralized Contract.

Questions pertaining to Microsoft's overall Master Contract with the State of NY, or NYS Government Customers interested in learning more about Microsoft Volume Licensing Offerings should contact:

Ed Feuerstein  
Client Director – Microsoft Corporation  
Telephone: 518-292-1122  
E-mail: edf@microsoft.com

NYS Government customers should contact:

Ed Feuerstein  
Client Director – Microsoft Corporation  
Telephone: 518-292-1122  
E-mail: edf@microsoft.com

Alexandra Arace  
Licensing Sales Specialist – Microsoft Corporation  
Telephone: 212-835-8725  
E-mail: aarace@microsoft.com

NYS County and Local Government customers should contact:

Francesca McCann  
Client Director – Microsoft Corporation  
Telephone: 518-292-1119  
E-mail: Francesca.McCann@microsoft.com

Alexandra Arace  
Licensing Sales Specialist – Microsoft Corporation  
Telephone: 212-835-8725  
E-mail: aarace@microsoft.com

NY City Customers should contact:

Nathalie Large-Odier  
Client Director – Microsoft Corporation  
Telephone: 917-388-1059  
E-mail: nlarge@microsoft.com

Alexandra Arace  
Licensing Sales Specialist – Microsoft Corporation  
Telephone: 212-835-8725  
E-mail: aarace@microsoft.com



NYS Education customers should contact:

Josh Reynolds  
Account Manager– Microsoft Corporation  
Telephone: (585) 203-3028  
E-mail: Josh.Reynolds@microsoft.com

Lars Christensen  
Licensing Specialist – Microsoft Corporation  
Telephone: (301) 771-8186  
Email: Lars.Chrisensen@microsoft.com

## Microsoft Qualified Educational User Definition (US Only)

All Microsoft eligible education customers must be located or reside in the United States. Qualified Educational Users are those entities that both have an educational purpose or mission and meet the criteria specified below. If a controversy exists as to an organization's eligibility, Microsoft retains the right to determine in its sole discretion the eligibility of the organization for the specific transaction in question. The following are eligible to acquire Microsoft academic edition products in the programs indicated and are defined as qualified educational users:

| QUALIFIED EDUCATIONAL USERS:   | ELIGIBLE PROGRAMS:  |
|--|---|
| <p><b>A) Educational Institutions</b><br/>           Defined as an accredited institution organized and operated exclusively for the purpose of teaching its enrolled students ("Educational Institutions"). An accredited institution must be:</p> <ol style="list-style-type: none"> <li>1. A public or private K-12, vocational school, correspondence school, junior college, college, university, or scientific or technical school that is either institutionally accredited by an accrediting agency nationally recognized by the U.S. Secretary of Education or, in the case of public K-12 institutions only, recognized or approved by the Department of Education of the State in which it is located. OR</li> <li>2. A preschool meeting all the following criteria: (i) is an early childhood program incorporated for the purpose of providing educational services to children between two and five years of age, and which serves minimum of ten such children; and (ii) has been in operation for at least one year.</li> </ol> | <ul style="list-style-type: none"> <li>• Academic Open</li> <li>• Academic Select Plus</li> <li>• Enrollment for Education Solutions (Both K12 Ed or Preschool &amp; Higher Ed)</li> <li>• Get Genuine Windows Agreement – Academic</li> <li>• Microsoft Cloud Agreement (CSP)</li> <li>• Microsoft Customer Agreement</li> <li>• Microsoft Online Subscription Agreement</li> <li>• Microsoft Products and Services Agreement</li> <li>• Open Value Subscription – Education Solutions (Both K12 Ed or Preschool &amp; Higher Ed)</li> <li>• School Agreement (K12 Ed or Preschool Only)</li> <li>• Services Provider Licensing Agreement</li> </ul> |
| <p><b>B) Administrative Offices or Boards of Education</b><br/>           Defined as (a) district, regional and state administrative offices of public Educational Institutions. (b) administrative entities, controlled by, and organized and operated exclusively for the administration of, private Educational Institutions, or (c) other state or local government entities, nearly all of whose activities consist of administrative support of a nature that advances academic learning, for public Educational Institutions.</p>   | <ul style="list-style-type: none"> <li>• Academic Open</li> <li>• Academic Select Plus</li> <li>• Enrollment for Education Solutions (Both K12 Ed or Preschool &amp; Higher Ed)</li> <li>• Get Genuine Windows Agreement – Academic</li> <li>• Microsoft Cloud Agreement (CSP)</li> <li>• Microsoft Customer Agreement</li> <li>• Microsoft Online Subscription Agreement</li> <li>• Microsoft Products and Services Agreement</li> <li>• Open Value Subscription – Education Solutions (Both K12 Ed or Preschool &amp; Higher Ed)</li> <li>• School Agreement (K12 Ed or Preschool Only)</li> <li>• Services Provider Licensing Agreement</li> </ul> |

**C) Public Libraries**

Must meet all of the following criteria: (i) primarily provide general library services without charge to all residents of a given community, district or region; (ii) 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 products and services, beyond its basic services, to the public at large with or without individual charges.

- Academic Open
- Academic Select Plus
- Get Genuine Windows Agreement – Academic
- Microsoft Customer Agreement
- Microsoft Online Subscription Agreement
- Microsoft Products and Services Agreement
- School Agreement
- Services Provider Licensing Agreement

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**D) 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.

- Academic Open
- Academic Select Plus
- Get Genuine Windows Agreement – Academic
- Microsoft Customer Agreement
- Microsoft Online Subscription Agreement
- Microsoft Products and Services Agreement
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All United States territories such as Puerto Rico, Guam, and Virgin Islands are not eligible under this definition.

**Special note regarding Hospitals, Healthcare Systems, Federal Government Military Schools/Training Facilities, and Research Laboratories:**

Hospitals, healthcare systems and research laboratories (including independent research laboratories or research laboratories affiliated with an eligible education customer or government agency) are NOT eligible to acquire academic edition products unless they are wholly owned and operated by a qualified Educational Institution as defined above in Sections A and B. "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 said institution's day-to-day operations. Eligible hospitals, healthcare systems, and research laboratories are NOT permitted to purchase under a School Agreement and are NOT permitted to be included as part of an Educational Institution's School Agreement even if they are wholly owned and operated by the Educational Institution. Military schools or other training facilities operated by the United States federal government that do not grant degrees are not eligible to acquire academic edition products.