

Open Value Subscription Agreement for Education Solutions

Agreement number
Microsoft to complete

V0761870

Previous Enrollment or
Agreement number
Reseller to complete

V5395148

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

Please note: The Open Value Subscription Agreement for Education Solutions is a simplified alternative in electronic agreement format to the Campus and School Agreement with the Enrollment for Education Solutions.

This Open Value Subscription Agreement for Education Solutions is entered into between Institution and Microsoft as of the effective date identified on the signature form.

Licensing Institution information

Institution ID: 37449543

Entity name* San Diego Community College District

Contact name: First* Kent **Last*** Keyser

Contact email address* kkeyser@sdccd.edu

Street address* 3375 Camino Del Rio South

City* San Diego

State/Province* CA

Postal code* 92108

Country* United States

Phone 619 388 6848

Tax ID (if applicable)

**indicates required field*

The personal information Institution 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 individual to be assigned by Institution receives online administrator permissions and thus may grant online access to others. This contact also receives all notices.

Entity name* San Diego Community College District

Contact name: First* Kent **Last*** Keyser

Contact email address* kkeyser@sdccd.edu

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Country* United States

Phone 619 388 6848

☐ This contact is a third party (not Institution)

Note: This contact receives personally identifiable information of Institution.

**indicates required field*

This agreement consists of (1) the terms and conditions of this agreement, (2) the Product List, (3) the Product Use Rights, (4) any orders submitted under this agreement, (5) the signature form, and (6) the Microsoft Qualified Educational User Definition located at <http://www.microsoft.com/licensing/contracts>.

A. Select a purchasing option and license period.

Unless Institution has a Qualifying Enrollment or Agreement upon signing this agreement, Institution must select at least one Desktop Platform Product from the Product categories below. To qualify for a Desktop Platform Product suite discount, Institution must order an available Desktop Platform Product suite and check all three Product categories below.

OS	<input checked="" type="checkbox"/> Please see the Product List for current Windows Desktop Operating System options
Office	<input checked="" type="checkbox"/> Please see the Product List for current Office options
CAL	<input checked="" type="checkbox"/> Please see the Product List for current CAL options

☐ Desktop Platform Products may qualify for up-to-date (UTD) discount (attach UTD discount form). To qualify for the UTD discount, Institution must be entering into a new Microsoft subscription agreement, must choose and complete the 36-month Licensed Period, and must have the qualifying licenses, as described in the UTD discount form. The 12-month Licensed Period option does not offer UTD discount.

Please select only one of the following two initial Licensed Period options:

<input type="checkbox"/> 12 full calendar months Licensed Period	<input checked="" type="checkbox"/> 36 full calendar months Licensed Period
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B. Defining Institution's Organization (select only one option).

Institution must define its Organization by choosing one of the options below. If Institution chooses to enroll only specific departments, school locations, and/or clearly defined User groups, Institution must provide the department, school location, and/or clearly defined User group names. If the department, school location or clearly defined User group is part of an Affiliate, Institution must also provide the name of the Affiliate. A department includes all segments of a department (e.g., a business school includes the business library). A department must be for educational purposes. Open access labs and other resource support centers do not qualify as separate departments.

☐ Institution only

☒ Institution and all of its Affiliates

☐ Institution *plus* the listed Affiliate(s) and/or department(s), school location(s), and/or clearly defined User group(s) if Affiliate is a school without departments or school locations, of Affiliate(s) (please list the Affiliate(s), department(s), school location(s) and/or User group(s) of Affiliate(s) below)

☐ The listed department(s), school location(s), and/or clearly defined User group(s) if Institution or Affiliate is a school without departments or school locations, of Institution and any of its Affiliates, and any Affiliate(s) (please list department(s), school location(s) and/or User group(s) and any Affiliate(s) below)

Please indicate whether the Institution's Organization will include all new Affiliates acquired after the start of this agreement: Include future Affiliates

C. Identify Institution price level.

- ☒ Check this box if Institution's Organization-wide Count is at least 1000, in order to qualify for the next price level.

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

- a. **Software Assurance manager.** This contact will receive communication concerning Software Assurance benefits, and any additional TechNet subscriptions that have been ordered separately from Software Assurance under this agreement.

Entity name* San Diego Community College District

Contact name: First* Kent **Last*** Keyser

Contact email address* kkeyser@sdccd.edu

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State/Province* CA

Postal code* 92108

Country* United States

Phone 619 388 6848

**indicates required field*

- b. **Subscriptions manager.** This contact will receive communication concerning registration for MSDN Products ordered under this agreement.

Entity name* San Diego Community College District

Contact name: First* Kent **Last*** Keyser

Contact email address* kkeyser@sdccd.edu

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**indicates required field*

- c. **Online Services manager.** This contact will receive communication concerning online services.

Entity name* San Diego Community College District

Contact name: First* Kent **Last*** Keyser

Contact email address* kkeyser@sdccd.edu

Street address* 3375 Camino Del Rio South

City* San Diego

State/Province* CA

Postal code* 92108

Country* United States

Phone 619 388 6848

**indicates required field*

E. Identify Institution's reseller and distributor.

a. Reseller

Entity name* Southland Technology, Inc.
Contact name: First* Al **Last*** landry
Contact email address* ALANDRY@SOUTHLANDTECHNOLOGY.COM
Street address* 8053 Vickers St
City* San Diego
State/Province* CA
Postal code* 92111
Country* United States
Phone 858-694-5932
**indicates required field*

b. Distributor

Entity name* D&H Distributing Company
Contact name: First* Christine **Last*** Kalmey
Contact email address* licensedesk@dandh.com
Street address* 2525 N. Seventh Street
City* Harrisburg
State/Province* PA
Postal code* 17110-0967
Country* United States
Phone (800) 877-1200 x7626
**indicates required field*

Name of Microsoft contracting Affiliate and notices contact information for Microsoft

Microsoft Licensing, GP
Dept. 551, Volume Licensing
6100 Neil Road, Suite 210
Reno, Nevada 89511-1137
USA

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Terms and Conditions

1. **Definitions.**

“Additional Product” means any Product available in the Defined Region, other than a Desktop Platform Product, that Institution chooses to license under this agreement;

“Affiliate” means

- a. if Institution is a non-public entity, any qualified educational user identified at <http://www.microsoft.com/licensing/contracts> that Institution owns or controls, that owns or controls Institution, or that is under common ownership or control with Institution; “Ownership” means, for purposes of this definition, control of more than a 50% interest in an entity.
- b. if Institution is a state or local government entity,
 - (i) any other qualified educational user identified at <http://www.microsoft.com/licensing/contracts> as of the effective date of this agreement that is an agency, department, office, bureau, division, or other entity of the state or local government, provided that the state and its Affiliates shall not, for purposes of this definition, be considered to be Affiliates of the federal government and its Affiliates; and
 - (ii) any other qualified educational user expressly authorized by the laws of the state to purchase under state education contracts.
- c. with regard to Microsoft, any legal entity that Microsoft owns, that owns Microsoft, or that is under common ownership with Microsoft.

“CAL” means client access license;

“Customer Data” means all data, including all text, sound, software, or image files that are provided to Microsoft by, or on behalf of, Institution through Institution’s use of the Online Services or in connection with Services.

"Defined Region" means the geographical region as defined on the regional listing located at <http://www.microsoft.com/licensing/licensing-options/open-regional.aspx> where Institution is organized and operated;

"Desktop Platform Product" means any Product available in the Defined Region and identified on the Product List as such and that Institution chooses to license under this agreement (Desktop Platform Products may only be licensed on an Organization-wide basis under this agreement);

"Eligible Entity" means any entity that meets the qualified educational user definition at <http://www.microsoft.com/licensing/contracts>;

"Fix" means Product fixes, modifications or enhancements or their derivatives that Microsoft either releases generally (such as service packs) or that Microsoft provides to Institution when performing Services to address a specific issue;

"Faculty" means any employees, contractors and volunteers who teach or perform research for Institution and use an Institution Qualified Desktop;

"Graduate" means a Student who has completed (1) a grade or a level in a school or an educational institution in Institution's Organization that qualifies the Student for enrollment into college or university or (2) a diploma or degree from a college or university in Institution's Organization;

"Institution" means a Qualified Educational User (as defined at <http://www.microsoft.com/licensing/contracts>) as of the effective date of this agreement that has entered into this agreement with Microsoft. If Institution is a school district, "Institution" includes all participating schools in the same district. For the avoidance of doubt, the term "Customer" as used in certain supplemental forms (for example, the program signature form) has the same meaning as "Institution";

"License" means Institution's right to download, install, access, and use a Product;

"Licensed Period" means the period of time beginning on the effective date of this agreement and continuing for the period of time specified in this agreement (either 12 or 36 full calendar months);

"Microsoft" means the Microsoft Affiliate that has entered into this agreement and its Affiliates, as appropriate;

"Online Services" means the Microsoft-hosted services identified in the Online Services section of the Product List;

"Organization" means the organization as defined by Institution in Section B above ("Defining Institution's Organization");

"Organization-wide Count" means the total quantity of Faculty and Staff in Institution's Organization. Institution must count a full-time member of its Faculty and Staff as 1, a part-time member of its Faculty as 1/3, and a part-time member of its Staff as 1/2;

"Previous Enrollment or Agreement" means a School Subscription Enrollment, a Campus Subscription Enrollment, an Enrollment for Education Solutions, or an Open Value Subscription Agreement for Education Solutions;

"Product" means all products identified on the Product List, such as all software, Online Services and other web-based services, including pre-release or beta versions. Products may be available under programs that vary by region;

"Product List" means the statement published by Microsoft from time to time on the World Wide Web at <http://www.microsoft.com/licensing/contracts> or a successor site. The Product List includes any Product-specific conditions or limitations on the acquisition of Licenses for, or the use of, those Products;

"Product 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 <http://www.microsoft.com/licensing/contracts> or a successor site;

"Qualified Desktop" means a device that is used for the benefit of Institution's Organization or by for the benefit of Students enrolled in Institution's Organization 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 Desktop do not include any device that is: (1) designated as a servers and not used as a personal computer OR (2) an Industry Device OR (3) not managed (as defined in the Product List at the start of the applicable initial or renewal term of the Agreement) as part of Institution's Organization.

"Qualifying Enrollment or Agreement" means an Enrollment for Education Solutions or an Open Value Subscription Agreement for Education Solutions, the minimum requirements of which were met (i.e. a Qualifying Enrollment was not used) and that was entered into by Institution or Institution's Affiliate, each active and valid upon signing this agreement. Institution must have been included in the Organization under an Enrollment for Education Solutions or Open Value Subscription Agreement for Education Solutions that is used as the Qualifying Enrollment or Agreement;

"Qualified User" means a User who (1) is a user of a Qualified Desktop or (2) accesses any server software or online services licensed within Institution's Organization. It does not include a person who accesses server software or online services solely under a license identified in the Qualified User exemptions in the Product List;

"Services" means all support, consulting and other services or advice, including any resulting deliverables provided to Institution by Microsoft. "Services" does not include Online Services;

"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 Services.

"Service Level Agreement" means the document specifying the standards to which Microsoft agrees to adhere and by which it measures the level of service for 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 List;

"Software Updates" means additional or replacement code for any portion of a Product that Microsoft may make available to the general public without a fee from time to time.

"Staff" means any non-Faculty employees, contractors and volunteers who perform work for Institution and use an Institution Qualified Desktop;

"Student" means any student enrolled in any educational institution that is part of Institution's Organization, whether on a full or part-time basis;

"Student Count" means the total quantity of Students in Institution's Organization. Institution must count a full-time Student as 1 and a part-time Student as 1/3;

"Student Qualified Desktop" means a Qualified Desktop owned, leased or controlled by a Student, or owned, leased or controlled by Institution's Organization and assigned for individual, dedicated use by a Student;

"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;

"run" or "use" means to copy, install, use, access, display, or otherwise interact with;

"Users" means Institution, Faculty, Staff, and Students designated in this agreement to run the Products and members of the public who access PCs located in Institution's open access labs or libraries. Users must be qualified educational users as defined at <http://www.microsoft.com/licensing/contracts> as of the effective date of this agreement.

2. How the Open Value Subscription Agreement program works.

- a. What this agreement covers.** This agreement covers the Products and Software Assurance Institution orders from the Product List under the Open Value Subscription program. It allows Institution to license Products on a subscription basis across its defined

Organization. Desktop Platform Products may only be licensed Organization-wide and Institution must license at least one Desktop Platform Product. Institution must select at least one of two different licensing options to license Organization-wide, Faculty and Staff or Students. Additional Products may be licensed in any quantity, and certain Additional Products identified in the Product List must be ordered for Institution's Organization-wide Count or Student Count, as applicable. Information about the use rights for Products licensed through the Open Value Subscription program is in the Product Use Rights. The Open Value Subscription program allows the Organization to run Microsoft software only during the term of the agreement. There is a buy-out option for the Licenses. If Organization exercises the buy-out option, the Licenses will become perpetual.

- b. One-year Licensed Period.** An order must be submitted to indicate the Products Organization chooses to run.
- c. Three-year Licensed Period.** An order must be submitted to indicate the Products Organization chooses to run. Thereafter, Institution must submit anniversary orders on the first and second anniversaries of the effective date of its agreement.
- d. About Software Assurance.** Under the Open Value Subscription program, all Products come with Software Assurance.
- e. Online services.** Online services are provided as subscription services and are subject to the unique terms set forth in the Product Use Rights and the Product List.

3. *How to establish prices.*

- a. Price levels.** Institution's prices for Desktop Platform Products will be based on the price level for which Institution qualifies. The price level is based on Institution's Organization-wide Count and does not change during the Licensed Period. If Institution chooses to extend this agreement, the price level will be reset at the start of the extension term based on Institution's Organization-wide Count at the time the extension order is placed. There are no price levels for Additional Products. Price levels only apply if the Faculty and Staff licensing option is selected.
- b. Microsoft offers savings**
 - (i)** if Institution selects a Desktop Platform Product suite, and/or
 - (ii)** if Organization is bringing perpetual Licenses of certain versions of Desktop Platform Products from Academic Open, Academic Select, Select Plus, OEM and/or FPP into this program. Microsoft offers a one-time reduced price (the price it charges the distributor/reseller) on the first year payment for the initial three-year Open Value Subscription agreement. Institution can consult its reseller for more details about the "up-to-date" (UTD) discount that Microsoft offers to its distribution channel. Organization is required to provide proof of licensing for the quantity that will qualify for the discount. Organization must have auditable licenses of current or prior versions of the Desktop Platform Products or Desktop Platform Product suites. For a list of Products eligible for the UTD discount, please refer to the Product List.
- c. Product price and payment terms set by Institution's reseller.** Institution must choose and maintain a reseller in its Defined Region. The License price and payment terms for all Products ordered will be determined by an agreement between Institution and Institution's reseller. Institution must specify the country(ies) where Organization will use the Licenses when placing orders.
- d.** Microsoft's prices (the prices it charges the distributor/reseller) to its distribution channel for Products under this agreement are established at the time the Product is first ordered and are re-established at extension or if Institution enters into a new agreement.

- e. **One-year Licensed Period.** Microsoft will not increase the price it charges to the reseller for an annual extension of a License by more than ten percent (10%) (as determined with reference to U.S. funds, regardless of the currency in which amounts are invoiced or payment is made) over the immediately preceding 12-month Licensed Period if Institution submits an extension order prior to the expiration of the Agreement for the same Products in the same quantities as ordered in the expiring Licensed Period.

4. *Licensing options and license grant — what Institution is licensed to run.*

- a. **Licensing options.** Organization must license Desktop Platform Products based on at least one of the following options: Faculty and Staff or Students. For the Faculty and Staff option, Institution's order quantity for Desktop Platform Products must be the Organization-wide Count, and for the Student option the Student Count. The Desktop Platform Product versions or SKUs (stock keeping units) included in Institution's initial order determine Organization's license rights for such Products.
- b. **License grant.** Microsoft grants the Organization 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. The rights granted are subject to the terms of this agreement, the Product Use Rights and the Product List and are granted only for the Licensed Period. Microsoft reserves all rights not expressly granted in this agreement.
 - (i) If the Faculty and Staff licensing is chosen, each Qualified User in the Organization (including Students and public users of Qualified Desktops in an open lab) may run the Desktop Platform Products, and Additional Products licensed for the Organization-wide Count, on any Institution Qualified Desktops. In the case of CALs, Organization may assign (1) a device CAL to each Institution Qualified Desktop and (2) a user CAL to each Faculty and Staff member, in both cases to access Institution's associated server software. Organization may not permit remote access to software installed on PCs in open access labs or libraries;
 - (ii) If the Student licensing option is chosen, each Student in the Organization may run one license of the Desktop Platform Products, and one license of Additional Products licensed for Organization's Student Count, on a Student Qualified Desktop. In the case of CALs, Organization may assign a user CAL to each Student to access Institution's associated server software. Student's right to use the software shall be governed by and subject to the relevant section(s) of the most current Product use rights;
 - (iii) Organization may run on Institution Qualified Desktops, and Students on Student Qualified Desktops, as many copies of other Additional Product(s) (i.e., Additional Products not licensed Organization-wide) Organization wishes so long as Institution places an order for required Licenses in the same month in which the Additional Product is first run. Order quantities must be equal to the number of copies Organization and Students run.
 - (iv) If Organization is licensing Office Professional and SharePoint Server CAL (Enterprise or Standard) for Faculty and Staff in its Organization under this Enrollment, then Organization's Students and their parents may use Office Web Applications at no charge for the purpose of Students' education in the Organization. There is no buy-out option for Office Web Applications.
- c. **Qualifying system License.** All desktop operating system Licenses provided under this program are upgrade Licenses only. Full desktop operating system Licenses are not available under this program. If Institution selects the Windows Desktop Operating System Upgrade or a Desktop Platform Product suite, all Qualified Desktops on which the Windows Desktop Operating System Upgrade will be used must be licensed to run one of the qualifying operating systems identified in the Product List at

<http://www.microsoft.com/licensing/contracts>. Note that the list of operating systems that qualify for the Windows Desktop Operating System Upgrade varies with the circumstances of the order. That list may be more extensive at the time of the initial order than it is for subsequent orders and system refreshes during the term of this agreement. Exclusions are subject to change when new versions of Windows are released.

For example: The following are not considered qualifying operating systems: (1) embedded operating systems; (2) Linux; and (3) OS/2. These are examples of exclusions only. Please see Product List for all current qualifying operating systems.

☒ (If applicable) If selecting the Windows Desktop Operating System option (standalone or included in a suite), Institution acknowledges the following:

- (i) The Windows Desktop Operating System Upgrade Licenses offered through this agreement are not full licenses. Organization has qualifying operating system licenses for all Qualified Desktops (and Students for their Student Qualified Desktops) on which the Windows Desktop Operating System Upgrade License is run.
 - (ii) In order to use a third party to reimage the Windows Operating System Upgrade, Organization must certify that it has acquired qualifying operating system licenses. See the Product List for details.
- d. **Perpetual and non-perpetual rights.** Subscription licenses, rights to access and use Online Services, and most Software Assurance rights are temporary. For all other licenses, the right to use Software becomes perpetual only when all license, Software Assurance, or license and Software Assurance payments for that Software have been made and the applicable Software Assurance term has expired. Perpetual licenses obtained via Software Assurance replace any perpetual licenses to the prior version
- e. **License confirmation.** All of the following, when taken together, are proof of Organization's Licenses, or if the buy-out option is exercised, perpetual Licenses: (1) this agreement and the order confirmation (as evidenced on Microsoft's VLSC web site), (2) for any transfers of perpetual Licenses allowed by this agreement, the documentation evidencing the License transfers, and (3) proof of payment.
- f. **Restrictions on use.** Organization may not:
 - (i) separate and use the components of a Product on two or more computers, upgrade or downgrade components at different times, or transfer components separately, except as provided in the Product Use Rights;
 - (ii) reverse engineer, decompile, or disassemble the Product or Fix, except to the extent applicable law permits it despite this limitation;
 - (iii) distribute, sublicense, rent, lease, lend, or commercially host to third parties the Product or Fix, except as permitted in this agreement or in a separate agreement.
- g. **Non-Microsoft software and technology.**
 - (i) Organization is solely responsible for any non-Microsoft software or technology that it installs or uses with the Product or Fixes. Microsoft is not a party to and is not bound by any terms governing Organization'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 licensed to Organization under the open source licenses used by the third parties that own such code, not by Microsoft.
 - (ii) If Organization 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 Organization'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 Institution.

- (iii) If Organization installs or uses any non-Microsoft software or technology with the Products or Fixes, it may not do so in any way that would subject Microsoft's intellectual property or technology to obligations beyond those included in this agreement.
- h. License rights are not related to fulfillment of Software media; non-exclusive license.** These rights apply to the Licenses obtained under this agreement and are not related to any order of fulfillment of software media. Each Product is licensed to Institution, not sold. The Product is licensed on a non-exclusive basis and neither party is obligated to deal exclusively with the other.

5. *How to know what Product Use Rights apply.*

- a. Product Use Rights.** Microsoft publishes Product Use Rights for each version of each Product.
 - (i) Product Use Rights for Products (other than Online Services).** The Product Use Rights in effect on the effective date of this agreement will apply to Organization's use of then-current versions of each Product (excluding Online Services). For future versions, the Product Use Rights in effect when those future versions are first released will apply. In both cases, subsequent changes made by Microsoft to the Product Use Rights for a particular version will not apply to Organization's use of that version; unless Organization chooses to have such changes apply.
 - (ii) Product Use Rights for Online Services.** For Online Services, the Product Use Rights in effect on the subscription start date will apply to Organization's use of the Online Service for the first 12 months of the subscription term, except as otherwise noted in the Product Use Rights. The process for updating the applicable user rights are detailed in the Product Use Rights.
 - (iii) Product Use Rights for earlier versions (downgrade).** Organization may use an earlier version of a Product than the version that is current on the effective date of the agreement. In that case, the Product 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 Product Use Rights applicable to the earlier version apply with respect to those features.
- b. No detrimental changes for Desktop Platform Products.** If a new version of a Desktop Platform Product has more restrictive use rights than the version that is current at the start of the applicable initial or renewal term of the agreement, those more restrictive use rights will not apply to the Organization's use of that Product during that term.
- c. Use rights for different language version.** If Organization is using any different language version of any Product licensed under its agreement, Organization's use of the different language version will be governed by the Product Use Rights for the version licensed under this agreement.

6. *How to order Products.*

- a. Sign this agreement.** Institution will be directed to a password protected Microsoft Web site to accept this agreement and allow its reseller to place Institution's order. Institution will receive an agreement confirmation which will indicate Microsoft's acceptance of the agreement. The agreement confirmation may be sent by email. After the reseller places Institution's first order, Institution will receive an order confirmation. This agreement will be terminated if Institution fails to place an order within 30 days of the agreement confirmation date. If Institution is unable to access Microsoft's Web site, Institution should contact its reseller.

- b. Minimum order quantity.** Initial orders, anniversary orders, and extension orders must contain at least one Desktop Platform Product for Organization-wide Count or Student Count, as applicable. The Organization-wide count and/or Student count as applicable must be at least 5 licenses.

The minimum requirements listed above are waived if Institution has a Qualifying Enrollment or Agreement.

c. Placing the initial order.

- (i) Initial orders, anniversary orders, and extension orders must contain at least one Desktop Platform Product for Organization-wide Count or Student Count, as applicable. The Organization-wide count and/or Student count as applicable must be at least 5 licenses.
- (ii) Orders for Desktop Platform Products and all component products that are part of the Desktop Platform Products must be for Institution's then-current Organization-wide Count.
- (iii) Additional Products must be ordered in exact quantities needed (in any quantity.) Certain Additional Products may instead be ordered for the Organization-wide Count, as described in the Product List.
- (iv) Products offered under the Student Offering must be ordered for the full Student Count, with the exception of certain Products designated in the Product List.
- (v) From time to time, Microsoft may offer additional licensing options for Students based on Licenses for Products ordered for Institution's Organization-wide Count, which will be described in the Product List.

d. Adding new Products not previously ordered. Orders can be submitted for Products that were not part of the initial order. The order must be placed in the month in which those copies are first run.

- (i) Orders for Desktop Platform Products and all component products that are part of the Desktop Platform Products must be for Institution's then-current Organization-wide Count.
- (ii) Additional Products must be ordered in exact quantities needed (in any quantity.) Certain Additional Products may instead be ordered for the Organization-wide Count, as described in the Product List.
- (iii) Products offered under the Student Offering must be ordered for the full Student Count.

The Licensed Period for additional orders will be the same as the agreement Licensed Period.

Microsoft will invoice the distributor, for the Products ordered. Microsoft will use the price list in effect on the date of the invoice to charge Institution's distributor for the additional Licenses.

e. Adding more copies of Products previously ordered

- (i) For Desktop Platform Products, and Additional Products licensed Organization-wide, and products offered under the Student offering, Institution does not need to submit orders to increase the number of copies run. However, increases in Organization-wide Count or Student Count, as applicable, must be reported at each anniversary of the agreement effective date.
- (ii) Other Additional Products (i.e., not licensed Organization-wide) are licensed based on the number of Licenses acquired. At any time during the Licensed Period (including any extension), Organization may run additional copies of any previously ordered Additional Products, provided Institution submits orders for such copies. The order must be placed in the month in which those copies are first run.

- f. **Extension orders and subsequent annual orders.** Institution must submit orders based on the following:
- (i) **One-year Licensed Period.** An extension order must be submitted to extend the agreement for another Licensed Period. The extension order must be received by Microsoft prior to the expiration of the Licensed Period. The selection and quantity of individual Products ordered, not the Product categories selected in section A above, can be changed at each extension order.
 - (ii) **Three-year Licensed Period.** An anniversary order must be received by Microsoft prior to each anniversary of the agreement effective date, and a subsequent extension order must be received by Microsoft prior to the expiration of the initial three-year Licensed Period. Each anniversary order must be for at least the same Product selection and total quantity as ordered during the one-year period in which each Product was first ordered, except for step-ups and any additional products not ordered Organization-wide. When placing anniversary orders, Institution may order fewer licenses for Online Services than the quantity of Institution's initial order as long as the anniversary order meets the minimum requirements for Platform Online Services.
 - (iii) Microsoft will give Institution prior written notice each anniversary to submit an annual order to Institution's reseller.
- g. **How to confirm orders.** Microsoft will publish information about orders placed by Institution, including an electronic confirmation of each order on a password-protected site on the World Wide Web at <https://www.microsoft.com/licensing/servicecenter> or a successor site. Upon Microsoft's acceptance of this agreement, the contact identified for this purpose will be provided access to this site.
- h. **Step up to a higher Product edition.** If a previously ordered Product has multiple editions, Organization may migrate to the higher edition by stepping up (e.g. from Core CAL to Enterprise CAL or from SQL Server Standard Edition to SQL Server Enterprise Edition.) The order requirements set forth in subsection 6d above apply to step-ups for both Desktop Platform Products and Additional Products.
- i. **Pay for orders.** Institution must pay its reseller for the Products ordered.
- j. **Changing a reseller.** If Institution discontinues its relationship with a reseller, Institution must choose a replacement reseller in Institution's Defined Region. If Institution intends to change its reseller, Institution 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.

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

- a. **General.** Institution may make as many copies of the Products licensed as necessary to distribute the Products within the Organization. All copies of any Product must be true and complete copies (including copyright and trademark notices) from master copies obtained from a Microsoft approved fulfillment source. Institution may also have a third party make or distribute copies but Institution is responsible for such third party's actions. Institution agrees to make reasonable efforts to notify its employees, agents, and other individuals running a Product that the Product is licensed from Microsoft and subject to the terms of this agreement.
- b. **Re-imaging rights.** 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), or (2) as a full packaged Product through a retail source, 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 components of the copies they replace and the number of copies or instances of the re-imaged Product permitted remains the same.
- (iii) Except for copies of an operating system and copies of Products licensed under another Microsoft program, the Product type (e.g., Upgrade or full License) re-imaged must be identical to the Product type licensed from the separate source.
- (iv) Any Product-specific processes or requirements for re-imaging identified in the Product List.
- (v) Re-imaged Products remain subject to the terms and use rights provided with the License acquired from the separate source. This subsection does not create or extend any Microsoft warranty or support obligation.

8. *Transfer and reassigning Licenses.*

- a. **License transfers.** License transfers are not permitted, except that Institution may transfer fully-paid perpetual licenses to:
 - (i) an Affiliate, or
 - (ii) a third party solely in connection with the transfer of hardware or employees to whom the licenses have been assigned as part of (1) a divestiture of an Affiliate or a division of an Affiliate or (2) a merger involving Institution or an Affiliate.
- b. **Notification of License Transfer.** Institution 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 Institution provides to the transferee, and the transferee accepts in writing, the applicable Product 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 Organization. Licenses and Software Assurance may be reassigned within the organization as described in the Product Use Rights.

9. *Term and termination.*

- a. This agreement will be effective on the date it is accepted by Microsoft unless a Qualifying/Previous Enrollment or Agreement number is provided at the top of this agreement. In that case, the effective date will be one day following the expiration of the Qualifying/Previous Enrollment or Agreement.
- b. This agreement ends 12 or 36 full calendar months from the effective date. The term is indicated in Section A of this agreement titled "Select a purchasing option and license period." Microsoft will provide Institution prior written notice advising of the extension and buy-out options.
- c. Either party may terminate this agreement only in the event of a material breach 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. When this agreement expires or is terminated:

- (i) If Institution does not submit an extension order or signs a new agreement based on the “Extending this agreement or signing a new agreement” section the agreement will expire. Since all Licenses under this agreement are temporary, the Organization will not be eligible to obtain Software Assurance for those Licenses under any other program without first acquiring a perpetual License or a License and Software Assurance.
 - (ii) If the agreement is terminated, or Institution does not exercise the buy-out option and allows the agreement to expire, then all copies of the Products licensed under this agreement and its associated media must be deleted and destroyed. Microsoft may request written certification of the deletion and destruction.
- e. **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.
- f. **Program updates.** Microsoft may make a change to this program that will make it necessary for Institution to enter into a new agreement at the time of an agreement extension.

10. *Extending this agreement or signing a new agreement.*

- a. **Extending the agreement.** Institution has a one-time option to extend this agreement and place additional orders under it for one additional term of 36 full calendar months. Institution’s entries in sections A, B, and/or C above remain unchanged upon extension. If Institution wishes to extend the agreement after the first term expires, it must submit an extension order prior to or at the expiration of the first term. The extension will start the day after the first term ends. If Microsoft makes a change to the Open Value Subscription program, the extension option may not be available and Institution may have to enter into a new agreement.
- b. **Signing a new agreement.** If Institution wishes to continue its subscription after the agreement expires, it may enter into a new agreement and place orders under it. In order to be considered as a consecutive term for the buy-out eligibility calculation purpose, Institution must place an order under the new agreement prior to or at the expiration of the existing agreement term. The new agreement will start the day after the existing agreement ends.

11. *Buy-out.*

Institution may elect to obtain perpetual Licenses for Products after subscribing for three or more consecutive years under the Open Value Subscription program through several one-year License Periods or a three-year License Period or combination of both. The buy-out order can be placed only at the end of the agreement term. Institution must submit an order to the reseller at least 30 days before the end of that term and pay the buy-out price. The buy-out price is determined by agreement between Institution and its reseller.

The buy-out order quantity for Licenses for Desktop Platform Products shall be at least equal to the Organization-wide Count but shall not exceed the total quantity of Institution Qualified Desktops in its Organization on the date of the buy-out order. The buy-out order quantity for Additional Products shall be the lowest total quantity of copies ordered during any of the three 12 month periods immediately preceding expiration of this agreement. The buy-out option is not available for Products licensed under the Student option.

Except as specifically provided otherwise in the Product Use Rights, perpetual Licenses acquired through this buy-out option are device-based Licenses. The license grant in Section 4b(i-ii) above does not apply

to such perpetual Licenses. For example, a License is required for each Qualified Desktop on which the Organization desires to run Office.

The Institution's prices for buy-out Licenses will be the buy-out prices in effect for its price level for that Product as of the date that it places its first order for that Product or as specified with the initial order.

If Institution opts to buy out Licenses and desires to maintain Software Assurance coverage, Institution must renew Software Assurance on or before the end of the agreement term by signing a new license agreement.

12. Confidentiality.

Microsoft may use any technical information it derives from providing services related to Microsoft software for problem resolution, troubleshooting, Product functionality enhancements, and Fixes for Microsoft's knowledge base. Microsoft agrees not to identify or disclose any confidential information in any item in the knowledge base. Microsoft is not obligated to restrict the future work assignments of people who have had access to Institution's confidential information. In addition, the parties and these people are free to use the information that these people remember related to information technology, including ideas, concepts, know-how, or techniques, so long as confidential information of the other party is not disclosed in the course of such use.

To the extent permitted by applicable law, the terms and conditions of this agreement are confidential. Neither party will disclose such terms and conditions, or the substance of any discussions that led to them, to any third party other than Affiliates or agents, or to designated or prospective resellers who: (1) have a need to know such information in order to assist in carrying out this agreement; and (2) have been instructed that all such information is to be handled in strict confidence.

13. Warranties.

a. Limited warranty. Microsoft warrants that:

- (i) Online Services will perform in accordance with the applicable Service Level Agreement; and
- (ii) Products other than Online Services will perform substantially as described in the applicable Microsoft user documentation.

b. Limited warranty term. The limited warranty for:

- (i) Online Services is for the duration of Organization's use of the Online Service, subject to the notice requirements in the applicable Service Level Agreement; and
- (ii) Products other than Online Services is one year from the date Organization first uses the Product.

c. Limited warranty exclusions. This limited warranty is subject to the following limitations:

- (i) the limited warranty does not cover problems caused by accident, abuse, or use of the Products in a manner inconsistent with this agreement or the Product Use Rights or resulting from events beyond Microsoft's reasonable control;
- (ii) the limited warranty does not apply to components of Products that Organization is permitted to redistribute; and
- (iii) the limited warranty does not apply to problems caused by the failure to meet minimum system requirements.

d. Remedies for breach of limited warranty. If Microsoft fails to meet any of the above limited warranties and Institution notifies Microsoft within the warranty term, then Microsoft will,

- (i) for Online Services, provide the remedies identified in the Service Level Agreement for the affected Online Service;

- (ii) for Products other than Online Service, at its option, either (1) return the price paid for the Product, or (2) repair or replace the Product; and
- (iii) for Services, at its option either (1) return the price paid for the specific Service or (2) re-perform the specific Service

These are Institution's only remedies for breach of the limited warranty, other than remedies required to be provided under applicable law.

- e. **DISCLAIMER OF OTHER WARRANTIES. OTHER THAN THIS LIMITED WARRANTY, MICROSOFT PROVIDES NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS. MICROSOFT DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE, OR NON-INFRINGEMENT. THESE DISCLAIMERS APPLY UNLESS APPLICABLE LAW DOES NOT PERMIT THEM. Any warranties, guarantees, or conditions that cannot be disclaimed as a matter of law last for one year from the start of the limited warranty.**

14. *Defense of infringement and misappropriation claims.*

- a. **Microsoft's agreement to protect.** Microsoft will defend Institution against any claims made by an unaffiliated third party that (i) any Product or Fix made available by Microsoft for a fee infringes that party's patent, copyright or trademark or makes unlawful use of its Trade Secret or (ii) arising from Microsoft's provision of an Online Service in violation of laws applicable to Microsoft as a service provider. Clause (ii) will not apply to (A) any laws or regulations applicable to Institution or Institution's industry that are not also generally applicable to information technology security providers, and (B) any violations of laws or regulations related to a claim covered under clause (i). Microsoft will also pay the amount of any resulting adverse final judgment (or settlement to which Microsoft consents). This Section 14 provides Institution's exclusive remedy for these claims.
- b. **Limitations on defense obligation.** Microsoft's obligations under (a)(i) above will not apply to the extent that the claim or award is based on:
 - (i) Customer Data, non-Microsoft software, modifications Institution makes to, or any specifications or materials Institution provides or makes available for, a Product or Fix;
 - (ii) Organization's combination of a Product or Fix with a non-Microsoft product, data or business process; or the use of a non-Microsoft product, data or business process;
 - (iii) Organization's use of either Microsoft's trademarks or the use or redistribution of a Product or Fix in violation of this agreement or any agreement incorporating its terms; or
 - (iv) Organization's use of a Product or Fix after Microsoft notifies Institution to discontinue that use due to a third party claim.

Institution will reimburse Microsoft for any costs or damages that result from any of the above actions.

- c. **Institution's agreement to protect.** Institution will defend Microsoft against any claims made by an unaffiliated third party that:
 - (i) any Customer Data or non-Microsoft software Microsoft hosts on Institution's behalf infringes the third party's patent, copyright, or trademark or makes unlawful use of its Trade Secret; or
 - (ii) arises from violation of the Acceptable Use Policy, which is described in the Product Use Rights.

Institution must pay the amount of any resulting adverse final judgment (or settlement to which Institution consents). This section provides Microsoft's exclusive remedy for these claims.

d. Rights and remedies in case of possible infringement or misappropriation.

- (i) Microsoft offerings.** If Microsoft reasonably believes that a Product or Fix may infringe or misappropriate a third-party's intellectual property rights, Microsoft will seek to: (1) procure for Organization the right to continue to use the Product or Fix; or (2) modify or replace it with a functional equivalent to make it non-infringing and notify Organization to discontinue use of the prior version, which Organization must do immediately. If the foregoing options are not commercially reasonable for Microsoft, or if required by a valid judicial or government order, Microsoft may terminate Organization's license or access rights in the Product or Fix. In such a case, Microsoft will notify Institution and refund any amounts Institution has paid for those rights to the Product or Fix (or for Online Services, any amount Institution has paid in advance for unused Online Services).
- (ii) Customer Data or use of non-Microsoft software with Online Services.** If an unaffiliated third party asserts that Customer Data or non-Microsoft software or technology used by Organization with the Online Services violates their intellectual property rights, Microsoft may ask Institution to remove the allegedly infringing item. If Institution fails to do so within a reasonable period of time, Microsoft may suspend or terminate the Online Service to which the Customer Data or non-Microsoft software relates.
- e. Obligations of protected party.** Institution must notify Microsoft promptly in writing of a claim subject to the Subsection titled "Microsoft's agreement to protect" and Microsoft must notify Institution promptly in writing of a claim subject to the Subsection titled "Institution's agreement to protect." The party invoking its right to protection must (1) give the other party sole control over the defense or settlement; and (2) provide reasonable assistance in defending the claim. The party providing the protection will reimburse the other party for reasonable out of pocket expenses that it incurs in providing assistance.

15. Limitation of liability.

- a. Limitation on liability.** To the extent permitted by applicable law, the total liability of each party, including its Affiliates and its contractors for all claims arising under this agreement is limited to direct damages up to (1) for Services, the amount Institution was required to pay for the Services under the applicable Statement of Services, (2) for each Product other than Online Services, the amount Institution was required to pay for the Product and, (3) for Online Services, the amount Institution paid for the Online Service during the 12 months before the cause of action arose; provided, that in no event will a party's aggregate liability for any Online Service exceed the amount paid for that Online Service. In the case of Products or Services provided free of charge or code that Institution is authorized to redistribute to third parties without separate payment to Microsoft, Microsoft's liability is limited to direct damages and capped at U.S. \$5,000. These limitations apply regardless of whether the asserted liability is based on breach of contract, tort (including negligence), strict liability, breach of warranties, or any other legal theory. However, the monetary limitations in this section will not apply to:

 - (i)** Microsoft's and Institution's obligations under the section titled "Defense of infringement and misappropriation claims";
 - (ii)** liabilities arising out of any breach by either party of its obligations under the section titled "Confidentiality"; except that Microsoft's liability arising out of or in relation to Customer Data shall in all cases be limited as provided above for the applicable Online Service or Services; and
 - (iii)** violation by either party of the other party's intellectual property rights
- b. EXCLUSION OF CERTAIN DAMAGES. TO THE EXTENT PERMITTED BY APPLICABLE LAW, WHATEVER THE LEGAL BASIS FOR THE CLAIM, NEITHER PARTY, NOR ANY OF ITS AFFILIATES OR CONTRACTORS, WILL BE LIABLE FOR ANY INDIRECT,**

CONSEQUENTIAL, SPECIAL, OR INCIDENTAL DAMAGES, OR DAMAGES FOR LOST PROFITS, REVENUES, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION ARISING IN CONNECTION WITH THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH POSSIBILITY WAS REASONABLY FORESEEABLE. HOWEVER, THIS EXCLUSION DOES NOT APPLY TO EITHER PARTY'S LIABILITY TO THE OTHER FOR VIOLATION OF (1) ITS CONFIDENTIALITY OBLIGATIONS (EXCEPT TO THE EXTENT THAT SUCH VIOLATION RELATES TO CUSTOMER DATA), (2) THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, OR (3) OBLIGATIONS IN THE SECTION TITLED "DEFENSE OF INFRINGEMENT, MISAPPROPRIATION, AND THIRD PARTY CLAIMS."

- c. **Affiliates and contractors.** Neither Microsoft nor Institution shall bring any action against the other's Affiliates or contractors in respect of any matter which is disclaimed on their behalf in this Section. Each party will indemnify the other in the event of any breach of this provision.

16. *Verifying compliance.*

Institution must keep all usual and proper records relating to the Products the Organization runs. Microsoft may request that Institution conduct an internal audit of all Microsoft Products in use throughout the Organization, comparing the number of Products in use to the number of effective Licenses issued in its name. Following any audit, Institution agrees to deliver to Microsoft a written statement signed by its authorized representative, certifying that either (1) Organization has sufficient Licenses to permit all usage disclosed by the audit, or (2) it has ordered sufficient Licenses to permit all usage disclosed by the audit. By requesting an internal audit, Microsoft does not waive its rights to enforce this agreement or to protect its intellectual property by any other means permitted by law.

17. *Work at home rights.*

During the Licensed Period, Faculty and Staff who are the primary users (as defined in the Product use Rights) of an Institution Qualified Desktop running one or more Products licensed by the Organization may run one copy of each licensed Product on a home PC that they own or lease (or, for work at home rights for a Client Access License, to access the server Product(s) licensed by Organization from a home PC that they own or lease), solely for work-related purposes. The total number of Faculty and Staff exercising work at home rights for Desktop Platform Products and Additional Products licensed Organization-wide may not exceed the Organization-wide Count. For Additional Products, the number of Faculty and Staff exercising work at home rights may not exceed the number of Licenses Organization has acquired for such Additional Products. If Institution upgrades the Product on the Qualified Desktop used by a Faculty and Staff member, the corresponding copy of the Product run on a home PC may likewise be upgraded. Work at home rights for Faculty and Staff automatically terminate upon cessation of employment by or other affiliation with Institution, and the copy of the Product may no longer be run on the home PC. Though Microsoft may offer both work at home rights and home use program rights under Software Assurance for a Product, Organization must choose to utilize either work at home rights or home use program rights for its Users for such Product, but not both.

18. *Distributing media.*

- a. **To Faculty and Staff.** Institution may acquire the quantity of media as necessary to distribute the Products to Faculty and Staff for use in accordance with the agreement. All media for a particular Product must be acquired from a Microsoft-approved fulfillment source for that Product. Institution may also copy volume licensing media acquired from a Microsoft-approved fulfillment source for distribution to Faculty and Staff Qualified Users only. All copies must be true and complete copies (including copyright and trademark notices). Institution must maintain the security of any volume licensing keys provided with volume licensing media in accordance with applicable Product Use Rights and other restrictions and

may disclose them only to employees authorized to engage in the installation and support of the Products. Institution may not disclose volume licensing keys to Faculty and Staff for work-at-home rights or Students or to any other unauthorized third party.

- b. To Faculty and Staff work at home Qualified Users and to Student Qualified Users.** If Institution chooses Faculty and Staff work at home rights for selected Products or elects the Student option, access to media by Faculty and Staff for work at home purposes and by Students must be restricted and regulated by Institution. All media for Products distributed to Faculty and Staff for work at home purposes and to Students must be acquired from a Microsoft approved fulfillment source, and such Products may be distributed to such Qualified Users only in the following ways:
- (i) if individual Student-media CD-ROM or disk sets (collectively, "Student Media") is purchased for a particular Product, Institution may distribute one copy of such Student Media directly to each authorized Faculty and Staff member for work at home rights or Student (Student Media may contain Product activation features that limit the number of installations); the reseller can identify media and Products that contain Product activation features. Institution is advised to contact its reseller for details on ordering and distributing Student Media; or
 - (ii) using volume licensing media acquired pursuant to this agreement, via (1) controlled download from a secure network server(s) or other storage device(s), (2) manual installation at a central location that Institution controls, or (3) a system of controlled short-term checkout of applicable volume licensing media solely for purposes of individual user installation, provided that this option (ii) is available only for Products for which a volume licensing key is not required.
 - (iii) **Additional method of software distribution.** Institution may distribute copies of and updates to Desktop Platform Products to Faculty and Staff (work at home rights only) and Students, when Organization is licensed to do so. Institution may also distribute through a Microsoft-approved entity selected by Institution to electronically distribute copies via download from secure network server(s) or other storage device(s), provided Institution or the Microsoft approved entity controls the download to ensure that the number of permitted copies is not exceeded and those making the download are licensed to do so.
- c. To Students.** Institution may order media to distribute the Products to Students for use in accordance with this agreement. Institution's order for media must specify version number and country of usage. Institution may only use the media received under this agreement to transfer Products to eligible Students. Products may only be transferred in the same media format that Institution receives under the agreement. Orders must be placed with the reseller named on the agreement. Institution may use a third party to complete and process eligible Students' orders for media under its agreement and to distribute media to eligible Students. Institution remains responsible for the third party's actions to the same extent Institution would be if the third party was its employee. Price and payment terms for media ordered are determined by agreement with Institution's designated reseller. Institution's designated reseller is authorized to purchase media Products from the Microsoft authorized replicator identified by Microsoft from time to time (the "Microsoft Authorized Replicator(s)") solely for the purpose of fulfilling orders placed under the agreement. Institution's designated reseller may purchase from the Microsoft Authorized Replicators media and documentation only for those Products available under the agreement.

19. Redistribution of Software Updates to Students.

- a. License grant.** Microsoft grants Organization a limited, non-exclusive, royalty-free, non-assignable, non-transferable, revocable License to distribute Software Updates to Institution's Students in accordance with the terms of this section. Organization's Students must use the Software Updates solely for their personal benefit in accordance with the end-user License Agreement with Microsoft ("EULA") included with each Software Update.

- b. Redistribution of Software Updates.** Organization may redistribute Software Updates to its Students (1) by electronic means provided that Institution's method of electronic distribution is adequately licensed and incorporates access control and security measures designed to prevent modification of the Software Updates and access by the general public or (2) by acquiring authorized copies on fixed media from a fulfillment source approved by Microsoft.
- c. Limitations.** Organization may not (1) produce or replicate Software Updates on to CDs or other distributable storage media, (2) combine the Software Updates with other, non-Microsoft software, (3) distribute any Software Updates as a stand-alone component via email attachment, (4) charge for the Software Updates, other than to recover any reasonable costs incurred in providing the updates to its students; (5) remove, modify, or interfere with the EULA or the EULA acceptance functionality included by Microsoft with any Software Update; or (6) alter the Software Updates in any way. Microsoft is not responsible for any cost related to the acquisition, distribution, or recall of the Software Updates.
- d. Tracking and recall, replacement Software Updates.** Organization must track the quantity and method of distribution of the Software Updates by means that will allow Institution to provide notice of a recall and offer replacements as provided in this subsection. Institution agrees to stop redistributing Software Updates within 10 days of receipt of a notice of recall from Microsoft and within 30 days of that notice Institution agrees to (1) return to Microsoft or destroy all copies of Software Updates in Organization's possession and (2) notify Organization's Students of the recall by the same or similar means in which they were notified of the availability of the Software Updates.

If Microsoft makes available to Organization a replacement Software Update, Organization agrees to make the replacement available to its Students, or Faculty and Staff, within 30 days of receipt in the same quantity and method(s) of distribution as Organization made the original Software Update available. The distribution of replacement Software Updates is subject to the same conditions and restrictions as Software Updates under this section.

- e. No warranties; exclusion of indirect, special, incidental, consequential, and certain other damages.** Notwithstanding anything to the contrary in this agreement, and to the extent permitted by law, Software Updates that Organization redistributes to its Students are provided "as is" without any warranties. Institution acknowledges that the provisions of this paragraph with regard to the Software Updates are reasonable considering, among other things, that the Software Updates are complex computer Products. Institution further acknowledges that the performance of the Software Updates will vary depending upon hardware, platform, and Products interactions and configurations.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL MICROSOFT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, CONSEQUENTIAL, OR INDIRECT DAMAGES THAT ARISE OUT OF OR ARE IN ANY WAY RELATED TO ORGANIZATION'S REDISTRIBUTION OF THE SOFTWARE UPDATES TO ITS STUDENTS. FURTHERMORE, IN NO EVENT SHALL MICROSOFT BE LIABLE FOR ANY SUCH DAMAGES BASED DIRECTLY OR INDIRECTLY UPON THE PROVISION OF SOFTWARE UPDATES OR UNAVAILABILITY OF SOFTWARE UPDATES—INCLUDING WITHOUT LIMITATION, DAMAGES DUE TO BUSINESS INTERRUPTION, LOSS OF PROFITS, REVENUE OR BUSINESS OPPORTUNITY, LOSS OF DATA AND THE LIKE, FAILURE TO MEET ANY DUTY, OR NEGLIGENCE.

- f. Limitation of liability.** With respect to Organization's redistribution of the Software Updates, the limitation of liability provisions in this agreement shall apply in those situations in which Organization or its Users assert a right to damages or other compensation from Microsoft.
- g. No support.** Institution understands that Microsoft has no obligation to provide any support for Software Updates that Organization may redistribute to its Students, including any benefits accruing from Software Assurance.
- h. Applicability.** The provisions of this section shall not apply to the distribution of Fixes to Students so long as the Fix distributed is for a Product the Students are authorized to run. All

other redistribution of additional or replacement code to Students is subject to the provisions of this section.

20. Miscellaneous.

- a. Notices to Microsoft.** Notices, authorizations, and requests in connection with this agreement must be sent by regular or overnight mail or express courier to the addresses and numbers listed on the signature form and in this agreement. Notices will be treated as delivered on the date shown on the return receipt or on the courier confirmation of delivery.
- b. No transfer of ownership.** Microsoft does not transfer any ownership rights in any licensed Product. Microsoft reserves all rights not specifically granted in this agreement. The Products are protected by copyright and other intellectual property rights laws and international treaties.
- c. Order of precedence.** In the case of a conflict between any documents in this agreement that is not expressly resolved in the documents, their terms will control in the following order of descending priority: (1) this agreement, (2) the Product List, (3) the Product Use Rights, (4) all orders submitted under this agreement, and (5) any other documents in this agreement. Terms in an amendment control over the amended document and any prior amendments concerning the same subject matter.
- d. Applicable law, venue, and jurisdiction.** This agreement is governed by the laws of the state where Institution is organized or formed. Both parties agree that the federal courts have exclusive jurisdiction over disputes under this agreement and the resolution. Any legal actions relating to this agreement must be brought in a court of competent jurisdiction within federal courts located in the jurisdiction of the state where Institution is organized, and the parties agree that jurisdiction and venue in such courts is appropriate.
- e. Severability.** If a court holds any term of this agreement to be illegal, invalid, or unenforceable, the remaining terms will remain in effect and this agreement will be amended to give effect to the eliminated provision to the maximum extent possible.
- f. Survival.** Provisions regarding Product Use Rights, restrictions on use, transfer of licenses, warranties, warranty limitations, limitation and exclusions on damages, defense against intellectual property claims, confidentiality, compliance verification, obligations on termination or expiration, and this "Miscellaneous" section will survive termination or expiration of this agreement.
- g. English language controls.** The English language version of this agreement controls.
- h. 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.
- i. Institution's responsibility for others using the Product; third parties that may benefit from this agreement.** Institution 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.

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 Institution. 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.

- j. Privacy and security.** Microsoft and Institution will each comply with all applicable privacy and data protection laws and regulations (including applicable security breach notification law). However, Microsoft is not responsible for compliance with any laws applicable to Institution or Institution's industry that are not also generally applicable to information

technology services providers. Institution consents to the processing of personal information by Microsoft and its agents to facilitate the subject matter of this agreement.

Institution may choose to provide personal information to Microsoft on behalf of third parties (including Institution's contacts, resellers, distributors, administrators, and employees) as part of this agreement. Institution will obtain all required consents from third parties under applicable privacy and data protection law before providing personal information to Microsoft.

The personal information Institution provides in connection with this agreement will be processed according to the privacy statement available at <https://www.microsoft.com/licensing/servicecenter> (see footer), except that Product-specific privacy statements are in the Product Use Rights. Personal data collected through Products may be transferred, stored and processed in the United States or any other country in which Microsoft or its service providers maintain facilities. By using the Products, Institution consents to the foregoing. 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.

For Online Services, additional privacy and security details are in the Product Use Rights.

- k. Advisor fee.** Microsoft, or its Affiliates, sometimes pays fees to software advisors, or other third parties authorized by Microsoft or one of its Affiliates. The fees are in exchange for their advisory Services. The payment of fees depends upon several factors, including the type of agreement under which Institution orders Licenses, which Licenses Institution orders, and whether Institution chooses to use an advisor. The fee amounts increase with the size of the orders Institution places under this agreement.
- l. U.S. export.** Products and Fixes are subject to U.S. export jurisdiction. Institution 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>. Institution will notify Microsoft at cmec@microsoft.com as to any regulatory or legal controls on the use, access or transfer of Institution's software or technology prior to such use, access or transfer to/by Microsoft. Institution will provide sufficient information to permit Microsoft to comply with applicable controls on Institution's software or technology.
- m. Subcontractors.** Microsoft may use contractors to support Online Services. Microsoft will be responsible for their performance subject to the terms of this agreement.
- n. 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.
- o. Section headings.** All section and subsection headings used in this agreement, as well as any Enrollments or Statement of Services, are for convenience only and shall not affect the interpretation of this agreement
- p. FERPA.** Upon receipt of a judicial order or lawfully issued subpoena requiring the disclosure of personally identifiable information from education records related to Institution in Microsoft's possession, Microsoft or an Affiliate of Microsoft will attempt to redirect the request to Institution. If compelled to disclose personally identifiable information from education records related to Institution to a third party, Microsoft will use commercially reasonable efforts to notify Institution in advance of a disclosure unless legally prohibited. Institution understands that Microsoft may have no or limited contact information for Institution's students and students' parents in its possession. Consequently, Institution will convey notification on behalf of Microsoft to students (or, with respect to a student under 18 years of age and not in attendance at a postsecondary institution, to the student's parent) of such an order or subpoena as may be required under applicable law.