

ENTERPRISE MASTER LICENSE AGREEMENT FOR MICROSOFT PRODUCTS

Definitions

Additional Product: Any Product that Licensor does not designate as an Enterprise Product in the Product Terms. As of the date of this Agreement, Additional Products are detailed in Attachment 1, tab Additional Products.

Affiliate: An entity of the United States Government.

Agreement: This Department of Defense Master License Agreement for Microsoft Products.

Anniversary Date: November 1st of each year

Enrolled Affiliate: Any entity of the United States Government for which the Microsoft Government Partner is authorized to procure Products under an Enrollment.

Early Termination: If the Enrolled Affiliate terminates its Enrollment with the Microsoft Government Partner before the Enrollment expires.

Enrollment: An order for Product(s) submitted by the Enrolled Affiliate to the Microsoft Government Partner (also referred to herein as an “Order”).

“**Enterprise**” means Enrolled Affiliate and the Affiliates listed on an Enrollment.

Enterprise Product: Any Desktop Platform Product that Licensor designates as an Enterprise Product in the Product Terms and for which the Microsoft Government Partner orders licenses on behalf of an Enrolled Affiliates. When Enterprise Products are ordered, such Enterprise Products must be licensed for all Qualified Devices and Qualified Users on an Enterprise-wide basis. As of the date of this Agreement, Licensor has designated the following Products as Enterprise Products per the Product Terms: see Attachment 1.

Fixes: Product fixes, modifications or enhancements or their derivatives that Microsoft releases generally (such as service packs).

Industry Device (also known as line of business device): Any device that: (1) is not useable in its deployed configuration as a general purpose personal computing device (such as a personal computer), a multi-function server, or a commercially viable substitute for one of these systems; and (2) only employs an industry or task-specific software program (e.g. a computer-aided design program used by an architect or a point of sale program) (“Industry Program”). The device may include features and functions derived from Microsoft software or third-party software. If the device performs desktop functions (such as email, word processing, spreadsheets, database, network or Internet browsing, or scheduling, or personal finance), then the desktop functions: (1) may only be used for the purpose of supporting the Industry Program functionality;

and (2) must be technically integrated with the Industry Program or employ technically enforced policies or architecture to operate only when used with the Industry Program functionality.

License: The right to download, install, access, and/or use a Product

Licensor: Microsoft Corporation.

Microsoft Government Partner: The Microsoft approved reseller from whom Orders are placed.

Online Services: means a Microsoft-hosted service to which the Enrolled Affiliate subscribes under a Microsoft volume licensing agreement, including any service identified in the Online Services section of the Product Terms.

Online Service Terms: means the use rights or terms of services for Online Services. The current version of the Online Service Terms as of the date of this Agreement is dated October 2016, and is attached hereto as Attachment 5 for reference purposes only.

Product: All products identified in the Product Terms, including software, subscriptions, and Software Assurance that are included in the Agreement.

Product Client Access License (CAL): a license that gives a user the right to access the services of the server.

Product Terms: means the document that provides information about Microsoft Products available through volume licensing. The current version of the Product Terms as of the date of this Agreement is dated October 2016, and is attached hereto as Attachment 4 for reference purposes only. The Product Terms includes any Product-specific conditions or limitations on the acquisition of licenses for, or use of, Products and the applicable Product terms is incorporated into the Order by reference unless more restrictive rights are contained therein.

Qualified Device: Any device that is used by or imaged for the benefit of Enrolled Affiliate's Enterprise and is: (1) a personal desktop computer, portable computer, workstation, or similar device capable of running Windows Professional locally (in a physical or virtual operating system environment), OR (2) a device used to access a virtual desktop infrastructure ("VDI"). Qualified Devices do not include any device that is: (1) designated as a server and not used as a personal computer, OR (2) an Industry Device, OR (3) not managed (as defined in the Product Terms at the start of the applicable initial or renewal term of the Enrollment) as part of Enrolled Affiliate's Enterprise. At its option, the Enrolled Affiliate may designate any device excluded above (e.g., Industry Device) that is used by or for the benefit of the Enrolled Affiliate's Enterprise as a Qualified Device for all or a subset of Enterprise Products the Enrolled Affiliate has selected.

Qualified User: A person (e.g., employee, consultant, contingent staff) who: (1) is a user of a Qualified Device, or (2) accesses any server software requiring a Product Client Access License.

It does not include a person who accesses server software solely under a License identified in the Qualified User exemptions in the Product Terms.

Software Asset Management (SAM) Engagement: A program of services performed by Microsoft or a Microsoft authorized partner designed to assist Enrolled Affiliate in conducting a software inventory.

Software Assurance: An offering by Microsoft that provides new version rights and other benefits for Products as further described in the Product Terms.

Subscription License: Where a License, per the Product Terms, is available on a subscription basis. Licenses for Online Services will be considered Subscription Licenses.

Trade Secret: Information, including a formula, pattern, compilation, program, device, method, technique, or process, that: derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

Use Rights: means the use rights or terms of service for each Product published on the Volume Licensing Site and updated from time to time. The Use Rights supersede the terms of any end user license agreement that accompanies a Product unless otherwise stated in this Agreement. The Use Rights for Software are published by Microsoft in the Product Terms. The Use Rights for Online Services are published in the Online Services Terms.

Use or run: To copy, install, use, access, display, or run.

You or Your: Refers to the Enrolled Affiliate.

Volume License Service Center (VLSC): as of the date of this Agreement gives access to: download products and keys; view relationship summary and license summary details; review enrollment status; and activate and consume Software Assurance benefits.

A. Placing Enrollments, this agreement covers:

The scope of the requirement covers all of Air Force, which includes Air Force Headquarters, Air Force Major Commands, Field Operating Agencies (FOAs), Direct Reporting Units (DRUs), and Numbered Air Forces (NAFs). Included in these categories are military, civilian, and contractor personnel. Additionally, the Total Air Force includes joint organizations where the Air Force is the Executive Agent and authorized Air Force contractors purchasing on behalf of the above organizations. The joint organizations that the Air Force is the executive agent and are within the scope of this agreement include: Northern Command (NORTHCOM), Strategic Command (STRATCOM), Transportation Command (TRANSCOM), Joint Service Provider (JSP), and Office of Secretary of Defense (OSD). Subsequent reference to Air Force ELA in this document will include these organizations. In addition, at the outset of this contract, Total Air Force includes Air Force Surgeon General, which will become part of Defense Health

Agency at a later date. If the Licenses for these organization reside on a separate enrollment, at such time, Air Force Surgeon licenses will transfer to their new parent organization.

Defense Information Systems Agency (DISA)

Department of Defense 4th Estate entities:

1. Includes: Defense Finance and Accounting Service, Defense Health Agency, Defense Manpower Data Center, and Under Secretary of Defense for Acquisition, Technology, and Logistics. Any additional enrollees will be negotiated in good faith at a later time,
2. Entities will transition into the Agreement at natural expiration of their current Enterprise with Licensor.
3. Each entity, prior to entry, will be required to provide asset inventories. This data will be collected using industry standard tools and processes. MapToolkit and SCCM may be used but are not the only tools that can be used.

Any additional enrollees will be negotiated in good faith at a later time.

B. Enrollments.

Each Government organization will have their own enrollment, example: Air Force, DISA, DFAS, DMDC and AT&L and a further breakdown of enrollments under the organization is acceptable.

C. Reporting Requirements:

The following reports will be required:

- a. Baseline Report: No Later than December 15, 2016 the Enrolled Affiliate must provide the Government Partner, to be provided to the Licensor, complete report(s) to include; the quantities of Additional Products covered by Software Assurance allocated by MAJCOM, ACOM, and COCOM. The reporting will include Products maintained or otherwise designated as management reserve that are retained by the program office as unassigned assets. The Enrolled Affiliate will collect the data using industry standard tools and processes. MapToolkit and SCCM may be used, but are not the only tools that can be used.
- b. Quarterly Reports: On a quarterly basis: Feb 2017, May 2017, Aug 2017, Feb 2018, May 2018, Aug 2018, Feb 2019, May 2019, Aug 2019, by the last business day of the month, Enrolled Affiliate will provide to the Government Partner, to be provided to the Licensor, complete report(s) to include; the quantities of Additional Products covered by Software Assurance allocated by MAJCOM, ACOM, and COCOM. The reporting will include Products maintained or otherwise designated as management reserve that are retained by the program office as unassigned assets. The Enrolled Affiliate may run software licenses inventory collection/asset discovery tool example: Microsoft Systems

Center Configuration Manager (SCCM), Microsoft Assessment and Planning (MAP) Toolkit, etc.) relating to the Products in use by the Enrolled Affiliate.

- c. **Sales Report Data:** In addition, the Enrolled Affiliate will authorize the Government Partner to provide monthly sales report data to the Licensor detailing additional purchases and assets added to the initial order on the last business day of the month by ordering entity.

1. License for Products

These rights apply to the License(s) obtained under the Order.

- a. **License Grant.** Licensor grants the Enrolled Affiliate a non-exclusive, worldwide and limited right to download, install, access, and use the Products each in the quantity ordered under the Enrollment(s). These rights are subject to the Product Terms and are conditioned on Enrolled Affiliate's continued compliance with the terms of this Agreement, including, without limitation, payment for the Products. Licensor reserves all rights not expressly granted in this agreement.
- b. **Duration of Licenses.** Subscription Licenses and Software Assurance (SA) rights are temporary and expire when the applicable Enrollment is terminated or expires, unless Enrolled Affiliate exercises buy-out option which is available for some subscription licenses. Except as otherwise noted in the applicable Enrollment or Use Rights, Licenses become perpetual only when all payments for that License have been made and the initial enrollment term or renewal term during which the License was ordered has expired. Enrolled Affiliate is otherwise eligible for perpetual Licenses upon early termination as per the terms outlined below.
- c. **Early Termination:** In the case of Early Termination, the Microsoft Government Partner on behalf of you and at your direction will have the following options for Licenses, excluding Subscription Licenses:
 - i. The Microsoft Government Partner may immediately pay to Microsoft the total remaining amount due in which case, you will have perpetual rights for all Licenses the Microsoft Government Partner has ordered for you; or

- ii. The Microsoft Government Partner may pay only amounts due as of the Early Termination date, in which case you will have perpetual Licenses (including the latest version of Products ordered under Software Assurance coverage in an initial or renewal term) for (1) all copies of Products for which payment has been made in full and (2) a proportional number of copies of Products it has ordered for which payment has been made. Your election of an option above must be documented in writing with the Microsoft Government Partner.

d. Applicable Product Terms.

- i. **Products (other than Online Services).** The Use Rights in effect on the date of BPA award will apply to Enrolled Affiliates (excluding Online Services) use of the version of each Product that is current at the time. For new Products, the Product Use Rights in effect when those versions and Products are first release will apply changes Licensor makes to the Use Rights for a particular version will not apply unless the Enrolled Affiliate chooses to have those changes apply. The Use Rights applicable to perpetual Licenses that were acquired under a previous agreement are determined by the agreement under which they were acquired. Renewal of Software Assurance does not change which Use Rights apply to those Licenses.

If any document or provision referenced in a URL included in the Product Terms contains terms that (a) allow for the automatic termination of a License; (b) allow for the automatic renewal of fees; (c) require the governing law to be anything other than Federal law; (d) require the Enrolled Affiliate to indemnify Microsoft or any third party; and/or (e) otherwise violate applicable law, then such provision shall not apply.

- ii. **Online Services.** For Online Services, the Use Rights in effect on the subscription start date will apply for the subscription term as defined in the Product Terms.
- iii. **More restrictive use rights.** If a new version of a Product has more restrictive use rights than the version that is current at the start of the applicable initial or renewal term of the Enrollment, those more restrictive use rights will not apply to the Enterprise's use of that Product during the term.
- e. **Downgrade rights.** The Enrolled Affiliate may use an earlier version of a Product than the version that is current on the effective date of the Enrollment. In that case, the Product Terms for the current version apply to the use of the earlier version. If the earlier Product version includes features that are not in the new version, then the Product Terms applicable to the earlier version apply with respect to those features.
- f. **New Version Rights under Software Assurance.** With Software Assurance coverage, the Enrolled Affiliate automatically has the right to use a new version of a

licensed Product as soon as it is released, even if the Enrolled Affiliate chooses not use the new version immediately. For licenses which Enrolled Affiliate has purchased SA coverage:

- i. Except as otherwise permitted under an Enrollment, use of the new version will be subject to the new version's Product Terms unless the new version has more restrictive use rights than the version that is current at the start of the applicable initial or renewal term of the Enrollment, those more restrictive use rights will not apply to the Enrolled Affiliate's use of that Product during the term.
 - ii. For Enterprise Products, if a new version has more restrictive use rights than the version that is current at the start of the applicable initial or renewal term of the Enrollment, those more restrictive use rights will not apply to the Enrolled Affiliate's use of that Product during the term.
 - iii. If the License for the earlier version of the Product is perpetual at the time the new version is released, the License for the new version will also be perpetual. Perpetual Licenses obtained through Software Assurance replaces any perpetual Licenses for the earlier version.
- g. **License confirmation.** The Government Contract, or the Order, the Enrolled Affiliate's order confirmation/proof of purchase provided by reseller, and any documentation evidencing transfers of Licenses, together will be the Enrolled Affiliate's evidence of all Licenses ordered by the Microsoft Government Partner under an Enrollment for an Enrolled Affiliate.
- h. **Reorganizations, Consolidations, and Privatizations.** If the Enrolled Affiliate's requirement for the number of Licenses changes by more than ten percent as a result of (1) a reorganization, consolidation of an entity or an operating division, or (2) a privatization of Enrolled Affiliate or an operating division of Enrolled Affiliate or any of its Affiliates or (3) a consolidation including a merger with a third party that has an existing agreement or Enrollment, Microsoft will work with the Microsoft Government Partner in good faith to determine how to accommodate Enrolled Affiliate's changed circumstances in the context of this agreement.
- i. **If Government Partner, on behalf of Enrolled Affiliate, elects not to renew.**
- i. **Software Assurance.** If Enrolled Affiliate elects not to renew Software Assurance for a specific product/license under its Enrollment then Enrolled Affiliate will not be permitted to order Software Assurance for that specific product/license later without first acquiring L&SA.
 - ii. **Subscription Licenses without an Extended Term.** If Enrolled Affiliate elects not to renew Subscription Licenses, the Subscription Licenses will end as of the Expiration Date. Any associated Microsoft License media must be uninstalled

and destroyed and Enrolled Affiliate's Enterprise must discontinue use. Microsoft may request written notification this was completed.

2. Transferring and Reassigning Licenses:

a. License transfers. Only fully-paid perpetual Licenses may be transferred:

- (1) if Enrolled Affiliate is an agency of the U.S. Government, to another agency of the U.S. Government or to an unaffiliated third party in connection with (1) a privatization of the government agency or of an operating division of an Enrolled Affiliate or one of its government agency affiliates, (2) a reorganization, or (3) a consolidation involving Enrolled Affiliate or an Affiliate.
- (2) Upon such transfer, Enrolled Affiliate must uninstall and discontinue using the licensed Product and render any copies unusable.

b. Notification of License Transfer. Enrolled Affiliate must notify Microsoft of a transfer of License by completing a license transfer form, which can be obtained from <http://www.microsoft.com/licensing/contracts> and sending the completed form to Microsoft before the license transfer. License transfer are acceptable if the licenses are perpetual.

c. Internal Assignment and Reassignment of Licenses and Software Assurance: Licenses and Software Assurance must be assigned to a single user or device within the Enterprise. Licenses and Software Assurance may be reassigned as described in the Product Terms and as set forth below.

- i. Microsoft understands that the Enrolled Affiliate is requiring Government Partner to allow for flexibility in the reassignment of Licenses from one command to another command and these reassignments may be between Enrollments under this Agreement.
- ii. The reassignment of Licenses will be without administrative cost to any party involved in the assignment of such Licenses, provided the Licenses are current or made current with regard to annual Software Assurance, and the Enrolled Affiliate to which the Licenses are being reassigned does not remarket or otherwise intend to resell the Licenses.
- iii. Enrolled Affiliate will complete documentation and notification required by Microsoft to facilitate the reassignment of Licenses and continuation of Software Assurance for the reassigned Licenses. Such documentation shall include a digital signature certifying assignment and de-installation by the assigning entity and a digital signature certifying receipt and installation by the assigned (receiving) entity. On a quarterly basis, Enrolled Affiliates provide Government Partner a report of any Licenses

Reassigned (including the name of the entity to which the Licenses were Reassigned) as well as any Licenses it acquired through Reassignment.

d. Effect of reassignment. The Enrolled Affiliate acknowledges that reassignments made in accordance with this Section will not be reflected in the VLSC. It will be the responsibility of the Government Partner and Enrolled Affiliate to ensure accurate accounting for the reassignment and invoicing adjustments.

3. Relocation. Government units and their associated software are frequently deployed world-wide and software may be relocated to a different command or unit at a site other than the original ship-to site. Licensor will not require the Enrolled Affiliate notify the Licensor of the relocation.

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

a. **General.** Enrolled Affiliate may make as many copies of the Products as it needs to distribute them within the Enterprise. Copies must be true and complete (including copyright and trademark notices), from master copies obtained from a Microsoft Government Partner. Enrolled Affiliate may use a third party to make these copies, but Enrolled Affiliate agrees that it will be responsible for any third party's actions. Enrolled Affiliate agrees to make reasonable efforts to notify its employees, agents, and any other individuals who use the Products that the Products are licensed from Microsoft and subject to the terms of the Agreement.

b. **Right to re-image.** In certain cases, re-imaging is permitted using the Product media. If the Microsoft Product(s) is licensed (1) from an original equipment manufacturer (OEM), (2) as full packaged Product through a retail source, or (3) under another Microsoft program, then media provided under the Order may be generally used to create images for use in place of copies provided through that separate source. This right is conditional upon the following:

- i. Separate Licenses must be acquired from the separate source for each Product that is re-imaged.
- ii. The Product, language, version and components of the copies made must be identical to the Product, language, version, and 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) re-imaged must be identical to the Product type from the separate source.
- iv. Enrolled Affiliate must adhere to any Product specific processes or requirements for re-imaging identified in the Product Terms.

- v. Re-imaged Products remain subject to the terms and use rights of the License acquired from the separate source. This subsection does not create or extend any warranty or support obligation.
- c. **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 Enterprise. 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 Licensor 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 Licensor and subject to the terms of this Agreement, which includes the Product Terms.
5. **License copies for training, evaluation, research and development (including Research Labs) and back-up.** For all Products other than Online Services, during the term of the Enrollment (including any renewal), each Enrolled Affiliate and any agency affiliate included in its Enterprise may (i) use up to 50 complimentary copies of any licensed Products in a dedicated training facility on their premises for purposes of training on that particular Product; (ii) use up to 25 complimentary copies of any Product for a 60 day evaluation period with no obligation to later purchase evaluated products; (iii) use one complimentary copy of any licensed Product for back-up or archival purposes for each of their distinct geographic locations.
6. **Service Standard Image.** Enrolled Affiliate is authorized to the following special use rights:

a. Reproduce the Product(s) in object code on an Enrolled Affiliate's standard configuration which contain Microsoft Products and other software applications;

b. Distribute the Microsoft Product(s) on the standard configuration via Government networks and other electronic or physical media to each Enrolled Affiliate's existing Microsoft ELA and Enrollment(s). Permission to reproduce and distribute the Microsoft Product(s) within the Enrolled Affiliates network includes software upgrades acquired with Software Assurance and patches and is valid during the term of the active Microsoft ELA and Enrollment(s). It is a requirement that both the Enrolled Affiliate reproducing and distributing the standard configuration and the Enrolled Affiliates receiving the standard configuration shall have an active Microsoft ELA and Enrollment(s); and,

c. Enrolled Affiliates shall use their Microsoft Volume License Key or Enterprise Volume License Activation Solution under their respective Microsoft ELA and Enrollment(s) to use the Microsoft Product(s) configured as part of the Enrolled Affiliates standard configuration program.

7. **Indemnification:** The Anti-Deficiency Act prohibits the Enrolled Affiliate from agreeing to indemnity provisions of undetermined potential. The Enrolled Affiliate does agree to pay for any loss, liability, or expense that arises out of or relates to the Enrolled Affiliate's acts or omissions with respect to its obligations hereunder, wherein a final determination of liability on the part of Enrolled Affiliate is established by a court of law or where settlement has been agreed to by the Enrolled Affiliate. This provision shall not be construed to limit the Enrolled Affiliate's rights, claims or defenses which arise as a matter of law or pursuant to any other provision of the Agreement. This provision shall not be construed to limit the sovereign immunity of the Enrolled Affiliate.

8. Order Requirements

a. **Enterprise Commitment.** If ordering any Enterprise Products, the Enrollment for each of the Enterprise Products must include coverage for Qualified Users or Qualified Devices, depending on the License type.

b. **Additional Products.** The Microsoft Government Partner, at the direction of the Enrolled Affiliate via an Order, may order Additional Products on behalf of the Enrolled Affiliate through an Enrollment.

9. Update Statement Requirements.

a. Enrolled Affiliate may not download or use licenses in excess of the quantities purchased. If Enrolled Affiliate has a need for additional licenses, it must purchase additional licenses before downloading and/or using the Product in excess of what the Enrolled Affiliate has the rights to use. Pricing for any such additional licenses will be in accordance with the future pricing table in effect as of the date the additional licenses are downloaded.

b. Thirty days prior to Enrollment Anniversary, Enrolled Affiliate must submit an update statement documenting, (1) the number of Qualified Devices and Qualified Users in the Enterprise (2) the number of Additional Product Licenses owned by the Enterprise; and (3) the number of Subscription Licenses owned by the Enterprise.

c. Subscription License Reductions. Transitions and Subscription License reductions cannot be reported until the following Enrollment anniversary date (or at Enrollment renewal, as applicable). Enrolled Affiliate may reduce the quantity of Subscription Licenses at the enrollment anniversary date on a prospective basis if permitted in the Product Terms as follows:

i. For Additional Products available as Subscription Licenses, Enrolled Affiliate may reduce the Licenses. If the License count is reduced to zero, then Enrolled Affiliate's use of the applicable Subscription License will be cancelled.

ii. Invoices will be adjusted to reflect any reductions in Subscription Licenses at the true-up order Enrollment anniversary date and effective as of such date.

10. Federal Appropriations Law: All Orders are required to comply with Federal Appropriations Law to include Purpose, Time, and Amount; the Anti-Deficiency Act; the Misappropriation Act; and the Bona Fide Need Rule. Enrolled Affiliate shall not download/copy any Product prior to following Federal Appropriations Law.

11. Patent, Copyright, Trademark, and Trade Secret Protection:

a. **Licensor's agreement to protect.** For any claims made by a third party against Enrolled Affiliate that any Product or Fix that is made available by Licensor for a fee and used by Enrolled Affiliate infringes the third party's patent, copyright or trademark or unlawfully uses its Trade Secret, Licensor at its sole cost and expense, will defend Enrolled Affiliate against the claim and indemnify Enrolled Affiliate from the damages, liabilities, costs and expenses awarded by the court to the third party claiming infringement or the settlement agreed to by Licensor, if Enrolled Affiliate does the following:

- i. notifies Licensor promptly in writing after Enrolled Affiliate receives notice of the claim;
- ii. gives Licensor control of the defense and any settlement negotiations, subject to 28 U.S.C. 516; and
- iii. reasonably provides Licensor all information and assistance the Licensor requests to defend against or settle the claim.

Licensor will reimburse Enrolled Affiliate for reasonable out of pocket expenses, including reasonable attorney's fees, that it incurs in providing assistance.

This Section provides Enrolled Affiliate's exclusive remedy for these claims.

b. Limitations on defense obligation. Licensor's obligations will not apply to the extent that the claim or award is based on:

- i. Enrolled Affiliate's use of the Product or Fix after Licensor notifies Enrolled Affiliate to discontinue that use due to a third party claim;
- ii. Enrolled Affiliate's violation of the Product Terms, except where the Product Terms have been nullified by the Order of Precedence present within this Agreement;
- iii. Enrolled Affiliate's combination of the Product or Fix with a non-Microsoft Product, data or business process;
- iv. modifications that the Enrolled Affiliate makes to the Product or Fix;
- v. Enrolled Affiliate's redistribution of the Product or Fix to, or use by the Enrolled Affiliate for the benefit of, any unaffiliated third party, except as expressly permitted by Microsoft in writing or this License Agreement/Product Terms;
- vi. Enrolled Affiliate's use of Microsoft's trademark(s) without express written consent to do so; or
- vii. any Trade Secret claim, where the Enrolled Affiliate acquires the Trade Secret (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 the Licensor or our affiliates) who owed to the party asserting the claim a duty to maintain the secrecy or limit the use of the Trade Secret.

In addition, Enrolled Affiliate agrees that it will not:

- A. violate this Agreement or Product Terms;
- B. modify any Product or Fix;
- C. redistribute the Product or Fix, or use such Product or Fix for the benefit of any unaffiliated third party, except as expressly permitted by this Agreement and/or the Product Terms;

- D. use Licensor trademark(s) without Licensor's express written consent to do so; and intentionally use or disclose a third party's Trade Secret.

c. **Specific rights and remedies in case of infringement.**

i. **Licensor's rights in addressing possible infringement.** If Licensor receives information concerning an infringement claim related to a Product or Fix, Licensor, in consultation with Enrolled Affiliate, may, at Licensor's expense and without obligation to do so:

A. procure for Enrolled Affiliate the right to continue to run the allegedly infringing Product or Fix, or

B. modify the Product or Fix, or replace it with a functional equivalent, to make it non-infringing, in which case Enrolled Affiliate will immediately cease use of the allegedly infringing Product or Fix after receiving notice from Licensor.

ii. **Enrolled Affiliate's specific remedy in case of infringement found by a court or administrative tribunal of competent jurisdiction.** If, as a result of an infringement claim, Enrolled Affiliates use of a Product or Fix that is made available by Licensor for a fee is found to be infringement by a court or administrative tribunal of competent jurisdiction, Licensor will in consultation with Enrolled Affiliate, at Licensor's option, either

A. procure the right to continue its use, or

B. replace it with a functional equivalent, or

C. modify it to make it non-infringing, or

D. refund the amount paid (or, for Online Services, refund any amounts paid in advance for unused Online Services) and terminate the License or right to access the infringing Product or Fix. Our right to terminate a License or right in accordance with this Section shall not apply if Enrolled Affiliate authorizes or consents to use of the Product or Fix, and in such cases, we shall have no obligation to indemnify or other liability whatsoever, to Enrolled Affiliate or to third parties for infringement, and the exclusive cause of action and remedy for infringement shall be in accordance with 28 U.S.C. 1498, as set forth in 48 C.F.R. 27.201-1(a).

- d. The obligations of the Licensor under this Section continue without time limit and survive the termination of this Agreement. Licensor's obligation to indemnify the Enrolled Affiliate, under the terms of this Section, shall be the Enrolled Affiliate's sole and exclusive remedy for an infringement claim related to a Product or Fix.

12. Use, ownership, rights, and restrictions.

- a. **Products.** Use of any Product is governed by the Product Terms specific to each Product and version and by these additional use rights and restrictions.
- b. **Fixes.** Fixes are licensed according to the license terms applicable to the Product to which those Fixes relate. If the Fixes are not provided for a specific Product, any other use terms Microsoft provides with the Fixes will apply, and if no use terms are provided, Enrolled Affiliate shall have a non-exclusive, perpetual, fully paid-up license to use and reproduce the Fixes solely for its internal use. Enrolled Affiliate may not modify, change the file name of, or combine any Fixes with any non-Microsoft computer code, except as expressly permitted in these additional use rights and restrictions.
- c. **Non-Microsoft software and technology.**
 - i. Otherwise than as specified herein, Enrolled Affiliate is solely responsible for any non-Microsoft software or technology that it installs or uses with the Products or Fixes. Microsoft is not a party to and is not bound by any terms governing Enrolled Affiliate's use of non-Microsoft provided software or technology. Without limiting the foregoing, non-Microsoft software or scripts linked to or referenced from any Product website, are governed by the open source licenses used by the third parties that own such code, not by Microsoft and Microsoft's licensing terms.
 - ii. If Enrolled Affiliate installs or uses any non-Microsoft software or technology with the Products or Fixes, it directs and controls the installation in and use of such software or technology in the Products or Fixes, through its actions (e.g., through Enrolled Affiliate's use of application programming interfaces and other technical means that are part of the Online Services). Microsoft will not run or make any copies of such non-Microsoft software or technology outside of its relationship with Enrolled Affiliate.
 - iii. If Enrolled Affiliate installs or uses any non-Microsoft software or technology with the Products or Fix, it may not do so in any way that would subject Microsoft's intellectual property or technology to obligations beyond those included in this Agreement.

d. **Restrictions on use.** Enrolled Affiliate must not, except where otherwise provided in this Agreement:

- 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 Terms;
- ii. reverse engineer, decompile or disassemble any Product or Fix, except to the extent applicable law permits it despite this limitation; or
- iii. re-distribute, sublicense, rent, lease, lend, or host any Product or Fix, except as permitted in the Product Terms or in a separate written agreement.

13. **Virus, Malicious, Mischievous or Destructive Programming**

Licensor warrants that it has established and regularly puts in place procedures, in conformity with applicable and the most current industry standards, to guard against the inclusion of viruses, as defined below, in any Product provided under this Agreement. A “virus” is defined as any computer codes, instruction data, or program that can or may in whole or part disable, materially alter, or damage any software, data, or computer hardware or otherwise interfere with or prevent use of a computer system. If notified by the Microsoft Government Partner in writing within ninety (90) days from the initial delivery (including initial download) of a Product that the Microsoft Government Partner or Enrolled Affiliate reasonably believes that the Product contains a virus, and if Licensor confirms the same, then Licensor will exercise reasonable efforts to (1) correct the Product, and (2) provide any resulting corrections to Microsoft Government Partner/ Enrolled Affiliate, without charge, as soon as reasonable possible. If the foregoing options are not commercially reasonable, Licensor will refund any amounts Microsoft Government Partner/Enrolled Affiliate paid in advance for unused or undistributed Product.

If the Microsoft Government Partner/Enrolled Affiliate fails to notify Licensor in writing within the ninety (90) day period described above, the Microsoft Government Partner/Enrolled Affiliate will be deemed to have accepted the Product and waived any claim for breach of this virus warranty. The foregoing does not apply to any user customizable features, or to any add-on features or products that have not been provided by Licensor including but not limited to items such as macros, scripts, and custom programming or formatting features. The foregoing states Licensor’s entire liability and Government Partner/Enrolled Affiliates remedy for any breach described in this subsection.

14. **Limitation of liability:**

- a. **Limitation on liability.** To the extent permitted by applicable law, the total liability of each party for all claims arising under this Agreement is limited to direct damages up to the amount Enrolled Affiliate was required to pay for the Product. In the case of Products

provided free of charge, or code that Enrolled Affiliate is authorized to redistribute to third parties without separate payment to Microsoft, Microsoft's liability is limited to direct damages up to U.S. \$5,000. However, the limitation in this Section (a) will not apply to:

- i. Licensor's and Enrolled Affiliate's obligations under the Section titled "Patent, Copyright, Trademark, and Trade Secret Protection";
 - ii. liabilities arising out of any breach by either party of its obligations under the Section entitled "Confidentiality", and
 - iii. violation by either party of the other party's intellectual property rights.
- b. **EXCLUSION OF CERTAIN DAMAGES. TO THE EXTENT PERMITTED BY APPLICABLE LAW, WHATEVER THE LEGAL BASIS FOR THE CLAIM, NEITHER PARTY, NOR ANY OF ITS AFFILIATES, OR CONTRACTORS, WILL BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, OR INCIDENTAL DAMAGES, OR DAMAGES FOR LOST PROFITS, REVENUES, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION ARISING IN CONNECTION WITH THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH POSSIBILITY WAS REASONABLY FORESEEABLE. HOWEVER, THIS EXCLUSION DOES NOT APPLY TO EITHER PARTY'S LIABILITY TO THE OTHER FOR VIOLATION OF (1) ITS CONFIDENTIALITY OBLIGATIONS (EXCEPT TO THE EXTENT THAT SUCH VIOLATION RELATES TO CUSTOMER DATA), (2) THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, OR (3) OBLIGATIONS IN THE SECTION TITLED "Patent, Copyright, Trademark, and Trade Secret Protection" ."**
- c. This clause shall not impair the U.S. Government's right to recover for fraud or crimes arising out of or related to this Agreement, the Order, or the Government Contract, or under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733.

15. **Confidentiality:** The following confidentiality provision applies between Licensor and Enrolled Affiliate.

- a. **What is included.** "Confidential Information" is non-public information, know-how and Trade Secrets in any form that are designated as "confidential" or that a reasonable person knows or reasonably should understand to be confidential. The Enrolled Affiliate may share the terms of this Agreement with an Affiliate. Confidential Information shall be so marked.

b. **What is not included.** The following types of information, however designated, are not Confidential Information. Information that:

- i. is, or becomes, publicly available without a breach of this agreement;
- ii. was lawfully known to the receiver of the information without an obligation to keep it confidential;
- iii. is received from another source who can disclose it lawfully and without an obligation to keep it confidential;
- iv. is independently developed;
- v. is a comment or suggestion one party volunteers about the other's business, products or services;
- vi. is subject to public disclosure pursuant to the Freedom of Information Act ("FOIA").

c. **Treatment of Confidential Information.**

- i. **In general.** Subject to the other terms of this Agreement and FOIA, each party agrees:
 - 1) it will not disclose the other's Confidential Information to third parties except as expressly permitted herein or otherwise agreed to in writing by the disclosing party; and
 - 2) it will use and disclose the other's Confidential Information only for purposes of the parties' business relationship with each other.
- ii. **Security precautions.** Subject to the other terms of this agreement, each party agrees:
 - 1) to take reasonable steps to protect the other's Confidential Information -- these steps must be at least as protective as those the party takes to protect its own Confidential Information;
 - 2) to notify the other promptly upon discovery of any unauthorized use or disclosure of Confidential Information; and
 - 3) to cooperate with the other to help regain control of the Confidential Information and prevent further unauthorized use or disclosure.
- iii. **Disclosing Confidential Information if required to by law.** Each party may disclose the other's Confidential Information if required to comply with law,

including FOIA, with a court order, or with other Government demand that has the force of law. Before doing so, each party must seek the highest level of protection available and, when possible, give the other enough prior notice to provide a reasonable chance to seek a protective order.

- d. **Length of Confidential Information obligations.** Except as permitted above, neither party will use or disclose the other's Confidential Information for five years after it is received. The five-year time period does not apply if applicable law requires a longer period or the Product Terms provide a more specific requirement.
16. **Publicity/Advertisement:** The Licensor must obtain the Contracting Officer's approval prior to issuing an advertisement, endorsement, or any other type of publicity identifying the Enrolled Affiliate as a customer. This includes the use of any trademark or logo.
17. **Microsoft Advice/Best Practices.** The Government shall have direct access to Microsoft and receive at least annually information about product best practices and capabilities, including recommendations for meeting future requirements based on Microsoft's Roadmap and commercial and industry trends. An Annual Customer Symposium/Training Conference may be requested by the Government and provided by Microsoft at no additional cost to the Government. The purpose of this event is to educate and inform Customers and associated industry partners involved in executing this agreement about best practices, implementation plans, and future year technology trends that have implications for the Department of Defense in the current and future year execution of this agreement. The Government shall not be required to communicate with Microsoft through the Government Partner to obtain information and /best practices.
18. **License Use Territories:** Any 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.
19. **Rights of Survivorship of the Agreement.** This Agreement shall survive unto Licensor, its successor, rights and assigns.
20. **Data Sharing/Transfer:** Data transfer is: Batch Processing, Multiplexing and Flat File Environments. The parties agree that as long as an authorized user/device license is properly licensed in accordance with this Agreement, the transfer, access, and manipulation of data or the sharing of data pertaining to the Products is unrestricted among the Affiliates. 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.
21. **Third Party Software:** The Enrolled Affiliate acknowledges that some Products may contain third party software or include software components which may be governed by separate license terms. If Enrolled Affiliate does not agree to such license terms, it may not

use the applicable software and/or component. If any such license terms contain a provision (a) allowing for the automatic termination of the license; (b) allowing for the automatic renewal of the license and/or fees; (c) requiring the governing law to be anything other than Federal law; and/or (d) requiring the Enrolled Affiliate to indemnify Licensor or any third party, then such provision shall not apply.

22. **Warranty.**

a. Limited warranties and remedies.

- i. Software.** Microsoft warrants that each version of the Software will perform substantially as described in the applicable Product documentation for one year from the date Enrolled Affiliate is first licensed for that version. If it does not and Enrolled Affiliate notifies Microsoft within the warranty term, then Microsoft will, at its option (1) return the price Customer paid for the Software license, or (2) repair or replace the Software.
- ii. Online Services.** Microsoft warrants that each Online Service will perform in accordance with the applicable SLA during Enrolled Affiliate's use. Enrolled Affiliate's remedies for breach of this warranty are in the SLA.

The remedies above are Enrolled Affiliate's sole remedies for breach of the warranties in this section. Enrolled Affiliate waives any breach of warranty claims not made during the warranty period.

- b. Exclusions.** The warranties in this agreement do not apply to problems caused by accident, abuse or use in a manner inconsistent with this agreement, including failure to meet minimum system requirements. These warranties do not apply to free, trial, pre-release, or beta products, or to components of Products that Enrolled Affiliate is permitted to redistribute.
- c. Disclaimer.** **Except for the limited warranties above, Microsoft provides no other warranties or conditions and disclaims any other express, implied or statutory warranties, including warranties of quality, title, non-infringement, merchantability, and fitness for a particular purpose.**

23. With regard to the OfficeProPlus International Traffic in Arms Regulations (ITAR) sku procured under an Order and subsequent Enrollment, the following, one-time use rights for the Licenses will apply:

- a. Subject to the ITAR terms and conditions, the Enrolled Affiliate will have the right to download and use two (2) copies of Office Professional Plus per paid subscription which will be received via the VLSC. The rights to Office Professional Plus will be non-perpetual and use rights will end at the expiration or termination of the Enrollments and will revert back to the original version of Office Professional Plus to which Enrolled Affiliate owned perpetual rights at the start of its Enrollment (see chart below). Or, at the Government's discretion under a follow-on Enterprise Agreement, Enrolled Affiliate may convert current licenses to perpetual licenses by purchasing SA under a follow-on

agreement. Perpetual licenses will be fully-paid and owned by the Enrolled Affiliate after 3 years of continuous SA payment on the follow-on Enterprise Agreement.

Enrolled Affiliate Original version of Office Professional Plus to which Enrolled Affiliate owns perpetual rights

Unites States Air Force

Office Professional Plus 2016 – 68,351

Office Professional Plus 2013 – 511,382

Office Professional Plus 2010 – 152,751

DISA

Office Professional Plus 2016 – 1,678

Office Professional Plus 2013 – 17,993

DMDC

Office Professional Plus 2010 – 2,282

AT&L

Office Professional Plus 2016 – 3,250

*DHA and JSP perpetual ownership counts are included within Army and/or AF inventory. MEDCOM and HQDA ITA are included in Army's enrollment. HQ has their own contract.

24. Verifying Compliance.

- a. **Right to verify compliance.** Enrolled Affiliate must keep records relating to the Products it and its Affiliates use or distribute. Microsoft has the right to verify Enrolled Affiliate's and its Affiliates' compliance with the license terms for the Products, at Microsoft's expense, through a formal product deployment assessment such as a SAM Engagement or other similar third party process. Microsoft may require Enrolled Affiliate complete Microsoft's self-audit process or request the Enrolled Affiliate to run a software license inventory collection/asset discovery tool (example: Microsoft Systems Center Configuration Manager (SCCM), Microsoft Assessment and Planning (MAP) Toolkit, etc.) relating to the Products in use by the Enrolled Affiliate. Such information will be used solely for purposes of determining compliance with this Agreement.

- b. All verification efforts undertaken in accordance with this Section shall comply with the Enrolled Affiliate's reasonable security and safety rules, system and network operational policies and procedures ("security rules"), provided that such security rules are applicable to the performance of the verification process(es); the Enrolled Affiliate makes such security and operational rules available to Licensor prior to the commencement of the verification process(es); and such security and operational rules do not modify or amend the terms and conditions of this Agreement.
- c. **Verification process and limitations.** Licensor will provide Enrolled Affiliate at least 90 days' notice of its intent to verify compliance. Unless specifically stated herein as a contract condition, Licensor may not verify compliance more than once in a 12 month period and Licensor shall be solely responsible for the costs Microsoft incurs in verifying compliance in accordance with this section. The Microsoft Government Partner, in conjunction with Microsoft as a first tier subcontractor, will engage an independent auditor or an approved Microsoft partner, as a second tier subcontractor, to conduct a formal software deployment assessment, which will involve reviewing the Agency's Microsoft Software Asset Management practices and provision of a current-state assessment relative to industry standards, and an actual deployment position for Microsoft software installed within the Agency's IT environments.
- d. **Remedies for non-compliance.** If self-audit reveals any unlicensed use or distribution, Microsoft, through the Microsoft Government Partner, shall invoice Enrolled Affiliate within 90 days to order sufficient licenses to cover that use or distribution. Notwithstanding the foregoing, nothing in this Section prevents the Enrolled Affiliate from disputing any invoice in accordance with the Contract Disputes Act (41 U.S.C. §§7101-7109). Microsoft will not undertake another verification of the same Enrolled Affiliate for at least one year. By exercising 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.

25. **Choice of Law:** This Agreement shall be governed by and construed in accordance with United States Federal Law, including the United States Code; United States Code of Federal Regulations; Federal Acquisition Regulations; Defense Federal Acquisition Regulation Supplement; and Financial Management Regulations.

26. Grace Period at the beginning of the contract for Additional Products. Due to de-consolidated ordering and funding appropriations, Enrolled Affiliate shall have a grace period for SA on current perpetual licenses set to expire on October 31, 2016. The Government's processing time to place preliminary orders for Software Assurance for current perpetual licenses whose expirations fall on October 31, 2016 is December 15, 2016. After this processing time ends, Software Assurance for perpetual licenses that expired on October 31, 2016 will no longer be allowed to be renewed without the repurchase of a License.

27. Windows Server and Systems Center

Enrolled Affiliate shall provide the counts of Windows Server and System Center processors (including the number of processors per server), and these quantities will receive the standard conversion rate which is as follows: processor Licenses will be exchanged for a minimum of 8 two-core pack Licenses (16 core Licenses) which is 8 cores per processor, that will be included for renewal of Software Assurance in this Agreement.

As a one-time exception, Enrolled Affiliate will have until January 31st, 2017 to provide the actual quantities of cores per processor through the necessary conversion documentation. Enrolled Affiliate will then receive grants for the actual number of cores per processor. To be eligible for these grants, Enrolled Affiliate will pay the Software Assurance for any additional cores from the effective date of this agreement.

28. Certain User Transitions

If Enrolled Affiliate notifies Microsoft 365 days prior to the first and second anniversary (Year 2 and 3) of the effective date of the Enrollment that the number of Users with Office ProPlus Subscriptions (O365ProPlusDITAR DdctdSvr ALNG SubsVL MVL DITARSprt PerUsr sku) in Enrolled Affiliate's Enrollment are transitioning to O365 E1 suite, Microsoft agrees to reduce upon the first and second anniversary (Year 2 and 3) as follows:

- * First anniversary (Year 2) up to (10) ten percent of the number of Office ProPlus subscriptions covered by their Enrollment. Microsoft will adjust the annual installment of the Enhanced Hybrid Desktop (O365ProPlusDITAR DdctdSvr ALNG SubsVL MVL DITARSprt PerUsr sku) to reflect the decrease upon the first anniversary (Year 2).
- * Second anniversary (Year 3) up to (30) thirty percent of the number of Office ProPlus subscriptions covered by their Enrollment. Microsoft will adjust the annual installment of the Enhanced Hybrid Desktop (O365ProPlusDITAR DdctdSvr ALNG SubsVL MVL DITARSprt PerUsr sku) to reflect the decrease upon the first anniversary (Year 3).

Reductions will be subject to the following terms and conditions:

- a. Amount of the adjustment. The adjustment will reflect the actual decrease in the number of Office ProPlus subscriptions in the Enrolled Affiliate's Enterprise. In no event shall the adjustment exceed when aggregated with any other adjustments previously made pursuant to this section, forty (40) percent of the total number of Office ProPlus Subscriptions in Enrolled Affiliate's Enrollment as of the effective date of the Enrollment.
- b. Corporate statement. Upon request, Enrolled Affiliate must provide to Microsoft a statement, duly signed on Enrolled Affiliate's behalf, certifying the then current total number of Office ProPlus subscriptions and associated on-premise copies of Office ProPlus in Enrolled Affiliate's Enterprise and other relevant facts as reasonably requested by Microsoft.
- c. All downloaded copies of Office ProPlus on device(s) assigned to the Users that are being reduced as part of this transition must be uninstalled and Enrolled Affiliate must provide to

Microsoft a statement duly signed on Enrolled Affiliate's behalf, certifying the software has been uninstalled from the device(s).

d. Any reduction in subscriptions as a result of this clause will not be eligible for perpetual rights of Office ProPlus and are excluded from Section 23 of this agreement, unless a purchase occurs at Current pricing for Office ProPlus Licenses.