

FORM APPROVED COUNTY COUNSEL 2/29/16  
 BY: GREGORY P. PRIAMOS DATE

**SUBMITTAL TO THE BOARD OF SUPERVISORS  
 COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

826



**FROM:** Riverside County Information Technology (RCIT)

**SUBMITTAL DATE:**  
 February 25, 2016

**SUBJECT:** Approve the updated Master Service Agreement (MSA) with Microsoft Corporation which supersedes and replaces MSA48219962, as a single source, to provide as needed services for critical consolidation projects for RCIT for FY 14/15 with the option to renew for one additional year through FY16/17. [All Districts]; [Total cost \$1.2 million, \$400,000 in FY 15/16, not to exceed \$800,000 in FY 16/17, RCIT Operating Budget].

**RECOMMENDED MOTION:** That the Board of Supervisors:

1. Approve and execute the Master Service Agreement with Microsoft Corporation, as a single source, in the amount of \$400,000 through FY 15/16 with the option to renew for one additional year through FY 16/17 up to \$800,000, to provide as needed services for critical projects, and;
2. Authorize the Purchasing Agent, in accordance with Ordinance No. 459, based on the availability of funding and as approved by County Counsel to: sign amendments that do not change the substantive terms of the agreement; and (b) sign amendments for services as needed for critical projects.

**BACKGROUND:  
 Summary**

(Continued on page 2)

*Steve Reneker*  
 Steve Reneker  
 Chief Information Officer

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost:	POLICY/CONSENT (per Exec. Office)
COST	\$ 400,000	\$ 800,000	\$ 1,200,000	\$ 0	Consent <input type="checkbox"/> Policy <input type="checkbox"/>
NET COUNTY COST	\$ 0	\$ 0	\$ 0	\$ 0	

**SOURCE OF FUNDS:** RCIT Operating Budget  
 Budget Adjustment: No  
 For Fiscal Year: 15/16-16/17

**C.E.O. RECOMMENDATION:** APPROVE  
 BY: *Jennifer L. Sargent*  
 County Executive Office Signature Jennifer L. Sargent

**MINUTES OF THE BOARD OF SUPERVISORS**

Purchasing & Fleet Services: *Teresa Summers*  
 Teresa Summers, Assistant Director

Departmental Concurrence

- A-30
- Positions Added
- 4/5 Vote
- Change Order

## **SUBMITTAL TO THE BOARD OF SUPERVISORS, COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

Approve the updated Master Service Agreement (MSA) with Microsoft Corporation which supersedes and replaces MSA48219962, as a single source, to provide as needed services for critical consolidation projects for RCIT for FY14/15 with the option to renew for one additional year FY16/17. [All Districts]; [Total cost \$1.2 million, \$400,000 in FY 15/16, not to exceed \$800,000 in FY 16/17, RCIT Operating Budget].

**DATE: February 25, 2016**

**PAGE: 2 of 2**

### **BACKGROUND:**

#### **Summary**

RCIT is engaged in consolidating departments, under direction from the Board of Supervisors and the Executive Office. As a result, there is a need to consolidate the underlying infrastructure across the county, including such items as "identity" within Microsoft Active Directory, Office 365, Desktop Management, etc.

The County is a complex environment and having this agreement in place will allow access to the deepest experts in the field relating to Microsoft technologies. There are no other vendors that have the same level of access to the software as the manufacturer or the depth of knowledge and resources available to guarantee success. Leveraging the manufacturer to provide implementation services on their products will lead to quicker time to value and less implementation risk, since the county will have a high degree of engagement from Microsoft to the County's success.

Anticipated costs for FY 15/16 are estimated at \$400,000 and \$800,000 in FY 16/17, for a total of \$1.2 million. Funds will not be encumbered until an approved scope of services has been agreed upon by RCIT and Microsoft, and funding is available. Each project scope of services will be added to the MSA via written amendment and reviewed and approved by County Counsel, as well.

#### **Contract History and Price Reasonableness**

On January 13, 2009 the Board approved agenda item #3.26 for consulting services with Microsoft Corporation based on a competitive bid process through Request for Proposal (RFP) #PUARC-933 resulting in MSA48219962. This provided a contract vehicle to assist RCIT in their technical development projects at the time, and to utilize Microsoft's technical skill and knowledge of Microsoft systems and applications. RCIT would like to replace this past agreement with the attached updated agreement to address current needs.

A Request for Quote (RFQ) #PUARC-1463 was released in November 2015 in an attempt to solicit competition for several types of Microsoft service offerings. However, the responses were not comparable as there were several service offerings not offered by Microsoft partners that are available direct from Microsoft. RCIT has a goal of developing a list of qualified consultants across different services over the next few months, and will work with the Purchasing Department to release a Request for Qualification (RFQu). As there is an immediate critical need for services, RCIT is seeking approval for a single source agreement with Microsoft.



**STEVE RENEKER**  
Chief Information Officer

## MEMORANDUM

**LOUIS RAJA ARUL DOSS, ACIO**  
Enterprise Applications Bureau  
**VEVA HARGUINDEGUY, ACIO**  
Converged Communications Bureau  
**JIM SMITH, ACIO**  
Technology Services Bureau

**To:** Board of Supervisors/Purchasing Agent  
**Via:** RCIT, Procurement Contract Specialist  
**From:** Steve Reneker, Chief Information Officer  
**Subject:** Single Source Procurement for Microsoft Services

**Date:** February 25, 2016

The below information is provided in support of my Department requesting approval for a sole source. Outside of a duly declared emergency, the time to develop a statement of work or specifications is not in itself justification for sole source.

1. **Supplier being requested:** Microsoft Corporation
2. **Vendor ID:** #0000026492
3. **Supply/Service being requested:**  
Microsoft consulting and technical services for several critical projects including migration services. Master Service Agreement (MSA) contains the terms and conditions of all services and the specific scope of each of the projects will be added via written amendment as approved by RCIT, Microsoft and County Counsel.
4. **Alternative suppliers that can or might be able to provide supply/service and extent of market research conducted:**  
There are various Microsoft Partners that are able to provide some or all of the services offered directly by Microsoft Corporation. A Request for Quote (RFQ) #PUARC-1463 was issued November 25, 2015 in an attempt to obtain multiple types of services to be provided at a fixed cost. However, with changes to the offering and the price structure, the results of the bid did not meet the needs of RCIT. The bid was cancelled and RCIT would like to move forward with approval to go directly to Microsoft to assist on some current critical projects while a Request for Information (RFI) is released to conduct further research on this commodity. A Request for Qualifications (RFQu) will also be released to allow future needs to be bid between qualified contractors and awarded based on best value to each project need.
5. **Unique features of the supply/service being requested from this supplier, which no alternative supplier can provide:**  
The County is a complex environment and having this agreement in place will allow access to the deepest experts in the field relating to Microsoft technologies. Leveraging the manufacture to provide implementation services on their products will lead to quicker time to value, less risk and a higher degree of engagement from Microsoft to the County's success. While partners may be able to provide similar services, they may not have the level of expertise that Microsoft, as the manufacturer of the product, has.

**6. Reasons why my department requires these unique features and what benefit will accrue to the county:**

RCIT is engaged in consolidating departments under direction from the Board and the Executive Office. As a result, there is a need to consolidate the underlying infrastructure across the county including such items as "identity" within Microsoft Active Directory, Office 365, Desktop Management, etc. The technical expertise and knowledgeable staff Microsoft can leverage to each project will help ensure this infrastructure consolidation is done correctly and in a timely manner.

**7. Period of Performance: From March 8, 2016 to June 30, 2017 (FY15/16 – 16/17)**

Is this an annually renewable contract?     No             Yes  
 Is this a fixed-term agreement:             No             Yes

**8. Identify all costs for this requested purchase. If approval is for multiple years, ongoing costs must be identified below. If annual increases apply to ongoing costs such as CPI or other contract increases, provide the estimated annual cost for each consecutive year. If the annual increase may exceed the Purchasing Agent's authority, Board approval must be obtained. (Note: ongoing costs may include but are not limited to subscriptions, licenses, maintenance, support, etc.)**

Description:	FY15/16 (March 8, 2016 – 6/30/2016)	FY16/17 (July 1, 2016 – 6/30/2017)	Total
One-time Costs:			
		Optional Renewal Term	
Ongoing Costs:	\$400,000	\$800,000	
Description	Microsoft consulting, migration, technical, infrastructure, development, (etc.) professional services.		
Total Costs	NTE \$400,000	NTE \$800,000	NTE \$1,200,000

(NTE: Not To Exceed)

**9. Price Reasonableness:**

Microsoft is offering the same terms as the awarded 2009 agreement based on RFP #PUARC-933 and their level of expertise should assure that the project is done correctly so there is no additional cost needed to correct mistakes as has happened in the past. At this time, approval of the agreement is at no cost and the amount requested is only an estimate. Actual cost(s) encumbered on this agreement will be for services as needed and those projects will reflect any discounts offered at the time. Critical projects will be identified based on need and added by written amendment, referred to as statement of services in the MSA.

**10. Does moving forward on this product or service further obligate the county to future similar contractual arrangements or any ongoing costs affiliated with this sole source? (Maintenance, support, or upgrades, if so, please explain)?**

No, projects to be done are of a onetime critical need.

**11. Projected Board of Supervisor Date (if applicable):March 8, 2016**

Submission to EO by February 25, 2016 for the March 8, 2016 Board date.

Steve Reneker, Chief Information Officer

Date

Purchasing Department Comments:

Approve

Approve with Condition/s

Disapprove

Not to exceed: \$ 1,200,000

One time

Annual

Amount through 6/30/17



2/29/16

16-469

Purchasing Agent

Date

Approval Number

(Reference of Purchasing Documents)

List Attachments:

Form 11 – Requesting approval of Master Service Agreement with Microsoft Corporation  
Master Service Agreement between Microsoft and County

# Microsoft Master Services Agreement – State and Local

Microsoft Master Services Agreement Number   
 Microsoft affiliate to complete

This Microsoft Master Services Agreement is entered into between the following entities as of the effective date identified below. This agreement is comprised of this cover page and the attached terms and conditions, the terms of which are incorporated herein by this reference.

This agreement contains terms of the relationship between you and us. If you contract for services from us under this agreement, the specific terms of those transactions will be contained in this agreement and any statement of services incorporating this agreement.

If the first statement of services entered into under this agreement is given an effective date that is earlier than the effective date of this agreement, the effective date of this agreement will be that earlier date for the purposes of that statement of services.

By signing below, each party acknowledges that it has read and understood the terms of this agreement and agrees to be bound by these terms.

<i>Customer</i>	<i>Microsoft Affiliate</i>
Name of Customer (please print) <b>County of Riverside</b>	Name <b>Microsoft Corporation</b>
Signature	Signature
Name of person signing (please print)	Name of person signing (please print) <b>David T. Gallagher</b>
Title of person signing (please print)	Title of person signing (please print) <b>Director of Contracts</b>
Signature date	Signature date (may be different than Effective Date)
	Effective Date (may be different than Signature Date)

FORM APPROVED COUNTY COUNSEL  
 BY:  DATE: 2/28/16  
 NEAL R. KIPNIS

**Contact information.** Each party will notify the other in writing if any of the information in the following table changes. The \* indicates required fields. By providing contact information, you consent to its use for purposes of administering this agreement by us, our affiliates, and other parties that help us administer this agreement.

<b>Customer</b>		
Name of Customer *	Contact Name *(This person receives notices under this agreement pursuant to Section 12 (Notices)).	
County of Riverside		
Street Address *	Contact Email Address *	
City *	State/Province *	Phone
Country *	Postal Code *	Fax
<b>Microsoft</b>		
Notices to Microsoft should be sent to ( <i>Microsoft affiliate to complete</i> ):		Copies should be sent to:
* Kevin Hartley Senior Attorney Microsoft Corporation 5335 Wisconsin Ave., NW Suite 600 Washington, DC 20015		Microsoft Law and Corporate Affairs One Microsoft Way Redmond, WA 98052 Services Attorney (425) 936-7329 fax
		USA

## Terms and Conditions

**1. Definitions.** In this agreement, a "party" or "parties" means you and/or us as the context requires. "You" means the entity that has entered into this agreement and may also refer, as the context requires, to your affiliates who enter into a statement of services under this agreement. "We", "us", or "our" means, the Microsoft entity that has entered into this agreement and may also refer, as the context requires, to our affiliates. In addition, the following definitions apply:

"**affiliate**" means (i) with regard to you, any government agency, department, office, instrumentality, division, unit or other entity of your state or local government that is supervised by or is part of you, or which supervises you or of which you are a part, or which is under common supervision with you; together with, as mandated by law, any county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality located within your state's jurisdiction and geographic boundaries; provided that a 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) with regard to us, any legal entity that we own, which owns us, or which is under common ownership with us. "**Ownership**" means more than 50% ownership.

"**contractor(s)**" means any third party supplier or other provider of computer technology or related services;

"**developments**" means any computer code or materials (other than products, fixes or pre-existing work) developed by us or in collaboration with you which is provided to you in the course of performance of a statement of services;

"**fixes**" means product fixes, modifications or enhancements or their derivatives that we either release generally, (such as commercial product service packs) or that we provide to you when performing services (such as workarounds, patches, bug fixes, beta fixes and beta builds);

"**joint ownership**" means each party has the right to independently exercise any and all rights of ownership now known or here after created or recognized, including without limitation the rights to use, reproduce, modify and distribute the developments for any purpose, without the need for further authorization to exercise any such rights or any obligation of accounting or payment of royalties;

"**open source license terms**" means license terms that require computer code to be generally (i) disclosed in source code form to third parties; (ii) licensed to third parties for the purpose of making derivative works; or (iii) redistributable to third parties at no charge;

"**pre-existing work**" means computer code or materials (other than products and fixes) developed or otherwise obtained independently of the efforts of a party under a statement of services;

"**product**" means any computer code, web-based services, or materials comprising commercially released, pre-release or beta products (whether licensed for a fee or no charge) and any derivatives of the foregoing we make available to you for license which is published by us, our affiliates, or a third party;

"**service deliverables**" means any computer code or materials, other than products or fixes, that we leave with you at the conclusion of our performance of services;

"**services**" means all support, consulting and other services or advice, including any resulting deliverables provided to you under the terms and conditions of this agreement;

"**statement of services**" means any work orders, services descriptions, or other statement of services referencing this agreement.

**2. Services.** The precise scope of the services will be specified in a statement of services. You or any of your affiliates may enter into statements of services under this agreement with our local affiliate. Our ability to deliver the services depends upon your full and timely cooperation, as well as the accuracy and completeness of any information you provide. This agreement does not obligate either party or its affiliates to enter into any statements of services.



### 3. **Ownership and license of service deliverables.**

- a. **Products and fixes.** All products, related solutions and fixes provided under a statement of services will be licensed according to the terms of the license agreement packaged with or otherwise applicable to such product. You are responsible for paying any licensing fees associated with products.
- b. **Pre-existing work.** All pre-existing work will remain the sole property of the party providing the pre-existing work. During the performance of services, each party grants to the other (and our contractors as necessary) a temporary, non-exclusive license to use, reproduce and modify any of its pre-existing work provided to the other party solely for the performance of such services.

Except as may be otherwise explicitly agreed to in a statement of services, upon payment in full, we grant you a non-exclusive, perpetual, fully paid-up license to use, reproduce and modify (if applicable) our pre-existing work in the form delivered to you as part of the service deliverables only for your internal business operations.

The perpetual license to our pre-existing work that we leave to you at the conclusion of our performance of the services is conditioned upon your compliance with the terms of this agreement and the applicable statement of services.

- c. **Developments.** Except as may be otherwise explicitly agreed to in a statement of services, upon payment in full we grant you joint ownership in the developments. You agree to exercise your rights for your internal business operations only and you will not resell or distribute the developments to any third party. Each party shall be the sole owner of any modifications that it makes based upon the developments.
- d. **Affiliates rights and sublicensing to affiliates.** Except as may be otherwise explicitly agreed to in a statement of services, you may sublicense the rights to the service deliverables granted hereunder to your affiliates, but you or your affiliates may not further sublicense these rights.

Any sublicensing of the service deliverables to your affiliates, if permitted, must be consistent with the license terms in this agreement or in any statement of services.

- e. **Open source license restrictions.** Because certain third party software is subject to open source license terms, the license rights that each party has granted to any computer code (or any intellectual property associated therewith) do not include any license, right, power or authority to incorporate, modify, combine and/or distribute that computer code with any other computer code in a manner which would subject the other's computer code to open source license terms. Furthermore, each party warrants that it will not provide or give to the other party computer code that is governed by open source license terms.
- f. **Reservation of Rights.** All rights not expressly granted in this section are reserved.

### 4. **Restrictions on use.** You may not:

- a) Rent, lease, lend, host or otherwise distribute service deliverables or fixes, except as otherwise provided in a statement of services; or
- b) Reverse engineer, de-compile, or disassemble fixes or service deliverables, except to the extent expressly permitted by applicable law despite this limitation.

Fixes and service deliverables licensed under this agreement are subject to U.S. export jurisdiction. You 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 [www.microsoft.com/exporting](http://www.microsoft.com/exporting).

**5. Supportability.** We may add support for new products or discontinue support for existing products from time-to-time. If we discontinue support for a product, we will inform you six months in advance of the discontinuation by posting the information at <http://support.microsoft.com> or any successor site. If we sell a product to another company, we will give you notice of the sale and at the time of such notice will either (i) arrange for the other company to continue the support; or (ii) continue support ourselves for 90 days to give you time to make alternative arrangements.

There may be cases where your implementation of our products cannot be effectively supported. As part of providing the support services, we will notify you if we reach that conclusion. If you do not modify the implementation to make it effectively supportable within 30 calendar days after the notice, we will not be obligated to provide additional support services for that implementation, however we will continue to provide support for your other supportable implementations covered by the statement of services.

For statements of services for support, we will use commercially reasonable efforts to provide the support services for those products covered in the statement of services, provided they are validly licensed by you.

**6. Fees.** You agree to pay us (or our designees) the fees described in each statement of services. The fees do not include fees for products. Unless otherwise stated in a statement of services, (i) you agree to pay within 30 calendar days of the date of our invoice; and (ii) we will not change our hourly rates identified in a statement of services during its term, but we may adjust our hourly rates prior to entering any new or amended statement of services. Our fees exclude any taxes, duties, tariffs, levies or other governmental charges or expenses (including, without limitation, any value added taxes), which will be billed to and paid by you. We are responsible for taxes based upon our personal property ownership and net income. We will have no obligation to continue to provide services if you fail to make timely payment.

**7. Confidentiality.** Subject to the requirements of your public records and trade secret laws (if any):

**a. Confidential information.** Confidential information means information marked or otherwise identified in writing by a party as proprietary or confidential or that, under the circumstances surrounding the disclosure, ought in good faith to be treated as proprietary or confidential. It includes, but is not limited to, non-public information regarding either party's products, features, marketing and promotions, and the negotiated terms of this agreement and any statement of services.

Confidential information does not include information which: (i) the recipient developed independently; (ii) the recipient knew before receiving it from the other party; or (iii) is or subsequently becomes publicly available or is received from another source, in both cases other than by a breach of an obligation of confidentiality.

**b. Use of confidential information.** For a period of five years after initial disclosure, neither party will use the other's confidential information without the other's written consent except in furtherance of this business relationship or as expressly permitted by this agreement or disclose the other's confidential information except (i) to obtain advice from legal or financial consultants, or (ii) if compelled by law, in which case the party compelled to make the disclosure will use its best efforts to give the other party notice of the requirement so that the disclosure can be contested.

Each party will take reasonable precautions to safeguard the other's confidential information. Such precautions will be at least as great as those each party takes to protect its own confidential information. Each party will disclose the other's confidential information to its employees, consultants or contractors only on a need-to-know basis, provided that such employees, consultants or contractors are subject to confidentiality obligations no less restrictive than those contained herein. When confidential information is no longer necessary to perform any obligation under any statement of services, each of us will return it to the other party or destroy it at the other's request.

Either party may provide suggestions, comments or other feedback to the other with respect to the other's products and services. Feedback is voluntary and the party receiving feedback may use it for any purpose without obligation of any kind except that the party receiving feedback will not disclose the source of feedback without the consent of the party providing it.

- c. **Cooperation in the event of disclosure.** Each party will immediately notify the other upon discovery of any unauthorized use or disclosure of the other party's confidential information and will cooperate in any reasonable way to help the other regain possession of the confidential information and prevent further unauthorized use or disclosure.
- d. **Knowledge base.** We may use any technical information we derive from providing services related to our products for problem resolution, troubleshooting, product functionality enhancements and fixes, for our knowledge base. We agree not to identify you or disclose any of your confidential information in any item in the knowledge base.
- e. **Protected Health Information.** Protected health information ("PHI") means individually identifiable information that (1) relates to the health of an individual, the provision of health care to an individual, or payment for the provision of health care to an individual; and (2) the use or disclosure of which is governed by federal and state laws and regulations, including without limitation the Health Insurance Portability and Accountability Act of 1996, and amended ("HIPAA"). You agree that you will take appropriate safeguards to prevent you, your employees, and other agents from disclosing any PHI to us, our employees or agents, or any of our affiliates or other providers of services under this Agreement, other than as is minimally necessary to permit us to carry out such services. If we receive any PHI from you, we agree not to use or further disclose such information other than as permitted by Exhibit B, which is attached hereto and incorporated by reference herein, or as may otherwise be required by Law. Exhibit B is designed according to the principles of HIPAA and the regulations promulgated under HIPAA. Some state laws are more stringent than HIPAA and may impose additional requirements on the use and disclosure of PHI. You agree that, if you maintain PHI that is subject to such state laws, you will not disclose it to us, until and unless you have obtained any consents or authorizations that are required under applicable laws.
- f. **California Public Records Act.** We acknowledge that the County ("you") are subject to the California Public Records Act (CPRA) and that this Agreement does not reduce or alter the obligations of the County under CPRA. Information provided by us to you may be subject to disclosure under CPRA, even if considered confidential by us; except where we deem such confidential information to be proprietary or trade secret information, which in such case, no release or disclosure shall be made in accordance with CPRA. Whenever there is a conflict between obligations under this Agreement and obligations under the CPRA, the CPRA shall control.

## 8. **Warranties.**

a. **Services.** We warrant that all services will be performed with professional care and skill.

b. **No other warranties.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, WE DISCLAIM AND EXCLUDE ALL REPRESENTATIONS, WARRANTIES, AND CONDITIONS WHETHER EXPRESS, IMPLIED OR STATUTORY OTHER THAN THOSE IDENTIFIED EXPRESSLY IN THIS AGREEMENT (INCLUDING ANY STATEMENT OF SERVICES THAT INCORPORATES THESE TERMS), INCLUDING BUT NOT LIMITED TO WARRANTIES OR CONDITIONS OF TITLE, NON-INFRINGEMENT, SATISFACTORY QUALITY, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE PRODUCTS, FIXES, SERVICE DELIVERABLES, RELATED MATERIALS AND SERVICES. WE WILL NOT BE LIABLE FOR ANY SERVICE(S) OR PRODUCT(S) PROVIDED BY THIRD PARTY VENDORS, DEVELOPERS OR CONSULTANTS IDENTIFIED OR REFERRED TO YOU BY US UNLESS SUCH THIRD PARTY

PRODUCTS OR SERVICES ARE PROVIDED UNDER OUR WRITTEN AGREEMENT BETWEEN YOU AND US, AND THEN ONLY TO THE EXTENT EXPRESSLY PROVIDED IN THIS AGREEMENT.

**9. Defense of infringement and misappropriation claim.** We will defend you against any claims made by an unaffiliated third party that any service deliverable infringes its patent, copyright, or trademark or misappropriates its trade secret, and will pay the amount of any resulting adverse final judgment (or settlement to which we consent).

You must notify us promptly in writing of the claim and give us sole control over its defense or settlement. You agree to provide us with reasonable assistance in defending the claim, and we will reimburse you for reasonable out of pocket expenses that you incur in providing that assistance. The terms “**misappropriation**” and “**trade secret**” are used as defined in the Uniform Trade Secrets Act.

Our obligations will not apply to the extent that any claim or adverse final judgment is based on (i) computer code or materials (e.g. specifications) you provide; (ii) your use of a fix or service deliverables after we notify you to discontinue use due to such a claim; (iii) your combining a fix or service deliverables with a non-Microsoft product, data or business process; (iv) damages attributable to the value of the use of a non-Microsoft product, data or business process; (v) an alteration of fixes or service deliverables by someone other than us or our contractors; (vi) your distribution of the fix or services deliverables to, or its use for the benefit of, any third party other than permitted by an applicable statement of services; (vii) your use of our trademark(s) without express written consent to do so; or (viii) any trade secret claim that is a result of your acquiring a trade secret (a) through improper means; (b) under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (c) from a person (other than us or our affiliates) who owed to the party asserting the claim a duty to maintain the secrecy or limit the use of the trade secret. You will reimburse us for any costs or damages that result from these actions.

If we receive information concerning an infringement claim related to a fix or service deliverables, we may, at our expense and without obligation to do so, either (i) procure for you the right to continue to use the allegedly infringing fix or service deliverables as permitted by the applicable statement of services; or (ii) modify the fix or service deliverables or replace it with a non-infringing functional equivalent, to make it non-infringing, in which case you will stop using the allegedly infringing fix or service deliverables immediately. If as a result of an infringement claim, your use of a fix or service deliverables is enjoined by a court of competent jurisdiction, we will, at our option, either i) procure the right to continue its use; ii) modify it to make it non-infringing; iii) replace it with a non-infringing functional equivalent; or iv) refund the amount paid for the infringing fix or service deliverables and terminate the license for (or as applicable, your ownership rights in) the infringing fix or service deliverable.

If any other type of third party claim is brought against you regarding our intellectual property, you must notify us promptly in writing. We may, at our option, choose to treat these claims as being covered by this Section 9. This Section 9 provides your exclusive remedy for third party infringement and trade secret misappropriation claims.

**10. Limitations of liability.**

**a. Limitation on Direct Damages.** There may be situations in which you have a right to claim damages or payment from us. Except as otherwise specifically provided in this paragraph, whatever the legal basis for your claims, our total liability (and that of our contractors) will be limited, to the maximum extent permitted by applicable law, to direct damages up to the amount you have paid under the applicable statement of services for the services giving rise to the claims. In the event services or any service deliverables are provided to you on a gratuitous or no-charge basis, our total liability to you will not exceed US\$5000. The limitations contained in this paragraph will not apply with respect to the following:

- (i) our obligations under Section 9;
- (ii) our liability for damages for gross negligence or willful misconduct, to the extent caused by us or our contractors and awarded by a court of final adjudication; and

(iii) our obligations under Section 7.

- b. NO LIABILITY FOR CERTAIN DAMAGES.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEITHER PARTY NOR THEIR AFFILIATES, SUPPLIERS OR CONTRACTORS WILL BE LIABLE FOR ANY INDIRECT DAMAGES (INCLUDING WITHOUT LIMITATION, CONSEQUENTIAL, SPECIAL, OR INCIDENTAL DAMAGES, DAMAGES FOR LOSS OF PROFITS OR REVENUES, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION), ARISING IN CONNECTION WITH THIS AGREEMENT, ANY STATEMENT OF SERVICES, SERVICES, SERVICE DELIVERABLES, FIXES, PRODUCTS, OR ANY OTHER MATERIALS OR INFORMATION, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH POSSIBILITY WAS REASONABLY FORESEEABLE. THIS EXCLUSION OF LIABILITY DOES NOT APPLY TO EITHER PARTY'S LIABILITY TO THE OTHER FOR VIOLATION OF ITS CONFIDENTIALITY OBLIGATION, REDISTRIBUTION OR OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS.
- c. Application.** Except as specified expressly in this Section 10, the limitations on and exclusions of liability for damages in this agreement apply regardless of whether the liability is based on breach of contract, tort (including negligence), strict liability, breach of warranties, or any other legal theory.

**11. Term and termination.** This agreement will remain in effect until terminated. The parties signing the cover page of this agreement may terminate it at any time by giving the other party at least 60 calendar days prior written notice.

Either party signing the cover page may terminate this agreement if the other party is in material breach or default of any obligation that is not cured within 30 calendar days notice of such breach.

The sole effect of terminating this agreement will be to terminate the ability of either party to enter into subsequent statements of services that incorporate the terms of this agreement. Termination of this agreement will not, by itself, result in the termination of any statements of services previously entered into (or extensions of the same) that incorporate the terms of this agreement, and the terms of this agreement will continue in effect for purposes of such statements of services unless and until the statement of services itself is terminated or expires.

The term of any statement of services will be set forth in an applicable statement of services. In addition, unless otherwise provided in a statement of services, your affiliate that signed the statement of services may terminate it for any reason by giving our affiliate that signed the statement of services 30 calendar days prior written notice. Either party signing a statement of services may terminate it if the other party is (i) in material breach or default of any obligation that is not cured within 30 calendar days' notice of such breach or (ii) fails to pay any invoice that is more than 60 calendar days outstanding. You agree to pay all fees for services performed and expenses incurred prior to termination and any additional amounts that may be specified in a statement of services.

**12. Notices.** All notices, authorizations, and requests given or made in connection with this agreement must be sent by post, express courier, facsimile or email to the addresses indicated on the cover page of this agreement or on an applicable statement of services, if different. Notices will be deemed delivered on the date shown on the postal return receipt or on the courier, or facsimile or email confirmation of delivery.

**13. Insurance.** We will procure and maintain the following insurance coverage, at all times when performing services on your premises under this agreement, via either commercial insurance, self-insurance, a combination of the two or any other similar risk financing alternative:

- a) Commercial General Liability covering bodily injury and tangible property damage liability with a limit of not less than U.S. \$2,000,000 each occurrence;

- b) Workers' Compensation (or maintenance of a legally permitted and governmentally-approved program of self-insurance) covering Microsoft employees pursuant to applicable state workers' compensation laws for work-related injuries suffered by our employees;
- c) Employer's Liability with limits of not less than U.S. \$1,000,000 per accident;
- d) Professional Liability/Errors & Omissions Liability covering damages arising out of negligent acts, errors, or omissions committed by us or our employees in the performance of services, with a limit of liability of not less than U.S. \$2,000,000 per claim; and
- e) Automobile Liability (if vehicles are brought on your premises or used in the performance of the services) with \$2,000,000 combined single limit per occurrence, for bodily injury and property damage combined covering owned, non-owned and hired vehicles.
- f) It is understood and agreed to by the parties hereto and the insurance company(s), that the Certificate(s) of Insurance and policies shall so covenant and shall be construed as primary insurance, and the Customer's Insurance deductibles and/or self-insured retention's or self-insured programs shall not be construed as contributory, unless the loss or damage is caused by the Customer.

We will provide you with evidence of coverage on request.

#### 14. **Miscellaneous.**

- a. **Assignment and right to subcontract.** Neither party may assign this agreement or any statement of services without the written consent of the other. We may use contractors to perform services and we will be responsible for their performance subject to the terms of this agreement.
- b. **Independent contractor.** We provide our services as an independent contractor, and will be responsible for any and all social security, unemployment, workers' compensation and other withholding taxes for all of our employees. You and we are free to develop products independently without the use of the other's confidential information. Neither you nor we are obligated to restrict the future work assignments of people who have had access to confidential information. In addition, you, we 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 violation of this agreement in the course of such use. This use shall not grant either party any rights under the other's copyrights or patents and does not require payment of royalties or separate license.
- c. **Applicable law; dispute resolution.** This agreement together with the applicable statement of services will be governed by the laws of your state, without giving effect to its conflict of law provisions. Disputes relating to this agreement will be subject to applicable mandatory dispute resolution statutes and regulations of your state.
- d. **Entire agreement.** This agreement and the statements of services constitute the parties' entire agreement concerning the subject matter hereof, and supersede any other prior and contemporaneous communications. The terms of these documents will control in the following order: (i) this agreement; and (ii) any statement of services. Any terms and conditions maintained by you or your affiliates or contained in any purchase order, other than those mandatory terms required by law, will not apply. The parties signing the cover page of this agreement may amend this agreement only in writing when signed by both parties. The parties signing a statement of services may amend the statement of services only in writing when signed by both parties.
- e. **Survival.** The sections regarding ownership and license, restrictions on use, fees, confidentiality, no other warranties, defense of infringement and misappropriation claims, limitations of liability, term and termination, notices, and miscellaneous of this agreement will survive any termination or expiration of this agreement or any statement of services. Additionally, as provided in Section 11 above, if this agreement is terminated all its terms shall

survive termination for purposes of any remaining statement of services in existence at the time this agreement is terminated.

- f. Severability.** If a court holds any provision of this agreement or a statement of services to be illegal, invalid or unenforceable, the remaining provisions will remain in full force and effect and the parties will amend the agreement or statement of services to give effect to the stricken clause to the maximum extent possible.
- g. Waiver.** No waiver of any breach of this agreement or statement of services will be a waiver of any other breach, and no waiver will be effective unless made in writing and signed by an authorized representative of the waiving party.
- h. Force majeure.** To the extent that either party's performance is prevented or delayed, either totally or in part, for reasons beyond that party's control, then that party will not be liable, so long as it resumes performance as soon as practicable after the reason preventing or delaying performance no longer exists.
- i. Counterparts.** This agreement and any statements of services may be executed in any number of counterparts, each of which will be an original, and such counterparts together will constitute one and the same instrument. Execution may be effected by delivery of facsimiles of signature pages (and the parties will follow such delivery by prompt delivery of originals of such pages).
- j. Cost or pricing data.** We will not, under any circumstances, accept any statement of services that would require the submission of cost or pricing data.
- k. Non-exclusivity.** This agreement (including any statement of services incorporating these terms) is non-exclusive. Nothing contained in it requires you to license, use or promote Microsoft software or services exclusively. You may, if you choose, enter into agreements with other parties to license, use or promote non-Microsoft software or services.

**Exhibit B**  
**Protected Health Information Exhibit**

This Exhibit B ("Exhibit") governs the use and disclosure of Protected Health Information (PHI) pursuant section 7e ("Confidentiality") of the Agreement. Definitions of some terms are provided in the Agreement.

1. **Use of PHI.** We agree not to use any PHI that we receive from you or create or receive on your behalf (collectively, "Your PHI"), other than as is expressly permitted by this Exhibit, or as may be required by law; provided that, we may use Your PHI for purposes of managing our internal business processes relating to our functions under the Agreement.
2. **Disclosure of PHI.** You agree that we may disclose your PHI to (a) our employees for the purpose of providing services described in any Services Description or Work Order entered into under the Agreement; (b) our affiliates for the purpose of providing the services described in any Services Description or Work Order entered into under the Agreement; (c) other persons, as approved by you in agent to whom we disclose Your PHI is informed of and agrees to the same restrictions and conditions that apply to us under this Exhibit with respect to uses and disclosures of Your PHI.
3. **Safeguards.** We agree to use appropriate safeguards to prevent uses and disclosures of Your PHI not provided for by this Exhibit.
4. **Reporting unauthorized disclosures.** We agree to notify you if we become aware of any of our employees or agents using or disclosing Your PHI in a manner not provided for by this Exhibit.
5. **Accounting of disclosures.** We will maintain a record of any disclosures we make of Your PHI, other than for the purposes of the Agreement, including the date of the disclosure, the name and, if known, the address of the recipient of Your PHI, a brief description of the PHI disclosed and a description of the purposes of the disclosure. We will maintain this record with respect to each disclosure we make for a minimum of six years after such disclosure has been made, and will make this record available to you upon your request.
6. **Disclosure of U.S. Department of Health and Human Services.** We will make our internal practices, books, and records relating to the use and disclosure of Your PHI available to the Secretary of the United States Department of Health and Human Services, if you are required by law to obtain information regarding our use and disclosure of Your PHI, for purposes of determining your compliance with HIPPA.
7. **Amendment.** As laws, regulations and government polices develop with respect to our affecting PHI, we may, by written notice to you, amend this Exhibit in such manner as we deem necessary to comply with such laws, regulations, or government policies. If you disagree with any such amendment, you shall notify us within thirty (30) days after we have given you notice of such amendment. If you and we are unable to agree on an amendment within thirty (30) days after you have provided such notice, either party may terminate the Agreement on written notice to the other, pursuant to paragraph 10 of the Agreement.



**8. Breach and Termination.** The Agreement, together with this exhibit, may be terminated pursuant to paragraph 10 of the Agreement.

**9. Procedure upon termination.** Upon termination of the Agreement, to the extent feasible, we will return or destroy all Your PHI that is still in our possession in any form. We will retain no copies of such information. If such return or destruction is not feasible, we will extend the protections of this Exhibit to such information and will limit further uses and disclosures to the purposes that make the return or destruction of the information infeasible.

**10. Electronic PHI.** We will: (i) implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any electronic PHI that we create, receive, maintain, or transmit on your behalf; (ii) ensure that any agent, including a subcontractor, to whom we provide electronic PHI agrees to implement reasonable and appropriate safeguards to protect such information; and (iii) report to you any security incident affecting Your PHI of which we become aware.