

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

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This Microsoft Select Plus 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 the first Affiliate Registration Form 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 the terms and conditions of this Agreement and all attachments identified therein, (2) the Product Terms, (3) the Online Services Terms, (4) any Affiliate registration 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 Online Services Terms. 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 and Services ordered.

The parties agree to be bound by the terms of this Agreement.

## ***Terms and Conditions***

### ***1. Definitions.***

In this Select Plus Agreement the following definitions apply:

“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).

“available” means, with respect to a Product, that Microsoft has made Licenses for that Product available for ordering under a particular licensing program.

“Customer” 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”.

“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.

“L&SA” means a License and Software Assurance for any Product ordered.

“Microsoft” means the Microsoft Affiliate that has entered into this Agreement or accepted Registered Affiliate’s registration form 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).

“Order” means the document Customer or Customer’s Affiliate submits under this Agreement to acquire Licenses.

“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).

“Qualifying Contract” means (1) an Enterprise Enrollment under a separate Microsoft Enterprise Agreement; (2) any Enterprise Subscription Enrollment entered into under a Microsoft Enterprise Agreement, or (3) a Select Agreement. Only agreements entered into by a Registered Affiliate may constitute a Qualifying Contract.

“Registered Affiliate” means an entity, either Customer or any one of Customer’s Affiliates, identified on an Affiliate Registration Form that has been accepted by Microsoft and has submitted an Order under this Agreement.

“Reseller” means a large account Reseller authorized by Microsoft to resell Licenses under this program.

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

“Software Assurance” is an offering by Microsoft that provides new version rights and other benefits for Products as further described in the Product Terms.

“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).

## **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 Agreement that would otherwise have been a minimum qualifying Order.

## **3. How to establish price level.**

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

#### 4. **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 Agreement. The rights granted are subject to the terms of this Agreement and the Use Rights. Microsoft reserves all rights not expressly granted in this Agreement.
- b. **Use by Affiliates.** Registered Affiliate may sublicense the right to use the Products ordered under this Agreement to any Affiliates, but Affiliates may not sublicense these rights and their use must be consistent with the terms of this Agreement.
- c. **Duration of Licenses.** Subscription Licenses and most Software Assurance rights are temporary and expire when the applicable 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 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.** This section is intentionally omitted and is included in Section 4.31 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).
- e. **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).
- 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 Agreement, the applicable Order, any 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 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 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.
- i. **Multi-Language Rights.** Registered Affiliate may use different language versions of any Product it Licenses under this agreement, provided that the License, L&SA, or Software Assurance for that different language version is available at the same or lower price than the price paid for the language version ordered of the same Product and License type.

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

- a. **Placing Orders.** Registered Affiliate may order Licenses and Online Services Microsoft makes available under this program by placing Orders with Registered Affiliate's authorized Reseller. The price and payment terms for all Orders will be determined by agreement between Registered Affiliate and its Reseller. When placing orders, a Registered Affiliate must specify the country or countries where the Registered Affiliate will use the Licenses.  
  
Microsoft may change the Products available under this program.

- b. When is the Registered Affiliate eligible to order just Software Assurance?** A Registered Affiliate may order Software Assurance for 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 for 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 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 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 its Reseller 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.

## **6. 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 Agreement.
- 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 Product 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 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 List.

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.

## **7. Transferring and reassigning 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, 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.

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 and Registered Affiliate must either return or destroy the licensed copies.

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 Product Terms.

## **8. 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 Microsoft or Registered Affiliate may terminate the Affiliate Registration Form if the other party materially breaches its obligations under this Agreement, including any obligation to 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 and opportunity to cure the breach. If Microsoft gives such notice to a Registered Affiliate, Microsoft will give OGS a copy of that notice as well and OGS agrees to help resolve the breach. If the breach also affects other Affiliate registrations, Microsoft shall give such notice to each Registered Affiliate and so advise OGS. If the breach cannot be resolved between Microsoft and Registered Affiliate within a reasonable period of time, Microsoft may terminate all the affected Affiliate registrations that received actual notification. If Registered Affiliate ceases to be an 'Affiliate' of the State of New York, Registered Affiliate must promptly notify

Microsoft, and Microsoft may terminate Registered Affiliate's registration under this Agreement.

- e. **Early termination.** If Registered Affiliate terminates the Affiliate Registration Form as a result of a breach by Microsoft, or if Microsoft terminates the Affiliate Registration Form because Registered Affiliate has ceased to be an "Affiliate" of the State of New York, 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.
- f. 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.
- 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).

## 9. **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 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.

10. **Restrictions on use.** This section is intentionally omitted and is included in Section 4.6(HH) of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

11. **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).

12. **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).

13. **Defense of infringement, misappropriation, and 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).

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

15. **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).

**16. *Non-Microsoft Software or Technology.*** This section is intentionally omitted and is included in Section 4.33 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

**17. *Miscellaneous.***

- a. **Notices.** This section is intentionally omitted and is included in Section 4.35 of the associated Custom Microsoft Business Agreement (Contract No. PS67984).
- b. **Clerical errors.** Microsoft may correct clerical errors in this Agreement, and any documents submitted with or under this Agreement, by providing notice by email and a reasonable opportunity for Customer or Registered Affiliate, as applicable, to object to the correction. Clerical errors include minor mistakes, unintentional additions and omissions. This provision does not apply to material terms, such as the identity, quantity or price of a Product ordered.
- c. **Assignment.** This section is intentionally omitted and is included in Appendix A Section 2 and Appendix B Section 40 of the associated Custom Microsoft Business Agreement (Contract No. PS67984).
- d. **Subcontractors.** This section is intentionally omitted and is included in Section 4.20 of the associated Custom Microsoft Business Agreement (Contract No. PS67984)
- e. **Severability.** This section is intentionally omitted and is included in Section 4.37 of the associated Custom Microsoft Business Agreement (Contract No. PS67984).
- f. **Waiver.** This section is intentionally omitted and is included in Section 4.30 of the associated Custom Microsoft Business Agreement (Contract No. PS67984).
- g. **Applicable law; dispute resolution.** This section is intentionally omitted and is included in section Appendix A Section 14 and Section 4.6(GG) of the associated Custom Microsoft Business Agreement (Contract No. PS67984).
- h. **This Agreement is not exclusive.** This section is intentionally omitted and is included in Section 4.29 of the associated Custom Microsoft Business Agreement (Contract No. PS67984).
- i. **Entire agreement.** This section is intentionally omitted and is included in Section 4.38 of the associated Custom Microsoft Business Agreement (Contract No. PS67984).
- j. **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).
- 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. **No transfer of ownership.** This section is intentionally omitted and is included in Section 4.23 of the associated Custom Microsoft Business Agreement (Contract No. PS67984).
- m. **Free Products.** This section is intentionally omitted and is included in Section 4.22 of the associated Custom Microsoft Business Agreement (Contract No. PS67984).
- n. **Amending the Agreement.** This section is intentionally omitted and is included in Section 1.6 of the associated Custom Microsoft Business Agreement (Contract No. PS67984).
- o. **Resellers and other third parties cannot bind Microsoft.** This section is intentionally omitted and is included in Section 4.21 of the associated Custom Microsoft Business Agreement (Contract No. PS67984).
- p. **Privacy and Security.** This section is intentionally omitted and is included in Section 4.6(AA) of the associated Custom Microsoft Business Agreement (Contract No. PS67984).
- q. **Natural disasters.** This section is intentionally omitted and is included in Section 4.25 of the associated Custom Microsoft Business Agreement (Contract No. PS67984).

- r. **Copyright violation.** This section is intentionally omitted and is included in Section 4.26 of the associated Custom Microsoft Business Agreement (Contract No. PS67984).
- s. **Section headings.** This section is intentionally omitted and is included in Section 4.36 of the associated Custom Microsoft Business Agreement (Contract No. PS67984).
- t. **U.S. export jurisdiction.** This section is intentionally omitted and is included in Section 4.27 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

