



Board Office Use: Legislative File Info.	
File ID Number	14-2247
Introduction Date	11/19/2014
Enactment Number	
Enactment Date	

Memo

To Board of Education

From Antwan Wilson, Superintendent *MST*
Mia Settles, Chief Operations Officer
John Krull, IT Officer, Technology Services

Board Meeting Date November 19, 2014

Subject Renewal of District's Microsoft Campus and School Agreement

Action Requested Approval for the renewal of the District's Microsoft Campus and School Agreement for 2014-2015

Background Previous to last year, the district had schools and departments individually purchase Microsoft Windows and Office licenses. These licenses, though perpetual, did not include upgrades. Often home versions of products were purchased which cannot be managed remotely or kept secure. This resulted in schools and departments either not having required software or sometimes being on different versions that lacked compatibility and security compliance. The Technology Services Department had a very difficult time managing multiple versions of software not meant for an enterprise environment like a large school district. Additionally, licensing compliance had not been maintained due to decentralized purchasing.

SHI won a competitive bid in 2013 on an RFP by the California Education Technology Professionals Association (CETPA) and Microsoft Strategic Alliance (CAMSA) program resulting in California statewide purchasing contract with Microsoft for the Educational Enrollment Solution (EES) program. This contract serves as a master-purchasing vehicle for K12 educational institutions in California. The board approved a 3-year agreement on November 6, 2013 (file [13-2504](#)).



Discussion

Students, staff, and administration use the Microsoft Campus and School Agreement from SHI for the full suite of Microsoft productivity software and licensing for all schools and departments. Software includes Windows 7 and Windows 8 Professional that allows authentication, security, and management with Active Directory and System Center. Current Office software including Word, Excel, PowerPoint, Access, Publisher, and Web Apps include software for both Windows and Macintosh OS. Included is full management (System Center) and virus protection (Forefront) that eliminate yearly payments to other vendors. Software is used for all existing and new computers making the districts computers compatible, compliant, secure, and easier to manage

Recommendation

The Board of Education approve the expense for year two of the contract for the Microsoft Campus and School Agreement

Fiscal Impact

\$178,242.50, Org. Key: 9999994701

Attachments

Microsoft Agreement
SHI Microsoft renewal quote 093014



Pricing Proposal
 Quotation #: 8511263
 Created On: 9/8/2014
 Valid Until: 9/30/2014

Oakland Unified School District

Inside Account Manager

John Krull
 26070 Myrtle St.
 Oakland, CA 04607
 UNITED STATES
 Phone: (510) 879-8288
 Fax:
 Email: john.krull@ousd.k12.ca.us

Zach Westpy
 290 Davidson Avenue
 Somerset, NJ 08873
 Phone: 1-800-535-5210
 Fax: 1-800-814-7567
 Email: Zach_Westpy@shi.com

All Prices are in US Dollar (USD)

Product	Qty	Your Price	Total
1 Microsoft Office 365 (Plan A3) - Product upgrade subscription license (12 month) - 1 user - upgrade from Core CAL Suite/Entertainment CAL Suite + MS Office Professional Plus - EDU, additional product - Campus, School - Win, Mac - All Languages Microsoft - Part#: M7K-00018	50	\$24.60	\$1,230.00
2 Off365PA2 ShrdSvr ALNG SubsVL MVL PerUsr - Faculty Microsoft - Part#: M6K-00001	5000	\$0.00	\$0.00
3 Off365PA2 ShrdSvr ALNG SubsVL MVL PerUsr - Student Microsoft - Part#: M6K-00001	55000	\$0.00	\$0.00
4 Off365ProPlusA ShrdSvr ALNG SubsVL MVL PerUsr - Student Microsoft - Part#: 5XS-00002	55000	\$0.00	\$0.00
5 Microsoft Learning Solutions: IT Academy - Services Subscription License (1 year) - 1 user - EDU - Win - All Languages Microsoft - Part#: 54R-00098	1	\$1,332.50	\$1,332.50
6 Acad Mvl All Lang 1Yr Lic/Sa Pk Dt Education D Ent Cal Faculty-A Microsoft - Part#: 2UJ-00003	3600	\$48.80	\$175,680.00
		Total	\$178,242.50

The Products offered under this proposal are subject to the SHI Return Policy posted at www.shi.com/returnpolicy, unless there is an existing agreement between SHI and the Customer.

Campus and School Agreement

Contents

1. <i>Definitions</i>	1
2. <i>How the Campus and School program works</i>	3
3. <i>Subscription price</i>	3
4. <i>License grant — what Institution and its Users are licensed to run</i>	3
5. <i>How to know what Product use rights apply</i>	4
6. <i>Making copies of Products and re-imaging rights</i>	4
7. <i>Distributing media</i>	5
8. <i>Redistribution of software updates to Students</i>	6
9. <i>Transfer and reassigning Licenses</i>	7
10. <i>Confidentiality</i>	8
11. <i>Options upon completion of a Licensed Period</i>	9
12. <i>Term and termination</i>	10
13. <i>Warranties</i>	10
14. <i>Defense of infringement, misappropriation, and third party claims</i>	11
15. <i>Limitation of liability</i>	13
16. <i>Verifying compliance</i>	14
17. <i>Miscellaneous</i>	15

This agreement is entered into between the entities identified on the signature form.

Effective Date. The effective date of this agreement is the effective date of the first Enrollment or the date Microsoft accepts this agreement, whichever is earlier.

This agreement consists of (1) these terms and conditions and the signature form, (2) the Product List, (3) the Product Use Rights, (4) any Enrollment entered into under this agreement, (5) any order submitted under this agreement, and (6) the eligibility criteria for Campus and School Agreement at <http://www.microsoft.com/licensing/contracts> as of the effective date of this agreement.

Please note: Documents referenced in this agreement but not attached to the signature form may be found at <http://www.microsoft.com/licensing/contracts> and are incorporated by reference, including the Product List, Product Use Rights and the Qualified Educational User definition. These documents may contain additional terms and conditions for Products licensed under this agreement and may be changed from time to time. Institution should review such documents carefully, both at the time of signing and periodically, to ensure a full understanding of all terms and conditions applicable to Products licensed.

Terms and Conditions

1. Definitions.

In this agreement, the following definitions apply:

“Affiliate” means

- a. with regard to Institution,
 - (i) for a non-public entity, any qualified educational user identified at <http://www.microsoft.com/licensing/contracts> that Institution owns and/or controls, that owns and/or controls Institution, or that is under common ownership and/or control with Institution; “ownership” means, for purposes of this definition, more than 50% ownership, and
 - (ii) for a state or local government entity,

1) any qualified educational user identified at <http://www.microsoft.com/licensing/contracts> as of the effective date of this agreement that is an agency, department, office, bureau, division, or entity of the state or local government, and

2) any qualified educational user expressly authorized by the laws of the state to purchase under state education contracts;

provided that the state and its Affiliates shall not, for purposes of this definition, be considered to be Affiliates of the federal government and its Affiliates; and

b. with regard to Microsoft, any legal entity that Microsoft owns, that owns Microsoft, or that is under common ownership with Microsoft;

“Customer Data” means all data, including all text, sound, or image files that are provided to Microsoft by, or on behalf of, Institution through Institution’s use of the Online Services;

“Enrollment” means the form that Institution submits under this agreement to sign up for this program;

“Fix(es)” means Product fixes, modifications or enhancements, or their derivatives, that Microsoft either releases generally (such as service packs) or that Microsoft provides to Institution when performing service(s) (such as workarounds, patches, bug fixes, beta fixes and beta builds);

“Institution” means the entity that is a qualified educational user identified at <http://www.microsoft.com/licensing/contracts> as of the effective date of this agreement that has entered into this agreement with Microsoft or the Institution’s Affiliate that has entered into an Enrollment under this agreement. If Institution is a school district, “Institution” includes all participating schools in the same district;

“License” means Institution’s right to run the quantity of a Product ordered. Under this agreement, Licenses are available only on a subscription basis (“Subscription License”). Licenses for Online Services will be considered Subscription Licenses under this agreement;

“Licensed Period” means the period of time beginning on the effective date specified in Institution’s Enrollment and continuing for the period of time specified in Institution’s Enrollment (either 12 or 36 calendar months);

“Microsoft” means the Microsoft entity that has entered into this agreement or an Enrollment and its Affiliates;

“Online Services” means the Microsoft-hosted services identified in the Online Services section of the Product List;

“Products” means all software, Online Services and other web-based services, including pre-release or beta versions, identified on the Product List;

“Product List” means the statement published by Microsoft from time to time on the World Wide Web at <http://www.microsoft.com/licensing/contracts> or at a successor site that Microsoft identifies, which identifies the Products that are or may be made available to qualified educational users (which availability may vary by region) and any Product-specific conditions or limitations on the acquisition of Licenses for, or the use of, those Products;

“Product Use Rights” means the use rights or terms of service for each Product and version at <http://www.microsoft.com/licensing/contracts> or at a successor site;

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

“Service Level Agreement” means the document specifying the standards Microsoft agrees to adhere to and by which it measures the level of service for an Online Service;

“Software Assurance” means an offering that provides new version rights and other benefits for Products as further described in the Product List;

"Trade Secret" means information that is not generally known or readily ascertainable to the public, has economic value as a result, and has been subject to reasonable steps under the circumstances to maintain its secrecy; and

"Users" means Institution, faculty, staff, and students designated on the Enrollment to run the Products, and members of the public who access devices located in Institution's open access labs or libraries.

2. *How the Campus and School program works.*

The Campus and School Agreement allows Institution to license one or more Products on a subscription basis. To license Products on a subscription basis means that the right to run the Product is non-perpetual and continues only during the Licensed Period.

Institution can participate in this program by submitting an Enrollment. This program allows a one-year Licensed Period or a three-year Licensed Period. The choice is indicated in the Enrollment.

One-year Licensed Period. An order must be submitted to indicate the Products Institution chooses to run. Thereafter, extension orders are submitted to continue the subscription each year. If an extension order is not received, the Enrollment will expire.

Three-year Licensed Period. An order must be submitted to indicate the Products Institution chooses to run. Thereafter, Institution must submit anniversary orders on the first and second anniversaries of the effective date of its Enrollment.

3. *Subscription price.*

This provision shall not apply to Products licensed to Institution at special promotion prices to distributor or reseller, as applicable.

One-year Licensed Period. Microsoft will not increase the License prices charged to the reseller for an annual extension order by more than ten percent (10%) (as determined with reference to U.S. funds, regardless of the currency in which amounts are invoiced or payment is made) over the License prices charged for the immediately preceding 12-month Licensed Period if (1) Institution submits an extension order prior to the expiration of the Enrollment and (2) such order is confirmed for the same Products in the same quantities as ordered in the expiring Licensed Period.

Three-year Licensed Period. If Institution chooses this option and complies with the ordering requirements in the agreement, for any Products ordered during the Licensed Period, the price Microsoft charges the Distributor or Reseller on each anniversary order will be the same as the price for the Products when they are first ordered except for step-ups.

4. *License grant — what Institution and its Users are licensed to run.*

On the date of Microsoft's letter to Institution confirming Microsoft's acceptance of the Enrollment, Institution is temporarily licensed to have Users run the Products as permitted in the Product use rights located at <http://www.microsoft.com/licensing/contracts>.

The Institution's right to have its Users run the Products and Fixes is expressly limited to the rights described in this agreement, including the following limitations:

- a. Neither Institution nor its Users may separate the components of Products 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.
- b. Neither Institution nor its Users may rent, lease, commercially host or lend any copy of the Products or Fixes, except where agreed by separate agreement.

- c. Neither Institution nor its Users may reverse engineer, decompile or disassemble the Products or Fixes except to the extent expressly permitted by applicable law despite this limitation.
- d. Neither Institution nor its Users may make copies of the Products or Fixes and distribute them on media to student Users.
- e. The components of the Products may vary by platform. Institution may run only the components of the Products that are included on the platform Institution chooses to deploy.

Neither Institution nor its Users will be entitled to free telephone support for the Products, except as specified in writing in connection with Software Assurance membership or other Software Assurance offerings.

Institution may only sublicense the right to run Products to Affiliates that are included in its defined organization.

These rights apply to the Licenses obtained under an Enrollment and are not related to any order or fulfillment of media. The ability to run current or later versions of a Product licensed under this agreement could be affected by minimum system requirements or other factors (e.g. hardware or other Products).

The right to run any Product under this agreement is temporary unless Institution elects to obtain perpetual Licenses under the buy-out option. This agreement, the applicable Enrollment, and Institution's order confirmation, together with proof of payment, will be Institution's evidence of all Licenses obtained under its Enrollment as described in this agreement.

5. How to know what Product use rights apply.

- a. **Product use rights.** The Product Use Rights in effect on the effective date of an Enrollment will apply to use of then-current versions of each Product (excluding Online Services). For future versions, the Product Use Rights in effect when those future versions are first released will apply. In both cases, subsequent changes made by Microsoft to the Product Use Rights for a particular version will not apply to use of that version, unless Institution chooses to have such changes apply.

The use rights for Online Services and the process for updating them as the Online Services evolve are detailed in the Product Use Rights.

- b. **Product Use Rights for earlier versions (downgrade).** If Institution runs an earlier version of a Product than the version that was current on the Enrollment effective date, the Product Use Rights for the version licensed, not the version being run, will apply. However, if the earlier version includes components that are not part of the licensed version, any Product Use Rights specific to those components will apply to Institution's use of those components.
- c. **Use rights for different language version.** Institution may run Products in any available language version. If Institution is using any different language version of any Product licensed under its agreement, Institution's use of the different language version will be governed by the Product Use Rights for the version licensed under this agreement.
- d. **Fixes.** Use of any Fixes is defined by the Product Use Rights for the affected Products or, if the Fix is not provided for specific Products, any other use terms Microsoft provides. All Fixes are licensed, not sold.

6. Making copies of Products and re-imaging rights.

- a. **General.** Institution may make as many copies of the Products licensed as necessary to distribute the Products within its organization. All copies of any Product must be true and complete copies (including copyright and trademark notices) from master copies obtained from a Microsoft approved fulfillment source. Institution may also have a third party make or distribute copies but Institution is responsible for such third party's actions. Institution agrees

to make reasonable efforts to notify its employees, agents, and other individuals running a Product that the Product is licensed from Microsoft and subject to the terms of this agreement.

- b. Copies for evaluation.** During the term of its Enrollment, Institution may run up to 10 complimentary copies of any Product for a 60 day evaluation period.
- c. Re-imaging rights.** In certain cases, re-imaging is permitted using the Product media. If the Microsoft Product(s) is licensed (1) from an original equipment manufacturer (OEM), or (2) as a full packaged Product through a retail source, then media provided under this agreement may generally be used to create images for use in place of copies provided through that separate source. This right is conditional upon the following:
 - (i) Separate Licenses must be owned from the separate source for each Product that is re-imaged.
 - (ii) The Product, language, version, and components of the copies made must be identical to the Product, language, version, and components of the copies they replace and the number of copies or instances of the re-imaged Product permitted remains the same.
 - (iii) Except for copies of an operating system and copies of Products licensed under another Microsoft program, the Product type (e.g., upgrade or full License) must be identical to the Product type from the separate source.
 - (iv) Any Product-specific processes or requirements for re-imaging identified in the Product List.
 - (v) Re-images made under this subsection remain subject to the terms and use rights provided with the License from the separate source. This subsection does not create or extend any warranty or support obligation.

7. *Distributing media.*

- a. To Faculty and Staff.** Institution may acquire the quantity of media as necessary to distribute the Products to Faculty and Staff for use in accordance with the agreement. All media for a particular Product must be acquired from a Microsoft-approved fulfillment source for that Product. Institution may also copy volume licensing media acquired from a Microsoft-approved fulfillment source for distribution to Faculty and Staff Users only. All copies must be true and complete copies (including copyright and trademark notices). Institution must maintain the security of any volume licensing keys provided with volume licensing media in accordance with applicable Product Use Rights and other restrictions and may disclose them only to employees authorized to engage in the installation and support of the Products. Institution may not disclose volume licensing keys to Faculty and Staff work-at-home Users or to Students or to any other unauthorized third party.
- b. To Faculty and Staff work at home Users and to Student licensing option Users.** If Institution exercises Faculty and Staff work at home rights for selected Products or selects the Student licensing option in an Enrollment, access to media by Faculty and Staff for work at home purposes and by Students must be restricted and regulated by Institution. All media for Products distributed to Faculty and Staff for work at home purposes and to Students must be acquired from a Microsoft-approved fulfillment source, and such Products may be distributed to such Users only in the following ways:
 - (i) if individual student-media CD-ROM or disk sets (collectively, "Student Media") is purchased for a particular Product, Institution may distribute one copy of such Student media directly to each authorized work at home User or Student (Student Media may contain Product activation features that limit the number of installations); the reseller can identify media and Products that contain Product activation features. Details on ordering and distributing Student Media, including a list of the Products for which Student Media is currently available, is at <http://www.microsoft.com/education/StudentMedia.msp>; or

- (ii) using volume licensing media acquired pursuant to this agreement, via (1) manual installation at a central location that Institution controls or (2) a system of controlled short-term checkout of applicable volume licensing media solely for purposes of individual user installation, provided that this option (2) is available only for Products for which a volume licensing key is not required.
 - (iii) Institution may also use a Microsoft-approved entity selected by Institution to electronically distribute copies via download from secure network server(s) or other storage device(s), provided Institution or the Microsoft-approved entity controls the download to ensure that the number of permitted copies is not exceeded and those making the download are licensed to do so. For more information on this download option, Institution is advised to contact its reseller who may manage this on Institution's behalf.
- c. **To Students.** Institution may order media to distribute the Products to Students for use in accordance with this agreement. Institution's order for media must specify version number and country of usage. Institution may only use the media received under its Enrollment to transfer Products to eligible Student Users. Products may only be transferred in the same media format that Institution receives under its Enrollment. Orders must be placed with the reseller named on the Enrollment. Institution may use a third party to complete and process eligible Student Users' orders for media under its Enrollment and to distribute media to eligible Student Users. Institution is responsible for the third party's actions. Price and payment terms for media ordered are determined by agreement with Institution's designated reseller. Institution's designated reseller is authorized to purchase media Products from the Microsoft-authorized replicator identified by Microsoft from time to time solely for the purpose of fulfilling orders placed under the Enrollment. Institution's designated reseller may purchase from Microsoft-authorized replicators media and documentation only for those Products available under the Enrollment.

8. *Redistribution of software updates to Students.*

- a. **License Grant.** From time to time, Microsoft may make available to the general public additional or replacement code of any portion of Microsoft's licensed Products without a fee ("software updates"). Microsoft grants Institution a limited, non-exclusive, royalty-free, non-assignable, non-transferable, revocable License to distribute the software updates to Institution's Students in accordance with the terms of this section. Institution's Students must use the software updates solely for their personal benefit in accordance with the end-user License Agreement with Microsoft ("EULA") included with each software update.
- b. **Redistribution of software updates.** Institution may redistribute software updates to its Students (1) by electronic means provided that Institution's method of electronic distribution is adequately licensed and incorporates access control and security measures designed to prevent modification of the software updates and access by the general public or (2) through acquiring authorized copies on fixed media from a fulfillment source approved by Microsoft.
- c. **Limitations.** Institution may not (1) produce or replicate software updates on to CDs or other distributable storage media, (2) combine the software updates with other non-Microsoft software, (3) distribute any software updates as a stand-alone component via email attachment, (4) charge for the software updates, other than to recover any reasonable costs incurred in providing the updates to its Students; (5) remove, modify, or interfere with the EULA or the EULA acceptance functionality included by Microsoft with any software update; or (6) alter the software updates in any way. Microsoft is not responsible for any cost related to the acquisition, distribution, or recall of the software updates.
- d. **Tracking and recall, replacement software updates.** Institution must track the quantity and method of distribution of the software updates by means that will allow it to provide notice of a recall and offer replacements as provided in this subsection. Institution agrees to stop redistributing software updates within 10 days of receipt of a notice of recall from Microsoft

and within 30 days of that notice Institution agrees to (1) return to Microsoft or destroy all copies of software updates in Institution's possession and (2) notify Institution's Students of the recall by the same or similar means in which they were notified of the availability of the software updates.

If Microsoft makes available to Institution a replacement software update, Institution agrees to make the replacement available to its Students, within 30 days of receipt in the same quantity and method(s) of distribution, if available, as Institution made the original software update available. The distribution of replacement software updates is subject to the same conditions and restrictions as software updates under this section.

- e. **No warranties, exclusion of indirect, special, incidental, consequential, and certain other damages.** Notwithstanding anything to the contrary in this agreement, and to the extent permitted by law, software updates that Institution redistributes to its Students are provided "as is" without any warranties. Institution acknowledges that the provisions of this paragraph with regard to the software updates are reasonable having regard to, among other things, the fact that they are complex computer Products, and their performance will vary depending upon hardware, platform and Products interactions, and configurations.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL MICROSOFT BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, CONSEQUENTIAL, OR INDIRECT DAMAGES THAT ARISE OUT OF OR ARE IN ANY WAY RELATED TO INSTITUTION'S REDISTRIBUTION OF THE SOFTWARE UPDATES TO ITS STUDENTS. FURTHERMORE, IN NO EVENT SHALL MICROSOFT BE LIABLE FOR ANY SUCH DAMAGES BASED DIRECTLY OR INDIRECTLY UPON THE PROVISION OF SOFTWARE UPDATES OR UNAVAILABILITY OF SOFTWARE UPDATES — INCLUDING WITHOUT LIMITATION, DAMAGES DUE TO BUSINESS INTERRUPTION, LOSS OF PROFITS, REVENUE OR BUSINESS OPPORTUNITY, LOSS OF DATA AND THE LIKE, FAILURE TO MEET ANY DUTY, OR NEGLIGENCE.

- f. **Limitation of liability.** With respect to Institution's redistribution of the software updates, the limitation of liability provisions in this agreement shall apply in those situations in which Institution or its Users have a right to claim damages or payment from Microsoft.
- g. **No support.** Software updates that Institution redistributes to its students are provided without any support obligation by Microsoft, including any benefits accruing from Software Assurance.
- h. **Applicability.** The provisions of this section shall not apply to distribution of Fixes to Students so long as (1) those Students are licensed under the Student licensing option, and (2) the Fix provided to those Students is for Products licensed to them under Student licensing option. All other redistribution to Students of additional or replacement code is subject to the provisions of this section.

9. Transfer and reassigning Licenses.

- a. **License Transfers.** License transfers are not permitted, except as explicitly set forth in the Perpetual License Transfer Form. The resale of Licenses is prohibited, including any transfer by Institution for the purpose of transferring those Licenses to an unaffiliated third party.
- b. **Internal Assignment of Licenses and Software Assurance.** Licenses and Software Assurance must be assigned to a single user or device with the organization. Licenses may be reassigned within the organization as described in the Product Use Rights.

10. Confidentiality.

- a. **What is included.** "Confidential Information" is non-public information, know-how and Trade Secrets in any form that:
- (i) are designated as "confidential";
 - (ii) a reasonable person knows or reasonably should understand to be confidential; or
 - (iii) include non-public information regarding either party's products or customers, marketing and promotions, or the negotiated terms of Microsoft agreements.
- b. **What is not included.** The following types of information, however marked, are not Confidential Information. Information that:
- (i) is, or becomes, publicly available without a breach of this agreement;
 - (ii) was lawfully known to the receiver of the information without an obligation to keep it confidential;
 - (iii) is received from another source who can disclose it lawfully and without an obligation to keep it confidential;
 - (iv) is independently developed; or
 - (v) is a comment or suggestion one party volunteers about the other's business, products or services.
- c. **Treatment of Confidential Information.**
- (i) **In general.** Subject to the other terms of this agreement, each party agrees:
 - 1) it will not disclose the other's Confidential Information to third parties; and
 - 2) it will use and disclose the other's Confidential Information only for purposes of the parties' business relationship with each other.
 - (ii) **Security precautions.** Subject to the other terms of this agreement, each party agrees:
 - 1) to take reasonable steps to protect the other's Confidential Information -- these steps must be at least as protective as those the party takes to protect its own Confidential Information;
 - 2) to notify the other promptly upon discovery of any unauthorized use or disclosure of Confidential Information; and
 - 3) to cooperate with the other to help regain control of the Confidential Information and prevent further unauthorized use or disclosure of it.
 - (iii) **Sharing Confidential Information with Affiliates and representatives.**
 - 1) A "Representative" is an employee, contractor, advisor, or consultant of one of the parties or of one of the parties' Affiliates.
 - 2) Each party may disclose the other's confidential information to its Representatives (who may then disclose that Confidential Information to other of that party's Representatives) only if those Representatives have a need to know about it for purposes of the parties' business relationship with each other. Before doing so, each party must:
 - A. ensure that Affiliates and Representatives are required to protect the Confidential Information on terms consistent with this agreement; and
 - B. accept responsibility for each Representative's use of Confidential Information.
 - 3) Neither party is required to restrict work assignments of Representatives who have had access to Confidential Information. Neither party can control the incoming

information the other will disclose to it in the course of working together, or what that party's Representatives will remember, even without notes or other aids. Each party agrees that use of information in Representatives' unaided memories in the development or deployment of the parties' respective products or services does not create liability under this agreement or trade secret law, and each party agrees to limit what it discloses to the other accordingly.

(iv) Disclosing Confidential Information if required to by law. Each party may disclose the other's Confidential Information if required to comply with a court order or other government demand that has the force of law. Before doing so, each party must seek the highest level of protection available and, when possible, give the other enough prior notice to provide a reasonable chance to seek a protective order.

d. Length of Confidential Information obligations. Except as permitted above, neither party will use or disclose the other's Confidential Information for five years after it is received. The five-year time period does not apply if applicable law requires a longer period or the Product Use Rights provide a more specific requirement.

11. Options upon completion of a Licensed Period.

Microsoft will provide prior written notice of expiration of an Enrollment. The notice will advise Institution of the option to: (1) extend the Enrollment, (2) submit a new Enrollment, (3) exercise the buy-out option, or (4) allow the Enrollment to expire. Microsoft will not unreasonably reject any extension order or new Enrollment. However, Microsoft may make a change to this program that will make it necessary for Institution to first enter into new agreement. Each Licensed Period will start the day following the expiration of the prior Licensed Period:

- a. One-year Licensed Period.** Institution may elect to extend an initial one-year Licensed Period for either (1) up to five consecutive terms of 12 full calendar months by submitting an extension order for each such extension term or (2) one term of 36 full calendar months.
- b. Three-year Licensed Period.** Institution may elect to extend an initial three-year Licensed Period for either (1) up to three consecutive terms of 12 full calendar months or (2) one term of 36 full calendar months.
- c. Buy-out option.** Institution may elect to obtain perpetual Licenses for Products licensed under the Enrollment provided it has licensed such Products under one or more Enrollments (including any extensions) under the Agreement (or a predecessor agreement) for at least 36 full calendar months immediately preceding expiration of the Enrollment. Institution must submit a buy-out order at least 30 days prior to expiration of the Enrollment. The buy-out option is not available for Products licensed under the Student licensing option. The Enrollment may provide further information regarding the buy-out order.
- d. License confirmation.** The order confirmation for the buy-out and any documentation evidencing transfers of Licenses, together with proof of payment, will be evidence of a perpetual License to run the latest version then available (or any prior version) for the copies of Products covered by the buy-out order.
- e. Allow the Enrollment to expire.** Institution may allow the Enrollment to expire. If the Enrollment expires, all Products must be deleted as provided in section titled "Term and termination."

Except as specifically provided otherwise in the Product Use Rights, perpetual Licenses acquired through the buy-out option are device Licenses. For example, a License is required for each PC on which Institution desires to run Office.

Because all Licenses acquired under this agreement are temporary, Institution will not be eligible to obtain Software Assurance for those Licenses under any other Microsoft volume licensing program without first acquiring a perpetual License or License and Software Assurance (L&SA).

12. **Term and termination.**

a. **Term.** This agreement will remain in effect until terminated by either party as allowed. These general terms and conditions apply to all Enrollments submitted. The terms of any Enrollment(s) will be for the Licensed Period as specified in such Enrollment(s).

b. **Termination of the agreement.** Either party may terminate this agreement for any reason upon 60 days written notice.

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

c. **Termination of an Enrollment.** Either party may terminate any Enrollment(s) if the other party is in material breach of any obligation, which breach is not cured within 30 days written notice of such breach. Microsoft may terminate this agreement and any Enrollment(s) immediately if Institution fails to continue to qualify as a qualified educational user as identified at <http://www.microsoft.com/licensing/contracts>. If no orders are received under an Enrollment, the Enrollment will be terminated 30 calendar days after the effective date of the Enrollment.

d. **Effect of termination and Licensed Period expiration.** Users may only run the Products and Fixes according to the terms of this agreement. Users are only licensed to run the Products and Fixes during the Licensed Period. If this agreement is terminated, or if no extension or anniversary order is submitted prior to the expiration of the Licensed Period or the purchase of perpetual Licenses for the Products, then all Products and Fixes that run as a result of this agreement must be deleted when the Licensed Period expires or is otherwise earlier terminated.

Similarly, if Institution stops ordering any Products or Product quantities decrease upon an extension of a Licensed Period, it must delete those Products prior to the beginning of the extended Licensed Period. Institution must make reasonable efforts to ensure that Faculty and Staff work-at-home Users (1) delete and remove Products and Fixes copies from the temporary ram (RAM) and permanent memory (e.g., hard disk) of their home PCs, and (2) disconnect access to any server Products at the end of the Licensed Period.

e. **Modification or termination of an Online Service for regulatory reasons.** Microsoft may modify or terminate an Online Service in any country where there is any current or future government requirement or obligation that (1) subjects Microsoft to any regulation or requirement not generally applicable to businesses operating there, (2) presents a hardship for Microsoft to continue operating the Online Service without modification, and/or (3) causes Microsoft to believe these terms or the Online Service may be in conflict with any such requirement or obligation. For example, Microsoft may modify or terminate an Online Service in connection with a government requirement that would cause Microsoft to be regulated as a telecommunications provider.

f. **Program updates.** Microsoft may make a change to this program that will make it necessary for Institution to enter into a new agreement and Enrollment(s) at the time of an Enrollment renewal.

13. **Warranties.**

a. **Limited warranty.** Microsoft warrants that:

(i) Online Services will perform in accordance with the applicable Service Level Agreement; and

(ii) Products other than Online Services will perform substantially as described in the applicable Microsoft user documentation.

- b. Limited warranty term.** The limited warranty for:
- (i) Online Services is for the duration of Institution's use of the Online Service, subject to the notice requirements in the applicable Service Level Agreement; and
 - (ii) Products other than Online Services is one year from the date Institution first uses the Product.
- c. Limited warranty exclusions.** This limited warranty is subject to the following limitations:
- (i) any implied warranties, guarantees or conditions not able to be disclaimed as a matter of law last for one year from the start of the limited warranty;
 - (ii) the limited warranty does not cover problems caused by accident, abuse or use in a manner inconsistent with this agreement or the Product Use Rights, or resulting from events beyond Microsoft's reasonable control;
 - (iii) the limited warranty does not apply to components of Products that Institution is permitted to redistribute;
 - (iv) the limited warranty does not apply to free, trial, pre-release, or beta products; and
 - (v) the limited warranty does not apply to problems caused by the failure to meet minimum system requirements.
- d. Remedies for breach of limited warranty.** If Microsoft fails to meet any of the above limited warranties and Institution notifies Microsoft within the warranty period, then Microsoft will:
- (i) for Online Services, provide the remedies identified in the Service Level Agreement for the affected Online Service; and
 - (ii) for Products other than Online Services, at its option either (1) return the price paid or (2) repair or replace the Product.
- These are Institution's only remedies for breach of the limited warranty, unless other remedies are required to be provided under applicable law.
- e. DISCLAIMER OF OTHER WARRANTIES. OTHER THAN THIS LIMITED WARRANTY, MICROSOFT PROVIDES NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS. MICROSOFT DISCLAIMS ANY IMPLIED REPRESENTATIONS, WARRANTIES, OR CONDITIONS, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE, OR NON-INFRINGEMENT. THESE DISCLAIMERS WILL APPLY UNLESS APPLICABLE LAW DOES NOT PERMIT THEM.**

14. Defense of infringement, misappropriation, and third party claims.

- a. Microsoft's agreement to protect.** Microsoft will defend Institution against any claims made by an unaffiliated third party that any Product or Fix that is made available by Microsoft for a fee infringes that party's patent, copyright, or trademark or makes intentional unlawful use of its Trade Secret. Microsoft will also pay the amount of any resulting adverse final judgment (or settlement to which Microsoft consents). This section provides Institution's exclusive remedy for these claims.
- b. Limitations on defense obligation.** Microsoft's obligations will not apply to the extent that the claim or award is based on:
- (i) Customer Data, code, or materials provided by Institution as part of the use of an Online Service;
 - (ii) Institution's use of the Product or Fix after Microsoft notifies it to discontinue that use due to a third party claim;

- (iii) Institution's combination of the Product or Fix with a non-Microsoft product, data or business process;
- (iv) damages attributable to the value of the use of a non-Microsoft product, data or business process;
- (v) modifications that Customer makes to the Product or Fix;
- (vi) Institution's redistribution of the Product or Fix to, or its use for the benefit of, any unaffiliated third party, except as expressly permitted by an Enrollment or the Product Use Rights;
- (vii) Institution's use of Microsoft's trademark(s) without express written consent to do so; or
- (viii) any Trade Secret claim, where Institution acquires the Trade Secret (1) through improper means; (2) under circumstances giving rise to a duty to maintain its secrecy or limit its use; or (3) from a person (other than Microsoft or its Affiliates) who owed to the party asserting the claim a duty to maintain the secrecy or limit the use of the Trade Secret.

Institution will reimburse Microsoft for any costs or damages that result from any of these actions.

c. Specific rights and remedies in case of infringement.

(i) **Microsoft's rights in addressing possible infringement.** If Microsoft receives information concerning an infringement claim related to a Product or Fix, Microsoft may, at its expense and without obligation to do so, either:

- 1) procure for Institution the right to continue to use the allegedly infringing Product or Fix; or
- 2) modify the Product or Fix, or replace it with a functional equivalent, to make it non-infringing, in which case Institution will immediately cease use of the allegedly infringing Product or Fix after receiving notice from Microsoft.

(ii) **Institution's specific remedy in case of injunction.** If, as a result of an infringement claim, Institution's use of a Product or Fix that is made available by Microsoft for a fee is enjoined by a court of competent jurisdiction, Microsoft will, at its option:

- 1) procure the right to continue its use;
- 2) replace it with a functional equivalent;
- 3) modify it to make it non-infringing; or
- 4) refund the amount paid (or, for Online Services, refund any amounts paid in advance for unused Online Services) and terminate the license or right to access the infringing Product or Fix.

d. Institution's agreement to protect. Institution will defend Microsoft against any claims made by an unaffiliated third party that:

(i) any Customer Data or non-Microsoft software Microsoft hosts on Institution's behalf infringes the third party's patent, copyright, or trademark or makes intentional unlawful use of its Trade Secret; or

(ii) arise from Institution's or its end user's violation of the terms of this agreement.

Institution must pay the amount of any resulting adverse final judgment (or settlement to which Institution consents). This section provides Microsoft's exclusive remedy for these claims.

e. Obligations of protected party. Institution must notify Microsoft promptly in writing of a claim subject to the subsection titled "Microsoft's agreement to protect" and Microsoft must

notify Institution promptly in writing of a claim subject to the subsection titled "Institution's agreement to protect." The party invoking its right to protection must (1) give the other party sole control over the defense or settlement; and (2) provide reasonable assistance in defending the claim. The party providing the protection will reimburse the other party for reasonable out of pocket expenses that it incurs in providing assistance.

15. Limitation of liability.

- a. Limitation on liability.** To the extent permitted by applicable law, the liability of each party and its Affiliates arising under this agreement is limited to direct damages up to (1) for Products other than Online Services, the amount Institution was required to pay for the Product giving rise to that liability and (2) for Online Services, the amount Institution was required to pay for the Online Service giving rise to that liability during the prior 12 months. In the case of Products provided free of charge, or code that Institution is authorized to redistribute to third parties without separate payment to Microsoft, Microsoft's liability is limited to U.S. \$5,000. These limitations 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. However, these monetary limitations will not apply to:
- (i) Microsoft's and Institution's obligations under the section titled "Defense of infringement, misappropriation, and third party claims";
 - (ii) liability for damages caused by either party's gross negligence or willful misconduct, or that of its employees or its agents, and awarded by a court of final adjudication (provided that, in jurisdictions that do not recognize a legal distinction between "gross negligence" and "negligence," "gross negligence" as used in this subsection shall mean "recklessness");
 - (iii) liabilities arising out of any breach by either party of its obligations under the section entitled "Confidentiality", except that Microsoft's liability arising out of or in relation to Customer Data shall in all cases be limited to the amount Institution paid for the Online Service giving rise to that liability during the prior 12 months;
 - (iv) liability for personal injury or death caused by either party's negligence, or that of its employees or agents, or for fraudulent misrepresentation; and
 - (v) violation by either party of the other party's intellectual property rights.
- b. EXCLUSION OF CERTAIN DAMAGES. TO THE EXTENT PERMITTED BY APPLICABLE LAW, WHATEVER THE LEGAL BASIS FOR THE CLAIM, NEITHER PARTY, NOR ANY OF ITS AFFILIATES, WILL BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, OR INCIDENTAL DAMAGES, OR DAMAGES FOR LOST PROFITS, REVENUES, BUSINESS INTERRUPTION, OR LOSS OF BUSINESS INFORMATION ARISING IN CONNECTION WITH THIS AGREEMENT, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH POSSIBILITY WAS REASONABLY FORESEEABLE. HOWEVER, THIS EXCLUSION DOES NOT APPLY TO EITHER PARTY'S LIABILITY TO THE OTHER FOR VIOLATION OF ITS CONFIDENTIALITY OBLIGATIONS (EXCEPT TO THE EXTENT THAT SUCH VIOLATION RELATES TO CUSTOMER DATA), THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, OR THE PARTIES' RESPECTIVE OBLIGATIONS IN THE SECTION TITLED "DEFENSE OF INFRINGEMENT, MISAPPROPRIATION, AND THIRD PARTY CLAIMS."**
- c. Affiliates.** Neither Microsoft nor Institution shall bring any action against the other's Affiliates in respect of any matter disclaimed on their behalf in this agreement. Each party will indemnify the other in the event of any breach of this provision.

16. **Verifying compliance.**

- a. **Right to verify compliance.** Institution must keep records relating to the Products it and its Affiliates use or distribute. Microsoft has the right to verify compliance with the agreement, at Microsoft's expense during the term of the applicable Enrollment and for a period of one year thereafter.
- b. **Verification process and limitations.** To verify compliance, Microsoft will engage an independent accountant from an internationally recognized public accounting firm, which will be subject to a confidentiality obligation. Verification will take place upon not fewer than 30 days notice, during normal business hours, and in a manner that does not interfere unreasonably with Institution's operations. As an alternative, Microsoft will have the option to require Institution to complete Microsoft's self-audit questionnaire relating to the Products Institution and any of its Affiliates use under this agreement.

If Microsoft undertakes verification and does not find material unlicensed use (License shortage of 5 percent or more per Product), Microsoft will not undertake another verification of the same entity for at least one year. Microsoft and Microsoft's auditors will use the information obtained in compliance verification only to enforce Microsoft's rights and to determine whether Institution is in compliance with the terms of this agreement. By invoking the rights and procedures described above, Microsoft does not waive its rights to enforce this agreement or to protect its intellectual property by any other means permitted by law.

- c. **Remedies for noncompliance.** If verification or self-audit reveals any unlicensed use, Institution must promptly order sufficient Licenses to cover its use. If material unlicensed use is found, Institution must reimburse Microsoft for the costs Microsoft has incurred in verification and acquire the necessary additional Licenses as single retail Licenses within 30 days.
- d. Additionally, Institution must use reasonable efforts to make Users aware of the terms and conditions upon which they are allowed to run the Products. Accordingly, Institution must:
 - (i) Notify all Users in advance of running the Products that:
 - 1) their use of the Products is subject to the terms of this agreement, including but not limited to limitations on liability, disclaimer of warranties and exclusion of remedies;
 - 2) they are allowed to run the Products only during the Licensed Period;
 - 3) if this agreement is terminated, or Institution does not submit an Enrollment or extension order prior to the expiration of the Licensed Period or purchase perpetual Licenses for the Products, then all Products run under this agreement must be deleted when the Licensed Period expires or is otherwise earlier terminated, whichever is first;
 - (ii) Periodically publish in an Institution wide publication and applicable web sites a reference to the location (either physical or on a computer network) where they can view the Product List and Product use rights. Microsoft publishes a copy of the Product List and Product use rights at <http://www.microsoft.com/licensing/>;
 - (iii) Notify Microsoft immediately if Institution becomes aware of any actual or potential violation of this agreement; and
 - (iv) Provide all reasonable assistance and cooperation as requested by Microsoft to investigate and remedy any unauthorized use of the Products by Users.

If Institution complies with this section, Institution will not be responsible for Student Users' failure to comply with the terms of this agreement.

17. *Miscellaneous.*

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

Copies should be sent to:

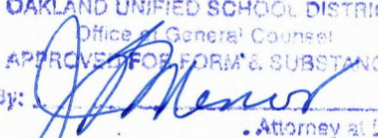
Microsoft Corporation
Legal and Corporate Affairs
Volume Licensing Group
One Microsoft Way
Redmond, WA 98052
USA
Via Facsimile:(425) 936-7329

- b. **No transfer of ownership.** Microsoft does not transfer any ownership rights in any licensed Product. Microsoft reserves all rights not specifically granted. The Products are protected by copyright and other intellectual property rights laws and international treaties.
- c. **Severability.** If a court holds any provision of this agreement to be illegal, invalid or unenforceable, the rest of the document will remain in full force and effect and this agreement will be amended to give effect to the portion of the agreement that was eliminated to the maximum extent possible. However, this agreement will be voidable by Microsoft at its option if provisions of this agreement regarding warranty disclaimers, damages disclaimers, limitations of liability, compliance verification, or obligations on termination are found to be invalid or unenforceable.
- d. **Waiver.** A waiver of any breach of this agreement is not a waiver of any other breach. Any waiver must be in writing and signed by an authorized representative of the waiving party.
- e. **Resellers and other third parties cannot bind Microsoft.** Resellers and other third parties do not have authority to bind or impose any obligation or liability on Microsoft.
- f. **This agreement is not exclusive.** Institution is free to enter into agreements to license, use or promote non-Microsoft Products or services.
- g. **Entire agreement.** The documents identified on the cover page of this agreement constitute the entire agreement concerning the subject matter, and supersede any prior or contemporaneous communications. In the case of a conflict between any documents identified in the first page that is not resolved expressly in the documents, their terms will control in the following order: (1) these terms and conditions and the signature form; (2) the Product List; (3) the Product Use Rights; and (4) all other Enrollments under this agreement. The terms of any purchase order or any general terms and conditions Institution or its Users maintain do not apply. This agreement (except the Product use rights, the Product List and the terms of any credit extending under any Enrollment) can be changed only by an amendment signed by both parties.
- h. **Assignment.** Assignment or transfer of this agreement or the rights or obligations, must have Microsoft's prior written approval. Microsoft may transfer this agreement or its rights and obligations to one of Microsoft's Affiliates.
- i. **Survival.** Provisions regarding ownership and license rights, fees, Product Use Rights, restrictions on use, evidence of perpetual Licenses, transfer of Licenses, warranties, defense

of infringement, misappropriation and third party claims, Microsoft's and Institution's obligations to protect each other, limitations of liability, confidentiality, compliance verification, obligations on termination or expiration and the other provisions in this section entitled "Miscellaneous" will survive termination or expiration of this agreement or any Enrollment.

- j. **Advisor fee.** Microsoft, or its Affiliates, sometimes pays fees to software advisors or other third parties authorized by Microsoft or one of its Affiliates. The fees are in exchange for their advisory services. The payment of fees depends upon several factors, including the type of agreement under which Institution orders Licenses, which Licenses are ordered, and whether Institution chooses to use an advisor. The fee amounts increase with the size of the orders placed under this agreement.
- k. **Applicable law, venue, and jurisdiction.** This agreement is governed by the laws of the state where Institution is organized or formed. Both parties agree that the federal courts have exclusive jurisdiction over disputes under this agreement and the resolution. Any legal actions relating to this agreement must be brought in a court of competent jurisdiction within federal courts located in the jurisdiction of the state where Institution is organized, and the parties agree that jurisdiction and venue in such courts is appropriate.
- l. **U.S. export jurisdiction.** Products and Fixes are subject to U.S. export jurisdiction. Institution will comply with all U.S. Export Administration Regulations and International Traffic in Arms Regulation requirements as well as all end-user, end-use, and destination restrictions issued by the U.S. and other governments applicable to this agreement. For additional information, see <http://www.microsoft.com/exporting/>.
- m. **Privacy.** Microsoft and Institution will comply with all applicable privacy and data protection laws and regulations. Institution may choose to provide personal information to Microsoft on behalf of third parties (including, Institution's contacts, resellers, distributors, and administrators) as part of this agreement. Institution represents and warrants that it has complied and will comply with any applicable laws to provide notices to or obtain permissions from any such individuals to allow sharing of their personal information with Microsoft for the purpose of allowing Microsoft or its agents to facilitate Institution's agreements and related services.

Institution consents to Microsoft's use of the contact information provided by Institution for purposes of administering its agreements, the business relationship and related services and with Microsoft's sharing of Institution's information with Institution's designated representatives, resellers, distributors, and administrators for such purposes, including allowing such individuals to update Institution's contact information on Institution's behalf. The personal information Institution provides in connection with this agreement will be used and protected according to the privacy statement available at <https://www.microsoft.com/licensing/servicecenter> to the maximum extent permitted by applicable law. Product-specific privacy commitments are described in the Product Use Rights.
- n. **Natural disaster.** In the event of a natural disaster, Microsoft may provide additional assistance or rights by posting them on <http://www.microsoft.com> at such time.

OAKLAND UNIFIED SCHOOL DISTRICT
Office of General Counsel
APPROVED FOR FORM & SUBSTANCE
BY: 
Attorney at Law