

Campus and School Agreement

Contents

1. Definitions.....	2
2. How the Campus and School program works.....	3
3. Subscription price.....	3
4. License grant — what Institution and its Users are licensed to run.....	4
5. How to know what Product use rights apply.....	4
6. How to order Products.....	5
7. Making copies of Products and re-imaging rights.....	6
8. Work at home rights.....	7
9. Distributing media.....	7
10. Redistribution of software updates to students.....	8
11. Transfer and reassigning Licenses.....	10
12. Confidentiality.....	10
13. Options upon completion of a Licensed Period.....	11
14. Term and termination.....	11
15. Warranties.....	12
16. Defense of infringement and misappropriation claims.....	13
17. Limitation of liability.....	14
18. Verifying compliance.....	15
19. Miscellaneous.....	16

This Agreement is entered into between the Institution and Microsoft on the date identified on the signature form.

Effective Date. The effective date of this agreement will be the date it is accepted by Microsoft; however, if the first Enrollment entered into under this agreement is given a Licensed Period with a starting date that is earlier than the date this agreement is accepted by Microsoft, the effective date of this agreement will be that earlier date.

This agreement consists of (1) these terms and conditions and the signature form, (2) the Product List, (3) the Product use rights applicable to Products licensed under this agreement, (4) any Enrollment entered into under this agreement, (5) any order submitted under this agreement, and (6) the eligibility criteria for Campus and School License program at <http://microsoft.com/licensing/contracts> as of the effective date of 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.

In this agreement, the following definitions apply:

“Affiliate” means

- a. with regard to Institution,
 - (i) for a non-public entity, any qualified educational user identified at <http://microsoft.com/licensing/contracts> that Institution owns and/or control, that owns and/or controls Institution, or that is under common ownership and/or control with Institution; “ownership” means, for purposes of the definition, more than 50% ownership, and
 - (ii) for a state or local government entity,
 - any other qualified educational user identified at <http://microsoft.com/licensing/contracts> as of the effective date of this agreement that is an agency, department, office, bureau, division, or other entity of the state or local government, and
 - any other qualified educational user expressly authorized by the laws of the state to purchase under state education contracts;

provided that the state and its Affiliates shall not, for purposes of this definition, be considered to be Affiliates of the federal government and its Affiliates; and

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

“available” means, with respect to a Product, that Microsoft has made Licenses for that Product available for ordering under a particular licensing program;

“Enrollment(s)” means the form that Institution submits under this agreement to sign up for this program;

“Fix(es)” means Product fixes, modifications or enhancements or their derivatives that Microsoft either releases generally (such as Product service packs) or that Microsoft provides to Institution when performing service(s) (such as workarounds, patches, bug fixes, beta fixes and beta builds);

“Institution” means the entity that is a qualified educational user identified at <http://microsoft.com/licensing/contracts> as of the effective date of this agreement that has entered into this agreement with Microsoft or the Institution’s Affiliate that has entered into an Enrollment under this agreement. If Institution is a school district, “Institution” also includes all participating schools in the same district;

“License” means any one of those offerings identified in the Product List (including standard licenses, and upgrades for desktop operating systems) that provides the right to run the version of the Product ordered;

“Licensed Period” means the period of time beginning on the effective date specified in Institution’s Enrollment and continuing for the period of time specified in Institution’s Enrollment (either 12 or 36 calendar months);

“Microsoft” means the Microsoft entity that has entered into this agreement or an Enrollment and its Affiliates;

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

“Products” means any product Microsoft makes available for license for a fee, including online services and other web based services;

“Product List” means, with respect to the Campus and School License 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 to

qualified educational users (which availability may vary by region) and any Product-specific conditions or limitations on the acquisition of Licenses for the Product;

“Software Assurance” means an annuity offering that provides benefits for Products that can include new version rights, spread payments, deployment planning services, training, support and access to differentiated technologies; and

“Users” means Institution, faculty, staff, and students designated on the Enrollment to run the Products and members of the public who access PCs located in Institution’s open access labs or libraries. Users must be qualified educational users as defined at <http://microsoft.com/licensing/contracts> as of the effective date of this agreement in order to be eligible for the Campus or School Agreement programs.

2. *How the Campus and School program works.*

This agreement allows Institution to license Products on a subscription basis for a one-year Licensed Period or a three-year Licensed Period.

The Campus and School Agreement allows Institution to license one or more Products on a subscription basis. To license Products on a subscription basis means that the right to run the Product is non-perpetual and continues only during the Licensed Period.

Institution can participate in this program by submitting an Enrollment. This program allows a one-year Licensed Period or a three-year Licensed Period. The choice is indicated in the Enrollment.

One-year Licensed Period. An order must be submitted to indicate the Products Institution chooses to run. Thereafter, extension orders are submitted to continue the subscription each year. If an extension order is not received, the Enrollment will expire.

Three-year Licensed Period. An order must be submitted to indicate the Products Institution chooses to run. Thereafter, Institution must submit anniversary orders on the first and second anniversaries of the effective date of its Enrollment.

Online services. The terms and conditions of this agreement apply to online services subscriptions throughout the entire term of the online services subscription, except as provided here and in the Product List at <http://microsoft.com/licensing/contracts>. Online services are provided as subscription services and may carry terms that are independent of the agreement terms. Billing terms for online services subscriptions may also differ from the terms of this agreement.

3. *Subscription price.*

If Institution chooses the one-year Licensed Period and submits an extension order prior to expiration of the subscription, Microsoft will not increase the License prices for an annual extension by more than 10%. If Institution chooses the three-year Licensed Period and meets ordering requirements, the price Microsoft charges the distributor on each anniversary order will be the same as the price for the Products when they are first ordered.

This provision shall not apply to Products licensed to Institution at special promotion prices.

One-year Licensed Period. Microsoft will not increase the License prices charged to the Distributor for an annual extension order by more than ten percent (10%) (as determined with reference to U.S. funds, regardless of the currency in which amounts are invoiced or payment is made) over the License prices charged for the immediately preceding 12-month Licensed Period if (i) Institution submits an extension order prior to the expiration of the Enrollment and (ii) such order is confirmed for the same Products in the same quantities as ordered in the expiring Licensed Period.

Three-year Licensed Period. If Institution chooses this option and complies with the ordering requirements within the agreement, for any Products ordered during the Licensed Period, the price

Microsoft charges the Distributor on each anniversary order will be the same as the price for the Products when they are first ordered except for step-ups.

4. *License grant — what Institution and its Users are licensed to run.*

On the date of confirmation of Microsoft's acceptance of the Enrollment, Institution is temporarily licensed to have its Users run the Products as permitted in the Product use rights. There are a number of restrictions that apply generally to Institution's and its Users' use of Products Microsoft provides to Institution (e.g. prohibitions on renting the Products, on reverse engineering it, etc.).

On the date of Microsoft's letter to Institution confirming Microsoft's acceptance of the Enrollment, Institution is temporarily licensed to have Users run the Products as specifically permitted in the Product use rights located at <http://microsoft.com/licensing/contracts>. If Institution is unable to access the Product use rights from the web location listed above, please contact Microsoft to request a copy.

The Institution's right to have its Users run the Products and Fixes is expressly limited to the rights described in this agreement, including the following limitations:

- a. Neither Institution nor its Users may separate the components of Products made up of multiple components by running them on different computers by upgrading or downgrading them at different times or by transferring them separately except as otherwise provided in the Product use rights.
- b. Neither Institution nor its Users may rent, lease, commercially host or lend any copy of the Products or Fixes, except where agreed by separate agreement.
- c. Neither Institution nor its Users may reverse engineer, decompile or disassemble the Products or Fixes except to the extent expressly permitted by applicable law despite this limitation.
- d. Neither Institution nor its Users may make copies of the Products or Fixes and distribute them on media to student Users.
- e. The components of the Products may vary by platform. Institution may run only the components of the Products that are included on the platform Institution chooses to deploy.

Neither Institution nor its Users will be entitled to free telephone support for the Products, except as specified in writing in connection with Software Assurance membership or other Software Assurance offerings.

These rights apply to the Licenses obtained under an Enrollment and are not related to any order or fulfillment of 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 Products).

The right to run any Product under this agreement is temporary unless Institution elects to obtain perpetual Licenses under the buy-out option. This agreement, the applicable Enrollment, and Institution's order confirmation, together with proof of payment, will be Institution's evidence of all Licenses obtained under its Enrollment as described in this agreement.

5. *How to know what Product use rights apply.*

Generally, the use rights in effect at the time Institution signs the Enrollment will apply. Any changes Microsoft makes to the use rights for existing versions after Institution signs the Enrollment will not apply to Institution. For versions that were not yet released at the time of signing, the use rights in effect when that version is first released will apply. Generally, even if Institution chooses to run an earlier version of a Product than the one Institution is licensing, the use rights for the latest version Institution is licensed to use will still apply.

- a. Product use rights.** Microsoft publishes Product use rights for each Product and each new version of a Product. The use rights in effect for a Product and version on the effective date of this agreement or extension will apply to Institution's use of the Product and version except:
- (i) earlier versions**

If Institution runs an earlier version of a Product that pre-dates either the Enrollment or the extension effective date and the current version of the Product as of that date, then the Product use rights for the version licensed apply. If the earlier version includes different components, any use rights for those components in the Product use rights that otherwise apply to the earlier version apply to Institution's use of them.
 - (ii) versions of Products for which Microsoft revises Product use rights**

If Microsoft revises the Product use rights for a particular version after an Enrollment or extension effective date, the Product use rights applicable to that version without those revisions apply.
 - (iii) later versions of Products Microsoft makes available after the Enrollment or extension effective date**

If a new version of a Product is made available during the term of the Enrollment or extension term, the use rights in effect on the date that new version is first released will apply.
- b. Use rights for different language version.** If Institution is using any different language version of any Product licensed under its agreement, Institution's use of the different language version will be governed by the Product use rights for the version licensed under this agreement.
- c. Fixes.** Use of any Fixes is defined by the Product use rights for the affected Products or, if the Fix is not provided for specific Products, any other use terms Microsoft provides. All Fixes are licensed, not sold.

6. *How to order Products.*

Initial order for Products must be submitted within 30 days of the effective date of the Enrollment. Institution can add new Products not previously ordered by submitting additional orders or run more copies of Products previously ordered by reporting the increase to Microsoft.

- a. Placing the initial order.** Orders must be submitted for Products within 30 days of the effective date of the Enrollment.
- b. Price and payment terms.** Price and payment terms for all Licenses ordered will be determined by agreement between Institution and its chosen reseller.
- c. Adding new Products not previously ordered.** Orders can be submitted for Products that were not part of the initial order. The order must be placed in the month in which those copies are first run. The Licensed Period for additional orders will be the same as the Enrollment Licensed Period.

Microsoft will invoice the distributor for the Products ordered on a pro-rated basis corresponding to the number of full calendar months remaining in the Licensed Period to a minimum of 6 months. Microsoft will use the price list in effect on the date of the invoice to charge Institution's distributor for the additional Licenses.

- d. Adding more copies of Products previously ordered**
 - (i)** Products, other than servers, are licensed on an Institution-wide basis. Institution does not need to submit orders to increase the number of copies run. However, increases

must be reported at each anniversary of the effective date of the Enrollment.

- (ii) Server Products are licensed based on the number of Licenses. At any time during the Licensed Period (including any extension), Institution may run additional copies of any previously ordered server Products, provided it submits orders for such copies. The order must be placed in the month in which those copies are first run.
- e. **Placing subsequent annual orders.** Institution must submit orders based on the following:
 - (i) **One-year Licensed Period.** An extension order must be submitted to extend the Enrollment for another Licensed Period. The order must be received by Microsoft prior to the expiration of the Licensed Period. The Products selection and quantity ordered can be changed at each extension order; provided, the selection and quantity are no less than the previous order.
 - (ii) **Three-year Licensed Period.** An anniversary order must be submitted on or before each anniversary of the effective date of the three-year Licensed Period. Each of the anniversary orders must at a minimum be for the same Products selection and quantity of all Products ordered during the first year of the Licensed Period, except for step-ups. At the end of the three-year Licensed Period, a new Enrollment is required to continue the subscription.
- f. **How to confirm orders.** Microsoft will publish information about orders placed by Institution, including an electronic confirmation of each order on a password-protected site on the World Wide Web at <https://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.
- g. **Step up to a higher Product edition.** If a previously ordered Product has multiple editions, Institution may migrate to the higher edition by stepping up (e.g. from Core CAL to Enterprise CAL or from SQL Server Standard Edition to SQL Server Enterprise Edition.) The Institution may step-up at the anniversary when placing the next anniversary or extension order by replacing the previously ordered edition with the higher edition. The upsized order quantity needs to be the same or higher quantity as the previous order.

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

Institution can make as many copies as it needs. The copies must be complete and made from copies obtained from an authorized source. If Institution uses third parties to make copies, Institution is responsible for them. Institution can make a specified number of complimentary copies for evaluation. In certain circumstances, Institution has re-imaging rights.

- a. **Copies necessary for internal deployment.** Institution may make as many copies of the Products licensed as necessary to distribute the Products to its Users. All copies of any Product must be true and complete copies (including copyright and trademark notices) and be made from media or a network source acquired from or made available by a Microsoft approved fulfillment source for that Product. Institution may also have a third party make or distribute copies in its place but Institution is responsible for third-party actions to the same extent Institution would be responsible if the third party were its employee. Institution must make reasonable efforts to make employees, agents, and other individuals running a Product aware that the Product is licensed from Microsoft and may only be run or transferred subject to the terms of this agreement.
- b. **Copies for evaluation.** During the term of its Enrollment, Institution may run up to 10 complimentary copies of any Product for a 60-day evaluation period.
- c. **Re-imaging rights.** Re-imaging is permitted using the Product media on the following conditions. If the Microsoft Product(s) is licensed (i) from an original equipment manufacturer

(OEM), or (ii) as a full packaged Product through a retail source, then media provided under this agreement may be used to create images for those licensed machines in place of media provided through that separate source. This right is conditioned upon the following:

- (i) A separate License must be owned from the separate source for each re-image.
- (ii) The Product, language, version, and components licensed under the Enrollment must be identical to the Product, language, version, and components licensed from the separate source.
- (iii) The Product type (e.g. upgrade or full License) must be identical to the Product type from the separate source.

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. *Work at home rights.*

Institution's faculty and staff Users who are licensed to use a particular Product have the right to run one copy of that Product on their home PC during the Licensed Period.

During the Licensed Period, faculty and staff Users who are licensed to use the particular Product, have the right to run one copy of that Product on a home PC that they own or lease (or, for work at home rights for a Client Access License, to access the server Product(s) from a home PC that they own or lease), for work-related purposes only; provided that in the case of work at home rights for any Product under a Enrollment, the total number of faculty and staff Users may not exceed the total number of eligible PCs (for a School Enrollment) or full time equivalent (for a Campus Enrollment) included in that Enrollment. As Microsoft offers both work at home rights and applicable home use program under Software Assurance, the Institution will only be entitled for one benefit. Institution's Users can choose to use either work at home rights or applicable home use program rights for a particular Product as Microsoft offers both work at home rights and applicable home use program rights.

9. *Distributing media.*

To distribute Products to its faculty and staff, Institution must acquire the Products media from a Microsoft-approved source for that Product or copy volume licensing media acquired from a Microsoft-approved fulfillment source for distribution to faculty and staff Users only.

- a. **To the faculty and staff.** Institution may acquire the quantity of media as necessary to distribute the Products to faculty and staff for use in accordance with the agreement. All media for a particular Product must be acquired from a Microsoft-approved fulfillment source for that Product. Institution may also copy volume licensing media acquired from a Microsoft-approved fulfillment source for distribution to faculty and staff Users only. All copies must be true and complete copies (including copyright and trademark notices). Replication guidelines are posted at <http://selectug.mslicense.com/>. Institution must maintain the security of any volume licensing keys provided with volume licensing media in accordance with applicable Product use rights and other restrictions and may disclose them only to employees authorized to engage in the installation and support of the Products. Institution may not disclose volume licensing keys to faculty and staff work-at-home or students or to any other unauthorized third party.
- b. **To faculty and staff work at home Users and to student full time equivalent (FTE) option Users.** If Institution chooses faculty and staff work at home rights for selected Products or selects the Student Option in an Enrollment, access to media by faculty and staff for work at home purposes and by students must be restricted and regulated by Institution.

All media for Products distributed to faculty and staff for work at home purposes and to students must be acquired from a Microsoft approved fulfillment source, and such Products may be distributed to such Users only in the following ways:

- (i) if individual student-media CD-ROM or disk sets (collectively, "student media") is purchased for a particular Product, Institution may distribute one copy of such student media directly to each authorized work at home or students (student media may contain Product activation features that limit the number of installations); the reseller can identify media and Products that contains Product activation features. Details on ordering and distributing student media, including a list of the Products for which student media is currently available, is at <http://www.microsoft.com/education/StudentMedia.mspx>; or
 - (ii) using volume licensing media acquired pursuant to this agreement, via (1) controlled download from a secure network server(s) or other storage device(s), (2) manual installation at a central location that Institution controls, or (3) a system of controlled short-term checkout of applicable volume licensing media solely for purposes of individual user installation, provided that this option (3) is available only for Products for which a volume licensing key is not required.
- c. To students.** Institution may order media to distribute the Products to students for use in accordance with this agreement. Institution's order for media must specify version number and country of usage. Institution may only use the media received under its Enrollment to transfer Products to eligible student Users. Products may only be transferred in the same media format that Institution receives under its Enrollment. Orders must be placed with the reseller named on the Enrollment. Institution may use a third party to complete and process eligible student Users' orders for media under its Enrollment and to distribute media to eligible student Users. Institution remains responsible for the third party's actions to the same extent Institution would be if the third party was its employee. Price and payment terms for media ordered are determined by agreement with Institution's designated reseller. Institution's designated reseller is authorized to purchase media Products from the Microsoft authorized replicator identified by Microsoft from time to time (the "Microsoft Authorized Replicator(s)") solely for the purpose of fulfilling orders placed under the Enrollment. Institution's designated reseller may purchase from the Microsoft Authorized Replicators media and documentation only for those Products available under the Enrollment.

10. *Redistribution of software updates to students.*

Institution has limited rights to distribute software updates to its students. If it does so, it must use one of the distribution methods and comply with the limitations described below. Institution has obligations with regard to tracking and replacement of software updates that it distributes. Microsoft disclaims all warranties and limits its liabilities arising out of software updates. No support is provided for software updates under this agreement.

- a. License Grant.** From time to time, Microsoft may make available to the general public additional or replacement code of any portion of Microsoft's licensed Products without a fee ("software updates"). Microsoft grants Institution a limited, non-exclusive, royalty-free, non-assignable, non-transferable, revocable License to distribute the software updates to Institution's students in accordance with the terms of this section. Institution's students must use the software updates solely for their personal benefit in accordance with the end-user License Agreement with Microsoft ("EULA") included with each software update.
- b. Redistribution of software updates.** Institution may redistribute software updates to its students (1) by electronic means provided that Institution's method of electronic distribution is adequately licensed and incorporates access control and security measures designed to prevent modification of the software updates and access by the general public or (2) through acquiring authorized copies on fixed media from a fulfillment source approved by Microsoft.

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

If Microsoft makes available to Institution a replacement software update, Institution agrees to make the replacement available to its students, within 10 days of receipt in the same quantity and method of distribution as Institution made the original software update available. The distribution of replacement software updates is subject to the same conditions and restrictions as software updates under this section.

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

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

- f. Limitation of liability.** With respect to Institution's redistribution of the software updates, the limitation of liability provisions in this agreement shall apply in those situations in which Institution or its Users have a right to claim damages or payment from Microsoft.
- g. No support.** Software updates that Institution redistributes to its students are provided without any support obligation by Microsoft, including any benefits accruing from Software Assurance.
- h. Applicability.** The provisions of this section shall not apply to distribution of Fixes to students so long as (1) those students are licensed under Student Option, and (2) the Fix provided to those students is for Products licensed to them under Student Option. All other redistribution to students of additional or replacement code is subject to the provisions of this section.

11. *Transfer and reassigning Licenses.*

Institution must obtain a perpetual License through the buy-out option before it can transfer licenses to an Affiliate, or to third parties in connection with a divestiture, merger, or consolidation. Institution is required to provide notice to Microsoft for such a transfer. Institution 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 and operating system licenses must stay with the computer system on which they were first installed.

Institution may not transfer any licenses acquired under this agreement except by obtaining perpetual licenses through the buy-out option described in the section titled "Options upon completion of a License period" and transferring them in accordance with the procedures described in this section.

- a. How to transfer perpetual licenses.** Institution may transfer perpetual licenses ordered under an Enrollment to an Affiliate or unaffiliated third party in connection with a divestiture or privatization of an operating division, a merger, or a consolidation, as long as it provides Microsoft with prior written and signed notice, on a form that Microsoft provides, that includes: (1) the applicable Enrollment number; (2) the quantity of licenses being transferred by Product and version; (3) the name, address and contact information of the transferee; and (4) any other information that Microsoft may reasonably request.

For all other transfers of licenses, Microsoft's written consent is required. Microsoft will not withhold its consent unreasonably. No License transfer will be valid unless Institution provides to the transferee, and the transferee accepts in writing, the applicable Product use rights, use restrictions, limitations of liability, and the transfer restrictions in this section. Any transfer made in violation of the requirements or restrictions of this section will be void. The resale of licenses is expressly prohibited.

- b. When transfers of perpetual licenses are not permitted.** Institution may not transfer (1) licenses on a short-term basis (either to third parties or by reassignment to different Users or devices internally), or (2) upgrade Licenses for a desktop operating system Product separately from the underlying desktop operating system License or from the computer system on which the Product is first installed.

12. *Confidentiality.*

Each party agrees not to use or disclose the other's confidential information except as necessary to further the purposes of this agreement. Each party agrees that if either party gives the other party feedback about the other's products or services, that feedback is not confidential.

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

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

13. *Options upon completion of a Licensed Period.*

Prior to completion of a Licensed Period, Institution will have the option to extend the Enrollment under the Licensed Period; obtain perpetual Licenses for Products licensed under the Enrollment; or allow the subscription to expire.

Microsoft will provide prior written notice of expiration of the Enrollment. The notice will advise Institution of the option to: (1) extend the Enrollment under the one-year Licensed Period, (2) submit a new Enrollment under the three-year Licensed Period, (3) exercise the buy-out option, or (4) allow the Enrollment to expire. Microsoft will not unreasonably reject any extension order or Enrollment. However, Microsoft may make a change to this program that will make it necessary for Institution to first enter into new agreements and Enrollments. Each Licensed Period will start the day following the expiration of the prior Licensed Period:

- a. **One-year Licensed Period.** Institution may elect to extend its one-year Licensed Period for 12 calendar months by submitting an extension order.
- b. **Three-year Licensed Period.** Institution may elect to extend its three-year Licensed Period by completing a new Enrollment.
- c. **Buy-out option.** An Institution may elect to obtain perpetual Licenses for Products licensed under its Enrollment of one-year Licensed Period or three-year Licensed Period. The buy-out pricing will depend on Institution's selected and fulfilled Licensed Period.

The minimum buy-out quantity must be no less than the total number of covered devices for Campus Enrollment or PCs for School Enrollment for:

- (i) the Institution-wide Campus and School Desktop Platform Products or its components defined in the Product List that are licensed under the initial Enrollment or extension term through the date of its buy-out order; and
 - (ii) any copies of any new or additional Campus and School Desktop Platform Products or its components Products added during the term of the initial Enrollment.
- d. **License confirmation.** The order confirmation for the buy-out and any documentation evidencing transfers of Licenses, together with proof of payment, will be evidence of a perpetual License to run the latest version then available (or any prior version) for the copies of Products covered by the buy-out order.
 - e. **Allow the Enrollment to expire.** Institution may allow the Enrollment to expire. If the Enrollment expires, all Products must be deleted as provided in section titled "Term and termination."

Because all Licenses acquired under this agreement are temporary, Institution will not be eligible to obtain Software Assurance for those Licenses under any other Microsoft volume licensing program without first acquiring a perpetual License or License and Software Assurance (L&SA).

14. *Term and termination*

This agreement stays in place until terminated. The term of each Enrollment is stated in the Enrollment. Either party can terminate the agreement on notice, which will not affect any existing Enrollments. Existing Enrollments may be terminated if either party breaches the agreement and does not cure the breach in the time allotted.

- a. **Term.** This agreement will remain in effect until terminated by either party as allowed. These general terms and conditions apply to all Enrollments submitted. The terms of any Enrollment(s) will be for the Licensed Period as specified in such Enrollment(s).

- b. Termination of the agreement.** Either party may terminate this agreement for any reason upon 60 days written notice.

Such termination will merely terminate either party's ability to enter into new Enrollments under this agreement. Such termination will not affect any Enrollments not otherwise terminated, and any terms of this agreement applicable to any Enrollments not otherwise terminated will continue in effect with respect to that Enrollment.

- c. Termination of an Enrollment.** Either party may terminate any Enrollment(s) if the other party is in material breach or default of any obligation, which breach or default is not cured within 30 days written notice of such breach. Microsoft may terminate this agreement and any Enrollment(s) immediately if Institution fails to continue to qualify as a qualified educational user as identified at <http://microsoft.com/licensing/contracts>. If no orders are received under an Enrollment, the Enrollment will be terminated 13 months after the effective date of this Enrollment.

- d. Effect of termination and Licensed Period expiration.** Users may only run the Products and Fixes according to the terms of this agreement. Users are only licensed to run the Products and Fixes during the Licensed Period. If this agreement is terminated, or if no extension or anniversary order is submitted prior to the expiration of the Licensed Period or the purchase of perpetual Licenses for the Products, then all Products and Fixes that run as a result of this agreement must be deleted when the Licensed Period expires or is otherwise earlier terminated.

Similarly, if Institution stops ordering any Products or Product quantities decrease upon an extension of a Licensed Period, it must delete those Products prior to the beginning of the extended Licensed Period. Institution must make reasonable efforts to ensure that faculty and staff Users (1) delete and remove Products and Fixes copies from the temporary ram (RAM) and permanent memory (e.g., hard disk) of their home PCs, and (2) disconnect access to any server Products at the end of the Licensed Period.

15. *Warranties.*

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

- a. Limited Product warranty.** Microsoft warrants that each version of a Product licensed by Institution 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 Institution 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 Institution 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 Product warranty.** If Institution notifies Microsoft within the warranty period that a 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 Institution's only remedies for breach of the limited warranty unless other remedies are required to be provided under applicable law.

- c. 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.**

16. Defense of infringement and misappropriation claims.

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

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

- a. Agreement to Protect.** Microsoft will defend Institution against any claims made by an unaffiliated third party that any Product or Fix infringes its 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 Institution'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 Institution must do.** Microsoft must be notified promptly in writing of the claim and given sole control over its defense or settlement. Institution agrees to provide Microsoft with reasonable assistance in defending the claim, and Microsoft will reimburse Institution for reasonable out of pocket expenses incurred in providing that assistance.
- c. Limitations on defense obligation.** Microsoft's obligations will not apply to the extent that the claim or adverse final judgment is based on:
- (i)** running of the Product or Fix after notice to discontinue running due to such a claim;
 - (ii)** combining 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)** altering the Product or Fix;
 - (v)** distribution of the Product or Fix to or its use for the benefit of, any third party;
 - (vi)** use of Microsoft trademark(s) without express written consent to do so; or
 - (vii)** any trade secret or undisclosed information claim, acquiring the trade secret or undisclosed information (1) through improper means; (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 its 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.

Institution will reimburse Microsoft for any costs or damages that result from 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 the Product or a Fix, Microsoft may, at its expense and without obligation to do so, either
- procure 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 running the allegedly infringing Product or Fix must be stopped immediately.
- (ii) **Institution's specific remedy in case of injunction.** If, as a result of an infringement claim, the use of the Product or a 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, modify it to make it non-infringing, or
 - refund the amount paid and terminate the License for the infringing Product or Fix.

If any other type of third party claim is brought regarding Microsoft's intellectual property, Institution must notify Microsoft promptly in writing. Microsoft may, at its option, choose to treat these claims as being covered by this section. This section provides the exclusive remedy for third party infringement and trade secret misappropriation claims.

17. *Limitation of liability.*

Microsoft limits its and its contractors' liability to Institution to the amount of money paid under this agreement to Microsoft for the Product or service giving rise to the claim. This limit does not apply, however, to Microsoft's obligations under the section titled "Defense of infringement and misappropriation claims," or to damages Institution 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, Microsoft's liability and that of Microsoft's contractors to Institution arising under this agreement shall be limited to direct damages up to the amount paid under this agreement for the Product or services giving rise to that liability. In the case of free product, services provided free of charge, or code that Institution is authorized to redistribute to third parties without separate payment to Microsoft, Microsoft's liability is limited to 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 limitations will not apply to:
- (i) Microsoft's obligations under the section titled "Defense of infringement and misappropriation claims;" or
 - (ii) liability for damages for gross negligence or willful misconduct caused by Microsoft 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 section titled "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.

18. Verifying compliance.

Generally, Microsoft has the right to review Institution'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.** Institution 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 Institution's operations. As an alternative, Microsoft will have the option to require Institution to complete Microsoft's self-audit questionnaire relating to the Products Institution and any of its Affiliates use under this agreement.

If Microsoft undertakes verification and does not find material unlicensed use (License shortage of 5 percent 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 Institution 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 noncompliance.** If verification or self-audit reveals any unlicensed use, Institution must promptly order sufficient Licenses to cover its use. If material unlicensed use is found, Institution must reimburse Microsoft for the costs Microsoft has incurred in verification and acquire the necessary additional Licenses as single retail Licenses within 30 days.
- d.** Additionally, Institution must use reasonable efforts to make Users aware of the terms and conditions upon which they are allowed to run the Products. Accordingly, Institution must:
- (i)** Notify all Users in advance of running the Products that:
- their use of the Products is subject to the terms of this agreement, including but not limited to limitations on liability, disclaimer of warranties and exclusion of remedies;
 - they are allowed to run the Products only during the Licensed Period;
 - if this agreement is terminated, or Institution does not submit an Enrollment or extension order prior to the expiration of the Licensed Period or purchase perpetual Licenses for the Products, then all Products run under this agreement must be deleted when the Licensed Period expires or is otherwise earlier terminated, whichever is first;

- (ii) Periodically publish in an Institution wide publication and applicable web sites a reference to the location (either physical or on a computer network) where they can view the Product List and Product use rights. Microsoft publishes a copy of the Product List and Product use rights at <http://microsoft.com/licensing/>;
- (iii) Notify Microsoft immediately if Institution becomes aware of any actual or potential violation of this agreement; and
- (iv) Provide all reasonable assistance and cooperation as requested by Microsoft to investigate and remedy any unauthorized use of the Products by Users.

If Institution complies with this section, Institution will not be responsible for student Users' failure to comply with the terms of this agreement.

19. *Miscellaneous.*

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



- b. **No transfer of ownership.** Microsoft does not transfer any ownership rights in any licensed Product. Microsoft reserves all rights not specifically granted. The Products are protected by copyright and other intellectual property rights laws and international treaties.
- 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 full force and effect and this agreement will be amended to give effect to the portion of the agreement that was eliminated to the maximum extent possible. However, this agreement will be voidable by Microsoft at its option if provisions of this agreement regarding warranty disclaimers, damages disclaimers, limitations of liability, compliance verification, or obligations on termination are found to be invalid or unenforceable.
- 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. **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.
- f. **This agreement is not exclusive.** Institution is free to enter into agreements to license, use or promote non-Microsoft products or services.
- g. **Entire agreement.** The documents identified on the cover page of this agreement constitute the entire agreement concerning the subject matter, and supersede any prior or contemporaneous communications. In the case of a conflict between any documents identified in the first page that is not resolved expressly in the documents, their terms will control in the following order: (1) these terms and conditions and the signature form; (2) the Product List; (3) the Product use rights; and (4) all other Enrollments under this agreement. The terms of any purchase order or any general terms and conditions Institution or its Users maintain do not apply. This agreement (except the Product use rights, the Product List and

the terms of any credit extending under any Enrollment) can be changed only by an amendment signed by both parties.

- h. Assignment.** Assignment or transfer of this agreement or the rights or obligations, must have Microsoft's prior written approval. Microsoft may transfer this agreement or its rights and obligations to one of Microsoft's Affiliates.
- i. Survival.** Provisions regarding Product use rights, restrictions on use, transfer of Licenses, warranties, defense of infringement and misappropriation claims, limitations of liability, confidentiality, compliance verification, and obligations on termination or expiration will survive termination or expiration of this agreement or any Enrollment.
- j. Advisor fee.** Microsoft, or its Affiliates, sometimes pays fees to software advisors or other third parties authorized by Microsoft or one of its Affiliates. The fees are in exchange for their advisory services. The payment of fees depends upon several factors, including the type of agreement under which Institution orders Licenses, which Licenses are ordered, and whether Institution chooses to use an advisor. The fee amounts increase with the size of the orders placed under this agreement.
- k. Applicable law, venue, and jurisdiction.** This agreement is governed by the laws of the state where Institution is organized or formed. Both parties agree that the federal courts have exclusive jurisdiction over disputes under this agreement and the resolution. Any legal actions relating to this agreement must be brought in a court of competent jurisdiction within federal courts located in the jurisdiction of the state where Institution is organized, and the parties agree that jurisdiction and venue in such courts is appropriate.
- l. Institution's export obligations.** U.S. export laws and regulations apply to Products and Fixes. Institution must obey all domestic and international export laws and regulations that apply to Products and Fixes. These laws include restrictions on destinations, end users and end use. For additional information, go to <http://microsoft.com/exporting/>.
- m. Institution's rights to privacy.** Microsoft and Institution will comply with all applicable privacy and data protection laws and regulations. Institution will not give any data to Microsoft containing personal information unless the owner of the data has specifically authorized Institution to do so for use as contemplated in the last sentence of this subsection. Institution agrees to allow Microsoft to use the contact information Institution gave to Microsoft to allow Microsoft and other parties to help Institution comply with this agreement. Any personal information Institution 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," Institution may have special rights, please go to <http://www.microsoft.com>.