

Program Signature Form

Agreement number

V4697871

Note: Enter the applicable active numbers associated with the documents below. Microsoft requires the associated active number be indicated here, or listed below as new.

For the purposes of this form, "Customer" can mean the signing entity, Enrolled Affiliate, Government Partner, Institution, or other party entering into a volume licensing program agreement.
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This signature form and all contract documents identified in the table below are entered into between the Customer and the Microsoft Affiliate signing, as of the effective date identified below.

Contract Document	Number or Code
Open Value Agreement Government	X20-10011G

By signing below, Customer and the Microsoft Affiliate agree that both parties (1) have received, read and understand the above contract documents, including any websites or documents incorporated by reference and any amendments and (2) agree to be bound by the terms of all such documents.

Customer
Name of Entity (must be legal entity name)* Monterey County Emergency Communications Signature* Printed First and Last Name* Printed Title* Signature Date*
Tax ID

** indicates required field*

Customer (Optional 2 nd)
Name of Entity (must be legal entity name)* Signature* Printed First and Last Name* Printed Title* Signature Date*
Tax ID

** indicates required field*

If Customer requires physical media, include the media form(s) with this signature form. For OV/OVS programs, products are available for online download from Volume Licensing Service Center.

After this signature form is signed by the Customer, send it and the Contract Documents to your Reseller, who must submit them to the Regional Operation Center. When the Agreement has been processed, Customer will receive a confirmation.

Prepared By: Franz Ordonez microsoft-licensing@ingrammicro.com
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Open Value Agreement

Agreement number
Microsoft to complete

V4697871

Previous Agreement(s)
number
Reseller to complete

This agreement must be attached to a signature form to be valid.

This Open Value Agreement is entered into between Customer and Microsoft as of the effective date identified in the signature form.

Licensing Customer information.

Customer ID: 96641F8E
Entity name* Monterey County Emergency Communications
Contact name: First* Lee Ann **Last*** Magoski
Contact email address* magoskil@countyofmonterey.gov
Street address* 1322 Natividad Road
City* Salinas,
State/Province* CA
Postal code* 93906-3101
Country* United States
Phone 0000000000
Tax ID (if applicable)
** indicates required field*

The personal information Customer provides in connection with this agreement will be used and protected according to the privacy statement available at <https://www.microsoft.com/licensing/servicecenter>.

Notices contact and online administrator.

This contact (1) receives all contractual notices and (2) is the Online Administrator for the Volume Licensing Service Center and may grant online access to others.

Entity name* Monterey County Emergency Communications
Contact name: First* Lee Ann **Last*** Magoski
Contact email address* magoskil@countyofmonterey.gov
Street address* 1322 Natividad Road
City* Salinas,
State/Province* CA
Postal code* 93906-3101
Country* United States
Phone 0000000000

This contact is a third party (not the Customer)

Warning: This contact receives personally identifiable information about the Customer.

** indicates required field*

This agreement consists of (1) the terms and conditions of this agreement, (2) the Product Terms, (3) the Use Rights, (4) the signature form, (5) any orders submitted under this agreement, and (6) if Customer is a qualified charitable organization or government entity, the Eligibility Definition on <http://www.microsoft.com/licensing/contracts>.

A. Select a purchasing option.

Please select one of the options below:

- Non organization-wide option** (complete sections B, C, and D below), minimum 5 Licenses in each category (Products and Licenses are identified at the time of order).
- Organization-wide option**, select at least one Enterprise Product or Enterprise Online Service from the product categories below to cover all Qualified Devices and/or Qualified Users, depending on the License type. Customer’s Enterprise must have a minimum of 5 Qualified Devices or Qualified Users. *To qualify for the platform discount, check all three product categories.*

OS	<input type="checkbox"/> Please see the Product Terms for current Windows Desktop Operating System options
Office Applications	<input type="checkbox"/> Please see the Product Terms for current Office Desktop Applications and Office 365 Applications options
Office 365 / CAL Suites	<input type="checkbox"/> Please see the Product Terms for current Office 365 Suite and CAL Suite options

B. Define Customer’s Enterprise (select only one).

Use this section to identify which Affiliates are included in the Enterprise. When a selection is made that includes Affiliates, Customer must cover all Affiliates’ Qualified Devices and/or Qualified Users with an Enterprise Product or Enterprise Online Service from section A above, at the beginning of the agreement. Customer’s Enterprise must consist of entire legal entities, not partial entities such as departments, divisions, or business units. Customer’s Enterprise includes (Check only one box in this section):

- Customer only
- Customer and all Affiliates within Customer’s Defined Region
- Customer and the following Affiliate(s) within Customer’s Defined Region
- Customer and all Customers’ Affiliates within its Defined Region with the following Affiliate(s) excluded:

Please indicate whether the Customer’s Enterprise will include all new Affiliates acquired after the start of this agreement: Include future Affiliates

C. Identify the Subscriptions manager and Software Assurance and online services managers (if different from notices).

a. Software Assurance manager

This contact will receive online permissions to manage the Software Assurance benefits under this agreement.

Entity name* Monterey County Emergency Communications

Contact name: First* Lee Ann **Last*** Magoski

Contact email address* magoskil@countyofmonterey.gov

Street address* 1322 Natividad Road

City* Salinas,
State/Province* CA
Postal code* 93906-3101
Country* United States
Phone 0000000000
** indicates required field*

b. Subscriptions manager

This contact will assign MSDN Subscription Licenses to the individual subscribers under this agreement. Assignment of the Subscription Licenses is necessary for access to any of the online benefits, such as subscription downloads. This contact will also manage any complimentary or additional media purchases related to these subscriptions.

Entity name* Monterey County Emergency Communications
Contact name: First* Lee Ann **Last*** Magoski
Contact email address* magoskil@countyofmonterey.gov
Street address* 1322 Natividad Road
City* Salinas,
State/Province* CA
Postal code* 93906-3101
Country* United States
Phone 0000000000
** indicates required field*

c. Online Services manager

This contact will be provided online permissions to manage the Online Services ordered under this agreement.

Entity name* Monterey County Emergency Communications
Contact name: First* Lee Ann **Last*** Magoski
Contact email address* magoskil@countyofmonterey.gov
Street address* 1322 Natividad Road
City* Salinas,
State/Province* CA
Postal code* 93906-3101
Country* United States
Phone 0000000000
** indicates required field*

D. Name Customer's reseller/distributor.

a. Reseller

Entity name* EGROUP HOLDING COMPANY LLC
Contact name: First* Matt **Last*** Naumoff
Contact email address* insidesales@egroup-us.com
Street address* 482 WANDO PARK BLVD
City* MOUNT PLEASANT
State/Province* SC
Postal code* 29465
Country* United States
Phone 843-531-6262
** indicates required field*

b. Distributor (if applicable)

Entity name* Ingram Micro

Contact name: First* Franz **Last*** Ordonez

Contact email address* microsoft-licensing@ingrammicro.com

Street address* 1759 Wehrle Drive

City* Williamsville

State/Province* NY

Postal code* 14221-7033

Country* United States

Phone 800-456-8000

** indicates required field*

Name of Microsoft contracting Affiliate and notices contact information for Microsoft

Microsoft Corporation
Dept. 551, Volume Licensing
6880 Sierra Center Parkway
Reno, Nevada 89511
USA

Electronically Submitted

Terms and Conditions

1. Definitions.

In this agreement, the following definitions apply:

“Additional Product” means any Product identified as such in the Product Terms and chosen by Customer under this agreement.

“Affiliate” means (1) any legal entity that controls, is controlled by, or that is under common control with a party, (2) if Customer is a government entity, any entity that meets the qualifying government criteria located at <http://www.microsoft.com/licensing/contracts> and is located in the same country as Customer, or (3) with regard to Customer if it is a charitable organization, any entity that meets the qualifying charity eligibility criteria located at <http://www.microsoft.com/licensing/contracts> and is located in the same country as Customer. “Control” means, ownership of more than a 50% interest of voting securities in an entity or the power to direct the management and policies of an entity.

“Customer” means the legal entity that has entered into this agreement.

“Customer Data” means all data, including all text, sound, software, image, or video files that are provided to Microsoft by, or on behalf of, Customer and its Affiliates through use of the Online Services.

“day” means a calendar day.

“Defined Region” means the geographical region as defined on the regional listing located at <https://www.microsoft.com/en-us/licensing/licensing-programs/open-regional> (or any successor link that Microsoft may designate) where the Customer is organized and operated.

“Enterprise” means Customer and the Affiliates it chooses to include under this agreement.

“Enterprise Online Service” means any Online Service designated as an Enterprise Online Service in the Product Terms and chosen by Customer under this agreement. Enterprise Online Services are treated as Online Services, except as noted.

“Enterprise Product” means any Product that Microsoft designates as an Enterprise Product or as qualifying for an organization-wide and/or platform discount on the Product Terms and chosen by Customer under this agreement. Enterprise Products must be licensed for all Qualified Devices and Qualified Users, depending on the License type, on an Enterprise-wide basis under this program.

“Fix(es)” means Product fixes, modifications, or enhancements or their derivatives that Microsoft either releases generally (such as Product service packs) or provides to Customer to address a specific issue.

“License” means the right to download, install, access and use a Product. For certain Products, a License may be available on a fixed term or subscription basis (“Subscription License”). Licenses for Online Services will be considered Subscription Licenses.

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

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

“Professional Services” means Product support services and Microsoft consulting services provided to Customer under this agreement. “Professional Services” does not include Online Services.

“Product” means all products identified on the Product Terms, such as all 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 and Professional Services available through volume licensing. The Product Terms document is published on the Volume Licensing Site and is updated from time to time.

“Qualified Device” means any device that is used by or for the benefit of Customer’s Enterprise and is: (1) a personal desktop computer, portable computer, workstation, or similar device capable of running Windows Professional 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 designated as a server and not used as a personal computer, or any device that only employs an industry- or task-specific software program. At its option, Customer may designate any device excluded above that is used by or for the benefit of Customer’s Enterprise as a Qualified Device for all or a subset of Enterprise Products or Online Services Customer has selected.

“Qualified User” means a person (e.g. employee, consultant, contingent staff) who (1) is a that user of a Qualified Device or (2) accesses any server software requiring an Enterprise Product Client Access License or any Enterprise Online Services. 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 List.

“SLA” means Service Level Agreement, which specifies the standards to which Microsoft agrees to adhere and by which it measures the level of service for an Online Service. The SLA is available at the Volume Licensing Site.

“Services Deliverables” means any computer code or materials, other than Products or Fixes, that Microsoft leaves with Institution at the conclusion of Microsoft’s performance of Professional Services.

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

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

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

“Use Rights” means, with respect to any licensing program, the use rights or terms of service for each Product and version published for that licensing program at the Volume Licensing Site and updated from time to time. The Use Rights include the Product-Specific License Terms, the License Model terms, the Universal License Terms, the Data Protection Terms, and the Other Legal Terms. The Use Rights supersedes the terms of any end user license agreement (on-screen or otherwise) that accompanies a Product.

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

2. Pricing.

- a. Organization-wide option.** Microsoft offers savings for individual Products ordered under the organization-wide option, and additional savings under the platform discount are available only at the time of the initial order. In addition, the prices Microsoft charges the distributor/reseller for Products ordered under the organization-wide option will not change during the first term of the agreement. Prices are re-established at renewal. The prices Microsoft charges the distributor/reseller for all other Products are established at the time of each order. If Customer elects the organization-wide option at the time it signs this agreement, it means that Customer agrees to order, for each selected Product, the number of Licenses equal to the number of its Qualified Devices and/or Qualified Users (including Qualified Devices and/or Qualified Users of its Affiliates listed on the cover pages, and including Qualified Devices and/or Qualified Users added during the first term and any renewal term).
- b. Product price and payment terms set by Customer’s reseller.** Customer’s prices for each Product will be established by its reseller.

3. **Licenses for products.**

- a. **License Grant.** Microsoft grants Customer a non-exclusive, worldwide and limited right to install and use the 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, the Use Rights and the Product Terms.
- b. **Use by Affiliates.** Customer may sublicense its Licenses for Products to any Affiliates located in Customer's Defined Region, but Affiliates may not sublicense these rights and their use must be consistent with the terms contained in this agreement.
- c. **Duration of Licenses.** Subscription Licenses and most Software Assurance rights are temporary and expire when this agreement is terminated or expires. For Online Services, the duration of the Subscription License starts at the time of Product activation and not the time of order and the Subscription License will remain subject to the terms of this agreement and the applicable Use Rights notwithstanding the termination or expiration of this agreement.
- d. **Applicable Use Rights.**
 - (i) **Products (other than Online Services).** The Use Rights in effect on the effective date of this agreement will apply to Customer's use of the version of each Product that is current at the time. For future versions and new Products, the 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 Customer chooses to have those changes apply.
 - (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.
- e. **Downgrade rights.** Customer may use an earlier version of a Product than the version that is current on the effective date of this agreement. 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.
- f. **New Version Rights under Software Assurance.** Customer must order and maintain continuous Software Assurance coverage for each License ordered. With Software Assurance coverage, Customer automatically has the right to use a new version of a licensed Product as soon as it is released, even if Customer chooses not to use the new version immediately.
- g. **License confirmation.** This agreement, Customer's order confirmation, and any documentation evidencing transfers of Licenses, together with proof of payment, will be Customer's evidence of all Licenses obtained under this agreement.
- h. **Non-Microsoft software and technology.** Customer is solely responsible for any non-Microsoft software or technology that it installs or uses with the Products or Fixes. Customer may not 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.
- i. **Restrictions on use.** Customer must not (and must not attempt to) reverse engineer, decompile, or disassemble the Product or Fix. Except as expressly permitted in this agreement, Customer must not (1) separate and run parts of a Product on more than one computer, upgrade or downgrade parts of a Product at different times, or transfer parts of a Product separately; or (2) distribute, sublicense, rent, lease, lend or host any Product or Fix.
- j. **Reservation of rights.** All rights not expressly granted are reserved to Microsoft.

4. How to order Products.

- a. Choosing a reseller.** Customer must choose and maintain a reseller authorized in Customer's Defined Region.
- b. Sign this agreement.** Customer will be directed to a password protected Microsoft Web site to accept this agreement and allow its reseller to place Customer's order. Customer will receive an agreement confirmation which will indicate Microsoft's acceptance of the agreement. The agreement confirmation may be sent by email. This agreement will be terminated if Customer fails to place an order within 30 days of agreement confirmation. After the reseller places Customer's first order, Customer will receive an order confirmation. If Customer is unable to access Microsoft's Web site, Customer should contact its reseller.
- c. Order Licenses and Software Assurance (or just Software Assurance if eligible).** Customer must place orders for additional copies and any new Products in the month in which it first runs those Products.
- d. Choose payment options.** If Customer elects to spread payments, Customer must submit an order each year through its reseller, even if there is no change in the number of Products run.
 - (i)** The order must be for no less than the number of Products ordered on its previous anniversary order plus any new and additional products ordered during the year. Customer's reseller will invoice Customer for the order.
 - (ii)** Microsoft will give Customer prior written notice each anniversary to submit an anniversary order to Customer's reseller. If Microsoft does not receive an order within 60 days after the anniversary of the effective date, Microsoft may invoice Customer directly (or instruct a third party to invoice and collect for it), for all sums due during the term of this agreement (based upon estimated retail prices plus twenty percent to cover Microsoft's extra administration costs).
 - (iii)** Microsoft accepts two payment options from its distributor/reseller under this agreement: equal annual installments or lump sum payment. However, other payment plans can be arranged between Customer and the reseller.
- e. Pay for orders.** Customer must pay its reseller for the Products ordered.
- f. Changing a reseller.** If Customer discontinues its relationship with its reseller, Customer must choose a replacement reseller in Customer's Defined Region. If Customer intends to change its reseller, Customer must notify Microsoft and the former reseller in writing on a form that Microsoft provides at least 30 days prior to the date on which the change is to take effect.
- g.** Open Charity Licensing and Pricing is not available in all countries. Where Charity licensing and pricing is not available, Charitable organizations must buy under Open License commercial pricing.
- h.** If Customer loses its status as a government or charitable organization subsequent to licensing products under this agreement, Customer may continue to use copies for which Customer is licensed, but Customer may not submit any new order for Licenses under the Microsoft Government or Charity Open License programs.

5. Making copies of Products and re-imaging rights.

- a. General.** Customer may make as many copies of Products as it needs to distribute them within the Enterprise. Copies must be true and complete (including copyright and trademark notices) from master copies obtained from a Microsoft approved fulfillment source. Customer may use a third party to make these copies, but Customer agrees that it will be responsible for that third party's actions. Customer agrees to make reasonable efforts to notify its

employees, agents and other individuals who use the Products that the Products are licensed from Microsoft and subject to the terms of this agreement.

- b. Right to re-image.** In certain cases, re-imaging is permitted using the Product media. If the Microsoft Product is licensed (1) from an original equipment manufacturer (OEM), (2) as full packaged Product through a retail source, or (3) under another Microsoft program, then media provided under this agreement may generally be used to create images for use in place of copies provided through that separate source. This right is conditional upon the following:
- (i) Separate Licenses must be acquired from the separate source for each Product that is re-imaged.
 - (ii) The Product, language, version, and components of the copies made must be identical to the Product, language, version, and all components of the copies they replace, and the number of copies or instances of the re-imaged Product permitted remains the same.
 - (iii) Except for copies of an operating system and copies of Products licensed under another Microsoft program, the Product type (e.g., upgrade or full License) re-imaged must be identical to the Product type from the separate source.
 - (iv) Customer 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.

6. Transferring and reassigning Licenses.

- a. License transfers.** License transfers are not permitted, except that Customer may transfer fully paid, perpetual licenses to:
- (i) an Affiliate located in the same Defined Region as Customer, or
 - (ii) a third party solely in connection with the transfer of hardware or employees to whom the licenses have been assigned as part of (1) a divestiture of an Affiliate or a division of an Affiliate or (2) a merger involving Customer or an Affiliate.
- b. Notification of License transfer.** Customer must notify Microsoft of a License transfer by completing a License transfer form, which can be obtained from <http://www.microsoft.com/licensing/contracts> and sending the completed form to Microsoft before the License transfer. No License transfer will be valid unless Customer provides to the transferee, and the transferee accepts in writing, the applicable Use Rights, use restrictions, limitations of liability (including exclusions and warranty provisions), and the transfer restrictions described in this section. Any License transfer not made in compliance with this section will be void.
- c. Internal Assignment of Licenses and Software Assurance.** Licenses and Software Assurance must be assigned to a single user or device within the Enterprise. Licenses and Software Assurance may be reassigned within the Enterprise as described in the Use Rights.
- d. Transfer of Software.** Notwithstanding any provisions concerning License transfers, nothing in the agreement prohibits the transfer of Software to the extent allowed under applicable law if the distribution right has been exhausted.

7. Term and termination.

- a. Effective Date.** This agreement will be effective on the date it is accepted by Microsoft unless a previous agreement or authorization number is provided. In that case, the effective

date will be one day following the expiration of the previous agreement or authorization number.

- b. Term.** This agreement ends 36 full calendar months from the effective date (first term). Microsoft will provide Customer prior written notice advising of the renewal options.
- c. Termination for cause.** Either party may terminate this agreement only in the event of a material breach or default of an obligation by the other party. Except where the breach is by its nature not curable within 30 days, the terminating party must give the other party 30 days prior written notice and opportunity to cure.
- d. 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.
- e. Termination for convenience.** Microsoft may terminate this agreement upon 30 days' prior notice to customer.
- f. Effect of termination or expiration.** When this agreement expires or is terminated, Customer must order all copies of Products it has run for which it has not previously submitted an order. All unpaid payments for Licenses immediately become due and payable.

8. How to renew this agreement.

- a. Renew Software Assurance by extension.** Customer has a one-time option to renew this agreement and place additional orders under it for one additional term of 36 full calendar months. However, if Microsoft makes a change to the Open Value program, Customer may have to enter into a new agreement. If Customer wishes to renew Software Assurance after the first term expires, it must submit a renewal order prior to or at the expiration of the first term. The new Software Assurance coverage will start the day after the first term ends. The renewal order must include:
 - (i)** Software Assurance coverage for Products run under an organization-wide option equal to the current number of desktops; and
 - (ii)** Software Assurance coverage for all Products run under a non-organization-wide option for which Customer wants to continue Software Assurance.
- b. Renew Software Assurance in new agreement.** If Customer wishes to renew Software Assurance after the agreement expires, it must submit a new order prior to or at the expiration of the agreement term. The new Software Assurance coverage will start the day after the existing agreement ends.

9. Confidentiality.

“Confidential Information” is non-public information that is designated “confidential” or that a reasonable person should understand to be confidential, including Customer Data, Professional Services, and the terms of Microsoft agreements. The Online Services Terms may provide additional obligations for, and limitations on disclosure and use of, 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 the 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 (1) for Customer Data until it is deleted from the Online Services, and (2) for all other Confidential Information, for a period of five years after a party receives the Confidential Information.

10. Compliance with applicable laws, privacy, and security.

- a. Microsoft and Customer each will comply with all applicable laws and regulations (including applicable security breach notification law). However, Microsoft is not responsible for compliance with any laws or regulations applicable to Customer or Customer’s industry that are not also generally applicable to information technology services providers.
- b. Customer consents to the processing of personal information by Microsoft and its agents to facilitate the subject matter of this agreement. Customer will obtain all required consents from third parties (including Customer’s contacts, resellers, distributors, administrators, and employees) under applicable privacy and data protection law before providing personal information to Microsoft.
- c. Personal information collected under this agreement (1) may be transferred, stored, and processed in the United States or any other country in which Microsoft or its service providers maintain facilities and (2) will be subject to the privacy terms specified in the Use Rights. Microsoft will abide by the European Economic Area and the Swiss data protection law regarding the collection, use, transfer, and retention, and other processing of personal data from the European Economic Area and Switzerland.
- d. **U.S. export.** Products, Fixes, and Services Deliverables are subject to U.S. export jurisdiction. Customer 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. For additional information related to Microsoft compliance with export rules, see <http://www.microsoft.com/exporting/>.

11. 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 Customer is first licensed for that version. If it does not, and Customer 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 Service will perform in accordance with the applicable SLA during Customer's use. Customer's remedies for breach of this warranty are in the SLA.

(iii) **Professional Services.** Microsoft warrants that it will perform Professional Services with professional care and skill. If Microsoft fails to do so, and Customer notifies Microsoft within 90 days of the date the Professional Services were performed, then Microsoft will, at its discretion, either re-perform the Professional Services or return the price Customer paid for them.

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

- b. **Exclusions.** The warranties in this agreement do not apply to 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 Customer is permitted to redistribute.
- c. **DISCLAIMER.** Except for the limited warranties above, 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.

12. *Defense of third party claims.*

The parties will defend each other against the third-party claims described in this section and will pay the amount of any resulting adverse final judgment or approved settlement, but only if the defending party is promptly notified in writing of the claim and has the right to control the defense and any settlement of it. The party being defended must provide the defending party with all requested assistance, information, and authority, and must take all reasonable action to mitigate its losses arising from the third-party claim. The defending party will reimburse the other party for reasonable out-of-pocket expenses it incurs in providing assistance. This section describes the parties' sole remedies and entire liability for such claims.

- a. **By Microsoft.** Microsoft will defend Customer against any third-party claim to the extent it alleges that a Product, Fix or Services Deliverable made available by Microsoft for a fee and used within the scope of the license granted (unmodified from the form provided by Microsoft and not combined with anything else) misappropriates a trade secret or directly infringes a patent, copyright, trademark or other proprietary right of a third party. If Microsoft is unable to resolve a claim of infringement under commercially reasonable terms, it may, at its option, either (1) modify or replace the Product, Fix or Services Deliverable with a functional equivalent; or (2) terminate Customer's license and refund any prepaid license fees (less depreciation on a five-year, straight-line basis) for perpetual licenses and any amount paid for Online Services for any usage period after the termination date. Microsoft will not be liable for any claims or damages due to Customer's continued use of a Product, Fix, or Services Deliverable after being notified to stop due to a third-party claim.
- b. **By Customer.** To the extent permitted by applicable law, Customer will defend Microsoft against any third-party claim to the extent it alleges that: (1) any Customer Data or non-Microsoft software hosted in an Online Service by Microsoft on Customer's behalf misappropriates a trade secret or directly infringes a patent, copyright, trademark, or other proprietary right of a third party; or (2) Customer's use of any Product, Fix, or Services Deliverable alone or in combination with anything else, violates the law or damages a third party.

13. Limitation of liability.

For each Product or Professional Service, 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 Customer paid for the applicable Products or Professional Services during the term of the agreement, subject to the following:

- a. **Online Services.** For Online Services, Microsoft's maximum liability to Customer for any incident giving rise to a claim will not exceed the amount Customer paid for the Online Service during the 12 months before the incident.
- b. **Free Products and Distributable Code.** For Products and Professional Services provided free of charge and code that Customer 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, or for loss of use, loss of business information, loss of revenue, 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 and Professional Services 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.

14. Verifying Compliance.

- a. **Right to verify compliance.** Customer must keep records relating to all use and distribution of Products by Customer and its Affiliates. Microsoft has the right, at its expense, to verify such compliance with the Products' license terms. Microsoft will engage an independent auditor and Customer must provide the independent auditor with any information the auditor reasonably requests in furtherance of the verification, including visible access to systems running the Products and evidence of licenses for Products the Customer hosts, sublicenses, or distributes to third parties. Customer must provide, without undue delay, the foregoing information and access upon request of the independent auditor.
- b. **Verification process.** Microsoft will notify Customer at least 30 calendar days in advance of its intent to verify Customer's compliance with the license terms for the Products Customer and its Affiliates use or distribute. The independent auditor is subject to a confidentiality obligation sufficient to cover the auditor's engagement with Customer for the verification process. Customer may, at its discretion, also require a mutually agreeable confidentiality agreement with the independent auditor for access to premises, data and systems. Such confidentiality agreement between Customer and auditor must be completed within fourteen (14) days of such request, and shall not restrict the ability for the independent auditor to accurately verify compliance and share the resulting information with Microsoft. Any information collected will be used solely for purposes of determining Customer's compliance. This verification will take place during normal business hours and the auditor will make best efforts not to interfere with Customer's operations during the course of the audit.
- c. **Remedies for non-compliance.** If verification reveals any use of Products without applicable license rights, then within 30 days Customer must order sufficient licenses to cover its use. If such use or distribution is determined to be in excess of Customer's existing licenses by 5% or more of the audited environment(s) in the aggregate, then Customer must reimburse Microsoft for the costs Microsoft incurred in obtaining the verification and acquire the necessary additional licenses. Such licenses will be obtained at 125% of the price, based on the then-current price list and applicable Customer price level. The use percentage is based on the total number of Products used without applicable license rights (as described above) compared to the total Product use. If it is verified that Product use is sufficiently licensed, Microsoft will not require Customer to engage in 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 legal or contractual means.

- d. **Customer self-audit.** Microsoft, at its sole discretion, may require Customer to conduct a self-audit, subject to the non-compliance remedies as set forth herein.

15. **Miscellaneous.**

- a. **Notices.** Notices to Microsoft must be sent to the address in this agreement. Notices must be in writing and will be treated as delivered on the date shown on the return receipt or on the courier or fax confirmation of delivery. Microsoft may provide information to Customer about upcoming ordering deadlines, services, and subscription information in electronic form, including by email to contacts provided by Customer. Emails will be treated as delivered on the transmission date.
- b. **Assignment.** Customer may not assign this agreement either in whole or in part.
- c. **No transfer of ownership.** Microsoft does not transfer any ownership rights in any licensed Product. The Products are protected by copyright and other intellectual property rights laws and international treaties.
- d. **Order of precedence.** In the case of a conflict between any documents identified in this agreement that is not resolved expressly in those documents, their terms will control in the following order of descending priority: (1) these terms and conditions and the accompanying signature form; (2) the Product Terms; (3) the Use Rights; and (4) all orders submitted under this agreement. The terms of any purchase order or any general terms and conditions Customer maintains do not apply.
- e. **Applicable law.** The terms of this agreement entered into with any Microsoft Affiliate located outside of Europe will be governed by and construed in accordance with the laws of the State of Washington and federal laws of the United States. The terms of each agreement entered into with a Microsoft Affiliate located in Europe will be governed by and construed in accordance with the laws of Ireland. The 1980 United Nations Convention on Contracts for the International Sale of Goods and its related instruments will not govern this agreement.
- f. **Severability.** If any provision in this agreement is found unenforceable, the balance of the agreement will remain in full force and effect.
- g. **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.
- h. **Survival.** Provisions regarding ownership and License rights, Use Rights, restrictions on use, evidence of perpetual Licenses, transfer of Licenses, warranties, defense of third party claims, limitations of liability, confidentiality, compliance verification, obligations on termination or expiration and the other provisions in this section entitled "Miscellaneous" will survive termination or expiration of this agreement.
- i. **Resellers and other third parties cannot bind Microsoft.** Resellers and other third parties do not have authority to bind or impose any obligation or liability upon Microsoft.
- j. **Use of contractors.** Microsoft may use contractors to perform services but will be responsible for their performance subject to the terms of this agreement.
- k. **Customer's responsibility for others using the Product; third parties that may benefit from this agreement.** Customer must use reasonable efforts to make its employees, agents, Affiliates, and others using the Product aware that the Product may be used only according to this agreement. Customer is responsible for the acts and omissions of any people or businesses that make, install, or run copies of the Product.

Certain sections of this agreement are for the benefit of Microsoft Affiliates. As a result, Microsoft and its Affiliates are entitled to enforce this agreement. Except for Microsoft Affiliates, this agreement does not create any enforceable rights by anyone other than Microsoft and Customer. Any representation or agreement made by Microsoft's Affiliates that would change the terms of this agreement must be in writing and signed by Microsoft's authorized representative.

- I. **Natural disaster.** In the event of a natural disaster, Microsoft may provide additional assistance or rights by posting them on <http://www.microsoft.com> at such time.

Electronically Submitted