

THE BOARD OF SUPERVISORS OF THE COUNTY OF STANISLAUS
ACTION AGENDA SUMMARY

DEPT: Chief Executive Office

BOARD AGENDA # *B-9

Urgent

Routine

pk

AGENDA DATE November 18, 2008

CEO Concurs with Recommendation YES NO

4/5 Vote Required YES NO

(Information Attached)

SUBJECT:

Authorize the Purchasing Agent to Enter into a Five Year Master Enterprise Agreement with Compucom Corporation for the Purchase of Microsoft Products

STAFF RECOMMENDATIONS:

1. Approve the purchase of Microsoft Office products at substantial discounts through a negotiated Master Enterprise Agreement with Compucom Corporation.
2. Authorize the Purchasing Agent to negotiate and enter into the five year Master Enterprise Agreement with Compucom Corporation for the purchase of the software licenses and updates.

FISCAL IMPACT:

The proposed Enterprise Agreement will allow the County to purchase software and licenses at a substantial discount over current purchase prices. The total 5 year cost of the recommended proposal is anticipated to be approximately \$790,000 which is to be paid through 5 annual installments. These annual installments will be paid out of existing appropriations in Departmental Budgets and a portion out of the Plant Acquisition budget. For this first year, it is anticipated that the total cost for participating departments would be \$158,000, with \$9,187.75 being paid from the Plant Acquisition budget. Possible future Plant Acquisition budget participation in this agreement will be evaluated on a year-to-year basis.

BOARD ACTION AS FOLLOWS:

No. 2008-778

On motion of Supervisor Monteith, Seconded by Supervisor Grover

and approved by the following vote,

Ayes: Supervisors: O'Brien, Grover, Monteith, and Vice Chairman DeMartini

Noes: Supervisors: None

Excused or Absent: Supervisors: Mayfield

Abstaining: Supervisor: None

1) X Approved as recommended

2) _____ Denied

3) _____ Approved as amended

4) _____ Other:

MOTION:

Christine Ferraro

ATTEST: CHRISTINE FERRARO TALLMAN, Clerk

File No.

DISCUSSION:

Today, whenever an electronic document is being worked on by more than one staff person, an issue arises as to the version of Microsoft Office being used by each party. Virtually every computer owned by the County has Microsoft Office installed. Microsoft Corporation updates their Office product every two to three years. Newer versions, partially by necessity, partially as a coercive measure to encourage purchasing newer versions, tend to save in a new format that works imperfectly with prior versions of Office. This creates a challenge when new PCs are purchased, since the older version of Office that may be predominate in a department may no longer be available. The resulting mix of different versions and associated incompatibilities can be a barrier to information sharing and collaboration. Versions currently being used by County departments include Office '97, Office 2000, Office 2003 and Office 2007.

In addition, many county-wide processes, such as the budget submittal system, are built around Microsoft Office products and work best with all users on the same version of Office. However, the cost of upgrading each computer to a newer version every two to three years has proved prohibitive to date. Agreeing on a standard version of Microsoft Office has likewise been a challenge.

The complications of dealing with multiple versions of Office lead to issues with document sharing, challenges in providing technical support, training impacts and compatibility with third-party applications that require a certain version of Office. For example, our Oracle Financial Management System allows data to be exported to Microsoft Excel – a Microsoft Office component. The version of Microsoft Excel supported by the Oracle Financial Management System changes over time; it rarely supports the newest version of Microsoft Office when it is released, and stops working for older versions at some point. This type of integration between the County's Office versions and other critical systems has impacts on which versions of the Office products the County should support. Having a single standard for which version of Microsoft Office will be used can begin to address those issues.

In 2003, Riverside County negotiated a master agreement with Microsoft Corporation for the benefit of other California State and Local governmental entities. This "Enterprise Agreement" provides an additional approximate 15% discount over the "Select" agreement pricing those agencies already enjoy. This Agreement also allows for a 3- or 5-year amortization of licenses purchased under it, and includes discounted product updates over the life of the agreement. This update mechanism allows any agency entering into the Agreement to deploy the newest version of covered Microsoft products over the life of the Agreement, such that any new version of Microsoft Office, for instance, released over the life of the Agreement can be installed at no additional license cost. After the expiration of the Agreement, it can be extended or not as the County wishes, but the products purchased under it are owned in perpetuity regardless. Three County departments are currently using the Microsoft Enterprise Agreement with good results. Other departments may consider such an agreement in future years.

Authorize the Purchasing Agent to Enter into a Five Year Master Enterprise Agreement with Compucom Corporation for the Purchase of Microsoft Products

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It is estimated that County departments spend approximately \$200,000 per year on Microsoft Office upgrades, however serious fragmentation continues to exist in terms of versions of Microsoft Office deployed. Under this proposal, the costs to participating departments would be fixed and predictable, and those departments would be able to manage the version issues strategically, rather than reactively.

Along with the Enterprise Agreement, participating departments requesting funding assistance agree to be bound by an agreement requiring them to comply with an established County standard for Microsoft Office software versions. That standard and its evolution will be managed by the County Information Technology Steering Committee.

List of participating departments:

Area Agency on Aging and Veterans Services
Animal Services
County Counsel
District Attorney
Environmental Resources
General Services Agency
Health Services Agency
Public Defender
Planning
Strategic Business Technology

POLICY ISSUES:

The Board of Supervisors is asked to consider adoption of a policy that would require departments who receive financial support from the Plant Acquisition budget for participation in the Enterprise Agreement (Attachment 1) to adhere to a standard version of Microsoft Office and an associated Office deployment schedule to be determined by the County Information Technology Steering Committee. The proposed policy is consistent with the Board's priority of efficient delivery of public services.

STAFFING IMPACTS:

There is no staffing impact associated with this item. Existing SBT and Departmental IT staff will be responsible for performing installation and upgrades consistent with the proposed policy.

Attachment 1

**Agreement Between {Department} and Stanislaus County
Regarding Microsoft Office and Associated Products**

Purpose: This agreement covers financial assistance from the Stanislaus County General Fund to {Department} for the purpose of payment of a portion of costs associated with an Enterprise Agreement with Microsoft Corp through their reseller Dell Computer Inc.

Terms: Stanislaus County will provide assistance to {Department} each year for the five year term of the Enterprise Agreement. {Department} will agree to abide by the deployment schedule for Microsoft Office products to be created by the County's IT Steering Committee for the period that financial assistance is provided.

Non-Compliance: Should {Department} fail to abide by that deployment schedule, Stanislaus County shall reserve the right to withhold financial assistance. Should the County fail to provide that financial assistance, {Department} shall no longer be bound by the Microsoft Office deployment schedule.

Signed and agreed on this date:

Department Head
Title

For the County
Title

Date:

Date

CONTRACT

County of Riverside

Dispatch via Print

Vendor ID 0000000033
Compucom Systems Inc
7171 Forest Lane
Dallas TX 75230
USA

Contract ID			Page	
RIVCO-20800-006-06/09			1 of 1	
Contract Dates		Currency	Rate Type	Rate Date
07/01/2008 to 12/31/2009		USD	CRRNT	PO Date
Description:			Contract Maximum	
Microsoft Enterprise Agreement			1,000,000.00	

Tax Exempt? N Tax Exempt ID:

Line #	Vendor Item ID	Item Desc	Minimum Order		Maximum / Open	
			Qty	Amt	Qty	Amt
1		Computer software: Microsoft Enterprise Agreement software licenses for Riverside County and surrounding Government Agencies within the state of California.	1.00	0.00	0.00	0.00

Pricing Agreement: Pricing Date:
Pricing Quantity:
Quantity Type:

Reference Microsoft Master Agreement Number 01E69633.

All terms, conditions, and specification of RFQ#ITARC-054 are hereby included with full force and like effect as if set forth herein.

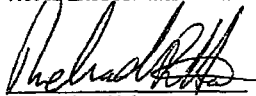
PAYMENT TERMS - For calculating due dates for payment terms, the County will use either the date that the invoice is received by the County or the date the goods/services are received, which ever is later.

In the event of contradiction, between the County's and the Seller's conditions, the County's conditions shall prevail.

The County reserves the right to cancel the unexpended balance of this order at any time.

Period of Performance: From July 1, 2008 through December 31, 2009.
Year: 1 of 3, final year end date of December 31, 2011.

Not to Exceed: Maximum contract amount \$ 1,000,000.00



Richard R. Hai
Procurement Contract Specialist
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Final = The price is final after adjustments
Hard = Apply adjustments regardless of other adjustments
Skip = Skip adjustments if any other adjustments have been applied

Authorized Signature



Microsoft Licensing, GP Document Summary Form

** This is for informational purposes only **

MSE#:

2-2391055178

(MSLI
Tracking
Number)

Doc Type:

Master Agreement

Do not modify the formatting or spacing of this Form above this text

Subsidiary:

Account Manager Name / Alias

Country:

United States

LAR/LAD/ESA

n/a

Program/Version

EA SLG 6.6

ACCOUNT: County of Riverside

Outsourcer Name. **n/a**

Business Agreement Number **n/a**

Master Agreement Number **01E69633**

Agreement Number: **n/a**

Purchase Order Number **n/a**

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Comments:

Enterprise Agreement

State and Local

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

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

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

This agreement consists of (1) these agreement terms and conditions and the signature form and all attachments identified therein, (2) the Product List, (3) the Product use rights applicable to Products licensed under this agreement, (4) any Affiliate Enrollment entered into under this agreement, and (5) any order submitted under this agreement.

Terms and Conditions

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

1. Definitions.

“Affiliate” means (1) with regard to Customer, (a) any government agency, department, office, instrumentality, division, unit or other entity of the state or local government that is supervised by or is part of Customer, or which supervises Customer or of which Customer is a part, or which is under common

supervision with Customer; (b) any county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality established by the laws of Customer's state and located within Customer's state jurisdiction and geographic boundaries; and (c) any other entity in Customer's state expressly authorized by the laws of Customer's state to purchase under state contracts; provided that a state and its Affiliates shall not, for purposes of this definition, be considered to be Affiliates of the federal government and its Affiliates, and (2) with regard to Microsoft, any legal entity that Microsoft owns, that owns Microsoft, or that is under common ownership with Microsoft,

"Additional Product" means any Product other than an Enterprise Product that an Enrolled Affiliate chooses to license under its Enrollment,

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

"CAL" means a Client Access License,

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

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

"Device-based Licenses" means Licenses that are calculated based on the number of Qualified Desktops that allow a single device to run a Product.

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

"Enrollment" means the document that an Enrolled Affiliate submits under this agreement to place its initial order;

"Enterprise" means the Enrolled Affiliate and the Affiliates it chooses on its Enrollment to include in its enterprise;

"Enterprise Product" means any Product that Microsoft designates as an Enterprise Product and that an Enrolled Affiliate chooses to license under its Enrollment (Enterprise Products may only be licensed on an Enterprise-wide basis under this program),

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

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

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

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

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

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

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

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

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

"Qualified Desktop" means any personal desktop computer, portable computer, workstation, or similar device that is used by or for the benefit of an Enrolled Affiliate or any Affiliate included in its Enterprise and that meets the minimum requirements for running any of the Enterprise Products. Qualified Desktops do not include: (i) any computer that is designated as a server and not used as a personal computer, (ii) any device dedicated to run ONLY line-of-business software (e.g. an accounting or bookkeeping program used by an accountant or a computer-aided design program used by an engineer or architect), or (iii) any device running an embedded operating system (e.g., Windows Vista for embedded, Windows XP embedded),

"Qualified User" means a person who receives Online Services or who accesses any CAL server software licensed within an Enrolled Affiliate's Enterprise. It does not include a person who accesses the software under an External Connector License. It also does not include a person who accesses the software in some other way that does not require a CAL;

"Qualifying Enrollment" means (1) an Enterprise Enrollment under a separate Microsoft Enterprise Agreement, (2) any Enterprise Subscription Enrollment under a separate Microsoft Enterprise Subscription Agreement, or (3) any other Enrollment submitted under the Microsoft Enterprise Agreement identified on the program signature form,

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

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

"Software Assurance" means an annuity offering that provides new version rights and other benefits for Microsoft software Products as set forth in the Product List, and

"User-based Licenses" means Licenses calculated based on the number of Qualified Users that allow named users to run a Product from any device

2. How the Enterprise program works.

Enrolled Affiliate can order two general types of Products under this agreement. For "Enterprise Products," Enrolled Affiliate must pay for a License for all Qualified Desktops and/or Qualified Users. For "Additional Products," Enrolled Affiliate must pay for Licenses based on the actual number of copies used. To participate in this agreement, Enrolled Affiliate must order at least one Enterprise Product.

Where to submit orders. Enrolled Affiliate's orders will be submitted directly to a Reseller. Online Services may have additional terms.

The Enterprise program gives Customers that wish to license one or more of Microsoft platform Products the means to ensure that their entire Enterprise will be licensed. Customer and Customer Affiliates can participate in this program by submitting one or more Enrollments under this agreement. On the Enrollment, the Enrolled Affiliate will designate the scope of its Enterprise and make the initial selection of Enterprise Products and any Additional Products it wishes to license. Each Enrollment must include at least one Enterprise Product. Microsoft may refuse to accept an Enrollment if it has a business reason for doing so. Notwithstanding any other provision of this agreement, only Enrolled Affiliates identified in an Enrollment will be responsible for complying with the terms of that Enrollment, including the terms of this agreement incorporated by reference in that Enrollment.

- a. **How Enrolled Affiliates acquire Licenses.** An Enrolled Affiliate will acquire its Licenses through its chosen Reseller. Orders will be made out to and submitted to the Enrolled Affiliate's Reseller. Microsoft will invoice that Reseller according to the terms in the applicable Enrollment. **Throughout this agreement the term "price" refers to reference price. The Reseller and the Enrolled Affiliate will determine the Enrolled Affiliate's actual price and payment terms.**

- b. **Choosing and maintaining a Reseller.** Each Enrolled Affiliate must choose and maintain a Reseller authorized in the Enrolled Affiliate's territory.
- c. **Online Services.** The terms and conditions of the agreement apply to Online Services subscriptions throughout the entire term of the subscription except as provided here and in the Product List at <http://microsoft.com/licensing/contracts>. Online Services are provided as subscription services and may carry additional terms that are independent of the agreement terms as specified in the Product use rights. Billing terms for Online Services subscriptions may also differ from the terms of this agreement.

3. How to establish price level.

Generally, price levels for each category of Product are based on the number of Qualified Desktops or Qualified Users in the Enrolled Affiliate's Enterprise. Prices are locked for a particular Product based on the price at the time Enrolled Affiliate first orders that Product.

- a. **Establishing Price Levels.** Each Product is assigned to a Product pool (applications, systems, or servers). There are four price levels (A, B, C, and D). An Enrolled Affiliate's price level for Enterprise Products is based on the initial number of Qualified Desktops or Qualified Users in its Enterprise and applies to Products ordered in each pool. The ability to order Device-based Licenses or User-based Licenses is determined by how the License is offered in the price list (e.g. Windows Vista is not offered as User-based License). If Enrolled Affiliate orders a platform Enterprise Product that contains both Device-based and User-based Licenses, prices will be based on the Qualified Desktop price level. Price levels are established separately for each Enrollment.

The price level for Additional Products in that pool will be level "D" throughout the term of the Enrollment.

- b. **Deriving prices from price levels.** The Enrolled Affiliate's prices, including true-up prices, are determined as follows:

For Products covered by the initial order. The Enrolled Affiliate's price for Licenses for Products on its order will not change throughout the initial Enrollment term.

For Additional Products added after the initial order. The Enrolled Affiliate's prices for Licenses for Additional Products ordered after acceptance of the Enrollment will be those prices in effect for its price level for that Product as of the date that it places its first order for that Product.

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

Enrolled Affiliate can use the Enterprise Products on all Qualified Desktops (or, in the case of CALs and certain services), all Qualified Desktops or Qualified Users, as applicable, may access the specified server software. For Additional Products, Enrolled Affiliate can run as many copies as desired, provided Enrolled Affiliate submits orders for them. Enrolled Affiliate can use the latest version of the Products or choose to use any earlier version.

Generally, use rights become permanent once the Enrollment term ends and Enrolled Affiliate has completed all payments. At that time, Enrolled Affiliate will have perpetual Licenses for the number of desktops, users, or copies for which Enrolled Affiliate submitted orders during the term. In cases where the Enrollment is terminated prior to the end of the term, subsections entitled "Termination for breach" and "Early termination" describe Enrolled Affiliate's rights.

Upon Microsoft's acceptance of the Enrollment, the Enrolled Affiliate has the following rights during the term of its Enrollment. These rights apply to the Licenses obtained under an Enrollment and are not related to any order or fulfillment of software media. The ability to run current or later versions of a

Product licensed under this agreement could be affected by minimum system requirements or other factors (e.g. hardware or other software).

- a. **General.** The Enrolled Affiliate may use the latest version (or any prior version) of any Product as permitted in the Product use rights, so long as it timely orders and pays for all required Licenses
- b. **Use by Affiliates.** The Enrolled Affiliate may sublicense the right to use the Products to any Affiliates covered under its Enrollment.
- c. **Special rule for Enterprise Products.** So long as the Enrolled Affiliate places true-up orders as required, the Enrolled Affiliate may use the latest version (or any prior version) of each Enterprise Product on each of its Qualified Desktops as permitted in the Product use rights. In addition, for CALs, each Qualified Desktop (or, for CALs that are User-based Licenses, each Qualified User) covered by the Enrollment may access and use the associated server software
- d. **When Licenses become perpetual.** The right to run any Product licensed under an Enrollment is temporary until:
 - (i) the Enrolled Affiliate has paid all installments of the price for that Product License and the applicable initial Enrollment or renewal term during which that Product License was ordered has expired or been renewed, or
 - (ii) the Enrolled Affiliate is otherwise eligible for perpetual Licenses upon early termination as provided in this agreement

Thereafter, the Enrolled Affiliate will have perpetual Licenses to run the Products ordered in the latest version available (or any prior version) as of the date of expiration, termination, or renewal. The number of perpetual Licenses will be equal to:

- **For Enterprise Products other than CALs that are User-based Licenses,** the total number of Qualified Desktops covered by the Enrollment;
- **For CALs that are User-based Licenses,** the total number of Qualified Users covered by the Enrollment; and
- **For each Additional Product,** the total number of Licenses ordered during the applicable initial Enrollment term or renewal term.
- **Subscription (Online Services) Licenses** are not perpetual under any circumstances.

In the case of early termination of an Enrollment as provided in the subsection entitled "Early termination," if an Enrolled Affiliate chooses only to pay amounts due and payable as of the termination date then the Enrolled Affiliate will instead have perpetual Licenses for the number of Licenses specified in the subsection entitled "Early termination "

- e. **Perpetual Licenses through Software Assurance.** Any perpetual Licenses received through Software Assurance supersede and replace the underlying perpetual Licenses for which that Software Assurance coverage was ordered. All perpetual Licenses acquired under this agreement remain subject to the terms of this agreement and the applicable Product use rights.
- f. **License confirmation.** This agreement, the applicable Enrollment, the Enrolled Affiliate's order confirmation, and any documentation evidencing transfers of Licenses, together with proof of payment, will be the Enrolled Affiliate's evidence of all Licenses obtained under its Enrollment.

5. How to know what Product use rights apply.

Microsoft's Products and Fixes are licensed to Customer, not sold. The specific use rights for Products are contained in Microsoft's published Product use rights. Generally, the use rights in effect at the time Enrolled Affiliate signs the Enrollment will apply. Any changes Microsoft makes to the use rights for existing versions after Enrolled Affiliate signs the Enrollment will not apply to Enrolled Affiliate's use of those versions. 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. Even if Enrolled Affiliate chooses to run an earlier version of a Product than the one Enrolled Affiliate is licensing, the use rights for the latest version Enrolled Affiliate 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. Unless otherwise specified in a license agreement, use of any Product that Customer licenses from Microsoft is governed by Product use rights specific to each Product and version and by the terms of the license agreement under which Customer licensed the Product. The latest version of the Product use rights is available at <http://www.microsoft.com/licensing/contracts> or at a successor site. The use rights in effect for a Product and version on the effective date of an Enrollment or renewal term will apply to Enrolled Affiliate's use of the Product and version, except.

(i) **earlier versions**

If Enrolled Affiliate runs an earlier version of a Product that pre-dates both the Enrollment or renewal 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 Enrolled Affiliate'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 renewal 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 renewal effective date**

If a new version of a Product is made available during the Enrollment or renewal term and Enrolled Affiliate elects to run the newer version, the use rights in effect on the date that new version is first released will apply, subject to the subsection entitled "No detrimental use rights for Enterprise Products" below.

Upon renewal of an Enrollment, use rights for all Products for which Software Assurance is renewed are reset (e.g. the use rights in effect as of the renewal date will apply, not the use rights that were applicable during the preceding term)

- b. **No detrimental use rights for Enterprise Products.** If a new version of an Enterprise Product has more restrictive use rights than the version that is current at the start of the applicable term, those more restrictive use rights will not apply to the Enrolled Affiliate's use of that Product during that term

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

6. How to order Product Licenses.

Enterprise Products must be ordered at the time the Enrollment is signed. In general, Software Assurance cannot be ordered without also ordering simultaneously underlying Licenses unless the Enrolled Affiliate is renewing unexpired Software Assurance coverage. Enrolled Affiliate can "step-up" to a higher Product edition of an existing Product by following the process described in this section.

Enrolled Affiliate must submit true-up orders annually to reflect Qualified Desktops, Qualified Users, and Additional Products added during the year.

- a. **Placing the initial order.** Each Enrolled Affiliate must submit an initial order for the Enterprise Products and Additional Products it selects with its Enrollment. Except as provided in the following paragraph, the order must be for L&SA for all Products. When placing orders, an Enrolled Affiliate must specify the country or countries where the Enrolled Affiliate and its Affiliates will use the Licenses

When is the Enrolled Affiliate eligible to order only Software Assurance for an Enterprise and Additional Product? An Enrolled Affiliate may order Software Assurance for the Enterprise Products and Additional Products it selects without the need to simultaneously order a License if the Enrolled Affiliate or any of the Affiliates in its Enterprise has obtained perpetual Licenses for that Product.

- (i) **For Enterprise Products** on an Enterprise-wide basis under a previous Qualifying Enrollment; and
- (ii) **For Additional Products** through Software Assurance or any similar upgrade protection. The new Enrollment becomes effective no later than the day following the date of expiration of that previous Enrollment or Software Assurance. These Software Assurance orders cannot exceed the number of perpetual Licenses acquired for that Product. For all other Products the Enrolled Affiliate must order L&SA.

- b. **Adding new Products not previously ordered.** An Enrolled Affiliate may only add new Enterprise Products by entering into a new Enrollment. New Additional Products may be run provided an order for L&SA is placed in the month the Product is first run. For additional copies run after the first order, the Enrolled Affiliated must place true-up orders.
- c. **Stepping up to higher Product editions.** If an already-ordered Product has multiple Product editions, an Enrolled Affiliate may migrate to the higher Product edition by ordering the applicable step-up License where available through Software Assurance. If step-up details are included in an initial Enrollment order, then the Enrolled Affiliate may step-up in accordance with the section entitled "True-ups and update statements." If the step-up details are not included in the initial Enrollment order, the Enrolled Affiliate may step-up by placing an order in the month the step-up is first run in accordance with the process set out in the section entitled "Adding new Products not previously ordered "
- d. **Reorganizations, Consolidations,, and Privatizations.** If the number of Qualified Desktops or Qualified Users covered by an Enrollment changes by more than ten percent as a result of a reorganization, consolidation, or privatization of an Enrolled Affiliate, Microsoft will work with the Enrolled Affiliate in good faith to determine how to accommodate its changed circumstances in the context of this agreement. If an Enrolled Affiliate consolidates with a third party with an existing Qualifying Enrollment, Microsoft will work with the Enrolled Affiliate in good faith to accommodate its changed circumstances in the context of this agreement
- e. **True-ups and update statements.** Within 15 days following the anniversary of the effective date of the Enrollment (including the third-year anniversary before any renewal), or on expiration or termination, the Enrolled Affiliate must submit either:
- (i) **a true-up order** to account for any increase in Qualified Desktops, Qualified Users, and/or Additional Products run since the last anniversary. To do this, the Enrolled Affiliate must determine the current number of Qualified Desktops, Qualified Users (if ordering User-based Licenses), and/or Additional Products run and submit a true-up order to account for any increase, or
- (ii) **an update statement** using a form we provide to show there is no change to the number of Qualified Desktops, Qualified Users, and/or Additional Products run since the last anniversary.

In order to meet the annual true-up requirement, Enrolled Affiliate must report an annual true-up or update statement must be submitted within 60 days prior to or 15 days following the anniversary to meet the annual true-up requirement. However, an Enrolled Affiliate may also true-up multiple occasions and at any time during the term of the Enrollment. Except where Online Services are included as part of other Licenses, true-ups do not apply to Online Services.

- f. **How to confirm orders.** Microsoft will publish information about orders placed by each Enrolled Affiliate, including an electronic confirmation of each order on a password-protected site on the World Wide Web at <https://licensing.microsoft.com> or a successor site. Upon Microsoft's acceptance of this agreement and Enrollments entered into under this agreement, the contact identified for this purpose will be provided access to this site.

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

Enrolled Affiliate can make as many copies as it needs. The copies must be complete and from master copies obtained from an authorized source. If Enrolled Affiliate uses third parties to make copies, Enrolled Affiliate is responsible for them. Enrolled Affiliate can make a specified number of complimentary copies for training, evaluation, and back-up. In certain circumstances, Enrolled Affiliate can use the media that it obtains under this program to make copies of Products that it is licensing through some other channel. Generally, this is only allowed where the Product, version, language, type, and components that are being copied are identical to those licensed through that other channel.

- a. **General.** The Enrolled Affiliate may make as many copies of the Products as it needs to distribute them within its organization. Copies must be true and complete (including copyright and trademark notices), from master copies obtained from a Microsoft approved fulfillment source. The Enrolled Affiliate may use a third party to make these copies, but the Enrolled Affiliate agrees that it will be responsible for that third party's actions. The Enrolled Affiliate agrees to use reasonable efforts to make its employees, agents, and any other individuals that it allows to use the Products aware that the Products are licensed from Microsoft and subject to the terms of this agreement.
- b. **Copies for training/evaluation and back-up.** The Enrolled Affiliate may (1) use up to 20 complimentary copies of any Product in a dedicated training facility on its premises, (2) use up to 10 complimentary copies of any Product for a 60 day evaluation period, and (3) use one complimentary copy of any licensed Product for back-up or archival purposes for each of its distinct geographic locations.
- c. **Right to re-image.** Re-imaging is permitted using the Product media on the following conditions if the Microsoft Product(s) is licensed (1) from an original equipment manufacturer (OEM), (2) as full packaged Product through a retail source, or (3) under another Microsoft program, then media provided under this agreement may be used to create images for other licensed machines in place of copies provided through that separate source. This right is conditional 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 its Enrollment must be identical to the Product, language, version and all components licensed from the separate source
 - (iii) Except for copies of an operating system and copies of Products licensed under another Microsoft program, the Product type (e.g. upgrade or full License) must be identical to the Product type from the separate source

Re-images made under this subsection remain subject to the terms and use rights provided with the License from the separate source. This subsection does not create or extend any warranty or support obligation.

8. Transferring and reassigning Licenses.

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

a. Transferring Licenses to third parties.

- (i) **Right to transfer.** Enrolled Affiliate may transfer fully-paid perpetual Licenses to (1) an Affiliate or (2) an unaffiliated third party in connection with a privatization of an Affiliate or of an operating division of the Enrolled Affiliate or one of its Affiliates, a reorganization, or a consolidation. To do so, the Enrolled Affiliate must complete and send to Microsoft a transfer notice in a form which can be obtained from <http://microsoft.com/licensing/contracts> before the transfer. All other transfers require Microsoft's prior written consent. Guidance on what types of transfers are permissible can be found at <http://microsoft.com/licensing/contracts>. No License transfer will be valid unless the Enrolled Affiliate provides to the transferee, and the transferee accepts in writing, the applicable Product use rights, use restrictions, limitations of liability, and the transfer restrictions described in this section. Any transfer not made in compliance with this section will be void. The resale of Licenses is expressly prohibited.
- (ii) **Certain transfers not permitted.** The Enrolled Affiliate may not transfer any of the following
- Licenses on a short-term basis (90 days or less),
 - temporary rights to use Products,
 - Software Assurance coverage,
 - perpetual Licenses for any version of any Product acquired through Software Assurance separately from the underlying perpetual Licenses for which that Software Assurance coverage was obtained, or
 - an upgrade License 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

b. Internal reassignment of Licenses and Software Assurance.

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

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

9. Term and termination.

This agreement stays in place until terminated. The term of each Enrollment is stated in the Enrollment. "Renewal" means the renewal of an Enrollment. Either party can terminate the agreement on notice — that will not affect any existing Enrollments. Generally, existing Enrollments may be terminated: (1) if either party breaches the agreement and does not cure the breach in the time allotted; or (2) for non-appropriation of funds. Generally, upon termination or expiration, Enrolled Affiliate must order Licenses for copies of Products it has been using but has not yet placed orders for, and pay for all Licenses in full.

- a. **Term.** This agreement will remain in effect unless it is terminated by either party as described below. Each Enrollment or order will have the term provided in that Enrollment or order
- b. **Termination without cause.** Either party may terminate this agreement, without cause, upon 60 days written notice. Such termination will merely terminate either party's and its Affiliates' ability to enter into new Enrollments under this agreement. Such termination will not affect any Enrollment or order not otherwise terminated, and any terms of this agreement applicable to any Enrollment or order not otherwise terminated will continue in effect with respect to that Enrollment or order. An Enrolled Affiliate may terminate an Enrollment without liability, penalty or further obligation to make payments if funds to make payments under the Enrollment are not appropriated or allocated for such purpose.
- c. **Termination for breach.** Either party to an Enrollment may terminate it if the other party materially breaches its obligations under this agreement, including any obligation to submit orders or pay amounts owed (even if such non-payment is caused by non-appropriation of funds). Except where the breach is by its nature not curable within 30 days, the terminating party must give the other party 30 days notice and opportunity to cure.

If Microsoft gives such notice to an Enrolled Affiliate, Microsoft will give Customer a copy of that notice as well and Customer agrees to assist in attempting to resolve the breach. If the breach also affects other Enrollments and cannot be resolved between Microsoft and Customer within a reasonable period of time, Microsoft may also terminate this agreement and all other Enrollments under it, unless the basis for termination of the enrollment is non-appropriation of funds to the Enrolled Affiliate, in which event Microsoft may only terminate the affected Enrollment(s). If an Enrolled Affiliate ceases to be Customer's Affiliate, Customer must promptly notify Microsoft, and Microsoft may terminate its Enrollment.

- d. **Early termination.** If (1) an Enrolled Affiliate terminates its Enrollment as a result of a breach by Microsoft, or (2) if Microsoft terminates an Enrollment because the Enrolled Affiliate has ceased to be an Affiliate of Customer, or (3) Enrolled Affiliate terminates an enrollment for non-appropriation of funds, or (4) Microsoft terminate an enrollment for non-payment due to non-appropriation of funds then the Enrolled Affiliate will have the following options:
 - (i) It may immediately pay the total remaining amount due, including all installments, in which case, the Enrolled Affiliate will have perpetual rights for all Licenses it has ordered; or
 - (ii) It may pay only amounts due as of the termination date, in which case the Enrolled Affiliate will have perpetual Licenses for

- all copies of Products (including the latest version of Products ordered under SA coverage in the current term) for which payment has been made in full, and
- the number of copies of Products it has ordered (including the latest version of Products ordered under Software Assurance coverage in current term) that is proportional to the total of installment payments paid versus total amounts due (paid and payable) if the early termination had not occurred.

Nothing in this section shall affect perpetual License rights acquired either in a separate agreement or in a prior term of the terminated Enrollment

- e. Effect of termination or expiration.** When this agreement expires or is terminated,
- (i) Enrolled Affiliate must order Licenses for all copies of Products it has run for which it has not previously submitted an order. Except as provided in the subsection titled "Early termination," all unpaid payments for Licenses immediately become due and payable.
 - (ii) Enrolled Affiliate's right to Software Assurance benefits under this agreement ends if it does not renew Software Assurance.

10. How to renew an Enrollment.

Generally, an Enrolled Affiliate can renew Enrollments for an additional one-year or three-year term, at its option. The renewal must include an order for Software Assurance for all Enterprise Products previously ordered, for all Qualified Desktops, and/or Qualified Users previously covered. Price levels and prices are reset at the beginning of the renewal term.

Microsoft will provide each Enrolled Affiliate with 60 days prior written notice of expiration of its Enrollment or renewal term advising it of its renewal options. An Enrolled Affiliate may have the option to renew its Enrollment for one term of 12 or 36 full calendar months. Microsoft and its Affiliates will not unreasonably reject any renewal. However, Microsoft may make a change to this program that will make it necessary for Customer and its Enrolled Affiliates to enter into new agreements and Enrollments.

- a. Renewal option.** The renewal term will start on the day following expiration of the prior term. An Enrolled Affiliate may not add new Enterprise Products not previously ordered as part of its renewal; to license new Enterprise Products, it must submit a new Enrollment.
- (i) **Consequences of non-renewal.** If the Enrolled Affiliate elects not to renew its Enrollment or Software Assurance for any Product under its Enrollment, and it otherwise allows Software Assurance for any Licenses acquired under its Enrollment to lapse, then the Enrolled Affiliate will not be permitted to order Software Assurance later without first acquiring L&SA
 - (ii) **Renewal price levels.** Prices and price levels for pools from which an Enterprise Product has been ordered will be reset for each renewal term based upon the Enrolled Affiliate's total number of Qualified Desktops as of the date of the renewal order.
 - (iii) **Renewing User-based Licenses.** If user-based Enterprise Products are renewed as part of the platform, then price levels are reset based on the current Qualified Desktop count. However if the user-based Enterprise Product is renewed outside of a platform, then the price level for the applicable pool will be based on the Enrolled Affiliate's total number of Qualified Users as of the date of the renewal order
 - (iv) **For Products renewed in a renewal order.** For each Enterprise Product and each Additional Product being renewed, the Enrolled Affiliate's renewal prices for all Licenses will be those prices in effect for its renewal price level for that Product as of the date of the renewal order.
 - (v) **For Additional Products added during a renewal term.** For each new Additional Product first added during a renewal term, the Enrolled Affiliate's prices for all Licenses

will be those prices in effect for its renewal price level for that Product as of the date that it places its first order for that Product.

(vi) **Placing renewal orders.** To renew, the Enrolled Affiliate must submit a renewal order within 30 days after the previous term expired. The renewal order must be for Software Assurance for:

- all platform Products or device-based Enterprise Products previously ordered equal to the number of Qualified Desktops in the Enrolled Affiliate's Enterprise as of the date of that renewal order,
- all user-based Enterprise Products equal to the number of Qualified Users covered by the Enrolled Affiliate's Enrollment as of the date of that renewal order.

At renewal, where applicable, an Enrolled Affiliate can elect to exchange its Device-based Licenses for User-based Licenses or vice-versa. In that event, the Enrolled Affiliate's renewal order must include L&SA for any number of Qualified Desktops or Qualified Users in excess of its current count. See the Product List for more information, and

- all Additional Product Licenses for which the Enrolled Affiliate elects to renew Software Assurance.

11. Restrictions on use.

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

a. Enrolled Affiliate must not:

- (i) separate and use the components of a Product on two or more computers, upgrade or downgrade components at different times, or transfer components separately, except as provided in the Product use rights;
- (ii) reverse engineer, decompile or disassemble any Product or Fix, except where applicable law permits it despite this limitation; or
- (iii) rent, lease, lend or commercially host to third parties any Product or Fix, except where Microsoft agrees by separate agreement

b. U.S. export jurisdiction. Products and Fixes are subject to U.S. export jurisdiction. For additional information see <http://www.microsoft.com/exporting>.

12. Confidentiality.

To the extent permitted by applicable law this agreement is confidential and should not be disclosed to third parties except to third parties that need to know about the agreement. Such parties should be instructed to keep the agreement in strict confidence. The agreement and its terms and conditions may be shared with affiliates and agents.

To the extent permitted by applicable law, the terms and conditions of this agreement are confidential. Neither party nor any of its Affiliates will disclose such terms and conditions, or the substance of any discussions that led to them, to any third party other than such party's Affiliates or agents, or to the Enrolled Affiliate's designated or prospective resellers who (1) have a need to know such information to assist in carrying out this agreement; and (2) have been instructed by one of the parties that all such information is to be handled in strict confidence.

13. Warranties.

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

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

14. Defense of infringement and misappropriation claims.

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

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

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

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

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

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

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

15. Limitation of liability.

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

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

- a. **Limitation on liability.** Except as otherwise provided in this section, to the extent permitted by applicable law, the liability of Microsoft and of Microsoft's contractors to Customer and its Affiliates arising under this agreement is limited to direct damages up to the amount Customer paid for the Product giving rise to that liability. In the case of Free Product or code that Customer is authorized to redistribute to third parties without separate payment to Microsoft, Microsoft's liability is limited to U.S. \$5,000. These limitations apply regardless of whether the liability is based on breach of contract, tort (including negligence), strict liability, breach of warranties, or any other legal theory. However, these monetary limitations will not apply to:
 - (i) Microsoft's obligations under the section titled "Defense of infringement and misappropriation claims"; or
 - (ii) liability for damages 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 the section entitled "Confidentiality"; or
 - (iv) liability for personal injury or death caused by Microsoft's negligence or that of its employees or agents or for fraudulent misrepresentation.
- b. **EXCLUSION OF CERTAIN DAMAGES. TO THE EXTENT PERMITTED BY APPLICABLE LAW, WHATEVER THE LEGAL BASIS FOR THE CLAIM, NEITHER PARTY, NOR ANY OF ITS AFFILIATES OR SUPPLIERS, WILL BE LIABLE FOR ANY INDIRECT DAMAGES (INCLUDING, WITHOUT LIMITATION, CONSEQUENTIAL, SPECIAL OR INCIDENTAL DAMAGES, DAMAGES FOR LOST PROFITS OR REVENUES, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION) ARISING IN CONNECTION WITH THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH POSSIBILITY WAS REASONABLY FORESEEABLE. HOWEVER, THIS EXCLUSION DOES NOT APPLY TO EITHER PARTY'S LIABILITY TO THE OTHER FOR VIOLATION OF ITS CONFIDENTIALITY OBLIGATIONS OR OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS.**

16. Verifying compliance.

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

- a. **Right to verify compliance.** Customer must keep records relating to the Products it and its Affiliates use under any license agreement. Microsoft has the right to verify compliance with the agreement, at Microsoft's expense, during the term of the applicable enrollment and for a period of one year thereafter.
- b. **Verification process and limitations.** To verify compliance, Microsoft will engage an independent accountant from an internationally recognized public accounting firm, which will be subject to a confidentiality obligation. Verification will take place upon not fewer than 30 days notice, during normal business hours and in a manner that does not interfere unreasonably with Customer's operations. As an alternative, Microsoft can require Customer to complete Microsoft's self-audit questionnaire relating to the Products Customer and any of its Affiliates use under this agreement, but reserves the right to use a verification process as set out above.

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

- c. **Remedies for non-compliance.** If verification or self-audit reveals any unlicensed use, Customer must promptly order sufficient licenses to cover its use. If material unlicensed use is found, Customer must reimburse Microsoft for the costs Microsoft has incurred in verification and acquire the necessary additional licenses at single retail license cost within 30 days.

17. Miscellaneous.

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

<i>Copies should be sent to:</i>	
Microsoft Corporation	
Legal and Corporate Affairs	
Volume Licensing Group	
One Microsoft Way	
Redmond, WA 98052	USA
Via Facsimile (425) 936-7329	

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

- e. **Applicable law; Dispute resolution.** The terms of this agreement will be governed by the laws of Enrolled Affiliate's state, without giving effect to its conflict of laws. Disputes relating to this agreement will be subject to applicable dispute resolution laws of Enrolled Affiliate's state.
- f. **This agreement is not exclusive.** Customer is free to enter into agreements to license, use or promote non-Microsoft software or services.
- g. **Entire agreement.** This agreement, the Product List, all Enrollments under this agreement, and the Product use rights constitute the entire agreement concerning the subject matter and supersede any prior or contemporaneous communications. In the case of a conflict between any of these documents that is not resolved expressly in the documents, their terms will control in the following order: (1) these terms and conditions and the accompanying signature form; (2) the Product List; (3) the Product use rights; (4) all Enrollments under this agreement; and (5) all orders submitted under this agreement. The terms of any purchase order or any general terms and conditions Customer or Customer Affiliates maintain do not apply.
- h. **Survival.** Provisions regarding ownership and License rights, fees, Product use rights, restrictions on use, evidence of perpetual Licenses, transfer of Licenses, warranties, defense of infringement and misappropriation claims, limitations of liability, confidentiality, compliance verification, obligations on termination or expiration and the other provisions in this section entitled "Miscellaneous" will survive termination or expiration of this agreement and of any agreement in which they are incorporated
- i. **No transfer of ownership.** Microsoft does not transfer any ownership rights in any licensed Product.
- j. **Free Products.** It is Microsoft's intent that the terms of this agreement and the Product use rights be in compliance with all applicable federal law and regulations. Any Free Product provided to Enrolled Affiliate is for the sole use and benefit of the Enrolled Affiliate, and is not provided for use by or personal benefit of any specific government employee.
- k. **Amending the agreement.** This agreement (except the Product List and the Product use rights) can be changed only by an amendment signed by both parties.
- l. **Resellers and other third parties cannot bind Microsoft.** Resellers and other third parties do not have authority to bind or impose any obligation or liability on Microsoft.
- m. **Customer's rights to privacy.** Microsoft and Customer will comply with all applicable privacy and data protection laws and regulations. Customer will not give any data to Microsoft containing personal information unless the owner of the data has specifically authorized Customer to do so for use as contemplated in the last sentence of this subsection. Customer agrees to allow Microsoft to use the contact information Customer gave to Microsoft to allow Microsoft, its Affiliates, and other parties to help Customer comply with this agreement. Any personal information Customer provides in connection with this agreement will be used and protected according to the privacy statement available at <https://licensing.microsoft.com>
- n. **Natural disasters.** In the event of a "natural disaster", Customer may have special rights, please go to <http://www.microsoft.com>
- o. **Copyright Violation.** Except as set forth in the section above entitled "Transferring and reassigning Licenses", the Enrolled Affiliate agrees to pay for, and comply with the terms of this agreement and the Product use rights, for the Products it uses. Except to the extent Enrolled Affiliate is licensed under this agreement, it will be responsible for its breach of this contract and violation of our copyright in the Products, including payment of License fees specified in this agreement for unlicensed use.

Supplemental Contact Information Form State and Local

This form can be used in combination with Agreement, and Enrollment/Registration. However, a separate form must be submitted for each Enrollment/Registration, when more than one is submitted on a signature form. For the purposes of this form, "Entity" can mean the signing Entity, Customer, Enrolled Affiliate, Integrator, Institution, or other party entering into a Volume Licensing program agreement. Primary and Notices contacts in this form will not apply to Enrollments or Registrations.

This form applies to Agreement
 Enrollment/Affiliate Registration Form

Insert primary entity name if more than one Enrollment/Registration Form is submitted

Contact information.

Each party will notify the other in writing if any of the information in the following contact information page(s) changes. The asterisks (*) indicate required fields. If the Entity chooses to designate other contact types, the same required fields must be completed for each section. By providing contact information, entity consents to its use for purposes of administering the Enrollment by Microsoft and other parties that help Microsoft administer this Enrollment. The personal information provided in connection with this agreement will be used and protected according to the privacy statement available at <http://licensing.microsoft.com>.

1. Additional electronic contractual notices contact information:

This contact will receive electronic contractual notices in addition to the notices contact. This contact is not required if Entity does not want a duplicate set of notices issued.

Name of Entity* County of Riverside
Contact name First* Rithy Last* Hai
Contact email* rhai@co.riverside.ca.us
Street address* 2980 Washington St.
City* Riverside State/Province* California Postal code* 92504
Country* US
Phone* 951-955-4929 Fax 951-955-4946

This contact is a third party (not the Entity) Warning This contact receives personally identifiable information of the Entity.

2. Software Assurance benefits contact:

This contact will receive communications concerning Software Assurance benefits, and any additional TechNet subscriptions that have been ordered separately from Software Assurance under its Enrollment or Registration.

Name of Entity* County of Riverside
Contact name First* Rithy Last* Hai
Contact email* rhai@co.riverside.ca.us
Street address* 2980 Washington St.
City* Riverside State/Province* California Postal code* 92504
Country* US
Phone* 951-955-4929 Fax 951-955-4946

3. MSDN contact:

This contact will receive communications concerning registration for MSDN products ordered under its Enrollment or Registration

Name of Entity* County of Riverside
Contact name First* Rithy Last* Hai
Contact email* rhai@co.riverside.ca.us
Street address* 2980 Washington St
City* Riverside State/Province* California Postal code* 92504
Country* US
Phone* 951-955-4929 Fax 951-955-4946

4. Online Services administrator:

This person will receive communications concerning registration for Online Services ordered under its Enrollment or Registration

Name of Entity* County of Riverside
Contact name First* Rithy Last* Hai
Contact email* rhai@co.riverside.ca.us
Street address* 2980 Washington St.
City* Riverside State/Province* California Postal code* 92504
Country* US
Phone* 951-955-4929 Fax 951-955-4946

5. Customer Support Manager (CSM) contact information:

This person is designated as the Customer Support Manager (CSM) for support-related activities.

Name of Entity* County of Riverside
Contact name First* Rithy Last* Hai
Contact email* rhai@co.riverside.ca.us
Street address* 2980 Washington St
City* Riverside State/Province* California Postal code* 92504
Country* US
Phone* 951-955-4929 Fax 951-955-4946

6. Primary contact information:

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

Name of Entity* County of Riverside
Contact name First* Rithy Last* Hai
Contact email* rhai@co.riverside.ca.us
Street address* 2980 Washington St.
City* Riverside State/Province* California Postal code* 92504
Country* US
Phone* 951-955-4929 Fax 951-955-4946

7. Notices and online access contact information:

This will designate a notices and online access contact different than the primary contact. This contact will replace the default administrator (primary contact) for the Agreement and receive all notices. This contact may appoint other administrators and grant others access to online information.

Same as primary contact

Name of Entity*

Contact name* First Last

Contact email*

Street address*

City* State/Province* Postal code*

Country*

Phone* Fax

Microsoft Licensing, GP Document Summary Form

* This is for informational purposes only *

MSE#:

2-2391055178

(MSLI
Tracking
Number)

Doc Type:

Amendments

Do not modify the formatting or spacing of this Form above this text

Subsidiary

Account Manager Name / Alias:

Country: **United States**

LAR/LAD/ESA:

n/a

Program/Version

EA SLG 6.6

ACCOUNT: County of Riverside

Outsourcer Name **n/a**

Business Agreement Number **n/a**

Master Agreement Number: **01E69633**

Agreement Number **n/a**

Purchase Order Number **n/a**

Comments:

3

Enterprise Agreement

Amendment ID CTM

001-fsilver- CORIVEA02

This amendment is entered into between the customer and Microsoft affiliate signing, as of the effective date identified below. All terms used but not defined will have the same meanings as in the Microsoft Enterprise Agreement identified above "the agreement." The following terms and conditions amend the terms and conditions of the agreement identified above with respect to the customer identified below and its enrolled affiliates. *This amendment provides changes in accordance with the requests of the County of Riverside and allows for a discount pursuant to the 200,000 desks currently participating under the County of Riverside Enterprise Agreement number 01E62044*

1. Section 2. A. of the Enterprise agreement is hereby amended and replaced in it's entirety as follows:

- a. Establishing price levels.** Each product is assigned to one of the following pools: applications, systems or servers. An enrolled affiliate's prices are based on the "price level" for which it qualifies in each individual product pool. *Price levels are established for enterprise products at Level D-7.5% and additional products at level D for all enrollments unless otherwise specified in an amendment to a specific enrollment.*

Product pools from which an enterprise product has been ordered,

Generally, for each product pool from which an enrolled affiliate orders an enterprise product, the price level throughout the initial term of the enrollment for any enterprise products *shall be D-7.5% and additional products ordered from that pool will be priced at level D-7.5% for the initial order at the time of enrollment. True-up pricing shall be determined pursuant to attachment A of this agreement.*

When the user CALs are ordered, the price level for any enterprise products or additional products ordered from the server pool is established as follows.

- If the user CALs are ordered as part of the Platform, then that price level is set as provided in the general rule.
- If the user CALs are ordered in any other way, then that price level will be set based on the enrolled affiliate's initial number of qualified users.

Product pools from which no enterprise product has been ordered. For any product pool from which the enrolled affiliate does not order an enterprise product, the price level for additional products within that pool will be price level "D" throughout the term of the enrollment (including any renewals).

Renewal price levels. Generally, price levels for pools from which an enterprise product has been ordered will be *level D-7.5% for Enterprise products and level D-7.5% for additional products at the initial order at the time of enrollment. True-up pricing shall be determined pursuant to attachment A of this agreement*

When renewing with the user CALs, the price level for any enterprise products or additional products ordered from the server pool is established as follows:

- If the user CALs are renewed as part of the platform, then that price level is reset as provided in the general rule.
- If the user CALs are renewed in any other way, then that price level will be the price level which the enrolled affiliate qualifies based on the enrolled affiliate's total number of qualified users as of the date of the renewal order.

2. A new section 19 I. is added to the agreement as follows:

The County of Riverside has required us to provide a 36 month and 60 month enrollment offering per your original RFP and final award. Enrolled affiliates may terminate their enrollments for their convenience without penalty on the third anniversary of their enrollment (or at any other time as permitted by California law) subject to proportional licensing as set forth in Section 12.e. of the agreement

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