

Enterprise Agreement State and Local

Custom Program Agreement Terms and Conditions

This Microsoft Enterprise Agreement (“Agreement”) is entered into between the entities identified on the signature form.

Effective date. The effective date of this Agreement is the effective date of any Enrollment entered into under this Agreement or the date Microsoft accepts this Agreement, whichever is earlier.

This Agreement consists of (1) the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984) and these Program Agreement terms and conditions, including any amendments and the signature form and all attachments identified therein, (2) the Product Terms applicable to Products licensed under this Agreement, (3) the Online Services Terms, (4) any Affiliate Enrollment entered into under this Agreement, and (5) any order submitted under this Agreement.

Please note: Documents referenced in this Agreement but not attached to the signature form may be found at <http://www.microsoft.com/licensing/contracts> and are incorporated in this Agreement by reference, including the Product Terms and Use Rights. These documents may contain additional terms and conditions for Products licensed under this 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.

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

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

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

“day” means a calendar day, except for references that specify “business day”.

“Enrolled Affiliate” means an entity, either Customer or any one of Customer’s Affiliates that has entered into an Enrollment under this Agreement.

“Enrollment” means the document that an Enrolled Affiliate submits under this Agreement to place orders for Products.

“Enterprise” means an Enrolled Affiliate and the Affiliates for which it is responsible and chooses on its Enrollment to include in its enterprise.

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

“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.

“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 as set forth in Section 1.8 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

“Online Services Terms” means the additional terms that apply to Enrolled Customer’s use of Online Services published on the Volume Licensing Site and updated from time to time.

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

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

“SLA” means Service Level Agreement, which shall have the definition as 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 on the Product Terms. Software does not include Online Services, but Software may be part of an Online Service.

“Software Assurance” shall have the definition as set forth in Section 1.58 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

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

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

“Volume Licensing Site” shall have the same meaning as “Licensing Site” in the Custom Microsoft Business Agreement (OGS Contract No. PS67984).

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 Agreement, only Enrolled Affiliates identified in an Enrollment will be responsible for complying with the terms of that Enrollment, including the terms of this 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. *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 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 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.** This section is intentionally omitted and is included in Section 4.31 of the associated Custom Microsoft 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 Microsoft Business Agreement (OGS Contract No. PS67984).
- 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 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 mutually determine how to accommodate its changed circumstances in the context of this Agreement.

4. 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 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 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.

5. ***Transferring and reassigning Licenses.***

- a. **License transfers.** License transfers are not permitted, except that 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 (A) a privatization of an Affiliate or agency or of an operating division of Enrolled Affiliate or an Affiliate, (B) a reorganization, or (C) a consolidation.

Upon such transfer, 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.

6. ***Term and termination.***

- a. **Term.** This section is intentionally omitted and is included in Section 4.1 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).
- b. **Termination without cause.** This section is intentionally omitted and is included in Section 4.6(W) of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).
- c. **Mid-term termination for non-appropriation of Funds.** This section is intentionally omitted and is included in Section 4.6(W) of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).
- d. **Termination for cause.** Without limiting any other remedies it may have, either Enrolled Affiliate or Microsoft may terminate an Enrollment if the other party materially breaches its

obligations under the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984), 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 Microsoft gives such notice to an Enrolled Affiliate, Microsoft also will give OGS a copy of that notice and OGS agrees to help resolve 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, together with OGS's help, within a reasonable period of time, Microsoft may terminate all the affected Enrollments that received actual notification. If an Enrolled Affiliate ceases to be an "Affiliate" of the State of New York, it must promptly notify Microsoft, and Microsoft may terminate the former Affiliate's Enrollment. If an Enrolled Affiliate terminates its Enrollment as a result of a breach by Microsoft, or if Microsoft terminates an Enrollment because Enrolled Affiliate ceases to be such an Affiliate, then Enrolled Affiliate will have the early termination rights described in the Enrollment.

- e. Early termination.** If (1) an Enrolled Affiliate terminates its Enrollment as a result of a breach by Microsoft, or (2) if Microsoft terminates an Enrollment because the Enrolled Affiliate has ceased to be an Affiliate of Customer, or (3) Enrolled Affiliate terminates an Enrollment for non-appropriation of funds, or (4) Microsoft terminates an Enrollment for non-payment due to non-appropriation of funds, 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 Software Assurance 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 Customer 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 due to 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.

- f. 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 Agreement ends if it does not renew Software Assurance.

- g. 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 Microsoft Business Agreement (OGS Contract No. PS67984).
- h. 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).

7. 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 4.33 of the associated Custom Microsoft 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 Microsoft Business Agreement (OGS Contract No. PS67984).
- e. Reservation of rights.** This section was intentionally omitted and is included in Section 4.31(c) of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

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

9. Privacy and compliance with laws.

- a.** This section is intentionally omitted and is included in Section 4.6(AA) of the associated Custom Microsoft Business Agreement (Contract No. PS67984).
- b.** This section is intentionally omitted and is included in Section 4.6(AA) of the associated Custom Microsoft Business Agreement (Contract No. PS67984).
- c. U.S. export.** This Section is intentionally omitted and is included in Section 4.27 of the associated Custom Microsoft 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 Microsoft 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 is 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 is included in Section 4.20 of the associated Custom Microsoft Business Agreement (Contract No. PS67984).
- b. Microsoft as independent contractor.** This section is intentionally omitted and is included in Section 51 of Appendix B to the associated Custom Microsoft Business Agreement (Contract No. PS67984).
- c. Notices.** This section is intentionally omitted and is included in Section 4.35 of the associated Custom Microsoft Business Agreement (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 (Contract No. PS67984).
- e. Amendments.** This section is intentionally omitted and is included in Section 1.6 of the associated Custom Microsoft Business Agreement (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 (Contract No. PS67984).
- g. Applicable law; dispute resolution.** This section is intentionally omitted and is included in Appendix A Section 14, and section 4.6(GG) of the associated Custom Microsoft Business Agreement (Contract No. PS67984).
- h. Severability.** This section is intentionally omitted and is included in Section 4.37 of the associated Custom Microsoft Business Agreement (Contract No. PS67984).
- i. Waiver.** This section is intentionally omitted and is included in Section 4.30 of the associated Custom Microsoft Business Agreement (Contract No. PS67984).
- j. No third-party beneficiaries.** Intentionally omitted.
- k. Survival.** This section is intentionally omitted and is included in Section 4.28 of the associated Custom Microsoft Business Agreement (Contract No. PS67984).
- l. Management and Reporting.** This section is intentionally omitted and is included in Section 4.34 of the associated Custom Microsoft Business Agreement (Contract No. PS67984).
- m. Order of precedence.** This section is intentionally omitted and is included in Section 4.3 of the associated Custom Microsoft Business Agreement (Contract No. PS67984).
- n. Free Products.** This section is intentionally omitted and is included in Section 4.22 of the associated Custom Microsoft Business Agreement (Contract No. PS67984).
- o. Voluntary Product Accessibility Templates.** This section is intentionally omitted and is included in Section 4.24 of the associated Custom Microsoft Business Agreement (Contract No. PS67984).
- p. Natural disaster.** This section is intentionally omitted and is included in Section 4.25 of the associated Custom Microsoft Business Agreement (Contract No. PS67984).
- q. Copyright violation.** This section is intentionally omitted and is included in Section 4.26 of the associated Custom Microsoft Business Agreement (Contract No. PS67984).

15. *Microsoft Online Services Criminal Justice Information Services (CJIS) Language for Covered Services.*

The following language is incorporated in any Enrollment issued hereunder where an Enrolled Affiliate uses Covered Services, as defined below, to process and/or store Criminal Justice Information.

Note: Future modifications to the language below shall supersede any previous versions of such language, and shall become effective as to any Enrollment previously executed hereunder on the date that such modifications are formalized through an amendment with Microsoft to OGS Contract No. PS67984.

The following Microsoft Online Services Criminal Justice Information Services (CJIS) for Covered Services language is entered into between the customer entity (“Enrolled Affiliate”) and the Microsoft entity (“Microsoft”) identified on the signature form for the Enrollment amended hereby, under which Enrolled Affiliate is purchasing Covered Services (as defined below). The entities agree that the following language supplements the Enrollment and applies to only the Covered Services Enrolled Affiliate buys under the Enrollment.

Defined Terms.

Capitalized terms used but not defined in this Section will have the meanings provided in the Agreement. The following definitions are used in this Section:

“**Azure**” means each of the Azure Government-branded services listed as being in the scope of the CJIS Policy at <http://azure.microsoft.com/en-us/support/trust-center/services>.

“**Covered Services**” means the following multi-tenant government “community” cloud services:

Each of the following Office 365-branded services: Exchange Online, SharePoint Online, Exchange Online Archiving, and Office Web Apps when delivered as part of Office 365 Government Plans E1 (formerly G1), E2 (formerly G2), E3 (formerly G3), E4 (formerly G4), K1, K2 or as standalone Government Community Cloud plans. Without limitation, Covered Services do not include Office 365 ProPlus, Lync Online or other Office 365-branded or separately branded Online Services.

Azure is included in this definition of Covered Services only to the extent it is needed to run and operate the Office 365-branded services referenced above.

“**CRM**” means each of the CRM Online Government-branded services described at <http://go.microsoft.com/fwlink/?LinkID=523874>, which covers the Microsoft Dynamics CRM Online services provisioned for eligible government community cloud entities, excluding (a) Microsoft Dynamics CRM for supported devices, which includes but is not limited to Microsoft Dynamics CRM Online services for tablets and/or smartphones; and (b) all separately-branded services made independently available with or in addition to CRM Online Government.

“**CSA**” means the New York State Police, or a successor agency as determined by the State of New York, acting in its capacity as the CJIS Systems Agency for the State of New York.

“**End User**” means an individual that accesses the Covered Services.

Term and Conditions.

1. CJIS Security Addendum

The Covered Services are multi-tenant cloud services offered as a “community cloud” as defined in the National Institute of Standards and Technology (NIST) Special Publication 800-145. Subject to the Agreement, this Amendment, and agreement reached with the CSA, Microsoft will deliver the Covered Services subject to the CJIS Security Addendum as set forth in any version of the CJIS Policy which becomes applicable during the term of the Enrollment amended hereby.

Enrolled Affiliate acknowledges the following restrictions on the use of the Covered Services for the processing and storage of Criminal Justice Information:

Office 365-branded services (“O365”). The use of O365 is fully in scope without any limitations on use; and

Azure. In recognition of the CSA’s current resource constraints, the use of Azure under this Amendment is limited to the minimum extent necessary to run and operate the O365 services. Such restricted use shall remain applicable until the CSA approves the use of Azure for the storage and processing of CJJ under this Amendment; and

CRM. Solely in recognition of the CSA’s current resource constraints, the use of CRM under this Amendment is currently out of scope until the CSA approves the use of CRM for the storage and processing of CJJ under this Amendment.

Enrolled Affiliate is responsible for its compliance with the restrictions on use described in this Section 1.

2. Role of CSA

At the CSA’s request, Microsoft has entered into an agreement with the CSA, including the CJIS Security Addendum, to facilitate use of Covered Services by public entities in the State of New York that are subject to the Criminal Justice Information Services (CJIS) Security Policy. Enrolled Affiliate will rely on the CSA, acting in its capacity as the CJIS Systems Officer (CSO) for the State of New York, to perform personnel screening of Microsoft personnel engaged in the delivery of the Covered Services and to exercise certain other functions under the CJIS Security Policy as described in this Amendment. Enrolled Affiliate acknowledges and agrees that CSA’s role is limited only to facilitating CJIS Security Policy compliance and Enrolled Affiliate is solely responsible for its compliance with other laws or policies that mandate greater or different requirements than CJIS Security Policy.

3. Enrolled Affiliate Responsibilities

3.1 Enrolled Affiliate acknowledges that the Covered Services enable End Users optionally to access and use a variety of additional resources, applications, or services that are (a) provided by third parties, or (b) provided by Microsoft subject to their own terms of use or privacy policies (collectively, for convenience, “add-ons”), as described in services documentation and/or in the portal through which Enrolled Affiliate’s administrator(s) will manage and configure the Covered Services.

3.2 Enrolled Affiliate is responsible to review Office 365 services documentation and CJIS implementation guidance. Enrolled Affiliate is responsible to establish, adopt and implement such policies and practices for its End Users’ use of Covered Services, together with any add-ons, as Enrolled Affiliate determines are appropriate to ensure Enrolled Affiliate’s compliance with the CJIS Security Policy or other legal or regulatory requirements applicable to Enrolled Affiliate and not generally applicable to Microsoft as an IT service provider. Enrolled Affiliates’ compliance with the CJIS Security Policy will be dependent, in part, upon Enrolled Affiliate’s configuration of the services and Enrolled Affiliate’s compliance with authoritative guidance from sources other than Microsoft (e.g., NCIC 2000 Operating Manual). Enrolled Affiliate is responsible to confirm the Covered Services environment is prepared and appropriate for CJJ prior to its processing or storing such data in the Covered Services.

3.3 Enrolled Affiliate acknowledges that only Covered Services will be delivered subject to the terms of this Amendment. Microsoft does not recommend processing and storage of Criminal Justice Information (“CJI,” as such term is defined in Appendix A to the CJIS Security Policy) in other services. Without limiting the foregoing, data that Enrolled Affiliate elects to provide to the Microsoft technical support organization, if any, or data provided by or on behalf of Enrolled Affiliate to Microsoft’s billing or commerce systems in connection with purchasing/ordering Covered Services, if any, is not subject to the provisions of this Amendment or the CJIS Addendum.

4. Approach to Compliance with CJIS Security Policy

Enrolled Affiliate agrees to comply with all requirements of the CJIS Security Policy. Microsoft agrees to comply with only those requirements applicable to it as a contractor or cloud services provider. This Section 4 contains additional information about how certain requirements of the CJIS Security Policy will be fulfilled. For convenient reference, provisions are numbered to conform to section numbering in the CJIS Security Policy (ver. 5.6, dated June 5, 2017). Microsoft and Enrolled Affiliate will each rely on the CSA to perform certain functions as described below, and Enrolled Affiliate is responsible to confirm the approach with the CSA to the extent Enrolled Affiliate deems appropriate.

4.1 CJIS Security Policy Section 5.2 Policy Area 2: Security Awareness Training

Microsoft will supplement its existing security training program as required to meet the requirements of Section 5.2 of the CJIS Security Policy. Required training will be delivered to personnel identified as in scope for CJIS Personnel Screening within six (6) months of the later of (1) the date the first customer in the State of New York who is a purchaser of Covered Services subject to this Amendment (or a similar amendment executed by the applicable Enrolled Affiliate) notifies Microsoft it is introducing CJI into the Covered Services, or (2) the date the CSA notifies Microsoft that personnel have passed required personnel screening. Microsoft will refresh training for in scope personnel on at least a biennial basis thereafter.

Microsoft will maintain training records, which will be available to the CSA upon written request.

4.2 CJIS Security Policy Section 5.3 Policy Area 3: Incident Response

In the event of an information security incident affecting the Covered Services, Microsoft will address such incident with Enrolled Affiliate as follows:

- (a) If Microsoft becomes aware of any unlawful access to any Customer Data stored on Microsoft's equipment or in Microsoft's facilities, or unauthorized access to such facilities or equipment resulting in loss, disclosure or alteration of Customer Data (each a "Security Incident"), Microsoft will promptly: (i) notify Enrolled Affiliate of the Security Incident; (ii) investigate the Security Incident and provide Enrolled Affiliate with detailed information about the Security Incident; and (iii) take reasonable steps to mitigate the effects and to minimize any damage resulting from the Security Incident.
- (b) An unsuccessful Security Incident will not be subject to this Section. An "Unsuccessful Security Incident" is one that results in no unauthorized access to Customer Data or to any Microsoft equipment or facilities storing Customer Data, and may include, without limitation, pings and other broadcast attacks on firewalls or edge servers, port scans, unsuccessful log-on attempts, denial of service attacks, packet sniffing (or other unauthorized access to traffic data that does not result in access beyond IP addresses or headers) or similar incidents.
- (c) Microsoft's obligation to report or respond to a Security Incident is not and will not be construed as an acknowledgement by Microsoft of any fault or liability with respect to the Security Incident.
- (d) Notification of Security Incidents, if any, will be delivered to one or more of Enrolled Affiliate's administrators by any means Microsoft selects, including via email. It is Enrolled Affiliate's sole responsibility to ensure Enrolled Affiliate's administrators maintain accurate contact information on the Online Services portal at all times.
- (e) Effective investigation or mitigation of a Security Incident may be dependent upon information or services configurations within Enrolled Affiliate's control. Accordingly, compliance with CJIS Security Policy Incident Response requirements will be a joint obligation of Microsoft and Enrolled Affiliate.
- (f) In the event Microsoft reasonably anticipates that a Security Incident may require legal action against involved individual(s), or where the Security Incident involves either civil or criminal action, Microsoft will take measures to contain, resolve, and mitigate the impact of a Security Incident to Enrolled Affiliate and conduct its investigative activities under guidance of legal staff and in accordance with general evidentiary principles.

4.3 CJIS Security Policy Section 5.11 Policy Area 11: Formal Audits

- (a) Audits by FBI CJIS Division. In the event the FBI CJIS Division desires to perform an audit of the Covered Services, Microsoft will cooperate with such audit in good faith. The FBI may be permitted to access Customer Data belonging to Enrolled Affiliate in connection with such audit, but not data belonging to other customers in the multi-tenant environment from which the Covered Services are delivered. If the FBI identifies what it believes to be deficiencies in the Covered Services as a result of an audit, Microsoft is committed to working in good faith to resolve the FBI's concerns through discussion and interaction between Microsoft, the CSA, and the FBI. Enrolled Affiliate will assist in this process if and as requested, but will otherwise rely on the CSA to act on behalf of all similarly situated entities that have purchased the Covered Services.
- (b) Audits by Enrolled Affiliate. In the event that Enrolled Affiliate desires to audit the Covered Services pursuant to the CJIS Security Policy, Enrolled Affiliate appoints the CSA to act on Enrolled Affiliate's behalf to conduct such audit activities, and Enrolled Affiliate agrees to rely on the CSA's audit in full satisfaction of any right to audit the Covered Services. Enrolled Affiliate acknowledges and agrees that all audit requests are subject to CSA's approval or denial, and Enrolled Affiliate further agrees that it will request an audit of the Covered Services by the CSA only if it determines, in good faith, that such audit is reasonably necessary for the Enrolled Affiliate to satisfy a valid legal obligation it is subject to.

Enrolled Affiliate acknowledges that either CSA or a third party auditor selected by CSA will exercise this right by attempting to satisfy its requirements for information via reference to Microsoft's services documentation, including audit reports prepared by Microsoft's qualified third party auditors. Along with other customers for the Covered Services, the CSA will be provided quarterly access to information generated by Microsoft's regular monitoring of security, privacy, and operational controls in place to afford applicable customers an ongoing view into effectiveness of such controls, and the CSA or its auditor may communicate with Microsoft subject matter experts. In the event the CSA reasonably determines this information is not sufficient for the CSA's or Enrolled Affiliate's audit objectives, then, upon the CSA's written request, Microsoft will provide the CSA or its qualified third party auditor the opportunity to communicate with Microsoft's auditor at the CSA's or Enrolled Affiliate's expense and, if required by CSA, a direct right to examine the Covered Services, including examination on premises. The CSA or its auditor may only access data belonging to Enrolled Affiliate or other entities in the State of New York that have purchased the Covered Services and rely on the CSA for purposes of audit.

- (c) Confidentiality of Audit Materials. Information provided by Microsoft to the FBI CJIS Division or CSA in connection with audit activities will consist of highly confidential proprietary or trade secret information of Microsoft. It is not expected that Enrolled Affiliate will require access to such information, and Microsoft may request reasonable assurances, written or otherwise, that information will be maintained as confidential and/or trade secret prior to providing such information to Enrolled Affiliate. If provided, Enrolled Affiliate will ensure Microsoft's audit materials, or report(s) created by Enrolled Affiliate based on a CSA audit of the Covered Services, are afforded the highest level of confidentiality available under applicable law.

4.4 CJIS Security Policy Section 5.12 Policy Area 12: Personnel Security

- (a) Enrolled Affiliate appoints the CSA to perform, and will rely upon CSA's completion of, personnel screening (i.e., background checks) for personnel in scope pursuant to Section 5.12 of the CJIS Security Policy. Enrolled Affiliate acknowledges and agrees that personnel screening determinations made by CSA are binding, and Enrolled Affiliate shall accept such decision as final. Enrolled Affiliate is responsible to confirm directly with the CSA that such personnel screening as the CSA or Enrolled Affiliate determines is required has been

completed prior to initial processing of CJ Data in the Covered Services, and whenever rescreening shall be required under CJIS Security Policy. Adjudication by Enrolled Affiliate or other counties, cities, or other subdivisions or agencies of state government will not be permitted. To facilitate efficient and effective personnel screening:

- The CSA will define adjudication criteria for personnel screening.
 - Microsoft will deliver to the CSA relevant information regarding Microsoft personnel in scope pursuant to Section 5.12 of the CJIS Security Policy.
 - Microsoft and the CSA will jointly define the process by which Microsoft will deliver to the CSA relevant information regarding personnel who may in the anticipated scope of their duties have logical or physical access to CJ in the Covered Services.
 - It is not anticipated that the CSA will deliver to Enrolled Affiliate confidential personal information pertaining to Microsoft personnel. However, if Enrolled Affiliate receives such confidential personal information it will be afforded the highest level of confidentiality available under applicable law.
 - If Enrolled Affiliate elects to obtain services from Microsoft in addition to the Covered Services (e.g. consulting services in connection with Enrolled Affiliates' migration and onboarding to the Covered Services), such personnel will not be included in scope for personnel screening by the CSA unless separately agreed by Enrolled Affiliate, the CSA, and Microsoft.
- (b) In the event the CSA approves a process under which a federal law enforcement agency or other suitable body conducts screening of personnel who have access to Customer Data in the Covered Services compliant with requirements of the CJIS Security Policy in lieu of CSA-conducted screening, Enrolled Affiliate will abide by the CSA's approval of personnel screening being conducted in this manner.

4.5 CJIS Security Policy Section 5.1.1.2: State and Federal Agency User Agreements

Microsoft shall design, test and operate the Covered Services to ensure they are free of common security vulnerabilities. Microsoft shall regularly conduct penetration testing to evaluate the security controls at the application, host, and networks layers used to provide the Covered Services. Microsoft shall take commercially reasonable steps to remediate significant weaknesses discovered. Assessment of penetration testing will be done by independent third party auditors and included in the scope of audit relevant to Covered Service certification or accreditation. Neither CSA nor Enrolled Affiliate may conduct penetration testing on such Covered Services. Microsoft agrees to provide the CSA with reports summarizing the test results and status of corrective actions arising from all penetration testing and vulnerability assessments performed by Microsoft and its third party auditors and agents.

4.6 CJIS Security Policy Area 5.10 Policy Section 5.10.1.5: Cloud Computing

Microsoft will use Customer Data solely to provide the Covered Services, including purposes consistent with the delivery of the Covered Services. Microsoft will not use Customer Data or derive information from it for any advertising or similar commercial purposes.

Microsoft may use subcontractors to perform and support Online Services; including Online Services processing CJ. Microsoft will be responsible for its own and its subcontractors' compliance with the terms of this CJIS Enrollment. For clarity, the definition of Subcontractor for purposes of this Amendment shall include Subprocessors used by Microsoft

4.7 NCIC Operating Manual

Enrolled Affiliate acknowledges that the current NCIC 2000 Operating Manual and FBI CJIS Security Policy consist of guidance and/or requirements for Enrolled Affiliate's use of the Covered Services. In the event Enrolled Affiliate determines the NCIC 2000 Operating Manual imposes obligations with respect to the Covered Services that can, in Enrolled Affiliate's opinion, only be

satisfied via changes in the manner in which the Covered Services are operated or delivered to Enrolled Affiliate, Enrolled Affiliate may request that the CSA provide Microsoft with written notification of the specific changes it believes are required of Microsoft in order to enable Enrolled Affiliate's compliance with the NCIC 2000 Operating Manual, and Microsoft agrees to consider any such request(s) relayed to Microsoft by the CSA in good faith.

4.8 Notices

Any notices in connection with the Covered Services will be delivered to Enrolled Affiliate by Microsoft. Enrolled Affiliate will determine whether these or any other notices regarding the Covered Services are required to be delivered to the FBI, CJIS Division, as contemplated in Section 6.05 of the Security Addendum and, if required, deliver such notices.

4.9 Termination

Should CSA determine that Microsoft is in material breach of CSA's agreement with Microsoft, titled "CJIS Information Agreement for Covered Services," Enrolled Affiliate may terminate its orders for the Covered Services within 30 days following the determination of such breach where the breach is, by its nature, not curable within 30 days. Enrolled Affiliate must give Microsoft 30 days' notice of its intent to terminate and an opportunity to cure. For up to 90 days following such termination, Enrolled Affiliate may extract its Customer Data from the Covered Services, in a manner that complies with all applicable laws and FBI CJIS Security Policy requirements, subject to the other terms and conditions of the Agreement and Enrollment amended hereby. Enrolled Affiliate will have the ability to access, extract, and delete Customer Data stored in the Online Service in a CJIS Security Policy-compliant manner. Microsoft's obligation to comply with all requirements of the Agreement, this Amendment and the CJIS Security Policy shall survive termination of this Agreement and continue in full force and effect for as long as Microsoft continues to store or retain any Customer Data.