Microsoft DEPARTMENT OF DEFENSE SOFTWARE LICENSE AGREEMENT

The following licensing terms and conditions set forth additional Department of the Defense (DoD) Software License requirements ("these additional terms and conditions"). The terms and conditions set out below supplement the terms and conditions of Microsoft's End User License Agreement (the "Agreement") (located in Appendix A), which are hereby incorporated by reference. Together the EULA and these additional terms and conditions constitute the DOD ESI Agreement ("Agreement" or this "BPA").

1. **Entire Agreement and the Enterprise:** The parties agree that more than one agency of the DoD may license products under such Agreement, provided that any acquisition of the product licenses by any agency must be made pursuant to one or more executed purchase orders or purchase documents (orders) submitted by each agency seeking to use the licensed product. The parties agree that, if the licensee is a "DoD Department or Agency" as defined by the 48 Code of Federal Regulations, section 202.101, and the United States Coast Guard when operating as a part of the Navy pursuant to law, the terms and conditions of this Agreement apply to any purchase of product licenses made by the DoD, and that the terms and conditions of this Agreement become part of the purchase document without further need for execution. The GSA Schedule contract, the Agreement, these additional terms and conditions, orders placed against the Agreement, and the Microsoft Product Terms constitute the entire agreement concerning the subject matter and supersede any prior or contemporaneous communications. Unless expressly stated otherwise, 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) the GSA Schedule contract; (2) these additional terms and conditions; (3) the EULA; (4) Orders placed against this Agreement; and (5) the Microsoft Product Terms. The terms of any purchase order or any general terms and conditions Government Partner maintains do not apply.

2. **Choice of Law/Venue:** This Agreement shall be governed by and construed in accordance with the substantive laws of the United States Code, US Code of Federal Regulations, Federal Acquisition Regulations and Defense Federal Acquisition Regulation Supplement (DFARS), without regard to principles of conflict of laws.

3. **Indemnification:** The DoD does not have the authority to and shall not indemnify any entity. The DoD agrees to pay for any loss, liability or expense, which arises out of or relates to the DoD's acts or omissions with respect to its obligations hereunder, where a final determination of liability on the part of the DoD is established by a court of law or

where settlement has been agreed to by the DoD agency with, where appropriate, coordination of the Department of Justice. This provision shall not be construed to limit the DoD's rights, claims or defenses which arise as a matter of law or pursuant to any other provision of this Agreement.

4. **Termination of Government Partner EA on behalf of Enrolled Affiliate:** In the event of a termination of an agreement between Licensor and Government Partner during the term of the Agreement, Licensor will continue to provide the products/services subject to the same terms and conditions through a follow-on contract for the remaining period with an authorized DoD ESI reseller. DoD license grants or License rights that have been purchased and paid for will be transferred to the new agreement and any remaining support/maintenance will be transferred without transfer fees by the Licensor.

5. **Confidentiality:** Each party shall treat the other party's confidential information in the same manner as its own confidential information. The parties must identify in writing what is considered confidential information

6. **Publicity/Advertisement:** The Licensor must obtain DoD approval prior to mentioning the DoD or a DoD agency in an advertisement, endorsement, or any other type of publicity. This includes the use of any trademark or logo.

7. **License Use Territories:** Any United States Department of Defense (DoD) civilian or military installation or work site in the Continental United States (CONUS) or outside the Continental United States (OCONUS), regardless of where software was acquired**.**

8. **Auditing Responsibilities:**

a. **Right to verify compliance.** The DOD must keep records relating to the Products it and its Affiliates (as defined in the EULA) use or redistribute. Licensor has the right to verify compliance with the Agreement, at Licensor's expense, during the term of the applicable Enrollment, as that terms I defined in the EULA (or if the Government Contract does not have Enrollments, then during the term of that Government Contract) and for a period of one year thereafter.

b. **Verification process and limitations**. To verify compliance, Microsoft, as Licensor, will engage an independent auditor that is mutually agreed upon between the DoD and Microsoft, which will be subject to a confidentiality obligation. The identified auditor must have or obtain appropriate security clearances to access both the facility and/or any system prior to disclosure of any information or data. Verification will take place upon not fewer than 90 days notice, during normal business hours and in a manner that does not interfere unreasonably with your operations. DOD must promptly provide the independent auditor with any information it reasonably requests in furtherance of the verification, including access to systems running the Products and evidence of Licenses for Products DOD uses, hosts, sublicenses, or distributes. As an alternative, Microsoft can require DOD to complete Microsoft's self-audit questionnaire relating to the

Products DOD and any of its Affiliates use or distribute under the Agreements, but reserves the right to use a verification process as set out above.

c. If Microsoft undertakes verification and does not find material unlicensed use (License shortage of 5% or more per Product), Microsoft will not undertake another verification of the same entity for at least one year. Microsoft and the independent auditors will use the information obtained in compliance verification only to enforce its rights and to determine whether DOD is in compliance with the terms of the Agreement. By invoking the rights and procedures described above, Microsoft does not waive its rights to enforce the Agreement or to protect its intellectual property by any other means permitted by law.

d. **Remedies for non-compliance.** If verification or self-audit reveals any unlicensed use, Microsoft, through its resellers or Government Partners, will promptly invoice the Enrolled Affiliate for sufficient Licenses to cover such use. If material unlicensed use is found, (a) the Enrolled Affiliate may be completely responsible for the costs we have incurred in verification, to the extent permitted by 31 U.S.C. § 1341 (Anti-Deficiency Act) and other applicable Federal law or similar state law (as applicable), and (b) the Enrolled Affiliate must pay the invoice in accordance with the procedures set forth in the applicable GSA Schedule contract for the additional Licenses within 30 days which will entitle the Enrolled Affiliate to use such Licenses. Notwithstanding the foregoing, nothing in this section prevents the government from disputing any invoice in accordance with the Contract Disputes Act (41 U.S.C. §§7101-7109).

9. **Net-Centricity.** The Department of Defense is transforming the way information is managed to accelerate decision-making, improve joint war fighting and create intelligence advantages. To reach this "Net-Centric" state, DoD must exploit advancing technologies that move the enterprise from an application centric to a data-centric paradigm. DoD ESI Contractor partners are encouraged to use the OSD NII DCIO Net-Centric Checklist, located at http://www.defenselink.mil/cionii/docs/NetCentric_Checklist_v2-1-3_.pdf to provide information on the Net-Centric posture of their IT products and services.

10. **Section 508 of the Rehabilitation Act Compliance:** Licensor will make available to DoD Voluntary Product Accessibility Templates (VPATs) for Microsoft products to assist DoD in meeting its obligations under Section 508. VPATs for Microsoft products are available to download at the following site:

http://www.microsoft.com/government/en-us/products/section508/Pages/default.aspx

11. **Temporary Use of Software During Times of Conflict and/or Natural Disaster:** during Temporary Expeditionary Deployments ("TEDs"), Enrolled Affiliate may temporarily deploy and install or use on, or access from qualified desktops or servers, the Enterprise Products, including the Standard Desktop Configuration, Enhanced Desktop Configuration, or Enhanced with SQL Desktop Configuration and the Additional

Products, all described in Attachments A&B (the "Software") on an unlimited number of qualified desktops or servers being used as part of the TEDs ("Temporary Use").

For purposes of this subsection, the term "Temporary Expeditionary Deployments" or "TEDs" shall refer to any number of software licensed Products enrolled under this agreement which may be used at no additional cost by the DoD Enrolled Affiliate. The coverage will extend to deployments away from in-garrison locations (any military post or government office where troops or civilian personnel are at a permanent location, deployment locations in support of war games, exercises, real world contingencies, and emergency situations similar to the initiated domestic terrorist attacks of 11 September 2001 and 19 April 1995 (i.e., Timothy McVeigh, Terry Nichols perpetrated 'Oklahoma City Bombing' involving the Alfred P. Murrah Federal Building'); and finally, the national inclement weather natural disasters perpetrated by Hurricane(s) Katrina and Rite during the August and September months of Calendar Year 2005, where temporary duty stations (TEDs) and continuity of operations (COOP) alternative venues or sites were needed, for a substantial period of time, due to the destruction of federal or U.S. Government facilities, infrastructure, offices and work spaces. The Government Contractor through which the order(s) under this Agreement is placed ("Government Partner") will submit on behalf of each DoD Enrolled Affiliate, a record of the count of each category of License used while deployed and the period of use. After the TED and upon request, the count and duration information, but not the deployed location information, will be provided to us for auditing purposes. Such Temporary Use of the software is limited to a period equal to the length of the TED or six (6) calendar months, whichever is shorter ("Temporary Use Period"), unless a different time period is agreed to in writing by Licensor.

At the end of the six month period or as mutually agreed to, Government Partner will provide to Licensor on behalf of the DoD Enrolled Affiliate written certification that the Licenses have either been destroyed or uninstalled or payment has been made under this Agreement. Government Partner will ensure that the Enrolled Affiliate agree to use the Products in accordance with the terms contained in this Agreement s. If DoD Enrolled Affiliate requires use of the Product(s) beyond the Temporary Use Period and such extended use has not been approved by Licensor, Government Partner on behalf of Enrolled Affiliate shall purchase the necessary licenses for the Product(s). Government Partner must submit for each DoD Enrolled Affiliate an update statement within 15 days following each anniversary of the effective date of the Enrollment Government Partner submits on its behalf, and after expiration or termination of such Enrollment, on a form we provide, per subsection 3(c) (Placing "true up" orders to account for additional desktops) above.

12. **Software Asset Management & ISO/IEC 19770-2:2009 Series:** The Licensor shall comply with ISO 19770-2:2009 Series Standards for all installable or distributable software products governed by this agreement. If any part of the ISO/IEC 19770-2:2009 standard is not approved by the ISO International Standards Committee at the time of contract

execution, the Licensor shall have 18 months to comply with the standard upon approval by ISO as agreed upon between the government and software provider/manufacturer.

13. **Data Sharing/Transfer:** Data transfer is: Batch Processing, Multiplexing and Flat File Environments. The parties agree that as long as an authorized user/device is properly licensed in accordance with the EULA, the transfer, access, and manipulation of data or the sharing of data is unrestricted for authorized users associated with the DoD missions. This license also provides for the ability of authorized users to access data from any US-owned datacenter with data owner granted permission and any appropriately licensed non-US owned datacenters.

14. **Third Party Software:** Notwithstanding anything to the contrary, the Government shall not be subject to third party terms and conditions that are contrary to Federal law.

15. **GFE Non-Portable Computer Use Rights:** DoD has adopted a Teleworking Policy which implements the requirements of Section 359 of Public Law No. 106-346 which requires each Executive Agency to establish a policy under which eligible employees of the agency may participate in Teleworking to the maximum extent possible without diminished employee performance. Enrolled Affiliate shall have the right to grant to those persons participating under the DoD Teleworking Policy and who have been issued a Government Furnished Equipment (GFE) non-portable desktop in lieu of portable computer, the portable use rights under the applicable License Agreement/Product Use Rights. The portable use rights will apply to such GFE desktop or to a portable computer but not both. Upon request from Licensor, the Enrolled Affiliate will provide a written report detailing the number of Enrolled Affiliate employees using portable use rights on GFE issued non-portable computers under the Teleworking policy.

16. **Token Activation:** Notwithstanding anything to the contrary in this agreement or the License Agreement/Product Use Rights, each Enrolled Affiliate may activate Products that Government Partner ordered on behalf of Enrolled Affiliate(s) under this agreement using a cryptographic license package, consisting of a token issuance license and associated license files ("License Package"), issued for each Product to Government Partner on behalf of each Enrolled Affiliate or Enrolled Affiliate by Microsoft for the purpose of activation of such Product, provided that, Government Partner requires each Enrolled Affiliate, via a modification to the applicable Government Contract(s), to (1) protect the License Package using all reasonable security measures, including but not limited to, encryption, access control lists, and marking any associated certificates, tokens and files as non-exportable; (2) agree that a failure to properly secure the License Package will be considered a material breach of the applicable Government Contract; and (3) acknowledge that each Enrolled Affiliate may be required to use a new License Package for significant updates or releases of previously activated Products. Microsoft may provide Government Partner instructions to provide to Enrolled Affiliate(s) or Enrolled Affiliate(s) instructions] regarding the use of License Packages, and may update such instructions from time to time." All other provisions of

the agreement and the applicable License Agreement/Product Use Rights remain in full force and effect.

17. **Copies necessary for internal deployment:** Each Enrolled Affiliate may make as many copies of the products licensed under the Enrollment as necessary to distribute the products to the users within its agency. All copies of any Product must be true and complete copies (including copyright and trademark notices) from master copies, acquired from or made available by a Microsoft approved fulfillment source for that product. Each Enrolled Affiliate may use a third party to make and distribute copies in accordance with this section, but the Enrolled Affiliate is responsible for third-party actions to the same extent it would be if the third party were its employee. The Enrolled Affiliate must make reasonable efforts to make employees, agents and other individuals running a product aware that the Product is licensed from Microsoft and subject to the terms of this Agreement.

18. **Re-imaging rights:** If an Enrolled Affiliate or any Affiliate included within its Enterprise has licensed products from an original equipment manufacturer (OEM), through a retail source or under any Microsoft program other than this Agreement, it may use copies made from the media provided under this Agreement in place of any copies made from the media provided through that separate source, so long as it complies with the following restrictions.

    The Enrolled Affiliate must have obtained a separate license from the separate source for each copy being replaced.

    The product, language, version and all components (in the case of product suites) of the copies made from the media provided under an enrollment must be identical to the product, language, version and all components of the copies they replace.

    Except for copies of an operating system and copies of Products licensed under another Microsoft program, the Product type (e.g., upgrade of full License) must be identical to the Product type from the separate source.

    The use of any copies made under this subsection is subject to the terms and use rights provided with the copies being replaced, and nothing in this section creates or extends any warranty or support obligation.

19. **License copies for training, evaluation, research and development (including Research Labs) and back-up:** During the term of an Enrollment (including any renewal term), each enrolled affiliate and any agency affiliate included in its enterprise may (i) run up to 20 complimentary copies of any additional product in a dedicated training facility on their premises; (ii) run up to 10 complimentary copies of any product that Microsoft make available to license as an additional product for a 60-day evaluation period; (iii) run complimentary copies of enterprise products and additional products on 1% (one percent) of the enrolled affiliates qualified desktops (or Qualified Users) for research and

development purposes; and (iv) make and retain one complimentary copy of any licensed product for back-up or archival purposes for each of their distinct geographic locations

20. **Secure Host Baseline (formerly known as DoD Unified Master Gold Disk (UMGD) Distribution):** In addition to the grant of license described under this Agreement, Licensor grants to the DoD permission to reproduce and distribute a copy of the Validation Authority (hereafter "licensed software") on the Gold Master Disk (GMD) to the Defense Information Systems Agency (DISA) for hosting and access and use by DoD Component agencies and the Services who have an active license to use the licensed software.

    The GMD shall only be distributed by licensee and/or DISA under the following terms and conditions:

    a. The DoD Component agency and the Services receiving the GMD shall already have a current and active license with the Licensor to use the licensed software;

    b. the DoD Component agency and the Services shall have a "Unique License Key" provided by Licensor solely to access the licensed software on the GMD for use only under the terms and conditions of the DoD Component or Services license agreement with Licensor;

    c. the DoD Component agency and Services shall keep the "Unique License Key" confidential and shall not provide it to any other DoD Component agency, Service or other DoD Department;

    d. the DoD shall be solely responsible for all expenses incurred in the reproduction and distribution of the licensed software on the GMD;

    e. use of the licensed software other than in connection with the GMD and as provided in the license agreement governing the DoD Component or Service is strictly prohibited;

    f. all licenses are appropriately ordered and paid for by the using agency.

    g. **Software Titles Incorporated by this License Agreement:** All software and online titles offered through Microsoft's Select Agreement and Enterprise Agreement Volume License Channels will be incorporated into this BPA where applicable and any and all other software or software titles which may be added through Licensor's in-house development or corporate acquisition. It is the DoD's anticipation this agreement will cover any and all software companies Microsoft may acquire in the future whose software is offered through Microsoft's Select Agreement and Enterprise Agreement Volume License Channels.

    h. **Licenses with Software Assurance:** In the event that Licenses with Software Assurance have not expired prior to a new contract/enrollment being established, Microsoft will work with the DoD in good faith to determine how to accommodate this scenario. Following are possible courses of action:

a. Terminate the Software Assurance coverage and roll that product license onto the new contract with prorated Software Assurance coverage that begins when the original Software Assurance was terminated.

b. Roll the current product license into the new contract with prorated Software Assurance coverage and allow the original Software Assurance coverage to expire naturally.

c. In the event of termination of the BPA by the DoD, the DoD will be entitled to Software Assurance coverage for the duration of such coverage for which the DoD has paid in full.

i. DoD Enterprise License: The parties agree that in the spirit of cooperation, there may be an instance, during the course of this BPA, where the DoD desires a DoD-Wide Microsoft Enterprise Agreement. The parties agree that all will work in good faith towards implementation of a mutually beneficial DoD-Wide Enterprise Agreement, that all terms contained in this agreement may become part of the DoD-Wide Enterprise Agreement and the DoD and Microsoft will work in good faith on issues that may hamper such an agreement (legacy licenses and the accompanying support, Right-sizing the enterprise, etc.).