

# Campus and School Agreement

## Custom Program Agreement Terms and Conditions

This Campus and School Agreement (“Program Agreement”) is entered into by the entities identified on the signature form.

**Effective date.** The effective date of this Program Agreement will be the earlier of either the date the Program Agreement is executed by Microsoft or the effective date of the first Enrollment.

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

**Please note:** Microsoft 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 and Use Rights. 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.

### ***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 Campus and School Agreement works.**

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

#### **3. How to Establish Price Levels and Pricing.**

- a. **Price levels.** Institution’s Organization-wide Count or Student Count, as applicable, determines the price level for Education Platform Products (A, B, C, or D).
- b. **Setting Prices.** Institution’s prices for each Product or Service will be determined by the awarded Reseller of the Microsoft Aggregate Agreement, as described in the applicable Enrollment and set forth in the Aggregate Agreement Pricing.

#### **4. *How to order Product Licenses.***

Placing Orders will be as described at Section 1.3 of the MBT.

#### **5. *License for Products.***

- a. **License Grant.** Microsoft grants the Organization a non-exclusive, worldwide and limited right to download, install and use software Products, and to access and use the Online Services, each in the quantity ordered under an Enrollment. The rights granted are subject to the terms of this Program Agreement, the Use Rights and the Product Terms. Microsoft reserves all rights not expressly granted in this Program Agreement.
- b. **Duration of Licenses.** Subscription Licenses and most Software Assurance rights are temporary and expire when the applicable Enrollment is terminated or expires, unless Institution exercises a buy-out option, which is available for some Subscription Licenses.
- c. **Applicable Use Rights** will be as outlined at Section 2.1 paragraph (i) of the MBT.
- d. **Downgrade Rights.** Organization may use an earlier version of a Product than the version that is current on the effective date of the Enrollment. For Licenses acquired in the current Enrollment term, the Use Rights for the current version apply to the use of the earlier version. If the earlier Product version includes features that are not in the new version, then the Use Rights applicable to the earlier version apply with respect to those features.
- e. **License Confirmation.** This Program Agreement, the applicable Enrollment, and Institution's order confirmation, together with proof of payment, will be Institution's evidence of all Licenses obtained under an Enrollment.

#### **6. *Use, ownership, rights, and restrictions.***

- a. **Products.** Unless otherwise specified in this Program Agreement, use of any Product is governed by the Use Rights specific to each Product and version and by the terms of the applicable Enrollment.
- b. **Fixes.** Each Fix is licensed under the same terms as the Product to which it applies. If a Fix is not provided for a specific Product, any use rights Microsoft provides with the Fix will apply.
- c. **Non-Microsoft software and technology.** This section is intentionally omitted and is included in Section 3 (C) of the associated MBT.
- d. **Restrictions.** Institution must not (and is not licensed to) (1) reverse engineer, decompile or disassemble any Product or Fix, (2) install or use non-Microsoft software or technology in any way that would subject Microsoft's intellectual property or technology to any other license terms; or (3) work around any technical limitations in a Product or Fix or restrictions in Product documentation. Except as expressly permitted in this Program Agreement or Product documentation, Institution must not (and is not licensed to) (1) separate and run parts of a Product or Fix on more than one device, upgrade or downgrade parts of a Product or Fix at different times, or transfer parts of a Product or Fix separately; or (2) distribute, sublicense, rent, lease, lend, any Products, Fixes, in whole or in part, or use them to offer hosting services to a third party.
- e. **Reservation of rights.** Products and Fixes are protected by copyright and other intellectual property rights laws and international treaties. Microsoft reserves all rights not expressly granted in this Program Agreement. No rights will be granted or implied by waiver or estoppel. Rights to access or use Software on a device do not give Institution any right to implement Microsoft patents or other Microsoft intellectual property in the device itself or in any other software or devices.

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

- a. **General.** Institution may make as many copies of Products as it needs to distribute them within the Organization. Copies must be true and complete (including copyright and trademark notices)

from master copies obtained from a Microsoft approved fulfillment source. Institution may use a third party to make these copies, but Institution is agreed it will be responsible for any third party's actions. Institution agrees to make reasonable efforts to notify its Users that the Products are licensed from Microsoft and subject to the terms of this Program Agreement.

- b. **Copies for training/evaluation and back-up.** For all Products other than Online Services, Institution may (1) use up to 20 complimentary copies of any licensed Products in a dedicated training facility on its premises for purposes of training on that particular Product, (2) use up to 10 complimentary copies of any Products for a 60-day evaluation period, and (3) use one complimentary copy of any licensed Product for back-up or archival purposes for each of its distinct geographic locations. Trials for Online Services may be available if specified in the Use Rights.
- c. **Right to re-image.** In certain cases, re-imaging is permitted using the Product media. If the Product is licensed (1) from an original equipment manufacturer (OEM), (2) as a full packaged Product through a retail source, or (3) under another Microsoft program, then media provided under this Program Agreement may generally be used to create images for use in place of copies provided through that separate source. This right is conditional upon the following:
  - (i) Separate Licenses must be acquired from the separate source for each Product that is re-imaged.
  - (ii) The Product, language, version, and components of the copies made must be identical to the Product, language, version, and components of the copies they replace and the number of copies or instances of the re-imaged Product permitted remains the same.
  - (iii) Except for copies of an operating system and copies of Products licensed under another Microsoft program, the Product type (e.g., Upgrade or full License) re-imaged must be identical to the Product type licensed from the separate source.
  - (iv) Institution must adhere to any Product-specific processes or requirements for re-imaging identified in the Product Terms.

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

## **8. Transferring and reassigning Licenses.**

- a. **License transfers.** License transfers are not permitted, except that Institution may transfer only fully-paid perpetual licenses to:
  - (i) an Affiliate, or
  - (ii) a third party solely in connection with the transfer of hardware or employees to whom the Licenses have been assigned as part of (1) a divestiture of part of the Organization or (2) a merger involving any part of the Organization.

Upon such transfer, the divested or merged part of the Organization must uninstall and discontinue using the licensed Products and render any copies unusable.

- b. **Notification of License Transfer.** Institution must notify Microsoft of a License transfer by completing a license transfer form, which can be obtained from the Licensing Site, and sending the completed form to Microsoft before the License transfer. No License transfer will be valid unless Institution provides to the transferee, and the transferee accepts in writing, documents sufficient to enable the transferee to ascertain the scope, purpose and limitations of the rights granted by Microsoft under the Licenses being transferred (including, without limitation, the applicable Use Rights, use and transfer restrictions, warranties and limitations of liability). Any License transfer not made in compliance with this section will be void.

- c. **Internal Assignment of Licenses and Software Assurance.** Licenses and Software Assurance must be assigned to a single User or device within the Organization. Licenses and Software Assurance may be reassigned within the Organization as described in the Use Rights.

**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 Manufacturer Umbrella Contract Appendix B, Section 47.
- c. **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.
- d. **Program updates** is intentionally omitted and is included in Section 1.6 of the MBT.

**10. 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.

**11. Privacy and compliance with laws.**

This section is intentionally omitted and is included in the MBT in the clarification to Section 2.63 of the Contract.

**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** will be in accordance with the process outlined in the MBT in the clarification to Appendix B, Section 67. Additional terms applicable to Academic Institutions are included below:

- d. Additionally, Institution must use reasonable efforts to make Users aware of the terms and conditions upon which they are allowed to use the Products. Accordingly, Institution must:
  - (i) Notify all Users in advance of using the Products that:
    - 1) their use of the Products is subject to the terms of this Program Agreement, including but not limited to limitations on liability, disclaimer of warranties and exclusion of remedies;
    - 2) they are allowed to run the Products only during the Licensed Period;
    - 3) if this Program Agreement is terminated, or an Enrollment expires and Institution does not purchase perpetual Licenses for the Products ordered under the Enrollment, then all Products run under this Program Agreement or the applicable Enrollment must be deleted when the Licensed Period expires or is otherwise earlier terminated, whichever is first;
  - (ii) Periodically publish in an Organization-wide publication and applicable web sites a reference to the location (either physical or on a computer network) where they can view the Product Terms and Use Rights;

- (iii) Notify Microsoft immediately if Institution becomes aware of any actual or potential violation of this Program Agreement; and
- (iv) Provide all reasonable assistance and cooperation Microsoft requests to investigate and remedy any unauthorized use of the Products by Users.

If Institution complies with this section, Institution will not be responsible for Student Users' failure to comply with the terms of this Program Agreement.

## 16. *Miscellaneous.*

- a. **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.
- b. **Microsoft as independent contractor.** In accordance with Appendix B, Section 55, it is understood and agreed that the legal status of Microsoft, its Subcontractors, agents, officers and employees under Umbrella Manufacturer Contract PM69723 is that of an independent contractor, and in no manner shall they be deemed employees of the Authorized User, and therefore are not entitled to any of the benefits associated with such employment. The parties are independent contractors. Institution and Microsoft each may develop products independently without using the other's Confidential Information.
- c. **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 Institution about upcoming ordering deadlines, services, and subscription information in electronic form, including by email to contacts provided by Institution. 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.
- d. **Agreement not exclusive.** Institution is free to enter into agreements to license, use, or promote non-Microsoft products or services.
- e. **Amendments** will be as outlined in Section 1.6 of the MBT. this Program Agreement.
- f. **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.
- g. **Applicable law.** Applicable Law will be accordance with Appendix A, Section 14 "Governing Law".
- h. **Severability.** If any provision in this Program Agreement is held to be unenforceable, the balance of the Program Agreement will remain in full force and effect and this Program Agreement will be amended to give effect to the eliminated provision to the maximum extent possible.
- i. **Waiver.** Failure to enforce any provision of this Program Agreement will not constitute a waiver. Any waiver must be in writing and signed by the waiving party.
- j. **No third-party beneficiaries.** This Program Agreement does not create any third-party beneficiary rights.
- k. **Survival.** All provisions survive termination or expiration of this Program Agreement except those requiring performance only during the term of the Program Agreement.
- l. **Taxes** is intentionally omitted and will be as described in Appendix B, Section 11.
- m. **Management and reporting.** Institution must provide and manage account details (e.g., contacts, orders, Licenses, software downloads) on Microsoft's Volume Licensing Service Center web site (or its successor site) at <https://www.microsoft.com/licensing/servicecenter>. On the effective date of this Program Agreement and any Enrollments, the contact(s) Institution

has identified for this purpose will be provided access to this site and may authorize additional users and contacts.

- n. **Order of Precedence.** This section is intentionally omitted and is included in Section 2.2 of the associated MBT.
- o. **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.
- p. **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.

