



Enterprise Agreement number
(Microsoft to complete)

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Proposal ID/Framework ID

000-dbeale-S-366

Enterprise Agreement

Custom State and Local

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

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

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

This Agreement consists of (1) these Agreement terms and conditions, including any amendments and the signature form and all attachments identified therein, (2) the Product 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" means

a. with regard to Customer,

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

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

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

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

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

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

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

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

"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" means the Microsoft-hosted services identified as Online Services in the Product Terms.

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

"Personally Identifiable Information" means an individual's last name and the individual's first name or first initial, in combination with and linked to any of the following elements, if that element is not publicly available information and is not encrypted, redacted, or altered in any manner that renders the element unreadable: (a) the individual's Social Security number; (b) the individual's driver's license number or state identification number; (c) the number of the individual's financial account, including a credit or debit card account number, or any security code, access code, or password that would permit access to the individual's financial account; (d) the individual's DNA profile; or (e) the individual's unique biometric data, including fingerprint, voice print, retina or iris image, or any other unique physical representation, and any other information protected by state or federal law.

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

"Product Terms" means the document that provides information about Microsoft Products and Professional Services available through volume licensing. The Product Terms document is published on the Volume Licensing Site and is updated from time to time.

"SLA" means Service Level Agreement, which specifies the minimum service level for Online Services and is published on the Volume Licensing Site.

"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" is an offering by Microsoft that provides new version rights and other benefits for Products as further described in the Product Terms.

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

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

"Use Rights" means the use rights or terms of service for each Product published on the Volume Licensing Site and updated from time to time. The Use Rights supersede the terms of any end user license agreement that accompanies a Product. The Use Rights for Software are published by Microsoft in the Product Terms. The Use Rights for Online Services are published in the Online Services Terms.

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

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

- a. **General.** The Enterprise program consists of the terms and conditions on which an Enrolled Affiliate may acquire Product Licenses. Under the Enterprise program, Customer and its Affiliates may order Licenses for Products by entering into Enrollments.
- b. **Enrollments.** The Enterprise program gives Customer and/or its Affiliates the ability to enter into one or more Enrollments to order Products. Subscription Enrollments may be available for some of these Enrollments. Notwithstanding any other provision of this Agreement, only Enrolled Affiliates identified in an Enrollment will be responsible for complying with the terms of that Enrollment, including the terms of this Agreement incorporated by reference in that Enrollment.
- c. **Licenses.** The types of Licenses available are (1) Licenses obtained under Software Assurance (L&SA), and (2) Subscription Licenses. These License types, as well as additional License Types, are further described in the Product List.
- d. **Establishing price Levels.** Each Product is assigned to a Product pool (applications, systems or servers). There are four price levels (A, B, C and D). An Enrolled Affiliate's price level for Enterprise Products or Enterprise Online Services for the initial order and true up orders will be "D-1%". All other products will be priced at level D.

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.**
 - (i) **Products (other than Online Services).** The Use Rights in effect on the effective date of the Enrollment will apply to Enterprise's use of the version of each Product that is current at the time. For future versions and new Products, the Use Rights in effect when those versions and Products are first released will apply. Changes Microsoft makes to the Use Rights for a particular version will not apply unless the Enrolled Affiliate chooses to have those changes apply. 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.
 - (ii) **Online Services.** For Online Services, the Use Rights in effect on the subscription start date will apply for the subscription term as defined in the Product Terms.
- d. **Downgrade rights.** Enrolled Affiliate may use an earlier version of a Product other than Online Services than the version that is current on the effective date of the Enrollment. In that case, the Use Rights for the current version apply to the use of the earlier version. If the earlier Product version includes features that are not in the new version, then the Use Rights applicable to the earlier version apply with respect to those features.

- e. **New Version Rights under Software Assurance.** Enrolled Affiliate must order and maintain continuous Software Assurance coverage for each License ordered. With Software Assurance coverage, Enterprise automatically has the right to use a new version of a licensed Product as soon as it is released, even if Enrolled Affiliate chooses not 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 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. *Pursuant to (1) above, if no dedicated training facility exists, the training licenses may be used on non-production devices that are used for training purposes.* 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.** Enrolled Affiliate may transfer only fully-paid perpetual Licenses to:

(i) an Affiliate or

(ii) an unaffiliated third party in connection with (A) a privatization of an Affiliate or agency or of an operating division of Enrolled Affiliate or an Affiliate, (B) a reorganization, or (C) a consolidation.

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, 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 Enterprise. Licenses and Software Assurance may be reassigned within the Enterprise as described in the Use Rights.

6. **Term and termination.**

a. **Term.** The term of this Agreement will be 36 full calendar months from the Effective date unless terminated by either party as described below. Each Enrollment will have the term provided in that Enrollment.

b. **Termination without cause.** Either party may terminate this Agreement, without cause, upon 60 days written notice. In the event of termination, new Enrollments will not be accepted, but any existing Enrollment will continue for the term of such Enrollment and will continue to be governed by this Agreement.

c. **Mid-term termination for non-appropriation of Funds.** Enrolled Affiliate may terminate this Agreement or an Enrollment without liability, penalty or further obligation to make payments if funds to make payments under the Agreement or Enrollment are not appropriated or allocated by the Enrolled Affiliate for such purpose.

d. **Termination for cause.** Without limiting any other remedies, it may have, either party may terminate an Enrollment if the other party materially breaches its obligations under this Agreement, including any obligation to submit orders or pay invoices. Except where the breach is by its nature not curable within 30 days, the terminating party must give the other party 30 days' notice of its intent to terminate and an opportunity to cure the breach.

- (i) *Customer reserves the right to cancel this Agreement in whole or in part without penalty, and without prior notice, if Microsoft:*

Files a petition in bankruptcy, becomes insolvent, or otherwise takes action to dissolve as a legal entity

Makes an assignment for the benefit of creditors

Fails to maintain and keep in force all required insurance, permits and licenses as provided in this Agreement;

- (ii) *The Customer reserves the right to cancel this Agreement in whole or in part without penalty, with 30 days' notice, if the Contractor:*

Fails to follow the sales and use tax certification requirements of s. 77.66 of the Wisconsin Statutes;

Incurs a delinquent Wisconsin tax liability;

Fails to submit a non-discrimination or affirmative action plan as required herein.

Fails to follow the non-discrimination or affirmative action requirements of subch. II, Chapter 111 of the Wisconsin Statutes (Wisconsin's Fair Employment Law); or

Becomes a state or federally debarred contractor.

Fails to maintain the confidentiality of the Customer's information that is considered to be Confidential Information, or

Performs in a manner that threatens the health or safety of a State employee, citizen, or customer.

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

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

- (i) It may immediately pay the total remaining amount due, including all installments, in which case, the Enrolled Affiliate will have perpetual rights for all Licenses it has ordered; or
- (ii) It may pay only amounts due as of the termination date, in which case the Enrolled Affiliate will have perpetual Licenses for:
- 1) all copies of Products (including the latest version of Products ordered under SA coverage in the current term) for which payment has been made in full, and
 - 2) the number of copies of Products it has ordered (including the latest version of Products ordered under Software Assurance coverage in current term) that is proportional to the total of installment payments paid versus total amounts due (paid and payable) if the early termination had not occurred.

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

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

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

- f. **Effect of termination or expiration.** When an Enrollment expires or is terminated,
- (i) Enrolled Affiliate must order Licenses for all copies of Products it has run for which it has not previously submitted an order. Any and all unpaid payments or any order of any kind, including subscription services, remain due and payable. Except as provided in the subsection titled "Early termination," all unpaid payments for Licenses immediately become due and payable.
 - (ii) Enrolled Affiliate's right to Software Assurance benefits under this Agreement ends if it does not renew Software Assurance.
- g. **Modification or termination of an Online Service for regulatory reasons.** Microsoft may modify or terminate an Online Service where there is any current or future government requirement or obligation that: (1) subjects Microsoft to any regulation or requirement not generally applicable to businesses operating there; (2) presents a hardship for Microsoft to continue operating the Online Service without modification; and/or (3) causes Microsoft to believe these terms or the Online Service may conflict with any such requirement or obligation.
- h. **Program updates.** Microsoft may make changes to this program that will make it necessary for Customer and its Enrolled Affiliates to enter into new agreements and Enrollments at the time of an Enrollment renewal.

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 terms Microsoft provides with the Fix will apply.
- c. **Non-Microsoft software and technology.** Enrolled Affiliate is solely responsible for any non-Microsoft software or technology that it installs or uses with the Products or Fixes.
- d. **Restrictions.** Enrolled Affiliate must not (and must not attempt 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 obligations beyond those included in this agreement, or (3) work around any technical limitations in the Products or restrictions in Product documentation. Except as expressly permitted in this agreement, Customer must not (i) separate and run parts of a Product on more than one device, upgrade or downgrade parts of a Product at different times, or transfer parts of a Product separately; or (ii) distribute, sublicense, rent, lease, lend, or use any Product or Fix to offer hosting services to a third party.

- e. **No transfer of ownership; reservation of rights.** Products and Fixes are protected by copyright and other intellectual property rights laws and international treaties. Microsoft (1) does not transfer any ownership rights in any Products or Fixes and (2) reserves all rights not expressly granted in this Agreement.

8. Confidentiality.

The terms and conditions of this Agreement may be disclosed in accordance with the requirements of Wisconsin Public Records Law, subchapter II, Chapter 19 of the Wisconsin Statutes. "Confidential Information" is non-public information that is designated "confidential" or that a reasonable person should understand is confidential, including Customer Data. Confidential Information does not include information that (a) becomes publicly available without a breach of this agreement, (b) the receiving party received lawfully from another source without a confidentiality obligation, (c) is independently developed, or (d) is a comment or suggestion volunteered about the other party's business, products or services.

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

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

Neither party is required to restrict work assignments of its Representatives who have had access to Confidential Information. Each party agrees that the use of information retained in Representatives' unaided memories in the development or deployment of the parties' respective products or services does not create liability under this agreement or trade secret law, and each party agrees to limit what it discloses to the other accordingly.

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

9. Privacy and Compliance and Laws.

- a. Enrolled Affiliate consents to the processing of personal information by Microsoft and its agents to facilitate the subject matter of this Agreement. Enrolled Affiliate will obtain all required consents from third parties under applicable privacy and data protection law before providing personal information to Microsoft.
- b. Personal information collected under this agreement (i) may be transferred, stored and processed in the United States or any other country in which Microsoft or its contractors maintain facilities and (ii) will be subject to the privacy terms specified in the Use Rights. Microsoft abides by the EU Safe Harbor and the Swiss Safe Harbor frameworks as set forth by the U.S. Department of Commerce regarding the collection, use, and retention of data from the European Union, the European Economic Area, and Switzerland.
- c. **U.S. export jurisdiction.** Products and Fixes are subject to U.S. export jurisdiction. Enrolled Affiliate must comply with all applicable international and national laws, including the U.S. Export Administration Regulations and International Traffic in Arms Regulations, and end-user, end use and destination restrictions issued by U.S. and other governments related to Microsoft products, services and technologies.

10. Warranties.

- a. **Limited warranties and remedies.**

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

The remedies above are the Enterprise's sole remedies for breach of the warranties in this section. Customer waives any breach of warranty claims not made during the warranty period.

- b. **Exclusions.** The warranties in this agreement do not cover problems caused by accident, abuse, or use in a manner inconsistent with this Agreement, including failure to meet minimum system requirements. These warranties do not apply to free, trial, pre-release, or beta Products, or to components of Products that Enrolled Affiliate is permitted to redistribute.
- c. **DISCLAIMER.** Microsoft provides no other warranties or conditions and disclaims any other express, implied, or statutory warranties, including warranties of quality, title, non-infringement, merchantability, and fitness for a particular purpose.

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

- a. **By Microsoft.** Microsoft will defend Enrolled Affiliate *and its Representatives* against any claims made by an unaffiliated third party (1) that any Product or Fix infringes its patent, copyright, or trademark or makes unlawful use of its Trade Secret; or (2) that arises from Microsoft's provision of an Online Service in violation of laws applicable to all online services providers. Microsoft will pay the amount of any resulting adverse final judgment or approved settlement. This does not apply to claims based on (i) Customer Data; (ii) non-Microsoft software; (iii) modifications to a Product or Fix Enrolled Affiliate makes, or any specifications or materials Enrolled Affiliate provides; (iv) Enrolled Affiliate's combination of the Product or Fix with (or damages based on the value of) a non-Microsoft product, data, or business process; (v) Enrolled Affiliate's use of a Microsoft trademark without express, written consent or the use or redistribution of a Product or Fix in violation of this Agreement; (vi) Enrolled Affiliate's continued use of a Product or Fix after being notified to stop due to a third party claim; or (vii) Products or Fixes provided free of charge.
- b. **By Enrolled Affiliate's responsibilities for certain claims.**

To the extent permitted by applicable law, and without waiving any defense of sovereign immunity or any rights or limits to liability existing under Wisconsin law applicable to Enrolled Affiliate, Enrolled Affiliate will be responsible for and Microsoft will not be responsible for any claims made by an unaffiliated third party that:

- (i) *any Customer Data or non-Microsoft software Microsoft hosts on Enrolled Affiliate's behalf infringes the third party's patent, copyright, or trademark or makes intentional unlawful use of its Trade Secret; or*
 - (ii) *arise from Enrolled Affiliate's or its end user's violation of the terms of this agreement or Enrolled Affiliate's or its end users' acceptable use policy(ies).*
- c. **Rights and remedies in case of possible infringement or misappropriation.** If Microsoft reasonably believes that a claim under this section may result in a legal bar prohibiting Enrolled Affiliate's use of the Product or Fix, Microsoft will seek to obtain the right for Enrolled Affiliate to keep using it or modify or replace it with a functional equivalent, in which case Enrolled Affiliate must discontinue use of the prior version immediately. If these options are not commercially reasonable, Microsoft may terminate Enrolled Affiliate's right to the Product

or Fix and refund any amounts Enrolled Affiliate has paid for those rights to Software or Fixes and, for Online Services, any amount paid for a usage period after the termination date.

- d. **Other terms.** The party being defended under this section 11 must notify the other party promptly of any claim subject to the subsection titled "By Microsoft," give the other party sole control over the defense or settlement, and provide reasonable assistance in defending the claim. The party providing the protection will reimburse the other party for reasonable out of pocket expenses that it incurs in providing assistance. Any settlement must be approved in writing by the defending party. The remedies provided in this section 11 are the exclusive remedies for the claims described in this section.

12. **Limitation of liability.**

- a. **Limitation of Liability.** To the extent permitted by applicable law, the liability of Microsoft and Enrolled Affiliate, their respective Affiliates and contractors arising under this Agreement is limited to direct damages up to:

- (i) for Products other than Online Services, two times (2x) the amount Enrolled Affiliate was required to pay for the Product giving rise to that liability, and
- (ii) for Online Services other than Office 365 Services, Azure, CRM Online, and Intune, the amount Enrolled Affiliate 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 Services giving rise to the liability, whichever is greater;

In the case of Products provided free of charge, or code that Enrolled Affiliate is authorized to redistribute to third parties without separate payment to Microsoft, Microsoft's liability is limited to U.S. \$5,000. These limitations apply regardless of whether the liability is based on breach of contract, tort (including negligence), strict liability, breach of warranties, or any other legal theory. However, these monetary limitations will not apply to:

1. Microsoft's and Enrolled Affiliate's obligations under the section titled "Defense of third party claims";
 2. liability for damages caused by either party's gross negligence or willful misconduct, or that of its employees or its agents, and awarded by a court of final adjudication (provided that, in jurisdictions that do not recognize a legal distinction between "gross negligence" and "negligence," "gross negligence" as used in this subsection shall mean "recklessness");
 3. liabilities arising out of any breach by either party of its obligations under the section entitled "Confidentiality", except that Microsoft's liability arising out of or in relation to Customer Data shall in all cases be limited to the amount Enrolled Affiliate paid for the Online Service giving rise to that liability during the prior 12 months or to the amounts covered in Section 12(d) and 12(e);
 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.
- b. **EXCLUSION OF CERTAIN DAMAGES. TO THE EXTENT PERMITTED BY APPLICABLE LAW, WHATEVER THE LEGAL BASIS FOR THE CLAIM, NEITHER PARTY, NOR ANY OF ITS AFFILIATES, OR CONTRACTORS, WILL BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, OR INCIDENTAL DAMAGES, OR DAMAGES FOR LOST PROFITS, REVENUES, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION ARISING IN CONNECTION WITH THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH POSSIBILITY WAS**

REASONABLY FORESEEABLE. HOWEVER, THIS EXCLUSION DOES NOT APPLY TO EITHER PARTY'S LIABILITY TO THE OTHER FOR VIOLATION OF ITS CONFIDENTIALITY OBLIGATIONS (EXCEPT TO THE EXTENT THAT SUCH VIOLATION RELATES TO CUSTOMER DATA), THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, OR THE PARTIES' RESPECTIVE OBLIGATIONS IN THE SECTION TITLED "DEFENSE OF INFRINGEMENT, MISAPPROPRIATION, AND THIRD PARTY CLAIMS."

- c. **Limitation of Liability for Azure, CRM Online and Intune.** The liability of each party, its Affiliates and its Contractors arising under an Enterprise Enrollment shall be limited to direct damages up to the amount the Enrolled Affiliate paid during the prior 24 months, or the cost of purchasing 24 months, whichever is greater, of the Individual Azure, CRM Online, or Intune services that gave rise to the liability. This change in the monetary limitation of liability for Azure, CRM Online, and Intune will also apply to Microsoft's liability arising out of or in relation to Customer Data.
- d. **Limitation of Liability for Office 365.** The following additional definitions shall apply to this Section 12(e):
- i. "Covered Data Loss" means loss of Customer Data that is not (a) attributable to the instructions, acts or omissions of Enrolled Affiliate or its users or (b) within the published recovery point objective for the Office 365 Services;
 - ii. "Covered Disclosure" means the disclosure of Customer Data as a result of a Security Incident; and
 - iii. "Security Incident" means any unlawful access to any Customer Data stored or transmitted on Microsoft's equipment or in Microsoft's facilities or unauthorized access to such equipment or facilities or transmissions resulting in loss, disclosure, or alteration of Customer Data.

Solely for the purpose of clarity related to the Office 365 Services, Section 12(a) of this Agreement above, titled "Limitation of Liability", is hereby amended as follows:

- a) the revision to the monetary limitation of liability for the Office 365 Services will apply to Microsoft's liability arising out of or in relation to its breach of its obligations under this Agreement related to Customer Data;
- b) for Enrolled Affiliates under this Agreement that fall under the Definition of Affiliate in Section 1, paragraph a, sub-paragraph (i) above, the maximum amount of either party's liability to the other for direct damages associated with the Office 365 Services will be limited to direct damages up to the amount the Enrolled Affiliate paid during the prior 36 months, or the cost of purchasing 36 months, whichever is greater subject to the exclusions set forth above in section 12(b). For clarification, if impacted Enrolled Affiliate licenses an Office 365 Service Suite under the Enrollment, the calculation above is based on the monthly cost of the full suite;
- c) for all other Enrolled affiliates, the maximum amount of either party's liability to the other for direct damages associated with the Office 365 Services will be the amounts paid by Enrolled affiliate for the Office 365 Service giving rise to that liability during the prior 24 months of the Enrollment or the cost of purchasing 24 months of the Office 365 Service, whichever is greater (subject to the exclusions set forth above in Section 12(b)).

The following costs related to affected individuals whose Personally Identifiable Information (PII) is disclosed pursuant to a Covered Disclosure shall be deemed to be "direct damages" not subject to the exclusion of indirect or consequential damages as set forth above in Section 12(b):

1. Enrolled Affiliate's costs in notifying affected individuals of Covered Disclosure in which the data subjects' personally-identifiable information has been disclosed;

2. Credit monitoring for up to twelve (12) months for affected individuals;
 3. Damages and fines assessed against Enrolled Affiliates by a court of competent jurisdiction and awarded to individuals whose Personally Identifiable Information is subject to a Covered Disclosure.
 4. 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 Affiliate, given the nature and scope of the Security Incident involving a Customer Data breach of PII, as validated by an independent internationally recognized third party industry expert chosen by both parties.
- e. **Affiliates and Contractors.** For all claims arising under this Agreement, Microsoft or Customer shall only bring an action against the other party and not against the other party's Affiliates or Contractors, provided, however, that the Customer does not by agreeing to this provision, waive any rights that it would have to bring suit against a Microsoft Affiliate or Contractor, with which Customer has entered into a separate, fully executed contract or purchase order directly with the Affiliate or Contractor, regardless of whether the services carried out by the Contractor or Affiliate include use of, or development related to, a product which was procured under this Agreement. To the extent permitted by applicable law, each party will be responsible for its breach of this provision.

13. Verifying compliance.

- a. **Right to verify compliance.** Enrolled Affiliate must keep accurate and complete records relating to all use and distribution of Products by Enrolled Affiliate and its Affiliates. Microsoft has the right, at its expense, to the extent permitted by applicable law, to verify Enrolled Affiliate and its Affiliates' compliance with the Product's license terms for the Products.
- b. **Verification process and limitations.** Microsoft will provide Enrolled Affiliate at least 30 days' notice of its intent to verify compliance. Verification will take place during normal business hours and in a manner that does not interfere unreasonably with Enrolled Affiliate's operations. Microsoft will engage an independent auditor, which will be subject to a confidentiality obligation. *The independent auditor shall provide a copy of the audit results reflecting the Enrolled Affiliate's Effective License Position when complete. The independent auditor shall comply with Enrolled Affiliate's security policies with respect to access to systems and may review these in advance in order verify compliance thereto.* Enrolled Affiliate must promptly provide the independent auditor with any information the auditor reasonably requests in furtherance of the verification, including access to systems running the Products (where such access to systems shall only be used for the purposes of verification) and evidence of Licenses for Products Enrolled Affiliate hosts, sublicenses, or distributes to third parties. *The independent auditor shall work in good faith with the Enrolled Affiliate to provide visibility into the independent auditor's access to systems to validate the auditors' actions.* Enrolled Affiliate agrees to complete Microsoft's self-audit process which Microsoft may require as an alternative to a third party audit. Any information collected in the self-audit will be used solely for purposes of determining compliance.
- c. **Remedies for non-compliance.** If verification or self-audit reveals any unlicensed use or distribution, then within 60 days, (1) Enrolled Affiliate must order sufficient licenses to cover that use or distribution, and (2) if unlicensed use or distribution is 5% or more, Enrolled Affiliate must, *subject to the laws of the State of Wisconsin,* reimburse Microsoft for the cost Microsoft has incurred in verification and acquire the necessary additional licenses at 110% of the price based on the then-current price list and Enrolled Affiliate price level. The unlicensed use percentage is based on the total number of licenses purchased compared to actual install base. *To the extent there is a conflict, the parties will work in good faith to resolve the conflict.* If there is no unlicensed use, Microsoft will not subject Enrolled Affiliate to another verification for at least one year. By exercising the rights and procedures described

above, Microsoft does not waive its rights to enforce this Agreement or to protect its intellectual property by any other means permitted by law.

14. **Miscellaneous.**

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

A copy of each notice should be sent to:

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

- b. **Assignment.** Either party may assign this Agreement to an Affiliate, but must notify the other party in writing of the assignment. Any other proposed assignment must be approved by the other party in writing. Assignment will not relieve the assigning party of its obligations under the assigned agreement. Any attempted assignment without required approval will be void.
- c. **Severability.** If any provision in this agreement is found unenforceable, the balance of the agreement will remain in full force and effect.
- d. **Use of contractors.** Microsoft may use contractors to perform services, but will be responsible for their performance subject to the terms of this Agreement.
- e. **Waiver.** Failure to enforce any provision of this agreement will not constitute a waiver. Any waiver must be in writing and signed by the waiving party.
- f. **Applicable law; dispute resolution.** The terms of this Agreement will be governed by the laws of Customer's state, without giving effect to its conflict of laws. Disputes relating to this Agreement will be subject to applicable dispute resolution laws of Customer's state.
- g. **This Agreement is not exclusive.** Customer and its Affiliates are free to enter into agreements to license, use or promote non-Microsoft products.
- h. **Management and Reporting.** Customer and/or Enrolled Affiliate may manage account details (e.g., contacts, orders, Licenses, software downloads) on Microsoft's Volume Licensing Service Center ("VLSC") web site (or successor site) at <https://www.microsoft.com/licensing/servicecenter>. Upon the effective date of this Agreement and any Enrollments, the contact(s) identified for this purpose will be provided access to this site and may authorize additional users and contacts.
- i. **Order of precedence.** In the case of a conflict between any documents in this Agreement that is not expressly resolved in those documents, their terms will control in the following order from highest to lowest priority: (1) this Enterprise Agreement, (2) any Enrollment, (3) the Product Terms, (4) the Online Services Terms, (5) orders submitted under this Agreement, and (6) any other documents in this Agreement. Terms in an amendment control over the amended document and any prior amendments concerning the same subject matter.

- j. **Survival.** All provisions survive termination or expiration of this Agreement except those requiring performance only during the term of the agreement.
- k. **Free Products.** It is Microsoft's intent that the terms of this Agreement and the Use Rights be in compliance with all applicable federal law and regulations. Any free Product provided to Enrolled Affiliate is for the sole use and benefit of the Enrolled Affiliate, and is not provided for use by or personal benefit of any specific government employee.
- l. **Amendments.** Any amendment to this Agreement must be executed by both parties, except that Microsoft may change the Product Terms and the Use Rights from time to time in accordance with the terms of this Agreement. Any conflicting terms and conditions contained in an Enrolled Affiliate's purchase order will not apply. Microsoft may require Customer to sign a new agreement or an amendment before an Enrolled Affiliate enters into an Enrollment under this agreement.
- m. **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>.
- n. **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.
- o. **Copyright violation.** Except as set forth in the section above entitled "Transferring and reassigning Licenses", the Enrolled Affiliate agrees to pay for, and comply with the terms of this Agreement and the Use Rights, for the Products it uses. Except to the extent Enrolled Affiliate is licensed under this Agreement, it will be responsible for its breach of this contract and violation of Microsoft's copyright in the Products, including payment of License fees specified in this Agreement for unlicensed use.
- p. **Calendar days.** Any reference in this Agreement or an Enrollment to a "day" means a calendar day, except references that specify "business day".
- q. **NONDISCRIMINATION AND AFFIRMATIVE ACTION.** Microsoft shall not discriminate against any employee or applicant for employment because of age, race, religion, color, handicap, sex, physical condition, national origin, developmental disability as defined in § 51.01(5), Wis. Stats., or sexual orientation as defined in § 111.32(13m), Wis. Stats. This provision shall include, but is not limited to, employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Except with respect to sexual orientation, Microsoft shall take affirmative action to ensure equal employment opportunities.
- Failure to comply with the conditions of this provision may result in the following consequences:
- termination of this Agreement as provided in section (6) herein,
 - designation of Microsoft as "ineligible" for future consideration as a responsible, supplier or qualified bidder or proposer for State contracts, or
- r. **ANTITRUST ASSIGNMENT.** By entering into this Agreement, Microsoft conveys, sells, assigns and transfers to the Customer all rights, title and interest in and to all causes of action, claims and demands of whatever nature it may now have or hereafter acquire under the antitrust laws of the United States and the State, relating specifically to that proportionate amount of the particular Goods or Services purchased or acquired by the State under this Agreement.

- s. **STATE TAX EXEMPTION.** *The Customer is exempt from payment of Wisconsin sales or use tax on all purchases.*
- t. **PROMOTIONAL ADVERTISING AND NEWS RELEASES.** *Reference to or use of the State of Wisconsin, the Great Seal of the State, the Wisconsin Coat of Arms, any Agency or other subunits of the State government, or any State official or employee, for commercial promotion is strictly prohibited. News releases or release of broadcast e-mails pertaining to this Agreement shall not be made without prior written approval of the Customer.*

Supplemental Contact Information Form State and Local

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

This form applies to: Agreement
 Enrollment/Affiliate Registration Form

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

Contact information.

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

1. Additional notices contact.

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

Name of Entity* Department of Administration acting on behalf of the State of Wisconsin

Contact name*: First Ellen Last Lybert

Contact email* Ellen.Lybert@wisconsin.gov

Street address* 5830 Femrite Drive

City* Madison State* WI Postal code* 53718

Country* USA

Phone* 608-224-3921 Fax 608-224-4044

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

2. Software Assurance manager.

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

Name of Entity*

Contact name*: First Last

Contact email*

Street address*

City* State* Postal code*

Country*

Phone* Fax

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

3. **Subscriptions manager.**

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

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

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

4. **Online Services manager.**

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

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

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

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

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

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

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

6. **Primary contact information:**

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

Name of Entity* Department of Administration acting on behalf of the State of Wisconsin
Contact name*: First Ellen Last Lybert
Contact email* Ellen.Lybert@wisconsin.gov
Street address* 5830 Femrite Drive
City* Madison State* WI Postal code* 53718

Country*: USA
Phone* 608-224-3921 Fax 608-224-4044

7. Notices contact and online administrator information:

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

Same as primary contact

Name of Entity*

Contact name*: First Last

Contact email*

Street address*

City* State* Postal code*

Country*:

Phone* Fax

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