

Academic Select Plus Agreement

Custom Program Agreement Terms and Conditions

This Microsoft Academic Select Plus Agreement (“Program Agreement”) is entered into between the entities identified on the signature form.

Effective date. The effective date of this Program Agreement is the effective date of the first Affiliate Registration Form or the date Microsoft accepts this Program Agreement, whichever is earlier.

This Program Agreement is governed by the Microsoft Business Terms (MBT) and the terms and conditions therein.

Please note: Documents referenced in this Program Agreement but not attached to the signature form may be found at <http://www.microsoft.com/licensing/contracts> and are incorporated in the MBT by reference, including the Product Terms, the Online Services Terms, and the Qualified Educational User definition (as defined in the associated MBT). These documents may contain additional terms and conditions for Products licensed under this Program Agreement and may be changed from time to time. Customer should review such documents carefully, both at the time of signing and periodically thereafter, and fully understand all terms and conditions applicable to Products licensed and Services ordered.

Terms and Conditions

1. Definitions.

All Definitions shall have the same meaning as set forth in the Manufacturer Umbrella Contract, and Section 1.8 of the MBT.

2. How the Academic Select Plus License program works.

The Academic Select Plus License program allows Registered Affiliates to order Licenses and services at academic pricing. Registered Affiliate can participate in this program if it (1) submits a minimum qualifying Order as defined in the Product Terms, (2) identifies and maintains at least one active Qualifying Contract, or (3) identifies an order placed under a separate agreement during the 12 months preceding the effective date of this Program Agreement that would otherwise have been a minimum qualifying order. For public Qualified Educational Users, only Registered Affiliates identified in a registration will be responsible for complying with the terms of that registration, including the terms of this Program Agreement incorporated by reference in that registration.

3. How to establish price level.

- a. Academic Price level.** Each Product is assigned to a Product pool and given a point value per License as shown on the Product Terms. To qualify for academic level pricing and be eligible to order Licenses from any particular pool under this Program Agreement, Registered Affiliates, in the aggregate, must order the quantity of Licenses in that pool each year to accumulate at least the minimum required points for that pool, as shown on the Product Terms.
- b. Compliance check.** Each year, on the Program Agreement’s anniversary date, Microsoft will review Institution’s purchases to count the number of points earned by all Registered Affiliates

for each pool during the preceding 12-month period. If Institution does not maintain a Qualifying Contract or place sufficient Orders to maintain eligibility for this program, Registered Affiliates will not be able to place additional Orders under this Program Agreement until Institution has placed a minimum qualifying Order.

4. How to order Product Licenses

- a. Placing Orders** will be as described at Section 1.3 of the MBT.
- b. How to confirm Orders.** Information about Orders, including an electronic confirmation of each Order, will be provided in a password-protected website at <https://licensing.microsoft.com> or a successor site. Upon Microsoft's acceptance of this Program Agreement, the contact Registered Affiliate designates on the Affiliate Registration Form will be provided access to this site.
- c. Invoices and payments.** For any Orders for Software Assurance or L&SA, Registered Affiliate may elect with its Reseller to spread its payments over three years rather than payment in a lump sum. In such cases, Microsoft will invoice the Reseller in installments, the first installment upon receipt of the Order, and subsequent installments on each anniversary of the Order or at Registered Affiliate's option, on the Affiliate anniversary month. Orders for Licenses without accompanying Software Assurance will be invoiced to the Reseller in full upon receipt of the Order.
- d. When is Registered Affiliate eligible to order only Software Assurance?** A Registered Affiliate may add Software Assurance to a previously licensed Product without ordering a new License for the product if:
 - (i)** Registered Affiliate previously obtained a perpetual License for a Product through Upgrade Advantage, Software Assurance, or any similar upgrade protection and, prior to the expiration of its existing upgrade protection, orders Software Assurance for the Product to become effective no later than one day following the scheduled expiration of the previous upgrade protection;
 - (ii)** Registered Affiliate is eligible to order Software Assurance for Products licensed through retail sources or from an original equipment manufacturer ("OEM") and places its order within the required time frame. The Product Terms at <http://www.microsoft.com/licensing/contracts> identifies those Products that may be enrolled in Software Assurance and the applicable time frame for placing an order;
 - (iii)** the Product Terms expressly permits Registered Affiliate to order Software Assurance without ordering a new License for the Product; or
 - (iv)** Registered Affiliate renews Software Assurance as described in the section of this Program Agreement titled, "How to renew Software Assurance."

5. License for Products.

- a. License Grant.** Microsoft grants Registered Affiliate a non-exclusive, worldwide and limited right to download, install and use software Products, and to access and use the Online Services, each in the quantity ordered. The rights granted are subject to the terms of this Program Agreement, the Use Rights and are granted only for the term specified in the Order. Microsoft reserves all rights not expressly granted in this Program Agreement.
- b. Use by Affiliates.** Registered Affiliate may sublicense the right to use the Products ordered under this Program Agreement to any Affiliates, but Affiliates may not sublicense these rights and their use must be consistent with the terms of this Program Agreement.
- c. Duration of Licenses.** Subscription Licenses and most Software Assurance rights are temporary and expire when the applicable Program Agreement or Affiliate Registration is terminated or expires,

unless Registered Affiliate exercises a buy-out option, which is available for some Subscription Licenses. Except as otherwise noted in the Program Agreement or Use Rights, all other Licenses become perpetual only when all payments for that License have been made and any applicable Software Assurance term has expired.

- d. **Applicable Use Rights** will be as outlined in Section 2.1, paragraph (i) of the MBT.
- e. **Downgrade rights.** Registered Affiliate may use an earlier version of a Product than the version that is current on the date of the Order. In that case, the Use Rights for the current version apply to the use of the earlier version. If the earlier version of a Product includes features that are not in the new version, then the Use Rights applicable to the earlier version apply with respect to those features.
- f. **New Version Rights under Software Assurance.** With Software Assurance coverage, Registered Affiliates may use a new version of a licensed Product as soon as it is released. New version rights apply to the License automatically upon release of the new version, even if Registered Affiliate chooses not to use the new version immediately.
 - (i) Except as otherwise permitted under a Qualifying Contract, use of the new version will be subject to the new version's Use Rights.
 - (ii) If the License to the earlier version of the Product is perpetual at the time the new version is released, the License for the new version will also be perpetual. Perpetual licenses obtained through Software Assurance replace any perpetual licenses to the earlier version.
- g. **Multi-Language rights.** Registered Affiliate may use different language versions of any Product it Licenses under this Program Agreement, provided that the License, L&SA, or Software Assurance for that different language version is available at the same or lower price than the price paid for the language version ordered of the same Product and License type.
- h. **Developer Products.** For each copy of Microsoft Developer Products a Registered Affiliate licenses for instructional purposes in connection with a class or other educational program, the Registered Affiliate may, as an alternative to deploying the product pursuant to the licensing model described in the Use Rights, either
 - (i) permit an unlimited number of its student users to run the Product on a single computer or similar device, provided that all such users comply with all other terms of this Program Agreement; or
 - (ii) if the Registered Affiliate has licensed multiple copies of the product, then, at any time, its students or faculty may run as many copies of the Product as it has licensed, provided that those users comply with all other terms of this Program Agreement. If the anticipated number of users of the Product will exceed the number of copies the Registered Affiliate has licensed, it must have a reasonable mechanism or process in place to ensure that the number of persons running the product at any given point in time does not exceed the number of copies licensed.
- i. **License confirmation.** This Program Agreement, the applicable Order, any Order confirmation, and any documentation evidencing transfers of perpetual Licenses, together with proof of payment, will be Registered Affiliate's evidence of all Licenses obtained under this Program Agreement.
- j. **After-acquired Licenses.** At any time after Microsoft has accepted its registration, Registered Affiliate may use any Product as if licensed under the terms of this Program Agreement, provided it submits an Order for a sufficient number of Licenses to authorize Registered Affiliate's use of the Product in the same calendar month in which the Product is first used.
- k. **Benefits limited to qualified educational user.** Products licensed under this Program Agreement may be used only by and for the benefit of a qualified educational user. Client Access Licenses that the Registered Affiliates acquire solely to enable their students to access their servers are, for the purposes of this restriction, deemed to be used by and for the benefit of a qualified educational user. For each such student Client Access License the Registered Affiliate acquires, it does not need to acquire a separate Client Access License for the parent(s) or legal guardian(s) of the licensed student user. Licenses obtained under this Program Agreement may not be transferred,

sublicensed, rented, leased, or loaned to any person or entity that is not a qualified educational user.

6. Restrictions on Use.

Registered Affiliate must not:

- a. separate and use the components of a Product on two or more computers, upgrade or downgrade components at different times, or transfer components separately, except as provided in the Use Rights;
- b. reverse engineer, decompile or disassemble any Product or Fix, except to the extent applicable law permits it despite this limitation; or
- c. distribute, sublicense, rent, lease, lend, or host any Product or Fix except as permitted by this Program Agreement, the Use Rights, or in a separate written agreement.

7. Making copies of Products and re-imaging rights.

- a. **General.** Registered Affiliate may make as many copies of the Products licensed as necessary to distribute the Products within its organization. All copies of any Product must be true and complete copies (including copyright and trademark notices) from master copies obtained from a Microsoft approved fulfillment source. The Registered Affiliate may also have a third party make or distribute copies, but the Registered Affiliate is responsible for such third party's actions. The Registered Affiliate agrees to make reasonable efforts to notify its employees, agents, and other individuals running a Product that the Product is licensed from Microsoft and subject to the terms of this Program Agreement and MBT.
- b. **Copies for training, evaluation, and back-up.** The Registered Affiliate may (1) use up to 20 complimentary copies of any Product in a dedicated training facility on its premises, (2) use up to 10 complimentary copies of any Product for a 60-day evaluation period, and (3) use one complimentary copy of any licensed Product for back-up or archival purposes for each of its distinct geographic locations.
- c. **Right to re-image.** In certain cases, re-imaging is permitted using the Product media. If the Microsoft Product(s) is licensed (1) from an original equipment manufacturer (OEM), (2) as full packaged Product through a retail source, or (3) under another Microsoft program, then media provided under this Program Agreement may be generally used to create images for use in place of copies provided through that separate source. This right is conditional upon the following:
 - (i) Separate Licenses must be acquired from the separate source for each Product that is re-imaged.
 - (ii) The Product, language, version, and components of the copies made must be identical to the Product, language, version, and all components of the copies they replace and the number of copies or instances of the re-imaged Product permitted remains the same.
 - (iii) Except for copies of an operating system and copies of Products licensed under another Microsoft Program Agreement, the Product type (e.g., upgrade or full License) re-imaged must be identical to the Product type licensed from the separate source.
 - (iv) Any Product-specific requirements for re-imaging identified in the Product Terms.
 - (v) Re-imaged Products remain subject to the terms and use rights provided with the License acquired from the separate source. This subsection does not create or extend any Microsoft warranty or support obligation.

8. **Transferring and reassigning Licenses.**

- a. **Transferring Licenses to third parties.** License transfers are not permitted, except that Registered Affiliate may transfer full-paid perpetual Licenses to:
 - (i) an Affiliate; or
 - (ii) a third party solely in connection with the transfer of hardware or employees to whom the Licenses have been assigned as part of (1) divestiture of an Affiliate or a division of an Affiliate or (2) a merger involving Registered Affiliate or an Affiliate
- b. **Notification of License Transfer.** Registered Affiliate must notify Microsoft of a License transfer by completing a license transfer form, which can be obtained from <http://www.microsoft.com/licensing/contracts>, and sending the completed form to Microsoft before the License transfer. No License transfer will be valid unless the Registered Affiliate provides to the transferee, and the transferee accepts in writing, the applicable Use Rights, use restrictions, limitations of liability (including exclusions and warranty provisions), and the transfer restrictions described in this section. Any License transfer not made in compliance with this section will be void and Registered Affiliate must either return or destroy the licensed copies.
- c. **Internal Assignment of Licenses and Software Assurance.** Licenses and Software Assurance must be assigned to a single user or device within the organization. Licenses and Software Assurance may be reassigned within the organization as described in the Product Terms.

9. **Term and termination.**

- a. **Term.** This section is intentionally omitted and is included in Section 2.3 of the associated MBT.
- b. **Termination.** The terms and conditions for Termination will be as outlined in NY OGS Appendix B, Section 47.
- c. **Early termination.** If an Registered Affiliate terminates its Registration as outlined in Manufacturer Umbrella Contract Appendix B, Section 47, then the Registered Affiliate will have the following options:
 - (i) It may immediately pay the total remaining amount due, including all installments, in which case, the Registered 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 Registered 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 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.
- d. **Effect of termination.** When this Program Agreement is terminated, Registered Affiliate must order Licenses for all copies of Products it has run for which it has not previously submitted an Order. Any and all unpaid payments or any order of any kind, including subscription services, remain due and payable.
- e. **Modification or termination of an Online Service for regulatory reasons** is intentionally omitted and is included in Section 4.2, paragraph b of the MBT.
- f. **Program updates** is intentionally omitted and is included in section 1.6 of the MBT.

10. How to renew Software Assurance.

- a. **Notice of Expiration.** Microsoft will provide notice prior to the expiration of any Software Assurance Registered Affiliate orders under this Program Agreement and advise Registered Affiliate of its Software Assurance renewal options.
- b. **Renewal Order.** To maintain Software Assurance coverage for any Licenses previously ordered under this Program Agreement, Registered Affiliate must submit an Order for an additional term of Software Assurance for those Products prior to or at the expiration of the previous term.
- c. **Consequences of non-renewal.** If Registered Affiliate allows Software Assurance for any Licenses to lapse, then Registered Affiliate may not renew Software Assurance for those Products again without first acquiring L&SA.

11. Confidentiality.

This section is intentionally omitted and is included in the clarification to Section 9 of Appendix B in Section 2.6 (A) of the associated MBT.

12. Warranties is intentionally omitted and is included in the MBT at the clarification to Appendix B, Section 59 (Warranties).

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

This section is covered by text from NY OGS Appendix B, Sections 61 “Indemnification” and Section 62, “Indemnification Relating to Infringement.”

14. Limitation of liability.

The terms and conditions for Limitation of liability will be as outlined in NY OGS Appendix B, Section 63 and Section 63B.

15. Verifying compliance is intentionally omitted and is included in the MBT in the clarification to Appendix B, Section 67.

16. Non-Microsoft Software or Technology is intentionally omitted and is included in Section 3 (C) of the associated MBT.

17. Miscellaneous.

- a. **Notices.** Notices to Microsoft must be sent to the address on the signature form. 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. Notices to OGS pursuant to the Aggregate Agreement shall be conducted in accordance with the Aggregate Agreement.
- b. **Mutually Drafted.** The parties hereto acknowledge that the drafting of this Program Agreement is a mutual effort among the Parties and that this Program Agreement is not to be construed against any party or group of parties as the drafter.
- c. **Assignment.** Assignment of a Program Agreement will be in accordance with Appendix A, Section 2 and Appendix B, Section 43 of the Manufacturer’s Umbrella Contract PM69723.

- d. **No transfer of ownership.** Microsoft does not transfer any ownership rights in any licensed Product.
- e. **Severability.** If a court holds any provision of this Program Agreement to be illegal, invalid or unenforceable, the rest of the document will remain in effect and this Program Agreement will be amended to give effect to the eliminated provision to the maximum extent possible.
- f. **Waiver.** A waiver of any breach of this Program Agreement is not a waiver of any other breach. Any waiver must be in writing and signed by an authorized representative of the waiving party.
- g. **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.
- h. **This Program Agreement is not exclusive.** Customer is free to enter into agreements to license, use or promote non-Microsoft software.
- i. **Order of Precedence.** This section is intentionally omitted and is included in Section 2.2 of the associated MBT.
- j. **Amendments** will be as outlined at Section 1.6 of the MBT.
- k. **Applicable Law.** Applicable Law will be accordance with Appendix A, Section 14 “Governing Law”.
- l. **Survival.** All provisions survive termination or expiration of this Program Agreement except those requiring performance only during the term of the Program Agreement.
- m. **Use of Subcontractors.** Microsoft may use subcontractors to perform Services but will be responsible for their performance subject to the terms of the MBT and the Manufacturer Umbrella Contract. For clarity, the definition of Subcontractor for the purposes of this Program Agreement shall include Subprocessors used by Microsoft.
- n. **Natural disaster.** In the event of a “natural disaster”, Microsoft may provide additional assistance or rights by posting on <http://www.microsoft.com> at such time.
- o. **Section headings.** All section and subsection headings used in this Program Agreement are for convenience only and shall not affect the interpretation of this Program Agreement.
- p. **FERPA.** Upon receipt of a judicial order or lawfully issued subpoena requiring the disclosure of personally identifiable information from education records related to Institution in Microsoft’s possession, Microsoft or an Affiliate of Microsoft will attempt to redirect the request to Institution. If compelled to disclose personally identifiable information from education records related to Institution to a third party, Microsoft will use commercially reasonable efforts to notify Institution in advance of a disclosure unless legally prohibited. Institution understands that Microsoft may have no or limited contact information for Institution’s students and students’ parents in its possession. Consequently, Institution will convey notification on behalf of Microsoft to students (or, with respect to a student under 18 years of age and not in attendance at a postsecondary institution, to the student’s parent) of such an order or subpoena as may be required under applicable law.