

# Open Value Subscription Agreement for Education Solutions

Agreement number  
Microsoft to complete

V6017792

Previous Enrollment or  
Agreement number  
Reseller to complete

**This agreement must be attached to a signature form to be valid.**

**Please note:** The Open Value Subscription Agreement for Education Solutions is a simplified alternative in electronic agreement format to the Campus and School Agreement with the Enrollment for Education Solutions.

This Open Value Subscription Agreement for Education Solutions is entered into by the entities identified on the signature form.

## ***Licensing Institution information***

**Institution ID:** 8AEBE141

**Entity name\*** The College of the Florida Keys

**Contact name: First\*** Randy **Last\*** Redmond

**Contact email address\*** Randy.redmond@cfk.edu

**Street address\*** 5901 College Road

**City\*** Key West

**State/Province\*** FL

**Postal code\*** 33040-4315

**Country\*** United States

**Phone** (305) 809-3197

**Tax ID (if applicable)**

*\*indicates required field*

The personal information Institution provides in connection with this agreement will be used and protected according to the privacy statement available at <https://www.microsoft.com/licensing/servicecenter>.

## ***Notices contact and online administrator***

This contact (1) receives all contractual notices and (2) is the Online Administrator for the Volume Licensing Service Center and may grant online access to others.

**Entity name\*** The College of the Florida Keys

**Contact name: First\*** Randy **Last\*** Redmond

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**Country\*** United States

**Phone** (305) 809-3197

☒ This contact is a third party (not Institution)

Note: This contact receives personally identifiable information of Institution.

*\*indicates required field*

This agreement consists of (1) the terms and conditions of this agreement, (2) the Product Terms, (3) the Use Rights, (4) any orders submitted under this agreement, (5) the signature form, and (6) the Microsoft Qualified Educational User Definition located at <http://www.microsoft.com/licensing/contracts>.

**A. Select a purchasing option and license period.**

Customer must select at least one Enterprise Product or Enterprise Online Service from the product categories below to cover all Qualified Devices and/or Qualified Users, depending on the License type. Customer's Enterprise must have a minimum of 5 Qualified Devices or Qualified Users. *To qualify for the platform discount, check all three product categories.*

<b>OS</b>	<input checked="" type="checkbox"/> Please see the Product Terms for current Windows Desktop Operating System options
<b>Office Applications</b>	<input checked="" type="checkbox"/> Please see the Product Terms for current Office Desktop Applications and Office 365 Applications options
<b>Office 365 / CAL Suites</b>	<input type="checkbox"/> Please see the Product Terms for current Office 365 Suite and CAL Suite options

☐ Desktop qualifies for up-to-date (UTD) discount (attach UTD discount form).

Please select only one of the following two initial Licensed Period options:

<input type="checkbox"/> 12 full calendar months Licensed Period	<input checked="" type="checkbox"/> 36 full calendar months Licensed Period
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**B. Defining Institution's Organization (select only one option).**

Institution must define its Organization by choosing one of the options below. If Institution chooses to enroll only specific departments, school locations, and/or clearly defined User groups, Institution must provide the department, school location, and/or clearly defined User group names. If the department, school location or clearly defined User group is part of an Affiliate, Institution must also provide the name of the Affiliate. A department includes all segments of a department (e.g., a business school includes the business library). A department must be for educational purposes. Open access labs and other resource support centers do not qualify as separate departments.

☐ Institution only

☒ Institution and all of its Affiliates

☐ Institution *plus* the listed Affiliate(s) and/or department(s), school location(s), and/or clearly defined User group(s) if Affiliate is a school without departments or school locations, of Affiliate(s) (please list the Affiliate(s), department(s), school location(s) and/or User group(s) of Affiliate(s) below)

☐ The listed department(s), school location(s), and/or clearly defined User group(s) if Institution or Affiliate is a school without departments or school locations, of Institution and any of its Affiliates, and any Affiliate(s) (please list department(s), school location(s) and/or User group(s) and any Affiliate(s) below)

Please indicate whether the Institution's Organization will include all new Affiliates acquired after the start of this agreement: Include future Affiliates

**C. Identify Institution price level.**

- ☐ Check this box if Institution's Organization-wide Count is at least 1000, in order to qualify for the next price level.

**D. Identify the Subscriptions manager and Software Assurance and online services managers (if different from notices) (if different from notices).**

- a. Software Assurance manager.** This contact will receive online permissions to manage the Software Assurance benefits under this agreement.

**Entity name\***

**Contact name: First\* Last\***

**Contact email address\***

**Street address\***

**City\***

**State/Province\***

**Postal code\***

**Country\***

**Phone**

*\*indicates required field*

- b. Subscriptions manager.** This contact will assign MSDN Subscription Licenses to the individual subscribers under this agreement. Assignment of the Subscription Licenses is necessary for access to any of the online benefits, such as subscription downloads. This contact will also manage any complimentary or additional media purchases related to these subscriptions.

**Entity name\*** The College of the Florida Keys

**Contact name: First\* Last\*** Randy Redmond

**Contact email address\*** Randy.redmond@cfk.edu

**Street address\*** 5901 College Road

**City\*** Key West

**State/Province\*** FL

**Postal code\*** 33040-4315

**Country\*** United States

**Phone** (305) 809-3197

*\*indicates required field*

- c. Online Services manager.** This contact will be provided online permissions to manage the online services ordered under this agreement.

**Entity name\***

**Contact name: First\* Last\***

**Contact email address\***

**Street address\***

**City\***

**State/Province\***

**Postal code\***

**Country\***

**Phone**

*\*indicates required field*

**E. Identify Institution's reseller and distributor.**

**a. Reseller.**

**Entity name\*** CDW Logistics LLC.  
**Contact name: First\*** Erin **Last\*** Richards  
**Contact email address\*** erin.richards@cdw.com  
**Street address\*** 20750 Civic Center Drive Suite 590  
**City\*** Southfield  
**State/Province\*** MI  
**Postal code\*** 48076  
**Country\*** United States  
**Phone** (469) 288-9098  
*\*indicates required field*

**b. Distributor.**

**Entity name\*** Tech Data  
**Contact name: First\*** CASA **Last\*** Administrator  
**Contact email address\*** casa@techdata.com  
**Street address\*** 16202 Bay Vista Dr  
**City\*** Clearwater  
**State/Province\*** FL  
**Postal code\*** 33760-3126  
**Country\*** United States  
**Phone** 800-237-8931x82031  
*\*indicates required field*

**Name of Microsoft contracting Affiliate and notices contact information for Microsoft**

Microsoft Corporation  
Dept. 551, Volume Licensing  
6880 Sierra Center Parkways  
Reno, Nevada 89511  
USA

# Terms and Conditions

## 1. Definitions.

“Additional Product” means any Product identified as such in the Product Terms and chosen by Institution under this agreement.

“Affiliate” means

- a. If Institution is a non-public entity, then, with regard to Institution, “Affiliate” means any Qualified Educational User (as defined in the applicable Microsoft Qualified Educational User Definition available at the Licensing Site) that Institution owns or controls, that owns or controls Institution, or that is under common ownership or control with Institution.
- b. If Institution is a public entity, then, with regard to Institution, “Affiliate” means, any Qualified Educational User that is:
  - (i) within the administrative control or supervision of Institution, or
  - (ii) expressly authorized by Institution to purchase as its affiliate.
- c. with regard to Microsoft, any legal entity that Microsoft owns, that owns Microsoft, or that is under common ownership with Microsoft.

For purposes of this definition, **except with regard to hospitals, healthcare systems, and research laboratories** (collectively, “Healthcare Institutions”), “ownership” means more than 50% ownership, and “control” means the right granted by law to exercise decision-making authority over the administrative, financial, and operational affairs of another. For Healthcare Institutions, “ownership” means that Institution is the sole owner of the Healthcare Institution, and “control” means that Institution is the only entity exercising control over the Healthcare Institution’s day-to-day operations.

“Customer Data” means all data, including all text, sound, software, image, or video files that are provided to Microsoft by, or on behalf of, Institution and its Affiliates through Institution’s use of the Online Services.

“Defined Region” means the geographical region as defined on the regional listing located at <http://www.microsoft.com/licensing/licensing-options/open-regional.aspx> where Institution is organized and operated.

“Desktop Platform Product” means any Product available in the Defined Region and identified in the Product Terms as such and that Institution chooses to license under this agreement. Desktop Platform Products may only be licensed on an Organization-wide basis under this agreement.

“Enterprise Online Service” means any Online Service designated as an Enterprise Online Service in the Product Terms and chosen by Institution under this agreement. Enterprise Online Services are treated as Online Services, except as noted.

“Enterprise Product” means any Product that Microsoft designates as an Enterprise Product in the Product Terms and chosen by the Institution under this agreement. Enterprise Products must be licensed for all Qualified Devices and Qualified Users on an Organization-wide basis under this program.

“Faculty” means any employees, contractors and volunteers who teach or perform research for Institution and uses a Qualified Device.

“Fix(es)” means Product fixes, modifications or enhancements or their derivatives that Microsoft either releases generally (such as service packs) or that Microsoft provides to Institution when performing services to address a specific issue.

“Graduate” means a Student who has completed (1) a grade or a level in a school or an educational institution in the Organization that qualifies the Student for enrollment into college or university or (2) earned a diploma or degree from a college or university in the Organization.

“Institution” means the entity that is (1) a Qualified Educational User (as defined at <http://www.microsoft.com/licensing/contracts>) as of the effective date of this agreement that has entered

into this agreement with Microsoft or (2) an Affiliate of Institution that has entered into an Enrollment under this agreement. If Institution is a school district, "Institution" includes all participating schools in the same district.

"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.

"Licensed Period" means the period of time beginning on the effective date of this agreement and continuing for the period of time specified in this agreement (either 12 or 36 full calendar months).

"Managed Device" means any device on which any Affiliate in the Enterprise directly or indirectly controls one or more operating system 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.

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

"Organization" means the organization as defined by Institution in Section B above ("Defining Institution's Organization").

"Organization-wide Count" means the total quantity of Faculty and Staff in the Organization. Institution must count a full-time member of its Faculty and Staff as 1, a part-time member of its Faculty as 1/3, and a part-time member of its Staff as 1/2.

"Previous Enrollment or Agreement" means a School Subscription Enrollment, a Campus Subscription Enrollment, an Enrollment for Education Solutions, or an Open Value Subscription Agreement for Education Solutions.

"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 and Professional Services available through volume licensing. The Product Terms document is published on the Volume Licensing Site and is updated from time to time.

"Professional Services" means Product support services and Microsoft consulting services provided to Institution under this agreement. "Professional Services" does not include Online Services.

"Qualified Device" means a device that is used for the benefit of Institution's Organization or by for the benefit of Students enrolled in the Organization 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, Institution may designate any device excluded above (e.g., Industry Device) that is used by or for the benefit of the Organization as a Qualified Device for all or a subset of Enterprise Products or Online Services Institution has selected.

"Qualifying Enrollment or Agreement" means an Enrollment for Education Solutions or an Open Value Subscription Agreement for Education Solutions, the minimum requirements of which were met (i.e. a Qualifying Enrollment was not used) and that was entered into by Institution or Institution's Affiliate, each active and valid upon signing this agreement. Institution must have been included in the Organization under an Enrollment for Education Solutions or Open Value Subscription Agreement for Education Solutions that is used as the Qualifying Enrollment or Agreement.

"Qualified User" means a User who (1) is a user of a Qualified Device or (2) accesses any server software or online services licensed within Institution's Organization. It does not include a person who accesses server software or online services solely under a license identified in the Qualified User exemptions in the Product Terms.

“Services Deliverables” means any computer code or materials, other than Products or Fixes, that Microsoft leaves with Institution at the conclusion of Microsoft’s performance of Professional Services.

“SLA” means Service Level Agreement, which specifies the standards to which Microsoft agrees to adhere and by which it measures the level of service for an Online Service. The SLA is available at the Volume Licensing Site.

“Software” means licensed copies of Microsoft software identified in the Product Terms. Software does not include Online Services or Services Deliverables, 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 described in the Product Terms.

“Software Updates” means additional or replacement code for any portion of a Product that Microsoft may make available to the general public without a fee from time to time.

“Staff” means any non-Faculty employees, contractors and volunteers who perform work for Institution and use an Institution Qualified Device.

“Student” means any individual enrolled in any educational institution that is part of Institution’s Organization, whether on a full or part-time basis.

“Student Count” means the total quantity of Students in the Organization. Institution must count a full-time Student as 1 and a part-time Student as 1/3.

“Student Qualified Device” means a Qualified Device owned, leased or controlled by a Student, or owned, leased or controlled by the Organization and assigned for individual, dedicated use by a Student.

“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.

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

“Use Rights” means, with respect to any licensing program, the use rights or terms of service for each Product and version published for that licensing program at the Volume Licensing Site. The Use Rights supersede the terms of any end user license agreement (on-screen or otherwise) 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.

“Users” means Institution, Faculty, Staff, and Students designated in this agreement to run the Products and members of the public who access devices located in Institution’s open access labs or libraries.

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

## **2. Pricing.**

**a. Discounts.** Microsoft offers savings:

**(i) Platform Discount.** if Institution selects a desktop platform, and/or;

**(ii) Up-to-date Discount.** If Customer has acquired a fully-paid, perpetual license to the current version of an Enterprise Product or desktop platform Product under another licensing program and orders the same Product under a new three-year Open Value Subscription agreement, Microsoft offers a one-time-only reduced price (the price it charges its distribution channel) on the first year payment. Please see the Product Terms for a list of Products and versions eligible for the “Up-to-date” (UTD) discount. Customer is required to provide proof of licensing for the quantity that will qualify for the discount.

**b. Product price and payment terms set by Institution’s reseller.** Institution’s prices for each Product will be established by its reseller.

- c. **Prices to channel.** Microsoft's price to its distribution channel for a particular Product is established at the time the Product is first ordered and is re-established at renewal.
- d. **One-year Licensed Period.** Microsoft will not increase the price it charges to the reseller for an annual extension of a License by more than ten percent (10%) (as determined with reference to U.S. funds, regardless of the currency in which amounts are invoiced or payment is made) over the immediately preceding 12-month Licensed Period if Institution submits an extension order prior to the expiration of the Agreement for the same Products in the same quantities as ordered in the expiring Licensed Period.

### 3. ***Licenses for Products.***

- a. **Licensing options.** The Organization must license Desktop Platform Products based on at least one of the following options: Faculty and Staff or Students. For the Faculty and Staff option, Institution's order quantity for Desktop Platform Products must be the Organization-wide Count, and for the Student option the Student Count. The Desktop Platform Product versions or SKUs (stock keeping units) included in Institution's initial order determine the Organization's license rights for such Products.
- b. **License grant.** Microsoft grants the Organization a non-exclusive, worldwide and limited right to install and use software Products and to access and use the Online Services, each in the quantity ordered under this agreement. The rights granted are subject to the terms of this agreement, the Use Rights and the Product Terms. Microsoft reserves all rights not expressly granted in this agreement.
- c. **Use by Affiliates.** Institution may sublicense its Licenses for Products to any Affiliates located in Institution's Defined Region, but Affiliates may not sublicense these rights and their use must be consistent with the terms contained in this agreement.
- d. **Duration of Licenses.** Subscription Licenses and most Software Assurance rights are temporary and expire when this agreement is terminated or expires, unless Institution exercises a buy-out option, which is available for some Subscription Licenses. For Online Services, the duration of the Subscription License starts at the time of Product activation and not the time of order and the Subscription License will remain subject to the terms of this agreement and the applicable Use Rights notwithstanding the termination or expiration of this agreement.
- e. **Applicable Use Rights.**
  - (i) **Products (other than Online Services).** The Use Rights in effect on the effective date of this agreement will apply to Institution'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 Institution chooses to have those changes apply.
  - (ii) **Online Services.** For Online Services, the Use Rights in effect on the subscription start date will apply for the subscription term in the Product Terms.
- f. **Downgrade rights.** Institution may use an earlier version of a Product than the version that is current on the effective date of this agreement. 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 will apply with respect to those features.
- g. **License confirmation.** This agreement, Institution's order confirmation, and any documentation evidencing transfers of Licenses, together with proof of payment, will be Institution's evidence of all Licenses obtained under this agreement.



- h. Non-Microsoft software and technology.** The Organization is solely responsible for any non-Microsoft software or technology that it installs or uses with the Products or Fixes. The Organization may not 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 agreement.
- i. Restrictions on use.** The Organization may not (and must not attempt to) reverse engineer, decompile, or disassemble the Product or Fix. Except as expressly permitted in this agreement, The Organization 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 a Product separately; or (2) distribute, sublicense, rent, lease, lend, or host any Product or Fix.

#### **4. *Qualifying systems Licenses***

The desktop operating system Licenses granted under this program are upgrade Licenses only. Full desktop operating system Licenses are not available under this program. If Institution selects the Windows Desktop Operating System Upgrade, all Qualified Devices on which the Organization runs the Windows Desktop Operating System Upgrade must be licensed to run one of the qualifying operating systems identified in the Product Terms at <http://www.microsoft.com/licensing/contracts>.

#### **5. *How to order Products.***

- a. Choosing a reseller.** Institution must choose and maintain a reseller authorized in Institution's Defined Region.
- b. Sign this agreement.** Institution will be directed to a password protected Microsoft Web site to accept this agreement and allow its reseller to place Institution's order. Institution will receive an agreement confirmation which will indicate Microsoft's acceptance of the agreement. The agreement confirmation may be sent by email. After the reseller places Institution's first order, Institution will receive an order confirmation. This agreement will be terminated if Institution fails to place an order within 30 days of the agreement confirmation date. If Institution is unable to access Microsoft's Web site, Institution should contact its reseller.
- c. Minimum order requirements for OVS-ES.** Initial orders, anniversary orders, and extension orders must contain at least one Desktop Platform Product for the Organization-wide Count or Student Count, as applicable. The Organization-wide count and/or Student count as applicable must be at least 5 licenses.

The minimum requirements listed above are waived if Institution has a Qualifying Enrollment or Agreement.

- d. Minimum order requirements.** Institution must submit an order within 30 days of the effective date of the Enrollment. Institution may subsequently submit orders for Products that were not part of its initial order, provided Institution orders such Products in the same calendar month in which the Organization initially uses them. The following terms apply to initial orders and non-anniversary orders for Products not previously ordered:
  - (i)** Initial orders, anniversary orders, and extension orders must contain at least one Desktop Platform Product for the Organization-wide Count or Student Count, as applicable. The Organization-wide count and/or Student count as applicable must be at least 5 licenses.
  - (ii)** Orders for Desktop Platform Products and all component products that are part of the Desktop Platform Products must be for Institution's then-current Organization-wide Count.

- (iii) Additional Products must be ordered in exact quantities needed (in any quantity.) Certain Additional Products may instead be ordered for the Organization-wide Count, as described in the Product Terms.
  - (iv) Products offered under the Student Offering must be ordered for the full Student Count, with the exception of certain Products designated in the Product Terms.
  - (v) From time to time, Microsoft may offer additional licensing options for Students based on Licenses for Products ordered for Institution's Organization-wide Count, which will be described in the Product Terms.
- e. Adding more copies of Products previously ordered**
- (i) For Desktop Platform Products, and Additional Products licensed Organization-wide, and products offered under the Student offering, Institution does not need to submit orders to increase the number of copies run. However, increases in Organization-wide Count or Student Count, as applicable, must be reported at each anniversary of the agreement effective date.
  - (ii) Other Additional Products (i.e., not licensed Organization-wide) are licensed based on the number of Licenses acquired. At any time during the Licensed Period (including any extension), The Organization may run additional copies of any previously ordered Additional Products, provided Institution submits orders for such copies. The order must be placed in the month in which those copies are first run.
- f. Extension orders and subsequent annual orders.** Institution must submit orders based on the following:
- (i) **One-year Licensed Period.** An extension order must be submitted to extend the agreement for another Licensed Period. The extension order must be received by Microsoft prior to the expiration of the Licensed Period. The selection and quantity of individual Products ordered, not the Product categories selected in section A above, can be changed at each extension order.
  - (ii) **Three-year Licensed Period.** An anniversary order must be received by Microsoft prior to each anniversary of the agreement effective date, and a subsequent extension order must be received by Microsoft prior to the expiration of the initial three-year Licensed Period. Each anniversary order must be for at least the same Product selection and total quantity as ordered during the one-year period in which each Product was first ordered, except for step-ups and any additional products not ordered Organization-wide. When placing anniversary orders, Institution may order fewer licenses for Online Services than the quantity of Institution's initial order as long as the anniversary order meets the minimum requirements for Platform Online Services.
- g. How to confirm orders.** Microsoft will publish information about orders placed by Institution, including an electronic confirmation of each order on a password-protected site on the World Wide Web at <https://www.microsoft.com/licensing/servicecenter> or a successor site. Upon Microsoft's acceptance of this agreement, the contact identified for this purpose will be provided access to this site.
- h. Step up to a higher Product edition.** If a previously ordered Product has multiple editions, The Organization may migrate to the higher edition by stepping up. The order requirements set forth in subsection 5(e) above apply to step-ups for both Desktop Platform Products and Additional Products.
- i. Pay for orders.** Institution must pay its reseller for the Products ordered.
- j. Changing a reseller.** If Institution discontinues its relationship with a reseller, Institution must choose a replacement reseller in Institution's Defined Region. If Institution intends to change its reseller, Institution must notify Microsoft and the former reseller in writing on a

form that Microsoft provides at least 30 days prior to the date on which the change is to take effect.

## **6. *Transfer and reassigning Licenses.***

- a. License transfers.** License transfers are not permitted, except that Institution may transfer fully-paid perpetual licenses to:
  - (i) an Affiliate located in the same Defined Region as Institution, 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 divestiture of an Affiliate or a division of an Affiliate or (2) a merger involving Institution or an Affiliate.
- b. Notification of License Transfer.** Institution must notify Microsoft of a License transfer by completing a license transfer form, which can be obtained from <http://www.microsoft.com/licensing/contracts> and sending the completed form to Microsoft before the license transfer. No License transfer will be valid unless Institution provides to the transferee, and the transferee accepts in writing, the applicable Use Rights, use restrictions, limitations of liability (including exclusions and warranty provisions), and the transfer restrictions described in this section. 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 Organization. Licenses and Software Assurance may be reassigned within the Organization as described in the Use Rights.

## **7. *Term and termination.***

- a. Effective date.** This agreement will be effective on the date it is accepted by Microsoft unless a Qualifying/Previous Enrollment or Agreement number is provided at the top of this agreement. In that case, the effective date will be one day following the expiration of the Qualifying/Previous Enrollment or Agreement.
- b. Term.** This agreement ends 12 or 36 full calendar months from the effective date. The term is indicated in Section A of this agreement titled "Select a purchasing option and license period." Microsoft will provide Institution prior written notice advising of the extension and buy-out options.
- c. Termination for Cause.** Either party may terminate this agreement only in the event of a material breach by the other party. Except where the breach is by its nature not curable within 30 days, the terminating party must give the other party 30 days prior written notice and opportunity to cure.
- d. Modification or termination of an Online Service for regulatory reasons.** Microsoft may modify or terminate an Online Service 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.
- e. Effect of termination or expiration.** If the agreement is terminated, or Customer does not exercise the buy-out, or allows the agreement to expire, then all copies of the Products licensed under this agreement must be deleted and destroyed. Microsoft may request written certification of the deletion and destruction.

- f. **Program updates.** Microsoft may make a change to this program that will make it necessary for Institution to enter into a new agreement at the time of an agreement extension.

## **8. *How to renew this agreement.***

- a. **Renew agreement by extension.** Institution has a one-time option to extend this agreement and place additional orders under it for one additional term of 36 full calendar months. If Institution wishes to renew this agreement, it must submit a renewal order prior to or at the expiration of the first term. The renewal will start the day after the first term ends. If Microsoft makes a change to this program, Institution may have to enter into a new agreement.
- b. **Renew agreement by executing new agreement.** If Institution wishes to continue its subscription after the agreement expires, it must submit a new order prior to or at the expiration of the agreement term. The new agreement will start the day after the existing agreement ends.

## **9. *Buy-out.***

Institution may elect to obtain perpetual Licenses for Products after subscribing for three or more consecutive years under the Open Value Subscription program through several one-year License Periods or a three-year License Period or combination of both. The buy-out order can be placed only at the end of the agreement term. Institution must submit an order to the reseller at least 30 days before the end of that term and pay the buy-out price. The buy-out price is determined by agreement between Institution and its reseller.

The buy-out order quantity for Licenses for Desktop Platform Products shall be at least equal to the Organization-wide Count but shall not exceed the total quantity of Institution Qualified Devices in its Organization on the date of the buy-out order. The buy-out order quantity for Additional Products shall be the lowest total quantity of copies ordered during any of the three 12 month periods immediately preceding expiration of this agreement. The buy-out option is not available for Products licensed under the Student option.

Except as specifically provided otherwise in the Use Rights, perpetual Licenses acquired through this buy-out option are device-based Licenses. The license grant in Section 3b above does not apply to such perpetual Licenses. For example, a License is required for each Qualified Device on which the Organization desires to run Office.

Institution's prices for buy-out Licenses will be the buy-out prices in effect for its price level for that Product as of the date that it places its first order for that Product or as specified with the initial order.

If Institution opts to buy out Licenses and desires to maintain Software Assurance coverage, Institution must renew Software Assurance on or before the end of the agreement term by signing a new license agreement.

## **10. *Confidentiality.***

"Confidential Information" is non-public information that is designated "confidential" or that a reasonable person should understand to be confidential, including Customer Data and the terms of Microsoft agreements. Confidential Information does not include information that: (a) becomes publicly available without a breach of this agreement, (b) was lawfully known or received by the receiving party without an obligation to keep it confidential, (c) is independently developed, or (d) is a comment or suggestion one party volunteers about the other's business, products or services.

Each party will take reasonable steps to protect that other party's Confidential Information and will use the other party's Confidential Information only for purposes of the parties' business relationship under this agreement. Neither party will disclose that information to third parties, except to its employees, Affiliates, resellers, contractors, advisors and consultants (collectively, "Representatives") and then only on a need-to-know basis under nondisclosure obligations at least as protective as this agreement. Each party

remains responsible for the use of the Confidential Information by its Representatives and in the event of the discovery of any unauthorized use or disclosure, must promptly notify the other party.

A party may disclose the other party's Confidential Information if required by law, but only after it notifies the other party (if legally permissible) to enable the other party to seek a protective order.

The obligations in this section apply for Customer Data until it is deleted from the Online Services, and for all other Confidential Information, for a period of five years after the Confidential Information is received.

## **11. Compliance with applicable laws, privacy, and security.**

- a. Microsoft and Institution will each comply with all applicable privacy and data protection laws and regulations (including applicable security breach notification law). However, Microsoft is not responsible for compliance with any laws applicable to Institution or Institution's industry that are not also generally applicable to information technology services providers. Institution consents to the processing of personal information by Microsoft and its agents to facilitate the subject matter of this agreement.
- b. Institution may choose to provide personal information to Microsoft on behalf of third parties (including Institution's contacts, resellers, distributors, administrators, and employees) as part of this agreement. Institution will obtain all required consents from third parties under applicable privacy and data protection law before providing personal information to Microsoft.
- c. The personal information Institution provides in connection with this agreement will be processed according to the privacy statement available at <https://www.microsoft.com/licensing/servicecenter> (see footer), except that Product-specific privacy statements are in the Use Rights. Personal data collected through Products may be transferred, stored and processed in the United States or any other country in which Microsoft or its service providers maintain facilities. By using the Products, Institution consents to the foregoing. 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.
- d. **U.S. export.** Products and Fixes are subject to U.S. export jurisdiction. Institution 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. For additional information related to Microsoft compliance with export rules, see <http://www.microsoft.com/exporting>.

## **12. Warranties.**

### **a. Limited warranties and remedies.**

- (i) **Software.** Microsoft warrants that each version of the Software will perform substantially as described in the applicable Microsoft user documentation for one year from the date Institution is first licensed for that version. If it does not and Institution notifies Microsoft within the warranty term, then Microsoft will, at its option (1) return the price Institution paid for the Software license, or (2) repair or replace the Software.
- (ii) **Online Services.** Microsoft warrants that each Online Service will perform in accordance with the applicable SLA during Institution's use. Institution's remedies for breach of this warranty are in the SLA.
- (iii) **Professional Services.** Microsoft warrants that it will perform Professional Services with professional care and skill. If Microsoft fails to do so and Institution notifies Microsoft within 90 days of the date the Professional Services were performed, then Microsoft will either re-perform the Professional Services or return the price Institution paid for them.

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

- b. **Exclusions.** The warranties in this agreement 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 Institution is permitted to redistribute.
- c. **DISCLAIMER.** Microsoft provides no other warranties or conditions and disclaims any other express, implied, or statutory warranties, including warranties of quality, title, non-infringement, merchantability, and fitness for a particular purpose.

### **13. Defense of third party claims.**

- a. **By Microsoft.** Microsoft will defend Customer against any claims made by an unaffiliated third party (1) that any Product or Fix infringes its patent, copyright, or trademark or makes intentional unlawful use of its Trade Secret; or (2) that arises from Microsoft's provision of an Online Service in violation of section 11 of this agreement. Microsoft will pay the amount of any resulting adverse final judgment or approved settlement. This does not apply to claims or awards based on (i) Customer Data; (ii) non-Microsoft software; (iii) modifications to a Product or Fix Customer makes or any specifications or materials Customer provides; (iv) Customer's combination of a Product or Fix with (or damages based on the value of) a non-Microsoft product, data, or business process; (v) Customer's use of a Microsoft trademark without express, written consent or the use or redistribution of a Product or Fix in violation of this agreement; (vi) Customer's continued use of a Product or Fix after being notified to stop due to a third party claim; or (vii) Products or Fixes that are provided free of charge.
- b. **By Institution.** Institution will defend Microsoft against any claims made by an unaffiliated third party: (1) that any Customer Data or non-Microsoft software Microsoft hosts on Institution's behalf infringes the third party's patent, copyright, or trademark or makes unlawful use of its Trade Secret; (2) that arises from violation of section 11 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; or (3) that are based on items excluded from Microsoft's defense obligations in section 13(a) above. Institution will pay the amount of any adverse final judgment or approved settlement resulting from a claim covered by this section 13(b).
- 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 Institution's use of the Product or Fix, Microsoft will seek to obtain the right for Institution to keep using it or modify or replace it with a functional equivalent, in which case Institution must discontinue use of the prior version immediately. If these options are not commercially reasonable, Microsoft may terminate Institution's right to the Product or Fix and refund any amounts Institution has paid for those rights to Software or Fixes and, for Online Services, any amount paid for a usage period after the termination date.
- d. **Other terms.** The party being defended under this section 13 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 13 are the exclusive remedies for the claims described in this section.

#### **14. *Limitation of liability.***

- a. **General.** The total liability of each party, including its Affiliates and its contractors for all claims arising under this agreement is limited to direct damages up to the following amounts: (1) for each Product other than Online Services, the amount Institution was required to pay for the Product, and (3) for Online Services, the amount Institution paid for the Online Service during the 12 months before the cause of action arose; but in no event will a party's aggregate liability for any Online Service exceed the total amount paid for that Online Service. In the case of Products provided free of charge or previews, Microsoft's liability is limited to direct damages up to U.S. \$5,000. These limitations apply regardless of whether the asserted liability is based on breach of contract, tort (including negligence), strict liability, breach of warranties, or any other legal theory.
- b. **Affiliates and contractors.** Microsoft and Institution agree not to bring any action against the other's Affiliates or contractors in respect of any matter which is disclaimed on their behalf in this Section. Each party will indemnify the other in the event of any breach of this provision.
- c. **EXCLUSION OF CERTAIN DAMAGES.** Neither party nor their Affiliates nor contractors will be liable for any indirect, consequential, special or incidental damages, or damages for lost profits, revenues, business interruption, or loss of business information in connection with this agreement, even if advised of the possibility of such damages or if such possibility was reasonably foreseeable.
- d. **Limits.** The limits and exclusions in this section 14 do not apply to either party's (1) obligations under section 13 or (2) liability for violation of its confidentiality obligations (except obligations related to Customer Data) or the other party's intellectual property rights.

#### **15. *Verifying compliance.***

Institution must keep accurate and complete records relating to all use and distribution of the Products by Institution and its Affiliates. Microsoft may request that Institution conduct an internal audit of all Microsoft Products in use throughout the Organization, comparing the number of Products in use to the number of effective Licenses issued in its name. Following any audit, the Institution agrees to deliver to Microsoft a written statement signed by its authorized representative, certifying that either (1) it has sufficient Licenses to permit all usage disclosed by the audit, or (2) it has ordered sufficient Licenses to permit all usage disclosed by the audit. By requesting an internal audit, Microsoft does not waive its rights to enforce this agreement or to protect its intellectual property by any other means permitted by law, including conducting an onsite audit.

#### **16. *Making Copies of Products and re-imaging rights.***

- a. **General.** Institution may make as many copies of the Products as it needs to distribute the Products to Faculty and Staff or Students for use in accordance with the agreement. Copies must be true and complete (including copyright and trademark notices) from master copies obtained from a Microsoft approved fulfillment source. Institution agrees to make reasonable efforts to notify individuals who use the Products that the Products are licensed from Microsoft and subject to the terms of this agreement.
- b. **Right to re-image.** In certain cases, re-imaging is permitted using the Product media. If the Microsoft Product 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 generally be 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) Institution 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.

## **17. *Redistribution of Software Updates to Students.***

- a. License grant. Microsoft grants the Organization a limited, non-exclusive, royalty-free, non-assignable, non-transferable, revocable License to distribute Software Updates to Institution's Students in accordance with the terms of this section. The Organization's Students must use the Software Updates solely for their personal benefit in accordance with the end-user License Agreement with Microsoft ("EULA") included with each Software Update.
- b. Redistribution of Software Updates. The Organization may redistribute Software Updates to its Students (1) by electronic means provided that Institution's method of electronic distribution is adequately licensed and incorporates access control and security measures designed to prevent modification of the Software Updates and access by the general public or (2) by acquiring authorized copies on fixed media from a fulfillment source approved by Microsoft.
- c. Limitations. The Organization may not (1) produce or replicate Software Updates on to CDs or other distributable storage media, (2) combine the Software Updates with other, non-Microsoft software, (3) distribute any Software Updates as a stand-alone component via email attachment, (4) charge for the Software Updates, other than to recover any reasonable costs incurred in providing the updates to its students; (5) remove, modify, or interfere with the EULA or the EULA acceptance functionality included by Microsoft with any Software Update; or (6) alter the Software Updates in any way. Microsoft is not responsible for any cost related to the acquisition, distribution, or recall of the Software Updates.
- d. Tracking and recall, replacement Software Updates. The Organization must track the quantity and method of distribution of the Software Updates by means that will allow Institution to provide notice of a recall and offer replacements as provided in this subsection. Institution agrees to stop redistributing Software Updates within 10 days of receipt of a notice of recall from Microsoft and within 30 days of that notice Institution agrees to (1) return to Microsoft or destroy all copies of Software Updates in the Organization's possession and (2) notify the Organization's Students of the recall by the same or similar means in which they were notified of the availability of the Software Updates.
- e. Replacement Software Updates. If Microsoft makes available to the Organization a replacement Software Update, the Organization agrees to make the replacement available to its Students, or Faculty and Staff, within 30 days of receipt in the same quantity and method(s) of distribution as the Organization made the original Software Update available. The distribution of replacement Software Updates is subject to the same conditions and restrictions as Software Updates under this section.
- f. No warranties. Notwithstanding anything to the contrary in this agreement, and to the extent permitted by law, Software Updates that the Organization redistributes to its Students are provided "as is" without any warranties. Institution acknowledges that the provisions of this paragraph with regard to the Software Updates are reasonable considering, among other



things, that the Software Updates are complex computer Products. Institution further acknowledges that the performance of the Software Updates will vary depending upon hardware, platform, and Products interactions and configurations.

- g. **Exclusion of damages.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL MICROSOFT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, CONSEQUENTIAL, OR INDIRECT DAMAGES THAT ARISE OUT OF OR ARE IN ANY WAY RELATED TO THE ORGANIZATION'S REDISTRIBUTION OF THE SOFTWARE UPDATES TO ITS STUDENTS. FURTHERMORE, IN NO EVENT SHALL MICROSOFT BE LIABLE FOR ANY SUCH DAMAGES BASED DIRECTLY OR INDIRECTLY UPON THE PROVISION OF SOFTWARE UPDATES OR UNAVAILABILITY OF SOFTWARE UPDATES—INCLUDING WITHOUT LIMITATION, DAMAGES DUE TO BUSINESS INTERRUPTION, LOSS OF PROFITS, REVENUE OR BUSINESS OPPORTUNITY, LOSS OF DATA AND THE LIKE, FAILURE TO MEET ANY DUTY, OR NEGLIGENCE.
- h. **Limitation of liability.** With respect to the Organization's redistribution of the Software Updates, the limitation of liability provisions in this agreement shall apply in those situations in which the Organization or its Users assert a right to damages or other compensation from Microsoft.
- i. **No support.** Institution understands that Microsoft has no obligation to provide any support for Software Updates that the Organization may redistribute to its Students, including any benefits accruing from Software Assurance.
- j. **Applicability.** The provisions of this section shall not apply to the distribution of Fixes to Students so long as the Fix distributed is for a Product the Students are authorized to run. All other redistribution of additional or replacement code to Students is subject to the provisions of this section.

## **18. *Miscellaneous.***

- a. **Notices.** Notices to Microsoft must be sent to the Microsoft address on the signature form with a copy sent to the address in this agreement. Notices must be in writing and will be treated as delivered on the date shown on the return receipt or on the courier or fax confirmation of delivery. Microsoft may provide information to Institution about upcoming ordering deadlines, services, and subscription information in electronic form, including by email to contacts provided by Institution. Emails will be treated as delivered on the transmission date.
- b. **Assignment.** Customer may not assign this agreement either in whole or in part.
- c. **No transfer of ownership.** Microsoft does not transfer any ownership rights in any Product. The Products are protected by copyright and other intellectual property rights laws and international treaties.
- d. **Order of precedence.** In the case of a conflict between any documents identified in this agreement that is not expressly resolved in those documents, their terms will control in the following order of descending priority: (1) this agreement, (2) the Product Terms, (3) the Use Rights, (4) all orders submitted under this agreement, and (5) any other documents in this agreement. Terms in an amendment control over the amended document and any prior amendments concerning the same subject matter.
- e. **Applicable law, venue, and jurisdiction.** The terms of this agreement are governed by the laws of the state where Institution is organized or formed. Both parties agree that the federal courts have exclusive jurisdiction over disputes under this agreement and the resolution. Any legal actions relating to this agreement must be brought in a court of competent jurisdiction within federal courts located in the jurisdiction of the state where Institution is organized, and the parties agree that jurisdiction and venue in such courts is appropriate.

- f. **Severability.** If any provision in this agreement is found unenforceable, the balance of the agreement will remain in full force and effect.
- g. **Survival.** Provisions regarding ownership and license rights, Use Rights, restrictions on use, transfer of licenses, warranties, limitation of liability, defense of third party claims, confidentiality, compliance verification, obligations on termination or expiration, and this section titled "Miscellaneous" will survive termination or expiration of this agreement.
- h. **English language controls.** The English language version of this agreement controls.
- i. **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 upon Microsoft.
- j. **Institution's responsibility for others using the Product; third parties that may benefit from this agreement.** Institution must use reasonable efforts to make its employees, agents, Affiliates, and others using the Product aware that the Product may be used only according to this agreement.

Certain sections of this agreement are for the benefit of Microsoft Affiliates. As a result, Microsoft and its Affiliates are entitled to enforce this agreement. Except for Microsoft Affiliates, this agreement does not create any enforceable rights by anyone other than Microsoft and Institution. Any representation or agreement made by Microsoft's Affiliates that would change the terms of this agreement must be in writing and signed by Microsoft's authorized representative.

- k. **Advisor fee.** Microsoft, or its Affiliates, sometimes pays fees to software advisors, or other third parties authorized by Microsoft or one of its Affiliates. The fees are in exchange for their advisory Services. The payment of fees depends upon several factors, including the type of agreement under which Institution orders Licenses, which Licenses Institution orders, and whether Institution chooses to use an advisor. The fee amounts increase with the size of the orders Institution places under this agreement.
- l. **Use of contractors.** Microsoft may use contractors to perform services, but Microsoft will be responsible for their performance subject to the terms of this agreement.
- m. **Insurance while performing Professional Services on Institution's premises.** Microsoft will maintain industry-appropriate insurance coverage at all times when performing Professional Services on Institution's premises via commercial insurance, self-insurance, or any other similar risk financing alternative. Microsoft will provide Institution with evidence of coverage on request.
- n. **Calendar days.** Any reference in this agreement to "day" will be a calendar day, except references that specify "business day".
- o. **FERPA.** Upon receipt of a judicial order or lawfully issued subpoena requiring the disclosure of personally identifiable information from education records related to Institution in Microsoft's possession, Microsoft or an Affiliate of Microsoft will attempt to redirect the request to Institution. If compelled to disclose personally identifiable information from education records related to Institution to a third party, Microsoft will use commercially reasonable efforts to notify Institution in advance of a disclosure unless legally prohibited. Institution understands that Microsoft may have no or limited contact information for Institution's students and students' parents in its possession. Consequently, Institution will convey notification on behalf of Microsoft to students (or, with respect to a student under 18 years of age and not in attendance at a postsecondary institution, to the student's parent) of such an order or subpoena as may be required under applicable law.