Commonwealth of Virginia
Virginia Information Technologies Agency

MICROSOFT ACADEMIC SELECT AGREEMENT

Optional Use Contract

Date:	October 27, 2005
Contract #:	VA-020819-MSA
Authorized User:	State Agencies and Public Bodies
Contractor:	Microsoft One Microsoft Way Redmond, WA 98052-6399
FIN:	91-1144442
Contact Person:	See page 2 for appropriate representative for State & Local Government and their contact information.
Term:	September 1, 2005 – August 31, 2008
Payment:	Net 30 days

For Additional Contract Information, Please Contact:

Virginia Information Technologies Agency
Supply Chain Management

Bob Gleason
Contract Officer
Phone: 804-371-5923
E-Mail: bob.gleason@vita.virginia.gov
Fax: 804-371-5969

NOTES: Individual Commonwealth of Virginia employees are not authorized to purchase equipment or services for their personal use from this Contract.

For updates, please visit our Website at http://www.vita.virginia.gov/procurement/contracts.cfm

VIRGINIA INFORMATION TECHNOLOGIES AGENCY (VITA): Prior review and approval by VITA for purchases in excess of $100,000.00 is required for State Agencies and Institutions only.

CONTRACT #VA-020819-MSA

CONTRACT CHANGE LOG

Change No.	Description of Change	Effective Date
1	Renews contract term	09/01/05

CONTACTS:

Microsoft VA Account Executive: (Government)	Beth DeHaven VOICE: (804) 560-1118 CELL: (804) 337-3262 CELL EMAIL: bdehaven@microsoft.com
Microsoft East Region Local Government Account Representative (Cities, Towns, Counties)	Lisa Roddy VOICE MAIL: (908) 286 - 4533 CELL: (347) 351-5049 EMAIL: lisarod@microsoft.com
Microsoft Inside Account Representative (Estimated Retail Price Lists, Product info)	Rachel Pizarro (800) 426-9400 x11667 OFFICE/VOICE rachelp@microsoft.com
Microsoft Volume License Site (MVLS) (License history)	https://www.licensing.microsoft.com
Select Online User Guide	http://www.selectug.mslicense.com
MS Customer Service Center (Key codes)	800-352-7140
Microsoft Product Use Rights/Product List	http://www.microsoft.com/licensing

NOTE: Microsoft does not sell Select software products except through Large Account Resellers (LARs). To place orders for Microsoft Products, see Contract #VA-030700-PCMG. PC Mall Gov is the Large Account Reseller (LAR) for Microsoft academic select products.

MICROSOFT SELECT ACADEMIC v6.0/STUDENT SELECT AGREEMENT
CONTRACT #VA-020819-MSA (Master Agreement #1S60981),

USE INSTRUCTIONS

1. **Contract Summary**
This Contract provides Academic Select 6.0 customers in higher education the ability to purchase licenses and media for a limited selection of products and transfer them to their students (refer to the Microsoft Academic Student Select Enrollment, section #1). **NOTE: No purchases may be placed against this Contract by academic institutions for their own use.**

2. **Institution Responsibility**
It is the responsibility of each academic institution to familiarize and adhere to the terms and conditions of the Contract, Amendment, Product Use Rights as applicable to the products licensed under this agreement, Product List and the Enrollment Agreement, prior, to completing and submitting an Enrollment to participate in the Contract (refer to the Microsoft Academic Student Select Enrollment, section #4).

3. **Contract Term**
August 23, 2002 – August 31, 2005

4. **Placing Orders**

- To participate in this Agreement, all institutions **must** first complete and submit a **Microsoft Academic Student Select Enrollment** to Dell Marketing L.P. **Dell will not accept any placement of orders from an institution unless they have enrolled to participate in the Agreement.**
- Dell will process the Enrollment and forward it to Microsoft.
- Microsoft will approve the Enrollment by assigning a unique Enrollment number that identifies the institution as a participant under the Contract. Microsoft will provide the unique Enrollment number to the institution. (No orders may be placed until this number is assigned by Microsoft and received by the institution.)
- All orders placed against this contract to Dell Marketing L.P. must include:
  1) Microsoft Master Agreement #01S60981,
  2) Dell Contract #VA-020409 and FEI #74-2616805.
  3) The institution's assigned unique Enrollment number,
  4) The Purchasing Contact Name and Telephone Number
  5) The Microsoft Product Number and Description
  6) The Quantity Ordered
  7) The Contract (discounted) Unit Price
  8) The Extended Line Item Amount
  9) The Purchase Order Total Amount
- Orders for licenses and media must be submitted in quantities of 25 Licenses per product, per order.
- Orders must specify version number and in-country usage.
- Institutions may use a third party to complete and process students' orders for Licenses and media under their enrollment and to distribute media to students, but the third party

must complete its work while physically located at the institution's facility. Institutions will be responsible for the third party's actions to the same extent that they would be if the third party were their employee (refer to the Microsoft Academic Student Select Enrollment, section #2).

5. **Products Available**

The following products are currently available under the Student Select Enrollment:

- Office XP Standard
- Office XP Professional
- Windows XP Professional Upgrades

Regular Academic Select part numbers and prices are used; however they are differentiated on the price list as student "STU" products.

6. **Microsoft ERP/Dell Marketing Sku License and Media Part Numbers Available**

MS ERP #021-04913 Office XP Win32 All Languages MVL – Academic-Select 6-STU- NON [Dell Marketing L.P. Sku#11249EDU, Media (CDs) #06-17912]

MS ERP #269-04644 Office XP PRO Win32 All Languages MVL-Academic-Select 6- STU-NON [Dell Marketing L.P. Sku#11248EDU, Media (CDs) #06-17911]

MS ERP #E85-00351 Windows XP Professional All Languages UPG MVL-Academic- Select 6-STU-NON [Dell Marketing Sku #11722 EDU, media (CDs) #06-20378]

7. **Minimum Point Requirement**

Institutions are required to reach 750 total points over three years for Student Select purchases for the products listed (refer to the Microsoft Academic Student Select Enrollment, page 2, "Representations and warranties". The point value for each Microsoft program available under this Agreement is equal to two points.

8. **Student Select License Agreement**

Institutions are required to have each student sign and return a "Student Select License Agreement" which is included as page 7 in the "Microsoft Academic Student Select Enrollment" prior to assigning or transferring the License to a student. Institutions are also required to provide a copy of the current version of the product use rights applicable to the Licenses being transferred or assigned with each "Student Select License Agreement" prior to the signature of the student (see Microsoft Academic Student Select Enrollment, section #4.)

9. **Records**

Institutions are required to maintain all records pursuant to the Microsoft Academic Select v6.0 Agreement. For further information refer to the Microsoft Academic Student Select Enrollment, section #5.

10. **Limited Warranty**

Refer to the Microsoft Academic Student Select Enrollment, section #6

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Microsoft Academic Select License

Microsoft Academic Select **Agreement** Renewal Form

Academic Select Agreement number *Reseller or Microsoft affiliate to complete*	**01S60981**

Use this form if you wish to renew the Academic Select Agreement specified above. You can renew your Academic Select Agreement for 12 or 36 months.

- When you renew your agreement, all enrollments under your agreement are automatically renewed.
- If you do not submit this form within 30 days following the expiration date of your Academic Select Agreement, then your agreement (and all enrollments under your agreement) will expire on the original expiration date.

To renew, please check one box below:

☐ ***12 months.*** Check this box if you wish to renew for 12 months.

☑ ***36 months.*** Check this box if you wish to renew for 36 months.

If you renew your Academic Select Agreement, then you can place orders at any time during your renewal term. However, if you wish to renew Software Assurance coverage ordered under your Academic Select Agreement, then you must place your order within 30 days from the expiration date of your current term.

By renewing your Academic Select Agreement, you agree that its expiration date will change as provided in this form. All other terms and conditions of your agreement will apply during the renewal term.

To renew, please sign two copies of this form and return them to us.

Microsoft Licensing, GP
Attn: Dept. 551, Volume Licensing
6100 Neil Road, Suite 210
Reno, NV 89511-1137

Microsoft Academic Select License

Customer *(please complete all fields)*	**Contracting Microsoft Affiliate**
Name of Entity **The Commonwealth of Virginia, Department of Information Technology**	Microsoft Licensing, GP
Signature	Signature
Printed Name ROBERT E. GLEASON	Printed Name Beverly Ellis
Printed Title VIRGINIA CONTRACTING OFFICER	Printed Title Contract Administrator
Signature Date 8/26/05	Signature Date (date Microsoft affiliate countersigns) SEP 0 9 2005
	Effective Date (may be different than our signature date) SEP 0 1 2005

Reseller *(please complete all fields)*
Name of Entity PC Mall
Signature
Printed Name Timothy Ryan
Printed Title Select / EA Administrator
Signature Date 9/2/05

Microsoft Academic Select License

Microsoft Academic Select **Agreement – Amendment #1**

Academic Select Agreement number
Microsoft affiliate to complete 01560981

This amends the Microsoft Academic Select Agreement identified above between **The Commonwealth of Virginia, Department of Information Technology** and MSLI, GP as of the effective date identified below. Any terms that are used but not defined in this amendment will have the same meanings as in the agreement.

I. Amendment.

Section I

A. The paragraph immediately below the customer information portion of the Agreement on page 1 and 2 is hereby deleted in its entirety and replaced with the following:

This agreement consists of (1) this Academic Select Agreement *(including any amendments thereto in reverse order of execution)*, (2) the Product List, (3) the product use rights applicable to products licensed under this agreement, (4) Schedule A, and (5) any enrollment entered into under this agreement.

B. The paragraph titled **Effective Date.** on page 2 is hereby deleted in its entirety and replaced with the following:

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 Department of Information Technology. Each enrollment executed hereunder shall not be legally binding until executed by each party thereto and shall become effective on the date of the signature of the applicable enrolling affiliate.*

C. Section 1 of the Terms and Conditions portion of the Agreement is hereby deleted in its entirety and replaced with the following:

Definitions. In this agreement, "you" means the eligible education customer that has entered into this agreement with us, *which is the Commonwealth of Virginia, through its Department of Information Technology,* and "we" or "us" means the Microsoft Microsoft entity that has entered into this agreement or an enrollment. In addition, the following definitions apply:

"affiliates" means (a) with regard to you, any *qualified public educational customer located within your jurisdiction and geographical boundaries*, and (b) with regard to us, legal entities that we own, which own us, or which are 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 Academic Select License program;

"commercial product" means any product we make commercially available for license for a fee;

"eligible education customer" means any qualified educational user identified in Schedule A as being eligible to acquire and use products under Academic Select;

"enrolled affiliate" means the party, either you or any 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 to us or one of our affiliates before orders can be placed under this agreement;

"Enrollment Agreement Number" means the number(s) we assign to each Select Enrollment Agreement hereunder;

"free product" means any product we make commercially available for license without charge;

"license confirmation" means the evidence of license provided by us or by one of our affiliates;

An "outsourcer" is an entity which is party to an Outsourcer 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 "affiliates" above, more than 50% ownership;

"product" means any product available to *your enrolled affiliates* for license under this agreement, as described on the Product List;

"Product List" means, with respect to any licensing program, the statement published by Microsoft from time to time which identifies the products available under each of the volume licensing programs, and identifies which products are available to academic Select licensing customers and any product-specific conditions or limitations on the acquisition of licenses for the product;

"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 or one of our affiliates to resell licenses in an enrolled affiliate's area under this program; and

"run" or "use" means to copy, install, use, access, display, run or 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 *term of the covered enrollment* period.

D. The first paragraph in Section 2 of the Terms and Conditions portion of the Agreement is hereby deleted in its entirety and replaced with the following:

Upon entering into this agreement, you and your affiliates, and outsourcers, may submit enrollments that allow enrolled affiliates to license certain products at a volume price level. Enrolled affiliates can sublicense to affiliates which do not enter into an enrollment, in order to allow them to share the benefits of this agreement. Enrolled affiliates may not acquire licenses under this agreement for the use or benefit of any person or entity other than affiliates. Each enrollment will expire on the expiration or earlier termination of this agreement. We will assign a Select Agreement Number and notify you of such number upon execution of this Select Agreement, and will assign separate Enrollment Agreement Numbers and notify the applicable enrolling affiliate after the execution of each Enrollment Agreement. Each enrolled affiliate, including outsourcers who are deemed to be enrolled affiliates pursuant to Microsoft Academic 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.

E. Section 2(a) and 2(b) of the Terms and Conditions portion of the Agreement are hereby deleted in their entirety and the subsections reserved.

F. The first paragraph in Section 3(a) of the Terms and Conditions portion of the Agreement is hereby deleted in its entirety and replaced with the following:

Placing orders. Each enrolled affiliate must submit orders for all copies of any products it or its affiliates run under its enrollment. *Except as otherwise provided in Section 7(g) and Section 9(b),* 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 make out and submit orders to 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.

G. Section 3(b) of the Terms and Conditions portion of the Agreement is hereby deleted in its entirety and replaced with the following:

Installment payments. *Certain licenses may be payable in installment payment. As of the effective date of this agreement, the license types which may be paid in installments include:*

i. Software Assurance; and
ii. License & Software Assurance bundle

The availability of installment payments for such license types is subject to change. Your reseller will be able to tell you what products may be paid in installments. Installment payments are not available for products ordered in the last year of this agreements term.

Ordering a product that is payable in installments establishes a payment obligation, such that the ordering affiliate is obligated to make all installments for such product 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 15(c) shall apply.

For those products for which payment is made in installments, the reseller will be invoiced for the first installment upon the date or its order to us, and all remaining installments shall be payable by your reseller to us on each anniversary of this agreement which occurs following the order date (excluding the final day of the term of this agreement). For example, a product ordered, with installment payments, in the 10th month of a 36-month agreement will be paid in three installments, the first of which will be upon the order date in such 10th month, and the second of which shall become due two months later (upon the first anniversary of the agreement). The dates upon which an affiliate's payments shall be due to their reseller shall be determined by agreement between such affiliate and its 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.

H. Section 3(c) of the Terms and Conditions portion of the Agreement is hereby deleted in its entirety and the subsection reserved.

I. Section 3(d) of the Terms and Conditions portion of the Agreement is hereby deleted in its entirety and replaced with the following:

Once an enrolled affiliate has received a license confirmation, it may transfer the licenses identified on the license confirmation to an affiliate, or to an unaffiliated eligible education customer in connection with a merger, consolidation or divestiture. For all other transfers of licenses, our written consent is required. We will not withhold our consent unreasonably.

In order to transfer licenses, an enrolled affiliate must physically transfer the relevant license confirmations. If transferring only some of the licenses listed on the license confirmation, the enrolled affiliate must record the transfer on the face of the license confirmation and provide a photocopy of the revised license confirmation to the entity to which the licenses are being transferred. In addition, no license transfer will be valid unless the entity to which the licenses are being transferred accepts in writing the applicable product use rights, use restrictions and limitations of liability. Upgrade Advantage subscription rights may not be transferred to, or used for the benefit of, a third party other than an affiliate. Except as otherwise agreed upon in writing by both parties, licenses cannot be transferred on a short-term basis.

An enrolled affiliate may transfer an upgrade license for an operating system product licensed under this agreement only as part of the sale or transfer of the computer system on which the product was first installed.

Any transfer made in violation of the requirements or restrictions of this section will be void.

J. The first paragraph in Section 5 of the Terms and Conditions portion of the Agreement is hereby deleted in its entirety and replaced with the following:

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 except as provided in Section 9(b),* 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 that different language version is available at the same or a lower price than the price paid 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.

K. The last paragraph of Section 6 of the Terms and Conditions portion of the Agreement is hereby deleted in its entirety.

L. The first paragraph in Section 7 of the Terms and Conditions portion of the Agreement is hereby deleted in its entirety and replaced with the following:

The product use rights applicable to products licensed under each enrollment are as follows. We will provide you with a copy of the applicable product use rights, or will make them available to you either by publication on the World Wide Web at a site we identify to you *in writing*. You acknowledge that you have access to the World Wide Web.

M. The third paragraph in Section 7(h) of the Terms and Conditions portion of the Agreement is hereby deleted in its entirety and replaced with the following:

The enrolled affiliates must make reasonable efforts to ensure that faculty, staff or other employee users delete and remove such copies from the temporary memory (RAM) and permanent memory (e.g. hard disk) of their computers at the end of the term of this agreement.

N. Section 9(a) of the Terms and Conditions portion of the Agreement is hereby deleted in its entirety and replaced with the following:

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 9(a), a third party is any party other than MSLI, 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.

O. Section 9(c)(iii) of the Terms and Conditions portion of the Agreement is hereby deleted in its entirety and replaced with the following:

In the case of copies licensed from an original equipment manufacturer (OEM) or through a retail source, in addition to the other conditions outlined in this subsection 9(c), the product type (e.g. upgrade or full license) of the copies made from the media provided under its enrollment must be identical to the product type of the copies they replace. However, an enrolled affiliate may use copies of a desktop operating system made from the media provided under its enrollment in place of copies of the same desktop operating system obtained from a separate source, *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*, even though they may be of different types (i.e. one may be an upgrade and the other a full license), provided that the product, language and version are identical.

P. The first paragraph in Section 10(a) of the Terms and Conditions portion of the Agreement is hereby deleted in its entirety and replaced with the following:

How to transfer. An enrolled affiliate may transfer its perpetual licenses to an affiliate, or to an *unaffiliated* eligible education customer in connection with a merger, consolidation or divestiture, as long as the enrolled affiliate provides prior written and signed notice, on a form that we provide *which will be available from your reseller*, 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.

Q. Section 10(b)(i) of the Terms and Conditions portion of the Agreement is hereby deleted in its entirety and replaced with the following:

(i) licenses on a short-term basis *except as otherwise agreed upon in writing by both parties*,

R. Section 11 of the Terms and Conditions portion of the Agreement is hereby deleted in its entirety and replaced with the following:

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

S. Section 13(a) of the Terms and Conditions portion of the Agreement is hereby deleted in its entirety and replaced with the following:

Limitation. There may be situations in which you or an enrolled affiliate have a right to claim damages or payment from us. Except as otherwise specifically provided in this paragraph, whatever the legal basis for the claim, our liability will be limited, to the maximum extent permitted by applicable law, to direct damages up to *100% of* the amount you or the enrolled affiliate have paid for the product giving rise to the claim. 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, or its equivalent in local currency.

T. Section 14 of the Terms and Conditions portion of the Agreement is hereby deleted in its entirety and replaced with the following:

Each enrolled affiliate must keep records relating to the products *it* and any *of the 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 15 days notice, during normal business hours and in a manner that does not interfere unreasonably with your operations. As an alternative, we may require you to accurately complete our self-audit questionnaire relating to the products you and any affiliates use. If verification or self-audit reveals unlicensed use of products, you *or the applicable affiliate* must promptly order sufficient licenses to permit all product usage disclosed. If material unlicensed use is found (license shortage of 5% or more), you *or the applicable 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.

U. Section 15(b) of the Terms and Conditions portion of the Agreement is hereby deleted in its entirety and replaced with the following:

Termination. Either party to an enrollment may terminate it *for cause*, including any obligation to submit orders or pay amounts owed. *If either (i) only one enrollment is executed hereunder and we terminate such enrollment for cause; or (ii) more than one enrollment is executed hereunder and we terminate two or more such enrollments for cause,* we may also terminate this agreement and all other enrollments under it. 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 an enrolled affiliate ceases to be your affiliate or ceases to be an eligible education customer, you must promptly notify us of this fact, and we may terminate its enrollment.

V. Section 15(c) of the Terms and Conditions portion of the Agreement is hereby deleted in its entirety and replaced with the following:

Effect of termination or expiration. *Except as otherwise provided by Section 5, 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 set forth below, in the event of termination all unpaid payment obligations for licenses (including installment payments made pursuant to Section 3(b) will immediately become due and payable to the applicable reseller(s), and the enrolled affiliate will be entitled to perpetual licenses only after all such payments have been made. However, 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) an enrolled affiliate terminates one or more remaining installment payments pursuant to one or more purchase orders due to non-appropriation or non-availability of funds, pursuant to Section 3(b), then the enrolled affiliate will have the following options. It may immediately pay its reseller the total remaining amount due, including all installments, in which case the enrolled affiliate will have perpetual licenses for all copies of the products it has ordered. As an alternative, it may pay its reseller only amounts due and payable as of the termination date, in which case the enrolled affiliate will have perpetual licenses for (i) all copies of all products for which payment has been made in full to the applicable reseller, and (ii) the number of copies of products for which payment has been made to the reseller in installments that is proportional to the amount that has been paid as of the termination date. If an enrolled affiliate elects not to make all installment payments to its reseller, (i) license confirmations issued for products for which*

installment payments are not made will be void, and (ii), we will re-issue license confirmations reflecting amounts paid by you under this paragraph.

In the event of non-appropriation, this paragraph 15(c) is not intended to create a request for payment but rather is intended to describe the impact that different levels of payment will have on license rights.

W. The first paragraph in Section 15(d) of the Terms and Conditions portion of the Agreement is hereby deleted in its entirety and replaced with the following:

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. 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 Academic 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.*

X. Section 16(a) of the Terms and Conditions portion of the Agreement is hereby deleted in its entirety and replaced with the following:

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.

Y. Section 16(g) of the Terms and Conditions portion of the Agreement is hereby deleted in its entirety and replaced with the following:

Entire agreement. The documents identified on the cover page to this agreement constitute our entire agreement concerning the subject matter hereof, and supersede any prior or contemporaneous communications. The terms of these documents shall control in the following order: (i) this Academic Select Agreement *(including any amendments thereto in reverse order of execution)*; (ii) the product use rights; (iii) the Product List; (iv) Schedule A; and (v) any and all enrollments under this agreement. The terms of any purchase order or any general terms and conditions you or your affiliates maintain, *other than those mandatory terms required by statute or regulation*, do not apply. This agreement (except the product use rights and the Product List) can be changed only by an amendment signed by *an authorized representative of* both parties.

Z. Section 16(h) of the Terms and Conditions portion of the Agreement is hereby deleted in its entirety and replaced with the following:

Survival. *Licenses identified in license confirmations and provisions of this agreement* regarding warranties, limitations of liability, confidentiality, compliance verification and obligations on termination or expiration will survive termination or expiration of this agreement or any enrollment.

AA. Section 16(j) of the Terms and Conditions portion of the Agreement is hereby deleted in its entirety and replaced with the following:

Applicable law. *This agreement and all enrollments related hereto shall 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 courts of the Commonwealth. MSLI, GP shall comply with all applicable federal, state and local laws.

BB. A new Section 16(k) ***Copyright Violation.*** is hereby added with the following language:

Copyright Violation. *Except to the extent an enrolled affiliate is licensed under this agreement, such enrolled affiliate shall 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.*

CC. A new Section 16(l) ***Non-appropriation.*** is hereby added with the following language:

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 or 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 Section 15. 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, except as otherwise provided by Section 15.

DD. A new Section 16(m) ***Contractual Records.*** is hereby added with the following language:

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.*

EE. A new Section 16(n) ***Non-Visual Access to Technology.*** is hereby added with the following language:

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.

FF. A new Section 16(o) ***Non-Visual Access Compliance.*** is hereby added with the following language:

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 16(n) 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 16(n), 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 16(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, "**Placing Orders.**"*

GG. A new Section 16(p) ***Conflicting Terms.*** is hereby added with the following language:

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 the Department of Information Technology to bestow or incur on behalf of the Commonwealth, then that provision shall be deemed of no effect. The Department of Technology has been delegated, by the Virginia Department of General Services, the purchasing authority to enter into statewide contracts for the purchase of all Information Technology.*

HH. A new Section 16(r) ***Compliance with the Code of Virginia.*** is hereby added with the following language:

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

II. A new Section 16(s) ***Estimated Retail Price.*** is hereby added with the following language:

Estimated retail prices. *Microsoft shall establish an estimated retail price for licenses and/or Software Assurance ordered hereunder and shall make such list available to you upon your request. The 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 time to time. Changes may be in the form of promotional estimated retail pricing which is made available for a specified period of time and, at the end of the period, returns to the established estimated retail price. 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.*

JJ. A new Section 16(t) ***Defense of Infringement Claim..*** is hereby added with the following language:

Defense of infringement claim. *We will defend you and your enrolled affiliates against any claim by an unaffiliated third party that any product infringes its patent or copyright, 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.*

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 after we notify you to discontinue running (and to notify your affiliates to discontinue running) due to such a claim; (ii) your (or your affiliate(s)') combining the product with a non-Microsoft product, data or business process; (iii) use of, or access to, the product by any person or entity other than an employee of you or one of your affiliates; or (iv) your or your affiliate(s)' altering the product. The applicable enrolled affiliate(s) will be completely responsible for any costs or damages that result from these actions.

If we receive information concerning an infringement claim related to a product, 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 (ii) modify the product 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 immediately. If, as a result of an infringement claim, your use (or an enrolled affiliate's use) of a product is enjoined by a court of competent jurisdiction, we will use commercially reasonable efforts to either procure the right to continue its use, replace it with a functional equivalent, or modify it to make it non-infringing.

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. Subject to the terms of Section 16(r), we may, at our option, choose to treat these claims as being covered by this section.

KK. The Academic Select Volume Forecast Form is hereby deleted in its entirety due to the fact that the Commonwealth of Virginia, through its Department of Information Technology, is party to a Microsoft State and Local Government Select Agreement wherein all point requirements have been met.

LL. **Schedule A** is hereby added to the agreement with the following:

Schedule A

Microsoft Qualified Educational User Definition (US Only)

All Microsoft eligible education customers must be located or reside in the United States[1]. The following are eligible to acquire Microsoft Academic Edition (AE) products in the programs indicated and are defined as qualified educational users:

	QUALIFIED EDUCATIONAL USERS:	ELIGIBLE PROGRAMS:
A)	**Educational Institutions** Defined as an accredited K-12 education institution or higher education institution organized and operated exclusively for purpose of teaching its matriculating students. An accredited institut ion must be: 1. A public or private K-12, vocational school, correspondence school, junior college, college, university, or scientific or technical school meeting all of the following criteria: (i) organized and operated exclusively for purpose of teaching its matriculating K-12 or higher education students; and (ii) institutionally accredited by a Regional Institutional Accrediting Agency recognized by the U.S. Secretary of Education. Note: Accreditation by a National Institutional and Specialized Accrediting Body alone does not qualify an end user as a qualified educational user. **OR** 2. An accredited preschool meeting all of the following criteria: (i) is an early childhood program that serves a minimum of ten children between two and five years of age; (ii) has been in operation for at least one year; (iii) provides educational services, and (iv) is incorporated for the purpose of providing education services to children between two and five years of age.	AE Full Packaged Product Academic Open Academic Select Campus Agreement (Higher Ed Only) School Agreement (K12 Ed Only)
B)	**Administrative Offices or Boards of Education of Educational Institutions** Defined as district, regional and state administrative offices of the Educational Institutions defined in Section A above.	AE Full Packaged Product Academic Open Academic Select Campus Agreement (Higher Ed Only) School Agreement (K12 Ed Only)
C)	**Full and Part Time Faculty and Staff of Educational Institutions** Defined as all full and part time faculty and staff of Educational Institutions defined in Section A above.	AE Full Packaged Product Only
D)	**Full and Part Time Matriculated Students of Higher Education Institutions** Defined as full and part time matriculated students of a higher education institution defined as a public or private, vocational school, correspondence school, junior college, college, university, or scientific or technical institution meeting all criteria defined in Section A (1) above. ***Full and Part Time Matriculated Students of K-12 are NOT Qualified Educational Users.***	AE Full Packaged Product Only
E)	**Educational Consortia and Systems** Defined as corporations and associations validly organized and existing under the laws of an individual state of the United States, representing members or shareholders of a common institution type (for example, community colleges, independent schools, state systems) within the same state. Each member or shareholder must be an Education Institution as defined in Section A above.	AE Full Packaged Product Academic Open Academic Select Campus Agreement (Higher Ed Only) School Agreement (K12 Ed Only)
F)	**Public Libraries** Must meet all of the following criteria: (i) provide general library services without charge to all residents of a given community, district or region; (ii) are supported by public or private funds; (iii) make its basic collections and basic services available to the population of its legal service area without charges to individual users, but may impose charges on users outside its legal service area; and (iv) may or may not provide the products and services, beyond its basic services, to the public at large with or without individual charges.	AE Full Packaged Product Academic Open Academic Select
G)	**Public Museums** Must meet all the following criteria: (i) are a public or private agency or institution organized on a permanent basis for essentially education or aesthetic purposes; (ii) utilize a professional staff; and (iii) own or utilize tangible objects, care for them and exhibit them to the public on a regular basis.	AE Full Packaged Product Academic Open Academic Select

[1] All United States territories such as Puerto Rico, Guam, Virgin Islands are not eligible under this definition.

Special note regarding Hospitals, Healthcare Systems and Research Laboratories:

Hospitals, Healthcare Systems and Research Laboratories (including independent Research Laboratories or Research Laboratories affiliated with the Department of Defense or the Department of Energy) are NOT eligible to acquire AE

[1] All United States territories such as Puerto Rico, Guam, Virgin Islands are not eligible under this definition.

products unless they are wholly owned and operated by a qualified Educational Institution as defined above in Section A. "Wholly owned and operated" means that the Educational Institution is the sole owner of said hospital, healthcare system or research laboratory and the only entity exercising control over the hospital's day-to-day operations. Additional information on determining if an entity is wholly owned and operated by an Educational Institution can be found at: http://www.microsoft.com/education/pricing/docs/HospitalDefinition.doc

Section II

The following provisions will amend and be applied to each Select enrollment entered under this agreement:

A. The Section **Representations and warranties.** on page 2 is hereby deleted in its entirety and replaced with the following:

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 Academic Select Agreement, including any amendments, and the product use rights, and agree to be bound by those; (ii) you are an eligible education customer and are either the entity that signed the Microsoft Academic Select Agreement or its affiliate; and (iii) the information that you provide on each of the attached forms is accurate.

This enrollment consists of (1) this cover page, (2) the Reseller Information Form, (3) the attached terms and conditions, and (4) the Student Select License Agreement. Where inconsistent with the Microsoft Academic Select Agreement, *the terms and conditions of the Microsoft Academic Select Agreement shall take precedence.*

B. Section 7, ***Confidentiality.*** of the Terms and Conditions portion of the Enrollment is hereby deleted in its entirety and the section is reserved.

C. Section 5, ***U.S. GOVERNMENT RESTRICTED RIGHTS.*** of the Microsoft Student Select License Agreement portion of the Enrollment is hereby deleted in its entirety and the section is reserved.

D. Section 7(a) of the Microsoft Student Select License Agreement portion of the Enrollment is hereby deleted in its entirety and replaced with the following:

Applicable law. *The Student EULA is 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 courts of the Commonwealth. MSLI, GP shall comply with all applicable federal, state and local laws.*

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Microsoft Academic Select License

II. *Effect of Amendment.*

Except as specifically amended by this amendment, all provisions of the agreement shall remain unchanged and in full force and effect. You must execute and return 2 copies of this amendment to the address below on or before August 30, 2002 in order for the terms and conditions of this amendment to be considered by MSLI, GP. When this amendment is fully executed, you will receive a confirming copy.

MSLI, GP
Attn: Dept. 551, Volume Licensing
6100 Neil Road, Suite 210
Reno, NV 89511-1137

Customer	Contracting Microsoft Affiliate
Name ***The Commonwealth of Virginia, Department of Information Technology***	MSLI, GP
Signature Ann Sells	Signature
Printed Name Ann Sells	Printed Name **Kim Akins**
Printed Title Contracts Engineer	Printed Title **Contract Administrator**
Signature Date 8/19/02	Effective Date 8/16/02

Prepared by: David Tracz

Microsoft Academic Select License

Microsoft Academic Select **Agreement**

Academic Select Agreement number
Microsoft affiliate to complete **01S60981**

This Microsoft Academic 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, DIT			Contact Name (This person handles access to online information. This person also receives notices unless a different contact for notices is provided in the notices section below.) Ann Sells
Street address 110 South 7th Street			Contact Email Address asells@dit.state.va.us
City Richmond	State/Province VA		Phone (804) 371-5988
Country USA	Postal Code 23219		Fax (804) 371-5969
			Microsoft Account Manager Name Robin Willett
Contracting Microsoft Affiliate			
MSLI, GP - 6100 Neil Road, Suite 210 - Reno, Nevada USA 89511-1137 - Dept. 551, Volume Licensing			

If notices should be sent to someone or some place other than above, complete the relevant portions below:		
Name of Entity		Contact Name
Street address		Contact Email Address
City	State/Province	Phone
Country	Postal Code	Fax
Notices to Microsoft should be sent to: MSLI, GP 6100 Neil Road, Suite 210 Reno, Nevada USA 89511-1137 Dept. 551, Volume Licensing		**Copies should be sent to:** Microsoft Law and Corporate Affairs One Microsoft Way Redmond, WA 98052 USA Volume Licensing Group VLG-USA@Microsoft.com (425) 936-7329 fax

This agreement consists of (1) this cover page, (2) the attached terms and conditions, (3) the attached Academic Select Volume Forecast Form, (4) the Product List, (5) the product use rights applicable to

products licensed under this agreement, (6) any enrollment entered into under this agreement, and (7) the eligibility criteria for the Academic Select License program as set forth in Schedule A to this agreement.

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

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, Department of Information Technology	MSLI, GP
Signature Ann Sells	Signature
Printed Name Ann Sells	Printed Name **Kim Akins**
Printed Title Contracts Engineer	Printed Title Contract Administrator
Signature Date 8/23/02	Signature Date (date Microsoft affiliate countersigns) 8/22/02
	Effective Date (may be different than our signature date) 8/22/02

Terms and Conditions

1. Definitions.

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

"affiliate" means (a) with regard to you, any eligible education customer that you own and/or control, that owns you and/or controls you, or that is under common ownership and/or control with you, 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 Academic Select License program;

"control" means, for purposes of the definition of "affiliate" above and only with respect to public educational institutions and their governing bodies, the right granted by law to exercise decision power over the administrative, financial and operational affairs of the other;

"eligible education customer" means any qualified educational user identified in Schedule A as being eligible to license and use products under the Academic Select License program;

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

"enrollment" means the document that you or your affiliate submits under this agreement to sign up for the Academic Select License program;

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

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

"ownership" means, for purposes of the definition of "affiliate" above, more than 50% ownership;

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

"Product List" means, with respect to any licensing program, the statement published by Microsoft from time to time that identifies the products available under each of the volume licensing programs, and identifies which products are available to Academic Select License program customers and any product-specific conditions or limitations on the acquisition of licenses for the product;

"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 or one of our affiliates to resell licenses in an enrolled affiliate's area under the Academic Select License program;

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

"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.

2. How the Academic Select License program works.

The Academic Select License program allows eligible education customers to license our products at discount pricing based on the volume of their license purchases. 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 reasonably refuse to accept an enrollment.

a. ***Price level – minimum forecast.*** Each product offering is assigned a point value on the Product List and is assigned to one of the following pools: applications, systems or servers. In order for your enrolled affiliates to qualify for academic level pricing ("Education level A") and be eligible to acquire licenses from any particular pool under this agreement, you must select that pool on the attached Academic Select Volume Forecast Form and represent to us that you reasonably expect your enrolled affiliates, in the aggregate, to acquire from that pool, during the initial term of this agreement, product licenses with a total point value of at least 1500 points. Your price level will be used to determine the prices we will invoice each enrolled affiliate's reseller for product licenses that enrolled affiliate orders.

b. ***Price level compliance.*** On every anniversary of the effective date of this agreement, including anniversaries during any renewal term, we will review the total license acquisitions by all enrolled affiliates during the previous three years to ensure that the minimum point requirement (1500 per pool) has been met for each selected pool. For the first anniversary and second anniversary reviews, we will multiply your enrolled affiliates' actual points earned for licenses purchased under this agreement by 3 and 1.5, respectively, to derive a three-year license purchase history. If the actual points earned within a pool fall below the minimum point requirement, your enrolled affiliates will no longer be allowed to acquire licenses from that pool under this agreement.

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. If an enrolled affiliate intends to change its reseller, the enrolled affiliate must notify us and the former reseller in writing, on a form that we provide, at least 30 days prior to the date on which the change is to take effect. In case of a change of reseller, the 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 make out and submit orders to 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.

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 becomes effective no later than one day following the expiration of that upgrade protection, and (ii) the enrolled affiliate places its Software Assurance order at the time it submits its new enrollment to its reseller.
- 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 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.

- An enrolled affiliate may renew Software Assurance ordered under its enrollment at the time it renews that enrollment, as described in subsection 15(d) (How to renew this agreement).

b. *Invoices and payments.* The prices at which we will invoice each enrolled affiliate's reseller will be based upon the price level under this agreement. Except as described in the next paragraph, 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.

If you are a governmental entity, you agree that neither you nor any of your affiliates will reproduce any software unless sufficient funds have been duly appropriated. Notwithstanding any right granted above or elsewhere in this agreement to spread or otherwise defer payments for licenses that may be available to non-governmental customers, you agree that, due to the uncertainty of future appropriations, any payments for product licenses (including Software Assurance and L&SA) ordered under this agreement will be made in full at the time the order is placed.

c. *Reporting country of use.* On all orders, the enrolled affiliate must report the countries where the enrolled affiliate or its affiliates run the products licensed under this agreement and the approximate number of copies run in each of those countries. This information is for our internal use only.

d. *Divestitures.* If an enrolled affiliate intends to transfer more than ten percent of its computers in connection with a divestiture, 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 10 (Transferring licenses). Any perpetual licenses obtained as described in this paragraph will be for the latest version of the products available as of the date on which the enrolled affiliate has completed payment.

4. How to confirm orders.

We will publish information about orders placed by each enrolled affiliate, including an electronic confirmation of each order, on a secure site on the World Wide Web at http://licensing.microsoft.com or a successor site that we identify.

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 that different language version is available at the same or a lower price than the price paid 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.

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 entitled to perpetual licenses upon early termination as provided in subsection 15(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 15(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 that subsection. Any perpetual licenses received through Software Assurance supersede and replace the underlying perpetual licenses for which that Software Assurance coverage was ordered.

All perpetual licenses acquired under this agreement remain subject to the terms of this agreement and the applicable product use rights.

This agreement, the applicable enrollment, the enrolled affiliate's order confirmation described in section 4 (How to confirm orders) above and any documentation evidencing transfers of licenses as described in subsection 10(a) (How to transfer), together with proof of payment, will be the enrolled affiliate's evidence of all licenses obtained under its enrollment.

We do not transfer any ownership rights in any licensed product, and we reserve all rights not expressly granted.

6. Restrictions on use.

An enrolled affiliate may not:

- Separate the components of a product made up of multiple components by running them on different computers, by upgrading or downgrading them at different times, or by transferring them separately, except as otherwise provided in the product use rights;
- Rent, lease, lend or host products, except where we agree by separate agreement;
- Reverse engineer, de-compile or disassemble products, except to the extent expressly permitted by applicable law despite this limitation; or
- Transfer licenses to, or sublicense, products to the U.S. Government.

Products licensed under this agreement may be used only by and for the benefit of an eligible education customer. Client Access Licenses your enrolled affiliates acquire solely to enable their students to access their servers are, for purposes of this restriction, deemed to be "used by and for the benefit of an eligible education customer." Licenses obtained under this agreement may not be transferred, sublicensed, rented, leased or loaned to any person or entity that is not an eligible education customer.

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

The software and user documentation are provided with restricted rights. Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2)

of the Commercial Computer Software--Restricted Rights at 48 CFR 52.227-19, as applicable. Manufacturer is Microsoft Corporation/One Microsoft Way/Redmond, Washington 98052-6399.

7. How to know what product use rights apply.

The product use rights applicable to products licensed under each enrollment are as follows. We will provide you with a copy of the applicable product use rights, or will make them available to you either by publication on the World Wide Web at a site we identify to you or by some other reasonable means. You acknowledge that you have access to the World Wide Web.

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 versions of a product that predate the latest version available as of an enrollment effective date.*** If an enrolled affiliate is using a version of any product licensed under its enrollment that became available prior to the version that was current on the enrollment effective date, the enrolled affiliate's use of the earlier version will be governed by the product use rights that would apply if the enrolled affiliate were using the version licensed under the enrollment, or in the case of Software Assurance or L&SA, the latest version that is or becomes available at any time during its enrollment.

d. ***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 transferred Software Assurance coverage. An enrolled affiliate may not otherwise separate Software Assurance 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.

g. ***Alternative product use rights.***

(i) **Deploying licenses in academic settings.** For each copy of Microsoft Encarta Reference Suite, Microsoft Encarta Deluxe, any title from the Microsoft Mastering Series, Microsoft Visual Basic (Learning, Professional and Enterprise Editions), Microsoft Visual C++ (Standard, Professional and Enterprise Editions), Microsoft Visual FoxPro, Microsoft Visual J++ (Standard and Professional Editions), Microsoft Visual Studio (Professional and Enterprise Editions), Microsoft Office Developer and Microsoft Visual InterDev an enrolled affiliate licenses for instructional purposes in connection with a class or other educational program, the enrolled affiliate may, as an alternative to deploying the product pursuant to the licensing model described in the product use rights, either (x) permit an unlimited number of student users at its educational institution to run the product on a single computer or similar device, provided that all such users comply with all other terms of this agreement; or (y) if the enrolled affiliate has licensed multiple copies of the product, then, at any time, its students or

faculty may run as many copies of the product as it has licensed copies, provided that those users comply with all other terms of this agreement. If the anticipated number of users of the product will exceed the number of copies the enrolled affiliate has licensed, it must have a reasonable mechanism or process in place to ensure that the number of persons running the product at any given point in time does not exceed the number of copies licensed.

(ii) **Deploying licenses in Per Mailbox Mode.** For each copy of Microsoft Exchange Server an enrolled affiliate licenses, it may, as an alternative to deploying the product pursuant to the licensing model described in the product use rights, use the product in "Per Mailbox Mode". Per Mailbox Mode requires the enrolled affiliate to dedicate one Microsoft Exchange Client Access License ("CAL") to each unique mailbox accessing or utilizing the services of Microsoft Exchange Server. If an enrolled affiliate chooses to deploy the product in Per Mailbox Mode, it may not later redeploy the product in Per Seat Mode. If an enrolled affiliate initially elects to deploy the product in the Per Seat Mode, it may transition one time only to the Per Mailbox Mode, but then this choice is permanent. Except as otherwise specified in this subsection (ii), all other terms and conditions governing use of the product in the Per Seat Mode govern use of the product in Per Mailbox Mode.

h. Work at home product use rights. For each copy of Microsoft Office Standard and Microsoft Office Professional an enrolled affiliate licenses, any of its faculty, staff or other employee users (but not any student user who is not also an employee user) of the computer or similar device on or from which such product is run may also run a second copy, during the term of this agreement (including any renewals) for work-related purposes only, from either a laptop or desktop computer that he or she owns or leases.

For each copy of (i) Microsoft Windows 2000 Professional or Terminal Services Client Access License and (ii) Windows 2000 Server Client Access License or Microsoft BackOffice Server 2000 Client Access License, or their successor products, an enrolled affiliate licenses, any of its faculty, staff or other employee users (but not any student user who is not also an employee user) of the computer or similar device on or from which such product is run may also access the Terminal Services of a Windows 2000 Server, Terminal Server Edition during the term of this agreement for work-related purposes only, from either a laptop or desktop computer that he or she owns or leases.

You and your affiliates must make reasonable efforts to ensure that faculty, staff or other employee users delete and remove such copies from the temporary memory (RAM) and permanent memory (e.g. hard disk) of their computers at the end of the term of this agreement.

8. 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. A description of Software Assurance Membership benefits and additional details is available from an enrolled affiliate's reseller or Microsoft account manager.

9. Making copies of software.

a. Copies necessary for internal deployment. Each enrolled affiliate may make as many copies of the products licensed 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. 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 Academic 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 9(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 a desktop operating system made from the media provided under its enrollment in place of copies of the same desktop operating system obtained from a separate source, even though they may be of different types (i.e. one may be an upgrade and the other a full license), provided that the product, language and version are identical.

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

10. *Transferring licenses.*

a. *How to transfer.* An enrolled affiliate may transfer its perpetual licenses to an affiliate, or to an eligible education customer in connection with a merger, consolidation or divestiture, 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 transferee accepts in writing the applicable product use rights, use restrictions, limitations of liability, and the transfer restrictions of this section 10. 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, (ii) temporary rights to use products, (iii) Software Assurance coverage during the term of the enrollment under which it is ordered (except internally as permitted in subsection 7(e) (Right to reassign Software Assurance coverage to replacement computers)), (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.

11. Confidentiality.

To the extent permitted by applicable law, the terms and conditions of this agreement are confidential. Neither you nor we will disclose such terms and conditions, or the substance of any discussions that led to them, to any third party other than your or our affiliates or agents, or to your designated or prospective resellers who: (a) have a need to know such information in order to assist in carrying out this agreement; and (b) have been instructed by you or us that all such information is to be handled in strict confidence.

12. 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 90 days from the date an enrolled affiliate first runs a copy of the version. Any warranties imposed by law concerning the products are limited to the same 90-day period. This warranty does not apply to components of products that an enrolled affiliate is permitted to redistribute under applicable product use rights, or if failure of the product has resulted from accident, abuse or misapplication. If the enrolled affiliate notifies 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. This is your exclusive remedy for any failure of any product to function as described in this paragraph.

b. ***NO OTHER WARRANTIES.*** TO THE EXTENT PERMITTED BY APPLICABLE LAW, WE DISCLAIM ALL WARRANTIES AND CONDITIONS, WHETHER EXPRESS, IMPLIED OR STATUTORY, OTHER THAN THOSE IDENTIFIED EXPRESSLY IN THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE PRODUCTS OR RELATED MATERIALS. WE WILL NOT BE LIABLE FOR ANY SERVICES OR PRODUCTS PROVIDED BY THIRD PARTY VENDORS, DEVELOPERS OR CONSULTANTS IDENTIFIED OR REFERRED TO YOU BY US UNLESS SUCH THIRD PARTY PRODUCTS OR SERVICES ARE PROVIDED UNDER WRITTEN AGREEMENT BETWEEN YOU AND US, AND THEN ONLY TO THE EXTENT EXPRESSLY PROVIDED IN SUCH AGREEMENT.

13. Limitation of liability.

a. ***Limitation.*** There may be situations in which you or an enrolled affiliate have a right to claim damages or payment from us. Except as otherwise specifically provided in this paragraph, whatever the legal basis for the claim, our liability will be limited, to the maximum extent permitted by applicable law, to direct damages up to the amount you or the enrolled affiliate have paid for the product giving rise to the claim. 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, or its equivalent in local currency. The limitations contained in this paragraph will not apply with respect to our obligations under section 11 (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 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 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.*** 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.

14. Verifying Compliance.

You must keep records relating to the products you and any affiliate 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 15 days notice, during normal business hours and in a manner that does not interfere unreasonably with your operations. As an alternative, we may require you to accurately complete our self-audit questionnaire relating to the products you and any affiliates use. If verification or self-audit reveals unlicensed use of products, you must promptly order sufficient licenses to permit all product usage disclosed. If material unlicensed use is found (license shortage of 5% or more), you must reimburse us for the costs we have incurred in verification and acquire the necessary additional licenses as single retail licenses within 30 days. If we undertake such verification and do not find material unlicensed use of products, we will not undertake another verification of the same entity for at least one year. We and our auditors will use the information obtained in compliance verification only to enforce our rights and to determine whether you are in compliance with the terms of this agreement. By invoking the rights and procedures described above, we do not waive our rights to enforce this agreement or to protect our intellectual property by any other means permitted by law.

15. Term, termination and renewal.

a. ***Term.*** This 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.*** 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. If we terminate an enrollment, we may also terminate this agreement and all other enrollments under it. 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 an enrolled affiliate ceases to be your affiliate or ceases to be an eligible education customer, 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 an enrolled affiliate terminates its enrollment as a result of our breach, or if we terminate its enrollment because it has ceased to be your affiliate, then the enrolled affiliate will have the following options. It may immediately pay the total remaining amount due, including all installments, in which case the enrolled affiliate will have perpetual licenses for all copies of the products it has ordered. As an alternative, it may pay only amounts due and payable as of the termination date, in which case the enrolled affiliate will have perpetual licenses for (i) all copies of all products for which payment has been made in full, and (ii) the number of copies of products

for which payment has been made in installments that is proportional to the amount that has been paid as of the termination date.

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 Academic Select License program that will make it necessary for you and your enrolled affiliates to enter into new agreements and enrollments.

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. 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.

16. *Miscellaneous.*

a. ***Notices.*** All notices, authorizations, and requests given or made in connection with this agreement must be sent by post, express courier, facsimile, or email to the addresses and numbers indicated in the applicable cover page to this agreement. Notices will be deemed delivered on the date shown on the postal return receipt or on the courier, facsimile or email confirmation of delivery.

b. ***Assignment.*** This agreement may be assigned by either party only to an affiliate, but assignment will not relieve the assigning party of its obligations under the assigned agreement. If either party assigns this agreement or any enrollment, it must notify the other party of the assignment in writing.

c. ***Severability.*** If a court holds any provision of this agreement to be illegal, invalid or unenforceable, the remaining provisions will remain in full force and effect and the parties will amend this agreement to give effect to the stricken clause to the maximum extent possible.

d. ***Waiver.*** No waiver of any breach of this agreement shall be a waiver of any other breach, and no waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party.

e. ***Force Majeure.*** To the extent that either party's performance is prevented or delayed, either totally or in part, for reasons beyond that party's control, then that party will not be liable, so long as it resumes performance as soon as practicable after the reason preventing or delaying performance no longer exists.

f. ***Note on Java Support.*** The products may contain support for programs written in Java. Java technology is not fault tolerant and is not designed, manufactured, or intended for use or resale as online control equipment in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems, in which the failure of Java technology could lead directly to death, personal injury, or severe physical or environmental damage. *Sun Microsystems, Inc. has contractually obligated Microsoft to make this disclaimer.*

g. ***Entire agreement.*** The documents identified on the cover page to this agreement constitute the entire agreement concerning the subject matter, and supersede any prior or

contemporaneous communications. The terms of these documents control in the following order: (i) these terms and conditions and the accompanying cover page (except under circumstances where an outsourcer enrollment is used, in which case the terms of the outsourcer enrollment control over these terms and conditions); (ii) the Product List; (iii) the product use rights; and (iv) all other enrollments under this agreement. The terms of any purchase order or any general terms and conditions you or your affiliates maintain do not apply. This agreement (except the Product List and the product use rights) can be changed only by an amendment signed by both parties. If you are a governmental entity or affiliated with a governmental entity, you represent to us that no term or condition is made a part of this agreement by any statute, rule or regulation promulgated by you or the governmental entity with which you are affiliated that is not expressly set forth in this agreement, and that no such term or condition nor any term or condition of this agreement shall be binding upon any subcontractor or supplier by operation of any statute, rule or regulation promulgated by you or the governmental entity with which you are affiliated unless the subcontractor or supplier expressly agrees to such term or condition. You acknowledge that this representation was a material inducement to our agreement.

h. Survival. Provisions regarding product use rights, restrictions on use, evidence of perpetual licenses, transfer of licenses, warranties, limitations of liability, confidentiality, compliance verification and obligations on termination or expiration will survive termination or expiration of this agreement or any enrollment.

i. Independent contractors. Resellers are independent contractors who act in their own name and for their own account; and they have no authority to bind or impose any obligation or liability upon us.

j. Applicable law. This agreement shall be interpreted in accordance with and governed by the laws of your State, without giving effect to its conflicts of law provisions, and you and we consent to the exclusive jurisdiction of the federal courts sitting in your State. This choice of jurisdiction does not prevent either party from seeking injunctive relief with respect to a violation of intellectual property rights or confidentiality obligations in any appropriate jurisdiction.

Academic Select Volume Forecast Form

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

You forecast that during the initial term of this agreement you and your affiliates will acquire at least 1,500 points in each of the product pool(s) marked below to qualify for academic level pricing within such product pool(s). Each product offering is assigned the number of points specified in the Product List. Note that academic pricing is established on a per pool basis. You do not need to acquire products from all pools, but you must acquire at least 1,500 points in each pool for which you wish to qualify for academic level pricing.

Mark below those product pool(s) from which you and your affiliates expect to earn at least 1,500 points during the initial term of the agreement.

	Product Pool
☐	Applications
☐	Systems
☐	Servers

Schedule A

Microsoft Qualified Educational User Definition (US Only)

All Microsoft eligible education customers must be located or reside in the United States[1]. The following are eligible to acquire Microsoft Academic Edition (AE) products in the programs indicated and are defined as qualified educational users:

	QUALIFIED EDUCATIONAL USERS:	ELIGIBLE PROGRAMS:
A)	**Educational Institutions** Defined as an accredited K-12 education institution or higher education institution organized and operated exclusively for purpose of teaching its students. An accredited institution must be: 1. A public or private K-12, vocational school, correspondence school, junior college, college, university, or scientific or technical school meeting all of the following criteria: (i) organized and operated exclusively for purpose of teaching its K-12 or higher education students; and (ii) institutionally accredited by a Regional Institutional Accrediting Agency recognized by the U.S. Secretary of Education. Note: Accreditation by a National Institutional and Specialized Accrediting Body alone does not qualify an end user as a qualified educational user. **OR** 2. An accredited preschool meeting all of the following criteria: (i) is an early childhood program that serves a minimum of ten children between two and five years of age; (ii) has been in operation for at least one year; (iii) provides educational services, and (iv) is incorporated for the purpose of providing education services to children between two and five years of age.	AE Full Packaged Product Academic Open Academic Select Campus Agreement (Higher Ed Only) School Agreement (K12 Ed Only)
B)	**Administrative Offices or Boards of Education of Educational Institutions** Defined as district, regional and state administrative offices of the Educational Institutions defined in Section A above.	AE Full Packaged Product Academic Open Academic Select Campus Agreement (Higher Ed Only) School Agreement (K12 Ed Only)
C)	**Full and Part Time Faculty and Staff of Educational Institutions** Defined as all full and part time faculty and staff of Educational Institutions defined in Section A above.	AE Full Packaged Product Only
D)	**Full and Part Time Students of Higher Education Institutions** Defined as full and part time students of a higher education institution defined as a public or private, vocational school, correspondence school, junior college, college, university, or scientific or technical institution meeting all criteria defined in Section A (1) above. ***Full and Part Time Students of K-12 are NOT Qualified Educational Users***	AE Full Packaged Product Only
E)	**Public Libraries** Must meet all of the following criteria: (i) provide general library services without charge to all residents of a given community, district or region; (ii) are supported by public or private funds; (iii) make its basic collections and basic services available to the population of its legal service area without charges to individual users, but may impose charges on users outside its legal service area; and (iv) may or may not provide the products and services, beyond its basic services, to the public at large with or without individual charges.	AE Full Packaged Product Academic Open Academic Select
F)	**Public Museums** Must meet all the following criteria: (i) are a public or private agency or institution organized on a permanent basis for essentially education or aesthetic purposes; (ii) utilize a professional staff; and (iii) own or utilize tangible objects, care for them and exhibit them to the public on a regular basis.	AE Full Packaged Product Academic Open Academic Select

[1] All United States territories such as Puerto Rico, Guam, Virgin Islands are not eligible under this definition.

Special note regarding Hospitals, Healthcare Systems and Research Laboratories:

Hospitals, Healthcare Systems and Research Laboratories (including independent Research Laboratories or Research Laboratories affiliated with the Department of Defense or the Department of Energy) are NOT eligible to acquire AE products unless they are wholly owned and operated by a qualified Educational Institution as defined above in Section A. "Wholly owned and operated" means that the Educational Institution is the sole owner of said hospital, healthcare system or research laboratory and the only entity exercising control over the hospital's day-to-day operations. Additional information on determining if an entity is wholly owned and operated by an Educational Institution can be found at: http://www.microsoft.com/education/pricing/docs/HospitalDefinition.doc

Microsoft Academic Select License

Microsoft Academic Student Select **Enrollment**

Academic Select Agreement number *Reseller to complete*		Enrollment number *Microsoft affiliate to complete*	
Academic Select Agreement Expiration Date *Reseller to complete*			

This Microsoft Academic Student 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. This person also receives notices unless a different contact for notices is provided in the notices section below.)
Street Address		Contact E-mail Address
City	State/Province	Phone
Country	Postal Code	Fax
		Microsoft Account Manager Name
Contracting Microsoft Affiliate		
MSLI, GP - 6100 Neil Road, Suite 210 - Reno, Nevada USA 89511-1137 - Dept. 551, Volume Licensing		

If notices should be sent to someone or some place other than above, complete the relevant portions below.		
Name of Entity		Contact Name
Street Address		Contact E-mail Address
City	State/Province	Phone
Country	Postal Code	Fax
Notices to Microsoft should be sent to: MSLI, GP 6100 Neil Road, Suite 210 Reno, Nevada USA 89511-1137 Dept. 551, Volume Licensing		**Copies should be sent to:** Microsoft Law and Corporate Affairs One Microsoft Way Redmond, WA 98052 USA Volume Licensing Group VLG-USA@Microsoft.com (425) 936-7329 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 Academic Select Agreement identified above apply here.

Effective date. The effective date of this enrollment will be the date this enrollment is signed by us.

Term. This enrollment will expire on the date on which the Microsoft Academic 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 Academic Select Agreement, including any amendments, and the product use rights, and agree to be bound by those; (ii) you are an eligible education customer and are either the entity that signed the Microsoft Academic 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. You further acknowledge and agree that Licenses obtained under this enrollment may not be counted for purposes of satisfying the minimum point requirement set forth in section 2 of the Microsoft Academic Select Agreement (How the Academic Select License program works).

This enrollment consists of (1) this cover page, (2) the Reseller Information Form, (3) the attached terms and conditions, and (4) the Student Select License Agreement. Where inconsistent with the Microsoft Academic Select Agreement, this enrollment supercedes the terms of the Microsoft Academic Select Agreement.

Customer	Contracting Microsoft Affiliate
Name of Entity	**MSLI, GP**
Signature	Signature
Printed Name	Printed Name
Printed Title	Printed Title
Signature Date	Effective Date *(date Microsoft affiliate countersigns)*

Reseller Information Form

Use this form to identify your selected reseller and large account distributor (if any) and have your reseller complete the information below and acknowledge your selection by signing below.

Reseller Information:	***Large Account Distributor Information (if applicable):***
Reseller Company Name	Distributor Company Name
Street Address and/or Post Office Box	Street Address and/or Post Office Box
City and State/Province and Postal Code	City and State/Province and Postal Code
Country	Country
Contact Name	Contact Name
Phone	Phone
Fax	Fax
Email Address	Email Address

The undersigned confirms that the Reseller and Large Account Distributor information is correct.

Name of Reseller
Name of Large Account Distributor (if applicable)
Signature
Printed Name
Printed Title
Date

Terms and Conditions

1. How the Academic Student Select Enrollment program works.

The Academic Student Select Enrollment allows you to obtain Licenses for the following products for your students under the Microsoft Academic Select Agreement at discount prices based on the volume of your license purchases under the Microsoft Academic Select Agreement: Windows XP Upgrade, Office XP Professional, and Office XP Standard, all of which must be in the English language. Additional products may be made available at our discretion. Each License obtained under this enrollment must be transferred or assigned to a current student in accordance with this enrollment. You may not transfer or assign any License obtained under this enrollment to any person or entity other than as expressly provided in this enrollment. Once a License is transferred or assigned to your student, that License becomes the property of the student to whom it has been transferred or assigned, and will not terminate or expire simply by virtue of the termination, suspension or other interruption of that person's status as your student. The License cannot be assigned or transferred, in whole or in part, by the student back to you or to any other third party. You may not transfer or assign to any student more than one (1) License with respect to any version of any product. Despite any terms to the contrary in the Microsoft Academic Select Agreement, the Product List or in any other materials published by Microsoft or its affiliates describing the Academic Select License program, students are not granted the right to run different language versions of a product licensed under this enrollment.

2. How to order product licenses.

You may order Licenses and media starting on the effective date of this enrollment. Each order will be for a License for each product selected. Orders for Licenses and media must be submitted in minimum quantities of 25 Licenses per product, per order. Orders for media must be in quantities equal to the order for Licenses. Your order for Licenses and media must specify version number and in-country usage. You may use only the media received under this enrollment to transfer or assign products to students. Products may only be transferred or assigned in the same CD-ROM media format that you receive under this enrollment. Orders must be placed with the reseller named on this enrollment. You may use a third party to complete and process students' orders for Licenses and media under this enrollment and to distribute media to students, but the third party must complete its work while physically located at your facility and you remain responsible for the third party's actions to the same extent you would be if the third party was your employee. Price and payment terms for all Licenses and media ordered are determined by agreement with your designated reseller. Your designated reseller is authorized to purchase media products from the Microsoft authorized replicator identified below or as otherwise identified by Microsoft from time to time (the "Microsoft Authorized Replicator(s)") solely for the purpose of fulfilling orders placed under this enrollment. Your designated reseller may purchase from the Microsoft Authorized Replicators media and documentation only for those products expressly identified in section 1 above.

iLogistix
Studentfulfillment@iLogistix.com
48105 Warm Springs Blvd.
Fremont, CA 94539
Tel: 800-550-6782
Fax: 510-498-7193

3. Running and making copies.

You may not run or copy any products licensed under this enrollment.

4. *Student Select License Agreement.*

As a condition to each transfer or assignment of a License to one of your students as permitted and anticipated by this enrollment, you shall require each student to sign and return to you a Student Select License Agreement in the form attached to this enrollment. The product use rights are incorporated by reference in the Student Select License Agreement, and you shall provide a copy of the current version of the product use rights applicable to the Licenses being transferred or assigned with each Student Select License Agreement prior to the signature of the student. Each Student Select License Agreement shall identify the Licenses transferred or assigned to the student by product name and version number, in the space provided for that purpose, and the date on which the Student Select License Agreement was signed and returned to you. The student must show personal identification to establish and document the student's right to use such versions of the products transferred. Each Student Select License Agreement will also include the student identification number issued by you in the space provided for that purpose. The student should be directed to keep a copy of the executed Student Select License Agreement as evidence of what that student is licensed to run.

5. *Records.*

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Microsoft Student Select License Agreement

Academic Select Agreement number *Customer to complete*	
Name of Student signing Academic Select License Agreement	

Academic Student Select Enrollment number *Customer to complete*	
Date of Issuance *Customer to complete*	
Student Identification Number *Customer to complete*	

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Product Description	Version No.	Language
		English
		English
		English

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