

City of Delray Beach Program Agreement

Enterprise Program Agreement

This City of Delray Beach ("Agency" or "Enrolled Affiliate" or "Customer") Program Agreement ("Agreement") is entered into between Agency and Insight Public Sector, Inc. ("Insight Public Sector"). Under this agreement, Insight Public Sector will submit Enrollments and order, on behalf of the Agency, Subscription Licenses for one or more Products, solely in connection with a Government Contract. Such licenses are solely for the use of the Enrolled Affiliates identified in each Enrollment, and not for use or access by Government Partner or any other third party.

Effective date. The effective date of this agreement is the date Microsoft accepts this Agreement. Any reference in this agreement or Enrollment to "day" means a calendar day, except references that specify "business day".

This agreement consists of (1) these terms and conditions, (2) the Product Terms applicable to Products licenses under this Agreement, (3) the Online Services Terms, (4) the Microsoft Customer Terms and Conditions set forth in Appendix A, (5) any Enrollment entered into under this Agreement and (6) Insight Public Sector's price to the government.

Please note: Documents referenced in this agreement but not attached may found at the Volume Licensing Site and are incorporated in this agreement by reference, including the Product Terms and Online Services Terms. These documents may contain additional terms and conditions for Products licensed under this Agreement and may be changed from time to time.

Terms and Conditions

1. Definitions

In this Agreement, the following definitions apply:

"Additional Product" means any Product identified as such in the Product Terms and ordered under an Enrollment.

"Affiliate" means

- a. With regard to Enrolled Affiliate, any State/Local Entity in the same State as Enrolled Affiliate, and for whose compliance with the Microsoft Customer Terms and Conditions Enrolled Affiliate accepts responsibility for in its Government Contract; and
- b. With regard to Microsoft or Government Partner, any legal entity that such party owns, or is owned by that party, or that is under common ownership with that party. "Ownership" means, for purpose of this definition, control of more than 50% interest in any entity.

"Agreement" means this Enterprise Agreement.

"Customer Data" means all data, including all text, sound, software, image, or video files that are provided to Microsoft by, or on behalf of, an Enrolled Affiliate through use Online Services.

"Community" means the community consisting of one or more of the following: (1) a Government, (2) a company using eligible Government Community Cloud Services to provide solutions to a Government or a qualified member of the Community, or (3) a company with Customer Data that is subject to Government regulations for which the company determines and Microsoft agrees that use of Government Community Cloud Services is appropriate to meet the company's regulatory requirements. Membership in the Community is ultimately at Microsoft's discretion, which may vary by Government Community Cloud Service.

"Enrolled Affiliate" means any State/Local Entity for which Government Partner orders Licenses under an Enrollment under

this Agreement which names that State/Local Entity. For clarity, Enrolled Affiliate is referred to as "Customer" in the Microsoft Customer Terms and Conditions, in Appendix A, below.

"Enrollment" means the document that Government Partner submits under this Agreement to place orders for Products to be consumed by the Enterprise.

"Enterprise" means, for each Enrollment, the Enrolled Affiliate and its Affiliates (if any) for which (a) Enrolled Affiliate chooses to purchase Products from Government Partner under the Government Contract to which the Enrollment applies; and (b) for which the Enrolled Affiliate accepts responsibility for complying with the Microsoft Customer Terms and Conditions, pursuant to the terms of its Government Contract.

"Enterprise Online Service" means any Online Service designated as an Enterprise Online Service in the Product Terms and chosen by Enrolled Affiliate under an Enrollment.

"Enterprise Product" means any Desktop Platform Product that Microsoft designates as an Enterprise Product in the Product Terms and chosen by Enrolled Affiliate under an Enrollment. Enrolled Affiliate must license Enterprise Products for all Qualified Devices and Qualified Users in the Enterprise under this program.

"Expiration Date" means, for each Enrollment, the date upon which the Enrollment expires.

"Federal Agency" means a bureau, office, agency, department or other entity of the United States Government.

"Fixes" means Product fixes, modification or enhancements, or their derivatives, that Microsoft either releases generally (such as service packs) or provides to the Enterprise.

"Government" means City of Delray Beach.

"Government Community Cloud Services" means Microsoft Online Services that are provisioned in Microsoft's multi-tenant data centers for exclusive use by or for the Community and offered in accordance with the National Institute of Standards and Technology (NIST) Special Publication 800-145. Microsoft Online Services that are Government Community Cloud Services as designated as such in the Use Rights and Product Terms.

"Government Partner" means Insight Public Sector.

"Industry Device" (also known as a line of business device) means any device that: (1) is not useable in its deployed configuration as a general purpose personal computing device (e.g., 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 (e.g., 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" means the right to download, install, access and use a Product. For certain Products, a License may be available on a fixed term or subscription basis ("Subscription License"). Licenses for Online Services will be considered Subscription Licenses.

"Managed Device" means any device on which any Affiliate in the Enterprise directly or indirectly controls one or more operating systems environments. Examples of Managed Devices can be found in the Product Terms.

"Microsoft" means the Microsoft Affiliate that has entered into this Agreement, and its Affiliates, as appropriate.

"Microsoft Customer Terms and Conditions" means those use rights and restrictions set forth in Appendix A to this agreement, which Government Partner is required to include in its Government Contracts.

"Online Services" means the Microsoft-hosted services identified as Online Services in the Product Terms.

"Online Services Terms" means the additional terms that apply to each Enrolled Affiliate's (and its Enterprise's) use of Online Services published on the Volume Licensing Site and updated from time to time.

"Product" means all products identified in the Product Terms, such as all Software, Online Services and other web-based services, including pre-release or beta versions.

"Product Terms" means the document that provides information about Microsoft Products available through volume licensing. The Product Terms document is published on the Volume Licensing Site and is updated from time to time.

"Device" means any device that is used by or for the benefit of the Enterprise and is: (1) a personal desktop computer, portable computer, workstation, or similar device capable of running Windows Pro 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, (2) an Industry Device, or (3) not a Managed Device. At its option, Enrolled Affiliate may designate any device excluded above (e.g., Industry Device) that is used by or for the benefit of the Enterprise as a Qualified Device for all or a subset of Enterprise Products or Online Services Enrolled Affiliate has selected.

"Qualified User" means a person (e.g., employee, consultant, contingent staff) who: (1) is a user of a Qualified Device or (2) accesses any server software requiring an Enterprise Product Client Access License or any Enterprise Online Service. It does not include a person who accesses server software or an Online Service solely under a License identified in the Qualified User exemptions in the Product Terms.

"SLA" means Service Level Agreement which specifies the minimum service level for Online Services and is published on the Volume Licensing Site.

"Reserved License" means, for an Online Service identified as eligible for annual orders in the Product Terms, the License reserved by Government Partner prior to the Enterprise's use and for which Microsoft will make the Online Service available for activation by the Enterprise.

"Software" means licenses copies of Microsoft software identified on the Product Terms. Software does not include Online Services, but Software may be part of an Online Service.

"Software Assurance" is an offering by Microsoft that provides new version rights and other benefits for Products as further described in the Product Terms;

"State/Local Entity" means (1) an agency of a state or local government in the United States, or (2) any United States 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's jurisdiction and geographic boundaries.

"Trade Secret" means information that is not generally known or readily ascertainable to the public, has economic value as a result, and has been subject to reasonable steps under the circumstances to maintain its secrecy;

"Tribal Entity" means a federally-recognized tribal entity performing tribal governmental functions and eligible for funding and services from the U.S. Department of Interior by virtue of its status as an Indian tribe.

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

"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. The Use Rights for Software are published in the Product Terms. The Use Rights for Online Services are published in the Online Services Terms.

"Volume Licensing Site" means <http://www.microsoft.com/licensing/contracts> or a successor site.

2. How this Agreement works.

- a. **General.** Under this Agreement, Enrolled Affiliate may order Products by entering into one or more Enrollments for use by the Enterprise established for each Enrollment.
- b. **Acquiring Licenses.** Enrolled Affiliates will acquire Products for their Enterprise through Government Partner.
- c. **No agency relationship.** Government Partner is not acting as a contracting agent to bind any Enrolled Affiliate or any of an Enrolled Affiliate's Affiliates to the terms of this Agreement. Government Partner does not have any authority to make any contractual commitments on behalf of Microsoft. Government Partner is an independent third party.

3. Pricing.

- a. **Enrolled Affiliate pricing.** Pricing for Licenses Government Partner resells to Enrolled Affiliate will be determined by agreement between Government Partner and Enrolled Affiliate. Microsoft will not be a party to such agreement.

4. Order requirements.

- a. **Minimum order requirements.** Enrolled Affiliate's Enterprise must include a minimum of 25 Qualified Users or Qualified Devices. Enrolled Affiliates initial order must include at least 25 Licenses in a single Product pool for Enterprise Product or Enterprise Online Services.
 - (i) **Enterprise Commitment.** Enrolled Affiliate must order enough Licenses from the Product pool for each Enterprise Product to cover all Qualified Users and/or all Qualified Devices. Enrolled Affiliate may elect to mix Enterprise Products and Enterprise Online Services within a Product pool as long as all Qualified Devices not covered by a License are only used by users covered with a user License.
 - (ii) **Enterprise Online Services only.** In Enrolled Affiliate does not order an Enterprise Product, then Enrolled Affiliate need only maintain at least 25 Subscription Licenses for Enterprise Online Services.

Azure Only Option for Enrollments. As an exception to the foregoing, Enrolled Affiliate may submit an Enrolled for Azure Monetary Commit and related Azure Plans only, with no other products.
- b. **Additional Products.** Upon satisfying the minimum order requirements, above, Enrolled Affiliate may order Additional Products and Services for the Enterprise.
- c. **Enrolled Affiliates.** Enrolled Affiliates must be State/Local Entities.
- d. **Third party authority.** Government Partner and Enrolled Affiliate do not have authority to bind or impose any obligation or liability on Microsoft.
- e. **Adding Products.**
 - (i) **Adding new Products not previously ordered.** Enrolled Affiliate may order new Enterprise Products or Enterprise Online Services for the Enterprise by contacting Government Partner. The Enterprise may use new Additional Products, other than Online Services, if Enrolled Affiliate places an order for the Additional Product in the month the Enterprise first uses the Product. For Additional Products that are Online Services, Enrolled Affiliate must order the Online Service before the Enterprise can use the Online Service.
 - (ii) **Adding Licenses for previously ordered Products.** Enrolled Affiliate may order additional Licenses for Products it has previously ordered (other than Online Services) at any time but must include the additional Licenses in its next annual order. Enrolled Affiliate must order additional License for Online Services prior

to the Enterprise using the additional Online Services, unless the Online Services are (1) identified as eligible for the annual order process in the Product Terms or (2) included as part of other Licenses.

- f. Annual order requirements.** Enrolled Affiliate must submit an annual order that accounts for changes since its initial order or last annual order (or other order placed after the last annual order), as applicable. If there are no changes, Enrolled Affiliate must submit an update statement instead of an annual order. For Products ordered under an Enterprise Enrollment, the term "annual order" is equivalent to "true up order".
- (i) Enterprise Products.** For Enterprise Products, Enrolled Affiliate must determine how many Qualified Devices and Qualified Users (if ordering user-based Licenses) the Enterprise has at the time Enrolled Affiliate places the annual order and order additional Licenses for all Qualified Devices and Qualified Users that are not already covered by existing Licenses, including any Enterprise Online Services.
 - (ii) Additional Products.** For Additional Products that Enrolled Affiliate has previously ordered submitted under this agreement, Enrolled Affiliate must determine the maximum number of Additional Products the Enterprise has used since the latest (1) the date of Enrolled Affiliates' initial order, (2) the date of Enrolled Affiliates most recent annual order, or (3) the most recent anniversary date of this agreement and submit an annual order for Licenses that accounts for any increase in the Enterprise's use of Additional Products.
 - (iii) Online Services.** For Online Services identified as eligible for annual order in the Product Terms, Enrolled Affiliate may reserve additional Licenses prior to an Enterprise's use of such Online Service. Government Partner will provide a report of Reversed Licenses in excess of existing orders to Enrolled Affiliate. Reserved Licenses will be invoiced retroactively for the prior year based upon the month in which they were reserved, as well as proactively for the following year (if applicable). Enrolled Affiliate must place a final order for Online Services that allow annual orders within in 30 days of the Expiration Date.
 - (iv) Subscription License reductions.** At the Enrollment anniversary date, Enrolled Affiliate may reduce the quantity of Subscription Licenses it has ordered on a prospective basis, if permitted in the Product Terms, provided that:
 - 1)** For Subscription Licenses that are part of an Enterprise-wide purchase, Licenses may be reduced if the total quantity of Licenses and Software Assurance for an applicable group meets or exceed the quantity of Qualified Devices or Qualified Users (if ordering user-based Licenses), and includes any additional Qualified Devices and Qualified Users added in any prior true-up orders. Step-up Licenses and add-on subscription licenses do not count towards this total count.
 - 2)** For Enterprise Online Services in a given Product pool licensed under an Enterprise Enrollment that are not part of an Enterprise-wide purchase, Enrolled Affiliate may reduce Licenses as long as the initial order minimum requirements are maintained.
 - 3)** For Enterprise Online Services and Enterprise Products licensed under an Enterprise Subscription Enrollment, Licenses can be reduced, as long as the initial order minimum requirements are maintained.
 - 4)** For Additional Products, if Enrolled Affiliate reduces the quantity of Subscription Licenses to zero, the Enterprise will no longer be licensed to use the applicable Additional Product(s).

Government Partner will adjust invoices to reflect any reductions in Subscription Licenses at the annual order Anniversary date, which reductions shall be effective as of that date.

- (v) **Device-based and user-based Licenses.** If the Use Rights provide that both device- and user-based Licenses are available for a Product and Enrolled Affiliate ordered device-based Licenses in the prior year, at each Enrollment anniversary date, it may instead order user-based Licenses, or vice versa.
 - (vi) **Update statement.** Enrolled Affiliate must submit an update statement instead of an annual order if, based on the date of Enrolled Affiliate's initial order or last annual order (or later order), (1) the number of Qualified Devices and Qualified Users in an Enterprise has not increased or (2) the Enterprise has not increased its usage of Additional Products. The update statement must be signed by Enrolled Affiliate's authorized representative.
 - (vii) **Late annual order.** If Government Partner does not receive Enrolled Affiliate's annual order or update statement when due, Government Partner will invoice Enrolled Affiliate for the quantity of Subscription Licenses Enrolled Affiliate ordered in the prior year and all Reserved Licenses in excess of that quantity. Enrolled Affiliate cannot report Subscription License reductions until the following Enrollment anniversary date or at Enrollment renewal, as applicable.
- g. Step-up Licenses.** For Licenses eligible for step-up under the Enrollment, Enrolled Affiliate may step-up to a higher edition or suite as follows:
- (i) For Enterprise Products and Online Services eligible for the annual order process, Enrolled Affiliate may order according to the annual order process.
 - (ii) For Additional Products (and Enterprise Products and Online Services eligible for the annual order process but not included on an initial order), Enrolled Affiliate may step-up by following the process described in the Section titled "Adding new Products not previously ordered."
- h. Buy-out Option.** Enrolled Affiliate may buy out Subscription Licenses acquired under an Enterprise Subscription Enrollment for Products other than Online Services (if permitted) and acquire perpetual Licenses for the latest version of the applicable Product as of the Expiration Date by ordering such Licenses at the buy-out price. Government Partner must receive Enrolled Affiliate's buy-out order no more than 30 days prior to the Expiration Date. The Expiration Date will be the invoice date for the buy-out order. If Enrolled Affiliate places a buy-out order, it must buy out Subscription Licenses for (1) all Qualified Devices and Qualified User added to the Enterprise during the final year of the Enrollment term, (2) all Additional Products the Enterprise is using for which Enrolled Affiliate has not yet placed an order, and (3) at least one of the following:
- (i) For all Enterprise Products which allow buy-out, the number of perpetual Licenses equal to the total number of the Enterprise's current Qualified Devices or Qualified Users for such Products, and/or
 - (ii) For Additional Products, the number of perpetual Licenses Enrolled Affiliate elects to obtain.
- i. Clerical Errors.** Microsoft and Government Partner may correct clerical errors in the Enrollment, and any documents submitted with or under the Enrollment, by provided notice by email and reasonable opportunity for Enrolled Affiliate to object to the correction. Clerical errors include minor mistakes, unintentional additions and omissions. This provision does not apply to material terms, such as the identity, quantity or price of a Product ordered.
- j. Verifying compliance.** Microsoft may, in its discretion and at its expense, verify Government Partner and Enrolled Affiliate's compliance with this Agreement.

5. Term and termination.

- a. Term.** This Agreement expires on the last day of the 36th full calendar month after the effective date of the Agreement. Each Enrollment will have the term provided in that Enrollment.

- b. Termination without cause.** Either party may terminate this Agreement, without cause, upon 60 days' written notice to the other party. In the event of termination, Microsoft will not accept new Enrollments, but any existing Enrollment will remain in effects for the term of such Enrollment and will continue to be governed by this Agreement.
- c. Mid-term termination for non-appropriation of Funds.** Government Partner may terminate an Enrollment without liability, penalty or further obligation to make payments to Microsoft if sufficient funds are not appropriated to or by the Enrolled Affiliate to make the payment to Government Partner required under a Government Contract (a "Non-Appropriation of Funds").
- d. Termination for Cause.** Without limiting any other remedies it may have, either party may terminate an Enrollment if the other party materially breaches its obligations under this Agreement, including any obligation to submit orders or pay invoices (even if such breach is caused by a Non-Appropriation of Funds. Except where a breach of this Agreement is by its nature not curable within 30 days, the terminating party must give the other party 30 days' notices of its intent to terminate an Enrollment due to a breach and an opportunity to cure the breach. If a breach by Government Partner affects more than one Enrollment and is not cured within a reasonable period of time, Microsoft may terminate this Agreement and all Enrollments under it, provided that if a breach is a result of Non-Appropriation of Funds, Microsoft may only terminate the Enrollment(s) directly affected by the Non-Appropriation of Funds. Microsoft may also terminate an Enrollment if any member of an Enterprise materially violates the Use Rights or the Microsoft Customer Terms and Conditions. If Enrolled Affiliate ceases to qualify as a State/Local Entity under the Microsoft Customer Terms and Conditions, Enrolled Affiliate must promptly notify Government Partner and Government Partner must promptly notify Microsoft. Microsoft may terminate the Enrollment(s) under which Enrolled Affiliate has used to purchase Microsoft Products.
- e. Early Termination.** If (1) Government Partner or Enrolled Affiliate terminates an Enrollment as a result of Microsoft's breach, (2) Microsoft terminates an Enrollment because Enrolled Affiliate ceases to qualify as an Enrolled Affiliate under the Microsoft Customer Terms and Conditions, or (3) Government Partner terminates an Enrollment for non-payment due to a Non-Appropriation of Funds, then Enrolled Affiliate will have the following options for Licenses that are not Subscription Licenses:
 - 1) Enrolled Affiliate may immediately pay the total remaining amount due under the Enrollment, including all installments, in which case, Enrolled Affiliate will be granted perpetual rights for all Licenses Enrolled Affiliate has ordered under the Enrollment (for the latest version of Products ordered under Software Assurance coverage in an initial or renewal term); or
 - 2) Enrolled Affiliate may only pay amounts due under the Enrollment as of the termination date, in which case Enrolled Affiliate will be granted perpetual Licenses (for the latest version of Products ordered under Software Assurance) for (1) all copies of Products for which Enrolled Affiliate has paid in full and (2) a proportional number of Licenses for Products Enrolled Affiliate has ordered and for which it has paid.

For Subscription Licenses, Enrolled Affiliate will have the following options:

- 1) For eligible Products, Enrolled Affiliate may obtain perpetual Licenses as described in the section of this agreement entitled, "Buy-out option," provided that Government Partner receives the buy-out order for these Licenses within 60 days after Enrolled Affiliate notifies Government Partner of its intent to terminate the Enrollment.

In the event of a breach by Microsoft, if Enrolled Affiliate chooses not to exercise a buy-out option Government Partner will issue Enrolled Affiliate a credit for any amount paid in advance for Subscription Licenses that an Enterprise will not be able to use due to the termination of the Enrollment.
- 2) If Microsoft terminates an Online Service for regulatory reasons, Enrolled Affiliate will receive a credit for any amount paid in advance for the period after termination.

6. End of Enrollment term; renewal.

- a. **General.** At the Expiration Date of each Enrollment, Enrolled Affiliate must immediately order and pay for Licenses the Enrolled Affiliate has used but has not previously submitted an order, except as otherwise provided in this Agreement.
- b. **Renewal Option.** At the Expiration Date of the initial term of each Enrollment, Enrolled Affiliate can renew Products by renewing an Enrollment for one additional 36 full calendar month term or by agreeing to a new Enrollment. Government Partner must receive the renewal order prior to or at the Expiration Date. The renewal term will start on the day following the Expiration Date. Microsoft or Government Partner will not unreasonably reject any renewal. Microsoft may make changes to the Enterprise Agreement that will make it necessary for Enrolled Affiliate to enter into a new agreement and Enrollment at renewal.
- c. **If Enrolled Affiliate elects not to renew.**
 - (i) **Software Assurance.** If Enrolled Affiliate does not renew Software Assurance for any Product ordered under an Enrollment, Enrolled Affiliate may not order Software Assurance later without first acquiring a new License with Software Assurance.
 - (ii) **Subscription Licenses buy-out.** Enrolled Affiliate may obtain perpetual Licenses as described in the section entitled "Buy-out option" for Licenses which a buy-out is available.
 - (iii) **Online Services eligible for an Extended Term.** For Online Services identified as eligible for an Extended Term in the Product Terms, the following options are available at the end of the Enrollment initial or renewal term.
 - 1) **Extended Term.** Licenses for Online Services will automatically expire in accordance with the terms of the Enrollment. An extended term feature that allows Online Services to continue month-to-month ("Extended Term") is available. During the Extended Term, Online Services will be invoiced monthly at the then-current published price for Enrolled Affiliate's price level as of the Expiration Date plus a 3% administrative fee for up to one year. If Enrolled Affiliate wants an Extended Term, Government Partner must submit a request to Microsoft. This request must be received no less than 30 days prior to the Expiration Date.
 - 2) **Cancellation during Extended Term.** If Enrolled Affiliate has opted for the Extended Term and later determines not to continue with the Extended Term, Enrolled Affiliate must submit a notice of cancellation for each Online Service. Cancellation will be effective at the end of the calendar month following 30 days after Microsoft has received the notice.
 - (iv) **Subscription Licenses and Online Services without an Extended Term.** If Enrolled Affiliate elects not to renew an Enrollment, its Licenses will be cancelled and will terminate as of the Expiration Date, and Enrolled Affiliate will no longer have a right to use the Products ordered under the expired Enrollment. Any media associated with the Enrolled Affiliate's use of the Products must be uninstalled and destroyed and the Enrolled Affiliate must discontinue its use of the Products. Microsoft may request that Enrolled Affiliate certify in writing that the Enrolled Affiliate has complied with this section.

7. Miscellaneous

- a. **Notices.** Notices, authorization, and requests in connection with this Agreement must be sent by regular or overnight mail or express courier to the addresses and numbers listed below. Notices will be treated as delivered on the date shown on the return receipt on the courier confirmation of delivery.

Copies should be sent to:
Insight Public Sector 6820 S. Harl Ave. Tempe, AZ 85283 Attn: SLED Contracts Team

- b. **Management and Reporting.** Government Partner and/or Enrolled Affiliate may manage account details (e.g., contacts, orders, Licenses, software downloads) on Microsoft's Volume License Service Center ("VLSC") web site (or successor site) at: <https://www.microsoft.com/licensing/servicecenter>. Upon effective date of the Enrollment, the contact(s) identified for this purpose will be provided access to this site and may authorize additional users and contacts.
- c. **Order of precedence.** In the case of a conflict between any documents in this agreement that is not resolved expressly in the documents, their terms will control in the following order, from highest to lowest priority: (1) The government contract and the terms of this agreement; (2) all Enrollments under this Agreement; (3) the Product Terms; (4) the Online Services Terms; and (5) all orders submitted under this agreement. Terms in an amendment control over the amended document and any prior amendments concerning the same subject matter.
- d. **Applicable currency.** Any payments made must be in U.S. Dollars.
- e. **Assignment.** Either party may assign this Agreement to an Affiliate, but it must notify other party in writing for the assignment. Any other assignment of rights must be approved by the other party in writing. Assignment will not relieve the assigning party of its obligations under the assigned Agreement. Any attempted assignment without requires approval will be void.
- f. **Severability.** If any provision of this Agreement is held to be unenforceable, the balance of the Agreement will remain in full force and effect.
- g. **Waiver.** Failure to enforce any provision in this Agreement will not constitute a waiver. Any waiver must be in writing and signed by the waiving party.
- h. **Dispute resolution.** When bringing an action to enforce this Agreement, the parties agree to the following venues:

- (i) If Microsoft brings the action, the venue will be where Government Partner has its headquarters;
- (ii) If Government Partner or Enrolled Affiliate brings the action against Microsoft, the venue will be the State of Washington, USA.

This choice of venue does not prevent any party from seeking injunctive relief in any appropriate jurisdiction with respect to a violation of intellectual property rights or confidentiality obligations.

- i. **Survival.** All provisions survive termination or expiration of this Government Contract, except those requiring performance only during the term of this Government Contract.
- j. **This agreement is not exclusive.** Government Partner/Enrolled Affiliate is free to enter into agreements to license, use or promote non-Microsoft software or services.
- k. **Applicable law.** Except as provided in the following sentence, the terms of this Agreement will be governed by and construed in accordance with the laws of the State of Washington and federal laws of the United States. With regard to the Enrollments hereunder, this agreement will be governed by and construed in accordance with the laws of the State in which the applicable the Enrolled Affiliate is located, and the federal laws of the United States. The Products are protected by copyright and other intellectual property rights laws and international treaties.
- l. **Amendment.** Any amendment to this Agreement must be executed by all parties, except that Microsoft may change the Product Terms, Use Rights and Service Level Agreements in accordance with the terms of this Agreement. Any conflicting terms and conditions contained in a purchase order will not apply. Microsoft may require Government Partner and Enrolled Affiliate to execute a new agreement or an amendment to this Agreement before they will accept an Enrollment.
- m. **Natural Disaster.** In the event of a natural disaster, Microsoft may provide additional assistance or rights by posting them on <http://www.microsoft.com> at such time.

Enterprise Agreement Enrollment

This Microsoft Enterprise Enrollment is entered into between the Agency and Insight Public Sector. Under this Enrollment, Government Partner may order Licenses for the benefit of the Enrolled Affiliate and not for use or access by Government Partner or any other third party.

This Enrollment consists of: (1) these terms and conditions, (2) the terms of the Enterprise Agreement, (3) the Product Selection Form, (4) any supplemental contact information form or Previous Agreement/Enrollment form and other forms that may be required and (5) any order submitted under this Enrollment.

Effective date. If the Enrolled Affiliate is renewing Software Assurance or Subscription Licenses from one or more previous Enrollments or agreements, then the effective date will be the day after the first prior Enrollment or agreement expires or terminates. Otherwise, the effective date will be the date this Enrollment is accepted by Government Partner. Any references to "anniversary date" refers to the anniversary of the effective date each year this Enrollment is in effect.

Term. This Enrollment will expire on the last day of the month, 36 full calendar months from the effective date of the initial term. If the Enrollment is renewed, the renewal term will expire 36 full calendar months after the effective date of the renewal term. Any reference in this Enrollment to "day" will be calendar day.

1. Enrolled Affiliate's Enterprise.

Identify which Affiliates are included in the Enterprise (Required). Affiliates must be entire entities, not partial entities. Enrolled Affiliate's organization includes (check only one box in this section.):

- ☒ Enrolled Affiliate
☐ Enrolled Affiliate and the following Affiliate(s):

- ☐ Enrolled Affiliate and all Affiliates, with following Affiliate(s) excluded:

Additional Affiliates may added later, by written amendment.

2. Contact information.

Each party will notify the other in writing if any of the information in the following contact information page(s) changes. The asterisks (*) indicate required fields. By providing contact information, Enrolled Affiliate consents to its use for purposes of administering this Enrollment by the Government Partner, its Affiliates and other parties that help administer this Enrollment.

- a. **Enrolled Affiliate primary contact Information.** The Enrolled Affiliate must identify an individual from inside its organization to serve as the primary contact. This contact is also an Online Administrator for the Volume Licensing Service Center and may grant online access to others.

Name of Entity (must be legal entity name)* **City of Delray Beach**
Contact name*: First **Jennifer** Last **Reynolds**
Contact email address* **reynoldsj@mydelraybeach.com**
Street address* **150 NW 1st Ave.**
City* **Delray Beach** State* **FL** Postal code* **33444**
Country* **United States**
Phone* **561-243-7192**
Fax **561-243-7188**

- b. Enrolled Affiliate notices and online administrator.** This individual receives contractual notices. They are also the Online Administrator for the Volume Licensing Service Center and may grant online access to others.

☒ Same as Enrolled Affiliate primary contact

Name of Entity (must be legal entity name)*

Contact name*: First Last

Contact email address*

Street address*

City* State* Postal code*

Country*

Phone*

Fax

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

- c. Online Services Manager.** This contact is authorized to manage the Online Services ordered under this Enrollment and (for applicable Online Services) to add or reassign Licenses, step-up, and initiate Transitions prior to a true-up order.

Name of Entity (must be legal entity name)* **City of Delray Beach**

Contact name*: First **Jennifer** Last **Reynolds**

Contact email address* **reynoldsj@mydelraybeach.com**

Street address* **150 NW 1st Ave.**

City* **Delray Beach** State* **FL** Postal code* **33444**

Country* **United States**

Phone* **561-243-7192**

Fax **561-243-7188**

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

3. Price Level.

The price level indicated in this section will be the price level for the initial Enrollment term for all Products ordered on the Product Selection Form and for any Additional Products in the same pool(s).

Qualified Devices: Enrolled Affiliate represents that the total number of Qualified Devices in Enrolled Affiliate's Enterprise is, or will be increased to, this number during the initial term of this Enrollment (This number must equal to at least 25 Qualified Devices, unless the "Azure Only" option is selected below).	762
Qualified User: Enrolled Affiliate represents that the total number of Qualified Users in Enrolled Affiliate's Enterprise is, or will be increased to, this number during the initial term of this Enrollment (This number must equal to at least 25 Qualified Users, unless the "Azure Only" option is selected below).	762

☐ Check this box to choose the Azure-Only Option for Enrollments, in accordance with Section 5(a) of the Agreement.

Price Level (for pools in which Enrolled Affiliate orders an Enterprise Product or Enterprise Online Service):	Qualified Desktop	Qualified User
	D	D

Price Level (for pools in which Enrolled Affiliate does not order an Enterprise Product):	Price level "D"
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4. Payment terms.

For the initial or renewal order, Enrolled Affiliate may pay in advance or elect to spread its payments over the applicable Enrollment term. If spread payments are elected, unless indicated otherwise on the quotation, Government Partner will invoice Enrolled Affiliate in three equal installment payments. The first installment will be invoiced upon Microsoft's acceptance of the Enrollment, and invoices for the subsequent installments will be issued on each Enrollment anniversary date. Subsequent orders will be invoiced in full upon acceptance of the order and Enrolled Affiliate may elect to pay annually or upfront for Online Services and upfront for all other Licenses.

Enterprise Enrollment Product Selection Form

Step 1. Enter all fields in the table below (Required).

Profile	Qualified Devices	Qualified Users	Enterprise Product Platform	Licensing Model
Enterprise	762	762	Yes	User
Device Profile (e.g. Call Center)				

Step 2. Select the Products and Quantities Enrolled Affiliate is ordering on its initial Enrollment Order. Quantities may not include any Licenses which Enrolled Affiliate has selected for optional future use, or to which it is stepping-up within Enrollment term.

Products	Enterprise Quantity	Device Profile (e.g. Call Center)
Secure Productive Enterprise (SPE)		
Secure Productive Enterprise E3 USL	762	
Secure Productive Enterprise E3 Add-on		
Secure Productive Enterprise E5 USL		
Secure Productive Enterprise E5 Add-on		
Office Professional Plus		
Office Professional Plus		
Office 365 ProPlus		
Office 365 Plans		
Office 365 Plan E1 USL		
Office 365 Plan E3 USL		
Office 365 Plan E5 USL		
Office 365 Plan E1 Add-on		
Office 365 Plan E3 Add-on		
Office 365 Plan E5 Add-on		
Office 365 Plan E3 without ProPlus Add-on		
Client Access License (CAL)		
Choose Core CAL or Enterprise CAL:		
Core CAL or Enterprise CAL		
Bridge for Office 365		
Bridge for Enterprise Mobility Suite		
Windows Desktop		
Windows 10 Enterprise E3 and LTSC Upgrade per Device		
Windows 10 Enterprise E5 per Device SL		
Windows 10 Enterprise E3 per User SL		
Windows 10 Enterprise E3 per User Add-on SL		
Windows 10 Enterprise E5 per User SL		
Windows 10 Enterprise E5 per User Add-on SL		
Windows 10 Enterprise E5 per Device Add-on SL		
Windows VDA		
Windows VDA per User USL		
Microsoft Intune		
Microsoft Intune USL		
Enterprise Mobility + Security		

Enterprise Mobility + Security E3 USL		
Enterprise Mobility + Security E3 Add-on		
Enterprise Mobility + Security E5 USL		
Enterprise Mobility + Security E5 Add-on		

Notes:

1. Enterprise Online Services may not be available in all locations. Please see the Product Terms for a list of locations where these may be purchased.
2. In Enrolled Affiliate does not order an Enterprise Product or Enterprise Online Service associated with an applicable Product pool, the price level for Additional Products in the same pool will be price level "D" throughout the term of the Enrollment.
3. Unless otherwise indicated in the associated documents, the CAL selection must be the same across the Enterprise for each Profile.

City of Delray Beach

Name

Title

Signature

Date


Insight Public Sector, Inc.

John Carnahan

Name

SVP - Business Development

Title



Signature

August 12, 2019

Date

Appendix A

Microsoft Customer Terms and Conditions

These Microsoft Customer Terms and Conditions shall apply to the Enrolled Affiliates use of Products and Services and must be incorporated in the Government Contract.

In this agreement, the following definitions apply:

"Additional Product" means any Product identified as such in the Product Terms and chosen for the Enterprise under the Government Contract.

"Affiliate" means

- a. With regard to Customer, any State/Local Entity in the same State as Customer, and for whose compliance with these Microsoft Customer Terms and Conditions Customer accepts responsibility for in this Government Contract; and
- b. With regard to Microsoft or Government Partner, any legal entity that such party owns, or is owned by that party, or that is under common ownership with that party. "Ownership" means, for purposes of this definition, control of more than a 50% interest in an entity.

"Community" means the community consisting of one or more of the following: (1) a Government, (2) a company using eligible Government Community Cloud Services to provide solutions to a Government or a qualified member of the Community, or (3) a company with Customer Data that is subject to Government regulations for which the company determines and Microsoft agrees that the use of Government Community Cloud Services is appropriate to meet the company's regulatory requirements. Membership in the Community is ultimately at Microsoft's discretion, which may vary by Government Community Cloud Service.

"Customer" means the State/Local Government entity that executed the Government Contract with Government Partner, into which these Microsoft Customer Terms and Conditions are incorporated.

"Customer Data" means all data, including all text, sound, software, or image files that are provided to Microsoft by, or on behalf of, Customer and the Enterprise through its use of the Online Services.

"Enrollment" means the document that Government Partner submits to Microsoft to place orders for Customer.

"Enterprise" means Customer and the Affiliate(s) (if any) (a) that Customer instructs Government Partner to list on the Enrollment; and (b) for whose compliance with these terms Customer accepts, by ordering Licenses for such Affiliate(s) hereunder.

"Enterprise Product" means any Desktop Platform Product that Microsoft designates as an Enterprise Product in the Product Terms and that Government Partner orders under an Enrollment. Enterprise Products must be licensed for all Qualified Devices and Qualified Users on an Enterprise-wide basis.

"Fixes" means Product fixes, modifications or enhancements or their derivatives that Microsoft either releases generally (such as service packs) or provides to the Enterprise.

"Federal Agency" means a bureau, office, agency, department or other entity of the United States Government.

"Government" means a Federal Agency, State/Local Entity, or Tribal Entity acting in its governmental capacity.

"Government Community Cloud Services" means Microsoft Online Services that are provisioned in Microsoft's multi-tenant data centers for exclusive use by or for the Community and is offered in accordance with the National Institute of Standards and Technology (NIST) Special Publication 800-145. Microsoft Online Services that are Government Community Cloud Services are designated as such in the Use Rights and Product Terms.

"Government Contract" means the binding agreement between Government Partner and Customer under which Customer orders Products from Government Partner and Government Partner binds Customer to these "Microsoft Customer Terms and Conditions."

"Government Partner" means the entity that has entered into a Government Contract with Customer.

"Industry Device" (also known as line of business device) means any device that: (1) is not useable in its deployed configuration as a general purpose personal computing device (e.g., 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" means Customer's (and its Enterprise's) right to download, install, access and use a Product. For certain Products, a License may be available on a subscription basis ("Subscription License"). Licenses for Online Services are Subscription Licenses.

"Managed Device" means any device on which any Affiliate in the Enterprise directly or indirectly controls one or more operating system environments. Examples of Manage Devices can be found in the Product Terms.

"Microsoft" means (1) the entity that has entered into an agreement (and Enrollment on Customer's behalf) with Government Partner, as both subcontractor to Government Partner and licensor and service provider for the Products, under which Government Partner may place orders for Products for use by the Customer and its Enterprise.

"Online Services" means the Microsoft-hosted services identified in the Online Services section of the Product Terms.

"Online Services Terms" means the additional terms that apply to Customer's (and its Enterprise's) use of Online Services published on the Volume Licensing Site and updated from time to time.

"Product" means all products identified in the Product Terms, such as software, Online Services and other web-based services, including pre-release or beta versions.

"Product Terms" means the document that provides information about Microsoft Products available through volume licensing. The Product Terms document is published on the Volume Licensing Site and updated from time to time.

"Qualified Device" means any device that is used by or for the benefit of the Enterprise and is: (1) a personal desktop computer, portable computer, workstation, or similar device capable of running Windows Pro 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, (2) an Industry Device, or (3) not a Managed Device. 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 Enterprise as a Qualified Device for all or a subset of Enterprise Products or Online Services the Enrolled Affiliate has selected.

"Qualified User" means a person (e.g., employee, consultant, contingent staff) who: (1) is a user of a Qualified Device, or (2) accesses any server software requiring an Enterprise Product Client Access License or any Enterprise Online Service. It does not include a person who accesses server software or an Online Service solely under a License identified in the Qualified User exemptions in the Product Terms.

"Reserved License" means for an Online Service identified as eligible for annual orders in the Product Terms, the License reserved by Government Partner for Customer's Enterprise prior to the Enterprises' use of the Online Service, and for which Microsoft will make the Online Service available for activation by the Enterprise.

"SLA" means Service Level Agreement, which specific the minimum service level for Online Services and is published on the Volume Licensing Site.

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

"Tribal Entity" means a federally-recognized tribal entity performing tribal government functions and eligible for funding and services from the U.S. Department of Interior by virtue of its status as an Indian tribe.

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

"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.

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.

"Volume Licensing Site: means <http://www.microsoft.com/licensing/contracts> or a successor site.

1. Licenses for Products.

- a. **License Grant.** By accepting an Enrollment, Microsoft authorizes Government Partner to grant (and Government Partner hereby grants the Enterprise) a non-exclusive, worldwide and limited right to download, install and use software Products, and to access and use the Online Services, each in the quantity ordered by Customer under this Government Contract (which corresponds to the quantity Government Partner will order from Microsoft under the Enrollment). The rights granted are subject to the terms of this Government Contract, the Use Rights and the Product Terms. Government Partner and Microsoft reserve all rights not expressly granted in this Government Contract.
- b. **Duration of Licenses.** Subscription Licenses and most Software Assurance rights are temporary and expire when the applicable Enrollment is terminated or expires, unless the Enrollment is renewed or Government Partner exercises a buy-out option, which is available for some Subscription Licenses. Except as otherwise noted in the applicable Enrollment or Use Rights, all other Licenses become perpetual only when Government Partner has made all payments to Microsoft for that License and the initial Enrollment term has expired.
- c. **Applicable Use Rights.**
 - (i) **Products (other than Online Services).** The Use Rights in effect on the effective date of the Enrollment will apply to Enterprise's use of the version of each Product that is current at the time. For future versions and new Products, the Use Rights in effect when those versions and Products are first released will apply. Changes Microsoft 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 Enrollment are determined by the agreement or Enrollment under which they were acquired. Renewal of Software Assurance does not change which Use Rights Apply to those Licenses.
 - (ii) **Online Services.** For Online Services, the Use Rights in effect on the subscription start date will apply for the subscription term under this Enrollment 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.
- d. **Downgrade rights.** The Enterprise may use an earlier version of Product than the version that is current on the effective date of the Enrollment. In that case, the Use Rights 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 Use Rights applicable to the earlier version apply with respect to those features.
- e. **New Version Rights under Software Assurance.** Customer must maintain continuous Software Assurance coverage for each License ordered under the Government Contract. With Software Assurance coverage, the Enterprise automatically has the right to use a new version of a licensed Product as soon as it is released, even if Enterprise chooses not use the new version immediately.
 - (i) Except as otherwise permitted under an Enrollment, use the new version will be subject to the new version's Use Rights.
 - (ii) 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 replace any perpetual Licenses for the earlier version.
- f. **License confirmation.** The Government Contract, including any order Customer places to Government Partner under the Government Contract, and Customer's order confirmation, if any, any documentation evidencing transfers of Licenses, and evidence of Customer's payment to Government Partner for Products, will be Customer's evidence of all Licenses ordered under the Government Contract.

- g. **Reorganizations, Consolidations, and Privatizations.** If the number of Licenses covered by an Enrollment changes by more than ten percent as a result of a reorganization, consolidation, or privatization of the Enterprise, Microsoft will work with Government Partner in good faith to determine how to accommodate the Enterprise's changed circumstances in the context of this agreement.
- h. **Modification or termination of an Online Service for regulatory reasons.** Microsoft may modify or terminate an Online Service (and Government Partner may terminate, if necessary) in any country or jurisdiction where there is any current or future government requirement or obligation that: (1) subjects Microsoft to any regulation or requirement not generally applicable to businesses operating there; (2) presents a hardship for Microsoft to continue operating the Online Service without modification; and/or (3) causes Microsoft to believe these terms or the Online Service may be in conflict with any such requirement or obligation.
- i. **Program updates.** Microsoft may make a change to the Enterprise and/or Enterprise Subscription programs that will make it necessary for Customer to enter into a new agreement and Enrollments with Government Partner, rather than renew an existing Enrollment.

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

- a. **General.** Customer may make as many copies of the media containing Products as it needs to distribute the Products within the Enterprise. Copies must be true and complete (including copyright and trademark notices) from master copies obtained from a Microsoft approved fulfillment source. Customer may use a third party to make these copies, but Customer agrees that it will be responsible for any third party's actions. Customer agrees to make reasonable efforts to notify its employees, agents, and any other individuals in the Enterprise who use the Products that those Products are licensed from Microsoft and subject to the terms of the Government Contract.
- b. **Copies for training/evaluation and back-up.** For all Products other than Online Services, the Enterprise may (1) use up to 20 complimentary copies of any Product in a dedicated training facility on its premises for purposes of training on that particular Product, (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. Trials for Online Services may be available if specified in the Use Rights.
- c. **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 Government Contract 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) Customer must adhere to any Product specific processes or requirements for re-imaging identified in the Product Terms.

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.

3. Transferring and assigning licenses.

- a. **License transfers.** License transfers outside of the Enterprise are not permitted, except that Customer may transfer only fully-paid perpetual Licenses to:
 - (i) an Affiliate in its Enterprise, or

- (ii) a third party solely in connection with the transfer of hardware or employees to whom the Licenses have been assigned as part of (1) a reorganization or privatization of a member of the Enterprise or a division of a member of the Enterprise or (2) a consolidation involving a member of the Enterprise.

Upon such transfer, Customer must uninstall and discontinue using the licensed Product and render any copies unusable.

- b. **Notification of License Transfer.** Customer must notify Government Partner (and Government Partner will notify Microsoft) of a transfer of License by completing a license transfer form, which can be obtained from <http://www.microsoft.com/licensing/contracts>. Government Partner must send the completed form to Microsoft before the License transfer. No License transfer will be valid unless Customer provides to the transferee, and the transferee accepts in writing, documents sufficient to enable the transferee to ascertain the scope, purpose and limitations of the rights granted by Microsoft under the License being transferred (including, without limitation, the applicable Use Rights, use and transfer restrictions, warranties and limitations of liability. Any License transfer not made in compliance with this section will be void.
- c. **Internal assignment 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 Use Rights.

4. Use, ownership, rights, and restrictions.

- a. **Products.** Use of any Product is governed by the Use Rights specific to each Product and version and by the Government Contract.
- b. **Fixes.** Each Fix is licensed under the same license terms as the Product to which it applies. If a Fix is not provided for a specific Product, any use rights Microsoft provides with the Fix will apply.
- c. **Non-Microsoft software and technology.** Customer is solely responsible for any non-Microsoft software or technology the Enterprise installs or uses with the Products or Fixes.
- d. **Restrictions.** Enterprise must not (and must not attempt to) (1) reverse engineer, decompile or disassemble any Product or Fix, (2) install or use non-Microsoft software or technology in any way that would subject Microsoft's intellectual property or technology to obligations beyond those included in this Government Contract; or (3) work around any technical limitations in the Products or restrictions in Product documentation. Except as expressly permitted in this Government Contract, the Enterprise must not (1) separate and run parts of a Product on more than one computer, upgrade or downgrade parts of a Product at different times, or transfer parts of Product separately; or (2) distribute, sublicense, rent, lease, lend, or use any Product or Fix to offer hosting services to a third party.
- e. **No transfer of ownership; Reservation of rights.** Products and Fixes are protected by copyright and other intellectual property rights laws and international treaties. Microsoft (1) does not transfer any ownership rights in any Products or Fixes and (2) reserves all rights not expressly granted to Customer or the Enterprise in this Government Contract.

5. Confidentiality.

"Confidential Information" is non-public information that is designated "confidential" or that a reasonable person should understand is confidential, including Customer Data and the terms of this Government Contract and other agreements. The Online Services Terms may provide additional obligations for, and limitations on disclosure and use of, Customer Data. Confidential Information does not include information that (1) becomes publicly available without a breach of this agreement, (2) the receiving party received lawfully from another sources without out an obligation to keep it confidential, (3) is independently developed, or (4) is a comment or suggestion one party volunteers about the other's business, products or services.

The Enterprise, Government Partner and Microsoft will take all reasonable steps to protect the other's Confidential Information and will use the other's Confidential Information only for purposes of the business relationship. Neither the Enterprise, Government Partner nor Microsoft will disclose that information to third parties, except to its employees, Affiliates, contractors, advisors and consultants (collectively, "Representatives") and then only on a need-to-know basis under nondisclosure obligation as least as protective as this Government Contract. The Enterprise, Government Partner and Microsoft remain responsible for the use of the Confidential Information by its Representatives and, in the event of discovery of any unauthorized use or disclosure, must promptly notify the other.

The Enterprise, Government Partner or Microsoft may disclose the other's Confidential Information if required by law; but only after it notifies the non-disclosing entity (if legally permissible) to enable it to seek a protective order.

Neither the Enterprise, Government Partner nor Microsoft is required to restrict work assignments of Representatives who have had access to Confidential Information. The Enterprise, Government Partner and Microsoft all agree that the use of information in Representatives' unaided memories in the development or deployment of products or services does not create liability under this agreement or trade secret laws and agree to limit what they disclose to each other accordingly.

These obligations apply (1) for Customer Data until it is deleted from the Online Services, and (2) for all other Confidential Information, for a period of five years after the Confidential Information is received.

Freedom of Information Act (FOIA). Notwithstanding anything in this section to the contrary, the parties acknowledge and agree that Enrolled Affiliate is subject to the United States Freedom of Information Act (5 U.S.C. §552) and may disclose information in response to a valid request in accordance with FOIA. Should Enrolled Affiliate receive a request under FOIA for Microsoft's confidential information, Enrolled Affiliate agrees to give Microsoft adequate prior notice of the request and before releasing Microsoft's confidential information to a third party, in order to allow Microsoft sufficient time to seek injunctive relief or other relief against such disclosure.

6. Privacy and compliance with Laws.

- a. Customer consents to the processing of personal information by Microsoft and its agents to facilitate the subject matter of this agreement. The Enterprise will obtain all required consents from third parties (including the Enterprise's contact, resellers, distributors, administrators and employees) under applicable privacy and data protection law before providing personal information to Microsoft.
- b. Except as otherwise stated in the Online Services Terms, personal information collected by Microsoft (1) may be transferred, stored and processed in the United States or any other country in which Microsoft or its contractors maintain facilities and (2) will be subject to the privacy terms specified in the Use Rights. For clarity, the section of the Online Services Terms titled "Data Processing Terms" establishes terms and conditions for the storage of data at rest in the United States for key Microsoft Online Services, including but not limited to those services available as Government Community Cloud Services. Microsoft abides by the EU Safe Harbor and the Swiss Safe Harbor frameworks as set forth by the U.S. Department of Commerce regarding the collection, use, and retention of data from the European Union, the European Economic Area, and Switzerland.
- c. **U.S. export.** Products, Fixes, and Service Deliverables are subject to U.S. export jurisdiction. The Enterprise must comply with all applicable international and national laws, including the U.S. Export Administration Regulations, the International Traffic in Arms Regulations, and end-user, end use and destination restrictions by U.S. and other governments related to Microsoft products, services, and technologies.

7. Warranties.

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 the Enterprise is first licensed for that version. If it does not and the Enterprise notifies Government Partner (and Government Partner notifies Microsoft) within the warranty term, then Microsoft will, at its option (1) return the price Government Partner paid Microsoft for the Software Licenses (and Government Partner will issue a corresponding refund to Customer), 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 the Enterprise's use. The Enterprise's remedies for breach of this warranty are in the SLA.

The remedies above are the Enterprise's sole remedies for breach of the warranties in this section.

- b. **Exclusions.** The warranties in this Government Contract do not cover 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 the Enterprise is permitted to redistribute.

- c. **DISCLAIMER.** Government Partner and Microsoft provide 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.

8. *Defense of third party claims.*

- a. **Microsoft.** Microsoft will defend the Enterprise or any member of the Enterprise against any claims made by an unaffiliated third party (1) that any Product or Fix infringes its patent; copyright or trademark or makes unlawful use of its Trade Secret; or (2) that arises from Microsoft's provision of an Online Service in violation of laws applicable to all online services providers. Microsoft will pay the amount of any resulting adverse final judgement or approved settlement. This does not apply to claims or award based on (1) Customer Data; (2) non-Microsoft software; (3) modifications to a Product or Fix a member of the Enterprise makes or any specifications or materials a member of the Enterprise provides; (4) any member of the Enterprise's combination of a Product or Fix with (or damaged based on the value of) a non-Microsoft product, data, or business process; (5) any member of the Enterprise's use of a Product or Fix in violation of this Government Contract; (6) any member of the Enterprise's continued use of a Product or Fix after being notified to stop due to a third party claim; or (7) Products or Fixes provided free of charge.
- b. **By Customer.** Customer and/or Government Partner will defend Microsoft against any claims made by an unaffiliated third party that:
- (i) any Customer Data or non-Microsoft software Microsoft hosts on behalf of any member of the Enterprise infringes the third party's patent, copyright, or trademark or makes unlawful use of its Trade Secret; or
 - (ii) arise from use of an Online Service in violation of applicable laws and regulations; a violation of the legal rights of others; or unauthorized access to or disruption of any service, data, account, or network in connection with the use of the Online Services.
- Customer and/or Government Partner will pay the amount of any adverse final judgment or approved settlement resulting from a claim covered by this section.

- c. **Rights and remedies in case of possible infringement or misappropriation.** If Microsoft reasonably believes that a claim under this section may result in a legal bar prohibiting the Enterprise's use of the Product or Fix, Microsoft will seek to obtain the right for the Enterprise's use of the Product or Fix, Microsoft will seek to obtain the right for the Enterprise to keep using it or modify or replace it with a functional equivalent, in which case the Enterprise must discontinue use of the prior version immediately. If these options are not commercially reasonable, Microsoft may terminate the Enterprise's right to the Product or Fix and refund to Government Partner any amounts it has paid for those rights to Software Fixes and, for Online Services, any amount paid for a usage period after the termination date. Government Partner will issue a corresponding refund to Customer.
- d. **Other terms.** The party being defended under this section must notify the other party promptly of any claim subject to this section, give the other party sole control over the defense or settlement; and provide reasonable assistance in defending the claim. The party providing the protection will reimburse the other party for reasonable out of pocket expenses that it incurs in providing assistance. Any settlement must be approved in writing by the defending party. The remedies provided in this section are the exclusive remedies for the claims described in this section.

9. *Limitation of liability.*

For each Product, the maximum, aggregate liability of Government Partner, the Enterprise, and/or Microsoft to each other under this Government Contract is limited to direct damages finally awarded an amount not to exceed the amounts Customer was required to pay for the applicable Products during the term of this Government Contract, subject to the following:

- a. **Online Services.** For Online Services, Microsoft's maximum liability to the Enterprise for any incident giving rise to a claim will not exceed the amount Customer paid for the Online Service during the 12 months before the incident.

- b. **Free Products and Distributable Code.** For Products provided free of charge and code that the Enterprise is authorized to redistribute to third parties without separate payment to Microsoft, Microsoft's liability is limited to direct damages finally awarded up to US\$5,000.
- c. **Exclusions.** In no event will Government Partner, the Enterprise and/or Microsoft be liable for indirect, incidental, special, punitive, or consequential damages, including loss of use, loss of profits, or interruption of business, however caused or on any theory of liability.
- d. **Exceptions.** No limitation or exclusions will apply to liability arising out of Government Partner's, the Enterprises, or Microsoft's (1) confidentiality obligations (except all liability related to Customer Data, which will remain subject to the limitations and exclusions above); (2) defense obligations; or (3) violation of the other party's intellectual property rights.
- e. **Limited Reimbursement for Customer Mitigation Costs.** To the extent that a Security Incident (as defined in the Online Services Terms) results from Microsoft's failure to comply with its obligations under the Online Services Terms and as subcontractor to Government Partner hereunder, and subject to the limitations of liability set forth in subsections a through d, above, Microsoft will reimburse Customer for reasonable out-of-pocket remediation costs incurred by Customer in connection with that Security Incident. "Reasonable-out-of-pocket remediation costs" are costs that (a) are customary, reasonable and expected to be paid by Customer based upon Customer's government function, based on the nature and scope of the Security Incident, and (b) do not arise from or relate to Customer's violation of (i) laws applicable to Customer or (ii) Customer's obligations to third parties, and (c) in no event include costs arising related to compliance with laws applicable to Customer or Customer's government function that are not generally applicable to information technology services providers. Customer must document all such expenditures and, upon Microsoft's request, those expenditures must be validated by an independent, internationally-recognized third party industry expert chosen by both parties. For avoidance of doubt, the costs reimbursed by Microsoft under this paragraph will be characterized as direct damages subject to the limitation on liability set forth in subsections a through d, above, and not as special damage excluded under subsection c.

10. Verifying compliance.

- a. **Right to verify compliance.** Customer must keep accurate and complete records relating to all use and distribution of Products by the Enterprise. Microsoft has the right, at its expense, to verify the Enterprise's compliance with the Products.
- b. **Verification process.** Microsoft will provide Customer at least 30 days' notice of its intent to verify compliance. Verification will take place during normal business hours and in a manner that does not interfere unreasonably with the Enterprise's operations. Microsoft will engage an independent auditor, which will be subject to a confidentiality obligation. The Enterprise must promptly provide the independent auditor with any information the auditor reasonably requests in furtherance of the verification, including to access to systems running the Products and evidences if licenses for Product the Enterprise hosts, sublicenses, or distributed to third parties. Customer agrees to complete Microsoft's self-audit process, which Microsoft may require as an alternative to a third party audit. Any information collected in the self-audit will be used solely for purposes of determining compliance.
- c. **Remedies for non-compliance.** If verification or self-audit reveals any unlicensed use or distribution, then within 30 days, (1) Customer must order sufficient Licenses to cover that use or distribution, and (2) if unlicensed use is 5% or more, Customer must reimburse Microsoft for the costs Microsoft has incurred in verification and acquire the necessary additional licenses at 125% of the price, based on the then-current price list. The unlicensed use percentage is based on the total number of licenses purchased compared to the actual install base. If there is no unlicensed use, Microsoft not subject Enterprise to another verification for at least one year. By exercising the rights and procedure described above, Microsoft does not waive its rights to enforce its rights under this Government Contract or to protect its intellectual property by any other means permitted by law.

11. Miscellaneous.

- a. **Assignment.** Customer may assign all its rights under this Government Contract to an Affiliate, but it must notify Government Partner in writing of the assignment, and Government Partner must notify Microsoft. Any other proposed assignment must approved by the non-assigning party and Government Partner in writing, subject to

Microsoft's written consent. Assignment will not relieve the assigning party of its obligations under this Government Contract. Any attempted assignment without required approval will be void.

- b. **Severability.** If any provision in this Government Contract is found enforceable, the balance of the agreement will remain in full force and effect.
- c. **Waiver.** A waiver of any breach of any provision of the Government Contract, the Use Rights or these Microsoft Customer Terms and Conditions is not a waiver of any other breach. Any waiver must be in writing and signed by an authorized representative of the waiving party.
- d. **Dispute resolution.** Disputes relating to this Agreement will be subject to applicable dispute resolution laws of Customer's state. Notwithstanding the foregoing, Microsoft may seek injunctive relieve in any appropriate jurisdiction with respect to a violation of intellectual property rights or confidentiality obligations.
- e. **Survival.** All provisions survive termination or expiration of this Government Contract except those requiring performance only during the term of this Government Contract.
- f. **This agreement is not exclusive.** Customer is free to enter into agreements to license, use, or promote non-Microsoft products or services.
- g. **Applicable law.** Any dispute between Customer and a Microsoft Affiliate related to this Government Contract will be governed by and construed in accordance with the laws of the Customer's State and federal laws of the United States, without giving effect to its conflict of laws.
- h. **Microsoft as independent contractor.** Microsoft and Customer are independent contractors. Microsoft and Customer each may develop products independently without using the other's Confidential Information.
- i. **Use of contractors.** Microsoft may use contractors to perform services but will be responsible for their performance subject to the terms of this Government Contract.
- j. **Amendments.** Any amendments to this Government Contract that affects Microsoft's rights under this Government Contract must be approved by Microsoft and executed between Microsoft and Government Partner before Government Partner provides a corresponding Amendment to Customer, except that Microsoft may change the Product Terms and Use Rights from time to time in accordance with the terms of the Government Contract. Any conflicting terms and conditions contained in Customer's purchase order to Government Partner will not apply to Microsoft.
- k. **Free Products.** Any free Product provided to Customer is for the sole use and benefit of the Enterprise, and is not provided for use by or personal benefit of any specific government employee.
- l. **Third party beneficiary.** Microsoft is a third party beneficiary of this Government Contract and may enforce its terms.
- m. **Natural disaster.** In the event of a natural disaster, Microsoft may provide additional assistance or rights to Customer than are set forth in this agreement by posting them on <http://www.microsoft.com> at such time.
- n. **Calendar days.** Any reference in this agreement to "day" will be a calendar day, except references that specify "business day."