Microsoft Licensing, GP
6100 Neil Road
Reno, NV 89511-1137

Tel 775 823 5600
Fax 775 826 0506

A Microsoft Company

Volume Licensing Customer,

Microsoft®

Welcome to the Microsoft Volume Licensing Program. Enclosed is your copy of your new Volume Licensing Agreement with Microsoft, which is now in effect with your company.

By now you should have received an email notification from Microsoft regarding acceptance of the terms and conditions of your Volume Licensing Agreement. The email notification contains current contract information such as licensing pools, participant contact information, and more.

In addition to the electronic email acceptance letter, you should have received a second email from Microsoft with information regarding an online resource, called Microsoft Volume Licensing Services (MVLS), contains detailed and confidential information regarding your Microsoft Volume Licensing account, including transaction history, product downloads, and Volume Licensing Product Keys.

If you have not received your electronic acceptance notification or MVLS instructions please contact your Large Account Reseller or Enterprise Software Advisor for assistance.

Keep this contract in a secure location. It is important that you understand all of the terms and conditions contained within, and can access the information if questions arise.

Thank you,

Microsoft Licensing, GP

Microsoft Licensing, GP is an equal opportunity employer.

Virginia Information Technologies Agency

expect the best

MICROSOFT SELECT V6.1 (STATE AND LOCAL) AGREEMENT – LEVEL D

CONTRACT VA040204-MCS

Contract Summary
The Microsoft Select V6.1 Agreement allows State and Local Government to purchase and use Microsoft software licenses and media in accordance with the terms and conditions of the Select Agreement, Product Use Rights and Product List Rights (may be viewed at http://microsoft.com/licensing

Entity Responsibility
It is the responsibility of each entity to thoroughly familiarize themselves with the terms and conditions of the Select Agreement, Product Use Rights and Product List Rights prior to purchasing software products under this Agreement.

Term of Select Agreement
May 1, 2004 – April 30, 2007

Renewal Options
12 or 36 months

Order Placement
Orders for Microsoft Select software products/licenses must be placed with **PC Mall Gov, Inc., Contract VA-030700-PCMG.**

- Complete a new Select V6.1 Enrollment form included with this Agreement
- Submit completed Select V6.1 Enrollment form to the Microsoft Large Account Reseller:

  Bill Miltenberger
  Business Development Manager
  PC Mall Gov, Inc.
  2201 Cooperative Way, Suite 301
  Herndon, VA 20171-3099

- Contact Bill Miltenberger at: (703) 904-9054 or email: williamMi@pcmallgov.com for additional questions or guidance

- Orders placed with the Microsoft Large Account Reseller (PC Mall Gov, Inc.) against this Master Select V6.1 Agreement may be confirmed on the World Wide Web at http://licensing.microsoft.com

Proof of License
It is the responsibility of each entity to maintain proper records to provide evidence of all Microsoft licenses, see Section 5. License Grant (last paragraph).

Microsoft Select - Contact Information:

Microsoft Virginia Account Executive: (State Government)	Beth Dehaven Voice: (804) 560-1118 Cell: (804) 337-3262 E-mail: bdehaven@microsoft.com
Microsoft East Region (Local Government)	Lisa Roddy Voice: (908) 268-4533 Cell: (347) 351-5049 E-mail: lisarod@microsoft.com
Microsoft Inside Account Representative (Estimated Retail Price Lists, Product Info)	Rachel Pizarro Voice: (800) 426-9400 x11667 Rachel@microsoft.com
Microsoft Volume License Site (MVLS)	https://www.licensing.microsoft.com
Select Online User Guide	http://www.selectug.mslicense.com
Microsoft Product User Rights/Product List	http://www.microsoft.com/licensing
MS Customer Service Center (Key Codes)	(800) 352-7140

NOTE: Microsoft does not sell Select products except through Large Account Resellers. Orders for Microsoft Products are placed by the Commonwealth with PC Mall Gov, Inc. Contract VA-030700-PCMG).

Microsoft Select License

Microsoft Select **Agreement** - State and Local - Level D

(NOT FOR USE WITH MICROSOFT BUSINESS AGREEMENT)

Select Agreement number
Microsoft affiliate to complete 01S65762

This Microsoft Select Agreement is entered into between the following entities. Each party will notify the other in writing if any of the information in the following table changes.

Customer			
Name of Entity	The Commonwealth of Virginia, Virginia Information Technologies Agency		Contact Name (This person handles access to online information and receives notices unless a different contact is below.) Ann Sells
Street Address	110 South 7th Street		Contact E-mail Address (required for online access) Ann.sells@vita . virginia.gov
City	Richmond	State/Province VA	Phone (804) 371-5988
Country		Postal Code 23219-3931	Fax (804) 371-5969
Microsoft Account Manager Name Beth DeHaven			Microsoft Account Manager E-mail Address bdehaven@microsoft.com
Contracting Microsoft Affiliate			
Microsoft Licensing, 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 (required for on-line access)
City	State/Province	Phone
Country	Postal Code	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 notices)
City	State/Province	Phone

This agreement consists of (1) this cover page, (2) the attached terms and conditions *(including any amendments hereto, in reverse order of execution)*, (3) the Product List *(which may be viewed at http://microsoft.com/licensing or at a successor site that we identify)*, (4) the product use rights applicable to products licensed under this agreement *(see Section 6 regarding determination of which product use rights apply)*, and (5) any enrollment entered into under this agreement.

Effective date. *This agreement is not legally binding until executed by both parties and shall become effective on the date of signature of the Commonwealth of Virginia, through the Virginia Information Technologies Agency. Each enrollment executed hereunder shall not be legally binding until executed by each party thereto*

Notices to Microsoft should be sent to:	***Copies should be sent to:***
Microsoft Licensing, 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 Commonwealth of Virginia,**	**Microsoft Licensing, GP**
Signature	Signature
Printed Name LEMUEL C STEWART JR	Printed Name Tracey Smith
Printed Title CIO	Printed Title Contract Administrator
Signature Date 4/2/04	Signature Date (date Microsoft affiliate countersigns) 4/1/04
Effective Date (may be different than our signature date)	APR 0 1 2004

Terms and Conditions

1. Definitions.

In this agreement, "you" means the entity that has entered into this agreement with us, *which is the Commonwealth of Virginia, through its Virginia Information Technologies Agency (VITA)*, and "we" or "us" means the Microsoft entity that has entered into this agreement or an enrollment. In addition, the following definitions apply:

"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 in your state 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;

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

"enrolled affiliate" means an entity, either you or any one of your affiliates, *or any outsourcer,* 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 Select License program;

"enrollment number" means the number(s) we assign to each enrollment hereunder;

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

"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 *(the Product List may be viewed at http://microsoft.com/licensing or at a successor site that we identify)*;

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

"outsourcer" is an entity which is party to an Outsourcer Select Enrollment hereunder, which such party you or an affiliate have engaged either to (i) finance and/or manage the acquisition of certain technology related assets; and/or (ii) manage information technology operations;

"ownership" means, for purposes of the definition of "affiliate" *with respect to us,* above, more than 50% ownership;

"product" means any product available *to your enrolled affiliates for* license as described on the Product List *(which may be viewed at http://microsoft.com/licensing or at a successor site that we identify)*;

"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 which identifies the products that are or may be made available under each of the volume licensing programs (which availability may vary by region), and any product-specific conditions or limitations on the acquisition of licenses for those products;

"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 Select License program;

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

"Select Agreement Number" means the number we assign to this Select Agreement;

"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; and

"VITA" means the Virginia Information Technologies Agency.

2. How the Select License program works.

The Select License program allows customers to license our products at discount pricing based on the volume of their license purchases. You and your affiliates, *or outsourcers on behalf of you and your affiliates,* can participate in this program by submitting one or more enrollments under this agreement. Once enrolled, the enrolled affiliate will receive master copies of products it intends to license and may run as many copies as it wishes during the term of its enrollment, provided it places monthly orders for those copies. We may refuse to accept an enrollment if we have a business reason for doing so. Product support is not included with the licenses under this agreement. Notwithstanding any other provision of this agreement, 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.

We will assign a Select Agreement Number and notify you of such number upon execution of this Select Agreement, and will assign separate enrollment numbers and notify the applicable enrolled affiliate after the execution of each enrollment. Each enrolled affiliate, including outsourcers who are deemed to be enrolled affiliates pursuant to Microsoft State and Local Government Select Outsourcer Enrollments hereto, shall be responsible for compliance with the terms of this agreement and the compliance of the enrolled affiliate's respective sublicenses, only with respect to the enrolled affiliate(s) enrollment. However, neither you nor any affiliate shall be responsible for compliance with any enrollments to which you or such affiliate is not a party or under which you or such affiliate does not participate. Notwithstanding the foregoing, outsourcers shall be solely responsible for both their own compliance, and the compliance of the participating affiliates for which they perform work, with respect to an Outsourcer Enrollment.

a. Establishing price levels.

The price level for all pools will be level D.

b. Price level adjustments.

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

c. ***Choosing, maintaining or changing a reseller.*** Each enrolled affiliate must choose and maintain a reseller authorized in the enrolled affiliate's area. Resellers are authorized to resell our product licenses, but act independently and have no authority to bind us. If we discontinue a reseller, the enrolled affiliate must choose a replacement. *We will notify you in writing if we discontinue the reseller's authority to resell licenses under this program.* If an enrolled affiliate intends to change its reseller, the enrolled affiliate 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 "reseller change date"). All payments billable prior to such reseller change date shall be paid to the former reseller. For example, with respect to a particular enrollment hereunder, if less than 30 days notice of intent to change reseller is given prior to an anniversary of this Select Agreement, then the annual Software Assurance and/or License & Software Assurance payments due pursuant to such enrollment (if any) shall be paid to the former reseller.* In case of a change of reseller, *each* enrolled affiliate is responsible for ensuring that all its obligations to the former reseller are met.

3. How to order product licenses.

a. ***Placing orders.*** Each enrolled affiliate must submit orders for all copies of any products it or its affiliates run under its enrollment. Orders must be submitted in the month in which those copies are first run. Unless the enrolled affiliate is eligible to order just Software Assurance as described below, each order must be for either a License or L&SA. Each enrolled affiliate must place orders through the enrolled affiliate's reseller. Price and payment terms for all licenses ordered will be determined by agreement between the enrolled affiliate and its chosen reseller. *Nothing in this agreement shall be construed to require that any entity, other than the entity which is identified in the "bill-to" section on a purchase order to the applicable reseller, shall be responsible for payment to its reseller pursuant to such purchase order.*

When is the enrolled affiliate eligible to order just Software Assurance? An enrolled affiliate may order Software Assurance for copies of a product, without the need to simultaneously order a new License for those copies, in the following circumstances:

- At the beginning of a new enrollment, the enrolled affiliate may order Software Assurance for copies of products for which the enrolled affiliate has previously obtained perpetual licenses through Upgrade Advantage, Software Assurance or any similar upgrade protection, so long as (i) the new enrollment *is assigned an* effective *date* no later than one day

following the expiration of that upgrade protection *(note that the effective date may be set to such date notwithstanding the actual date of execution),* and (ii) the enrolled affiliate places its Software Assurance order *within 10 business days following receipt of notification (either from us or the reseller) of its enrollment number. For example, based on the April 30, 2004 expiration date of prior Software Assurance coverage from the Commonwealth's expired version 5 Select Agreement, an enrolled affiliate would have 90 days (i.e. until July 31, 2004) to place orders for renewal of such prior Software Assurance coverage ("SA Renewal Orders"), provided that (i) it must place such SA Renewal Orders within 10 days following receipt of notification of its enrollment number; and (ii) the effective date of its enrollment will be set by us to be May 1, 2004.*

- During the term of its enrollment (including any renewal term), an enrolled affiliate may be eligible to order Software Assurance under its enrollment for copies of certain products licensed through retail sources or from an original equipment manufacturer (OEM), provided that the enrolled affiliate places its order within the required time frame. The Product List *(which may be viewed at http://microsoft.com/licensing or at a successor site that we identify)* identifies those products that may be enrolled in Software Assurance as described in this subsection and the applicable time frame for placing an order.
- An enrolled affiliate may also order Software Assurance in any other circumstances expressly permitted in the Product List *(which may be viewed at http://microsoft.com/licensing or at a successor site that we identify).*
- An enrolled affiliate may renew Software Assurance ordered under its enrollment at the time *its enrollment is renewed automatically pursuant to the extension of this agreement*, as described in subsection 10(d) (How to renew this agreement).

In all such cases *where an enrolled affiliate chooses to renew Software Assurance upon expiration of the initial 36-month term of this agreement*, the enrolled affiliate must order Software Assurance for the *entire period of extension or renewal.*

b. Invoices and payments. The prices at which we will invoice each enrolled affiliate's reseller will be based upon the applicable price level under this agreement. For any orders for Software Assurance or L&SA, if the enrolled affiliate elects to spread its payments over the applicable initial enrollment or renewal term rather than paying in a lump sum, it may make this election with its reseller. In such cases, we will invoice the enrolled affiliate's reseller in equal installments, the first installment upon receipt of the order and subsequent installments on each remaining anniversary of the effective date of this agreement occurring during the initial enrollment or renewal term in which the order was placed. Any amounts for Licenses only (i.e. without accompanying Software Assurance) will be invoiced to the enrolled affiliate's reseller in full upon receipt of the order.

c. Reporting country of use. *You represent that all licenses ordered hereunder will be used in the United States.*

d. Privatization. If an enrolled affiliate intends to transfer more than ten percent of its computers in connection with a privatization of its government operations, and as a result it would like to transfer the copies of the products running on those computers prior to the expiration of its enrollment, we will work with that enrolled affiliate in good faith to arrange for acceleration of any remaining payments for those copies run pursuant to Software Assurance or L&SA and to allow for the transfer of perpetual licenses for such copies as described in section 9 (Transferring licenses). Any perpetual licenses obtained as described in this paragraph will be for the latest

version of the products available as of the later of (i) the date on which the enrolled affiliate has completed payment, or (ii) the date of transfer.

4. How to confirm orders.

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

5. License grant – what your enrolled affiliates are licensed to run.

At any time after its enrollment effective date, each enrolled affiliate may run as many copies as it chooses, of any available products it chooses, provided that it submits orders for all such copies as required in subsection 3(a) (Placing orders). Each enrolled affiliate may run in place of any product version it licenses under this agreement a prior version or different language version (so long as the License, L&SA or Software Assurance for that different language version is available at the same or a lower price than the price paid for the corresponding license type for the version ordered) of the same product. If an affiliate runs copies of products under an enrolled affiliate's enrollment, those copies are sublicensed from that enrolled affiliate subject to the terms of this agreement. *Such sublicensing to affiliates is allowed hereby.* These rights apply to the licenses obtained under an enrollment and are not related to any order or fulfillment of software media.

License only. An enrolled affiliate's right under this agreement to run copies of any product for which it orders only a License is temporary until the enrolled affiliate has paid for that License in full. Thereafter, the enrolled affiliate will have a perpetual license to run the number of copies ordered in the version ordered.

L&SA or Software Assurance. An enrolled affiliate's right under this agreement to run copies of any product for which it orders L&SA or Software Assurance is temporary until one of the following occurs:

(i) the enrolled affiliate has paid all installments of the price for such coverage, and the applicable initial enrollment or renewal term during which such product licenses were ordered has expired or been renewed; or

(ii) the enrolled affiliate is otherwise eligible for perpetual licenses either pursuant to subsection 3(d) (Privatization) or upon early termination as provided in subsection 10(c) (Effect of termination or expiration).

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), for the number of copies ordered during the applicable initial enrollment term or renewal term. In the case of early termination as provided in subsection 10(b) (Termination), 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 10(c) (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 *(see Section 6 regarding determination of which product use rights apply)*.

This agreement, the applicable enrollment, the enrolled affiliate's order confirmation described in section 4 (How to confirm orders) above, and any documentation evidencing transfers of licenses as described in subsection 9(a) (How to transfer), together with proof of *order or* payment, will be the enrolled affiliate's evidence of all licenses obtained under its enrollment.

6. 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.

c. ***For deployed versions of a product that predate the licensed version.***

For the purposes of this Section 6(c), the following additional definitions shall apply:

(i) "Downgraded Copy" means a copy of a version of product that predates the latest version of such product for which the applicable license for such copy applies (for example, a copy of Office 2000 deployed in lieu of Office 2003, when the applicable license was either purchased as Office 2003 or was upgraded to Office 2003 pursuant to Software Assurance); and

(ii) "Current Copy" means a copy of the latest version of product provided by the applicable license.

If an enrolled affiliate is using a *Downgraded Copy in lieu of a Current Copy,*

the enrolled affiliate's use of the *Downgraded Copy* will be governed by the product use rights *for the latest version of such product available at the time such enrolled affiliate first deployed (whether under this agreement or a previous agreement) a license for the version of the product which applies to such Downgraded Copy. Once the enrolled affiliate replaces such Downgraded Copy with a Current Copy, such enrolled affiliate's use of the Current Copy will be subject to the product use rights in effect on the date on which the version of the product which applies to such Current Copy first became available*

d. ***Cross-language use rights.*** If an enrolled affiliate is using any different language version of any product licensed under its enrollment, the enrolled affiliate's use of the different language version will be governed by the product use rights for the version licensed under the enrollment.

e. ***Right to reassign Software Assurance coverage to replacement computers.*** An enrolled affiliate may reassign Software Assurance coverage ordered for an underlying desktop operating system product installed on one computer to a replacement computer so long as (i) that replacement computer is licensed to run the latest version of the desktop operating system available as of the date of the reassignment, and (ii) the enrolled affiliate removes from the original computer any desktop operating system upgrades that were installed under the reassigned Software Assurance coverage. An enrolled affiliate may not otherwise separate Software Assurance coverage or any right to run any version of any product acquired through such coverage from the underlying license for which it is ordered.

f. ***Microsoft's commitment on use rights.*** We will not change an enrolled affiliate's product use rights for any version of a product after it becomes available to that enrolled affiliate under its enrollment.

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 *to you in writing* 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 under various provisions of the product use rights, you will be responsible for any cost or damages arising form any claim to which your indemnity obligation would otherwise apply.

7. Software Assurance Membership.

Each enrolled affiliate that commits to obtaining either L&SA or Software Assurance for all copies of all products licensed within a designated product pool throughout the term of its enrollment (including any renewal) qualifies for Software Assurance Membership. Membership may entitle the enrolled affiliate to special benefits. Enrolled affiliates that make the commitment for more than one pool may be entitled to further benefits. Each enrolled affiliate that elects to become a Software Assurance Member must indicate its selection of the Software Assurance Membership option, and the product pool(s) for which it is making the required commitment, on its enrollment. Software Assurance Membership benefits may be subject to additional terms and conditions. A description of Software Assurance Membership benefits and additional details are available from the enrolled affiliate's reseller or Microsoft account manager.

8. Making copies of software.

a. ***Copies necessary for internal deployment.*** Each enrolled affiliate may make as many copies of the products licensed as necessary to distribute the products to its users. 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 or 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. *For the purposes of this Section 8, a third party is any party other than Microsoft Licensing, GP or its assignee.* 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 to which it sublicenses may (i) run up to 20 complimentary copies of any product in a dedicated training facility on their premises; (ii) run up to 10 complimentary copies of any 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 to whom it sublicenses has licensed products from an original equipment manufacturer (OEM), through a retail source or under any Microsoft program other than this Select License 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 its 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 8(c), the product type (e.g. upgrade or full license) of the copies made from the media provided under its enrollment must be identical to the product type of the copies they replace. However, an enrolled affiliate may use copies of an operating system made from the media provided under its enrollment in place of copies of the same operating system *(or prior version of such operating system, provided that such prior version must be permitted to be run pursuant to the terms and conditions of the OEM license)* 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 *permitted to be run pursuant to the OEM license.*

The use of any copies made under this subsection 8(c) is subject to the terms and use rights provided with the copies being replaced *(see Section 6 regarding determination of which product use rights apply)*, and nothing in this subsection creates or extends any warranty or support obligation.

9. Transferring licenses.

a. How to transfer. An enrolled affiliate may transfer its perpetual licenses to an affiliate, or to an unaffiliated third party in connection with a privatization of enrolled affiliate operations, as long as the enrolled affiliate provides 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 subsections 6(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 of this section 9. Any transfer made in violation of the requirements or restrictions in 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, *except as otherwise agreed upon in writing by all parties to an enrollment*), (ii) temporary rights to use products, (iii) Software Assurance coverage, *except to an affiliate when the underlying license is also transferred to such affiliate*, (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 operating system license or from the computer system on which the product was first installed.

10. Term, termination and renewal.

a. Term. *Provided that it has been executed by both you and us, t his* agreement will remain in effect for 36 full calendar months following the effective date unless it is renewed or terminated earlier as described below. All enrollments entered into under this agreement will expire or terminate upon the expiration or termination of this agreement, unless terminated earlier as described below.

b. Termination.

For the purposes of this Section 10(b), the following additional definitions shall apply:

(i) "In-Scope Affiliate" means an affiliate that is an agency of the Executive Branch of the Commonwealth of Virginia; and

(ii) "Out-Of-Scope Affiliate" means an affiliate that is not an In-Scope Affiliate.

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.

If the enrolled affiliate for which such breach applies is an In-Scope Affiliate, then the following shall apply:

- you agree to assist in attempting to resolve the problem; and
- If the problem also affects *one or more* other *In-Scope Affiliates'* 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(s).

If the enrolled affiliate for which such breach applies is an Out-Of-Scope Affiliate, then the following shall apply:

- *If the problem also affects other one or more Out-Of-Scope Affiliates' enrollments and cannot be resolved within a reasonable period of time, we may also terminate all other Out-Of-Scope Affiliates' enrollments and decline to execute additional enrollments submitted by Out-Of-Scope Affiliates, 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(s).*

If an enrolled affiliate ceases to be your affiliate, you must promptly notify us of this fact, and we may terminate its enrollment.

c. *Effect of termination or expiration.* Upon expiration or termination of this agreement or 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 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) 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, *in the event of non-appropriation of funds,* it may *elect not to make those payments for which funds were not appropriated* , in which case *both of the following shall apply: (a)* 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; *and (b) the enrolled affiliate shall immediately cease running those copies of products for which it has not received a perpetual license.*

d. *How to renew this agreement.* We will provide you with 60 days prior written notice of expiration of the initial agreement or renewal term advising you of your renewal options. You may

have the option to renew this agreement for successive terms of 12 or 36 full calendar months. When you renew this agreement all enrollments under this agreement are automatically renewed. We and our affiliates will not unreasonably refuse to renew this agreement or reject any renewal order. However, we may make a change to the Select License program that will make it necessary for you and your enrolled affiliates to enter into new agreements and enrollments. *If a new agreement and/or enrollment is needed for such renewal order, then the effective date of such renewal agreement and/or enrollment must be no later than one day following the expiration of the original agreement and/or enrollment, even if such agreement and/or enrollment is executed later than such effective date.*

Placing renewal orders. If an enrolled affiliate wishes to renew Software Assurance for any copies previously covered under its enrollment, it must submit a renewal order for those copies for the entire renewal term within 30 days after the previous term expired. Each renewal term will start the same day following expiration of the prior term. Upon renewal of this agreement, an enrolled affiliate will not be eligible to order Software Assurance coverage for any copies of any products for which it obtained only a License without first acquiring L&SA.

Consequences of non-renewal. If you elect not to renew this agreement, or if an enrolled affiliate fails to renew Software Assurance coverage for any copies of any product licensed under an enrollment, and if the enrolled affiliate otherwise allows Software Assurance for those copies to lapse, then the enrolled affiliate will not be permitted to order Software Assurance for those copies later without first acquiring L&SA.

11. Restrictions on use.

You and your affiliates 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 *(see Section 6 regarding determination of which product use rights apply)*;
- Rent, lease, lend or host products *to third parties*, 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 *and your affiliates* 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.

12. Confidentiality.

The terms and conditions of this agreement may be posted on the Commonwealth of Virginia's website.

13. Warranties.

a. ***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 *you or* an 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 *you and your affiliates are* permitted to redistribute under applicable product use rights *(see Section 6 regarding determination of which product use rights apply)*, or if failure of the product has resulted from accident, abuse or misapplication. If you *or an enrolled affiliate* 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 *(and your affiliates' exclusive remedy)* for any failure of any product to function as described in this subsection.

b. ***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 *AND YOUR AFFILIATES* 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.

14. Defense of infringement and misappropriation claims.

We will defend you *and your enrolled affiliates* against any claims 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) *to the applicable affiliate(s) to which such judgment applies.* You *or the applicable enrolled affiliate* must notify us promptly in writing of the claim and, *to the extent permitted by applicable law of the Commonwealth of Virginia,* give us sole control over its defense or settlement. You *and your enrolled affiliates* agree to provide us with reasonable assistance in defending the claim, and we will reimburse you *and/or the applicable enrolled affiliates* for reasonable out of pocket expenses that you *and they* 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 *or an affiliate's* running of the product or fix after we notify you to discontinue running *(and notify your affiliates to stop running)* due to such a claim; (ii) your *(or your affiliate's)* 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 *(or your affiliate's)* altering the product or fix ; (v) your *(or your affiliate's)* use of our trademark(s) without express written consent to do so; or (vi) 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. *The applicable enrolled affiliate(s)* 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 *and your enrolled affiliates* 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 *and your enrolled affiliates* will stop running the allegedly infringing product or fix immediately. If, as a result of an infringement claim, your use *(or an enrolled affiliate's 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 *or an affiliate* regarding our intellectual property, you *or such affiliate* must notify us promptly in writing. We may, at our option, choose to treat these claims as being covered by this section. This Section 14 provides your *and your affiliates'* exclusive remedy for third party infringement and trade secret misappropriation claims.

15. Limitation of liability.

a. Limitation. There may be situations in which you or *one or more* enrolled affiliates 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 *100% of* the amount you or *such* enrolled affiliate(s) 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 paragraph will not apply with respect to the following in connection with the performance of this agreement:

(i) our obligations under Section 14 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;

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

(iii) our obligations under section 12 (confidentiality).

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 *to the other party* 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 its confidentiality obligation or of the other party's intellectual property rights.

c. Application. Except as specified expressly in this Section 15, 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.

16. Verifying Compliance.

Each enrolled affiliate must keep records relating to the products *it* and any *affiliate(s) to which it sublicenses or transfers licenses* 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 use. *The applicable enrolled affiliate* 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, *and the applicable enrolled affiliate has also implemented such program.* If verification or self-audit reveals unlicensed use of products, *the applicable 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), *the applicable enrolled affiliate* must reimburse us for the costs we have incurred in verification and acquire the necessary additional licenses *at the then-current non-discounted Estimated Retail Price for such 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 *or your affiliates* 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.

17. Miscellaneous.

a. ***Notices.*** All notices, authorizations, and requests given or made in connection with this agreement must be sent by post *(prepaid certified mail), or* express courier, *but not by* 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 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. In the case of a conflict between any of these documents that is not resolved expressly in the documents, their terms will control in the following order: (i) these terms and conditions *(including any amendments hereto in reverse order of execution),* and the accompanying cover page; (ii) the Product List (which may be viewed at http://microsoft.com/licensing or at a successor site that we identify); (iii) the product use rights

(see Section 6 regarding determination of which product use rights apply); 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 List and the product use rights) can be changed only by an amendment signed by *an authorized representative of* both parties.

h. ***Survival.*** Provisions *of this agreement* regarding product use rights *(see Section 6 regarding determination of which product use rights apply)*, 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*** *. This agreement will be interpreted in accordance with and governed in all respects by the laws of the Commonwealth of Virginia and any litigation with respect thereto shall be brought in the appropriate Virginia circuit court. Microsoft shall comply with all applicable federal, state, and local laws This paragraph does not prevent either party from seeking injunctive or equitable relief with respect to a violation of intellectual property rights or confidentiality obligations in any appropriate venue located in the Commonwealth of Virginia.*

k ***Copyright Violation.*** Except to the extent *an enrolled affiliate is* licensed under this agreement, *such enrolled affiliate* will be responsible for *its* violation of our copyright in the products, including payment *to its reseller* of license fees specified in this agreement for unlicensed use.

l. ***Non-appropriation.*** *All payment obligations under this contract are subject to both (i) the availability of legislative appropriation for this purpose, and (ii) such funds being made legally available for payment. In the event of non-appropriation of funds by the Legislature, or of such funds not being made legally available for the purchase of items under this contract, then the Commonwealth may cancel its purchase order for the remaining payments for those goods (software) for which funds have not been appropriated or made legally available for payment, subject to the terms and conditions of Sections 5 and 10(c). You or the enrolled affiliate, as applicable, agree to provide written notice to us as soon as possible after legislative action is completed.*

If any purchases are to be supported by federal funding, and such funding is not made available, then the Commonwealth may cancel its purchase order for the remaining payments for those goods (software) dependent on such federal funds without further obligation, subject to the terms and conditions of Sections 5 and 10(c).

m. ***Contractual records.*** *We shall make all contractual books and records and other documents relating to matters under this Select Agreement available to the Commonwealth and its designated agents for purposes of audit and examination for a period of five years after final payment.*

Contractual records include, but are not limited to, this Agreement, attachments hereto, and modifications hereto.

n. ***Non-Visual Access to Technology.*** *All information technology which, pursuant to this agreement, is purchased or upgraded by or for the use of any state agency or institution or*

political subdivision of the Commonwealth (the "Technology") shall comply with the following non-visual access standards from the date of purchase or upgrade until the expiration of this agreement:

(i) Effective, interactive control and use of the Technology shall be readily achievable by non-visual means;

(ii) The Technology equipped for non-visual access shall be compatible with information technology used by other individuals with whom any blind or visually impaired user for the Technology interacts.

(iii) Non-visual access technology shall be integrated into any networks used to share communications among employees, program participants or the public: and

(iv) The technology for non-visual access shall have the capability of providing equivalent access by non-visual means to telecommunications or the other interconnected network services used by persons who are not blind or visually impaired.

Compliance with the foregoing non-visual access standards shall not be required if the head of the using agency, institution or political subdivision determines that (i) the Technology is not available with non-visual access because the essential elements of the Technology are visual and (ii) non-visual equivalent is not available.

Installation of hardware, software, or peripheral devices used for non-visual access is not required when the Technology is being used exclusively by individuals who are not blind or visually impaired, but applications programs and underlying operating systems (including the format of the data used for the manipulation and presentation of information shall permit the installation and effective use of non-visual access software and peripheral devices.

If requested in writing, we will provide a detailed explanation of how compliance with the forgoing non-visual access standards is achieved and a validation of concept demonstration.

The requirements of this paragraph shall be construed to achieve full compliance with The Information Technology Access Act 2.2-3500 through 2.2-3504 of the Code of Virginia.

o. ***Non-Visual Access Compliance**. We expressly acknowledge that state funds may not be expended in connection with the purchase of an automated information system unless that system meets certain statutory requirements relating to accessibility by persons with visual impairments including those outlined in section 17(p) above. Accordingly, we represent and warrant to the Commonwealth of Virginia that the technology provided to the Commonwealth for purchase is capable, either by virtue of features included within the technology or because it is readily adaptable by use with other technology, of: (1) providing equivalent access for effective use by both visual and non-visual means; (2) presenting information, including prompts used for interactive communications, in formats intended for non-visual use; and (3) being integrated into networks for obtaining, retrieving, and disseminating information used by individuals who are not blind or visually impaired. For purposes of this paragraph, the phrase "equivalent access" means a substantially similar ability to communicate with or make use of the technology, either directly by features incorporated within the technology or by other reasonable means such as assistive devices or services which would constitute reasonable accommodations under the Americans with Disabilities Act or similar state or federal laws. Examples of methods by which equivalent access may be provided include, but are not limited to, keyboard alternatives to mouse commands and other means of navigating graphical displays, and customizable display appearance.*

The Commonwealth agrees to provide us with written notice of any claim of non-compliance of one or more products (products) with respect to this Section 17(o), and shall allow us 60 days from the date of such notification in which to cure such non-compliance. Provided that the we are unable to cure such non-compliance within set timeframe, the Commonwealth's sole remedy for our breach of this Section 17(o) shall be to receive from us a credit against future license fees

equal to the depreciated value of the product Licenses obtained under this Select Agreement for non-compliant products. Upon receipt of such credit, you shall discontinue use of such products, and the licenses for individual copies of such products shall become null and void. This provision shall not be construed to cause the licenses for an entire product line, or all copies of a given product, to become void. Rather, it shall be narrowly construed to apply only to licenses for specific copies of products for which both i) we are unable to cure non-compliance; and ii) the user or users of such copy require compliance in order to perform one or more tasks. For purposes of this paragraph, the depreciated value of a license will be calculated based on straight-line amortization over a twenty-four (24) month period from the date the license confirmation for such license was, or should have been, ordered pursuant to Section 3 of this Select Agreement, "How to Order Product Licenses."

p. ***Conflicting terms.*** *If any provision appearing in this agreement purports to cause the Commonwealth to bestow a right or incur an obligation that is beyond the legal authority of VITA to bestow or incur on behalf of the Commonwealth, then that provision shall be deemed of no effect. VITA has been legislated the purchasing authority to enter into statewide contracts for the purchase of all Information Technology.*

q. ***Effective date.*** *This agreement is not legally binding until executed by both parties and shall become effective on the date of signature of the Commonwealth of Virginia, through VITA.*

r. ***Compliance with Code of Virginia.*** *We agree to comply with all provisions of the Code of Virginia to the extent applicable to this agreement.*

s. ***Estimated retail prices for products.*** *Microsoft shall establish an estimated retail price for products ordered hereunder, at the price level available hereunder, and shall make such list available to you upon your request. Such estimated retail prices are intended only as reference points for enrolling affiliates to use in negotiating actual prices with their resellers. The estimated retail prices are subject to change from month to month. In no event, however, will any change be effective on less than thirty (30) days prior written notice to the applicable reseller. The estimated retail prices will not include taxes.*

t. ***Installment payments.*** *Certain orders for Software Assurance and/or License and Software Assurance pursuant to enrollments hereunder may establish a payment obligation for such products, such that the ordering affiliate is obligated to make all installments for such products according to the applicable installment payment schedule, subject to the appropriation of funds for such installments. In the event that funds for an installment payment are not appropriated, the ordering affiliate agrees to notify us immediately, and the terms and conditions of Section 5 and 10(c) shall apply.*

u. ***Contractual disputes.*** *In accordance with Section 2.2-4363 of the Code of Virginia, contractual claims, whether for money or other relief, shall be submitted in writing to the purchasing agency no later than sixty (60) days after the expiration of this agreement; however, written notice of Microsoft's intention to file such claim must be given to such agency at the time of the occurrence upon which the claim is based. Pendency of claims shall not delay payment to the applicable reseller of amounts agreed due. The purchasing agency shall render a final decision in writing within thirty (30) days after its receipt of Microsoft's written claim.*

Microsoft may not invoke any available administrative procedure under Section 2.2-4365 of the Code of Virginia nor institute legal action prior to receipt of the purchasing agency's decision on the claim, unless that agency fails to render its decision within thirty (30) days. The decision of the purchasing agency shall be final and conclusive unless Microsoft, within six (6) months of the

date of the final decision on the claim, invokes appropriate action under Section 2.2-4364, Code of Virginia or the administrative procedure authorized by Section 2.2-4365, Code of Virginia.

The Virginia Information Technologies Agency, its officers, agents and employees, including, without limitation, are executing this agreement solely in its or their statutory and regulatory capacities as agent for enrolled affiliates hereunder and need not be joined as a party to any dispute that may arise hereunder with respect to such enrolled affiliate(s).

In the event of any breach by the Commonwealth, Microsoft's remedies shall be limited to claims for damages and Prompt Payment Act interest and, if available and warranted, equitable relief, all such claims to be processed pursuant to this agreement. In no event shall Contractor's remedies include the right to prematurely terminate any license hereunder.

Except for those controversy and claims involving a breach of either party's intellectual property rights or confidentiality obligations, any controversy or claim arising out of or relating to the Agreement whether with respect to the interpretation of any provision of the Agreement, or with respect to the performance of either party hereto, shall be resolved as follows: 1) senior representatives from both parties shall meet and negotiate in good faith to resolve the controversy or claim, 2) if after 30 calendar days either of the representatives concludes, after a good faith attempt to resolve the dispute, that amicable resolution through continued negotiation of the matter at issue does not appear likely to resolve the controversy or claim, than such controversy or claim may be submitted to alternative dispute resolution.

Select Volume Forecast Form

(to be completed with your reseller or Microsoft account manager)

This Form has been deleted. The price level for all pools shall be level D, pursuant to Section 2(a) above.

~~By marking the corresponding box, select one of the below options and provide the requested information.~~

☐

~~Indicate below the number of points attributable to the licenses you forecast that you and your affiliates will acquire from each product pool during the initial term of this agreement. You do not need to acquire products from all product pools. Each product is assigned the number of points specified in the Product List.~~

[illegible]		Applications Pool (circle one if applicable)	Systems Pool (circle one if applicable)	Servers Pool (circle one if applicable)

Select Volume Forecast Form

(to be completed with your reseller or Microsoft account manager)

Step 1: Identify the Enterprise Enrollment. Enter the Enterprise Enrollment number and expiration date required below. If you or an affiliate is entering into an Enterprise Enrollment concurrently with this agreement, we will provide the number. If you (or your affiliates) are party to more than one Enterprise Enrollment, you may only identify and receive credit for your orders under a single Enterprise Enrollment.

Enterprise Enrollment Number	Expiration Date

Step 2: Identify the product pools from which an enterprise product has been licensed under the Enterprise Enrollment.

Column 2	Mark the box(es) next to either the Enterprise Desktop Professional Platform or one or more of the individual enterprise products, to indicate which products have been licensed under the Enterprise Enrollment identified above.

		Applicable Product Pool

Step 3: Identify the corresponding Enterprise Enrollment price level. In box 3(a) below, enter the number of qualified desktops initially included in the Enterprise Enrollment (or, if the Enterprise Enrollment has been renewed, the qualified desktop count as of that Enterprise Enrollment renewal date). In box 3(b) below, enter the price level that corresponds to the number of qualified desktops entered in box 3(a) using the chart below. This price level will be the same for all pools marked in step 2 above.

Qualified Desktops	Price Level

Select Volume Forecast Form

(to be completed with your reseller or Microsoft account manager)

Step 4: Indicate below the number of points attributable to the licenses you forecast for pools from which no enterprise products were ordered under the Enterprise Enrollment. For each product pool not covered by the Enterprise Enrollment identified above (i.e. those product pools, if any, that you did not mark an enterprise product in Step 2 above), indicate below the number of points attributable to the licenses you forecast that you and your affiliates will acquire from that product pool during the initial term of this agreement.

[illegible]		Application Pool (circle one if applicable)	System Pool (circle one if applicable)	Server Pool (circle one if applicable)

Microsoft Select License

Microsoft Select **Enrollment**- State and Local

Microsoft Business Agreement number (if applicable) *Reseller or Microsoft affiliate to complete*		Enrollment number *Microsoft affiliate to complete*	
Select Agreement number *Reseller or Microsoft affiliate to complete*		Previous agreement number *Reseller to complete*	
Select Agreement Expiration Date *Reseller or Microsoft affiliate to complete*		Previous agreement end date *Reseller to complete*	

This Microsoft Select Enrollment is entered into between the following entities. Each party will notify the other in writing if any of the information in the following table changes.

Customer		
Name of Entity		Contact Name (This person handles access to online information, and receives notices unless a different contact is provided below.)
Street address		Contact E-mail Address (required for online access)
City	State/Province	Phone
Country	Postal code	Fax
Microsoft Account Manager Name		Microsoft Account Manager E-mail
Contracting Microsoft Affiliate		
Microsoft Licensing, 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	Phone
Country	Postal code	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 notices)
City	State/Province	Phone
Country	Postal Code	Fax

Definitions. When used in this enrollment, "you" refers to the entity that signs this enrollment with us and "we" or "us" refers to the Microsoft entity that signs this enrollment. All other definitions in the Microsoft Select Agreement identified above apply here.

Effective date. If you are renewing Software Assurance coverage (or similar upgrade protection) from one or more previous Microsoft agreements, then the effective date of this enrollment will be the day after the earliest expiration of such coverage. Otherwise the effective date will be the date this enrollment is signed by us. Where a previous Microsoft agreement is being used, your reseller will require the agreement number and agreement end date to complete the applicable boxes above.

Term. This enrollment will expire on the date on which the Microsoft Select Agreement expires, unless it is terminated earlier as provided for in that Agreement.

Representations and warranties. By signing this enrollment, the parties agree to be bound by the terms of this enrollment, and you represent and warrant that: (i) you have read and understood the Microsoft Business Agreement (if any) and the Microsoft Select Agreement, including any amendments to those documents, and the product use rights, and agree to be bound by those; (ii) you are either the entity that signed the Microsoft Select Agreement or its affiliate; (iii) during the initial term of this enrollment you expect to purchase licenses equal to at least 750 points; and (iv) the information that you provide on each of the attached forms is accurate.

Non-exclusivity. This enrollment is non-exclusive. Nothing contained in it 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.

Microsoft Volume Licensing Web Sites	
Product Use Rights	http://microsoft.com/licensing/resources
Product List	http://microsoft.com/licensing/resources
Microsoft Volume Licensing Services (MVLS) (password protected site to view orders under this enrollment)	https://licensing.microsoft.com

Notices to Microsoft should be sent to:	Copies should be sent to:
Microsoft Licensing, 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

This enrollment consists of (1) this cover page, (2) the Software Assurance Election Form, and (3) the Reseller Information Form.

Customer	Contracting Microsoft Affiliate
Name of Entity	**Microsoft Licensing, GP**
Signature	Signature
Printed name	Printed name
Printed title	Printed title
Signature date	Signature date *(date Microsoft affiliate countersigns)*
	Effective Date *(may be different than our signature date)*

Software Assurance Election Form

1. Software Assurance Membership election:

To become a Software Assurance Member, you must agree to purchase and maintain Software Assurance for all copies of all products licensed under this enrollment from at least one product pool. For a description of benefits resulting from choosing one or more product pools below and additional details regarding the Software Assurance Membership program, please consult your reseller or Microsoft account manager.

For each product pool, mark the "yes" or "no" to indicate whether you are committing to purchase and maintain Software Assurance for all copies of all products licensed from that pool under this enrollment.

Product Pools	Yes	No
Applications	☐	☐
Systems	☐	☐
Servers	☐	☐

Note: If you mark "Yes", we will not accept orders for Licenses without Software Assurance.

2. Election to renew Software Assurance (or similar upgrade protection):

If you are renewing Software Assurance (or similar upgrade protection) from a previous Microsoft agreement, mark the box below and provide your previous enrollment number and enrollment end date or Microsoft Open License Authorization Number and end date to your reseller for it to complete the applicable boxes at the top of the cover page of this enrollment.

For an explanation of the circumstances under which you may renew, see subsection 3(a) (Placing orders) of the Select Agreement.

☐ **Yes, I am renewing Software Assurance.**

Reseller Information Form

Use this form to identify your selected reseller and have your reseller complete the information below and acknowledge your selection by signing below.

Reseller Information:
Reseller Company Name
Street address
City and State/Province and Postal Code
Country
Contact name
Phone
Fax
Email address

The undersigned confirms that the Reseller information is correct.

Name of Reseller
Signature
Printed name
Printed title
Date

Appendix

Media Shipping Information Form - Starter CD Kit

Enrollment Information		Reseller Contact	
Agreement #: (Reseller or Microsoft affiliate to complete)		Company Name:	
Enrollment # (Microsoft affiliate to complete)		Contact Name:	
Customer Contact Name:		Contact Email:	
		Contact Phone:	

At your option, Starter CD kits and CD-ROM subscriptions relating to your Select Enrollment (identified above) will be shipped to the address set out below. Terms used but not defined in this form have the meanings given to them in your enrollment.

CD Kit Ship To Information (* indicates required information)	
Company Name *	Contact Name *
Street Address *	Contact Email Address *
City and State / Province *	Contact Phone Number *
Country and Postal Code	Contact Fax Number

If you choose below to receive media, then upon our acceptance of your enrollment, we will send you your starter CD kit (media) in the language(s) you select. This starter CD kit will be provided at no additional charge, in order to permit you to exercise the license rights granted under your enrollment and the related Select License Agreement. You may also subscribe to updates in the form of CDs, or upon reasonable notice, electronic download or similar other means. If you need additional CD kits and updates, you may order these through your reseller for a fee. For a complete list of the contents of any kit, visit the web site at http://selectug.mslicense.com.

☐ I **want** to receive a starter CD kit (media)

☐ I **want** to subscribe to receive kit updates.

☐ I **do not want** to receive a starter CD kit (media)

☐ I **do not want** to subscribe to receive kit updates

The charges for any purchased media may be subject to sales taxes based upon where media delivery occurs. If you are exempt from sales taxes in the media delivery location, please provide the applicable sales tax exemption documentation with your enrollment.

Media Shipping Information Form – Starter CD Kit (Continued)

For each language and group you wish to receive, mark the corresponding box with an ***X***

Language	Applications Pool					Systems Pool	Servers Pool	
	Office Family	Mapping *	Developer Tools	Training and Learning	Products for Macintosh	Windows Client: Business	Windows Servers	Server Applications
English	☐	☐	☐	☐	☐	☐	☐	☐
English/MultiLanguage	☐					☐	☐	☐
Arabic	☐					☐		☐
Brazilian Portuguese	☐			☐		☐	☐	☐
Chinese Simplified	☐		☐				☐	☐
Chinese Traditional	☐		☐			☐	☐	☐
Chinese Traditional Hong Kong/Pan-Chinese						☐	☐	
Czech	☐		☐			☐	☐	☐
Danish	☐					☐		☐
Dutch	☐		☐	☐		☐	☐	☐
Finnish	☐					☐		☐
French	☐	☐	☐	☐	☐	☐	☐	☐
German	☐	☐	☐	☐	☐	☐	☐	☐
Greek	☐					☐		☐
Hebrew	☐					☐		☐
Hungarian	☐					☐	☐	☐
Italian	☐	☐	☐	☐		☐	☐	☐
Japanese	☐		☐	☐	☐	☐	☐	☐
Korean	☐		☐			☐	☐	☐
Norwegian	☐					☐		☐
Pan Chinese	☐							☐
Polish	☐					☐	☐	☐
Portuguese	☐					☐	☐	☐
Russian	☐		☐			☐	☐	☐
Spanish	☐	☐	☐	☐	☐	☐	☐	☐
Swedish	☐		☐	☐	☐	☐	☐	☐
Thai	☐							
Turkish	☐					☐	☐	☐

* Mapping Kit is not available for use in or shipment to, India, Morocco, Pakistan, China, Hong Kong SAR, Macau SAR, and Turkey

= Not Available