

Enterprise Agreement State and Local Custom Program Agreement Terms and Conditions

This Microsoft Enterprise 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 any Enrollment entered into under this Program Agreement 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: 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 1.7 of the MBT.

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 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.** For both the initial and any renewal term Enrolled Affiliate’s Price Level for all Products ordered under this Enrollment will be Level “D” throughout the term of the Enrollment.

- b. **Setting Prices.** Enrolled Affiliate's prices for each Product or Service will be 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. 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 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 the Enrolled Affiliate exercises a buy-out option, which is available for some Subscription Licenses. Except as otherwise noted in the applicable Enrollment or Use Rights, all other Licenses become perpetual only when all payments for that License have been made and the initial Enrollment term has expired.
- c. **Applicable Use Rights** will be as outlined at Section 2.1, paragraph (i) of the MBT.
- 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. 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. **New Version Rights under Software Assurance.** Enrolled Affiliate must order and maintain continuous Software Assurance coverage for each License ordered. With Software Assurance coverage, Enterprise automatically has the right to use a new version of a licensed Product as soon as it is released, even if Enrolled Affiliate chooses not to use the new version immediately.
 - (i) Except as otherwise permitted under an Enrollment, use of the new version will be subject to the new version's Use Rights.
 - (ii) If the License for the earlier version of the Product is perpetual at the time the new version is released, the License for the new version will also be perpetual. Perpetual Licenses obtained through Software Assurance replace any perpetual Licenses for the earlier version.
- f. **License confirmation.** This Program 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 Program Agreement.

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

- a. **Products.** Unless otherwise specified in a supplemental agreement, use of any Product is governed by the Use Rights specific to each Product and version and by the terms of the applicable supplemental agreement.
- b. **Fixes.** Each Fix is licensed under the same terms as the Product to which it applies. If a Fix is not provided for a specific Product, any use rights Microsoft provides with the Fix will apply.
- c. **Non-Microsoft software and technology.** This section is intentionally omitted and is included in Section 3, paragraph C of the associated MBT.
- d. **Restricted Use by Licensee.** Enrolled Affiliate must not (and is not licensed to) (1) reverse engineer, decompile, or disassemble any Product or Fix; (2) install or use non-Microsoft software or technology in any way that would subject Microsoft's intellectual property or technology to any other license terms; or (3) work around any technical limitations in a Product or Fix or restrictions in Product documentation. Enrolled affiliate 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 or 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 Enrolled Affiliate 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.** Enrolled Affiliate may make as many copies of Products, as it needs to distribute them within the Enterprise. Copies must be true and complete (including copyright and trademark notices) from master copies obtained from a Microsoft approved fulfillment source. Enrolled Affiliate may use a third party to make these copies, but Enrolled Affiliate agrees it will be responsible for any third party's actions. Enrolled Affiliate agrees to make reasonable efforts to notify its employees, agents, and any other individuals who use the Products that the Products are licensed from Microsoft and subject to the terms of this Program 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 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 all components of the copies they replace, and the number of copies or instances of the re-imaged Product permitted remains the same.
- (iii) Except for copies of an operating system and copies of Products licensed under another Microsoft program, the Product type (e.g., Upgrade or full License) re-imaged must be identical to the Product type licensed from the separate source.
- (iv) Enrolled Affiliate must adhere to any Product-specific processes or requirements for re-imaging identified in the Product Terms.

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

8. Transferring and reassigning Licenses.

- a. **License transfers.** License transfers are not permitted, except that Customer or an Enrolled Affiliate may transfer only fully paid perpetual Licenses to:
 - (i) an Affiliate, or
 - (ii) a third party solely in connection with the transfer of hardware or employees to whom the Licenses have been assigned as part of (1) a privatization of an Affiliate or agency or of an operating division of Enrolled Affiliate or an Affiliate, (2) a reorganization, or (3) a consolidation.

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

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

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

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. **Early termination.** If an Enrolled Affiliate terminates its Enrollment as outlined in Manufacturer Umbrella Contract Appendix B, Section 47, 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 of the Enrollment titled “Buy-out option,” provided that Microsoft receives the buy-out order for those Licenses within 60 days after Enrolled Affiliate provides notice of termination.
 - 2) In the event of a breach by Microsoft, if Enrolled Affiliate chooses not to exercise a buy-out option, Microsoft will issue Enrolled Affiliate a credit for any amount paid in advance for Subscription Licenses that the Enterprise will not be able to use to do the termination of the Enrollment.

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

- d. **Effect of termination or expiration.** When an Enrollment expires or is terminated,
- (i) Enrolled Affiliate must order Licenses for all copies of Products it has run for which it has not previously submitted an order. Any and all unpaid payments for any order of any kind remain due and payable. Except as provided in the subsection titled “Early termination,” all unpaid payments for Licenses immediately become due and payable.
 - (ii) Enrolled Affiliate’s right to Software Assurance benefits under this Program Agreement ends if it does not renew Software Assurance.
- 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. 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 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 in 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. 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 Contractor.
- b. Microsoft as independent contractor.** In accordance with the Manufacturer Umbrella Contract Appendix B, Section 55, it is understood and agreed that the legal status of Microsoft, its Subcontractors, agents, officers and employees under their Manufacturer Umbrella 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.
- 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 email delivery 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.
- d. Agreement not exclusive.** Customer is free to enter into agreements to license, use or promote non-Microsoft products.
- e. Amendments** will be as outlined at Section 1.6 of the MBT.
- 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 in accordance with the Manufacturer Umbrella Contract Appendix A, Section 14 "Governing Law".
- h. 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.
- 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. Management and Reporting.** Customer and/or Enrolled Affiliate may manage account details (e.g., contacts, orders, Licenses, software downloads) on Microsoft's Volume Licensing Service Center ("VLSC") web site (or successor site) at: <https://www.microsoft.com/licensing/servicecenter>. Upon the effective date of this Program 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.
- m. Order of Precedence.** This section is intentionally omitted and is included in Section 2.2 of the associated MBT.
- n. Free Products.** It is Microsoft's intent that the terms of this Program 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.

- 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 Program Agreement and the Use Rights, for the Products it uses. Except to the extent Enrolled Affiliate is licensed under this Program Agreement, it will be responsible for its breach of this Program Agreement and violation of Microsoft's copyright in the Products, including payment of License fees specified in this Program Agreement for unlicensed use.
- r. 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.

