

## Services Provider License Agreement (Indirect)

Microsoft Partner Program Member Number and Level <i>Customer to complete</i>	Membership Level	Previous agreement number, if any <i>Customer to complete</i>	
Microsoft Hosting Community enrollment confirmation <i>Customer must complete if "registered" level MSPP member</i>	Select One	Previous agreement expiration date, if any <i>Customer to complete</i>	

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

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This Microsoft Services Provider License Agreement is entered into between the entities and as of the effective date identified on the signature form.

This agreement consists of (1) this Services Provider License Agreement, (2) the signature form, (3) the terms of the Microsoft Business Agreement or Microsoft Business and Services Agreement, as applicable ("Master Agreement"), and (4) the SPUR.

### **Terms and Conditions**

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

#### **1. Contact information.**

Each party will notify the other in writing if any of the following contact information changes. The asterisks (\*) indicate required fields. By providing contact information, Customer consents to its use in administration of this agreement by Microsoft and other parties that help administer this agreement.

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

**Name of entity (must be legal entity name)\***

**Contact name\* First Last**

**Contact email address\***

**Street address\***

**City\* Postal code\***

**Country\***

**Phone\* Fax**

**Tax ID**

- b. **Notices and online access contact information.** This contact will replace the default administrator (primary contact) for this agreement and receive all notices. This contact may appoint other administrators and grant others access to online information.

Same as primary contact

**Name of entity\***

**Contact name\* First Last**

**Contact email address\***

**Street address\***

**City\* Postal code\***

**Country\***

**Phone\* Fax**

This contact is a third party. **Warning: This contact receives personally identifiable information of the Customer.**

- c. **Additional electronic contractual notices contact information.** The electronic contractual notices contact will receive electronic contractual notices in addition to the copies provided to the notices contact. This contact is not required if Customer does not need a duplicate set of notices.

Same as primary contact

**Name of entity\***

**Contact name\* First Last**

**Contact email address\***

**Street address\***

**City\* Postal code\***

**Country\***

**Phone\* Fax**

- d. **Language preference. Select the language for notices.** English

- e. **Microsoft account manager.** Provide the Microsoft account manager contact for this Customer.

**Microsoft account manager name**

**Microsoft account manager email address**

## **2. Customer's Affiliates.**

Customer must identify each of its Affiliates, as provided below, before such Affiliates have any rights under this agreement. In addition, the following restrictions apply:

- a. Affiliates must sign an affiliate agreement in a form provided by Microsoft;
- b. Customer shall be legally responsible and indemnify Microsoft for any Affiliate's violation of the terms of this agreement; and
- c. Affiliates must be entire legal entities, not partial entities such as departments, divisions or business units.

When an Affiliate ceases to be Customer's Affiliate, Customer must immediately notify Microsoft of the change in status and the Affiliate must immediately stop exercising any rights permitted by this agreement.

- Customer and all Affiliates are included (including future Affiliates).
- Customer and only the following Affiliates are included:
  
- The following Affiliates are excluded:

### **3. How to qualify for this program.**

To be eligible for this program, Customer must enroll and maintain its status as a:

- a. Registered Member of the Microsoft Partner Program and Hosting Community or
- b. Certified Partner of the Microsoft Partner Program.

Microsoft describes the requirements of these programs on a designated Microsoft website.

### **4. Definitions.**

All capitalized terms used, but not defined herein shall have the meanings given to them in the Master Agreement. In addition, the following definitions apply:

"available" means, for purposes of this agreement and notwithstanding the contrary definition in the Master Agreement, licenses for that Product or Client Software that are listed in the SPUR and on the Reseller's price list.

"Client Software" means software that is installed on an End User's device that allows the device to access or use the Products.

"End User" means an individual or legal entity that obtains Software Services directly from Customer, or indirectly through a Software Services Reseller.

"End User Agreement" means the agreement between Customer and an End User under which Customer provides Software Services to the End User. With regard to Software Services Resellers, "End User Agreement" means the agreement between the Software Services Reseller and the End User under which the Software Services Reseller provides Customer's Software Services to the End User.

"End User License Terms" means the document entitled "End User License Terms" applicable to the Products. Microsoft will provide a form of the End User License Terms to the Customer. Microsoft may change the form of the End User License Terms from time to time.

"OEM" means original equipment manufacturer.

"Outsourcing Company" means a third party that performs data center management services or installation services for Customer.

"Redistribution Software" means software that may be installed on an End User's device that may be used, modified, reproduced and/or redistributed by an End User without separate payment. Examples of Redistribution Software are sample, redistributable, and/or software development (SDK) software code and tools. Redistribution Software is a Product.

"Rental Device" means a personal computer (desktop or laptop) or server containing Products. A Rental Device must be fully owned or leased by Customer and is rented/leased to an End User, whether or not Customer receives payment for such rental/lease.

"Reseller" means a Microsoft authorized reseller of Products for the Services Provider License Agreement program.

"Software Documentation" means any documents included with a Product.

"Software Services" means services that Customer provides to End Users that make available,

display, run, access, or otherwise interact, directly or indirectly, with the Products, including via Rental Devices. Customer must provide these services from data center(s) through the Internet, a telephony network or a private network, or by providing Rental Devices, on a rental, subscription or services basis, whether or not Customer receives a fee. Software Services exclude any services involving installation of a Product directly on any End User device to permit an End User to interact with the Product.

“Software Services Reseller” means a legal entity to which Customer grants rights under this Agreement to provide Customer’s Software Services to End Users.

“SPUR” means the services provider use rights, which identifies the Products available in the program and their use rights.

“Zero Use” means Customer and its Software Services Resellers did not use any of the Products to provide Software Services during the prior calendar month.

## **5. Reseller.**

Customer must designate a Reseller. Customer must notify Microsoft in the event that the relationship between Customer and its Reseller terminates.

a. **Reseller.** Customer must designate a Reseller by submitting the form provided by Microsoft. Microsoft will make available to Customer a list of the Resellers on a Microsoft designated website. All Resellers:

- (i) are independent contractors who act in their own name and for their own account;
- (ii) have complete discretion regarding pricing, distribution, invoicing and collections; and
- (iii) have no authority to bind or impose any obligation or liability whatsoever upon Microsoft.

Microsoft makes no representations, warranties or guarantees of any kind regarding the services of any Reseller.

b. **Change of Reseller.** If Customer’s relationship with Reseller terminates, or if Microsoft terminates Customer’s Reseller:

- (i) Customer or Microsoft, as applicable, will use commercially reasonable efforts to provide as much notice as possible prior to such event;
- (ii) Customer will work with Microsoft to resolve any issues resulting from the termination, including entering into a non-reseller version of Microsoft’s standard Services Provider License Agreement if no replacement Reseller is available;
- (iii) Customer will designate a replacement Reseller within 14 days of termination of the Reseller; and
- (iv) Customer will complete and sign a change of Reseller form or Channel Partner form. The change of Reseller or Channel Partner form is available on a Microsoft designated website. The change of Reseller or Channel Partner form must be sent to Customer’s new Reseller for written acknowledgement of its appointment.

## **6. How Products may be used.**

Customer may provide the Products to End Users in the form of Software Services. Customer can use the products for internal use if that use does not constitute the majority of its use, and it reports and pays for that use. Customer has limited rights to copy and distribute Products. Customer may make one backup copy per data center, may distribute the Products only to Outsourcing Companies, and may distribute only Client Software to End Users. Customer may locate Rental Devices in an End User Facility solely to provide Software Services to the End User. For Rental Devices, Customer shall market and distribute the Products installed on the Rental Devices, and not as “standalone” products. Customer may demonstrate the Software Services to third parties, provide the Software Services on a trial basis to third parties, and use

the Products for internal evaluation and testing. The Products are not licensed for High Risk Uses.

- a. License grant to provide Products as Software Services.** Subject to the terms of this agreement, Microsoft grants Customer a non-perpetual, non-exclusive, terminable, non-transferable, worldwide and limited right during the term of this agreement to copy, install, access, display, run, distribute, make available or otherwise interact with the Products in order to provide Software Services. This agreement does not modify Customer's use of Products licensed solely for internal use under other agreements with Microsoft (e.g., Open, Select or Enterprise license agreements). Customer's rights under this agreement will automatically terminate upon expiration or termination of this agreement. Microsoft reserves all rights not expressly granted.
- b. Internal use.** Customer may use Products for its internal use, so long as:
- (i) Customer reports use in its monthly use report and pays for this use;
  - (ii) Customer's use is less than 50% of the total use of such Products by all of its End Users (calculated on a product-by-product basis) each month;
  - (iii) such internal use does not utilize Rental Devices, with the exception of Products obtained from OEMs; and
  - (iv) the SPUR does not restrict internal use for the Product at issue.
- c. Copying and distribution of Products and Software Documentation.**
- Customer may not make any copies of the original media except as permitted in this agreement. Customer may make one backup copy of the original media containing the Products for each of its data centers. Customer must include on any copies all copyright, trademark and proprietary notices contained in or on the Products.
- Customer may distribute original media containing Products only to Outsourcing Company and Affiliates. Customer may only distribute original media containing Client Software and/or Redistribution Software to its End Users.
- Customer may not copy any Software Documentation for the Products. If the Software Documentation is only in electronic form, Customer may print one copy for Customer's own use and one copy for each End User who uses its Rental Devices.
- d. End User Facility installations.** Customer may locate servers ("Servers") containing Products on an End User's premises ("End User Facility") solely to provide Software Services to the End User, provided that the Servers are fully owned or leased by Customer. Upon request, Customer will promptly identify the number of Servers located at each End User Facility and the Products installed on said Servers. Customer shall not permit End User (or any third party providing services to the End User) to access, maintain, or otherwise use the Products, except for the sole purpose of accessing the functionality of the Products in the form of Software Services in accordance with the terms of this agreement.
- e. Products on Rental Devices.** Customer may rent Products identified in the SPUR as available for rental to End Users, subject to the terms of this agreement. Customer must ensure that each Product is activated before deployment of a Rental Device to an End User. Customer may not use, or allow to be used, Rental Devices at any End User Facility for the purpose of providing Software Services to any other End User. Customer shall market and distribute the Products installed on Rental Devices and not as "standalone" products.
- f. Evaluation and testing of Products by Customer.** Customer may install and use the Products on servers connected to Customer's internal networks for internal testing and evaluation for a period of 90 days. This period will begin on the date Customer first acquires the original media for the Product.
- g. End User demonstrations.** Customer may demonstrate its Software Services to prospective End Users so long as such demonstration is consistent with the SPUR, as it may be amended from time to time. Customer may have up to 50 active user IDs for

demonstration purposes. Customer must keep records of all demonstrations, including the name of the prospective End User and the number of user IDs used. Customer must make these records available to Microsoft when Microsoft verifies Customer's compliance with this agreement.

**h. End User evaluations.** Customer may use the Products to provide Software Services on a trial basis to its End Users if the following conditions are met:

- (i) the sole purpose of the trial must be for the End Users' evaluation of the Products;
- (ii) the trial may not be longer than 60 days for any given End User;
- (iii) the SPUR must not restrict such use;
- (iv) Customer must have entered into End User Agreements with the End Users; and
- (v) Customer must not charge or receive any fee or benefit from the End Users from the trial.

Notwithstanding the foregoing, Customer may not use Rental Devices for End User evaluations. Customer must keep records of all End User evaluations, including the name and address of the prospective End Users and the total number of user IDs used. Customer must make these records available to Microsoft when Microsoft verifies Customer's compliance with this agreement.

**i. Server administration and maintenance.** Customer may authorize up to 20 individuals per data center (including employees of any Outsourcing Company performing services for Customer) to access and use the Products for the sole purpose of testing, maintenance and administration of the Products.

**j. No High Risk Use. The Products are not fault-tolerant. The Products are not designed or intended for use in any situation where failure or fault of any kind of the Product could lead to death or serious bodily injury of any person, or to severe physical or environmental damage ("High Risk Use"). Customer is not licensed to use the Products in, or in conjunction with, High Risk Use. High Risk Use is STRICTLY PROHIBITED. High Risk Use includes, for example, the following: aircraft or other modes of human mass transportation, nuclear or chemical facilities, and Class III medical devices under the Federal Food, Drug, and Cosmetic Act. Customer agrees not to use, distribute or sublicense the use of the Products in, or in connection with, any High Risk Use.**

## **7. Requirements for Software Services Resellers and data center outsourcing.**

Customer may provide Software Services through Software Services Resellers and engage in data center outsourcing provided that Customer takes ultimate responsibility for the third parties, has a proper End User Agreement in place, notifies Microsoft of the third party's identity, obtains permission for Microsoft to conduct inspections of data centers, and takes appropriate steps to destroy or obtain the Products when the license term ends.

**a. Distribution of Software Services through Software Services Resellers.** Customer may provide Software Services through one or more Software Services Resellers if Customer:

- (i) signs and maintains an agreement ("Software Services Software Services Reseller Agreement") with the Software Services Reseller. The Software Services Reseller Agreement must require the Software Services Reseller to provide Software Services only to End Users. The Software Services Reseller Agreement must also provide that the termination or expiration of this agreement will automatically terminate all rights to use Products in the Software Services Reseller Agreement;
- (ii) requires each of its Software Services Resellers to sign and maintain End User Agreements with End Users in compliance with the section of this agreement entitled "End User Agreement requirements"; and

(iii) provides Microsoft with the name and address of Customer's Software Services Resellers upon Microsoft's request.

Customer may authorize a Software Services Reseller to distribute original media containing only Client Software and/or Redistribution Software to End Users. Customer is legally responsible to Microsoft for any unauthorized installation, use, copying, access or distribution of Client Software and/or Redistribution Software by the Software Services Reseller.

**b. Data center outsourcing.** Customer may install the Products on servers under the day-to-day management and control of Outsourcing Companies. Customer must maintain an agreement with each Outsourcing Company that complies with the requirements of this subsection. Customer may also distribute original media to the Outsourcing Company for installation purposes only and authorize the Outsourcing Company to install the Products on such servers on behalf of Customer, provided that Customer's agreement with the Outsourcing Company requires the Outsourcing Company to comply with Customer's obligations regarding installation of the Products as specified in this agreement, the SPUR, and subject to confidentiality restrictions.

(i) **Identification of Outsourcing Company.** Customer must provide Microsoft with the name and address of the Outsourcing Company when Microsoft verifies Customer's compliance with this agreement. Customer's agreement with the Outsourcing Company must permit this disclosure.

(ii) **Scope of use.** Customer is responsible for all of its obligations under this agreement regardless of the physical location of the servers. The Outsourcing Company may only use the Products to perform data center administration, testing and/or maintenance support services for Customer. The Outsourcing Company may not use the Products for any other purpose. Customer will be responsible to Microsoft for any unauthorized installation, use, copying, access or distribution of the Products by the Outsourcing Company.

(iii) **Data center inspection.** Subject to any compliance verification pursuant to the terms of the Master Agreement, Microsoft may conduct a reasonable inspection of all servers that contain the Products at the Outsourcing Company's data centers. Customer's agreement with the Outsourcing Company must permit this inspection. Inspections will be conducted during regular business hours at the Outsourcing Company's facilities, with at least 10 business days prior notice. Microsoft will conduct this inspection in a manner that will not interfere unreasonably with the operations of the Outsourcing Company.

(iv) **Copies of Products.** When Customer's agreement with an Outsourcing Company expires or terminates, Customer must use commercially reasonable efforts to (i) remove all copies of the Products on the Outsourcing Company's servers or render the Products permanently unusable; and (ii) ensure that the Outsourcing Company returns or destroys the media containing the Products it has received.

**c. Compliance with license requirements.** Customer must inform the individuals who have access to the Products that the Products are licensed by Microsoft and may only be used in accordance with the terms of this agreement. Customer will use commercially reasonable efforts to prevent any unauthorized distribution, copying, use, or pirating of the Products.

## **8. End User Agreement requirements.**

Customer must maintain End User Agreements with all End Users. End User Agreements must include restrictions on changing embedded notices and on reverse engineering, disclaimers of warranties, pertinent provisions from the SPUR, protections of Microsoft's intellectual property, and a notice that Microsoft is not responsible for support. Customer will be responsible for unauthorized use where it fails to comply with the requirements of this section. Customer must provide the End User License Terms to End Users using Rental Devices, Client Software, or Redistribution Software. Customer must remove all Client Software, Redistribution Software and

- a. Minimum required terms.** Customer must maintain End User Agreements with all End Users. Customer must ensure that the End User Agreements are effective and binding in all applicable jurisdictions. End User Agreements must, at a minimum:
- (i) prohibit the End User from removing, modifying or obscuring any copyright, trademark or other proprietary rights notices that are contained in or on the Products;
  - (ii) prohibit the End User from reverse engineering, decompiling, or disassembling the Products, except to the extent that such activity is expressly permitted by applicable law;
  - (iii) disclaim, to the extent permitted by applicable law, all warranties by Microsoft and any liability by Microsoft or its suppliers for any damages, whether direct, indirect, or consequential, arising from the Software Services;
  - (iv) state that Customer or a third party on Customer's behalf (and not Microsoft or its suppliers) will provide technical support for the Software Services;
  - (v) include terms at least as protective of Microsoft's intellectual property rights as contained in this agreement;
  - (vi) permit the disclosures of End User information required by this agreement;
  - (vii) include limitations at least as protective as those stipulated in the subsection entitled "No High Risk Use";
  - (viii) require the End User to keep a copy of the End User License Terms with any Rental Device; and
  - (ix) contain the following language in End User Agreements for Rental Devices: "The undersigned hereby acknowledges that its use of Microsoft products accompanying the computer equipment rented or leased pursuant to this agreement is governed by the End User License Terms, a copy of which is attached hereto."
- b. End User License Terms.** If Customer distributes Client Software, Redistribution Software, and/or the Products on Rental Devices, the End User Agreements must include terms that are substantially similar to, but no less restrictive than, the End User License Terms. Customer must ensure that the End User License Terms are effective and binding in all applicable jurisdictions. Microsoft will provide the Customer a form of the End User License Terms, which may be updated from time to time upon at least 30 days notice. Customer is responsible for supplementing the End User License Terms with the applicable terms contained in the SPUR regarding the use, modification, copying and/or distribution of such Products. Customer may, subject to confidentiality restrictions, disclose the SPUR to Customer's Affiliates, End Users and Software Services Resellers to fulfill these obligations.
- Customer is responsible to Microsoft for any unauthorized installation, use, copying, access or distribution of Client Software and/or Redistribution Software by an End User if Customer fails to comply with the terms of this section.
- c. Compliance.** If Microsoft believes in good faith that any End User is not complying with the End User License Terms, Customer must cooperate in good faith with Microsoft to investigate and remedy the non-compliance.
- d. Copies of Products.** Within 30 days of the termination of an End User Agreement, Customer shall:
- (i) remove all copies of Client Software and/or Redistribution Software from the End User's devices or otherwise render the Products permanently unusable;
  - (ii) ensure that the End User returns or destroys all copies of Client Software and Redistribution Software that it received; and
  - (iii) remove all Rental Devices from the End User Facility.

## **9. Additional requirements and obligations.**

Generally, Customer must preserve and pass-through intellectual property notices, and abide by certain trademark and logo usage requirements. Customer must also refrain from engaging in piracy or distributing Products to any party that Customer knows is engaged in these activities. Customer also must comply with all applicable laws and regulations. Customer must defend, indemnify and hold Microsoft harmless from any claim arising as a result of Customer's failure to abide by the terms of this section.

- a. Copyright, trademark and patent notices.** Customer must not remove any copyright, trademark or patent notices contained in or on Products. Customer has no right under this agreement to use any Microsoft logos in any manner whatsoever. Whenever a Product is first referenced in any written or visual communication, Customer must use the appropriate trademark, Product descriptor and trademark symbol (either "™" or "®"), and clearly indicate Microsoft's (or Microsoft's suppliers') ownership of such marks. For information on Microsoft trademarks, including a listing of current trademarks, see <http://www.microsoft.com/trademarks>. Customer must not undertake any action that will interfere with or diminish Microsoft's (or Microsoft's suppliers') right, title and/or interest in the trademark(s) or trade name(s). At Microsoft's request, Customer must provide Microsoft with samples of all of Customer's written or visual materials that use a Product name.
- b. Anti-piracy.** Customer must not engage in the manufacture, use distribution or transfer of counterfeit, pirated or illegal software. Customer may not distribute or transfer Products to any party that Customer knows is engaged in these activities. Customer must report to Microsoft any suspected counterfeiting, piracy or other intellectual property infringement in computer programs, manuals, marketing materials or other materials owned by Microsoft and/or its licensors as soon as Customer becomes aware of it. Customer will cooperate with Microsoft in the investigation of any party suspected of these activities.
- c. Government approvals.** Customer must exercise its rights under this agreement with all necessary government approvals. Customer also must comply with all applicable laws and regulations.
- d. Indemnity.** Customer must defend, indemnify and hold Microsoft harmless from any claim arising as a result of (i) its improper installation of a Product; (ii) any software virus introduced by Customer; (iii) its violation of the terms of this agreement; and (iv) unauthorized installation, use, access, copying, reproduction, and/or distribution of any portion of the Products by an End User (or any third party providing services to the End User). In addition, Customer is liable to Microsoft for all damages, costs, and expenses, including reasonable attorneys' fees, resulting from Customer's continued distribution of an allegedly infringing Product after Microsoft provided Customer with notice to stop.

## **10. How to know what Product use rights apply.**

This section describes where to find the use rights that apply to Products, when Microsoft can change those use rights, and when Microsoft can withdraw a Product from the program and how that would affect Customer.

- a. Use rights are version-specific.** The SPUR is published periodically on a Microsoft website. The use rights for the Products are version-specific.
- b. Applicable Use Rights.** The use rights for the version of a Product that are in the SPUR in effect upon the effective date of this agreement remain in effect for the term of the agreement, subject to the following:
  - (i) Microsoft may revise the SPUR in order to (1) add use rights for new Products or new versions of Products and (2) to make non-substantive changes. In either case the most recent version of the use rights for the Product will apply; and

(ii) Microsoft may remove Products in accordance with the terms of subsection c, below.

- c. Removal of Products from the SPUR.** If Microsoft has notified Customer that a Product was removed from the SPUR due to an intellectual property infringement claim or in accordance with a court or other governmental order, Customer must immediately cease any use or distribution of the allegedly infringing Product.

If the Product was removed for any other reason, Customer may continue to license the removed Product if Customer reported use of the removed Product prior to the time of its removal from the SPUR. The use rights applicable to any removed Product will be those stated in the SPUR that was in effect immediately prior to removal of the Product.

- d. End User License Agreement applicability.** This agreement supersedes any end user license agreement (“EULA”) that may accompany a Product and any conflicting Services terms. This agreement supersedes any EULA (except the warranty terms) that accompanies a Product from an OEM or from an entity other than Microsoft, if:

- (i) the SPUR does not state otherwise; and
- (ii) Customer uses the Products to provide Software Services.

Customer may receive additional software (including fixes) with the Products. If a EULA accompanies the additional software (other than fixes), that Product is licensed to Customer under the terms of that EULA and not under this agreement. If a EULA accompanies a fix, the use rights contained in that EULA (but not any warranties from Microsoft), which do not conflict with the SPUR or End User License Terms, apply.

## **11. Monthly Use Reports.**

In general, Customer must submit consolidated monthly use reports or zero use reports, whether or not any use was made during the preceding month, on behalf of itself, its Affiliates and its Software Services Resellers, to its Reseller. The reports must be certified by an authorized representative of Customer.

Customer must submit either a monthly use report or zero use report to its Reseller within 10 days after the last day of each month or on a date agreed to by Customer and its Reseller. An authorized representative of Customer must certify that the monthly use report or zero use report is accurate and complete.

- a. Monthly reporting.** Customer’s Reseller will provide Customer details on the format of and procedure for submitting the reports. Customer must provide all applicable information requested in the monthly use report. At a minimum, each monthly use report must include the following information:

- (i) the total number of licenses required for each Product that Customer used during the preceding calendar month;
- (ii) End User name and address if the End User generated more than US\$1,000 per month in revenue; and
- (iii) the country in which the End User is located.

Customer’s monthly use report must include and consolidate the use of the Products by its Affiliates and Software Services Resellers. Customer’s Affiliates and Software Services Resellers do not submit monthly use reports directly to Customer’s Reseller. Customer does not need to provide a monthly use report for End User demonstrations, End User evaluations, Customer’s evaluation and testing of Products, or server administration and maintenance.

- b. Zero use.** Customer must submit a zero use report to its Reseller. A zero use report is submitted only if Customer had Zero Use.
- c. Final monthly use report.** Customer must submit, within 30 days of termination or expiration of this agreement, a final monthly use report or zero use report to its Reseller. The report must cover Customer’s use of the Products through the date of termination or

expiration.

- d. **Obtaining Products and Software Documentation.** Software Documentation and original media containing the Products may be ordered from Customer's Reseller. Microsoft may limit the number of copies of original media and Software Documentation that Customer's Reseller may order from Microsoft. Microsoft will provide Customer with the necessary codes to permit installation, re-installation and copying of the Products, subject to the terms of this agreement.

Customer may also obtain certain Products from an OEM to the extent permitted in the SPUR. These Products must be preinstalled on the computer system purchased from the OEM by Customer.

## **12. Invoices and Unlicensed Use.**

Customer's Reseller will invoice Company monthly based upon the number of licenses reported in Customer's monthly use report.

- a. **Reseller Invoices.** Customer's Reseller will invoice Company monthly based upon the number of licenses reported in Customer's monthly use report. Customer's monthly invoice will include any internal use of the Products as reported by Customer in its monthly use report.
- b. **Unlicensed use.** If an action to verify compliance with this agreement reveals unlicensed use, Customer shall pay 115% of the per unit price for each unpaid license. Microsoft will presume that such unreported use began upon commencement of each End User relationship with Customer, unless Customer reasonably demonstrates a different scope and duration.

## **13. Technical support services.**

This agreement does not include support services. Customer may obtain support from Microsoft under a separate agreement. For Products or Rental Devices, Customer must provide certain information about support to End Users.

- a. **Microsoft support.** The Services Provider License program does not include support services. Customer may obtain support services from Microsoft under a separate agreement. For more information about support services, see <http://support.microsoft.com> or a successor site that Microsoft identifies.
- b. **End User support requirements.** Customer must obtain and continuously maintain one of the following support services in order to provide commercially reasonable support to its End Users:
- (i) a Microsoft Premier support services agreement;
  - (ii) support services through the Microsoft Professional support program with prepayment for at least 10 incidents; or
  - (iii) support services that are equivalent to i or ii above through either another Microsoft support program or a third party support provider.
- c. **Rental Device support.** Customer shall be responsible for communicating to any Rental Device End User that the End User is not eligible for Microsoft support services. Should Customer provide the End User with primary support for the Products installed on the Rental Devices, Customer shall include clear and conspicuous support information, including a regular or toll-free hardware and software support number to contact Customer, for the End User as part of the documentation included with each Rental Device.

## 14. **Term and termination.**

The term of this agreement is three years. Customer may request an extension solely to support existing End Users, which Microsoft has sole discretion to grant or deny. Customer may terminate the agreement upon notice. Microsoft may terminate the agreement if Customer breaches. Upon termination, Customer must certify, on behalf of itself and its Software Services Resellers, the return or destruction of the Products.

- a. Agreement term.** The term of this agreement is three years from the effective date identified on the signature form. Microsoft may terminate this agreement earlier as described below.
- b. Extension.** Not less than 30 days before the agreement expires, Customer may request an extension of this agreement, which Microsoft in its sole discretion may approve or deny. Customer may only request an extension if Customer will not sign any new End User Agreements and Customer has continuing obligations under existing End User Agreements to provide Software Services beyond the term of this agreement. Customer's request must include the total quantity and expiration dates of any End User Agreements that extend beyond the initial term. If Microsoft agrees to extend the agreement:
- (i) the extension period will be either the longest remaining End User Agreement period or 12 months, whichever period is shorter; and
  - (ii) Customer may not provide Software Services to any new End Users or extend any existing End User Agreements.
- c. Earlier termination.** Customer may voluntarily terminate this agreement with 60 days' prior written notice to Microsoft. Either party may terminate this agreement if the other party breaches any term of this agreement. The party terminating this agreement for breach must give the other party 30 days' written notice, during which time the breaching party has a right to cure before the termination will become effective.
- Microsoft may immediately terminate this agreement by giving notice to Customer if:
- (i) Customer's breach is not curable within 30 days;
  - (ii) Customer breaches the subsection of the Master Agreement entitled "Assignment";
  - (iii) required by a valid judicial or governmental order;
  - (iv) Customer commits three or more material breaches of the use rights contained in the SPUR;
  - (v) Customer engages in any unauthorized manufacture, copying, distribution or use of any Products, or otherwise engages in the infringement of Microsoft's intellectual property rights;
  - (vi) Customer fails to report monthly use for three consecutive months;
  - (vii) Customer reports Zero Use for more than six consecutive months;
  - (viii) Customer becomes insolvent, voluntarily or involuntarily enters bankruptcy, reorganization, composition or other similar proceedings under applicable laws, admits in writing its inability to pay debts, or makes or attempts to make an assignment for the benefit of creditors; or
  - (ix) Customer fails to enter into a non-reseller version of Microsoft's Services Provider License Agreement within thirty (30) days after Customer's relationship with a Reseller terminates.
- d. Obligations on termination or expiration.** Upon termination or expiration of this agreement, Customer must return all copies of the Products (including their component parts) and Software Documentation that Customer received under this agreement to its Reseller. Customer's Reseller may instead instruct Customer to delete and destroy the Products, their component parts and Software Documentation. Customer must certify to Microsoft the deletion and destruction. Customer must instruct its Affiliates, End Users,

and Software Services Resellers to do the same. Microsoft will not refund any amounts paid for Software Documentation or original media that have been destroyed. In the event of a termination by Microsoft, all payment obligations under this agreement, including without prejudice, any minimum commitment payments, shall become immediately due and payable on the date of termination.

## **15. Miscellaneous.**

- a. **Notices to Microsoft.** Notices, authorizations, and requests in connection with this agreement must be sent by regular or overnight mail, express courier, fax, or email to the addresses and numbers listed on the signature form and in this agreement. Notices will be treated as delivered on the date shown on the return receipt or on the courier, fax, or email confirmation of delivery.

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

- b. **Order of precedence.** In the case of a conflict between any documents identified on the first page that is not resolved expressly in the documents, their terms will control in the following order: (i) these terms and conditions and the accompanying signature form; (ii) the terms and conditions of the Master Agreement; and (iii) the SPUR.
- 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. **Relationship between parties.** Neither this agreement as a whole nor any specific term or condition will be interpreted as creating a partnership, joint venture, agency, or franchise relationship between the parties.
- 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. **Survival.** Sections of this agreement that, by their terms, require performance after termination or expiration of this agreement, including but not limited to, provisions regarding use rights, restrictions on use, compliance with laws, compliance verification and obligations on termination or expiration of this agreement, will survive termination or expiration of this agreement.
- g. **Advisor fee.** Microsoft sometimes pays fees to software advisors or other third parties authorized by Microsoft. The fees are in exchange for their advisory services. The payment of fees depends upon several factors, including the type of agreement under which Customer orders licenses, which licenses Customer orders, and whether Customer chooses to use an advisor. The fee amounts increase with the size of the orders Customer places under this agreement.