

Campus and School Agreement

Custom Program Agreement Terms and Conditions

This agreement is entered into by the entities identified on the signature form.

This agreement consists of (1) the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984), (2) these terms and conditions and the signature form, (3) the Product Terms, (4) the Online Services Terms, (5) any Enrollment entered into under this agreement, and (6) any order submitted under this agreement.

Terms and Conditions

1. Definitions.

Notwithstanding any other definitions to the contrary described in the Custom Microsoft Business Agreement (OGS Contract No. PS67984), in this Campus and School Agreement the following definitions apply:

“Affiliate” shall have the definition as set forth in Section 1.8(B) and (C) of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

“Customer Data” shall have the definition set forth in Section 1.8 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

“Enrollment” means the document that Institution submits under this agreement to place orders for Products.

“day” means a calendar day.

“Fixes” shall have the definition set forth in Section 1.8 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

“Institution” means the entity that is (1) a Qualified Educational User (as defined in Appendix E to the associated Custom Master Business Agreement (OGS Contract No. PS67984) as of the effective date of this agreement that has entered into this agreement with Microsoft or (2) an Affiliate of Institution that has entered into an Enrollment under this agreement. If Institution is a school district, “Institution” includes all participating schools in the same district.

“Knowledge Worker” has the definition provided in the Enrollment.

“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.

“Licensed Period” means the period of time beginning on the effective date specified in the Enrollment and continuing for the period of time specified in the Enrollment.

“Licensing Site” means <http://www.microsoft.com/licensing/contracts> or a successor site.

“Microsoft” means the Microsoft Affiliate that has entered into this agreement or an Enrollment and its Affiliates, as appropriate.

“Online Services” shall have the definition set forth in Section 1.8 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

“Online Services Terms” shall have the definition set forth in Section 1.8 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

“Organization” means the organization Institution defines in its Enrollment.

“Product” shall have the definition set forth in Section 1.8 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

“Product Terms” shall have the definition set forth in Section 1.8 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

“Service Level Agreement or SLA” shall have the definition set forth in Section 1.8 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

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

“Software Assurance” shall have the definition set forth in Section 1.8 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

“Software Update” means additional or replacement code for any portion of a Product that Microsoft may make available to the general public without a fee from time to time.

“Student” means any individual enrolled in any educational institution that is part of the Organization, whether on a full-time or part-time basis.

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

“Use Rights” shall have the definition set forth in Section 1.8 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984)

“Users” means Institution, Knowledge Workers, and Students designated on the Enrollment to run the Products, and members of the public who access devices located in Institution’s open access labs or libraries.

2. 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 agreement, the Use Rights and the Product Terms. 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 Institution exercises a buy-out option, which is available for some Subscription Licenses.
- c. Applicable Use Rights.** This section is intentionally omitted and is included in Section 4.31 of the associated Custom Master Business Agreement (OGS Contract No. PS67984).
- d. Downgrade Rights.** This section is intentionally omitted and is included in Section 4.32 of the associated Custom Master Business Agreement (OGS Contract No. PS67984).

- e. **License Confirmation.** This section is intentionally omitted and is included in Section 4.6(MM) of the associated Custom Master Business Agreement (OGS Contract No. PS67984).

3. Use, ownership, rights, and restrictions.

- a. **Products.** Unless otherwise specified in this 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 4.33 of the associated Custom Master Business Agreement (OGS Contract No. PS67984).
- d. **Restrictions.** This section is intentionally omitted and is included in Section 4.6(HH) of the associated Custom Master Business Agreement (OGS Contract No. PS67984).
- e. **Reservation of rights.** This section is intentionally omitted and is included in Section 4.31(c) of the associated Custom Master Business Agreement (OGS Contract No. PS67984)

4. 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 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 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.

5. Redistribution of Software Updates to Student Users.

- a. **License grant.** Microsoft grants the Organization a limited, non-exclusive, royalty-free, non-assignable, non-transferable, revocable License to distribute Software Updates to Institution's Student Users in accordance with the terms of this section. The Organization's Student Users must use the Software Updates solely for their personal benefit in accordance with the end-user License Agreement ("EULA") with Microsoft included with each Software Update.
- b. **Redistribution of Software Updates.** Institution may redistribute Software Updates to its Student Users (1) by electronic means provided that Institution's method of electronic distribution is adequately licensed and incorporates access control and security measures designed to prevent modification of the Software Updates and access by the general public or (2) by acquiring authorized copies on fixed media from a fulfillment source approved by Microsoft.
- c. **Limitations.** Institution may not (1) produce or replicate Software Updates onto CDs or other distributable storage media, (2) combine the Software Updates with other non-Microsoft software, (3) distribute any Software Updates as a stand-alone component via email attachment, (4) charge for the Software Updates, other than to recover any reasonable costs incurred in providing the updates to its Student Users; (5) remove, modify, or interfere with the EULA or the EULA acceptance functionality included by Microsoft with any Software Update; or (6) alter the Software Updates in any way. Microsoft is not responsible for any cost related to the acquisition, distribution, or recall of the Software Updates.
- d. **Tracking and recall.** Organization must track the quantity and method of distribution of the Software Updates by means that will allow Institution to provide notice of a recall and offer replacements as provided in this subsection. Institution agrees to stop redistributing Software Updates within 10 days of receipt of a notice of recall from Microsoft and within 30 days of that notice Institution agrees to (1) return to Microsoft or destroy all copies of Software Updates in the Organization's possession and (2) notify its Student Users of the recall by the same or similar means in which they were notified of the availability of the Software Updates.
- e. **Replacement Software Updates.** If Microsoft makes a replacement Software Update available, Institution agrees to make the replacement available to its Student Users, within 30 days of receipt in the same quantity and method(s) of distribution, if available, as Institution made the original Software Update available. The distribution of replacement Software Updates is subject to the same conditions and restrictions as other Software Updates under this section.
- f. **No warranties.** Notwithstanding anything to the contrary in this agreement, and to the extent permitted by law, Software Updates that Institution redistributes to its Student Users are provided "as is" without any warranties. Institution acknowledges that the provisions of this paragraph with regard to the Software Updates are reasonable considering, among other things, that the Software Updates are complex computer products. Institution further acknowledges that the performance of the Software Updates will vary depending upon hardware, platform and Products interactions, and configurations.
- g. **Exclusion of damages.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL MICROSOFT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, CONSEQUENTIAL, OR INDIRECT DAMAGES THAT ARISE OUT OF OR ARE IN ANY WAY RELATED TO INSTITUTION'S REDISTRIBUTION OF THE SOFTWARE UPDATES TO ITS STUDENTS. FURTHERMORE, IN NO EVENT SHALL MICROSOFT BE LIABLE FOR ANY SUCH DAMAGES BASED DIRECTLY OR INDIRECTLY UPON THE PROVISION OF SOFTWARE UPDATES OR UNAVAILABILITY OF SOFTWARE

UPDATES—INCLUDING, WITHOUT LIMITATION, DAMAGES DUE TO BUSINESS INTERRUPTION, LOSS OF PROFITS, REVENUE OR BUSINESS OPPORTUNITY, LOSS OF DATA AND THE LIKE, FAILURE TO MEET ANY DUTY, OR NEGLIGENCE.

- h. Limitation of liability.** With respect to Institution's redistribution of the Software Updates, the limitation of liability provisions in this agreement shall apply in those situations in which Institution or any User asserts a right to damages or other compensation from Microsoft.
- i. No support.** Institution understands that Microsoft has no obligation to provide any support for Software Updates that Institution may redistribute to its Student Users, including any benefits accruing from Software Assurance.
- j. Applicability.** The provisions of this section shall not apply to the distribution of Fixes to Student Users so long as the Fix distributed is for a Product the Students are authorized to run under the Student licensing option. All other redistribution of additional or replacement code to Student Users is subject to the provisions of this section.

6. 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.

7. Confidentiality.

This section is intentionally omitted and is included in section 4.6(G) of the associated Custom Master Business Agreement (OGS Contract No. PS67984).

8. Privacy and compliance with laws.

- a.** This section is intentionally omitted and is included in Section 4.6(AA) of the associated Custom Master Business Agreement (OGS Contract No. PS67984).
- b.** This section is intentionally omitted and is included in Section 4.6(AA) of the associated Custom Master Business Agreement (OGS Contract No. PS67984).
- c. U.S. Export.** This section is intentionally omitted and is included in Section 4.27 of the associated Custom Master Business Agreement (OGS Contract No. PS67984).

9. Term and termination.

- a. **Effective date.** The effective date of this agreement will be the earlier of either the date the agreement is executed by Microsoft or the effective date of the first Enrollment.
- b. **Term.** This section is intentionally omitted and is included in Section 4.1 of the associated Custom Master Business Agreement (OGS Contract No. PS67984).
- c. **Termination without cause.** This section is intentionally omitted and is included in Section 4.6(W) of the associated Custom Master Business Agreement (OGS Contract No. PS67984).
- d. **Termination for cause.** Without limiting any other remedies it may have, Microsoft and Enrolled Affiliate 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 the breach affects other Enrollments Microsoft shall give such notice to each Enrolled Affiliate and so advise OGS. If the breach cannot be resolved between Microsoft and Enrolled Affiliate within a reasonable period of time, Microsoft may terminate the affected Enrollments that received actual notification. If Enrolled Affiliate terminates an Enrollment as a result of a breach by Microsoft, then Institution will have the early termination rights described in the Enrollment.
- e. **Modification or termination of an Online Service for regulatory reasons.** This section is intentionally omitted and is included in section 4.6(W) of the associated Custom Master Business Agreement (OGS Contract No. PS67984).
- f. **Program updates.** This section is intentionally omitted and is included in Section 1.6 of the associated Custom Master Business Agreement (OGS Contract No. PS67984).

10. Warranties.

This section is intentionally omitted and is included in Section 4.6(BB) of the associated Custom Master Business Agreement (OGS Contract No. PS67984).

11. Defense of third party claims.

This section is intentionally omitted and is included in Section 4.6(EE) of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

12. Limitation of liability.

This section is intentionally omitted and included in Section 4.6(FF) of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

13. Verifying compliance.

This section is intentionally omitted and is included in Section 4.6(JJ) of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

14. Miscellaneous.

- a. **Use of contractors.** This section is intentionally omitted and included in Section 4.20 of the associated Custom Microsoft Business Agreement (OGS Contract No, PS67984).
- b. **Microsoft as independent contractor.** This section is intentionally omitted and is included in Section 51 of Appendix B of the associated Custom Master Business Agreement (OGS Contract No. PS67984).

- c. **Notices.** This section is intentionally omitted and is included in Section 4.35 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).
- d. **Agreement not exclusive.** This section is intentionally omitted and is included in Section 4.29 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).
- e. **Amendments.** This section is intentionally omitted and is included in Section 1.6 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).
- f. **Assignment.** This section is intentionally omitted and is included in Appendix A Section 2 and Appendix B Section 40 to the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).
- g. **Applicable law.** This section is intentionally omitted and is included in Appendix A Section 14 to the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).
- h. **Dispute resolution.** This section is intentionally omitted and is included in Section 4.6(GG) of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).
- i. **Severability.** This section is intentionally omitted and is included in Section 4.37 of the Custom Microsoft Business Agreement (OGS Contract No. PS67984).
- j. **Waiver.** This section is intentionally omitted and is included in Section 4.30 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).
- k. **No third-party beneficiaries.** Intentionally omitted.
- l. **Survival.** This section is intentionally omitted and is included in Section 4.28 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).
- m. **Taxes.** This section is intentionally omitted and is included in Section 9 of Appendix B to the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).
- n. **Management and reporting.** This section is intentionally omitted and is included in Section 4.34 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).
- o. **Order of precedence.** This section is intentionally omitted and is included in Section 4.3 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).
- 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.