

Enterprise Agreement

State and Local

CTM (Custom Agreement) for State of Oregon - Department of Administrative Services

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

01-bmarsha20150902

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

Effective Date and Term. This Agreement shall be effective on the date on which it is fully executed and approved according to applicable laws, rules and regulations ("Effective Date"). The term of this Agreement will be 36 months from the Effective Date, with two optional 12-month extension periods, unless this Agreement is terminated earlier in accordance with its terms. The optional extension periods may be exercised by the parties via a fully-executed, written amendment to this Agreement. Each Enrollment will have the term provided in that Enrollment.

Any reference in this Agreement or an Enrollment to a "day" means a calendar day, except references that specify "business day".

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

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

Terms and Conditions

1. Definitions.

"Affiliate" means

- a. with regard to Customer,
 - (i) any government agency, department, office, instrumentality, division, unit or other entity of the State Government as defined by ORS 174.111;
 - (ii) any county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality established by the laws of Customer's state and located within Customer's state jurisdiction and geographic boundaries; and
 - (iii) any other entity in Customer's state expressly authorized by the laws of Customer's state to purchase under state contracts; provided that a state and its Affiliates shall not, for purposes of this definition, be considered to be Affiliates of the federal government and its Affiliates; and
- b. with regard to Microsoft, any legal entity that Microsoft owns, that owns Microsoft, or that is under common ownership with Microsoft;

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

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

“Customer Data” means all data, including all text, sound, software, image, or video files that are provided to Microsoft by, or on behalf of, an Enrolled Affiliate and other entities in its Enterprise through the use of the Online Services.

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

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

“Enterprise” means an Enrolled Affiliate and other entities for which it is responsible and chooses on its Enrollment to include in its enterprise;

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

“License” means the right to download, install, access and use a Product. 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;

“Online Service” means the Microsoft-hosted services identified as Online Services in the Product List.

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

“Product List” means the statement published by Microsoft from time to time at the Volume Licensing Site. The Product List includes Product-specific conditions or limitations on the acquisition of licenses for Products.

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

“SLA” means Service Level Agreement, which specifies the standards to which Microsoft agrees to adhere and by which it measures the level of service for an Online Service. The SLA is available at the Volume Licensing Site.

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

“Software Assurance” is an offering by Microsoft that provides new version rights and other benefits for Products as further described in the Product List.

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

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

“Use Rights” means, with respect to any licensing program, the use rights or terms of service for each Product and version published for that licensing program at the Volume Licensing Site or at a successor site. The Use Rights supersede the terms of any end user license agreement (on-screen or otherwise) that accompanies a Product. The Use Rights for Software are published by Microsoft in the Product Use Rights. The Use Rights for Online Services are published in the Online Services Terms. “Volume Licensing Site” means <http://www.microsoft.com/licensing/contracts> or a successor site.

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

- a. **General.** The Enterprise program consists of the terms and conditions on which an Enrolled Affiliate may acquire Product Licenses. Under the Enterprise program, Customer and its Affiliates may order Licenses for Products by entering into Enrollments.
- b. **Enrollments.** The Enterprise program gives Customer and/or its Affiliates the ability to enter into one or more Enrollments to order Products. Subscription Enrollments may be available for some of these Enrollments. Notwithstanding any other provision of this Agreement, only Enrolled Affiliates identified in an Enrollment will be responsible for complying with the terms of that Enrollment, including the terms of this Agreement incorporated by reference in that Enrollment, and each Enrollment is a separate and independent agreement, distinct from all other Enrollments.
- 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. **How Enrolled Affiliates acquire Licenses.** An Enrolled Affiliate will acquire its Licenses through its chosen Reseller. Orders will be made out to and submitted to the Enrolled Affiliate's Reseller. Microsoft will invoice that Reseller according to the terms in the applicable Enrollment.
- e. **Choosing and maintaining a Reseller.** Each Enrolled Affiliate must choose and maintain a Reseller authorized in the United States.
- f. **Pricing.**
 - (i) **Establishing Price Levels.** Enrolled Affiliate's Price Level will be Level D for all Enterprise Products, Enterprise Online Services, Online Services and Additional Products ordered under any Enrollment.
 - (ii) **Placing Orders through Reseller.** Orders under an Enrollment will be made to the Reseller. Microsoft will invoice the Reseller according to the terms in the applicable Enrollment. Throughout this Agreement the term "price" refers to reference price. The Reseller and the Enrolled Affiliate will determine the Enrolled Affiliate's actual price and payment terms.
- g. **Order Requirements.** Order Requirements are outlined in each Enrollment.
- h. **Management and Reporting.** Each Enrolled Affiliate may manage its account details (e.g., contacts, orders, Licenses, software downloads) on Microsoft's Volume Licensing Service Center ("VLSC") web site (or successor site) at: <https://www.microsoft.com/licensing/servicecenter>. Upon the effective date of this Agreement and any Enrollments, the contact(s) identified for this purpose will be provided access to this site and may authorize additional users and contacts.

3. **Licenses for Products.**

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

c. Applicable Use Rights.

- (i) Products (other than Online Services).** The Use Rights in effect on the effective date of the Enrollment will apply to Enterprise's use of the version of each Product that is current at the time. For future versions and new Products, the Use Rights in effect when those versions and Products are first released will apply. Changes Microsoft makes to the Use Rights for a particular version will not apply unless the Enrolled Affiliate chooses to have those changes apply.
- (ii) Online Services.** For Online Services, the Use Rights in effect on the subscription start date will apply for the subscription term as defined in the Product List.
- d. Downgrade rights.** Enrolled Affiliate may use an earlier version of a Product other than Online Services than the version that is current on the effective date of the Enrollment. In that case, the Use Rights for the current version apply to the use of the earlier version. If the earlier Product version includes features that are not in the new version, then the Use Rights applicable to the earlier version apply with respect to those features.
- 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 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 the Product 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 that would breach the terms of this Agreement if committed by the Enrolled Affiliate. Enrolled Affiliate agrees to make reasonable efforts to notify its employees, agents, and any other individuals who use the Products that the Products are licensed from Microsoft and subject to the terms of this Agreement.
- b. Copies for training/evaluation and back-up.** For all Products other than Online Services, Enrolled Affiliate may: (1) use up to 20 complimentary copies of any licensed Product in a dedicated training facility on its premises for purposes of training on that particular Product, (2) use up to 10 complimentary copies of any Products for a 60 day evaluation period, and (3) use one complimentary copy of any licensed Product for back-up or archival purposes for each of

its distinct geographic locations. Trials for Online Services may be available if specified in the Use Rights.

- c. Right to re-image.** In certain cases, re-imaging is permitted using the Product media. If the Microsoft Product is licensed (1) from an original equipment manufacturer (OEM), (2) as a full packaged Product through a retail source, or (3) under another Microsoft program, then media provided under this Agreement may generally be used to create images for use in place of copies provided through that separate source. This right is conditional upon the following:
- (i) Separate Licenses must be acquired from the separate source for each Product that is re-imaged.
 - (ii) The Product, language, version, and components of the copies made must be identical to the Product, language, version, and all components of the copies they replace and the number of copies or instances of the re-imaged Product permitted remains the same.
 - (iii) Except for copies of an operating system and copies of Products licensed under another Microsoft program, the Product type (e.g., Upgrade or full License) re-imaged must be identical to the Product type licensed from the separate source.
 - (iv) Enrolled Affiliate must adhere to any Product-specific processes or requirements for re-imaging identified in the Product List.

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

5. Transferring and reassigning Licenses.

- a. License transfers.** Enrolled Affiliate may transfer fully-paid perpetual Licenses to:
- (i) an Affiliate or
 - (ii) an unaffiliated third party in connection with (A) a privatization of an Affiliate or agency or of an operating division of Enrolled Affiliate or an Affiliate, (B) a reorganization, or (C) a consolidation.
- b. Notification of License Transfer.** Enrolled Affiliate must notify Microsoft of a License transfer by completing a license transfer form, which can be obtained from <http://www.microsoft.com/licensing/contracts> and sending the completed form to Microsoft before the License transfer. No License transfer will be valid unless Enrolled Affiliate provides to the transferee, and the transferee accepts in writing, the applicable Use Rights, use restrictions, limitations of liability (including exclusions and warranty provisions), and the transfer restrictions described in this section. Any License transfer not made in compliance with this section will be void.
- 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 to 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.

If Microsoft gives such notice to an Enrolled Affiliate other than Customer, Microsoft also will give Customer a copy of that notice. 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 Section 6.

- 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 (1, 2, 3 and 4, collectively, "Early Termination"), 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 following the expiration or termination of this Agreement.

7. Use, ownership, and restrictions.

- a. Products.** Unless otherwise specified in a supplemental agreement, use of any Product is governed by the Use Rights specific to each Product and version and by the terms of the applicable supplemental agreement.
- b. Fixes.** Each Fix is licensed under the same terms as the Product to which it applies. If the Fix is not provided for a specific Product, any use terms Microsoft provides with the Fix will apply. If no use terms are provided, Enrolled Affiliate shall have a non-exclusive, perpetual, fully paid-up license to use and reproduce the Fix solely for its internal business use. Enrolled Affiliate may not modify, change the file name or combine any Fix with any non-Microsoft computer code, except as expressly permitted in another agreement.
- c. Non-Microsoft software and technology.** Enrolled Affiliate is solely responsible for any non-Microsoft software or technology that it installs or uses with the Products or Fixes. Enrolled Affiliate may not install or use non-Microsoft software or technology in any way that would subject Microsoft's intellectual property or technology to obligations beyond those included in this agreement.
- d. Sample Code.** Upon payment in full, Microsoft grants the Enterprise a non-exclusive, perpetual, non-transferable, license to use and modify any software code that Microsoft provides for purposes of illustration ("Sample Code") and to reproduce and distribute the object code form of the Sample Code for Enrolled Affiliate's internal business purposes only and not to any unaffiliated third party.
- e. Restrictions on use.** Enrolled Affiliate must not (and must not attempt to) reverse engineer, decompile, or disassemble any Product or Fix. Except as expressly permitted in this agreement, Customer must not (1) separate and run parts of a Product on more than one computer, upgrade or downgrade parts of a Product at different times, or transfer parts of a Product separately; or (2) distribute, sublicense, rent, lease, lend, or host any Product, or Fix, unless otherwise permitted by the Product's Use Rights or in a separate written agreement.
- f. Reservation of rights.** All rights not expressly granted are reserved to Microsoft.
- g. Supportability of Products.** Support for Products is available under the terms of a supplemental agreement, a separate Statement of Services or under the terms set forth at <http://support.microsoft.com/> or a successor site. Premier Support Services, Microsoft Consulting Services, and other professional services may only be purchased under a Microsoft Services Agreement.

8. Confidentiality.

"Confidential Information" is non-public information that is designated "confidential" or that a reasonable person should understand to be confidential, including Customer Data. Confidential Information does not include information that (a) becomes publicly available without a breach of this agreement, (b) was lawfully known or received by the receiving party without an obligation to keep it confidential, (c) is independently

developed, or (d) is a comment or suggestion one party volunteers about the other's business, products or services.

Each party will take reasonable steps to protect the other party's Confidential Information and will use the other party's Confidential Information only for purposes of the parties' business relationship under this agreement. Neither party will disclose that information to third parties, except to its employees, Affiliates, contractors, advisors and consultants (collectively, "Representatives") and then only on a need-to-know basis under 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 the discovery of any unauthorized use or disclosure, must promptly notify the other party. In addition, an Enrolled Affiliate may disclose Confidential Information to any governmental body with regulatory authority over or oversight of the Enrolled Affiliate that is acting pursuant to such authority or oversight.

A party may disclose the other party'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. Without limiting the generality of the foregoing, Microsoft hereby acknowledges that certain documents, materials or other information that Microsoft discloses to Customer or to an Affiliate of Customer (including Enrolled Affiliates) under this Agreement may be considered a "Public Record" subject to disclosure under the Oregon Public Records Laws, including but not limited to ORS 192.410-192.505 and the provisions for the Custody and Maintenance of Public Records, 192.005-192.170. Consequentially, such documents, materials or information will not be considered "Confidential Information for the purposes of this Section 8, and will be disclosed or withheld based on Customer's or Affiliate's reasonable determination of its obligations under the Oregon Public Records Laws. The disclosure or non-disclosure of documents, materials or other information, or any portion thereof, submitted by Microsoft to Customer or an Affiliate may depend upon administrative or judicial processes and determinations made pursuant to the Oregon Public Records Law. If Customer or an Affiliate of Customer receives from a third party any request under the Oregon Public Records Law for the disclosure of information designated by Microsoft as "Confidential Information," Customer or the Affiliate shall notify Microsoft within a reasonable period of time of the request, and Microsoft shall be exclusively responsible for defending Microsoft's position concerning the confidentiality of the requested information. Neither Customer nor any of its Affiliates is or shall be obligated to assist in Microsoft's defense. If any requests for disclosure of such information are made to Customer or an Affiliate, disclosure shall only be made consistent with and to the extent allowable under the Public Records Law after giving Microsoft the aforementioned notice.

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

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

9. Compliance and applicable laws, privacy, and security.

- a. Microsoft and Enrolled Affiliate each will comply with all applicable laws and regulations (including applicable security breach notification law). However, Microsoft is not responsible for compliance with any laws applicable to Enrolled Affiliate or Enrolled Affiliate's industry or government function that are not also generally applicable to information technology services providers.
- b. Enrolled Affiliate consents to the processing of personal information by Microsoft and its agents to facilitate the subject matter of this Agreement. Enrolled Affiliate will obtain all required consents from third parties under applicable privacy and data protection law before providing personal information to Microsoft.
- c. Personal information collected through Products (i) may be transferred, stored and processed in the United States or any other country in which Microsoft or its contractors maintain facilities

and (ii) will be subject to the privacy terms specified in the Use Rights. Microsoft abides by the EU Safe Harbor and the Swiss Safe Harbor frameworks as set forth by the U.S. Department of Commerce regarding the collection, use, and retention of data from the European Union, the European Economic Area, and Switzerland.

- d. **U.S. export jurisdiction.** Products and Fixes are subject to U.S. export jurisdiction. Enrolled Affiliate must comply with all applicable international and national laws, including the U.S. Export Administration Regulations and International Traffic in Arms Regulations, and end-user, end use and destination restrictions issued by U.S. and other governments related to Microsoft products, services and technologies. For additional information related to Microsoft compliance with export rules, see <http://www.microsoft.com/exporting>.

10. **Warranties.**

a. **Limited warranties and remedies.**

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

The remedies above are Customer's sole remedies for breach of the warranties in this section.

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

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

- a. **By Microsoft.** Microsoft will defend, subject to Section 11(a)(viii), Enrolled Affiliate 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 subsection (a) of the section titled "Compliance and applicable laws, privacy, and security" above. Microsoft will pay the amount of any resulting adverse final judgment or approved settlement. This does not apply to:
 - (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 trademarks without express, written consent or the use or redistribution of a Product or Fix in violation of this Agreement;

- (vi) Enrolled Affiliate's use of a Product or Fix after Microsoft notifies Enrolled Affiliate to discontinue that use due to a third party claim; or
 - (vii) Products or Fixes provided free of charge. For the avoidance of doubt, any Fix provided with respect to a Product for which the Enrolled Affiliate maintains current Software Assurance is not a Fix provided free of charge.
 - (viii) Microsoft will have control of the defense and settlement of any claim that is subject to Section 11.a; however, neither MS nor any attorney engaged by Microsoft will defend the claim in the name of the State of Oregon or any agency of the State of Oregon, nor purport to act as legal representative of the State of Oregon or any of its agencies, without the approval of the Attorney General for the State of Oregon, nor will MS settle any claim on behalf of the State of Oregon without the approval of the Attorney General. The State of Oregon may, at its election and expense, assume its own defense and settlement in the event that the State of Oregon determines that Microsoft is prohibited from defending the State of Oregon, is not adequately defending the State of Oregon's interests, or that an important governmental principle is at issue and the State of Oregon desires to assume its own defense.
- b. **By Enrolled Affiliate.** Subject to the limitations of Article XI, § 7 and Article XI, § 10 of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 through 30.300), Enrolled Affiliate shall indemnify, within the limits of and subject to the restrictions in the Tort Claims Act:
- (1) Enrolled Affiliate will indemnify Microsoft against 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 unlawful use of its Trade Secret;
 - (ii) arises from violation of subsection (a) of the section titled "Compliance and applicable laws, privacy, and security" above; a violation of the legal rights of others; or unauthorized access to or disruption of any service, data, account, or network in connection with the use of the Online Services; or
 - (iii) are based on items excluded from Microsoft's defense obligations in the subsection titled "By Microsoft" above.
 - (2) Enrolled Affiliate will pay the amount of any adverse final judgment or approved settlement resulting from a claim covered by this section titled "By Enrolled Affiliate."
- 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 titled "Defense of third party claims" 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 titled "Defense of third party claims" are the exclusive remedies for the claims described in this section.

12. **Limitation of liability.**

- a. **General.** The total liability of each party, including its Affiliates and contractors, for claims arising under this Agreement is limited to direct damages up to the following amounts (1) for each Product other than Online Services, the amount Enrolled Affiliate was required to pay for the Product under this Agreement, and (2) for Online Services, the amount Enrolled Affiliate paid for the Online Service during the prior 12 months before the cause of action arose; but in no event will a party's aggregate liability for any Online Service exceed the total amount paid for that Online Service under this Agreement. In the case of Products provided free of charge, previews, or code that Enrolled Affiliate is authorized to redistribute to third parties without separate payment to Microsoft, Microsoft's liability is limited to direct damages up to U.S. \$5,000. These limitations apply regardless of whether the liability is based on breach of contract, tort (including negligence), strict liability, breach of warranties, or any other legal theory.
- b. **Affiliates and contractors.** Microsoft and Enrolled Affiliate each agree not to bring any action against the other's Affiliates or contractors in respect of any matter disclaimed on their behalf in this Agreement. Each party will be responsible for its actions in the event of any breach of this provision.
- c. **EXCLUSION OF CERTAIN DAMAGES.** Neither party nor their Affiliates or contractors will be liable for any indirect, consequential, special or incidental damages, or damages for lost profits, revenues, business interruption, or loss of business information in connection with this agreement, even if advised of the possibility of such damages or if such possibility was reasonably foreseeable.
- d. **Limits.** The limits and exclusions in this section titled "Limitation of liability" do not apply to either party's (1) obligations under the section titled "Defense of third party claims", or (2) liability for violation of its confidentiality obligations (except obligations related to Customer Data) or the other party's intellectual property rights.

13. **Verifying compliance.**

- a. **Right to verify compliance.** Enrolled Affiliate must keep accurate and complete records relating to all use and distribution of Products within Enrolled Affiliate's Enterprise. Microsoft has the right, to the extent permitted by applicable law, to verify Enrolled Affiliate's Enterprise's compliance with the license terms for Products, at Microsoft's expense.
- b. **Verification process and limitations.** Microsoft will provide Enrolled Affiliate at least 30 days' notice of its intent to verify compliance. Verification will take place during normal business hours and in a manner that does not interfere unreasonably with Enrolled Affiliate's operations. Microsoft will engage an independent auditor, which will be subject to a confidentiality obligation. Enrolled Affiliate must promptly provide the independent auditor with any information the auditor reasonably requests in furtherance of the verification, including access to systems running the Products and evidence of Licenses for Products Enrolled Affiliate hosts, sublicenses, or distributes to third parties. Enrolled Affiliate agrees to complete Microsoft's self-audit process, which Microsoft may require as an alternative to a third party audit. Any information collected in the self-audit will be used solely for purposes of determining compliance.
- c. **Remedies for non-compliance.** If verification or self-audit reveals any unlicensed use or distribution, then within 30 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 and if the verification was conducted by Microsoft following Enrolled Affiliate's refusal to conduct a self-audit or failure to cooperate with Microsoft or its independent auditor, then Enrolled Affiliate must reimburse Microsoft for the cost Microsoft has incurred in verification and acquire the necessary additional licenses at 125% 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. If there is no unlicensed use, Microsoft will not undertake another verification of the same Enrolled Affiliate for at least one year. By exercising the rights and procedures described above, Microsoft does not waive its rights to enforce this Agreement or to protect its intellectual property by any other means permitted by law, provided that Enrolled Affiliate's payment of license fees in accordance with this section for any unlicensed use or distribution shall be Microsoft's sole monetary remedy for such unlicensed use or distribution.

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

Notices to Customer in connection with the Terms and Conditions must be sent via email to the email address(s) listed on record for this Agreement.

Notices associated with a specific Enrollment or order must be transmitted to the Enrolled Affiliate that is a party to the Enrollment or that placed the Order or (if the License was transferred) holds the License, at the email address(s) listed on record for the Enrollment.

- b. **Assignment.** Either party may assign this Agreement to an Affiliate, but must notify the other party in writing of the assignment. Any other assignment of rights must be approved by the other party in writing. Assignment will not relieve the assigning party of its obligations under the assigned agreement. Any attempted assignment without required approval will be void.
- 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. . Any claim, action, suit, or proceeding (collectively, "Claim") between an Enrolled Affiliate that is an agency or department of the State of Oregon and Microsoft that arises from or relates to this Agreement must be brought and conducted solely and exclusively within the Circuit Court of Marion County

for the State of Oregon; provided, however, if a Claim must be brought in a federal forum, then it must be brought and conducted solely and exclusively within the United States District Court for the District of Oregon. MICROSOFT, BY EXECUTION OF THIS CONTRACT HEREBY CONSENTS TO THE IN PERSONAM JURISDICTION OF THE COURTS REFERENCED IN THIS SECTION. In no event may this section be construed as a waiver by the State of Oregon of any form of defense or immunity, whether sovereign immunity, governmental immunity, immunity based on the eleventh amendment to the Constitution of the United States or otherwise, from any claim or from the jurisdiction of any court.

- g. This Agreement is not exclusive.** Customer and its Affiliates are free to enter into agreements to license, use or promote non-Microsoft software.
- h. Entire agreement.** This Agreement, the Product List, all Enrollments under this Agreement, and the Use Rights constitute the entire agreement concerning the subject matter and supersede any prior or contemporaneous communications.
- i. Order of precedence.** In the case of a conflict between any documents in this Agreement that is not expressly resolved in those documents, their terms will control in the following order of descending priority: (1) this Enterprise Agreement, (2) any Enrollment, (3) the Product List, (4) the Use Rights, (5) orders submitted under this Agreement, and (6) any other documents in this Agreement. Terms in an amendment control over the amended document and any prior amendments concerning the same subject matter.
- j. Survival.** Provisions regarding ownership and license rights, fees, Use Rights, restrictions on use, evidence of perpetual licenses, transfer of licenses, warranties, defense of third party claims, limitations of liability, confidentiality, compliance verification, obligations on termination or expiration and the other provisions in this section entitled "Miscellaneous" will survive termination or expiration of this Agreement.
- k. No transfer of ownership.** Microsoft does not transfer any ownership rights in any licensed Product. The Products are protected by copyright and other intellectual property rights laws and international treaties.
- l. Free Products.** It is Microsoft's intent that the terms of this Agreement and the Use Rights be in compliance with all applicable federal law and regulations. Any free Product provided to Enrolled Affiliate is for the sole use and benefit of the Enrolled Affiliate, and is not provided for use by or personal benefit of any specific government employee.
- m. Amendments.** Any amendment to this Agreement must be executed by both parties, except that Microsoft may change the Product List and the Use Rights in accordance with the terms of this Agreement. Any conflicting terms and conditions contained in a purchase order will not apply. Microsoft may require Customer to sign a new agreement or an amendment before an Enrolled Affiliate enters into an Enrollment under this agreement.
- n. Resellers and other third parties cannot bind Microsoft.** Resellers and other third parties do not have authority to bind or impose any obligation or liability on Microsoft.
- o. Voluntary Product Accessibility Templates.** Microsoft supports the government's obligation to provide accessible technologies to its citizens with disabilities as required by Section 508 of the Rehabilitation Act of 1973, and its state law counterparts. The Voluntary Product Accessibility Templates ("VPATs") for the Microsoft technologies used in providing the online services can be found at Microsoft's VPAT page. Further information regarding Microsoft's commitment to accessibility can be found at <http://www.microsoft.com/enable>.
- p. Natural disaster.** In the event of a "natural disaster," Microsoft may provide additional assistance or rights by posting them on <http://www.microsoft.com> at such time.
- q. 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.

- r. **Calendar days.** Any reference in this Agreement or an Enrollment to a "day" means a calendar day, except references that specify "business day".
- s. **Attorney Fees.** Neither Microsoft nor Customer is entitled to obtain judgment from the other party for attorney fees it has incurred in any litigation between the parties or in defense of any claim asserted by a third party.
- t. **Termination for Lack of Funding.** Nothing in this Agreement may be construed to permit any violation of Article XI, Section 7 of the Oregon Constitution or any other law regulating liabilities or monetary obligations of the State of Oregon. Customer's payment for services performed or license fees due after the last day of the current biennium is contingent upon Customer, if receiving funding, appropriations, limitations, allotments or other expenditure authority from the Oregon Legislative Assembly (including its Emergency Board) sufficient to allow Customer, in the exercise of its reasonable administrative discretion, to continue to compensate Microsoft.
- u. **Independent Contractor.** Microsoft shall act at all times as an independent contractor and not as an agent or employee of Customer. Microsoft has no right or authority to incur or create any obligation for or legally bind Customer in any way. Although Customer reserves the right to evaluate the quality of Microsoft's completed performance, Licensee cannot and will not control the means or manner by which Microsoft performs its obligations under this Agreement, except to the extent the means and manner in which these obligations are to be performed is specifically set forth in this Agreement. Microsoft shall determine the appropriate means and manner of performing its obligations. Microsoft is not an "officer," "employee" or "agent" of Customer, and Microsoft shall make no representations to third parties to the contrary. Neither party shall make any statements, representations, or commitments of any kind or to take any action binding on the other except as provided for in this Agreement or authorized in writing by the party to be bound.
- v. **Incorporation of Oregon Statutes.** To the extent applicable, ORS 279B.220, 279B.230 and 279B.235 are incorporated into this Agreement by reference
- w. **Tax Compliance Certificate.** By executing this Agreement, the undersigned certifies under penalty of perjury that he or she is authorized to act on behalf of Microsoft and that, to the best of the undersigned's knowledge, Microsoft is not in violation of any Oregon Tax Laws. For purposes of this certification, "Oregon Tax Laws" means a state tax imposed by ORS 403.200 to 403.250 (Tax For Emergency Communications), chapters 118 (Inheritance Tax), 314 (Income Tax), 316 (Personal Income Tax), 317 (Corporation Excise Tax), 318 (Corporation Income Tax), and 323 (Cigarettes And Tobacco Products Tax), and the elderly rental assistance program under ORS 310.630 to 310.706; and any local taxes administered by the Department of Revenue under ORS 305.620.