

## **GENERAL SERVICES ADMINISTRATION**

Federal Supply Service

### **Authorized Federal Supply Schedule Price List**

On-line access to contract ordering information, terms and conditions, up-to-date pricing, and the option to create an electronic delivery order are available through GSA *Advantage!*®, a menu-driven database system. The INTERNET address GSA *Advantage!*® is: [GSAAdvantage.gov](http://GSAAdvantage.gov).

## **Multiple Award Schedule**

FSC Group: Information Technology

FSC Class: 7A21

**Contract number: GS-35F-309AA**

**Contract period: April 9, 2023- April 8, 2028**

**Minburn Technology Group, LLC**

9716 Arnon Chapel Road

Great Falls, VA 22066

703-626-0284

[www.minburntech.com](http://www.minburntech.com)

**Service-Disabled Veteran Owned Small Business**

For more information on ordering from Federal Supply Schedules go to the GSA Schedules page at [GSA.gov](http://GSA.gov).

**Price List Current through Mod PA-0072 dated 03/29/2023**

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## CUSTOMER INFORMATION

**1a. Table of awarded special item number(s) with appropriate cross-reference to item descriptions and awarded price(s).**

SINs	Recovery	Cooperative Purchasing	SIN Title
511210	511210-RC	511210-STL	Software Licenses
54151	54151-RC	54151-STL	Software Maintenance as a Service
518210C	518210C-RC	518210C-STL	Cloud Computing Services
33411	33411-RC		Purchasing of New Electronic Equipment
811212	811212-RC		Computer and Office Machine Repair and Maintenance
OLM	OLM-RC	OLM-STL	Order Level Materials

**1b. Identification of the lowest priced model number and lowest unit price for that model for each special item number awarded in the contract. This price is the Government price based on a unit of one, exclusive of any quantity/dollar volume, prompt payment, or any other concession affecting price. Those contracts that have unit prices based on the geographic location of the customer, should show the range of the lowest price, and cite the areas to which the prices apply. Refer to GSA Pricing Section.**

**1c. Hourly rates are not applicable.** Refer to GSA Pricing Section for entire offering.

**2. Maximum order:** \$500,000

**3. Minimum order:** \$100

**4. Geographic coverage (delivery area).** Domestic and Overseas

**5. Point(s) of production (city, county, and State or foreign country).** USA

**6. Discount from list prices or statement of net price.** Government Net Prices (discounts already deducted.)

**7. Quantity discounts.** None

**8. Prompt payment terms. Information for Ordering Offices: Prompt payment terms cannot be negotiated out of the contractual agreement in exchange for other concessions.** Net 30 days.

**9. Foreign items (list items by country of origin).** Not Applicable

**10a. Time of delivery.** 30 Days ARO

**10b. Expedited Delivery.** Items available for expedited delivery are noted in this price list. To Be Determined at the Task Order level

**10c. Overnight and 2-day delivery.** Schedule customer may contact the Contractor for rates for overnight and 2-day delivery.

**10d. Urgent Requirements.** Ordering activities may contact the Contractor's representative to check availability of faster delivery.

**11. F.O.B. point(s).** Destination

**12a. Ordering address(es).**

Minburn Technology Group, LLC  
9716 Arnon Chapel Rd  
Great Falls, VA 22066

**12b. Ordering procedures:** For supplies and services, the ordering procedures, information on Blanket Purchase Agreements (BPA's) are found in Federal Acquisition Regulation (FAR) 8.405-3.

**13. Payment address.**

Minburn Technology Group, LLC  
P.O. Box 1227  
Great Falls, VA 22066

**14. Warranty provision.**

- a) Unless specified otherwise in this contract, the applicable Manufacturer's Contractor's standard commercial guarantee/warranty as stated in Attachment A to the contract's commercial pricelist will apply to this contract.
- b) The Contractor warrants and implies that the items delivered hereunder are merchantable and fit for use for the particular purpose described in this contract.
- c) Limitation of Liability. Except as otherwise provided by an express or implied warranty, the Contractor will not be liable to the ordering activity for consequential damages resulting from any defect or deficiencies in accepted items

**15. Export packing charges, if applicable.** Not Applicable

**16. Terms and conditions of rental, maintenance, and repair (if applicable).**

**HARDWARE: SIN 811212 Hardware Maintenance Order Terms**

1. Service Areas

- a. The maintenance and/or repair service rates per the contract are applicable to any ordering activity locations within a NA (\*\*insert miles) mile radius of the Contractor/Original Equipment Manufacturer (OEM) service points. If any additional

charge is to apply because of the greater distance from the Contractor/OEM service locations, the mileage rate or other distance factor shall be negotiated at the Task Order level.

- b. When maintenance and/or repair services cannot be performed at the ordering activity installation site, the repair services will be performed at the Contractor's plant(s) listed below:

2745 Hartland Road  
Falls Church, VA 22043

## 2. Loss or Damage

When the Contractor moves equipment to its/OEM location for repairs, the Contractor shall be responsible for any damage or loss, from the time the equipment is removed from the ordering activity installation, until the equipment is returned to such installation.

## 3. Scope

- a. The Contractor shall provide maintenance for all equipment listed herein, as requested by the ordering activity during the contract term. Repair service and repair parts/spare parts shall apply exclusively to the equipment types/models within the scope of the Information Technology Category.
- b. Equipment placed under maintenance service shall be in good operating condition.
  - i. In order to determine that the equipment is in good operating condition, the equipment shall be subject to inspection by the Contractor, without charge to the ordering activity.
  - ii. Costs of any repairs performed for the purpose of placing the equipment in good operating condition shall be borne by the Contractor, if the equipment was under the Contractor/OEM guarantee/warranty or maintenance responsibility prior to the effective date of the maintenance order.
  - iii. If the equipment was not under the Contractor/OEM responsibility, the costs necessary to place the equipment in proper operating condition are to be borne by the ordering activity, in accordance with the provisions of the contract.

## 4. Responsibilities

- a. For equipment not covered by a maintenance contract or warranty, repair service personnel shall complete repairs as soon as possible after notification by the ordering activity that service is required. Within the service areas, this repair service should normally be done within 4 hours after notification.
- b. If the Ordering Activity task or delivery order specifies a factory authorized/certified service personnel then the Contractor is obligated to provide such a factory authorized/certified service personnel for the equipment to be repaired or serviced, unless otherwise agreed to in advance between the Ordering Activity and the Contractor.

## 5. Maintenance Rate Provisions

- a. The Contractor shall bear all costs of maintenance, including labor, parts, and such other expenses as are necessary to keep the equipment in good operating condition, provided that the required repairs are not occasioned by fault or negligence of the ordering activity.
  - i. Regular Hours: The basic monthly rate for each make and model of equipment shall entitle the ordering activity to maintenance service during a mutually agreed upon nine (9) hour principal period of maintenance, Monday through Friday, exclusive of holidays observed at the ordering activity location.

- ii. After Hours: Should the ordering activity require that maintenance be performed outside of regular hours, charges for such maintenance, if any, will be specified in the GSA Price List (I-FSS-600 CONTRACT PRICE LISTS (OCT 2016)). Periods of less than one hour will be prorated to the nearest quarter hour.
- iii. Travel and Transportation: If any charge is to apply, over and above the regular maintenance rates, due to the distance between the ordering activity location and the Contractor/OEM's service area, the charge will be negotiated at the Task Order level.

Indicate if there will be an additional charge for travel and transportation \_\_\_\_ Yes  
 No

- b. Quantity Discounts from listed maintenance service rates for multiple equipment owned and/or leased by an ordering activity shall be provided below:

Quantity Range	Discounts
Units – N/A	0.00%
Units – N/A	0.00%
Units – N/A	0.00%

**17. Terms and conditions of installation (if applicable).** Not Applicable

**18a. Terms and conditions of repair parts indicating date of parts price lists and any discounts from list prices (if applicable).** Not Applicable

**18b. Terms and conditions for any other services (if applicable).**

Microsoft Volume Licensing -

License Agreement/Product Use Rights can be viewed at <http://www.minburntech.com/>

Terms and Conditions for Microsoft Cloud Computing Services can be viewed at

<https://www.microsoft.com/en-us/licensing/licensing-programs/licensing-for-industries.aspx>

**19. List of service and distribution points (if applicable).** Not Applicable

**20. List of participating dealers (if applicable).** Not Applicable

**21. Preventive maintenance (if applicable).** Not Applicable

**22a. Special attributes such as environmental attributes (e.g., recycled content, energy efficiency, and/or reduced pollutants).** Not Applicable

**22b. If applicable, indicate that Section 508 compliance information is available on Electronic and Information Technology (EIT) supplies and services and show where full details can be found (e.g. contractor's website or other location.) The EIT standards can be found at: [www.Section508.gov/](http://www.Section508.gov/).**

Section 508 compliance information on the supplies and services in this contract are available at the following website address (URL): <http://www.microsoft.com/enable/microsoft/section508.aspx>

If applicable, Section 508 compliance information on the supplies and services offered in this contract will be supplied by Contractor or Manufacturer (see definition below) upon request via email at the following address: [contracts@minburntech.com](mailto:contracts@minburntech.com)

The EIT standard can be found at: [www.Section508.gov/](http://www.Section508.gov/)

**23. Unique Entity Identifier (UEI) number.** 965431815 / WN8JFVZTBCA5

**24. Notification regarding registration in System for Award Management (SAM) database.** Minburn Technology Group registered and active in SAM.

**Service Contract Labor Standards:** The Service Contract Labor Standards (SCLS), formerly known as the Service Contract Act (SCA), is applicable to this contract as it applies to the entire Multiple Award Schedule (MAS) and all services provided. While no specific labor categories have been identified as being subject to SCLS/SCA due to exemptions for professional employees (FAR 22.1101, 22.1102 and 29 CFR 541.300), this contract still maintains the provisions and protections for SCLS/SCA eligible labor categories. If and / or when the contractor adds SCLS/SCA labor categories to the contract through the modification process, the contractor must inform the Contracting Officer and establish a SCLS/SCA matrix identifying the GSA labor category titles, the occupational code, SCLS/SCA labor category titles and the applicable WD number. Failure to do so may result in cancellation of the contract.

### **Order Level Materials - OLM**

OLMs are supplies and/or services acquired in direct support of an individual task or delivery order placed against a Schedule contract or BPA. OLM pricing is not established at the Schedule contract or BPA level, but at the order level. Since OLMs are identified and acquired at the order level, the ordering contracting officer (OCO) is responsible for making a fair and reasonable price determination for all OLMs.

OLMs are procured under a special ordering procedure that simplifies the process for acquiring supplies and services necessary to support individual task or delivery orders placed against a Schedule contract or BPA. Using this new procedure, ancillary supplies and services not known at the time of the Schedule award may be included and priced at the order level.

OLM information on GSA.gov: <https://www.gsa.gov/buying-selling/purchasing-programs/gsa-multiple-award-schedule/schedule-features/orderlevel-materials-olms>

## **GSA PRICING SECTION**

To view and order from the complete catalog available under this GSA Schedule, please search under our contract number GS-35F-309AA at the [GSA Advantage! website](#).



## ***Exhibit 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 AND PROFESSIONAL SERVICES THAT YOU ORDER (OR RECEIVE AS PART OF YOUR ORDER) FROM THE CONTRACTOR UNDER THE CONTRACTOR’S CONTRACT WITH YOU (THE “CONTRACT”). THESE MICROSOFT LICENSE TERMS AND CONDITIONS SHALL TAKE PRECEDENCE OVER ANY CONFLICTING TERMS IN AN ORDER OR ORDERING DOCUMENTATION.

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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.

“Azure Government Services” means one or more of the services or features Microsoft makes available to Enrolled Affiliate under this Enrollment and identified at <http://azure.microsoft.com/en-us/regions/#services>, which are Government Community Cloud Services.

“Azure Secret and O365 Secret Services” means one or more of the services or features Microsoft makes available to Enrolled Affiliate in the Azure Secret and O365 Secret environment under the Enrollment. The full catalog of Azure and O365 Secret Services will be listed in the customer portals for the Azure Secret cloud and the O365 Secret cloud or at some other location specified by Microsoft.

“Azure Top Secret Services” means the Microsoft Online Services that are provisioned for exclusive use by the Community for data classified at the Top-Secret level. Azure Top Secret Services are considered Government Community Cloud Services.

“Code-With Projects” means Professional Services made available to the Customer at no additional charge in order to enable Customer’s deployment or use of Microsoft technologies.

“Commercial Software Engineering” (“CSE”) means the technical resource team providing Professional Services for Code-With Projects.

“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.

“Compliance Trust Center Page” means the compliance page of the Microsoft Trust Center, published by Microsoft at <https://www.microsoft.com/en-us/TrustCenter/Compliance/default.aspx> or a successor site Microsoft later identifies.

“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 or with Professional Services. Customer Data does not include Support and Consulting Data.

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 Contract with you, 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.

“Microsoft - Customer Investment Projects” means those Professional Services funded by Microsoft and provided to Enrolled Affiliate to enhance the benefits of Microsoft technology in the Enrolled Affiliate's environment. Microsoft Customer Investment Funded Projects may include, but are not limited to, Code-With Services.

“Office 365 US Government” means the Government Community Cloud Service described by the Office 365 Service Descriptions, and purchased by Enrolled Affiliate pursuant to the terms and conditions of the Enrollment.

“Office 365 GCC High” means the Government Community Cloud Service described by the Office 365 Service Descriptions, and purchased by Enrolled Affiliate pursuant to the terms and conditions of the Enrollment.

“O365 Top Secret Services” means one or more of the services or features Microsoft makes available to Enrolled Affiliate in the O365 Top Secret environment under the Enrollment. The full catalog of O365 Top Secret Services will be listed in the customer portals for the O365 Secret cloud or at some other location specified by Microsoft. O365 Top Secret Services are considered Government Community Cloud Services.

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

“Online Services Benefits” means those Professional Services, made available to eligible customers at no additional charge as part of an Online Services subscription to advise and assist with onboarding, migration, training and use of those Online Services. Additional terms and conditions may be required to receive some Online Services Benefits. Eligibility will be determined on a per-service basis and may vary depending on availability. Microsoft reserves the right to change the availability of Online Service Benefits at any time in its sole discretion.

“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 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 and Professional Services available through volume licensing. The Product Terms document is available on the Volume Licensing Site and is updated from time to time.

“Professional Services” means all Product support services and Microsoft research or engineering services, training, advice, consulting or other services provided to assist with onboarding, migration, training and use of Products, including Online Services or otherwise related to any Product, including Online Services. The precise scope of the Professional Services may be specified in a Statement of Services. Enrolled Affiliate or any of Enrolled Affiliate's Affiliates may enter into Statements of Services

under this Agreement with Microsoft's local Affiliates. Microsoft's ability to deliver the Professional Services depends upon Enrolled Affiliate's full and timely cooperation, as well as the accuracy and completeness of any information Enrolled Affiliate provides. This Agreement does not obligate either party or its Affiliates to enter into any Statements of Services.

"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.

"Service Deliverables" means any computer code or materials, other than Products or Fixes, that Microsoft leaves with Enrolled Affiliate at the conclusion of Microsoft's performance of the Professional Services. All Service Deliverables must be explicitly listed in the applicable Statement of Services. Not all Professional Services projects will have Service Deliverables.

"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.

"Statement of Services" means any work orders, services descriptions, or other description of Professional Services that incorporates this Agreement.

"Support and Consulting Data" means all data, including all text, sound, video, image files, or software, that are provided to Microsoft by, or on behalf of, Enrolled Affiliate (or that Enrolled Affiliate authorizes Microsoft to obtain from an Online Service) through an engagement with Microsoft to obtain Professional Services covered under this Agreement. Support and Consulting Data may include Personal Data.

"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.

b. **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 Fix will apply.

c. **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.

- d. 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.
- e. f. No transfer of ownership; Reservation of rights.** Products, Fixes, and Services Deliverables are protected by copyright and other intellectual property rights laws and international treaties. Microsoft (1) does not transfer any ownership rights in any Products, Fixes, or Service Deliverables 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 and any Statement of Services. 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 if Enrolled Affiliate is a Federal Agency, 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.
- (iii) **Professional Services.** Microsoft warrants that all Professional Services will be performed with professional care and skill. If Microsoft fails to do so and Enrolled Affiliate notifies Microsoft within 90 days of the date of performance, then, unless otherwise stated in the applicable Statement of Services, Microsoft will re-perform the Professional Services as Enrolled Affiliate's sole remedy for breach of the Professional Services warranty.
- (iv) With respect to the provision of Professional Services, unless stated otherwise in a separate Statement of Service, each party represents and warrants it will secure the permission of the other party prior to providing any source code in a manner that would subject the other party's intellectual property to any other license terms or require the other party to distribute source code to any of its technologies.
- (v) Notwithstanding anything to the contrary in this section, all results of any Professional Services provided as an Online Service Benefit or as a Microsoft Customer Investment Project and any software or technologies provided by either party during the provision of any Professional Services provided as an as an Online Services Benefit or as a Microsoft Customer Investment Project are provided strictly "as is" and "with all faults" and without warranties of any kind except.

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 or Service Deliverable 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 or Service Deliverable Enrolled Affiliate makes or any specifications or materials Enrolled Affiliate provides; (iv) Enrolled Affiliate's combination of a Product or Fix or Service Deliverable 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 or Service Deliverable in violation of this agreement; (vi) Enrolled Affiliate's continued use of a Product or a Fix or Service Deliverable after being notified to stop due to a third party claim; or (vii) Products or Fixes or Service Deliverable 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 or Service Deliverable, 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 or Service Deliverable and refund any amounts Enrolled Affiliate has paid for those rights to Software and Fixes and Service Deliverables 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 (subject to 28 U.S.C. § 516); 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. Professional Services.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE PARTIES LIMIT THEIR LIABILITY FOR ANY CLAIMS RELATED TO PROFESSIONAL SERVICES PROVIDED AS AN ONLINE SERVICE BENEFIT OR AS A MICROSOFT CUSTOMER INVESTMENT PROJECT UNDER THIS AGREEMENT TO \$5,000 AND IN NO EVENT WILL EITHER PARTY (INCLUDING THEIR DIRECTORS, OFFICERS AND AFFILIATES) BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, SPECIAL, OR EXEMPLARY DAMAGES ARISING OUT OF THE PERFORMANCE OF SUCH PROFESSIONAL SERVICES UNLESS OTHERWISE STATED IN A SEPARATE STATEMENT OF SERVICES. EACH PARTY'S TOTAL LIABILITY FOR ALL CLAIMS RELATING TO ALL OTHER PROFESSIONAL SERVICES WILL BE LIMITED TO THE AMOUNTS ENROLLED AFFILIATE WAS REQUIRED TO PAY FOR THE APPLICABLE PROFESSIONAL SERVICES. THE EXCLUSIONS IN THIS SECTION 9b APPLY REGARDLESS OF WHETHER APPLICATION OF THESE EXCLUSIONS CAUSES ANY REMEDY TO FAIL OF ITS ESSENTIAL PURPOSE. THIS SECTION 9b WILL NOT APPLY TO LIABILITY ARISING OUT OF EITHER PARTY'S LIABILITY FOR (A) VIOLATION OF ITS CONFIDENTIALITY OBLIGATIONS (EXCEPT OBLIGATIONS RELATED TO DATA UNDER SECTION 12.D BELOW); OR (B) INFRINGEMENT, MISAPPROPRIATION, OR OTHER VIOLATIONS OF THE OTHER PARTY'S TECHNOLOGIES OR INTELLECTUAL PROPERTY.
- c. Free Products and Distributable Code.** For Products and Professional Services provided free of charge or as a Online Service Benefit or as a Microsoft-Customer Investment Project 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.
- d. 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.
- e. 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 or Support and Consulting 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.
- f.** 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:

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

**(ii)** 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. **Professional Services**

- a. Description of Supplier Services.** The precise scope of the Professional Services may be specified in a Statement of Services. Enrolled Affiliate or any of Enrolled Affiliate's Affiliates may enter into Statements of Services under this Agreement with Microsoft's local Affiliates. Microsoft's ability to deliver the Professional Services depends upon Enrolled Affiliate's full and timely cooperation, as well as the accuracy and completeness of any information Enrolled Affiliate provides. This Agreement does not obligate either party or its Affiliates to enter into any Statements of Services.
- b. Proprietary Rights.**
  - (i) Pre-existing Work.** Each party owns and retains all rights, title and interest to its pre-existing Confidential Information and technology, including technologies developed outside of this agreement, together with all related intellectual property rights (as to each party, its "**Pre-Existing Work**"). Subject to compliance with the terms of this agreement, each party grants to the other a worldwide, non-exclusive, non-assignable, fully paid-up license to use, reproduce, and create derivative works of its Pre-existing Work, provided that: (i) Microsoft's license to Enrolled Affiliate's Pre-Existing Work is solely for the purposes of providing technical resources under this agreement; (ii) Enrolled Affiliate's license to Microsoft Pre-Existing Work will be in accordance with this agreement; (iii) neither party may use the other party's Pre-Existing Work on a standalone basis and (iv) neither party may distribute or otherwise transfer any of the other party's Pre-Existing Work to a third party.
  - (ii) Improvements.** Each party shall exclusively own all modifications and derivative works created under this agreement to that party's Pre-Existing Work ("**Improvements**"), regardless of who authors such Improvements. Each party assigns to the other party all rights, title, and interest to any Improvements that it makes to the other party's Pre-Existing work. Subject to compliance with the terms of this agreement, the parties license Improvements as follows: (i) Microsoft grants Enrolled Affiliate a worldwide, non-exclusive, non-assignable, fully paid-up license to use, reproduce, and create derivative works, but not distribute or otherwise transfer, Improvements to

Microsoft's Pre-Existing Work; and (ii) Enrolled Affiliate grants Microsoft a worldwide, non-exclusive, non-assignable, fully paid-up license to use, reproduce, distribute, and create derivative works of only those Improvements Microsoft may create to Enrolled Affiliate's Pre-Existing Work that are generic solutions or services.

**(iii) Developments.** Either party may create new technology, written materials, or proofs of concept under this agreement that do not include any Pre-Existing Work or Improvements ("**Developments**"). All Developments will be owned by Microsoft and Enrolled Affiliate assigns to Microsoft all rights, title, and interest to any Developments that it makes. Microsoft grants Enrolled Affiliate a worldwide, non-exclusive, non-assignable, fully paid-up license to use, reproduce, and create derivative works, but not distribute or otherwise transfer to a third party, Developments.

**(iv) Service Deliverables.** Service Deliverables do not include Improvements or Developments. Improvements and Developments are provided solely in accordance with subsection (ii) and (iii) above unless otherwise agreed in a Statement of Services. For Service Deliverables, upon payment in full, Microsoft grants to the Enrolled Affiliate a non-exclusive, perpetual, fully paid-up license to use, reproduce and modify any Service Deliverables for the Enrolled Affiliates internal purposes only and not for sale or distribution to any unaffiliated third party, except as may be otherwise explicitly expressed in the applicable Statement of Services. Microsoft or the Enrolled Affiliate will be the sole owner of any modifications that each makes based upon the Service Deliverables. If Enrolled Affiliate is a Federal Agency and if any Service Deliverables are determined not to be commercial items and are delivered subject to: (i) the Department of Defense FAR Supplement ("DFARS") in the course of performance of this Agreement, Microsoft assigns to such Enrolled Affiliate unlimited rights in the Service Deliverables if the conditions at DFARS 252.227-7014(b)(1) are present; or with government purpose rights if the conditions at DFARS 252.227-7014(b)(2) are present; or with restricted rights if the conditions at DFARS 252.227-7014(b)(3) are present; or (ii) the Federal Acquisition Regulation ("FAR"), Microsoft assigns to such Enrolled Affiliate unlimited rights in the Service Deliverables if the conditions at FAR 52.227-14(b) are present; or limited rights or restricted rights if the conditions at FAR 52.227-14(g) are present. Any modification made to Service Deliverables or other data with Enrolled Affiliate funds shall remain the property of the party making the modification. Enrolled Affiliate may only sublicense its rights to the Services Deliverables and any sample code granted hereunder to its Affiliates, but Enrolled Affiliate's Affiliates may not sublicense these rights. Enrolled Affiliate is responsible for ensuring its Affiliates' compliance with this Section.

- c. Open Source.** Microsoft may elect to release to Enrolled Affiliate certain Improvements or Developments as open source software, published with related end user documentation to a public repository on GitHub or another mutually accepted venue, under the terms of the MIT License (<http://opensource.org/licenses/MIT>) or another mutually accepted open source license. The open source license, and not the terms above, will apply to such Improvements or Developments.
- d. Data.** Customer owns all rights to data that Customer or its affiliates may elect to share with Microsoft in Microsoft's performance of Professional Services. The data protection terms of the Microsoft Professional Services Limited Data Protection Addendum apply and are available at <http://aka.ms/mpsldpa>.
- e. Subcontractors.** Microsoft may retain third-party or Affiliate implementation partners, systems integrators, or other third-party or Affiliate contractors or consultants to perform Professional Services (each a "Subcontractor"), provided that each party will require their Subcontractors to enter into a nondisclosure agreement at least as restrictive as Section 5 of this Exhibit. Microsoft will be fully responsible for its Subcontractor's acts and omissions, performance or nonperformance under and compliance with this Exhibit, and any breach of this Exhibit by any Subcontractor retained by a party shall be treated as a breach by Microsoft.
- f. Feedback.** Either party may provide suggestions, comments, ideas, know-how, or other feedback to the other party. Feedback is voluntary and the receiving party is not required to hold it in

confidence. The receiving party will not disclose the source of feedback without the providing party's consent. Feedback may be used for any purpose without obligation of any kind.

**g. Retained Rights.** Except as expressly set forth in this agreement, neither party grants the other (by implication, estoppel or otherwise) any right, title, interest, or license, in such party's patents, patent applications, trade secrets, copyrights, mask work rights, trademarks or other intellectual property.

### **13. *Microsoft – Customer Investment Projects.***

- a. From time to time, Microsoft may offer to provide Enrolled Affiliate certain services at no cost to the Enrolled Affiliate to enhance the benefits of Microsoft technology in the Enrolled Affiliate's environment. Any such services would be provided in consideration for the licenses acquired by Enrolled Affiliate throughout the applicable Enrollment term.
- b. All services provided as a Microsoft-Customer Investment Project are Professional Services and are subject to and governed by these Microsoft Terms and Conditions unless otherwise stated in the applicable Statement of Work.
- c. Microsoft is under no obligation to offer such services to Enrolled Affiliate.
- e. At Microsoft's discretion, Microsoft may choose to perform such services itself or have a third party provide them to customer.
- f. Each Microsoft- Customer Investment Project must have a written Statement of Work ("SOW"), signed by both parties. The SOW must reference these Microsoft Terms and Conditions and must include an estimate of the value of the services being provided. At the conclusion of each Microsoft – Customer Investment Project, Enrolled Affiliate may be required to sign a proof of execution (POE) document confirm the work described in the SOW was completed.
- f. Microsoft waives any and all entitlement to compensation from Enrolled Affiliate for all Microsoft – Customer Investment Projects performed in accordance with this section.
- g. Microsoft intends all Microsoft- Customer Investment Projects performed in accordance with this section and associated terms be in compliance with applicable laws and regulations with respect to gratuitous services. It is specifically understood that all services and Services Deliverables provided as part of a Microsoft-Customer Investment Project are provided are for the sole benefit and use of Enrolled Affiliate and are not provided for personal use or benefit of any individual Enrolled Affiliate employee.

### **14. *Segmentation.***

The purchase of any Products and related Professional Service offerings or other service offerings are all separate offers and separate from any other order for any Products and related Professional Service offerings or other service offerings you may receive or have received from Microsoft. Enrolled Affiliate understands that it may purchase and/or acquire any Products and related Professional Service offerings or other Service offerings independently of any other Products or Service offerings. Enrolled Affiliate's obligation to pay for (a) any Products and related Professional Service offerings is not contingent on performance of any other Professional Service offerings or delivery of any other Products or (b) other Professional Service offerings is not contingent on delivery of any Products or performance of any additional/other Professional Service offerings

### **15. *Government Community Cloud.***

**If Enrolled Affiliate orders Government Community Cloud Services, the following terms also apply.**

- a. **Community requirements.** If Enrolled Affiliate purchases Government Community Cloud Services, Enrolled Affiliate certifies that it is a member of the Community and agrees to use Government Community Cloud Services solely in its capacity as a member of the Community and, for eligible Government Community Cloud Services, 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 Enrolled Affiliate's license(s) for Government Community Cloud Services without notice. Enrolled Affiliate acknowledges that only Community members may use Government Community Cloud Services.
- b. 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.
- c. Enrolled Affiliate may not deploy or use Government Community Cloud Services and corresponding non-Government Community Cloud Services in the same domain.
- d. 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) Terms regarding compliance with non-US law, such as GDPR, will not apply.
  - (iii) References to geographic areas outside the United States for the location of Customer Data at rest do not apply.
  - (iv) The compliance control standards and frameworks for Government Community Cloud Services are detailed in the applicable System Security Plan for each service and may differ from those applicable to commercial services (e.g., as set forth in the Online Services Data Protection Addendum).
- e. **Commercial Products.** Microsoft may make commercial products available to Enrolled Affiliate to use with Enrolled Affiliate's Government Community Cloud Services. Such Products will be provisioned in the public commercial cloud and all security controls and data commitments related to these services are described in the Use Rights.

## **16. *Azure Secret and Top Secret and O365 Secret and Top Services.***

- a. The following terms and conditions apply solely to Azure Secret and Top Secret and O365 Secret and Top Secret Services and shall take precedence over any conflicting terms in this agreement or any document incorporated herein.
- b. Enrolled Affiliate certifies that all Enrolled Affiliates included in the Enterprise have the authority to access classified systems at the Secret level.
- c. The existing Service Level Agreements ("SLAs") for Azure and O365 services apply to Azure Secret and Top Secret and O365 Secret and Top Services, except that the SLAs are modified as follows:
  - i. For the purpose of this Section 15, "data centers" as they are referred to in the existing SLAs, shall include any Microsoft data centers, colocation data centers, or security operations centers (SOCs) that support the Azure Secret and Top Secret and O365 Secret and Top Secret Services provided under this Agreement.
  - ii. The SLA commitment does not apply to any unavailability, suspension or termination of Services:



- a. caused by any factor outside of Microsoft's reasonable control, including any force majeure event, which may include, but is not restricted to: limiting access to the facility by the Enrolled Affiliate or a third party (including the U.S. government, if Enrolled Affiliate is not a Federal Agency), limiting access to software, equipment or the space in which software or equipment are located in the facility by the Enrolled Affiliate or a third party (including the U.S. government, if Enrolled Affiliate is not a Federal Agency) or a third party, limiting Internet access or network access, IP transit provider issues, or cyber attacks;
- b. that results from any actions or inactions of the Enrolled Affiliate or a third party (including the U.S. government, if Enrolled Affiliate is not a Federal Agency), including but not limited to failure to process or deploy software patches through any government mandated vetting process or failure to meet agreed upon requirements for scaling of capacity;
- c. that results from Enrolled Affiliate equipment, software or other technology and/or third party (including the U.S. government, if Enrolled Affiliate is not a Federal Agency) equipment, software or other technology (other than third party equipment within our direct control), encryption devices and related software;
- d. that results from Microsoft dependencies on Enrolled Affiliate or a third party (including the U.S. government, if Enrolled Affiliate is not a Federal Agency) systems or any components thereof;
- e. that results from any maintenance as provided for pursuant to any separate Agreement;
- f. that result from Enrolled Affiliate's failure to adhere to any other agreed upon policy or process documentation applicable to the environment;
- g. that result from customer support issues that cannot be resolved through Microsoft's standard support channels available for Azure Secret and O365 Secret Services within the standard SLA period available for Azure Secret and O365 services.

## **17. 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.** 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 <https://www.microsoft.com/en-us/accessibility>.
- m. **Conflicts with U.S Federal law.** If any document incorporated by reference into this Exhibit, 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 this Exhibit, 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. **Insurance while performing Professional Services on Enrolled Affiliate's premises.** Microsoft will maintain industry-appropriate insurance coverage at all times when performing Professional Services on Enrolled Affiliate's premises under this Agreement via commercial insurance, self insurance, or any other similar risk financing alternative. Microsoft will provide Enrolled Affiliate with evidence of coverage on request.
- o. **Cost or pricing data.** Microsoft will not, under any circumstances, will provide Enrolled Affiliate with, or accept any Statement of Services that would require the submission of, cost or pricing data.
- p. **Section headings.** All section and subsection headings used in this agreement are for convenience only and shall not constitute a part of this agreement for any other purpose **and** shall not be deemed to limit or affect any of the provisions hereof.