

Select Plus License Program Agreement State and Local Custom Program Agreement Terms and Conditions

This Microsoft 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 Use Rights and Product Terms. 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 Select Plus License program works.**

The Select Plus License program allows Registered Affiliates to order Licenses and Services if Registered Affiliate (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.

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

- a. **Establishing price levels.** Throughout the term of this Program Agreement, Enrolled Affiliate’s price level for each Product will be level “D.” The price Microsoft will invoice Reseller will be based on Enrolled Affiliate’s price level for the Product ordered. *this Program Agreement*
- 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**

- a. **Placing Orders** will be as described at Section 1.3 of the MBT.
- b. **When is the Registered Affiliate eligible to order just Software Assurance?** A Registered Affiliate may order Software Assurance to a previously-licensed Product without ordering a new License for the Product if:

- (i) Registered Affiliate has previously obtained perpetual Licenses through Upgrade Advantage, Software Assurance, or any similar upgrade protection and, prior to expiration of its existing upgrade protection, orders Software Assurance 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.
 - (iv) A Registered Affiliate renews Software Assurance as described in the section of this Program Agreement titled “How to renew Software Assurance.”
- c. How to confirm Orders.** Information about Orders, including an electronic confirmation of each Order, will be provided in a password-protected website at <https://www.microsoft.com/licensing/servicecenter/> 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.
- d. Invoices and payments.** For any Orders for Software Assurance or L&SA, Registered Affiliate may elect with the Reseller for the Aggregate Agreement to spread payment over three years rather than making 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.

5. Licenses 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 under this Program Agreement. 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. 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 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 applicable 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. **License confirmation.** This Program Agreement, the applicable Enrollment, Registered Affiliate's 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.
 - h. **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.

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.** The Registered Affiliate may make as many copies of the Products as it needs to distribute them within its organization. Copies must be true and complete (including copyright and trademark notices), from master copies obtained from a Microsoft approved fulfillment source. The Registered Affiliate may use a third party to make these copies, but the Registered Affiliate agrees that it will be responsible for that third party's actions. The Registered Affiliate agrees to make reasonable efforts to make its employees, agents and any other individuals that it allows to use the Products aware that the Products are licensed from Microsoft and can only be transferred subject to the terms of this Program Agreement and MBT.
- b. **Copies for training, evaluation, and back-up.** For all Products other than Online Services, 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. 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 volume licensing program 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 owned from the 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) must be identical to the Product type from the separate source.

(iv) Any Product-specific 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 assigning Licenses.

a. **Transferring Licenses to third parties.** License transfers are not permitted, except that Registered Affiliate may transfer fully-paid perpetual licenses to:

(i) an Affiliate

(ii) a third party solely in connection with the transfer of hardware or employees to whom the Licenses have been assigned as part of (A) a privatization of an Affiliate or agency or of an operating division of Registered Affiliate, (B) a reorganization or (C) a consolidation..

b. **Notification of License Transfer.** Registered Affiliate must notify Microsoft of a License transfer by completing a 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 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.

c. **Internal Reassignment of Licenses and Software Assurance.** Licenses and Software Assurance must be assigned to a single user or device within Registered Affiliate's 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 NY OGS Appendix B, Section 47.

c. **Early termination.** If Registered Affiliate terminates the Affiliate registration Form as outlined in Manufacturer Umbrella Contract Appendix B, Section 47, then Registered Affiliate will have the following options for Licenses, excluding Subscription Licenses:

(i) It may immediately pay the total remaining amount due, including all installments, in which case, Registered Affiliate will have perpetual rights for all Licenses ordered (for the latest version of Products with Software Assurance coverage); or

(ii) It may pay only amounts due as of the termination date, in which case Registered Affiliate will have perpetual Licenses (for the latest version of Products with Software Assurance coverage) for:

1) all Licenses for which payment has been made in full, and

2) a proportional number of Licenses it has ordered for which payment has been made.

For Subscription Licenses, in the event of a breach by Microsoft, Registered Affiliate will receive a credit for any amount paid in advance that would apply after the date of termination.

- 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 Software Assurance coverage and advise Registered Affiliate of its 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 Licenses 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 order Software Assurance for those Licenses 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 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. **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. **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.
- 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. **Applicable law;** Applicable Law will be accordance with Appendix A, Section 14 "Governing Law".
- 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. **Survival.** All provisions survive termination or expiration of this Program Agreement except those requiring performance only during the term of the Program Agreement.
- k. **No transfer of ownership.** Microsoft does not transfer any ownership rights in any licensed Product.
- l. **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 Registered Affiliate is for the sole use and benefit of the Registered Affiliate and is not provided for use by or personal benefit of any specific government employee.
- m. **Amendments** will be as outlined at Section 1.6 of the MBT.
- 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. **Natural disasters.** In the event of a "natural disaster", Microsoft may provide additional assistance or rights by posting on <http://www.microsoft.com> at such time.
- p. **Copyright violation.** Except as set forth in section above entitled "Transferring and reassigning Licenses", the Registered 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 Registered 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.
- q. **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.