

Enterprise Agreement

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

Effective date. The effective date of this agreement is the earliest effective date of any Enrollment entered into under this agreement or the date Microsoft accepts this agreement, whichever is earlier. Any reference in this agreement or an Enrollment to a “day” means a calendar day, except references that specify “business day.”

This agreement consists of (1) these terms and conditions and the signature form, (2) the terms of either the Microsoft Business Agreement or Microsoft Business and Services Agreement (“Primary Agreement”) identified on the signature form, (3) the Product Terms, and (4) any Enrollment entered into under this agreement. By entering into this agreement, Customer agrees to be bound by the terms and conditions of the Primary Agreement. If Customer is a qualifying government entity, the Qualifying Government Entity Addendum is incorporated by reference.

Please note: Documents referenced in this agreement but not attached to the signature form may be found at <http://www.microsoft.com/licensing/contracts> and are incorporated in this agreement by reference, including the Product Terms and Qualifying Government Entity Addendum. These documents may contain additional terms and conditions for Products licensed under this agreement and may be changed from time to time. Customer should review such documents carefully, both at the time of signing and periodically thereafter, and fully understand all terms and conditions applicable to Products licensed and Services ordered.

Terms and Conditions

1. Definitions.

Terms used in this agreement but not otherwise defined will have the definition provided in the Primary Agreement. The following definitions also apply:

“Customer” means the entity that has entered into this agreement with Microsoft.

“Enrolled Affiliate” means an entity, either Customer or any one of Customer’s Affiliates, that has entered into an Enrollment under this agreement.

“Enrollment” means the document that an Enrolled Affiliate submits under this agreement to place orders for Products and Services.

“Enterprise” means Enrolled Affiliate and the Affiliates it chooses to include on its Enrollment.

“License” means the right to download, install, access and use a Product. For certain Products, a License may be available on a fixed term or subscription basis (“Subscription License”). Licenses for Online Services will be considered Subscription Licenses.

“Material Adverse Changes” means any change to the Use Rights for a Product that could reasonably affect Enrolled Affiliate’s decision to purchase the Product and that would require Enrolled Affiliate’s to purchase additional licenses, increase the cost to Enrolled Affiliate of using the Product, remove an existing right, or place additional restrictions on the use of the Product.

“Microsoft” means the Microsoft Affiliate that has entered into this agreement or an Enrollment and its Affiliates, as appropriate.

“Software” means licensed copies of Microsoft software identified in the Product Terms. Software does not include Online Services or Services Deliverables, but Software may be part of an Online Service.

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

“Use Rights” means, with respect to any licensing program, the use rights or terms of service for each Product and version published for that licensing program at the Volume Licensing Site and updated from time to time. The Use Rights include the Product-Specific License Terms, the License Model terms,

the Universal License Terms, the Data Protection Terms, and the Other Legal Terms. The Use Rights supersede the terms of any end user license agreement (on-screen or otherwise) that accompanies a Product.

2. Licenses for Products.

- a. **License Grant.** Microsoft grants the Enterprise a non-exclusive, worldwide and limited right to download, install and use software Products, and to access and use the Online Services, each in the quantity ordered under an Enrollment. The rights granted are subject to the terms of this agreement, the Use Rights and the Product Terms. Microsoft reserves all rights not expressly granted in this agreement.
- b. **Duration of Licenses.** Subscription Licenses and most Software Assurance rights are temporary and expire when the applicable Enrollment is terminated or expires, unless the Enrolled Affiliate exercises a buy-out option, which is available for some Subscription Licenses. Except as otherwise noted in the applicable Enrollment or Use Rights, all other Licenses become perpetual only when all payments for that License have been made and the initial Enrollment term has expired.
- c. **Applicable Use Rights.** The latest Use Rights as updated from time to time, apply to the use of all Products, subject to the following exceptions.
 - (i) **For Products with metered usage-based pricing (e.g., metered Microsoft Azure Services).** Material Adverse Changes published after the start of a calendar month will apply beginning the following month.
 - (ii) **For Versioned Software.** Material Adverse Changes published after the date a Product is first licensed will not apply to any licenses for that Product acquired during the applicable Enrollment term unless the changes are published with the release of a new version and Customer chooses to update to that version. Renewal of Software Assurance does not change which Use Rights apply to perpetual Licenses acquired during a previous term or Enrollment.
 - (iii) **For all other Products (e.g., Office 365 services).** Material Adverse Changes published after the start of the subscription term will not apply to any licenses for that Product acquired during the applicable Enrollment term.
 - (iv) **For use rights granted through Software Assurance.** Material Adverse Changes published after the date a Product is first licensed will not apply to any licenses for that Product during the applicable enrollment term unless the changes are published with the release of a new version and Customer chooses to update to that version.
- d. **Downgrade rights.** Enterprise may use an earlier version of a Product than the version that is current on the effective date of the Enrollment. For Licenses acquired in the current Enrollment term, the Use Rights for the current version apply to the use of the earlier version. If the earlier Product version includes features that are not in the new version, then the Use Rights applicable to the earlier version apply with respect to those features.
- e. **New Version Rights under Software Assurance.** Enrolled Affiliate must order and maintain continuous Software Assurance coverage for each License ordered. With Software Assurance coverage, Enterprise automatically has the right to use a new version of a licensed Product as soon as it is released, even if Enterprise chooses not to use the new version immediately.
 - (i) Except as otherwise permitted under an Enrollment, use of the new version will be subject to the new version's Use Rights.
 - (ii) If the License for the earlier version of the Product is perpetual at the time the new version is released, the License for the new version will also be perpetual. Perpetual Licenses obtained through Software Assurance replace any perpetual Licenses for the earlier version.
- f. **License confirmation.** This agreement, the applicable Enrollment, Enrolled Affiliate's order confirmation, and any documentation evidencing transfers of perpetual Licenses,

together with proof of payment, will be Enrolled Affiliate's evidence of all Licenses obtained under an Enrollment.

- g. Acquisitions, divestitures, and mergers.** If the number of Licenses covered by an Enrollment changes by more than ten percent as a result of (1) an acquisition of an entity or an operating division, (2) a divestiture of an Affiliate or an operating division of Enrolled Affiliate or any of its Affiliates, or (3) a merger including a merger with a third party that has an existing agreement or Enrollment, Microsoft will work with Enrolled Affiliate in good faith to determine how to accommodate its changed circumstances in the context of this agreement.

3. *Making copies of Products and re-imaging rights.*

- a. General.** Enrolled Affiliate may make as many copies of Products as it needs to distribute them within the Enterprise. Copies must be true and complete (including copyright and trademark notices) from master copies obtained from a Microsoft approved fulfillment source. Enrolled Affiliate may use a third party to make these copies, but Enrolled Affiliate agrees it will be responsible for any third party's actions. Enrolled Affiliate agrees to make reasonable efforts to notify its employees, agents, and any other individuals who use the Products that the Products are licensed from Microsoft and subject to the terms of this agreement.
- b. Copies for training/evaluation and back-up.** For all Products other than Online Services, Enrolled Affiliate may (1) use up to 20 complimentary copies of any licensed Products in a dedicated training facility on its premises for purposes of training on that particular Product, (2) use up to 10 complimentary copies of any Products for a 60 day evaluation period, and (3) use one complimentary copy of any licensed Product for back-up or archival purposes for each of its distinct geographic locations. Trials for Online Services may be available if specified in the Use Rights.
- c. Right to re-image.** In certain cases, re-imaging is permitted using the Product media. If the Microsoft Product is licensed (1) from an original equipment manufacturer (OEM), (2) as a full packaged Product through a retail source, or (3) under another Microsoft program, then media provided under this agreement may generally be used to create images for use in place of copies provided through that separate source. This right is conditional upon the following:
- (i) Separate Licenses must be acquired from the separate source for each Product that is re-imaged.
 - (ii) The Product, language, version, and components of the copies made must be identical to the Product, language, version, and all components of the copies they replace and the number of copies or instances of the re-imaged Product permitted remains the same.
 - (iii) Except for copies of an operating system and copies of Products licensed under another Microsoft program, the Product type (e.g., Upgrade or full License) re-imaged must be identical to the Product type licensed from the separate source.
 - (iv) Enrolled Affiliate must adhere to any Product-specific processes or requirements for re-imaging identified in the Product Terms.

Re-imaged Products remain subject to the terms and use rights of the License acquired from the separate source. This subsection does not create or extend any Microsoft warranty or support obligation.

4. *Transferring and assigning Licenses.*

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

- (ii) a third party solely in connection with the transfer of hardware or employees to whom the Licenses have been assigned as part of (1) a divestiture of an Affiliate or a division of an Affiliate or (2) a merger involving Customer or an Affiliate.

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

- b. **Notification of License transfer.** Customer or Enrolled Affiliate must notify Microsoft of a License transfer by completing a License transfer form, which can be obtained from <http://www.microsoft.com/licensing/contracts>, and sending the completed form to Microsoft before the License transfer. No License transfer will be valid unless Customer or Enrolled Affiliate provides to the transferee, and the transferee accepts in writing, documents sufficient to enable the transferee to ascertain the scope, purpose and limitations of the rights granted by Microsoft under the Licenses being transferred (including, without limitation, the applicable Use Rights, use and transfer restrictions, warranties and limitations of liability). Any License transfer not made in compliance with this section will be void.
- c. **Internal assignment of Licenses and Software Assurance.** Licenses and Software Assurance must be assigned to a single user or device within the Enterprise. Licenses and Software Assurance may be reassigned within the Enterprise as described in the Use Rights.

5. **Term and termination.**

- a. **Term.** This agreement will remain in effect unless terminated by either party as described below. Each Enrollment will have the term provided in that Enrollment. Microsoft may change or discontinue certain Online Services as further described in the Product Terms.
- b. **Termination without cause.** Either party may terminate this agreement, without cause, upon 60 days' written notice. In the event of termination, new Enrollments will not be accepted, but any existing Enrollment will continue for the term of such Enrollment and will continue to be governed by this agreement.
- c. **Termination for cause.** Without limiting any other remedies it may have, either party may terminate an Enrollment if the other party materially breaches its obligations under this agreement, including any obligation to submit orders or pay invoices. Except where the breach is by its nature not curable within 30 days, the terminating party must give the other party 30 days' notice of its intent to terminate and an opportunity to cure the breach. If Microsoft gives such notice to an Enrolled Affiliate, Microsoft also will give Customer a copy of the notice, and Customer agrees to help resolve the breach. If the breach affects other Enrollments and cannot be resolved between Microsoft and Customer within a reasonable period of time, Microsoft may terminate this agreement and all Enrollments under it. If an Enrolled Affiliate ceases to be Customer's Affiliate, Customer must promptly notify Microsoft, and Microsoft may terminate the former Affiliate's Enrollment. If an Enrolled Affiliate terminates its Enrollment as a result of a breach by Microsoft, or if Microsoft terminates an Enrollment because Enrolled Affiliate ceases to be Customer's Affiliate, then Enrolled Affiliate will have the early termination rights described in the Enrollment.
- d. **Modification or termination of an Online Service for regulatory reasons.** Microsoft may modify or terminate an Online Service in any country or jurisdiction where there is any current or future government requirement or obligation that (1) subjects Microsoft to any regulation or requirement not generally applicable to businesses operating there, (2) presents a hardship for Microsoft to continue operating the Online Service without modification, and/or (3) causes Microsoft to believe these terms or the Online Service may conflict with any such requirement or obligation.
- e. **Program updates.** Microsoft may make changes to this program that will make it necessary for Customer and its Enrolled Affiliates to enter into new agreements and Enrollments at the time of an Enrollment renewal.

6. **Miscellaneous.**

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

Microsoft may provide information about Enrollment deadlines and Online Services by email to contacts provided by Enrolled Affiliate under an Enrollment or through a web site Microsoft identifies. Notice by email is given as of the transmission date.

- b. **Management and reporting.** Enrolled Affiliate must provide and manage account details (e.g., contacts, orders, Licenses, software downloads) at <https://www.microsoft.com/licensing/servicecenter> (or a successor site). On the effective date of this agreement and any Enrollments, the contact(s) Enrolled Affiliate has identified for this purpose will be provided access to this site and may authorize additional users and contacts.
- c. **Order of precedence.** In the case of a conflict between any documents in this agreement that is not expressly resolved in those documents, their terms will control in the following order, from highest to lowest priority: (1) Microsoft Products and Services Data Protection Addendum (2) the Primary Agreement, (3) this Enterprise Agreement, (4) any Enrollment, (5) the Product Terms, (6) Service Level Agreements, (7) orders submitted under this agreement, and (8) any other documents in this agreement. Terms in an amendment control over the amended document and any prior amendments concerning the same subject matter.
- d. **Applicable currency.** Any payments made to Microsoft must be in the Microsoft approved currency for the respective locale.
- e. **Taxes.** If any amounts are to be paid to Microsoft, the amounts owed are exclusive of any taxes unless specified on the invoice as tax inclusive. Customer shall pay any applicable value added, goods and services, sales, gross receipts, or other transaction taxes, fees, charges or surcharges, or any regulatory cost recovery surcharges or similar amounts that are owed under this agreement and which Microsoft is permitted to collect from Customer. Customer shall also be responsible for any applicable stamp taxes and for all other taxes that it is legally obligated to pay, including any taxes that arise on the distribution or provision of Products or Professional Services by Customer to its Affiliates. Microsoft shall be responsible for payment of all taxes based on its net income, gross receipts taxes imposed in lieu of taxes on income or profits, or taxes on property ownership.

If any taxes are required to be withheld on payments made to Microsoft, Customer may deduct such taxes from the amount owed and pay them to the appropriate taxing authority; provided, however, that Customer shall promptly secure and deliver an official receipt for those withholdings and other documents reasonably requested by Microsoft to claim a foreign tax credit or refund. Customer will ensure that any taxes withheld are minimized to the extent possible under applicable law.