

AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT		I. CONTRACT ID CODE		PAGE OF PAGES	
2. AMENDMENT/MODIFICATION NO. P00027		3. EFFECTIVE DATE SEE BLOCK 16C		5. PROJECT NO. (IF APPLICABLE)	
6. ISSUED BY NAVSUP FLC NORFOLK CONTRACTING MECHANICSBURG OFFICE 5450 CARLISLE PIKE, P.O. BOX 2020 MECHANICSBURG, PA 17055-0788		7. ADMINISTERED BY SAME AS BLOCK 6 POC: Robin Cleaver, Code 215.1 PHONE: (717) 605-8515 EMAIL: robin.cleaver@navy.mil		CODE N00189	
8. NAME AND ADDRESS OF CONTRACTOR CDW GOVERNMENT LLC 230 N. MILWAUKEE AVENUE VERNON HILLS, IL 60061 POC: Marianne Swann PHONE: (703) 621-8220 EMAIL: Marianne.swann@cdw.com				9A. AMENDMENT OF SOLICITATION NO.	
CODE: 1KH72 FACILITY CODE :				9B. DATED (SEE ITEM 11)	
11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS				10A. MODIFICATION OF CONTRACT/ORDER N00104-02-A-ZE85 GS-35F-0195J	
<input type="checkbox"/> The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of offers <input type="checkbox"/> is <input type="checkbox"/> is not extended.				10B. DATED (SEE ITEM 13) 08/05/2002	
Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods: (a) By completing Items 8 and 15, and returning _____ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference to the solicitation and solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.					
12. ACCOUNTING AND APPROPRIATION DATA (if required) N/A					
13. THIS ITEM APPLIES ONLY TO THE MODIFICATION OF CONTRACTS/ORDERS AS SPECIFIED ITEM 14.					
A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.					
B. THE ABOVE NUMBERED CONTRACT/ORDER IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).					
<input checked="" type="checkbox"/> C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF: FAR 43.103(a)(3)					
D. OTHER (Specify type of modification and authority)					
E. IMPORTANT: Contractor <input type="checkbox"/> is not, <input checked="" type="checkbox"/> is required to sign this document and return 1 copy.					
14. DESCRIPTION OF AMENDMENT/MODIFICATION (including solicitation/contract subject matter where feasible.)					
1. The purpose of this bilateral modification is to extend the BPA Ordering Period through <u>19 APRIL 2017</u> .					
Continued on Page 2.					
Distribution: BPA Contractor EDA regina.baca@navy.mil Except as provided herein, all other terms and conditions of the contract remain unchanged and in full force and effect.					
15A. NAME AND TITLE OF SIGNER <i>Sheryl S. McCurnin</i> <i>Senior Manager</i>			16A. NAME AND TITLE OF CONTRACTING OFFICER <i>W. M. Huber</i> Contracting Officer		
15B. CONTRACTOR/OFFEROR <i>Sheryl S. McCurnin</i>		15C. DATE SIGNED <i>5/18/16</i>		16B. UNITED STATES OF AMERICA BY <i>W. M. Huber</i>	
(Signature of person authorized to sign)				(Signature of Contracting Officer)	
				16C. DATE SIGNED 05/19/2016	
NSN 7540-01-152-8070 PREVIOUS EDITION UNUSABLE		30-105 SPCC OVPT (REV 10-84) (LOCAL)		STANDARD FORM 30 (REV. 10-83) Prescribed by GSA FAR (48 CFR) 53-243	

2. BPA Attachment C - Microsoft License Agreement/Product Use Rights, dated January 2010, is hereby deleted in its entirety and replaced with Attachment C - Microsoft DoD Software License Agreement, dated 16 May 2016, as provided herein.

3. The BPA Point of Contact information shown in Paragraph B.2.a. of the BPA is changed to read as follows:

B.2.a. Contracting Office:

Point of Contact:

NAVSUP FLC Norfolk Contracting
Mechanicsburg Office
Code 215.1, Building 407
5450 Carlisle Pike
Mechanicsburg, PA 17055-0788

POC: Robin Cleaver
Phone: (717) 605-8515
Fax: (717) 605-1951
Email: robin.cleaver@navy.mil

or Alternate Point of Contact:

NAVSUP FLC Norfolk Contracting
Mechanicsburg Office
Code 215.1, Building 407
5450 Carlisle Pike
Mechanicsburg, PA 17055-0788

POC: Dennis Fellin
Phone: (717) 605-5659
Fax: (717) 605-1951
Email: dennis.fellin@navy.mil

4. All other terms and conditions of this BPA remain unchanged.

**Microsoft DEPARTMENT OF DEFENSE
SOFTWARE LICENSE AGREEMENT**

The following licensing terms and conditions set forth additional Department of the Defense (DoD) Software License requirements (“these additional terms and conditions”). The terms and conditions set out below supplement the terms and conditions of Microsoft’s End User License Agreement (the “Agreement”) (located in Appendix A), which are hereby incorporated by reference. Together the EULA and these additional terms and conditions constitute the DOD ESI Agreement (“Agreement” or this “BPA”).

- 1. Entire Agreement and the Enterprise:** The parties agree that more than one agency of the DoD may license products under such Agreement, provided that any acquisition of the product licenses by any agency must be made pursuant to one or more executed purchase orders or purchase documents (orders) submitted by each agency seeking to use the licensed product. The parties agree that, if the licensee is a “DoD Department or Agency” as defined by the 48 Code of Federal Regulations, section 202.101, and the United States Coast Guard when operating as a part of the Navy pursuant to law, the terms and conditions of this Agreement apply to any purchase of product licenses made by the DoD, and that the terms and conditions of this Agreement become part of the purchase document without further need for execution. The GSA Schedule contract, the Agreement, these additional terms and conditions, orders placed against the Agreement, and the Microsoft Product Terms constitute the entire agreement concerning the subject matter and supersede any prior or contemporaneous communications. Unless expressly stated otherwise, in the case of a conflict between any of these documents that is not resolved expressly in the documents, their terms will control in the following order: (1) the GSA Schedule contract; (2) these additional terms and conditions; (3) the EULA; (4) Orders placed against this Agreement; and (5) the Microsoft Product Terms. The terms of any purchase order or any general terms and conditions Government Partner maintains do not apply.
- 2. Choice of Law/Venue:** This Agreement shall be governed by and construed in accordance with the substantive laws of the United States Code, US Code of Federal Regulations, Federal Acquisition Regulations and Defense Federal Acquisition Regulation Supplement (DFARS), without regard to principles of conflict of laws.
- 3. Indemnification:** The DoD does not have the authority to and shall not indemnify any entity. The DoD agrees to pay for any loss, liability or expense, which arises out of or relates to the DoD’s acts or omissions with respect to its obligations hereunder, where a final determination of liability on the part of the DoD is established by a court of law or

where settlement has been agreed to by the DoD agency with, where appropriate, coordination of the Department of Justice. This provision shall not be construed to limit the DoD's rights, claims or defenses which arise as a matter of law or pursuant to any other provision of this Agreement.

4. **Termination of Government Partner EA on behalf of Enrolled Affiliate:** In the event of a termination of an agreement between Licensor and Government Partner during the term of the Agreement, Licensor will continue to provide the products/services subject to the same terms and conditions through a follow-on contract for the remaining period with an authorized DoD ESI reseller. DoD license grants or License rights that have been purchased and paid for will be transferred to the new agreement and any remaining support/maintenance will be transferred without transfer fees by the Licensor.
5. **Confidentiality:** Each party shall treat the other party's confidential information in the same manner as its own confidential information. The parties must identify in writing what is considered confidential information
6. **Publicity/Advertisement:** The Licensor must obtain DoD approval prior to mentioning the DoD or a DoD agency in an advertisement, endorsement, or any other type of publicity. This includes the use of any trademark or logo.
7. **License Use Territories:** Any United States Department of Defense (DoD) civilian or military installation or work site in the Continental United States (CONUS) or outside the Continental United States (OCONUS), regardless of where software was acquired.
8. **Auditing Responsibilities:**
 - a. **Right to verify compliance.** The DOD must keep records relating to the Products it and its Affiliates (as defined in the EULA) use or redistribute. Licensor has the right to verify compliance with the Agreement, at Licensor's expense, during the term of the applicable Enrollment, as that terms I defined in the EULA (or if the Government Contract does not have Enrollments, then during the term of that Government Contract) and for a period of one year thereafter.
 - b. **Verification process and limitations.** To verify compliance, Microsoft, as Licensor, will engage an independent auditor that is mutually agreed upon between the DoD and Microsoft, which will be subject to a confidentiality obligation. The identified auditor must have or obtain appropriate security clearances to access both the facility and/or any system prior to disclosure of any information or data. Verification will take place upon not fewer than 90 days notice, during normal business hours and in a manner that does not interfere unreasonably with your operations. DOD must promptly provide the independent auditor with any information it reasonably requests in furtherance of the verification, including access to systems running the Products and evidence of Licenses for Products DOD uses, hosts, sublicenses, or distributes. As an alternative, Microsoft can require DOD to complete Microsoft's self-audit questionnaire relating to the

Products DOD and any of its Affiliates use or distribute under the Agreements, but reserves the right to use a verification process as set out above.

- c. If Microsoft undertakes verification and does not find material unlicensed use (License shortage of 5% or more per Product), Microsoft will not undertake another verification of the same entity for at least one year. Microsoft and the independent auditors will use the information obtained in compliance verification only to enforce its rights and to determine whether DOD is in compliance with the terms of the Agreement. By invoking the rights and procedures described above, Microsoft does not waive its rights to enforce the Agreement or to protect its intellectual property by any other means permitted by law.
 - d. **Remedies for non-compliance.** If verification or self-audit reveals any unlicensed use, Microsoft, through its resellers or Government Partners, will promptly invoice the Enrolled Affiliate for sufficient Licenses to cover such use. If material unlicensed use is found, (a) the Enrolled Affiliate may be completely responsible for the costs we have incurred in verification, to the extent permitted by 31 U.S.C. § 1341 (Anti-Deficiency Act) and other applicable Federal law or similar state law (as applicable), and (b) the Enrolled Affiliate must pay the invoice in accordance with the procedures set forth in the applicable GSA Schedule contract for the additional Licenses within 30 days which will entitle the Enrolled Affiliate to use such Licenses. Notwithstanding the foregoing, nothing in this section prevents the government from disputing any invoice in accordance with the Contract Disputes Act (41 U.S.C. §§7101-7109).
9. **Net-Centricity.** The Department of Defense is transforming the way information is managed to accelerate decision-making, improve joint war fighting and create intelligence advantages. To reach this “Net-Centric” state, DoD must exploit advancing technologies that move the enterprise from an application centric to a data-centric paradigm. DoD ESI Contractor partners are encouraged to use the OSD NII DCIO Net-Centric Checklist, located at http://www.defenselink.mil/cionii/docs/NetCentric_Checklist_v2-1-3_.pdf to provide information on the Net-Centric posture of their IT products and services.
10. **Section 508 of the Rehabilitation Act Compliance:** Licensor will make available to DoD Voluntary Product Accessibility Templates (VPATs) for Microsoft products to assist DoD in meeting its obligations under Section 508. VPATs for Microsoft products are available to download at the following site:
- <http://www.microsoft.com/government/en-us/products/section508/Pages/default.aspx>
11. **Temporary Use of Software During Times of Conflict and/or Natural Disaster:** during Temporary Expeditionary Deployments (“TEDs”), Enrolled Affiliate may temporarily deploy and install or use on, or access from qualified desktops or servers, the Enterprise Products, including the Standard Desktop Configuration, Enhanced Desktop Configuration, or Enhanced with SQL Desktop Configuration and the Additional

Products, all described in Attachments A&B (the "Software") on an unlimited number of qualified desktops or servers being used as part of the TEDs ("Temporary Use").

For purposes of this subsection, the term "Temporary Expeditionary Deployments" or "TEDs" shall refer to any number of software licensed Products enrolled under this agreement which may be used at no additional cost by the DoD Enrolled Affiliate. The coverage will extend to deployments away from in-garrison locations (any military post or government office where troops or civilian personnel are at a permanent location, deployment locations in support of war games, exercises, real world contingencies, and emergency situations similar to the initiated domestic terrorist attacks of 11 September 2001 and 19 April 1995 (i.e., Timothy McVeigh, Terry Nichols perpetrated 'Oklahoma City Bombing' involving the Alfred P. Murrah Federal Building'); and finally, the national inclement weather natural disasters perpetrated by Hurricane(s) Katrina and Rita during the August and September months of Calendar Year 2005, where temporary duty stations (TEDs) and continuity of operations (COOP) alternative venues or sites were needed, for a substantial period of time, due to the destruction of federal or U.S. Government facilities, infrastructure, offices and work spaces. The Government Contractor through which the order(s) under this Agreement is placed ("Government Partner") will submit on behalf of each DoD Enrolled Affiliate, a record of the count of each category of License used while deployed and the period of use. After the TED and upon request, the count and duration information, but not the deployed location information, will be provided to us for auditing purposes. Such Temporary Use of the software is limited to a period equal to the length of the TED or six (6) calendar months, whichever is shorter ("Temporary Use Period"), unless a different time period is agreed to in writing by Licensor.

At the end of the six month period or as mutually agreed to, Government Partner will provide to Licensor on behalf of the DoD Enrolled Affiliate written certification that the Licenses have either been destroyed or uninstalled or payment has been made under this Agreement. Government Partner will ensure that the Enrolled Affiliate agree to use the Products in accordance with the terms contained in this Agreement. If DoD Enrolled Affiliate requires use of the Product(s) beyond the Temporary Use Period and such extended use has not been approved by Licensor, Government Partner on behalf of Enrolled Affiliate shall purchase the necessary licenses for the Product(s). Government Partner must submit for each DoD Enrolled Affiliate an update statement within 15 days following each anniversary of the effective date of the Enrollment Government Partner submits on its behalf, and after expiration or termination of such Enrollment, on a form we provide, per subsection 3(c) (Placing "true up" orders to account for additional desktops) above.

- 12. Software Asset Management & ISO/IEC 19770-2:2009 Series:** The Licensor shall comply with ISO 19770-2:2009 Series Standards for all installable or distributable software products governed by this agreement. If any part of the ISO/IEC 19770-2:2009 standard is not approved by the ISO International Standards Committee at the time of contract

execution, the Licensor shall have 18 months to comply with the standard upon approval by ISO as agreed upon between the government and software provider/manufacturer.

- 13. Data Sharing/Transfer:** Data transfer is: Batch Processing, Multiplexing and Flat File Environments. The parties agree that as long as an authorized user/device is properly licensed in accordance with the EULA, the transfer, access, and manipulation of data or the sharing of data is unrestricted for authorized users associated with the DoD missions. This license also provides for the ability of authorized users to access data from any US-owned datacenter with data owner granted permission and any appropriately licensed non-US owned datacenters.
- 14. Third Party Software:** Notwithstanding anything to the contrary, the Government shall not be subject to third party terms and conditions that are contrary to Federal law.
- 15. GFE Non-Portable Computer Use Rights:** DoD has adopted a Teleworking Policy which implements the requirements of Section 359 of Public Law No. 106-346 which requires each Executive Agency to establish a policy under which eligible employees of the agency may participate in Teleworking to the maximum extent possible without diminished employee performance. Enrolled Affiliate shall have the right to grant to those persons participating under the DoD Teleworking Policy and who have been issued a Government Furnished Equipment (GFE) non-portable desktop in lieu of portable computer, the portable use rights under the applicable License Agreement/Product Use Rights. The portable use rights will apply to such GFE desktop or to a portable computer but not both. Upon request from Licensor, the Enrolled Affiliate will provide a written report detailing the number of Enrolled Affiliate employees using portable use rights on GFE issued non-portable computers under the Teleworking policy.
- 16. Token Activation:** Notwithstanding anything to the contrary in this agreement or the License Agreement/Product Use Rights, each Enrolled Affiliate may activate Products that Government Partner ordered on behalf of Enrolled Affiliate(s) under this agreement using a cryptographic license package, consisting of a token issuance license and associated license files (“License Package”), issued for each Product to Government Partner on behalf of each Enrolled Affiliate or Enrolled Affiliate by Microsoft for the purpose of activation of such Product, provided that, Government Partner requires each Enrolled Affiliate, via a modification to the applicable Government Contract(s), to (1) protect the License Package using all reasonable security measures, including but not limited to, encryption, access control lists, and marking any associated certificates, tokens and files as non-exportable; (2) agree that a failure to properly secure the License Package will be considered a material breach of the applicable Government Contract; and (3) acknowledge that each Enrolled Affiliate may be required to use a new License Package for significant updates or releases of previously activated Products. Microsoft may provide Government Partner instructions to provide to Enrolled Affiliate(s) or Enrolled Affiliate(s) instructions] regarding the use of License Packages, and may update such instructions from time to time.” All other provisions of

the agreement and the applicable License Agreement/Product Use Rights remain in full force and effect.

17. Copies necessary for internal deployment: Each Enrolled Affiliate may make as many copies of the products licensed under the Enrollment as necessary to distribute the products to the users within its agency. All copies of any Product must be true and complete copies (including copyright and trademark notices) from master copies, acquired from or made available by a Microsoft approved fulfillment source for that product. Each Enrolled Affiliate may use a third party to make and distribute copies in accordance with this section, but the Enrolled Affiliate is responsible for third-party actions to the same extent it would be if the third party were its employee. The Enrolled Affiliate must make reasonable efforts to make employees, agents and other individuals running a product aware that the Product is licensed from Microsoft and subject to the terms of this Agreement.

18. Re-imaging rights: If an Enrolled Affiliate or any Affiliate included within its Enterprise has licensed products from an original equipment manufacturer (OEM), through a retail source or under any Microsoft program other than this Agreement, it may use copies made from the media provided under this Agreement in place of any copies made from the media provided through that separate source, so long as it complies with the following restrictions.

The Enrolled Affiliate must have obtained a separate license from the separate source for each copy being replaced.

The product, language, version and all components (in the case of product suites) of the copies made from the media provided under an enrollment must be identical to the product, language, version and all components of the copies they replace.

Except for copies of an operating system and copies of Products licensed under another Microsoft program, the Product type (e.g., upgrade of full License) must be identical to the Product type from the separate source.

The use of any copies made under this subsection is subject to the terms and use rights provided with the copies being replaced, and nothing in this section creates or extends any warranty or support obligation.

19. License copies for training, evaluation, research and development (including Research Labs) and back-up: During the term of an Enrollment (including any renewal term), each enrolled affiliate and any agency affiliate included in its enterprise may (i) run up to 20 complimentary copies of any additional product in a dedicated training facility on their premises; (ii) run up to 10 complimentary copies of any product that Microsoft make available to license as an additional product for a 60-day evaluation period; (iii) run complimentary copies of enterprise products and additional products on 1% (one percent) of the enrolled affiliates qualified desktops (or Qualified Users) for research and

development purposes; and (iv) make and retain one complimentary copy of any licensed product for back-up or archival purposes for each of their distinct geographic locations

20. Secure Host Baseline (formerly known as DoD Unified Master Gold Disk (UMGD) Distribution): In addition to the grant of license described under this Agreement, Licensor grants to the DoD permission to reproduce and distribute a copy of the Validation Authority (hereafter "licensed software") on the Gold Master Disk (GMD) to the Defense Information Systems Agency (DISA) for hosting and access and use by DoD Component agencies and the Services who have an active license to use the licensed software.

The GMD shall only be distributed by licensee and/or DISA under the following terms and conditions:

- a. The DoD Component agency and the Services receiving the GMD shall already have a current and active license with the Licensor to use the licensed software;
- b. the DoD Component agency and the Services shall have a "Unique License Key" provided by Licensor solely to access the licensed software on the GMD for use only under the terms and conditions of the DoD Component or Services license agreement with Licensor;
- c. the DoD Component agency and Services shall keep the "Unique License Key" confidential and shall not provide it to any other DoD Component agency, Service or other DoD Department;
- d. the DoD shall be solely responsible for all expenses incurred in the reproduction and distribution of the licensed software on the GMD;
- e. use of the licensed software other than in connection with the GMD and as provided in the license agreement governing the DoD Component or Service is strictly prohibited;
- f. all licenses are appropriately ordered and paid for by the using agency.
- g. **Software Titles Incorporated by this License Agreement:** All software and online titles offered through Microsoft's Select Agreement and Enterprise Agreement Volume License Channels will be incorporated into this BPA where applicable and any and all other software or software titles which may be added through Licensor's in-house development or corporate acquisition. It is the DoD's anticipation this agreement will cover any and all software companies Microsoft may acquire in the future whose software is offered through Microsoft's Select Agreement and Enterprise Agreement Volume License Channels.
- h. **Licenses with Software Assurance:** In the event that Licenses with Software Assurance have not expired prior to a new contract/enrollment being established, Microsoft will work with the DoD in good faith to determine how to accommodate this scenario. Following are possible courses of action:

- a. Terminate the Software Assurance coverage and roll that product license onto the new contract with prorated Software Assurance coverage that begins when the original Software Assurance was terminated.
- b. Roll the current product license into the new contract with prorated Software Assurance coverage and allow the original Software Assurance coverage to expire naturally.
- c. In the event of termination of the BPA by the DoD, the DoD will be entitled to Software Assurance coverage for the duration of such coverage for which the DoD has paid in full.
- i. **DoD Enterprise License:** The parties agree that in the spirit of cooperation, there may be an instance, during the course of this BPA, where the DoD desires a DoD-Wide Microsoft Enterprise Agreement. The parties agree that all will work in good faith towards implementation of a mutually beneficial DoD-Wide Enterprise Agreement, that all terms contained in this agreement may become part of the DoD-Wide Enterprise Agreement and the DoD and Microsoft will work in good faith on issues that may hamper such an agreement (legacy licenses and the accompanying support, Right-sizing the enterprise, etc.).

Appendix A

Microsoft License Terms and Conditions

MICROSOFT CORPORATION ("MICROSOFT") IS A FIRST TIER SUBCONTRACTOR UNDER THIS CONTRACT. THESE MICROSOFT LICENSE TERMS AND CONDITIONS APPLY TO MICROSOFT PRODUCTS THAT YOU ORDER FROM THE CONTRACTOR UNDER THE CONTRACTOR'S GSA SCHEDULE CONTRACT (THE "CONTRACT"). THESE MICROSOFT LICENSE TERMS AND CONDITIONS SHALL TAKE PRECEDENCE OVER ANY CONFLICTING TERMS IN AN ORDER OR ORDERING DOCUMENTATION.

In this agreement, the following definitions apply:

"Additional Product" means any Product identified as such in the Product List and chosen for Enrolled Affiliate under the applicable Enrollment and identified on your Order.

"Affiliate" means any legal entity that a party owns, that owns a party, or that is under common ownership with a party. "Ownership" means, for purposes of this definition, control of more than a 50% interest in an entity.

"Community" means the community consisting of one or more of the following: (1) a Government, (2) an Enrolled Affiliate using eligible Government Community Cloud Services to provide solutions to a Government or a qualified member of the Community, or (3) an Enrolled Affiliate with Customer Data that is subject to Government regulations for which the Enrolled Affiliate determines and Microsoft agrees that the use of Government Community Cloud Services is appropriate to meet the Enrolled Affiliate's regulatory requirements. Membership in the Community is ultimately at Microsoft's discretion, which may vary by Government Community Cloud Service.

"Customer Data" means all data, including all text, sound, software, or image files that are provided to Microsoft by, or on behalf of, Enrolled Affiliate through its use of the Online Services.

Any reference in this agreement or an Enrollment to a "day" means a calendar day, except references that specify "business day".

"Enrollment" means the document that Government Partner submits to Microsoft to place orders for Enrolled Affiliate.

"Enrolled Affiliate" or "you" means any entity of the United States or entity authorized by the United States that enters into a Government Contract for Products with Government Partner.

"Enterprise" means Enrolled Affiliate and the Affiliates listed on an Enrollment.

"Enterprise Product" means any Desktop Platform Product that Microsoft designates as an Enterprise Product in the Product Terms for which Government Partner chooses to order License(s) under an Enrollment for Enrolled Affiliate. Enterprise Products must be licensed for all Qualified Devices and Qualified Users on an Enterprise-wide basis under this program.

"Federal Agency" means a bureau, office, agency, department or other entity of the United States Government.

"Fixes" means Product fixes, modifications or enhancements or their derivatives that Microsoft releases generally (such as Product service packs), or provides to Enrolled Affiliate to address a specific issue.

"Government" means a Federal Agency, State/Local Entity, or Tribal Entity acting in its governmental capacity.

"Government Community Cloud Services" means Microsoft Online Services that are provisioned in Microsoft's multi-tenant data centers for exclusive use by or for the Community and offered in accordance with the National Institute of Standards and Technology (NIST) Special Publication 800-145. Microsoft Online Services that are Government Community Cloud Services are designated as such in the Use Rights and Product Terms.

“Government Contract” means the Government Partner’s GSA Schedule Contract, which incorporates these Microsoft License Terms and Conditions.

“Government Partner” means the entity from whom you place your order for Products under the Government Contract.

“Industry Device” (also known as line of business device) means any device that: (1) is not useable in its deployed configuration as a general purpose personal computing device (such as a personal computer), a multi-function server, or a commercially viable substitute for one of these systems; and (2) only employs an industry or task-specific software program (e.g. a computer-aided design program used by an architect or a point of sale program) (“Industry Program”). The device may include features and functions derived from Microsoft software or third-party software. If the device performs desktop functions (such as email, word processing, spreadsheets, database, network or Internet browsing, or scheduling, or personal finance), then the desktop functions: (1) may only be used for the purpose of supporting the Industry Program functionality; and (2) must be technically integrated with the Industry Program or employ technically enforced policies or architecture to operate only when used with the Industry Program functionality.

“License” means Enrolled Affiliate’s right to use the quantity of a Product ordered. For certain Products, a License may be available on a subscription basis (“Subscription License”). Licenses for Online Services will be considered Subscription Licenses under these Additional Use Right and Restrictions.

“Managed Device” means any device on which any Affiliate in the Enterprise directly or indirectly controls one or more operating system environments. Examples of Managed Devices can be found in the Product Terms.

“Online Services” means the Microsoft-hosted services identified in the Online Services section of the Product Terms.

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

“Order” means the order placed by you to the Government Partner under the Government Partner’s GSA Schedule contract.

“Product” means all products identified on the Product Terms, such as software, Online Services and other web-based services, including pre-release or beta versions. Product availability may vary by region.

“Product Terms” means the document that provides information about Microsoft Products available through volume licensing. The Product Terms document is published on the Volume Licensing Site at <http://explore.ms.com> and is updated from time to time.

“Qualified Device” means any device that is used by or for the benefit of Enrolled Affiliate’s Enterprise and is: (1) a personal desktop computer, portable computer, workstation, or similar device capable of running Windows Pro locally (in a physical or virtual operating system environment), or (2) a device used to access a virtual desktop infrastructure (“VDI”). Qualified Devices do not include any device that is: (1) designated as a server and not used as a personal computer, (2) an Industry Device, or (3) not a Managed Device.

At its option, the Enrolled Affiliate may designate any device excluded above (e.g., Industry Device) that is used by or for the benefit of the Enrolled Affiliate’s Enterprise as a Qualified Device for all or a subset of Enterprise Products or Online Services the Enrolled Affiliate has selected.

“Qualified User” means a person (e.g., employee, consultant, contingent staff) who: (1) is a user of a Qualified Device, or (2) accesses any server software requiring an Enterprise Product Client Access License or any Enterprise Online Service. It does not include a person who accesses server software or

an Online Service solely under a License identified in the Qualified User exemptions in the Product Terms.

“Reserved License” means for an Online Service identified as eligible for true-ups in the Product Terms, the License reserved by Enrolled Affiliate prior to use and for which Microsoft will make the Online Service available for activation.

“SLA” means Service Level Agreement, which specifies the minimum service level for Online Services and is published on the Volume Licensing Site.

“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” means an offering that provides new version rights and other benefits for Products as described in the Product Terms.

“Trade Secret” means information that is not generally known or readily ascertainable to the public, has economic value as a result, and has been subject to reasonable steps under the circumstances to maintain its secrecy.

“Tribal Entity” means a federally-recognized tribal entity performing tribal governmental functions and eligible for funding and services from the U.S. Department of Interior by virtue of its status as an Indian tribe.

“Use Rights,” means the use rights or terms of service for each Product published on the Volume Licensing Site and updated from time to time. The Use Rights supersede the terms of any end user license agreement that accompanies a Product. The Use Rights for Software are published by Microsoft in the Product Terms. The Use Rights for Online Services are published in the Online Services Terms.

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

1. Licenses for Products.

Upon Microsoft’s acceptance of Government Partner’s Enrollment for an Enrolled Affiliate, the Enrolled Affiliate has the following rights during the term of its Order. These rights apply to the Licenses obtained under the Order.

- a. **License Grant.** By accepting an Enrollment, 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 the Enrollment. The rights granted are subject to the terms of the Use Rights and the Product Terms and are conditions on Enrolled Affiliate’s continued compliance with the terms of this agreement, including, without limitation, payment for the Licenses. 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 Enrollment is renewed or 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.**
 - (i) **Products (other than Online Services).** The Use Rights in effect on the effective date of the Enrollment will apply to Enterprise’s use of the version of each Product that is current at the time. For future versions and new Products, the Product Use Rights in effect when those versions and Products are first released will apply. Changes Microsoft

makes to the Use Rights for a particular version will not apply unless the Enrolled Affiliate chooses to have those changes apply. The Use Rights applicable to perpetual Licenses that were acquired under a previous agreement or Enrollment are determined by the agreement or Enrollment under which they were acquired. Renewal of Software Assurance does not change which Use Rights apply to those Licenses.

(ii) Online Services. For Online Services, the Use Rights in effect on the subscription start date will apply for the subscription term as defined in the Product Terms.

(iii) More restrictive use rights. If a new version of a Product has more restrictive use rights than the version that is current at the start of the applicable initial or renewal term of the Enrollment, those more restrictive use rights will not apply to the Enterprise's use of that Product during the term.

- d. Downgrade rights.** Enterprise may use an earlier version of Product than the version that is current on the effective date of the Enrollment. In that case, the Use Rights for the current version apply to the use of the earlier version. If the earlier Product version includes features that are not in the new version, then the Use Rights applicable to the earlier version apply with respect to those features.
- e. New Version Rights under Software Assurance.** Enrolled Affiliate must order and maintain continuous Software Assurance coverage for each License ordered. With Software Assurance coverage, Enterprise automatically has the right to use a new version of a licensed Product as soon as it is released, even if Enterprise chooses not 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.** The Government Contract, the Order, the Enrolled Affiliate's order confirmation, and any documentation evidencing transfers of Licenses, together with proof of payment, will be the Enrolled Affiliate's evidence of all Licenses ordered by the Government Partner under an Enrollment for an Enrolled Affiliate.
- g. Reorganizations, Consolidations, and Privatizations.** If the number of Licenses covered by an Enrollment changes by more than ten percent as a result of a reorganization, consolidation, or privatization of any member of the Enterprise, Microsoft will work with Government Partner in good faith to determine how to accommodate the Enterprise's changed circumstances in the context of these Additional Use Rights and Restrictions.
- h. Modification or termination of an Online Service for regulatory reasons.** Microsoft may modify or terminate an Online Service in any country or jurisdiction where there is any current or future government requirement or obligation that: (1) subjects Microsoft to any regulation or requirement not generally applicable to businesses operating there; (2) presents a hardship for Microsoft to continue operating the Online Service without modification; and/or (3) causes Microsoft to believe these terms or the Online Service may be in conflict with any such requirement or obligation.
- i. Program updates.** Microsoft may make a change to the Enterprise and/or Enterprise Subscription programs that will make it necessary for Enrolled Affiliates to enter into a new agreement and Enrollments with Government Partner at the time of an Enrollment renewal. If any such updates occur during a current contract, including option periods, such change(s)

will be made at no increase in cost to Enrolled Affiliate: all pricing in the current contract, including contract options will be honored despite any such change(s).

2. *Making copies of Products and re-imaging rights.*

- a. **General.** Enrolled Affiliate may make as many copies of the 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 that 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 the Government Contract and the Order.
- 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 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 Product for a 60-day evaluation period, and (3) use one complimentary copy of any licensed Product for back-up or archival purposes for each of its distinct geographic locations. Trials for Online Services may be available if specified in the Use Rights.
- c. **Right to re-image.** In certain cases, re-imaging is permitted using the 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 the Order 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 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 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 warranty or support obligation.

3. *Transferring and assigning 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 (1) a reorganization or privatization of an Affiliate or a division of an Affiliate or (2) a consolidation involving Enrolled Affiliate or an Affiliate.

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 transfer of License 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, 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 Enterprise. Licenses and Software Assurance may be reassigned as described in the Use Rights.

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

- a. **Products.** Use of any Product is governed by the Use Rights specific to each Product and version and by these Additional Use Rights and Restrictions.
 - (i) **Fixes.** Each fix is under the same license terms as the Product to which it applies. If a Fix is not provided for a specific Product, any use terms Microsoft provides with the Fixe will apply.
- b. **Non-Microsoft software and technology.**

Enrolled Affiliate is solely responsible for any non-Microsoft software or technology that it installs or uses with the Products or Fixes.

- (i) Microsoft is not a party to and is not bound by any terms governing Enrolled Affiliate's use of non-Microsoft software or technology. Without limiting the foregoing, non-Microsoft software or scripts linked to or referenced from any Product website, are governed by the open source licenses used by the third parties that own such code, not by Microsoft and Microsoft's licensing terms.
- (ii) If Enrolled Affiliate installs or uses any non-Microsoft software or technology with the Products or Fixes, it directs and controls the installation in and use of such software or technology in the Products or Fixes, through its actions (e.g., through Enrolled Affiliate's use of application programming interfaces and other technical means that are part of the Online Services). Microsoft will not run or make any copies of such non-Microsoft software or technology outside of its relationship with Enrolled Affiliate.
- (iii) **Restrictions** Enrolled Affiliate must not (and must not attempt to): (1) reverse engineer, decompile or disassemble any Product, Fix, or Services Deliverable, (2) install or use non-Microsoft software or technology in any way that would subject Microsoft's intellectual property or technology to obligations beyond those included in this agreement; or (3) work around any technical limitations in the Products or restrictions in Product documentation. Except as expressly permitted in this agreement, Enrolled Affiliate must not (i) separate and run parts of a Product on more than one device, upgrade or downgrade parts of a Product at different times, or transfer parts of a Product separately; or (ii) distribute, sublicense, rent, lease, lend, or use any Product, or Fix to offer hosting services to a third party.

No transfer of ownership; **Reservation of rights.** Products and Fixes are protected by copyright and other intellectual property rights laws and international treaties. Microsoft (1) does not transfer any ownership rights in any Products or Fixes and (2) reserves all rights not expressly granted to Enrolled Affiliate.

5. Confidentiality.

"Confidential Information" is non-public information that is designated "confidential" or that a reasonable person should understand is confidential, including Customer Data. Confidential Information does not include information that (1) becomes publicly available without a breach of this agreement, (2) the receiving party received lawfully from another source without a confidentiality obligation, (3) is independently developed, or (4) is a comment or suggestion volunteered about the other party's business, products or services.

Each party will take reasonable steps to protect the other's Confidential Information and will use the other party's Confidential Information only for purposes of the parties' business relationship. Neither party will disclose that Confidential Information to third parties, except to its employees, Affiliates, contractors, advisors and consultants ("Representatives") and then only on a need-to-know basis under nondisclosure obligations at least as protective as this agreement. Each party remains responsible for the use of the Confidential Information by its Representatives and, in the event of discovery of any unauthorized use or disclosure, must promptly notify the other party.

A party may disclose the other's Confidential Information if required by law; but only after it notifies the other party (if legally permissible) to enable the other party to seek a protective order.

Neither party is required to restrict work assignments of its Representatives who have had access to Confidential Information. Each party agrees that the use of information retained in Representatives' unaided memories in the development or deployment of the parties' respective products or services does not create liability under this agreement or trade secret law, and each party agrees to limit what it discloses to the other accordingly.

These obligations apply (i) for Customer Data until it is deleted from the Online Services, and (ii) for all other Confidential Information, for a period of five years after the Confidential Information is received.

Freedom of Information Act (FOIA). Notwithstanding anything in this section to the contrary, the parties acknowledge and agree that Enrolled Affiliate is subject to the United States Freedom of Information Act (5 U.S.C. § 552) and may disclose information in response to a valid request in accordance with FOIA. Should Enrolled Affiliate receive a request under FOIA for Microsoft's confidential information, Enrolled Affiliate agrees to give Microsoft adequate prior notice of the request and before releasing Microsoft's confidential information to a third party, in order to allow Microsoft sufficient time to seek injunctive relief or other relief against such disclosure.

6. Privacy and Compliance with Laws.

- a. Enrolled Affiliate consents to the processing of personal information by Microsoft and its agents to facilitate the subject matter of these Microsoft License Terms and Conditions and the applicable Order. Enrolled Affiliate will obtain all required consents from third parties (including Enrolled Affiliate's contacts, resellers, distributors, administrators, and employees) under applicable privacy and data protection law before providing personal information to Microsoft.
- b. Unless otherwise specified in the Enrollment or the Use Rights, personal information collected under these Microsoft License Terms and Conditions (i) may be transferred, stored and processed in the United States or any other country in which Microsoft or its contractors maintain facilities and (ii) will be subject to the privacy terms specified in the Use Rights. Microsoft abides by the EU Safe Harbor and the Swiss Safe Harbor frameworks as set forth by the U.S. Department of Commerce regarding the collection, use, and retention of data from the European Union, the European Economic Area, and Switzerland.
- c. **U.S. export.** Products and Fixes are subject to U.S. export jurisdiction. Enrolled Affiliate must comply with all applicable international and national laws, including the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, and end-user,

end use and destination restrictions by U.S. and other governments related to Microsoft products, services, and technologies.

7. Warranties.

a. Limited warranties and remedies.

(i) **Software.** Microsoft warrants that each version of the Software will perform substantially as described in the applicable Product documentation for one year from the date Enrolled Affiliate is first licensed for that version. If it does not and Enrolled Affiliate notifies Microsoft within the warranty term, then Microsoft will, at its option (1) return the price Customer paid for the Software license, or (2) repair or replace the Software.

(ii) **Online Services.** Microsoft warrants that each Online Services will perform in accordance with the applicable SLA during the Enrolled Affiliate's use. Enrolled Affiliate's remedies for breach of this warranty are in the SLA.

The remedies above are Enrolled Affiliate's sole remedies for breach of the warranties in this section. Enrolled Affiliate waives any breach of warranty claims not made during the warranty period.

- b. Exclusions.** The warranties in this agreement do not cover problems caused by accident, abuse or use in a manner inconsistent with this agreement, including failure to meet minimum system requirements. These warranties do not apply to free, trial, pre-release, or beta Products, or to components of Products that Enrolled Affiliate is permitted to redistribute.
- c. DISCLAIMER.** Microsoft provides no other warranties or conditions and disclaims any other express, implied or statutory warranties, including warranties of quality, title, non-infringement, merchantability, and fitness for a particular purpose.

8. Defense of third party claims.

- a. By Microsoft.** Microsoft will defend Enrolled Affiliate against any claims made by an unaffiliated third party that (i) any Product or Fix made available by Microsoft infringes its patent, copyright or trademark or makes unlawful use of its Trade Secret, or (ii) that arises from Microsoft's provision of an Online Service in violation of laws applicable to all online services providers. Microsoft will pay the amount of any resulting adverse final judgment or approved settlement. This does not apply to claims or awards based on (i) Customer Data; (ii) non-Microsoft software; (iii) modifications to a Product or a Fix Enrolled Affiliate makes or any specifications or materials Enrolled Affiliate provides; (iv) Enrolled Affiliate's combination of a Product or Fix with (or damages based on the value of) a non-Microsoft product, data, or business process; (v) Enrolled Affiliate's use of a Microsoft trademark without express, written consent or the use or redistribution of a Product or Fix in violation of this agreement; (vi) Enrolled Affiliate's continued use of a Product or Fix after being notified to stop due to a third party claim; or (vii) Products or FIXES provided free of charge.
- b. Your agreement to protect.** Enrolled Affiliate agrees that use of Customer Data or non-Microsoft software Microsoft hosts on Enrolled Affiliate's behalf will not infringe any third party's patent, copyright or trademark or make unlawful use of any third party's Trade Secret. . In addition, Enrolled Affiliate will not use an Online Service to gain unauthorized

access to or disrupt any service, data, account or network in connection with the use of the Online Services.

- c. **Rights and remedies in case of possible infringement or misappropriation.** If Microsoft reasonably believes that a claim under this section may result in a legal bar prohibiting Enrolled Affiliate's use of the Product or Fix, Microsoft will seek to obtain the right for Enrolled Affiliate to keep using it or modify or replace it with a functional equivalent, in which case Enrolled Affiliate must discontinue use of the prior version immediately. If these options are not commercially reasonable, Microsoft may terminate Enrolled Affiliate's right to the Product or Fix and refund any amounts Enrolled Affiliate has paid for those rights to Software and Fixes and, for Online Services, any amount paid for a usage period after the termination date.
- d. **Other terms.** Enrolled Affiliate must notify Microsoft promptly in writing of a claim subject to this section; give Microsoft sole control over the defense and settlement; and provide reasonable assistance in defending the claims. Microsoft will reimburse Enrolled Affiliate for reasonable out of pocket expenses that it incurs in providing assistance. The remedies provided in this section are the exclusive remedies for the claims described in this section.

Notwithstanding the foregoing, Microsoft's rights set forth in this section (and the rights of the third party claiming infringement) shall be governed by the provisions of 28 U.S.C. § 1498.

9. *Limitation of liability.*

To the extent permitted by applicable law, for each Product, each party's maximum, aggregate liability to the other under this Agreement is limited to direct damages finally awarded in an amount not to exceed the amounts Enrolled Affiliate was required to pay for the applicable Products during the term of the Agreement, subject to the following:

- a. **Online Services.** For Online Services, Microsoft's maximum liability to Enrolled Affiliate for any incident giving rise to a claim will not exceed the amount Enrolled Affiliate paid for the Online Service during the 12 months before the incident.
- b. **Free Products and Distributable Code.** For Products provided free of charge and code that Enrolled Affiliate is authorized to redistribute to third parties without separate payment to Microsoft, Microsoft's liability is limited to direct damages finally awarded up to US\$5,000.
- c. **Exclusions.** In no event will either party be liable for indirect, incidental, special, punitive, or consequential damages, including loss of use, loss of profits, or interruption of business, however caused or on any theory of liability.
- d. **Exceptions.** No limitation or exclusions will apply to liability arising out of either party's (1) confidentiality obligations (except for all liability related to Customer Data, which will remain subject to the limitations and exclusions above); (2) defense obligations; or (3) violation of the other party's intellectual property rights.
- e. This clause shall not impair the U.S. Government's right to recover for fraud or crimes arising out of or related to these Microsoft License Terms and Conditions under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733.

10. *True-up Requirements*

- a. **True-Up Order.** Enrolled Affiliate must submit an annual true-up order that accounts for changes since the initial order or last true-up order. If there are no changes, then an update statement must be submitted instead of a true-up order. Microsoft, at its discretion, may validate the true-up data submitted through a formal product deployment assessment using an approved Microsoft partner.

- b. **Enterprise Products.** Enrolled Affiliate must determine the number of Qualified Devices and Qualified Users (if ordering user-based Licenses) at the time the true-up order is placed and must order additional Licenses for all Qualified Devices and Qualified Users that are not already covered by existing Licenses, including any Enterprise Online Services.
- c. **Additional Products.** For Additional Products that have been previously ordered, Enrolled Affiliate must determine the maximum number of Additional Products used since the latter of the initial order, the last true-up order, or the prior anniversary date and submit a true-up order that accounts for any increase.
- d. **Online Services.** For Online Services identified as eligible for true-up in the Product Terms, Enrolled Affiliate may reserve the additional Licenses prior to use, and payment may be deferred until the next true-up order. Microsoft will provide a report of Reserved Licenses in excess of existing orders to Enrolled Affiliate's Government Partner. Reserved Licenses will be invoiced retroactively to the month in which they were reserved.
- e. **Subscription License reductions.** Enrolled Affiliate may reduce the quantity of Subscription Licenses at the enrollment anniversary date on a prospective basis if permitted in the Product Terms as follows:
 - i. For Subscription Licenses part of an Enterprise-wide purchase, Licenses may be reduced if the total quantity of Licenses and Software Assurance for an applicable group meets or exceeds the quantity of Qualified Devices identified on the Product Selection Form and includes any additional Qualified Devices and Qualified Users added in any prior true-up orders. Step-up Licenses and add-on subscription licenses do not count towards this total count.
 - ii. For Enterprise Online Services not a part of an Enterprise-wide purchase, Licenses can be reduced as long as the initial order minimum requirements are maintained.
 - iii. For Additional Products available as Subscription Licenses, Enrolled Affiliate may reduce the Licenses. If the License count is reduced to zero, then Enrolled Affiliate's use of the applicable Subscription License will be cancelled.

Invoices will be adjusted to reflect any reductions in Subscription Licenses at the true-up order Enrollment anniversary date and effective as of such date.

- f. **Update statement.** An update statement must be submitted instead of a true-up order if, since the initial order or last true-up order, Enrolled Affiliate's Enterprise has not: (1) changed the number of Qualified Devices and Qualified Users licensed with Enterprise Products or Enterprise Online Services; and (2) increased its usage of Additional Products. This update statement must be signed by Enrolled Affiliate's authorized representative. The update statement must be received by Microsoft between 60 and 30 days prior to the Enrollment anniversary date. The last update statement is due within 30 days prior to the Expiration Date.
- g. **True-up order period.** The true-up order or update statement must be received by Microsoft between 60 and 30 days prior to each Enrollment anniversary date. The third-year true-up order or update statement is due within 30 days prior to the Expiration Date, and any license reservations within this 30 day period will not be accepted. Enrolled

Affiliate may submit true-up orders more often to account for increases in Product usage, but an annual true-up order or update statement must still be submitted during the annual order period.

- h. **Late true-up.** If the true-up order or update statement is not received when due:
 - (i) Enrolled Affiliate will be invoiced for all Reserved Licenses not previously ordered; and .
 - (ii) *Subscription License reductions cannot be reported until the following Enrollment anniversary date (or at Enrollment renewal, as applicable).*

- i. **Step-up Licenses.** For Licenses eligible for a step-up under this Enrollment, Enrolled Affiliate may step-up to a higher edition or suite as follows:

For step-up Licenses included on an initial order, Enrolled Affiliate may order according to the true-up process.

If step-up Licenses are not included on an initial order, Enrolled Affiliate may step-up initially by following the process described in the Section titled "Adding new Products not previously ordered," then for additional step-up Licenses, by following the true-up order process.

11. Verifying compliance.

- a. **Right to verify compliance.** Enrolled Affiliate must keep records relating to all use and distribution of Products by Enrolled Affiliate and its Affiliates. Microsoft has the right, at its expense, to verify Enrolled Affiliate's and its Affiliates compliance with the Product's license terms.
- b. **Verification process and limitations.** Microsoft will provide Enrolled Affiliate at least 30 days' notice of its intent to verify compliance. Verification will take place during normal business hours and in a manner that does not interfere unreasonably with Enrolled Affiliates operations. Microsoft will engage an independent auditor, which will be subject to a confidentiality obligation and subject to Enrolled Affiliate's security requirements. Enrolled Affiliate must promptly provide the independent auditor with any information it reasonably requests in furtherance of the verification, including access to systems running the Products and evidence of licenses for Products Enrolled Affiliate hosts, sublicenses, or distributes to third parties. Enrolled Affiliate agrees to complete Microsoft's self-audit process; which Microsoft may require as an alternative to a third party audit. Any information collected in the self-audit will be used solely for purposes of determining compliance.
- c. **Remedies for non-compliance.** If verification or self-audit reveals any unlicensed use or distribution, then, within 30 days, Contractor will invoice Enrolled Affiliate for sufficient Licenses to cover that use or distribution. If unlicensed use or distribution is 5% or more, Enrolled Affiliate may be completely responsible for the costs Microsoft has incurred in verification, to the extent permitted by 31 U.S.C. § 1341 (Anti-Deficiency Act) and other applicable Federal law or similar state law (as applicable). The unlicensed use percentage is based on the total number of Licenses purchased compared to actual install base. Notwithstanding the foregoing, nothing in this section prevents the Enrolled Affiliate from disputing any invoice in accordance with the

Contract Disputes Act (41 U.S.C. §§7101-7109). If there is no unlicensed use, Microsoft will not subject Enrolled Affiliate to another verification for at least one year. By exercising the rights and procedures described above, Microsoft does not waive its rights to enforce this agreement or to protect its intellectual property by any other means permitted by law.

12. Government Community Cloud.

- a. **Community requirements.** Agency certifies that all Enrolled Affiliates in the Enterprise are members of the Community and represents that all Enrolled Affiliates in the Enterprise have agreed to use Government Community Cloud Services solely in their capacities as members of the Community and for the benefit of end users that are members of the Community. Use of Government Community Cloud Services by an entity that is not a member of the Community or to provide services to non-Community members is strictly prohibited and could result in termination of Government Partner's or an Enrolled Affiliate's license(s) for Government Community Cloud Services. Agency acknowledges that only Community members may use Government Community Cloud Services.
 - (i) All terms and conditions applicable to non-Government Community Cloud Services also apply to their corresponding Government Community Cloud Services, except as otherwise noted in the Use Rights and this Amendment.
 - (ii) Enrolled Affiliate may not deploy or use Government Community Cloud Services and corresponding non-Government Community Cloud Services in the same domain.
 - (iii) Any Enrolled Affiliate in the Enterprise that uses Government Community Cloud Services must maintain its status as a member of the Community. Maintaining status as a member of the Community is a material requirement for such services.
- b. **Use Rights for Government Community Cloud Services.** For Government Community Cloud Services, notwithstanding anything to the contrary in the Use Rights:
 - (i) Government Community Cloud Services will be offered only within the United States.
 - (ii) Additional European Terms, as set forth in the Use Rights, will not apply.
 - (iii) References to geographic areas in the Use Rights with respect to the location of Customer Data at rest, as set forth in the Use Rights, refer only to the United States.

13. Miscellaneous.

- a. **Severability.** If any provision in this agreement is found unenforceable, the balance of the agreement will remain in full force and effect.
- b. **Management and Reporting.** Enrolled Affiliate must provide and manage account details (e.g., contacts, orders, Licenses, software downloads) on Microsoft's Volume Licensing Service Center web site (or successor site) at: <https://www.microsoft.com/licensing/servicecenter>. On the effective date of this agreement and any Enrollments, the contact(s) Enrolled Affiliate has identified for this purpose will be provided access to this site and may assign additional users and contacts.
- c. **Waiver.** Failure to enforce any provision of this agreement will not constitute a waiver. Any waiver must be in writing and signed by the waiving party.

- d. **Free Products.** Any free Product provided to Enrolled Affiliate is for the sole use and benefit of the Enrolled Affiliate purposes only, and is not provided for use by or personal benefit of any specific government employee.
- e. **Assignment.** Enrolled Affiliate may assign all its rights under this agreement to an Affiliate, but it must notify Microsoft in writing of the assignment. Any other proposed assignment under this agreement must be approved by the other party in writing. Any assignment will not relieve the assigning party of its obligations under the assigned agreement. Any attempted assignment without required approval will be void.
- f. **Use of contractors.** Microsoft may use contractors to support services but will be responsible for their performance subject to the terms of this agreement.
- g. **Third party beneficiary.** Microsoft is a third party beneficiary of this agreement and may enforce its terms.
- h. **Survival.** All provisions survive termination or expiration of this agreement except those requiring performance only during the term of the agreement.
- i. **Privacy and Compliance with applicable Laws, privacy and security.**
 - (i) Microsoft and Enrolled Affiliate will each comply with all applicable laws and regulations (including applicable security breach notification law). However, Microsoft is not responsible for compliance with any laws applicable to Enrolled Affiliate or Enrolled Affiliate's industry that are not also generally applicable to information technology services providers.
- j. **Natural disaster.** In the event of a natural disaster, Microsoft may provide additional assistance or rights to Enrolled Affiliate than are set forth in this agreement by posting them on <http://www.microsoft.com> at such time.
- k. **Disputes.** Any breach of these Microsoft License Terms and Conditions, including Enrolled Affiliate's obligations set forth herein, shall be handled in accordance with the Contracts Disputes Act (41 U.S.C. §§7101-7109).
- l. **Voluntary Product Accessibility Templates.** Microsoft supports the government's obligation to provide accessible technologies to its citizens with disabilities as required by Section 508 of the Rehabilitation Act of 1973, and its state law counterparts. The Voluntary Product Accessibility Templates ("VPATs") for Products and the Microsoft technologies used in providing the Online Services can be found at Microsoft's VPAT page. Further information regarding Microsoft's commitment to accessibility can be found at <http://www.microsoft.com/enable>.
- m. If any document incorporated by reference into these Microsoft License Terms and Conditions, including the Use Rights and terms included and/or referenced or incorporated herein and/or therein, contains a provision (a) allowing for the automatic termination of your license rights or Software Assurance services; (b) allowing for the automatic renewal of services and/or fees; (c) requiring the governing law to be anything other than Federal law; and/or (d) otherwise violates applicable Federal law, then, such terms shall not apply with respect to the Federal Government. If any document incorporated by reference into these Microsoft License Terms and Conditions, including the Use Rights and terms included and/or referenced or incorporated herein and/or therein contains an indemnification provision, such provision shall not apply as to the United States indemnifying Microsoft or any other party.
- n. No provisions of any shrink-wrap or any click-through agreement (or other similar form of agreement) that may be provided in conjunction with any product(s) or services acquired under these Microsoft License Terms and Conditions shall apply in place of, or serve to modify any provision of these Microsoft License Terms and Conditions, even if a user or authorized officer of Enrolled Affiliate purports to have affirmatively accepted such shrink-wrap or click-through provisions. For the avoid of doubt and without limiting the foregoing, in the event of a conflict between any such shrink-wrap or click-through provisions (irrespective

of the products or services that such provisions attach to) and any term or condition of these Microsoft License Terms and Conditions, then the relevant term or condition of these Microsoft License Terms and Conditions shall govern and supersede the purchase of such product(s) or services to the extent of any such conflict. All acceptance of agreements and renewals shall be executed in writing.

- o. Section headings.** All section and subsection headings used in this agreement are for convenience only and shall not affect the interpretation of this agreement