



Microsoft Enterprise **Agreement** – State and Local

(Custom for State of South Carolina)

Enterprise Agreement number
Microsoft affiliate to complete

01E61860

This Microsoft Enterprise Agreement is entered into between the following entities as of the effective date identified below. Each party will notify the other in writing if any of the information in the following table changes.

Customer		
Name of Entity	The State of South Carolina's Information Technology Management Office ("ITMO") on behalf of enrolled affiliates of S.C.	Contact Name Charles Johnson <small>(This person handles access to online information and receives notices unless a different contact is provided below.)</small>
Street Address	4430 Broad River Rd	Contact E-mail Address (required for online access) CJohnson@cio.sc.gov
City	Columbia	State/Province SC
Country	USA	Postal Code 29210
Microsoft Account Manager Name	Jim Lorenz	Phone 803-896-5249
Microsoft Account Manager Email	jlorenz@microsoft.com	Fax 803-896-0099
Contracting Microsoft Affiliate		
MSLI, GP - 6100 Neil Road, Suite 210 - Reno, Nevada USA 89511-1137 - Dept. 551, Volume Licensing		

If online access and notices should be provided to someone or some place other than above, complete this section:

Name of Entity	Contact Name
Street address	Contact E-mail Address
City	State/Province
Country	Postal Code
	Phone
	Fax

If duplicate electronic contractual notices should be provided to someone or some place in addition to the above, complete this section:

Name of Entity	Contact Name
Street address	Contact Email Address (required for electronic notice)

City	State/Province	Phone
Country	Postal Code	Fax

This agreement consists of (1) this cover page, (2) the attached terms and conditions, (3) the Product List, (4) the product use rights applicable to products licensed under this agreement, and (5) any enrollment entered into under this agreement.

Effective date. If the first enrollment entered into under this agreement is given an effective date that is earlier than the date this agreement is signed by us, the effective date of this agreement will be that earlier date. Otherwise, this agreement will be effective on the date it is signed by us.

Notices to Microsoft should be sent to:	Copies should be sent to:
MSLI, GP 6100 Neil Road, Suite 210 Reno, Nevada USA 89511-1137 Dept. 551, Volume Licensing	Microsoft Law and Corporate Affairs One Microsoft Way Redmond, WA 98052 USA Volume Licensing Group (425) 936-7329 fax

By signing below, the parties agree to be bound by the terms of this agreement, and you represent that the information you have provided on this cover page is accurate.

Customer	Contracting Microsoft affiliate
Name of Entity: The State of South Carolina's Information Technology Management Office ("ITMO") on behalf of enrolled affiliates of S.C.	MSLI, GP
Signature 	Signature 
Printed Name Michael B. Spicer	Printed Name PAUL NELSON
Printed Title Information Technology Mgmt Officer	Printed Title CONTRACT ADMINISTRATOR
Signature Date 6-16-03	Signature Date (date Microsoft affiliate countersigns) JUN 20 2003
	Effective Date (may be different than our signature date) 6/20/2003

Terms and Conditions

1. Definitions.

In this agreement, "you" means the entity that has entered into this agreement with us, and "we" or "us" means the Microsoft entity that has entered into this agreement or an enrollment. In addition, the following definitions apply:

"1st anniversary price level" means the volume discount level that is calculated for each product family with respect to certain enrollments pursuant to the terms and conditions of Section 18(l)(2)(F), which such level shall be used in conjunction with the initial price level and 2nd anniversary price level applicable to such enrollments to determine whether the year 3 desktop reference price should be lowered for such enrollments pursuant to the terms and conditions of Section 18(l)(2)(G);

"2nd anniversary price level" means the volume discount level that is calculated for each product family with respect to certain enrollments pursuant to the terms and conditions of Section 18(l)(2)(F), which such level shall be used in conjunction with the initial price level and 1st anniversary price level applicable to such enrollments to determine whether the year 3 desktop reference price should be lowered for such enrollments pursuant to the terms and conditions of Section 18(l)(2)(G);

"3-year desktop reference price" means, with respect to an enterprise product on an enrollment, the sum of the reference prices of all installment payments for such product during the initial 3-year term of such enrollment;

"additional product" means any product other than an enterprise product that an enrolled affiliate chooses to license under its enrollment;

"affiliate" means (a) with regard to you, (i) any government agency, department, instrumentality, division, unit or other office of your state or local government that is supervised by or is part of you, or which supervises you or of which you are a part, or which is under common supervision with you; (ii) any county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality established by the laws of your state and located within your state's jurisdiction and geographic boundaries; and (iii) any other entity expressly authorized by the laws of your state to purchase under state contracts; provided that a state and its affiliates shall not, for purposes of this definition, be considered to be affiliates of the federal government and its affiliates; and (b) with regard to us, any legal entity that we own, that owns us, or that is under common ownership with us;

"adjustment multiplier" means, with respect to a product family on the second anniversary of the effective date of an enrollment for which it is determined, a number by which the originally calculated year 3 desktop reference price is multiplied in order to determine the adjusted year 3 desktop reference price, pursuant to the terms and conditions of Section 18(l)(2)(G);

"aggregate family desktop count" means, with respect to a particular product family as of a particular annual pricing date, the aggregate number of qualified desktops under all unexpired enrollments for which one or more products in such family are chosen as enterprise products as of such date, including both (i) the original qualified desktops ordered under such unexpired enrollments, plus (ii) any additional qualified desktops added pursuant to true up orders;

"annual pricing date" means each of the following:

- (i) the effective date of this agreement (the "first annual pricing date");*
- (ii) the first day of the eleventh (11th) full calendar month following such first annual pricing date (the "second annual pricing date"); and*
- (iii) the first day of the calendar month that occurs every 12 months following the second annual pricing date, until the last enrollment executed hereunder expires or is otherwise terminated.*

For example, if the first annual pricing date is July 1, 2003, then the second annual pricing date shall be June 1, 2003, and each subsequent annual pricing date shall occur on June 1 of each successive calendar year until the last enrollment hereunder expires or is otherwise terminated;

"annual price level" means, with respect to a particular product family and as of a particular annual pricing period, the volume discount level, determined pursuant to the terms and conditions of Section 18(l), by which each of the following shall be determined, based upon the aggregate family desktop count for such product family as of the annual pricing date upon which such the determination of such level for such period is made:

- (i) the initial annual reference prices of enterprise products in such product family for new enrollments with effective dates which occur in such annual pricing period;
- (ii) the 1st anniversary and 2nd anniversary price levels for certain enrollments; and
- (iii) the adjustment multiplier with respect to the year 3 desktop reference price for enterprise products in such product family for previously-executed enrollments whose second anniversary falls in such annual pricing period;

"annual pricing period" means each period which:

- (i) begins on the first annual pricing date, or any anniversary thereof; and
- (ii) ends twelve (12) full calendar months following the day it begins.

For example, if the first annual pricing date is July 1, 2003, then: the first annual pricing period will run from July 1, 2003 to June 30, 2004; the second annual pricing period will run from July 1, 2004 to June 30, 2005; and so forth.

Note that, with the exception of the first annual pricing period, each annual pricing period begins one month following the annual pricing date upon which the annual price level for such period is determined pursuant to Section 18(l). Such one-month period is necessary for us to calculate the annual price levels and reference prices for the subsequent annual pricing period, and to implement adjustments, if any, to the reference prices of third year installment payments for enrollments whose second anniversary falls in such subsequent period.

"available" means, with respect to a product, that we have made licenses for that product available for ordering under the Enterprise Agreement program;

"CAL family" means any of the following client access license ("CAL") products, when such products are chosen as enterprise products on an enrollment:

- (i) Microsoft BackOffice CAL;
- (ii) Microsoft Core CAL;
- (iii) Microsoft Windows Server CAL;
- (iv) Microsoft Exchange Server CAL;
- (v) Microsoft SQL Server CAL;
- (vi) Microsoft Systems Management Server CAL; or
- (vii) Microsoft SharePoint Portal Server CAL;

"component platform product" means any of the following enterprise products:

- (i) Microsoft Office Professional;
- (ii) Microsoft Office Standard;
- (iii) Microsoft Windows XP Professional Operating System Upgrades;
- (iv) Microsoft Core CAL; and

(v) *Microsoft BackOffice CAL;*

"ending price level" means, with respect to an enterprise product ordered pursuant to a particular enrollment, the volume discount level that is used to determine the adjustment multipliers applied to apply to the year 3 desktop reference price, pursuant to the terms and conditions of Subsection 18(l)(2)(G).

"enrolled affiliate" means an entity, either you or any one of your affiliates, that has entered into an enrollment under this agreement;

"enrollment" means the document that you or your affiliate submits under this agreement to sign up for the Enterprise Agreement program and make an initial selection of products;

"fix(es)" means product service packs and other fixes that we release generally;

"enterprise" means the enrolled affiliate and the affiliates it chooses on its enrollment to include in its enterprise;

"enterprise product" means any product that we designate as an enterprise product and that an enrolled affiliate chooses to license under its enrollment (enterprise products may only be licensed on an enterprise-wide basis under the Enterprise Agreement program);

"Government EA Price List" means the Microsoft State and Local Government Enterprise Agreement Price List that is provided on a monthly basis to each reseller, which contains the reference prices for both enterprise products and additional products.

"horizon desktop count" means, with respect to a product family on an annual pricing date, the number of qualified desktops that is equal to (i) the total number of qualified desktops enrolled, as of such annual pricing date, in unexpired enterprise enrollments containing an enterprise product belonging to such product family ("current enrollments"), minus (ii) the number of qualified desktops enrolled under current enrollments that are scheduled to expire before the following annual pricing date, if such enrollments are not otherwise renewed. For example, if, as of a particular annual pricing date, there are 10,000 qualified desktops in unexpired enrollments for a product family, and if one or more such enrollments containing a total of 6,000 qualified desktops will expire before the following annual pricing date if not otherwise renewed, then the horizon desktop count with respect to the annual pricing date and product family for which the determination is made shall be 4,000;

"horizon price level" means, with respect to a product family during an annual pricing period, the volume discount level that is used to determine the 3-year desktop reference price of each enterprise product in such product family for enrollments whose effective dates fall during such period, based on the horizon desktop count, pursuant to the terms of Section 18(l)(2)(A);

"initial desktop count" means, with respect to a product family in which an enterprise product on an enrollment is included, the aggregate family desktop count for such product family as of the annual pricing date which immediately precedes the annual pricing period during which the effective date of such enrollment occurs;

"initial price level" means, with respect to a product family during an annual pricing period, the volume discount level that is used to determine the year 1 desktop reference price and year 2 desktop reference price of each enterprise product in such product family, pursuant to the terms of Section 18(l)(2)(B);

"ITMO" means the South Carolina Information Technology Management Office, which is established by South Carolina Code Section 11-35-820.

"License" means any one of those offerings identified in the Product List (including standard licenses, and upgrades for desktop operating systems) that provides the right to run the version of the product for which it is ordered;

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

"Microsoft BackOffice Client Access License" and "BackOffice CAL" means each of the following client access license products, when purchased together as a suite:

- (i) Windows CAL;
- (ii) Exchange CAL;
- (iii) SQL CAL; and
- (iv) SMS CAL

(note: BackOffice CALs may solely be purchased hereunder pursuant to enrollments that renew previous enrollments under which BackOffice CAL was included as an enterprise product, and may not be purchased pursuant to any non-renewal enrollments executed hereunder);

"Microsoft Core Client Access License" and "Core CAL" means each of the following client access license products, when purchased together as a suite:

- (i) Windows CAL;
- (ii) Exchange CAL;
- (iii) SharePoint CAL; and
- (iv) SMS CAL;

"non-renewal enrollment" means any enrollment executed hereunder that is not a renewal enrollment;

"Office family" means either of the following enterprise products: (i) Microsoft Office Professional; or (ii) Microsoft Office Standard;

"order" means an order on a form that is acceptable to the reseller;

"product" means any product available to license as described on the Product List;

"Product List" means, with respect to any licensing program, the statement published by Microsoft from time to time on the World Wide Web at <http://microsoft.com/licensing/>, or at a successor site that we identify, that identifies the products that are or may be made available under each of the volume licensing programs, and identifies which products are available to Enterprise Agreement program customers and any product-specific conditions or limitations on the acquisition of licenses for those products;

"original true up reference price" means, with respect to an enterprise product at the first, second or third anniversaries of an enrollment, respectively, the original per-additional-desktop unit reference price for the true up order due at such anniversary, as determined at the effective date of such enrollment pursuant to Section 18(l);

"platform discount" means a discount factor applied when calculating the reference prices for products sold pursuant to platform enrollments, pursuant to the terms of Section 18(l);

"platform enrollment" means any enrollment executed hereunder for which each of the following is a chosen enterprise product:

- (i) either (a) Office Standard or (b) Office Professional; and
- (ii) Microsoft Windows Professional desktop operating system; and
- (iv) either (c) BackOffice CAL or (d) Core CAL;

"premium level discount" means a discount factor applied when calculating the reference prices for products during an annual pricing period for which the initial desktop count and/or horizon desktop count are 40,000 or more, pursuant to the terms of Section 18(l);

"product family" means any of the following collections of enterprise products, as defined above: (i) Office family; (ii) Windows family; and/or (iii) CAL family;

"qualified desktop" means any personal desktop computer, portable computer, workstation or similar device that is used by or for the benefit of an enrolled affiliate or any affiliate included in its enterprise and that meets the minimum requirements for running any of the enterprise products. Qualified desktops do not include: (i) any computer that is designated as a server and not used as a personal computer, (ii) any

system dedicated to run ONLY line-of-business software (e.g., an accounting or bookkeeping program used by an accountant, or a computer-aided design program used by an engineer or architect); or (iii) any system running an embedded operating system (e.g. Windows 9.x for embedded, Windows XP embedded);

“renewal enrollment” means an enrollment executed hereunder pursuant to which a renewal order for enterprise products is made;

“renewal order” means the order that an enrolled affiliate submits at the beginning of any renewal term to renew Software Assurance coverage for products previously ordered under its enrollment;

“reseller” means a large account reseller authorized by us to resell licenses in an enrolled affiliate’s area under the Enterprise Agreement program;

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

“Select Price List” means the Microsoft Select Agreement Price List that is provided on a monthly basis to each reseller, which contains the estimated retail prices for products made available pursuant to the Microsoft select program;

“Software Assurance” means, for any underlying licensed product for which it is ordered, the right to upgrade to, and run, the latest version of that product that we make available during the covered period;

“true up desktop reference price” means, with respect to an enterprise product at the first, second or third anniversaries of an enrollment, respectively, the per-additional-desktop unit reference price for the true up order due within 15 days following such anniversary, as determined at the effective date of such enrollment pursuant to Section 18(l);

“unexpired enrollment” means, with respect to an annual pricing date, an enterprise enrollment under either (i) this agreement; or (ii) another Microsoft Enterprise Agreement to which either you or one of your affiliates is party, provided that such enrollment shall not have expired or been terminated prior to such annual pricing date;

“Windows family” means the following enterprise product: Microsoft Windows XP Professional desktop operating system (or its successor);

“year 1 desktop reference price” means, with respect to an enterprise product on an enrollment, the per-desktop reference price that applies to the first of three annual installment payments for such product;

“year 2 desktop reference price” means, with respect to an enterprise product on an enrollment, the per-desktop reference price that applies to the second of three annual installment payments for such product; and

“year 3 desktop reference price” means, with respect to an enterprise product on an enrollment, the per-desktop reference price that applies to the third of three annual installment payments for such product.

2. How the Enterprise Agreement program works.

The Enterprise Agreement program gives customers that wish to license one or more of Microsoft’s platform products across their enterprise the means to ensure that their entire enterprise will be licensed. You and your affiliates can participate in this program by submitting one or more enrollments under this agreement. On the enrollment, the enrolled affiliate will designate the scope of its enterprise and make the initial selection of enterprise products and any additional products it wishes to license. Each enrollment must include at least one of those products that we make available to license as an enterprise product. We may refuse to accept an enrollment if we have a business reason for doing so. Notwithstanding any other provision of this agreement: (i) only enrolled affiliates identified in an enrollment will be responsible for complying with the terms of that enrollment, including the terms of this agreement incorporated by reference in that enrollment; and (ii) a governmental entity will only be responsible for its own compliance with the terms of any enrollment (and with the terms of this agreement which are incorporated by reference into such enrollment) it has executed, and bears no responsibility or

liability for any act, or failure to act, or for any obligation or any losses relating in any way to any other entity.

- a. **Establishing price levels.** *The method by which price levels shall be determined as set forth in Section 18(l).*
- b. **Deriving prices from price levels.** *The enrolled affiliate's reference prices shall be determined as set forth in Section 18(l).*
- c. **How your enrolled affiliates acquire licenses.** An enrolled affiliate will acquire its licenses by executing an enrollment under which it acquires its licenses through its chosen reseller. Orders under an enrollment will be made out to and submitted to the enrolled affiliate's reseller. We will invoice that reseller according to the terms in the applicable enrollment. While such enrollment will contain reference prices, the reseller and the enrolled affiliate will determine the enrolled affiliate's actual price and payment terms.
- d. **Choosing and maintaining a reseller.**

Resellers. Each enrolled affiliate that signs an enrollment must choose and maintain a reseller in the enrolled affiliate's area. Resellers are authorized to resell our product licenses, but act independently and have no authority to bind us.

Change of reseller. If an entity ceases to be a reseller, the enrolled affiliate must choose a replacement. If an enrolled affiliate intends to change its reseller, *it* must submit written notice to us and the former reseller, on a form that we provide, at least 30 days prior to the date on which the change is to take effect (*the "change effective date"*). Such change will only be effected on *such change effective date*. *Any scheduled billings or required orders due prior to such change effective date shall be due to the original reseller. Failure to follow such procedure shall constitute grounds for termination of such enrollment for cause.*

- e. **Reporting country of use.** On each order (initial, subsequent, true up or renewal), an enrolled affiliate must report to us:
 - **For enterprise products** – the countries where its qualified desktops covered by that order are located and the approximate number of such qualified desktops in each of those countries, and
 - **For additional products** – the countries where the enrolled affiliate or its affiliates run those copies of the additional products covered by that order and the approximate number of copies run in each of those countries.

This information is for our internal use only and does not change the prices we provide for the products licensed under this agreement.

3. How to order enterprise product licenses.

- a. **Placing the initial order.** Each enrolled affiliate must submit an initial order for the enterprise products it selects on its enrollment. Except as provided in the following paragraph, the order must be for L&SA for all enterprise products.

When is the enrolled affiliate eligible to order only Software Assurance for an enterprise product? An enrolled affiliate may order Software Assurance for the enterprise products it selects without the need to simultaneously order a License if the enrolled affiliate or any of the affiliates in its enterprise have obtained perpetual licenses for that product on an enterprise-wide basis under a previous "Enterprise Enrollment" (defined below), and the new enrollment becomes effective no later than the day following the date of expiration of that "Enterprise Enrollment." The Software Assurance order must be for the number of qualified desktops covered as of the expiration of that "Enterprise Enrollment." For all other qualified desktops included in an enrollment submitted under this agreement, the enrolled affiliate must order L&SA.

The term "Enterprise Enrollment," as used in this section 3, means (i) a Microsoft Enterprise Select Agreement; (ii) an enterprise enrollment under a separate Microsoft Select Master Agreement or Microsoft Enterprise Agreement; (iii) any enterprise subscription enrollment entered into under a separate Microsoft Enterprise Subscription Agreement; (iv) any other enrollment submitted under the Microsoft Enterprise Agreement identified on the cover page; or (v) a Microsoft Open License Value Agreement that includes the election of a company-wide option.

- b. Adding new enterprise products.** An enrolled affiliate may only add new enterprise products by entering into a new enrollment.
- c. Placing annual "true up" orders to account for additional desktops.** Each enrolled affiliate must determine the current number of qualified desktops in its enterprise: (i) at each anniversary of the effective date of its enrollment (including anniversaries during any renewal); and, (ii) at the expiration or early termination of its enrollment.
- **If the desktop count has increased.** If the number of qualified desktops has increased, the enrolled affiliate must submit an order for L&SA covering those additional desktops. The enrolled affiliate must place the order within 15 days following the anniversary of the enrollment effective date, expiration or termination.
 - **If the desktop count has not increased.** If the number has not increased, the enrolled affiliate must submit an update statement confirming this fact on the form we provide within that 15-day period.
- d. Reorganizations, Consolidations, and Privatizations.** If the number of qualified desktops in an enterprise changes by more than ten percent as a result of an reorganization, consolidation, or privatization of an enrolled affiliate, we will work with the enrolled affiliate in good faith to determine how to accommodate its changed circumstances in the context of this agreement. If an enrolled affiliate consolidates with a customer with an existing "Enterprise Enrollment," we will work with the enrolled affiliate in good faith to accommodate its changed circumstances in the context of this agreement.

4. How to order additional product licenses.

- a. Placing the initial order.** Each enrolled affiliate must submit an initial order for the additional products it has selected, if any, on its enrollment. Except as provided in the following paragraph, the order must be for L&SA for all copies of those additional products.

When is the enrolled affiliate eligible to order only Software Assurance for an additional product? An enrolled affiliate may order Software Assurance for additional products it selects without the need to simultaneously order a License if the enrolled affiliate or any of the affiliates it includes in its enterprise has obtained perpetual licenses for those products with Upgrade Advantage, Software Assurance or any similar upgrade protection, and the new enrollment becomes effective no later than one day following the expiration of that upgrade protection. The order may be for up to the number of copies covered by such upgrade protection. An enrolled affiliate may also order Software Assurance alone in any other circumstances expressly permitted in the Product List. For all other copies included in an enrollment submitted under this agreement, the enrolled affiliate must order L&SA.

- b. Adding new additional products not previously ordered.** Each enrolled affiliate may, during the remainder of the applicable initial enrollment or renewal term, run new additional products under its enrollment that were not part of the initial order. To do so, the enrolled affiliate must order L&SA in the month in which the product is first run, covering all copies of that product run as of the date of the order. For any additional copies of that product run after the date of that order, the enrolled affiliate must submit orders as described in subsection 4(c) (Placing annual "true up" orders to account for additional copies) below.

- c. Placing annual "true up" orders to account for additional copies.** Each enrolled affiliate may, during the remainder of the applicable initial enrollment or renewal term, run additional copies of those additional products it previously ordered under subsections (a) and (b), provided that the enrolled affiliate places a true up order for L&SA for those additional copies. The enrolled affiliate must submit an order within 15 days after the next anniversary of the effective date of the enrollment (including anniversaries occurring during any renewal) following the date on which those copies were first run. For additional copies first run in the year in which an enrollment expires or is terminated, the enrolled affiliate must submit an order within 15 days following the expiration or termination date.
- d. Update statements.** Each enrolled affiliate must submit an update statement within 15 days following each anniversary of the effective date of its enrollment, and after expiration or termination of its enrollment, on a form we provide, unless that enrolled affiliate (i) is running only enterprise products under its enrollment, and (ii) it is not otherwise required to submit an update statement under subsection 3(c) (Placing "true up" orders to account for additional desktops) above.

5. How to confirm orders.

We will publish information about orders placed by each enrolled affiliate, including an electronic confirmation of each order, on a password-protected site on the World Wide Web at <http://licensing.microsoft.com> or a successor site that we identify. Upon our acceptance of this agreement and enrollments entered into under this agreement, the contact identified for this purpose on the cover page will be provided access to this site.

6. License grant -- what your enrolled affiliates are licensed to run.

Upon our acceptance of the enrollment, the enrolled affiliate has the following rights during the term of its enrollment. These rights apply to the licenses obtained under an enrollment and are not related to any order or fulfillment of software media.

- **For enterprise products.** The enrolled affiliate may run one copy of the latest version (or any prior version) of each enterprise product, on each qualified desktop. By including affiliates in its enterprise, the enrolled affiliate sublicenses this right to each of them subject to the terms of this agreement.
- **For additional products.** The enrolled affiliate may run for its own benefit the number of copies of each additional product ordered in the latest version (or any prior version). If an affiliate included in any enrolled affiliate's enterprise runs any copies of an additional product under this agreement, those copies are sublicensed from that enrolled affiliate subject to the terms of this agreement.

The right to run any product licensed under an enrollment is temporary until:

- (i) the enrolled affiliate has paid all installments of the price for that product license and the applicable initial enrollment or renewal term during which that product license was ordered has expired or been renewed, or
- (ii) the enrolled affiliate is otherwise entitled to perpetual licenses upon early termination as provided in subsection 11(c) (Termination of an enrollment).

Thereafter, the enrolled affiliate will have perpetual licenses to run the latest version available as of such date of expiration, renewal or termination (or any prior version), of each enterprise product in a number of copies equal to the total number of qualified desktops covered by the enrollment; and each additional product in the number of copies ordered during the applicable initial enrollment term or renewal term. In the case of early termination as provided in subsection 11(c) (Termination of an enrollment), if an enrolled affiliate chooses only to pay amounts due and payable as of the termination date, then the enrolled affiliate will instead have perpetual licenses for the number of copies specified in subsection 11(e) (Effect of termination or expiration).

Any perpetual licenses received through Software Assurance supersede and replace the underlying perpetual licenses for which that Software Assurance coverage was ordered. All perpetual licenses acquired under this agreement remain subject to the terms of this agreement and the applicable product use rights.

This agreement, the applicable enrollment, the enrolled affiliate's order confirmation described in section 5 (How to confirm orders) above, and any documentation evidencing transfers of licenses as described in subsection 10(a) (How to transfer), together with proof of payment, will be the enrolled affiliate's evidence of all licenses obtained under its enrollment.

7. How to know what product use rights apply.

Except as otherwise described below, an enrolled affiliate's use of any product that it licenses from us is governed by product use rights specific to each product and version. The product use rights applicable to products licensed under each enrollment are as follows.

- a. For latest versions available as of an enrollment effective date.** For the latest version of any product available on or before the enrollment effective date, the product use rights in effect on the enrollment effective date for that product and version apply.
- b. For versions and products that become available after an enrollment effective date.** For any version of any existing product, or any new product, first made available after the enrollment effective date, the product use rights in effect on the date on which the version or product first becomes available apply (subject to our commitment on use rights below).
- c. For versions of a product that predate the latest version available as of an enrollment effective date.** If an enrolled affiliate is using a version of any product licensed under its enrollment that became available prior to the version that was current on the enrollment effective date, the enrolled affiliate's use of the earlier version will be governed by the product use rights that would apply if the enrolled affiliate were using the version licensed under the enrollment, or in the case of Software Assurance or L&SA, the latest version that is or becomes available at any time during its enrollment.
- d. Microsoft's commitment on use rights.**

For all products – use rights fixed by version. We will not change an enrolled affiliate's product use rights under this agreement for any version of a product after it becomes available to that enrolled affiliate under its enrollment.

For enterprise products – no detrimental use right changes in new versions.

- (i) **For new versions made available during the initial enrollment term.** If we make available a new version of any enterprise product during the initial enrollment term and that new version is subject to certain use rights that are more restrictive than those that applied to a prior version under an enrollment that was or became available during the initial enrollment term, the enrolled affiliate may run that new version without being subject to those certain more restrictive use rights.
- (ii) **For new versions made available during each renewal term.** Upon each renewal of Software Assurance for an enterprise product, an enrolled affiliate's use of that product will be governed by the use rights that apply to the latest version of that product available as of the date of that renewal, including any terms that are more restrictive than those that applied to a previous version of that product licensed by that enrolled affiliate under its enrollment during the preceding term. However, if during a renewal term we make available a new version of that same enterprise product with certain use rights more restrictive than those use rights that applied to a prior version licensed under an enrollment that was or became available during that same term, the enrolled affiliate may run the new version without being subject to those certain more restrictive use rights.

- (iii) **New features or functionality.** The right described in subsections (i) and (ii) above does not apply to product use rights that relate specifically to new features or functionality added to a new version.

We will provide each enrolled affiliate with a copy of the applicable product use rights or will make them available either by publication on the World Wide Web at <http://microsoft.com/licensing/> or at a successor site that we identify, or by some other reasonable means. You acknowledge that you and your affiliates have access to the World Wide Web. We do not transfer any ownership rights in any licensed product, and we reserve all rights not expressly granted. In lieu of your obligation to indemnify us or anyone else under various provisions of the product use rights, you will be responsible for any cost or damages arising from any claim to which your indemnity obligation would otherwise apply, *but only to the extent allowed by applicable law.*

8. Software Assurance Membership.

Throughout the term of its enrollment (including any renewal), each enrolled affiliate automatically qualifies as a member of Microsoft's Software Assurance Membership program. Membership may entitle the enrolled affiliates to special benefits. These benefits may be subject to additional terms and conditions. For a description of these benefits, an enrolled affiliate should consult its reseller or Microsoft account manager.

9. Making copies of software.

- a. Copies necessary for internal deployment.** Each enrolled affiliate may make as many copies of the products licensed under its enrollment as necessary to distribute the products to the users within its enterprise. All copies of any product must be true and complete copies (including copyright and trademark notices) and be made from CD-ROMs, disk sets or a network source, acquired from or made available by a Microsoft approved fulfillment source for that product. Each enrolled affiliate may also have a third party make and distribute copies in its place, but the enrolled affiliate is responsible for third-party actions to the same extent it would be if the third party were its employee. You and your affiliates must make reasonable efforts to make employees, agents and other individuals running a product aware that the product is licensed from us and may only be run or transferred subject to the terms of this agreement.
- b. Copies for training, evaluation and back-up.** During the term of its enrollment (including any renewal), each enrolled affiliate and any affiliate included in its enterprise may (i) run up to 20 complimentary copies of any additional product in a dedicated training facility on their premises; (ii) run up to 10 complimentary copies of any product that we make available to license as an additional product for a 60-day evaluation period; and (iii) make and retain one complimentary copy of any licensed product for back-up or archival purposes for each of their distinct geographic locations.
- c. Re-imaging rights.** If an enrolled affiliate or any affiliate included within its enterprise has licensed products from an original equipment manufacturer (OEM), through a retail source or under any Microsoft program other than this Enterprise Agreement program, it may use copies made from the media provided under the enrolled affiliate's enrollment in place of any copies made from the media provided through that separate source, so long as it complies with the following restrictions.
- (i) The enrolled affiliate must have obtained a separate license from the separate source for each copy being replaced.
 - (ii) The product, language, version and all components (in the case of product suites, such as Office) of the copies made from the media provided under an enrollment must be identical to the product, language, version and all components of the copies they replace.
 - (iii) In the case of copies licensed from an original equipment manufacturer (OEM) or through a retail source, in addition to the other conditions outlined in this subsection 9(c), the product

type (e.g. upgrade or full license) of the copies made from the media provided under an enrollment must be identical to the product type of the copies they replace. However, an enrolled affiliate may use copies of a desktop operating system made from the media provided under its enrollment in place of copies of the same desktop operating system obtained from a separate source, even though they may be of different types (i.e. one may be an upgrade and the other a full license), provided that the product, language and version are identical.

The use of any copies made under this subsection 9(c) is subject to the terms and use rights provided with the copies being replaced, and nothing in this section creates or extends any warranty or support obligation.

10. Transferring licenses.

- a. How to transfer.** An enrolled affiliate may transfer perpetual licenses ordered under an enrollment to an affiliate, or to an unaffiliated third party in connection with a privatization of the enrolled affiliate, as long as the enrolled affiliate provides us with prior written and signed notice, on a form that we provide, that includes: (i) the applicable enrollment number; (ii) the quantity of licenses being transferred by product and version; (iii) the name, address and contact information of the transferee; and (iv) any other information that we may reasonably request.

For all other transfers of licenses, our written consent is required. We will not withhold our consent unreasonably. No license transfer will be valid unless the enrolled affiliate provides to the transferee, and the transferee accepts in writing the applicable product use rights (as provided in subsection 7(a) (For latest versions available as of an enrollment effective date) and (b) (For versions and products that become available after an enrollment effective date), use restrictions, limitations of liability, and the transfer restrictions in this section 10. Any transfer made in violation of the requirements or restrictions of this section will be void.

- b. When transfers are not permitted.** An enrolled affiliate may not transfer (i) licenses on a short-term basis (either to third parties or by reassignment to different users or devices internally), (ii) temporary rights to use products, (iii) Software Assurance coverage, (iv) perpetual licenses for any version of any product acquired through Software Assurance separately from the underlying perpetual licenses for which that Software Assurance coverage was ordered; or (v) upgrade licenses for a desktop operating system product separately from the underlying desktop operating system license or from the computer system on which the product is first installed.

11. Term, termination and renewal.

- a. Term.** This agreement will remain in effect unless it is terminated by *us* or *ITMO* as described below. Each enrollment will have the term provided in that enrollment.
- b. Termination of this agreement.** Either *we* or *ITMO* may terminate this agreement for any reason upon 60 days written notice.

Effect of termination. Such termination will merely terminate either party's and its affiliates' ability to enter into new enrollments under this agreement. Such termination will not affect any enrollment not otherwise terminated, and any terms of this agreement applicable to any enrollment not otherwise terminated will continue in effect with respect to that enrollment.

- c. Termination of an enrollment - general.** Either party to an enrollment may terminate it if the other party materially breaches its obligations under this agreement, including any obligation to submit orders or pay amounts owed (even if such non-payment is caused by non-appropriation of funds). Except where the breach is by its nature not curable within 30 days, the terminating party must give the other party 30 days notice and opportunity to cure. If we give such notice to an enrolled affiliate, we will give you a copy of that notice as well and you agree to assist in attempting to resolve the problem. If the problem also affects other enrollments and cannot be resolved between you and us within a reasonable period of time, we may also terminate this

agreement and all other enrollments under it, unless the basis for termination of the enrollment is non-appropriation of funds to the enrolled affiliate, in which event we may only terminate the affected enrollment. *Upon written request, ITMO agrees to confirm whether any enrolled affiliate continues to be eligible to submit an enrollment pursuant to this agreement.*

d. Termination of enrollment – non-appropriation of funds. An enrolled affiliate may terminate an enrollment without liability, penalty or further obligation to make payments if funds to make payments under the enrollment are not appropriated or allocated for such purpose, subject to Section 11(e), below (Effect of expiration or termination).

e. Effect of termination or expiration. Upon expiration or termination of any enrollment, the enrolled affiliate must order licenses for all copies of products it or its affiliates have run under its enrollment for which the enrolled affiliate has not previously submitted an order. Except as provided in the next paragraph, in the event of termination, all unpaid installments of the purchase price for any licenses will immediately become due and payable, and the enrolled affiliate will be entitled to perpetual licenses only after all such payments have been made.

If (i) an enrolled affiliate terminates its enrollment as a result of our breach, (ii) we terminate an enrolled affiliate's enrollment because it has ceased to be your affiliate, or (iii) you terminate an enrollment for non-appropriation of funds, or (iv) we terminate an enrollment for non-payment due to non-appropriation of funds, then the enrolled affiliate will have the following options: It may immediately pay the total remaining amount due, including all installments, in which case the enrolled affiliate will have perpetual licenses for all copies of the products it has ordered. As an alternative, it may pay only amounts due and payable as of the termination date, in which case the enrolled affiliate will have perpetual licenses for (i) all copies of all products for which payment has been made in full, and (ii) the number of copies of products for which payment has been made in installments that is proportional to the amount that has been paid as of the termination date.

f. How to renew an enrollment. We will provide each enrolled affiliate with 60 days prior written notice of expiration of its enrollment or renewal term advising it of its renewal options. An enrolled affiliate may have the option to renew its enrollment for successive terms of 12 or 36 full calendar months. We and our affiliates will not unreasonably reject any renewal order. However, we may make a change to the Enterprise Agreement program that will make it necessary for you and your enrolled affiliates to enter into new agreements and enrollments.

Placing renewal orders. To renew, the enrolled affiliate must submit a renewal order within 30 days after the previous term expired. The renewal order must be for Software Assurance for (i) all enterprise products previously ordered for all qualified desktops in the enrolled affiliate's enterprise as of the date of that renewal order, and (ii) all copies of additional products for which the enrolled affiliate elects to renew Software Assurance. Each renewal term will start the day following expiration of the prior term. An enrolled affiliate may not add new enterprise products not previously ordered during the initial term as part of its renewal; to license new enterprise products it must submit a new enrollment.

Consequences of non-renewal. If the enrolled affiliate elects not to renew its enrollment or Software Assurance for any additional product under its enrollment, and it otherwise allows Software Assurance for any copies of any products licensed under its enrollment to lapse, then the enrolled affiliate will not be permitted to order Software Assurance for such copies later without first acquiring L&SA.

12. Restrictions on use.

An enrolled affiliate may not:

- Separate the components of a product made up of multiple components (in the case of product suites, such as Office) by running them on different computers, by upgrading or downgrading

them at different times, or by transferring them separately, except as otherwise provided in the product use rights;

- Rent, lease, lend or host products, except where we agree by separate agreement;
- Reverse engineer, de-compile or disassemble products, except to the extent expressly permitted by applicable law despite this limitation; or
- Transfer licenses to, or sublicense, products to the U.S. Government.

Products licensed under this agreement are subject to U.S. export jurisdiction. You agree to comply with all applicable international and national laws that apply to these products, including the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by U.S. and other governments. For additional information, see <http://www.microsoft.com/exporting/>.

13. Confidentiality.

This section has been deleted, and the section number reserved.

14. Warranties.

- Limited product warranty.** We warrant that each version of a product will perform substantially in accordance with our user documentation. This warranty is valid for a period of one year from the date an enrolled affiliate first runs a copy of the version. To the maximum extent permitted by law, any warranties imposed by law concerning the products are limited to the same extent and the same one-year period. This warranty does not apply to components of products that an enrolled affiliate is permitted to redistribute under applicable product use rights, or if failure of the product has resulted from accident, abuse or misapplication. If you notify us within the warranty period that a product does not meet this warranty, then we will, at our option, either (i) return the price paid for the product or (ii) repair or replace the product. To the maximum extent permitted by law, this is your exclusive remedy for any failure of any product to function as described in this subsection.
- NO OTHER WARRANTIES.** TO THE EXTENT PERMITTED BY APPLICABLE LAW, WE DISCLAIM AND EXCLUDE ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED OR STATUTORY, OTHER THAN THOSE IDENTIFIED EXPRESSLY IN THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO WARRANTIES OR CONDITIONS OF TITLE, NON-INFRINGEMENT, SATISFACTORY QUALITY, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE PRODUCTS OR RELATED MATERIALS. WE WILL NOT BE LIABLE FOR ANY SERVICES OR PRODUCTS PROVIDED BY THIRD PARTY VENDORS, DEVELOPERS OR CONSULTANTS IDENTIFIED OR REFERRED TO YOU BY US UNLESS SUCH THIRD-PARTY PRODUCTS OR SERVICES ARE PROVIDED UNDER WRITTEN AGREEMENT BETWEEN YOU AND US, AND THEN ONLY TO THE EXTENT EXPRESSLY PROVIDED IN SUCH AGREEMENT.

15. Defense of infringement and misappropriation claims.

We will defend you against any claim made by an unaffiliated third party that any product or fix infringes its patent, copyright, or trademark or misappropriates its trade secret, and will pay the amount of any resulting adverse final judgment (or settlement to which we consent). You must notify us promptly in writing of the claim and give us sole control over its defense or settlement. *We agree that we will not consent to the settlement of any claim under this Section 15 without your or your affiliate's written permission to the extent that such settlement or compromise requires you or your affiliate (i) to part with any right or make any payment not indemnified by us hereunder, or (ii) subjects you or your affiliate to any injunction. In any such claim, suit or proceeding, you or your affiliate shall be entitled to be represented by counsel selected by you or your affiliate, at you or your affiliate's expense.* You agree to provide us with reasonable assistance in defending the claim, and we will reimburse you for reasonable

out of pocket expenses that you incur in providing that assistance. The terms "misappropriation" and "trade secret" are used as defined in the Uniform Trade Secrets Act.

Our obligations will not apply to the extent that the claim or adverse final judgment is based on (i) your running of the product or fix after we notify you to discontinue running due to such a claim; (ii) your combining the product or fix with a non-Microsoft product, data or business process; (iii) damages attributable to the value of the use of a non-Microsoft product, data or business process; (iv) your altering the product or fix; (v) your distribution of the product or fix to, or its use for the benefit of, any third party; (vi) your use of our trademark(s) without express written consent to do so; or (vii) for any trade secret claim, your acquiring a trade secret (a) through improper means; (b) under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (c) from a person (other than us or our affiliates) who owed to the party asserting the claim a duty to maintain the secrecy or limit the use of the trade secret. . You will be responsible for any costs or damages that result from these actions.

If we receive information concerning an infringement claim related to a product or fix, we may, at our expense and without obligation to do so, either (i) procure for you the right to continue to run the allegedly infringing product or fix, or (ii) modify the product or fix or replace it with a functional equivalent, to make it non-infringing, in which case you will stop running the allegedly infringing product or fix immediately. If, as a result of an infringement claim, your use of a product or fix is enjoined by a court of competent jurisdiction, we will, at our option, either procure the right to continue its use, replace it with a functional equivalent, modify it to make it non-infringing, or refund the amount paid and terminate the license for the infringing product or fix..

If any other type of third party claim is brought against you regarding our intellectual property, you must notify us promptly in writing. We may, at our option, choose to treat these claims as being covered by this section. This Section 15 provides your exclusive remedy for third party infringement and trade secret misappropriation claims.

16. Limitation of liability.

a. Limitation. There may be situations in which you or an enrolled affiliate have a right to claim damages or payment from us. Except as otherwise specifically provided in this subsection, whatever the legal basis for the claims, our liability will be limited, to the maximum extent permitted by applicable law, to direct damages up to the amount you or the enrolled affiliate have paid for the product giving rise to the claims. In the case of free product or code you or an enrolled affiliate are authorized to redistribute to third parties without separate payment to Microsoft, our total liability to you or the enrolled affiliate will not exceed US\$5000. The limitations contained in this subsection will not apply with respect to the following in connection with the performance of this agreement:

(i) our obligations under Section 15 to defend third party claims of patent, copyright or trademark infringement or trade secret misappropriation, and to pay damages resulting from any final adjudication (or settlement to which we consent) of such claims; and

(ii) our liability for damages for gross negligence or willful misconduct, to the extent caused by us or our agent and awarded by a court of final adjudication.

b. No liability for certain damages. To the maximum extent permitted by applicable law, neither party nor any of its affiliates or suppliers will be liable for any indirect damages (including, without limitation, consequential, special or incidental damages, damages for loss of profits or revenues, business interruption, or loss of business information) arising in connection with any agreement, product, fix or service, even if advised of the possibility of such damages or if such

possibility was reasonably foreseeable. This exclusion of liability does not apply to either party's liability to the other for violation of the other party's intellectual property rights.

- c. Application.** Except as specified expressly in this Section 16, the limitations on and exclusions of liability for damages in this agreement apply regardless of whether the liability is based on breach of contract, tort (including negligence), strict liability, breach of warranties, or any other legal theory.

17. Verifying Compliance.

Each enrolled affiliate must keep records relating to the products *it*, and any affiliates *that sublicense from it*, run. We have the right to verify compliance, at our expense, during the term of this agreement and for a period of one year thereafter. To do so, we will engage an independent accountant from a nationally recognized public accounting firm, which will be subject to a confidentiality obligation. Verification will take place upon not fewer than 30 days notice, during normal business hours and in a manner that does not interfere unreasonably with your operations. As an alternative, we may require an enrolled affiliate to accurately complete our self-audit questionnaire relating to the products *it*, and any affiliates *that sublicense from it*, use. You will have the right to conduct a self-audit prior to any third-party audit if (a) the governor of your state has issued an executive order (or state legislation exists) requiring software licensing compliance statewide and for state-funded agencies (including local governments), and (b) your state has adopted and implemented a statewide licensing compliance software asset management program reasonably acceptable to Microsoft. If verification or self-audit reveals unlicensed use of products, *the enrolled affiliate* must promptly order sufficient licenses to permit all product usage disclosed. If material unlicensed use is found (license shortage of 5% or more), you must reimburse us for the costs we have incurred in verification and acquire the necessary additional licenses as single retail licenses within 30 days. If we undertake such verification and do not find material unlicensed use of products, we will not undertake another verification of the same entity for at least one year. We and our auditors will use the information obtained in compliance verification only to enforce our rights and to determine whether you are in compliance with the terms of this agreement. By invoking the rights and procedures described above, we do not waive our rights to enforce this agreement or to protect our intellectual property by any other means permitted by law.

18. Miscellaneous.

- a. Notices.** All notices, authorizations, and requests given or made in connection with this agreement must be sent by post, express courier, facsimile, or email to the addresses and numbers indicated in the applicable cover page to this agreement. Notices will be deemed delivered on the date shown on the postal return receipt or on the courier, facsimile or email confirmation of delivery.
- b. Assignment.** This agreement may be assigned by either party only to an affiliate, but assignment will not relieve the assigning party of its obligations under the assigned agreement. If either party assigns this agreement or any enrollment, it must notify the other party of the assignment in writing.
- c. Severability.** If a court holds any provision of this agreement to be illegal, invalid or unenforceable, the remaining provisions will remain in full force and effect and the parties will amend this agreement to give effect to the stricken clause to the maximum extent possible.
- d. Waiver.** No waiver of any breach of this agreement shall be a waiver of any other breach, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party.
- e. Force Majeure.** To the extent that either party's performance is prevented or delayed, either totally or in part, for reasons beyond that party's control, then that party will not be liable, so long as it resumes performance as soon as practicable after the reason preventing or delaying performance no longer exists.

- f. Non-exclusivity.** This agreement and all enrollments under it are non-exclusive. Nothing contained in this agreement or any such enrollment requires you to license, use or promote Microsoft software or services exclusively. You may, if you choose, enter into agreements with other parties to license, use or promote non-Microsoft software or services
- g. Entire agreement.** The documents identified on the cover page to this agreement constitute the entire agreement concerning the subject matter and supersede any prior or contemporaneous communications. The terms will control in the following order: (i) these terms and conditions and the accompanying cover page; (ii) the Product List; (iii) the product use rights; and (iv) all enrollments under this agreement. The terms of any purchase order or any general terms and conditions you or your affiliates maintain, other than those mandatory terms required by statute or regulation, do not apply. This agreement (except the product use rights and the Product List) can be changed only by an amendment signed by both parties.
- h. Survival.** Provisions regarding product use rights, restrictions on use, evidence of perpetual licenses, transfer of licenses, warranties, limitations of liability, confidentiality, compliance verification and obligations on termination or expiration will survive termination or expiration of this agreement or any enrollment.
- i. Independent contractors.** Resellers are independent contractors who act in their own name and for their own account; they have no authority to bind or impose any obligation or liability upon us.
- j. Applicable law; Dispute resolution.** *The agreement and any dispute, claim, or controversy relating to the agreement shall, in all respects, be interpreted, construed, enforced and governed by and under the laws of the State of South Carolina. Disputes relating to this agreement will be subject to applicable dispute resolution laws of your state. We agree that any act by a South Carolina governmental entity regarding the agreement is not a waiver of either such government entity's sovereign immunity or the government entity's immunity under the Eleventh Amendment of the United State's Constitution.*
- k. Copyright Violation.** Except to the extent you are licensed under this agreement, you will be responsible for your violation of our copyright in the products, including payment of license fees specified in this agreement for unlicensed use.
- l. Determination of reference prices.** *Reference prices for additional products and enterprise products shall be determined as follows:*

(1) Determination of pricing for additional products.

The volume discount level hereunder for additional products in all pools shall be "Level D."

(2) Determination of pricing for enterprise products.

(A) Determination of horizon price level. For each product family and for each annual pricing period, we will determine a horizon price level that shall apply to all enrollments containing enterprise products in such product family which have effective dates that fall during such pricing period, pursuant to Table 1 in Addendum A, by matching the horizon desktop count for such family (as of the annual pricing date which immediately precedes such annual pricing period) with the column marked "Annual Price Level Name."

For example if, as of the annual price date upon which the determination of horizon price level for an annual pricing period is to be made, the horizon desktop count for the Office family is calculated to be below 15,000 qualified desktops, then the horizon price level for the Office family for such annual pricing period shall be "Level C," and if the horizon desktop count for the Windows family is calculated to be between 15,000 and 39,999 qualified desktops, then the horizon price level for the Windows Family for such annual pricing period shall be "Level D."

(B) Determination of initial price level. For each product family and for each annual pricing period, we will determine an initial price level that shall apply to all enrollments containing enterprise products in such product family which have effective dates that fall during such annual pricing period, pursuant to Table 1 in Addendum A, by matching the aggregate family desktop count for such family (as of the annual pricing date which immediately precedes such annual pricing period) with the column marked "Annual Price Level Name."

For example if, as of the annual price date upon which the determination of initial price level for an annual pricing period is to be made, the aggregate family desktop count for the Office family is calculated to be between 15,000 and 39,999 qualified desktops, then the initial price level for the Office family for such annual pricing period shall be "Level D."

(C) Establishing component initial desktop reference prices for new enrollments. The Government EA Price List provided to resellers generally contains reference prices for the following common enterprise products:

- Microsoft Office Professional;*
- Microsoft Windows XP Professional Operating System Upgrades;*
- Microsoft Core CAL; and*
- Microsoft Desktop Professional (which is a suite composed of the preceding three component products, and the reference price for which is equal to the sum of the three component reference prices less the applicable platform discount).*

For the purposes of the agreement, the Government EA Price List entry for Microsoft Desktop Professional (or any other enterprise product we might add to such price list that is a combination of component products from different product families) shall not apply, since this section 18(l) provides an alternate and equivalent means by which the component products of such suite shall be priced. Rather, the components of Microsoft Desktop Professional (or other suite of products from different product families) shall be sold as separate line items to the reseller. This is necessary in order that the year 3 desktop reference prices which apply to each of the product families which contain the component products may be adjusted separately, as set forth below in Section 18(l)(2)(G).

On each annual pricing date, we will establish a list of 3-year desktop reference prices, year 1 desktop reference prices, year 2 desktop reference prices, and year 3 desktop reference prices (collectively, "initial desktop reference prices") for each of the most commonly requested enterprise products, plus any other enterprise products for which you may have requested reference prices. We will provide you with a list of such reference prices. We will also provide your reseller(s) with a list of such initial desktop reference prices, along with the corresponding confidential reseller costs.

Such initial desktop reference prices shall apply to all new enrollments signed during the annual pricing period which immediately follows such annual pricing date, but not thereafter, unless different initial prices are agreed upon in writing between us and an enrolled affiliate (or between us and you) based upon certain exceptions to standard terms including (but not limited to) applied credits and/or deferred payment schedules.

Initial desktop reference prices and true up desktop reference prices for each enterprise product sold on an enrollment which becomes effective during an annual pricing period shall be calculated, using the formulas below, using each such product's standard license Select reference price ("L") (except as noted below with respect to the Windows Professional Upgrade) and one-year Software Assurance Select reference price ("SA") pursuant to the reference prices found on the Select Price List which is in effect as of the annual pricing date upon which the determination is being made for such annual pricing

period, and using a Select volume discount level that is determined for each pool based on the respective initial desktop count and horizon desktop counts for the corresponding product family as of such annual pricing date, as follows:

Qualified Desktops	Select Level
15,000 or more	D
Below 15,000	C

For example, if, as of the annual pricing date for which a determination is being made, both the horizon and initial desktop counts for the Office family are 15,000 or more qualified desktops, then the Select reference prices that apply when calculating "L" and "SA" for products in the Office Family, for use in the below formulas, shall be based upon the "Level D" Select reference prices for such products.

For the purposes of determining the value of "L" solely with respect to the Windows Professional Upgrade, sixty percent (60%) of the Select reference price of such Upgrade shall be used.

The following formulas shall apply:

- (i) for orders of License & Software Assurance on an initial order made pursuant to a non-renewal enrollment, the initial annual reference prices shall be calculated according to the following formulas:

Formula for 3-year desktop reference price (using the horizon desktop count to determine the applicable Select volume discount levels):

$\{ [L + (3 \times SA)] \times 0.85 \}$; less (a) an additional premium level discount (if applicable); less (b) a platform discount (if applicable) pursuant to the terms and conditions below governing such additional discounts.

Formula for both year 1 and year 2 desktop reference prices (using the initial desktop count to determine the applicable select volume discount levels):

$\{ [L + (3 \times SA)] \times 0.85 / 3 \}$; less (a) an additional premium level discount (if applicable); less (b) a platform discount (if applicable) pursuant to the terms and conditions below governing such additional discounts.

Formula for year 3 desktop reference price:

$\{ 3\text{-year desktop reference price} - \text{year 1 desktop reference price} - \text{year 2 desktop reference price} \}$

- (ii) for orders of Software Assurance on an initial order made pursuant to a renewal enrollment, the initial annual reference prices shall be calculated according to the following formulas:

Formula for 3-year desktop reference price (using the horizon desktop count to determine the applicable select volume discount levels):

$\{ (3 \times SA) \times 0.95 \}$; less (a) an additional premium level discount (if applicable); less (b) a platform discount (if applicable) pursuant to the terms and conditions below governing such additional discounts.

Formula for both year 1 and year 2 desktop reference prices (using the initial desktop count to determine the applicable select volume discount levels):

$\{ SA \times 0.95 \}$; less (a) an additional premium level discount (if applicable); less (b) a platform discount (if applicable) pursuant to the terms and conditions below governing such additional discounts.

Formula for year 3 desktop reference price:

$\{ 3\text{-year desktop reference price} - \text{year 1 desktop reference price} - \text{year 2 desktop reference price} \}$

- (iii) for orders of License & Software Assurance on the first anniversary true up order made pursuant to either a renewal enrollment or a non-renewal enrollment, the true up desktop reference price shall be calculated according to the following formula (using the initial desktop count to determine the applicable select volume discount levels):

$\{ L + (2.5 \times SA) \} \times 0.85$; less an additional premium level discount (if applicable); less a platform discount (if applicable) pursuant to the terms and conditions below governing such additional discounts;

- (iv) for orders of License & Software Assurance on the second anniversary true up order made pursuant to either a renewal enrollment or a non-renewal enrollment, the true up desktop reference price shall be calculated according to the following formula (using the initial desktop count to determine the applicable select volume discount levels):

$\{ L + (1.5 \times SA) \} \times 0.85$; less an additional premium level discount (if applicable); less a platform discount (if applicable) pursuant to the terms and conditions below governing such additional discounts; and

- (v) for orders of License & Software Assurance on the third anniversary true up order made pursuant to either a renewal enrollment or a non-renewal enrollment, the true up desktop reference price shall be calculated according to the following formula (using the initial desktop count to determine the applicable select volume discount levels):

$\{ L + (0.5 \times SA) \} \times 0.85$; less an additional premium level discount (if applicable); less a platform discount (if applicable) pursuant to the terms and conditions below governing such additional discounts.

The results of each of the above calculations will be rounded to the nearest penny.

(D) Additional discounts applied to initial prices for components. After calculating initial prices for each component enterprise product pursuant to the above formulas, the following additional discounts may be applied to such prices, subject to the terms and conditions below:

- (a) A "premium level discount" will be applied to an enterprise product, provided that the aggregate family desktop count that applies to such product is equal to or greater than 40,000 qualified desktops. The amount of such premium level discount with respect to initial price levels shall be determined according to Table 1 in Addendum A, by matching the initial desktop count for the applicable product family (as of the annual pricing date which immediately precedes such annual pricing period) with the applicable column under the heading "Premium Level Discount." The amount of such premium level discount with respect to horizon price levels shall be determined according to Table 1 in Addendum A, by matching the horizon desktop count for the applicable product family (as of the annual pricing date which immediately precedes such annual pricing period) with the applicable column under the heading

"Premium Level Discount." Such premium level discount (if any) will be applied before applying a platform discount (if any).

For example, if the year 1 annual reference price of a component product in a non-renewal enrollment, before a premium level discount and/or platform discount is applied, is \$100.00, and if the initial price level for the product family for the applicable annual pricing period is determined to be the 80K premium level, then a corresponding premium level discount of 6% will be applied (i.e. a discount of 6 percent of \$100.00, or \$6.00), such that the resulting initial annual reference price before the platform discount is applied will be:

$$\{ \$100.00 - \$6.00 \} = \$94.00.$$

For another example, if the 3-year reference price of a component product in a non-renewal enrollment, before a premium level discount and/or platform discount is applied, is \$300.00, and if the horizon price level for the product family for the applicable annual pricing period is determined to be the 60K premium level, then a corresponding premium level discount of 4% will be applied (i.e. a discount of 4 percent of \$300.00, or \$12.00), so the resulting 3-year reference price before the platform discount is applied will be:

$$\{ \$300.00 - \$12.00 \} = \$288.00.$$

- (b) *A "platform discount" will be applied to component platform products (e.g. Microsoft Office Professional) ordered pursuant to platform enrollments, but not to other enterprise products, if any, in such platform enrollments (e.g. a platform discount would not apply to Microsoft Project). Such premium level discount (if any) will be applied after applying a premium level discount (if any), and shall be as follows:*

Such platform discounts are as follows:

- (i) *15% for initial orders of License & Software Assurance on non-renewal enrollments;*
- (ii) *5% for initial orders (but not true up orders) of Software Assurance for renewal enrollments; and*
- (iii) *15% for true up orders of License & Software Assurance for both renewal enrollments and non-renewal enrollments.*

For example, if the year 1 desktop reference price of a component product in a non-renewal platform enrollment, after the premium level discount is applied, is \$94.00, then a platform discount of 15% will be applied (i.e. 15% of \$94.00, or \$14.10), so the resulting initial annual reference price will be

$$\{ \$94.00 - \$14.10 \} = \$79.90.$$

The results of each of the above discount calculations will be rounded to the nearest penny.

Platform discounts will be provided so long as they are made generally available to all volume licensing customers. If the amount of such generally available platform discount is either increased, decreased, or eliminated, such increase, decrease or elimination will apply to the annual pricing period which immediately follows such event.

(E) Annual provision of reference prices. Table 3 in Addendum A shows the initial desktop reference prices, year 1 desktop reference prices, and year 2 desktop reference prices that shall apply during the first annual pricing period hereunder. Table 4 in Addendum A shows the true up desktop reference prices that shall apply during the first annual pricing period hereunder. We will provide you with new initial annual reference prices on or before the first day of each subsequent annual pricing period.

(F) Determination of 1st anniversary, 2nd anniversary, and ending price levels. Upon each annual pricing date, and for each product family, we will both:

(i) determine a volume discount level by matching the aggregate family desktop count for such family (as of such annual pricing date) with the column marked "Annual Price Level Name." pursuant to Table 1 in Addendum A. Such volume discount level shall:

- be referred to hereafter as the "1st anniversary price level" with respect to enrollments (if any) for which the first anniversary of their effective dates falls during the annual pricing period which immediately follows such annual pricing date; and
- be referred to hereafter as the "2nd anniversary price level" with respect to enrollments (if any) for which the second anniversary of their effective dates falls during the annual pricing period which immediately follows such annual pricing date; and

(ii) determine an "ending price level" with respect to enrollments for which the second anniversary of their effective dates falls during the annual pricing period which immediately follows such annual pricing date. Such ending price level shall be determined according to the relationship between initial price level, 1st anniversary price level, and 2nd anniversary price level, respectively, according to the following table:

Annual Price Level Criteria:			Examples with sample price levels:			
If the first anniversary price level is:	and the second anniversary price level is:	then the ending price level will be:	Initial Annual Price level	First Anniversary Annual Price Level	Second Anniversary Annual Price Level	Ending Price Level
the same as the initial price level	any level	The initial price level	C	C	Any Level	C
Higher than the initial price level	the same or higher than the first anniversary price level	The first anniversary price level	B	C or D	C or D	C
Higher than the initial price level	lower than the first anniversary price level but higher than the initial level	the second anniversary price level	B	D	C	C
Higher than the initial price level	the same as or lower than the initial price level	The initial price level	B	C	A or B	B
Lower than the initial price level	the same or lower than the first anniversary price level	The first anniversary price level	C	B	A or B	B
Lower than the initial price level	Higher than the first anniversary price level but lower than the initial level	the second anniversary price level	C	A	B	B
Lower than the initial price level	the same as or higher than the initial price level	The initial price level	C	A or B	C or D	C

For the purposes of the above table, one annual price level is "higher" than another volume level if the minimum aggregate family desktop count requirement for such level is greater than that for the second level, and one annual price level is "lower" than another volume level if the minimum aggregate family desktop count requirement for such level is

lower than that for the second level. For example, the 40K Premium Level is lower than the 60K Premium Level, but is higher than Level D.

(G) Adjustments to year 3 desktop reference prices upon sustained increase of annual price level.

The year 3 desktop reference prices of each enterprise product in each enrollment is subject to reduction, provided that the ending price level for the applicable product family has increased, relative to the horizon price level.

Such reduction in year 3 desktop reference price will be determined separately for each product family, prior to the second anniversary of each enrollment's effective date, based upon adjustment multipliers determined pursuant to Table 2 in Addendum A. The adjustment multiplier for each applicable product family on an enrollment is determined pursuant to such table by finding the intersection of (i) the column which corresponds to the combination of initial price level and horizon price level, and (ii) the line which corresponds to the ending price level.

To determine the adjusted year 3 desktop reference price for an enterprise product, the adjustment multiplier applicable to each enterprise product will be multiplied by the originally calculated year 3 desktop reference price for such product, and the resulting amount shall be rounded to the nearest Penny.

(H) Special price level for enrollments executed during the first annual pricing period ("year 1 enrollments").

As an exception to the foregoing, the parties agree that the initial price level for each product family for the first annual pricing period shall be Level D, notwithstanding the fact that the actual aggregate family desktop counts are as follows:

- Office Family: 10,500
- Windows Family: 10,500
- CAL Family: 10,500

This allowance is based upon the parties' good faith estimate that the aggregate family desktop count in all product families will surpass 15,000 qualified desktops as of the second annual pricing date, and will remain above 15,000 beyond the third annual pricing date. For the purposes of calculating an end pricing level for such year 1 enrollments, the first anniversary price level and second anniversary price levels shall be determined pursuant to the normal terms of this Section 18(l) above.

(l) Additional terms and conditions. You acknowledge and agree that there may be certain instances in which the reference prices of certain enterprise products in certain enrollments executed by affiliates, whether under this Enterprise Agreement or otherwise under a separate Enterprise Agreement or Enterprise Subscription agreement, may be adjusted in ways that vary from the adjustments agreed upon in Section 18(l)(2)(G), pursuant to separate agreement between the enrolled affiliate and us. Such instances may include, but are not limited to, those enrollments: (i) that were executed prior to this enterprise agreement; (ii) that contain other enterprise products than those in the three product families defined herein; (iii) for which we negotiate a special payment schedule such as a "ramped" installment payments; and (iv) for which a special price is negotiated to match the equivalent Select reference price for sufficient licenses, such as to account for unexpired Upgrade Advantage and/or Software Assurance.

In the event that, in the absence of this Section 18(l), an enrolled affiliate would otherwise qualify for a lower reference price, for one or more of its chosen enterprise products, than the corresponding reference price(s) for such enterprise product(s) as determined

pursuant to the terms and conditions hereof, the lower of the two reference prices for each such enterprise product shall apply.

Reference prices are provided only for the purpose of comparison. Actual pricing and payment terms will be determined by agreement between each enrolled affiliate and its chosen reseller. All adjustments to reference prices defined herein will correspond to a proportional adjustment we will make to the reseller's confidential cost.

You agree to assist us in making eligible affiliates aware of the general terms, conditions, and benefits of entering into an Enrollment, by:

- (i) posting such information on a website accessible to each such affiliate;
- (ii) participating, upon our request and as your schedule reasonably permits, in conference calls with such prospective Participating Affiliates, to discuss such terms, conditions, and benefits.

- m. Choice of reseller.** Each enrolled affiliate hereunder agrees to choose a reseller that has been approved by ITMO, and, subject to the terms and conditions of Section 2(d), to change resellers upon receipt from ITMO of a written request to do so.
- n. Scope of agreement.** Except as provided either (i) in section 9c, or (ii) with respect to licenses which are enrolled in Software Assurance hereunder, this agreement does not apply to software licenses acquired legally by an enrolled affiliate through another means other than this agreement.
- o. ITMO's liability.** ITMO bears no liability for any losses arising out of or relating in any way to this agreement, except with respect to any enrollment for which ITMO is the enrolled affiliate.
- p. Purchase through resellers.** This agreement is entered into pursuant to the South Carolina Consolidated Procurement Code; accordingly, this agreement does not authorize any South Carolina governmental entity to make any payment to the contracting Microsoft affiliate (or any of its affiliates) in order to acquire License, Software Assurance, or any other item. Payment may be made by an enrolled affiliate only to a reseller pursuant to a contract with such reseller. We shall not be responsible for enrolled affiliate's failure to comply with the restrictions stated in this paragraph.
- q. Application of definitions.** Defined terms herein, when used in the product use rights or product list shall have the meaning assigned hereby, unless such terms are otherwise defined differently in the product use rights or product list.
- r. Non-appropriation of funds.** Subject to the terms and conditions of Section 11, and to the extent required by South Carolina law, payment and performance obligations for succeeding fiscal periods shall be subject to the availability and appropriation of funds therefore.

Addendum A

Table 1: Volume Level Determinations

Aggregate Family Desktop Count	Annual Price Level Name	EA / Select Price List Volume Level	Premium Level Discount
Below 15,000	Level C	Level C	N/A
15,000 - 39,999	Level D	Level D	N/A
40,000 - 59,999	40K Premium Level	Level D	2.00%

Table 2: Adjustment Multipliers for 3rd year payments:

		Initial Price Level		
		Level C	Level D	40K Premium Level
Ending price level	Level C	1.000	1.070	1.070
	Level D	0.833	1.000	1.040
	40K Premium Level	0.789	0.969	1.000

Table 3: Adjustment Multipliers for 2nd and 3rd Year True Up Payments:

		Initial Price Level		
		Level C	Level D	40K Premium Level
Ending price level	Level C	1.000	1.070	1.070
	Level D	0.923	1.000	1.020
	40K Premium Level	0.906	0.980	1.000

Table 4: Initial Annual Reference Prices for Component Enterprise Products in enrollments executed during first annual pricing period:

Enterprise Product	Non-Platform Enrollments		Platform Enrollments		Family	EA Level for Family
	New 3-Year Enterprise Enrollment	Renewal 3-Year Enterprise Enrollment	New 3-Year Enterprise Enrollment	Renewal 3-Year Enterprise Enrollment		
Office Pro	\$ 204.00	\$ 106.10	\$ 173.40	\$ 100.80	Office	Level C
Office Std	\$ 169.42	\$ 88.10	\$ 144.01	\$ 83.70	Office	Level C
Windows Professional	\$ 65.69	\$ 43.50	\$ 55.84	\$ 41.33	Windows	Level C
Windows CAL	\$ 12.40	\$ 5.96	\$ 10.54	\$ 5.66	CAL	Level C
Exchange CAL	\$ 28.01	\$ 13.44	\$ 23.81	\$ 12.77	CAL	Level C
SharePoint CAL	\$ 30.13	\$ 14.42	\$ 25.61	\$ 13.70	CAL	Level C
SMS CAL	\$ 16.49	\$ 7.90	\$ 14.02	\$ 7.51	CAL	Level C
SQL CAL	\$ 61.23	\$ 29.37	\$ 52.05	\$ 27.90	CAL	Level C
Core CAL (Windows, Exchange, Sharepoint, & SMS CALs)	\$ 82.67	\$ 39.62	\$ 70.27	\$ 37.64	CAL	Level C
BackOffice CAL (Windows, Exchange, SQL, & SMS CALs)	N/A	\$ 53.86	N/A	\$ 51.17	CAL	Level C

Addendum A (Continued)

Table 6: Original True Up Reference Prices for component Enterprise Products in enrollments executed during first annual pricing period:

Enterprise Product	Non-Platform Enrollments			Platform Enrollments			Family	EA Level for Family
	1st Anniv. True Up	2nd Anniv. True Up	3rd Anniv. True Up	1st Anniv. True Up	2nd Anniv. True Up	3rd Anniv. True Up		
Office Pro	\$ 564.54	\$ 469.60	\$ 374.67	\$ 479.86	\$ 399.16	\$ 318.47	Office	Level C
Office Std	\$ 468.86	\$ 390.03	\$ 311.21	\$ 398.53	\$ 331.53	\$ 264.53	Office	Level C
Windows Professional	\$ 177.61	\$ 138.69	\$ 99.77	\$ 150.97	\$ 117.89	\$ 84.80	Windows	Level C
Windows CAL	\$ 34.53	\$ 29.19	\$ 23.87	\$ 29.35	\$ 24.81	\$ 20.29	CAL	Level C
Exchange CAL	\$ 78.02	\$ 66.01	\$ 53.98	\$ 66.32	\$ 56.11	\$ 45.88	CAL	Level C
SharePoint CAL	\$ 83.91	\$ 71.03	\$ 58.13	\$ 71.32	\$ 60.38	\$ 49.41	CAL	Level C
SMS CAL	\$ 45.92	\$ 38.86	\$ 31.79	\$ 39.03	\$ 33.03	\$ 27.02	CAL	Level C
SQL CAL	\$ 170.54	\$ 144.27	\$ 117.99	\$ 144.96	\$ 122.63	\$ 100.29	CAL	Level C
Core CAL (Windows, Exchange, Sharepoint, & SMS CALs)	\$ 230.28	\$ 194.83	\$ 159.39	\$ 195.74	\$ 165.61	\$ 135.48	CAL	Level C
BackOffice CAL (Windows, Exchange, SQL, & SMS CALs)	\$ 312.56	\$ 264.40	\$ 216.25	\$ 265.68	\$ 224.74	\$ 183.81	CAL	Level C