

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

965



FROM: Riverside County Information Technology

SUBMITTAL DATE:

August 16, 2010

SUBJECT: Approval of Microsoft Select Agreement

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve and execute the three year Microsoft Select Agreement (SA) and;
2. Authorize the Purchasing Agent, in accordance with Ordinance No. 459, to enter in to the Select Agreement for Microsoft products without seeking competitive bids, authorize the Purchasing Agent to sign amendments, and exercise renewal options for an amount not to exceed the annual CPI rates, and
3. Direct the Clerk of the Board to retain one original copy and return two copies to the Purchasing Office.

BACKGROUND:

(Continued on Page 2)

Greg R. Stoddard
Chief Technology Officer

FINANCIAL DATA	Current F.Y. Total Cost:	\$ 0.00	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0.00	Budget Adjustment:	No
	Annual Net County Cost:	\$ 0.00	For Fiscal Year:	2010/11

SOURCE OF FUNDS: Departmental Budgets – upon utilization of the Microsoft Select Agreement	Positions To Be Deleted Per A-30	<input type="checkbox"/>
	Requires 4/5 Vote	<input type="checkbox"/>

C.E.O. RECOMMENDATION:

APPROVE

BY:
Serena Chow

County Executive Office Signature

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Tavaglione, seconded by Supervisor Stone and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended.

Ayes: Buster, Tavaglione, Stone, Benoit and Ashley
Nays: None
Absent: None
Date: August 31, 2010
xc: RCIT, Purchasing

Kecia Harper-Ihem
Clerk of the Board

By:
Deputy

Prev. Agn. Ref.:

District: A11

Agenda Number:

ATTACHMENTS FILED
WITH THE CLERK OF THE BOARD

3.69

FORM APPROVED COUNTY COUNSEL
BY: NEAL R. KIPNIS
DATE: 8/19/10
Departmental Concurrence

Purchasing: Mark Seiler, Assistant Director

Policy ☒ Policy ☒
Consent ☐ Consent ☐

Dept't Recomm.:
Per Exec. Ofc.:

BACKGROUND (Continued):

This renewal assures that County departments will receive the best discount offered to government agencies for the Microsoft software product and upgrade services.

The Microsoft Select Agreement is a renewable program that covers licensing of Microsoft software and optional upgrade services that are not already covered by the Microsoft Enterprise Agreement (Microsoft Office, Microsoft Windows and Back Office products).

Various Cities and Counties formed a consortium comprised of members of California County Information Services Directors Association (CCISDA) and Municipal Information Systems Association of California (MISAC) organizations, and working with Microsoft, determined best pricing and developed a customized program that works best for California Government. From this consortium a competitive bid was published and six (6) Microsoft Large Account Resellers (LARs) responded. The County evaluated the responses and recommended the six (6) LARs (Compucom, Dell Marketing, En Pointe Technologies, Insight, Soft Choice, and Software House International, Inc.) to be awarded a statewide contract for any government entity to purchase software that is not through the Microsoft Enterprise Agreement.

Under this agreement there is no obligation by the County to purchase anything. If Departments choose to purchase, purchases will be made through their individual departmental budgets. Purchases will be made through the six (6) LAR's mentioned above, through a competitive bid process. County of Riverside has an estimated annual expenditure of \$100,000 under this agreement. State and local entities have an estimated annual expenditure of \$10,000,000 under this agreement.

PRICE REASONABLENESS:

This 36-month renewal will assure that the County continues to receive the deepest price discounts offered to all government agencies. With this agreement, the county avoids having to use the Federal and State GSA contract and paying an administrative fee for use of their contracts. The County will receive the same discount structure as the State and Federal government contracts.

REVIEW/APPROVAL: Purchasing and County Counsel concur with this request.

Select Signature Form

State and Local

Master Agreement number or Enrollment number*

SGN-

Proposal ID

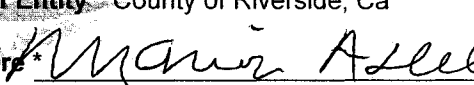
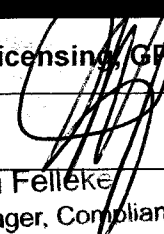
Microsoft to complete if applicable

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

This signature form and all contract documents identified in the table below are entered into between the Customer and the Microsoft Affiliate signing, as of the effective date identified below.

Contract Document	Document Number or Code
Select Agreement	X20-00260
Select Enrollment	X20-00307
<Choose One>	Document Number or Code
<Choose One>	Document Number or Code
Document Description	Document Number or Code
Document Description	Document Number or Code
Document Description	Document Number or Code
Document Description	Document Number or Code
Document Description	Document Number or Code

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

Customer	Microsoft Affiliate
Name of Entity * County of Riverside, Ca	Microsoft Licensing, GP
Signature * 	Signature 
Printed Name * MARION ASHLEY	Printed Name Mestfin Felleke
Printed Title * CHAIRMAN, BOARD OF SUPERVISORS	Printed Title Program Manager, Compliance
Signature Date * AUG 31 2010	Signature Date AUG 13 2010 <small>(date Microsoft Affiliate countersigns)</small>
Tax ID	Effective Date <small>(may be different than Microsoft's signature date)</small>

* indicates required field

FORM APPROVED COUNTY COUNSEL

BY:  DATE 8/11/10

AUG 31 2010 3.69

Optional 2nd Customer signature or Outsourcer Signature (if applicable)

Customer	Outsourcer
Name of Entity *	Name of Entity *
Signature * _____	Signature * _____
Printed Name *	Printed Name *
Printed Title *	Printed Title *
Signature Date *	Signature Date *

If Customer requires physical media, additional contacts, or is reporting multiple previous Enrollments, include the appropriate form(s) with this signature form. If no media form is included, no physical media will be sent.

After this signature form is signed by the Customer, send it and the Contract Documents to Customer's channel partner or Microsoft account manager who must submit them to the following address. When the signature form is fully executed by Microsoft, Customer will receive a confirmation copy.

Microsoft Licensing, GP

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

Prepared By: Name of Preparer Email of Preparer

Select Enrollment

State and Local

Enrollment number (Microsoft Affiliate to complete)		Proposal ID (Reseller to complete)	
Previous Enrollment, agreement or auth number (if renewing Software Assurance)(Reseller to complete)		Earliest expiring previous Enrollment end date ¹ (Reseller to complete)	

¹ If consolidating from multiple previous Enrollments with Software Assurance, complete the multiple previous Enrollment form and attach it to this Enrollment. Enterprise Products can only be renewed from a Qualifying Enrollment. Additional Products can be renewed from any previous Enrollment with Software Assurance.

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

This Microsoft Select Enrollment is entered into between the entities, as of the effective date identified on the signature form.

This Enrollment consists of (1) This Enrollment, (2) the terms of the Select Agreement identified on the signature form and all attachments identified therein.

Enrolled Affiliate agrees to purchase Licenses equal to at least 750 points during the initial term of this Enrollment.

All terms used but not defined are located at <http://microsoft.com/licensing/contracts>.

Effective date. If Enrolled Affiliate is renewing Software Assurance coverage from one or more previous Microsoft agreements, then the effective date of this Enrollment will be the day after the earliest expiration of such coverage. Otherwise the effective date will be the date this Enrollment is processed by Microsoft.

Term. This Enrollment will expire on the date the Microsoft Select Agreement identified on the signature form expires.

Qualifying systems Licenses. The operating system Licenses granted under this program are upgrade Licenses only. *Full operating system Licenses are not available under this program.*

1. **Contact information.**

Each party will notify the other in writing if any of the information in the following contact information page(s) changes. The asterisks (*) indicate required fields. By providing contact information, Enrolled Affiliate consents to its use for purposes of administering this Enrollment by Microsoft, its Affiliates, and other parties that help administer this Enrollment. The personal information provided in connection with this Enrollment will be used and protected in accordance with the privacy statement available at <http://licensing.microsoft.com>.

- a. Primary contact information:** The Enrolled Affiliate of this Enrollment must identify an individual from inside its organization to serve as the primary contact. This contact is the default online administrator for this Enrollment and receives all notices unless Microsoft is provided written notice of a change. The online administrator may appoint other administrators and grant others access to online information.

Name of entity: (must be legal entity name)*: County of Riverside, Ca

Contact name * First: Chauntay, **Last:** McDuff

Contact email address*: clmcduff@riversidecountyit.org

Street address *: 6147 River Crest Drive, Suite A

City *: Riverside, **State *:** CA **Postal code *:** 92507

Country *: USA

Phone * 951-486-7759 Fax 951-486-7790

Tax ID

- b. **Notices and online administrator:** This individual receives online administrator permissions and thus may grant online access to others. This contact also receives all notices.

☒ *Same as primary contact*

Name of entity (must be legal entity name): *

Contact name * First: , **Last:**

Contact email address*

Street address *

City * , **State *** **Postal code ***

Country *

Phone * **Fax**

- c. **Language preference:** Select the language for notices. English

- d. **Microsoft account manager:** Provide the Microsoft account manager contact for this Enrolled Affiliate.

Microsoft account manager name: Mark Starr

Microsoft account manager email address: mstarr@microsoft.com

- e. If Enrolled Affiliate requires a separate contact for any of the following, attach the Supplemental Contact Information form. Otherwise, the notices contact remains the default.

- Additional notices contact
- Software Assurance manager
- Subscription manager
- Online Services manager
- Customer Support Manager (CSM) contact

- f. Is a purchase under this Enrollment being financed through MS Financing? ☐ Yes, ☒ No.

- g. **Reseller information**

Reseller company name: * CompuCom Systems, Inc.

Street address (PO boxes will not be accepted) * 7171 Forest Lane

City* Dallas State * TX Postal Code * 75230

Country * USA

Contact name * Joel P Sherman

Phone * 972-856-5520

Fax

Contact email address * joel.sherman@compucom.com

The undersigned confirms that the information is correct.

Name of Reseller* CompuCom Systems, Inc.

Signature * 

Printed name * Joel P Sherman

Printed title * Microsoft BDM

Date * 8/14/10

Changing a Reseller. If Microsoft or the Reseller chooses to discontinue doing business with one another, Enrolled Affiliate must choose a replacement. If Enrolled Affiliate intends to change the Reseller, it must notify Microsoft and the former Reseller, in writing on a form provided at least 90 days prior to the date on which the change is to take effect. The change will take effect 90 days from the date of Enrolled Affiliate's signature.

2. Software Assurance Membership election.

To become a Software Assurance Member, Enrolled Affiliate must agree to purchase and maintain Software Assurance for all copies of all Products licensed under this Enrollment from at least one Product pool. For a description of benefits resulting from choosing one or more Product pools below and additional details regarding the Software Assurance Membership program, please consult with the Reseller or Microsoft account manager.

For each Product pool, mark "yes" or "no" to indicate whether Enrolled Affiliate is committing to purchase and maintain Software Assurance for all copies of all Products licensed from that pool under this Enrollment.

Product pools	Yes	No
Applications	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Systems	<input type="checkbox"/>	<input checked="" type="checkbox"/>
Servers	<input type="checkbox"/>	<input checked="" type="checkbox"/>

Note: If "Yes" is marked, all orders for Licenses must have Software Assurance.

3. Renewing Software Assurance.

If Enrolled Affiliate is renewing Software Assurance from multiple Select programs or consolidating other previous Enrollments or agreements (including Open authorizations) into this Enrollment please complete the multiple previous Enrollment form and attach it to this Enrollment. The earliest expiring previous Enrollment/agreement which contains Software Assurance is to be inserted on the signature form. If only one previous Enrollment/agreement is renewing, please insert that previous number on the signature form.

Select Agreement

State and Local

Not for Use with Microsoft Business Agreement or Microsoft Business and Services Agreement

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This Microsoft Select Agreement is entered into between the entities identified on the signature form.

Effective date. The effective date of this agreement is the effective date of the first Enrollment or the date Microsoft accepts this agreement, whichever is earlier.

This agreement consists of: (1) the terms and conditions of this agreement and all attachments identified therein; (2) the Product List; (3) the Product Use Rights applicable to Products licensed under this agreement; (4) any Enrollment entered into under this agreement; and (5) any order submitted under this agreement.

Terms and Conditions

A Note on Section Summaries: Some sections of this agreement have a summary at the beginning. These summaries are intended for ease of reference and are not part of the agreement. If any summary conflicts with the section it is summarizing, the section of the agreement, and not the summary, controls.

1. Definitions.

“Affiliate” means

- a. with regard to Customer,
 - (i) any government agency, department, office, instrumentality, division, unit or other entity of the state or local government that is supervised by or is part of Customer, or which supervises Customer or of which Customer is a part, or which is under common supervision with Customer;
 - (ii) any county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality established by the laws of

Customer's state and located within Customer's state jurisdiction and geographic boundaries; and

(iii) any other entity in Customer's state expressly authorized by the laws of Customer's state to purchase under state contracts; 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

b. with regard to Microsoft, any legal entity that Microsoft owns, that owns Microsoft, or that is under common ownership with Microsoft;

"available" means Microsoft has made licenses for that Product available on the Product List for ordering under a particular licensing program;

"Commercial Product" means any Product Microsoft makes available for license for a fee;

"Customer" means the entity that has entered into this agreement and its Affiliates;

"Defined Region" means the United States;

"Enrolled Affiliate" means an entity that is either the Customer or any one of Customer's Affiliates that has entered into an Enrollment under this agreement;

"Enrollment" means the document that Enrolled Affiliate submits under this agreement to sign up for this program;

"Fixes" means Product fixes, modifications or enhancements or their derivatives that Microsoft releases generally (such as Commercial Product service packs);

"Free Product" means any Product Microsoft makes available for license without charge;

"License" means, for any one of the Products identified in the Product List (including standard Licenses and upgrades for desktop operating systems), the right to run the version of the Product ordered;

"L&SA" means a License and Software Assurance for any Product ordered;

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

"Online Service" means any software Microsoft licenses Enrolled Affiliate to run on Microsoft servers on a subscription basis;

"Pre-release" or "Beta" Products are Products provided prior to commercial release;

"Product" means all Commercial Products, Free Products, Pre-release Products and Beta Products, including any online services and other web-based services identified on the Product List;

"Product List" means, with respect to any licensing program, the statement published by Microsoft from time to time on the World Wide Web at <http://microsoft.com/licensing/contracts>, or at a successor site that Microsoft identifies, which identifies the Products that are or may be made available under the program (which availability may vary by region) and any Product-specific conditions or limitations on the acquisition of Licenses for those Products;

"Product Use Rights" means, with respect to any licensing program, the use rights for each Product and version published for that licensing program at <http://www.microsoft.com/licensing/contracts> or at a successor site.

"Reseller" means a large account Reseller authorized by Microsoft to resell Licenses in an Enrolled Affiliate's Defined Region under this program;

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

"Select Qualifying Enrollment" means either (1) an Enterprise Enrollment under a separate Microsoft Enterprise Agreement or (2) an Enterprise Subscription Enrollment under a Microsoft Enterprise Subscription Agreement; and

"Software Assurance" means an annuity offering that provides new version rights and other benefits for Products as described in the Product List.

2. How the Select License program works.

Under the Select License program, Customer and its Affiliates can license Commercial Products at discount pricing based on the volume of Licenses they purchase. Enrolled Affiliates receive master copies of the Commercial Products and may make and run as many copies as they wish during the term of the Enrollment, as long as they place monthly orders for those copies through an authorized Reseller.

The Select License program allows Enrolled Affiliate to license Commercial Products at discount pricing based on the volume of purchases made under this agreement. Customer and Customer's Affiliates can participate in this program by submitting one or more Enrollments under this agreement. Once enrolled, the Enrolled Affiliate will receive master copies of Commercial Products it intends to license and may run as many copies as it wishes during the term of its Enrollment, provided it places monthly orders for Licenses for those Commercial Products. Microsoft may refuse to accept an Enrollment if Microsoft has a business reason for doing so. Product support is not included with the Licenses under this agreement. Notwithstanding any other provision of this agreement, only Enrolled Affiliates identified in an Enrollment will be responsible for complying with the terms of that Enrollment, including the terms of this Agreement incorporated by reference in that Enrollment.

Choosing and maintaining a Reseller. Each Enrolled Affiliate that accepts an Enrollment must choose and maintain a Reseller authorized in the Enrolled Affiliate's Defined Region.

Online Services. The terms and conditions of the agreement apply to Online Services subscriptions throughout the entire term of the subscription except as provided here and in the Product List or the Product Use Rights at <http://microsoft.com/licensing/contracts>. A printed copy may be obtained by Customer from its Reseller upon request. Online Services are provided as subscription services and may carry additional terms as specified in the Product Use Rights. Billing terms for Online Services subscriptions may differ from the terms of this agreement.

3. How to establish price level.

Customer's price level for each Product pool will depend on the volume of all Enrolled Affiliates' License purchases from that pool. Customer's price levels may be adjusted on an annual basis.

- a. **Establishing price levels.** Each Product offering is assigned a point value on the Product List and is assigned to one of the following pools: applications, systems, or servers. Customer's price levels are established in the Select Volume Forecast Form. Customer's price level will be used to determine the prices Microsoft will invoice each Enrolled Affiliate's Reseller for Product Licenses that the Enrolled Affiliate orders. *Throughout this agreement the term "price" refers to reference price.*

4. License grant — what Enrolled Affiliates are licensed to run.

Enrolled Affiliates can run, for their own benefit, as many available Products as they wish, so long as they submit orders for such Licenses on a monthly basis. Enrolled Affiliates can use the latest versions of the Products or choose to use any earlier version.

Generally, use rights become permanent once the Enrollment term ends and Enrolled Affiliate has completed all payments. At that time, Enrolled Affiliate will have perpetual Licenses for the number of Licenses ordered during the applicable initial Enrollment or renewal term. In cases where the Enrollment is terminated prior to the end of the term, subsections titled "Early termination" and "Effect

of termination or expiration" describe Enrolled Affiliate's rights.

The Enrolled Affiliate has the following rights during the term of its Enrollment. These rights apply to the Licenses obtained under an Enrollment and are not related to any order or fulfillment of software media. The ability to run current or later versions of a Product licensed under this agreement could be affected by minimum system requirements or other factors (e.g. hardware or other software).

- a. **General.** At any time after the effective date, each Enrolled Affiliate may run for its own benefit as many available Products as it chooses, provided that it submits orders for all Licenses as required in the subsection titled "Placing orders."
- b. **Use by Affiliates.** The Enrolled Affiliate may sublicense the right to use the Products to any Affiliates covered under its Enrollment but Affiliate recipient of Licenses may not sublicense these rights and its use must be consistent with the License terms contained in this agreement.
- c. **Prior version or different language version.** Each Enrolled Affiliate may run in place of any Product version it licenses under this agreement a prior version or different language version of the same Product (so long as, in the case of different language versions, the License, L&SA, or Software Assurance for that different language version is available at the same or a lower price than the price paid for the corresponding License type for the version ordered).
- d. **When Licenses become perpetual.**
 - (i) **License only.** An Enrolled Affiliate's right to run copies of any Product for which it orders only a License is temporary until the Enrolled Affiliate has paid for that License in full. Thereafter, the Enrolled Affiliate will have a perpetual License to run the number of copies ordered in the version ordered.
 - (ii) **L&SA or Software Assurance.** An Enrolled Affiliate's right to run copies of any Product for which it orders L&SA or Software Assurance is temporary until:
 - the Enrolled Affiliate has paid all installments of the price for such coverage and the applicable initial Enrollment or renewal term during which such Product Licenses were ordered has expired or been renewed; or
 - the Enrolled Affiliate is otherwise eligible for perpetual Licenses as provided in this agreement.Thereafter, the Enrolled Affiliate will have perpetual Licenses to run the Products ordered in the latest versions available as of the date of expiration, renewal, or termination (or any prior version) for the number of copies ordered during the applicable initial Enrollment term or renewal term.
 - (iii) **In cases of early termination.** In the case of early termination, as provided in the subsection titled "Early termination," an Enrolled Affiliate that chooses only to pay amounts due and payable as of the termination date will have perpetual Licenses only for the number of copies specified in the subsection titled "Early termination."
 - (iv) **Subscription (Online Services) Licenses** are not perpetual under any circumstances.
- e. **Perpetual Licenses through Software Assurance.** Any perpetual Licenses received through Software Assurance supersede and replace the underlying perpetual Licenses for which that Software Assurance coverage was ordered. All perpetual Licenses acquired under this agreement remain subject to the terms of this agreement and the applicable Product Use Rights.
- f. **License confirmation.** This agreement, the applicable Enrollment, the Enrolled Affiliate's order confirmation, and any documentation evidencing transfers of Licenses, together with proof of payment, will be the Enrolled Affiliate's evidence of all Licenses obtained under its Enrollment.

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

Generally, Microsoft agrees to lock-in the Product Use Rights at the start of the Enrollment, for current versions, and on the date of first release, for new versions, so that any subsequent changes Microsoft makes to the Product Use Rights will not affect the Enrolled Affiliate. A special rule applies in the case of downgrades, as described below.

- a. **Product Use Rights.** Microsoft publishes Product Use Rights for each version of each Product. The latest version of the Product Use Rights is available at <http://www.microsoft.com/licensing/contracts>.

(i) **Product Use Rights for current and future versions of Products.**

The Product Use Rights in effect on the effective date of an Enrollment will apply to the Enrolled Affiliate's use of then-current versions of each Product. 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 the Enrolled Affiliate's use of that version.

(ii) **Product Use Rights for earlier versions (downgrade).**

If Enrolled Affiliate runs an earlier version of a Product than the version that was current on the Enrollment effective date, the Product Use Rights for the version licensed, not the version being run, will apply. However, if the earlier version includes components that are not part of the licensed version, any Product Use Rights specific to those components will apply to the Enrolled Affiliate's use of those components.

- b. **Reservation of rights.** All rights not expressly granted are reserved.

In lieu of Customer's obligation to indemnify Microsoft under various provisions of the Product Use Rights, Customer will be responsible for any cost or damages arising from any claim to which Customer's indemnity obligation would otherwise apply.

6. **How to order Product Licenses.**

An Enrolled Affiliate must submit orders for all copies of Products that it or its Affiliates run under its Enrollment. Each Enrolled Affiliate must place orders through the Enrolled Affiliate's Reseller. In general, Software Assurance cannot be ordered without also ordering simultaneously underlying Licenses unless the Enrolled Affiliate is renewing unexpired Software Assurance coverage or the Product List otherwise expressly permits it.

- a. **Placing orders.** Each Enrolled Affiliate must submit orders for all copies of any Products it or its Affiliates run under its Enrollment. Orders must be submitted in the month in which those copies are first run. Unless the Enrolled Affiliate is eligible to order just Software Assurance as described below, each order must be for either a License or L&SA. Each Enrolled Affiliate must place orders through the Enrolled Affiliate's Reseller. Price and payment terms for all Licenses ordered will be determined by agreement between the Enrolled Affiliate and its chosen Reseller. When placing orders, an Enrolled Affiliate must specify the country or countries where the Enrolled Affiliate and its Affiliates will use the Licenses.

When is the Enrolled Affiliate eligible to order just Software Assurance? An Enrolled Affiliate may order Software Assurance for copies of a Product, without the need to simultaneously order a new License for those copies, in each of the following circumstances:

- (i) At the beginning of a new Enrollment, the Enrolled Affiliate may order Software Assurance for copies of Products for which the Enrolled Affiliate has previously obtained perpetual Licenses through Upgrade Advantage, Software Assurance, or any similar

upgrade protection, so long as (1) the new Enrollment becomes effective no later than one day following the expiration of that upgrade protection, and (2) the Enrolled Affiliate places its Software Assurance order at the time it submits its new Enrollment to its Reseller.

- (ii) During the term of its Enrollment (including any renewal term), an Enrolled Affiliate may be eligible to order Software Assurance under its Enrollment for copies of certain Products licensed through retail sources or from an original equipment manufacturer ("OEM"), provided that the Enrolled Affiliate places its order within the required time frame. The Product List at <http://microsoft.com/licensing/contracts> identifies those Products that may be enrolled in Software Assurance and the applicable time frame for placing an order.
- (iii) An Enrolled Affiliate may also order Software Assurance in any other circumstances expressly permitted in the Product List.
- (iv) An Enrolled Affiliate may renew Software Assurance ordered under its Enrollment at the time it renews that Enrollment as described in the section titled "How to renew this agreement."

In all such cases, the Enrolled Affiliate must order Software Assurance for the remaining initial Enrollment and any renewal term, if applicable.

- b. **How to confirm orders.** Microsoft will publish information about orders placed by each Enrolled Affiliate, including an electronic confirmation of each order on a password-protected site on the World Wide Web at <https://licensing.microsoft.com> or a successor site. Upon Microsoft's acceptance of this agreement and Enrollments entered into under this agreement, the contact identified for this purpose will be provided access to this site.
- c. **Invoices and payments.** The prices at which Microsoft will invoice each Enrolled Affiliate's Reseller will be based upon the applicable price level under this agreement. For any orders for Software Assurance or L&SA, if the Enrolled Affiliate elects to spread its payments over the applicable initial Enrollment or renewal term rather than paying in a lump sum, it may make this election with its Reseller. In such cases, Microsoft will invoice the Enrolled Affiliate's Reseller in equal installments, the first installment upon receipt of the order and subsequent installments on each remaining anniversary of the effective date of this agreement occurring during the initial Enrollment or renewal term in which the order was placed. Any amounts for Licenses only (i.e. without accompanying Software Assurance) will be invoiced to the Enrolled Affiliate's Reseller in full upon receipt of the order.
- d. **Reorganizations, Consolidations, and Privatizations.** If an Enrolled Affiliate intends to transfer more than ten percent of its computers in connection with a reorganization, consolidation, or privatization of its government operations and, as a result, it would like to transfer the copies of the Products running on those computers prior to the expiration of its Enrollment, Microsoft will work with that Enrolled Affiliate in good faith to arrange for acceleration of any remaining payments for those copies run pursuant to Software Assurance or L&SA to allow for the transfer of perpetual Licenses for such copies. Any perpetual Licenses obtained as described in this paragraph will be for the latest version of the Products available as of the later of (1) the date on which the Enrolled Affiliate has completed payment or (2) the date of transfer of the Products.

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

Enrolled Affiliate can make as many copies as it needs. The copies must be complete and from master copies obtained from an authorized source. If Enrolled Affiliate uses third parties to make copies, Enrolled Affiliate is responsible for the actions of those third parties. Enrolled Affiliate can make a specified number of complimentary copies for training, evaluation and back-up. In certain circumstances, Enrolled Affiliate can use the media that it obtains under this agreement to make

copies of Products that it is licensing through another channel. Generally, this is only allowed where the Product, version, language, type, and components that are being copied are identical to those licensed through that other channel.

- a. **General.** The Enrolled Affiliate may make as many copies of the Products as it needs to distribute them within its organization. Copies must be true and complete (including copyright and trademark notices) and be from master copies obtained from a Microsoft approved fulfillment source. The Enrolled Affiliate may use a third party to make these copies but the Enrolled Affiliate agrees that it will be responsible for that third party's actions. The Enrolled Affiliate agrees to use reasonable efforts to make its employees, agents and any other individuals that it allows to use the Products aware that the Products are licensed from Microsoft and are subject to the terms of this agreement.
- b. **Copies for training, evaluation, and back-up.** The Enrolled Affiliate may (1) use up to 20 complimentary copies of any Product in a dedicated training facility on its premises, (2) use up to 10 complimentary copies of any Product for a 60-day evaluation period, and (3) use one complimentary copy of any licensed Product for back-up or archival purposes for each of its distinct geographic locations.
- c. **Right to re-image.** In certain cases, re-imaging is permitted using the volume licensing program Product media. If the Microsoft Product(s) is licensed (1) from an original equipment manufacturer (OEM), (2) as full packaged Product through a retail source, or (3) under another Microsoft program, then media provided under this agreement may 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 owned from the source for each Product that is re-imaged.
 - (ii) The Product, language, version and components of the copies made must be identical to the Product, language, version and all components of the copies they replace and the number of copies or instances of the re-imaged Product permitted remains the same.
 - (iii) Except for copies of an operating system and copies of Products licensed under another Microsoft program, the Product type (e.g., upgrade or full License) must be identical to the Product type from the separate source.
 - (iv) Re-images made under this subsection remain subject to the terms and use rights provided with the License from the separate source. This subsection does not create or extend any warranty or support obligation.

8. Transferring and reassigning Licenses.

Enrolled Affiliate can transfer Licenses to an Affiliate and to third parties in connection with a privatization, reorganization, or consolidation, provided it gives notice to Microsoft. Enrolled Affiliate cannot transfer Licenses to third parties under other circumstances without Microsoft's prior consent. Transferees must agree to be bound by applicable terms. License transfers must be permanent. Software Assurance cannot be transferred, but under certain conditions can be reassigned to another machine within the same enterprise. All new rights must be transferred together with their underlying licenses. Desktop operating system upgrade Licenses must stay with the computer system on which they were first installed. Generally, Enrolled Affiliate can reassign Licenses internally from one user to another or from one device to another.

a. Transferring Licenses to third parties.

- (i) **Right to transfer.** Enrolled Affiliate may transfer fully-paid perpetual Licenses to (1) an Affiliate or (2) an unaffiliated third party in connection with a reorganization, consolidation, or privatization of Enrolled Affiliate operations. To do so, the Enrolled Affiliate must complete a transfer notice form which can be obtained from

<http://microsoft.com/licensing/contracts> and send the notice to Microsoft before the transfer. All other transfers require Microsoft's prior written consent. Guidance on what types of transfers are permissible can be found at <http://microsoft.com/licensing/contracts>. No License transfer will be valid unless the Enrolled Affiliate provides to the transferee, and the transferee accepts in writing, the applicable Product Use Rights, use restrictions, limitations of liability, and the transfer restrictions described in this section. Any transfer not made in compliance with this section will be void. The resale of Licenses, including any transfer by a Customer or its Affiliate with a primary purpose to enable the transfer of those Licenses to an unaffiliated third party, is expressly prohibited.

(ii) **Certain transfers not permitted.** The Enrolled Affiliate may not transfer any of the following:

- Licenses on a short-term basis (90 days or less);
- temporary rights to use Products;
- Software Assurance coverage;
- perpetual Licenses for any version of any Product acquired through Software Assurance separate from the underlying perpetual Licenses for which that Software Assurance coverage was obtained;
- an upgrade License for a desktop operating system Product separate from the underlying desktop operating system License, or from the computer system on which the Product is first installed.
- full version desktop operating system Licenses, unless transferred with the sale of the device for which it operates;
- any Software Assurance benefits or Online Services products; or
- any Licenses for resale to unaffiliated third parties.

b. Internal reassignment of Licenses and Software Assurance.

(i) **For Products other than the desktop operating system upgrade.** For Products other than the desktop operating system upgrade, the Enrolled Affiliate may internally reassign Licenses to another department within its Enterprise. However, Enrolled Affiliate may not reassign Licenses on a short-term basis (90 days or less) or reassign Software Assurance or other upgrade coverage separate from the underlying License except as provided otherwise in this agreement. The Enrolled Affiliate may not reassign desktop operating system upgrade Licenses from one computer to another.

(ii) **For desktop operating systems.** The Enrolled Affiliate may internally reassign Software Assurance coverage on desktop operating systems from the original computer to a replacement computer within its Enterprise, so long as (1) the replacement computer is licensed to run the latest version of that operating system, and (2) the Enrolled Affiliate removes any desktop operating system upgrades from the original computer.

9. Term and termination.

This agreement, and all Enrollments submitted under it, end 36 full calendar months from the effective date of this agreement, unless the agreement is renewed or terminated earlier. Generally, existing Enrollments may be terminated: (1) if either party breaches the agreement and does not cure the breach in the time allotted; or (2) for non-appropriation of funds. Generally, Enrolled Affiliate must order Licenses for copies of Products it has been using but has not yet placed orders for and pay for all Licenses in full.

- a. **Term.** This agreement will remain in effect for 36 full calendar months following the agreement effective date unless it is renewed or terminated earlier as described below. All Enrollments entered into under this agreement will expire or terminate upon the expiration or termination of this agreement, unless terminated earlier as described below.
- b. **Termination for breach.** Either party to an Enrollment may terminate it if the other party materially breaches its obligations under this agreement, including any obligation to submit orders or pay amounts owed (even if such non-payment is caused by non-appropriation of funds). Except where the breach is by its nature not curable within 30 days, the terminating party must give the other party 30 days notice and opportunity to cure. If Microsoft gives such notice to an Enrolled Affiliate, Microsoft will give Customer a copy of that notice as well and Customer agrees to assist in attempting to resolve the breach. If the breach also affects other Enrollments and cannot be resolved between Customer and Microsoft within a reasonable period of time, Microsoft may also terminate this agreement and all other Enrollments under it, unless the basis for termination of the Enrollment is non-appropriation of funds to the Enrolled Affiliate, in which event Microsoft may only terminate the affected Enrollment(s). If an Enrolled Affiliate ceases to be Customer's Affiliate, Customer must promptly notify Microsoft, and Microsoft may terminate its Enrollment.
- c. **Early termination.** If (1) an Enrolled Affiliate terminates its Enrollment as a result of Microsoft's breach or (2) if Microsoft terminates an Enrollment because the Enrolled Affiliate has ceased to be Customer's Affiliate, or (3) Enrolled Affiliate terminates an enrollment for non-appropriation of funds, or (4) Microsoft terminate an enrollment for non-payment due to non-appropriation of funds, then the Enrolled Affiliate will have the following options:
- (i) it may immediately pay the total remaining amount due, including all installments, in which case the Enrolled Affiliate will have perpetual rights for all Licenses it has ordered; or
 - (ii) it may pay only amounts due as of the termination date, in which case the Enrolled Affiliate will have perpetual Licenses for:
 - all copies of Products (including the latest version of Products ordered under SA coverage in the current term) for which payment has been made in full, and
 - the number of copies of Products it has ordered (including the latest version of Products ordered under Software Assurance coverage in the current term) that is proportional to the total of installment payments paid versus total amount due (paid and payable) if the early termination had not occurred.
- Nothing in this section shall affect perpetual License rights acquired either in a separate agreement or in a prior term of the terminated Enrollment.
- d. **Effect of termination or expiration.** When an Enrollment expires or is terminated,
- (i) Enrolled Affiliate must order Licenses for all copies of Products it has run for which it has not previously submitted an order. Any and all unpaid payments or any order of any kind, including subscription services, remain due and payable. Except as provided in the subsection titled "Early termination," all unpaid payments for Licenses immediately become due and payable.
 - (ii) Enrolled Affiliate's right to Software Assurance benefits under this agreement ends if it does not renew Software Assurance.

10. How to renew this agreement.

Customer can renew the agreement for an additional one-year or three-year term at its option.

Renewal. Microsoft will provide Customer with 60 days' prior written notice of expiration of the initial agreement or renewal term advising Customer of Customer's renewal options. Customer may have the option to renew this agreement for one term of either 12 or 36 full calendar months. If Customer renews this agreement, all Enrollments under this agreement are automatically renewed. Microsoft and its Affiliates will not unreasonably reject any renewal. However, Microsoft may make a change to this program that will make it necessary for Customer and its Enrolled Affiliates to enter into new agreements and Enrollments.

Placing renewal orders. If an Enrolled Affiliate wishes to renew Software Assurance for any copies previously covered under its Enrollment, it must submit a renewal order for those copies for the entire renewal term prior to or at the expiration of the previous term. The renewal term will start the day following expiration of the prior term. Upon renewal of this agreement, an Enrolled Affiliate will not be eligible to order Software Assurance coverage for any copies of any Products for which it obtained only a License without first acquiring L&SA.

Consequences of non-renewal. If Customer elects not to renew this agreement, or if an Enrolled Affiliate elects not to renew Software Assurance coverage for any copies of any Product licensed under an Enrollment, and it otherwise allows Software Assurance for those copies to lapse, then the Enrolled Affiliate will not be permitted to order Software Assurance for those copies later without first acquiring L&SA.

11. Restrictions on use.

This section describes several restrictions that apply generally to Customer's use of any software Microsoft provides to Customer (e.g., prohibitions on renting or hosting the software, or reverse engineering it).

a. Enrolled Affiliate must 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 any Product or Fix, except where applicable law permits it despite this limitation; or
- (iii) rent, lease, lend or host to or for third parties any Product or Fix, except where Microsoft agrees in a separate written agreement.

12. Confidentiality.

Each party agrees not to disclose the terms of this agreement except as provided below. Feedback a party gives about the other party's Products is not confidential and can be used by the receiving party. Each party has a right to use residual information obtained in the course of their relationship, and neither is obligated to restrict their own representatives' work assignments because of this agreement.

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.**

Microsoft warrants that its Commercial Products will work substantially as described in the accompanying documentation, subject to certain limitations. If not, Microsoft will provide replacement Commercial Product or a refund. Microsoft disclaims all other warranties.

- a. **Limited Product warranty.** Microsoft warrants that each version of a Commercial Product licensed by Enrolled Affiliate will perform substantially as described in the applicable Microsoft user documentation. This warranty is subject to the following limitations:
 - (i) the warranty applies for one year from the date Enrolled Affiliate first runs a copy of the Product;
 - (ii) any implied warranties, guarantees or conditions last only during the term of the limited warranty, except where applicable law does not permit such a limitation;
 - (iii) the 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;
 - (iv) the warranty does not apply to components of Products that Enrolled Affiliate is permitted to redistribute; and
 - (v) the warranty does not apply to problems caused by the failure to meet minimum system requirements.
- b. **Remedies for breach of limited Commercial Product warranty.** If Customer notifies Microsoft within the warranty period that a Commercial Product does not meet the limited warranty, then Microsoft will, at its option, either (1) return the price paid for the Product, or (2) repair or replace the Product. These are Customer's only remedies for breach of the limited warranty, unless other remedies are required to be provided under applicable law.
- c. **No warranty on Free, Pre-Release, and Beta Products.** To the maximum extent permitted by law, Free Products and Beta Products are provided "as-is," without any warranties. Customer acknowledges that the provisions of this paragraph are reasonable, among other things as these Products are being provided to Customer without charge prior to commercial release, and/or before Microsoft has fully tested them.
- d. **DISCLAIMER OF OTHER WARRANTIES. OTHER THAN THIS LIMITED WARRANTY, MICROSOFT PROVIDES NO OTHER EXPRESS OR IMPLIED WARRANTIES. MICROSOFT DISCLAIMS ANY IMPLIED REPRESENTATIONS, WARRANTIES OR CONDITIONS, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE OR NON-INFRINGEMENT. THESE DISCLAIMERS WILL APPLY UNLESS APPLICABLE LAW DOES NOT PERMIT THEM.**

14. **Defense of infringement and misappropriation claims.**

Microsoft agrees to defend Customer against claims that Microsoft software infringes someone else's intellectual property rights, and pay any damages awarded by a court or in a settlement. There are several exceptions, which limit Microsoft's obligations in cases where Customer has contributed in some way to the claim. If something Customer has done caused the claim and Microsoft is damaged, Customer must reimburse Microsoft.

If Microsoft believes that it is necessary to avoid an infringement claim, Microsoft may replace or modify the Products Customer is using. If someone enjoins Customer use of a Product, Microsoft will, at its option, replace the Product, modify it to make it non-infringing, obtain the rights Customer needs to keep using it, or refund Customer's money.

- a. Agreement to protect.** Microsoft will defend Customer against any claims made by an unaffiliated third party that any Commercial Product or Fix infringes that party's patent, copyright or trademark or makes intentional unlawful use of its trade secret or undisclosed information. Microsoft will also pay the amount of any resulting adverse final judgment (or settlement to which Microsoft consents). This section provides Customer's and its Affiliate's exclusive remedy for these claims. The term "undisclosed information" is used in accordance with Article 39.2 of the TRIPs agreement.
- b. What the Customer must do.** Customer must notify Microsoft promptly in writing of the claim and give Microsoft sole control over its defense or settlement. Customer must also provide Microsoft with reasonable assistance in defending the claim. Microsoft will reimburse Customer for reasonable out of pocket expenses that it incurs in providing that assistance.
- c. Limitations on defense obligation.** Microsoft's obligations will not apply to the extent that the claim or award is based on:
- (i) Customer's or its Affiliate's use of the Product or Fix after Microsoft notifies it to discontinue that use due to a third party claim;
 - (ii) Customer's or its Affiliate's combination of the Product or Fix with a non-Microsoft product, data or business process;
 - (iii) damages attributable to the value of the use of a non-Microsoft product, data or business process;
 - (iv) modifications that Customer or its Affiliates make to the Product or Fix;
 - (v) Customer's or its Affiliate's redistribution of the Product or Fix to, or Customer's or its Affiliate's use for the benefit of, any unaffiliated third party;
 - (vi) Customer's or its Affiliate's use of Microsoft's trademark(s) without express written consent to do so; or
 - (vii) any trade secret or undisclosed information claim, where Customer or its Affiliates acquires the trade secret or undisclosed information (1) through improper means; or (2) under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (3) from a person (other than Microsoft or Microsoft's Affiliates) who owed to the party asserting the claim a duty to maintain the secrecy or limit the use of the trade secret or undisclosed information.

Customer will reimburse Microsoft for any costs or damages that result from any of these actions.

d. Specific rights and remedies in case of infringement.

- (i) Microsoft's rights in addressing possible infringement.** If Microsoft receives information concerning an infringement claim related to a Product or Fix, Microsoft may, at its expense and without obligation to do so, either:
- procure for Customer the right to continue to run the allegedly infringing Product or Fix, or
 - modify the Product or Fix, or replace it with a functional equivalent, to make it non-infringing, in which case Customer will immediately stop using the allegedly infringing Product or Fix after receiving notice from Microsoft.
- (ii) Customer's specific remedy in case of injunction.** If, as a result of an infringement claim, Customer's use of a Commercial Product or Fix is enjoined by a court of competent jurisdiction, Microsoft will, at its option, either:
- procure the right to continue its use, or
 - replace it with a functional equivalent, or

- modify it to make it non-infringing, or
- refund the amount paid and terminate the License for the infringing Commercial Product or Fix.

15. Limitation of liability.

Microsoft limits its liability to Customer to the amount of money Customer has paid Microsoft for the Product giving rise to the claim. This limit does not apply, however, to Microsoft's obligations under the section entitled "Defense of infringement and misappropriation claims," or to damages Customer incurs because of Microsoft's breach of its confidentiality obligations or because of Microsoft's gross negligence or willful misconduct.

Each party agrees that it will not be liable to the other for consequential, indirect, punitive or special damages, except those that result from a breach of confidentiality or from one party violating the other's intellectual property rights.

- a. Limitation on liability.** Except as otherwise provided in this section, to the extent permitted by applicable law, the liability of Microsoft and of Microsoft's contractors to Customer and its Affiliates arising under this agreement is limited to direct damages up to the amount Customer paid for the Product giving rise to that liability. In the case of Free Product or code that Customer is authorized to redistribute to third parties without separate payment to Microsoft, Microsoft's liability is limited to U.S. \$5,000. These limitations 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. However, these monetary limitations will not apply to:

- (i) Microsoft's obligations under the section titled "Defense of infringement and misappropriation claims"; or
- (ii) liability for damages caused by Microsoft's gross negligence or willful misconduct, or that of its employees or its agents, and awarded by a court of final adjudication; or
- (iii) liabilities arising out of any breach by Microsoft of its obligations under the section entitled "Confidentiality"; or
- (iv) liability for personal injury or death caused by Microsoft's negligence or that of its employees or agents or for fraudulent misrepresentation.

- 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 SUPPLIERS, WILL BE LIABLE FOR ANY INDIRECT DAMAGES (INCLUDING, WITHOUT LIMITATION, CONSEQUENTIAL, SPECIAL OR INCIDENTAL DAMAGES, DAMAGES FOR LOST PROFITS OR 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 ITS CONFIDENTIALITY OBLIGATIONS OR OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS.**

16. Verifying compliance.

Microsoft has the right to review Customer's records or conduct an onsite audit through an independent auditor. Microsoft will pay for the costs of the audit unless it reveals a material noncompliance.

- a. **Right to verify compliance.** Customer must keep records relating to the Products it and its Affiliates use under any License agreement. Microsoft has the right to verify compliance with the agreement, at Microsoft's expense, during the term of the applicable Enrollment and for a period of one year thereafter.
- b. **Verification process and limitations.** To verify compliance, Microsoft will engage an independent accountant from an internationally recognized public accounting firm, which will be subject to a confidentiality obligation. Verification will take place upon not fewer than 30 days notice, during normal business hours and in a manner that does not interfere unreasonably with Customer's operations. As an alternative, Microsoft can require Customer to complete Microsoft's self-audit questionnaire relating to the Products Customer and any of its Affiliates use under this agreement, but reserves the right to use a verification process as set out above.
- If Microsoft undertakes verification and does not find material unlicensed use (License shortage of 5% or more), Microsoft will not undertake another verification of the same entity for at least one year. Microsoft and Microsoft's auditors will use the information obtained in compliance verification only to enforce Microsoft's rights and to determine whether Customer is in compliance with the terms of this agreement. By invoking the rights and procedures described above, Microsoft does not waive its rights to enforce this agreement or to protect its intellectual property by any other means permitted by law.
- c. **Remedies for non-compliance.** If verification or self-audit reveals any unlicensed use, Customer must promptly order sufficient Licenses to cover its use. If material unlicensed use is found, Customer must reimburse Microsoft for the costs Microsoft has incurred in verification and acquire the necessary additional Licenses at single retail License cost within 30 days.

17. **Miscellaneous.**

- a. **Notices to Microsoft.** Notices, authorizations, and requests in connection with this agreement must be sent by regular or overnight mail, express courier, or fax 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, or fax, confirmation of delivery.

Copies should be sent to:

Microsoft Corporation
Legal and Corporate Affairs
Volume Licensing Group
One Microsoft Way
Redmond, WA 98052
USA

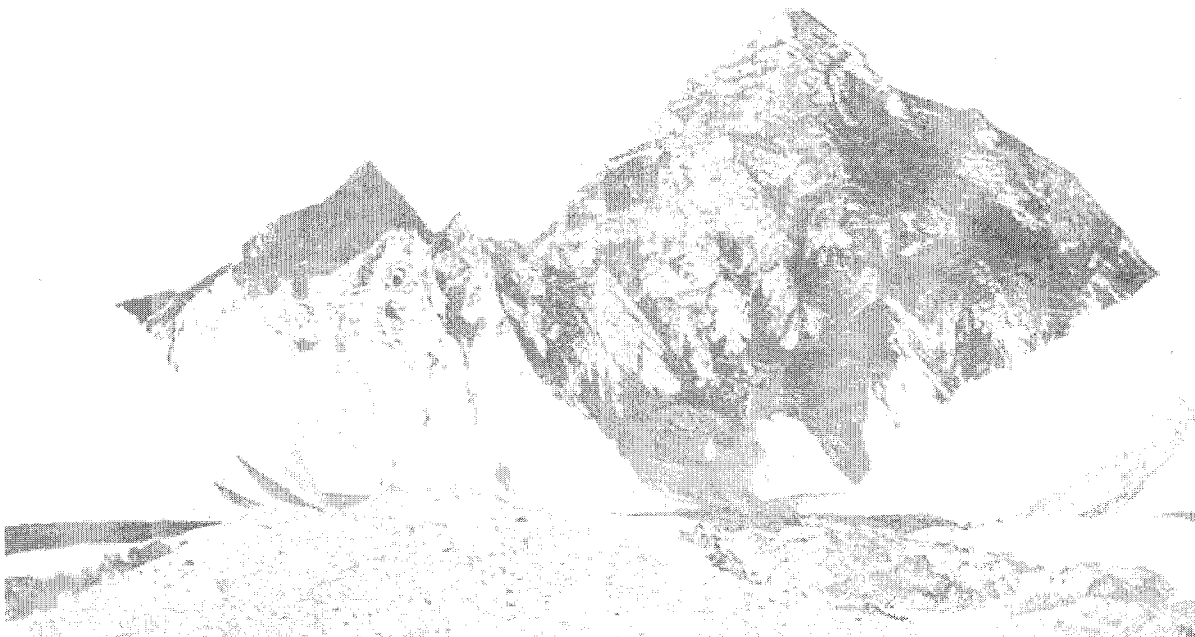
Via Facsimile: (425) 936-7329

- b. **Assignment.** Either party may assign this agreement to an Affiliate only. Assignment will not relieve the assigning party of its obligations under the assigned agreement. If either party assigns this agreement, it must notify the other party of the assignment in writing.
- c. **Severability.** If a court holds any provision of this agreement to be illegal, invalid or unenforceable, the rest of the document will remain in effect and this agreement will be amended to give effect to the eliminated provision to the maximum extent possible.
- d. **Waiver.** A waiver of any breach of this agreement is not a waiver of any other breach. Any waiver must be in writing and signed by an authorized representative of the waiving party.

- e. **Applicable law; Dispute resolution.** The terms of this agreement will be governed by the laws of Enrolled Affiliate's state, without giving effect to its conflict of laws. Disputes relating to this agreement will be subject to applicable dispute resolution laws of Enrolled Affiliate's state.
- f. **This agreement is not exclusive.** Customer is free to enter into agreements to license, use or promote non-Microsoft software or services.
- g. **Entire agreement.** This agreement, the Product List, all Enrollments under this agreement, and the Product Use Rights constitute the entire agreement concerning the subject matter and supersede any prior or contemporaneous communications. In the case of a conflict between any of these documents that is not resolved expressly in the documents, their terms will control in the following order: (1) these terms and conditions and the accompanying signature form; (2) the Product List; (3) the Product Use Rights; (4) all Enrollments under this agreement; and (5) all orders submitted under this agreement. The terms of any purchase order or any general terms and conditions Customer or Customer Affiliates maintain do not apply.
- h. **Survival.** Provisions regarding ownership and license rights, fees, Product Use Rights, restrictions on use, evidence of perpetual licenses, transfer of licenses, warranties, defense of infringement and misappropriation claims, limitations of liability, confidentiality, compliance verification, obligations on termination or expiration and the other provisions in this section entitled "Miscellaneous" will survive termination or expiration of this agreement and of any agreement in which they are incorporated.
- i. **No transfer of ownership.** Microsoft does not transfer any ownership rights in any licensed Product.
- j. **Free Products.** It is Microsoft's intent that the terms of this agreement and the Product Use Rights be in compliance with all applicable federal law and regulations. Any Free Product provided to Enrolled Affiliate is for the sole use and benefit of the Enrolled Affiliate, and is not provided for use by or personal benefit of any specific government employee.
- k. **Amending the agreement.** This agreement (except the Product List and the Product Use Rights) can be changed only by an amendment signed by both parties.
- l. **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 on Microsoft.
- m. **Customer's rights to privacy.** Microsoft and Customer will comply with all applicable privacy and data protection laws and regulations. Customer may choose to provide personal information to Microsoft on behalf of third parties (including, Customer's contacts, resellers, distributors, and administrators) as part of this agreement. Customer represents and warrants that it has and will comply with any applicable laws to provide notices to or obtain permissions from any such individuals to allow sharing of their personal information with Microsoft for the purpose of allowing Microsoft or its agents to facilitate Customer's agreements. Customer consents to Microsoft's and its agents use of the contact information provided by Customer for purposes of administering its agreements, the business relationship and related services and with Microsoft's sharing of Customer's information with Customer's designated representatives, resellers, distributors, and administrators for such purposes, including allowing such individuals to update Customer's contact information on Customer's behalf. The personal information Customer provides in connection with this agreement will be used and protected according to the privacy statement available at <https://licensing.microsoft.com>.
- n. **Natural Disaster.** In the event of a "natural disaster," Microsoft provide additional assistance or rights by posting them on <http://www.microsoft.com> at such time
- o. **Copyright Violation.** Except as set forth in section above entitled "Transferring and reassigning Licenses", the Enrolled Affiliate agrees to pay for, and comply with the terms of this agreement and the Product Use Rights, for the Products it uses. Except to the extent

Enrolled Affiliate is licensed under this agreement, it will be responsible for its breach of this contract and violation of Microsoft's copyright in the Products, including payment of License fees specified in this agreement for unlicensed use.

- p. **U.S. Export jurisdiction.** Products and Fixes are subject to U.S. export jurisdiction. Customer must comply with all applicable laws including the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, as well as end-user, end-use and destination restrictions issued by U.S. and other governments. For additional information, see <http://www.microsoft.com/exporting/>.



Select Volume Forecast Form

Throughout the term of this agreement, Enrolled Affiliate's price level for each Product pool (Applications, Systems and Servers) for which Enrolled Affiliate orders Products on behalf of U.S. Government agency Enrolled Affiliates will be level "D". The U.S. Government does not need to acquire Products in all pools.

