



# ONEIDA COUNTY BOARD OF LEGISLATORS

ONEIDA COUNTY OFFICE BUILDING ♦ 800 PARK AVENUE ♦ UTICA, N.Y. 13501-2977

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(315) 798-5404

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Minority Leader

## COMMUNICATIONS WITH DOCUMENTATION FOR THE DECEMBER 23, 2020 MEETING

(Correspondence relating to upcoming legislation, appointments, petitions, etc.)

<u>FILE NO.</u>	<u>COMMITTEE</u>	<u>PAGES</u>
2020-368 . . .	Health and Human Services, Ways & Means.....	
2020-369 . . .	Health and Human Services, Ways & Means.....	
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2020-372 . . .	Health & Human Services, Ways & Means .....	
2020-373 . . .	Health and Human Services, Ways & Means.....	
2020-374 . . .	Airport, Ways & Means.....	
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2020-376 . . .	Government Operations, Ways & Means .....	
2020-377 . . .	Government Operations, Ways and Means.....	
2020-378 . . .	Ways & Means.....	
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# ONEIDA COUNTY HEALTH DEPARTMENT

Adirondack Bank Building, 5<sup>th</sup> Floor, 185 Genesee St., Utica, NY 13501

ANTHONY J. PICENTE, JR.  
ONEIDA COUNTY EXECUTIVE



PHYLLIS D. ELLIS, BSN, MS,  
F.A.C.H.E.  
DIRECTOR OF HEALTH

## ADMINISTRATION

Phone: (315) 798-6400 • Fax: (315) 266-6138 • Email: [publichealth@ocgov.net](mailto:publichealth@ocgov.net)

October 28, 2020

FN 20 20 368

Anthony J. Picente, Jr.  
Oneida County Executive  
800 Park Avenue  
Utica, New York 13501

HEALTH & HUMAN SERVICES  
WAYS & MEANS

Dear Mr. Picente:

Attached are two (2) copies of an agreement between the County of Oneida through its Health Department and City of Utica for the purchase of an XRF machine which detects lead. The City of Utica will use \$15,690.00 of grant funding received from the New York State Department of Health to purchase the machine which will be owned by Oneida County and operated by its Health Department for the Lead Poisoning Prevention Program (LPPP).

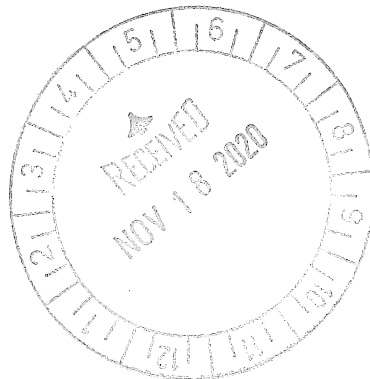
This is a one-time purchase and supports programs mandated by Public Health Law. If this agreement meets with your approval, please forward to the Board of Legislators for consideration at their next meeting.

Sincerely,

*Phyllis D. Ellis PB*

Phyllis D. Ellis, BSN, MS, F.A.C.H.E.  
Director of Health

Attachments  
CM



Reviewed and Approved for submittal to the  
Oneida County Board of Legislators by

*Anthony J. Picente, Jr.*  
County Executive

Date 11-18-20

Oneida Co. Department: Public Health

Competing Proposal \_\_\_\_\_  
Only Respondent \_\_\_\_\_  
Sole Source RFP \_\_\_\_\_  
Other   X  

**Name & Address of Vendor:** City of Utica  
1 Kennedy Plaza  
Utica, NY 13502

**Title of Activity or Service:** Agreement for City of Utica to pay for an XRF machine to detect lead hazards.

**Proposed Dates of Operation:** Single purchase

**Population/Number to be Served:** Oneida County

**Summary Statements**

**1) Narrative Description of Proposed Services**

The City of Utica will use \$15,690.00 of its grant funding from the NYS Department of Health to purchase an XRF machine which detects lead.

**2) Program/Service Objectives and Outcomes: NA**

**3) Program Design and Staffing: N/A**

**Total Funding Requested:** \$0.00 Account A4015

**Oneida County Dept. Funding Recommendation:** \$0.00

**Proposed Funding Sources (Federal \$/ State \$/County \$):** No funding needed

**Cost Per Client Served:** N/A

**Past Performance Data:** N/A

**O.C. Department Staff Comments:**

## AGREEMENT

THIS AGREEMENT, made and entered into by and between the City of Utica, a municipal corporation incorporated under the laws of New York State, having its principal offices at 1 Kennedy Plaza, Utica, New York 13502 (hereinafter referred to as the "City"), and Oneida County, a municipal corporation organized and existing under the laws of the State of New York, by and through its Health Department, having principal offices at the Oneida County Office Building, 800 Park Avenue, Utica, New York 13501 (hereinafter collectively referred to as the "County").

## WITNESSETH

WHEREAS, City was awarded a \$155,000.00 grant from the New York state department of Health for "City-County Coordination to Prevent Lead Poisoning," ("Grant").

WHEREAS, as part of the grant, an X-ray Fluorescence Spectroscopy ("XRF" or "Equipment") is to be purchased by the City on behalf of the County.

WHEREAS, The County will own and manage the XRF.

WHEREAS, the City agrees to use Grant funds in the amount of \$15,690.00 to purchase for the County the XRF, subject to the terms and conditions set forth herein.

NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE PARTIES AS FOLLOWS:

### I. EQUIPMENT TO BE PURCHASED

City shall order and pay for, through its Purchasing Department, the XRF more fully described in the attached quote sheet, referred to herein as Exhibit A. Equipment shall be delivered to:

Oneida County Health Department  
185 Genesee Street, 4th floor  
Utica, NY 13501-2101  
Attention: Francis Zimmer  
Phone: 315-798-5064

County will accept said Equipment upon delivery.

### II. PROOF OF OWNERSHIP

County agrees that it will be the sole and original owner of said Equipment. Upon receipt of the Equipment, County will forward to City, within 5 days of receipt, a copy of any bill of sale

or other document that demonstrates County's receipt and ownership of the Equipment. Said documentation shall be sent to:

Kathryn F. Hartnett  
Office of the Corporation Counsel  
Utica City Hall  
1 Kennedy Plaza  
Utica, New York 13502

County, as the sole and original owner of the Equipment, agrees that it is solely responsible for the use, storage, and maintenance of the Equipment. County further agrees that City is not responsible for any defects in the Equipment and that in the event there is any defect in the equipment, County is solely responsible for notifying the manufacturer and/or distributor from which the Equipment was purchased and for negotiating a resolution in the event such a defect is identified.

### III. OTHER REPRESENTATIONS AND WARRANTIES

County represents and warrants that it is authorized to use, possess, maintain, or otherwise own an XRF, pursuant to all licensing requirements, laws and regulations including but not limited to Title 10, Chapter 1, Part 16 of the New York Code of Rules and Regulations (10 NYCRR 16) and New York State Public Health Law, Section 225.

### IV. INDEMNIFICATION

The City is a funding source only and does not participate in or direct County or any of the activities or services of the County in connection with its ownership of the XRF. Accordingly, the County understands and agrees that the City, its directors, officers, employees, and agents shall not be liable for any of the County's contracts, torts, or other acts or omissions, or those by the County's directors, officers, members, employees, agents, contractors or volunteers. The County understands and agrees that the City's insurance policies do not extend to or protect the County, nor the County's directors, officers, members, employees, agents, contractors, or volunteers. The County understands and agrees that the City will not provide any legal defense for the County or any such person(s) in the event of any claim against any or all of them. The County shall indemnify and hold the City, its directors, officers, employees, and agents harmless from all liability, including, but not limited to, the costs of defense from the contracts, torts, or other acts or omissions of the County, its employees, directors, officers, employees, agents, contractors or volunteers, in any way connected with any activity of the County, including, but not limited to, use, ownership, maintenance and/or storage of the XRF.

V. NO GUARANTEE OF FUTURE FUNDING

Provision of this grant does not imply any future funding commitment by the City.

VI. CHOICE OF VENUE

If either party elects to commence litigation against the other in connection with any matter relating to or arising out of this Agreement, it shall do so in a New York State Court of Competent Jurisdiction sitting in Oneida County, New York or in the United States District Court for the Northern District of New York.

VII. ENTIRE AGREEMENT

The terms of this Agreement, including any attachments, amendments, addendums or appendixes attached hereto, constitute the entire understanding and agreement of the parties and cancel or supersede all prior negotiations, representations, understandings or agreements, whether written or oral, with respect to the subject matter of this Agreement. By signing below, the parties agree and acknowledge that they have read, understood and agreed to all the terms contained in any addenda attached hereto.

*[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year below written.

Date: \_\_\_\_\_

Oneida County: \_\_\_\_\_

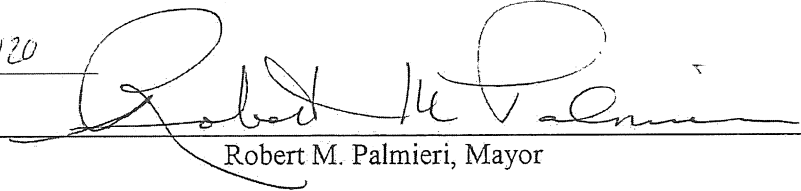
Anthony J. Picente, Jr., County Executive

\*\*\*\*\*

Date: \_\_\_\_\_

\*\*\*\*\*

Date: 11/12/2020

  
\_\_\_\_\_

City of Utica: \_\_\_\_\_  
Robert M. Palmieri, Mayor

Approved: \_\_\_\_\_

Ellen Rayhill, Assistant County Attorney

**SALES QUOTATION**

Quote #	Quote Date	Exp Delivery Time	Page
TMA-RS-1587	10/8/20	3 - 4 Weeks ARO	1 of 9
Payment Terms	Quote valid until	Shipping Method	Inco Terms
Net 30 (with approved credit)	12/31/20	Fed Ex 2 <sup>nd</sup> Day	FOB Origin
Sales Contact	Bob Spozarski		
Contact Phone	412-848-8814		

City of Utica  
1 Kennedy Plaza  
Utica, NY 13502  
Attention: Ms. Pam Wells  
Phone: 315-792-0100

Dear Ms. Wells:

Thank you for your interest in handheld Thermo Scientific Niton x-ray fluorescence (XRF) analyzers and for giving us the opportunity to earn your business. Attached is the information you requested. We have worked hard to become the worldwide market leader in handheld XRF analysis, as well as one of the fastest growing business units within Thermo Fisher Scientific. Following are just a few of the many features and benefits that make our instrument the best value for reliability, versatility, and performance.

- **Outstanding Service and Support** keep the analyzer in optimal working order
- **Exceptional ergonomics** – superior balance of size and weight.
- **Easy-to-navigate software system** with large characters for error-free data input. Go from start-up to testing in three easy steps!
- **High-strength, rugged, environmentally sealed housing** protects internal components from unwanted dirt, dust, heat, moisture, etc.
- **Fastest throughput** of any handheld XRF analyzer on the market – typical time for routine positive grade identification is less than two seconds.
- **Unmatched battery use time** – 8-12 hours between charges!
- **Multiple safety features**, such as proximity buttons and count-rate proximity sensors.
- **A strong commitment to Research and Development** continues to drive greater reliability through technological innovation that smaller competitors cannot match.
- **Free Radiation Safety and Operational training** at any Thermo Scientific Niton analyzer class for the life of the analyzer.

I look forward to working with you and appreciate the opportunity to present our products. Please let me know if you have any questions or require additional information. Thank you again.

Sincerely,

*Bob Spozarski*

Bob Spozarski

For additional information or to place an order:

Call (toll free): 800-875-1578  
Call (outside the US): 978-670-7460  
Fax: 877-680-2568  
eMail: [PEA.Sales.opps@thermofisher.com](mailto:PEA.Sales.opps@thermofisher.com)

Additional instructions, terms and conditions on last page




October 8, 2020

QUOTE NUMBER TMA-RS-1587

We are pleased to provide the following quotation requested in support of our Niton XLp300 Lead Paint Analyzer. This proposal is valid 30 days from the above date:

XLp 300 Lead Paint Analyzer

Product Name	Standard Features	Standard Calibration	Purchase Price
<p>XLp 300 Lead Paint Analyzer</p> 	<ul style="list-style-type: none"> <li>➤ Two rechargeable battery packs providing 12+ hour operation between recharges</li> <li>➤ Battery charger</li> <li>➤ AC Power Supply</li> <li>➤ Carrying case</li> <li>➤ PC connection cable</li> <li>➤ SpectraView™ element scanner</li> <li>➤ Integrated touch screen display</li> <li>➤ "Virtual" keyboard</li> <li>➤ User-programmable quick-pick data entry fields</li> <li>➤ Integrated barcode scanner and barcode generator for sample ID input</li> <li>➤ On-site operator training.</li> <li>➤ NDT© software suite including remote control operation via PC, data analysis and certificate print capabilities</li> <li>➤ Belt Holster</li> </ul>	<p>Lead Paint Analysis Program provides top-performing industrial lead paint analysis.</p>	<p>Lead Paint Analysis</p> <p>Configured with 40 mCi Cd-109 isotope</p> <p><b><u>PURCHASE PRICE:</u></b>  List Price.....\$19,995.00  Government Discount-<u>\$ 4,500.00</u></p> <p><b><u>Total Price.....\$15,495.00</u></b>  <b><u>(+ \$195 Shipping &amp; Handling)</u></b></p>

October 8, 2020

**QUOTE NUMBER TMA-RS-1587**

**Warranty and Extended Warranty Options**

<i>Option</i>	<i>Price</i>
12 month Limited warranty (batteries, accessories and routine maintenance are not included)	<b>Included</b>
12 Month Limited Warranty Extension. Price per 12-month extension up to maximum of 60 total months of warranty.	<b>\$1,995.00</b>
<b>Delivery:</b>	30 Days ARO, subject to completion of training and licensing/registration requirements, if any.
<b>Terms:</b>	Cash in Advance (CIA) or Net 30 <b>on approved accounts.</b>
<b>Shipping:</b>	FOB Tewksbury, MA. FedEx 2 <sup>nd</sup> Day Service <b>Instrument: \$120</b>

Please apply applicable Taxes – If tax exempt please supply certificate with purchase order.

Terms: Cash in Advance (CIA), Purchase Order (PO), or Net 30.

Due to ongoing development and continual product improvement, product specifications are subject to change without notice.

Kind Regards,

*Bob Spozarski*

**SALES QUOTATION**

Quote #	Quote Date	Exp Delivery Time	Page
TMA-RS-1587	10/8/20	3 - 4 Weeks ARO	1 of 9
Payment Terms	Quote valid until	Shipping Method	Inco Terms
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Sales Contact	Bob Spozarski		
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City of Utica  
1 Kennedy Plaza  
Utica, NY 13502  
Attention: Ms. Pam Wells  
Phone: 315-792-0100

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- **Free Radiation Safety and Operational training** at any Thermo Scientific Niton analyzer class for the life of the analyzer.

I look forward to working with you and appreciate the opportunity to present our products. Please let me know if you have any questions or require additional information. Thank you again.

Sincerely,

*Bob Spozarski*

Bob Spozarski

For additional information or to place an order:

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 Call (outside the US): 978-670-7460  
 Fax: 877-680-2568  
 eMail: [PEA.Sales.opp@thermofisher.com](mailto:PEA.Sales.opp@thermofisher.com)


Additional instructions, terms and conditions on last page

October 8, 2020

QUOTE NUMBER TMA-RS-1587

We are pleased to provide the following quotation requested in support of our Niton XLP300 Lead Paint Analyzer. This proposal is valid 30 days from the above date:

**XLP 300 Lead Paint Analyzer**

Product Name	Standard Features	Standard Calibration	Purchase Price
<p>XLP 300 Lead Paint Analyzer</p> 	<ul style="list-style-type: none"> <li>➤ Two rechargeable battery packs providing 12+ hour operation between recharges</li> <li>➤ Battery charger</li> <li>➤ AC Power Supply</li> <li>➤ Carrying case</li> <li>➤ PC connection cable</li> <li>➤ SpectraView™ element scanner</li> <li>➤ Integrated touch screen display</li> <li>➤ "Virtual" keyboard</li> <li>➤ User-programmable quick-pick data entry fields</li> <li>➤ Integrated barcode scanner and barcode generator for sample ID input</li> <li>➤ On-site operator training.</li> <li>➤ NDT® software suite including remote control operation via PC, data analysis and certificate print capabilities</li> <li>➤ Belt Holster</li> </ul>	<p>Lead Paint Analysis Program provides top-performing industrial lead paint analysis.</p>	<p>Lead Paint Analysis</p> <p>Configured with 40 mCi Cd-109 isotope</p> <p><b><u>PURCHASE PRICE:</u></b></p> <p>List Price.....\$19,995.00</p> <p>Government Discount-\$ 4,500.00</p> <p><b><u>Total Price.....\$15,495.00</u></b></p> <p><b><u>(+ \$195 Shipping &amp; Handling)</u></b></p>

October 8, 2020

**QUOTE NUMBER TMA-RS-1587**

**Warranty and Extended Warranty Options**

<i>Option</i>	<i>Price</i>
<b>12 month Limited warranty</b> (batteries, accessories and routine maintenance are not included)	<b>Included</b>
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<b>Delivery:</b>	30 Days ARO, subject to completion of training and licensing/registration requirements, if any.
<b>Terms:</b>	Cash in Advance (CIA) or Net 30 on <b>approved accounts</b> .
<b>Shipping:</b>	FOB Tewksbury, MA. FedEx 2 <sup>nd</sup> Day Service <b>Instrument: \$120</b>

Please apply applicable Taxes – If tax exempt please supply certificate with purchase order.

Terms: Cash in Advance (CIA), Purchase Order (PO), or Net 30.

Due to ongoing development and continual product improvement, product specifications are subject to change without notice.

Kind Regards,

*Bob Spozarski*

Anthony J. Picente, Jr.  
County Executive



Colleen Fahy-Box  
Commissioner

**ONEIDA COUNTY DEPARTMENT OF FAMILY AND COMMUNITY SERVICES**  
**Commissioner's Office**  
**COUNTY OFFICE BUILDING ~ 800 PARK AVENUNE ~ UTICA, NY 13501**  
**PHONE: 315-798-5733 ~ FAX: 315-798-5218**

November 17, 2020

FN 20 20-369

Honorable Anthony J. Picente, Jr.  
Oneida County Executive  
800 Park Avenue  
Utica, New York 13501

HEALTH & HUMAN SERVICES

WAYS & MEANS

Dear Mr. Picente:

Attached for your review and approval is the renewal of the Purchase of Service Agreement between Oneida County, through its Department of Family and Community Services (Department of Social Services), and the YWCA of the Mohawk Valley.

This Purchase of Service Agreement provides advocacy services for victims of sexual and/or severe physical abuse. The Advocates receive specialized training in child abuse investigation and court processes. They support both child victims and their non-offending family members. The Advocates' support encourages families to cooperate with law enforcement and service providers, thereby promoting better outcomes for the victim and the community.

The Child Advocacy Center is a model program with a multidiscipline team approach. It protects child victims while reducing the trauma associated with such abuse and prosecuting the perpetrators.

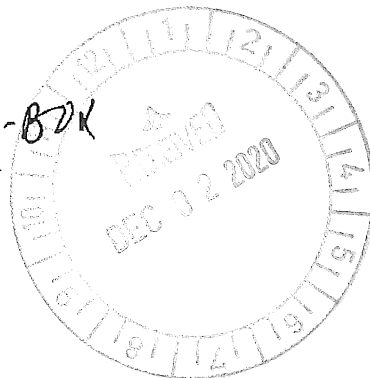
The cost of this Agreement is \$92,782.00 from October 1, 2020 through September 30, 2021. The local cost to support this effort is 27.18% or \$25,218.15.

I respectfully request the approval of this renewal to protect the children of Oneida County and ask that you forward this to the Board of Legislators for consideration. Thank you for your consideration.

Sincerely,

*Colleen Fahy-Box*  
Colleen Fahy-Box  
Commissioner

CFB/tms  
attachment



Reviewed and Approved for submittal to the  
Oneida County Board of Legislators by

*Anthony J. Picente, Jr.*  
Anthony J. Picente, Jr.  
County Executive

Date 12.2.20

# 17903

Oneida Co. Department Family and Community Services      Competing Proposal  
(Social Services)      Only Respondent   X    
Sole Source RFP \_\_\_\_\_

**Oneida County Board of  
Legislators Summary**

**Name of Proposing Organization:** YWCA of the Mohawk Valley  
1000 Cornelia Street  
Utica, New York 13502

**Title of Activity or Services:** First Renewal Advocacy Services to provide advocacy and guidance for Child Sexual Abuse victims or alleged victims and their families.

**Proposed Dates of Operation:** October 1, 2020 through September 30, 2021

**Client Population/Number to be Served:** Children and their families who are victims or alleged victims of Child Sexual Abuse

**SUMMARY STATEMENTS**

**1). Narrative Description of Proposed Services**

The Agreement is to provide services to assist child victims and their non-offending family members dealing with the aftermath of child sexual abuse and/or severe physical abuse. The Contractor will provide child victims and their non-offending family members with supportive services in a compassionate and understanding manner to reduce the trauma and to support the child and family to heal and move forward.

Children who have been sexually abused and/or severely physically abused need to feel safe when disclosing the trauma they have suffered. The Child Abuse Advocates will accompany the children and their non-offending family members throughout all processes of this disclosure, including medical interview, exam, contact with law enforcement, and judicial proceedings. The role of the advocate is supportive, informative and continuous. The Advocates are also active members of the Child Advocacy Center multidisciplinary team.

**2). Program/Service Objectives and Outcomes**

**Outcome:** Assist child victims and non-offending family members in dealing with victimization in a manner to minimize trauma associated with sexual and/or severe physical abuse.

**Performance:** Victim advocates will be present at initial interviews, medical interviews and examinations, contact with law enforcement, and judicial proceedings, or any other meetings. Advocates support the victims, facilitate victims' future disclosures, and promote a coordinated response by the CAC team in regards to serious abuse cases. In their role, the advocates will provide 24-hour crisis intervention and maintain regular contact with the victim and/or family. These services

will be offered in a manner that reflects cultural competence and family-focused planning.

**3). Program Design and Staffing Level** – Two full-time Child Sexual Abuse Advocates. Full case coverage will be provided.

**Total Funding Requested:** \$ 92,782.00

**Oneida County Dept. Funding Recommendation:** Account #: A6011.49537

**Mandated or Non-mandated Service:** Mandated

**Proposed Funding Source (Federal \$ /State \$ / County \$):**

Federal	38.39 %	= \$ 35,619.00
State	34.43 %	= \$ 31,944.85
Local	27.18 %	= \$25,218.15

**Cost Per Client Served:**

**Past performance Served:** The YWCA was awarded this contract by RFP.

**O.C. Department Staff Comments:** The Department is satisfied with this contractor.



**THIS AGREEMENT**, made and entered into by and between the County of Oneida, a municipal corporation organized and existing pursuant to the laws of the State of New York and having its principal offices at the Oneida County Office Building, 800 Park Avenue, Utica, New York 13501 (hereinafter referred to as the "County"), through its Department of Family and Community Services, Department of Social Services (hereinafter referred to as the "Department"), and the YWCA of the Mohawk Valley, a domestic not-for profit corporation organized and existing pursuant to the laws of the State of New York and having its principal offices at 7 Rutger Park, Utica, New York 13501 (hereinafter referred to as the "Contractor").

**WITNESSETH:**

**WHEREAS**, the County and the Contractor entered into an agreement whereby the Contractor provides services to the Department for advocacy and guidance for child victims of sexual or severe physical abuse and their non-offending family members within Oneida County, hereinafter referred to as the "Original Agreement" (County contract # 90029), a copy of which is attached hereto as Exhibit "A." The Original Agreement was in effect from October 1, 2019 through September 30, 2020; and

**WHEREAS**, the Original Agreement included terms allowing the County to renew this annual agreement once; and

**WHEREAS**, the parties are desirous of entering into a First Renewal to the Original Agreement regarding the following provisions,

**NOW THEREFORE**, in consideration of the mutual promises made herein, the parties hereto agree as follows:

1. The First Renewal to the Original Agreement (County contract #90029) shall commence October 1, 2020 and terminate September 30, 2021.
2. The County's total reimbursement to the Contractor for the term of this First Renewal Agreement shall not exceed Ninety-Two thousand Seven hundred eighty two dollars (\$92,782.00).
  - a. The monthly payment from October 1, 2020 through August 31, 2021 shall be \$7,731.83.
  - b. The monthly payment from September 1, 2021 through September 30, 2021 shall be \$7,731.87.
3. All other terms of the Original Agreement remain in effect without change or alteration.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year written below.

\*\*\*\*\*

Date: \_\_\_\_\_

Oneida County Executive: \_\_\_\_\_  
Anthony J. Picente, Jr., Oneida County Executive

\*\*\*\*\*

Approved: \_\_\_\_\_  
Kimberly A. Kolch, Assistant County Attorney

\*\*\*\*\*

Date: 11/30/20

Oneida County Department of Social Services: Colleen Fahy-Box  
Colleen Fahy-Box, Commissioner

\*\*\*\*\*

Date: 11/19/20

YWCA of the Mohawk Valley: Dianne Stancato  
Dianne Stancato, Chief Executive Officer

\*\*\*\*\*

AGREEMENT

**THIS AGREEMENT**, made and entered into by and between the County of Oneida, a municipal corporation organized and existing pursuant to the laws of the State of New York and having its principal offices at the Oneida County Office Building, 800 Park Avenue, Utica, New York 13501 (hereinafter referred to as the "County"), through its Department of Social Services (hereinafter referred to as the "Department"), and the YWCA of the Mohawk Valley, a domestic not-for profit corporation organized and existing pursuant to the laws of the State of New York and having its principal offices at 7 Rutger Park, Utica, New York 13501 (hereinafter referred to as the "Contractor").

**WHEREAS**, the Department has the need to provide advocacy and guidance for child victims of sexual or severe physical abuse and their non-offending family members within Oneida County; and

**WHEREAS**, the Contractor has the knowledge, skill and expertise to provide the needed services to the Department; and

**WHEREAS**, the County has determined that the amount of funds to be paid to the Contractor is fair and reasonable to provide such services; and

**NOW THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE COUNTY AND THE CONTRACTOR AS FOLLOWS:**

**A. TERM AND TERMINATION OF AGREEMENT**

1. The term of this Agreement shall be from October 1, 2019 through September 30, 2020.
2. The option to renew this Agreement, under all current terms and conditions, for one (1) additional one-year term, shall be at the sole discretion of the County . Notice to the Contractor of any renewal or extension shall be provided by the County to the Contractor prior to the end of the term of this Agreement.
3. The County may terminate this Agreement upon thirty (30) days written notice to the Contractor for any reason, or immediately for cause, upon written notice to the Contractor.

**B. SCOPE OF SERVICES**

1. The purpose of this Agreement is to assist child victims and their non-offending family members (hereinafter collectively, the "Victims") to move forward in their lives following child sexual abuse and/or severe physical abuse.

2. The Contractor shall provide two (2) Child Sexual Abuse Victim Advocates (collectively, the "Advocates") to work with the Victims.
3. The Advocates shall be trained sexual violence advocates, specifically, family advocates and certified as such by the New York State Department of Health.
4. The Advocates shall provide the Victims with supportive services in a compassionate and understanding manner, which shall enable the Victims to begin healing from the trauma of child sexual abuse and/or severe physical abuse.
5. The Contractor shall develop and promote a coordinated response to child sexual abuse and/or severe physical abuse, facilitate future disclosures and collaborate efforts with other Child Advocacy Center (CAC) team members, including law enforcement, child protective workers, medical personnel and mental health providers.
6. The Contractor shall provide staffing as follows:
  - a. The Contractor shall ensure that the Advocates assigned to perform services under this Agreement have earned a four-year degree in the subject of psychology, human development, childhood development, social work, human services, sociology or a related field.
  - b. The Contractor shall ensure that the Advocates assigned to perform services under this Agreement possess a valid driver's license.
7. The Contractor shall ensure that services under this Agreement are available twenty-four (24) hours per day, seven (7) days per week, as follows:
  - a. The Contractor shall ensure that at all times during the regular business hours of the CAC, at least two (2) Advocates are working on-site at the CAC.
  - b. The Contractor shall ensure that Advocates are available on an "on-call" basis to respond as needed after regular business hours of the CAC. "On-call" shall be defined as a minimum of one (1) Advocate that is available to respond on-site to the location where they are needed should a case be received after the regular business hours of the CAC, or during any other non-traditional hour.
8. Services to be provided by the Contractor, both during regular business hours of the CAC and on-call, shall include, but not be limited to:
  - a. Respond to the Victims at the initial reporting of alleged child sexual abuse and/or severe physical abuse;

- b. Provide crisis intervention, advocacy/accompaniment and information/referrals to the Victims throughout the initial interview and investigation process;
- c. Provide the Victims with supportive information regarding the law enforcement , investigation , and court proceedings medical services and all other proceedings pertaining to the allegation of child sexual abuse/severe physical abuse;
- d. Schedule on-site forensic medical exams for the Victims and accompany them to ; said exams.
- e. Schedule initial on-site counseling appointments with CAC mental health subcontractors for the Victims as needed;
- f. Provide advocacy, accompaniment and support, during the initial disclosure, interview and forensic medical exam to the Victims as needed;
- g. Provide follow-up services with the Victims as required by each case circumstance, including, but not limited to, monthly home visits and weekly phone contact;
- h. Participate in CAC meetings, case reviews, case planning discussion and training as required to fulfill the obligations of this Agreement;
- i. Provide progress notes detailing pertinent case related contacts and information;
- j. The Advocates shall be supervised by the Contractor's supervisory staff, with basic oversight by the CAC to the extent it is necessary to ensure adequate coverage and provision of services.
- k. The Advocates shall make contact with the Victims independent of medical exams, court appearances, interviews and counseling sessions as directed by CAC staff. The Advocates shall have contact with the Victims in their home at least once per month for the duration of the open case. In addition, the Advocates shall have weekly phone contact with the Victims for the duration of the open case;
- l. The Advocates shall keep the child protective caseworker and law enforcement investigator assigned to the case informed of case developments;
- m. The Contractor shall make every effort to ensure continuity of services between the Victims and the assigned Advocates. This shall mean that the Contractor shall ensure that the same Advocate provides service to the Victims from case initiation to case conclusion in order to promote a stable and trusting relationship between the Advocate and the Victims and minimize further trauma.

- n. The Contractor shall comply with all laws, regulations and Department procedures, including, but not limited to all standards for Child Sexual Abuse Victim Advocacy services prescribed by federal, state and local law.
- o. The Advocates shall build an effective relationship by: establishing trust; empowering the Victims; encouraging candor; and providing clear, honest, supportive and accurate information;
- p. The Advocates shall act as the voice for the Victims until he or she can speak for himself or herself;
- q. The Advocates shall respect the rights of the Victims;
- r. The Advocates shall provide support, coaching and direction through home visits and telephone calls;
- s. The Advocates shall provide referrals, facilitate access and coordinate services for the Victims;
- t. The Advocates shall obtain language translation or interpretation services when needed;
- u. The Advocates shall assist the Victims in advocating for themselves to strengthen and reclaim control;
- v. The Advocates shall share and help the Victims to recognize hope, positive experiences and to identify and build on strengths.

C. PERFORMANCE OF SERVICES

- 1. The Contractor represents that the Contractor has the qualifications, the specialized skill(s), the experience and the ability to properly perform the services. The Contractor shall use its best efforts to perform the services such that the results are satisfactory to the County and the Department. The Contractor shall be solely responsible for determining the method, details and means of performing the services, except where federal, state or local laws and regulations impose specific requirements on performance of the same.
- 2. The Contractor may, at its own expense, employ or engage the services of such employees, subcontractors and/or partners as the Contractor deems necessary to perform the services (collectively, the "Assistants"). The Assistants are not and shall not be deemed employees of the County, and the County shall have no obligation to provide the Assistants with any salary or benefits. The Contractor shall be solely responsible and shall remain liable for the performance of the services by the Assistants in a manner

satisfactory to the County, and in compliance with any and all applicable federal, state or local laws and regulations. The Contractor shall expressly advise the Assistants of the terms of this Agreement.

3. The Contractor acknowledges and agrees that the Contractor and its Assistants have no authority to enter into contracts that bind the County, or create obligations on the part of the County without the prior written authorization of the County.
4. The County maintains the right to contract with other individuals or entities to perform the same services.
5. The Advocates assigned to the CAC shall submit to a fingerprint check and a State Central Registry/Connections check, the cost of which shall be paid by the County.
6. The CAC shall hold meetings with the Contractor as needed upon the reasonable request of either party to discuss systems, program issues, or other topics of concern to either party.
7. The Contractor shall be responsible for any disciplinary issues relative to Contractor's staff assigned to perform services under this Agreement.
8. The Department shall be notified as soon as possible and made aware when an Advocate submits a leave request such as vacation or medical leave, or upon termination of employment, and will be provided information as to who will be replacing said Advocate during any extended absences.
9. The Contractor shall ensure that an Advocate's position is not vacant for more than two (2) weeks at any time.
10. The Commissioner of Social Services may request the replacement of an Advocate should she deem such action is necessary, however, the final decision with regard to staffing under this Agreement shall remain with the Contractor.
11. The Contractor shall provide any training to CAC staff members or other County employees as deemed necessary by the Department.
12. The Department shall refer appropriate Victims to the Contractor's services in a timely manner.

D. NO SUBCONTRACT

1. The Contractor shall not subcontract any part of this Agreement to another agency without prior written approval from the County.

2. The terms and conditions of any subcontract must be approved by the County.

E. MEASUREMENTS AND OUTCOMES

1. Outcome: Assist Victims in dealing with victimization in the most positive and healing manner possible, to minimize trauma associated with child sexual and/or severe physical abuse.
2. Performance: The Advocates shall be present at initial interviews, medical interviews and examinations, law enforcement and judicial proceedings, or other such meetings in order to support the Victims, facilitate future disclosures and promote a coordinated response by the CAC team in regards to serious abuse cases. In their role, the Advocates shall provide crisis intervention as well as maintain regular contact with the Victims. These services shall be offered in a manner that reflects cultural competence and family focused planning;
3. Standards of Performance Measurements:
  - a. 100% of the Victims served at the CAC shall be offered the services of an Advocate and referred to an Advocate for follow up.
  - b. The Advocates shall engage 80% of the Victims referred for services.
  - c. 80% of the individuals who receive services from the Advocates shall report satisfaction with the quality and availability of the services provided as measured by a client satisfaction survey given after the first 72 hours of service and at the conclusion of their services.
  - d. The Advocates' services shall be available during hours of operation of the CAC.
  - e. The Advocates shall meet all the specified job requirements noted under Section B: Scope of Services, as measured by the successful completion of all the required case contacts and case activity. Verification of case contacts and case activity shall be required in a manner provided by the Contractor and agreeable to the County. This document shall be maintained and provided to the CAC Coordinator and attached to the monthly voucher.
4. The Advocates shall apply best practices to meet the outcomes established by the Department, as follows:
  - a. Provide compassion and understanding to enable Victims to recover from the trauma of child sexual abuse/severe physical abuse and receive assistance needed to progress forward with their lives.



- b. Build an effective relationship by:
  - i. Establishing trust;
  - ii. Empowering the Victims;
  - iii. Encouraging candor; and
  - iv. Providing clear, honest, supportive, and accurate information.
- c. Foster additional disclosure by the Victims who might otherwise go without assistance:
  - i. Develop an individual plan with each Victim;
  - ii. Create an environment that allows for healing and recovery for each Victim;
  - iii. Know and understand Victim's rights;
  - iv. Know and understand potential issues associated with survivors of child sexual assault;
  - v. Assist Victims through legal and medical systems;
  - vi. Know and understand potential issues associated with family and or criminal court;
  - vii. Learn and understand the culture of the Victim's family;
  - viii. Demonstrate empathy and resourcefulness;
  - ix. Possess knowledge of and be able to access community resources; and
  - x. Educate the community about the impact of child sexual abuse and severe child abuse and maltreatment.
- d. Develop and promote a more coordinated response through participation with the CAC:
  - i. Respond to all initial reports of alleged child sexual abuse and/or severe physical abuse;
  - ii. Coordinate the response between the medical and legal systems to reduce intrusion, increase disclosure and promote open communication;
  - iii. Actively participate in morning meetings and Multi-Disciplinary Team Meetings as required to fulfill the obligations of this Agreement;
  - iv. Attend training specific to advocacy work in order to provide a foundation for understanding the Advocate's role;
  - v. Cultivate an atmosphere of professionalism through demonstration of skill, knowledge, initiative, effective communication and accountability.

#### F. INSURANCE AND INDEMNIFICATION

- 1. The Contractor shall purchase and maintain insurance of the following types of coverage and limits of liability with an insurance carrier qualified and admitted to do business in the State of New York. The Insurance carrier must have at least an A- (excellent) rating by A.

- a. Commercial General Liability (CGL) coverage with limits of Insurance of not less than \$1,000,000 each occurrence and \$2,000,000 Annual Aggregate.
  - i. CGL coverage shall be written on ISO Occurrence form CG 00 01 1001 or a substitute form providing equivalent coverage and shall cover liability arising from premises, operations, independent contracts, products-completed operations, and personal and advertising injury.
  - ii. Oneida County, and all other parties required by Oneida County, shall be included as additional insureds. Coverage for the additional insureds shall apply as primary and non-contributing insurance before any other insurance or self-insurance, including any deductible or self-insured retention, maintained by or provided to the additional insureds. Coverage for these additional insureds shall include completed operations.
  - iii. Abuse and molestation coverage must be included.
- b. Professional Liability coverage with limits of \$1,000,000 each occurrence and \$2,000,000 aggregate.
  - i. Coverage for review of cases and resulting professional assessment.
  - ii. Coverage for abuse and molestation.
- c. Automobile Liability
  - i. Business Auto Liability with limits of at least \$1,000,000 each accident.
  - ii. Business Auto coverage must include coverage for liability arising out of all owned, leased, hired and non-owned automobiles.
  - iii. Oneida County shall be included as an additional insured on the auto policy. Coverage for the additional insured shall be on a primary and non-contributing basis.
- d. Commercial Umbrella
  - i. Umbrella limits must be at least \$5,000,000.
  - ii. Umbrella coverage must include as additional insureds all entities that are additional insureds on the CGL.

iii. Umbrella coverage for such additional insureds shall apply as primary and non-contributing before any other insurance or self-insurance, including any deductible or self-insured retention, maintained by or provided to the additional insureds.

e. Workers' Compensation and Employer's Liability

i. Statutory limits apply.

2. **Waiver of Subrogation:** The Contractor waives all rights against the County and its agents, officers, directors and employees for recovery of damages to the extent these damages are covered by CGL, Professional Liability, Automobile Liability, Umbrella Liability or Workers' Compensation and Employer's Liability insurance maintained per requirements stated above.

3. **Certificates of Insurance:** Prior to the start of any work the contractor shall provide a certificates of insurance to the County. Attached to each certificate of insurance shall be a copy of the Additional Insured Endorsement that is part of the Contractor's CGL Policy. These certificates and the insurance policies required above shall contain a provision that coverage afforded under the policies will not be canceled or allowed to expire until at least 30 days prior written notice has been given to the County.

4. **Indemnification:** The Contractor agrees that it shall defend, indemnify and hold the County harmless from and against all liability, damages, expenses, costs, causes of actions, suits, claims or judgments arising, occurring or resulting from property damage, personal injuries or death to persons arising, occurring or resulting from or out of the negligent performance of services by Contractor and its sub-consultants, agents, servants, or employees, and from any loss or damage arising, occurring or resulting from the negligent acts or failure to act or any default or negligence by the Contractor and its sub-consultants or failure on the part of the Contractor and its sub-consultants to comply with any of the covenants, terms or conditions of this Agreement.

G. **PAYMENTS**

I. Payment shall be issued in monthly installments, as detailed below, upon submission of a County voucher and data necessary to allow the County to determine if a Fiscal Penalty detailed herein is to be assessed.

a. From October 1, 2019 through September 30, 2020:

i. Total payment by the County to the Contractor from October 1, 2019 through September 31, 2020 shall not exceed \$92,782.00.

1. Monthly payment from October 1, 2019 through August 31, 2020 shall be \$7,731.83.
  2. Monthly payment September 1, 2020 through September 30, 2020 shall be \$7,731.87.
- b. In the event that the County and the Department elect to renew this Agreement for one (1) year pursuant to Section A hereinabove, monthly payment for such renewal terms shall be:
- i. Total payment by the County to the Contractor from October 1, 2020 through September 30, 2021 shall not exceed \$92,782.00
    1. Monthly payment from October 1, 2020 through August 31, 2021 shall be \$7,731.83.
    2. Monthly payment from September 1, 2021 through September 30, 2021 shall be \$7,731.87.
2. The total cost of services provided under this Agreement shall not exceed \$185,564.00 for the duration of this Agreement and any renewal terms elected by the County.
3. **Fiscal Penalty for failure to meet a Standard of Performance:**
- a. Program performance measurements and outcomes shall be monitored monthly, and a fiscal penalty shall be imposed for any unmet Standards of Performance Measurement specified in Section E(3) herein. Standards of Performance Measurements that are not met shall be assessed a penalty equal to a reduction of two percent (2%) of the monthly installment for each Standard of Performance Measurement not met.
4. It is agreed by the Contractor that performance without this Agreement will not be paid for by the Department.

H. **REPORTING REQUIREMENTS**

1. The Contractor acknowledges that the County receives grant funding to provide the services under this Agreement, and further acknowledges that pursuant to the terms and conditions of said grant funding, the County is required to make certain reports to New York State.
2. In order to ensure the County is able to comply with its reporting requirements to maintain the grant funding to provide the services herein, the Contractor agrees to submit the following reports to the Department:

- a. A Quarterly Program Report, every three (3) months, for the duration of this Agreement.
  - b. Statistical reports on a monthly basis, which must be received no later than the 5<sup>th</sup> day of each and every month, containing statistical reports for the prior month of service. Said report shall include the following information:
    - i. The number of Victims served;
    - ii. The monthly caseload;
    - iii. The type(s) of services provided, including the number and types of contacts per case; and
    - iv. Any relevant comments regarding the case and/or services.
3. Reports shall include number of families served each month. Said reports shall also indicate the number of families served who receive Temporary Assistance (TA) and those whose household income is at or below 200% of the Federal Poverty Guideline. In order to have consistent reporting in this section, the number of families reported each month shall not be duplicated. A family that is served more than once per month within the Agreement period shall be counted only once. If a family receives services under more than one agreement between the County and the Contractor, said family shall be counted once per month for each service received.
4. The Contractor agrees to prepare and provide any and all other reports required by the County and State Governments pertaining to this Agreement.
5. The Contractor agrees to provide an Annual Independent Audit.
6. Reports shall be submitted to the Oneida County Contract Administration Office located at 800 Park Avenue, 4<sup>th</sup> Floor, Utica, New York 13501.
7. The liaisons for this Agreement are:  
Director of Services - Oneida County Department of Social Services; and  
Kari Procopio - YWCA of the Mohawk Valley.

I. INDEPENDENT CONTRACTOR STATUS

1. It is expressly agreed that the relationship of the Contractor and its Assistants to the County shall be that of Independent Contractors. The Contractor's Assistants shall not be considered employees of the County for any purpose including, but not limited to, claims for unemployment insurance, workers' compensation, retirement, or health insurance benefits. The Contractor, in accordance with its status as an Independent Contractor, covenants and agrees that its Assistants will conduct themselves in accordance with such

status, that they will neither hold themselves out as, nor claim to be, officers or employees of the County and that they will not make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the County.

2. The Contractor warrants and represents that it is in the business of offering the same or similar services detailed herein and does offer the same or similar service(s) to other entities and/or the general public as a regular course of business. The Contractor and the County agree that Contractor is free to undertake other work arrangements during the term of this Agreement, and may continue to make its services available to the public and other entities.
3. The Contractor's Assistants shall not be eligible for compensation from the County due to:
  - a. Illness;
  - b. Absence due to normal vacation; or
  - c. Absence due to attendance at school, special training or a professional convention or meeting.
4. The Contractor acknowledges and agrees that Contractor's Assistants shall not be eligible for any County employee benefits, including retirement membership credits.
5. The Contractor shall be paid pursuant to IRS Form 1099, and shall be solely responsible for applicable taxes for all compensation paid under this Agreement, and for compliance with all applicable labor and employment requirements, including payroll deductions, workers' compensation insurance, and provision of health insurance where required. The County shall not be responsible for withholding from the payments provided for services rendered for state or federal income tax, unemployment insurance, workers' compensation, disability insurance or social security insurance (FICA). The Contractor shall provide proof of workers' compensation insurance, where applicable, prior to execution of this Agreement.
6. The Contractor shall indemnify and hold the County harmless from all loss or liability incurred by the County as a result of the County not making such payments or withholdings.
7. If the Internal Revenue Service, Department of Labor, or any other governmental agency questions or challenges the Contractor's or its Assistants' Independent Contractor status, it is agreed that both the County and the Contractor shall have the right to participate in any conference, discussion, or negotiations with the governmental agency, irrespective of with whom or by whom such discussions or negotiations are initiated.
8. The Contractor shall comply with federal and state laws as supplemented in the Department of Labor regulations and any other regulations of the federal and state entities relating to such employment and Civil Rights requirements.

J. EXPENSES

The Contractor shall be solely responsible for paying all of its business expenses related to furnishing the services described herein, and shall not be reimbursed the cost of travel, equipment, tools, office space, support services or other general operating expenses.

K. TRAINING

The Contractor shall not be required to attend or undergo any training by the County. The Contractor shall be fully responsible for obtaining the training necessary to maintain any licenses or certifications to perform the services described herein, and shall be solely responsible for the cost of the same.

L. ADVICE OF COUNSEL

Each party acknowledges that, in executing this Agreement, such party has had the opportunity to seek the advice of independent legal counsel, and has read and understood all of the terms and provisions of this Agreement.

M. CHOICE OF LAW / VENUE

1. If either party elects to commence litigation against the other in connection with any matter relating to or arising out of this Agreement, it shall do so in a New York State Court of competent jurisdiction sitting in Oneida County, New York, or in the United States District Court for the Northern District of New York.
2. This Agreement shall be construed and enforced in accordance with the laws of the State of New York.

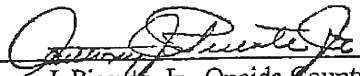
N. ENTIRE AGREEMENT

1. The obligations of the parties hereunder are conditioned upon the continued availability of federal and/or New York State funds for the purposes set forth in this Agreement.
2. The terms of this Agreement, including any attachments, amendments, addendums or appendixes attached hereto, constitute the entire understanding and agreement of the parties and cancels and supersedes all prior negotiations, representations, understandings or agreements, whether written or oral, with respect to the subject matter of this Agreement.
3. No waiver, alterations or modifications of and provisions of this Agreement shall be binding unless in writing and signed by the duly authorized representative of the parties sought to be bound.


IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year written below.

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Date: 10/15/19

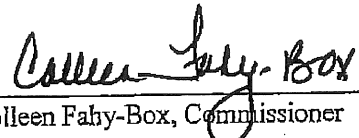
Oneida County Executive:   
Anthony J. Picente, Jr., Oneida County Executive

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Approved:   
Kimberly A. Kolch, Assistant County Attorney


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Date: 9/6/19

Oneida County Department of Social Services:   
Colleen Fahy-Box, Commissioner

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Date: 8/28/19

YWCA of the Mohawk Valley:   
Dianne Stancato, Chief Executive Officer

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APPENDIX A  
NEW YORK STATE CONDITIONS

The parties to the attached contract further agree to be bound by the following, which are hereby made a part of said contract.

- I. This contract may not be assigned by the contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or disposed of without the previous consent, in writing, of the State.
- II. This contract shall be deemed executory only to the extent of money available to the State for the performance of the terms hereof and no liability on account thereof shall be incurred by the State of New York beyond moneys available for the purpose thereof.
- III. The contractor specifically agrees, as required by Labor Law, Sections 220 and 220-d, as amended that:
  - (a) no laborer, workman or mechanic, in the employ of the contractor, subcontractor or other person doing or contracting to do the whole or any part of the work contemplated by the contract shall be permitted or required to work more than eight hours in any one calendar day or more than five days in any one week, except in the emergencies set forth in the Labor Law.
  - (b) The wages paid for a legal day's work shall be not less than the prevailing rate of wages as defined by law.
  - (c) The minimum hourly rate of wages to be paid shall not be less than that stated in the specifications, and any redetermination of the prevailing rate of wages after the contract is approved shall be deemed to be incorporated herein by reference as of the effective date of redetermination and shall form a part of these contract documents.
  - (d) The Labor Law provides that the contract may forfeited and no sum paid for any work done thereunder on a second conviction for willfully paying less than—
    - (a) the stipulated wage scale as provided in Labor Law, Section 220, subdivision 3, as amended or
    - (b) less than the stipulated minimum hourly wage scale as provided in Labor Law, Section 220-d, as amended.
- IV. The contractor specifically agrees, as required by the provisions of the Labor Law, Section 220-e, as amended, that:
  - (a) in hiring of employees for the performance of work under this contract or any subcontract hereunder, or for the manufacture, sale or distribution of materials, equipment or supplies hereunder, no contractor, subcontractor, shall by reason of race, creed, color, sex or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates.
  - (b) No contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired

for the performance of work under this contract on the account of race, creed, color, sex or national origin.

- (c) There may be deducted from the amount payable to the contractor by the State under this contract a penalty of fifty dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of the contract, and
- (d) This contract may be cancelled or terminated by the State or municipality and all moneys due or to become due hereunder may be forfeited for a second or any subsequent violation of the terms or conditions of this section of the contract, and
- (e) The aforesaid provisions of this section covering every contract for or on behalf of the State or a municipality for the manufacture, sale or distribution of materials, equipment or supplies shall be limited to operations performed within the territorial limits of the State of New York.

V. The contractor specifically agrees, as required by Executive Order # 45, dated Jan. 4, 1977, effective February 4, 1977, that:

- (a) The contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake programs of affirmative action to insure that they are afforded equal employment opportunities without discrimination. Such action shall be taken with reference, but not limited to: recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on-the-job training.
- (b) If the contractor is directed to do so by the contracting agency or the Office of State Contract Compliance (hereafter OSCC). The contractor shall request each employment agency, labor union, or authorized representative of workers, with which he has a collective bargaining or other agreement or understanding, to furnish him with a written statement that such employment agency, labor union or representative will not discriminate because of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligations hereunder and the purposes of Executive Order # 45 (1977).
- (c) The contractor will state, in all solicitations or advertisements for employees placed by or on behalf of the contractor, that all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
- \* (d) The contractor will comply with all the provisions of Executive Order # 45 (1977) and rules, regulations and orders issued

pursuant thereto and will furnish all information and reports required by said Executive Order or such rules, regulations and orders, and will permit access to its books, records, and accounts and to its premises by the contracting agency or the OSCC for the purposes of ascertaining compliance with said Executive Order and such rules, regulations and orders.

\*(e) If the contractor does not comply with the equal opportunity provisions of this contract, with Executive Order # 45 (1977), or with such rules, regulations, or orders, this contract or any portion thereof, may be cancelled, terminated or suspended or payments thereon withheld, or the contractor may be declared ineligible for future State or State-assisted contracts, in accordance with procedures authorized in Executive Order #45 (1977), and such other sanctions may be imposed and remedies invoked as are provided in said Executive Order or by rule, regulation or order issued pursuant thereto, or as otherwise provided by law.

\*(f) The contractor will include the provisions of clauses (a) through (e) above and all contract provisions promulgated by OSCC pursuant to Section 1.3 (b) of Executive Order # 45 (1977), in every non-exempt subcontract or purchase order in such a manner that such provisions will be binding upon each subcontractor or vendor as to its work force within the State of New York. The contractor will take such action in enforcing such provisions of such subcontract or purchase order as the contracting agency or the OSCC may direct, including sanctions or remedies for noncompliance. If the contractor becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such direction, the contractor shall promptly so notify the Attorney General, requesting him to intervene and protect the interests of the State of New York.

VI. The contractor will comply with the provisions of Sections 291-299 of the Executive Law and the Civil Rights Law, will furnish all information and reports deemed necessary by the State Division of Human Rights under the Law, and will permit access to its books, records and accounts by the State Industrial Commissioner for the purposes of investigation to ascertain compliance with the non-discrimination clauses, the Executive Law and Civil Rights Law.

VII. (a) By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his knowledge and belief:

1) The prices in this bid have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;

2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder, and will not be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor;

3) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

(b) A bid shall not be considered for award nor shall any award be made where (a) (1) (2) and (3) above have not been complied with provided, however, that if in any case the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefor. Where (a) (1) (2) and (3) above have not been complied with, the bid shall not be considered for award nor shall any award be made unless the head of the purchasing unit of the State, public department or agency to which the bid is made, or his designee, determines that such disclosure was not made for the purpose of restricting competition.

The fact that bidder (a) has published price lists, rates, or tariffs covering items being procured, (b) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (c) has sold the same items to other customers at the same prices being bid, does not constitute, without more a disclosure within the meaning of sub-paragraph VII (a)

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\*\*Note: Reference to the above Rules and Regulations refer to those Rules and Regulations in effect as of the date of the solicitation of bids relative to this contract.

## APPENDIX B

### STANDARD CLAUSES FOR ALL ONEIDA COUNTY DEPARTMENT OF SOCIAL SERVICES CONTRACTS

#### PERSONNEL

- a. The Contractor agrees to be solely responsible for the recruitment, hiring, provision of employment benefits, payment of salaries, and management of its project personnel. These functions shall be carried out in accordance with the provisions of this AGREEMENT, and all applicable federal, state and local laws and regulations.
- b. It is the policy of the Department to encourage the employment of qualified applicants or recipients of public assistance by both public organization and private enterprises who are under contractual AGREEMENT to the Department for the provision of goods and services. Contractors will be expected to make best efforts in this area.
- c. The Contractor agrees to identify, in writing, the person(s) who will be responsible for directing the work to be done under this AGREEMENT. No change or substitution of such responsible person(s) will be made without prior approval in writing from the Department, to the degree that such change is within the reasonable control of the Contractor

#### NOTICES

- a. All notices permitted or required hereunder shall be in writing and shall be transmitted either by:
  1. By certified or registered United States mail, return receipt requested;
  2. By facsimile transmission;
  3. By personal delivery;
  4. By expedited delivery service; or
  5. By e-mail

Notices to the Department shall be addressed to the Commissioner of Social Services at the address, facsimile number or e-mail Address provided to the Contractor during contract development or to such different Program Manager as the Department may from time-to time designate.

- b. Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.
- c. The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The Parties agree to mutually designate individuals as their respective representatives for the

purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

#### OFFICE SERVICES

- a. The Contractor shall be responsible for the provision of necessary equipment and services for Contractor's staff, pursuant to and described in the narratives and budgets contained in the AGREEMENT.
- b. For federally funded contracts, title to real property and non-expendable personal property whose requisition cost is borne in whole or in part by monies provided under this AGREEMENT shall be determined between the Contractor and the Department, pursuant to federal regulations 45 CFR 92 unless such authority is otherwise inappropriate. Title to all equipment, supplies and material purchased with funds under this AGREEMENT under contracts which are not federally funded shall be in the State of New York and the property shall not be transferred, conveyed, or disposed of without written approval of the Department. Upon expiration or termination of this AGREEMENT, all property purchased with funds under this AGREEMENT shall be returned to the Department, unless the Department has given direction for, or approval of, an alternative means of disposition in writing.
- c. Upon written direction by the Department, the Contractor shall maintain an inventory of those properties that are subject to the provisions of sub-paragraph b of this section

#### GENERAL TERMS AND CONDITIONS

- a. The Contractor agrees to comply in all respects with the provisions of this AGREEMENT and the attachments hereto. The Contractor specifically agrees to perform services according to the objectives, tasks, work plan and staffing plan contained in the AGREEMENT. Any modifications to the tasks or work plan contained in AGREEMENT must be mutually agreed to by both parties in writing before the additional or modified tasks or work plan shall commence.
- b. If any specific event or conjunction of circumstances threatens the successful completion of the project, in whole or in part, including where relevant, timely completion of milestones, the Contractor agrees to submit to the Department within three (3) days of occurrence or perception of such problem, a written description thereof together with a recommended solution thereto.
- c. The Contractor immediately shall notify in writing the Department Program Manager assigned to this contract of any unusual incident, occurrence or event that involves the staff, volunteers or officers of the Contractor, and subcontractor or Program participant funded through this AGREEMENT, including but not limited to the following: death or serious injury; an arrest or possible criminal activity; and destruction of property; significant damage to the physical plant of the Contractor, or other matters of a similarly serious nature.

- d. In providing these services, the Contractor hereby agrees to be responsible for designing and operating these services, and otherwise performing, so as to maximize federal financial participation to the Department under the Federal Social Security Act.
- e. If funds from this AGREEMENT will be used to pay any costs associated with the provision of legal services of any sort, the following shall apply;
1. No litigation shall be brought against the State of New York, the New York State Office of Children and Family Services or against Oneida County or the Department or other local government or local social services district with funds provided under this AGREEMENT. The term "litigation" shall include commencing or threatening to commence a lawsuit, joining or threatening to join as a party to ongoing litigation, or requesting any relief from either the State of New York, the New York State Office of Children and Family Services or Oneida County or other local government or local social services district, based upon any agreement between such agency in litigation with another party and such party, during pendency of the litigation.
  2. Opinions prepared by consultant law firms construing the statutes of Constitution of the State of New York do not constitute the view of the State unless the prior written approval of the Attorney General is obtained. Requests for said approval shall be submitted to the Solicitor General, Division of the Appeals and Opinions Bureau, department of Law, The Capital, Albany, New York 12224
  3. The Contractor shall provide to the Department in a format provided by the Department such additional information concerning the provision of legal services as the Department shall require.
- f. The Department will designate a Contract Manager who shall have authority relating to the technical services and operational functions of this AGREEMENT and activities completed or contemplated there under. The Contract Manager and those individuals designated by him/her in writing shall have the prerogative to make announced or unannounced on-site visits to the project. Project reports and issues of interpretation or direction relating to this AGREEMENT shall be directed to the Contract Manager.
- g. Except where the Department otherwise authorizes or directs in writing, the Contractor agrees not to enter into any subcontracts, or revisions to subcontracts, for the performance of the obligations contained herein until it has received the prior written approval of the Department, which shall have the right to review and approve each and every subcontract prior to giving written approval to the contractor to enter into the subcontract. All agreements between the Contractor and subcontractors shall be by written contract, signed by individuals authorized to bind the parties. All such subcontracts shall contain provisions for specifying (1) that the work performed by the subcontractor must be in accordance with the terms of this AGREEMENT (2) that nothing contained in the subcontract shall impair the rights of the Department under this AGREEMENT, (3) that nothing contained in the subcontract, nor under this AGREEMENT, shall be deemed to create any contractual relationship between the subcontractor and the Department, and (4) incorporating all provisions regarding the

rights of the Department as set forth in this AGREEMENT, where applicable. The Contractor specifically agrees that the Contractor shall be fully responsible to the Department for the acts and omissions of subcontractors and of persons either directly or indirectly employed by them, as it is for the acts and omissions of persons directly employed by the Contractor.

- h. The Contractor warrants that it, its staff and any and all subcontractors which must be approved by the Department, have all the necessary licenses, approvals and certifications currently required by the law of any applicable local, state or federal government to perform the services pursuant to this AGREEMENT and/or subcontract entered into under this AGREEMENT. The Contractor further agrees such required licenses, approvals and certificates will be kept in full force and effect during the term of this AGREEMENT, and/or any extension thereof, and to secure any new licenses, approvals or certificates within the required time frames and/or to require its staff and subcontractors to obtain and requisite licenses, approvals or certificates. In the event the Contractor, its staff, and/or subcontractors are notified of a denial or revocation of any license, approval or certification to perform the services under this AGREEMENT, Contractor will immediately notify the Department.
- i. This AGREEMENT cannot be assigned by the Contractor to a subcontractor without obtaining written approval of the Department. Prior to executing a subcontract agreement the Contractor agrees to provide the Department the information the Department needs to determine whether a proposed subcontractor is a responsible vendor. The determination of vendor responsibility will be made in accordance with Section n. of General Terms and Conditions herein.
- j. If the Contractor intends to use materials, equipment or personnel paid for under this AGREEMENT in a revenue generating activity, the Contractor shall report such intentions to the Department forthwith and shall be subject to the direction of the Department as to the disposition of such revenue.
- k. Any interest accrued on funds paid to the Contractor by the Department shall be deemed to be the property of the Department and shall either be credited to the Department at the termination of this AGREEMENT or expended on additional services provided for under this AGREEMENT.
- l. The Contractor ensures that the grounds, structures, building and furnishings at the program site(s) used under this AGREEMENT are maintained in good repair and free from any danger to health or safety and that any building or structure used for program services complies with all applicable zoning, building, health, sanitary, and fire codes.
- m. The Contractor agrees to produce, and retain for the balance of the calendar year in which produced, and for a period of six (6) years thereafter, any and all records necessary to substantiate upon audit, the proper deposit and expenditure of funds received under this AGREEMENT. Such records shall include, but not be limited to,



original books of entry (e.g., cash disbursements and cash receipts journal), and the following specific records (as applicable) to substantiate the types of expenditures noted:

1. Payroll Expenditures: cancelled checks and the related bank statements, time and attendance records, payroll journals, employee personal history folders, and cost allocation plans, if applicable.
2. Payroll Taxes and Fringe Benefits: cancelled checks, copies of related bank statements, reporting forms, and invoices for Fringe Benefit expenses.
3. Non-Personal Services Expenditures: original invoices/receipts, cancelled checks and related bank statements, consultant agreements, leases, and cost allocation plans, if applicable.
4. Receipt and Deposit of Advance and Reimbursements: itemized bank stamped deposit slips, and a copy of the related bank statements.
5. The Contractor agrees that any equipment purchased with funds under this AGREEMENT is the property of the Department and will remain with or will be returned to the Department in the event of the termination of this AGREEMENT,

Although not required, the Department recommends that the Contractor retain records directly pertinent to this AGREEMENT for a period of ten (10) years after the end of the calendar year in which they were made, as the statute of limitations for the New York False Claims Act is ten (10) years.

- n. By signing this AGREEMENT, the Contractor certifies that within the past three (3) years the Contractor has engaged in no actions that would establish a basis for a finding by the Department that the Contractor is a non-responsible vendor or, if the Contractor has engaged in any such action or actions, that all such actions have been disclosed to the Department prior to entering into this AGREEMENT. The actions that would potentially establish a basis for a finding by Department that the Contractor is a non-responsible vendor include:
  1. The Contractor has had a license or contract suspended, revoked or terminated by a governmental agency.
  2. The Contractor has had a claim, lien, fine, or penalty imposed or secured against the Contractor by a governmental agency.
  3. The Contractor has initiated a bankruptcy proceeding or such a proceeding has been initiated against the Contractor
  4. The Contractor has been issued a citation, notice, or violation order by a governmental agency finding the Contractor to be in violation of any local, state, or federal laws.
  5. The Contractor has been advised by a governmental agency that a determination to issue a citation, notice or violation order finding the Contractor to be in violation of any local, state or federal laws is pending before a governmental agency
  6. The Contractor has not paid all due and owed local, state and federal taxes to the proper authorities
  7. The Contractor has engaged in any other actions of a similarly serious nature.

Where the Contractor has disclosed any of the above to the Department, the Department may require as a condition precedent to entering into this AGREEMENT that the

Contractor agree to such additional conditions as will be necessary to satisfy the Department that the vendor is and will remain a responsible vendor. By signing this AGREEMENT, the Contractor agrees to comply with any such additional conditions that have been made a part of this AGREEMENT.

By signing this AGREEMENT, the Contractor also agrees that during the term of the AGREEMENT, the Contractor will promptly notify the Department if the Contractor engages in any actions that would establish a basis for a finding by Department that the Contractor is a non-responsible vendor, as described above.

- o. By signing this AGREEMENT, the Contractor agrees to comply with State Tax Law section 5-a
- p. The Contractor must maintain Workers' Compensation Insurance in accordance with the Workers' Compensation Law. If the Contractor believes they are exempt from the Workers' Compensation insurance requirement then they must apply for an exemption. Contractors can apply for the exemption online through the New York State Workers' Compensation Board website at:  
[http://www.wcb.state.ny.us/content/ebiz/wc\\_db\\_exemptions/wc\\_db\\_exemptions.jsp](http://www.wcb.state.ny.us/content/ebiz/wc_db_exemptions/wc_db_exemptions.jsp)
- q. All organizations that receive federal financial assistance under social service programs are prohibited from discriminating against beneficiaries or prospective beneficiaries of the social service programs on the basis of religion or religious belief. Accordingly, organizations, in providing services supported in whole or in part with federal financial assistance, and in their outreach activities related to such services, are not allowed to discriminate against current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

Organizations that engage in explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) must perform such activities and offer such services outside of programs that are supported with direct federal financial assistance (including through prime awards or sub-awards), separately in time or location from any such programs or services supported with direct federal financial assistance, and participation in any such explicitly religious activities must be voluntary for the beneficiaries of the social service program supported with such federal financial assistance

#### REPORTS AND DELIVERABLES

The Contractor shall prepare and submit all reports, documents, and projects required by this AGREEMENT to the Department's Contract Manager for review and approval. These reports shall be in such substance, form, and frequency as required by the Department and as necessary to meet state, federal and Oneida County requirements.

The Contractor shall complete Contract Evaluations as required by the Department as

well as Statistical Data as needed by the Department and New York State to meet the reporting requirements.

#### CONFIDENTIALITY AND PROTECTION OF HUMAN SUBJECTS

- a. The Contractor agrees to safeguard the confidentiality of financial and/or client information relating to individuals and their families who may receive services in the course of this project. The Contractor shall maintain the confidentiality of all such financial and/or client information with regard to services provided under this AGREEMENT in conformity with the provisions of applicable state, federal, and local laws and regulations. Any breach of confidentiality by the Contractor, its agents or representatives shall be cause for immediate termination of this AGREEMENT.
- b. Any Contractor who will provide goods and/or services to a residential facility or program operated by Department agrees to require all of its employees and volunteers who will have the potential for regular and substantial contact with youth in the care or custody of the Department to sign an Employee Confidentiality Certification and employee Background Certification before any such employees and volunteers are permitted access to youth in the care or custody of the Department and/or any financial and/or client identifiable information concerning such youth. Additionally, the Department will require a database check of the State wide Central Register of Child Abuse and Maltreatment (SCR) of each employee and volunteer of the Contractor who has the potential for regular and substantial contract with children in the care or custody of the Department. Any Contractor whose employees and volunteers will have access to financial and/or client identifiable information concerning youth in the care or custody of Department agrees to require all such employees and volunteers to sign an Employee Confidentiality Certification before any such employees and volunteers are permitted access to any financial and/or client identifiable information concerning such youth.
- c. The Contractor and any subsequent subcontractor shall not discriminate or refuse assistance to individuals with AIDS or an HIV infection or an HIV - related illness.

The Contractor and any subsequent subcontractor agrees that their staff to whom confidential HIV - related information may be given as a necessity for providing services and in accordance with 403 of Title 18 NYSDSS regulation and Section 2782 of the Public Health Law are fully informed of the penalties and fines for re-disclosure in violations of state law and regulations.

The Contractor and any subsequent subcontractor must include the following written statement when disclosing any confidential HIV - related information.

"This information has been disclosed to you from confidential records which are protected by state law. State law prohibits you from making any further disclosure of this information without the specific written consent of the person to whom it pertains, or as otherwise permitted by law. Any unauthorized further disclosure in violation of state law may result in a fine or jail sentence or both. A general authorization for the

release of medical or other information is not sufficient authorization for further disclosure."

- d. All information contained in the Contractor's, or its subcontractor's files shall be held confidential pursuant to the applicable provisions of the Social Services Law and any State Department Regulations promulgated thereunder, including 18 NY CRR Sec. 357.5 and 423.7, as well as any applicable federal laws and any regulations promulgated thereunder and shall not be disclosed except as authorized by law.
- e. The Contractor and any of the Contractor's staff that are subject to the Oneida County computer systems/databases shall complete the Oneida County Department of Social Services Confidentiality and Non-Disclosure Agreement provided with this AGREEMENT and shall submit forms to the following address:

Oneida County Department of Social Services  
Contract Administration Office, 4<sup>th</sup> Floor  
800 Park Ave  
Utica, New York, 13501

#### PUBLICATIONS AND COPYRIGHTS

- a. The results of any activity supported under this AGREEMENT may not be published without prior written approval of the Department, which results (1) shall acknowledge the support of the Department and the County and, if funded with federal funds, the applicable federal funding agency, and (2) shall state that the opinions, results, findings and/or interpretations of data contained therein are the responsibility of the Contractor and do not necessarily represent the opinions, interpretation or policy of the Department or Oneida County.
- b. The Department and Oneida County expressly reserve the right to a royalty-free, non-exclusive and irrevocable license to reproduce, publish, distribute or otherwise use, in perpetuity, any and all copyrighted or copyrightable material resulting from this AGREEMENT or activity supported by this AGREEMENT. All publications by the Contractor covered by this AGREEMENT shall expressly acknowledge the Department's right to such license.
- c. All of the license rights so reserved to the Department and Oneida County under this paragraph are equally reserved to the United States Department of Health and Human Services and subject to the provisions on copyrights contained in 45 CFR 92 if the AGREEMENT is federally funded
- d. The Contractor agrees that at the completion of any scientific or statistical study, report or analysis prepared pursuant to this AGREEMENT, it will provide to the Department at no additional cost a copy of any and all data supporting the scientific or statistical study, report or analysis, together with the name(s) and business address(es) of the principal(s) producing the scientific or statistical study, report or

analysis. The Contractor agrees and acknowledges the right of the Department, subject to applicable confidentiality restrictions, to release the name(s) and business address(es) producing the scientific or statistical study, report or analysis, together with a copy of the scientific or statistical study, report or analysis and all data supporting the scientific or statistical study, report or analysis.

#### PATENTS AND INVENTIONS

The Contractor agrees that any all inventions, conceived or first actually reduced to practice in the course of, or under this AGREEMENT, or with monies supplied pursuant to this AGREEMENT, shall be promptly and fully reported to the Department. Determination as to ownership and/or disposition of rights to such inventions, including whether a patent application shall be filed, and if so, the manner of obtaining, administering and disposing of rights under any patent application or patent which may be issued, shall be made pursuant to all applicable law and regulations.

#### TERMINATION

- a. This AGREEMENT may be terminated by the Department upon thirty (30) days prior written notice to the Contractor. Such notice is to be made by way of registered or certified mail return receipt requested or hand delivered with receipt granted by the Contractor. The date of such notice shall be deemed to be the date the notice is received by the Contractor established by the receipt returned, if delivery by registered or certified mail, or by the receipt granted by the Contractor, if the notice is delivered by hand. The Department agrees to pay the Contractor for reasonable and appropriate expenses incurred in good faith before the date of termination of this AGREEMENT.
- b. If the Contractor fails to use any real property or equipment purchased pursuant to this AGREEMENT or the Contractor ceases to provide the services specified in the AGREEMENT for which the equipment was purchased, the Department may terminate this AGREEMENT upon thirty (30) days written notice to the Contractor, where the Contractor has failed to cure as set forth hereafter, said notice of breach shall be sent by way of registered or certified mail return receipt requested, or shall be delivered by hand, receiving Contractor's receipt therefore. Said notice shall specify the Contractor's breach and shall demand that such breach be cured. Upon failure of the Contractor to comply with such demand within thirty (30) days, or such longer period as may be specified therein, the Department may, upon written notice similarly served, immediately terminate this AGREEMENT, termination to be effective upon the date of receipt of such notice established by the receipt returned to the Department. Upon such termination, the Department may require (a) the repayment to the Department of any monies previously paid to the Contractor, or (b) return of any real property or equipment purchased under the terms of this AGREEMENT or an appropriate combination of (a) and (b), at the Department's option.

- c. To the extent permitted by law, this AGREEMENT shall be deemed in the sole discretion of the Department terminated immediately upon the filing of a petition in bankruptcy or insolvency, by or against the Contractor. Such termination shall be immediate and complete, without termination costs or further obligation by the Department to the Contractor
- d. Should the Department determine that federal, state or County funds are limited or become unavailable for any reason, the Department may reduce that total amount of funds payable to the Contractor, reduce the AGREEMENT period or deem this AGREEMENT terminated immediately. The Department agrees to give notice to the Contractor as soon as it becomes aware that funds are unavailable, in the event of termination under this paragraph. If the initial notice is oral notification, the Department shall follow this up immediately with written notice. The Department will be obligated to pay the Contractor only for the expenditures made and obligations incurred by the Contractor until such time as notice of termination is received either orally or in writing by the Contractor from the Department.
- e. The Contractor shall provide to the Department such information as is required by the Department in order that the Department may determine whether the Contractor is a responsible vendor for purposes of compliance with section 163 of the State Finance Law and requirements of the Department. If there is any change in any of the vendor responsibility information provided to the Department by the Contractor at any time during the term of this AGREEMENT, the Contractor shall be required to immediately notify the Department so that the Department may assess whether the Contractor continues to be a responsible vendor. Should the Contractor fail to notify the Department of any change in the vendor responsibility information or should the Department otherwise determine that the Contractor has ceased to be a responsible vendor for the purposes of this AGREEMENT, the Department may terminate this AGREEMENT upon thirty (30) days written notice to the Contractor. Said notice of termination shall be sent by way of registered or certified mail return receipt requested, or shall be delivered by hand, receiving Contractor's receipt therefore. Said notice shall specify the reason(s) that the Contractor has been found to no longer be a responsible vendor.

Upon determination that the Contractor is no longer a responsible vendor the Department may, in its discretion and as an alternative to termination pursuant to this paragraph, notify the contractor of the determination that the Contractor has ceased to be a responsible vendor and set forth the corrective action that will be required of the Contractor to maintain this AGREEMENT. Should the Contractor fail to comply with the required corrective action within thirty (30) days of the date of notification, or such longer period as may be specified therein, the Department may, upon written notice similarly served, immediately terminate this AGREEMENT, termination to be effective upon the date of receipt of such notice established by the receipt returned to the Department. Upon such termination, the Department may require (a) the repayment to the Department of any monies previously paid to the Contractor, (b) return of any real property or equipment

purchased under the terms of this AGREEMENT, or an appropriate combination of (a) and (b) at the Department's option.

## CONTRACTOR COMPLIANCE

The Contractor agrees to provide an Annual Certification pertaining to this AGREEMENT as part of the Contractor's Annual Independent audit.

The Department shall have the right to audit or review the Contractor's performance and operations as related to this AGREEMENT. If the Department should determine that the Contractor has abused or misused funds paid to the Contractor, or if the Contractor has violated or is in non-compliance with any term of any other agreement with the Department, or has abused or misused funds paid to the Contractor under any other agreement with the Department, the rights of the Department shall include, but not be limited to:

1. Recovery of any funds expended in violation of this AGREEMENT;
2. Suspension of Payments;
3. Termination of this AGREEMENT; and/or
4. Employment of another entity to fulfill the requirements of this AGREEMENT.

The Contractor shall be liable for all reasonable costs incurred on account thereof, including payment of any cost differential for employing such entity. The Contractor will assist the Department in transferring the operation of the contracted services to any other entity selected by the Department in a manner that will enable the Department or clients to continue to receive services in an on-going basis, including, but not limited to , notifying clients of the new entity to which the services will be transferred and the effective date of the transfer, providing the new entity promptly and at no charge with a complete copy of the clients' and all other records necessary to continue the provision of the transferred services, and transferring any equipment purchased with funds provided under this AGREEMENT.

Nothing herein shall preclude the Department from taking actions otherwise available to it under law.

The Contractor agrees to cooperate fully with any audit or investigation the Department or any agent of the Department may conduct and to provide access during normal business hours to any and all information necessary to perform its audit or investigation. The Contractor shall also allow the Department, and any representatives specifically directed by the Department to take possession of all books, records and documents relating to this AGREEMENT without prior notice to the Contractor. The Department will return all such books, records and documents to the Contractor upon completion the official purposes for which they were taken.

The Contractor agrees that all agreements between the Contractor and a subcontractor or consultants for the performance of any obligations under this AGREEMENT will be by written contract (subcontract) which will contain provisions including, but not limited to, the above specified rights of the Department.

## FISCAL SANCTION

In the sole discretion of the Department, contractors may be placed on Fiscal Sanction when the Department identifies any of the following issues:

1. The Contractor has received an advance, overpayment or other funds under this or another agreement that has not been refunded to the Department within the established timeframe;
2. A Department or other audit identifies significant fiscal irregularities and/or that funds are due to the Department
3. The Contractor has not provided satisfactory services as required under the terms of this or another Department agreement;
4. The Contractor has not provided fiscal or program reports as required under the terms of this or another Department agreement;
5. A Department, County, state or federal prosecutorial or investigative agency identifies possible criminal activity, or significant fiscal or programmatic irregularities on the part of the Contractor;
6. The Contractor is not in compliance with state, federal, or County statutes or regulations, or applicable Department guidelines, policies and/or procedures; or
7. Unsafe physical conditions exist at a program site operated by the Contractor and funded under an agreement with the Department

Once the Contractor has been placed on Fiscal Sanction, payments on all open contracts and any new awards, amendments or contract renewals will not be processed until the issues have been satisfactorily resolved. The Contractor will be notified in advance of any proposed Fiscal Sanction and will be provided a timeframe within which the issues must be resolved in order to avoid Fiscal Sanction. Issues that are not resolved within the timeframe established by the Department may be referred to the Attorney General (AG) for collection of legal action. If a contract is referred to the AG a collection fee will be added to the amount owed. In addition, interest will be due on any amount not paid in accordance with the timeframes established by the AG. The Contractor will remain on Fiscal Sanction until the amount owed, including any collection fee and interest is paid.

## ADDITIONAL ASSURANCES

- a. The Department and Contractor agree that the Contractor is an Independent Contractor, and not in any way deemed to be an employee of the Department or County of Oneida for any purpose including, but not limited to, claims for unemployment insurance, workers' compensation, retirement or health insurance benefits. The Contractor agrees to defend and indemnify the Department and/or Oneida County for any loss the Department and/or Oneida County may suffer when such losses result from claims of any person or organization injured by the negligent acts or omissions of the Contractor, its officers and/or employees or subcontractors. Furthermore, the Contractor agrees to indemnify, defend, and save harmless the Department and/or Oneida County, and its



officers, agents, and employees from any and all claims and losses occurring or resulting from any and all contractors, subcontractors, and any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this AGREEMENT, and from all claims and losses occurring or resulting to any person, firm, or corporation who may be injured or damaged by the Contractor in the performance of this AGREEMENT, and against any liability, including costs and expenses, for violation of proprietary rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, or use, or disposition of any data furnished under this AGREEMENT or based on any libelous or other unlawful matter contained in such data or written materials in any form produced pursuant to this AGREEMENT.

- b. The Contractor further agrees that the Department has the right to take whatever action it deems appropriate, including, but not limited to, the removal of the Contractor from the rotation list, the removal of clients, the cessation of client referrals, and termination of this AGREEMENT, if the Contractor fails to submit a completed and signed Standard Insurance Certificate or its acceptable substitute, which is subsequently approved by the Oneida County Department of Law, prior to the expiration of its insurance coverage.

#### RENEWAL NOTICE TO CONTRACTORS

Options to renew this AGREEMENT are at the discretion of the Department, which shall supply written notice of such renewal or termination within thirty (30) days of the expiration date. The Commissioner of Social Services reserves the right to evaluate the job performance and availability of funding.

#### COMPLIANCE WITH LAW

The Contractor represents and agrees to comply with the requirements of the Civil Rights Act of 1964 as amended, the Age Discrimination Employment Act of 1964 as amended, the Federal Rehabilitation Act of 1973 as amended, and Executive Order No. 11246, entitled "Equal Employment Opportunity" as amended by Executive Order No. 11375 and as supplemented in Department of Labor Relations, 41CFR Part 60.

The Contractor also agrees to comply with federal and state laws as supplemented in the Dept. of Labor regulations and any other regulations of the federal and state entities relating to such employment and Civil Rights requirements.

As a mandated reporting agency, all instances of suspected child abuse, neglect and/or maltreatment, will be reported to the Central Registry as required by law. These verbal reports will be followed by submission of completed 2221A to the Department. The family will be informed in advance of the Agency's decision to file a report with the Central Register.

The Contractor attests they have not been debarred by the federal Government from

contracting to provide services funded by any federal money.

The obligations of the parties hereunder are conditioned upon the continued availability of federal and/or New York State Funds for the purposes set forth in this AGREEMENT.

Should funds become unavailable or should appropriate federal or New York State officials fail to approve sufficient funds for completion of the services or programs set forth in this AGREEMENT, the Department shall have the option to immediately terminate this AGREEMENT upon providing written notice to the Contractor. In such an event, the Department shall be under no further obligation to the Contractor other than payment for costs actually incurred prior to termination and in no event will the Department be responsible for any actual or consequential damages as a result of termination.

This AGREEMENT contains all the terms and conditions agreed upon by the parties. All items incorporated by reference are to be attached. No other understandings, oral or otherwise, regarding the subject matter of this AGREEMENT, shall be deemed to exist or to bind any of the parties hereto. No waiver, alterations or modifications of and provisions of this AGREEMENT shall be binding unless in writing and signed by the duly authorized representative of the parties sought to be bound.

This AGREEMENT shall be binding upon both parties when fully signed and executed and upon approval of the appropriate legislative bodies where required.

As the duly authorized representative of the Contractor, I hereby certify that the Contractor will comply with the above Standard Clauses.

YWCA Mohawk Valley  
NAME OF CONTRACTED AGENCY

Dianne Stancato, CEO  
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE

Dianne Stancato, CEO                      8/28/19  
SIGNATURE    DATE

**YWCA of The Mohawk Valley  
Board of Directors  
2019-2020**

Name/Address	Term	Title/Place of Employment	Telephone	Email
Jennifer DeWearth 8960 Kellogg Street Clinton, NY 13323 President	2018-2019 (1) 2019-2022 (2) 2019-2020	Dean of Student Enrollment MVCC 1101 Sherman Drive, Utica, NY 13501	C: 316-982-1691 W: 316-731-5816	<a href="mailto:jdewearth@mvcc.edu">jdewearth@mvcc.edu</a>
Carol Steele 7 Hingham Road Utica, NY 13501 Vice President	2018-2021 (1) 2018-2020	Retired, MBA Finance/Accounting; BA Psychology	C: 316-625-8024	<a href="mailto:csteele3@rogers.com">csteele3@rogers.com</a>
Pamela Matt, Esq. 44 Jordan Road New Hartford, NY 13413 Assistant Treasurer	2016-2018 (1) 2018-2021 (2) 2017-2018 (1) 2018-2019 (2)	Executive Director, Young Scholars Program Utica College 1600 Burnstone Rd., Utica, NY 13502	H: 316-783-0957 W: 316-792-3184 C: 316-269-3941	<a href="mailto:pmatt7150@gmail.com">pmatt7150@gmail.com</a> <a href="mailto:pmatt@utica.edu">pmatt@utica.edu</a>
Ulrica Elliott-Jefferson 1208 Gray Avenue Utica, NY 13502 Treasurer	2014-2017 (1) 2017-2020 (2) 2017-2018 (1) 2018-2019 (2) 2019-2020 (1)	Ops Supervisor, Issuer & Loans Services Bank of NY Mellon	H: 316-634-4029	<a href="mailto:ulrice.elliott@bny Mellon.com">ulrice.elliott@bny Mellon.com</a>
C. Sonia Martínez 53 1/2 Prospect Street Utica, NY 13501 Secretary	2016-2018 (1) 2019-2022 (2) 2018-2019 (1) 2019-2020 (1)	Executive Director Mohawk Valley Latino Association	H: 316-642-2681	<a href="mailto:sonia@mvcaulica.org">sonia@mvcaulica.org</a> <a href="mailto:cmartinez0927@gmail.com">cmartinez0927@gmail.com</a>
<b>EXPIRES 2022</b> C. Sonia Martínez Jennifer DeWearth	See above See above			
Melissa Priest 1027 Bacon St. Utica, NY 13501	2018-2019 (1) 2019-2022 (1)	Lecturer/Advisor, College of Business Management, SUNY Polytechnic Institute	W: 316-792-7247	<a href="mailto:mpriest@sunyt.edu">mpriest@sunyt.edu</a>
<b>EXPIRES 2021</b> Pamela Matt, Esq.	See above			
Amy Palmieri 110 College St. Clinton, NY 13323	2016-2018 (1) 2018-2021 (2)	Senior Assistant, Major Gifts Hamilton College	H: 316-853-2085 W: 316-869-4687	<a href="mailto:apalmier@hamilton.edu">apalmier@hamilton.edu</a>
Elizabeth Snyder Fortino 2817 Oneida St. Utica, NY 13501	2014-2015 (partial) 2015-2018 (1) 2018-2021 (2)	Principal Attorney in Charge of Utica & Syracuse Office NY State Mental Hygiene Legal Service 2817 Oneida St., Utica, NY 13501	W: 316-404-7411	<a href="mailto:ecbaurisident@gmail.com">ecbaurisident@gmail.com</a>
Abby Puleo 10 Woodberry Road New Hartford, NY 13413	2013-2015 (partial) 2016-2018 (1) 2018-2021 (2) 2017-2018 (1) 2018-2019 (2)	Fast Track Claims Supervisor Utica National Insurance Company Utica, NY 13502	H: 316-292-3083	<a href="mailto:abby.puleo@uticanational.com">abby.puleo@uticanational.com</a>
<b>EXPIRES 2020</b> Kathleen Williams Alcott 9555 Sessions Road Saugerties, NY 13458	2016-2017 (partial) 2017-2020 (1)	Associate Director, NEATEC - SUNY POLY	C: 316-723-6281	<a href="mailto:kalcott@sunypoly.edu">kalcott@sunypoly.edu</a>
Zora Thomova 28 Bailey Mow Run New Hartford, NY 13413	2018-2020 (1)	Interim Dean, College of Arts and Sciences; Professor, Director of Global Studies, SUNY Polytechnic Institute	W: 316-798-9165	<a href="mailto:zthomovr@sunypoly.edu">zthomovr@sunypoly.edu</a>
Colleen McCaughn, Ph.D. 4 Mohawk Street Little Falls, NY 13365	2016-2017 (partial) 2017-2020 (1)	President, Herkimer College	C: 316-728-1256	<a href="mailto:cmccaughn@herkimer.edu">cmccaughn@herkimer.edu</a>
Linda Luboy (resigned 7/1/19) 32 Tennyson Road New Hartford, NY 13413	2017-2020 (1)	Regional Traffic Engineer NYS Department of Transportation	H: 316-793-2460	<a href="mailto:mluboy@roadrunners.com">mluboy@roadrunners.com</a> <a href="mailto:linda.luboy@dot.ny.gov">linda.luboy@dot.ny.gov</a>
Sharon Heyboer 2626 Glenwood Road Utica, NY 13501	2017-2020 (1)	Assistant to the Regional Director NYS Department of Transportation	C: 316-841-0320	<a href="mailto:sharon.heyboer@dot.ny.gov">sharon.heyboer@dot.ny.gov</a>
Matthew Grove 1543 Sunset Avenue Utica, NY 13502	2017-2020 (1)	Business Analyst Indium Corporation	H: 316-782-0569 C: 316-982-8749	<a href="mailto:mogrove@indium.net">mogrove@indium.net</a>

**Oneida County Department of Social Services  
Contractor and Contract Staff  
Confidentiality and Non-Disclosure Agreement**

I, the undersigned, an employee of YWCA Mohawk Valley, (the  
Name of Contract Agency

"Service Provider"), hereby state that I understand and agree that all information provided to the Service Provider from the Oneida County Department of Social Services staff by paper copies, computer systems or databases, electronic communication or otherwise obtained pursuant to the Agreement entered between the Oneida County Department of Social Services and the Service Provider indicated above, is CONFIDENTIAL, is to be used only for the purposes of performing services required by the Agreement, and must be safeguarded from unauthorized disclosure.

I further understand that such information includes, but is not limited to, any and all information regarding parents or guardians and their children, and all employment, financial, and personal identifying data, including Protected Health Information (PHI) as set forth in HIPAA regulations.

I agree to maintain all such information as CONFIDENTIAL, and I agree to use such information only in the performance of my official duties to perform the functions required by the Agreement, unless otherwise authorized in writing by the Department of Social Services.

I understand that confidential information maintained in and/or obtained from systems/databases such as, but not limited to the Welfare Management system (WMS), Child Support Management System (CSMS/ASSETS), Benefits Issuance Control System (BICS), COGNOS, and Connections are protected by Federal and State statutes and regulations. Access and disclosure of confidential information is strictly limited to authorized employees and legally designated agents, for authorized purposes only in the delivery of program services.

I understand that service providers may not access their own active, closed or archived records or those involving a relative, friend, acquaintance, neighbor, partner or co-worker or other individuals to whom they have no official assignment.

I understand that if my employment is terminated by resignation, retirement or for other reasons or the Service Provider Contract is not renewed, the terms of this Confidentiality and Non-Disclosure Agreement are still binding.

I understand that if I disclose CONFIDENTIAL information in violation of the requirements stated herein, any individual who incurs damages due to the disclosure may recover such damage in a civil action.

I understand that, in addition to any other penalties provided by law, any person who willfully releases or willfully permits the release of any CONFIDENTIAL information as described herein to persons or agencies not authorized under New York State law to receive it shall be guilty of a class A misdemeanor.

Print Name: Dianne Stancato  
Signature: Dianne Stancato  
Title: CEO  
Date: 8/28/19  
Witness: [Signature] EA

ADDENDUM --STANDARD ONEIDA COUNTY CONDITIONS

THIS ADDENDUM, entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between the County of Oneida, hereinafter known as County, and a Contractor, subcontractor, vendor, vendee, licensor, licensee, lessor, lessee or any third party, hereinafter known as Contractor.

WHEREAS, County and Contractor have entered into a contract, license, lease, amendment or other agreement of any kind (hereinafter referred to as the "Contract"); and

WHEREAS, the Oneida County Attorney and the Oneida County Director of Purchasing have recommended the inclusion of the standard clauses set forth in this Addendum to be included in every Contract for which County is a party, now, thereafter,

The parties to the attached Contract, for good consideration, agree to be bound by the following clauses which are hereby made a part of the Contract.

1. EXECUTORY OR NON-APPROPRIATION CLAUSE.

The County shall have no liability or obligation under this Contract to the Contractor or to anyone else beyond the annual funds being appropriated and available for this Contract.

2. ONEIDA COUNTY BOARD OF LEGISLATORS: RESOLUTION #249 SOLID WASTE DISPOSAL REQUIREMENTS.

Pursuant to Oneida County Board of Legislator Resolution No. 249 of May 26, 1999, the Contractor agrees to deliver exclusively to the facilities of the Oneida-Herkimer Solid Waste Authority, all waste and recyclables generated within the Authority's service area by performance of this Contract by the Contractor and any subcontractors. Upon awarding of this Contract, and before work commences, the Contractor will be required to provide Oneida County with proof that Resolution No. 249 of 1999 has been complied with, and that all wastes and recyclables in the Oneida-Herkimer Solid Waste Authority's service area which are generated by the Contractor and any subcontractors in performance of this Contract will be delivered exclusively to Oneida-Herkimer Solid Waste Authority facilities.

3. CERTIFICATIONS REGARDING LOBBYING, DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS, AND DRUG-FREE WORKPLACE REQUIREMENTS.

- a. Lobbying. As required by Section 1352, Title 31 of the U.S. Code and implemented at 34 CFR Part 82 for persons entering into a grant or cooperative

agreement over \$100,000, as defined at 34 CFR Part 82, Section 82.105 and 82.110, the Contractor certifies that:

- i. No federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any persons for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal grant or cooperative agreement.
  - ii. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal grant or cooperative agreement, the Contractor shall complete and submit Standard Form 111 "Disclosure Form to Report Lobbying," in accordance with its instructions.
  - iii. The Contractor shall require that the language of this certification be included in the award documents for all subcontracts and that all subcontractors shall certify and disclose accordingly.
- b. Debarment, Suspension and other Responsibility Matters. As required by Executive Order 12549, Debarments and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 83.105 and 85.110,
- i. The Contractor certifies that it and its principals:
    - A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
    - B. Have not within a three-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a

criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction, violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

C. Are not presently indicted or otherwise criminally or civilly charged by a Government entity (federal, state or local) with commission of any of the offenses enumerated in subparagraph (B), above, of this certification; and

D. Have not within a three-year period preceding this Contract had one or more public transactions (federal, state, or local) for cause or default;

ii. Where the Contractor is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this Contract.

c. Drug-Free Workplace (Contractors other than individuals). As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for Contractors, as defined at 34 CFR Part 85, Sections 85.605 and 85.610:

i. The Contractor will or will continue to provide a drug-free workplace by:

A. Publishing a statement notifying employees that the manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

B. Establishing an ongoing drug-free awareness program to inform employees about:

1) The dangers of drug abuse in the workplace;

- 2) The Contractor's policy of maintaining a drug-free workplace;
- 3) Any available drug counseling, rehabilitation, and employee assistance program; and
- 4) The penalties that may be imposed upon an employee for drug abuse violation occurring in the workplace;

C. Making it a requirement that each employee to be engaged in the performance of the Contract be given a copy of the statement required by paragraph (A), above;

D. Notifying the employee in the statement required by paragraph (A), above, that as a condition of employment under the Contract, the employee will:

- 1) Abide by the terms of the statement; and
- 2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction;

E. Notifying the County, in writing within ten (10) calendar days after having received notice under subparagraph (D)(2), above, from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position and title, to:

Director, Grants Management Bureau, State Office Building Campus, Albany, New York 12240. Notice shall include the identification number(s) of each affected contract.

F. Taking one of the following actions, within thirty (30) calendar days of receiving notice under paragraph (D)(2), above, with respect to any employee who is so convicted;



- 1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
- 2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency;

G. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (A),(B),(C),(D),(E) and (F), above.

- ii. The Contractor may insert in the space provided below the site(s) for the performance of work done in connection with the specific contract.

Place of Performance (street, address, city, county, state, zip code).

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d. Drug-Free Workplace (Contractors who are individuals). As required by the Drug-Free Workplace act of 1988, and implemented at 34 CFR Part 85, Subpart F, for Contractors that are individuals, as defined at 34 CFR Part 85, Sections 85.605 and 85.610:

- i. As a condition of the contract, the Contractor certifies that he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the Contract; and
- ii. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any contract activity, the

Contractor will report the conviction, in writing, within ten (10) calendar days of the conviction, to:

Director, Grants Management Bureau, State Office Building  
Campus, Albany, NY 12240. Notice shall include the  
identification number(s) of each affected Contract.

4. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA).

When applicable to the services provided pursuant to the Contract:

- a. The Contractor, as a Business Associate of the County, shall comply with the Health Insurance Portability and Accountability Act of 1996, hereinafter referred to as "HIPAA," as well as all regulations promulgated by the Federal Government in furtherance thereof, to assure the privacy and security of all protected health information exchanged between the Contractor and the County. In order to assure such privacy and security, the Contractor agrees to enact the following safeguards for protected health information:
  - i. Establish policies and procedures, in written or electronic form, that are reasonably designed, taking into consideration the size of, and the type of activities undertaken by, the Contractor, to comply with the Standards for Privacy of Individual Identifiable Health Information, commonly referred to as the Privacy Rule;
  - ii. Utilize a combination of electronic hardware and computer software in order to securely store, maintain, transmit, and access, protected health information electronically; and
  - iii. Utilize an adequate amount of physical hardware, including but not limited to, locking filing cabinets, locks on drawers, other cabinets and office doors, in order to prevent unwarranted and illegal access to computers and paper files that contain protected health information of the County's clients.
- b. This agreement does not authorize the Contractor to use or further disclose the protected health information that the Contractor handles in treating patients of the County in any manner that would violate the requirements of 45 CFR § 164.504(e), if that same use or disclosure were done by the County, except that:

- i. The Contractor may use and disclose protected health information for the Contractor's own proper management and administration; and
- ii. The Contractor may provide data aggregation services relating to the health care operations of the County.

c. The Contractor shall:

- i. Not use or further disclose protected health information other than as permitted or required by this contract or as required by law;
- ii. Use appropriate safeguards to prevent the use or disclosure of protected health information other than as provided for in this Contract;
- iii. Report to the County any use or disclosure of the information not provided for by this Contract of which the Contractor becomes aware;
- iv. Ensure that any agents, including a subcontractor, to whom the Contractor provides protected health information received from, or created or received by the Contractor on behalf of the County, agrees to the same restrictions and conditions that apply to the Contractor with respect to such protected health information;
- v. Make available protected health information in accordance with 45 CFR §164.524;
- vi. Make available protected health information for amendment and incorporate any amendments to protected health information in accordance with 45 CFR §164.528;
- vii. Make available the information required to provide an accounting of disclosures in accordance with 45 CFR § 164.528;
- viii. Make its internal practices, books, and records relating to the use and disclosure of protected health information received from, or created or received by, the Contractor on behalf of the County

available to the Secretary of Health and Human Services for purposes of determining the County's compliance with 45 CFR § 164.504(e)(2)(ii); and

- ix. At the termination of this Contract, if feasible, return or destroy all protected health information received from, or created or received by, the Contractor on behalf of the County that the Contractor still maintains, in any form, and retain no copies of such information; or, if such return or destruction is not feasible, extend the protections of this Contract permanently to such information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.
- d. The Contractor agrees that this contract may be amended if any of the following events occurs:
- i. HIPAA, or any of the regulations promulgated in furtherance thereof, is modified by Congress or the Department of Health and Human Services;
  - ii. HIPAA, or any of the regulations promulgated in furtherance thereof, is interpreted by a court in a manner impacting the County's HIPAA compliance; or
  - iii. There is a material change in the business practices and procedures of the County.
- e. Pursuant to 45 CFR § 164.504(e)(2)(iii), the County is authorized to unilaterally terminate this Contract if the County determines that the Contractor has violated a material term of this Contract.

5. NON-ASSIGNMENT CLAUSE.

In accordance with Section 109 of the General Municipal Law, this Contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the County's previous written consent, and any attempts to do so are null and void. The Contractor may, however, assign its right to receive payments without the County's prior written consent unless this Contract concerns Certificates of Participation pursuant to Section 109-b of the General Municipal Law.

6. WORKER'S COMPENSATION BENEFITS.

In accordance with Section 108 of the General Municipal Law, this Contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this Contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

7. NON-DISCRIMINATION REQUIREMENTS.

To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other state and federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a Contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this Contract shall be performed within the State of New York, the Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 of the Labor Law, the Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. The Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this Contract and forfeiture of all monies due hereunder for a second or subsequent violation.

8. WAGE AND HOURS PROVISIONS.

If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 of the Labor Law, neither the Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said Articles, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, the Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as

determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the County of any County-approved sums due and owing for work done upon the project.

9. NON-COLLUSIVE BIDDING CERTIFICATION.

In accordance with Section 103-d of the General Municipal Law, if this Contract is awarded based upon the submission of bids, the Contractor certifies and affirms, under penalty of perjury, as to its own organization, under penalty of perjury, that to the best of its knowledge and belief:

(1) the prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor; and (2) unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and (3) no attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition. The Contractor further affirms that, at the time the Contractor submitted its bid, an authorized and responsible person executed and delivered to the County a non-collusive bidding certification on the Contractor's behalf.

10. RECORDS.

The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertaining to performance under this Contract (hereinafter, collectively, "the Records"). The Records shall include, but not be limited to, reports, statements, examinations, letters, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, electronic files, e-mails (and all attachments thereto), rules, regulations and codes. The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The County Comptroller, the County Attorney and any other person or entity authorized to conduct an audit or examination, as well as the agency or agencies involved in this Contract, shall have access to the Records during normal business hours at an office of the Contractor within the County or, if no such office is available, at a mutually agreeable and reasonable venue within the County, for the term specified above, for the purposes of inspection, auditing and copying. The County shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute"), provided that: (a) the Contractor shall timely inform an appropriate County official, in writing, that said records should not be disclosed; (b) said records

shall be sufficiently identified; and (c) in the sole discretion of the County, designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the County's right to discovery in any pending or future litigation. Notwithstanding any other language, the Records may be subject to disclosure under the New York Freedom of Information Law, for other applicable state or federal law, rule or regulation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

- a. Identification Number(s). Every invoice or claim for payment submitted to a County agency by a payee, for payment for the sale of goods or service or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. This number includes any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Where the payee does not have such number or numbers, the payee, on its invoice or claim for payment, must state with specificity the reason or reasons why the payee does not have such number or numbers.
- b. Privacy Notification. (i) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the County is mandatory. The principle purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their liabilities and to generally identify persons affected by the taxes administered by the New York State Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (ii) The personal information is requested by the County's purchasing unit contracting to purchase goods or services or lease the real or personal property covered by this Contract.

12. CONFLICTING TERMS.

In the event of a conflict between the terms of the Contract (including any and all attachments thereto and amendments thereof) and the terms of this Addendum, the terms of this Addendum shall control.

13. GOVERNING LAW.

This Contract shall be governed by the laws of the State of New York except where the Federal Supremacy Clause requires otherwise.

14. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.

The Contractor certifies and warrants that all wood products to be used under this Contract award will be acquired in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law (Use of Tropical Hardwoods), which prohibits purchase and use of tropical hardwoods, unless specifically exempted by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the sole responsibility of the Contractor to establish to meet with the approval of the County.

In addition, when any portion of this Contract involving the use of woods, whether for supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in Section 165 of the State Finance Law. Any such use must meet with approval of the County; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the sole responsibility of the Contractor to establish to meet with the approval of the County.

15. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.

The Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa).

16. GRATUITIES AND KICKBACKS.

- a. Gratuities. It shall be unethical for any person to offer, give, or agree to give any County employee or former County employee, or for any County employee or former County employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request; influencing the content of any specification or procurement standard; rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application;



request for ruling, determination, claim, or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.

- b. Kickbacks. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime Contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

#### 17. AUDIT

The County, the State of New York, and the United States shall have the right at any time during the term of this agreement and for the period limited by the applicable statute of limitations to audit the payment of monies hereunder. The Contractor shall comply with any demands made by the County to provide information with respect to the payment of monies made hereunder during the period covered by this paragraph. The Contractor shall maintain its books and records in accordance with generally accepted accounting principles or such other method of account which is approved in writing by the County prior to the date of this agreement. The revenues and expenditures of the Contractor in connection with this agreement shall be separately identifiable. Each expenditure or claim for payment shall be fully documented. Expenditures or claims for payment which are not fully documented may be disallowed. The Contractor agrees to provide to, or permit the County to examine or obtain copies of, any documents relating to the payment of money to the Contractor or expenditures made by the Contractor for which reimbursement is requested to be made or has been made to the Contractor by the County. The Contractor shall maintain all records required by this paragraph for 7 years after the date this agreement is terminated or ends.

If the Contractor has expended, in any fiscal year, \$300,000.00 or more in funds provided by a federal financial assistance program from a federal agency pursuant to this agreement and all other contracts with the County, the Contractor shall provide the County with an audit prepared by an independent auditor in accordance with the Single Audit Act of 1984, 31 U.S.C. §§ 7501, et seq., as amended, and the regulations adopted pursuant to such Act.

#### 18. CERTIFICATION OF COMPLIANCE WITH THE IRAN DIVESTMENT ACT.

Pursuant to Section 103-g of the General Municipal Law, by submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, each bidder or Contractor, or any person signing on behalf of any bidder or Contractor, and any assignee or subcontractor and, in the case of a joint bid, each party thereto, certifies, under penalty of perjury, that once the Prohibited Entities List is posted on the Office of General Services

(hereinafter "OGS") website, that to the best of its knowledge and belief, that each bidder or Contractor and any subcontractor or assignee is not identified on the Prohibited Entities List created pursuant to State Finance Law § 165-a(3)(b).

Additionally, the bidder or Contractor is advised that once the Prohibited Entities List is posted on the OGS website, any bidder or Contractor seeking to renew or extend a Contract or assume the responsibility of a Contract awarded in response to this solicitation must certify at the time the Contract is renewed, extended or assigned that it is not included on the Prohibited Entities List.

During the term of the Contract, should the County receive information that a bidder or Contractor is in violation of the above-referenced certification, the County will offer the person or entity an opportunity to respond. If the person or entity fails to demonstrate that he, she or it has ceased engagement in the investment which is in violation of the Iran Divestment Act of 2012 within ninety (90) days after the determination of such violation, then the County shall take such action as may be appropriate, including, but not limited to, imposing sanctions, seeking compliance, recovering damages or declaring the bidder or Contractor in default.

The County reserves the right to reject any bid or request for assignment for a bidder or Contractor that appears on the Prohibited Entities List prior to the award of a Contract and to pursue a responsibility review with respect to any bidder or Contractor that is awarded a Contract and subsequently appears on the Prohibited Entities List.

19. PROHIBITION ON TOBACCO AND E-CIGARETTE USE ON COUNTY PROPERTY

Pursuant to Local Law No. 3 of 2016, the use of tobacco and e-cigarettes are prohibited on Oneida County property, as follows:

- a. For the purposes of this provision, the "use of tobacco" shall include:
  - i. The burning of a lighted cigarette, pipe, cigar or other lighted instrument for the purpose of smoking tobacco or a tobacco substitute;
  - ii. The use of tobacco and/or a substance containing tobacco or a tobacco substitute by means other than smoking, including: chewing; holding in the mouth; or expectoration of chewing tobacco.
- b. For the purposes of this provision, "e-cigarette" shall mean an electronic device composed of a mouthpiece, heating element, battery and electronic circuit that

delivers vapor which is inhaled by an individual user as he or she simulates smoking.

c. For the purposes of this provision, "on Oneida County property" shall be defined as:

i. Upon all real property owned or leased by the County of Oneida;  
and

ii. Within all County of Oneida-owned vehicles or within private vehicles when being used for a County of Oneida purpose, except that a driver may smoke in a privately-owned vehicle being used for a County of Oneida Purpose if the driver is the sole occupant of the vehicle.

d. Each violation of this Local Law No. 3 of 2016 shall constitute a separate and distinct offense and may be punishable by a fine of up to \$200.00 for a first offense and up to \$1,000.00 for subsequent offenses.

20. COMPLIANCE WITH NEWYORK STATE LABOR LAW § 201-G

The Contractor shall comply with the provisions of New York State Labor Law § 201-g.

Anthony J. Picente Jr.  
County Executive

Colleen Fahy-Box  
Commissioner



**ONEIDA COUNTY DEPARTMENT OF FAMILY AND COMMUNITY SERVICES**

Administration, 7<sup>th</sup> Floor  
County Office Building, 800 Park Avenue, Utica, NY 13501  
Phone (315) 798-5523 Fax (315) 793-6044

November 18, 2020

FN 20 20-370

HEALTH & HUMAN SERVICES

WAYS & MEANS

Honorable Anthony J. Picente Jr.  
Oneida County Executive  
800 Park Avenue  
Utica, New York 13501

Dear Mr. Picente:

Attached for your review and approval is a Purchase of Service Agreement between Oneida County, through its Department of Family and Community Services, and various individuals to provide specialized counseling services.

The clinical counseling contractor will work with children and families to identify and treat mental health and behavioral issues, including those where substance abuse negatively affects daily functioning. By providing this service, the Department intends to both reduce out-of-home placements and to expedite the return home from placement.

The term of this Agreement runs from January 1, 2021 through December 31, 2023. This Agreement is funded partly by the Child Abuse or Neglect Prevention and Treatment Act (CAPTA) State Grant with any additional preventive service counseling having a local cost of 27.18 %. The Department does not anticipate spending more than \$450,000.00 for the duration of this Agreement.

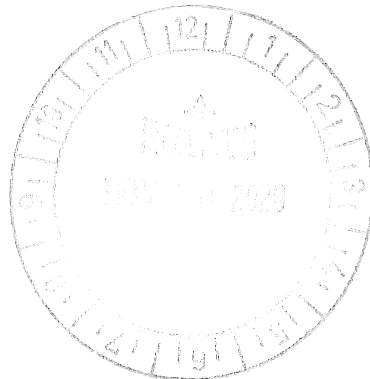
I respectfully request the approval of this Agreement between Oneida County, through its Department of Family and Community Services, and various individuals to provide specialized counseling services.

Thank you for your consideration.

Sincerely,

*Colleen Fahy-Box*  
Colleen Fahy-Box  
Commissioner

CFB/tms  
attachment



Reviewed and Approved for submittal to the  
Oneida County Board of Legislators by

*Anthony J. Picente Jr.*  
Anthony J. Picente, Jr.  
County Executive

Date 11-20-20

# 50500

Oneida Co. Department Social Services

Competing Proposal \_\_\_\_\_  
Only Respondent \_\_\_\_\_  
Sole Source RFP \_\_\_\_\_

Oneida County Board of Legislators  
Contract Summary

Name of Proposing Organization: Template Contract to provide "Various Specialized Counseling Services"  
Title of Activity or Services: Specialized Clinical Counseling  
Proposed Dates of Operations: January 1, 2021 through December 31, 2023  
Client Population/Number to be Served: Children and their families who are in need of counseling services.

**SUMMARY STATEMENTS**

**1). Narrative Description of Proposed Services**

Clinical Services is defined as assessment, diagnosis, testing, psychotherapy, and specialized therapies provided by a person who has attained a Master's Degree in social work, is a licensed psychologist or psychiatrist, or another recognized therapist in human services.

**2). Program/Service Objectives and Outcomes**

The clinical counseling contractor will work with participant adult, families and children to identify and treat mental health and behavioral issues, including substance abuse, that negatively affect daily functioning and can result in placement outside of the home. This service is expected to reduce out of home placements and to expedite the return home from placements.

**3). Program Design and Staffing Level -**

Licensed Counselors with a Masters degree in Social Work will provide Behavioral Counseling services under this agreement.

**Total Funding Requested:** \$ 90.00 per hour.

**Oneida County Dept. Funding Recommendation:** Account #A6070.49548

**Mandated or Non-mandated:** Mandated service

**Proposed Funding Source (Federal \$ /State \$ / County \$):**

This Agreement is funded in part by the Child Abuse or Neglect Prevention and Treatment Act (CAPTA) State Grant with any additional preventive services having a local cost of 27.18 %.

<b>Federal</b> –	38.39 %
<b>State</b> -	34.43 %
<b>County</b> -	27.18 %

**Cost Per Client Served:** \$ 90.00 per clinical hour

**Past performance Served:** The Department does not anticipate spending more than \$450,000.00 for the duration of this agreement.

**O.C. Department Staff Comments:** The Department contracts with a number of clinical counselors to ensure availability.

**THIS AGREEMENT**, is made by and between Oneida County (hereinafter referred to as “the County”), a municipal corporation organized and existing under the laws of the State of New York and having its principal office at 800 Park Avenue, Utica, New York through its Department of Family and Community Services (Department of Social Services) (hereinafter referred to as “the Department”), and various qualified counselors, a licensed Master of Social Work, having her principal place of business at \_\_\_\_\_ (hereinafter referred to as “the Contractor”).

**WITNESSETH:**

**WHEREAS**, the Commissioner of Social Services of the County (hereinafter referred to as the Commissioner) is charged with the responsibility for the administration of all child welfare services provided in the County at public expense pursuant to Article 6 of the Social Services Law, including Preventive Services pursuant to Section 409 et seq. of the Social Services Law and the Consolidated Services Plan for the State of New York; and

**WHEREAS**, the Commissioner, pursuant to Section 409-a(4) of the Social Services Law and 18 NYCRR Section 405.1 may provide such Preventive Services directly or through the purchase of services; and

**WHEREAS**, the Contractor has the specialized skill and experience to properly perform the services described herein; and

**WHEREAS**, the County has determined that the amount of funds to be paid to the Contractor is reasonable and necessary to provide quality Preventive Services in conformance with the Consolidated Services Plan for the State of New York, Section 409 et seq. of the Social Services Law, and 18 NYCRR Parts 405 and 423; and

**WHEREAS**, it is economically and organizationally feasible for the County to contract with the Contractor for the performance of these services;

**NOW, THEREFORE, IT IS MUTUALLY AGREED BETWEEN THE DEPARTMENT AND THE CONTRACTOR AS FOLLOWS:**

**SECTION I: DEFINITIONS**

Whenever the following terms are used in this Agreement and schedules attached hereto, they shall have the following meaning unless otherwise clearly noted.

(1) Preventive Services shall mean supportive and rehabilitative services provided to children and their families in accordance with the provisions of 18 NYCRR Part 423 for the purpose of: averting a disruption of a Family which will or could result in placement of a child in foster care;

enabling a child who has been placed in foster care to return to his or her Family at an earlier time than would otherwise be possible; or reducing the likelihood that a child who has been discharged from foster care would return to such care. The following services, when provided for the above-stated purpose and in conformity with this Part, are considered Preventive Services.

Mandated Preventive Services shall mean Preventive Services provided to a child and his or her Family whom the Department is required to serve pursuant to 18 NYCRR Section 430.9. Non-Mandated Preventive Services shall mean Preventive Services provided to a child and his or her Family whom the Department may service pursuant to Section 409-a (2) of the Social Services Law. The services, set forth in paragraphs (2) through (17) of this Agreement, when provided for the above-stated purpose and in conformity with 18 NYCRR Part 423, are considered Preventive Services.

(2) Case Management is defined as the responsibility of the Department to authorize the provision of Preventive Services, to approve the client eligibility determination according to the criteria of 18 NYCRR Section 423.3 and to approve in writing the service plans as defined in 18 NYCRR Part 428.

(3) Case Planning is defined as assessing the need for, providing or arranging for, and coordinating and evaluating the provision of those Preventive Services needed by a child and his or her Family to prevent disruption of the Family or to help a child in foster care return home sooner. Case Planning shall include, but not be limited to, referring such child and his or her Family to other services as needed, including but not limited to, educational counseling and training, vocational diagnosis and training, employment counseling, therapeutic and preventive medical care and treatment, health counseling and health maintenance services, vocational rehabilitation, housing services, speech therapy and legal services. Case Planning responsibility shall also include documenting client progress and adherence to the plan by recording in the uniform case record as defined in 18 NYCRR Part 428 and 18 NYCRR Section 430.8 through 430.13 that such services are provided and providing Casework Contact as defined in paragraph (4) of this Agreement. Case Planner shall mean the caseworker assigned Case Planning responsibility.

(4) Casework Contacts are defined as:

(i). Individual or group face-to-face counseling sessions between the Case Planner and the child and/or the child's parents, relatives or guardians constitutes Preventive Services for the purpose of guiding the child and/or the child's parents or guardians towards a course of action agreed to by the child and/or the child's parents or guardians as the best method of attaining personal objectives or resolving problems or needs of a social, emotional, developmental or economic nature;

(ii). Individual or group activities with the child and/or the child's parents that are planned for the purposes of achieving such course of action as specified in the child and Family's service plan;

(5) Clinical Services is defined as assessment, diagnosis, testing, psychotherapy, and specialized therapies provided by a person who has received a master's degree in social work, a



licensed psychologist, a licensed psychiatrist or other recognized therapist in human services. Such services shall be separate and distinct from Casework Contacts as defined in paragraph (4) of this Agreement.

(6) Day Care Services as defined in the Consolidated Services Plan for the State of New York prepared pursuant to Section 34-a of the Social Services Law.

(7) Day Services to Children as defined in 18 NYCRR Section 425.1 shall mean a program offering a combination of services including at least: social services, psychiatric, psychological, education and/or vocational services and health supervision, and also including, as appropriate, recreational and transportation services, for at least 3 (three) but less than 24 (twenty-four) hours per day and at least 4 (four) days per week excluding holidays. If it can be demonstrated that one or more of these services are not needed by the population served, the service may be waived.

(8) Emergency Cash or Goods is defined as money or the equivalent thereto, food, clothing or other essential items that are provided to a child and his or her Family in an emergency or acute problem situation in order to avert foster care placement.

(9) Emergency Shelter is defined as providing or arranging for shelter where a child and his or her Family who are in an emergency or acute problem situation reside in a site other than their own home in order to avert foster care placement.

(10) Family shall be defined solely for the purpose of this Agreement as the child who is at risk of foster care, his or her parent, or legal guardians, or other caretakers and siblings. Family may include a woman who is pregnant as specified in 18 NYCRR Section 320.9(c) (6). Family may also include a child who does not live with his or her parents and needs services to prevent return to foster care.

(11) Family Planning Services as defined in the Consolidated Services Plan for the State of New York prepared pursuant to Section 34-a of the Social Services Law.

(12) Home Management Services as defined in the Consolidated Services Plan for the State of New York prepared pursuant to Section 34-a of the Social Services Law.

(13) Homemaker Services as defined in the Consolidated Services Plan for the State of New York prepared pursuant to Section 34-a of the Social Services Law.

(14) Housekeeper/Chore Services as defined in the Consolidated Services Plan for the State of New York prepared pursuant to Section 34-a of the Social Services Law.

(15) Parent Aide Services is defined as those services provided in the home and community that focus on the need of the parent for instruction and guidance and are designed to maintain and enhance parental functioning and Family/parent role performance. Techniques may include, but not be

limited to: role modeling, listening skills, home management assistance and education in parenting skills and personal coping behavior.

(16) Parent Training is defined as group instruction in parent skills development and the developmental needs of the child and adolescent for the purpose of strengthening parental functioning and parent/child relationships in order to avert a disruption in a Family or help a child in foster care return home sooner than otherwise possible. Parent training may include child-parent interaction groups formed to enhance relationship and communication skills.

(17) Transportation Services is defined as providing or arranging for transportation of the child and/or his Family to and/or from services arranged as part of the child's service plan; however, transportation may not be provided as a preventive service for visitation of children in foster care with their parents except when such transportation cannot be arranged or provided by the child's Family.

## SECTION II: TERM OF AGREEMENT

This Agreement shall commence January 1, 2021 and continue through December 31, 2023. This Agreement may be renewed for additional terms upon the mutual agreement of the parties.

## SECTION III: SCOPE OF SERVICES

(1) The Contractor shall furnish and coordinate Preventive Services to recipients in accordance with federal and New York State laws and regulations, including 18 NYCRR Parts 404 and 423 and any other standards prescribed by the New York State Office of Children and Family Services ("OCFS"). All that follows in this section shall be viewed in the context of this paragraph.

(2) The Department shall be responsible for determining the eligibility of persons for Preventive Services to be purchased by the County. The Department shall also be responsible for establishing the policies and procedures for such eligibility determinations in accordance with 18 NYCRR Part 423 and any other standards prescribed by OCFS.

(3) The Department shall be responsible for Case Management, which shall include authorizing the provision of Preventive Services, approving client eligibility in accordance with 18 NYCRR Section 423.3 and approving child service plans.

(4) The Contractor shall provide Preventive Services in accordance with the program narrative and rates of payment described in Appendix C of this Agreement.

(5) The Contractor and the Department shall cooperate in the collection and exchange of data to facilitate service planning and to provide required information to the State's Child Care Review Service.

(6) The Contractor and the Department shall comply with Section 153 of the Social

Services Law, which requires all social services districts that purchase Preventive Services from other authorized agencies to charge any loss of reimbursement pursuant to this section to such agencies to the extent that such loss is attributable to such agencies.

(7) The Contractor and the County agree that a determination by OCFS to deny reimbursement to the County for the provision of Preventive Services for a child, pursuant to Section 153 of the Social Services Law, shall not relieve the County or the Contractor from which the County has purchased Preventive Services, from its statutory or contractual obligations to continue to provide Preventive Services for the child or other children in its care.

(8) Case Planning, along with Casework Contacts, shall be provided by the Contractor in accordance with Appendix C of this Agreement and as required by individual case plans 18 NYCRR Section 432.4(c).

(9) The Contractor shall review and discuss the service plan with the Department. Any changes in the plan or significant deviation therefrom, shall be submitted in a revised plan to the Department prior to the proposed implementation of the change. The Contractor shall implement the change upon receipt of written approval by the Department.

(10) The Contractor shall comply with the reporting provision of suspected child abuse or maltreatment as set forth in Title 6 of Article 6 of the Social Services Law.

#### SECTION IV: FAIR HEARINGS

The Department shall notify applicants for or recipients of care and services of their right to a fair hearing to appeal the denial, reduction or termination of a service, or failure to act upon application within thirty (30) days of application. The Department shall also inform applicants for or recipients of Preventive Services how to file a fair hearing request. The Department shall be responsible for establishing fair hearing procedures, holding fair hearings, and taking such steps as may be necessary to enforce its determinations and decisions. The Department shall provide the Contractor with copies of the decision. The Contractor, upon the request of the Department, shall participate in appeals and fair hearings as witnesses for a determination of issues.

#### SECTION V: REIMBURSEMENT AND SERVICE FEES

The County shall reimburse the Contractor for provision of Preventive Services in accordance with the claiming procedures and prescribed schedule of fees, as set forth in Appendix C of this Agreement and in accordance with state and federal regulations pertaining to reimbursement of Preventive Services.

#### SECTION VI: GENERAL RESPONSIBILITIES OF PARTIES

(1) The Contractor shall exercise oversight of its day-to-day affairs and programs. The Contractor shall have the responsibility for day-to-day provision of Preventive Services for each child

serviced by it in accordance with this Agreement and with appropriate OCFS regulations. The parties hereto recognize, however, that ultimate responsibility for the welfare of each child rests with the Department.

(2) The Contractor shall maintain sufficient staff, facilities and equipment, in accordance with the regulations of the OCFS in order to provide the services set forth in Appendix C of this Agreement.

(3) The Contractor shall provide the services described in Appendix C of this Agreement and shall provide the Department written notification of the location(s) of any services provided in conjunction with the child service plan.

(4) The Department shall notify the Contractor of persons who are assigned monitoring responsibility for Child Protective Services recipients receiving Preventive Services from the Contractor.

#### SECTION VII: BOOKS, RECORDS AND REPORTS

(1) The Contractor shall keep accurate records (in conformance with state regulations established for utilization review and uniform case recording) for each public charge receiving services under this Agreement. Each record shall indicate the services provided to the child and his or her family, in addition to other recipients of service involved with the case, including the date such services were provided. The Contractor shall make such reports to the Department on the status and progress of each recipient of service at intervals required in the OCFS regulations.

(2) All information contained in the Contractor's files shall be held confidential by the Contractor and the Department pursuant to the applicable provisions of the Social Services Law and any New York State regulations promulgated thereunder, including 18 NYCRR Section 357.5 and 423.7, as well as any applicable federal laws and any regulations promulgated thereunder and shall not be disclosed except as authorized by law.

(3) Records of individual recipients of services shall be made available to the Department upon request for consultation or review.

(4) The Contractor shall maintain statistical records as required by the Department and will furnish such data at times prescribed by and on forms supplied by the Department.

(5) The Contractor shall maintain financial books, records and necessary supporting documents as required by the Department. The Contractor shall use accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of the services provided under this Agreement. The Contractor shall collect statistical data of a fiscal nature on a regular basis and make fiscal and statistical reports at times prescribed by, and on forms furnished by, the Department.

(6) The Contractor shall retain all books, records and other documents relevant to this Agreement for six (6) years after final payment for services to which they relate, during which time authorized County, state and/or federal auditors shall have access to and the right to examine the same.

(7) In addition to paragraphs (3), (4), (5), and (6) of this Agreement, and until the expiration of six (6) years after the furnishing of services pursuant to this Agreement or any subcontract made pursuant to this Agreement, the Contractor and its subcontractor(s) shall make available, upon written request, to the Secretary of the U.S. Department of Health and Human Services, or upon request, to the Comptroller General, or any of their duly authorized representatives, this Agreement, and books, documents and records of the Contractor or subcontractor(s) that are necessary to certify the nature and extent of such costs.

#### SECTION VIII: ACCOUNTABILITY

(1) The Department shall establish methods to evaluate the provision of Preventive Services by the Contractor pursuant to this Agreement. All provisions of this Section shall be interpreted consistent with New York State law and applicable regulations. In implementing the foregoing, the Contractor recognizes that the Commissioner, pursuant to statute, has ultimate responsibility for the protection and preservation of the welfare of all children within her jurisdiction and thus has the duty, ongoing throughout the term of this Agreement, to monitor the Contractor with regard to the Preventive Services provided to the children referred hereunder.

(2) The Contractor agrees that a program and facilities review, as pertains to the delivery of Preventive Services under this Agreement, including meetings with recipients of service, review of uniform case records, review of service policy and procedural issuances, review of staffing and job description and meetings with staff directly or indirectly involved in the provision of Preventive Services, may be conducted at any reasonable time by qualified personnel from those local, state and federal agencies with the required legal powers and statutory authority to conduct such activities.

(3) The Department shall confer with the Contractor at least twice a year to discuss the Contractor's services purchased by the County. This shall include, but not be limited to, such items as frequency of contact and planning with the natural Family and significant others, scope of service plans and of achieving the goals stated therein, and extent to which special mental health, remedial, tutorial and vocational services were provided after the Contractor and the Department determined these were necessary. These semi-annual client reviews shall include determination of compliance with Agreement requirements.

(4) If the Contractor fails to substantially comply with the provisions of this Agreement after due written notice, the County may take such actions or invoke such sanctions under this Agreement and any appropriate regulations issued by OCFS as it deems necessary.

(5) The Contractor may subcontract certain direct services of this Agreement. The Contractor shall provide a list of all sub-contracts on a monthly basis. Where subcontractors are

permitted, they are subject to federal and state requirements governing purchase of services contracts. The Contractor is responsible for the performance of any subcontractor.

(6) The Contractor covenants and agrees that neither it nor any of its directors, officers, members, or employees has any interest, nor shall they acquire any interest, directly or indirectly, which would substantially or adversely conflict in any manner or degree with the Contractor's performance of the services defined in Section I. The Contractor further covenants that in the performance of this Agreement, no person having such interest shall be employed.

#### SECTION IX: COMPLIANCE WITH LAW

(1) The Contractor shall comply with the requirements of the Civil Rights Act of 1964 as amended, the Age Discrimination Employment Act of 1967 as amended, the Federal Rehabilitation Act of 1973 as amended, and Executive Order No.11375 and as supplemented in Department of Labor Relations, 41 CFR, Part 60. The Contractor also agrees to observe all applicable federal regulations contained in 45 CFR, Part 84, and 28 CFR, Part 41.

(2) The Contractor shall be bound by the terms and conditions of Appendix A, Appendix B, Appendix C, and the Standard Oneida County Conditions Addendum attached hereto and made a part hereof.

#### SECTION X: TERMINATION OF AGREEMENT

(1) This Agreement may be terminated by mutual written agreement of the contracting parties.

(2) This Agreement may be terminated by the County for cause upon the failure of the Contractor to comply with the terms and conditions of this Agreement, including the attachment(s) hereto, provided that the County shall give the Contractor written notice specifying the Contractor's failure. Such written notice shall be delivered via registered or certified mail with return receipt requested or shall be delivered by hand with receipt granted by the Contractor. The Contractor agrees not to incur new obligations or to claim any expenses incurred after receipt of the notification of termination.

(3) In addition to the termination provisions set forth in paragraph (2) supra, the County shall have the right to terminate this Agreement in whole or in part, if at any time the Contractor has failed to comply with any federal, state or local health, safety or fire code regulations, or in the event that any license, approval or certification of the Contractor, required by federal, state or County government is revoked, not renewed, or otherwise not in full force or effect, or in the event that a new such license, approval or certification is required and the Contractor fails to secure it during the term of this Agreement.

(4) When this Agreement is to be terminated pursuant to paragraphs (2) and (3) supra,

# XXXXX

notice of termination shall be given in writing specifying the reasons for termination and the effective date of termination. The effective date shall not be less than thirty (30) days from the date of notice, unless substantial breach of contract is involved. In the event of a substantial breach of contract, the County may terminate immediately. In any event, the effective date of termination shall not be later than the Agreement expiration date.

(5) Upon termination or upon expiration of the term of this Agreement pursuant to paragraphs (1), (2), or (3) supra, the Department shall arrange for the transfer to another Contractor of all public charges then served by the Contractor. In order to reimburse the Contractor for all public charges not transferred by the effective date of termination, the County and Contractor shall negotiate an extension of this Agreement prior to the date of termination.

(6) The Contractor shall comply with all County close-out procedures, including but not limited to: account for and refund to the County any overpayments or excess funds paid to the Contractor pursuant to this Agreement; not incur or pay any further obligation to be reimbursed to it under this Agreement beyond the termination date; and transmit to the Department or its designee on written request copies of all books, records, documents and materials pertaining to the financial details of any services provided under the terms of this Agreement.

#### SECTION XI: INSURANCE REQUIREMENTS

(1) The Contractor shall maintain a professional liability policy and will provide the County with proof of coverage in the amount of \$1,000,000 per incident and \$5,000,000 aggregate during the term of this Agreement. The professional liability policy must include coverage for workplace liability and sexual abuse and molestation. The Contractor further agrees that such coverage shall not be terminated without prior notice to the County of at least thirty (30) days. The Contractor grants the County a limited power of attorney to communicate with the Contractor's insurance providers and/or agents for the express purpose of confirming the coverage required hereunder.

(2) Business Automobile Liability (BAL)

- a. BAL with limits of at least \$1,000,000 for each accident.
- b. BAL coverage must include coverage for liability arising out of all owned, leased, hired, and non-owned automobiles.
- c. Oneida County shall be included as an additional insured on the BAL policy. Coverage for the additional insured shall be on a primary and non-contributing basis.

(3) Use of Subcontractors: If any work under this Agreement is subcontracted in any way, the Contractor must execute a written agreement with the subcontractor containing the same indemnification clause and insurance requirements as stated in this Agreement protecting the County and the Contractor. The Contractor is responsible for executing the agreement with the

subcontractor and obtaining Certificates of Insurance verifying the insurance requirements. The Contractor is further responsible for verifying and ensuring there is no limitation on the County's (or any other party required by the County) rights and coverage as additional insureds on the subcontractor's policies. The Contractor shall fully indemnify and hold harmless the County for any loss of expense incurred by the County for its failure to fulfill this obligation.

SECTION XII: MISCELLANEOUS

(1) The County and the Contractor agree that the Contractor is an Independent Contractor and is not in any way to be deemed an employee of the County. The Contractor shall indemnify the County for any loss the County may suffer when such losses result from claims of any person or organization injured by acts or omission of the Contractor, its officers, employees or sub-contractors.

(2) The Contractor shall at all times indemnify and hold harmless the County and its officers and employees, free and clear of any and all liability arising from any act of omission or commission by the Contractor, its officers or employees, with respect to this Agreement and any of the terms thereof.

(3) The County shall make payments to the Contractor on a monthly basis upon presentation of a County Voucher with such verifications as requested by the County.

(4) This Agreement may not be assigned, transferred or in any way disposed of by the Contractor without first having obtained written approval thereof from the County.

(5) The Contractor warrants that it is not in arrears to the County upon any debt or contract, and that it has not been in default and is not in default as surety, contractor or otherwise.

(6) The Contractor warrants that it and its services staff, when necessary, have all of the licenses, approvals and certifications currently required by the laws of any applicable municipality. The Contractor further agrees to keep such required documents in full force and effect during the term of this Agreement or any extension, and to comply within the required time to secure any new license so required.

(7) The terms of this Agreement, including any attachments, amendments, addendums or appendixes attached hereto, constitute the entire understanding and agreement of the parties and cancel and supersede all prior negotiations, representations, understandings or agreements, whether written or oral, with respect to the subject matter of this Agreement. No waiver, alterations or modifications of any provisions of this Agreement shall be binding unless in writing and signed by the duly authorized representative of the parties sought to be bound.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day and year written.



\*\*\*\*\*

Date: \_\_\_\_\_

Oneida County: \_\_\_\_\_  
Anthony J. Picente, Jr., County Executive

\*\*\*\*\*

Approved: \_\_\_\_\_  
Kimberly A. Kolch, Assistant County Attorney

\*\*\*\*\*

Date: 11/19/20

Department of Family and Community Services: Colleen Fahy-Box  
Colleen Fahy-Box, Commissioner of Social Services

\*\*\*\*\*

Date: \_\_\_\_\_

Contractor: \_\_\_\_\_  
Print Name:

\*\*\*\*\*

APPENDIX A  
NEW YORK STATE CONDITIONS

The parties to the attached contract further agree to be bound by the following, which are hereby made a part of said contract.

- I. This contract may not be assigned by the contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or disposed of without the previous consent, in writing, of the State.
- II. This contract shall be deemed executory only to the extent of money available to the State for the performance of the terms hereof and no liability on account thereof shall be incurred by the State of New York beyond moneys available for the purpose thereof.
- III. The contractor specifically agrees, as required by Labor Law, Sections 220 and 220-d, as amended that:
  - (a) no laborer, workman or mechanic, in the employ of the contractor, subcontractor or other person doing or contracting to do the whole or any part of the work contemplated by the contract shall be permitted or required to work more than eight hours in any one calendar day or more than five days in any one week, except in the emergencies set forth in the Labor Law.
  - (b) The wages paid for a legal day's work shall be not less than the prevailing rate of wages as defined by law.
  - (c) The minimum hourly rate of wages to be paid shall not be less than that stated in the specifications, and any redetermination of the prevailing rate of wages after the contract is approved shall be deemed to be incorporated herein by reference as of the effective date of redetermination and shall form a part of these contract documents.
  - (d) The Labor Law provides that the contract may be forfeited and no sum paid for any work done thereunder on a second conviction for willfully paying less than—
    - (a) the stipulated wage scale as provided in Labor Law, Section 220, subdivision 3, as amended or
    - (b) less than the stipulated minimum hourly wage scale as provided in Labor Law, Section 220-d, as amended.
- IV. The contractor specifically agrees, as required by the provisions of the Labor Law, Section 220-e, as amended, that:
  - (a) in hiring of employees for the performance of work under this contract or any subcontract hereunder, or for the manufacture, sale or distribution of materials, equipment or supplies hereunder, no contractor, subcontractor, shall by reason of race, creed, color, sex or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates.
  - (b) No contractor, subcontractor, nor any person on his behalf shall, in any manner, discriminate against or intimidate any employee hired

for the performance of work under this contract on the account of race, creed, color, sex or national origin.

- (c) There may be deducted from the amount payable to the contractor by the State under this contract a penalty of fifty dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of the contract, and
- (d) This contract may be cancelled or terminated by the State or municipality and all moneys due or to become due hereunder may be forfeited for a second or any subsequent violation of the terms or conditions of this section of the contract, and
- (e) The aforesaid provisions of this section covering every contract for or on behalf of the State or a municipality for the manufacture, sale or distribution of materials, equipment or supplies shall be limited to operations performed within the territorial limits of the State of New York.

V. The contractor specifically agrees, as required by Executive Order # 45, dated Jan. 4, 1977, effective February 4, 1977, that:

- (a) The contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake programs of affirmative action to insure that they are afforded equal employment opportunities without discrimination. Such action shall be taken with reference, but not limited to: recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff, or termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on-the-job training.
- (b) If the contractor is directed to do so by the contracting agency or the Office of State Contract Compliance (hereafter OSCC). The contractor shall request each employment agency, labor union, or authorized representative of workers, with which he has a collective bargaining or other agreement or understanding, to furnish him with a written statement that such employment agency, labor union or representative will not discriminate because of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligations hereunder and the purposes of Executive Order # 45 (1977).
- (c) The contractor will state, in all solicitations or advertisements for employees placed by or on behalf of the contractor, that all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.
- \*(d) The contractor will comply with all the provisions of Executive Order # 45 (1977) and rules, regulations and orders issued

pursuant thereto and will furnish all information and reports required by said Executive Order or such rules, regulations and orders, and will permit access to its books, records, and accounts and to its premises by the contracting agency or the OSCC for the purposes of ascertaining compliance with said Executive Order and such rules, regulations and orders.

\*(e) If the contractor does not comply with the equal opportunity provisions of this contract, with Executive Order # 45 (1977), or with such rules, regulations, or orders, this contract or any portion thereof, may be cancelled, terminated or suspended or payments thereon withheld, or the contractor may be declared ineligible for future State or State-assisted contracts, in accordance with procedures authorized in Executive Order #45 (1977), and such other sanctions may be imposed and remedies invoked as are provided in said Executive Order or by rule, regulation or order issued pursuant thereto, or as otherwise provided by law.

\*(f) The contractor will include the provisions of clauses (a) through (e) above and all contract provisions promulgated by OSCC pursuant to Section 1.3 (b) of Executive Order # 45 (1977), in every non-exempt subcontract or purchase order in such a manner that such provisions will be binding upon each subcontractor or vendor as to its work force within the State of New York. The contractor will take such action in enforcing such provisions of such subcontract or purchase order as the contracting agency or the OSCC may direct, including sanctions or remedies for noncompliance. If the contractor becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such direction, the contractor shall promptly so notify the Attorney General, requesting him to intervene and protect the interests of the State of New York.

VI. The contractor will comply with the provisions of Sections 291-299 of the Executive Law and the Civil Rights Law, will furnish all information and reports deemed necessary by the State Division of Human Rights under the Law, and will permit access to its books, records and accounts by the State Industrial Commissioner for the purposes of investigation to ascertain compliance with the non-discrimination clauses, the Executive Law and Civil Rights Law.

VII. (a) By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his knowledge and belief:

1) The prices in this bid have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor;

2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder, and will not be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor;

3) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

(b) A bid shall not be considered for award nor shall any award be made where (a) (1) (2) and (3) above have not been complied with provided, however, that if in any case the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefor. Where (a) (1) (2) and (3) above have not been complied with, the bid shall not be considered for award nor shall any award be made unless the head of the purchasing unit of the State, public department or agency to which the bid is made, or his designee, determines that such disclosure was not made for the purpose of restricting competition.

The fact that bidder (a) has published price lists, rates, or tariffs covering items being procured, (b) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (c) has sold the same items to other customers at the same prices being bid, does not constitute, without more a disclosure within the meaning of sub-paragraph VII (a)

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**\*\*Note:** Reference to the above Rules and Regulations refer to those Rules and Regulations in effect as of the date of the solicitation of bids relative to this contract.

## APPENDIX B

### STANDARD CLAUSES FOR ALL ONEIDA COUNTY DEPARTMENT OF COMMUNITY AND FAMILY SERVICES CONTRACTS

#### PERSONNEL

- a. The Contractor agrees to be solely responsible for the recruitment, hiring, provision of employment benefits, payment of salaries, and management of its project personnel. These functions shall be carried out in accordance with the provisions of this AGREEMENT, and all applicable federal, state and local laws and regulations.
- b. It is the policy of the Department to encourage the employment of qualified applicants or recipients of public assistance by both public organization and private enterprises who are under contractual AGREEMENT to the Department for the provision of goods and services. Contractors will be expected to make best efforts in this area.
- c. The Contractor agrees to identify, in writing, the person(s) who will be responsible for directing the work to be done under this AGREEMENT. No change or substitution of such responsible person(s) will be made without prior approval in writing from the Department, to the degree that such change is within the reasonable control of the Contractor

#### NOTICES

- a. All notices permitted or required hereunder shall be in writing and shall be transmitted either by:
  1. By certified or registered United States mail, return receipt requested;
  2. By facsimile transmission;
  3. By personal delivery;
  4. By expedited delivery service; or
  5. By e-mail

Notices to the Department shall be addressed to the Commissioner of Social Services at the address, facsimile number or e-mail Address provided to the Contractor during contract development or to such different Program Manager as the Department may from time-to time designate.

- b. Any such notice shall be deemed to have been given either at the time of personal delivery or, in the case of expedited delivery service or certified or registered United States mail, as of the date of first attempted delivery at the address and in the manner provided herein, or in the case of facsimile transmission or email, upon receipt.
- c. The parties may, from time to time, specify any new or different address in the United States as their address for purpose of receiving notice under this Agreement by giving fifteen (15) days written notice to the other party sent in accordance herewith. The Parties agree to mutually designate individuals as their respective representatives for the

purposes of implementation and administration/billing, resolving issues and problems and/or for dispute resolution.

#### OFFICE SERVICES

- a. The Contractor shall be responsible for the provision of necessary equipment and services for Contractor's staff, pursuant to and described in the narratives and budgets contained in the AGREEMENT.
- b. For federally funded contracts, title to real property and non-expendable personal property whose requisition cost is borne in whole or in part by monies proved under this AGREEMENT shall be determined between the Contractor and the Department, pursuant to federal regulations 45 CFR 92 unless such authority is otherwise inappropriate. Title to all equipment, supplies and material purchased with funds under this AGREEMENT under contracts which are not federally funded shall be in the State of New York and the property shall not be transferred, conveyed, or disposed of without written approval of the Department. Upon expiration or termination of this AGREEMENT, all property purchased with funds under this AGREEMENT shall be returned to the Department, unless the Department has given direction for, or approval of, an alternative means of disposition in writing.
- c. Upon written direction by the Department, the Contractor shall maintain an inventory of those properties that are subject to the provisions of sub-paragraph b of this section

#### GENERAL TERMS AND CONDITIONS

- a. The Contractor agrees to comply in all respects with the provisions of this AGREEMENT and the attachments hereto. The Contractor specifically agrees to perform services according to the objectives, tasks, work plan and staffing plan contained in the AGREEMENT. Any modifications to the tasks or work plan contained in AGREEMENT must be mutually agreed to by both parties in writing before the additional or modified tasks or work plan shall commence.
- b. If any specific event or conjunction of circumstances threatens the successful completion of the project, in whole or in part, including where relevant, timely completion of milestones, the Contractor agrees to submit to the Department within three (3) days of occurrence or perception of such problem, a written description thereof together with a recommended solution thereto.
- c. The Contractor immediately shall notify in writing the Department Program Manager assigned to this contract of any unusual incident, occurrence or event that involves the staff, volunteers or officers of the Contractor, and subcontractor or Program participant funded through this AGREEMENT, including but not limited to the following: death or serious injury; an arrest or possible criminal activity; and destruction of property; significant damage to the physical plant of the Contractor, or other matters of a similarly serious nature.

- d. In providing these services, the Contractor hereby agrees to be responsible for designing and operating these services, and otherwise performing, so as to maximize federal financial participation to the Department under the Federal Social Security Act.
- e. If funds from this AGREEMENT will be used to pay any costs associated with the provision of legal services of any sort, the following shall apply;
  - 1. No litigation shall be brought against the State of New York, the New York State Office of Children and Family Services or against Oneida County or the Department or other local government or local social services district with funds provided under this AGREEMENT. The term "litigation" shall include commencing or threatening to commence a lawsuit, joining or threatening to join as a party to ongoing litigation, or requesting any relief from either the State of New York, the New York State Office of Children and Family Services or Oneida County or other local government or local social services district, based upon any agreement between such agency in litigation with another party and such party, during pendency of the litigation.
  - 2. Opinions prepared by consultant law firms construing the statutes of Constitution of the State of New York do not constitute the view of the State unless the prior written approval of the Attorney General is obtained. Requests for said approval shall be submitted to the Solicitor General, Division of the Appeals and Opinions Bureau, department of Law, The Capital, Albany, New York 12224
  - 3. The Contractor shall provide to the Department in a format provided by the Department such additional information concerning the provision of legal services as the Department shall require.
- f. The Department will designate a Contract Manager who shall have authority relating to the technical services and operational functions of this AGREEMENT and activities completed or contemplated there under. The Contract Manager and those individuals designated by him/her in writing shall have the prerogative to make announced or unannounced on-site visits to the project. Project reports and issues of interpretation or direction relating to this AGREEMENT shall be directed to the Contract Manager.
- g. Except where the Department otherwise authorizes or directs in writing, the Contractor agrees not to enter into any subcontracts, or revisions to subcontracts, for the performance of the obligations contained herein until it has received the prior written approval of the Department, which shall have the right to review and approve each and every subcontract prior to giving written approval to the contractor to enter into the subcontract. All agreements between the Contractor and subcontractors shall be by written contract, signed by individuals authorized to bind the parties. All such subcontracts shall contain provisions for specifying (1) that the work performed by the subcontractor must be in accordance with the terms of this AGREEMENT (2) that nothing contained in the subcontract shall impair the rights of the Department under this AGREEMENT, (3) that nothing contained in the subcontract, nor under this AGREEMENT, shall be deemed to create any contractual relationship between the subcontractor and the Department, and (4) incorporating all provisions regarding the



rights of the Department as set forth in this AGREEMENT, where applicable. The Contractor specifically agrees that the Contractor shall be fully responsible to the Department for the acts and omissions of subcontractors and of persons either directly or indirectly employed by them, as it is for the acts and omissions of persons directly employed by the Contractor.

- h. The Contractor warrants that it, its staff and any and all subcontractors which must be approved by the Department, have all the necessary licenses, approvals and certifications currently required by the law of any applicable local, state or federal government to perform the services pursuant to this AGREEMENT and/or subcontract entered into under this AGREEMENT. The Contractor further agrees such required licenses, approvals and certificates will be kept in full force and effect during the term of this AGREEMENT, and/or any extension thereof, and to secure any new licenses, approvals or certificates within the required time frames and/or to require its staff and subcontractors to obtain and requisite licenses, approvals or certificates. In the event the Contractor, its staff, and/or subcontractors are notified of a denial or revocation of any license, approval or certification to perform the services under this AGREEMENT, Contractor will immediately notify the Department.
- i. This AGREEMENT cannot be assigned by the Contractor to a subcontractor without obtaining written approval of the Department. Prior to executing a subcontract agreement the Contractor agrees to provide the Department the information the Department needs to determine whether a proposed subcontractor is a responsible vendor. The determination of vendor responsibility will be made in accordance with Section n. of General Terms and Conditions herein.
- j. If the Contractor intends to use materials, equipment or personnel paid for under this AGREEMENT in a revenue generating activity, the Contractor shall report such intentions to the Department forthwith and shall be subject to the direction of the Department as to the disposition of such revenue.
- k. Any interest accrued on funds paid to the Contractor by the Department shall be deemed to be the property of the Department and shall either be credited to the Department at the termination of this AGREEMENT or expended on additional services provided for under this AGREEMENT.
- l. The Contractor ensures that the grounds, structures, building and furnishings at the program site(s) used under this AGREEMENT are maintained in good repair and free from any danger to health or safety and that any building or structure used for program services complies with all applicable zoning, building, health, sanitary, and fire codes.
- m. The Contractor agrees to produce, and retain for the balance of the calendar year in which produced, and for a period of six (6) years thereafter, any and all records necessary to substantiate upon audit, the proper deposit and expenditure of funds received under this AGREEMENT. Such records shall include, but not be limited to,

original books of entry (e.g., cash disbursements and cash receipts journal), and the following specific records (as applicable) to substantiate the types of expenditures noted:

1. Payroll Expenditures: cancelled checks and the related bank statements, time and attendance records, payroll journals, employee personal history folders, and cost allocation plans, if applicable.
2. Payroll Taxes and Fringe Benefits: cancelled checks, copies of related bank statements, reporting forms, and invoices for Fringe Benefit expenses.
3. Non-Personal Services Expenditures: original invoices/receipts, cancelled checks and related bank statements, consultant agreements, leases, and cost allocation plans, if applicable.
4. Receipt and Deposit of Advance and Reimbursements: itemized bank stamped deposit slips, and a copy of the related bank statements.
5. The Contractor agrees that any equipment purchased with funds under this AGREEMENT is the property of the Department and will remain with or will be returned to the Department in the event of the termination of this AGREEMENT,

Although not required, the Department recommends that the Contractor retain records directly pertinent to this AGREEMENT for a period of ten (10) years after the end of the calendar year in which they were made, as the statute of limitations for the New York False Claims Act is ten (10) years.

- n. By signing this AGREEMENT, the Contractor certifies that within the past three (3) years the Contractor has engaged in no actions that would establish a basis for a finding by the Department that the Contractor is a non-responsible vendor or, if the Contractor has engaged in any such action or actions, that all such actions have been disclosed to the Department prior to entering into this AGREEMENT. The actions that would potentially establish a basis for a finding by Department that the Contractor is a non-responsible vendor include:
  1. The Contractor has had a license or contract suspended, revoked or terminated by a governmental agency.
  2. The Contractor has had a claim, lien, fine, or penalty imposed or secured against the Contractor by a governmental agency.
  3. The Contractor has initiated a bankruptcy proceeding or such a proceeding has been initiated against the Contractor
  4. The Contractor has been issued a citation, notice, or violation order by a governmental agency finding the Contractor to be in violation of any local, state, or federal laws.
  5. The Contractor has been advised by a governmental agency that a determination to issue a citation, notice or violation order finding the Contractor to be in violation of any local, state or federal laws is pending before a governmental agency
  6. The Contractor has not paid all due and owed local, state and federal taxes to the proper authorities
  7. The Contractor has engaged in any other actions of a similarly serious nature.

Where the Contractor has disclosed any of the above to the Department, the Department may require as a condition precedent to entering into this AGREEMENT that the

Contractor agree to such additional conditions as will be necessary to satisfy the Department that the vendor is and will remain a responsible vendor. By signing this AGREEMENT, the Contractor agrees to comply with any such additional conditions that have been made a part of this AGREEMENT.

By signing this AGREEMENT, the Contractor also agrees that during the term of the AGREEMENT, the Contractor will promptly notify the Department if the Contractor engages in any actions that would establish a basis for a finding by Department that the Contractor is a non-responsible vendor, as described above.

- o. By signing this AGREEMENT, the Contractor agrees to comply with State Tax Law section 5-a
- p. The Contractor must maintain Workers' Compensation Insurance in accordance with the Workers' Compensation Law. If the Contractor believes they are exempt from the Workers' Compensation insurance requirement then they must apply for an exemption. Contractors can apply for the exemption online through the New York State Workers' Compensation Board website at:  
[http://www.wcb.state.ny.us/content/ebiz/wc\\_db\\_exemptions/wc\\_db\\_exemptions.jsp](http://www.wcb.state.ny.us/content/ebiz/wc_db_exemptions/wc_db_exemptions.jsp)
- q. All organizations that receive federal financial assistance under social service programs are prohibited from discriminating against beneficiaries or prospective beneficiaries of the social service programs on the basis of religion or religious belief. Accordingly, organizations, in providing services supported in whole or in part with federal financial assistance, and in their outreach activities related to such services, are not allowed to discriminate against current or prospective program beneficiaries on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to attend or participate in a religious practice.

Organizations that engage in explicitly religious activities (including activities that involve overt religious content such as worship, religious instruction, or proselytization) must perform such activities and offer such services outside of programs that are supported with direct federal financial assistance (including through prime awards or sub-awards), separately in time or location from any such programs or services supported with direct federal financial assistance, and participation in any such explicitly religious activities must be voluntary for the beneficiaries of the social service program supported with such federal financial assistance

## REPORTS AND DELIVERABLES

The Contractor shall prepare and submit all reports, documents, and projects required by this AGREEMENT to the Department's Contract Manager for review and approval. These reports shall be in such substance, form, and frequency as required by the Department and as necessary to meet state, federal and Oneida County requirements.

The Contractor shall complete Contract Evaluations as required by the Department as

well as Statistical Data as needed by the Department and New York State to meet the reporting requirements.

#### CONFIDENTIALITY AND PROTECTION OF HUMAN SUBJECTS

- a. The Contractor agrees to safeguard the confidentiality of financial and/or client information relating to individuals and their families who may receive services in the course of this project. The Contractor shall maintain the confidentiality of all such financial and/or client information with regard to services provided under this AGREEMENT in conformity with the provisions of applicable state, federal, and local laws and regulations. Any breach of confidentiality by the Contractor, its agents or representatives shall be cause for immediate termination of this AGREEMENT.
- b. Any Contractor who will provide goods and/or services to a residential facility or program operated by Department agrees to require all of its employees and volunteers who will have the potential for regular and substantial contact with youth in the care or custody of the Department to sign an Employee Confidentiality Certification and employee Background Certification before any such employees and volunteers are permitted access to youth in the care or custody of the Department and/or any financial and/or client identifiable information concerning such youth. Additionally, the Department will require a database check of the State wide Central Register of Child Abuse and Maltreatment (SCR) of each employee and volunteer of the Contractor who has the potential for regular and substantial contract with children in the care or custody of the Department. Any Contractor whose employees and volunteers will have access to financial and/or client identifiable information concerning youth in the care or custody of Department agrees to require all such employees and volunteers to sign an Employee Confidentiality Certification before any such employees and volunteers are permitted access to any financial and/or client identifiable information concerning such youth.
- c. The Contractor and any subsequent subcontractor shall not discriminate or refuse assistance to individuals with AIDS or an HIV infection or an HIV - related illness.

The Contractor and any subsequent subcontractor agrees that their staff to whom confidential HIV - related information may be given as a necessity for providing services and in accordance with 403 of Title 18 NYSDSS regulation and Section 2782 of the Public Health Law are fully informed of the penalties and fines for re-disclosure in violations of state law and regulations.

The Contractor and any subsequent subcontractor must include the following written statement when disclosing any confidential HIV - related information.

"This information has been disclosed to you from confidential records which are protected by state law. State law prohibits you from making any further disclosure of this information without the specific written consent of the person to whom it pertains, or as otherwise permitted by law. Any unauthorized further disclosure in violation of state law may result in a fine or jail sentence or both. A general authorization for the

release of medical or other information is not sufficient authorization for further disclosure."

- d. All information contained in the Contractor's, or its subcontractor's files shall be held confidential pursuant to the applicable provisions of the Social Services Law and any State Department Regulations promulgated thereunder, including 18 NY CRR Sec. 357.5 and 423.7, as well as any applicable federal laws and any regulations promulgated thereunder and shall not be disclosed except as authorized by law.
- e. The Contractor and any of the Contractor's staff that are subject to the Oneida County computer systems/databases shall complete the Oneida County Department of Social Services Confidentiality and Non-Disclosure Agreement provided with this AGREEMENT and shall submit forms to the following address:

Oneida County Department of Social Services  
Contract Administration Office, 4<sup>th</sup> Floor  
800 Park Ave  
Utica, New York, 13501

#### PUBLICATIONS AND COPYRIGHTS

- a. The results of any activity supported under this AGREEMENT may not be published without prior written approval of the Department, which results (1) shall acknowledge the support of the Department and the County and, if funded with federal funds, the applicable federal funding agency, and (2) shall state that the opinions, results, findings and/or interpretations of data contained therein are the responsibility of the Contractor and do not necessarily represent the opinions, interpretation or policy of the Department or Oneida County.
- b. The Department and Oneida County expressly reserve the right to a royalty-free, non-exclusive and irrevocable license to reproduce, publish, distribute or otherwise use, in perpetuity, any and all copyrighted or copyrightable material resulting from this AGREEMENT or activity supported by this AGREEMENT. All publications by the Contractor covered by this AGREEMENT shall expressly acknowledge the Department's right to such license.
- c. All of the license rights so reserved to the Department and Oneida County under this paragraph are equally reserved to the United States Department of Health and Human Services and subject to the provisions on copyrights contained in 45 CFR 92 if the AGREEMENT is federally funded
- d. The Contractor agrees that at the completion of any scientific or statistical study, report or analysis prepared pursuant to this AGREEMENT, it will provide to the Department at no additional cost a copy of any and all data supporting the scientific or statistical study, report or analysis, together with the name(s) and business address(es) of the principal(s) producing the scientific or statistical study, report or

analysis. The Contractor agrees and acknowledges the right of the Department, subject to applicable confidentiality restrictions, to release the name(s) and business address(es) producing the scientific or statistical study, report or analysis, together with a copy of the scientific or statistical study, report or analysis and all data supporting the scientific or statistical study, report or analysis.

#### PATENTS AND INVENTIONS

The Contractor agrees that any all inventions, conceived or first actually reduced to practice in the course of, or under this AGREEMENT, or with monies supplied pursuant to this AGREEMENT, shall be promptly and fully reported to the Department. Determination as to ownership and/or disposition of rights to such inventions, including whether a patent application shall be filed, and if so, the manner of obtaining, administering and disposing of rights under any patent application or patent which may be issued, shall be made pursuant to all applicable law and regulations.

#### TERMINATION

- a. This AGREEMENT may be terminated by the Department upon thirty (30) days prior written notice to the Contractor. Such notice is to be made by way of registered or certified mail return receipt requested or hand delivered with receipt granted by the Contractor. The date of such notice shall be deemed to be the date the notice is received by the Contractor established by the receipt returned, if delivery by registered or certified mail, or by the receipt granted by the Contractor, if the notice is delivered by hand. The Department agrees to pay the Contractor for reasonable and appropriate expenses incurred in good faith before the date of termination of this AGREEMENT.
- b. If the Contractor fails to use any real property or equipment purchased pursuant to this AGREEMENT or the Contractor ceases to provide the services specified in the AGREEMENT for which the equipment was purchased, the Department may terminate this AGREEMENT upon thirty (30) days written notice to the Contractor, where the Contractor has failed to cure as set forth hereafter, said notice of breach shall be sent by way of registered or certified mail return receipt requested, or shall be delivered by hand, receiving Contractor's receipt therefore. Said notice shall specify the Contractor's breach and shall demand that such breach be cured. Upon failure of the Contractor to comply with such demand within thirty (30) days, or such longer period as may be specified therein, the Department may, upon written notice similarly served, immediately terminate this AGREEMENT, termination to be effective upon the date of receipt of such notice established by the receipt returned to the Department. Upon such termination, the Department may require (a) the repayment to the Department of any monies previously paid to the Contractor, or (b) return of any real property or equipment purchased under the terms of this AGREEMENT or an appropriate combination of (a) and (b), at the Department's option.

- c. To the extent permitted by law, this AGREEMENT shall be deemed in the sole discretion of the Department terminated immediately upon the filing of a petition in bankruptcy or insolvency, by or against the Contractor. Such termination shall be immediate and complete, without termination costs or further obligation by the Department to the Contractor
- d. Should the Department determine that federal, state or County funds are limited or become unavailable for any reason, the Department may reduce that total amount of funds payable to the Contractor, reduce the AGREEMENT period or deem this AGREEMENT terminated immediately. The Department agrees to give notice to the Contractor as soon as it becomes aware that funds are unavailable, in the event of termination under this paragraph. If the initial notice is oral notification, the Department shall follow this up immediately with written notice. The Department will be obligated to pay the Contractor only for the expenditures made and obligations incurred by the Contractor until such time as notice of termination is received either orally or in writing by the Contractor from the Department.
- e. The Contractor shall provide to the Department such information as is required by the Department in order that the Department may determine whether the Contractor is a responsible vendor for purposes of compliance with section 163 of the State Finance Law and requirements of the Department. If there is any change in any of the vendor responsibility information provided to the Department by the Contractor at any time during the term of this AGREEMENT, the Contractor shall be required to immediately notify the Department so that the Department may assess whether the Contractor continues to be a responsible vendor. Should the Contractor fail to notify the Department of any change in the vendor responsibility information or should the Department otherwise determine that the Contractor has ceased to be a responsible vendor for the purposes of this AGREEMENT, the Department may terminate this AGREEMENT upon thirty (30) days written notice to the Contractor. Said notice of termination shall be sent by way of registered or certified mail return receipt requested, or shall be delivered by hand, receiving Contractor's receipt therefore. Said notice shall specify the reason(s) that the Contractor has been found to no longer be a responsible vendor.

Upon determination that the Contractor is no longer a responsible vendor the Department may, in its discretion and as an alternative to termination pursuant to this paragraph, notify the contractor of the determination that the Contractor has ceased to be a responsible vendor and set forth the corrective action that will be required of the Contractor to maintain this AGREEMENT. Should the Contractor fail to comply with the required corrective action within thirty (30) days of the date of notification, or such longer period as may be specified therein, the Department may, upon written notice similarly served, immediately terminate this AGREEMENT, termination to be effective upon the date of receipt of such notice established by the receipt returned to the Department. Upon such termination, the Department may require (a) the repayment to the Department of any monies previously paid to the Contractor, (b) return of any real property or equipment

purchased under the terms of this AGREEMENT, or an appropriate combination of (a) and (b) at the Department's option.

## CONTRACTOR COMPLIANCE

The Contractor agrees to provide an Annual Certification pertaining to this AGREEMENT as part of the Contractor's Annual Independent audit.

The Department shall have the right to audit or review the Contractor's performance and operations as related to this AGREEMENT. If the Department should determine that the Contractor has abused or misused funds paid to the Contractor, or if the Contractor has violated or is in non-compliance with any term of any other agreement with the Department, or has abused or misused funds paid to the Contractor under any other agreement with the Department, the rights of the Department shall include, but not be limited to:

1. Recovery of any funds expended in violation of this AGREEMENT;
2. Suspension of Payments;
3. Termination of this AGREEMENT; and/or
4. Employment of another entity to fulfill the requirements of this AGREEMENT.

The Contractor shall be liable for all reasonable costs incurred on account thereof, including payment of any cost differential for employing such entity. The Contractor will assist the Department in transferring the operation of the contracted services to any other entity selected by the Department in a manner that will enable the Department or clients to continue to receive services in an on-going basis, including, but not limited to , notifying clients of the new entity to which the services will be transferred and the effective date of the transfer, providing the new entity promptly and at no charge with a complete copy of the clients' and all other records necessary to continue the provision of the transferred services, and transferring any equipment purchased with funds provided under this AGREEMENT.

Nothing herein shall preclude the Department from taking actions otherwise available to it under law.

The Contractor agrees to cooperate fully with any audit or investigation the Department or any agent of the Department may conduct and to provide access during normal business hours to any and all information necessary to perform its audit or investigation. The Contractor shall also allow the Department, and any representatives specifically directed by the Department to take possession of all books, records and documents relating to this AGREEMENT without prior notice to the Contractor. The Department will return all such books, records and documents to the Contractor upon completion the official purposes for which they were taken.

The Contractor agrees that all agreements between the Contractor and a subcontractor or consultants for the performance of any obligations under this AGREEMENT will be by written contract (subcontract) which will contain provisions including, but not limited to, the above specified rights of the Department.



## FISCAL SANCTION

In the sole discretion of the Department, contractors may be placed on Fiscal Sanction when the Department identifies any of the following issues:

1. The Contractor has received an advance, overpayment or other funds under this or another agreement that has not been refunded to the Department within the established timeframe;
2. A Department or other audit identifies significant fiscal irregularities and/or that funds are due to the Department
3. The Contractor has not provided satisfactory services as required under the terms of this or another Department agreement;
4. The Contractor has not provided fiscal or program reports as required under the terms of this or another Department agreement;
5. A Department, County, state or federal prosecutorial or investigative agency identifies possible criminal activity, or significant fiscal or programmatic irregularities on the part of the Contractor;
6. The Contractor is not in compliance with state, federal, or County statutes or regulations, or applicable Department guidelines, policies and/or procedures; or
7. Unsafe physical conditions exist at a program site operated by the Contractor and funded under an agreement with the Department

Once the Contractor has been placed on Fiscal Sanction, payments on all open contracts and any new awards, amendments or contract renewals will not be processed until the issues have been satisfactorily resolved. The Contractor will be notified in advance of any proposed Fiscal Sanction and will be provided a timeframe within which the issues must be resolved in order to avoid Fiscal Sanction. Issues that are not resolved within the timeframe established by the Department may be referred to the Attorney General (AG) for collection of legal action. If a contract is referred to the AG a collection fee will be added to the amount owed. In addition, interest will be due on any amount not paid in accordance with the timeframes established by the AG. The Contractor will remain on Fiscal Sanction until the amount owed, including any collection fee and interest is paid.

## ADDITIONAL ASSURANCES

- a. The Department and Contractor agree that the Contractor is an Independent Contractor, and not in any way deemed to be an employee of the Department or County of Oneida for any purpose including, but not limited to, claims for unemployment insurance, workers' compensation, retirement or health insurance benefits. The Contractor agrees to defend and indemnify the Department and/or Oneida County for any loss the Department and/or Oneida County may suffer when such losses result from claims of any person or organization injured by the negligent acts or omissions of the Contractor, its officers and/or employees or subcontractors. Furthermore, the Contractor agrees to indemnify, defend, and save harmless the Department and/or Oneida County, and its

officers, agents, and employees from any and all claims and losses occurring or resulting from any and all contractors, subcontractors, and any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this AGREEMENT, and from all claims and losses occurring or resulting to any person, firm, or corporation who may be injured or damaged by the Contractor in the performance of this AGREEMENT, and against any liability, including costs and expenses, for violation of proprietary rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, or use, or disposition of any data furnished under this AGREEMENT or based on any libelous or other unlawful matter contained in such data or written materials in any form produced pursuant to this AGREEMENT.

- b. The Contractor further agrees that the Department has the right to take whatever action it deems appropriate, including, but not limited to, the removal of the Contractor from the rotation list, the removal of clients, the cessation of client referrals, and termination of this AGREEMENT, if the Contractor fails to submit a completed and signed Standard Insurance Certificate or its acceptable substitute, which is subsequently approved by the Oneida County Department of Law, prior to the expiration of its insurance coverage.

#### RENEWAL NOTICE TO CONTRACTORS

Options to renew this AGREEMENT are at the discretion of the Department, which shall supply written notice of such renewal or termination within thirty (30) days of the expiration date. The Commissioner of Social Services reserves the right to evaluate the job performance and availability of funding.

#### COMPLIANCE WITH LAW

The Contractor represents and agrees to comply with the requirements of the Civil Rights Act of 1964 as amended, the Age Discrimination Employment Act of 1964 as amended, the Federal Rehabilitation Act of 1973 as amended, and Executive Order No. 11246, entitled "Equal Employment Opportunity" as amended by Executive Order No. 11375 and as supplemented in Department of Labor Relations, 41CFR Part 60.

The Contractor also agrees to comply with federal and state laws as supplemented in the Dept. of Labor regulations and any other regulations of the federal and state entities relating to such employment and Civil Rights requirements.

As a mandated reporting agency, all instances of suspected child abuse, neglect and/or maltreatment, will be reported to the Central Registry as required by law. These verbal reports will be followed by submission of completed 2221A to the Department. The family will be informed in advance of the Agency's decision to file a report with the Central Register.

The Contractor attests they have not been debarred by the federal Government from

contracting to provide services funded by any federal money.

The obligations of the parties hereunder are conditioned upon the continued availability of federal and/or New York State Funds for the purposes set forth in this AGREEMENT.

Should funds become unavailable or should appropriate federal or New York State officials fail to approve sufficient funds for completion of the services or programs set forth in this AGREEMENT, the Department shall have the option to immediately terminate this AGREEMENT upon providing written notice to the Contractor. In such an event, the Department shall be under no further obligation to the Contractor other than payment for costs actually incurred prior to termination and in no event will the Department be responsible for any actual or consequential damages as a result of termination.

This AGREEMENT contains all the terms and conditions agreed upon by the parties. All items incorporated by reference are to be attached. No other understandings, oral or otherwise, regarding the subject matter of this AGREEMENT, shall be deemed to exist or to bind any of the parties hereto. No waiver, alterations or modifications of and provisions of this AGREEMENT shall be binding unless in writing and signed by the duly authorized representative of the parties sought to be bound.

This AGREEMENT shall be binding upon both parties when fully signed and executed and upon approval of the appropriate legislative bodies where required.

As the duly authorized representative of the Contractor, I hereby certify that the Contractor will comply with the above Standard Clauses.

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NAME OF CONTRACTED AGENCY

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PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE

---

SIGNATURE

DATE

# XXXXX

## APPENDIX C

### I. Preventive Service Goals and Objectives

- A. Target Population: Children and families in need of counseling services in order to address mental health and behavioral concerns that are negatively affecting an individual's or Family's ability to function on a daily basis.
- B. There is a need to provide community-based Clinical Services (as defined below) to children and families in order to lessen the risk of family disruption due to mental health or behavior issues which could result in child abuse/neglect situations, the need for diversion services, Juvenile Delinquent (JD) behaviors and/or out of home placements.

### II. Scope of Services

- A. Clinical Services is defined as assessment, diagnosis, testing, psychotherapy, and specialized therapies provided by a person who has received a master's degree in social work, a licensed psychologist, a licensed psychiatrist or other recognized therapist in human services. Clinical Services provided to families with children enrolled in Day Services have such services included in the Day Services rate.
- B. Eligibility: The Department is responsible for determining eligibility for preventive services and the Department will make referrals to the Contractor.
- C. It shall be the responsibility of representatives of the Department, either directly or through contract services, to observe negative living conditions in residences when providing services and to report those conditions to the appropriate authority for the municipality in which the residences are located. Each representative will have a checklist and shall complete the checklist after making visual inspections. Each representative will also report to the Department any gross deviations from normal living standards not included on the checklist.
- D. The Department will provide Case Management functions for all children and Families that are involved in active service cases (preventive, protective and placements). The Department will maintain responsibility for the Child Care Review Service (CCRS) information and coordination with the Contractor for formulation of service plan and utilization review procedures.
- E. As a mandated reporter, the Contractor shall report all instances of suspected child abuse, neglect, and/or maltreatment to the Central Registry as required by law. The Contractor shall then submit a completed 2221A to the Department. The family will be informed in advance of the Contractor's decision to file a report with the Central Registry.
- F. Authorization of Services: The Department will authorize services via a DSS 2921 application for services and appropriate Welfare Management System (WMS) forms.

### III. Outcome/Measurements for Clinical Services

- A. Outcome: The Contractor, under this Agreement will work with participant families and children to identify and treat mental health and behavioral issues that negatively affect daily functioning which could result in out of home placements. In so doing, the number of out of home placements will be reduced and/or return home from placements will be expedited.
- B. Performance: Families and/or children with mental health or behavioral modification service needs will be identified and become engaged in services. Clinical assessment will be done in a manner that reflects culturally competent and family focused planning. Clinical Services will include comprehensive assessment, diagnosis, testing, and psychotherapy.
- C. Measurement: 80% of the participant Families will not have any substantiated reports of abuse/neglect while participating in services.
- D. Measurement: 80% of the participant Families/children referred on a preventive basis will maintain their children in their home during the time services are being offered and for 6 months following the completion of counseling services.
- E. Measurement: 80% of participant families that have children in out of home placements eligible for Mandated Preventive Services based on the service plan goal to return children home within 6 months will have their children returned to them within the specified 6 month period.
- F. Measurement: 80% of the cases with existing Family Court orders will not have any new violations filed during the time the case remains open under this Agreement with the Contractor.
- G. Measurement: 80% of the participants will report satisfaction with services offered as measured by a client satisfaction survey.

### IV. Required Claiming and Reporting Procedures

- A. The Contractor will bill on vouchers provided by the Department, which shall include the Contractor's name, agreement name and number and indicate the Contractor's share of the program cost. The Contractor will attempt to obtain insurance or family contribution when appropriate and feasible, and will bill the Department for the remaining cost up to the agreed hourly rate. The Contractor will also submit the "Itemized Composite billing for Preventive Services Contracts/Counseling" and "Itemized Individual Billing for all Preventive Services Contracts: Counseling, Case Planning, Parent Aide, Other, with Comments." These will be fully completed with "Individual" sheets containing treatment comments. A final "Counseling Treatment Report" will be completed upon termination of the case for treatment. All reports will include the case number, client's full name, and the

Department caseworker's name. All reports will be sent to the Department's Contract Administrator I.

- B. The Department may require other reports as necessary within the context of counseling data.
- C. The Contractor agrees to prepare and provide any and all monthly reports required pursuant to law, rule or regulation by the County and/or state governments pertaining to this Agreement.
- D. The Contractor agrees to participate in a quarterly meeting every 3 months with the Department should the Department deem necessary.
- E. The Department will pay the Contractor for direct Clinical Service to the client at the maximum rate of \$90.00 per hour for individual or family therapy, and \$20.00 per hour per client for group therapy with the deduction of any client contribution. Clinical Hour shall be defined as 60 minutes spent in direct service with the client. Payment will be at \$90.00 per Client Hour for child and Family assessments and counseling services. Appointments cancelled with less than 24 hour working day notification for any reason or due to no show by the client will be billed at a flat rate of \$50.00 per missed appointment. Travel will be reimbursed at the IRS allowable rate for mileage at the time the expense is incurred.
- F. The obligations of the parties hereunder are conditioned upon the continued availability of County, federal, and/or New York State funds for the purposes set forth in this Agreement.

#### V. Performance of Services

- A. The Contractor represents that she is duly licensed and has the qualifications, the specialized skill(s), the experience and the ability to properly perform the services. The Contractor shall use her best efforts to perform the services such that the results are satisfactory to the County. The Contractor shall be solely responsible for determining the method, details and means of performing the services, except where federal, state or local laws and regulations impose specific requirements on performance of the same.
- B. The Contractor may, at her own expense, employ or engage the services of such employees, subcontractors and/or partners as she deems necessary to perform the services (collectively, the "Assistants"). The Assistants are not and shall not be deemed employees of the County, and the County shall have no obligation to provide the Assistants with any salary or benefits. The Contractor shall be solely responsible and shall remain liable for the performance of the services by the Assistants in a manner satisfactory to the County, and in compliance with any and all applicable federal, state or local laws and regulations. The Contractor shall expressly advise the Assistants of the terms of this Agreement.
- C. The Contractor acknowledges and agrees that Contractor and her Assistants have no authority to enter into contracts that bind the County or create obligations on the part of the County without the prior written authorization of the County.

- D. The Contractor shall inform the Department within twenty-four (24) hours if she is unable or unwilling to accept an assignment and/or perform services pursuant to this Agreement. The Contractor maintains the right to do so at any time, and the Department maintains the right to contract with other individuals or entities to perform the same services.

#### VI. Independent Contractor Status

- A. It is expressly agreed that the relationship of the Contractor and her Assistants to the County shall be that of Independent Contractors. Neither the Contractor, nor her Assistants shall be considered employees of the County for any purpose including, but not limited to, claims for unemployment insurance, workers' compensation, retirement, or health insurance benefits. The Contractor, in accordance with her status as an Independent Contractor, covenants and agrees that she and her Assistants will conduct themselves in accordance with such status, that they will neither hold themselves out as, nor claim to be, officers or employees of the County by reason thereof and that they will not by reason thereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the County.
- B. The Contractor warrants and represents that she is in the business of offering the same or similar services detailed herein and does offer the same or similar service(s) to other entities and/or the public as a regular course of business. The Contractor and the County agree that the Contractor is free to undertake other work arrangements during the term of this Agreement, and may continue to make her services available to the public.
- C. The Contractor and her Assistants shall not be eligible for compensation from the County due to illness, absence due to normal vacation, or absence due to attendance at school or special training or a professional convention or meeting.
- D. The Contractor acknowledges and agrees that neither the Contractor, nor her Assistants, shall be eligible for any County employee benefits, including retirement membership credits.
- E. The Contractor shall be solely responsible for applicable taxes for all compensation paid to the Contractor or her Assistants under this Agreement, and for compliance with all applicable labor and employment requirements with respect to the Contractor's form of business organization, and with respect to the Assistants, including payroll deductions, workers' compensation insurance, and provision of health insurance where required. The County shall not be responsible for withholding from the payments provided for services rendered for state or federal income tax, unemployment insurance, workers' compensation, disability insurance or social security insurance (FICA). The Contractor shall provide proof of workers' compensation insurance, where applicable, prior to execution of this Agreement.
- F. The Contractor shall indemnify and hold the County harmless from all loss or liability incurred by the County because of the County not making such payments or withholdings.

- G. If the Internal Revenue Service, Department of Labor, or any other governmental agency questions or challenges the Contractor's or her Assistants' Independent Contractor status, it is agreed that the County and the Contractor shall have the right to participate in any conference, discussion, or negotiations with the governmental agency, irrespective of with whom or by whom such discussions or negotiations are initiated.
- H. The Contractor agrees to comply with federal and state laws as supplemented in the Department of Labor regulations and any other regulations of federal and state entities relating to such employment and Civil Rights requirements.

#### VII. Miscellaneous

- A. Expenses: The Contractor is solely responsible for paying all of her business expenses related to furnishing the services described herein, and the County shall not reimburse the cost of equipment, tools, office space, support services or other general operating expenses.
- B. Training: The Contractor and her Assistants shall not be required to attend or undergo any training by the County. The Contractor shall be fully responsible for her Assistants' or her own training necessary to maintain any licenses or certifications to perform the services described herein, and shall be solely responsible for the cost of the same.
- C. Advice of Counsel: Each party acknowledges that, in executing this Agreement, such party has had the opportunity to seek the advice of independent legal counsel, and has read and understood all of the terms and provisions of this Agreement.



**Oneida County Department of Social Services  
Contractor and Contract Staff  
Confidentiality and Non-Disclosure Agreement**

I, the undersigned, an employee of \_\_\_\_\_, (the  
Name of Contract Agency

“Service Provider”), hereby state that I understand and agree that all information provided to the Service Provider from the Oneida County Department of Social Services staff by paper copies, computer systems or databases, electronic communication or otherwise obtained pursuant to the Agreement entered between the Oneida County Department of Social Services and the Service Provider indicated above, is CONFIDENTIAL, is to be used only for the purposes of performing services required by the Agreement, and must be safeguarded from unauthorized disclosure.

I further understand that such information includes, but is not limited to, any and all information regarding parents or guardians and their children, and all employment, financial, and personal identifying data, including Protected Health Information (PHI) as set forth in HIPAA regulations.

I agree to maintain all such information as CONFIDENTIAL, and I agree to use such information only in the performance of my official duties to perform the functions required by the Agreement, unless otherwise authorized in writing by the Department of Social Services.

I understand that confidential information maintained in and/or obtained from systems/databases such as, but not limited to the Welfare Management system (WMS), Child Support Management System (CSMS/ASSETS), Benefits Issuance Control System (BICS), COGNOS, and Connections are protected by Federal and State statutes and regulations. Access and disclosure of confidential information is strictly limited to authorized employees and legally designated agents, for authorized purposes only in the delivery of program services.

I understand that service providers may not access their own active, closed or archived records or those involving a relative, friend, acquaintance, neighbor, partner or co-worker or other individuals to whom they have no official assignment.

I understand that if my employment is terminated by resignation, retirement or for other reasons or the Service Provider Contract is not renewed, the terms of this Confidentiality and Non-Disclosure Agreement are still binding.

I understand that if I disclose CONFIDENTIAL information in violation of the requirements stated herein, any individual who incurs damages due to the disclosure may recover such damage in a civil action.

I understand that, in addition to any other penalties provided by law, any person who willfully releases or willfully permits the release of any CONFIDENTIAL information as described herein to persons or agencies not authorized under New York State law to receive it shall be guilty of a class A misdemeanor.

Print Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Witness: \_\_\_\_\_

## STANDARD ONEIDA COUNTY CONDITIONS ADDENDUM

THIS ADDENDUM, entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between the County of Oneida, hereinafter known as County, and a Contractor, subcontractor, vendor, vendee, licensor, licensee, lessor, lessee or any third party, hereinafter known as Contractor.

WHEREAS, County and Contractor have entered into a contract, license, lease, amendment or other agreement of any kind (hereinafter referred to as the "Contract"), and

WHEREAS, the Oneida County Attorney and the Oneida County Director of Purchasing have recommended the inclusion of the standard clauses set forth in this Addendum to be included in every Contract for which County is a party, now, thereafter,

The parties to the attached Contract, for good consideration, agree to be bound by the following clauses which are hereby made a part of the Contract.

1. EXECUTORY OR NON-APPROPRIATION CLAUSE.

The County shall have no liability or obligation under this Contract to the Contractor or to anyone else beyond the annual funds being appropriated and available for this Contract.

2. ONEIDA COUNTY BOARD OF LEGISLATORS: RESOLUTION #249 SOLID WASTE DISPOSAL REQUIREMENTS.

Pursuant to Oneida County Board of Legislator Resolution No. 249 of May 26, 1999, the Contractor agrees to deliver exclusively to the facilities of the Oneida-Herkimer Solid Waste Authority, all waste and recyclables generated within the Authority's service area by performance of this Contract by the Contractor and any subcontractors. Upon awarding of this Contract, and before work commences, the Contractor will be required to provide Oneida County with proof that Resolution No. 249 of 1999 has been complied with, and that all wastes and recyclables in the Oneida-Herkimer Solid Waste Authority's service area which are generated by the Contractor and any subcontractors in performance of this Contract will be delivered exclusively to Oneida-Herkimer Solid Waste Authority facilities.

3. CERTIFICATIONS REGARDING LOBBYING, DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS, AND DRUG-FREE WORKPLACE REQUIREMENTS.

- a. Lobbying. As required by Section 1352, Title 31 of the U.S. Code and implemented at 34 CFR Part 82 for persons entering into a grant or cooperative

agreement over \$100,000, as defined at 34 CFR Part 82, Section 82.105 and 82.110, the Contractor certifies that:

- i. No federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any persons for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal grant or cooperative agreement.
  - ii. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal grant or cooperative agreement, the Contractor shall complete and submit Standard Form 111 "Disclosure Form to Report Lobbying," in accordance with its instructions.
  - iii. The Contractor shall require that the language of this certification be included in the award documents for all subcontracts and that all subcontractors shall certify and disclose accordingly.
- b. Debarment, Suspension and other Responsibility Matters. As required by Executive Order 12549, Debarments and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 83.105 and 85.110,
- i. The Contractor certifies that it and its principals:
    - A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
    - B. Have not within a three-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a

criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction, violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

C. Are not presently indicted or otherwise criminally or civilly charged by a Government entity (federal, state or local) with commission of any of the offenses enumerated in subparagraph (B), above, of this certification; and

D. Have not within a three-year period preceding this Contract had one or more public transactions (federal, state, or local) for cause or default;

ii. Where the Contractor is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this Contract.

c. Drug-Free Workplace (Contractors other than individuals). As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for Contractors, as defined at 34 CFR Part 85, Sections 85.605 and 85.610:

i. The Contractor will or will continue to provide a drug-free workplace by:

A. Publishing a statement notifying employees that the manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

B. Establishing an ongoing drug-free awareness program to inform employees about:

1) The dangers of drug abuse in the workplace;

- 2) The Contractor's policy of maintaining a drug-free workplace;
- 3) Any available drug counseling, rehabilitation, and employee assistance program; and
- 4) The penalties that may be imposed upon an employee for drug abuse violation occurring in the workplace;

C. Making it a requirement that each employee to be engaged in the performance of the Contract be given a copy of the statement required by paragraph (A), above;

D. Notifying the employee in the statement required by paragraph (A), above, that as a condition of employment under the Contract, the employee will:

- 1) Abide by the terms of the statement; and
- 2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction;

E. Notifying the County, in writing within ten (10) calendar days after having received notice under subparagraph (D)(2), above, from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position and title, to:

Director, Grants Management Bureau, State Office Building Campus, Albany, New York 12240. Notice shall include the identification number(s) of each affected contract.

F. Taking one of the following actions, within thirty (30) calendar days of receiving notice under paragraph (D)(2), above, with respect to any employee who is so convicted;

- 1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
- 2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency;

G. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (A),(B),(C),(D),(E) and (F), above.

- ii. The Contractor may insert in the space provided below the site(s) for the performance of work done in connection with the specific contract.

Place of Performance (street, address, city, county, state, zip code).

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d. Drug-Free Workplace (Contractors who are individuals). As required by the Drug-Free Workplace act of 1988, and implemented at 34 CFR Part 85, Subpart F, for Contractors that are individuals, as defined at 34 CFR Part 85, Sections 85.605 and 85.610:

- i. As a condition of the contract, the Contractor certifies that he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the Contract; and
- ii. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any contract activity, the

Contractor will report the conviction, in writing, within ten (10) calendar days of the conviction, to:

Director, Grants Management Bureau, State Office Building  
Campus, Albany, NY 12240. Notice shall include the  
identification number(s) of each affected Contract.

4. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA).

When applicable to the services provided pursuant to the Contract:

- a. The Contractor, as a Business Associate of the County, shall comply with the Health Insurance Portability and Accountability Act of 1996, hereinafter referred to as "HIPAA," as well as all regulations promulgated by the Federal Government in furtherance thereof, to assure the privacy and security of all protected health information exchanged between the Contractor and the County. In order to assure such privacy and security, the Contractor agrees to enact the following safeguards for protected health information:
  - i. Establish policies and procedures, in written or electronic form, that are reasonably designed, taking into consideration the size of, and the type of activities undertaken by, the Contractor, to comply with the Standards for Privacy of Individual Identifiable Health Information, commonly referred to as the Privacy Rule;
  - ii. Utilize a combination of electronic hardware and computer software in order to securely store, maintain, transmit, and access, protected health information electronically; and
  - iii. Utilize an adequate amount of physical hardware, including but not limited to, locking filing cabinets, locks on drawers, other cabinets and office doors, in order to prevent unwarranted and illegal access to computers and paper files that contain protected health information of the County's clients.
- b. This agreement does not authorize the Contractor to use or further disclose the protected health information that the Contractor handles in treating patients of the County in any manner that would violate the requirements of 45 CFR § 164.504(e), if that same use or disclosure were done by the County, except that:

- i. The Contractor may use and disclose protected health information for the Contractor's own proper management and administration; and
- ii. The Contractor may provide data aggregation services relating to the health care operations of the County.

c. The Contractor shall:

- i. Not use or further disclose protected health information other than as permitted or required by this contract or as required by law;
- ii. Use appropriate safeguards to prevent the use or disclosure of protected health information other than as provided for in this Contract;
- iii. Report to the County any use or disclosure of the information not provided for by this Contract of which the Contractor becomes aware;
- iv. Ensure that any agents, including a subcontractor, to whom the Contractor provides protected health information received from, or created or received by the Contractor on behalf of the County, agrees to the same restrictions and conditions that apply to the Contractor with respect to such protected health information;
- v. Make available protected health information in accordance with 45 CFR §164.524;
- vi. Make available protected health information for amendment and incorporate any amendments to protected health information in accordance with 45 CFR §164.528;
- vii. Make available the information required to provide an accounting of disclosures in accordance with 45 CFR § 164.528;
- viii. Make its internal practices, books, and records relating to the use and disclosure of protected health information received from, or created or received by, the Contractor on behalf of the County



available to the Secretary of Health and Human Services for purposes of determining the County's compliance with 45 CFR § 164.504(e)(2)(ii); and

ix. At the termination of this Contract, if feasible, return or destroy all protected health information received from, or created or received by, the Contractor on behalf of the County that the Contractor still maintains, in any form, and retain no copies of such information; or, if such return or destruction is not feasible, extend the protections of this Contract permanently to such information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.

d. The Contractor agrees that this contract may be amended if any of the following events occurs:

i. HIPAA, or any of the regulations promulgated in furtherance thereof, is modified by Congress or the Department of Health and Human Services;

ii. HIPAA, or any of the regulations promulgated in furtherance thereof, is interpreted by a court in a manner impacting the County's HIPAA compliance; or

iii. There is a material change in the business practices and procedures of the County.

e. Pursuant to 45 CFR § 164.504(e)(2)(iii), the County is authorized to unilaterally terminate this Contract if the County determines that the Contractor has violated a material term of this Contract.

5. NON-ASSIGNMENT CLAUSE.

In accordance with Section 109 of the General Municipal Law, this Contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the County's previous written consent, and any attempts to do so are null and void. The Contractor may, however, assign its right to receive payments without the County's prior written consent unless this Contract concerns Certificates of Participation pursuant to Section 109-b of the General Municipal Law.

6. WORKER'S COMPENSATION BENEFITS.

In accordance with Section 108 of the General Municipal Law, this Contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this Contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

7. NON-DISCRIMINATION REQUIREMENTS.

To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other state and federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a Contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this Contract shall be performed within the State of New York, the Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 of the Labor Law, the Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. The Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this Contract and forfeiture of all monies due hereunder for a second or subsequent violation.

8. WAGE AND HOURS PROVISIONS.

If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 of the Labor Law, neither the Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said Articles, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, the Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as

determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the County of any County-approved sums due and owing for work done upon the project.

9. NON-COLLUSIVE BIDDING CERTIFICATION.

In accordance with Section 103-d of the General Municipal Law, if this Contract is awarded based upon the submission of bids, the Contractor certifies and affirms, under penalty of perjury, as to its own organization, under penalty of perjury, that to the best of its knowledge and belief:

(1) the prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor; and (2) unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and (3) no attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition. The Contractor further affirms that, at the time the Contractor submitted its bid, an authorized and responsible person executed and delivered to the County a non-collusive bidding certification on the Contractor's behalf.

10. RECORDS.

The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertaining to performance under this Contract (hereinafter, collectively, "the Records"). The Records shall include, but not be limited to, reports, statements, examinations, letters, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, electronic files, e-mails (and all attachments thereto), rules, regulations and codes. The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The County Comptroller, the County Attorney and any other person or entity authorized to conduct an audit or examination, as well as the agency or agencies involved in this Contract, shall have access to the Records during normal business hours at an office of the Contractor within the County or, if no such office is available, at a mutually agreeable and reasonable venue within the County, for the term specified above, for the purposes of inspection, auditing and copying. The County shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute"), provided that: (a) the Contractor shall timely inform an appropriate County official, in writing, that said records should not be disclosed; (b) said records

shall be sufficiently identified; and (c) in the sole discretion of the County, designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the County's right to discovery in any pending or future litigation. Notwithstanding any other language, the Records may be subject to disclosure under the New York Freedom of Information Law, for other applicable state or federal law, rule or regulation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

- a. Identification Number(s). Every invoice or claim for payment submitted to a County agency by a payee, for payment for the sale of goods or service or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. This number includes any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Where the payee does not have such number or numbers, the payee, on its invoice or claim for payment, must state with specificity the reason or reasons why the payee does not have such number or numbers.
- b. Privacy Notification. (i) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the County is mandatory. The principle purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their liabilities and to generally identify persons affected by the taxes administered by the New York State Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (ii) The personal information is requested by the County's purchasing unit contracting to purchase goods or services or lease the real or personal property covered by this Contract.

12. CONFLICTING TERMS.

In the event of a conflict between the terms of the Contract (including any and all attachments thereto and amendments thereof) and the terms of this Addendum, the terms of this Addendum shall control.

13. GOVERNING LAW.

This Contract shall be governed by the laws of the State of New York except where the Federal Supremacy Clause requires otherwise.

14. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.

The Contractor certifies and warrants that all wood products to be used under this Contract award will be acquired in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law (Use of Tropical Hardwoods), which prohibits purchase and use of tropical hardwoods, unless specifically exempted by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the sole responsibility of the Contractor to establish to meet with the approval of the County.

In addition, when any portion of this Contract involving the use of woods, whether for supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in Section 165 of the State Finance Law. Any such use must meet with approval of the County; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the sole responsibility of the Contractor to establish to meet with the approval of the County.

15. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.

The Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa).

16. GRATUITIES AND KICKBACKS.

- a. Gratuities. It shall be unethical for any person to offer, give, or agree to give any County employee or former County employee, or for any County employee or former County employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request; influencing the content of any specification or procurement standard; rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application;

request for ruling, determination, claim, or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.

- b. Kickbacks. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime Contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

17. AUDIT

The County, the State of New York, and the United States shall have the right at any time during the term of this agreement and for the period limited by the applicable statute of limitations to audit the payment of monies hereunder. The Contractor shall comply with any demands made by the County to provide information with respect to the payment of monies made hereunder during the period covered by this paragraph. The Contractor shall maintain its books and records in accordance with generally accepted accounting principles or such other method of account which is approved in writing by the County prior to the date of this agreement. The revenues and expenditures of the Contractor in connection with this agreement shall be separately identifiable. Each expenditure or claim for payment shall be fully documented. Expenditures or claims for payment which are not fully documented may be disallowed. The Contractor agrees to provide to, or permit the County to examine or obtain copies of, any documents relating to the payment of money to the Contractor or expenditures made by the Contractor for which reimbursement is requested to be made or has been made to the Contractor by the County. The Contractor shall maintain all records required by this paragraph for 7 years after the date this agreement is terminated or ends.

If the Contractor has expended, in any fiscal year, \$300,000.00 or more in funds provided by a federal financial assistance program from a federal agency pursuant to this agreement and all other contracts with the County, the Contractor shall provide the County with an audit prepared by an independent auditor in accordance with the Single Audit Act of 1984, 31 U.S.C. §§ 7501, et seq., as amended, and the regulations adopted pursuant to such Act.

18. CERTIFICATION OF COMPLIANCE WITH THE IRAN DIVESTMENT ACT.

Pursuant to Section 103-g of the General Municipal Law, by submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, each bidder or Contractor, or any person signing on behalf of any bidder or Contractor, and any assignee or subcontractor and, in the case of a joint bid, each party thereto, certifies, under penalty of perjury, that once the Prohibited Entities List is posted on the Office of General Services

(hereinafter "OGS") website, that to the best of its knowledge and belief, that each bidder or Contractor and any subcontractor or assignee is not identified on the Prohibited Entities List created pursuant to State Finance Law § 165-a(3)(b).

Additionally, the bidder or Contractor is advised that once the Prohibited Entities List is posted on the OGS website, any bidder or Contractor seeking to renew or extend a Contract or assume the responsibility of a Contract awarded in response to this solicitation must certify at the time the Contract is renewed, extended or assigned that it is not included on the Prohibited Entities List.

During the term of the Contract, should the County receive information that a bidder or Contractor is in violation of the above-referenced certification, the County will offer the person or entity an opportunity to respond. If the person or entity fails to demonstrate that he, she or it has ceased engagement in the investment which is in violation of the Iran Divestment Act of 2012 within ninety (90) days after the determination of such violation, then the County shall take such action as may be appropriate, including, but not limited to, imposing sanctions, seeking compliance, recovering damages or declaring the bidder or Contractor in default.

The County reserves the right to reject any bid or request for assignment for a bidder or Contractor that appears on the Prohibited Entities List prior to the award of a Contract and to pursue a responsibility review with respect to any bidder or Contractor that is awarded a Contract and subsequently appears on the Prohibited Entities List.

#### 19. PROHIBITION ON TOBACCO AND E-CIGARETTE USE ON COUNTY PROPERTY

Pursuant to Local Law No. 3 of 2016, the use of tobacco and e-cigarettes are prohibited on Oneida County property, as follows:

- a. For the purposes of this provision, the "use of tobacco" shall include:
  - i. The burning of a lighted cigarette, pipe, cigar or other lighted instrument for the purpose of smoking tobacco or a tobacco substitute;
  - ii. The use of tobacco and/or a substance containing tobacco or a tobacco substitute by means other than smoking, including: chewing; holding in the mouth; or expectoration of chewing tobacco.
- b. For the purposes of this provision, "e-cigarette" shall mean an electronic device composed of a mouthpiece, heating element, battery and electronic circuit that

delivers vapor which is inhaled by an individual user as he or she simulates smoking.

c. For the purposes of this provision, "on Oneida County property" shall be defined as:

i. Upon all real property owned or leased by the County of Oneida;  
and

ii. Within all County of Oneida-owned vehicles or within private vehicles when being used for a County of Oneida purpose, except that a driver may smoke in a privately-owned vehicle being used for a County of Oneida Purpose if the driver is the sole occupant of the vehicle.

d. Each violation of this Local Law No. 3 of 2016 shall constitute a separate and distinct offense and may be punishable by a fine of up to \$200.00 for a first offense and up to \$1,000.00 for subsequent offenses.

20. COMPLIANCE WITH NEWYORK STATE LABOR LAW § 201-G

The Contractor shall comply with the provisions of New York State Labor Law § 201-g.



# ONEIDA COUNTY HEALTH DEPARTMENT

Adirondack Bank Building, 5<sup>th</sup> Floor, 185 Genesee St., Utica, NY 13501

ANTHONY J. PICENTE, JR.  
ONEIDA COUNTY EXECUTIVE



PHYLLIS D. ELLIS, BSN, MS, F.A.C.H.E.  
DIRECTOR OF HEALTH

## ADMINISTRATION

Phone: (315) 798-6400 Fax: (315) 266-6138

November 16, 2020

FN 20 20-371

Anthony J. Picente, Jr.  
Oneida County Executive  
800 Park Avenue  
Utica, New York 13501

HEALTH & HUMAN SERVICES

WAYS & MEANS

Dear Mr. Picente:

Attached are two (2) copies of a renewal Agreement between Oneida County, through its Health Department and Adrean Funeral Services, Inc. for transportation of decedents to locations designated by the Onondaga County Medical Examiner's office or its designees.

The term of this Agreement shall become effective January 1, 2021 through December 31, 2021. The amount of compensation for transportation services in 2021 will be \$93,636.00 which will be paid on a quarterly basis at the beginning of each quarter beginning January 1<sup>st</sup> and subsequently on April 1<sup>st</sup>, July 1<sup>st</sup> and October, 1<sup>st</sup>. If this agreement meets with your approval, please forward the same to the Board of Legislators for review.

Please feel free to contact me at 315-798-5220 or by e-mail at [pellis@ocgov.net](mailto:pellis@ocgov.net) should you require additional information.

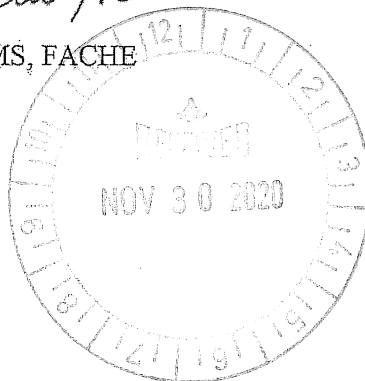
Thank you for your attention to this matter.

Sincerely,

*Phyllis D. Ellis AB*

Phyllis D. Ellis, BSN, MS, FACHE  
Director of Health

CM



Reviewed and Approved for submittal to the  
Oneida County Board of Legislators by

*Anthony J. Picente, Jr.*

Anthony J. Picente, Jr.  
County Executive

Date 11-30-20

Oneida Co. Department: Health

Competing Proposal \_\_\_\_\_  
Only Respondent X  
Sole Source RFP \_\_\_\_\_  
Other \_\_\_\_\_

ONEIDA COUNTY BOARD  
OF LEGISLATORS

Name & Address of Vendor:

Adrean Funeral Services, Inc.  
700 Rutger Street  
Utica, New York 13501

Title of Activity or Service:

Transportation of Decedents

Proposed Dates of Operation:

January 1, 2021 to December 31, 2021

Client Population/Number to be Served:

Oneida County

**Summary Statements**

1) **Narrative Description of Proposed Services:** Obtain transportation services by Adrean Funeral Services, Inc., to remove and transport decedents to locations designated by the Onondaga County Medical Examiner's Office or its designees.

2) **Program/Service Objectives and Outcomes:** NA

3) **Program Design and Staffing:** NA

**Total Funding Requested:** \$93,636.00 plus storage **Account # A1186.495**

**Oneida County Dept. Funding Recommendation:** \$93,636.00

**Proposed Funding Sources (Federal \$/ State \$/County \$):**\$93,636.00 plus storage

**Cost Per Client Served:** NA

**Past Performance Data:**

NA

**O.C. Department Staff Comments:** NA

**Mandated Service:** Oneida County is contractually obligated to Onondaga County to provide transportation of deceased to and from Onondaga County Medical Examiner.

MEDICAL EXAMINER OFFICE TRANSPORTATION  
SERVICES AGREEMENT

THIS AGREEMENT, entered into on the day of \_\_\_\_\_, 2020, by and between the County of Oneida, a municipal corporation organized and existing under the laws of the State of New York, with offices located at 800 Park Avenue, Utica, New York 13501, hereinafter referred to as "COUNTY," and Adrean Funeral Service, Inc., a domestic business corporation with its offices located at 700 Rutger Street, Utica, New York 13501, hereinafter referred to as the "CONTRACTOR."

WITNESSETH

WHEREAS, the COUNTY wishes to engage the services of a qualified provider possessing the requisite skills, expertise and licensing to provide decedent removal, temporary storage, and transportation services to the Onondaga County Medical Examiner Office (OCMEO) who serves on the behalf of the COUNTY;

WHEREAS, the COUNTY requested proposals from qualified agencies to perform such services; and

WHEREAS, after a thorough review, it has been determined the CONTRACTOR possesses the requisite skills, expertise, and licensing to provide the required services set forth hereunder;

NOW THEREFORE, in consideration of the mutual promises made by the parties herein, the COUNTY and the CONTRACTOR agree as follows:

1. TERM:

The terms and conditions of this Agreement shall commence January 1, 2021 and terminate December 31, 2021.

2. SCOPE OF SERVICES:

a. The Onondaga County Medical Examiner's Office (OCMEO) is located at 100 Elizabeth Blackwell Street, Syracuse, New York. The CONTRACTOR shall provide decedent removal, temporary storage, and transportation services to and from, as the case may be, this location and/or to other locations as required in the event of a mass fatality or other incident where an off-site location is necessary (hereinafter collectively called the "Services").

b. The CONTRACTOR shall provide the Services at such times, dates and locations as designated by the COUNTY through the OCMEO. The Services shall be required at various locations throughout Oneida County, including, but not limited to, residences, roadways, wooded areas, funeral homes, and hospitals/health care facilities.

c. The CONTRACTOR shall provide such Services on an on-call basis, and shall provide such Services at any time, twenty-four hours per day, and seven days per week.

d. The CONTRACTOR shall utilize vehicles conforming to New York State Health laws appropriate for the performance of Services. Vehicles will be subject to the approval of the OCMEO Chief Medical Examiner or his/her designated representative. Inappropriate or poorly maintained vehicles shall be disallowed.

- e. The CONTRACTOR shall utilize vehicles with appropriate equipment for a wide range of locations or scenarios and are unmarked or do not display a company name.
- f. The OCMEO shall provide the CONTRACTOR with information about scene location, weight of decedent, decontamination requirements, and any other information that may require additional assistance or resources by the CONTRACTOR at the time of notification.
- g. The CONTRACTOR agrees that it shall have available, at all times, a sufficient number of vehicles and staff to remove at least two decedents from two different locations at the same time.
- h. The CONTRACTOR shall respond to the designated location within forty-five (45) minutes of notification by the OCMEO except and unless, in the rare instance, there is a delay caused by unforeseen events beyond the CONTRACTOR's reasonable control.
- i. The CONTRACTOR agrees that it shall allot forty-five (45) minutes of time on-scene for stand-by and removal. On-scene time starts upon arrival at the scene and ends when the decedent is removed from the scene, OCMEO staff will contact the CONTRACTOR when the decedent is ready for removal; however, the CONTRACTOR must be aware there are times when the removal may be delayed due to law enforcement and/or other agency activities beyond the control of the OCMEO,
- j. The CONTRACTOR shall provide at least two (2) employees to remove decedents from scenes and emergency rooms and at least one (1) employee to remove decedents from hospital morgues. The CONTRACTOR's employees must be capable of moving heavy decedents up to 250 pounds and must have the appropriate number of staff and equipment to remove decedents up to 500 pounds. The CONTRACTOR should not expect any assistance with removal,
- k. The CONTRACTOR's employees shall dress professionally and appropriately for scene response.
- l. The CONTRACTOR and its employees shall demonstrate respect for the decedent and for family members of the decedent at all times during the performance of Services. A flat or plastic carry-board must be used to transfer all decedents to a stretcher for removal.
- m. The CONTRACTOR and its employees must maintain confidentiality of all information obtained during transport, this includes basic data such as decedent name, age, gender, sexual orientation, circumstances of death, as well as other information. Any breach of confidentiality may result in the termination of this Agreement and possible legal action,
- n. The CONTRACTOR and its employees must use standard precautions during performance of the Services.
- o. The CONTRACTOR and its employees must comply with Occupational Safety and Health regulations 29 CFR 1910.1030: Occupational Exposure to Blood-Borne Pathogens and 29 CFR 1910.132-136: Personal Protective Equipment, and supply personal protective supplies to meet these standards.
- p. The CONTRACTOR and its employees must read the Onondaga County Center for Forensic Sciences ("CFS") Safety Manual Contractor Safety Handout and complete the Contractor Safety Acknowledgement Signature form.

q. The CONTRACTOR shall utilize cellular telephone and/or two-way radio communication between the CONTRACTOR's main office, mobile vehicle(s) and OCMEO employees.

r. During performance of the Services, the CONTRACTOR shall utilize various types of body bags provided by the OCMEO. Heavy duty bags must be used in any instance where the death is the result of a criminal act, requires removal by hand carrying the remains (i.e. off road or woods), or in circumstances where special handling is required, as directed by the OCMEO staff on scene. In all other routine removal situations (hospitals, nursing homes, etc.), the decedent, ideally, must be placed in a bag provided by that institution. In those cases where a bag is not provided by an institution, or removal is made from a private residence, a lightweight bag must be utilized. In cases where the decedent is extremely obese, special oversized heavyweight bags shall be utilized as determined by OCMEO staff. All bags shall be replenished upon arrival at the OCMEO. All bags are the property of the OCMEO and must be used for only that purpose.

s. The CONTRACTOR shall utilize other supplies provided by the OCMEO for scene preservation as directed by OCMEO's Forensic Investigators (Forensic Investigators) or Medical Examiners.

t. The CONTRACTOR must complete the following chain of custody when a Forensic Investigator is present at the scene/pick-up location: The Forensic Investigator shall begin the chain of custody at the scene by sealing the bag with a numbered lock seal and shall then transfer the decedent to the CONTRACTOR for transport. The chain of custody shall continue at check-in of the decedent at the OCMEO. The CONTRACTOR and/or its employees shall not depart the OCMEO, following decedent transport, until said chain of custody is completed and signed by both the CONTRACTOR's representative and an OCMEO representative.

u. The CONTRACTOR must complete the following chain of custody when a Forensic Investigator is NOT present at the scene/pick-up location: The CONTRACTOR shall ensure the numbered lock seal on the body bag matches the seal number noted in the hospital or other agency's records/forms before transport to the OCMEO. If the body bag is NOT sealed upon arrival, the CONTRACTOR shall use an approved OCMEO property and evidence form to document personal property and valuables on the decedent, with hospital or other agency staff present, and then seal the bag with a numbered lock seal before transport to the OCMEO. The chain of custody shall continue at check-in of the decedent at the OCMEO. The CONTRACTOR and/or its employees shall not depart the OCMEO, following decedent transport, until said chain of custody is completed and signed by both the CONTRACTOR's representative and an OCMEO representative.

v. The CONTRACTOR shall bring any issues/problems encountered to the attention of the Forensic Investigator responsible for the particular scene, or to the OCMEO or his /her designee.

w. The CONTRACTOR must provide a monthly report on all responses including OCMEO case number, time of arrival and departure from the scene, scene location, and names of CONTRACTOR employees responding. This report shall be submitted with a quarterly invoice for Services performed to the Oneida County Director of Public Health.

### 3. COMPENSATION:

a. The amount of compensation from the COUNTY to the CONTRACTOR for decedent removal and transportation performed under this Agreement shall be Ninety-three Thousand Six Hundred and thirty-six Dollars (\$93,636.00).

- i. Such compensation shall be made by the COUNTY after receipt of an Oneida County voucher presented by the CONTRACTOR to the COUNTY, on forms prescribed by the COUNTY and after audit and approval by the COUNTY's Public Health Director, the COUNTY's Department of Audit and Control, and the COUNTY's Comptroller.
- ii. Compensation shall be made quarterly commencing January 1st, 2021 with subsequent payments on April 1st, 2021 July 1st, 2021, and October 1st, 2021 pursuant to the above procedures. .
- iii. At no time shall the CONTRACTOR submit a bill to a member of the decedent's family.

b. The CONTRACTOR shall provide storage of decedents on an as-needed basis for an additional charge. In the event that storage of a decedent is necessary, the CONTRACTOR shall be compensated in accordance with the above procedures and pursuant to the following schedule :

- i. Storage time shall be calculated from the time a decedent arrives at the CONTRACTOR's facility until such time the decedent is removed from the CONTRACTOR's facility.
- ii. There shall be no additional charge for non-refrigerated storage at the CONTRACTOR's facility for the first 24 hours. After the first 24 hours, a decedent shall be stored in refrigeration at the rate of One Hundred Dollars (\$100.00) per 24 hours, or any part thereof.
- iii. In the event a decedent requires immediate refrigeration upon arrival at the CONTRACTOR's facility, there will be an additional charge of One Hundred Dollars (\$100.00) per 24 hours, or any part thereof.

c.

#### 4. CONFIDENTIALITY:

The CONTRACTOR shall hold in strict confidence all records and proceedings the CONTRACTOR has access to in the provision of the above Services. The CONTRACTOR shall not disclose any information, data or records except to those persons or entities as authorized or required by law or pursuant to a court order, or by written consent of the COUNTY, it being acknowledged and agreed that, except as otherwise required by law, the COUNTY shall have sole responsibility for responding to requests for access to such records.

#### 5. REPORTING REQUIREMENTS:

The CONTRACTOR shall keep separate and accurate records regarding performance of the Services under the term of this Agreement and, upon request by the COUNTY, the CONTRACTOR shall submit such documentation to the COUNTY.

#### 6. PERFORMANCE OF SERVICES:

- a. The CONTRACTOR represents that the CONTRACTOR is duly licensed (as applicable) and has the qualifications, the specialized skill(s), the experience, and the ability to properly perform the Services. The CONTRACTOR shall use its best efforts to perform the Services such that the results

are satisfactory to the COUNTY. The CONTRACTOR shall be solely responsible for determining the method, details, and means of performing the Services, except where federal, state or local laws and regulations impose specific requirements on performance of same.

b. The CONTRACTOR may, at its own expense, employ or engage the services of such employees, subcontractors, and/or partners as the CONTRACTOR deems necessary to perform the Services (collectively, the "Assistants"). The Assistants are not and shall not be deemed employees of the COUNTY, and the COUNTY shall have no obligation to provide the Assistants with any salary or benefits. The CONTRACTOR shall be solely responsible and shall remain liable for the performance of the Services by the Assistants in a manner satisfactory to the COUNTY, in compliance with any and all applicable federal, state or local laws and regulations. The CONTRACTOR shall expressly advise the Assistants of the terms of this Agreement.

c. The CONTRACTOR acknowledges and agrees that the CONTRACTOR and its Assistants have no authority to enter into contracts that bind the COUNTY or create obligations on the part of the COUNTY without the prior written authorization of the COUNTY,

#### 7. INDEPENDENT CONTRACTOR STATUS:

a. It is expressly agreed that the relationship of the CONTRACTOR and its Assistants to the COUNTY shall be that of Independent Contractors. The CONTRACTOR's Assistants shall not be considered employees of the COUNTY for any purpose including, but not limited to, claims for unemployment insurance, workers' compensation, retirement or health insurance benefits. The CONTRACTOR, in accordance with its status as an Independent Contractor, covenants and agrees that its Assistants will conduct themselves in accordance with such status, that they shall not hold themselves out as, nor claim to be, officers or employees of the COUNTY by any reason thereof and they will not by any reason thereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the COUNTY.

b. The CONTRACTOR warrants and represents that it is in the business of offering the same or similar services detailed herein and does offer the same or similar services to other entities and/or the general public as a regular course of business, The CONTRACTOR and the COUNTY agree that the CONTRACTOR is free to undertake other work arrangements during the term of this Agreement and may continue to make its services available to the public.

c. The CONTRACTOR acknowledges and agrees that neither the CONTRACTOR, nor its Assistants, shall be eligible for any COUNTY employee benefits, including retirement membership credits.

d. The CONTRACTOR shall be solely responsible for applicable taxes for all compensation paid to the CONTRACTOR or its Assistants under this Agreement, and for compliance with all applicable labor and employment requirements with respect to the CONTRACTOR's self-employment, sole proprietorship or other form of business organization, and with respect to the Assistants, including payroll deductions, worker's compensation insurance, and provision of health insurance where required, The COUNTY shall not be responsible for withholding from the payments provided for Services rendered for State or Federal income tax, unemployment insurance, worker's compensation, disability insurance or social security insurance (FICA). The CONTRACTOR shall provide proof of worker's compensation insurance, where applicable, prior to execution of this Agreement.

e. The CONTRACTOR shall indemnify and hold the COUNTY harmless from all loss or liability incurred by the COUNTY as a result of the COUNTY not making such payments or withholdings.

f. If the Internal Revenue Service, Department of Labor, or any other governmental agency questions or challenges the CONTRACTOR's or its Assistants' Independent Contractor status, it is agreed that both the COUNTY and the CONTRACTOR shall have the right to participate in any conference, discussion, or negotiations with the governmental agency, irrespective of with whom or by whom such discussions or negotiations are initiated.

g. The CONTRACTOR shall comply with federal and state laws as supplemented in the Department of Labor regulations and any other regulations of the Federal and State entities relating to such employment and Civil Rights requirements.

h. The CONTRACTOR shall not display the COUNTY's name in any manner, including, without limitation, for the purpose of promotion, development or acquisition of new business for the CONTRACTOR.

#### 8. INDEMNIFICATION:

The CONTRACTOR shall defend, indemnify and hold harmless the COUNTY and ONONDAGA COUNTY, their officers, directors, elected officials and employees and other agents, from and against any claims, liabilities, damages, judgments or other losses (including attorneys' fees) imposed upon or incurred by them arising out of or as a result of any acts or omissions of the CONTRACTOR, or its officers, directors, employees or other agents, in connection with the performance of any of their respective obligations under this Agreement.

#### 9. INSURANCE:

a. The CONTRACTOR shall provide the COUNTY with proof that Adrean Funeral Service, Inc. is covered under a professional liability policy of insurance which coverage shall be extended or endorsed to include any work performed for the COUNTY under the terms of this Agreement,

b. The CONTRACTOR shall, at its own expense, at all times during the term of this Agreement, procure and maintain in force policies of insurance, written by one or more insurance carriers licensed to do business in the State of New York, and having offices within the State of New York, which will insure against liability for the Services to be performed under the Agreement.

c. The CONTRACTOR shall have the COUNTY and Onondaga County named as additional insureds on a primary basis to said policies, and to provide the COUNTY with certificates from said insurance company or companies showing the COUNTY and Onondaga County as additional insureds prior to execution of the Agreement, and to provide that such coverage shall not be terminated without prior written notice to the COUNTY at least fifteen (15) days prior to said termination.

d. Specific Insurance minimum requirements shall consist of the following:

i. Commercial General Liability Insurance: One million dollars (\$1,000,000.00) per occurrence and Three Million dollars (\$3,000,000.00) aggregate;

ii. Automobile Liability Insurance: One million (\$1,000,000.00) per occurrence and Three Million dollars (\$3,000,000.00) aggregate; and

iii. Excess/ Umbrella coverage: Three million dollars (\$3,000,000) per occurrence and Three Million dollars (\$3,000,000.00) aggregate.



10. AUDIT:

The CONTRACTOR shall meet with the COUNTY on reasonable notice and at reasonable times and locations to permit the COUNTY to audit any and all files controlled or supervised by the CONTRACTOR under this Agreement.

11. TERMINATION:

This Agreement may be cancelled for cause by the COUNTY upon thirty (30) days written notice to the CONTRACTOR. However the parties shall diligently endeavor to resolve any issue creating cause prior to the COUNTY advising the CONTRACTOR of its intent to terminate for cause.

12. ENTIRE AGREEMENT:

This Agreement and the attachments hereto represent the entire understanding between the parties and may not be amended or any of its provisions waived without the prior written consent of both the COUNTY and the CONTRACTOR.

13. CHOICE OF LAW, VENUE:

- a. This Agreement shall be governed by the laws of the State of New York.
- b. If either party elects to commence litigation against the other in connection with any matter relating or arising out of this Agreement, it shall do so in a New York State Court of Competent Jurisdiction sitting in Oneida County, New York or in the United States District Court for the Northern District of New York,

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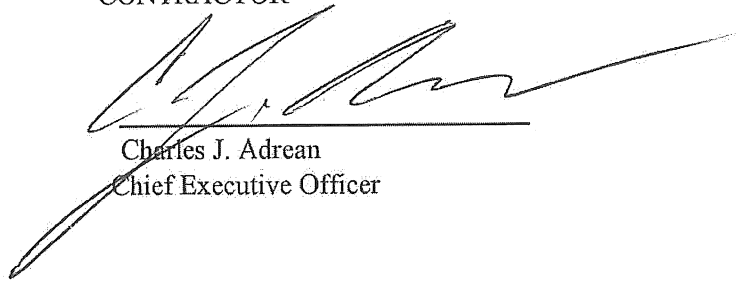
IN WITNESS WHEREOF, the COUNTY and the CONTRACTOR have executed this Agreement on the day and year first written above.

COUNTY OF ONEIDA  
Approved

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Anthony J. Picente, Jr.  
County Executive

CONTRACTOR



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Charles J. Adrean  
Chief Executive Officer

Approved:

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Ellen S. Rayhill  
Assistant County Attorney

## ADDENDUM --STANDARD ONEIDA COUNTY CONDITIONS

THIS ADDENDUM, entered into on this 24<sup>th</sup> day of November, 2020, between the County of Oneida, hereinafter known as County, and a Contractor, subcontractor, vendor, vendee, licensor, licensee, lessor, lessee or any third party, hereinafter known as Contractor.

WHEREAS, County and Contractor have entered into a contract, license, lease, amendment or other agreement of any kind (hereinafter referred to as the "Contract"), and

WHEREAS, the Oneida County Attorney and the Oneida County Director of Purchasing have recommended the inclusion of the standard clauses set forth in this Addendum to be included in every Contract for which County is a party, now, thereafter,

The parties to the attached Contract, for good consideration, agree to be bound by the following clauses which are hereby made a part of the Contract.

1. EXECUTORY OR NON-APPROPRIATION CLAUSE.

The County shall have no liability or obligation under this Contract to the Contractor or to anyone else beyond the annual funds being appropriated and available for this Contract.

2. ONEIDA COUNTY BOARD OF LEGISLATORS: RESOLUTION #249 SOLID WASTE DISPOSAL REQUIREMENTS.

Pursuant to Oneida County Board of Legislators Resolution No. 249 of May 26, 1999, the Contractor agrees to deliver exclusively to the facilities of the Oneida-Herkimer Solid Waste Authority, all waste and recyclables generated within the Authority's service area by performance of this Contract by the Contractor and any subcontractors. Upon awarding of this Contract, and before work commences, the Contractor will be required to provide Oneida County with proof that Resolution No. 249 of 1999 has been complied with, and that all wastes and recyclables in the Oneida-Herkimer Solid Waste Authority's service area which are generated by the Contractor and any subcontractors in performance of this Contract will be delivered exclusively to Oneida-Herkimer Solid Waste Authority facilities.

3. CERTIFICATIONS REGARDING LOBBYING, DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS, AND DRUG-FREE WORKPLACE REQUIREMENTS.

- a. Lobbying. As required by Section 1352, Title 31 of the U.S. Code and implemented at 34 CFR Part 82 for persons entering into a grant or cooperative

agreement over \$100,000, as defined at 34 CFR Part 82, Section 82.105 and 82.110, the Contractor certifies that:

- i. No federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any persons for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal grant or cooperative agreement.
  - ii. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal grant or cooperative agreement, the Contractor shall complete and submit Standard Form 111 "Disclosure Form to Report Lobbying," in accordance with its instructions.
  - iii. The Contractor shall require that the language of this certification be included in the award documents for all subcontracts and that all subcontractors shall certify and disclose accordingly.
- b. Debarment, Suspension and other Responsibility Matters. As required by Executive Order 12549, Debarments and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 83.105 and 85.110,
- i. The Contractor certifies that it and its principals:
    - A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
    - B. Have not within a three-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a

criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction, violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

C. Are not presently indicted or otherwise criminally or civilly charged by a Government entity (federal, state or local) with commission of any of the offenses enumerated in subparagraph (B), above, of this certification; and

D. Have not within a three-year period preceding this Contract had one or more public transactions (federal, state, or local) for cause or default;

ii. Where the Contractor is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this Contract.

c. Drug-Free Workplace (Contractors other than individuals). As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for Contractors, as defined at 34 CFR Part 85, Sections 85.605 and 85.610:

i. The Contractor will or will continue to provide a drug-free workplace by:

A. Publishing a statement notifying employees that the manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

B. Establishing an ongoing drug-free awareness program to inform employees about:

1) The dangers of drug abuse in the workplace;

- 2) The Contractor's policy of maintaining a drug-free workplace;
- 3) Any available drug counseling, rehabilitation, and employee assistance program; and
- 4) The penalties that may be imposed upon an employee for drug abuse violation occurring in the workplace;

C. Making it a requirement that each employee to be engaged in the performance of the Contract be given a copy of the statement required by paragraph (A), above;

D. Notifying the employee in the statement required by paragraph (A), above, that as a condition of employment under the Contract, the employee will:

- 1) Abide by the terms of the statement; and
- 2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction;

E. Notifying the County, in writing within ten (10) calendar days after having received notice under subparagraph (D)(2), above, from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position and title, to:

Director, Grants Management Bureau, State Office Building Campus, Albany, New York 12240. Notice shall include the identification number(s) of each affected contract.

F. Taking one of the following actions, within thirty (30) calendar days of receiving notice under paragraph (D)(2), above, with respect to any employee who is so convicted;

- 1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
- 2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency;

G. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (A),(B),(C),(D),(E) and (F), above.

- ii. The Contractor may insert in the space provided below the site(s) for the performance of work done in connection with the specific contract.

Place of Performance (street, address, city, county, state, zip code).

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d. Drug-Free Workplace (Contractors who are individuals). As required by the Drug-Free Workplace act of 1988, and implemented at 34 CFR Part 85, Subpart F, for Contractors that are individuals, as defined at 34 CFR Part 85, Sections 85.605 and 85.610:

- i. As a condition of the contract, the Contractor certifies that he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the Contract; and
- ii. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any contract activity, the

Contractor will report the conviction, in writing, within ten (10) calendar days of the conviction, to:

Director, Grants Management Bureau, State Office Building  
Campus, Albany, NY 12240. Notice shall include the  
identification number(s) of each affected Contract.

4. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA).

When applicable to the services provided pursuant to the Contract:

- a. The Contractor, as a Business Associate of the County, shall comply with the Health Insurance Portability and Accountability Act of 1996, hereinafter referred to as "HIPAA," as well as all regulations promulgated by the Federal Government in furtherance thereof, to assure the privacy and security of all protected health information exchanged between the Contractor and the County. In order to assure such privacy and security, the Contractor agrees to enact the following safeguards for protected health information:
  - i. Establish policies and procedures, in written or electronic form, that are reasonably designed, taking into consideration the size of, and the type of activities undertaken by, the Contractor, to comply with the Standards for Privacy of Individual Identifiable Health Information, commonly referred to as the Privacy Rule;
  - ii. Utilize a combination of electronic hardware and computer software in order to securely store, maintain, transmit, and access, protected health information electronically; and
  - iii. Utilize an adequate amount of physical hardware, including but not limited to, locking filing cabinets, locks on drawers, other cabinets and office doors, in order to prevent unwarranted and illegal access to computers and paper files that contain protected health information of the County's clients.
- b. This agreement does not authorize the Contractor to use or further disclose the protected health information that the Contractor handles in treating patients of the County in any manner that would violate the requirements of 45 CFR § 164.504(e), if that same use or disclosure were done by the County, except that:



- i. The Contractor may use and disclose protected health information for the Contractor's own proper management and administration; and
- ii. The Contractor may provide data aggregation services relating to the health care operations of the County.

c. The Contractor shall:

- i. Not use or further disclose protected health information other than as permitted or required by this contract or as required by law;
- ii. Use appropriate safeguards to prevent the use or disclosure of protected health information other than as provided for in this Contract;
- iii. Report to the County any use or disclosure of the information not provided for by this Contract of which the Contractor becomes aware;
- iv. Ensure that any agents, including a subcontractor, to whom the Contractor provides protected health information received from, or created or received by the Contractor on behalf of the County, agrees to the same restrictions and conditions that apply to the Contractor with respect to such protected health information;
- v. Make available protected health information in accordance with 45 CFR §164.524;
- vi. Make available protected health information for amendment and incorporate any amendments to protected health information in accordance with 45 CFR §164.528;
- vii. Make available the information required to provide an accounting of disclosures in accordance with 45 CFR § 164.528;
- viii. Make its internal practices, books, and records relating to the use and disclosure of protected health information received from, or created or received by, the Contractor on behalf of the County

available to the Secretary of Health and Human Services for purposes of determining the County's compliance with 45 CFR § 164.504(e)(2)(ii); and

- ix. At the termination of this Contract, if feasible, return or destroy all protected health information received from, or created or received by, the Contractor on behalf of the County that the Contractor still maintains, in any form, and retain no copies of such information; or, if such return or destruction is not feasible, extend the protections of this Contract permanently to such information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.
- d. The Contractor agrees that this contract may be amended if any of the following events occurs:
- i. HIPAA, or any of the regulations promulgated in furtherance thereof, is modified by Congress or the Department of Health and Human Services;
  - ii. HIPAA, or any of the regulations promulgated in furtherance thereof, is interpreted by a court in a manner impacting the County's HIPAA compliance; or
  - iii. There is a material change in the business practices and procedures of the County.
- e. Pursuant to 45 CFR § 164.504(e)(2)(iii), the County is authorized to unilaterally terminate this Contract if the County determines that the Contractor has violated a material term of this Contract.

5. NON-ASSIGNMENT CLAUSE.

In accordance with Section 109 of the General Municipal Law, this Contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the County's previous written consent, and any attempts to do so are null and void. The Contractor may, however, assign its right to receive payments without the County's prior written consent unless this Contract concerns Certificates of Participation pursuant to Section 109-b of the General Municipal Law.

6. WORKER'S COMPENSATION BENEFITS.

In accordance with Section 108 of the General Municipal Law, this Contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this Contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

7. NON-DISCRIMINATION REQUIREMENTS.

To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other state and federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a Contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this Contract shall be performed within the State of New York, the Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 of the Labor Law, the Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. The Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this Contract and forfeiture of all monies due hereunder for a second or subsequent violation.

8. WAGE AND HOURS PROVISIONS.

If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 of the Labor Law, neither the Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said Articles, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, the Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as

determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the County of any County-approved sums due and owing for work done upon the project.

9. NON-COLLUSIVE BIDDING CERTIFICATION.

In accordance with Section 103-d of the General Municipal Law, if this Contract is awarded based upon the submission of bids, the Contractor certifies and affirms, under penalty of perjury, as to its own organization, under penalty of perjury, that to the best of its knowledge and belief:

(1) the prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor; and (2) unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and (3) no attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition. The Contractor further affirms that, at the time the Contractor submitted its bid, an authorized and responsible person executed and delivered to the County a non-collusive bidding certification on the Contractor's behalf.

10. RECORDS.

The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertaining to performance under this Contract (hereinafter, collectively, "the Records"). The Records shall include, but not be limited to, reports, statements, examinations, letters, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, electronic files, e-mails (and all attachments thereto), rules, regulations and codes. The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The County Comptroller, the County Attorney and any other person or entity authorized to conduct an audit or examination, as well as the agency or agencies involved in this Contract, shall have access to the Records during normal business hours at an office of the Contractor within the County or, if no such office is available, at a mutually agreeable and reasonable venue within the County, for the term specified above, for the purposes of inspection, auditing and copying. The County shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute"), provided that: (a) the Contractor shall timely inform an appropriate County official, in writing, that said records should not be disclosed; (b) said records

shall be sufficiently identified; and (c) in the sole discretion of the County, designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the County's right to discovery in any pending or future litigation. Notwithstanding any other language, the Records may be subject to disclosure under the New York Freedom of Information Law, for other applicable state or federal law, rule or regulation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

- a. Identification Number(s). Every invoice or claim for payment submitted to a County agency by a payee, for payment for the sale of goods or service or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. This number includes any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Where the payee does not have such number or numbers, the payee, on its invoice or claim for payment, must state with specificity the reason or reasons why the payee does not have such number or numbers.
- b. Privacy Notification. (i) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the County is mandatory. The principle purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their liabilities and to generally identify persons affected by the taxes administered by the New York State Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (ii) The personal information is requested by the County's purchasing unit contracting to purchase goods or services or lease the real or personal property covered by this Contract.

12. CONFLICTING TERMS.

In the event of a conflict between the terms of the Contract (including any and all attachments thereto and amendments thereof) and the terms of this Addendum, the terms of this Addendum shall control.

13. GOVERNING LAW.

This Contract shall be governed by the laws of the State of New York except where the Federal Supremacy Clause requires otherwise.

14. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.

The Contractor certifies and warrants that all wood products to be used under this Contract award will be acquired in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law (Use of Tropical Hardwoods), which prohibits purchase and use of tropical hardwoods, unless specifically exempted by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the sole responsibility of the Contractor to establish to meet with the approval of the County.

In addition, when any portion of this Contract involving the use of woods, whether for supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in Section 165 of the State Finance Law. Any such use must meet with approval of the County; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the sole responsibility of the Contractor to establish to meet with the approval of the County.

15. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.

The Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa).

16. GRATUITIES AND KICKBACKS.

- a. Gratuities. It shall be unethical for any person to offer, give, or agree to give any County employee or former County employee, or for any County employee or former County employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request; influencing the content of any specification or procurement standard; rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application;

request for ruling, determination, claim, or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.

- b. Kickbacks. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime Contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

#### 17. AUDIT

The County, the State of New York, and the United States shall have the right at any time during the term of this agreement and for the period limited by the applicable statute of limitations to audit the payment of monies hereunder. The Contractor shall comply with any demands made by the County to provide information with respect to the payment of monies made hereunder during the period covered by this paragraph. The Contractor shall maintain its books and records in accordance with generally accepted accounting principles or such other method of account which is approved in writing by the County prior to the date of this agreement. The revenues and expenditures of the Contractor in connection with this agreement shall be separately identifiable. Each expenditure or claim for payment shall be fully documented. Expenditures or claims for payment which are not fully documented may be disallowed. The Contractor agrees to provide to, or permit the County to examine or obtain copies of, any documents relating to the payment of money to the Contractor or expenditures made by the Contractor for which reimbursement is requested to be made or has been made to the Contractor by the County. The Contractor shall maintain all records required by this paragraph for 7 years after the date this agreement is terminated or ends.

If the Contractor has expended, in any fiscal year, \$300,000.00 or more in funds provided by a federal financial assistance program from a federal agency pursuant to this agreement and all other contracts with the County, the Contractor shall provide the County with an audit prepared by an independent auditor in accordance with the Single Audit Act of 1984, 31 U.S.C. §§ 7501, et seq., as amended, and the regulations adopted pursuant to such Act.

#### 18. CERTIFICATION OF COMPLIANCE WITH THE IRAN DIVESTMENT ACT.

Pursuant to Section 103-g of the General Municipal Law, by submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, each bidder or Contractor, or any person signing on behalf of any bidder or Contractor, and any assignee or subcontractor and, in the case of a joint bid, each party thereto, certifies, under penalty of perjury, that once the Prohibited Entities List is posted on the Office of General Services

(hereinafter "OGS") website, that to the best of its knowledge and belief, that each bidder or Contractor and any subcontractor or assignee is not identified on the Prohibited Entities List created pursuant to State Finance Law § 165-a(3)(b).

Additionally, the bidder or Contractor is advised that once the Prohibited Entities List is posted on the OGS website, any bidder or Contractor seeking to renew or extend a Contract or assume the responsibility of a Contract awarded in response to this solicitation must certify at the time the Contract is renewed, extended or assigned that it is not included on the Prohibited Entities List.

During the term of the Contract, should the County receive information that a bidder or Contractor is in violation of the above-referenced certification, the County will offer the person or entity an opportunity to respond. If the person or entity fails to demonstrate that he, she or it has ceased engagement in the investment which is in violation of the Iran Divestment Act of 2012 within ninety (90) days after the determination of such violation, then the County shall take such action as may be appropriate, including, but not limited to, imposing sanctions, seeking compliance, recovering damages or declaring the bidder or Contractor in default.

The County reserves the right to reject any bid or request for assignment for a bidder or Contractor that appears on the Prohibited Entities List prior to the award of a Contract and to pursue a responsibility review with respect to any bidder or Contractor that is awarded a Contract and subsequently appears on the Prohibited Entities List.

19. PROHIBITION ON TOBACCO AND E-CIGARETTE USE ON COUNTY PROPERTY

Pursuant to Local Law No. 3 of 2016, the use of tobacco and e-cigarettes are prohibited on Oneida County property, as follows:

- a. For the purposes of this provision, the "use of tobacco" shall include:
  - i. The burning of a lighted cigarette, pipe, cigar or other lighted instrument for the purpose of smoking tobacco or a tobacco substitute;
  - ii. The use of tobacco and/or a substance containing tobacco or a tobacco substitute by means other than smoking, including: chewing; holding in the mouth; or expectoration of chewing tobacco.
- b. For the purposes of this provision, "e-cigarette" shall mean an electronic device composed of a mouthpiece, heating element, battery and electronic circuit that



delivers vapor which is inhaled by an individual user as he or she simulates smoking.

c. For the purposes of this provision, “on Oneida County property” shall be defined as:

i. Upon all real property owned or leased by the County of Oneida;  
and

ii. Within all County of Oneida-owned vehicles or within private vehicles when being used for a County of Oneida purpose, except that a driver may smoke in a privately-owned vehicle being used for a County of Oneida Purpose if the driver is the sole occupant of the vehicle.

d. Each violation of this Local Law No. 3 of 2016 shall constitute a separate and distinct offense and may be punishable by a fine of up to \$200.00 for a first offense and up to \$1,000.00 for subsequent offenses.

## 20. COMPLIANCE WITH NEWYORK STATE LABOR LAW § 201-G

The Contractor shall comply with the provisions of New York State Labor Law § 201-g.

# ONEIDA COUNTY HEALTH DEPARTMENT

Adirondack Bank Building, 5<sup>th</sup> Floor, 185 Genesee St., Utica, NY 13501

ANTHONY J. PICENTE, JR.  
ONEIDA COUNTY EXECUTIVE



PHYLLIS D. ELLIS, BSN, MS, F.A.C.H.E.  
DIRECTOR OF HEALTH

## ADMINISTRATION

Phone: (315) 798-6400 Fax: (315) 266-6138 Email: [publichealth@ocgov.net](mailto:publichealth@ocgov.net)

November 16, 2020

FN 20 20-372

Anthony J. Picente, Jr.  
Oneida County Executive  
800 Park Avenue  
Utica, New York 13501

HEALTH & HUMAN SERVICES  
WAYS & MEANS

Dear Mr. Picente:

Attached is an Agreement between Oneida County through its Health Department Diagnostic and Treatment Clinic and Planned Parenthood of Greater New York, Inc. for the provision of testing, diagnosing, and treatment of sexually transmitted diseases to residents of Oneida County. Such service is a requirement of the local health department according to Public Health regulation and therefore is a mandated public health service.

The agreement will commence October 1, 2020 and will end September 30, 2024. Reimbursement is based on a per-service rate of \$150.00, \$50.00 or \$25.00, depending on and defined by services rendered. The Contractor also will bill insurances for all insured clients who are willing to provide their insurance information. The total charges depend on volume of claims, and based on historic client volume will not exceed \$180,000.00 for the term of the agreement.

This is a program mandated by Public Health Law.

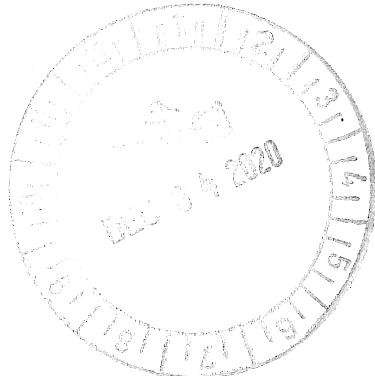
If the enclosed meets with your approval, please forward to the Board of Legislators for consideration at their next meeting,

Sincerely,

*Phyllis D. Ellis* 1PB

Phyllis D. Ellis, BSN, MS, F.A.C.H.E.  
Director of Health

Attachments  
CM



Reviewed and Approved for submittal to the  
Oneida County Board of Legislators by

*Anthony J. Picente, Jr.*  
Anthony J. Picente, Jr.  
County Executive

Date 12-3-20

Oneida Co. Department: Health\_\_\_

Competing Proposal \_\_\_\_\_

Only Respondent \_\_\_\_\_

Sole Source RFP \_\_\_\_\_

Other \_\_\_\_\_ Renewal

**ONEIDA COUNTY BOARD  
OF LEGISLATORS**

**Name & Address of Vendor:**

Planned Parenthood of Greater New York, Inc.  
26 Bleecker Street  
New York, NY 10012

**Title of Activity or Service:**

Provision of STD Clinic Services

**Proposed Dates of Operation:**

October 1, 2020 to September 30, 2024

**Client Population/Number to be Served:**

County Residents

**Summary Statements**

- 1) **Narrative Description of Proposed Services:** Diagnosis and testing of Sexually Transmitted Diseases to residents of Oneida County as outlined in the NYS Sanitary Code (10 NYCRR Chapter 1). Costs are reimbursable at 36% by NYSDOH.
- 2) **Program/Service Objectives and Outcomes:** Provision of care according to the NYSDOH requirements and guidelines of the Centers for Disease Control and Prevention (CDC).
- 3) **Program Design and Staffing:** Contractor will see referred clients within three working days at the Article 28 Diagnostic and Treatment Clinic sites in both Utica and Rome, NY. Staffing will be licensed and certified as required by NYSDOH

**Total Funding Requested:** \$180,000.00      **Account # A4012.195**

**Oneida County Dept. Funding Recommendation:** \$180,000.00

**Proposed Funding Sources (Federal \$/ State \$/County \$):** 36% State; 64% County

**Cost Per Client Served:** \$150.00, \$50.00 or \$25

**Past Performance Data:** previous expenditures are roughly \$45,000.00 per year

**O.C. Department Staff Comments:**

**Mandatory:** Yes

## AGREEMENT

THIS AGREEMENT, by and between the COUNTY OF ONEIDA, a municipal corporation organized and existing under the laws of the State of New York, hereinafter referred to as the “County,” with offices at 800 Park Avenue, Utica, New York 13501, by and through the ONEIDA COUNTY HEALTH DEPARTMENT, with offices at 185 Genesee Street, Utica, New York 13501, hereinafter referred to as the “Agency,” and PLANNED PARENTHOOD OF GREATER NEW YORK, INC., a domestic not-for-profit corporation organized and existing under the laws of the State of New York, with administrative offices at 26 Bleecker Street, New York, New York 10012, hereinafter referred to as the “Contractor.”

### WITNESSETH:

WHEREAS, the County is responsible for providing diagnosis and treatment of sexually transmitted diseases, hereinafter referred to as “STD,” under New York State Public Health Law Article 23 and 10 NYCRR Part 23; and

WHEREAS, comprehensive awareness of STD in Oneida County is needed; and

WHEREAS, the Contractor is certified by the State of New York for diagnosis and treatment of STD; and

WHEREAS, the Contractor agrees to provide said diagnosis and treatment services to Oneida County residents who request an STD clinic appointment through the Agency;

NOW, THEREFORE, in consideration of the promises, covenants, and agreement contained herein, the parties agree as follows:

1. Term:

The term of this Agreement shall be from October 1, 2020 through September 30, 2024 or until terminated according to the termination requirements contained within this Agreement.

2. Scope of Services:

- a. The Contractor shall provide testing, diagnosis, and treatment of STD to residents of Oneida County as outlined in the New York State Sanitary Code at 10 NYCRR Sections 23.1 through 23.2 and Section 23.5, hereinafter collectively called the “Services.”
- b. The Contractor shall treat the following diseases, which are also listed in Group A of 10 NYCRR 23.1:
  - i. Chlamydia Trachomatis Infection;
  - ii. Gonorrhea;

- ii. Syphilis;
  - iii. Non-gonococcal Urethritis (NGU);
  - v. Non-gonococcal (mucopurulent) Cervicitis;
  - vi. Trichomoniasis;
  - vii. Lymphogranuloma Venereum;
  - viii. Chancroid; and
  - ix. Granuloma Inguinale
- c. The Contractor shall arrange to see clients within three (3) business days after referral by the Agency. The Contractor shall arrange for priority appointments for priority clients identified by the New York State Department of Health or the County. The Contractor shall operate sites in both Utica and Rome. Both sites will be open Monday through Friday and will offer same day and walk-in opportunities. The Contractor shall have evening appointments until 7:30 p.m. on Mondays at its Rome site and on Thursdays at its Utica site. The Contractor shall provide the County with two weeks' notice if the hours of operation change.
- d. The Contractor shall routinely screen all STD clients referred by the Agency for Hepatitis A and B and HPV vaccination eligibility and administer such vaccine(s) as appropriate. The Contractor shall document such screening and vaccination in client records. When referrals for subsequent vaccinations are indicated, the Contractor shall provide a referral notice to the County accordingly based on the appropriate vaccine dosage schedule.
- e. The Contractor shall immediately notify, by telephone, the New York State Department of Health investigators with information, as required by the New York State Department of Health, regarding positive tests for reportable communicable diseases, including but not limited to Gonorrhea, Syphilis, Chlamydia, Chancroid, and Lymphogranuloma Venereum.
- f. The Contractor shall identify and prioritize cases that require partner notification according to 10 NYCRR 23.5 and refer such cases to the New York State Department of Health.
- g. If the New York State Department of Health intervenes to obtain a field blood sample from a recalcitrant client, the Contractor shall handle sampling supplies, labeling, and specimen handling/shipping.

- h. The Contractor shall adhere to standards and guidelines as established by the Center for Disease Control and Prevention, as required by the New York State Department of Health “Sexually Transmitted Disease, HIV Services and Control” Guidance Document, a copy of which is attached hereto and made a part hereof as Attachment “A,” and as established by the professional licensing requirements of the New York State Education Department.
  - i. The Agency shall conduct quality reviews of a representative sample of client records on an annual basis, at dates and times mutually arranged by the parties.
  - ii. The Contractor shall conduct its own regular quality assurance audits and shall share the results of such audits with the County.
  - iii. The Contractor shall provide the County with copies of all New York State Department of Health survey reports, including Statement of Deficiencies and approved Plans of Correction, if any, within 30 days of receipt of same.

3. Payment for Services:

- a. The County shall reimburse the Contractor pursuant to the following schedule:
  - i. A per-visit rate of \$150.00 for basic testing, diagnosis, and treatment of STD and counseling for the following: HIV (rapid test), chlamydia, gonorrhea, syphilis, trichomoniasis (women only), bacterial vaginosis, vaginal yeast infection, and genital herpes.
  - ii. A per-visit rate of \$50.00 for any follow-up treatment or visit, including retesting visits for positive STD clients. The follow-up visit shall include notification by phone or mail, dispensing of medication, discussing the meaning of test results and the use of medication, partner treatment that coincides with a visit, and the completion of reporting forms (Attachment “B”) and communication with the County.
  - iii. A rate of \$25.00 for HIV Testing (rapid test).
- b. The County shall not be responsible for reimbursing the Contractor for the following:
  - i. Tests submitted to other laboratories, without prior approval from the Agency;
  - ii. Tests submitted to laboratories for non-Oneida County residents; and
  - iii. Tests submitted to laboratories for Family Planning clients.

- c. STD diagnosis and treatment services shall be billed to the client's private or public insurance payer with client consent and with no out-of-pocket cost to the client. However, at no time shall the client be denied access to services, diagnosis, or treatment based on the client's willingness to provide insurance information.
- d. The Contractor shall enroll eligible individuals in Medicaid and/or the Family Planning Benefit Program.
- e. The County's reimbursement to the Contractor shall be based upon the Contractor's monthly submission of an Oneida County Voucher with supporting documentation to the Agency.

4. Indemnification:

The Contractor agrees to defend, indemnify and save harmless the County from any loss the County may suffer when such losses result from claims of any person or organization injured by the acts or omissions of the Contractor, its officers and/or employees or subcontractors. Furthermore, the Contractor agrees to indemnify, defend, and save harmless the County, and its officers, agents, and employees from any and all claims and losses occurring or resulting from any and all contractors, subcontractors, and any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from all claims and losses occurring or resulting to any person, firm, or corporation who may be injured or damaged by the Contractor in the performance of this Agreement, and against any liability, including costs and expenses, for violation of proprietary rights, copyrights, or rights of privacy, arising out of the publication, translation, reproduction, delivery, performance, or use, or disposition of any data furnished under this Agreement or based on any libelous or other unlawful matter contained in such data or written materials in any form produced pursuant to this Agreement.

5. Insurance:

a. Insurance Requirements:

- i. The Contractor shall purchase and maintain insurance of the following types of coverage and limits of liability with an insurance carrier qualified and admitted to do business in the State of New York. The insurance carrier must have at least an A- (excellent) rating by A. M. Best.
- ii. Commercial General Liability (CGL) coverage with limits of insurance of not less than \$1,000,000 each occurrence and \$2,000,000 Annual Aggregate.
  - A. CGL coverage shall be written on ISO Occurrence form CG 00 01 1001 or a substitute form providing equivalent coverage and shall cover liability arising from premises, operations, independent

contracts, products-completed operations, and personal and advertising injury.

- B. The County and all other parties required by the County, shall be included as additional insureds. Coverage for the additional insureds shall apply as primary and non-contributing insurance before any other insurance or self-insurance, including any deductible or self-insured retention, maintained by, or provided to, the additional insureds. Coverage for these additional insureds shall include completed operations.
- iii. Professional Liability coverage with limits of \$1,000,000 each occurrence and \$2,000,000 aggregate.
- iv. Umbrella Liability Coverage with limits of \$5,000,000 each occurrence and \$5,000,000 aggregate.
- vi. Workers' Compensation and Employer's Liability Insurance.

A. Statutory limits apply.

- b. Certificates of Insurance: Prior to the start of any work the Contractor shall provide certificates of insurance to the County. Attached to each certificate of insurance shall be a copy of the Additional Insured Endorsement that is part of the Contractor's CGL Policy. These certificates and the insurance policies required above shall contain a provision that coverage afforded under the policies will not be canceled or allowed to expire until at least thirty (30) days prior written notice has been given to the County.
- c. Waiver of Subrogation: The Contractor waives all rights against the County and the Agency and their agents, officers, directors and employees for recovery of damages to the extent these damages are covered by CGL, Medical Malpractice/Professional Liability, Automobile Liability, or Workers' Compensation and Employer's Liability insurance maintained per requirements stated above.

6. Confidentiality:

The Contractor agrees to maintain files in a confidential manner consistent with §2306 of the New York State Public Health Law and any Federal Law regulating such files. Information contained in these files shall be released only upon the written consent of the client being served or to the Agency as outlined below.

- a. It is expressly understood that as a contractor for the County, the Contractor may and will receive confidential information from the Agency and this information may have been received from other independent contractors and/or licensed agencies. The Contractor agrees that all such information will be considered as being confidential and shall not be re-disclosed without the written consent of the client.



- b. Accordingly, as a condition of and in consideration of access to confidential information, the Contractor promises that:
- i. They shall use confidential information only as needed to perform the duties outlined in the “Scope of Services” above for the County. This means, among other things, that:
    - A. The Contractor shall only access confidential information for which there is a need to know;
    - B. The Contractor shall not in any way divulge, copy, release, sell, loan review, alter or destroy any confidential information except as properly authorized; and
    - C. The Contractor shall not misuse confidential information or carelessly handle confidential information.
  - ii. The Contractor shall safeguard and shall not disclose any access code or any other authorization that allows access to confidential information. The Contractor accepts responsibility for all activities undertaken using any access code and other authorization.
  - iii. The Contractor shall report activities by any individual or entity that is suspected of or may compromise the confidentiality of confidential information. Reports made in good faith about suspect activities shall be held in confidence to the extent permitted by law, including the name of the individual reporting the activities.
  - iv. The Contractor understands that the obligations under this Agreement will continue after termination of the Agreement and that it is further understood that any privileges hereunder are subject to periodic review, revision and if appropriate, renewal.
  - v. The Contractor understands that there is no right or ownership interest in any confidential information referred to in this Agreement. The Agency may at any time revoke any access code, other authorization, or access to confidential information. At all times during the course of providing Services under this Agreement, the Contractor shall safeguard the confidentiality of all confidential information.
  - vi. The Contractor shall be responsible for any misuse or wrongful disclosure of confidential information and for any failure to safeguard an access code or other authorization access to confidential information. It is expressly understood that any failure to comply with this Agreement may result in

immediate termination of access to the information system and legal action against the Contractor.

7. Termination:

- a. This Agreement may be terminated at any time by the County giving to the Contractor at least thirty (30) calendar days prior written notice of termination. However, in the event Contractor defaults in the performance of any of Contractor's obligations under this Agreement, the County may terminate this Agreement effective upon written notice at any time.
- b. Upon notice of termination the Contractor shall immediately submit to the Agency all required documentation for Services rendered up to the date of termination, under the terms of this Agreement, before a final reimbursement for Services rendered can occur.

8. Performance of Services:

- a. The Contractor represents that the Contractor is duly licensed (as applicable) and has the qualifications, the specialized skill(s), the experience and the ability to properly perform the Services. The Contractor shall use its best efforts to perform the Services such that the results are satisfactory to the County. The Contractor shall be solely responsible for determining the location, method, details and means of performing the Services, except where federal and/or state laws and regulations impose specific requirements on performance of the same.
- b. The Contractor may, at its own expense, employ or engage the services of such employees, subcontractors and/or partners as the Contractor deems necessary to perform the Services (collectively, the "Assistants"). The Assistants are not and shall not be deemed employees of the County, and the County shall have no obligation to provide the Assistants with any salary or benefits. The Contractor shall be solely responsible and shall remain liable for the performance of the Services by the Assistants in a manner satisfactory to the County, and in compliance with any and all applicable federal and/or state laws and regulations. The Contractor shall expressly advise the Assistants of the terms of this Agreement.
- c. The Contractor acknowledges and agrees that the Contractor and its Assistants have no authority to enter into contracts that bind the County or create obligations on the part of the County without the prior written authorization of the County.
- d. The County maintains the right to contract with other individuals or entities to perform the same Services.

9. Independent Contractor Status:

- a. It is expressly agreed that the relationship of the Contractor and its Assistants to the County shall be that of Independent Contractors. The Contractor and its Assistants shall not be considered employees of the County for any purpose including, but not limited to, claims for unemployment insurance, workers' compensation, retirement, or health insurance benefits. The Contractor, in accordance with its status as an Independent Contractor, covenants and agrees that its Assistants will conduct themselves in accordance with such status, that they will neither hold themselves out as, nor claim to be, an officer or employee of the Agency by reason thereof and that they will not by reason thereof, make any claim, demand or application to or for any right or privilege applicable to an officer or employee of the County.
- b. The Contractor warrants and represents that it is in the business of offering the same or similar Services detailed herein and does offer the same or similar Service(s) to other entities and/or the general public as a regular course of business. The Contractor and the County agree that the Contractor is free to undertake other work arrangements during the term of this Agreement, and may continue to make its services available to the public.
- c. The Contractor and its Assistants shall not be eligible for compensation from the County due to a) illness; b) absence due to normal vacation; c) absence due to attendance at school or special training or a professional convention or meeting.
- d. The Contractor acknowledges and agrees that neither the Contractor, nor its Assistants, shall be eligible for any County employee benefits, including retirement membership credits.
- e. The Contractor shall be paid pursuant to IRS Form 1099, and shall be solely responsible for applicable taxes for all compensation paid to the Contractor or its Assistants under this Agreement, and for compliance with all applicable labor and employment requirements with respect to Contractor's form of business organization, and with respect to its Assistants, including payroll deductions, workers' compensation insurance, and provision of health insurance where required. The County shall not be responsible for withholding from the payments provided for Services rendered for state or federal income tax, unemployment insurance, workers' compensation, disability insurance or social security insurance (FICA). The Contractor shall provide proof of workers' compensation insurance, where applicable, prior to execution of this Agreement.
- f. The Contractor shall indemnify and hold the County harmless from all loss or liability incurred by the County as a result of the County not making such payments or withholdings.
- g. If the Internal Revenue Service, Department of Labor, or any other governmental agency questions or challenges the Contractor's or its Assistants' Independent Contractor status, it is agreed that both the County and the Contractor shall have the right to participate in any conference, discussion, or negotiations with the

governmental agency, irrespective of with whom or by whom such discussions or negotiations are initiated.

- h. The Contractor agrees to comply with federal and state laws as supplemented in the Department of Labor regulations and any other regulations of the federal and state entities relating to such employment and Civil Rights requirements.

10. Expenses:

The Contractor is solely responsible for paying all of its business expenses related to furnishing the Services described herein, and shall not be reimbursed the cost of travel, equipment, tools, office space, support services or other general operating expenses.

11. Training:

The Contractor shall not be required by the County to attend or undergo any training, other than those trainings mandated by federal and/or state law or regulations necessary to perform the Services described herein. Except for those trainings mandated by federal and/or state law or regulations necessary to perform the Services described herein, the Contractor shall be fully responsible for its own training necessary to maintain any licenses or certifications to perform the Services described herein, and shall be solely responsible for the cost of the same.

12. Advice of Counsel:

Each party acknowledges that, in executing this Agreement, such party has had the opportunity to seek the advice of independent legal counsel, and has read and understood all of the terms and provisions of this Agreement.

13. Entire Agreement:

The terms of this Agreement, including any attachments, amendments, addendums or appendixes attached hereto, including the Standard Oneida County Conditions Addendum, constitute the entire understanding and agreement of the parties and cancels and supersedes all prior negotiations, representations, understandings or agreements, whether written or oral, with respect to the subject matter of this Agreement. No waiver, alterations or modifications of any provisions of this Agreement shall be binding unless in writing and signed by the duly authorized representative of the parties sought to be bound.

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IN WITNESS THEREOF, the parties hereto have executed this Agreement on the day and year first below written.

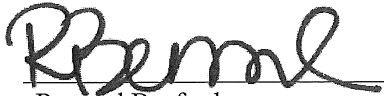
**COUNTY OF ONEIDA**

By: \_\_\_\_\_  
Anthony J. Picente, Jr. Date  
Oneida County Executive

**ONIEDA COUNTY HEALTH DEPARTMENT**

By: \_\_\_\_\_  
Phyllis D. Ellis, BSN, MS, F.A.C.H.E. Date  
Director

**PLANNED PARENTHOOD OF GREATER NEW YORK, INC.**

By:  \_\_\_\_\_  
Racquel Benford Date  
Chief Operating Officer

Approved

By: \_\_\_\_\_  
Ellen S. Rayhill, Esq.  
Assistant County Attorney

**ADDENDUM --STANDARD ONEIDA COUNTY CONDITIONS**

THIS ADDENDUM, entered into on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, between the County of Oneida, hereinafter known as County, and a Contractor, subcontractor, vendor, vendee, licensor, licensee, lessor, lessee or any third party, hereinafter known as Contractor.

WHEREAS, County and Contractor have entered into a contract, license, lease, amendment or other agreement of any kind (hereinafter referred to as the "Contract"), and

WHEREAS, the Oneida County Attorney and the Oneida County Director of Purchasing have recommended the inclusion of the standard clauses set forth in this Addendum to be included in every Contract for which County is a party, now, thereafter,

The parties to the attached Contract, for good consideration, agree to be bound by the following clauses which are hereby made a part of the Contract.

1. EXECUTORY OR NON-APPROPRIATION CLAUSE.

The County shall have no liability or obligation under this Contract to the Contractor or to anyone else beyond the annual funds being appropriated and available for this Contract.

2. ONEIDA COUNTY BOARD OF LEGISLATORS: RESOLUTION #249 SOLID WASTE DISPOSAL REQUIREMENTS.

Pursuant to Oneida County Board of Legislator Resolution No. 249 of May 26, 1999, the Contractor agrees to deliver exclusively to the facilities of the Oneida-Herkimer Solid Waste Authority, all waste and recyclables generated within the Authority's service area by performance of this Contract by the Contractor and any subcontractors. Upon awarding of this Contract, and before work commences, the Contractor will be required to provide Oneida County with proof that Resolution No. 249 of 1999 has been complied with, and that all wastes and recyclables in the Oneida-Herkimer Solid Waste Authority's service area which are generated by the Contractor and any subcontractors in performance of this Contract will be delivered exclusively to Oneida-Herkimer Solid Waste Authority facilities.

3. CERTIFICATIONS REGARDING LOBBYING, DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS, AND DRUG-FREE WORKPLACE REQUIREMENTS.

- a. Lobbying. As required by Section 1352, Title 31 of the U.S. Code and implemented at 34 CFR Part 82 for persons entering into a grant or cooperative

agreement over \$100,000, as defined at 34 CFR Part 82, Section 82.105 and 82.110, the Contractor certifies that:

- i. No federal appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any persons for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal grant or cooperative agreement.
  - ii. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal grant or cooperative agreement, the Contractor shall complete and submit Standard Form 111 "Disclosure Form to Report Lobbying," in accordance with its instructions.
  - iii. The Contractor shall require that the language of this certification be included in the award documents for all subcontracts and that all subcontractors shall certify and disclose accordingly.
- b. Debarment, Suspension and other Responsibility Matters. As required by Executive Order 12549, Debarments and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 83.105 and 85.110,
- i. The Contractor certifies that it and its principals:
    - A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any federal department or agency;
    - B. Have not within a three-year period preceding this Contract been convicted of or had a civil judgment rendered against them for commission of fraud or a

criminal offense in connection with obtaining, attempting to obtain, or performing a public (federal, state or local) transaction or contract under a public transaction, violation of federal or state antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

C. Are not presently indicted or otherwise criminally or civilly charged by a Government entity (federal, state or local) with commission of any of the offenses enumerated in subparagraph (B), above, of this certification; and

D. Have not within a three-year period preceding this Contract had one or more public transactions (federal, state, or local) for cause or default;

ii. Where the Contractor is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this Contract.

c. Drug-Free Workplace (Contractors other than individuals). As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for Contractors, as defined at 34 CFR Part 85, Sections 85.605 and 85.610:

i. The Contractor will or will continue to provide a drug-free workplace by:

A. Publishing a statement notifying employees that the manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the Contractor's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

B. Establishing an ongoing drug-free awareness program to inform employees about:

1) The dangers of drug abuse in the workplace;



- 2) The Contractor's policy of maintaining a drug-free workplace;
- 3) Any available drug counseling, rehabilitation, and employee assistance program; and
- 4) The penalties that may be imposed upon an employee for drug abuse violation occurring in the workplace;

C. Making it a requirement that each employee to be engaged in the performance of the Contract be given a copy of the statement required by paragraph (A), above;

D. Notifying the employee in the statement required by paragraph (A), above, that as a condition of employment under the Contract, the employee will:

- 1) Abide by the terms of the statement; and
- 2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five (5) calendar days after such conviction;

E. Notifying the County, in writing within ten (10) calendar days after having received notice under subparagraph (D)(2), above, from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position and title, to:

Director, Grants Management Bureau, State Office Building Campus, Albany, New York 12240. Notice shall include the identification number(s) of each affected contract.

F. Taking one of the following actions, within thirty (30) calendar days of receiving notice under paragraph (D)(2), above, with respect to any employee who is so convicted;

- 1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or
- 2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a federal, state or local health, law enforcement, or other appropriate agency;

G. Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (A),(B),(C),(D),(E) and (F), above.

- ii. The Contractor may insert in the space provided below the site(s) for the performance of work done in connection with the specific contract.

Place of Performance (street, address, city, county, state, zip code).

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d. Drug-Free Workplace (Contractors who are individuals). As required by the Drug-Free Workplace act of 1988, and implemented at 34 CFR Part 85, Subpart F, for Contractors that are individuals, as defined at 34 CFR Part 85, Sections 85.605 and 85.610:

- i. As a condition of the contract, the Contractor certifies that he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the Contract; and
- ii. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any contract activity, the

Contractor will report the conviction, in writing, within ten (10) calendar days of the conviction, to:

Director, Grants Management Bureau, State Office Building  
Campus, Albany, NY 12240. Notice shall include the  
identification number(s) of each affected Contract.

4. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA).

When applicable to the services provided pursuant to the Contract:

- a. The Contractor, as a Business Associate of the County, shall comply with the Health Insurance Portability and Accountability Act of 1996, hereinafter referred to as "HIPAA," as well as all regulations promulgated by the Federal Government in furtherance thereof, to assure the privacy and security of all protected health information exchanged between the Contractor and the County. In order to assure such privacy and security, the Contractor agrees to enact the following safeguards for protected health information:
  - i. Establish policies and procedures, in written or electronic form, that are reasonably designed, taking into consideration the size of, and the type of activities undertaken by, the Contractor, to comply with the Standards for Privacy of Individual Identifiable Health Information, commonly referred to as the Privacy Rule;
  - ii. Utilize a combination of electronic hardware and computer software in order to securely store, maintain, transmit, and access, protected health information electronically; and
  - iii. Utilize an adequate amount of physical hardware, including but not limited to, locking filing cabinets, locks on drawers, other cabinets and office doors, in order to prevent unwarranted and illegal access to computers and paper files that contain protected health information of the County's clients.
- b. This agreement does not authorize the Contractor to use or further disclose the protected health information that the Contractor handles in treating patients of the County in any manner that would violate the requirements of 45 CFR § 164.504(e), if that same use or disclosure were done by the County, except that:

- i. The Contractor may use and disclose protected health information for the Contractor's own proper management and administration; and
- ii. The Contractor may provide data aggregation services relating to the health care operations of the County.

c. The Contractor shall:

- i. Not use or further disclose protected health information other than as permitted or required by this contract or as required by law;
- ii. Use appropriate safeguards to prevent the use or disclosure of protected health information other than as provided for in this Contract;
- iii. Report to the County any use or disclosure of the information not provided for by this Contract of which the Contractor becomes aware;
- iv. Ensure that any agents, including a subcontractor, to whom the Contractor provides protected health information received from, or created or received by the Contractor on behalf of the County, agrees to the same restrictions and conditions that apply to the Contractor with respect to such protected health information;
- v. Make available protected health information in accordance with 45 CFR §164.524;
- vi. Make available protected health information for amendment and incorporate any amendments to protected health information in accordance with 45 CFR §164.528;
- vii. Make available the information required to provide an accounting of disclosures in accordance with 45 CFR § 164.528;
- viii. Make its internal practices, books, and records relating to the use and disclosure of protected health information received from, or created or received by, the Contractor on behalf of the County

available to the Secretary of Health and Human Services for purposes of determining the County's compliance with 45 CFR § 164.504(e)(2)(ii); and

- ix. At the termination of this Contract, if feasible, return or destroy all protected health information received from, or created or received by, the Contractor on behalf of the County that the Contractor still maintains, in any form, and retain no copies of such information; or, if such return or destruction is not feasible, extend the protections of this Contract permanently to such information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.
- d. The Contractor agrees that this contract may be amended if any of the following events occurs:
- i. HIPAA, or any of the regulations promulgated in furtherance thereof, is modified by Congress or the Department of Health and Human Services;
  - ii. HIPAA, or any of the regulations promulgated in furtherance thereof, is interpreted by a court in a manner impacting the County's HIPAA compliance; or
  - iii. There is a material change in the business practices and procedures of the County.
- e. Pursuant to 45 CFR § 164.504(e)(2)(iii), the County is authorized to unilaterally terminate this Contract if the County determines that the Contractor has violated a material term of this Contract.

5. NON-ASSIGNMENT CLAUSE.

In accordance with Section 109 of the General Municipal Law, this Contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the County's previous written consent, and any attempts to do so are null and void. The Contractor may, however, assign its right to receive payments without the County's prior written consent unless this Contract concerns Certificates of Participation pursuant to Section 109-b of the General Municipal Law.

6. WORKER'S COMPENSATION BENEFITS.

In accordance with Section 108 of the General Municipal Law, this Contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this Contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

7. NON-DISCRIMINATION REQUIREMENTS.

To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other state and federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a Contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this Contract shall be performed within the State of New York, the Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 of the Labor Law, the Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Contract. The Contractor is subject to fines of \$50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this Contract and forfeiture of all monies due hereunder for a second or subsequent violation.

8. WAGE AND HOURS PROVISIONS.

If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 of the Labor Law, neither the Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said Articles, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, the Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as

determined by the State Labor Department in accordance with the Labor Law. Additionally, effective April 28, 2008, if this is a public work contract covered by Article 8 of the Labor Law, the Contractor understands and agrees that the filing of payrolls in a manner consistent with Subdivision 3-a of Section 220 of the Labor Law shall be a condition precedent to payment by the County of any County-approved sums due and owing for work done upon the project.

9. NON-COLLUSIVE BIDDING CERTIFICATION.

In accordance with Section 103-d of the General Municipal Law, if this Contract is awarded based upon the submission of bids, the Contractor certifies and affirms, under penalty of perjury, as to its own organization, under penalty of perjury, that to the best of its knowledge and belief:

(1) the prices in this bid have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor; and (2) unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and (3) no attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition. The Contractor further affirms that, at the time the Contractor submitted its bid, an authorized and responsible person executed and delivered to the County a non-collusive bidding certification on the Contractor's behalf.

10. RECORDS.

The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertaining to performance under this Contract (hereinafter, collectively, "the Records"). The Records shall include, but not be limited to, reports, statements, examinations, letters, memoranda, opinions, folders, files, books, manuals, pamphlets, forms, papers, designs, drawings, maps, photos, letters, microfilms, computer tapes or discs, electronic files, e-mails (and all attachments thereto), rules, regulations and codes. The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The County Comptroller, the County Attorney and any other person or entity authorized to conduct an audit or examination, as well as the agency or agencies involved in this Contract, shall have access to the Records during normal business hours at an office of the Contractor within the County or, if no such office is available, at a mutually agreeable and reasonable venue within the County, for the term specified above, for the purposes of inspection, auditing and copying. The County shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute"), provided that: (a) the Contractor shall timely inform an appropriate County official, in writing, that said records should not be disclosed; (b) said records

shall be sufficiently identified; and (c) in the sole discretion of the County, designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the County's right to discovery in any pending or future litigation. Notwithstanding any other language, the Records may be subject to disclosure under the New York Freedom of Information Law, for other applicable state or federal law, rule or regulation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION.

- a. Identification Number(s). Every invoice or claim for payment submitted to a County agency by a payee, for payment for the sale of goods or service or for transactions (e.g., leases, easements, licenses, etc.) related to real or personal property must include the payee's identification number. This number includes any or all of the following: (i) the payee's Federal employer identification number, (ii) the payee's Federal social security number, and/or (iii) the payee's Vendor Identification Number assigned by the Statewide Financial System. Where the payee does not have such number or numbers, the payee, on its invoice or claim for payment, must state with specificity the reason or reasons why the payee does not have such number or numbers.
- b. Privacy Notification. (i) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the County is mandatory. The principle purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their liabilities and to generally identify persons affected by the taxes administered by the New York State Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law. (ii) The personal information is requested by the County's purchasing unit contracting to purchase goods or services or lease the real or personal property covered by this Contract.

12. CONFLICTING TERMS.

In the event of a conflict between the terms of the Contract (including any and all attachments thereto and amendments thereof) and the terms of this Addendum, the terms of this Addendum shall control.



13. GOVERNING LAW.

This Contract shall be governed by the laws of the State of New York except where the Federal Supremacy Clause requires otherwise.

14. PROHIBITION ON PURCHASE OF TROPICAL HARDWOODS.

The Contractor certifies and warrants that all wood products to be used under this Contract award will be acquired in accordance with, but not limited to, the specifications and provisions of Section 165 of the State Finance Law (Use of Tropical Hardwoods), which prohibits purchase and use of tropical hardwoods, unless specifically exempted by the State or any governmental agency or political subdivision or public benefit corporation. Qualification for an exemption under this law will be the sole responsibility of the Contractor to establish to meet with the approval of the County.

In addition, when any portion of this Contract involving the use of woods, whether for supply or installation, is to be performed by any subcontractor, the prime Contractor will indicate and certify in the submitted bid proposal that the subcontractor has been informed and is in compliance with specifications and provisions regarding use of tropical hardwoods as detailed in Section 165 of the State Finance Law. Any such use must meet with approval of the County; otherwise, the bid may not be considered responsive. Under bidder certifications, proof of qualification for exemption will be the sole responsibility of the Contractor to establish to meet with the approval of the County.

15. COMPLIANCE WITH NEW YORK STATE INFORMATION SECURITY BREACH AND NOTIFICATION ACT.

The Contractor shall comply with the provisions of the New York State Information Security Breach and Notification Act (General Business Law Section 899-aa).

16. GRATUITIES AND KICKBACKS.

- a. Gratuities. It shall be unethical for any person to offer, give, or agree to give any County employee or former County employee, or for any County employee or former County employee to solicit, demand, accept, or agree to accept from another person, a gratuity or an offer of employment in connection with any decision, approval, disapproval, recommendation, or preparation of any part of a program requirement or a purchase request; influencing the content of any specification or procurement standard; rendering of advice, investigation, auditing, or in any other advisory capacity in any proceeding or application;

request for ruling, determination, claim, or controversy, or other particular matter, pertaining to any program requirement or a contract or subcontract, or to any solicitation or proposal therefor.

- b. Kickbacks. It shall be unethical for any payment, gratuity, or offer of employment to be made by or on behalf of a subcontractor under a contract to the prime Contractor or higher tier subcontractor or any person associated therewith, as an inducement for the award of a subcontract or order.

17. AUDIT

The County, the State of New York, and the United States shall have the right at any time during the term of this agreement and for the period limited by the applicable statute of limitations to audit the payment of monies hereunder. The Contractor shall comply with any demands made by the County to provide information with respect to the payment of monies made hereunder during the period covered by this paragraph. The Contractor shall maintain its books and records in accordance with generally accepted accounting principles or such other method of account which is approved in writing by the County prior to the date of this agreement. The revenues and expenditures of the Contractor in connection with this agreement shall be separately identifiable. Each expenditure or claim for payment shall be fully documented. Expenditures or claims for payment which are not fully documented may be disallowed. The Contractor agrees to provide to, or permit the County to examine or obtain copies of, any documents relating to the payment of money to the Contractor or expenditures made by the Contractor for which reimbursement is requested to be made or has been made to the Contractor by the County. The Contractor shall maintain all records required by this paragraph for 7 years after the date this agreement is terminated or ends.

If the Contractor has expended, in any fiscal year, \$300,000.00 or more in funds provided by a federal financial assistance program from a federal agency pursuant to this agreement and all other contracts with the County, the Contractor shall provide the County with an audit prepared by an independent auditor in accordance with the Single Audit Act of 1984, 31 U.S.C. §§ 7501, et seq., as amended, and the regulations adopted pursuant to such Act.

18. CERTIFICATION OF COMPLIANCE WITH THE IRAN DIVESTMENT ACT.

Pursuant to Section 103-g of the General Municipal Law, by submitting a bid in response to this solicitation or by assuming the responsibility of a Contract awarded hereunder, each bidder or Contractor, or any person signing on behalf of any bidder or Contractor, and any assignee or subcontractor and, in the case of a joint bid, each party thereto, certifies, under penalty of perjury, that once the Prohibited Entities List is posted on the Office of General Services

(hereinafter “OGS”) website, that to the best of its knowledge and belief, that each bidder or Contractor and any subcontractor or assignee is not identified on the Prohibited Entities List created pursuant to State Finance Law § 165-a(3)(b).

Additionally, the bidder or Contractor is advised that once the Prohibited Entities List is posted on the OGS website, any bidder or Contractor seeking to renew or extend a Contract or assume the responsibility of a Contract awarded in response to this solicitation must certify at the time the Contract is renewed, extended or assigned that it is not included on the Prohibited Entities List.

During the term of the Contract, should the County receive information that a bidder or Contractor is in violation of the above-referenced certification, the County will offer the person or entity an opportunity to respond. If the person or entity fails to demonstrate that he, she or it has ceased engagement in the investment which is in violation of the Iran Divestment Act of 2012 within ninety (90) days after the determination of such violation, then the County shall take such action as may be appropriate, including, but not limited to, imposing sanctions, seeking compliance, recovering damages or declaring the bidder or Contractor in default.

The County reserves the right to reject any bid or request for assignment for a bidder or Contractor that appears on the Prohibited Entities List prior to the award of a Contract and to pursue a responsibility review with respect to any bidder or Contractor that is awarded a Contract and subsequently appears on the Prohibited Entities List.

#### 19. PROHIBITION ON TOBACCO AND E-CIGARETTE USE ON COUNTY PROPERTY

Pursuant to Local Law No. 3 of 2016, the use of tobacco and e-cigarettes are prohibited on Oneida County property, as follows:

- a. For the purposes of this provision, the “use of tobacco” shall include:
  - i. The burning of a lighted cigarette, pipe, cigar or other lighted instrument for the purpose of smoking tobacco or a tobacco substitute;
  - ii. The use of tobacco and/or a substance containing tobacco or a tobacco substitute by means other than smoking, including: chewing; holding in the mouth; or expectoration of chewing tobacco.
- b. For the purposes of this provision, “e-cigarette” shall mean an electronic device composed of a mouthpiece, heating element, battery and electronic circuit that

delivers vapor which is inhaled by an individual user as he or she simulates smoking.

c. For the purposes of this provision, “on Oneida County property” shall be defined as:

i. Upon all real property owned or leased by the County of Oneida;  
and

ii. Within all County of Oneida-owned vehicles or within private vehicles when being used for a County of Oneida purpose, except that a driver may smoke in a privately-owned vehicle being used for a County of Oneida Purpose if the driver is the sole occupant of the vehicle.

d. Each violation of this Local Law No. 3 of 2016 shall constitute a separate and distinct offense and may be punishable by a fine of up to \$200.00 for a first offense and up to \$1,000.00 for subsequent offenses.

## 20. COMPLIANCE WITH NEWYORK STATE LABOR LAW § 201-G

The Contractor shall comply with the provisions of New York State Labor Law § 201-g.

ONEIDA COUNTY HEALTH DEPARTMENT CONFIDENTIAL CASE REPORT WORKSHEET  
PHONE: (315) 798-5747 FAX: (315) 798-1057 (REVISED 3/17)

**IMMEDIATE ATTENTION IS REQUIRED - PLEASE COMPLETE & FAX BACK**

Patient Name: Last \_\_\_\_\_ First \_\_\_\_\_ County: Oneida  
Street Address: \_\_\_\_\_ City: \_\_\_\_\_ Zip Code: \_\_\_\_\_  
Telephone: (\_\_\_\_) \_\_\_\_\_ DOB: \_\_\_\_\_ Sex: \_\_\_\_\_ M \_\_\_\_\_ F \_\_\_\_\_

<b>Occupation:</b>	<b>Setting:</b>	<b>Race:</b>	<b>Ethnicity:</b>	<b>Pregnant:</b>
1 ___ Food Service	1 ___ Camp	1 ___ White	1 ___ Hispanic or Latino	1 ___ Yes (# WEEKS _____)
2 ___ Unemployed	2 ___ Day Care Facility	2 ___ Black	2 ___ Not Hispanic or Latino	(EDC: _____)
3 ___ Retired	3 ___ Health Care Facility	3 ___ American Indian/ Alaskan	3 ___ Unknown	2 ___ No
4 ___ Day Care	4 ___ Homeless	4 ___ Asian		3 ___ Unknown
5 ___ Health Care	5 ___ Jail/Prison	5 ___ Native Hawaiian/ Other Pacific Islander		
6 ___ Student/School	6 ___ School	6 ___ Other		
7 ___ Inmate	7 ___ Other	7 ___ Unknown		
8 ___ Other Occupation	8 ___ Unknown			
9 ___ Correction Work				
10 ___ Unknown				

Disease: \_\_\_ Chlamydia [ \_\_\_ PID] Hospitalized? \_\_\_ Yes (Adm Date \_\_\_\_\_ Hospital \_\_\_\_\_)  
\_\_\_ Gonorrhea [ \_\_\_ PID \_\_\_ Disseminated] \_\_\_ No  
\_\_\_ Syphilis [ \_\_\_ primary \_\_\_ secondary \_\_\_ early \_\_\_ latent]

Reason for visit: \_\_\_ Symptoms \_\_\_ Referral \_\_\_ Screening \_\_\_ Other \_\_\_ Unknown

Testing health provider: \_\_\_\_\_ Facility name: \_\_\_\_\_

Date of first symptom: \_\_\_\_\_ Exam/specimen collection date: \_\_\_\_\_

Source of specimen: \_\_\_\_\_ Site of infection: \_\_\_\_\_

Lab name: \_\_\_\_\_ Report date: \_\_\_\_\_

Treating/prescribing physician: \_\_\_\_\_ Facility name: \_\_\_\_\_

Treating Facility phone number: \_\_\_\_\_

Treatment date: \_\_\_\_\_ Drug: \_\_\_\_\_ Dosage: \_\_\_\_\_ Route: \_\_\_\_\_

Treatment date: \_\_\_\_\_ Drug: \_\_\_\_\_ Dosage: \_\_\_\_\_ Route: \_\_\_\_\_

Treatment date: \_\_\_\_\_ Drug: \_\_\_\_\_ Dosage: \_\_\_\_\_ Route: \_\_\_\_\_

DATE OF LAST HIV TEST: \_\_\_\_\_ PREP \_\_\_ YES DATE STARTED \_\_\_\_\_

PRESCRIBER ADMINISTERED IN OFFICE: YES \_\_\_\_\_ NO \_\_\_\_\_

E-SCRIPT DATE: \_\_\_\_\_ PHARMACY & PHONE# \* \_\_\_\_\_ \*

For Chlamydia infections only: Was expedited partner therapy given? \_\_\_\_\_

If no treatment was given - narrative \_\_\_\_\_

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Guidance Document

Topic: Sexually Transmitted Disease, HIV Services and Control

**Purpose and Background**

New York State (NYS) relies on Local Health Departments (LHDs) to control, investigate, test, treat and report sexually transmitted diseases (STDs) and Human Immunodeficiency Virus (HIV). STDs include, but are not limited to, syphilis, gonorrhea, lymphogranuloma venereum, chancroid and Chlamydia. Disease control activities include surveillance, epidemiological control programs, and programs that provide laboratory and clinical services for STD.

Nationally, NYS has the highest reported number of Acquired Immune Deficiency Syndrome (AIDS) cases and persons reported living with HIV and AIDS. NYS relies on the LHDs as part of a comprehensive approach to address the prevention, care and supportive services tailored to the needs of diverse populations with HIV/AIDS.

The LHD's authority and responsibility for STD prevention and control within their jurisdiction is referenced in Public Health Law § 2300 *et seq.* and 10 NYCRR 40-2.20. STDs are listed in 10 NYCRR 23.1. Notwithstanding Public Health Law (PHL) 2110, New York City Department of Health and Mental Hygiene must conduct a STD/HIV program consistent with the guidance below to be eligible for State Aid.

**Part 40 Regulations**

**40-2.20 Sexually Transmitted Diseases (STDs) and Human Immunodeficiency Virus (HIV); performance standards.**

The local health department shall maintain a program designed to minimize the incidence of STDs and HIV. The program shall include, at a minimum, activities to ensure:

- (a) epidemiologic case finding, timely disease surveillance and reporting, in accordance with Part 2 of this Title;
- (b) availability of accessible laboratory testing for STDs and HIV;
- (c) provision of adequate facilities for diagnosis and treatment of STDs, directly or by contract, pursuant to Article 23 of the Public Health Law;
- (d) provision of partner notification and referral services for priority patients, as determined in an investigation undertaken pursuant to 10 NYCRR 2.6;
- (e) provision of prophylactic treatment to exposed partners for STDs;
- (f) information, referral and assistance in utilizing appropriate community service programs;
- (g) public health marketing and communication, including developing or adapting public education materials or campaigns, and promoting and disseminating such materials and campaigns, to promote healthy behaviors and reduce risk factors associated with STDs, HIV and related health disparities; and
- (h) distribution of at least one communication per year to health care providers,

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clinics and laboratories on local and regional morbidity rates, CDC guidelines, diagnostic and treatment modalities and Department reporting requirements for STDs and HIV.

Conditions and procedures for State Aid

In general, LHDs must comply with Article 6 of the PHL and 10 NYCRR Part 40, which establish conditions and procedures for State Aid reimbursement. Additionally, the Department has published a guidance document entitled "Article 6 State Aid Eligibility Conditions Requiring Special Attention," which applies to all General Public Health Work programs. LHDs should read this program-specific guidance in conjunction with those important resources.

Description of required services and associated costs eligible for State aid

The following describes the required elements for State Aid eligibility. It also includes recommended best practices.

1. Surveillance system (10 NYCRR 40-2.20 (a))

Required services:

- a) timely, complete, and accurate reporting by providers
  - i. providers must report infectious syphilis cases (including primary, secondary, and early latent syphilis or persons with non-treponemal serologic titers of  $> 1:8$ ) and reactive umbilical cord or maternal delivery test results by telephone to the LHD within 24 hours of diagnosis;
  - ii. all low titer reactive non-treponemal tests (titers  $\geq 1:16$ ) must be reported to the LHD by phone or fax or ECLRS within 24 hours of diagnosis; and
  - iii. cases of gonorrhea, Chlamydia, chancroid, and LGV must be reported to the LHD within 24 hours of diagnosis;
- b) timely verification of diagnosis and treatment of reported cases;
- c) timely, complete and accurate morbidity reporting to the State Department of Health. Upon receipt of a report of an STD, the LHD is required to immediately notify New York State Department of Health during normal business hours and ensure that communicable diseases are investigated to verify diagnosis, ascertain sources of infection, and seek out contacts and unreported cases;
- d) a written protocol that outlines the local health department procedures for interacting with providers, provider responsibilities, guidelines for diagnosis and treatment and procedures for case reporting;
- e) routine feedback of morbidity statistics to providers;
- f) a system of followup that maintains an historical record of laboratory results from syphilis tests; and
- g) copies or records of any written correspondence or other communication with

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laboratories, healthcare providers and healthcare facilities about unreported cases and/or failures to comply with communicable disease reporting requirements must be retained by the LHD and made available to the NYSDOH Program staff for monitoring/auditing for a minimum of seven years (6 plus current year) to ensure that such services are being implemented.

**Best Practices:**

- a) verification of diagnosis and treatment by the LHD within 72 hours (3 business days) of receiving the case report;
- b) completion of the HIN (CDESS) report within 7 days of receiving the case report (information on possible cases of infectious syphilis should be recorded on CDESS as soon as it is received by the LHD with case confirmation including complete information entered within 7 days of receiving a case report);
- c) creation of an Electronic Serology Registry entry when the LHD receives laboratory confirmation of infection in previously unreported individual or when a new RPR is received for an individual whose historic record of syphilis is documented in paper format (19-A card). When a new Electronic Serology Registry entry is made to create or update an individual's information, the entry should include sufficient historic lab results and treatment information to facilitate clinical assessment of this individual;
- d) protocols for addressing non-reporting and repeated non-reporting for medical providers, laboratories, and health care facilities that fail to report; and
- e) communication of morbidity statistics to providers at least annually.

**2. Clinical and Laboratory Services (10 NYCRR 40-2.20(b) and (c))**

**Required services:**

The LHD's STD/HIV clinical and laboratory services must include all of the following:

- a) provide facilities and services, either directly or through contract, for the diagnosis and treatment of persons with STD who live within the local health jurisdiction, consistent with PHL § 2304 and 10 NYCRR 23.1 and 23.2;
- b) provide services in a confidential manner consistent with Public Health Law § 2306;
- c) clearly communicate to the general public how to access and obtain STD/HIV services;
- d) provide clinic facilities that are physically accessible, in accordance with the Americans with Disabilities Act (42 U.S.C. 12101 *et seq.*);
- e) offer operating locations and hours that are sufficient to meet STD/HIV morbidity needs among the general population;
- f) provide clinic hours and staffing sufficient to accommodate disease intervention



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- specialist referrals and priority patients on a walk-in basis;
- g) provide referral and follow-up for patients presenting with common STD-related problems and complications (e.g., pelvic inflammatory disease, adverse reactions to medication, desensitization for penicillin allergic pregnant woman with syphilis, follow-up on abnormal PAP smears, etc.) that cannot be addressed in the clinic setting;
  - h) provide screening for high-risk populations;
  - i) ensure that clinical staff possess the appropriate licensing credentials commensurate with the care being provided; and
  - j) if laboratory services are provided on-site, ensure that the clinic holds a current New York State laboratory permit as required by PHL 570 *et seq.*

Best Practices for Clinical services:

- a) have a system in place to assess patient satisfaction;
- b) be accessible to public and/or private transportation from residential areas;
- c) provide clinical staff specific training in the diagnosis and management of STD/HIV such as provided by:
  - i. the NYSDOH Bureau of STD Prevention and Epidemiology's STD Center of Excellence or the NYC DOHMH STD/HIV Prevention Training Center;
  - ii. Staff should receive annual clinical updates to stay abreast of recent changes in clinical guidelines and recommendations;
- d) have the capacity to accurately diagnose and treat bacterial STDs, as well as other viral, protozoal, and ectoparasitic STD and fungal genital infections that are prevalent in the community;
- e) have the capacity to distribute medications for disease diagnosed in the clinic;
- f) provide condoms and counseling on primary prevention to all patients;
- g) provide targeted screening of STD (e.g., syphilis, gonorrhea, and Chlamydia) to at-risk populations (which may include those seen in LHD conducted or supported HIV, TB, Family Planning, and Perinatal clinics, as well as other venues);
- h) actively manage through site review and, when contracted to another agency, conduct contract monitoring; and
- i) have established referrals for HIV care for those patients identified with HIV.

Best Practices for Laboratory services:

- a) each clinic should have an on-site stat laboratory or the capacity to perform stat tests;
- b) on-site laboratories should perform the following tests, which, with the exception of urine pregnancy tests (a waived test under CLIA) are classified as moderate complexity under CLIA, and thus must be performed under a laboratory permit issued pursuant to Article 5,

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Title V of PHL: Gram stain; non-treponemal antibody card tests for syphilis; saline wet mount for *Trichomonas vaginalis*; detection of clue cells of bacterial vaginosis; KOH wet mount for the identification of yeast and amine odor (Whiff) test; and urine pregnancy tests. Provision of any laboratory testing on site requires compliance with clinical laboratory statutes (PHL 570 - 583) and regulations (10 NYCRR 58 & 19).

3. Epidemiologic case finding services (10 NYCRR 40-2.20(a))

Required services:

- a) conduct therapy monitoring (i.e., confirmation/verification with follow-up for cases receiving inadequate or inappropriate treatment) for all priority cases (i.e., all infectious syphilis and congenital syphilis cases, as well as pregnant women and adolescents with gonorrhea and chlamydia);
- b) conduct partner services (partner notification and referral) - all LHDs which have their own STD/HIV investigative staff should have an epidemiologically-based method for selecting priority cases for follow-up. LHDs which are not required to have their own STD/HIV investigative staff should refer to the regional office to conduct partner services for patients in their jurisdiction;
- c) regular communication with community medical providers and facilities serving high-risk populations (e.g., juvenile detention centers, county jails, psychiatric facilities, drug and alcohol treatment centers, family planning/planned parenthood organizations, community health centers, etc.) to foster reporting and cooperation with screening recommendations and partner notification efforts; and
- d) develop and implement a protocol for assuring provision of prophylactic treatment of exposed partners.

Best practices:

- a) conduct therapy monitoring (i.e., confirmation/verification with follow-up for cases receiving inadequate or inappropriate treatment) for syphilis within 24 hours of receiving the disease report;
- b) conduct therapy monitoring for all gonorrhea and Chlamydia within 72 hours of receiving the disease report;
- c) for those LHDs that have their own STD/HIV investigative staff: conduct partner notification services for syphilis within 24 hours of case assignment and priority gonorrhea and Chlamydia cases within 72 hours of case assignment to investigative staff;
- d) prioritize and refer patients for partner services in terms of specific diseases as established in the Reactor Grid and Field Activity Priority Schedule of the New York State Department of Health Field Operations Manual or based on locally defined and justifiable epidemiologic parameters that identify high

New York State Department of Health  
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**Topic: Sexually Transmitted Disease, HIV Services and Control**

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- risk persons (e.g., age, sex, pregnancy-status, behavior, or geographic location, etc.);
- e) collaborate/communicate with non-health department care providers, particularly those that regularly diagnosis and treat patients with STD/HIV, at least annually;
  - f) collaborate/communicate with, including make site visits to, juvenile detention facilities, county jails, psychiatric facilities, drug and alcohol treatment centers as well as other institutional providers and residential facilities at least annually to assure reporting and contact tracing occurs among institutional residents and, where feasible, promote screening for STD/HIV; and
  - g) prophylactically treat anyone reasonably believed to have been exposed to STD/HIV.

4. Educational outreach and health promotion (10 NYCRR 40-2.20(g) and (h))

Required services:

- a) Required services provide factual information regarding the identification and prevention of STD/HIV to the community;
- b) actively provide information to county residents where public services can be obtained, especially among high-risk populations including adolescents; and
- c) provide at least one communication per year to the medical community apprising them of local morbidity rates, current New York State diagnostic and treatment modalities, and reporting requirements related to STD/HIV.

Best practices:

- a) produce an annual statistical summary of STD/HIV morbidity;
- b) target populations with high-risk behaviors for educational outreach;
- c) inform the public, especially adolescents, young adults and populations experiencing increased morbidity, to be aware of and to recognize symptoms of STDs;
- d) promote safer sex practices and use of barrier methods such as condom use to reduce acquisition and transmission of STD/HIV;
- e) develop and maintain the capacity to implement community and individual level behavior change interventions; and
- f) establish distribution plan for timely dissemination of information to CBOs serving county populations identified as at high risk based on increased morbidity.

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Description of enhanced services and associated costs eligible (but not required) for State Aid

1. screening for Hepatitis A, B and C antibody
2. screening for Herpes Simplex Virus type 2 antibodies
3. screening for Human Papilloma Virus/cervical cancer (PAP smear)
4. provision of male/female condoms along with education on proper use
5. provision of syringe access programs to promote safe disposal of sharps (needles, syringes, lancets) as well as providing access to sterile needles/syringes
6. provision of HIV prevention interventions pre-exposure prophylaxis (PrEP) and post-exposure prophylaxis (PEP)
  - a) PrEP is an antiretroviral medication which when taken daily can prevent the acquisition of HIV infection in persons considered high-risk. The LHD plays a key role in reaching such persons and assessing them for appropriateness in receiving PrEP. The following services are eligible for reimbursement during clinic visits:
    - 1) educate high-risk person regarding PrEP
    - 2) assess person's appropriateness and readiness to begin PrEP
    - 3) conduct/obtain baseline HIV/STD screening
    - 4) write the first two prescriptions for PrEP to be filled at the pharmacy or through the manufacturer's patient assistance program
    - 5) begin the referral process to a community provider for the continuation of PrEP which includes:
      - o evaluation of person's compliance with the medication regime and readiness to follow through with provider care
      - o reinforce person's continued medication compliance each visit
      - o once it is determined a person is appropriate and compliant with medication regime and care, provide an active referral (make appointment) for continued PrEP care with a community provider
    - 6) If a community provider is not available, reimbursable services will include PrEP services as recommended by New York State guidelines. In such cases, the LHD must demonstrate a good faith effort to link the person to a community provider and demonstrate that the LHD pursued support through patient assistance programs and third party reimbursement.

Please see Figure 1 at:

<http://www.hivguidelines.org/clinical-guidelines/pre-exposure-prophylaxis/guidance-for-the-use-of-pre-exposure-prophylaxis-prep-to-prevent-hiv-transmission/>

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b) Post-exposure prophylaxis (PEP) consists of three antiretroviral medications taken for 28 days following exposure to HIV. Exposure to HIV is considered a medical emergency and there are three separate clinical guidelines for HIV prophylaxis: 1) following a sexual assault, 2) an occupational exposure or 3) a non-occupational exposure. In the event that a person presents to a LHD clinic with a possible exposure to HIV within the previous 36 hours, PEP may be appropriate. Decisions regarding initiation of PEP beyond 36 hours post exposure should be made on a case-by-case basis with the realization of diminished efficacy when timing of initiation is prolonged. The patient should be counselled about PEP and urgently referred to the nearest emergency department (ED) or experienced community provider known to have PEP medication available for immediate treatment. The following services are eligible for reimbursement during clinic visits:

- 1) Educating HIV negative patients on the availability of PEP for possible exposure to HIV
- 2) Counseling and urgent referral to an ED or community provider known to have PEP medication available for immediate treatment
- 3) Providing PEP medication and HIV, STD, hepatitis B and hepatitis C testing as per New York State guidelines, as necessary. This guidance does not supersede existing practice related to sexual assault. Sexual assault should be referred to the ED immediately.

**Billing Third Parties for STD services**

LHDs are encouraged to bill patients and must, to the greatest extent practicable, bill insurance for STD services. However, if patients do not have insurance or are not willing to have their insurance billed, LHDs must provide services for the diagnosis and treatment of persons with STDs who live in the local health jurisdiction, regardless of their ability to pay. STD services provided by the LHD are eligible for Article 6 reimbursement.

The New York State Department of Health Bureau of STD Prevention and Epidemiology has developed technical assistance on billing third-party payers and on maintaining confidentiality as required by law (see Resources/Guidance section).

**Reporting of costs on the State Aid Application (SAA)**

Salaries, revenues and direct costs associated with STD/HIV activities and services must be reported on the STD/HIV line of the SAA.

**Description of ineligible services and associated costs**

1. The cost of general hospital care of communicable disease patients, including STD/HIV patients, is ineligible, except that hospital in-patient care for patients with syphilis or tuberculosis is eligible for Article 6 reimbursement, pursuant to 10 NYCRR 40-2.3(b)(3).

New York State Department of Health  
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Topic: Sexually Transmitted Disease, HIV Services and Control

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2. Costs related to STD/HIV ongoing case management, mental health, housing and other services beyond education, counseling and testing are ineligible.
3. Diagnosis and treatment of other coexisting conditions not directly related to the care of STDs is ineligible.
4. Other than what is stated under Enhanced Services, care and treatment of a patient with HIV is ineligible. In addition, PrEP medication and ongoing PrEP care of a HIV negative patient is also ineligible.

Note: Reimbursement for on-going continual care can be obtained by a healthcare provider through billing private insurance, Medicaid or the New York State Department of Health Pre-exposure Prophylaxis Assistance Program (PrEP-AP). PrEP-AP provides reimbursement to enrolled providers for monitoring and care, as recommended by NYSDOH PrEP guidance, of eligible persons on PrEP. PrEP medication may be obtained by uninsured or underinsured individuals through the manufacturer's patient assistance program.

Payment options for expenses related to PrEP are summarized on the NYSDOH website at: [http://www.health.ny.gov/diseases/aids/general/prep/docs/payment\\_options.pdf](http://www.health.ny.gov/diseases/aids/general/prep/docs/payment_options.pdf)

Payment options for PEP are summarized at: <http://www.hivguidelines.org/wp-content/uploads/2013/06/npep-payment-options-05-22-2013.pdf>

Resources/Guidance

NYSDOH Bureau of Sexually Transmitted Disease Prevention and Epidemiology

- Field Operations Manual, available upon request by e-mail to: [stdc@health.ny.gov](mailto:stdc@health.ny.gov).
- Billing Guidance Supplement: promoting confidential access to care. This resource is available upon request by contacting [stdc@health.ny.gov](mailto:stdc@health.ny.gov).

New York State Department of Health

- NYSDOH AIDS Institute Office of the Medical Directors HIV Clinical Resources available at: <http://www.hivguidelines.org/>.
- Information about HIV testing is available on the NYSDOH web site at: <http://www.health.ny.gov/diseases/aids/providers/testing/index.htm>.

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Centers for Disease Control and Prevention

- Program Operations Guidelines for STD Prevention available at:  
<http://www.cdc.gov/std/program/gl-2001.htm>
- Sexually Transmitted Diseases Treatment Guidelines available at:  
<http://www.cdc.gov/std/treatment/2010/default.htm>

PrEP and PEP Resources

- The NYSDOH website at [www.health.ny.gov/diseases/aids/general/prep/](http://www.health.ny.gov/diseases/aids/general/prep/).
- NYS HIV Clinical Guidelines site:
  - PrEP:
    - <http://www.hivguidelines.org/clinical-guidelines/pre-exposure-prophylaxis/guidance-for-the-use-of-pre-exposure-prophylaxis-prep-to-prevent-hiv-transmission/>
  - PEP:
    - Non-Occupational Exposure <http://www.hivguidelines.org/clinical-guidelines/post-exposure-prophylaxis/hiv-prophylaxis-following-non-occupational-exposure/>
    - Occupational Exposure <http://www.hivguidelines.org/clinical-guidelines/post-exposure-prophylaxis/hiv-prophylaxis-following-occupational-exposure/>
    - Sexual Assault <http://www.hivguidelines.org/clinical-guidelines/post-exposure-prophylaxis/hiv-prophylaxis-for-victims-of-sexual-assault/>
- Clinical training is available through:  
The Clinical Education Initiative at [www.cetraining.org](http://www.cetraining.org).
- Training for support service staff can be obtained through:  
AIDS Institute's HIV Education & Training Program at [www.hivtrainingny.org/](http://www.hivtrainingny.org/)
- Patient Information can be found at:
  - PrEP: <http://www.health.ny.gov/publications/9146.pdf> (English)  
<http://www.health.ny.gov/publications/9147.pdf> (Spanish)
  - PEP: <http://www.health.ny.gov/publications/9104.pdf> (English)  
<http://www.health.ny.gov/publications/9105.pdf> (Spanish)



# ONEIDA COUNTY HEALTH DEPARTMENT

ANTHONY J. PICENTE, JR  
ONEIDA COUNTY EXECUTIVE

PHYLLIS D. ELLIS, BSN, MS, FACHE  
DIRECTOR OF HEALTH



"PROMOTING & PROTECTING THE HEALTH OF ONEIDA COUNTY"

OCGOV.NET/HEALTH

November 16, 2020

FN 20 20-373

Anthony J. Picente, Jr.  
Oneida County Executive  
800 Park Avenue  
Utica, New York 13501

HEALTH & HUMAN SERVICES

WAYS & MEANS

Dear Mr. Picente:

Attached is an Agreement between Oneida County through its Health Department (OCHD) and Health Research, Inc. (HRI) for the provision of developing and expanding capacity of an Overdose Data to Action Program.

The term of this Agreement shall commence on September 1, 2020 and remain in effect through August 31, 2021. The amount of the yearly budget award is \$72,000. After OCHD submits reimbursements for 90% (\$65,000) of the award, the remaining balance is released automatically. In addition, \$100,000 is allocated to the "Restricted" budget category which placeholder funding will allow HRI to quickly award OCHD additional funds, should they become available, to address any new or emerging public health needs.

The reason this grant is being forwarded for signature after the commencement date is due to delays in receiving the agreement from HRI.

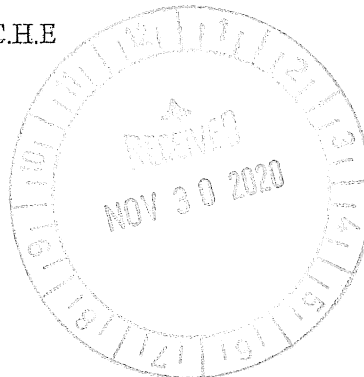
If this Agreement meets with your approval, please forward to the Board of Legislators for consideration at their next meeting.

Sincerely,

*Phyllis D. Ellis /PB*

Phyllis D. Ellis, BSN, MS, F.A.C.H.E  
Director of Health

Attachment  
CM



Reviewed and Approved for submittal to the  
Oneida County Board of Legislators by

*Anthony J. Picente, Jr.*

Anthony J. Picente, Jr.  
County Executive

Date 11-19-20

ADMINISTRATION  
ADIRONDACK BANK BLDG., 5TH FL.,  
185 GENESEE ST. UTICA, NY 13501  
TEL: (315) 798-8400 • FAX: (315) 266-6138

SPECIAL CHILDREN SERVICES  
ADIRONDACK BANK BLDG. 5TH FL.,  
185 GENESEE ST. UTICA, NY 13501  
TEL: (315) 798-5249 • FAX: (315) 731-3491

ENVIRONMENTAL HEALTH  
ADIRONDACK BANK BLDG., 4TH FL.,  
185 GENESEE ST. UTICA, NY 13501  
TEL: (315) 798-5064 • FAX: (315) 798-5486

CLINICAL SERVICES  
406 ELIZABETH ST. UTICA, NY 13501  
TEL: (315) 798-5748 • FAX: (315) 798-1057



Oneida Co. Department: Public Health

Competing Proposal \_\_\_\_\_  
Only Respondent \_\_\_\_\_  
Sole Source RFP \_\_\_\_\_  
Other Grant

**ONEIDA COUNTY BOARD  
OF LEGISLATORS**

Name & Address of Vendor: Health Research, Inc.  
Riverview Center  
150 Broadway, Suite 516  
Menands, NY 12204-2719

Title of Activity or Service: Overdose Data to Action

Proposed Dates of Operation: September 1, 2020 through August 31, 2021

Client Population/Number to be Served: All County residents

**Summary Statements**

- 1) **Narrative Description of Proposed Services**  
Develop and expand Overdose Data to Action to reduce opioid deaths
- 2) **Program/Service Objectives and Outcomes:** Reduce overdose deaths by using real-time data
- 3) **Program Design and Staffing:**

**Total Funding Requested:** \$172,000.00 Guaranteed Expense Account: A4019  
(\$100,000.00) Restricted Revenue Account: A3484

**Oneida County Dept. Funding Recommendation:** \$172,000.00

**Proposed Funding Sources (Federal \$/ State \$/County \$):** 100% Grant reimbursement.

**Cost Per Client Served:** N/A

**Past Performance Data:** N/A

**O.C. Department Staff Comments:**

**AGREEMENT**

This Agreement, made this 27th day of August, 2020 by and between HEALTH RESEARCH, INC., with offices located at Riverview Center, 150 Broadway, Ste. 560, Menands, NY, 12204, hereinafter referred to as "HRI, a domestic not-for profit corporation, and

Oneida County through the Health Department  
185 Genesee St.  
Utica, NY 13501 hereinafter referred to as the "Contractor"  
(a(n) State/Local Government

**WITNESSETH**

**WHEREAS**, HRI has been awarded a grant/contract from the Center Disease Control Prevent, hereinafter referred to as the "Project Sponsor" under grant/contract number 5NU17CE9249740200, hereinafter referred to as "Sponsor Reference"; and,

**WHEREAS**, part of the overall project involves the following:

*OD2a - Building Local Health Department Capacity*

**WHEREAS**, the Contractor has represented to HRI that it is knowledgeable, qualified, and experienced in the skill(s) required for this project, and that it is willing and capable of performing the services required hereunder

Now therefore, in consideration of the promises and mutual covenants herein, the parties hereto agree as follows:

**Definitions:** Throughout this Agreement, the following terms shall have the following definitions:

- "Contract Start Date": 09/01/2020
- "Contract End Date": 08/31/2021
- "Total Contract Amount": \$172,000
- "Maximum Reimbursable Amount": \$65,000
- "HRI Project Director": Gelberg, Dr. Kitty
- "Required Voucher Frequency": Monthly
- "FAIN Number": NU17CE924974
- "HRI Contract Number": 6169-02
- "Catalog of Federal Domestic Assistance Number": 93.136 ("This contract is "Federally" funded.")

**Budget Flexibility Percentage:** 25 % Percent of Total - Cumulative re-budget among categories is allowed by this percentage of the Total Contract Amount, or \$250,000, whichever is less

**Attachments / Exhibits:** The following are hereby incorporated and made a part of this Agreement:

- Exhibit A - "Scope of Work"
- Exhibit B - "Budget"
- Exhibit C - "Reporting/Vouchering Instructions"
- Exhibit D - "Prime Federal Award Information" (if checked) [X ]
- Attachment A - "General Conditions for HRI Contracts"
- Attachment B - "Program Specific Clauses" (if checked) [X ]
- Attachment C - "Modifications to General Conditions and/or Program Specific Clauses" (if checked) [ ]

**IN WITNESS WHEREOF**, this Agreement has been duly executed by the parties hereto as of the date first above set forth.

**Health Research, Inc**

**Oneida County through the Health Department**  
Federal ID: 15-6000460-  
DUNS#: 075814186

*Cheryl A Mattox*

Name: Cheryl A. Mattox  
Title: Executive Director

Name:  
Title:

**Exhibit A- OD2A for LHDs - Work Plan and Progress Report Template**

LHD Name: Oneida County

<b>Category 1: Integrate and empower local prevention and response efforts</b>							
<b>Optional Strategy:</b> Develop actionable products for prevention efforts -- toolkit(s), action guide(s), technical assistance resources, etc.							
<i>Specify topic: Stigma, Prevention, Local Opioid Resources</i>							
Suggested/Example Activities	Lead Staff	Contributing Partners	Contracts/Consultants	Timeframe		Status	Progress Notes
				Start Q	End Q		
<p>Select topic &amp; target audience for awareness campaigns and/or resource advertisements. Topics and target audience to be determined; emphasis on high-risk and disproportionately affected populations.</p> <p>Goals of the campaign: to increase awareness that Opioids can be addictive and dangerous, to reinforce that help is available for those suffering from an opioid use disorder (OUD), and to encourage those struggling with OUD to visit the campaign website to locate help and resources.</p> <p>Campaign will coincide with rollout of Oneida County Opioid Task Force Website, which will house resources referred to in campaign.</p>	Jared Henderson, OCDMH; Lisa Worden, OCHD	Health Department, Mental Health Department, Opioid Task Force		1	2		
Create or identify existing materials that can be integrated into new product	Jared Henderson, OCDMH; Lisa	Health Department, Mental Health Department,	Foster Martin Advertising or other Agency	2	4		

**Exhibit A- OD2A for LHDs - Work Plan and Progress Report Template**

	Worden, OCHD	Opioid Task Force					
Construct background/contextual info/purpose	Jared Henderson, OCDMH; Lisa Worden, OCHD	Health Department, Mental Health Department, Opioid Task Force	Foster Martin Advertising or other Agency	2	4		
Create or identify tools to collect feedback and evaluate impact of campaign	Jared Henderson, OCDMH; Lisa Worden, OCHD	Health Department, Mental Health Department, Opioid Task Force	Foster Martin Advertising or other Agency	2	4		
Create or adapt planning tools for product (timelines, action items, to-do lists, etc.)	Jared Henderson, OCDMH; Lisa Worden, OCHD	Health Department, Mental Health Department, Opioid Task Force	Foster Martin Advertising or other Agency	2	4		
Submit draft to NYSDOH	Jared Henderson, OCDMH	Health Department, Mental Health Department, Opioid Task Force		2	4		
Run Campaign/Disseminate Materials	Jared Henderson, OCDMH; Lisa Worden, OCHD		Foster Martin Advertising or other Agency	3	4		
<b>Category 1 Successes:</b>							
<b>Category 1 Barriers:</b>							
<b>Category 1 Request for TA/Training:</b>							
<b>Category 1 New partnerships and/or resources developed:</b>							

**Exhibit A- OD2A for LHDs - Work Plan and Progress Report Template**

<b>Category 2: Build capacity for more effective and sustainable local prevention and response efforts</b>							
<b>Required Strategy:</b> Ongoing participation in meetings and training needs assessments and submit at least two success stories by 08/31/2020							
Suggested/Example Activities	Lead Staff	Contributing Partners	Contracts/Consultants	Timeframe		Status	Progress Notes
				Start Q	End Q		
Respond to any training needs assessments, and participate in webinars, regional conference calls, 1:1 calls with Region Lead, and attend in-person meetings/trainings	Jared Henderson, OCDMH	Health Department, Mental Health Department, Opioid Task Force		1	4		
Receive success story template from NYSDOH	Jared Henderson, OCDMH	Health Department, Mental Health Department, Opioid Task Force		1	4		
Determine success story topics	Jared Henderson, OCDMH	Health Department, Mental Health Department, Opioid Task Force		1	4		
Submit draft success stories to NYSDOH	Jared Henderson, OCDMH	Health Department, Mental Health Department, Opioid Task Force		1	4		

<b>Category 3: Implement evidence-based/evidence informed prevention and response strategies</b>							
<b>Optional Strategy:</b> Establish Linkages to Care in Emergency Departments							
Suggested/Example Activities	Lead Staff	Contributing Partners	Contracts/Consultants	Timeframe		Status	Progress Notes
				Start Q	End Q		

**Exhibit A- OD2A for LHDs - Work Plan and Progress Report Template**

Collaborate with team of hospital ED representatives, public health and mental health staff to assess individual hospital needs for implementation of buprenorphine in the ED.	Lisa Worden, OCHD; Krista Drake, OCHD; Jared Henderson, OCDMH	Oneida County Health and Mental Health, Mohawk Valley Health System, Rome Memorial Hospital	Consultant provider (i.e, Dr. Joshua Lynch)	1	4		
Identify ways in which OD2A grant may assist in resources gaps identified in the assessment.	Lisa Worden, OCHD; Krista Drake, OCHD; Jared Henderson, OCDMH	Oneida County Health and Mental Health, Mohawk Valley Health System, Rome Memorial Hospital		1	4		
Link hospitals to subject matter expertise to assist with training, barriers, challenges, policies and procedures	Lisa Worden, OCHD; Krista Drake, OCHD; Jared Henderson, OCDMH	Oneida County Health and Mental Health, NYSDOH, Consultants	Consultant provider (i.e, Dr. Joshua Lynch)	1	4		
<b>Successes:</b>							
<b>Barriers:</b>							
<b>Request for TA/Training:</b>							
<b>New partnerships and/or resources developed:</b>							

**Category 3: Implement evidence-based/evidence informed prevention and response strategies**  
**Optional Strategy: Establish Linkages to Care by expanding/integrating Peer Support Services**

Suggested/Example Activities	Lead Staff	Contributing Partners	Contracts/Consultants	Timeframe		Status	Progress Notes
				Start Q	End Q		
Identify an agency that can assist in advancing at least 2 trained CRPA to becoming advanced CRPA with training	Jared Henderson, OCDMH; Lisa	Health Dept, Mental Health, ACR Health,	Center for Family Life & Recovery (CFLR)	1	2		

**Exhibit A- OD2A for LHDs - Work Plan and Progress Report Template**

and work hours completed to support ODMAP overdose victim follow up.	Worden, OCHD	Center for Family Life & Recovery				
Identify an agency and/or agencies that can develop, implement, and operate a peer follow-up program to support ODMAP overdose victim follow-up.	Jared Henderson, OCDMH; Lisa Worden, OCHD	Health Dept, Mental Health, ACR Health	ACR Health, Center for Family Life & Recovery (CFLR)	1	4	
Initiate any necessary contracts for project implementation with defined scope of services.	Jared Henderson, OCDMH; Lisa Worden, OCHD	Health Dept, Mental Health, ACR Health, Center for Family Life & Recovery	ACR Health, Center for Family Life & Recovery and/or other identified trainers	1	4	
Implement peer follow up program and peer training program.	Jared Henderson, OCDMH; Lisa Worden, OCHD	Health Dept, Mental Health, ACR Health, Center for Family Life & Recovery	ACR Health, Center for Family Life & Recovery and/or other identified trainers	1	4	
Conduct a Post-Implementation Program Evaluation that summarizes assessment of implementation activities, evaluates effectiveness of Program, and identifies needs for improvement.	Jared Henderson, OCDMH; Lisa Worden, OCHD	Health Dept, Mental Health, ACR Health, Center for Family Life & Recovery	ACR Health, Center for Family Life & Recovery and/or other identified trainers	2	4	
<b>Successes:</b>						
<b>Barriers:</b>						
<b>Request for TA/Training:</b>						
<b>New partnerships and/or resources developed:</b>						

**Category 3: Implement evidence-based/evidence informed prevention and response strategies**

**Optional Strategy: Provider and Health System Support**

Suggested/Example Activities	Lead Staff	Contracts/Consultants	Timeframe	Status	Progress Notes
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**Exhibit A- OD2A for LHDs - Work Plan and Progress Report Template**

		<b>Contributing Partners</b>		Start Q	End Q		
Provide 2 buprenorphine waiver trainings	Jared Henderson, OCDMH; Lisa Worden, OCHD	Health Dept., Mental Health, NYSDOH, Bup Trainers	Bup Waiver Trainer(s): Dr. Joshua Lunch	1	4		
Provide providers with educational opportunities that address the stigma and misconceptions associated with buprenorphine prescribing	Jared Henderson, OCDMH; Lisa Worden, OCHD	Health Dept., Mental Health, NYSDOH, Bup Trainers, ACR Health, Local Providers	Subject Matter Experts (i.e., Dr. Joshua Lynch)	1	4		
<b>Successes:</b>							
<b>Barriers:</b>							
<b>Request for TA/Training:</b>							
<b>New partnerships and/or resources developed:</b>							

<b>Category 3: Implement evidence-based/evidence informed prevention and response strategies</b>							
<b>Optional Strategy: Provider and Health System Support – Referrals</b>							
<b>Suggested/Example Activities</b>	<b>Lead Staff</b>	<b>Contributing Partners</b>	<b>Contracts/Consultants</b>	<b>Timeframe</b>		<b>Status</b>	<b>Progress Notes</b>
				Start Q	End Q		
Plan for development of Oneida MATTERS referral system to build and expand systems for effective referral networks.	Lisa Worden, OCHD; Krista Drake, OCHD; Jared Henderson, OCDMH	Health Department, Mental Health Department, Treatment Providers	NYSDOH, Buffalo MATTERS	1	4		
Initiate any necessary contracts for project implementation with defined scope of services	Lisa Worden, OCHD; Krista	Health Department, Mental Health Department, Treatment Providers	NYSDOH, Buffalo MATTERS	1	4		



**Exhibit A- OD2A for LHDs - Work Plan and Progress Report Template**

	Drake, OCHD; Jared Henderson, OCDMH						
Implement/launch referral platform	Lisa Worden, OCHD; Krista Drake, OCHD; Jared Henderson, OCDMH	Health Department, Mental Health Department, Treatment Providers	NYSDOH, Buffalo MATTERS	1	4		
<b>Successes:</b>							
<b>Barriers:</b>							
<b>Request for TA/Training:</b>							
<b>New partnerships and/or resources developed:</b>							

<b>Category 3: Implement evidence-based/evidence informed prevention and response strategies</b>							
<b>Optional Strategy: Partner with Public Safety</b>							
Suggested/Example Activities	Lead Staff	Contributing Partners	Contracts/Consultants	Timeframe		Status	Progress Notes
				Start Q	End Q		
Collaborate with local law enforcement agency and/or agencies (TBD) to develop and implement a post-overdose co-response program; Law Enforcement (LE) officer(s) will accompany peers during follow-up visits.	Lisa Worden, OCHD; Jared Henderson, OCDMH	ODMAP Overdose Response Team		1	4		
Ensure that participating LE officers receive Harm Reduction Education/Best Practice Training prior to going on visits.	Lisa Worden, OCHD; Jared Henderson, OCDMH	ODMAP Overdose Response Team		1	4		

**Exhibit A- OD2A for LHDs - Work Plan and Progress Report Template**

Integrate real-time overdose surveillance data from identified sources into ODMAP Overdose Weekly Report for sharing to mobilize action.	Lisa Worden, OCHD; Jared Henderson, OCDMH	ODMAP Overdose Response Team		1	4		
Assess tool for tracking outcomes and peer follow up for overdose victims captured in ODMAP to identify gaps and needs for improvement.	Lisa Worden, OCHD; Jared Henderson, OCDMH	ODMAP Overdose Response Team		1	4		
Collaborate with Mohawk Valley Crime Analysis Center, HIDTA, IT Specialists and/or HealtheConnections to develop secure technology to better track ODMAP victim biographical data to better track, analyze and evaluate impact of peer follow up visits, demographic subsets (i.e. age groups, race/ethnicity, gender, geography) , generate on-demand custom and pre-set analytical reports, identify vulnerable at-risks individuals (i.e, multiple overdoses, children, individuals not being captured in ODMAP) and enhancing security and integrity of the victim overdose data.	Lisa Worden, OCHD; Jared Henderson, OCDMH	ODMAP Overdose Response Team, Mohawk Valley Crime Analysis Center, HIDTA,	IT Specialists and/or HealtheConnections	1	4		
Initiate any necessary contracts for project implementation with defined scope of services	Lisa Worden, OCHD; Jared Henderson, OCDMH		IT Specialist	1	4		
Design/implement tracking tool	Lisa Worden, OCHD; Jared Henderson, OCDMH		IT Specialist	2	4		

**Exhibit A- OD2A for LHDs - Work Plan and Progress Report Template**

Provide ongoing real-time overdose surveillance data that can assist with targeted and strategic prevention, treatment, recovery, harm-reduction, and law enforcement interventions in high-risk areas	Lisa Worden, OCHD; Jared Henderson, OCDMH	ODMAP Overdose Response Team		1	4		
<b>Successes:</b>							
<b>Barriers:</b>							
<b>Request for TA/Training:</b>							
<b>New partnerships and/or resources developed:</b>							

<b>Category 3: Implement evidence-based/evidence informed prevention and response strategies</b>							
<b>Optional Strategy: Expand Access to Naloxone and Harm Reduction Education</b>							
<b>Suggested/Example Activities</b>	<b>Lead Staff</b>	<b>Contributing Partners</b>	<b>Contracts/Consultants</b>	<b>Timeframe</b>		<b>Status</b>	<b>Progress Notes</b>
				<b>Start Q</b>	<b>End Q</b>		
Establish relationship with training providers	Jared Henderson, OCDMH; Lisa Worden, OCHD	Health Department, Mental Health Department, Opioid Task Force	ACR Health, Center for Family Life & Recovery, Community Recovery Center, Helio Health, and McPike Addiction Treatment Center	1	1		
Initiate any necessary contracts for project implementation with defined scope of services	Jared Henderson, OCDMH; Lisa Worden, OCHD	Health Department, Mental Health Department, Opioid Task Force	ACR Health, Center for Family Life & Recovery, Community Recovery Center, Helio Health, and McPike Addiction Treatment Center	1	4		
Identify targeted audiences	Jared Henderson, OCDMH; Lisa Worden, OCHD	Health Department, Mental Health Department, Opioid Task Force	ACR Health, Center for Family Life & Recovery, Community Recovery Center, Helio Health, and McPike Addiction Treatment Center	1	4		
Conduct Naloxone Trainings	Jared Henderson,	Health Department,	ACR Health, Center for Family Life & Recovery,	1	4		

**Exhibit A- OD2A for LHDs - Work Plan and Progress Report Template**

	OCDMH; Lisa Worden, OCHD	Mental Health Department, Opioid Task Force	Community Recovery Center, Helio Health, and McPike Addiction Treatment Center				
Conduct Harm Reduction education/training for treatment providers	Jared Henderson, OCDMH; Lisa Worden, OCHD	Health Department, Mental Health Department, Opioid Task Force	ACR Health	1	4		
<b>Successes:</b>							
<b>Barriers:</b>							
<b>Request for TA/Training:</b>							
<b>New partnerships and/or resources developed:</b>							

<b>Category 4: Innovation Project</b>							
<b>Optional Strategy:</b> Expand access to critical and timely information, data, and resources related to Opioids and Opioid Use Disorder throughout Oneida County and surrounding region.							
Suggested/Example Activities	Lead Staff	Contributing Partners	Contracts/Consultants	Timeframe		Status	Progress Notes
				Start Q	End Q		
Identify a contractor that can construct and develop a website for the Oneida County Opioid Task Force. The website will serve as an informative centralized hub for opioid-related information pertinent to Oneida County.  <u>Target Audience:</u> All Opioid Task Force Partners/Stakeholders, PWUD's, and general public.	Jared Henderson, OCDMH; Lisa Worden, OCHD	Health Department, Mental Health Department, Opioid Task Force, IT Dept.	Catalog & Commerce Solutions, LLC	1	1		

**Exhibit A- OD2A for LHDs - Work Plan and Progress Report Template**

Initiate any necessary contracts for project implementation with defined scope of services.	Jared Henderson, OCDMH; Lisa Worden, OCHD	Health Department, Mental Health Department, Opioid Task Force, IT Dept.	Catalog & Commerce Solutions, LLC	1	2		
Work collaboratively with contractor; grant approval of designs and concepts for all website & content development.	Jared Henderson, OCDMH; Lisa Worden, OCHD	Health Department, Mental Health Department, Opioid Task Force, IT Dept.	Catalog & Commerce Solutions, LLC	1	3		
Create or identify tools to collect feedback and evaluate impact/reach of website.	Jared Henderson, OCDMH; Lisa Worden, OCHD	Health Department, Mental Health Department, Opioid Task Force, IT Dept.	Catalog & Commerce Solutions, LLC	1	4		
Allow NYSDOH access to website before launch for prior/final approval.	Jared Henderson, OCDMH; Lisa Worden, OCHD	Health Department, Mental Health Department, Opioid Task Force, IT Dept.	Catalog & Commerce Solutions, LLC	2	3		
Launch Website to general public; provide navigation/orientation assistance upon request.	Jared Henderson, OCDMH	Health Department, Mental Health Department, Opioid Task Force, IT Dept.		2	4		
Monitor website daily and submit any updates/changes in content/design to Oneida County IT Department.	Jared Henderson, OCDMH; Lisa Worden, OCHD	Health Department, Mental Health Department, Opioid Task Force, IT Dept.	Catalog & Commerce Solutions, LLC	2	4		
<b>Category 1 Successes:</b>							

**Exhibit A- OD2A for LHDs - Work Plan and Progress Report Template**

Category 1 Barriers:
Category 1 Request for TA/Training:
Category 1 New partnerships and/or resources developed:

**New York State Department Of Health  
Health Research, Inc. - Overdose Data to Action**

**EXHIBIT B - Budget**

9/1/2020

**Contractor :** Oneida County Health Department

**Contract Period :** September 1, 2020 - August 31, 2021

**Contract # :** 6169-02

**HRI Account # :** 15-0991-02

See instructions for important information. Be sure to sign and date (see below) and submit this page as a pdf. In addition, submit the entire budget file in Excel.

**SUMMARY BUDGET**

<b>Budget Categories</b>	<b>Original Budget</b>	<b>Modification</b>	<b>Revised Budget</b>
SALARIES / PERSONNEL		\$ -	\$ -
FRINGE BENEFITS		\$ -	\$ -
SUPPLIES	\$ 5,000	\$ -	\$ 5,000
TRAVEL	\$ 350	\$ -	\$ 350
EQUIPMENT		\$ -	\$ -
MISCELLANEOUS	\$ 2,000	\$ -	\$ 2,000
CONTRACTUAL / CONSULTANT	\$ 64,650	\$ -	\$ 64,650
ADMINISTRATIVE COSTS		\$ -	\$ -
<b>SUBTOTAL</b>	<b>\$ 72,000</b>	<b>\$ -</b>	<b>\$ 72,000</b>
RESTRICTED (For NYSDOH use only)	\$ 100,000	\$ -	\$ 100,000
<b>TOTAL :</b>	<b>\$ 172,000</b>	<b>\$ -</b>	<b>\$ 172,000</b>

**Reason for Proposed Changes (for budget modifications):**

**Contractor**

Authorized Signature: See attached

Date:

Supplies

Contractor: Oneida County Health Department  
Contract Period: September 1, 2020 - August 31, 2021

**SUPPLIES :** *Provide a justification for all supplies, including a description of how it relates to specific program objectives. Please refer to the Equipment section for guidance on items with a unit cost of \$5,000 or more.*

<u>Item Description</u>	<u>Amount</u>
Office Supplies	\$ 2,000
Program Materials	\$ 3,000

**Total Supplies Requested:** \$ 5,000

**Justification**

Office supplies and equipment for (e.g., pens, pencils, three hole punchers, pads, post-its, fax/copier paper, notebooks, staples, scotch tape, flip-chart pads, magic markers, folders, binders, report covers, etc.). This includes supplies to support partnership meetings, presentations, etc.  
Program supplies such as ODMAP material for law enforcement such as visor clips, care kits for peer follow up visits and other supply items to support implementation of grant strategies. "Care Kits" would be packets that could be distributed to overdose victims by peer response agencies and other partners interacting with overdose victims; they could be a vinyl/fabric packet that can fit cards about local treatment and harm reduction services and Narcan Kits as supplied by the agency and NOT the Health Department. Additional items may be identified by partners to support overdose victims - these will be identified in the planning process; these will be sent to NYSDOH for approval prior to purchasing.  
Additional Visor clips/inserts will be purchased if additional ones are needed for law enforcement vehicles. These remind officers to call in overdose information to ODMAP hub

Supplies include items that do not exceed the \$1,000 threshold



Travel

Contractor: Oneida County Health Department

Contract Period: September 1, 2020 - August 31, 2021

Travel: *Include staff and conference travel, as well as travel to regional meetings and training sessions. Contractors without reimbursement policies should use New York State travel reimbursement policy.*

<u>Purpose/Destination</u>	<u>Amount</u>
Mileage and Travel costs to grant related conferences, regional meetings, and events.	\$ 350

Total Travel Requested: \$ 350

Is mileage requested (personal auto or agency auto)     X    

Yes

                     No

**Justification**

Registration fees, personal auto mileage, travel, lodging and meals for Staff participating in opioid grant activities including in-person and/or web-based local, regional and national meetings, conferences and other Opioid-related trainings.

Miscellaneous

Contractor: Oneida County Health Department  
Contract Period: September 1, 2020 - August 31, 2021

*Funds may be used to support program-related miscellaneous costs. All services must be provided within the contract period (services provided prior to the beginning or after the end date of the contract are not allowable costs for reimbursement).*

<u>Item Description</u>	<u>Amount</u>
Printing	\$ 1,700
Naloxone Mailing Fees	\$ 300

Total Miscellaneous Requested : \$ 2,000

Justification

**Printing:** In house and professional printing of signs, posters, and other opioid educational materials for community distribution, hand outs, and meeting and training materials for grant activities.

**Naloxone Mailing Fees:** Any charges/fees associated with local agency mailing of naloxone to Oneida County residents.

**NYSDOH NOTE:** All Opioid Education/Outreach materials and Advertising/Media messages must be approved prior to incurring costs .

**Subcontracts/Consultants**

Contractor: Oneida County Health Department  
 Contract Period: September 1, 2020 - August 31, 2021

<b>SUBCONTRACTS / CONSULTANTS:</b>		
<i>Provide a listing of all subcontracts, including consultant agreements. If the subcontractor/consultant has not been selected, please indicate "TBA" in Name. Contractors are required to use a structured selection process consistent with agency policy and maintain copies of all subcontracts and documentation of the selection process. Administrative/Indirect Costs for all consultant/consultant agreements are limited to 10% of total direct costs unless a federally approved rate agreement is provided. All subcontracts entered into must be executed as line item cost reimbursable unless otherwise approved.</i>		
<i>All of the requirements listed in Attachment A "General Terms and Conditions" and Attachment B "Program Specific Clauses" must flow down to all subcontractor agreements.</i>		
<b>Agency / Name</b>	<b>Description of Services</b> Include number of hours and hourly rate for consultants. Include a detailed line-item budget for subcontracts.	<b>Amount</b>
Local law enforcement agency/agencies (TBD)	<p><b>Period of Performance:</b> Sept. 1, 2020 - August 31, 2021</p> <p><b>Scope of Work:</b> A local law enforcement agency and/or agencies (TBD) will work collaboratively with Oneida County Health Department (OCHD), Oneida County Department of Mental Health (OCMH), and Oneida County Opioid Task Force (OCOTF) to develop and implement a post-overdose response program. Law Enforcement (LE) officer(s) will accompany peers during follow-up visits. Participating LE officers will receive Harm Reduction Educator/Best Practice Training prior to going on visits.</p> <p><b>Method of Accountability:</b> Contractor will report to and collaborate with the OD2A program coordinator and/or designated staff to ensure deliverables are met. Contractor will submit a proposal for scope of work to be approved by OCHD and OCMH.</p> <p><b>Detailed Budget and Justification:</b> \$18,000 (Estimate - Request for Statement of Work will be submitted by the contractor to OCHD and OCMH for identified projects). Scope of work and costs to be developed.</p> <p><b>NYSDOH Note:</b> Provide name, detailed budget and justification. A budget modification with these details is required prior to entering into agreements and incurring costs.</p>	\$ 18,000
ACR Health	<p><b>Period of Performance:</b> Sept. 1, 2020 - June 30, 2021</p> <p><b>Scope of Work:</b> Operation and maintenance of Peer Follow-Up Program. ACR Health will operate and maintain Peer Follow-Up Program that provides Peer follow-up support services to overdose victims identified via ODMAP (Oneida County Residents).</p> <p><b>Method of Accountability:</b> Contractor will report to and collaborate with the OCHD OD2A Program Coordinator and/or designated staff to ensure deliverables are met.</p> <p><b>Detailed Budget and Justification:</b> Proposal to be requested for identified projects. Scope of work and costs to be developed in planning process.</p> <p><b>NYSDOH Note:</b> Provide detailed budget and justification. A budget modification with these details is required prior to entering into agreements and incurring costs.</p>	\$ 10,000
Center for Family Life & Recovery (CFLR)	<p><b>Period of Performance:</b> Sept. 1, 2020 - June 30, 2021</p> <p><b>Scope of Work:</b> Operation and maintenance of Peer Collaborative (includes ongoing community trainings) and peer agency integration into Follow-Up Program. CFLR will operate and maintain a multi-agency Peer Collaborative and integrate the work of this collaborative into Peer Follow-Up program to provide diverse Peer follow-up services to overdose victims (Oneida County Residents) identified through ODMAP.</p> <p><b>Method of Accountability:</b> Contractor will report to and collaborate with the OD2A Program Coordinator and/or designated staff to ensure deliverables are met.</p> <p><b>Detailed Budget and Justification:</b> Fees and services vary. Proposal to be requested for identified projects. Scope of work and costs to be developed in planning process.</p> <p><b>NYSDOH Note:</b> Provide detailed budget and justification. A budget modification with these details is required prior to entering into agreements and incurring costs.</p>	\$ 10,000
Bup Waiver Trainers - Dr. Kelly Ramsey	<p><b>Period of Performance:</b> Sept. 1, 2020 - August 31, 2021</p> <p><b>Scope of Work:</b> Trainers to provide two buprenorphine waiver trainings for local medical providers.</p> <p><b>Method of Accountability:</b> Contractor will report to and collaborate with the OD2A Program Coordinator and/or designated staff to ensure deliverables are met.</p> <p><b>Detailed Budget and Justification:</b> \$1,500 per training to pay for one trainer @ \$750 each, trainer/TA fee</p>	\$ 3,000
Catalog & Commerce Solutions, LLC (via Oneida County Information Technology Department)	<p><b>Period of Performance:</b> Sept. 1, 2020 - August 31, 2021</p> <p><b>Scope of Work:</b> Ongoing maintenance of website to support county Opioid Task Force and Workgroup activities. The website will serve as an informative centralized hub for opioid-related information pertinent to Oneida County and its Opioid Task Force. It will be organized with existing materials and information, data, and interactive forms.</p> <p><b>Method of Accountability:</b> Contractor will report to and collaborate with the OD2A Program Coordinator and/or designated staff to ensure deliverables are met.</p> <p><b>Detailed Budget and Justification:</b>                      Ongoing Maintenance: \$600.00/year.                      • 2020 - prorated from website completion. (\$50.00/month).                      • 2021-2022 - \$600.00/year - due at January 1 of Service Year.                      • 2023 and beyond - \$20.00/year escalation (3%).</p>	\$ 600
FosterMartin Marketing Services and/or Townsquare Media	<p><b>Period of Performance:</b> Sept. 1, 2020 - August 31, 2021</p> <p><b>Scope of Work:</b> Development and/or printing of marketing materials for Opioid Task Force, Prevention Team, Naloxone Trainings, Opioid education and stigma education and/or other grant activities.</p> <p><b>Method of Accountability:</b> Contractor will report to and collaborate with the OD2A Program Coordinator and/or designated staff to ensure deliverables are met.</p> <p><b>Detailed Budget and Justification:</b> Fees and services vary. Proposal to be requested for identified projects. Scope of work and costs to be developed in planning process.</p> <p><b>NYSDOH Note:</b> Provide detailed budget and justification. A budget modification with these details is required prior to entering into agreements and incurring costs.</p>	\$ 10,000
Oneida County Department of Mental Health (OCMH)	<p><b>Period of Performance:</b> Sept. 1, 2020 - August 31, 2021</p> <p><b>Scope of Work:</b> This is an agreement between the Oneida County Health Department (OCHD) and the Oneida County Department of Mental Health (OCMH). Contractor (OCMH) will provide the services of its Program Analyst to assist the OCHD in the administration and oversight of all activities performed under the Opioid Data To Action (OD2A) grant. A Memorandum of Understanding (MOU) has been agreed upon and executed by Oneida County Health Department (OCHD) and Oneida County Department of Mental Health (OCMH).</p> <p><b>Responsibilities:</b></p> <ol style="list-style-type: none"> <li>1. The OCMH shall provide the services of its Program Analyst to assist the OCHD in the administration and oversight of all activities performed under Year 1 of the Opioid Data To Action (OD2A) grant.</li> <li>2. Administration and oversight activities shall include, but not be limited to:                         <ol style="list-style-type: none"> <li>a. Completion and review all vouchers for grant activity expenses.</li> <li>b. Inventory and ordering as necessary any supplies required for grant activities.</li> <li>c. Complying with monthly reporting as the grant requires.</li> <li>d. Collaboration with community partners, OCHD and other County staff to implement strategies identified in the work plan.</li> <li>e. Coordination of activities with other related and interconnected OCHD and OCMH initiatives.</li> </ol> </li> <li>3. Ensuring that all grant work plan objectives, strategies, performance measures and contractual and budgetary requirements are met.</li> </ol> <p><b>Method of Accountability:</b> Contractor will report to and collaborate with OCHD, OCMH and designated staff to ensure deliverables and reporting requirements are met. The parties shall meet regularly to plan grant activities, set and monitor grant goals, and assess current strategies for data collection and surveillance activities and their use.</p> <p><b>Detailed Budget and Justification:</b>                      For the services provided under this agreement, the OCHD will reimburse the OCMH 30% of the Program Analyst's salary, up to \$30,000.00 annually. Breakdown:                      • Annual Salary: \$43,500 (\$23.9/hr)                      • 30% Annual Salary: \$13,050</p>	\$ 13,050
<b>Total Subcontracts/Consultants Requested :</b>		<b>\$ 64,650</b>

Restricted

Contractor: Oneida County Health Department  
Contract Period: September 1, 2020 - August 31, 2021

FOR NYSDOH USE ONLY

<u>Purpose/Destination</u>	<u>Amount</u>
These restricted funds allows for increased funds to be awarded to the contract in the event additional funds become available.	\$ 100,000

Total Restricted: \$ 100,000

Justification

NYSDOH Note: Items in the Restricted budget category are not reimbursable. To remove items from the Restricted budget category, submit a budget modification request to grants@health.ny.gov for approval. The budget modification request must include a break-out of expenses and a justification that shows how the expenses support the contract deliverables.

**Exhibit C**  
**Reporting and Vouchering Requirements**

The **Reporting Frequency** for this Contract shall be:

**Monthly**

**Voucher /Reports submission:**

The Contractor shall submit all vouchers and reports required hereunder to the address noted:

**Grants Administration  
New York State Department of Health  
Riverview Center  
150 Broadway, Suite 516  
Menands, NY 12204**

or

**Email: [grants@health.ny.gov](mailto:grants@health.ny.gov)**

**EXHIBIT D**

<b>1. DATE ISSUED</b> MM/DD/YYYY 07/29/2020	<b>1a. SUPERSEDES AWARD NOTICE</b> dated except that any additions or restrictions previously imposed remain in effect unless specifically rescinded
<b>2. CFDA NO.</b> 93.136 - Injury Prevention and Control Research and State and Community Based Programs	
<b>3. ASSISTANCE TYPE</b> Cooperative Agreement	
<b>4. GRANT NO.</b> 5 NU17CE924974-02-00 Formerly	<b>5. TYPE OF AWARD</b> Other
<b>4a. FAIN</b> NU17CE924974	<b>5a. ACTION TYPE</b> Non-Competing Continuation
<b>6. PROJECT PERIOD</b> MM/DD/YYYY From 09/01/2019	<b>Through</b> MM/DD/YYYY 08/31/2022
<b>7. BUDGET PERIOD</b> MM/DD/YYYY From 09/01/2020	<b>Through</b> MM/DD/YYYY 08/31/2021
<b>8. TITLE OF PROJECT (OR PROGRAM)</b> New York State - Overdose Data to Action	

**DEPARTMENT OF HEALTH AND HUMAN SERVICES  
Centers for Disease Control and Prevention**

2939 Brandywine Road  
Atlanta, GA 30341

**NOTICE OF AWARD**  
AUTHORIZATION (Legislation/Regulations)  
Section 311(c)(1) of the PHS Act (42 USC § 243(c)(1))

<b>9a. GRANTEE NAME AND ADDRESS</b> HEALTH RESEARCH, INC. Corning Tower Room 359 Corning Tower Albany, NY 12237-0001	<b>9b. GRANTEE PROJECT DIRECTOR</b> Mr. Michael A. Saglimbeni Riverview Center Menands, NY 12204-2726 Phone: 518-431-1200
<b>10a. GRANTEE AUTHORIZING OFFICIAL</b> Ms. Cheryl Mattox 150 Broadway Suite 560 Menands, NY 12204-2719 Phone: 518-431-1200	<b>10b. FEDERAL PROJECT OFFICER</b> Kimberly N Evans 4770 Buford Hwy Atlanta, GA 30341-3717 Phone: 404.639.1220

**ALL AMOUNTS ARE SHOWN IN USD**

<b>11. APPROVED BUDGET</b> (Excludes Direct Assistance)		<b>12. AWARD COMPUTATION</b>	
I Financial Assistance from the Federal Awarding Agency Only		a. Amount of Federal Financial Assistance (from item 11m) 6,251,633.00	
II Total project costs including grant funds and all other financial participation		b. Less Unobligated Balance From Prior Budget Periods 0.00	
a. Salaries and WageS	2,312,056.00	c. Less Cumulative Prior Award(s) This Budget Period 0.00	
b. Fringe Benefits	878,585.00	<b>d. AMOUNT OF FINANCIAL ASSISTANCE THIS ACTION</b> 6,251,633.00	
c. Total Personnel Costs	3,190,641.00	<b>13. Total Federal Funds Awarded to Date for Project Period</b> 12,503,266.00	
d. Equipment	0.00	<b>14. RECOMMENDED FUTURE SUPPORT</b> (Subject to the availability of funds and satisfactory progress of the project):	
e. Supplies	8,702.00	YEAR	TOTAL DIRECT COSTS
f. Travel	57,959.00	a. 3	d. 6
g. Construction	0.00	b. 4	e. 7
h. Other	140,773.00	c. 5	f. 8
i. Contractual	2,126,091.00	<b>15. PROGRAM INCOME SHALL BE USED IN ACCORD WITH ONE OF THE FOLLOWING ALTERNATIVES:</b>	
<b>j. TOTAL DIRECT COSTS</b> →	5,524,166.00	a. DEDUCTION	
k. INDIRECT COSTS	727,467.00	b. ADDITIONAL COSTS	
<b>l. TOTAL APPROVED BUDGET</b>	6,251,633.00	c. MATCHING	
m. Federal Share	6,251,633.00	d. OTHER RESEARCH (Add / Deduct Option)	
n. Non-Federal Share	0.00	e. OTHER (See REMARKS)	
<b>16. THIS AWARD IS BASED ON AN APPLICATION SUBMITTED TO, AND AS APPROVED BY, THE FEDERAL AWARDING AGENCY ON THE ABOVE TITLED PROJECT AND IS SUBJECT TO THE TERMS AND CONDITIONS INCORPORATED EITHER DIRECTLY OR BY REFERENCE IN THE FOLLOWING:</b>		<b>b</b>	
a. The grant program legislation		In the event there are conflicting or otherwise inconsistent policies applicable to the grant, the above order of precedence shall prevail. Acceptance of the grant terms and conditions is acknowledged by the grantee when funds are drawn or otherwise obtained from the grant payment system.	
b. The grant program regulations.			
c. This award notice including terms and conditions, if any, noted below under REMARKS.			
d. Federal administrative requirements, cost principles and audit requirements applicable to this grant.			

**REMARKS** (Other Terms and Conditions Attached -  Yes  No)

**GRANTS MANAGEMENT OFFICIAL:**

Valencia Williams, Lead Grant Management Specialist  
1600 Clifton Rd  
Atlanta, GA 30333  
Phone: 404.498.3260

<b>17.OBJ CLASS</b> 41.51	<b>18a. VENDOR CODE</b> 1141402155A1	<b>18b. EIN</b> 141402155	<b>19. DUNS</b> 157119657	<b>20. CONG. DIST.</b> 20
<b>FY-ACCOUNT NO.</b>	<b>DOCUMENT NO.</b>	<b>ADMINISTRATIVE CODE</b>	<b>AMT ACTION FIN ASST</b>	<b>APPROPRIATION</b>
21. a. 9-939ZUCS	b. 19NU17CE924974OPCE	c. CE	d. \$0.00	e. 75-19-0952
22. a. 0-9390BX6	b. 19NU17CE924974OPCE	c. CE	d. \$6,251,633.00	e. 75-20-0952
23. a.	b.	c.	d.	e.

NOTICE OF AWARD (Continuation Sheet)

PAGE 2 of 2	DATE ISSUED 07/29/2020
GRANT NO. 5 NU17CE924974-02-00	

**Direct Assistance**

BUDGET CATEGORIES	PREVIOUS AMOUNT (A)	AMOUNT THIS ACTION (B)	TOTAL (A + B)
Personnel	\$0.00	\$0.00	\$0.00
Fringe Benefits	\$0.00	\$0.00	\$0.00
Travel	\$0.00	\$0.00	\$0.00
Equipment	\$0.00	\$0.00	\$0.00
Supplies	\$0.00	\$0.00	\$0.00
Contractual	\$0.00	\$0.00	\$0.00
Construction	\$0.00	\$0.00	\$0.00
Other	\$0.00	\$0.00	\$0.00
<b>Total</b>	<b>\$0.00</b>	<b>\$0.00</b>	<b>\$0.00</b>

## AWARD ATTACHMENTS

NYS Dept of Health/Health Research Inc.

5 NU17CE924974-02-00

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1. GMS Financial Documents
2. Special Terms and Conditions
3. Technical Requirements



## AWARD INFORMATION

**Incorporation:** In addition to the federal laws, regulations, policies, and CDC General Terms and Conditions for Non-research awards at <https://www.cdc.gov/grants/federalregulationspolicies/index.html>, the Centers for Disease Control and Prevention (CDC) hereby incorporates Notice of Funding Opportunity (NOFO) number CE19-1904, entitled Overdose Data to Action, and application dated May 29, 2020, as may be amended, which are hereby made a part of this Non-research award, hereinafter referred to as the Notice of Award (NoA).

**Approved Funding:** Funding in the amount of \$6,251,633 is approved for the Year 02 budget period, which is September 1, 2020 through August 31, 2021. All future year funding will be based on satisfactory programmatic progress and the availability of funds.

The federal award amount is subject to adjustment based on total allowable costs incurred and/or the value of any third party in-kind contribution when applicable.

Note: Refer to the Payment Information section for Payment Management System (PMS) subaccount information.

**Financial Assistance Mechanism:** Cooperative Agreement

**Substantial Involvement by CDC:** This is a cooperative agreement and CDC will have substantial programmatic involvement after the award is made. Substantial involvement is in addition to all post-award monitoring, technical assistance, and performance reviews undertaken in the normal course of stewardship of federal funds.

CDC program staff will assist, coordinate, or participate in carrying out effort under the award, and recipients agree to the responsibilities therein, as detailed in the NOFO. CDC program support to recipients will help ensure the success of the cooperative agreement by:

- Providing cross-site and recipient-specific surveillance technical assistance, such as providing tools to identify nonfatal and fatal drug poisonings using ICD-9-CM, ICD-10-CM, text searches of ED chief complaint and ICD-10 cause of death codes;
- Providing technical assistance to revise annual work plans;
- Assisting in advancing program activities to achieve project outcomes;
- Providing scientific subject matter expertise and resources;
- Collaborating with recipients to develop evaluation plans that align with CDC evaluation activities;
- Providing technical assistance on recipient's evaluation and performance measurement plan;
- Providing technical assistance to define and operationalize performance measures;
- Facilitating the sharing of information among recipients;
- Participating in relevant meetings, committees, conference calls, and working groups related to the cooperative agreement requirements to achieve outcomes;
- Coordinating communication and program linkages with other CDC programs and Federal agencies, such as Centers for Medicare and Medicaid Services (CMS), Food and Drug Administration (FDA), the National Institutes of Health (NIH), the Substance Abuse and Mental Health Services Administration (SAMHSA), Department of Justice (DOJ), and the HHS Office of the National Coordinator for Health Information Technology (ONC);
- Translating and disseminating lessons learned through publications, meetings, surveillance measures and other means on promising and best practices to expand the evidence base;
- Providing guidance on SUDORS data abstraction, use of necessary data sharing platforms (e.g. NVDRS, NSSP ESSENCE) and CDC templates to collect ED data;
- Supporting use of CDC ED case definitions by providing recipients computer programming code such as SAS, R, and ESSENCE to implement the cases definitions if resources are available;
- Providing ongoing data quality reviews and feedback on required ED and drug overdose death data submissions; and
- Providing technical assistance on data management plans.

**Objective/Technical Review Statement Response Requirement:** The review comments on the strengths and weaknesses of the proposal are provided as part of this award. A response to the weaknesses in these statements must be submitted to and approved, in writing, by the Grants Management Specialist/Grants Management Officer (GMS/GMO) noted in the CDC Staff Contacts section of this NoA, no later than 30 days from the budget period start date. Failure to submit the required information by the due date, October 1, 2020, will cause delay in programmatic progress and will adversely affect the future funding of this project.

**Budget Revision Requirement:** By October 1, 2020 the recipient must submit a revised budget with a narrative justification. Failure to submit the required information in a timely manner may adversely affect the future funding of this project. If the information cannot be provided by the due date, you are required to contact the GMS/GMO identified in the CDC Staff Contacts section of this notice before the due date.

**Salaries and Fringe:** All vacant staff positions (Program Research Specialist) must be filled in a timely manner. The recipient must notify CDC upon hiring of these positions. In addition, all personnel providing services including in-kind must be listed in Personnel with % of effort and description of duties. Recipient is advised to submit a GrantSolutions' grant note upon hire with CDC salary requirements. A budget revision is not required.

**Note:** Travel category should be for recipient staff travel only. If non-employee, recipient is to adhere to the agency's travel policy. A budget revision is not required.

**Other Costs:** Incentive payments to volunteers or patients participating in a grant-supported project or program are allowable. Incentive payments to individuals (gift cards) to motivate them to take advantage of grant-supported health care or other services are allowable if within the scope of an approved project. Recipient is to adhere to their internal policies as it relates to incentives and inventory control measures. A budget revision is not required.

**Indirect Costs:** Recipient's Indirect Costs Rate expired 03/31/2020, and recipient must submit a new Indirect Cost Agreement no later than 30 days from the budget period start date, October 1, 2020. Indirect costs should be applied according to the established Indirect Cost Agreement. A budget revision is required.

**Expanded Authority:** The recipient is permitted the following expanded authority in the administration of the award.

- Carryover of unobligated balances from one budget period to a subsequent budget period. Unobligated funds may be used for purposes within the scope of the project as originally approved. Recipients will report use, or intended use, of unobligated funds in Section 12 "Remarks" of the annual Federal Financial Report. If the GMO determines that some or all of the unobligated funds are not necessary to complete the project, the GMO may restrict the recipient's authority to automatically carry over unobligated balances in the future, use the balance to reduce or offset CDC funding for a subsequent budget period, or use a combination of these actions.

Addition alternative: Under this alternative, program income is added to the funds committed to the project/program and is used to further eligible project/program objectives.

Cost sharing or matching alternative: Under this alternative, program income is used to finance some or the entire non-federal share of the project/program.

Note: The disposition of program income must have written prior approval from the GMO.

#### **FUNDING RESTRICTIONS AND LIMITATIONS**

**Notice of Funding Opportunity (NOFO) Restrictions:**

- Recipients may not use funds for research.
- Recipients may not use funds for clinical care except as allowed by law.
- Recipients may use funds only for reasonable program purposes, including personnel, travel, supplies, and services.
- Generally, recipients may not use funds to purchase furniture or equipment. Any such proposed spending must be clearly identified in the budget.
- Reimbursement of pre-award costs generally is not allowed, unless the CDC provides written approval to the recipient.
- Other than for normal and recognized executive-legislative relationships, no funds may be used for:
  - publicity or propaganda purposes, for the preparation, distribution, or use of any material designed to support or defeat the enactment of legislation before any legislative body
  - the salary or expenses of any grant or contract recipient, or agent acting for such recipient, related to any activity designed to influence the enactment of legislation, appropriations, regulation, administrative action, or Executive order proposed or pending before any legislative body
- See Additional Requirement (AR) 12 for detailed guidance on this prohibition and additional guidance on lobbying for CDC awardees.
- The direct and primary recipient in a cooperative agreement program must perform a substantial role in carrying out project outcomes and not merely serve as a conduit for an award to another party or provider who is ineligible
- In accordance with the United States Protecting Life in Global Health Assistance policy, all non-governmental organization (NGO) applicants acknowledge that foreign NGOs that receive funds provided through this award, either as a prime recipient or subrecipient, are strictly prohibited, regardless of the source of funds, from performing abortions as a method of family planning or engaging in any activity that promotes abortion as a method of family planning, or to provide financial support to any other foreign non-governmental organization that conducts such activities. See Additional Requirement (AR) 35 for applicability (<https://www.cdc.gov/grants/additionalrequirements/ar-35.html>).
- Program funds cannot be used for purchasing naloxone, implementing or expanding drug “take back” programs or other drug disposal programs (e.g. drop boxes or disposal bags), purchasing fentanyl test strips, or directly funding or expanding direct provision of substance abuse treatment programs. Such activities are outside the scope of this NOFO

**Recipient’s Indirect Costs Rate expired 03/31/2020, and recipient must submit a new Indirect Cost Agreement no later than no later than 30 days from the budget period start date, October 1, 2020. Indirect costs should be applied according to the established Indirect Cost Agreement.**

## **REPORTING REQUIREMENTS**

### **Required Disclosures for Federal Awardee Performance and Integrity Information System**

**(FAPIIS):** Consistent with 45 CFR 75.113, applicants and recipients must disclose in a timely manner, in writing to the CDC, with a copy to the HHS Office of Inspector General (OIG), all information related to violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the federal award. Subrecipients must disclose, in a timely manner in writing to the prime recipient (pass through entity) and the HHS OIG, all information related to violations of federal criminal law involving fraud, bribery, or gratuity violations potentially affecting the federal award. Disclosures must be sent in writing to the CDC and to the HHS OIG at the following addresses:

CDC, Office of Grants Services  
 Darryl V. Mitchell, Grants Management Specialist  
 Centers for Disease Control and Prevention  
 OD, Environmental, Occupational Health & Injury Prevention Services Branch  
 2939 Flowers Rd  
 Atlanta, GA 30341  
 Email: [dvm1@cdc.gov](mailto:dvm1@cdc.gov) (Include “Mandatory Grant Disclosures” in subject line)

AND

U.S. Department of Health and Human Services  
Office of the Inspector General  
ATTN: Mandatory Grant Disclosures, Intake Coordinator  
330 Independence Avenue, SW  
Cohen Building, Room 5527  
Washington, DC 20201

Fax: (202)-205-0604 (Include "Mandatory Grant Disclosures" in subject line) or  
Email: [MandatoryGranteeDisclosures@oig.hhs.gov](mailto:MandatoryGranteeDisclosures@oig.hhs.gov)

Recipients must include this mandatory disclosure requirement in all subawards and contracts under this award.

Failure to make required disclosures can result in any of the remedies described in 45 CFR 75.371. Remedies for noncompliance, including suspension or debarment (See 2 CFR parts 180 and 376, and 31 U.S.C. 3321).

CDC is required to report any termination of a federal award prior to the end of the period of performance due to material failure to comply with the terms and conditions of this award in the OMB-designated integrity and performance system accessible through SAM (currently FAPIIS). (45 CFR 75.372(b)) CDC must also notify the recipient if the federal award is terminated for failure to comply with the federal statutes, regulations, or terms and conditions of the federal award. (45 CFR 75.373(b))

#### **PAYMENT INFORMATION**

*The HHS Office of the Inspector General (OIG) maintains a toll-free number (1-800-HHS-TIPS [1-800-447-8477]) for receiving information concerning fraud, waste, or abuse under grants and cooperative agreements. Information also may be submitted by e-mail to [hhstips@oig.hhs.gov](mailto:hhstips@oig.hhs.gov) or by mail to Office of the Inspector General, Department of Health and Human Services, Attn: HOTLINE, 330 Independence Ave., SW, Washington DC 20201. Such reports are treated as sensitive material and submitters may decline to give their names if they choose to remain anonymous.*

**Payment Management System Subaccount:** Funds awarded in support of approved activities have been obligated in a subaccount in the PMS, herein identified as the "P Account". Funds must be used in support of approved activities in the NOFO and the approved application.

#### **CDC Staff Contacts**

**Grants Management Specialist:** The GMS is the federal staff member responsible for the day-to-day management of grants and cooperative agreements. The GMS is the primary contact of recipients for business and administrative matters pertinent to grant awards.

CDC, Office of Grants Services  
Darryl V. Mitchell, Grants Management Specialist  
Centers for Disease Control and Prevention  
OD, Environmental, Occupational Health & Injury Prevention Services Branch  
2939 Flowers Rd  
Atlanta, GA 30341  
Email: [dvm1@cdc.gov](mailto:dvm1@cdc.gov)

**Program/Project Officer:** The PO is the federal official responsible for monitoring the programmatic, scientific, and/or technical aspects of grants and cooperative agreements, as well as contributing to the effort of the award under cooperative agreements.

**Programmatic Contact:**

Rachael B. Georgetown, MBA  
Centers for Disease Control and Prevention  
National Center for Injury Prevention & Control  
4770 Buford Hwy S106-9  
Chamblee GA 30341  
Email: [vdy8@cdc.gov](mailto:vdy8@cdc.gov)  
Telephone: 770-488-1376

**Grants Management Officer:** The GMO is the federal official responsible for the business and other non-programmatic aspects of grant awards. The GMO is the only official authorized to obligate federal funds and is responsible for signing the NoA, including revisions to the NoA that change the terms and conditions. The GMO serves as the counterpart to the business officer of the recipient organization. GMO contact information is located on Page 1 of this NOA.

**GMO Contact:**

Valencia Williams, Grants Management Officer  
Centers for Disease Control and Prevention  
Branch 5 Supporting Chronic Diseases and Injury Preventionh  
2939 Flowers Rd  
Atlanta, GA 30341  
Telephone: 404-498-3260  
Email: [yvr1@cdc.gov](mailto:yvr1@cdc.gov)

**Attachment A**  
**General Terms and Conditions - Health Research Incorporated Contracts**

1. **Term** - This Agreement shall be effective and allowable costs may be incurred by the Contractor from the Contract Start Date through the Contract End Date, (hereinafter, the "Term") unless terminated sooner as hereinafter provided or extended by mutual agreement of the parties.
2. **Allowable Costs/Contract Amount –**
  - a) In consideration of the Contractor's performance under this Agreement, HRI shall reimburse the Contractor for allowable costs incurred in performing the Scope of Work, which is attached hereto as Exhibit A, in accordance with the terms and subject to the limits of this Agreement.
  - b) It is expressly understood and agreed that the aggregate of all allowable costs under the Agreement shall in no event exceed the Total Contract Amount, except upon formal amendment of this Agreement as provided herein below.
  - c) The allowable cost of performing the work under this Agreement shall be the costs approved in the Budget attached hereto as Exhibit B and actually incurred by the Contractor, either directly incident or properly allocable, to the Agreement, in the performance of the Scope of Work. For work performed under a Scope of Work that results from a federally funded grant or contract, Contractor's costs must be in accordance with cost principles of the Department of Health and Human Services Grants Policy Statement (HHS GPS). To be allowable, a cost must be reasonable, necessary, and cost-effective (as reasonably determined by HRI). In calculating costs, the accounting practices of Contractor must be based on generally accepted accounting principles and practices appropriate to the circumstances and consistent with other comparable activities of Contractor. Costs resulting from inconsistent practices in excess of the amount that would have resulted from using practices consistent with this Section 2(c) are unallowable. Contractor shall supply documentation of such policies and procedures to HRI when requested.
  - d) Irrespective of whether the "Audit Requirements" specified in paragraph 3(a) are applicable to this Agreement, all accounts and records of cost relating to this Agreement shall be subject to audit by HRI or its duly authorized representative(s) and/or the Project Sponsor during the Term and for three years after the final voucher is submitted for payment. This provision includes the right for HRI to request copies of source documentation in support of any costs claimed. If an audit is started before the expiration of the 3-year period, the records must be retained until all findings involving the records have been resolved and final action taken. Any reimbursement made by HRI under this Agreement shall be subject to retroactive correction and adjustment upon such audits. The Contractor agrees to repay HRI promptly any amount(s) determined on audit to have been incorrectly paid. HRI retains the right, to the extent not prohibited by law or its agreements with the applicable Project Sponsor(s) to recoup any amounts required to be repaid by the Contractor to HRI by offsetting those amounts against amounts due to the Contractor from HRI pursuant to this or other agreements. The Contractor shall maintain appropriate and complete accounts, records, documents, and other evidence showing the support for all costs incurred under this Agreement.
3. **Administrative, Financial and Audit Regulations –**
  - a) This Agreement shall be audited, administered, and allowable costs shall be determined in accordance with the terms of this Agreement and the requirements and principles applicable to the Contractor as noted below, including, but not limited to, the Office of Management and Budget (OMB) Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (referred to herein as the "Uniform Guidance") as codified in Title 2 of the Code of Federal Regulations. The federal regulations specified below apply to the Contractor (excepting the "Audit Requirements," which apply to federally- funded projects only), regardless of the source of the funding specified (federal/non-federal) on the face page of this Agreement. For non-federally funded projects any right granted by the regulation to the federal sponsor shall be deemed granted to the Project Sponsor. It is understood that a Project Sponsor may impose restrictions/requirements beyond those noted below in which case such restrictions/requirements will be noted in Attachment B Program Specific Clauses.

<b>Contractor Type</b>	<b>Administrative Requirements</b>	<b>Cost Principles</b>	<b>Audit Requirements Federally Funded Only</b>
College or University	Uniform Guidance	Uniform Guidance	Uniform Guidance
Not-for-Profit	Uniform Guidance	Uniform Guidance	Uniform Guidance
State, Local Gov. or Indian Tribe	Uniform Guidance	Uniform Guidance	Uniform Guidance
For-Profit	45 CFR Part 74	48 CFR Part 31.2	Uniform Guidance
Hospitals	2 CFR Part 215	45 CFR Part 74	Uniform Guidance

- b) If this Agreement is federally funded, the Contractor will provide copies of audit reports required under any of the above audit requirements to HRI within 30 days after completion of the audit.

#### 4. Payments -

- a) No payments will be made by HRI until such time as HRI is in receipt of the following items:
- Insurance Certificates pursuant to Article 9;
  - A copy of the Contractor's latest audited financial statements (including management letter if requested);
  - A copy of the Contractor's most recent 990 or Corporate Tax Return;
  - A copy of the Contractor's approved federal indirect cost rate(s) and fringe benefit rate (the "federal rates"); or documentation (which is acceptable to HRI) which shows the Contractor's methodology for allocating these costs to this Agreement. If, at any time during the Term the federal rates are lower than those approved for this Agreement, the rates applicable to this Agreement will be reduced to the federal rates;
  - A copy of the Contractor's time and effort reporting system procedures (which are compliant with the Uniform Guidance) if salaries and wages are approved in the Budget.
  - A copy of equipment policy if equipment is in the approved budget.
  - Further documentation as requested by HRI to establish the Contractor's fiscal and programmatic capability to perform under this Agreement.

Unless and until the above items are submitted to and accepted by HRI, the Contractor will incur otherwise allowable costs at its own risk and without agreement that such costs will be reimbursed by HRI pursuant to the terms of this Agreement. No payments, which would otherwise be due under this Agreement, will be due by HRI until such time, if ever, as the above items are submitted to and accepted by HRI.

- b) The Contractor shall submit voucher claims and reports of expenditures at the Required Voucher Frequency noted on the face page of this Agreement, in such form and manner, as HRI shall require. HRI will reimburse Contractor upon receipt of expense vouchers pursuant to the Budget in Exhibit B, so long as Contractor has adhered to all the terms of this Agreement and provided the reimbursement is not disallowed or disallowable under the terms of this Agreement. All information required on the voucher must be provided or HRI may pay or disallow the costs at its discretion. HRI reserves the right to request additional back up documentation on any voucher submitted. Further, all vouchers must be received within thirty (30) days of the end of each period defined as the Required Voucher Frequency (i.e. each month, each quarter). Contractor shall submit a final voucher designated by the Contractor as the "Completion Voucher" no later than sixty (60) days from termination of the Agreement. Vouchers received after the 60 day period may be paid or disallowed at the discretion of HRI.
- c) The Contractor agrees that if it shall receive or accrue any refunds, rebates, credits or other amounts (including any interest thereon) that relate to costs for which the Contractor has been reimbursed by HRI under this Agreement it shall notify HRI of that fact and shall pay or, where appropriate, credit HRI those amounts.
- d) The Contractor represents, warrants and certifies that reimbursement claimed by the Contractor under this Agreement shall not duplicate reimbursement received from other sources, including, but not limited to client fees, private insurance, public donations, grants, legislative funding from units of government, or any other source. The terms of this paragraph shall be deemed continuing representations upon which HRI has relied in entering into and which are the essences of its agreements herein.

5. **Termination** - Either party may terminate this Agreement with or without cause at any time by giving thirty (30) days written notice to the other party. HRI may terminate this Agreement immediately upon written notice to the Contractor in the event of a material breach of this Agreement by the Contractor. It is understood and agreed, however, that in the event that Contractor is in default upon any of its obligations hereunder at the time of any termination, such right of termination shall be in addition to any other rights or remedies which HRI may have against Contractor by reason of such default. Upon termination of the Agreement by either party for any reason, Contractor shall immediately turn over to HRI any works in progress, materials, and deliverables (whether completed or not) related to the services performed up to the date of termination.

#### 6. Representations and Warranties – Contractor represents and warrants that:

- a) it has the full right and authority to enter into and perform under this Agreement;
- b) it will perform the services set forth in Exhibit A in a workmanlike manner consistent with applicable industry practices;
- c) the services, work products, and deliverables provided by Contractor will conform to the specifications in Exhibit A;
- d) there is no pending or threatened claim or litigation that would have a material adverse impact on its ability to perform as required by this Agreement.

7. **Indemnity** - To the fullest extent permitted by law, Contractor shall indemnify, hold harmless and defend HRI, its agents, employees, officers, board members, the New York State Department of Health, and the People of the State of New York against all claims, damages, losses or expenses including but not limited to attorneys' fees arising out of or resulting from the performance of the agreement, provided any such claim, damage, loss or expense arises out of, or in connection with, any act or omission by Contractor, or anyone directly or indirectly employed or contracted by Contractor, in the performance of services under this Agreement, and such acts or omissions (i) constitute negligence, willful misconduct, or fraud; (ii) are attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including loss of use resulting therefrom; (iii) cause the breach of any confidentiality obligations set forth herein; (iv) relate to any claim for compensation and payment by any employee or agent of Contractor; (v) result in intellectual property infringement or misappropriation by Contractor, its employees, agents, or subcontractors; or (vi) are violations of regulatory or statutory provisions of the New York State Labor Law, OSHA or other governing rule or applicable law. The obligation of the Contractor to indemnify any party under this paragraph shall not be limited in any manner by any limitation of the amount of insurance coverage or benefits including workers' compensation or other employee benefit acts provided by the Contractor. In all subcontracts entered into by the Contractor related to performance under this Agreement, the Contractor will include a provision requiring the subcontractor to provide the same indemnity and hold harmless to the indemnified parties specified in this paragraph.

8. **Amendments/Budget Changes –**

- a) This Agreement may be changed, amended, modified or extended only by mutual consent of the parties provided that such consent shall be in writing and executed by the parties hereto prior to the time such change shall take effect, with the exception of changes and amendments that are made mandatory by the Project Sponsor under the sponsoring grant/contract, which will take effect in accordance with the Project Sponsor's requirements and schedule.
- b) In no event shall there be expenses charged to a restricted budget category without prior written consent of HRI.
- c) The Budget Flexibility Percentage indicates the percent change allowable in each category of the Budget, with the exception of a restricted budget category. As with any desired change to this Agreement, budget category deviations exceeding the Budget Flexibility Percentage in any category of the Budget are not permitted unless approved in writing by HRI. In no way shall the Budget Flexibility Percentage be construed to allow the Contractor to exceed the Total Contract Amount less the restricted budget line, nor shall it be construed to permit charging of any unallowable expense to any budget category. An otherwise allowable charge is disallowed if the charge amount plus any Budget Flexibility Percentage exceeds the amount of the budget category for that cost.

9. **Insurance –**

- a) The Contractor shall maintain or cause to be maintained, throughout the Term, insurance or self-insurance equivalents of the types and in the amounts specified in section b) below. Certificates of Insurance shall evidence all such insurance. It is expressly understood that the coverage's and limits referred to herein shall not in any way limit the liability of the Contractor. The Contractor shall include a provision in all subcontracts requiring the subcontractor to maintain the same types and amounts of insurance specified in b) below.
- b) The Contractor shall purchase and maintain at a minimum the following types of insurance coverage and limits of liability:
  - 1) Commercial General Liability (CGL) with limits of insurance of not less than \$1,000,000 each Occurrence and \$2,000,000 Annual Aggregate. If the CGL coverage contains a General Aggregate Limit, such General Aggregate shall apply separately to each project. HRI and the People of the State of New York shall be included as Additional Insureds on the Contractor's CGL, using ISO Additional Insured Endorsement CG 20 10 11 85 or an endorsement providing equivalent coverage to the Additional Insureds. The CGL insurance for the Additional Insureds shall be as broad as the coverage provided for the Named Insured Contractor. It shall apply as primary and non-contributing insurance before any insurance maintained by the Additional Insureds.
  - 2) Business Automobile Liability (AL) with limits of insurance of not less than \$1,000,000 each accident. AL coverage must include coverage for liability arising out of all owned, leased, hired and non-owned automobiles.
  - 3) Workers Compensation (WC) & Employers Liability (EL) with limits of insurance of not less than \$100,000 each accident for bodily injury by accident and \$100,000 each employee for injury by disease.
  - 4) If specified by HRI, Professional Liability Insurance with limits of liability of \$1,000,000 each occurrence and \$3,000,000 aggregate.
- c) Provide that such policy may not be canceled or modified until at least 30 days after receipt by HRI of written notice thereof; and



- d) Be reasonably satisfactory to HRI in all other respects.

#### 10. Publications and Conferences –

- a) All written materials, publications, journal articles, audio-visuals that are either presentations of, or products of the Scope of Work which are authorized for publication or public dissemination, subject to the confidentiality restrictions herein, will acknowledge HRI, the New York State Department of Health (DOH) and the Project Sponsor and will specifically reference the Sponsor Reference Number as the contract/grant funding the work with a disclaimer, as appropriate, such as: “The content of this publication (journal article, etc.) is solely the responsibility of the authors and does not necessarily represent the official views of HRI or the Project Sponsor. This requirement shall be in addition to any publication requirements or provisions specified in Attachment B – Program Specific Clauses.
- b) Conference Disclaimer: Where a conference is funded by a grant, cooperative agreement, sub-grant and/or a contract the recipient must include the following statement on conference materials, including promotional materials, agenda, and Internet sites, “Funding for this conference was made possible (in part) by the <insert Project Sponsor name>. The views expressed in written conference materials or publications and by speakers and moderators do not necessarily reflect the official policies of HRI, NYS Department of Health or the Project Sponsor, nor does mention of trade names, commercial practices, or organizations imply endorsement by the U.S. Government.”

Use of Logos: In order to avoid confusion as to the conference source or a false appearance of Government, HRI or DOH endorsement, the Project Sponsor, HRI and/or DOH's logos may not be used on conference materials without the advance, express written consent of the Project Sponsor, HRI and/or DOH.

#### 11. Title -

- a) Unless noted otherwise in an attachment to this Agreement, title to all equipment purchased by the Contractor with funds from this Agreement will remain with Contractor. Notwithstanding the foregoing, at any point during the Term or within 180 days after the expiration of the Term, HRI may require, upon written notice to the Contractor, that the Contractor transfer title to some or all of such equipment to HRI. The Contractor agrees to expeditiously take all required actions to effect such transfer of title to HRI when so requested. In addition to any requirements or limitations imposed upon the Contractor pursuant to paragraph 3 hereof, during the Term and for the 180 day period after expiration of the Term, the Contractor shall not transfer, convey, sublet, hire, lien, grant a security interest in, encumber or dispose of any such equipment. The provisions of this paragraph shall survive the termination of this Agreement.
- b) Contractor acknowledges and agrees that all work products, deliverables, designs, writings, inventions, discoveries, and related materials (collectively, “Works”) made, produced or delivered by Contractor in the performance of its obligations hereunder will be owned exclusively by HRI. All copyrightable Works are “works made for hire”, which are owned by HRI. Contractor will assign, and hereby assigns and transfers to HRI, all intellectual property rights in and to Works, including without limitation, copyrights, patent rights, trademark rights, and trade secret rights. The Contractor shall take all steps necessary to effect the transfer of the rights granted in this paragraph to HRI. As set forth in paragraph 18(d) herein, Standard Patent Rights Clauses under the Bayh-Dole Act (37 C.F.R. 401) are hereby incorporated by reference and shall supersede any terms in this Agreement that may conflict therewith. The provisions of this paragraph shall survive the termination of this Agreement.

**12. Confidentiality** - Information relating to individuals who may receive services pursuant to this Agreement shall be maintained and used only for the purposes intended under the Agreement and in conformity with applicable provisions of laws and regulations or specified in Attachment B, Program Specific Clauses. Contractor acknowledges and agrees that, during the course of performing services under this Agreement, it may receive information of a confidential nature, whether marked or unmarked, (“Confidential Information”). Contractor agrees to protect such Confidential Information with the same degree of care it uses to protect its own confidential information of a similar nature and importance, but with no less than reasonable care. Contractor will not use Confidential Information for any purpose other than to facilitate the provision of services under this Agreement, and Contractor will not disclose Confidential Information in an unauthorized manner to any third party without HRI's advance written consent.

**13. Equal Opportunity and Non-Discrimination** - Contractor acknowledges and agrees, whether or not required by Article 15 of the New York State Executive Law (also known as the Human Rights Law) or any other State or Federal statutory or constitutional non-discrimination provisions, that Contractor will not discriminate against any employee or applicant for employment because of race, color, creed, religion, sex, sexual orientation, gender identity, national origin, age, disability, pregnancy-related condition, military or veteran status, genetic predisposition or carrier status, marital or familial status, domestic violence victim status, individual's relationship or association with a member of a protected category or any other basis protected by applicable state and federal law. Furthermore, Contractor agrees that neither it nor its authorized subcontractors, if any, shall, by reason of race, color, creed, religion, sex, sexual orientation, gender identity, national origin, age, disability, pregnancy-related condition, military or veteran status, genetic predisposition or carrier status, marital or

familiar status, domestic violence victim status, individual's relationship or association with a member of a protected category or any other basis protected by applicable state and federal law: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this Agreement. Contractor is subject to fines of \$50.00 per person per day for any violation of this provision, or of Section 220-e or Section 239 of the New York State Labor Law, as well as possible termination of this Agreement and forfeiture of all moneys due hereunder for a second or subsequent violation.

**14. Use of Names** - Unless otherwise specifically provided for in Attachment B, Program Specific Clauses, and excepting the acknowledgment of sponsorship of this work as required in paragraph 10 hereof (Publications), the Contractor will not use the names of Health Research, Inc. the New York State Department of Health, the State of New York or any employees or officials of these entities without the express written approval of HRI.

**15. Site Visits and Reporting Requirements -**

- a) Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance of the services under this Agreement (collectively, "Records"). The Records must be kept for three years after the final voucher is paid.
- b) HRI and the Project Sponsor or their designee(s) shall have the right to conduct site visits where services are performed and observe the services being performed by the Contractor and any subcontractor and inspect Records. The Contractor shall render all assistance and cooperation to HRI and the Project Sponsor in connection with such visits. The surveyors shall have the authority, to the extent designated by HRI, for determining contract compliance as well as the quality of services being provided.
- c) The Contractor agrees to provide the HRI Project Director, or his or her designee complete reports, including but not limited to, narrative and statistical reports relating to the project's activities and progress at the Reporting Frequency specified in Exhibit C. The format of such reports will be determined by the HRI Project Director and conveyed in writing to the Contractor.

**16. Miscellaneous –**

- a) Contractor and any subcontractors are independent contractors, not partners, joint venturers, or agents of HRI, the New York State Department of Health or the Project Sponsor; nor are the Contractor's or subcontractor's employees considered employees of HRI, the New York State Department of Health or the Project Sponsor for any reason. Contractor shall pay employee compensation, fringe benefits, disability benefits, workers compensation and/or withholding and other applicable taxes (collectively the "Employers Obligations") when due. The contractor shall include in all subcontracts a provisions requiring the subcontractor to pay its Employer Obligations when due. Contractor is fully responsible for the performance of any independent contractors or subcontractors.
- b) This Agreement may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet, subjected to any security interest or encumbrance of any type, or disposed of without the previous consent, in writing, of HRI.
- c) This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns.
- d) Contractor shall have no interest, financial or otherwise, direct or indirect, or engage in any business, transaction, or professional activity, that may create a conflict, or the appearance of a conflict, with the proper discharge of Contractor's duties under this Agreement or the conflict of interest policy of any agency providing federal funding under this Agreement. In the event any actual or potential conflict arises, Contractor agrees to notify HRI in writing within ten (10) days to allow HRI to evaluate any potential or actual conflict. Contractor certifies that it has implemented and is in compliance with a financial conflict of interest policy that complies with 42 CFR Part 50 Subpart F, as may be amended from time to time. Contractor acknowledges that it cannot engage in any work or receive funding from HRI until they have disclosed all financial conflicts of interest and identified an acceptable management strategy to HRI. At HRI's request, Contractor will provide information about how it identified, managed, reduced or eliminated conflicts of interest. Failure to disclose such conflicts or to provide information to HRI may be cause for termination as specified in the Terms & Conditions of this Agreement. HRI shall provide Contractor with a copy of notifications sent to the funding agency under this Agreement.
- e) Regardless of the place of physical execution or performance, this Agreement shall be construed according to the laws of the State of New York and shall be deemed to have been executed in the State of New York. Any action to enforce, arising out of or relating in any way to any of the provisions of this Agreement may only be brought and prosecuted in such court or courts located in the State of New York as provided by law; and the parties' consent to the jurisdiction of said court or courts located in the State of New York and to venue in and for the County of Albany to the exclusion of all other court(s) and to service of process by certified or registered mail, postage prepaid, return

receipt requested, or by any other manner provided by law. The provisions of this paragraph shall survive the termination of this Agreement.

- f) All official notices to any party relating to material terms hereunder shall be in writing, signed by the party giving it, and shall be sufficiently given or served only if sent by registered mail, return receipt requested, addressed to the parties at their addresses indicated on the face page of this Agreement.
- g) If any provision of this Agreement or any provision of any document, attachment or Exhibit attached hereto or incorporated herein by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement but this Agreement shall be reformed and construed as if such invalid provision had never been contained herein and such provision reformed so that it would be valid, operative and enforceable to the maximum extent permitted.
- h) The failure of HRI to assert a right hereunder or to insist upon compliance with any term or condition of this Agreement shall not constitute a waiver of that right by HRI or excuse a similar subsequent failure to perform any such term or condition by Contractor.
- i) It is understood that the functions to be performed by the Contractor pursuant to this Agreement are non-sectarian in nature. The Contractor agrees that the functions shall be performed in a manner that does not discriminate on the basis of religious belief and that neither promotes nor discourages adherence to particular religious beliefs or to religion in general.
- j) In the performance of the work authorized pursuant to this Agreement, Contractor agrees to comply with all applicable project sponsor, federal, state and municipal laws, rules, ordinances, regulations, guidelines, and requirements governing or affecting the performance under this Agreement in addition to those specifically included in the Agreement and its incorporated Exhibits and Attachments.
- k) This Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Delivery of an executed signature page to the Agreement by facsimile transmission or PDF shall be as effective as delivery of a manually signed counterpart.
- l) The following pertains only to Contractors located in New York City or doing business in New York City: Contractor agrees it is compliant with NYC Local Law 96 (2018) Stop Sexual Harassment in NYC Act.

#### **17. Federal Regulations/Requirements Applicable to All HRI Agreements -**

The following are federal regulations, which apply to all Agreements; regardless of the source of the funding (federal/non-federal) specified on the face page of this Agreement. Accordingly, regardless of the funding source, the Contractor agrees to abide by the following:

- a) **Human Subjects, Derived Materials or Data** - If human subjects are used in the conduct of the work supported by this Agreement, the Contractor agrees to comply with the applicable federal laws, regulations, and policy statements issued by DHHS in effect at the time the work is conducted, including by not limited to Section 474(a) of the HHS Act, implemented by 45 CFR Part 46 as amended or updated. The Contractor further agrees to complete an OMB No. 0990-0263 form on an annual basis.
- b) **Laboratory Animals** - If vertebrate animals are used in the conduct of the work supported by this Agreement, the Contractor shall comply with the Laboratory Animal Welfare Act of 1966, as amended (7 USC 2131 et. seq.) and the regulations promulgated thereunder by the Secretary of Agriculture pertaining to the care, handling and treatment of vertebrate animals held or used in research supported by Federal funds. The Contractor will comply with the *HHS Policy on Humane Care and Use of Laboratory Animals by Awardee Institutions* and the *U.S. Government Principles for the Utilization and Care of Vertebrate Animals Used in Testing, Research and Training*.
- c) **Research Involving Recombinant DNA Molecules** - The Contractor and its respective principle investigators or research administrators must comply with the most recent *Public Health Service Guidelines for Research Involving Recombinant DNA Molecules* published at Federal Register 46266 or such later revision of those guidelines as may be published in the Federal Register as well as current *NIH Guidelines for Research Involving Recombinant DNA Molecules*.
- d) Contractor is required to register with SAM.gov and maintain active status as stated in 2 CFR Subtitle A, Chapter 1, and Part 25. Contractor must maintain the accuracy/currency of the information in SAM at all times during which the Contractor has an active agreement with HRI. Additionally, the Contractor is required to review and update the information at least annually after the initial registration, and more frequently if required by changes in information.
- e) Equal Employment Opportunity – for all agreements

This contractor and subcontractor shall abide by the requirements of 41 CFR 60-1.4(a) which is hereby incorporated herein.

**This contractor and subcontractor shall abide by the requirements of 41 CFR 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.**

**This contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a). This regulation prohibits discrimination against qualified protected veterans, and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified protected veterans.**

f) National Labor Relations Act (Executive Order 13496)

Contractors that are not exempt from the National Labor Relations Act and have contracts, subcontracts or purchase orders subject to EO 13496 must satisfy the requirements of that Executive Order and its implementing regulations at 29 CFR Part 471 to be in compliance with the law.

**18. Federal Regulations/Requirements Applicable to Federally Funded Agreements through HRI -**

The following clauses are applicable only for Agreements that are specified as federally funded on the Agreement face page:

- a) If the Project Sponsor is an agency of the Department of Health and Human Services: The Contractor must be in compliance with the following Department of Health and Human Services and Public Health Service regulations implementing the statutes referenced below and assures that, where applicable, it has a valid assurance (HHS-690) concerning the following on file with the Office of Civil Rights, Office of the Secretary, HHS.
- 1) Title VI of the Civil Rights Act of 1964 as implemented in 45 CFR Part 80.
  - 2) Section 504 of the Rehabilitation Act of 1973, as amended, as implemented by 45 CFR Part 84.
  - 3) The Age Discrimination Act of 1975 (P.L. 94-135) as amended, as implemented by 45 CFR 1.
  - 4) Title IX of the Education Amendments of 1972, in particular section 901 as implemented at 45 CFR Part 86 (elimination of sex discrimination).
  - 5) Sections 522 and 526 of the HHS Act as amended, implemented at 45 CFR Part 84 (non-discrimination for drug/alcohol abusers in admission or treatment).
  - 6) Section 543 of the HHS Act as amended as implemented at 42 CFR Part 2 (confidentiality of records of substance abuse patients).
  - 7) Trafficking in Persons – subject to the requirement of Section 106 (g) of the Trafficking Victims Protection Act of 2000, as amended (22 U.S.C. 7104).
  - 8) HHS regulatory requirements on Responsibility of Applicants for Promoting Objectivity in Research and financial conflicts of interest set forth in 42 C.F.R Parts 50 and 94.
  - 9) Contractor agrees to comply with other requirements of the Project Sponsor, if applicable, set forth in the HHS Grants Policy Statement.
- b) Notice as Required Under Public Law 103-333: If the Project Sponsor is an agency of the Department of Health and Human Services, the Contractor is hereby notified of the following statement made by the Congress at Section 507(a) of Public Law 103-333 (The DHHS Appropriations Act, 1995, hereinafter the "Act"): It is the sense of the Congress that, to the greatest extent practicable, all equipment and products purchased with funds made available in this Act should be American-made.
- c) Contractor agrees that if the Project Sponsor is other than an agency of the DHHS, items 1, 2, 3 and 4 in subsection a) above shall be complied with as implemented by the Project Sponsor.
- d) Contractor agrees that the Standard Patent Rights Clauses under the Bayh-Dole Act (37 C.F.R 401) are hereby incorporated by reference and shall supersede any terms in this Agreement that may conflict therewith.
- e) Criminal Penalties for Acts Involving Federal Health Care Programs\_- Recipients and sub-recipients of Federal funds are subject to the strictures of 42 U.S.C. 1320A-7B(b)) and should be cognizant of the risk of criminal and administrative liability under this statute, including for making false statements and representations and illegal remunerations.
- f) Equipment and Products - To the greatest extent practicable, all equipment and products purchased with federal funds should be American-made.

- g) Acknowledgment of Federal Support – When issuing statements, press releases, requests for proposals, bid solicitations and other documents describing projects or programs funded in whole or in part by federal money, all awardees receiving Federal funds, including and not limited to State and local governments and recipients of Federal research grants, shall clearly state (1) the percentage of the total costs of the program or project which will be financed with Federal money, (2) the dollar amount of Federal funds for the project or program, and (3) percentage and dollar amount of the total costs of the project or program that will be financed by nongovernmental sources.
- h) Recipients and sub-recipients of Federal funds are subject to the strictures of the Medicare and Medicaid anti-kickback statute (42 U.S.C. 1320a-7b (b) and should be cognizant of the risk of criminal and administrative liability under this statute, specifically under 42 U.S.C. 1320 7b(b) illegal remunerations which states, in part, that whoever knowingly and willfully: (A) Solicits or receives (or offers or pays) any remuneration (including kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind, in return for referring (or to induce such person to refer) and individual to a person for the furnishing or arranging for the furnishing of any item or service, OR (B) in return for purchasing, leasing, ordering, or recommending purchasing, leasing, or ordering, or to purchase, lease, or order, any goods, facility, services, or item for which payment may be made in whole or in part under subchapter XIII of this chapter or a State health care program, shall be guilty of a felony and upon conviction thereof, shall be fined not more than \$25,000 or imprisoned for not more than five years or both.
- i) Clean Air Act and the Federal Water Pollution Control Act Compliance - If this contract is in excess of \$150,000, Contractor agrees to comply and to require that all subcontractors have complied, where applicable, with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. § 7401-7671q.) and the Federal Water Pollution Control Act as amended (33 U.S.C. §1251-1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).
- j) Americans With Disabilities Act - This agreement is subject to the provisions of Subtitle A of Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. 12132 ("ADA") and regulations promulgated pursuant thereto, see 28 CFR Part 35. The Contractor shall not discriminate against an individual with a disability, as defined in the ADA, in providing services, programs or activities pursuant to this Agreement.
- k) Whistleblower Policy: Congress has enacted whistleblower protection statute 41 U.S.C. 4712, which applies to all employees working for contractors, grantees, subcontractors, and subgrantees on federal grants and contracts. This program requires all grantees, subgrantees and subcontractors to: inform their employees working on any federally funded award they are subject to the whistleblower rights and remedies of the program; inform their employee in writing of employee whistleblower protections under 41 U.S.C. 4712 in the predominant native language of the workforce; and Contractors and grantees will include such requirements in any agreement made with a subcontractor or subgrantee.

The statute (41 U.S.C. 4712) states that an "employee of a contractor, subcontractor, grantee [or subgrantee] may not be discharged, demoted, or otherwise discriminated against as a reprisal for "whistleblowing". In addition, whistleblower protections cannot be waived by any agreement, policy, form, or condition of employment.

Whistleblowing is defined as making a disclosure "that the employee reasonably believes is evidence of any of the following: gross mismanagement of a federal contract or grant; a gross waste of federal funds; an abuse of authority relating to a federal contract or grant; a substantial and specific danger to public health or safety; or a violation of law, rule, or regulation related to a federal contract or grant (including the competition for, or negotiation of, a contract or grant). To qualify under the statute, the employee's disclosure must be made to: a Member of Congress or a representative of a Congressional committee; or an Inspector General; or the Government Accountability Office; or a Federal employee responsible for contract or grant oversight or management at the relevant agency; or an authorized official of the Department of Justice or other law enforcement agency; or a court or grand jury; a management official or other employee of the contractor, subcontractor, grantee or subgrantee who has the responsibility to investigate, discover or address misconduct.

## 19. Required Federal Certifications –

Acceptance of this Agreement by Contractor constitutes certification by the Contractor of all of the following:

- a) The Contractor is not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any Federal department or agency.
- b) The Contractor is not delinquent on any Federal debt.

- c) Byrd Anti-Lobbying Amendment (31 U.S.C. § 1352) – Contracts for \$100,000 or more must file the required certifications. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. § 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.
- d) The Contractor shall comply with the requirements of the Pro-Children Act of 1994 and shall not allow smoking within any portion of any indoor facility used for the provision of health, day care, early childhood development, education or library services to children under the age of eighteen (18) if the services are funded by a federal program, as this Agreement is, or if the services are provided in indoor facilities that are constructed, operated or maintained with such federal funds.
- e) The Contractor has established administrative policies regarding Scientific Misconduct as required by the Final Rule 42 CFR Part 93, Subpart A as published at the 54 Federal Register 32446, August 8, 1989.
- f) The Contractor maintains a drug free workplace in compliance with the Drug Free Workplace Act of 1988 as implemented in 45 CFR Part 76.
- g) If the Project Sponsor is either an agency of the Public Health Service or the National Science Foundation, the Contractor is in compliance with the rules governing Objectivity in Research as published in 60 Federal Register July 11, 1995.
- h) Compliance with EO13513, Federal Leadership on Reducing Text Messaging while Driving, October 1, 2009. Recipients and sub recipients of CDC grant funds are prohibited both from texting while driving a Government owned vehicle and/or using Government furnished electronic equipment while driving any vehicle. Grant recipients and sub recipients are responsible for ensuring their employees are aware of this prohibition and adhere to this prohibition.
- i) EO 13166, August 11, 2000, requires recipients receiving Federal financial assistance to take steps to ensure that people with limited English proficiency can meaningfully access health and social services. A program of language assistance should provide for effective communication between the service provider and the person with limited English proficiency to facilitate participation in, and meaningful access to, services. The obligations of recipients are explained on the OCR website at <http://www.hhs.gov/sites/default/files/ocr/civilrights/resources/specialtopics/lep/lepguidance.pdf>.
- j) Equal Employment Opportunity, requires compliance with E.O. 13672 "Further Amendments to Executive Order 11478, Equal Employment Opportunity in the Federal Government, and Executive Order 11246, "Equal Employment Opportunity", and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

The Contractor shall require that the language of all of the above certifications will be included in the award documents for all subawards under this Agreement (including subcontracts, subgrants, and contracts under grants, loans and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. The Contractor agrees to notify HRI immediately if there is a change in its status relating to any of the above certifications.

## Attachment "B" Program Specific Clauses

1. The following replaces the last sentence in Attachment A, Paragraph 4 b). Payments. "Contractor shall submit a final voucher designated by the Contractor as the "Completion Voucher" no later than Thirty (30) days from termination of the Agreement."
2. Budget Flexibility Percentage – Re-budgets/transfers among total cost categories are allowed up to 25% of the total contract budget, or \$250,000 whichever is less, without prior approval. Budget increases or changes to contract personnel, new equipment and new or increased costs of contractual/consultant agreements require prior approval.
3. Maximum Reimbursable Amount: In the event that a Maximum Reimbursable Amount has been specified on the face page of this Agreement, it is understood and accepted by the Contractor that while the Budget attached hereto as Exhibit B is equal to the Total Contract Amount specified on the face page of this Agreement, the aggregate of all allowable costs reimbursed under this reimbursement contract will not exceed the Maximum Reimbursable Amount. The Contractor may incur allowable costs in all categories as noted in the Budget Exhibit B; however, the aggregate amount reimbursed by HRI under this Agreement shall not exceed the Maximum Reimbursable Amount. In the event the Maximum Reimbursable Amount is increased by HRI, the Contractor will be notified in writing by HRI.
4. Program funds cannot be used for:
  - purchasing naloxone
  - implementing or expanding drug "take back" programs or other drug disposal programs (e.g. drop boxes or disposal bags)
  - purchasing fentanyl test strips, or directly funding or expanding direct provision of substance abuse treatment programs
  - Clinical care or direct patient care
  - purchasing incentives or promotional systems
  - research, fundraising or lobbying
  - construction or major renovations



# Griffiss International Airport

660 Hangar Road, Suite 223  
Rome, NY 13441  
Telephone: 315-736-4171 / Fax: 315-736-0568

EDWARD A. ARCURI  
Interim Commissioner

ANTHONY J. PICENTE, JR.  
County Executive

FN 20 20-374

November 12, 2020

Anthony J. Picente, Jr.  
Oneida County Executive  
800 Park Avenue  
Utica, New York 13501

AIRPORT

WAYS & MEANS

RE: Lease Agreement – Sapphire Air, LLC, Office and Hangar Space in Nose Dock784

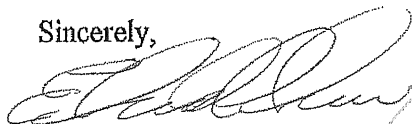
Dear County Executive Picente:

Please consider acceptance of this Lease Agreement between Griffiss International Airport and Sapphire Air, LLC.

The lease agreement shall be for a period of one (1) year, commencing on November 1, 2020 and ending on October 31, 2021. Following the expiration of the initial term, each year for four (4) consecutive years, this Lease Agreement shall automatically renew for an additional one (1) year term. The revenue from the initial lease term shall be Fourteen Thousand Four Hundred Dollars. A three percent annual escalator shall apply to subsequent terms.

If you concur with this lease agreement, please sign and forward to the Board of Legislators for further consideration.

Sincerely,

  
Edward A. Arcuri  
Interim Commissioner of Aviation



EAA/rae

Reviewed and Approved for submittal to the  
Oneida County Board of Legislator by



Anthony J. Picente, Jr.  
County Executive

Date 11-20-20



Competing Proposal \_\_\_\_\_  
Only Respondent \_\_\_\_\_  
Sole Source RFP \_\_\_\_\_  
Other  X

**ONEIDA COUNTY BOARD OF LEGISLATORS  
CONTRACT SUMMARY**

**Name & Address of Vendor:** Sapphire Air, LLC  
2435 State Route 5  
Utica, New York 13502

**Title of Activity or Service:** Lease

**Proposed Dates of Operation:** November 1, 2020 to October 30, 2021 (Initial Term)

**Client Population/Number to be Served:** N/A

**Summary Statements**

1) Narrative Description of Proposed Services: This is a lease agreement 200+/- square feet of office space and 2,000 +/- square feet of hangar space at 625 Bomber Drive, Rome, New York in the building commonly referred to as Nose Dock 784. The lease has a one year initial term and can be renewed annually thereafter up four additional one-year terms.

2) Program/Service Objectives and Outcomes: N/A

3) Program Design and Staffing: N/A

**Total Funding Requested:** N/A -Revenue      **Account #:**

**Oneida County Dept. Funding Recommendation:** \$14,400.00 in revenue for the initial term.

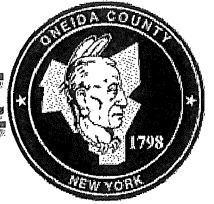
**Proposed Funding Sources (Federal \$/ State \$/County \$):** N/A

**Cost Per Client Served:** N/A

**Past Performance Data:** None

**O.C. Department Staff Comments:**

# Griffiss International Airport



660 Hangar Road, Suite 223  
Rome, NY 13441

Telephone: 315-736-4171 / Fax: 315-736-0568

**ANTHONY J. PICENTE, JR.**  
County Executive

**EDWARD A. ARCURI**  
Interim Commissioner of Aviation

## ***LEASE AGREEMENT***

This LEASE AGREEMENT (hereafter referred to as the "Lease Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2020, by and between the **COUNTY OF ONEIDA**, a municipal corporation organized and existing under the laws of the State of New York, with its principal place of business located at 800 Park Avenue, Utica, NY 13501 (hereinafter referred to as "Landlord") and Sapphire Air, LLC, (hereinafter referred to as "Tenant").

**NOW THEREFORE**, in consideration of the mutual promises and covenants herein contained, and in consideration of the sum of \$1.00 lawful monies of the United States in hand paid by each party to the other, the receipt and sufficiency of which is hereby acknowledged, the parties do hereby agree as follows:

### **1. Description and Use.**

a. Landlord hereby rents to Tenant, and Tenant does hereby rent from Landlord, a total of 200 +/- square feet of office space and 2,000 +/- square feet of hangar space within the building commonly referred to as Nose Dock 784, 625 Bomber Drive, Rome, New York, as more particularly shown on **Exhibit "A"** annexed hereto, hereinafter referred to as "Demised Premises."

b. The Demised Premises shall be used by Tenant for the purpose of operation, storage and maintenance of its aircraft and the office area for general office purposes.

c. Said use shall be conducted in compliance with applicable building and/or fire codes and Tenant shall comply with all the General Terms and Conditions annexed hereto as **Exhibit "B,"** which is hereby incorporated by reference.

### **2. Term.**

a. The Term of this Lease Agreement shall be for a period of one (1) year, commencing on November 1, 2020 and ending on October 31, 2021 (the "Initial Term"), unless this Lease Agreement is sooner terminated in accordance herewith by either party providing sixty (60) days advance written notice. Following the expiration of the Initial Term, each year for four (4) consecutive years this Lease Agreement shall automatically renew for an additional one (1) year term (each a successively numbered "Renewal Term"), unless Tenant shall notify the Landlord to the contrary no later than sixty (60) days prior to the commencement of any Renewal Term. Also, the Tenant hereby agrees that the rent to be charged during such tenancy shall be increased each November 1 by adding three percent (3%) to the base rent that was in effect during the immediately preceding twelve (12) months.

b. In the event the Tenant remains in possession of the Demised Premises after the expiration of the Initial Term or any Renewal Term, as the case may be, the Tenant shall be deemed to be occupying the Demised Premises as a Tenant from month-to-month, with the parties therefore subject to existing provisions of law and all of the conditions of this Lease Agreement insofar as they are applicable to a month-to-month tenancy until the Demised Premises are vacated by the Tenant or until the parties enter into a new agreement, whichever is sooner. Also, in this event, the Tenant hereby agrees that the rent to be charged during such month-to-month tenancy shall be increased each November 1 by adding three percent (3%) to the base rent that was in effect during the immediately preceding twelve (12) months.

### **3. Base Rent.**

a. As and for the use of the Demised Premises, the Tenant shall pay Rent during the Initial Term of this Lease Agreement in the total sum of Fourteen Thousand Four Hundred and 00/100 Dollars (\$14,400.00), payable over twelve (12) equal monthly installments of One Thousand Two Hundred and 00/100 Dollars (\$1,200.00) each.

b. The Rent to be charged during the First Renewal Term would be the total sum of Fourteen Thousand Eight Hundred Thirty-Two and 00/100 Dollars (\$14,832.00), payable in twelve (12) equal monthly installments of One Thousand Thirty-Six and 20/100 Dollars (\$1,236.00).

c. The Rent to be charged during the Second Renewal Term would be the total sum of Fifteen Thousand Two Hundred Seventy-Six and 96/100 Dollars (\$15,276.96), payable in twelve (12) equal monthly installments of One Thousand Two Hundred Seventy-Three and 08/100 Dollars (\$1,273.08).

d. The Rent to be charged during the Third Renewal Term would be the total sum of Fifteen Thousand Seven Hundred Thirty-Five and 27/100 Dollars (\$15,735.27), payable in twelve (12) equal monthly installments of One Thousand Three Hundred Eleven and 27/100 Dollars (\$1,311.27).

e. The Rent to be charged during the Fourth Renewal Term would be the total sum of Sixteen Thousand Two Hundred Four and 24/100 Dollars (\$16,204.24), payable in twelve (12) equal monthly installments of One Thousand Three Hundred Fifty and 35/100 Dollars (\$1,350.35).

f. All monthly installment payments shall be due, in advance, on the 1<sup>st</sup> day of each and every month. The payment of Rent in monthly installments is for Tenant's convenience only and, in the event of Tenant's default, the Landlord shall have the right to accelerate payment and demand all sums due hereunder.

g. All such Rent payments shall be made payable to the "County of Oneida" and remitted to 660 Hangar Road, Rome, NY 13441, or to such other address or addresses as the Landlord may, from time to time, designate. In the event any retroactive rental payments are due hereunder, payment of same shall be made on the first day of the next succeeding month.

### **4. Security Deposit.**

Tenant shall **NOT** be required to post a Security Deposit with the Landlord for the faithful performance of the terms and conditions of this Lease Agreement.

### **5. Insurance and Indemnification.**

a. During the term of this Lease Agreement, including all Renewal Terms, Tenant shall maintain insurance of the following types of coverage and limits of liability with an insurance carrier qualified and

admitted to do business in the State where the property is located. The Insurance carrier must have at least an A- (excellent) rating by A. M. Best.

i. Commercial General Liability (CGL) coverage with limits of Insurance of not less than \$1,000,000 each occurrence and \$4,000,000 Annual Aggregate.

1. The CGL coverage shall include a General Aggregate Limit and such General Aggregate shall apply separately to each location.

2. CGL coverage shall be written on ISO Occurrence form CG 00 01 1001 or a substitute form providing equivalent coverage and shall cover liability arising from premises, operations, independent contracts, products-completed operations, and personal and advertising injury.

3. County of Oneida, and all other parties required of the Landlord, shall be included as additional insureds. Coverage for the additional insureds shall apply as Primary and Non-contributing Insurance before any other insurance or self-insurance, including any deductible or self-insured retention, maintained by, or provided to, the additional insured's.

ii. Aviation Commercial General Liability (ACGL) coverage with limits of Insurance of not less than \$10,000,000 each occurrence and \$10,000,000 Products/Completed Operations Aggregate limit.

1. Each Aircraft Limit of \$10,000,000; Each Loss Limit of \$10,000,000.

2. County of Oneida, and all other parties required of the Landlord, shall be included as additional insureds. Coverage for the additional insureds shall apply as Primary and Non-contributing Insurance before any other insurance or self-insurance, including any deductible or self-insured retention, maintained by or provided to the additional insureds.

iii. Commercial Umbrella

1. Umbrella limits must be at least \$5,000,000.

2. Umbrella coverage must include as additional insureds all entities that are additional insureds on the CGL.

3. Umbrella coverage for such additional insureds shall apply as primary and non-contributing before any other insurance or self-insurance, including any deductible or self-insured retention, maintained by or provided to the additional insureds.

iv. Workers' Compensation and Employers Liability

1. Statutory limits apply.

b. **Waiver of Subrogation:** Tenant waives all rights against Landlord and their agents, officers, directors and employees for recovery of damages to the extent these damages are covered by commercial general liability and/or workers' compensation and employer's liability insurance maintained per requirements stated above.

c. **Certificates of Insurance:** Prior to occupancy the Tenant shall provide a certificate of insurance to the Landlord. Attached to each certificate of insurance shall be a copy of the Additional Insured Endorsement that is part of the Tenant's Commercial General Liability Policy. These certificates and the insurance policies required above and annexed hereto as **Exhibit "C,"** which is hereby incorporated by reference, contain a provision that coverage afforded under the policies will not be canceled or allowed to expire until at least 30 days prior written notice has been given to the Landlord.

d. Indemnification:

i. Tenant further agrees to hold Landlord harmless from all claims and losses by reason of an accident or damage (including death) to any person or property happening on or about the Demised Premises arising from acts or omissions of Tenant or Tenant's agents, employees, or invitees; to the extent allowed by law, Tenant shall indemnify and hold Landlord harmless against all liability or loss and against all claims or actions based upon or arising out of damage or injury (including death) to persons or property caused by or sustained in connection with the Demised Premises or based upon any violation of any statute, ordinance, building code, or regulation, and the defense of any such claims or actions, resulting from the acts or omissions of Tenant or Tenant's agents, employees, or invitees.

ii. In the event that any claim in writing is asserted by a third party, which may entitle the Landlord to indemnification, Landlord shall give notice thereof to Tenant, which notice shall be accompanied by a copy of the statement of the claim. Following the notice, Landlord shall have the right, but not the obligation, to participate at its sole expense, in the defense, compromise or settlement of such claim with counsel of its choice. If Tenant shall fail timely to defend, contest or otherwise protect against any suit, action or other proceeding arising from such claim, or in the event Landlord decides to participate in the proceeding or defense, Landlord shall have the right to defend, contest, or otherwise protect itself against same and be reimbursed for expenses and reasonable attorney's fees and, upon not less than ten (10) days' notice to Tenant, to make any reasonable compromise or settlement thereof. In connection with any claim as aforesaid, the parties hereto shall cooperate fully with each other and make available all pertinent information necessary or advisable for the defense, compromise or settlement of such claim.

iii. The indemnification provisions of this paragraph shall survive the expiration or termination of this Lease Agreement.

**IN WITNESS WHEREOF**, the parties have executed this Lease Agreement which shall become effective as of the date first above written.

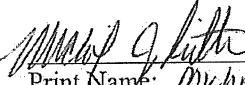
County of Oneida, Landlord

Saphire Air, LLC

By: \_\_\_\_\_

Anthony J. Picente, Jr.  
County Executive

By: \_\_\_\_\_

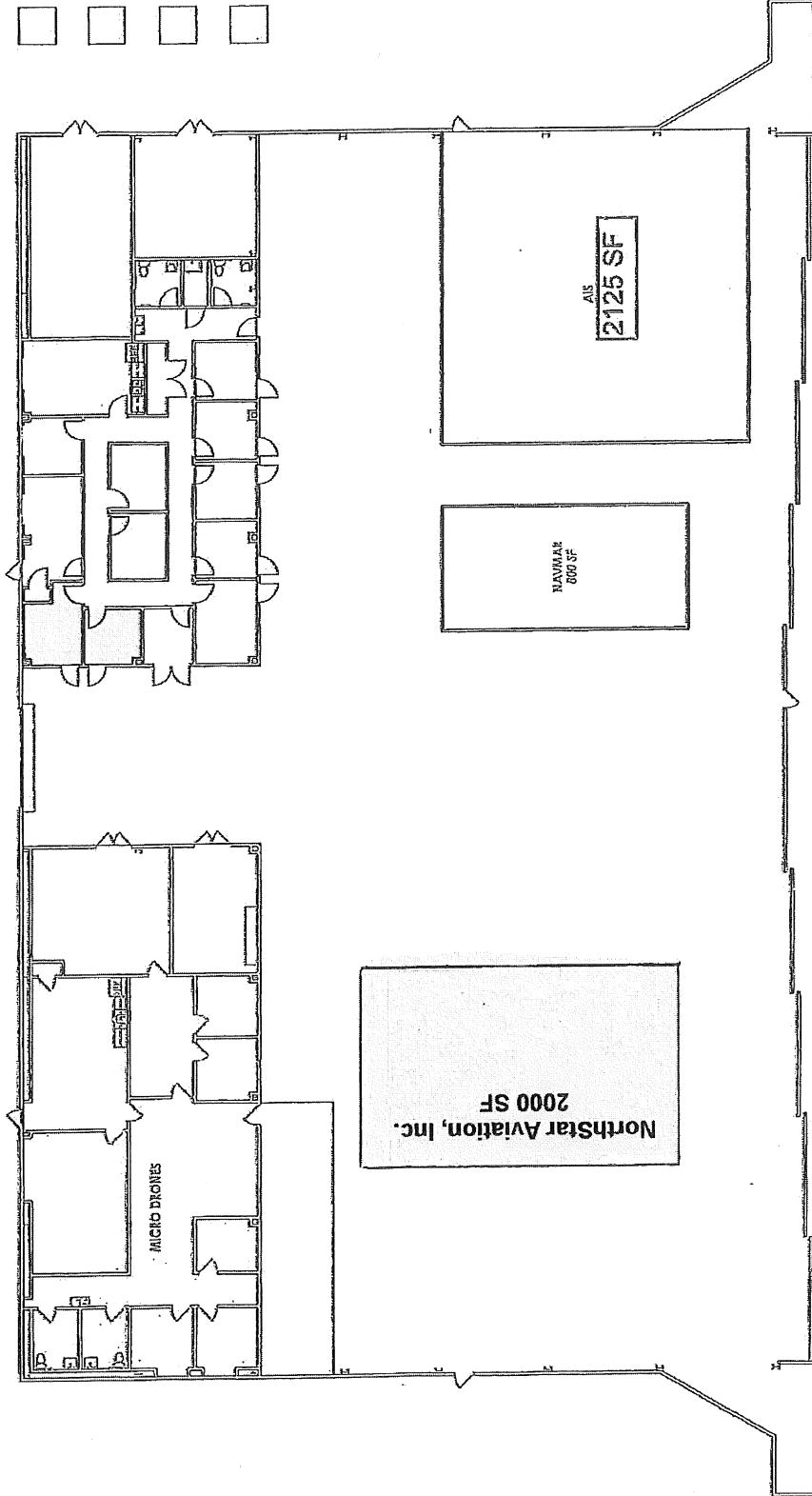
  
Print Name: Michael J Ritter  
Title: President

Approved:

\_\_\_\_\_  
Amanda Lynn Cortese  
Special Assistant County Attorney

# Exhibit A

- NAVBAR
- MICRODRONES
- AIS
- RUAIR



GRIFFISS NOSE DOCK # 784

# **Exhibit B**



## EXHIBIT B - GENERAL TERMS AND CONDITIONS

**1. Late Charge.** If any sum due from Tenant is not actually received by Landlord within fifteen (15) days of the date due, then Tenant shall pay a late charge of five percent (5%) of the amount due, in addition to any reasonable attorneys' fees, collection expenses, or interest incurred by Tenant's failure to make timely payments. Landlord shall have the right, but not the obligation, to provide Tenant with monthly or annual invoices for Rent payments; a timely payment of Rent is due regardless of the issuance of such invoices, or lack thereof.

**2. Proration of Rent.** In the event that the Term of this Lease Agreement begins or terminates on any date other than the first day or last day of a calendar month, the applicable Rent and charges for that month shall be paid for that month on a pro rata basis according to the number of days in that month during which the Demised Premises was enjoyed by Tenant.

**3. Delivery of Rent.** Rent checks shall be made payable to "County of Oneida" and shall be mailed or delivered to: 660 Hangar Road, Rome, NY 13441, or to such other place or places as Landlord may, from time to time, designate, in writing.

**4. Security Deposit.** The Security Deposit, if any, shall be returned to Tenant upon expiration or termination of this Lease Agreement after Tenant has vacated the Premises, provided that Tenant has fully and faithfully carried out all of the terms and provisions of this Lease Agreement, including but not limited to the prompt payment of Rent and any other sums due Landlord. No interest shall be payable by Landlord to Tenant on account of such Security Deposit. Landlord shall have the right, but not the obligation, to apply all or any part of such Security Deposit to cure any default of Tenant, and if Landlord does so, Tenant shall upon demand by Landlord, deposit with Landlord the amount necessary for Landlord to have at all times on hand the full amount of the Security Deposit required under this Lease Agreement, and if Tenant fails to restore such Security Deposit to the full deposit amount within three (3) days after receipt of such demand, such failure shall constitute a material breach of the Lease Agreement.

**5. Permitted Uses; Prohibited Uses.**

a. The Demised Premises shall be used by the Tenant only for the purposes identified in the Lease Agreement, and for no other use. Painting, other than minor touch up of an aircraft, is prohibited within the Demised Premises unless otherwise approved by Landlord and the local fire marshal. Storage of non-aviation items in the Demised Premises is not allowed. Kerosene or gas-fired heaters or any type of open-flame heaters or devices are prohibited in the Demised Premises.

b. In that the Demised Premises are located at the Griffiss International Airport, Tenant shall not use the Demised Premises in a manner that would violate the rules and regulations of the Federal Aviation Administration or the Griffiss International Airport (hereinafter referred to as "Airport"). Tenant acknowledges that Tenant has conducted Tenant's own investigation and has determined that the Demised Premises are suitable for Tenant's intended use.

c. Tenant will not make or permit any use of the Demised Premises that would be (1) offensive so as to constitute a nuisance; (2) unlawful under any federal, state, or county code, ordinance, or regulation; (3) injurious to any person or property; (4) prohibited by a New York standard form fire insurance policy; or (5) which may increase or cause the Landlord to incur liability under any laws relating to the use and storage of hazardous materials.

**6. Ingress and Egress.** Tenant shall have reasonable right of ingress and egress across Landlord's adjoining property in common with others in order to obtain access to the Demised Premises. The ramp areas and taxi-lanes adjacent to the Demised Premises shall be and are deemed to be right-of-way and common areas to which the Tenant shall have non-exclusive access to and use of for the Term of this Lease Agreement and any renewals thereof.

**7. Utilities and Services.** Landlord shall be responsible for providing all utilities and services, including without limitation, electricity, water, gas and sewer services furnished to the Demised Premises, without contribution or apportionment from the Tenant. The Landlord shall not be liable for any interruption or delay in such utility services unless such delay or interruption is caused by the Landlord's negligence or willful misconduct.

**8. Casualty.** In the event that the Demised Premises or the means of access thereto, shall be damaged by fire or any other cause, the Rent payable hereunder shall not abate, provided that the Demised Premises are not rendered

unusable by such damage. If the Demised Premises are rendered unusable as determined by Rome City Fire or Codes personnel and Landlord elects to repair the same, the Rent shall abate for the period during which such repairs are being made, provided the damage was not caused by the acts or omissions of Tenant or Tenant's employees, agents or invitees. If Tenant or Tenant's employees, agents, or invitees caused such damage, the Rent shall not abate. If the Demised Premises are rendered unusable and Landlord elects not to repair the same, this Lease Agreement shall be terminable at the option of either party.

**9. Environmental Obligations and Indemnity.**

a. Tenant shall not permit the Demised Premises to be contaminated with any environmental hazard and Tenant shall not store hazardous waste or materials, contaminants, or flammable materials, except that the Tenant may maintain only limited amounts of hazardous or flammable materials in approved storage containers on or about the Demised Premises required for the normal course of conducting Tenants business. Aviation fuels, gasoline and other like products will be stored in designated locations and storage facilities and will comply with all Federal, State and Local laws, environmental compliance laws and regulations and comply with local fire codes. Tenant shall indemnify, protect, and hold Landlord harmless from any environmental damage resulting from Tenant's use of the Demised Premises, and, if such environmental damage resulting from Tenant's use of the Demised Premises is discovered, Tenant shall promptly undertake and pursue diligently appropriate steps to repair the damage. Furthermore, Tenant shall notify Landlord, in writing, of any incident or occurrence which results in environmental damage within twenty-four (24) hours after such incident or occurrence or following the discovery of same.

b. The environmental indemnification provisions of this paragraph shall survive the expiration or termination of the Lease.

**10. Obligations of Landlord.** Landlord will maintain the structural components of the Demised Premises, including hangar doors and hangar door mechanisms, and Landlord will provide normal building maintenance without additional cost to Tenant. Tenant shall have at all times the reasonable right of ingress to and egress from the Demised Premises over and across the Landlord's adjoining premises, in common with others. To ensure this right, Landlord shall make all reasonable efforts to keep areas adjacent to the Demised Premises free and clear of all hazards and obstructions, natural or man-made.

**11. Obligations of Tenant.**

a. **Storage.** The Demised Premises shall be used only as described in this Lease Agreement.

b. **Maintenance and Repair.** Tenant shall maintain the Demised Premises in a neat and orderly condition, and shall keep all areas clean and clear of oil, grease or toxic chemicals. Tenant shall maintain only limited amounts of hazardous or flammable materials in approved storage containers within or about the Demised Premises. No boxes, crates, rubbish, paper or other litter shall be permitted to accumulate within or about the Demised Premises.

c. **Damage.** Tenant shall be responsible for all damage to the Demised Premises caused by use or negligence of Tenant, or Tenant's agents, employees, or invitees. Tenant shall be responsible for all damage to property, real or personal, located on or about the Demised Premises caused by the use or negligence of Tenant, or Tenant's agents, employees, or invitees. Landlord reserves the right to make such repairs, at Tenant's expense, which shall be deemed "additional rent" and shall become due and payable as part of Tenant's next monthly Rent payment. Tenant shall make no structural, electrical, or other modification to the Demised Premises without first obtaining Landlord's written permission and obtaining any permits, if required.

d. **Tenant's Personal Property.** All personal property placed or moved into the Demised Premises shall be at the risk of Tenant or owner thereof, and Landlord shall not be liable for any damage to personal property, or to Tenant, arising from any act of negligence of any other tenant or occupant at the Airport. Tenant agrees and understands that Tenant is responsible for the proper securing of personal property and shall further indemnify and hold Landlord harmless for any damage or liability caused by improper securing of personal property. Landlord shall not be responsible for any loss from theft, vandalism, or act of God, and all personal property stored upon the Demised Premises is at Tenant's sole risk.

e. **Compliance with Laws.** Tenant agrees to and shall comply with all applicable ordinances, rules, and regulations established by federal, state, or local government agencies or by Landlord. Tenant shall be responsible for obtaining and complying with all governmental permits required for Tenant's use and occupancy of the Demised Premises, if any. Tenant further expressly represents, covenants, warrants, guarantees, and agrees that it shall fully comply with all federal, state and local laws, ordinances, rules and regulations protecting the environment. Tenant agrees to keep itself reasonably informed of future changes in the existing environmental laws. Tenant agrees to

cooperate with any investigation or inquiry by any governmental agency regarding possible violation of any environmental law or regulation.

**f. Fire Extinguisher.** Tenant shall maintain at all times, in the Demised Premises, a minimum of two (2) approved twenty (20) pound dry chemical portable fire extinguishers suitable for use on Class "A", "B", and "C" fires with a current inspection certificate from an approved fire equipment company affixed.

**g. Surrender upon Termination.** On the expiration or termination of the Lease Agreement, Tenant shall immediately surrender possession of the Demised Premises and shall remove aircraft and all other property therein, leaving the Demised Premises in the same condition as when received, ordinary wear and tear excepted. Tenant shall be liable for any and all damage to the Demised Premises caused by the use or negligence of Tenant or Tenant's agents, employees, or invitees, including, but not limited to, damage to doors or interior walls by being bent or broken or damage to floors due to fuel or oil spillage. If Tenant fails to remove such items from the Demised Premises and to repair such damage upon vacating the premises, then Landlord may remove the items and repair the damages, and Tenant shall promptly pay the costs and expenses of such removal and repairs upon proper demand by Landlord.

**h. Compliance with All Resolutions, Rules, Regulations, and Standards.** Tenant acknowledges that Landlord operates an airport, and resolutions, rules, regulations, and standards must be adopted by Landlord and modified from time to time in order to promote the orderly operation and development of the Airport. Therefore, Tenant agrees to be bound by all terms and provisions of any resolutions, rules, regulations, and standards that may from time to time be adopted by Landlord, provided that such resolutions, rules, regulations, and standards do not increase the Rent to be paid by Tenant. The parties agree that Tenant's use of the Demised Premises and any rights conferred to Tenant in this Lease Agreement shall be subject to Landlord's minimum standards, as amended from time to time, Tenant shall be given advance notice of any proposed change or addition to such rules, regulations, and standards, and Tenant shall be given an opportunity to be heard thereon. All the terms, conditions, and covenants of this Lease Agreement shall inure to the benefit of and shall be binding upon the successors and assigns of the parties.

**i. Signs.** Tenant shall not erect or post any signs without the Landlord's written permission.

**j. Covenant of Continuous Operations and Not to Abandon or Vacate.** Tenant hereby covenants that during the Term, the Tenant will continue its operations for the entire length of the Lease and not cease operations, and further covenants not to abandon, to continuously occupy, and not to vacate the Demised Premises prior to the expiration of the Term without a Surrender Agreement with the Landlord in place. Abandonment and/or vacation of the Demised Premises shall be defined to include but not be limited to the cessation of operations, or abandonment of Tenant-owned or third party-owned property at the Demised Premises unattended, or removal of substantial portions of Tenant's property from the Demised Premises, other than in the normal course of Tenant's business. The Tenant acknowledges that any failure to so continuously operate, and/or any abandonment or vacation of the Demised Premises will entitle the Landlord to obtain an injunction or order compelling the Tenant to continuously operate its business in the Demised Premises and/or return to its business in the Demised Premises, and the Tenant hereby consents to such injunction or order, in addition to any other remedies to which the Landlord may be entitled at law or in equity, including monetary damages related to any premature cessation of operations which causes expense to the Landlord, including but not limited to such matters as environmental remediation, cleaning of premises or removal of debris left by the Tenant prior to completion of the Term.

**k. Personnel Badging Requirement.** Tenant acknowledges that any personnel employed, contracted, visiting or conducting business with the Tenant that require airport movement area access require the appropriate badging or badged escort for entry onto the movement area. Badging of personnel must be coordinated through the Oneida County Department of Aviation Administrative offices. There is a fee for the badging process, and payment of said fee is the sole responsibility of the Tenant separate and apart from payment under this Lease Agreement.

**12. Nondiscrimination.** Notwithstanding any other provision of this Lease Agreement, during the Term of this Lease Agreement, Tenant for itself, its heirs, personal representatives, successors in interest, and/or assigns, as the case may be, as part of the consideration for this Lease Agreement, does hereby covenant and agree that:

**a.** No person shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination in the use of the Demised Premises on the grounds of race, color, religion, sex, disability, age, national origin or other protected class.

**b.** In the construction of any improvements on, over, or under the Demised Premises, and the furnishing of services therein or thereon, no person shall be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination on the grounds of race, color, religion, sex, disability, age, national origin or other protected class.

c. Tenant shall use the Demised Premises in compliance with all other requirements imposed by or pursuant to Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act of 1964, and as such regulations may be amended.

d. In the event of breach of any of the above nondiscrimination covenants, Landlord shall have the right to terminate this Lease Agreement and to reenter and repossess the Demised Premises and hold the premises as if this Lease Agreement had never been made or issued. The provision does not become effective until the procedures of Title 49, Code of Federal Regulations, Part 21, have been followed and completed, including the exercise or expiration of appeal rights.

### **13. Reservation of Rights by Landlord.**

a. **Development.** Landlord reserves the right to further develop and improve the Airport as Landlord sees fit, without interference or hindrance, but taking into consideration the desires and views of Tenant, and for purposes of developing and improving the Airport, Landlord reserves the right upon reasonable notice to enter upon the Demised Premises and make improvements to same. Landlord shall make every effort to minimize the disruption of normal Airport usage during periods of repair or further development of the Airport.

b. **Relocation.** Landlord reserves the right upon thirty (30) days written notice to relocate Tenant to a similar size facility in other areas of the Airport at Landlord's sole expense.

c. **National Emergency.** Landlord further reserves the right, during time of war or national emergency, to lease the landing area or common areas of the Airport to the United States Government or the State of New York for military use or for natural disaster relief operations, and if such a lease is executed with the federal or state government, the terms of this Lease Agreement which are inconsistent with the lease to the government shall be temporarily suspended and rent shall be abated accordingly during the tenancy by the government.

### **14. Right of Access and Inspection.**

a. Landlord will retain a key for access to the Demised Premises. Tenant will not change locks without prior notice and agreement of Landlord.

b. Landlord shall have the right to make reasonable inspections of the Demised Premises between the hours of 8:00 a.m. and 5:00 p.m. on weekdays, exclusive of federal holidays. Landlord shall have the right at any other time to enter the Demised Premises for security, fire, other emergencies, or making repairs.

**15. Assurance Agreements.** This Lease Agreement is subordinate to the provisions of any and all existing and future agreements between the Landlord and the State of New York or the United States of America relative to the operation, maintenance, or development of the Airport, the execution of which may be required as a condition precedent to the expenditure of funds for the development of the Airport, or any part thereof.

**16. Federal Aviation Administration Requirements.** In the event that the Federal Aviation Administration (FAA) or its successors require modification or change in this Lease Agreement as a condition precedent to (1) the granting of funds for the improvement of the Airport, or (2) as a condition precedent to compliance with FAA regulations or standards, Tenant agrees to consent to such amendments, modifications, or changes to this Lease Agreement as may be reasonably required to either obtain such funds or comply with such regulations or standards. However, in no event shall Tenant be required pursuant to this paragraph to agree to a reduction in size of the Demised Premises, or a change in the authorized use to which Tenant has put the Demised Premises without an adjustment in Rent.

**17. Airspace.** As a condition of this Lease Agreement, Landlord reserves unto itself, its successors, and assigns, for use and benefit of the public, a right of flight for the passage of aircraft in the airspace above the surface of the Demised Premises, together with the right to cause in the airspace such noise as may be inherent in the operation of aircraft, now known or hereafter used, for navigation of or flight in the airspace, and for use of the airspace for landing on, taking off from, or operating on the Airport. Tenant expressly agrees for itself, its successors and assigns, to restrict the height of structures, objects of natural growth and other obstructions on the Demised Premises to such a height in compliance with Federal Aviation Regulations, Part 77. Tenant agrees for itself, its successors and assigns, to prevent any use of the Demised Premises which would interfere with or adversely affect the operation or maintenance of the Airport, or otherwise constitute an airport hazard.

**18. No Grant of Exclusive Right or Privilege.** Notwithstanding anything contained in this Lease Agreement that may be, or may appear to be, to the contrary, it is expressly understood and agreed that the rights granted under this Lease Agreement are non-exclusive, and Landlord reserves the right to grant similar privileges to another tenant or other tenants on other parts of the Airport. Nothing in this Lease Agreement shall be construed as granting an exclusive right or privilege other than the right of Tenant to possess and to peacefully enjoy the use of the Demised Premises in accordance with this Lease Agreement.

**19. Sublease.**

a. Tenant shall not enter into any sub-agreement or sub-lease of the Demised Premises or assign its rights under this Lease Agreement without prior written approval of Landlord. Tenant shall not either voluntarily, or by operation of law, assign, or transfer the leasehold interest granted by this Lease Agreement or any interest therein, and shall not sublet the Demised Premises or any part thereof, or any right or privilege appurtenant thereto, nor allow the sale or transfer of a majority interest or majority ownership of Tenant, without first obtaining the written consent of the Landlord. The consent to one assignment or subletting shall not be deemed to be consent to any subsequent assignment, subletting, or encumbrance. Any such subsequent assignment or subletting shall be void, and shall, at the option of Landlord, constitute a default of this Lease Agreement.

b. Regardless of Landlord's consent, no subletting or assignment shall release Tenant or Guarantor, if any, from any obligations and/or liabilities of Tenant or Guarantor, if any, to pay the Rent and to perform all other obligations required of Tenant by this Lease Agreement. The acceptance of the Rent by Landlord from any other person shall not be deemed to be a waiver by Landlord of any provision of this Lease Agreement. In the event of a default by any assignee or subtenant of Tenant in the performance of any of the terms of this Lease Agreement, Landlord may proceed directly against Tenant without the necessity of exhausting remedies against an assignee or subtenant.

**20. Condition of Premises.** Tenant shall accept, and has accepted, the Demised Premises in its present condition, AS IS, without any liability or obligation on the part of either Landlord or Tenant to make any alterations, improvements or repairs of any kind on or about the Demised Premises.

**21. Disclaimer of Warranty and Responsibility for Securing Aircraft.** Tenant accepts all facilities on the Premises on an "as is" basis. Landlord hereby disclaims, and Tenant accepts such disclaimer, of any warranty, either express or implied of the condition, use, or fitness of the tie-down rings, ropes, chains, or other apparatus used to secure airplanes, and Tenant assumes full responsibility to furnish any equipment necessary to properly secure Tenant's aircraft. Tenant agrees and understands that Tenant is responsible for the proper tie down or securing of aircraft inside or outside of the Demised Premises and shall further indemnify and hold harmless the Landlord for any damage or liability caused by improper tie down or securing. Landlord shall not be liable for any loss from theft, vandalism or act of God, and all aircraft are stored or parked on the Demised Premises or Airport at Tenant's sole risk.

**22. Alterations; Liens.**

a. Tenant covenants and agrees not to install any fixtures or make any alterations, additions or improvements to the Demised Premises without the prior written approval of Landlord. All fixtures installed or additions and improvements made to the Demised Premises shall become Landlord's property and shall, at the election of the Landlord, remain in the Demised Premises at the expiration or termination of this Lease Agreement without compensation or payment to Tenant. Tenant shall not suffer or permit any lien to be filed against the Demised Premises or any part of Landlord's interest, by reason of work, labor, services or materials performed or supplied to Tenant or anyone holding the Demised Premises or any part thereof under Tenant. If any such lien is filed against the Demised Premises or Landlord's interest, Tenant shall cause the same to be discharged of record within thirty (30) days after the date of filing the same, and shall incur all charges in procuring the release of such lien.

b. Tenant agrees to pay all lawful and valid liens affecting Landlord's fee title to the Leasehold Premises placed against Tenant by its contractors, subcontractors, mechanics, laborers, material men, and other items of like character, and indemnify Landlord against all expenses, costs and charges, including bond premiums for release of liens and reasonable attorneys' fees incurred in the defense of any suit in discharging the Demised Premises or any part thereof from any such liens, or lawful and valid judgments, or encumbrances caused by Tenant.

c. Tenant shall not have any authority to create any liens for labor or material in the Rent interest owned by Landlord or Landlord's interest in the Demised Premises by any persons contracting with Tenant for the

destruction or removal of any facilities or other improvements or for the construction, erection, installation, alteration, or repair of any facilities or other improvements on or about the Demised Premises. All materialmen, contractors, subcontractors, mechanics, and laborers, are hereby charged with notice that they must look only to Tenant and to Tenant's interests in the property in the Demised Premises to secure the payment of any bill for work done or materials furnished at the request or instruction of Tenant.

**23. Events of Default by Tenant.** The occurrence of any of the following shall constitute an event of default under this Lease Agreement:

- a. Tenant fails to pay any part or all the money due Landlord under this Lease Agreement, and such non-payment continues for a period of thirty (30) days after written notice;
- b. Tenant fails to perform or breaches any term, covenant, or provision of this Lease Agreement, and such non-performance or breach is not cured within thirty (30) days after written notice of the default from Landlord is delivered to Tenant;
- c. Tenant is the subject a voluntary or involuntary petition for bankruptcy protection (including a petition for reorganization or an agreement), Tenant makes a general or other assignment for the benefit of creditors, or Tenant's assets or operations become subject to the control of a court-appointed receiver;
- d. Landlord determines that Tenant is not in compliance with the terms of this Lease Agreement on a routine or consistent basis.
- e. The failure of Tenant to comply with any terms or conditions of the Lease or to the General Terms and Conditions set forth herein shall be considered a material breach and default of this Lease Agreement.

**24. Remedies on Default by Tenant.** In the event of any default of this Lease Agreement by Tenant, Landlord shall have the right, at its earliest option, to pursue any one or more of the following remedies, in addition or in place of the remedies otherwise provided herein or by statute, without notice and demand whatsoever to Tenant or Guarantor, if any:

- a. Landlord shall have the right to terminate this Lease Agreement and to enter upon and take possession of the Demised Premises and to remove the aircraft and any other property of Tenant from the Demised Premises without being deemed guilty of trespass, breach of peace or forcible entry and detainer and without prejudice to any other remedy for possession or arrearage in Rent, and Tenant expressly waives the service of any notice. Tenant agrees to pay Landlord on demand the amount of all loss or damage which Landlord may suffer by reason of such termination, including the expenses of retaking, re-renting the Demised Premises, and loss of Rent through the inability to re-let the Demised Premises.
- b. Landlord shall have the right to enter upon and take possession of the Demised Premises, and re-let the Demised Premises and receive the Rents therefore without thereby terminating or avoiding this Lease Agreement. Tenant agrees to pay Landlord on the due date of each month thereafter sums equivalent to the monthly Rent payable under this Lease Agreement, less the avails of re-letting, if any.
- c. Exercise by Landlord of either or both of the rights specified above shall not prejudice Landlord's right to pursue any other legal remedy available to Landlord in law or equity, including, but not limited to, court costs and attorneys' fees for bringing legal action against Tenant. All of the foregoing rights, remedies, powers, and elections of Landlord are cumulative, and pursuit of any of the foregoing shall not preclude other remedies provided by law, nor shall such pursuit constitute a forfeiture or waiver of any rent due to Landlord or of any damages occurring to Landlord by reason of the violation of any of the provisions of this Lease Agreement. Forbearance by Landlord to enforce one or more of the remedies upon an event of default shall not be deemed or construed to constitute a waiver of such default.
- d. Tenant agrees that no assent, express or implied, by Landlord to any breach of this Lease Agreement by Tenant shall be deemed to be a waiver of any succeeding breach by Tenant.
- e. All sums due under this Lease Agreement shall be paid by Tenant to Landlord without any setoff or counterclaim whatsoever and all past due sums shall bear interest at the maximum legal rate per annum. The subsequent acceptance of Rents under this Lease Agreement by Landlord shall not be deemed to be a waiver of any preceding default by Tenant of any term, covenant or condition of this Lease Agreement, other than the failure to pay the particular Rents so accepted, regardless of Landlord's knowledge of such preceding default at the time of accepting the Rents.

**25. Landlord's Lien.** Tenant hereby gives and grants to Landlord a lien upon, and pledges as collateral to the Landlord in case of default, all fixtures, chattels and personal property of every kind and description now or hereafter to be placed, installed, or stored by Tenant at the Airport, and Tenant agrees that in the event of any failure

on the part of Tenant to comply with each and every one of the covenants and obligations hereof, or in the event of any default continuing for sixty (60) days of any specified rent, Landlord may take possession of and sell the same in any manner provided by law and may credit the net proceeds upon an indebtedness due, or damage sustained by Landlord without prejudice to further claims thereafter to arise under the terms of this Lease Agreement.

**26. Notices.** All notices to the parties shall be sent or delivered to that party at the address first written for that party in this Lease Agreement, or at such other address as may, from time to time, be designated by such party. All notices shall be in writing and shall be either personally to the other party in hand with proof of delivery or by certified mail, return receipt requested, and postage prepaid. Notices sent or delivered by mail in accordance with this paragraph shall be deemed to have been given five (5) business days after the date of mailing, and all other notices delivered by any other means with proof of delivery, such as hand delivery or express delivery, shall be deemed to have been given when received.

**27. Miscellaneous Provisions.**

**a. Successors Bound.** This Lease Agreement shall not be effective or binding on any party until fully executed. All of the covenants, conditions and obligations of this Lease Agreement shall be binding upon and inure to the benefit of the respective heirs, administrators, successors, and assigns of the parties, as the case may be.

**b. Joinder by Guarantor; Personal Guarantee.** By joining in the execution of this Lease Agreement, Guarantor, if any, hereby unconditionally guarantees performance of each and every obligation of Tenant created in this Lease Agreement. Guarantor waives any requirement of notice of non-payment or non-performance, proof, or demand, as a condition for liability by Guarantor. Guarantor expressly agrees that the validity of this Lease Agreement and the obligations of this personal guarantee shall in no way be terminated, affected, or impaired by reason of assertion by Landlord against Tenant of any of the rights or remedies reserved to Landlord pursuant to the provisions of this Lease Agreement, or by Landlord granting any indulgence or giving of additional time to Tenant for the performance of any of the obligations of this Lease Agreement. This personal guarantee shall remain in full force and effect as to any amendment, modification, renewal, extension, or otherwise, of this Lease Agreement. Landlord need not pursue any remedies against Tenant before enforcing this personal guarantee against Guarantor. If there is more than one person or entity signing this Lease Agreement as Guarantor, the obligations imposed by this Lease Agreement on Guarantor shall be joint and several.

**c. Construction of Agreement.** Words of any gender used in this Lease Agreement shall be construed to include any other gender, and words in singular number shall be held to include the plural, and vice versa, when the sense requires. The headings or captions for paragraphs or subparagraphs in this Lease Agreement are for convenience only and are not a part of this Lease Agreement and do not in any way limit or expand the terms and provisions of this Lease Agreement.

**d. Judicial Interpretation.** If any provision of this Lease Agreement becomes subject to judicial interpretation, it is agreed that the court interpreting or considering such provision will not apply the presumption or rule of construction that the terms of this Lease Agreement be more strictly construed against the party which itself or through its counsel prepared the same, because all parties have participated in the preparation of the final form of this Lease Agreement through review and negotiation of terms, and therefore, the application of such presumption or rule of construction would be inappropriate and contrary to the intent of the parties.

**e. Severability.** In the event that any provision of this Lease Agreement is determined to be invalid, illegal, or unenforceable for any reason, then the parties shall negotiate in good faith and agree on such amendments or modifications to this Lease Agreement, or such other appropriate actions, that will to the maximum extent practicable in light of such determination, give effect to the intentions of the parties as reflected in this Lease Agreement, and all other provisions of this Lease Agreement, as amended, modified, or otherwise, shall remain in full force and effect, but if, after good faith negotiations, the parties fail to reach an agreement regarding the invalid, illegal, or unenforceable provisions, then the parties agree that such provisions shall be severed from this Lease Agreement and such severance shall not invalidate any other provision of this Lease Agreement or this Lease Agreement itself.

**f. Joint Obligations.** If there is more than one person or entity signing this Lease Agreement as Tenant, the obligations imposed by this Lease Agreement on Tenant shall be joint and several.

**g. Entire Agreement.** This Lease Agreement contains the entire agreement between the parties, and no prior or independent agreements or understandings between the parties pertaining to the renting of the Demised Premises shall be effective for any purpose. Tenant acknowledges that any representations, statements, or negotiations made by Landlord or by any of Landlord's staff, employees, counsel, or any other agent, do not suffice

to legally bind Landlord, unless such representations have been reduced to writing and fully executed by all of the parties.

**h. Written Modifications.** No provision of this Lease Agreement may be changed or modified except by an agreement in writing executed by all of the parties or their successors in interest with the same formality as the original agreement.

**i. Venue; Law.** Venue for all court proceedings to enforce or interpret this Lease Agreement or determine the liabilities and obligations of the parties shall be in Oneida County, New York, and such proceedings shall be governed by the laws of the State of New York.

**j. Subordination.** Upon request of Landlord, Tenant will in writing subordinate Tenant's rights under this Lease Agreement to the lien of any mortgage or deed of trust, to any lender, bank, insurance company or lending institution, or the requirements of any grant for funding that may be sought by Landlord.

**k. Relationship of Parties.** Tenant shall never at any time during the term of this Lease Agreement become the agent of Landlord, and Landlord shall not be responsible for the acts or omissions of Tenant or Tenant's agents. Nothing in this Lease Agreement shall be deemed or construed to create the relationship of principal and agent or of partnership or of joint venture or of any association between the parties other than the relationship of landlord and tenant.

**l. Attorneys' Fees.** It is understood and agreed between the parties hereto that in the event of any litigation between the parties, the prevailing party shall be entitled to recover reasonable attorneys' fees and court costs from the losing party.

**m. Recording.** This Lease Agreement shall not be recorded in the public records.



# **Exhibit C**



ONEIDA COUNTY  
 DEPARTMENT OF PUBLIC WORKS  
 George E. Carle Complex  
 5999 Judd Road, Oriskany, NY 13424  
 Phone: (315) 793-6235 Fax: (315) 768-6299

ANTHONY J. PICENTE JR.  
 County Executive

MARK E. LARAMIE, P.E.  
 Commissioner

FN 20 20 - 375

November 16, 2020

Anthony J. Picente, Jr.  
 Oneida County Executive  
 800 Park Avenue  
 Utica, NY 13501

**PUBLIC WORKS**

**WAYS & MEANS**

Dear County Executive Picente,

The enclosed contract amendment with Lochner Engineering procures additional engineering services needed for reconstruction of the Marcy-SUNY IT Parkway in the Town of Marcy.

Due to roadway realignment, additional highway right-of-way is required. Lochner's original scope of work included a 25-year title history search. The County Attorney determined that a 50-year title history search is required. In addition, final roadway realignment geometry requires additional soil borings within the Gridley Creek ravine. Specialized equipment and additional technical services are required.

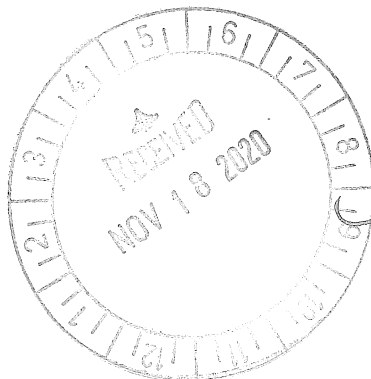
On November 4, 2020, the Oneida County Board of Acquisition and Contract approved Change Order No. 2 to the contract with Lochner Engineering to complete the aforementioned work items for an additional fee of \$20,359.00. The revised maximum amount payable (MAP) would be \$510,359.00 with funding provided thru Capital Project H-618.

Please review the enclosed contract amendment and if acceptable forward to the Oneida County Board of Legislators for consideration.

Thank you for your continued support.

Sincerely,

Mark E. Laramie, P.E.  
 Commissioner



Reviewed and Approved for submittal to the  
 Oneida County Board of Legislators by  
  
 Anthony J. Picente, Jr.  
 County Executive  
 Date 11-18-20

Oneida Co. Department: Public Works

Competing Proposal	<u>  X  </u>
Only Respondent	<u>      </u>
Sole Source RFP	<u>      </u>
Other	<u>      </u>

## ONEIDA COUNTY BOARD OF LEGISLATORS

**Name & Address of Vendor:** Lochner Engineering, P.C.  
181 Genesee Street  
Utica, NY 13501

**Title of Activity or Service:** Professional Consulting Services for  
Reconstruction of Marcy-SUNY IT Parkway-CO#2

**Proposed Dates of Operation:** Start on Execution - 12/31/2021

**Client Population/Number to be Served:** N/A

### Summary Statements

#### 1) Narrative Description of Proposed Services:

Due to roadway realignment, additional highway right of way is required. Lochner’s original scope of work included a 25-year title history search. The County Attorney determined that a 50-year title history search is required. In addition, final roadway realignment geometry requires additional soil borings within the Gridley Creek ravine. Specialized equipment and additional technical services are required.

On November 4, 2020, the Oneida County Board of Acquisition and Contract approved Change Order No. 2 to the contract with Lochner Engineering to complete the aforementioned work items for an additional fee of \$20,359.00. The revised maximum amount payable (MAP) would be \$510,359.00.

#### 2) Program/Service Objectives and Outcomes: N/A

#### 3) Funding

<b>Account #:</b>	H-618
<b>Total Funding Requested:</b>	\$510,359.00
<b>Oneida County Dept. Funding Recommendation:</b>	\$510,359.00

#### Proposed Funding Sources

<b>Federal:</b>	\$0.00
<b>New York State:</b>	\$0.00
<b>Oneida County:</b>	\$510,359.00

**4) Mandated/Not Mandated:** This is a mandated service, as it is a Change Order to an existing agreement on an ongoing project.

**Past Performance Data:** N/A

#### O.C. Department Staff Comments:

Original MAP	\$48,839.00	(Schematic Design)
Change Order No. 1	\$441,161.00	(Plans & Specifications)
Proposed Change Order No. 2	\$20,359.00	(Additional Title Search & Soil Borings)
<u>Proposed MAP</u>	<u>\$510,359.00</u>	

# LOCHNER

## Attachment C – Change Order Form

Contract No. Rehabilitation of the Marcy-SUNY IT Parkway  
Project No. LEPC 17050  
Change Order No. Two  
Effective Date October 19, 2020

In accordance with Article 7 of the Consulting Services Agreement dated March 25, 2020 (“Agreement”) between the Oneida County (“CLIENT”) and Lochner Engineering, P.C. (“CONSULTANT”), this Change Order modifies the Agreement as follows:

**1. Change in Services:**

See attached Scope of Services

**2. Change in time of Performance (attach schedule if appropriate):**

None

**3. Change in CONSULTANT’s Compensation:**

The increase in Maximum Amount Payable as a result of this change order is as follows:


Original MAP	\$ 48,839.00
Change Order #1	\$ 441,161.00
Change Order #2	\$20,359.00
Revised MAP	\$ 510,359.00

All other terms and conditions remain unchanged.

**ONEIDA COUNTY**

\_\_\_\_\_  
Signature  
  
\_\_\_\_\_  
Name, Title (Printed or Typed)  
  
\_\_\_\_\_  
Date

**LOCHNER ENGINEERING, P.C.**

  
\_\_\_\_\_  
Signature  
  
Ryan G. Gargan, Vice-President  
\_\_\_\_\_  
Name, Title (Printed or Typed)  
  
10/22/2020  
\_\_\_\_\_  
Date

**SA02 Exhibit B**  
**Reconstruction of Marcy-SUNY IT Parkway in the Town of Marcy, Oneida County NY**

This is a contract amendment to the initial contract between Oneida County and Lochner Engineering, PC for design services related to the reconstruction of the Marcy-SUNY IT Parkway from approximately 1100 feet southwest of Hazard Road to Mulaney Road. This amendment contains the scope and associated fee exhibits that are required to complete the design services and develop contract bid documents for the roadway improvements.

**Section 5 Right-of-Way R.K. Hite**

**5.1.5 Title Research and Title Certification**

- 5.1.5.5 For the acquisition of real property rights, the Consultant will perform a Fifty-Year Title search. The Fifty-Year Search will start with a deed that conveys complete and indefeasible title, which has been executed and of record at least fifty years prior to the search date. The Fifty-Year Search will not begin with a deed where the grantor and grantee are in some way related without full consideration having been paid.

**Section 2. Data Collection and Analysis**

**2.8 Soil Investigations**

**2.8.2 Atlantic Testing laboratories (ATL) will provide the following field services:**

- 2.8.2.1 Coordinate an underground utility clearance using a public utility locating service such as Dig Safely New York. The CLIENT or OWNER shall be responsible to provide information regarding private buried and overhead site utilities not managed by public utility sources. ATL shall take reasonable precautions to avoid damage to subsurface utilities and structures that have been properly identified and marked. ATL shall not be responsible for damage to subsurface utilities and structures that are not correctly identified or marked during the public underground utility clearance, and/or damage to private subsurface utilities and structures resultant from incorrect information provided by the CLIENT or OWNER.
- Completion of an underground utility clearance requires a minimum of three business days, in accordance with Dig Safely New York policy.
- 2.8.2.2 Mobilize and demobilize the following:
- Two-person drill crew
  - ATV-mounted drill rig
- 2.8.2.3 Advance nine (9) soil borings, utilizing hollow stem augers and/or flush joint casing, to estimated depths ranging between 15 to 30 feet each, to practical refusal, or until at least 10 feet of material exhibiting a Standard Penetration Test (N value) of at least 50 blows/foot is penetrated, whichever is less. If practical refusal is encountered, the material may be cored, at selected locations, a minimum of 5 feet using an NX-size core barrel (2-inch core diameter).
- 2.8.2.4 Perform soil sampling and Standard Penetration Testing (SPT), using a 2-inch OD split spoon sampler, in accordance with ASTM D 1586: *“Standard Test Method for Standard Penetration Test (SPT) and Split Barrel Sampling of Soils,”* continuously to a minimum depth of 12 feet and at 5-foot intervals thereafter.
- 2.8.2.5 Collect undisturbed samples (Shelby tubes) to represent the stratum of concern if soft cohesive soil is encountered, as necessary.
- 2.8.2.6 Backfill borings upon project completion with on-site material. The boreholes will be restored at the surface grade to generally correspond with existing conditions (i.e., soil, asphalt cold patch, concrete). CLIENT will be responsible for monitoring backfilled locations for settlement and condition of surface

restoration. ATL assumes no liability for borehole settlement and makes no warranties or guarantees, express or implied, related to surface restoration.

**2.8.3 ATL will provide the following laboratory services:**

2.8.3.1 Perform visual classification of the soil and/or rock samples in the laboratory in accordance with Burmister Soil Classification System.

**2.8.3.2 Soil:**

- ASTM D 422 Particle-Size Analysis of Soils (with Hydrometer analysis)
- ASTM D 422 Particle-Size Analysis of Soils (without Hydrometer analysis)
- ASTM D 2216 Natural Moisture Content
- ASTM D 4318 Liquid Limit, Plastic Limit, and Plasticity Index of Soils
- ASTM D 7012 Method C Unconfined Compressive Strength of Intact Rock Cores

**2.8.4 ATL will provide the following reporting services:**

2.8.4.1 Prepare a Geotechnical Report to include the following:

- Boring Location Plan and Site Location Map
- Description of subsurface investigation and sampling methodology
- Description of subsurface soil and rock conditions, and groundwater conditions
- Computer-generated soil boring logs with laboratory soil/rock classifications, subsurface stratigraphy, SPT observations, groundwater observations, and rock core descriptions
- Laboratory test results
- Geotechnical analysis that includes the following:
  - 1) Recommended foundation system
  - 2) Allowable soil bearing pressure
  - 3) Estimated settlement
  - 4) Lateral earth pressures
  - 5) Frost protection
  - 6) Subsurface drainage recommendations
  - 7) Backfill criteria
  - 8) Provide the Seismic Site Classification in accordance with ASCE 7-16

2.8.4.2 Distribute reports as directed by CLIENT. Reports will be distributed to CLIENT by email, unless otherwise directed.

**2.8.5 CLIENT will be responsible for the following:**

2.8.5.1 Stake the location and obtain the ground elevation for each boring. Provide ATL with boring locations, elevations, and boring location plan prior to commencing field work.

2.8.5.2 Provide appropriate access for the proposed equipment to each boring location.

2.8.5.3 Obtain any required permits and permissions for site access.

**Exhibit A, Page 1**  
**Summary**  
**Lochner Engineering, P.C.**  
**Reconstruction of Edic Road in the Town of Marcy**  
**Oneida County Department of Public Works**  
**Oneida County**  
**October 19, 2020**

Item IA, Direct Technical Salaries (estimated) subject to audit	\$0
Item IB, Direct Technical Salaries Premium Portion of overtime (estimated) of overtime subject to audit	\$0
Item II, Direct Non-Salary Cost (estimated) Expenses	\$944
Item II, Direct Non-Salary Cost (estimated) Sub-Consultant Cost (RK Hite)	\$6,415
Item II, Direct Non-Salary Cost (estimated) Sub-Consultant Cost (Environmental Design & Research)	\$0
Item II, Direct Non-Salary Cost (estimated) Sub-Consultant Cost (Prudent Engineering)	
Item II, Direct Non-Salary Cost (estimated) Sub-Consultant Cost (OSPA Engineering Services)	\$0
Item II, Direct Non-Salary Cost (estimated) Sub-Contractor Cost (Atlantic Testing Laboratories)	\$13,000
Item III, Overhead (estimated) subject to audit @ 160%	\$0
Item II Fixed Fee - 8%	\$0
<hr/>	
Total Estimated Cost	\$20,359
Contingency	<hr/>
<b>TOTAL FEE</b>	<b>\$20,359</b>
<hr/>	

**Exhibit A, Page 2**  
**Estimate of Direct Non- Salary Cost**  
**Lochner Engineering, P.C.**  
**Reconstruction of Edic Road in the Town of Marcy**  
**Oneida County Department of Public Works**  
**Oneida County**  
**October 19, 2020**

**1. Travel, Lodging and Subsistence**

<u>Trips to:</u>							
Site		trips with		miles per trip @	\$0.580	per mile =	\$0.00
Oneida County DPW	2	trips with	814	miles per trip @	\$0.580	per mile =	\$944.24
							\$944.24
Tolls	0	trips @	\$ -	per trip =			\$0.00
<b>TOTAL TRAVEL, LODGING, &amp; SUBSISTENCE</b>							<b>\$944.24</b>

**2. Reproduction, Drawings & Report**

8-1/2 x 11 B/W Copies (Specifications)	sets	40	sheets/set	\$0.10	each sheet	\$0.00	
11 x 17 B/W Copies (Plans)	sets	50	sheets/set	\$0.15	each sheet	\$0.00	
8-1/2 x 11 B/W Copies (Reports)	sets	50	sheets/set	\$0.10	each sheet	\$0.00	
11 x 17 B/W Copies (Report Dwgs)	sets	30	sheets/set	\$0.10	each sheet	\$0.00	
Boards for Public Meeting							
<b>TOTAL REPRODUCTION, DRAWING &amp; REPORT</b>							<b>\$0.00</b>

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**TOTAL DIRECT NON - SALARY COST      \$944.24**

**3. Subcontractor Cost**

Geotechnical - Borings and Foundation Recommendation for Culvert and Retaining walls (Estimated)	\$13,000.00
Title Research and Title Certification	\$ 6,500.00
<b>TOTAL SUBCONTRACTOR COSTS      \$19,500.00</b>	



Exhibit B, Page 1  
 Specific Hourly Rate Schedule  
 September 8, 2020 SA 01 (rev1)  
 R.K. Hite & Co., Inc.

**Project Title:** Edic Road to Mulvaney Road Reconstruction  
**PIN:** N/A  
**Town:** Marcy  
**County:** Oneida

Job Title	Hourly Rates			Overtime Category
	2019	Projected (2020)	Maximum	
Principal	\$135.00	\$140.00	\$140.00	A
Project Manager	\$100.00	\$103.00	\$103.00	A
Appraisal Reviewer	\$94.00	\$97.00	\$97.00	B
Relocation Specialist	\$94.00	\$97.00	\$97.00	B
Field Coordinator	\$72.00	\$75.00	\$75.00	B
Property Rights Specialist	\$68.00	\$70.00	\$70.00	B
Title Specialist	\$66.00	\$68.00	\$68.00	B
Title Examiner	\$68.00	\$70.00	\$70.00	B
Data Manager	\$80.00	\$82.00	\$82.00	B
Data Technician	\$64.00	\$66.00	\$66.00	B
Secretary	\$40.00	\$41.00	\$41.00	B
Title Attorney	\$125.00	\$125.00	\$100.00	A
Appraiser	\$90.00	\$90.00	\$90.00	A
EDPL Attorney	\$250.00	\$250.00	\$250.00	A

NOTE:  
 Hourly rates shall not exceed those shown above.

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OVERTIME POLICY

- Category A: No overtime compensation.
- Category B: Overtime compensated at straight time rate.

STAFFING TABLE

R.K. HITE & CO., INC.

TASK	DESCRIPTION	JOB TITLE					TOTALS			
		PROJECT MANAGER	APPRAISAL REVIEWER	PROPERTY RIGHTS SPECIALIST	TITLE SPECIALIST	TITLE REVIEWER		DATA BASE MANAGER	DATA TECHNICIAN	SECRETARY
<b>GENERAL</b>										
1.05	Project Familiarization	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
1.07	Cost and Progress Reporting	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	<b>SUBTOTAL</b>	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
<b>INCIDENTAL PHASE</b>										
5.01	Abstract Request Map and Title Search	0.25	0.00	0.00	50.00	6.00	0.00	0.75	0.50	57.50
5.02	Right of Way Survey	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
5.03	Right of Way Mapping	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
5.04	Right of Way Plan	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
5.05	Right of Way Cost Estimate	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
5.06	Public Hearings/Meetings	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
5.07	Property Appraisals	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
5.08	Appraisal Reviews	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
5.10	Relocation Assistance (Incidental Phase)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	<b>SUBTOTAL</b>	0.25	0.00	0.00	50.00	6.00	0.00	0.75	0.50	57.50
<b>ACQUISITION PHASE</b>										
5.09	Negotiations & Property Acquisition	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
5.10	Relocation Assistance (Acquisition Phase)	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
	<b>SUBTOTAL</b>	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00
<b>TOTAL HOURS</b>		0.25	0.00	0.00	50.00	6.00	0.00	0.75	0.50	57.50
<b>PROJECTED HOURLY RATE</b>		\$103.00	\$97.00	\$70.00	\$68.00	\$70.00	\$82.00	\$66.00	\$41.00	
<b>LABOR COST</b>		\$25.75	\$0.00	\$0.00	\$3,400.00	\$420.00	\$0.00	\$49.50	\$20.50	\$3,915.75

EXHIBIT B, PAGE 2b  
September 8, 2020 SA 01 (rev1)

Direct Non-Salary

Project Title: Edic Road to Mulvaney  
Road Reconstruction  
PIN: N/A  
Town: Marcy  
County: Oneida

R.K. HITE & CO., INC.

TASK	DESCRIPTION		TITLE	APPRAISER	Closing/EDPL	TOTALS
			ATTORNEY		ATTORNEY	
<b>GENERAL</b>						
1.05	Project Familiarization		0.00	0.00	0.00	0.00
1.07	Cost and Progress Reporting		0.00	0.00	0.00	0.00
	<b>SUBTOTAL</b>		0.00	0.00	0.00	0.00
<b>INCIDENTAL PHASE</b>						
5.01	Abstract Request Map and Title Search		6.00	0.00	0.00	6.00
5.02	Right of Way Survey		0.00	0.00	0.00	0.00
5.03	Right of Way Mapping		0.00	0.00	0.00	0.00
5.04	Right of Way Plan		0.00	0.00	0.00	0.00
5.05	Right of Way Cost Estimate		0.00	0.00	0.00	0.00
5.06	Public Hearings/Meetings		0.00	0.00	0.00	0.00
5.07	Property Appraisals		0.00	0.00	0.00	0.00
5.08	Appraisal Reviews		0.00	0.00	0.00	0.00
5.10	Relocation Assistance (Incidental Phase)		0.00	0.00	0.00	0.00
	<b>SUBTOTAL</b>		6.00	0.00	0.00	6.00
<b>ACQUISITION PHASE</b>						
5.09	Negotiations & Property Acquisition		0.00	0.00	0.00	0.00
5.10	Relocation Assistance (Acquisition Phase)		0.00	0.00	0.00	0.00
	<b>SUBTOTAL</b>		0.00	0.00	0.00	0.00
<b>TOTAL HOURS</b>			6.00	0.00	0.00	6.00
<b>PROJECTED HOURLY RATE</b>			\$125.00	\$90.00	\$250.00	
<b>LABOR COST</b>			\$750.00	\$0.00	\$0.00	\$750.00

EXHIBIT B, PAGE 3  
 Estimate of Direct Non-Salary Cost  
 R.K. Hite & Co., Inc.  
 September 8, 2020 SA 01 (rev1)

**Project Title:** Edic Road to Mulvaney Road Reconstruction  
**PIN:** N/A  
**Town:** Marcy  
**County:** Oneida

**Travel, Lodging, Subsistence, Fees and Supplies**

Per Diem 0 Nights @ \$154.00 /night \$0.00

Trips	Vehicle Type	No. Trips	Mile per Trip	Total Miles			
Incidental Phase							
To Site	Auto	0	400	0			
Local	Auto	0	100	0			
Acquisition Phase							
To Site	Auto	0	100	0			
Local	Auto	0	10	0			
				0	@	\$0.580	<u>\$0.00</u>

\$0.00

Reproduction, Drawings & Reports \$1,750.00

Telephone \$0.00

Postage & Deliveries \$0.00

E&O Insurance Premium \$0.00

Recording Fees \$0.00

TOTAL DIRECT NON-SALARY COSTS \$1,750.00

**Project Title:** Edic Road to  
Mulvaney Road  
Reconstruction

EXHIBIT B, PAGE 4  
Summary  
September 8, 2020 SA 01 (rev1)  
R.K. HITE & CO., INC.

**PIN:** N/A  
**Town:** Marcy  
**County:** Oneida

	<u>221 Incidental</u>	<u>222 Acquisition</u>	<u>TOTAL</u>
ITEM 1A, (estimated - subject to audit)	\$3,915.75	\$0.00	\$3,915.75
ITEM 1B (estimated - subject to audit)			
Item II, Direct Non-Salary Cost (estimated - subject to audit)	\$1,750.00	\$0.00	\$1,750.00
Item II, Direct Non-Salary Cost (Sub-Contractor Cost) (estimated - subject to audit)			
Item III, Overhead (estimated - subject to audit)			
Item IV, Fixed Fee (negotiated)			
Item II, Direct Non-Salary Cost (Title/Attorney) (estimated -subject to audit)	\$750.00	\$0.00	\$750.00
Item II, Direct Non-Salary Cost (Closing/EDPL Attorney) (estimated -subject to audit)	\$0.00	\$0.00	\$0.00
Item II, Direct Non-Salary Cost (Appraiser) (estimated -subject to audit)	\$0.00	\$0.00	\$0.00
	\$6,415.75	\$0.00	<u>\$6,415.75</u>

**EXHIBIT B**

**FEE SCHEDULE**

Service	Estimated Quantity	Unit Fee	Estimated Cost
<b>ATL SERVICES</b>			
<b>Mobilization/Demobilization</b>			
ATV-Mounted Drill Rig with a Two-Person Drill Crew	1	\$ 4,000.00 Lump Sum	4,000.00
<b>Soil Borings</b>			
Auger or Cased Boring (< 75 blows/foot material)	175	\$ 55.00 /LF	9,625.00
Auger or Cased Boring (> 75 blows/foot material)	--	\$ 65.00 /LF	If Required
<b>Soil Sampling</b>			
2-inch OD Split Spoon Sample	71	\$ 25.00 /Each	1,775.00
Undisturbed Sample (Shelby Tube)	--	\$ 220.00 /Each	If Required
<b>Rock Drilling</b>			
NX Coring	20	\$ 99.00 /LF	1,980.00
<b>Laboratory Testing</b>			
Visual Soil Classification (Burmister)	71	\$ 5.50 /Each	390.50
ASTM D 422: Particle Size Analysis of Soils without Hydrometer	5	\$ 80.00 /Test	400.00
ASTM D 422: Particle Size Analysis of Soils with Hydrometer	3	\$ 125.00 /Test	375.00
ASTM D 2216: Moisture Content	25	\$ 8.00 /Test	200.00
ASTM D 7012 Method C: Unconfined Compression Test - Intact Rock Cores	--	\$ 245.00 /Test	If Required
ASTM D 4318: Liquid Limit, Plastic Limit, Plasticity Index (Atterberg Limits)	2	\$ 105.00 /Test	210.00
<b>Report Preparation</b>			
Prepare Geotechnical Report	1	\$ 2,500.00 Lump Sum	2,500.00
<b>Technical Personnel</b>			
Geotechnical Engineer Office (additiional services)	--	\$ 90.00 /Hour	If Requested
<b>Miscellaneous</b>			
Standby Time Includes time delays uncontrolled by ATL	--	\$ 400.00 /Hour	If Required
<b>Subtotal ATL Services</b>			21,455.50
<b>ATL ENGINEERING, P.C. SERVICES</b>			
<b>Technical Personnel</b>			
Principal Engineer	2	\$ 150.00 /Hour	300.00
<b>Subtotal ATL Engineering, P.C. Services</b>			300.00
<b>Estimated Cost</b>			<b>\$21,755.50</b>
<b>Lump Sum \$19,750</b>			

**NOTES TO THE FEE SCHEDULE**

Unit Fee invoices will be based on the unit fees and the actual services rendered, and may vary from the Total Estimated Cost. Lump Sum invoices will be based on the Lump Sum Fee.

It is ATL's understanding that NYS prevailing wages are applicable for this project. The unit fees are based on the applicable prevailing wage rates.

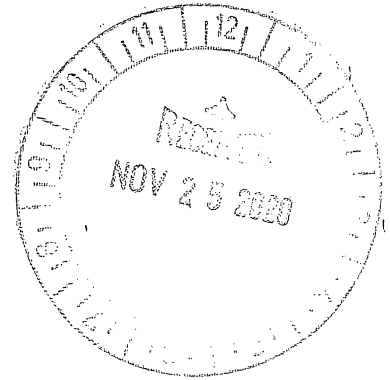
STATE OF NEW YORK  
STATE BOARD OF ELECTIONS

FN 20 20-376

GOVERNMENT OPERATIONS

ELECTION COMMISSIONER CERTIFICATION

WAYS & MEANS



To the Clerk of the County (Board) (Legislature), County of Oneida.

*I certify that:*

At a meeting of the Democratic County Committee of the County of Oneida, or a duly constituted subcommittee thereof, as prescribed under NY State Election Law 3-204 paragraph 2, held on the 23<sup>rd</sup> day of November, 2020, at Clinton, New York, under the provisions of the Election Law and rules of the County Committee, a quorum being present, Carolann N Cardone residing at 614 Plymouth Place, Utica New York, 13501, was recommended by a majority of said committee as a suitable and qualified person for appointment to the office of Commissioner of Elections,

for the term beginning January 1, 2021

     to fill an existing vacancy in said office for the remainder of the current term and that said designee is a registered voter of the County of Oneida and a duly enrolled member of the Democratic Party.

Dated at Clinton, New York

November 23, 2020.

(date)

A handwritten signature in black ink, appearing to read "W. Decker".

(Chairman or Secretary)



ANTHONY J. PICENTE JR.  
County Executive

ANNEMARIE AMBROSE  
Director

**ONEIDA COUNTY**  
**DEPARTMENT OF INFORMATION TECHNOLOGY**  
Oneida County Office Building ♦ 800 Park Avenue ♦ Utica, NY 13501

FN 20 20-377

November 18, 2020

Honorable Anthony J. Picente Jr.  
Oneida County Executive  
800 Park Avenue  
Utica, New York 13501

GOVERNMENT OPERATIONS

WAYS & MEANS

Dear Mr. Picente,

Attached for your review and approval is an Enterprise Enrollment Agreement between Oneida County, through its Department of Information Technology and Microsoft Corporation.

In November of 2019, Oneida County Information Technology engaged in a contract review with Invisio Corporation through Microsoft. It was found that the County was grossly out of compliance with regard to Microsoft licensing.

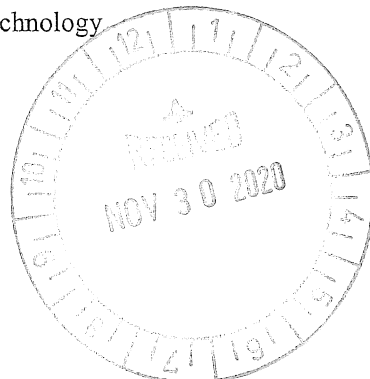
This Agreement provides a mechanism for Oneida County Information Technology to engage in a proper Microsoft volume license agreement and properly dispense Microsoft product subscriptions to County equipment. Compliance with Microsoft license distribution audit findings is imperative. Without compliance, the County could be vulnerable to severe financial penalties above the cost to rectify the discrepancy. Further, the County could be denied access to Microsoft products, which could cripple the County's ability to function.

The cost to reconcile this discrepancy is \$374,964.67. It will be funded by Capital fund H433 in 2020.

I am respectfully requesting the approval of this Agreement between Oneida County, through its Department of Information Technology and Microsoft Corporation. If you concur, please indicate so by endorsing this letter and forwarding of the enclosed agreement to the Board of Legislators for consideration at their next meeting.

Sincerely,

AnneMarie Ambrose  
Director, Information Technology



Reviewed and Approved for submittal to the  
Oneida County Board of Legislator by

Anthony J. Picente, Jr.  
County Executive

Date 11-30-20



Oneida Co. Department: Info Tech

Competing Proposal \_\_\_\_\_  
Only Respondent \_\_\_\_\_  
Sole Source RFP \_\_\_\_\_  
Other  X

**ONEIDA COUNTY BOARD  
OF LEGISLATORS**

Name & Address of Vendor: Microsoft Corporation  
1 Microsoft Way  
Redmond, WA 98052

Title of Activity or Service: Enterprise Agreement for Licensing & Leverage

Proposed Dates of Operation: 3 Years

Client Population/Number to be Served:

**Summary Statements**

- 1) **Description of Proposed Services:** This agreement provides a mechanism for Oneida County Information Technology to engage in proper Microsoft volume License agreement and properly dispense Microsoft product subscriptions To County equipment
- 2) **Program/Service Objectives and Outcomes:** Without compliance the County could be vulnerable to servere financial penalties above the cost to rectify the discrepancy. The County could also be denied access to Microsoft products.
- 3) **Program Design and Staffing:**

**Total Funding Requested:** Per SOW, \$374,964.67 total      **Account:** # H433  
(3 Years from date of execution)

**Oneida County Dept. Funding Recommendation:** Per SOW, \$374,964.67 total  
--This is a mandated service, as the licenses are required to keep the County's systems operational

**Proposed Funding Sources (Federal \$/ State \$/County \$):** County

**Cost Per Client Served:** N/A

**Past Performance Data:** N/A

**O.C. Department Staff Comments:** None

## Custom Enterprise Enrollment

## State and Local

Enterprise Enrollment number <i>(Microsoft to complete)</i>		Proposal ID/Framework ID <i>(if applicable)</i>	NYS001
Previous Enrollment number <i>(Reseller to complete)</i>			

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

This Microsoft Enterprise Enrollment is entered into between the entities as identified in the signature form as of the effective date. Enrolled Affiliate represents and warrants it is an Affiliate of the State of New York who entered into the Enterprise Agreement identified on the program signature form.

This Enrollment consists of: (1) the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984) and these Enterprise Enrollment terms and conditions, (2) the terms of the Enterprise Agreement identified on the signature form, (3) the Product Selection Form, (4) the Product Terms, (5) the Online Services Terms, (6) any Supplemental Contact Information Form, Previous Agreement/Enrollment form, and other forms that may be required, and (7) any order submitted under this Enrollment. By entering into this Enrollment, Enrolled Affiliate agrees to be bound by the terms and conditions of the Enterprise Agreement.

If there is a capitalized term in this Enrollment that is not defined elsewhere in the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984), and there is a definition of the capitalized term at the following link, the definition at the link will apply: <http://www.microsoft.com/licensing/contracts>. In the event there is language in the definition at the link which conflicts with OGS Contract No. PS67984, the language of OGS Contract No. PS67984 will control.

**Effective date.** If Enrolled Affiliate is renewing Software Assurance or Subscription Licenses from one or more previous Enrollments or agreements, then the effective date will be the day after the first prior Enrollment or agreement expires or terminates. If this Enrollment is renewed, the effective date of the renewal term will be the day after the Expiration Date of the initial term. Otherwise, the effective date will be the date this Enrollment is accepted by Microsoft. Any reference to "anniversary date" refers to the anniversary of the effective date of the applicable initial or renewal term for each year this Enrollment is in effect.

**Term.** The initial term of this Enrollment will expire on the last day of the month, 36 full calendar months from the effective date of the initial term. The renewal term will expire 36 full calendar months after the effective date of the renewal term.

## Terms and Conditions

### 1. Definitions.

Terms used but not defined in this Enrollment will have the definition in the Enterprise Agreement. The following definitions are used in this Enrollment:

"Additional Product" means any Product identified as such in the Product Terms and chosen by Enrolled Affiliate under this Enrollment.

"Community" means the community consisting of one or more of the following: (1) a Government, (2) an Enrolled Affiliate using eligible Government Community Cloud Services to provide solutions to a

Government or a qualified member of the Community, or (3) a Customer with Customer Data that is subject to Government regulations for which Customer determines and Microsoft agrees that the use of Government Community Cloud Services is appropriate to meet Customer's regulatory requirements. Membership in the Community is ultimately at Microsoft's discretion, which may vary by Government Community Cloud Service.

"Enterprise Online Service" means any Online Service designated as an Enterprise Online Service in the Product Terms and chosen by Enrolled Affiliate under this Enrollment. Enterprise Online Services are treated as Online Services, except as noted.

"Enterprise Product" means any Desktop Platform Product that Microsoft designates as an Enterprise Product in the Product Terms and chosen by Enrolled Affiliate under this Enrollment. Enterprise Products must be licensed for all Qualified Devices and Qualified Users on an Enterprise-wide basis under this program.

"Expiration Date" means the date upon which this Enrollment expires.

"Federal Agency" means a bureau, office, agency, department or other entity of the United States Government.

"Government" means a Federal Agency, State/Local Entity, or Tribal Entity acting in its governmental capacity.

"Government Community Cloud Services" means Microsoft Online Services that are provisioned in Microsoft's multi-tenant data centers for exclusive use by or for the Community and offered in accordance with the National Institute of Standards and Technology (NIST) Special Publication 800-145. Microsoft Online Services that are Government Community Cloud Services are designated as such in the Use Rights and Product Terms.

"Industry Device" (also known as line of business device) means any device that: (1) is not useable in its deployed configuration as a general purpose personal computing device (such as a personal computer), a multi-function server, or a commercially viable substitute for one of these systems; and (2) only employs an industry or task-specific software program (e.g. a computer-aided design program used by an architect or a point of sale program) ("Industry Program"). The device may include features and functions derived from Microsoft software or third-party software. If the device performs desktop functions (such as email, word processing, spreadsheets, database, network or Internet browsing, or scheduling, or personal finance), then the desktop functions: (1) may only be used for the purpose of supporting the Industry Program functionality; and (2) must be technically integrated with the Industry Program or employ technically enforced policies or architecture to operate only when used with the Industry Program functionality.

"Managed Device" means any device on which any Affiliate in the Enterprise directly or indirectly controls one or more operating system environments. Examples of Managed Devices can be found in the Product Terms.

"Qualified Device" means any device that is used by or for the benefit of Enrolled Affiliate's Enterprise and is: (1) a personal desktop computer, portable computer, workstation, or similar device capable of running Windows Pro locally (in a physical or virtual operating system environment), or (2) a device used to access a virtual desktop infrastructure ("VDI"). Qualified Devices do not include any device that is: (1) designated as a server and not used as a personal computer, (2) an Industry Device, or (3) not a Managed Device. At its option, the Enrolled Affiliate may designate any device excluded above (e.g., Industry Device) that is used by or for the benefit of the Enrolled Affiliate's Enterprise as a Qualified Device for all or a subset of Enterprise Products or Online Services the Enrolled Affiliate has selected.

"Qualified User" means a person (e.g., employee, consultant, contingent staff) who: (1) is a user of a Qualified Device, or (2) accesses any server software requiring an Enterprise Product Client Access License or any Enterprise Online Service. It does not include a person who accesses server software or an Online Service solely under a License identified in the Qualified User exemptions in the Product Terms.

"Reseller" means an entity authorized by Microsoft to resell Licenses under this program and engaged by an Enrolled Affiliate to provide pre- and post-transaction assistance related to this Agreement;

"Reserved License" means for an Online Service identified as eligible for true-ups in the Product Terms, the License reserved by Enrolled Affiliate prior to use and for which Microsoft will make the Online Service available for activation.

"State/Local Entity" means (1) any agency of a state or local government in the United States, or (2) any United States county, borough, commonwealth, city, municipality, town, township, special purpose district, or other similar type of governmental instrumentality established by the laws of Customer's state and located within Customer's state's jurisdiction and geographic boundaries.

"Tribal Entity" means a federally-recognized tribal entity performing tribal governmental functions and eligible for funding and services from the U.S. Department of Interior by virtue of its status as an Indian tribe.

"Use Rights" shall have the definition as set forth in Section 1.8 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

"Volume Licensing Site" shall have the same meaning as "Licensing Site" in the Custom Microsoft Business Agreement (OGS Contract No. PS67984).

## **2. Order requirements.**

- a. **Minimum order requirements.** Enrolled Affiliate's Enterprise must have a minimum of 250 Qualified Users or Qualified Devices. The initial order must include at least 250 Licenses for Enterprise Products or Enterprise Online Services.
  - (i) **Enterprise commitment.** Enrolled Affiliate must order enough Licenses to cover all Qualified Users or Qualified Devices, depending on the License Type, with one or more Enterprise Products or a mix of Enterprise Products and the corresponding Enterprise Online Services (as long as all Qualified Devices not covered by a License are only used by users covered with a user License).
  - (ii) **Enterprise Online Services only.** If no Enterprise Product is ordered, then Enrolled Affiliate need only maintain at least 250 Subscription Licenses for Enterprise Online Services.
- b. **Additional Products.** Upon satisfying the minimum order requirements above, Enrolled Affiliate may order Additional Products.
- c. **Use Rights for Enterprise Products.** For Enterprise Products, if a new Product version has more restrictive Use Rights than the version that is current at the start of the applicable initial or renewal term of the Enrollment, those more restrictive Use Rights will not apply to Enrolled Affiliate's use of that Product during that term.
- d. **Country of usage.** Enrolled Affiliate must specify the countries where Licenses will be used on its initial order and on any additional orders.
- e. **Resellers.** Enrolled Affiliate must choose and maintain a Reseller authorized in the United States throughout the term of this Enrollment. During the term of any contract between OGS and a Microsoft Reseller for Software and Online Services, Enrolled Affiliate must acquire its Licenses through the OGS-designated Reseller under such contract. Orders must be submitted to the Reseller who will transmit the order to Microsoft. The Reseller and Enrolled Affiliate determine pricing and payment terms as between them, and Microsoft will invoice the Reseller based on those terms. Resellers and other third parties do not have authority to bind or impose any obligation or liability on Microsoft.
- f. **Adding Products.**
  - (i) **Adding new Products not previously ordered.** New Enterprise Products or Enterprise Online Services may be added at any time by contacting a Microsoft Account Manager or Reseller. New Additional Products, other than Online Services, may be used if an order is

placed in the month the Product is first used. For Additional Products that are Online Services, an initial order for the Online Service is required prior to use.

- (ii) **Adding Licenses for previously ordered Products.** Additional Licenses for previously ordered Products other than Online Services may be added at any time but must be included in the next true-up order. Additional Licenses for Online Services must be ordered prior to use, unless the Online Services are (1) identified as eligible for true-up in the Product Terms or (2) included as part of other Licenses.
- g. **True-up requirements.** Enrolled Affiliate must submit an annual true-up order that accounts for any changes since the initial order or last order. If there are no changes, then an update statement must be submitted instead of a true-up order.
- (i) **Enterprise Products.** For Enterprise Products, Enrolled Affiliate must determine the number of Qualified Devices and Qualified Users (if ordering user-based Licenses) at the time the true-up order is placed and must order additional Licenses for all Qualified Devices and Qualified Users that are not already covered by existing Licenses, including any Enterprise Online Services.
  - (ii) **Additional Products.** For Additional Products that have been previously ordered under this Enrollment, Enrolled Affiliate must determine the maximum number of Additional Products used since the latter of the initial order, the last true-up order, or the prior anniversary date and submit a true-up order that accounts for any increase.
  - (iii) **Online Services.** For Online Services identified as eligible for true-up in the Product Terms, Enrolled Affiliate may place a reservation order for the additional Licenses prior to use and payment may be deferred until the next true-up order. Microsoft will provide a report of Reserved Licenses ordered but not yet invoiced to Enrolled Affiliate and its Reseller. Reserved Licenses will be invoiced retroactively to the month in which they were ordered.
  - (iv) **Subscription License reductions.** Enrolled Affiliate may reduce the quantity of Subscription Licenses at the Enrollment anniversary date on a prospective basis if permitted in the Product Terms, as follows:
    - 1) For Subscription Licenses that are part of an Enterprise-wide purchase, Licenses may be reduced if the total quantity of Licenses and Software Assurance for an applicable group meets or exceeds the quantity of Qualified Devices and Qualified Users (if ordering user-based Licenses) identified on the Product Selection Form, and includes any additional Qualified Devices and Qualified Users added in any prior true-up orders. Step-up Licenses do not count towards this total count.
    - 2) For Enterprise Online Services that are not a part of an Enterprise-wide purchase, Licenses can be reduced as long as the initial order minimum requirements are maintained.
    - 3) For Additional Products available as Subscription Licenses, Enrolled Affiliate may reduce the Licenses. If the License count is reduced to zero, then Enrolled Affiliate's use of the applicable Subscription License will be cancelled.Invoices will be adjusted to reflect any reductions in Subscription Licenses at the true-up order Enrollment anniversary date and effective as of such date.
  - (v) **Update statement.** An update statement must be submitted instead of a true-up order if, since the initial order or last true-up order, Enrolled Affiliate's Enterprise: (1) has not changed the number of Qualified Devices and Qualified Users licensed with Enterprise Products or Enterprise Online Services; and (2) has not increased its usage of Additional Products. This update statement must be signed by Enrolled Affiliate's authorized representative.
  - (vi) **True-up order period.** The true-up order or update statement must be received by Microsoft between 60 and 30 days prior to each Enrollment anniversary date. The third-

year true-up order or update statement is due within 30 days prior to the Expiration Date, and any license reservations within this 30-day period will not be accepted. Enrolled Affiliate may submit true-up orders more often to account for increases in Product usage, but an annual true-up order or update statement must still be submitted during the annual order period.

(vii) **Late true-up order.** If the true-up order or update statement is not received when due, Microsoft will invoice Reseller for all Reserved Licenses not previously invoiced and Subscription License reductions cannot be reported until the following Enrollment anniversary date (or at Enrollment renewal, as applicable).

- h. **Step-up Licenses.** For Licenses eligible for a step-up under this Enrollment, Enrolled Affiliate may step-up to a higher edition or suite as follows:
  - (i) For step-up Licenses included on an initial order, Enrolled Affiliate may order according to the true-up process.
  - (ii) If step-up Licenses are not included on an initial order, Enrolled Affiliate may step-up initially by following the process described in the Section titled "Adding new Products not previously ordered," then for additional step-up Licenses, by following the true-up order process.
- i. **Clerical errors.** Microsoft may correct clerical errors in this Enrollment, and any documents submitted with or under this Enrollment, by providing notice by email and a reasonable opportunity for Enrolled Affiliate to object to the correction. Clerical errors include minor mistakes, unintentional additions and omissions. This provision does not apply to material terms, such as the identity, quantity or price of a Product ordered.
- j. **Verifying compliance.** Microsoft may, in its discretion and at its expense, verify compliance with this Enrollment as set forth in the Enterprise Agreement.

### 3. **Pricing.**

- a. **Price Levels.** For both the initial and any renewal term Enrolled Affiliate's Price Level for all Products ordered under this Enrollment will be Level "D" throughout the term of the Enrollment.
- b. **Setting Prices.** Enrolled Affiliate's prices for each Product or Service will be established by its Reseller. Except for Online Services designated in the Product Terms as being exempt from fixed pricing, Microsoft's prices for Resellers for each Product or Service ordered will be fixed throughout the applicable initial or renewal Enrollment term. Microsoft's prices to Resellers are reestablished at the beginning of the renewal term.

### 4. **Payment terms.**

For the initial or renewal order, Enrolled Affiliate may pay upfront or elect to spread its payments over the applicable Enrollment term. If an upfront payment is elected, Microsoft will invoice Enrolled Affiliate's Reseller in full upon acceptance of this Enrollment. If spread payments are elected, Microsoft will invoice Enrolled Affiliate's Reseller in three equal annual installments. The first installment will be invoiced upon Microsoft's acceptance of this Enrollment and remaining installments will be invoiced on each subsequent Enrollment anniversary date. Subsequent orders are invoiced upon acceptance of the order and Enrolled Affiliate may elect to pay annually or upfront for Online Services and upfront for all other Licenses.

### 5. **End of Enrollment term and termination.**

- a. **General.** At the Expiration Date, Enrolled Affiliate must immediately order and pay for Licenses for Products it has used but has not previously submitted an order for, except as otherwise provided in this Enrollment.

- b. **Renewal option.** At the Expiration Date of the initial term, Enrolled Affiliate can renew Products by renewing this Enrollment for one additional 36-month term or by signing a new Enrollment. Microsoft must receive a Renewal Form, Product Selection Form, and renewal order prior to or at the Expiration Date. Microsoft will not unreasonably reject any renewal.
- c. **If Enrolled Affiliate elects not to renew.**
- (i) **Software Assurance.** If Enrolled Affiliate elects not to renew Software Assurance for any Product under its Enrollment, then Enrolled Affiliate will not be permitted to order Software Assurance later without first acquiring a new License with Software Assurance.
- (ii) **Online Services eligible for an Extended Term.** For Online Services identified as eligible for an Extended Term in the Product Terms, the following options are available at the end of the Enrollment initial or renewal term.
- 1) **Extended Term.** Licenses for Online Services will automatically expire in accordance with the terms of the Enrollment. An extended term feature that allows Online Services to continue month-to-month ("Extended Term") for up to one year, unless designated in the Product Terms to continue until cancelled, is available. During the Extended Term, Online Services will be invoiced monthly at the then-current published price as of the Expiration Date. If Enrolled Affiliate wants an Extended Term, Enrolled Affiliate must submit a request to Microsoft at least 30 days prior to the Expiration Date.
- 2) **Cancellation during Extended Term.** At any time during the first year of the Extended Term, Enrolled Affiliate may terminate the Extended Term by submitting a notice of cancellation to Microsoft for each Online Service. Thereafter, either party may terminate the Extended Term by providing the other with a notice of cancellation for each Online Service. Cancellation will be effective at the end of the month following 30 days after Microsoft has received or issued the notice.
- (iii) **Subscription Licenses and Online Services not eligible for an Extended Term.** If Enrolled Affiliate elects not to renew, the Licenses will be cancelled and will terminate as of the Expiration Date. Any associated media must be uninstalled and destroyed and Enrolled Affiliate's Enterprise must discontinue use. Microsoft may request written certification to verify compliance.
- d. **Termination for cause.** Any termination for cause of this Enrollment will be subject to the "Termination for cause" section of the Enterprise Agreement Program Agreement. In addition, it shall be a breach of this Enrollment if Enrolled Affiliate or any Affiliate in the Enterprise that uses Government Community Cloud Services fails to meet and maintain the conditions of membership in the definition of Community.
- e. **Early termination.** Any early termination of this Enrollment will be subject to the "Early Termination" Section of the Enterprise Agreement.

For Subscription Licenses, in the event of a breach by Microsoft, or if Microsoft terminates an Online Service for regulatory reasons, Microsoft will issue Reseller a credit for any amount paid in advance for the period after termination.

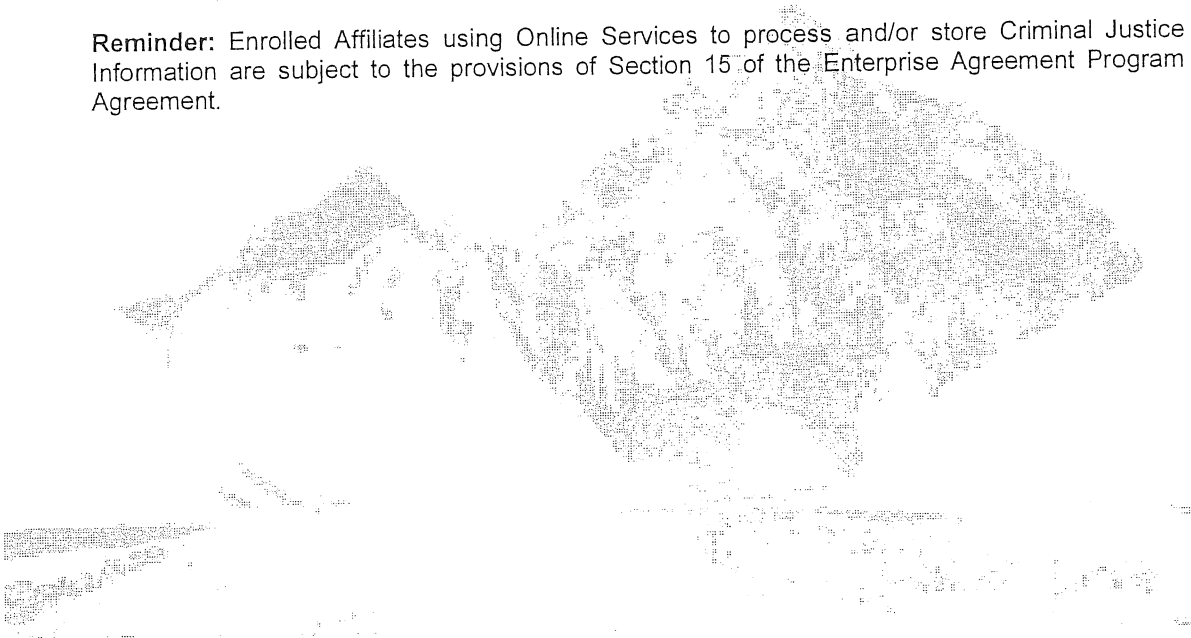
## 6. **Government Community Cloud.**

- a. **Community requirements.** If Enrolled Affiliate purchases Government Community Cloud Services, Enrolled Affiliate certifies that it is a member of the Community and agrees to use Government Community Cloud Services solely in its capacity as a member of the Community and, for eligible Government Community Cloud Services, for the benefit of end users that are members of the Community. Use of Government Community Cloud Services by an entity that is not a member of the Community or to provide services to non-Community members is strictly prohibited and could result in termination of Enrolled Affiliate's license(s) for Government Community Cloud Services without notice. Enrolled Affiliate acknowledges that only Community members may use Government Community Cloud Services.

- b. All terms and conditions applicable to non-Government Community Cloud Services also apply to their corresponding Government Community Cloud Services, except as otherwise noted in the Use Rights, Product Terms, and this Enrollment.
- c. Enrolled Affiliate may not deploy or use Government Community Cloud Services and corresponding non-Government Community Cloud Services in the same domain.
- d. **Use Rights for Government Community Cloud Services.** For Government Community Cloud Services, notwithstanding anything to the contrary in the Use Rights:
  - (i) Government Community Cloud Services will be offered only within the United States.
  - (ii) Additional European Terms, as set forth in the Use Rights, will not apply.
  - (iii) References to geographic areas in the Use Rights with respect to the location of Customer Data at rest, as set forth in the Use Rights, refer only to the United States.

**7. *Microsoft Online Services Criminal Justice Information Services (CJIS) Language for Covered Services.***

**Reminder:** Enrolled Affiliates using Online Services to process and/or store Criminal Justice Information are subject to the provisions of Section 15 of the Enterprise Agreement Program Agreement.





## Enrollment Details

### 1. Enrolled Affiliate's Enterprise.

- a. Identify which Enrolled Affiliates are included in the Enterprise. (Required) Enrolled Affiliate's Enterprise must consist of entire offices, bureaus, agencies, departments or other entities of Enrolled Affiliate, not partial offices, bureaus, agencies, or departments, or other partial entities. Check only one box in this section. If no boxes are checked, Microsoft will deem the Enterprise to include the Enrolled Affiliate only. If more than one box is checked, Microsoft will deem the Enterprise to include the largest number of Affiliates:

Enrolled Affiliate only

Enrolled Affiliate and all Affiliates

Enrolled Affiliate and the following Affiliate(s) (Only identify specific affiliates to be included if fewer than all Affiliates are to be included in the Enterprise):

Enrolled Affiliate and all Affiliates, with following Affiliate(s) excluded:

- b. Please indicate whether the Enrolled Affiliate's Enterprise will include all new Affiliates acquired after the start of this Enrollment: Include future Affiliates \_\_\_\_\_

### 2. Contact information.

Each party will notify the other in writing if any of the information in the following contact information page(s) changes. The asterisks (\*) indicate required fields. By providing contact information, Enrolled Affiliate consents to its use for purposes of administering this Enrollment by Microsoft, its Affiliates, and other parties that help administer this Enrollment. The personal information provided in connection with this Enrollment will be used and protected in accordance with the privacy statement available at <https://www.microsoft.com/licensing/servicecenter>.

- a. **Primary contact.** This contact is the primary contact for this Enrollment from within Enrolled Affiliate's Enterprise. This contact is also an Online Administrator for the Volume Licensing Service Center and may grant online access to others. The primary contact will be the default contact for all purposes unless separate contacts are identified for specific purposes

Name of entity (must be legal entity name)\* County of Oneida  
Contact name\* First Chuck Last Klein  
Contact email address\* ocsupport@ocgov.net  
Street address\* 800 Park Ave  
City\* Utica  
State/Province\* NY

Postal code\* 13501-  
(For U.S. addresses, please provide the zip + 4, e.g. xxxxx-xxxx)  
Country\* USA  
Phone\* 315-798-6471  
Tax ID  
*\* indicates required fields*

- b. **Notices contact and Online Administrator.** This contact (1) receives the contractual notices, (2) is the Online Administrator for the Volume Licensing Service Center and may grant online access to others, and (3) is authorized to order Reserved Licenses for eligible Online Services, including adding or reassigning Licenses and stepping-up prior to a true-up order.

Same as primary contact (default if no information is provided below, even if the box is not checked).

Contact name\* First Derek Last Daniels  
Contact email address\* ddaniels@ocgov.net  
Street address\* 800 Park Ave  
City\* Utica  
State/Province\* NY  
Postal code\* 13501-  
(For U.S. addresses, please provide the zip + 4, e.g. xxxxx-xxxx)  
Country\* USA  
Phone\* 315-798-6426

Language preference. Choose the language for notices. English

This contact is a third party (not the Enrolled Affiliate). Warning: This contact receives personally identifiable information of the Customer and its Affiliates.

*\* indicates required fields*

- c. **Online Services Manager.** This contact is authorized to manage the Online Services ordered under this Enrollment and (for applicable Online Services) to add or reassign Licenses and step-up prior to a true-up order.

Same as notices contact and Online Administrator (default if no information is provided below, even if box is not checked)

Contact name\*: First Last  
Contact email address\*  
Phone\*

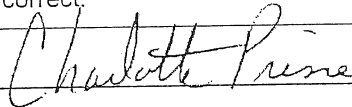
This contact is from a third party organization (not the entity). Warning: This contact receives personally identifiable information of the entity.

*\* indicates required fields*

- d. **Reseller information.** Reseller contact for this Enrollment is:

Reseller company name\* Dell Inc.  
Street address (PO boxes will not be accepted)\* One Dell Way  
City\* Round Rock  
State/Province\* TX  
Postal code\* 78682  
Country\* USA  
Contact name\* Government Contract Admin  
Phone\* 847-465-3700  
Contact email address\* US\_MS\_VL\_Admin@dell.com  
*\* indicates required fields*

By signing below, the Reseller identified above confirms that all information provided in this Enrollment is correct.

Signature* 
Printed name* Charlotte Prine
Printed title* Sr Analyst
Date* 11/23/2020

\* indicates required fields

**Changing a Reseller.** This section is intentionally omitted and is included in Section 1.4 of the associated Custom Microsoft Business Agreement (OGS Contract No. PS67984).

- e. If Enrolled Affiliate requires a separate contact for any of the following, attach the Supplemental Contact Information form. *Otherwise, the notices contact and Online Administrator remains the default.*
  - (i) Additional notices contact
  - (ii) Software Assurance manager
  - (iii) Subscriptions manager
  - (iv) Customer Support Manager (CSM) contact

### 3. **Financing.**

Financing is not available under this Enrollment.

## Amendment to Contract Documents

Enrollment Number

5-0000005899165

This amendment ("Amendment") is entered into between the parties identified on the attached program signature form. It amends the Enrollment or Agreement identified above. All terms used but not defined in this Amendment will have the same meanings provided in that Enrollment or Agreement.

## Enterprise Enrollment

### Effective Date

### Amendment ID M23

The paragraph of the Enrollment titled "Effective date" is amended by adding the following:

Both parties to the Enrollment have agreed, for their mutual benefit, that the Enrollment will have an effective date other than the date it is signed by Microsoft. Therefore, the effective date of the Enrollment will be 1/1/2021.

Except for changes made by this Amendment, the Enrollment or Agreement identified above remains unchanged and in full force and effect. If there is any conflict between any provision in this Amendment and any provision in the Enrollment or Agreement identified above, this Amendment shall control.

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

**Microsoft Internal Use Only:**

(M23)EnrAmend(EffectiveDate)(WW)(ENG)(Aug2017)(IU).docx		M23	PLSS
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## Program Signature Form

MBA/MBSA number	U6809250	5-0000005899165
Agreement number	5267864	

**Note:** Enter the applicable active numbers associated with the documents below. Microsoft requires the associated active number be indicated here, or listed below as new.

For the purposes of this form, "Customer" can mean the signing entity, Enrolled Affiliate, Government Partner, Institution, or other party entering into a volume licensing program agreement.

This signature form and all contract documents identified in the table below are entered into between the Customer and the Microsoft Affiliate signing, as of the effective date identified below.

<b>Contract Document</b>	<b>Number or Code</b>
<Choose Agreement>	Document Number or Code
<Choose Agreement>	Document Number or Code
<Choose Agreement>	Document Number or Code
<Choose Agreement>	Document Number or Code
<Choose Agreement>	Document Number or Code
<Choose Enrollment/Registration>	Document Number or Code
<Choose Enrollment/Registration>	Document Number or Code
<Choose Enrollment/Registration>	Document Number or Code
<Choose Enrollment/Registration>	Document Number or Code
Enterprise Enrollment	CTM (NYS001)
Enrollment Product Selection Form	0995156.005 (new)
Amendment	M23 (new)
Document Description	Document Number or Code
Document Description	Document Number or Code
Document Description	Document Number or Code

By signing below, Customer and the Microsoft Affiliate agree that both parties (1) have received, read and understand the above contract documents, including any websites or documents incorporated by reference and any amendments and (2) agree to be bound by the terms of all such documents.

<b>Customer</b>
Name of Entity (must be legal entity name)* County of Oneida
Signature* _____
Printed First and Last Name* Anthony J Picente, Jr
Printed Title Oneida County Executive
Signature Date*
Tax ID

\* indicates required field

Microsoft Affiliate	
Microsoft Corporation	
Signature	<u>MaryAnn Holland</u> <small>MaryAnn Holland (Nov 24, 2020 07:16 PST)</small>
Printed First and Last Name	
Printed Title	
Signature Date <small>(date Microsoft Affiliate countersigns)</small>	
Agreement Effective Date <small>(may be different than Microsoft's signature date)</small>	

Optional 2<sup>nd</sup> Customer signature or Outsourcer signature (if applicable)

Customer	
Name of Entity (must be legal entity name)*	
Signature*	_____
Printed First and Last Name*	
Printed Title	
Signature Date*	

\* indicates required field

Outsourcer	
Name of Entity (must be legal entity name)*	
Signature*	_____
Printed First and Last Name*	
Printed Title	
Signature Date*	

\* indicates required field

If Customer requires additional contacts or is reporting multiple previous Enrollments, include the appropriate form(s) with this signature form.

After this signature form is signed by the Customer, send it and the Contract Documents to Customer's channel partner or Microsoft account manager, who must submit them to the following address. When the signature form is fully executed by Microsoft, Customer will receive a confirmation copy.

**Microsoft Corporation**  
 Dept. 551, Volume Licensing  
 6880 Sierra Center Parkway  
 Reno, Nevada 89511  
 USA

Proposal ID

0995156.005

Enrollment Number

Language: English (United States)

Enrolled Affiliate's Enterprise Products and Enterprise Online Services summary for the initial order:					
Profile	Qualified Devices	Qualified Users	Device / User Ratio	Enterprise Product Platform	CAL Licensing Model
Enterprise	1,050	1,050	1.0	No	User Licenses

Products	Enterprise Quantity
<b>Microsoft 365 Enterprise</b>	
Microsoft 365 E3 USL	1,050

Enrolled Affiliate's Product Quantities:				
Price Group	1	2	3	4
Enterprise Products	Office Professional Plus + Office 365 ProPlus + Office 365 (Plans E3 and E5) + Microsoft 365 Enterprise	Client Access License + Office 365 (Plans E1, E3 and E5) + Microsoft 365 Enterprise	Client Access License + Windows Intune + EMS USL + Microsoft 365 Enterprise	Win E3 + Win E5 + Win VDA + Microsoft 365 Enterprise
Quantity	1050	1050	1050	1050

Enrolled Affiliate's Price Level:	
Product Offering / Pool	Price Level
Enterprise Products and Enterprise Online Services USLs: Unless otherwise indicated in associated contract documents, Price level set using the highest quantity from Groups 1 through 4.	D
Additional Product Application Pool: Unless otherwise indicated in associated contract documents, Price level set using quantity from Group 1.	D
Additional Product Server Pool: Unless otherwise indicated in associated contract documents, Price level set using the highest quantity from Group 2 or 3.	D
Additional Product Systems Pool: Unless otherwise indicated in associated contract documents, Price level set using quantity from Group 4.	D

NOTES
Unless otherwise indicated in the associated contract documents, the price level for each Product offering / pool is set as described above, based upon the quantity to price level mapping below:

Quantity of Licenses and Software Assurance	Price Level
2,399 and below	A
2,400 to 5,999	B
6,000 to 14,999	C
15,000 and above	D
<p>Note 1: Enterprise Online Services may not be available in all locations. Please see the Product List for a list of locations where these may be purchased.</p>	
<p>Note 2: If Enrolled Affiliate does not order an Enterprise Product or Enterprise Online Service associated with an applicable Product pool, the price level for Additional Products in the same pool will be price level "A" throughout the term of the Enrollment. Refer to the Qualifying Government Entity Addendum pricing provision for more details on price leveling.</p>	



Volume  
Licensing

# Product Terms October 1, 2020

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# Introduction

## About this Document

Beginning July 1, 2015, the Product Terms replaces both the Product List and the Product Use Rights (PUR) documents. All references to the Product List and PUR in Customer’s volume licensing agreements refer to the applicable sections of the Product Terms. The Product Terms describe the availability of Products and Professional Services through the Microsoft Volume Licensing Programs (previously conveyed through the Product List), as well as the use rights for Software Products (previously conveyed through the PUR). Terms of service for the Online Services referenced in this document are published in the Online Services Terms (OST) at <http://go.microsoft.com/?linkid=9840733>.

Products listed in the Product Terms are available as of the date on the Product Terms [Cover Page](#). Earlier versions of the Product Terms are available on <http://go.microsoft.com/?linkid=9839207>, including earlier versions of the Product List and PUR documents. Information on discontinued Microsoft products and services is available on <http://www.microsoftvolumelicensing.com>. Customers should contact their reseller or Microsoft account manager for information pertaining to regional availability of Microsoft products and Professional Services.

## What this Document contains

The Product Terms includes the following sections:

- [Introduction](#), which includes a list of recent changes.
- [License Terms](#), which list the Universal License Terms and License Model Terms that apply to Software Products.
- [Software Products](#), which list all Software Product Entries.
- [Online Services Products](#), which list all Online Services Product Entries.
- [Glossary](#), which defines Attributes, Cell Values, Column Headings and other capitalized terms used in the Product Terms.
- The following appendices:
  - [Appendix A – CAL/ML Equivalent Licenses Table](#), which identifies CAL suites and Online Services subscription Licenses available that provide access to Server Products.
  - [Appendix B – Software Assurance](#), which describes rules on purchasing SA and additional benefits available to SA customers.
  - [Appendix C - Online Services Add-ons & Other Transition Licenses](#), which describe the qualifying products and conditions for Online Services Add-ons and From SA USLs
  - [Appendix D – Professional Services](#), which lists the Professional Services offered through Microsoft Volume Licensing.
  - [Appendix E – Program Agreement Supplemental Terms](#), which provides additional terms for Microsoft Volume Licensing Program Agreements.
  - [Appendix F – Product Promotions](#), which lists Product promotions that are not otherwise on the Price List.
  - [Appendix G - Storage Array and Azure Data Box Terms](#), which provides additional terms for Storage Array and Azure Data Box devices.
  - [Appendix H - Student Use Benefits and Academic Programs](#), which lists the Qualifying Products and associated Student Use Benefits.
- [Index](#), which lists all the Products referenced in the Product Terms and identifies where they are located.

## How to Navigate a Product Entry

Each Software Product Entry includes four sections: Program Availability, Product Conditions, Use Rights, and Software Assurance. Each Online Services Product Entry includes two sections: Program Availability and Product Conditions.

1. **Program Availability** identifies, for each Product, the offering type, point count (where applicable), and availability across volume licensing programs.

1. Program Availability

Products	DA	L	L/SA	SA	QL	S/S+	MPSA	UV/UVS	EV/EAS	UVS-ES	EES
Windows MultiPoint Server 2012 Standard	12/12	5	8	3							
Windows MultiPoint Server 2012 Premium	12/12	10	15	5							

Annotations:

- Open License: A callout box pointing to the 'QL' column header.
- Hovering a cursor over the column headings and cell values displays additional information: A callout box pointing to the 'QL' column header.
- Point values are for one year: A callout box pointing to the '15' value in the 'L/SA' column for Windows MultiPoint Server 2012 Premium.
- A green cell means the Product is available in the column's Program: A callout box pointing to the '15' value in the 'L/SA' column for Windows MultiPoint Server 2012 Premium.

2. **Product Conditions** provides additional information related to acquiring the Product, such as prerequisites for purchase, prior versions, and the applicable Product Pool.

### 2. Product Conditions

Prior Version: Visual Studio 2012 (8/12)	Product Pool: Applications	Down Editions: N/A
Extended Term Eligible: N/A	Prerequisite: N/A	Prerequisite (SA): N/A
Promotions: N/A	Qualified User Exemption: N/A	Reduction Eligible: N/A
Reduction Eligible (SCE): All except MSDN OS	Transition Eligible: N/A	True Up Eligible: N/A
LTD Discount: N/A		

**2.1 License Grant for SQL Server Parallel Data Warehouse Developer**  
 The Licensed Users under Visual Studio Professional with MSDN, Visual Studio Premium 2013 with MSDN, Visual Studio Test Professional 2013 with MSDN are deemed to have one license for SQL Server 2012 Parallel Data Warehouse Developer.

*Annotations:*  
 - Hovering a cursor over blue text displays additional information.  
 - A gray cell means the attribute does not apply to the Product(s) listed in 1. Program Availability.

3. Use Rights identifies the License Terms for each Software Product, including the Universal License Terms, the applicable License Model, and any Product-Specific License Terms. References in Customer's volume licensing agreement to "Use Rights" refer to the terms included in the Use Rights section of each Software Product Entry. Terms for Online Services are in the OST.

### 3. Use Rights

License Terms: Universal Servers/CAL	Product-Specific License Terms: N/A	Additional Software: All
Client Access Requirement: All	External User Access Requirement: CAL	Included Technologies: N/A
Notices: N/A		

**3.1 Server Software Access**

Base Access License	Project Server 2013 CAL Project Online User SL
---------------------	---

*Annotations:*  
 - Blue underline text is a "hyperlink" redirecting to more details.  
 - Server Software Access table identifies the licenses needed to access the Servers or manage devices using the Products listed in 1. Program Availability.

4. Software Assurance identifies terms and conditions associated with SA coverage.

### 4. Software Assurance

SA Benefits: Server	Disaster Recovery: N/A	Fail-Over Rights: All (except Developer and Parallel Data Warehouse)
License Mobility: All (except Developer and Parallel Data Warehouse)	Migration Rights: Product List – March 2014 and March 2015	Roaming Use Rights: N/A
Self Hosting: All (except Developer)		

**4.1 SQL Server 2014 Enterprise Core – Unlimited Virtualization**  
 Customer may run any number of instances of the server software in any number of OSEs on any Licensed Server on all of its core licenses for the Server.

*Annotation:*  
 - Identifies where information on migration paths from one version of software to another version is located.

## Clarifications and Summary of Changes to this Document

Below are recent additions, deletions and other changes to the Product Terms. Also listed below, are clarifications of Microsoft policy in response to common customer questions.

Additions	Deletions
Teams Rooms Standard (Device SL)	Meeting Room (Device SL)
Teams Rooms Premium (Device SL)	Managed Meeting Rooms (Device SL)
SharePoint Syntex (SL)	
Extra Graph Connector Capacity (SL)	
Dynamics 365 Project Operations (User SL)	
Audio Conferencing Extended Dial-out minutes to USA/CAN (User SL)	

### License Terms

Universal License Terms: Updated multiplexing clause to align with the Online Services Terms. Update for clarity only. No change to intent.

### Online Services

Microsoft Azure Services and Server Subscriptions for Azure: Clarified that references to Azure deployment rights mean Customer's Azure service accounts.

# License Terms

All instances of the "Use Rights" in Customer's volume licensing agreement refer to the terms identified in the "Use Rights" section of each Product Entry. For each Product, this includes the Universal License Terms, applicable License Model Terms and any Product-Specific License Terms in the Product Entry.

For Online Services, references to "Use Rights" in Customer's volume licensing agreement refer to the OST. If a software Product includes both software and online services, the online services will be governed by the terms in the OST and all the software will be governed by these License Terms.

## Universal License Terms

---

Universal License Terms apply to all software Products licensed through Microsoft Volume Licensing (except where specifically noted in the License Model Terms and/or the Product-Specific License Terms).

### 1. Definitions

Terms used in the Product Terms but not defined in the [Glossary](#) will have the definition provided in Customer's volume licensing agreement.

### 2. Customer's Use Rights

If Customer complies with its volume licensing agreement, it may use the software as expressly permitted in the Product Terms. Customer needs a License for each Product and separately licensed functionality used on a device or by a user.

### 3. Rights to Use Other Versions and Lower Editions

For any permitted copy or Instance, Customer may create, store, install, run or access in place of the version licensed, a copy or Instance of a prior version, different permitted language version, different available platform version (for example, 32 bit or 64 bit) or a permitted lower edition. The use rights for the licensed version still apply. Licenses for prior versions and lower editions do not satisfy the licensing requirements for a Product.

### 4. Third Party Software

The software may contain third party proprietary or open source programs or components that are licensed under separate terms that are presented to Customer during installation or in the "ThirdPartyNotices" file accompanying the software. The software may also contain third party open source programs that Microsoft, not the third party, licenses to Customer under Microsoft's license terms.

### 5. Pre-Release Code, Updates or Supplements, Additional Functionality

Microsoft may offer updates or supplements to the Products. Customer may use the updates or supplements to the Products, pre-release code, additional functionality and optional add-on services to the Products, subject to specific terms (if any) that accompany them. Some Products require automatic updates, as described in the Product-Specific License Terms.

### 6. Restrictions

Customer may not (and is not licensed to) use the Products to offer commercial hosting services to third parties, work around any technical limitations in the Products or restrictions in Product documentation, or separate the software for use in more than one OSE under a single License (even if the OSEs are on the same physical hardware system), unless expressly permitted by Microsoft. Rights to access the software on any device do not give Customer any right to implement Microsoft patents or other Microsoft intellectual property in the device itself or in any other software or devices.

### 7. Software Assurance

SA coverage may grant additional use rights to Customer. These additional rights end at the expiration of the SA coverage for the License, unless otherwise noted in the benefit description.

### 8. Outsourcing Software Management

Customer may install and use licensed copies of the software on Servers and other devices that are under the day-to-day management and control of Authorized Outsourcers, provided all such Servers and other devices are and remain fully dedicated to Customer's use. Customer is responsible for all of the obligations under its volume licensing agreement regardless of the physical location of the hardware upon which the software is used. Except as expressly permitted here or elsewhere in these Product Terms, Customer is not permitted to install or use licensed copies of the software on Servers and other devices that are under the management or control of a third party.

### 9. License Assignment and Reassignment

Before Customer uses software under a License, it must assign that License to a device or user, as appropriate. Customer may reassign a License to another device or user, but not less than 90 days since the last reassignment of that same License, unless the reassignment is due to (i) permanent hardware failure or loss, (ii) termination of the user's employment or contract or (iii) temporary reallocation of CALs, Client Management Licenses and user or device SLs to cover a user's absence or the unavailability of a device that is out of service. Customer must remove the software or block access from the former device or to the former user. SA coverage and any Licenses that are granted or acquired in connection with SA coverage

may be reassigned only with the underlying qualifying license. Additional terms apply to the reassignment of Windows desktop operating system per device licenses, as detailed in the [Windows Product Entry](#).

## 10. Technical Measures

Microsoft may use technical measures to enforce terms that restrict Customer's use of certain versions of Product and may verify compliance with those terms as provided in Customer's volume license agreement. Some Products are protected by technological measures and require activation or validation, as well as a product key, to install or access them.

### 10.1 Activation and validation

Customer shall use the appropriate product key provided by Microsoft for activation and validation of the software Product being installed by the Customer. Customer's right to use the software after the time specified in the software Product may be limited unless it is activated. Customer is not licensed to continue using the software if it has unsuccessfully attempted to activate. Each device that has not activated by a Key Management Service (KMS) must use a Multiple Activation Key (MAK) or Azure AD-based Activation. Customer may not circumvent activation or validation.

### 10.2 Product Keys

An assigned product key is required for licensed use of the software. All product keys are Confidential Information of Microsoft. Notwithstanding anything to the contrary in Customer's volume licensing agreement, Customer may not disclose product keys to third parties. Customer may not provide unsecured access to its key management service (KMS) machines over an uncontrolled network. In the event of unauthorized use or disclosure of product keys or KMS keys, Microsoft may prevent further activations, deactivate or block product keys from activation or validation, and take other appropriate action.

## 11. Notices

Where indicated in the Use Rights section of each Product Entry, the following notices apply:

### 11.1 Internet-based Features

Software Products may contain features that connect and send information over the Internet, without additional notice to Customer, to Microsoft's systems and those of its Affiliates and service providers. Use of that information is described in the Microsoft Privacy Statement ([aka.ms/privacy](http://aka.ms/privacy)).

### 11.2 Bing Maps

The Product may include use of Bing Maps. Any content provided through Bing Maps, including geocodes, can only be used within the product through which the content is provided. Customer's use of Bing Maps is governed by the Bing Maps End User Terms of Use available at <http://go.microsoft.com/?linkid=9710837> and the Microsoft Privacy Statement available at <http://go.microsoft.com/fwlink/?LinkID=248686>.

### 11.3 H.264/AVC Visual Standard, the VC-1 Video Standard, and the MPEG-4 Part 2 Visual Standard

This software may include H.264/AVC, VC-1, and MPEG-4 Part 2 visual compression technology. MPEG LA, L.L.C. requires this notice: THIS PRODUCT IS LICENSED UNDER THE AVC, THE VC-1, THE MPEG-4 PART 2 VISUAL PATENT PORTFOLIO LICENSES FOR THE PERSONAL AND NON-COMMERCIAL USE OF A CONSUMER TO (i) ENCODE VIDEO IN COMPLIANCE WITH THE ABOVE ("VIDEO STANDARDS") AND/OR (ii) DECODE AVC, VC-1, MPEG-4 PART 2 VIDEO THAT WAS ENCODED BY A CONSUMER ENGAGED IN A PERSONAL AND NON-COMMERCIAL ACTIVITY AND/OR WAS OBTAINED FROM A VIDEO PROVIDER LICENSED TO PROVIDE SUCH VIDEO. NO LICENSE IS GRANTED OR SHALL BE IMPLIED FOR ANY OTHER USE. ADDITIONAL INFORMATION MAY BE OBTAINED FROM MPEG LA, L.L.C. SEE [www.mpegla.com](http://www.mpegla.com). For clarification purposes, this notice does not limit or inhibit the use of the software for normal business uses that are personal to that business which do not include (i) redistribution of the software to third parties, or (ii) creation of content with the VIDEO STANDARDS compliant technologies for distribution to third parties.

### 11.4 Malware protection

Microsoft cares about protecting customers' devices from malware. The software will turn on malware protection if other protection is not installed or has expired. To do so, other antimalware software will be disabled or may have to be removed.

## 12. Font Components, Images, and Sounds

While Customer runs the software, it may access and use icons, images, sounds and media included with the software only from a Licensed Device and may use the fonts included with or installed by that software to display and print content. Customer may only embed fonts in content as permitted by the embedding restrictions in the fonts; and temporarily download them to a printer or other output device to print content.

## 13. Included Technologies

Products may include other Microsoft technology components subject to their own license terms, as indicated in the Use Rights section of each Product Entry. If separate terms for these components are not addressed in the Product-Specific License Terms, they may be found in a separate folder in the Product's installation directory or through the Product's unified installer.

## 14. Benchmark Testing

Customer must obtain Microsoft's prior written approval to disclose to a third party the results of any benchmark test of any Server Product or Microsoft Desktop Optimization Pack.

## 15. Multiplexing

Hardware or software that a Customer uses to:

- pool connections or reduce the number of OSE's, devices, or users a Product directly manages;
- reduce the number of devices or users that directly or indirectly access or use a Product;
- or access data a Product itself processes or generates;

does not reduce the number of Licenses of any type that a customer needs.

## 16. Administrative and Support Rights

Customer may allow access to server software running in any permitted OSE by two users without CALs solely for administrative purposes.

Customer may also allow remote access to other Products solely for purposes of providing technical product support to Licensed Users or on Licensed Devices.

## 17. Distributable Code

Refer to the Product Entries for software that contains code and text files Customer is permitted to distribute "Distributable Code". The code and text files listed below are also Distributable Code that may be used as described below. In the case of a conflict between the following terms and Distributable Code terms published in the Product Entry, the terms in the Product Entry govern Customer's use of Distributable Code.

### 17.1 Right to Use and Distribute

The code and text files listed below are "Distributable Code."

- REDIST.TXT Files: Customer may copy and distribute the object code form of code listed in REDIST.TXT files and in OTHER-DIST.TXT files, as well as any code marked as "Silverlight Libraries", Silverlight "Client Libraries" and Silverlight "Server Libraries".
- Sample Code, Templates, and Styles: Customer may modify, copy, and distribute the source and object code form of code marked as "sample", "template", "simple styles" and "sketch styles."
- Third Party Distribution: Customer may permit distributors of its programs to copy and distribute the Distributable Code as part of those programs.
- Image Library: Customer may copy and distribute images, graphics and animations in the Image Library as described in the software documentation.

### 17.2 Distribution Requirements

If Customer distributes any Distributable Code. Customer must:

- Only distribute it with Customer's programs, where Customer's programs provide significant primary functionality to the Distributable Code;
- require distributors and external end users to agree to terms that protect the Distributable Code at least as much as Customer's volume licensing agreement, including the Product Terms;
- indemnify, defend, and hold harmless Microsoft from any claims, including attorneys' fees, related to the distribution or use of Customer's programs, except to the extent that any claim is based solely on the Distributable Code included in Customer's programs.

### 17.3 Distribution Limitations

Customer may not:

- alter any copyright, trademark or patent notice in the Distributable Code;
- use Microsoft's trademarks in Customer's programs' names or in a way that suggests its programs come from or are endorsed by Microsoft;
- distribute Distributable Code in or with any malicious or, deceptive programs or in an unlawful manner; or
- modify or distribute the source code of any Distributable Code so that any part of it becomes subject to an Excluded License. An Excluded License is one that requires, as a condition of use, modification or distribution, that the code be disclosed or distributed in source code form, or that others have the right to modify it.

## 18. Software Plus Services

Microsoft may provide services with Products through software features that connect with Microsoft or service provider computer systems over the Internet. It may change or cancel the services at any time. Customer may not use the services in any way that could harm them or impair anyone else's use of them. Customer may not use the services to try to gain unauthorized access to any service, data, account or network by any means.

## 19. Processing of Personal Data; GDPR

To the extent Microsoft is a processor or subprocessor of personal data in connection with a software Product, Microsoft makes to all customers, effective May 25, 2018, the commitments in (a) in the "Processing of Personal Data; GDPR" provision of the "Data Protection Terms" section of the [Online Services Data Protection Addendum](#) and (b) in the European Union General Data Protection Regulation Terms in Attachment 3 of the [Online Services Data Protection Addendum](#).



## License Model Terms

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The License Model for each Product is identified in the Use Rights section of the Product Entry. License Model terms apply to all software Products licensed under that License Model, as specified in the Product Entry and subject to any exceptions and other terms noted in the Product-Specific License Terms.

### Desktop Applications

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#### Device License

1. Customer may install any number of copies of the software on a Licensed Device and on any Server dedicated to Customer's use for each License it acquires. Any dedicated Server that is under the management or control of an entity other than Customer or one of its Affiliates is subject to the [Outsourcing Software Management](#) clause.
2. Unless Customer licenses the software as an Enterprise Product or on a company-wide basis, it may also install the software on a single portable device for use by the Primary User of the Licensed Device.
3. Any number of users may use the software running on a Licensed Device, but only one user may access and use the software at a time.
4. Remote use of the software running on a Licensed Device is permitted for the Primary User from any device or for any other user from another Licensed Device.
5. Remote use of the software running on a Server dedicated to Customer's use is permitted for any user from a Licensed Device.

#### Media Elements and Templates

Microsoft grants Customer a license to copy, distribute, perform and display media elements (images, clip art, animations, sounds, music, video clips, templates and other forms of content) included with the software and the Office web apps in projects and documents, except that Customer may not sell, license or distribute copies of any media elements by themselves or as a product if the primary value of the product is the media elements.

### Desktop Operating Systems

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#### Device License

1. Customer may install one copy of the software on a Licensed Device or within a local virtual hardware system on a Licensed Device for each License it acquires.
2. Customer may use the software on up to two processors.
3. Local use is permitted for any user.
4. Remote use is permitted for the Primary User of the Licensed Device and for any other user from another Licensed Device or a Windows VDA Licensed Device.
5. Only one user may access and use the software at a time.
6. Customer may connect up to 20 devices to the Licensed Device for file sharing, printing, Internet Information Services, Internet Connection Sharing or telephony services.
7. An unlimited number of connections are allowed for KMS activation or similar technology.

#### Adobe Flash Player

The software may include a version of Adobe Flash Player. Customer agrees that its use of the Adobe Flash Player is governed by the license terms for Adobe Systems Incorporated at <http://go.microsoft.com/fwlink/?linkid=248532>. Adobe and Flash are either registered trademarks or trademarks of Adobe Systems Incorporated in the United States and/or other countries.

### Per Core/CAL

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#### Server Licenses (per core)

1. Customer may use the server software on a Licensed Server, provided it acquires sufficient Server licenses as described below.
2. The number of Licenses required equals the number of Physical Cores on the Licensed Server, subject to a minimum of 8 Licenses per Physical Processor and a minimum of 16 Licenses per Server.
3. Datacenter edition permits use of the server software in any number of OSEs on the Licensed Server.
4. Standard edition:
  - Standard edition permits use of the server software in two OSEs on the Licensed Server.
  - Standard edition permits use of one Running Instance of the server software in the Physical OSE on the Licensed Server (in addition to two Virtual OSEs), if the Physical OSE is used solely to host and manage the Virtual OSEs.
  - Customer may assign additional Standard edition Licenses to the Licensed Server equal to the number specified in 2 above and use the server software in two additional OSEs on the Licensed Server.
5. As long as the total numbers of Licenses and Physical Cores remains the same, License reassignment is permitted any time Customer repartitions a single piece of hardware.
6. As a one-time alternative to assigning base CALs per user or per device, a number of base CALs may be dedicated to an Instance of the server software on a single Server (per server mode) to permit up to the same number of users or devices to concurrently access that Instance.

**Access Licenses**

1. Except as described here and noted in the Product-Specific License Terms, all server software access requires CALs or CAL Equivalent Licenses.
2. CALs are not required for access by another Licensed Server.
3. CALs are not required to access server software running a Web Workload or HPC Workload.
4. CALs are not required for access in a Physical OSE used solely for hosting and managing Virtual OSEs.

**Server/CAL****Server Licenses (per Instance)**

Customer may use one Running Instance of server software in either a Physical OSE or Virtual OSE on a Licensed Server for each License it acquires.

**Access Licenses**

1. Except as described here and noted in the Product-Specific License Terms, all server software access requires CALs or CAL Equivalent Licenses.
2. CALs are not required for access by another Licensed Server.

**Per Core**

For Products under the Per Core License Model, Customer must choose either Licensing by Physical Core on a Server or Licensing by Individual Virtual OSE. The terms for each are set forth below.

**Server Licenses (per core) – Licensing by Physical Core on a Server**

1. Customer may use the server software on a Licensed Server, provided it acquires sufficient Server Licenses as described below.
2. The number of Licenses required equals the number of Physical Cores on the Licensed Server subject to a minimum of four Licenses per Physical Processor.
3. For Enterprise edition, Customer may use any number of Running Instances of the server software on the Licensed Server in a number of Physical OSEs and/or Virtual OSEs equal to the number of licenses assigned to it.
4. For each additional Enterprise edition License that Customer assigns beyond the number of Licenses required under paragraph 2 above, it may use of the server software in one additional OSE on the Licensed Server.
5. For other editions, Customer may use any number of Running Instances of the server software only in the Physical OSE on the Licensed Server.

**Server Licenses (per core) – Licensing by Individual Virtual OSE**

1. Customer may use any number of Running Instances of the server software in any Virtual OSE on the Licensed Server, provided it acquires sufficient Licenses as described below.
2. The number of Licenses required equals the number of Virtual Cores in the Virtual OSE, subject to a minimum of four Licenses per Virtual OSE.
3. If any Virtual Core is at any time mapped to more than one Hardware Thread, Customer needs a License for each Hardware Thread to which it is mapped.

**Management Servers****Management Licenses**

The Management License version, not the version of software used, determines the version of applicable License Terms (including use under downgrade rights notwithstanding terms to the contrary).

**Server Management Licenses (per core)**

1. Customer may use the software on Azure or any Server dedicated to its use\* to Manage OSEs on a Licensed Server, provided it acquires sufficient Server Licenses as described below.
2. The number of Licenses required equals the number of Physical Cores on the Licensed Server, subject to a minimum of 8 Licenses per Physical Processor and a minimum of 16 Licenses per Server.
3. Datacenter edition permits use of the server software to Manage any number of OSEs on the Licensed Server.
4. Standard edition:
  - Standard edition permits use of the software to Manage up to two OSEs on the Licensed Server.
  - Standard edition permits Management of the Physical OSE on the Licensed Server (in addition to two Virtual OSEs), if the Physical OSE is used solely to host and Manage Virtual OSEs.
  - Customer may assign additional Standard edition Licenses to the Licensed Server equal to the number specified in 2 above and Manage two additional OSEs.
5. OSEs running Server operating systems require Server Management Licenses.

**Client Management Licenses (per OSE or user)**

1. Customer may use the software on Azure or any Server dedicated to its use\* to Manage an OSE on a Licensed Device or OSEs on devices used by a Licensed User for each Client Management License it acquires.

2. OSEs running operating systems other than Server operating systems require Client Management Licenses or Management License Equivalent Licenses.
3. The number of Client Management Licenses required depends on License type (per OSE or user) assigned.
4. Management of an OSE accessed by more than one user requires an OSE Client Management License or a User Client Management License for each user.

\*Any dedicated Server that is under the management or control of an entity other than Customer or one of its Affiliates is subject to the [Outsourcing Software Management](#) clause.

#### Management Licenses are not required for:

1. OSEs in which there are no Running Instances of software;
2. Any of Customer's network infrastructure devices functioning solely for the purpose of transmitting network data and not running Windows Server software;
3. Conversion of OSEs from Physical to Virtual; or
4. Any device solely monitored or managed for the status of its hardware components with respect to system temperature, fan speed, power on/off, system reset or CPU availability.

#### Data Sets

Customer may not copy or distribute any data set (or any portion of a data set) included in the software.

## Specialty Servers

#### Server Licenses (per Instance)

Customer may use one Running Instance of server software in either a Physical OSE or Virtual OSE on a Licensed Server for each Server License it acquires.

## Developer Tools

#### User Licenses

1. One Licensed User may use any number of copies of the software and any prior version on any device dedicated to Customer's use for each User License it acquires. Any dedicated device that is under the management or control of an entity other than Customer or one of its Affiliates is subject to the [Outsourcing Software Management](#) clause.
2. Licensed Users may use the software for evaluation and to develop, test, and demonstrate Customer's programs. These rights include the use of the software to simulate an end user environment to diagnose issues related to its programs.
3. The software is not licensed for use in a Production Environment.

#### Additional License Terms for Visual Studio Subscriptions

In addition to the rights in the License Model Terms, Customer may allocate a Visual Studio Subscription for each License it acquires. For Visual Studio Subscriptions, the "Software" means software made available to Customer's subscription level via Visual Studio Subscription Subscriber Downloads. Any online service made available with Customer's Visual Studio Subscription may not be used in a Production Environment.

#### Running the Software on Microsoft Azure Services

1. The Licensed User may run the Software on Microsoft Azure Services during the term of its Visual Studio Subscription.
2. The use of the Software remains subject to the terms and conditions of Customer's volume licensing agreement and any terms that come with the Software.
3. The Developer Tools License Model Terms apply to the use of the Software and Azure Dev/Test offers, except that the Licensed User may not run Office Professional Plus or System Center Virtual Machine Manager for production use on Microsoft Azure Services.

#### Additional Requirements

To run Software on Microsoft Azure Services Customer must activate its Visual Studio Subscription by linking its Microsoft account to the Visual Studio Subscription.

#### Acceptance Testing and Feedback

Customer's end users may access the Software, and online services made available with Customer's Visual Studio Subscription, to perform acceptance tests or to provide feedback on its programs.

#### Windows Server 2016 Remote Desktop Services

Up to 200 anonymous users at a time may use the Remote Desktop Services feature of the Windows Server software to access online demonstrations of Customer's programs.

#### Windows Embedded Product

Each Windows Embedded Product is licensed under the terms that come with it, including any Microsoft obligations related to defense of infringement and misappropriation claims. These terms replace the corresponding terms in Customer's volume licensing agreement. Each Licensed User may install and use an unlimited number of copies of the licensed Windows Embedded Product.



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# Software

## Advanced Threat Analytics

### 1. Program Availability

Products	DA	L	L/SA	SA	OL	S/S+	MPSA	OV/OVS	EA/EAS	OVS-ES	EES
Advanced Threat Analytics 2016 Client Management License per OSE	8/15		2	1							
Advanced Threat Analytics 2016 Client Management License per User	8/15		2	1							

### 2. Product Conditions

PIIDP Version: N/A	Product Pool: Server	Down Editions: N/A
Extended Term Eligible: N/A	Prerequisite: N/A	Prerequisite (SA): Appendix B
Promotions: N/A	Qualified User Exemption: N/A	Reduction Eligible: N/A
Reduction Eligible (SCE): N/A	Student Use Benefit: See Appendix H	Trade-Up Eligible: N/A
UID Discount: N/A		

#### 2.1 Country Restrictions

Customer may not download Advanced Threat Analytics 2016 for use or distribution in the People's Republic of China.

#### 2.2 Academic Customers

Enrollment for Education Solutions and School Subscription Enrollment customers may purchase Advanced Threat Analytics 2016 Client Management License per OSE and deploy as per User or per OSE as contemplated in the [Management Servers License Model](#).

### 3. Use Rights

License Terms: Universal; <a href="#">Management Servers</a>	Product-Specific License Terms: Yes	Additional Software: N/A
Client Access Requirements: N/A	External User Access Requirements: ML	Included Technologies: Windows Software Components
Notices: <a href="#">Internet-based Features</a>		

#### 3.1 Management License

Client Management License	Advanced Threat Analytics 2016 (User or OSE ML) Microsoft 365 F3 (User SL)	Azure Advanced Threat Protection for Users (User SL) Management License Equivalent License (refer to <a href="#">Appendix A</a> )
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#### 3.2 Usage Requiring a Management License

Licenses are only required for client OSEs (or server OSEs used as client OSEs) that are on or accessed by end user devices authenticated by an Active Directory managed by Advanced Threat Analytics.

#### 3.3 Third Party Licensing Terms for Open Source Components

Licensed User may not reverse engineer, decompile or disassemble the software, or otherwise attempt to derive the source code for the software, except and to the extent required by third party licensing terms governing use of certain open source components that may be included with the software.

### 4. Software Assurance

SA Benefits: Server	Disaster Recovery: Yes	Fail-Over Rights: N/A
License Mobility: N/A	Migration Rights: N/A	Roaming Rights: N/A
Self Hosting: Yes	SA Equivalent Rights: N/A	

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## Azure FXT Edge Filer

### 1. Program Availability

Products	DA	L	L/SA	SA	OL	S/S+	MPSA	OV/OVS	EA/EAS	OVS-ES	EES
Azure FXT Edge Filer Subscription License (SL)	6/19										
Azure FXT Edge Filer Step-up Subscription License (SL)	6/19										

### 2. Product Conditions

Prior Version: N/A	Product Pool: Server	Down Editions: N/A
Extended Term Eligible: N/A	Prerequisite: Step-Up SL	Prerequisite (SA): N/A
Promotions: N/A	Qualified User Exemption: N/A	Reduction Eligible: N/A
Reduction Eligible (SCE): N/A	Student Use Benefit: N/A	Step-Up Eligible: N/A
UID Discount: N/A		

#### 2.1 Azure FXT Edge Filer Step-Up License

For each Azure FXT Edge Filer SL it acquires, Customer may acquire one Step-up SL.

### 3. Use Rights

License Terms: Universal; Specialty Servers	Product-Specific License Terms: Yes	Additional Software: N/A
Client Access Requirements: N/A	External User Access Requirements: ML	Included Technologies: Windows Software Components
Notices: N/A		

#### 3.1 Storing Processed Data on Third Party Servers

Customer must acquire the Step-Up SL in addition to the base Azure FXT Edge Filer SL in order to use the software to back-up data from the Licensed Server to third party servers.

### 4. Software Assurance

SA Benefits: N/A	Disaster Recovery: N/A	Fail-Over Rights: N/A
License Mobility: N/A	Migration Rights: N/A	Roaming Rights: N/A
Self-Hosting: N/A	SA equivalent Rights: N/A	

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## BizTalk

### 1. Program Availability

Products	DA	L	L/SA	SA	OL	S/S+	MPSA	OV/OVS	EA/EAS	OVS-ES	EES
BizTalk Server 2020 Branch Edition	1/20	25	38	13							
BizTalk Server 2020 Branch IDC	1/20										
BizTalk Server 2020 Enterprise Edition	1/20	200	300	100							
BizTalk Server 2020 Standard Edition	1/20	50	75	25							
BizTalk Server 2020 Standard Edition IDC	1/20										

### 2. Product Conditions

Prior Version: BizTalk Server 2016 (12/16)	Product Pool: Server	Down Editions: N/A
Extended Term Eligible: N/A	Prerequisite: N/A	Prerequisite (SA): Appendix B
Promotions: N/A	Qualified User Exemption: All	Reduction Eligible: N/A
Reduction Eligible (SCE): All (except Branch IDC)	Student Use Benefit: N/A	Step-Up Eligible: N/A
UID Discount: N/A		

### 3. Use Rights

License Terms: Universal; Per Core	Product-Specific License Terms: Branch and Standard	Additional Software: All editions
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Client Access Requirements: N/A	External User Access Requirements: N/A	Included Technologies: Windows Software Components
Notices: Internet-based Features		

### 3.1 BizTalk Server Branch and Standard Edition

#### 3.1.1 Use Limitation

Customer may not use the server software on a Server that is part of a networked cluster or in an OSE that is part of a networked cluster of OSEs on the same Server.

#### 3.1.2 Office Web Component

Customer may use the Office Web Component only to view and print copies of static documents, text and images created with the software. Customer does not need separate licenses for copies of the component.

### 3.2 BizTalk Server Branch Edition

Customer may Run Instances of the software on Licensed Servers only at the endpoint of its internal network (or edge of its organization) to connect business events or transactions with activities processed at that endpoint; provided, the Licensed Server may not:

- act as the central node in a “hub and spoke” networking model,
- centralize enterprise-wide communications with other Servers or devices; or
- automate business processes across divisions, business units, or branch offices.

### 3.3 Licensing Use of Host Integration Server (HIS)

Customer may use HIS server software and Additional Software under the terms and conditions of the Per Core License Model using BizTalk Server core licenses. Customer may use HIS Additional Software (e.g., HIS Client) only in conjunction with its licensed use of HIS server software. The rights applicable to this use are determined by which edition and version of BizTalk Server licenses Customer assigns to the Server (e.g., unlimited virtualization rights require BizTalk Server Enterprise licenses with SA). Use of HIS server software is limited to branch office deployments if used under the BizTalk Server Branch Edition licenses).

### 3.4 Additional Software

Administration and Monitoring Tools	ADOMD.NET	BizTalk Server Related Schemas and Templates
Business Activity Monitoring (“BAM”) Client	BAM Alert Provider for SQL Notification Services	BAM Event APIs and Interceptors and Administration Tools
Business Activity Services	Business Rules Component	Development Tools
HTTP Receive Adapter	Master Secret Server/Enterprise Single Sign-On	MQHelper.dll
MQSeries Agent	MSXML	SOAP Receive Adapter
Software Development Kit(s)	SQLXML	UDDI
Windows Communication Foundation Adapters	Windows SharePoint Services Adapter Web Services	

## 4. Software Assurance

SA Benefits: Server	Disaster Recovery: All editions	Fail-Over Rights: N/A
License Mobility: All editions	Migration Rights: Product List - December 2014	Roaming Rights: N/A
Self Hosting: All editions (except Branch)	SA Equivalent Rights: N/A	

### 4.1 Biz Talk Server 2020 Enterprise – Unlimited Virtualization

Customer may run any number of Instances of the server software in any number of OSEs on any Licensed Server for which it has full SA coverage on all of its Server (per core) Licenses.

### 4.2 Biz Talk Server Feature Packs

Customer is eligible to use Feature Packs released during the term of its SA coverage.

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## CAL Suites

### 1. Program Availability

Products	DA	L	L/SA	SA	OL	S/S+	MPSA	OV/OVS	EA/EAS	OVS-ES	EES
Core CAL Suite (Device and User)		(1)	2	1							
Core CAL Suite Bridge for Office 365 (User SL)											

Core CAL Suite Bridge for Office 365 From SA (User SL)				
Core CAL Suite Bridge for Office 365 and Microsoft Intune (User SL)				
Core CAL Suite Bridge for Microsoft Intune (User SL)				
Core CAL Suite Bridge for Enterprise Mobility+ Security (User SL)				
Enterprise CAL Suite (Device and User)	(2)	8	2	
Enterprise CAL Suite Bridge for Office 365 (User SL)				
Enterprise CAL Suite Bridge for Office 365 From SA (User SL)				
Enterprise CAL Suite Bridge for Office 365 and Microsoft Intune (User SL)				
Enterprise CAL Suite Bridge for Microsoft Intune (User SL)				
Enterprise CAL Bridge for Enterprise Mobility + Security (User SL)				
Enterprise CAL Bridge for Enterprise Mobility + Security From SA (User SL)				

## 2. Product Conditions

Prior Version: N/A	Product Pool: Server	Down Editions: N/A
Extended Term Eligible: N/A	Prerequisite: CAL Suite Bridge Section 2.3	Prerequisite (SA): <a href="#">Appendix B</a>
Promotions: N/A	Qualified User Exemption: N/A	Reduction Eligible: Core and Enterprise CAL Suite Bridge (all types). See CAL Suite Bridge Section 2.3.
Reduction Eligible (SCE): N/A	Student Use Benefit: N/A	Upgrade Eligible: N/A
UTD Discount: Core CAL or Enterprise CAL Suite		Add-ons and From SA: See <a href="#">Appendix C</a>

### 2.1 Process to Determine Applicable Use Rights for CAL Suites

A CAL Suite License is version-less and the access rights are determined by the status of the SA coverage on it. If SA coverage lapses, access rights under perpetual Licenses are determined based on the use rights in effect for the versions that were current prior to the lapse.

### 2.2 Components of CAL Suite

Refer to [Appendix A](#), CAL/Management License Equivalent Licenses chart for the current components of the Core CAL Suite and the Enterprise CAL Suite.

### 2.3 CAL Suite Bridge

A CAL Suite Bridge is an Enterprise Product and may only be acquired to satisfy the Organization Wide requirement of either that CAL Suite Bridge or its parent CAL Suite. When a CAL Suite Bridge is required the number of CAL Suite Bridge User SLs should be the same number of User SLs for the qualifying Online Service.

CAL Suite Bridge	Parent CAL Suite	Qualifying Online Services
Core CAL Suite Bridge for Office 365	Core CAL Suite	Office 365 E1, or Office 365 E3, or Office 365 E5
Core CAL Suite Bridge for Office 365 and Microsoft Intune	Core CAL Suite	Office 365 E1 and Microsoft Intune, or Office 365 E3 and Microsoft Intune, or Office 365 E5 and Microsoft Intune
Core CAL Suite Bridge for Microsoft Intune	Core CAL Suite	Microsoft Intune
Core CAL Suite Bridge for Enterprise Mobility + Security	Core CAL Suite	Enterprise Mobility + Security E3, or Enterprise Mobility + Security E5
Enterprise CAL Suite Bridge for Office 365	Enterprise CAL Suite	Office 365 E3, or Office 365 E5
Enterprise CAL Suite Bridge for Office 365 and Microsoft Intune	Enterprise CAL Suite	Office 365 E3 and Microsoft Intune, or Office 365 E5 and Microsoft Intune
Enterprise CAL Suite Bridge for Microsoft Intune	Enterprise CAL Suite	Microsoft Intune
Enterprise CAL Suite Bridge for Enterprise Mobility + Security	Enterprise CAL Suite	Enterprise Mobility + Security E3, or Enterprise Mobility + Security E5

### 2.4 Student Only CALs (Academic Open License and Academic Select)

Student Only CALs are restricted to license student owned PCs or institution owned PCs dedicated to an individual student and are not for use in labs or classrooms.

## 3. Use Rights

License Terms: <a href="#">Universal</a> ; <a href="#">Server/CAL</a> , <a href="#">Per Core/CAL</a> , <a href="#">Management Server</a>	Product-Specific License Terms: N/A	Additional Software: N/A
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Client Access Requirements: N/A	External User Access Requirements: N/A	Included Technologies: N/A
Notices: N/A		

### 3.1 Academic Programs

The following applies to customers in Academic Volume Licensing Programs.

#### 3.1.1 Exchange Online Archiving for Exchange Server A

Academic Institutions under Enrollment for Education Solutions and Open Value Subscription Agreement for Education Solutions, licensed for Enterprise CAL Suite for their Organization-Wide count and Student count are authorized to a corresponding number of Exchange Online Archiving for Exchange Server A User SLs for all users covered within their Organization-Wide count and Student count.

## 4. Software Assurance

SA Benefits: Server	Disaster Recovery: N/A	Fail-Over Rights: N/A
License Mobility: N/A	Migration Rights: <a href="#">Product List - March 2014</a> (Forefront United Access Gateway 2010)	Roaming Rights: N/A
Self-Hosting: N/A	SA Equivalent Rights: N/A	

### 4.1 Extended Use Rights for Microsoft 365 Customers

Qualifying customers licensed for Microsoft 365 or a combination of Office 365 and Enterprise Mobility + Security provides have the same access to Exchange Online Archiving for Exchange Server as the Enterprise CAL Suite provided. "Qualifying Customers" are Enterprise Enrollment, Enterprise Subscription Enrollment, or Enrollment for Education Solutions customers who have active Software Assurance coverage for the Enterprise CAL Suite as of November 30, 2014.

### 4.2 Online Services Included with Enterprise CAL Suite

Enterprise CAL Suite with active SA coverage also includes the rights to Exchange Online Archiving for Exchange Server, Data Loss Prevention, and Exchange Online Protection.

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## Core Infrastructure Server (CIS) Suite

### 1. Program Availability

Products	DA	L	L/SA	SA	OL	S/S+	MPSA	DV/OVS	EA/EAS	OVS-ES	EES
Core Infrastructure Server Suite Standard (2-packs of Core Licenses)			3	2							
Core Infrastructure Server Suite Standard (16-packs of Core Licenses)			13	8							
Core Infrastructure Server Suite Datacenter (2-packs of Core Licenses)			23	8							
Core Infrastructure Server Suite Datacenter (16-packs of Core Licenses)			113	38							

### 2. Product Conditions

Prior Version: N/A	Product Pool: Server	Down Editions: N/A
Extended Term Eligible: N/A	Prerequisite: N/A	Prerequisite (SA): <a href="#">Appendix B</a>
Promotions: N/A	Qualified User Exemption: N/A	Reduction Eligible: N/A
Reduction Eligible (SCE): All	Student Use Benefit: N/A	Title Up Eligible: N/A
UDD Discount: N/A		

#### 2.1 Software Included with CIS Suite Standard

CIS Suite Standard includes the latest versions of Windows Server Standard and System Center Standard made available during Customer's SA coverage.

#### 2.2 Software Included with CIS Suite Datacenter

CIS Suite Datacenter includes the latest versions of Windows Server Datacenter and System Center Datacenter made available during Customer's SA coverage.

### 3. Use Rights

License Terms: <u>Universal</u>	Product-Specific License Terms: All editions	Additional Software: N/A
Client Access Requirements: N/A	External User Access Requirements: N/A	Included Technologies: N/A
Notices: N/A		

#### 3.1 Applicable Use Rights

Customer's use of CIS Suite software is governed by the applicable License Terms for the individual Products comprising the CIS Suite software as modified by these License Terms. For each Server on which Customer runs CIS Suite software, the number of Licenses required equals the number of Physical Cores on the Licensed Server, subject to a minimum of 8 Licenses per Physical Processor and a minimum of 16 Licenses per Server. Customer may assign additional CIS Suite Standard edition Licenses to the Licensed Server equal to the number specified in the prior sentence and run the server software in two additional OSEs and Manage two additional OSEs on the Licensed Server.

#### 3.2 Server License and Management License Assignment

For purposes of applying License Terms for Windows Server and System Center to Customer's use of CIS Suite, Customer is deemed to have assigned to the Licensed Server Windows Server and System Center Licenses equal to the number of CIS Suite Licenses assigned to the Server.

#### 3.3 Additional Terms

Customer may run a prior version or a down edition of any of the individual Products included in the CIS Suite as permitted in the license terms for that Product in the Product Terms.

All other requirements to acquire and assign External Connector Licenses, CALs and Management Licenses to users or devices for access and management, as set forth in the Product Terms, remain in full force and effect.

### 4. Software Assurance

SA Benefits: Server	Disaster Recovery: All editions	Failover Rights: N/A
License Mobility: N/A	Migration Rights: <u>Product List - March 2014, Product Terms - October and December 2016</u>	Roaming Rights: N/A
Self Hosting: All Editions	SA Equivalent Rights: Yes	

#### 4.1 Microsoft Azure Hybrid Benefit for Windows Server

Refer to Microsoft Azure Hybrid Benefit of the Microsoft Azure Product Entry for deploying Windows Server images on Microsoft Azure.

#### 4.2 Semi-Annual Channel Releases

Customers with active SA on CIS Suite Standard or Datacenter Licenses, and on Windows Server Base Access Licenses and Windows Server Additive Access Licenses (as appropriate) may install, use, and Manage Semi-Annual Channel releases (including both Pilot and Broad releases) on Licensed Servers.

#### 4.3 Microsoft Endpoint Configuration Manager (formerly, System Center Configuration Manager) Current Branch Rights

Customers with active SA on CIS Suite Standard or Datacenter Licenses may install and use the Current Branch option of Microsoft Endpoint Configuration Manager.

#### 4.4 Software Assurance Rights and Benefits for Subscription Licenses

Any Subscription License Customer acquires under SCE is granted the same SA rights and benefits during the term of the subscription as Licenses with SA coverage.

#### 4.5 Server and Cloud Enrollment (SCE) - Right to manage OSEs on Microsoft Azure under CIS Suite Licenses

SCE Customers who have met the enrollment coverage requirements and are licensed for and using CIS Suite to manage OSEs in their own data centers, may also use System Center software licensed under CIS Suite to manage their qualifying Virtual OSEs running within Microsoft Azure. For every 16 CIS Suite core Licenses or each CIS Suite processor License covered by a customer's SCE, the customer may manage up to 10 qualifying Virtual OSEs running within Microsoft Azure. Qualifying Virtual OSEs include:

- Windows Server Virtual Machine Instances (including Instances deployed under Azure HUB)
- Cloud Services instances (Web role and Worker role)
- Storage Accounts
- SQL Databases
- Websites instances

#### 4.6 Software Assurance Renewal Offer for Windows Server and System Center

Customers who have Licenses with active SA for both of the Products in Column A of the table below may, upon expiration of that coverage, acquire SA for the corresponding CIS Suite in Column B without acquiring the underlying CIS Suite License.

Column A	Column B
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Windows Server Standard (2-packs of Core Licenses) System Center Standard (2-packs of Core Licenses)	Core Infrastructure Server Suite Standard (2-packs of Core Licenses)
Windows Server Datacenter (2-packs of Core Licenses) System Center Datacenter (2-packs of Core Licenses)	Core Infrastructure Server Suite Datacenter (2-packs of Core Licenses)

Customers who license and use CIS Suite (Standard or Datacenter) under this offer may no longer use software under their qualifying Licenses shown in Column A. Licenses and SA acquired under a subscription agreement do not qualify for this offer.

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## Forefront

### 1. Program Availability

Products	DA	L	L/SA	SA	OL	S/S+	MPSA	OV/OVS	EA/EAS	OVS-ES	EES
Forefront Identity Manager 2010 R2 - Windows Live Edition	5/12	25	38	13							

### 2. Product Conditions

Prior Version: Forefront Identity Manager 2010 - Windows Live Edition (4/10)	Product Pool: Server	Down Editions: N/A
Extended Term Eligible: N/A	Prerequisite: N/A	Prerequisite (SA): Appendix B
Promotions: N/A	Qualified User Exemption: N/A	Reduction Eligible: N/A
Reduction Eligible (SCE): N/A	Student Use Benefit: N/A	True Up Eligible: N/A
UITD Discount: N/A		

#### 2.1 Forefront Identity Manager 2010 – Windows Live Edition

Forefront Identity Manager 2010 – Windows Live Edition is the next version for Identity Lifecycle Manager 2007 – Windows Live Edition.

### 3. Use Rights

License Terms: <u>Universal</u> ; Specialty Server	Product-Specific License Terms: All editions	Additional Software: Yes
Client Access Requirements: N/A	External User Access Requirements: N/A	Included Technologies: N/A
Notices: N/A		

#### 3.1 Importing identity data: Forefront Identity Manager 2010 R2 Windows Live Edition

Customer may use the software to import identity data, and changes to those data, from one or more connected data sources and to facilitate the synchronization and transfer of those data, between Customer's connected data sources and the Microsoft Passport Network / Windows Live ID service. Customer may not use the software for any other purpose.

#### 3.2 Additional Software

Client Software		
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### 4. Software Assurance

SA Benefits: Server	Disaster Recovery: N/A	Failover Rights: N/A
License Mobility: N/A	Migration Rights: N/A	Roaming Rights: N/A
Self-Hosting: N/A	SA Equivalent Rights: N/A	

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## Microsoft Dynamics 365 On-premises

### 1. Program Availability

Products	DA	L	L/SA	SA	OL	S/S+	MPSA	OV/OVS	EA/EAS	OVS-ES	EES
Dynamics 365 Team Members On-premises CAL (Device and User)	12/16	(1)	2	1							
Dynamics 365 Customer Service On-premises CAL (Device and User)	12/16	(1)	2	1							
Dynamics 365 Sales On-premises CAL (Device and User)	12/16	(1)	2	1							

Dynamics 365 Operations On-premises CAL (User)	6/17	(50)	
Dynamics 365 Operations Activity On-premises CAL (User)	6/17	(15)	
Dynamics 365 Operations Device On-premises CAL (Device)	6/17	(10)	
Dynamics 365 Operations Server	6/17	(50)	

## 2. Product Conditions

Prior Version: Dynamics CRM 2016 (12/15), Dynamics CRM 2015 (12/14), Dynamics AX 2012 R3 (5/14), Dynamics AX 2012 R2 (12/12)	Product Pool: Server	Down Editions: N/A
Extended Term Eligible: N/A	Prerequisite: N/A	Prerequisite (SA): Appendix B
Promotions: N/A	Qualified User Exemption: N/A	Reduction Eligible: N/A
Reduction Eligible (SCE): N/A	Student Use Benefit: N/A	Make-Up Eligible: N/A
UTD Discount: N/A		

## 3. Use Rights

License Terms: <u>Universal</u> ; <u>Server/CAL</u>	Product-Specific License Terms: All editions	Additional Software: All editions
Client Access Requirements: All editions	External User Access Requirements: Licensed with Sales and Customer Service CALs, except for (i) Customer's or its Affiliates' contractors or agents; (ii) access through Dynamics 365 Clients; or (iii) Licensed with Operations Server	Included Technologies: N/A
Notices: <u>Internet-based Features</u> , <u>Bing Maps</u>		

### 3.1 Dynamics 365 On-premises Server Software Access

License	Server access entitlement
Dynamics 365 Team Members On-premises CAL (Device and User)	For Team Members use (Except that Device CALs do not include access to Operations functionality.)
Dynamics 365 Team Members (User SL)	Sales
Dynamics 365 Sales On-premises CAL (Device and User)	
Dynamics 365 Sales (User SL)	Customer Service
Dynamics 365 Customer Service On-premises CAL (Device and User)	
Dynamics 365 Customer Service (User SL)	Operations
Dynamics 365 Operations On-premises CAL (User)	
Dynamics 365 Supply Chain Management (User SL)	
Dynamics 365 Finance (User SL)	Operations Activity
Dynamics 365 Operations Activity On-premises CAL (User)	
Dynamics 365 Operations Activity (User SL)	Operations Device
Dynamics 365 Operations Device On-premises CAL (Device)	
Dynamics 365 Operations Device (User SL)	

### 3.2 Use rights for Dynamics 365 Operations Servers

The software may include plug-ins, runtime, and other components identified in printed or online documentation that allow Customer to extend its functionality. Customer may modify or create derivative works of these components and use those derivative works, but only with the software and only for Customer's internal purposes.

### 3.3 Use rights for Dynamics 365 On-Premises

#### 3.3.1 Server Use Rights for Dynamics 365 CALs

Customers with Dynamics 365 CALs may install and use any number of copies of the corresponding Dynamics 365 Server software on a server dedicated to Customer's use. Any dedicated Server that is under the management or control of an entity other than Customer or one of its Affiliates is subject to the Outsourcing Software Management clause. This right does not apply to Dynamics 365 Operations Server.

#### 3.3.2 Eligibility for Qualified Offers

Customers renewing an agreement with Dynamics CRM CAL Licenses as of November 1, 2016 may acquire Dynamics 365 On-premises CAL Qualified Offer Licenses in agreement renewals before October 31, 2019.

#### 3.3.3 Dynamics 365 Team Members CALs

Existing Enterprise Agreement Subscription customers with Team Members licenses acquired prior to May 1, 2019 may use existing and newly acquired Dynamics 365 Team Members CALs in accordance with the Dynamics 365 service description at <http://download.microsoft.com/download/D/B/3/DB37B5D3-7796-4536-AC8D-8EFDB95CD52F/Team-Members-Grandfathering.pdf> through the duration of their existing agreement and any subsequent subscription term begun prior to December 31, 2020.

**3.4 Additional Software**

Microsoft Dynamics 365 for Microsoft Outlook	Microsoft E-Mail Router and Rule Deployment Wizard for Microsoft Dynamics 365	Microsoft Dynamics Reporting Extensions for Microsoft Dynamics 365
Microsoft Dynamics 365 Report Authoring Extensions	Microsoft Dynamics 365 Multilingual User Interface (MUI)	Microsoft Dynamics 365 for supported devices

**4. Software Assurance**

SA Benefits: Server	Disaster Recovery: Operations Server	Fail-Over Rights: Operations Server
License Mobility: Operations Server	Migration Rights: <a href="#">Product List - November 2014 and June 2015</a> ; <a href="#">Product Terms December 2016</a> ; <a href="#">Product Terms July 2017</a>	Roaming Rights: N/A
Self Hosting: Operations Server	SA Equivalent Rights: N/A	

**4.1 Dynamics 365 Server Rights**

Customers with Dynamics 365 CALs and active SA may install and use any number of copies of the corresponding Dynamics 365 Server software on a network server or shared server. This right does not apply to Dynamics 365 Operations Server.

**4.2 Dynamics 365 Operations Server Rights**

Dynamics 365 Operations Server may only be used by Customers that have active SA or equivalent license. Customers that allow SA or equivalent license to lapse must uninstall the server software. Customers that have perpetual rights may install the latest update of Dynamics AX 2012 R3 Server or Commerce Server software that is available at the time of lapse.

**4.3 Dynamics 365 Operations Server Fail-over Rights**

Customer may run passive fail-over instances of Dynamics 365 Operations Server as follows. Passive fail-over Instances may be run in either a separate OSE on the Licensed Server or on a different Server dedicated to Customer's use. Dedicated Servers that are under the management or control of an entity other than Customer or one of its Affiliates are subject to the [Outsourcing Software Management](#) clause. Fail-Over Rights apply only if the number of licenses that otherwise would be required to run the passive fail-over Instances does not exceed the number of licenses required to run the corresponding production Instances. This SA benefit requires SA for the Licensed Server and access license, if any.

**4.4 Localization and Updates**

Customer is eligible to receive and use updates related to government tax and regulatory requirements on Licensed Servers provided it has active SA or equivalent license for the Licensed Servers and CALs.

**4.5 Unified Service Desk (USD)**

For each Dynamics 365 Sales On-premises CAL or Dynamics 365 Customer Service On-premises CAL for which Customer has SA, Customer may install and use USD on a Licensed Device. The right to use USD is limited to the user or device to whom the qualifying CAL is assigned.

**4.6 Dynamics CustomerSource**

Dynamics 365 On-premises CAL customers with active SA have access to CustomerSource.

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**Microsoft Identity Manager**

**1. Program Availability**

Products	DA	L	L/SA	SA	OL	S/S+	MPSA	OV/OVS	EA/EAS	OVS-ES	EES
Microsoft Identity Manager 2016 CAL (User)	8/15	1	2	1							
Microsoft Identity Manager 2016 External Connector	8/15	125	188	63							

**2. Product Conditions**

Prior Version: Forefront Identity Manager 2010 R2 (5/12)	Product Pool: Server	Down Editions: N/A
Extended Term Eligible: N/A	Prerequisite: N/A	Prerequisite (SA): <a href="#">Appendix B</a>
Promotions: N/A	Qualified User Exemption: N/A	Reduction Eligible: N/A
Reduction Eligible (SCE): N/A	Student Use Benefit: N/A	True-Up Eligible: N/A
USD Discount: N/A		

### 3. Use Rights

License Terms: <a href="#">Universal</a>	Product-Specific License Terms: All editions	Additional Software: Yes
Client Access Requirements: N/A	External User Access Requirements: N/A	Included Technologies: N/A
Notices: N/A		

#### 3.1 Additional Software

Client Software	
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### 4. Software Assurance

SA Benefits: Server	Disaster Recovery: Yes	Fail-Over Rights: N/A
License Mobility: N/A	Migration Rights: N/A	Roaming Rights: N/A
Self-Hosting: N/A	SA Equivalent Rights: N/A	

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## Office Applications

### Office Desktop Applications

#### 1. Program Availability

Products	DA	L	L/SA	SA	DL	S/S+	MPSA	OV/OVS	EA/EAS	OVS-ES	EES
Access 2019	9/18	1	2	1							
Excel 2019	9/18	1	2	1							
Office Standard 2019	9/18	2	3	1							
Office Professional Plus 2019	9/18	2(1)	3	1							
Office Home & Student 2013 RT Commercial Use	10/12	1	2	1							
Office Multi Language Pack 2013	10/12	1	2	1							
Outlook 2019	9/18	1	2	1							
PowerPoint 2019	9/18	1	2	1							
Project Standard 2019	9/18	2	4	2							
Project Professional 2019	9/18	4(1)	6	2							
Publisher 2019	9/18	1	2	1							
Skype for Business 2019	9/18	1	2	1							
Visio 2019 Standard	9/18	1	2	1							
Visio 2019 Professional	9/18	2(1)	3	1							
Word 2019	9/18	1	2	1							
Work at Home for Office Standard 2019	9/18	2									
Work at Home for Office Professional Plus 2019	9/18	2									

#### 2. Product Conditions

Prior Version: Office 2016 and Office 2016 Applications (10/15)	Product Pool: Application	Down Editions: N/A
Extended Term Eligible: N/A	Prerequisite: Work at Home	Prerequisite (SA): <a href="#">Appendix B</a>
Promotions: N/A	Qualified User Exemption: N/A	Reduction Eligible: N/A
Reduction Eligible (SCE): N/A	Student Use Benefit: <a href="#">See Appendix H</a>	True-Up Eligible: N/A
UTD Discount: Office Professional Plus		Add-ons and From SA: <a href="#">See Appendix C</a>

##### 2.1 Work at Home

A Work at Home License may be acquired for the Qualifying Products in the table below. The Primary User of the Qualifying Product may install and use the Work at Home software on one device outside of Customer's or its Affiliates' premises (e.g., at the user's home).

Qualifying Product(s)	Qualifying Work at Home License
Office Standard 2019	Work at Home for Office Standard 2019

Office Professional Plus 2019	Work at Home for Office Professional Plus 2019
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**2.2 Platform Independent**

Customer may run either the version licensed or a different platform version, provided that the different platform version was available when the original licensed version became available. If the components of a Product suite vary by platform version, Customer may use the components of the suite that it chooses to deploy and only those components; Customer may not mix components across platform versions. SA for a platform independent License permits Customer to use, in place of the licensed Product the most current version of either platform version of the Product that becomes available during the term of coverage.

**2.3 Office Online Server**

Customers purchasing Office Standard 2016 or Office Professional Plus 2016 licenses before August 1, 2016 may use the editing functionality described in the Office for the web section [Appendix B](#) with those licenses. This right expires on August 1, 2019.

**3. Use Rights**

License Terms: <a href="#">Universal</a> ; <a href="#">Desktop Applications</a>	Product-Specific License Terms: Office suites and Office Home & Student RT Commercial Use Rights	Additional Software: N/A
Client Access Requirements: N/A	External User Access Requirements: N/A	Included Technologies: Office Web Apps Server 2013 (Office suites only)
Notices: <a href="#">Bing Maps</a> (Excel and Office Professional Plus); <a href="#">H.264/MPEG-4 and/or VC-1</a> (Skype for Business); <a href="#">Internet-based Features</a>		

**3.1 Office Home & Student 2013 RT Commercial Use Rights**

The commercial use restriction for Office Home & Student 2013 RT is waived for:

- The Primary User of a Licensed Device running Office Professional Plus or Standard 2019/2016 or; and
- Office Home & Student 2013 RT installed on a device assigned an Office Professional Plus or Standard 2019/2016 or Office Home & Student 2013 RT Commercial Use license.

Except as provided in this section, the terms provided with the Office Home & Student 2013 RT license will govern.

**3.2 Academic Programs**

The following applies to customers in Academic Volume Licensing Programs.

**3.2.1 Microsoft 365 Apps for enterprise Extended Use Rights**

Provided an Institution has licensed Office Professional Plus for all Faculty and Staff in its defined Organization under an Open Value Subscription Agreement for Education Solutions or an Enrollment for Education Solutions (pre 2017 versions), each Licensed User may use a Microsoft 365 Apps for enterprise subscription for the sole use of each Licensed User for the duration of the agreement. Licenses acquired at no cost through this offer may not be counted toward satisfaction of Institution’s minimum order requirements.

**3.2.2 Graduation Benefit**

Institutions with an active Enrollment for Education Solutions may, at any time during the Enrollment term, transfer a Student’s Office Professional Plus licenses to such Student when they become a Graduate. Institution must provide each such Graduate with a license agreement in the form provided by Microsoft. Upon the Graduate’s acceptance of the terms of the license agreement, the Graduate’s right to run Office Professional Plus becomes perpetual.

**4. Software Assurance**

SA Benefits: Application	Disaster Recovery: N/A	Fail-Over Rights: N/A
License Mobility: N/A	Migration Rights: <a href="#">Product List - June 2015</a> (Office Multi-Language Pack and Visio Premium 2010)	Roaming Rights: Office, Project and Visio
Self-Hosting: N/A	SA Equivalent Rights: N/A	

**4.1 Office Standard and Office Professional Plus Outsourcing Software Management Rights for Customers renewing SA after September 2019 but before October 2020**

Any Customer that used the software with a Listed Provider under the [Outsourcing Software Management](#) clause immediately prior October 1, 2019 may use Licenses acquired after October 1, 2019 but before October 1, 2020 on that Listed Provider until September 30, 2020 subject to the terms and conditions of the [Outsourcing Software Management](#) clause in the September 2019 Product Terms.

# Office for Mac

## 1. Program Availability

Products	DA	L	L/SA	SA	OJ	S/S*	MPSA	OJ/OVS	EA/EAS	OVS/ES	EES
Excel 2019 for Mac	9/18	1	2	1							
Skype for Business for Mac 2019	9/18	1	2	1							
Office 2019 for Mac Standard	9/18	2(1)	3	1							
Outlook 2019 for Mac	9/18	1	2	1							
PowerPoint 2019 for Mac	9/18	1	2	1							
Word 2019 for Mac	9/18	1	2	1							
Work at Home for Mac 2019	9/18	2									

## 2. Product Conditions

Prior Version: Office for Mac 2016 and Office for Mac 2016 Applications (9/15)	Product Pool: Application	Down Editions: N/A
Extended Term Eligible: N/A	Prerequisite: Work at Home	Prerequisite (SA): Appendix B
Promotions: N/A	Qualified User Exemption: N/A	Reduction Eligible: N/A
Reduction Eligible (SCE): N/A	Student Use Benefit: N/A	True-Up Eligible: N/A
UB/DI Discount: N/A		

### 2.1 Work at Home

A Work at Home License may be acquired for Office for Mac. The Primary User of the Office 2019 for Mac Standard software may install and use the Work at Home for Mac Office 2019 for Mac Standard software on one device outside of Customer’s or its Affiliate’s premises (e.g., at the user’s home).

### 2.2 Platform Independent

Customer may run either the version licensed or a different platform version, provided that the different platform version was available when the original licensed version became available. If the components of a Product suite vary by platform version, then Customer may use the components of the suite that it chooses to deploy and only those components; Customer may not mix components across platform versions. SA for a platform independent License permits Customer to use, in place of the licensed Product the most current version of either platform version of the Product that becomes available during the term of coverage.

### 2.3 Office Online Server

Customers purchasing Office 2016 for Mac Standard licenses before August 1, 2016 may use the editing functionality described in the Office for the web section of [Appendix B](#) with those licenses. This right expires on August 1, 2019.

## 3. Use Rights

License Terms: <a href="#">Universal</a> ; <a href="#">Desktop Applications</a>	Product-Specific License Terms: Office for Mac	Additional Software: N/A
Client Access Requirements: N/A	External User Access Requirements: N/A	Included Technologies: Office Web Apps Server 2013 (Office suite only)
Notices: <a href="#">Internet-based Features</a>		

### 3.1 Office Home & Student 2013 RT Commercial Use

The commercial use restriction for Office Home & Student 2013 RT is waived for the Primary User of a Licensed Device running Office 2019/2016 for Mac Standard. Except as provided in this section, the terms provided with the Office Home & Student 2013 RT license will govern.

## 4. Software Assurance

SA Benefits: Application	Disaster Recovery: N/A	Fail-Over Rights: N/A
License Mobility: N/A	Migration Rights: <a href="#">Product List - June 2015</a> (Communicator for Mac 2010, Entourage for Mac 2008)	Roaming Rights: N/A
Self-Hosting: N/A	SA Equivalent Rights: N/A	

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# Office Servers

## Exchange Server

### 1. Program Availability

Products	DA	L	L/SA	SA	OL	S/St	MPSA	OV/OVS	EA/EAS	OVS-ES	EES
Exchange Server Enterprise 2019	10/18	50	75	25							
Exchange Server Enterprise 2019 CAL (Device and User)	10/18	1	2	1							
Exchange Server Standard 2019	10/18	10	15	5							
Exchange Server Standard 2019 CAL (Device and User)	10/18	1	2	1							

### 2. Product Conditions

Prior Version: Exchange Server 2016 (10/15)	Product Pool: Server	Down Editions: Enterprise to Standard
Extended Term: Eligible: N/A	Prerequisite: N/A	Prerequisite (SA): Appendix B
Promotions: N/A	Qualified User Exemption: N/A	Reduction Eligible: N/A
Reduction Eligible (SCE): N/A	Student Use Benefit: N/A	True-Up Eligible: N/A
UID Discount: N/A		

### 3. Use Rights

License Terms: Universal; Server/CAL	Product-Specific License Terms: N/A	Additional Software: All editions
Client Access Requirements: All editions	External User Access Requirements: Licensed with Server (access to Additional Functionality requires both Base and Additive CALs)	Included Technologies: N/A
Notices: N/A		

#### 3.1 Server Software Access

Base Access License	Exchange Server 2019 Standard CAL CAL Equivalent License (refer to Appendix A)	Exchange Online (Plan 1/1G/2/2A/2G) User SL
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##### 3.1.1 Additional Functionality Associated with Exchange Enterprise CAL

In-Place Archive, In-Place Holds (Indefinite, Query-based, and Time-based), Information Protection and Compliance, Custom Retention Policies, Per User/Distribution List Journaling, Site Mailboxes – Compliance, Data Loss Prevention

Additive Access License	Exchange Server 2019 Enterprise CAL CAL Equivalent License (refer to Appendix A)	Exchange Online (Plan 2/2A/2G) User SL
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#### 3.2 Additional Software

Exchange Management Tools		
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### 4. Software Assurance

SA Benefits: Server	Disaster Recovery: All editions	Fair Over-Rights: N/A
License Mobility: All editions (server licenses only)	Migration Rights: Product List - June 2015 (External Connector)	Roaming Rights: N/A
Self Hosting: All editions	ISA Equivalent Rights: N/A	

#### 4.1 Exchange Enterprise CAL with Services 2019 Supplemental Terms and Conditions

Exchange Server Enterprise CAL with active SA coverage includes the rights to Data Loss Prevention and Exchange Online Protection.

#### 4.2 Exchange Online Voice Mail Service

Customers with active SA coverage for Exchange Server Standard 2019 or Exchange Server Enterprise 2019 may use the Exchange Online Voice Mail Service of Cloud Voicemail to access voice messages from Outlook. Use of this Online Service is subject to the OST.

# Project Server

## 1. Program Availability

Products	DA	L	L/SA	SA	OL	S/S+	MPSA	OV/OVS	EA/EAS	OVS-ES	EES
Project Server 2019	10/18	50	75	25							
Project Server 2019 CAL (Device and User)	10/18	1	2	1							

## 2. Product Conditions

Prior Version: Project Server 2016 (5/16)	Product Pool: Server	Down Editions: N/A
Extended Term Eligible: N/A	Prerequisite: N/A	Prerequisite (SA): Appendix B
Promotions: N/A	Qualified User Exemption: N/A	Reduction Eligible: N/A
Reduction Eligible (SCE): N/A	Student Use Benefit: N/A	True-Up Eligible: N/A
UFD Discount: N/A		

## 3. Use Rights

License Terms: <u>Universal</u> ; <u>Server/CAL</u>	Product-Specific License Terms: N/A	Additional Software: Yes
Client Access Requirements: Yes	External User Access Requirements: CAL	Included Technologies: N/A
Notices: N/A		

### 3.1 Server Software Access

Base Access License	Project Server 2019 CAL Project Plan 3 User SL Project 2019 Professional	Project Essentials User SL Project Plan 5 User SL
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### 3.2 Additional Software

Software Development Kit		
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## 4. Software Assurance

SA Benefits: Server	Disaster Recovery: Project Server	Fail-Over Rights: N/A
License Mobility: Server licenses only	Migration Rights: N/A	Roaming Rights: N/A
Self-Hosting: N/A	ISA Equivalent Rights: N/A	

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# SharePoint Server

## 1. Program Availability

Products	DA	L	L/SA	SA	OL	S/S+	MPSA	OV/OVS	EA/EAS	OVS-ES	EES
SharePoint Server 2019	10/18	50	75	25							
SharePoint Server 2019 Standard CAL (Device and User)	10/18	1	2	1							
SharePoint Server 2019 Enterprise CAL (Device and User)	10/18	1	2	1							

## 2. Product Conditions

Prior Version: SharePoint Server 2016 (5/16)	Product Pool: Server	Down Editions: N/A
Extended Term Eligible: N/A	Prerequisite: N/A	Prerequisite (SA): Appendix B
Promotions: N/A	Qualified User Exemption: N/A	Reduction Eligible: N/A
Reduction Eligible (SCE): SharePoint Server	Student Use Benefit: N/A	True-Up Eligible: N/A
UFD Discount: N/A		

## 3. Use Rights

License Terms: <u>Universal</u> ; <u>Server/CAL</u>	Product-Specific License Terms: Yes	Additional Software: Yes
Client Access Requirements: Yes	External User Access Requirements: Licensed with Server	Included Technologies: N/A

Notices: N/A
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### 3.1 SharePoint Server 2019 Server Software Access

Base Access License	SharePoint Server 2019 Standard CAL CAL Equivalent License (refer to <a href="#">Appendix A</a> )	SharePoint Online (Plan 1/2) User SL
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#### 3.1.1 Additional SharePoint Server Functionality Associated with SharePoint Enterprise CAL

Business Connectivity Services Line of Business Webparts; Office 2019 Business Connectivity Services Client Integration; Access Services; Enterprise Search; E-discovery and Compliance; InfoPath Forms Services; Excel Services, PowerPivot, and PowerView; Visio Services; PerformancePoint Services; Custom Analytics Reports; Data Loss Prevention; and Advanced Charting.

Additive Access License	SharePoint Server 2019 Enterprise CAL CAL Equivalent License (refer to <a href="#">Appendix A</a> )	SharePoint Online (Plan 2) User SL
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### 3.2 CAL Waiver for Users Accessing Publicly Available Content

CALs are not required to access content, information, and applications that Customer makes publicly available to users over the Internet (i.e., where access is not restricted to Intranet or Extranet scenarios).

### 3.3 Additional Software

Software Development Kit		
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## 4. Software Assurance

SA Benefits: Server	Disaster Recovery: All editions	Fail-Over Rights: N/A
License Mobility: SharePoint Server and Office Audit and Control Management Server (server licenses only)	Migration Rights: <a href="#">Product List - June 2015</a> (SharePoint Server and SharePoint Server for Internet Sites)	Roaming Rights: N/A
Self-Hosting: N/A	SA Equivalent Rights: N/A	

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## Skype for Business Server

### 1. Program Availability

Products	DA	L	L/SA	SA	OL	S/S	MPSA	OV/OVS	EA/EAS	OVS-ES	EES
Skype for Business Server 2019	10/18	50	75	25							
Skype for Business Server 2019 Standard CAL (Device and User)	10/18	1	2	1							
Skype for Business Server 2019 Enterprise CAL (Device and User)	10/18	1	2	1							
Skype for Business Server 2019 Plus CAL (Device and User)	10/18	1	2	1							
Skype for Business Plus CAL (User SL)											

### 2. Product Conditions

Prior Version: Skype for Business Server 2015 (5/15), Skype for Business Server 2015 Standard, Enterprise and Plus CALs (5/15)	Product Pool: Server	Down Editions: N/A
Extended Term Eligible: N/A	Prerequisite: N/A	Prerequisite (SA): <a href="#">Appendix B</a>
Promotions: N/A	Qualified User Exemption: N/A	Reduction Eligible: N/A
Reduction Eligible (SCE): N/A	Student Use Benefit: N/A	Upgrade Eligible: N/A
UFD Discount: N/A		

### 3. Use Rights

License Terms: <a href="#">Universal</a> ; <a href="#">Server/CAL</a>	Product Specific License Terms: N/A	Additional Software: Yes
Client Access Requirements: Yes	External User Access Requirements: Licensed with Server	Included Technologies: Windows Software Components
Notices: <a href="#">H.264/MPEG-4</a> and/or <a href="#">VC-1</a>		

### 3.1 Server Software Access

Base Access License	Skype for Business Server 2019 Standard CAL CAL Equivalent License (refer to <a href="#">Appendix A</a> )	Skype for Business Online (Plan 1/1G/1A/2/2G/2A) User SL
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#### 3.1.1 Additional Functionality Associated with Skype for Business Server Enterprise CAL Audio, Video and Web Conferencing, Desktop Sharing, Room Systems and Multiple HD Video Streams

Additive Access License	Skype for Business Server 2019 Enterprise CAL CAL Equivalent License (refer to <a href="#">Appendix A</a> )	Skype for Business Online (Plan 2/2A/2G) User SL
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#### 3.1.2 Additional Functionality Associated with Skype for Business Server Plus CAL Voice Telephony and Call Management

Additive Access License	Skype for Business Server 2019 Plus CAL Phone System User SL	CAL Equivalent License (refer to <a href="#">Appendix A</a> ) Skype for Business Plus CAL User SL
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### 3.2 Additional Software

Administrative Tools	Archiving and Monitoring Server Role	Audio/Video Conferencing Server Role
Autodiscovery Service Role	Central Management Server Role	Director Role
Edge Server Role	Skype for Business Web App Server Role	Mediation Server Role
Microsoft Skype Web App	Microsoft Skype for Business Server 2019 Control Panel	PowerShell Snap-in
Reach Application Sharing Server Role	Mobility Service Role	Video Interop Server Role
Topology Builder	Unified Communications Application Server Role	
Web Conferencing Server Role	Central Management Server Role	

## 4. Software Assurance

SA Benefits: Server	Disaster Recovery: Skype for Business Server	Fall-Over Rights: N/A
License Mobility: Server licenses only	Migration Rights: <a href="#">Product List - April 2015</a>	Roaming Rights: N/A
Self-Hosting: N/A	SA Equivalent Rights: N/A	

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## SQL Server

### 1. Program Availability

Products	DA	L	L/SA	SA	OL	S/S+	MPSA	OV/OVS	EA/EAS	OVS-ES	EES
SQL Server 2019 Standard	11/19	15	23	8							
SQL Server 2019 Standard Core (2-packs of Core Licenses)	11/19	50	75	25							
SQL Server 2019 Enterprise	11/19			38							
SQL Server 2019 Enterprise Core (2-packs of Core Licenses)	11/19	125	188	63							
SQL Server 2019 CAL	11/19	1	2	1							
SQL Server ESU (Standard and Enterprise, Server and Core)											
SQL Server Big Data Node (BDN)(2-packs of Core Licenses)	11/19										

Note: SQL Server licenses purchased through CSP are subject to different terms as set forth in the [Server Subscriptions for Azure section of these Product Terms](#).

### 2. Product Conditions

Prior Version: SQL Server 2017 (10/17)	Product Pool: Server – All editions	Down Editions: Enterprise Core to Standard, Business Intelligence, Workgroup or Small Business or 2008 R2 Datacenter; Standard to Workgroup or Small Business
Extended Term Eligible: N/A	Prerequisite: ESU and SQL Server Big Data Node require SA for SQL Server	Prerequisite (SA): <a href="#">Appendix B</a>
Promotions: N/A	Qualified User Exemption: Per Core Products only	Reduction Eligible: N/A
Reduction Eligible (SCE): All editions	Student Use Benefit: N/A	Trade-Up Eligible: N/A
UTD Discount: N/A		

### 2.1 SQL Server Enterprise (Server/CAL)

Existing SQL Server Enterprise (Server/CAL) customers may renew their SA on Server Licenses acquired under that License Model, however new Server Licenses for SQL Server Enterprise (Server/CAL) are no longer available. Existing SA customers upgrading to the 2019 version should refer to the November 2019 [Product Terms](#) for SQL Server Enterprise (Server/CAL) License Terms.

### 2.2 SQL Server Parallel Data Warehouse

SQL Server Parallel Data Warehouse is a deployment option for SQL Server Enterprise Core customers. Customers are eligible to use only the software builds made available during the term of their SA coverage.

## 3. Use Rights

License Terms: <a href="#">Universal</a> ; <a href="#">Server/CAL – Standard</a> , <a href="#">Per Core – Standard Core and Enterprise Core</a>	Product-Specific License Terms: All editions	Additional Software: All editions
Client Access Requirements: Server/CAL editions only	External User Access Requirements: CALs (Server/CAL editions only)	Included Technologies: Windows Software Components
Notices: Internet-based Features		

### 3.1 Server Software Access

Base Access License	SQL Server 2019 CAL
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### 3.2 Automatic Updates to Previous Versions of SQL Server

If the SQL Server software is installed on Servers or devices running any supported editions of SQL Server prior to SQL Server 2012 (or components of any of them) this software will automatically update and replace certain files or features within those editions with files from this software. This feature cannot be switched off. Removal of these files may cause errors in the software and the original files may not be recoverable. By installing this software on a Server or device that is running such editions you consent to these updates in all such editions and copies of SQL Server (including components of any of them) running on that Server or device.

### 3.3 SQL Server Platform Selection

SQL Server Licenses are platform agnostic and permit deployment and use on Windows or Linux platforms.

### 3.4 Running Instances for Standard Edition

For each Server License, software may be run in only one Physical OSE or Virtual OSE at a time, but Customer may use any number of Running Instances of the server software in that OSE.

### 3.5 SQL Server Big Data Nodes

Customer’s use of SQL Server Big Data Node is governed by the Use Rights for SQL Server Enterprise Core, except that Customer may use SQL Server Big Data Node Instances only with a Master Node. A “Master Node” is an OSE running SQL Server Standard Core or SQL Server Enterprise Core under Customer’s Licenses with SA or equivalent subscription rights. The following SA rights also apply to Customer’s use of SQL Server Big Data Node: Unlimited Virtualization and License Mobility.

### 3.6 Fail-Over Servers for Parallel Data Warehouse (PDW)

The PDW Appliance is a single unit made up of two or more compute nodes (Licensed Servers) all controlled by a single PDW control virtual machine (Virtual OSE). Technology is built in to the appliance which allows the software to fail-over to another compute node on the appliance. Customer does not need additional Licenses for the software running in fail-over OSEs as executed by the PDW Appliance technology.

### 3.7 Use of SQL Server with Container Technology

For purposes of licensing use of SQL Server software running within a container on a container runtime such as docker, cri-o, or containerd, (i) a container is considered to be a Virtual OSE, and (ii) the Physical or Virtual Cores available to that container are considered to be Hardware Threads. Customer’s use is subject to the Per Core License Model or Server/CAL License Model and any other License Terms relevant to the SQL Server Licenses Customer has appropriately assigned to the Licensed Server in connection with that use. For clarity, notwithstanding anything to the contrary, if hyperthreading is enabled and Customer is licensing use under the Per Core License Model, Customer must assign a Core License for each Hardware Thread mapped to a container, subject to a minimum of four Licenses.

### 3.8 Additional Software

#### 3.8.1 Additional Software - All (except Parallel Data Warehouse)

Client Quality Connectivity	Client Tools Backwards Compatibility	Client Tools Connectivity
Client Tools SDK	Data Quality Client	Distributed Replay Client
Documentation Components	Management Tools - Basic	Management Tools - Complete
Reporting Services Add-in for SharePoint Products	SQL Client Connectivity SDK	

### 3.8.2 Additional Software - Parallel Data Warehouse

Parallel Data Warehouse Control Virtual Machine	
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## 4. Software Assurance

SA Benefits: Server	Disaster Recovery: All editions. See Fail-Over Rights section below for additional terms for SQL Server.	Fail-Over Rights: All editions (Not applicable to Parallel Data Warehouse). See Fail-Over Rights section below for additional terms for SQL Server.
License Mobility: All editions of SQL Server (Not applicable to Parallel Data Warehouse) and SQL Server Big Data Node.	Migration Rights: See <a href="#">Product Terms - October 2019</a> .	Roaming Rights: N/A
Self Hosting: All editions	SA Equivalent Rights: Yes	

### 4.1 SQL Server 2019 Enterprise Core - Unlimited Virtualization

Customer may run any number of instances of the server software in any number of OSEs on any Licensed Server for which it has full SA coverage on all of its core licenses for the Server.

### 4.2 SQL Server – Fail-over Rights

For each of its Primary Workloads, Customer is entitled to:

- One Fail-over OSE for any purpose, including high availability, on any Server dedicated to Customer’s use (subject to the [Outsourcing Software Management](#) clause); and
- Two Fail-over OSEs specifically for disaster recovery purposes:
  - one on any Server dedicated to Customer’s use (subject to the [Outsourcing Software Management](#) clause) and
  - one on Microsoft Azure servers

Customer may also run Primary Workloads and its disaster recovery Fail-over OSEs simultaneously for brief periods of disaster recovery testing every 90 days, and around the time of a disaster, for a brief period, to assist in the transfer between them. Customer may perform the following maintenance-related operations for any permitted Fail-over OSE:

- Database consistency checks or Checkdb
- Log Back-ups
- Full Back-ups
- Monitoring resource usage data

Fail-over OSEs permitted for disaster recovery must be asynchronous and manual. Fail-over OSEs may not serve SQL Server data to users or devices or otherwise run active SQL Server workloads. The number of licenses that otherwise would be required for a Fail-over OSE must not exceed the number of licenses required for the corresponding Primary Workload. These fail-over rights require SA for both the Licensed Server and CALs, if any, and do not apply when Customer deploys SQL Software under [License Mobility through SA](#).

### 4.3 Additional Fail-over OSE for High Availability for use with Big Data Clusters

Customer is entitled to one additional Fail-over OSE for high availability for each of its Primary Workloads that runs on the Linux platform and serves as the SQL Server master instance when used in conjunction with Customer’s use of Big Data Clusters. These additional Fail-over OSEs are otherwise subject to the same SQL Server – Fail Over Rights limitations.

### 4.4 Use of SQL on Microsoft Azure

When using SQL Server on Azure under Azure Hybrid Benefit rights, or Disaster Recovery Rights, Customer should indicate such use, as prompted in the Azure portal or Azure command line APIs.

### 4.5 SQL Server Big Data Nodes License Grant for SQL Server SA Customers

Customer will have eight SQL Server Big Data Node Licenses for each SQL Server Enterprise Core License with SA or equivalent subscription rights assigned to one of its Master Nodes.

Customer will have one SQL Server Big Data Node License for each SQL Server Standard Core License with SA or equivalent subscription rights assigned to one of its Master Nodes.

Customer may order additional quantities of SQL Server Big Data Node Licenses as needed.

### 4.6 SQL Server Enterprise Core and SQL Server Enterprise - Machine Learning Server for Windows and Machine Learning Server for Linux

Only customers with servers licensed to run SQL Server Enterprise Core with SA or SQL Server Enterprise with SA may use updates to Machine Learning Server for Windows and Machine Learning Server for Linux made available after October 2017. Customers may use these updates on the Licensed Servers, subject to the SQL Server Enterprise Core and SQL Server Enterprise use rights, respectively. Customers licensing SQL Server Enterprise under the Server/CAL Licensing Model must also have SA on their corresponding CALs to obtain this benefit. Customers’ right to use these updates expires when their SA expires.

#### 4.7 SQL Enterprise Core – Running Machine Learning Server for Hadoop

For each SQL Server Enterprise Core License Customer has with active SA, Customer may also run Machine Learning Server for Hadoop on up to five Servers dedicated to Customer’s use solely in conjunction with its licensed use of SQL Server Enterprise Core. Any dedicated Server under the management or control of an entity other than Customer or one of its Affiliates is subject to the [Outsourcing Software Management](#) clause.

#### 4.8 Use of Power BI Report Server – SQL Server Enterprise Edition

Customer may run Power BI Report Server software on the Licensed Server or in Azure. Customer may run the software on a maximum numbers of cores equal to the number of SQL Server Enterprise Edition Core Licenses with active SA assigned to the licensed Server, subject to a minimum of four core licenses per OSE. Alternatively, if the software is run in Azure, Customer must allocate one SQL Server Enterprise Edition Core License with active SA per virtual core, subject to a minimum of four core licenses per OSE. Use is additionally subject to the applicable terms of Customer’s volume license agreement. A Power BI Pro User SL is required to publish shared Power BI reports using the Power BI Report Server. This right expires upon expiration of Customer’s SA coverage.

#### 4.9 Extended Security Updates

Refer to [Extended Security Updates](#) in Appendix B for acquisition and use of Extended Security Updates.

#### 4.10 SQL Server 2019 Enterprise Core - Parallel Data Warehouse Feature Updates

Customers with SA coverage are eligible for Parallel Data Warehouse feature releases (e.g., appliance updates) available between major product releases.

#### 4.11 SQL Server Buy-Out Option under the Enrollment for Application Platform EAP

Customer may renew SA for SQL Server Enterprise Server/CAL Licenses, but the only buy-out option at the end of Customer’s enrollment term will be for core Licenses.

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## System Center

### System Center Server

#### 1. Program Availability

Products	DA	L	L/SA	SA	OL	S/S+	MPSA	OV/DVS	EA/EAS	OVS-ES	EES
System Center 2019 Datacenter Server Management License (2-packs of Core Licenses)	3/19		13	8	BY			BY			
System Center 2019 Datacenter Server Management License (16-packs of Core Licenses)	3/19		38	13	BY			BY			
System Center 2019 Standard Server Management License (2-packs of Core Licenses)	3/19		3	2	BY			BY			
System Center 2019 Standard Server Management License (16-packs of Core Licenses)	3/19		23	8	BY			BY			

#### 2. Product Conditions

Prior Version: System Center 2016 (10/16)	Product Pool: Server	Down Editions: N/A
Extended Term Eligible: N/A	Prerequisite: N/A	Prerequisite (SA): Appendix B
Promotions: N/A	Qualified User Exemption: N/A	Reduction Eligible: N/A
Reduction Eligible (SCE): N/A	Student Use Benefit: N/A	True-Up Eligible: N/A
UFD/Discount: N/A		

#### 3. Use Rights

License Terms: Universal; Management Servers	Product-Specific License Terms: All editions	Additional Software: N/A
Client Access Requirements: N/A	External User Access Requirements: N/A	Included Technologies: SQL Server Technology, Windows Software Components
Notices: Internet-based Features, Bing Maps		

#### 3.1 Management License - System Center 2019 Standard

Server Management License	System Center 2019 Standard Management License
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### 3.2 Management License - System Center 2019 Datacenter

Server Management License	System Center 2019 Datacenter Management License
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### 3.3 System Center Endpoint Protection Use with Azure Security Center or Microsoft Defender Advanced Threat Protection for Servers

Customer may use System Center Endpoint Protection to manage Virtual OSEs it is protecting using the Standard tier of Azure Security Center or Microsoft Defender Advanced Threat Protection for Servers. The System Center License Terms, as amended here, govern that use. Managed Virtual OSEs can be running on shared or dedicated Servers. Customer is not required to acquire and assign System Center Licenses for this limited use.

### 3.4 SQL Server Technology

Customer may run any number of Instances of any SQL Server database software included in the Product in one OSE on a Server dedicated to Customer's use for the limited purpose of supporting that Product and any other Product that includes SQL Server database software. Dedicated Servers that are under the management or control of an entity other than Customer or one of its Affiliates are subject to the [Outsourcing Software Management](#) clause.

### 3.5 Windows Server Containers

Customer may Manage any number of OSEs instantiated as Windows Server Containers on the Licensed Server.

## 4. Software Assurance

SA Benefits: Server	Disaster Recovery: All editions	Fail-Over Rights: N/A
License Mobility: All editions (License Mobility through SA only)	Migration Rights: <a href="#">Product List - October 2013, Product Terms - October 2016, and December 2016</a>	Roaming Rights: N/A
Self Hosting: All editions	SA Equivalent Rights: N/A	

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## Microsoft Endpoint Configuration Manager (formerly, System Center Configuration Manager)

### 1. Program Availability

Products	DA	L	L/SA	SA	OL	S/S+	MPSA	DV/OVS	EA/EAS	OVS-ES	EES
Microsoft Endpoint Configuration Manager Client Management License per OSE	10/16*		2	1							
Microsoft Endpoint Configuration Manager Client Management License per User	10/16*		2	1							
Microsoft Endpoint Configuration Manager Client Management License (Client ML) (Student Only)	10/16*		2	1							

\*Microsoft Endpoint Configuration Manager is a Current Branch release originally made available in 10/16 as System Center Configuration Manager.

### 2. Product Conditions

Prior Version: System Center Configuration Manager (10/16),	Product Pool: Server	Down Editions: N/A
Extended Term Eligible: N/A	Prerequisite: N/A	Prerequisite (SA): Appendix B
Promotions: N/A	Qualified User Exemption: N/A	Reduction Eligible: N/A
Reduction Eligible (SCE): N/A	Student Use Benefit: N/A	True-Up Eligible: N/A
UFD Discount: N/A		

#### 2.1 Academic Customers

Enrollment for Education Solutions and School Subscription Enrollment customers may purchase Microsoft Endpoint Configuration Manager Client Management License per OSE and deploy as per User or per OSE as contemplated in the [Management Servers](#) License Model.

### 3. Use Rights

License Terms: <a href="#">Universal</a> ; <a href="#">Management Servers</a>	Product-Specific License Terms: Yes	Additional Software: N/A
Client Access Requirement: N/A	External User Access Requirements: ML	Included Technologies: SQL Server Technology, Windows Software Components
Notices: <a href="#">Internet-based Features</a> , <a href="#">Bing Maps</a>		



3.1 Management License

Client Management License	Microsoft Endpoint Configuration Manager (User or OSE) Microsoft Intune (User SL) Microsoft Intune for Devices	Microsoft 365 F3 (User SL) Management License Equivalent License (refer to Appendix A)
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3.2 SQL Server Technology

Customer may run any number of instances of any SQL Server database software included in the Product in one OSE on a Server dedicated to Customer's use only for the purpose of supporting that Product and any other Product that includes SQL Server database software. Dedicated Servers that are under the management or control of an entity other than Customer or one of its Affiliates are subject to the Outsourcing Software Management clause.

4. Software Assurance

SA Benefits: Server	Disaster Recovery: Yes	Failover Rights: N/A
License Mobility: N/A	Migration Rights: Product List - October 2013	Roaming Rights: N/A
Self Hosting: Yes	SA Equivalent Rights: N/A	

4.1 Microsoft Endpoint Configuration Manager – VDI Rights

Customers with active SA coverage for Microsoft Endpoint Configuration Manager CMLs, Core CALs, or Enterprise CALs (each, a "VDI qualifying license") may use the software to manage, at any one time, up to four Virtual OSEs in which software used remotely from the device or by the user to which that VDI qualifying License has been assigned, is running. Each Virtual OSE may be run on a different virtual desktop infrastructure hosts.

4.2 Microsoft Endpoint Configuration Manager Current Branch Rights

Customers with active SA on Microsoft Endpoint Configuration Manager Licenses, or ML equivalent Licenses, may install and use the Current Branch option of Microsoft Endpoint Configuration Manager.

4.3 Access to Intune

Customers with active SA on Microsoft Endpoint Configuration Manager Licenses, or ML equivalent Licenses, may permit limited access to Intune by its Licensed Users in conjunction with use of Microsoft Endpoint Configuration Manager for the co-management of those users' PCs. Access and use of these Intune features are subject to the Intune License Terms as set forth in the Online Services Terms.

4.4 Access to System Center Configuration Manager 1606

Optionally, Customer may use System Center Configuration Manager 1606 in place of the Microsoft Endpoint Configuration Manager to manage its Licensed Devices or devices used by Licensed Users. The right to use System Center Configuration Manager 1606 continues upon expiration of Customer's SA except in the case of expired subscription-based Microsoft Endpoint Configuration Manager Licenses or expired subscription-based ML equivalent Licenses. This does not permit ongoing use of Microsoft Endpoint Configuration Manager after SA expires.

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System Center Data Protection Manager

1. Program Availability

Products	DA	L	L/SA	SA	OL	S/S	MPSA	OV/OVS	EA/EAS	OVS-ES	EES
System Center 2019 Data Protection Manager per OSE (Client ML)	3/19	(1)	2	1							
System Center 2019 Data Protection Manager per User (Client ML)	3/19		2	1							

2. Product Conditions

Prior Version: System Center 2016 Data Protection Manager (1/17)	Product Pool: Server	Down Editions: N/A
Extended Term: Eligible: N/A	Prerequisite: N/A	Prerequisite (SA): Appendix B
Promotions: N/A	Qualified User Exemption: N/A	Reduction Eligible: N/A
Reduction Eligible (SCE): N/A	Student Use Benefit: N/A	True-Up Eligible: N/A
Volume Discount: N/A		

### 2.1 Academic Customers

Enrollment for Education Solutions and School Subscription Enrollment customers may purchase System Center 2019 Data Protection Manager Client Management License per OSE and deploy as per User or per OSE as contemplated in the [Management Servers](#) License Model.

## 3. Use Rights

License Terms: <a href="#">Universal</a> ; <a href="#">Management Servers</a>	Product-Specific License Terms: Yes	Additional Software: N/A
Client Access Requirements: N/A	External User Access Requirements: ML	Included Technologies: SQL Server Technology, Windows Software Components
Notices: <a href="#">Internet-based Features</a> , <a href="#">Bing Maps</a>		

### 3.1 Management License

Client Management License	System Center 2019 Data Protection Manager License (User or OSE)
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### 3.2 SQL Server Technology

Customer may run any number of Instances of any SQL Server database software included in the Product in one OSE on a Server dedicated to Customer's use for the limited purpose of supporting that Product and any other Product that includes SQL Server database software. Dedicated Servers that are under the management or control of an entity other than Customer or one of its Affiliates are subject to the [Outsourcing Software Management](#) clause.

## 4. Software Assurance

SA Benefits: Server	Disaster Recovery: N/A	Fail-Over Rights: N/A
License Mobility: N/A	Migration Rights: <a href="#">Product List - October 2013</a> , <a href="#">Product Terms January 2017</a>	Roaming Rights: N/A
Self Hosting: All editions	SA Equivalent Rights: N/A	

### 4.1 System Center Data Protection Manager Current Branch Rights

Customers with active SA on System Center Data Protection Manager Licenses, or ML equivalent License, may install and use the Current Branch option of System Center Data Protection Manager.

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# System Center Endpoint Protection

## 1. Program Availability

Products	DA	L	L/SA	SA	OL	S/S+	MPSA	OV/OVS	EA/EAS	OVS/ES	EES
System Center Endpoint Protection 1606 (Device and User SL)	10/16	1									

## 2. Product Conditions

Prior Version: System Center 2012 R2 Endpoint Protection (10/13)	Product Pool: Server	Extended Term Eligible: N/A
Down Editions: N/A	Prerequisite: N/A	Prerequisite (SA): N/A
Promotions: N/A	Qualified User Exemption: N/A	Reduction Eligible: N/A
Reduction Eligible (SCE): N/A	Student Use Benefit: N/A	True Up Eligible: N/A
UPL/D/Discount: N/A		

## 3. Use Rights

License Terms: <a href="#">Universal</a> ; <a href="#">Management Servers</a>	Product-Specific License Terms: Yes	Additional Software: N/A
Client Access Requirement: N/A	External User Access Requirements: ML	Included Technologies: N/A
Notices: <a href="#">Internet-based Features</a>		

### 3.1 Management License

Client Management License	System Center Endpoint Protection (User or Device SL) Windows 10 Enterprise E5 and A5 (User SL) Windows 10 Education E5 (User SL)	Intune (User SL, Add-on), Intune for EDU (User SL, Device SL, Add-on), Intune for Devices Window VDA E5 (User SL) M365 E5 Security (User SL)
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### 3.2 Server Management SLs

In addition to User SL requirements, Server Management Licenses are required for each Server in the number specified in the System Center 2016 Datacenter and Standard license terms. For purposes of this statement, OSEs running server operating systems that access System Center Endpoint Protection or related software are managed OSEs. For this paragraph, a “Servers” is a device on which Customer runs server operating system software.

### 3.3 Substitution of Scan Engines

Microsoft may substitute comparable software and files for the Online Service’s:

- anti-virus and anti-spam software; and
- signature files and content filtering data files.

## 4. Software Assurance

SA Benefits: N/A	Disaster Recovery: N/A	Fail-Over Rights: N/A
License Mobility: N/A	Migration Rights: Product List - March 2014	Roaming Rights: N/A
Self-Hosting: N/A	SA Equivalent Rights: N/A	

### 4.1 System Center Endpoint Protection Current Branch Rights

Customers with active SA on System Center Endpoint Protection Licenses, or ML equivalent License, may install and use the Current Branch option of System Center Endpoint Protection.

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## System Center Operations Manager

### 1. Program Availability

Products	DA	L	L/SA	SA	OL	S/S+	MPSA	OV/OVS	FA/EAS	OVS-ES	EES
System Center 2019 Operations Manager per OSE (Client ML)	3/19	(1)	2	1							
System Center 2019 Operations Manager per User (Client ML)	3/19		2	1							

### 2. Product Conditions

Prior Version: System Center Operations Manager 2016 (1/17)	Product Pool: Server	Down Editions: N/A
Extended Term Eligible: N/A	Prerequisite: N/A	Prerequisite (SA): Appendix B
Promotions: N/A	Qualified User Exemption: N/A	Reduction Eligible: N/A
Reduction Eligible (SEE): N/A	Student Use Benefit: N/A	True-Up Eligible: N/A
WTD Discount: N/A		

### 2.1 Academic Customers

Enrollment for Education Solutions and School Subscription Enrollment customers may purchase System Center 2019 Operations Manager Client Management License per OSE and deploy as per User or per OSE as contemplated in the [Management Servers License Model](#).

### 3. Use Rights

License Terms: Universal; Management Servers	Product-Specific License Terms: Yes	Additional Software: N/A
Client Access Requirements: N/A	External User Access Requirements: ML	Included Technologies: SQL Server Technology, Windows Software Components
Notices: Internet-based Features, Bing Maps		

### 3.1 Management License

Client Management License	System Center 2019 Operations Manager License (User or OSE)
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### 3.2 SQL Server Technology

Customer may run any number of Instances of any SQL Server database software included in the Product in one OSE on a Server dedicated to Customer’s use for the limited purpose of supporting that Product and any other Product that includes SQL Server database software. Dedicated

Servers that are under the management or control of an entity other than Customer or one of its Affiliates are subject to the [Outsourcing Software Management](#) clause.

## 4. Software Assurance

SA Benefits: Server	Disaster Recovery: N/A	Fail-Over Rights: N/A
License Mobility: N/A	Migration Rights: <a href="#">Product List - October 2013</a> ; <a href="#">Product Terms January 2017</a>	Roaming Rights: N/A
Self Hosting: All editions	SA Equivalent Rights: N/A	

### 4.1 System Center Operations Manager Current Branch Rights

Customers with active SA on System Center Operations Manager Licenses, or ML equivalent License, may install and use the Current Branch option of System Center Operations Manager.

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# System Center Orchestrator

## 1. Program Availability

Products	DA	L	L/SA	SA	DL	S/S+	MPSA	OY/OVS	EA/EAS	OVS-ES	EES
System Center 2019 Orchestrator per OSE (Client ML)	3/19	(1)	2	1							
System Center 2019 Orchestrator per User (Client ML)	3/19		2	1							

## 2. Product Conditions

Prior Version: System Center 2016 Orchestrator (1/17)	Product Pool: Server	Down Editions: N/A
Extended Term Eligible: N/A	Prerequisite: N/A	Prerequisite (SA): <a href="#">Appendix B</a>
Promotions: N/A	Qualified User Exemption: N/A	Reduction Eligible: N/A
Reduction Eligible (SCE): N/A	Student Use Benefit: N/A	True-Up Eligible: N/A
UTD Discount: N/A		

### 2.1 Academic Customers

Enrollment for Education Solutions and School Subscription Enrollment customers may purchase System Center 2019 Orchestrator Client Management License per OSE and deploy as per User or per OSE as contemplated in the [Management Servers License Model](#).

## 3. Use Rights

License Terms: <a href="#">Universal</a> ; <a href="#">Management Servers</a>	Product-Specific License Terms: Yes	Additional Software: N/A
Client Access Requirements: N/A	External User Access Requirements: ML	Included Technologies: SQL Server Technology, Windows Software Components
Notices: <a href="#">Internet-based Features</a> , <a href="#">Bing Maps</a>		

### 3.1 Management License

Client Management License	System Center 2019 Orchestrator License (User or OSE)
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### 3.2 SQL Server Technology

Customer may run any number of Instances of any SQL Server database software included in the Product in one OSE on a Server dedicated to Customer's use for the limited purpose of supporting that Product and any other Product that includes SQL Server database software. Dedicated Servers that are under the management or control of an entity other than Customer or one of its Affiliates are subject to the [Outsourcing Software Management](#) clause.

## 4. Software Assurance

SA Benefits: Server	Disaster Recovery: N/A	Fail-Over Rights: N/A
License Mobility: N/A	Migration Rights: <a href="#">Product List - October 2013</a> ; <a href="#">Product Terms January 2017</a>	Roaming Rights: N/A
Self Hosting: All editions	SA Equivalent Rights: N/A	

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# System Center Service Manager

## 1. Program Availability

Products	DA	L	L/SA	SA	OL	S/S+	MPSA	OV/OVS	EA/EAS	OVS-ES	EES
System Center 2019 Service Manager per OSE (Client ML)	3/19	(1)	2	1							
System Center 2019 Service Manager per User (Client ML)	3/19		2	1							

## 2. Product Conditions

Prior Version: System Center 2016 Service Manager (1/17)	Product Pool: Server	Down Editions: N/A
Extended Term Eligible: N/A	Prerequisite: N/A	Prerequisite (SA): Appendix B
Promotions: N/A	Qualified User Exemption: N/A	Reduction Eligible: N/A
Reduction Eligible (SCE): N/A	Student Use Benefit: N/A	True-Up Eligible: N/A
UID Discount: N/A		

### 2.1 Academic Customers

Enrollment for Education Solutions and School Subscription Enrollment customers may purchase System Center 2019 Service Manager Client Management License per OSE and deploy as per User or per OSE as contemplated in the [Management Servers License Model](#).

## 3. Use Rights

License Terms: Universal; Management Servers	Product-Specific License Terms: Yes	Additional Software: N/A
Client Access Requirements: N/A	External User Access Requirements: ML	Included Technologies: SQL Server Technology, Windows Software Components
Notices: Internet-based Features, Bing Maps		

### 3.1 Management License

Client Management License	System Center 2019 Service Manager License (User or OSE) Azure Active Directory Premium (P1 and P2) User SL	Microsoft Identity Manager 2016 CAL (User)
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### 3.2 SQL Server Technology

Customer may run any number of instances of any SQL Server database software included in the Product in one OSE on a Server dedicated to Customer's use for the limited purpose of supporting that Product and any other Product that includes SQL Server database software. Dedicated Servers that are under the management or control of an entity other than Customer or one of its Affiliates are subject to the [Outsourcing Software Management](#) clause.

## 4. Software Assurance

SA Benefits: Server	Disaster Recovery: N/A	Fail-Over Rights: N/A
License Mobility: N/A	Migration Rights: <a href="#">Product List - October 2013</a> ; <a href="#">Product Terms January 2017</a>	Roaming Rights: N/A
Self Hosting: All editions	SA Equivalent Rights: N/A	

### 4.1 System Center Service Manager Current Branch Rights

Customers with active SA on System Center Service Manager Licenses, or ML equivalent License, may install and use the Current Branch option of System Center Service Manager.

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# Virtual Desktop Infrastructure (VDI) Suite

Customers looking for information about how to license and use the VDI Suite should refer to the April 2015 Product Use Rights <http://go.microsoft.com/?linkid=9839206> and June 2015 Product List <http://go.microsoft.com/?linkid=9839207>.

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# Visual Studio

## Visual Studio

### 1. Program Availability

Products	DA	L	L/SA	SA	OL	S/S+	MPSA	OV/DVS	EA/EAS	OVS-ES	EES
Visual Studio Professional 2019	3/19	2									
Visual Studio Professional 2019 Subscription	3/19	(1)	2	1							
Visual Studio Enterprise 2019 Subscription	3/19	(1)	51	17							
Visual Studio Test Professional 2019 Subscription	3/19	(1)	9	3							
MSDN Platforms	6/13	(1)	9	3							

### 2. Product Conditions

Prior Version: Visual Studio 2017 (4/17)	Product Pool: Applications	Down Editions: Enterprise to Professional
Extended Term Eligible: N/A	Prerequisite: N/A	Prerequisite (SA): Appendix B
Promotions: N/A	Qualified User Exemption: N/A	Reduction Eligible: N/A
Reduction Eligible (SCE): All	Student Use Benefit: N/A	True-Up Eligible: N/A
UFD Discount: N/A		

#### 2.1 License Grant for SQL Server Parallel Data Warehouse Developer

Each Licensed User of Visual Studio Professional Subscription, Visual Studio Enterprise Subscription and Visual Studio Test Professional Subscription is deemed to have one License for SQL Server 2016 Parallel Data Warehouse Developer.

#### 2.2 License Grant for Azure DevOps Server 2020

Each Licensed User of Visual Studio Professional Subscription, Visual Studio Enterprise Subscription, Visual Studio Test Professional Subscription and MSDN Platforms is deemed to have one Server License for Azure DevOps Server and one Azure DevOps Server User CAL. The CAL is for the sole use of the Licensed User.

#### 2.3 Microsoft Azure Services

Microsoft Azure benefits cannot be combined from multiple Visual Studio Subscriptions or MSDN Platforms onto a single Microsoft Azure account.

#### 2.4 Windows Virtual Desktop

Refer to the Windows Virtual Desktop section of the [Microsoft Azure Services](#) Product entry for rights to access Windows Virtual Desktop virtual machines.

### 3. Use Rights

License Terms: <a href="#">Universal</a> ; <a href="#">Developer Tools</a>	Product-Specific License Terms: All	Additional Software: N/A
Client Access Requirements: N/A	External User Access Requirements: N/A	Included Technologies: SQL Server Technology, Windows Software Components, Microsoft SharePoint, Windows SDK, Microsoft Office Components, Microsoft Advertising SDK
Notices: <a href="#">Internet-based Features</a> – All, <a href="#">Bing Maps</a> – All (except MSDN Platforms), <a href="#">H.264/MPEG-4 AVC</a> and/or <a href="#">VC-1</a> – All (except MSDN Platforms)		

#### 3.1 Build Devices and Visual Studio Build Tools

Customer may install copies of the files from Visual Studio Professional, Visual Studio Enterprise, or from Visual Studio Build Tools onto its build devices, including physical devices and virtual machines or containers on those devices, whether on-premises or remote devices that are dedicated solely to Customer's use, or hosted on Microsoft Azure for Customer, (collectively, "Build Devices"). Dedicated devices that are under the management or control of an entity other than Customer or one of its Affiliates are subject to the [Outsourcing Software Management](#) clause. Customer and others in its organization may use these files on its Build Devices solely to compile, build, and verify programs developed by using Visual Studio Professional or Visual Studio Enterprise, or to run quality or performance tests of those programs as part of the build process.

#### 3.2 Utilities

Customer may copy and install the Utilities listed at <https://aka.ms/vs/16/utilities> onto its devices solely to debug and deploy Customer's programs and databases that Customer develops with Visual Studio Professional and Visual Studio Enterprise. Utilities are designed for temporary use. Microsoft may not be able to patch or update Utilities separate from the Visual Studio software, and some Utilities by their nature may make it possible for others to access devices on which the Utilities are installed. Customer should delete all the Utilities installed onto a device when it

finishes debugging or deploying its programs and databases. Microsoft is not responsible for any third-party use or access of devices, or of the programs or databases on devices, on which the Utilities have been installed.

### 3.3 Developing Extensions

#### 3.3.1 Limits on Extensions.

Customer may not develop or enable others to develop extensions for Visual Studio Professional or Visual Studio Enterprise (or and other component of the Visual Studio family of products) which circumvent the technical limitations implemented in the software. If Microsoft technically limits or disables extensibility for the software, Customer may not extend the software by, among other things, loading or injecting into the software any non-Microsoft add-ins, macros, or packages; modifying the software registry settings; or adding features or functionality equivalent to that found in the Visual Studio family of products.

#### 3.3.2 No Degrading the Software.

If Customer develops an extension for Visual Studio Professional or Visual Studio Enterprise (or any other component of the Visual Studio family of products), Customer must test the installation, uninstallation, and operation of its extension to ensure that such processes do not disable any features or adversely affect the functionality of Visual Studio Professional or Visual Studio Enterprise (or such component) or of any previous version or edition thereof.

### 3.4 Distributable Code

Visual Studio Professional and Visual Studio Enterprise contains code and text files that Customer is permitted to distribute in programs it develops while using such software.

#### 3.4.1 Right to Use and Distribute.

The code and text files listed below are “Distributable Code”.

- **Distributable List.** Customer may copy and distribute the object code form of code listed on the Distributable List located at <https://aka.ms/vs/16/redistribution>.
- **Sample Code, Templates, and Styles.** Customer may copy, modify, and distribute the source and object code form of code marked as “sample”, “template”, “simple styles”, and “sketch styles”.
- **Third-party Distribution.** Customer may permit distributors of its programs to copy and distribute the Distributable Code as part of those programs.

### 3.5 Office Professional Plus 2019 – Visual Studio Enterprise Subscription

Each Licensed User of Visual Studio Enterprise Subscription may also install and use one copy of Office Professional Plus 2019 or Microsoft 365 Apps for enterprise for production use. Except as provided here, the [Desktop Applications License Model](#) in the [License Terms](#) section applies to the Licensed User’s use of Office Professional Plus 2019 and the Microsoft 365 Apps for enterprise terms in the [Online Services Terms](#) (<https://aka.ms/OST>) applies to Licensed User’s use of Microsoft 365 Apps for enterprise.

### 3.6 Third Party Licensing Terms for Open Source Components

Licensed User may not reverse engineer; decompile or disassemble the software, or otherwise attempt to derive the source code for the software, except and to the extent required by third party licensing terms governing use of certain open source components that may be included with the software.

## 4. Software Assurance

SA Benefits: Applications	Disaster Recovery: N/A	Fail-Over Rights: N/A
License Mobility: N/A	Migration Rights: <a href="#">Product List - March 2014</a> and <a href="#">Product Terms - September 2015</a>	Reaming Rights: N/A
Self-hosting: N/A	SA Equivalent Rights: Yes	

#### 4.1 Software Assurance Eligibility

Customers with expiring SA on any Visual Studio Subscription License or an active retail subscription corresponding to the Visual Studio offerings in the Product Terms may renew coverage under any Visual Studio Subscription License. When renewing to a different Subscription level, the new use terms replace the prior use terms, and any software not included in the new Subscription may no longer be used. Renewing into coverage that corresponds to a higher Visual Studio edition is facilitated through Step Up Licenses (refer [Appendix B – Software Assurance](#)).

#### 4.2 Visual Studio Subscription Perpetual Rights

Customer’s rights to use any software licensed through Visual Studio Subscription become perpetual when Customer’s right to use Visual Studio becomes perpetual.

# Azure DevOps Server

## 1. Program Availability

Products	DA	L	1/SA	SA	OL	S/S+	MPSA	OV/OVS	EA/EAS	OVS-ES	EES
Azure DevOps Server 2020 with SQL Server Technology	9/20		8	3							
Azure DevOps Server 2020 CAL (Device and User)	9/20		8	3							

## 2. Product Conditions

Prior Version: Azure DevOps Server 2019 (3/19)	Product Pool: Server	Down Editions: N/A
Extended Term Eligible: N/A	Prerequisite: All	Prerequisite (SA): Appendix B
Promotions: N/A	Qualified User Exemption: N/A	Reduction Eligible: N/A
Reduction Eligible (SCE): All	Student Use Benefit: N/A	True-Up Eligible: N/A
UTD Discount: N/A		

## 3. Use Rights

License Terms: <u>Universal</u> ; <u>Server/CAL</u>	Product-Specific License Terms: All	Additional Software: All
Client Access Requirements: Yes	External User Access Requirements: CALs	Included Technologies: SQL Server Technology, Windows Software Components
Notices: N/A		

### 3.1 Server Software Access

Base Access License	Azure DevOps Server 2020 CAL	Azure DevOps Services paid user
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#### 3.1.1 Additional Functionality

Test Plan		
Additive Access License	Visual Studio Test Professional Subscription MSDN Platforms	Visual Studio Enterprise Subscription Azure DevOps Services Test Manager paid user

### 3.2 Usage Not Requiring CALs

The following uses do not require CALs; view, edit, or enter work items; access Azure DevOps Server Reporting; accessing Azure DevOps Services via a Azure DevOps Server Proxy; providing approvals to stages as part of the Release Management pipeline; and accessing Azure DevOps Server through a pooled connection from another integrated application or service.

### 3.3 SQL Server Technology

Customer may run any number of Instances of any SQL Server database software included in the Product in one OSE on a Server dedicated to Customer's use for the limited purpose of supporting that Product and any other Product that includes SQL Server database software. Dedicated Servers that are under the management or control of an entity other than Customer or one of its Affiliates are subject to the Outsourcing Software Management clause.

### 3.4 Third Party Licensing Terms for Open Source Components

Licensed User may not reverse engineer, decompile or disassemble the software, or otherwise attempt to derive the source code for the software, except and to the extent required by third party licensing terms governing use of certain open source components that may be included with the software.

### 3.5 Azure DevOps Server Build Services

If Customer has one or more Licensed Users of Visual Studio Enterprise Subscription, Visual Studio Professional Subscription, Visual Studio Enterprise monthly subscription, or Visual Studio Professional monthly subscription then Customer may also install the Visual Studio software and permit access and use of it as part Azure DevOps Server Build Services by Customer's Licensed Users and Licensed Devices of Azure DevOps Server.

### 3.6 Additional Software

Azure DevOps Server Build Services		
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## 4. Software Assurance

SA Benefits: Server	Disaster Recovery: Yes	Fall-Over Rights: N/A
License Mobility: Yes (server licenses only)	Migration Rights: N/A	Roaming Rights: N/A
Self Hosting: Yes	SA Equivalent Rights: N/A	



# Windows

## Windows Desktop Operating System

### 1. Program Availability

Products	DA	L	L/SA	SA	OL	S/S+	MPSA	OV/OVS	EA/EAS	DVS-ES	EES	CSP
Windows 10 Pro (Per Device)	8/15	2										
Windows 10 Enterprise LTSC 2019 (Per Device)	10/18	2										
Windows 10 Enterprise (Per Device)	10/16	2										
Windows 10 Enterprise E3 (SL)	8/15	2										
Windows 10 Enterprise E3 From SA (SL)	8/15	2										
Windows 10 Enterprise E5 (SL)	8/16	2										
Windows 10 Enterprise E5 From SA (SL)	8/16	2										
Windows 10 Enterprise E3 Per User Add-on (to Enterprise per device) (SL)	12/14	2										
Windows 10 Enterprise E5 Per User Add-on (to Enterprise per device) (SL)	8/16	2										
Windows 10 Education (Per Device)	8/15	(1)	3	1								
Windows 10 Education E3 (SL)	10/17											
Windows 10 Enterprise A3 (SL)	10/17											
Windows 10 Education E5 (Per User)	10/17											
Windows 10 Enterprise A5 (Per User)	10/17											
Windows VDA per device(SL)	7/07	2(1)										
Windows VDA E3 (SL)	12/14	2										
Windows VDA E5 (SL)	5/17	2										
Windows 10 Home to Pro Right Licensing (Per Device)	4/17	2										
Windows 10 Home to Pro Upgrade for Microsoft 365 Business Premium												
Windows 8.1 Enterprise Sideloading (Per Device)	11/13	1										
Windows Embedded 8 Standard Enterprise Kit (100 Pack)	10/13	2										
Windows 7 ESU 2020 for M365 (Per Device)	4/19											
Windows 7 ESU 2020 (Per Device)	4/19											
Microsoft Defender ATP (SL)												

### 2. Product Conditions

Prior Version: Windows 10 Enterprise LTSC 2016 (10/16), Windows Embedded 8.1 Industry (4/14)	Product Pool: System	Down Editions: Enterprise to Pro
Extended Term Eligible: N/A	Prerequisite: All licenses (except Virtual Desktop Access)	Prerequisite (SA): <a href="#">Appendix B, Section 4</a>
Promotions: N/A	Qualified User Exemption: N/A	Reduction Eligible: Add-ons, Additional Products
Reduction Eligible (SCE): N/A	Student Use Benefit: See <a href="#">Appendix H</a>	True-Up Eligible: N/A
UTD Discount: Windows 8.1 Enterprise		Add-ons and From SA: See <a href="#">Appendix C</a>

#### 2.1 License Assignment for Windows Desktop Operating System Licenses

##### 2.1.1 Per User License Assignment Eligibility (Excluding Virtual Desktop Access)

The Licensed User must be the Primary User of at least one device licensed with a Qualifying OS. This one device must also be the Primary User's primary work device.

##### 2.1.2 Per Device License Assignment Eligibility (Excluding Virtual Desktop Access)

The Licensed Device must be licensed with a Qualifying OS, and the Qualifying OS must be installed on the Licensed Device. Per Device license assignment is permanent unless Customer has Software Assurance for that device.

### 2.1.3 Virtual Desktop Access (VDA) License Assignment Eligibility

VDA Per Device and Per User licenses may be assigned to any user or device.

## 2.2 Qualifying Operating Systems

Windows software acquired through a volume licensing agreement may only be installed or activated on devices licensed to run one of the qualifying operating systems (OS) below.

### 2.2.1 Qualifying OS – Per User Licenses and Virtual Desktop Access Per Device/User Licenses

Qualifying Operating Systems	Enterprise Agreement, Microsoft Products and Services Agreement, Select, Select Plus	Microsoft Cloud Agreement and Microsoft Customer Agreement
Windows 10		
Enterprise, IoT Enterprise, Pro, Pro for Workstations, Pro in S mode	X	X
Windows 7 / 8 / 8.1		
Enterprise, Pro, Professional, Ultimate, Windows 7 Professional/Ultimate for Embedded Systems, Windows Embedded 8/8.1 Pro, Industry Pro	X	

### 2.2.2 Qualifying OS – Per Device Licenses (Excluding Virtual Desktop Access Licenses)

Unless Customer has Software Assurance for the device, Customer must remove the Qualifying OS from the device before installing Windows software acquired through a volume licensing agreement on a Licensed Device.

Qualifying Operating Systems	New Enterprise Agreement (EA)/Open Value Company Wide (OV-OW) <sup>1</sup>	Existing Enterprise Agreement (EA)/Open Value Company Wide (OV-OW)	Microsoft Products and Services Agreement (MPSA)/Select Plus/Open	Microsoft Cloud Agreement and Microsoft Customer Agreement	Academic and Charity
Windows 10					
Enterprise, Pro, Pro for Workstations, Pro in S mode	X	X	X	X	X
Education, Home, Home in S mode					X
Windows 8/8.1					
Enterprise, Pro	X	X	X		X
Windows 8/8.1					
Windows 7					
Enterprise, Professional, Ultimate	X	X	X		X
Home Premium, Home Basic, Starter Edition					X
Windows Vista					
Enterprise, Business, Ultimate	X		X		X
Home Premium, Home Basic, Starter Edition					X
Windows XP					
Professional, Tablet Edition, Pro Blade PC	X		X		X
Home, Starter Edition					X
Apple					
macOS <sup>2</sup>	X		X		X
Windows Embedded Operating Systems					
Windows 10 IoT Enterprise	X	X	X	X	X
Windows 2000 Professional for Embedded Systems	X		X		X
Windows XP Professional for Embedded Systems	X		X		X
Windows Vista Business/Ultimate for Embedded Systems	X		X		X
Windows 7 Professional/Ultimate for Embedded Systems	X	X	X		X
Windows Embedded 8/8.1 Pro, Industry Pro	X	X	X		X

<sup>1</sup>Also applicable to Qualified Devices acquired through merger or acquisition

<sup>2</sup>macOS must be preinstalled by the authorized manufacturer prior to the initial sale of the device.

### 2.2.3 Restricted Use Qualifying OS – Per Device Licenses

Qualifying Operating Systems	New Enterprise Agreement (EA)/Open Value Company Wide (OV-OW)	Existing Enterprise Agreement (EA)/Open Value Company Wide (OV-OW)	Microsoft Products and Services Agreement	Academic and Charity
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	Value Company Wide (OV-OW) <sup>1</sup>	Value Company Wide (OV-OW)	(MPSA)/Select Plus/Open	
Windows 10 IoT Enterprise for Retail or Thin Clients	X		X	X
Windows Embedded 8 and 8.1 Industry Retail			X	X
Windows Embedded POSReady 7 Pro			X	X
Windows Embedded for Point of Service			X	X
Windows Embedded POSReady 2009			X	X
Windows Embedded POSReady 7			X	X
Windows XP Embedded			X	X
Windows Embedded Standard 7			X	X
Windows Embedded Standard 2009			X	X
Windows Embedded 8 Standard			X	X

<sup>1</sup>Also applicable to Qualified Devices acquired through merger or acquisition

**2.2.3.1 Restricted Use Qualifying Operating Systems**

The right to use Windows software acquired through a volume licensing agreement on a device licensed with a Restricted Use Qualifying OS is limited to the specific use for which the device was designed. The device running the acquired Windows software may not be used as a general-purpose PC or as a commercially viable substitute for such a system. Acquired Windows software installed on devices licensed with a Point of Sale (POS) version of Windows Embedded must be primarily used for running a POS application.

**2.2.3.2 Software Assurance Purchase Limitation for Restricted Use Qualifying Operating Systems**

Software Assurance may not be acquired for devices licensed with Restricted Use Qualifying Operating Systems. This limitation does not apply to devices licensed with Windows 10 IoT for Retail or Thin Clients.

**2.3 Mixing Per User and Per Device Licenses on Enterprise Enrollments**

Customers may mix Windows Per Device and Per User licenses on Enterprise Enrollments if 1) all users of unlicensed Qualified Devices are licensed with Windows Per User, and 2) all Qualified Devices used by unlicensed users are licensed with Windows Per Device.

**2.4 Version-less Windows Pro/Enterprise Upgrades for the People’s Republic of China**

Version-less Licenses for Windows Enterprise and Windows Professional are only available in the People’s Republic of China under the Select Plus, Select, and Open License programs (two points). The Licenses are edition specific, so Customer must use a version of the edition of software acquired. The Qualifying Operating Systems for the Enterprise and Pro editions of Windows 10 apply, respectively, to the version-less Licenses for Windows Enterprise and Windows Professional.

**2.5 Third Party Re-imaging**

Before a third party may re-image a Customer’s devices, Customer must provide the third party with written documentation showing it has the requisite licenses for the installation.

**2.6 Regional Fulfillment Options**

**2.6.1 Windows KN Editions**

Customers located in Korea with an active volume licensing agreement or enrollment may acquire media for Windows KN editions for deployment and use in Korea. No other use is permitted.

**2.6.2 Windows N Editions (Not with Windows Media Player)**

Customers located in countries established in the European Union (EU) or European Free Trade Association (EFTA) with an active volume licensing agreement or enrollment may acquire media for Microsoft Windows N editions for deployment and use in countries in the European Union (EU) or the European Free Trade Association (EFTA). (For purposes of Open License, an “active agreement” is one associated with an active Open License Authorization Number.)

**2.7 Windows Embedded 8 Standard Enterprise Kit**

Use of the software features enabled by the Windows Embedded 8 Standard Enterprise Kit is subject to the license terms for the underlying Windows Embedded 8 Standard software. The right to use the software features expires when the right to use the underlying software expires. The Windows Embedded 8 Standard Enterprise Kit License must be permanently assigned to a single device and may not be transferred to any other device.

**2.8 Purchase Eligibility for Windows 10 Home to Pro Upgrade for Microsoft 365 Business Premium**

Customers in Australia, Canada, Iceland, Japan, New Zealand, Norway, Switzerland, USA, or any country in the European Union may license the Windows 10 Home to Pro Upgrade for Microsoft 365 Business Premium in any quantity up to the number of its Microsoft 365 Business Premium subscriptions. Notwithstanding Section 2.2 Qualifying Operating Systems, Customer may install Windows 10 Home to Pro Upgrade for Microsoft 365 Business Premium software on devices licensed with Windows Home version 7 or later.

## 2.9 Purchase Eligibility for Windows 10 Home to Pro Right Licensing for E3/E5

### 2.9.1 Prerequisites

Notwithstanding Section 2.2 Qualifying Operating Systems, Customers in Australia, Canada, Iceland, Japan, New Zealand, Norway, Switzerland, USA, or any country in the European Union are eligible for Windows 10 Home to Pro Right Licensing for devices licensed with Windows Home version 7 or later if they have been continuously licensed with any of the following since March 1, 2017:

- Windows 10 Enterprise per device with active SA
- Windows 10 Enterprise E3/E5 SLs

### 2.9.2 Purchase Requirements

Windows 10 Home to Pro Right Licenses are available only as a one-time purchase, where all units must be placed under a single order. Customers are required to acquire a license for each device that is licensed with Windows 10 Home and that meets at least one of the following criteria:

- Is licensed with Windows 10 Enterprise per device, or
- On which Pro or Enterprise is installed and is used by a Windows 10 Enterprise E3/E5 Licensed User

### 2.9.3 License Restrictions

This license does not include the rights to install or run an Instance of any prior version of Windows 10 Pro. Reassignment rights apply only to a replacement device with a Pro or Enterprise qualifying OS.

## 2.10 Automatic Updates

Customer authorizes Microsoft to download and install updates automatically on devices running Windows 10 unless they have been configured to prevent automatic updates using supported methods. All updates are licensed under the same terms as the Product to which they apply.

## 2.11 Windows 7 ESU (Extended Security Updates)

Customer may acquire Windows 7 ESU licenses on a per device basis. Devices running a local OSE covered by ESU or accessing virtual OSEs covered by ESU must be licensed with Windows 7 ESU for the respective year of coverage. Devices do not need an ESU license to access Windows 7 OSEs covered by ESU running on Windows Virtual Desktop on Azure. If Customer has one or more ESU licenses, devices do not need an ESU license to run or access Windows 7 OSEs covered by ESU when the OSE is licensed through a Visual Studio Subscription for development or test purposes. Windows 7 ESU 2020/2021/2022 for M365 licenses may only be assigned to devices with active Software Assurance or used exclusively by users with Windows Enterprise, VDA, or M365 SLs (that include Windows 10 Enterprise). Windows 7 ESU 2020/2021/2022 licenses may be assigned to any device. Windows 7 ESU 2021 & 2022 and Windows 7 ESU 2021 & 2022 for M365 licenses may only be assigned to devices also licensed with ESU(s) for the prior year(s).

## 2.12 Windows 7 ESU 2020 Entitlement for E5 Security Users

Users licensed with Microsoft 365 E5, Microsoft 365 E5 Security, or Microsoft 365 Security + Compliance SLs through an Enterprise Agreement or Enterprise Subscription Agreement, or users licensed on a Government Community Cloud tenant with all three component services of Microsoft 365 E5 (Windows 10 Enterprise E5, Enterprise Mobility + Security E5, and Office 365 E5) through an Enterprise Agreement or Enterprise Subscription Agreement ("Qualified Users") may use up to five simultaneous devices to run a local OSE covered by Windows 7 ESU for 2020 or access virtual OSEs covered by Windows 7 ESU for 2020. Customer may acquire Windows 7 ESU 2021 & 2022 and Windows 7 ESU 2021 & 2022 for Microsoft 365 licenses for such devices without the need to acquire the 2020 ESU license if the devices were used solely by Qualified Users for the duration of the ESU 2020 coverage period. These devices must be assigned ESU licenses for all respective years if used by any users not currently licensed with Microsoft 365 E5, Microsoft 365 E5 Security, or Microsoft 365 Security + Compliance SLs.

## 2.13 Academic and Charity Programs

### 2.13.1 License Assignment

#### 2.13.1.1 Per User License Assignment

The Licensed User must be the Primary User of at least one device licensed for a Qualifying OS in section 2.2.2 Per Device Licenses.

#### 2.13.1.2 Per Device License Assignment

The Licensed Device must be licensed with a Qualifying OS in section 2.2.2 Per Device Licenses, and the Qualifying OS must be installed on the Licensed Device. Per Device license assignment is permanent unless Customer has Software Assurance for that device.

### 2.13.2 Academic Program Windows Edition Rights

Windows Education licenses include rights to install or activate Windows Enterprise in lieu of Windows Education.

### 2.13.3 Lab and Library Use

Institutions with Windows Education E3/E5, or Windows 10 Education (per device) assigned to all faculty and staff, Education Qualified Users or Knowledge Workers may install Windows 10 Education, Windows 10 Enterprise, or Windows 10 Pro Academic on any open access lab or library within the Institution's Organization. Use of the software is otherwise subject to the License terms for Windows 10 Education. This provision does not apply to User SLs acquired under the Microsoft Cloud Agreement and Microsoft Customer Agreement.

**2.13.4 Shared Devices**

Institutions with Windows Education E3/E5 assigned to all Knowledge Workers or Education Qualified Users are licensed to run Windows 10 Education, Windows 10 Enterprise, or Windows 10 Pro Academic on any shared device with a qualifying operating system within the Institution’s Organization. For the purposes of this subsection, shared device means a device not used by any one person more than 50% of the time during a single work day period, and not assigned to any Primary User as their primary work device. Use of Windows on shared devices does not count as use of an Education Platform Product under the Enrollment for Education Solutions. Use of the software is otherwise subject to the License terms for Windows 10 Education.

**2.13.5 Starter Edition OS Restrictions for Academic Programs**

Licenses acquired under academic or education programs and using Windows XP Starter Edition, Windows Vista Starter Edition or Windows 7 Starter Edition as a qualifying OS may not be transferred outside the country of purchase.

**2.13.6 Graduation Benefit**

Institutions with an active Enrollment for Education Solutions may, at any time during the Enrollment term, transfer a Student’s Windows Education license to such Student when they become a Graduate if the Student installs or activates Windows Education on a Student owned device while enrolled at the institution. Institution must provide each such Graduate with a license agreement in the form provided by Microsoft. Upon the Graduate’s acceptance of the terms of the license agreement, the Graduate receives a perpetual right to run Windows Education locally on the same device. This entitlement is nontransferable to any other device.

**3. Use Rights**

License Terms: <u>Universal</u> ; <u>Desktop Operating Systems</u> , <u>OST</u> (Microsoft Defender Advanced Threat Protection; Windows Update Compliance; Desktop Analytics)	Product-Specific License Terms: All Windows licenses	Additional Software: N/A
Client Access Requirements: N/A	External User Access Requirements: N/A	Included Technologies: N/A
Notices: H.264/MPEG-4 AVC and/or VC-1		

**3.1 Windows Local Use**

Customer may run Windows software acquired through a volume licensing agreement as one Physical OSE locally on Licensed Devices. This local use right applies to VDA per device licenses only if the Licensed Device is also licensed with a Qualifying Operating System. Licensed Users may run Windows software acquired through a volume licensing agreement as one Physical OSE locally on devices licensed with a Qualifying Operating System.

**3.2 Windows 10 Azure AD-Based Activation**

Licensed Users using Azure AD-based activation may activate the software in the Physical OSE on up to five concurrent devices running either Windows 10 Pro Anniversary Update or Windows 10 Enterprise Creator’s Update or later.

**3.3 Microsoft Defender Advanced Threat Protection**

Eligible Licensed Users may use Microsoft Defender Advanced Threat Protection on up to five concurrent devices.

**3.4 Windows Apps**

Unless other terms are displayed to Customer or presented in the app’s settings, Customer agrees the services that it accesses from the Windows app is governed by the Microsoft Services Agreement at <http://go.microsoft.com/fwlink/?linkid=246338> or for Windows apps that access Xbox services, the Xbox.com terms of use at <http://xbox.com/legal/livetou>.

**3.5 Windows 10 Mobile Enterprise**

Customers with an Enterprise Agreement, Microsoft Products and Services Agreement, or Select Plus agreement may install and use Windows 10 Mobile Enterprise during the term of their agreement.

**3.6 Microsoft Cloud Agreement and Microsoft Customer Agreement Activation Use Rights**

For Customers licensed under a Microsoft Cloud Agreement or Microsoft Customer Agreement,

- Notwithstanding sections 3.2 and 3.7, each user may activate no more than five concurrent instances of the software across physical and virtual OSEs.
- Notwithstanding the Universal License Terms or volume licensing agreement, upgrade Licenses do not include rights to run or install a prior version, different language version, different platform version, or a lower edition of Windows, including Windows 10 Enterprise LTSC.
- Section 4 (Software Assurance) does not apply.

**3.7 Windows 10 Upgrade Benefit**

The following User SLs include a Windows 10 upgrade benefit (version upgrade only, edition remains the same) for device(s) licensed with Windows 7, 8, 8.1:

- Windows 10 Enterprise/Education (all)

- Microsoft 365 (all that include Windows 10 Enterprise)

### 3.8 Windows 10 Multitenant Hosting

Customers with Windows 10 Enterprise Per User SLs (excluding local only), Windows 10 Education Per User SLs, or VDA Per User SLs using Azure AD-based activation may install the Windows 10 Creators Update or later version software on a virtual machine running on Microsoft Azure (notwithstanding anything to the contrary in the [Outsourcing Software Management](#) clause) or a shared server with a Qualified Multitenant Hosting Partner ("QMTH") identified at [www.microsoft.com/Qualified\\_Multitenant\\_Hoster\\_Program](http://www.microsoft.com/Qualified_Multitenant_Hoster_Program). Rights to install and use the software with a QMTH do not apply if the QMTH is using a Listed Provider as a Data Center Provider. Each Licensed User may access up to four instances of the software. Azure Government customers may use KMS activation in lieu of Azure AD-based activation. When configuring the image(s) on Microsoft Azure, Customers must indicate their use of the multitenant hosting for Windows 10 and adhere to other software configuration requirements available at <https://docs.microsoft.com/en-us/windows/deployment/vda-subscription-activation>. Partner based deployment requirements are available at [www.microsoft.com/Qualified\\_Multitenant\\_Hoster\\_Program](http://www.microsoft.com/Qualified_Multitenant_Hoster_Program). This section does not apply to Students receiving access to software through Student Use Benefit.

### 3.9 Windows Virtual Desktop for Windows

Refer to the Windows Virtual Desktop section of the [Microsoft Azure Services Product entry](#) for rights to access Windows Virtual Desktop Windows 7 and Windows 10 virtual machines.

### 3.10 Windows Outsourcing Software Management Rights for Customers renewing Windows SA or User SLs after September 2019 but before October 2020

Any Customer that used the software with a Listed Provider under the [Outsourcing Software Management](#) clause immediately prior October 1, 2019 may continue to use that Listed Provider until September 30, 2020 subject to the terms and conditions of the [Outsourcing Software Management](#) clause in the September 2019 Product Terms.

## 4. Software Assurance

SA Benefits: System	Disaster Recovery: N/A	Fail-Over Rights: N/A
License Mobility: N/A	Migration Rights: <a href="#">Product List - June 2015</a> (Windows Companion Subscription)	Roaming Rights: <a href="#">February 2016 – Product Terms</a>
Self-Hosting: N/A	SA Equivalent Rights: N/A	

### 4.1 Software Assurance Additional Use Rights

Section 4 (Software Assurance) applies to the following licenses.

- Windows 10 Enterprise E3/E5
- Windows 10 Enterprise per device
- Windows 10 Education E3/E5
- Windows VDA E3/E5
- Windows VDA per device

This provision does not apply to SLs acquired under the Microsoft Cloud Agreement and Microsoft Customer Agreement or by way of the Student Use Benefit.

### 4.2 Windows Virtualization

#### 4.2.1 Local Virtualization

Customer may run Windows software acquired through a volume licensing agreement on up to four Virtual OSEs locally on Licensed Devices. This local use right applies to VDA Per Device licenses only if the Licensed Device is also licensed with a Qualifying Operating System. Licensed Users may run Windows software acquired through a volume licensing agreement on up to four Virtual OSEs locally on devices licensed with a Qualifying Operating System. If all permitted Virtual OSEs are used Customer may use the Physical OSE only to host and manage the Virtual OSEs.

#### 4.2.2 Remote Virtualization

Any user of a Licensed Device, or any device used by a Licensed User, may remotely access up to four Virtual OSEs or one Physical OSE of Windows software acquired through a volume licensing agreement on (a) device(s) dedicated to Customer's use. Dedicated Servers that are under the management or control of an entity other than Customer or one of its Affiliates are subject to the [Outsourcing Software Management](#) clause. Notwithstanding anything to the contrary in the [Outsourcing Software Management](#) clause, Customer's VDA E3 and E5 Licensed Users may remotely access Windows software under these Remote Virtualization rights on any Listed Provider's Servers dedicated to Customer's use.

### 4.3 10.1" Screen Device Benefit

Customer with Per User license may install Windows software acquired through a volume licensing agreement on all Windows licensed devices with integrated screens 10.1" diagonally or less.

#### 4.4 Windows to Go

Customer may create and store an Instance of Windows software acquired through a volume licensing agreement on up to two USB drives using Windows to Go and run the Instance(s) on Licensed Device(s) or, if licensed per user, on any device.

##### 4.4.1 Windows to Go Student Option

Academic Institutions electing the Student Option are permitted a maximum of one Windows to Go Instance per licensed student device while that student is enrolled at the institution.

#### 4.5 Windows Pro SA

Customers who previously acquired SA for Windows Pro may renew SA on their covered devices without the need to buy a Windows Enterprise license.

#### 4.6 Microsoft Desktop Optimization Pack (MDOP)

Customer may install and use management functionality in the MDOP on Customer's other devices dedicated to their use to manage software on the Licensed Device or Licensed User's Devices. Customer may also use the AGPM, DaRT and UE-V to manage software on servers within its domain, so long as the desktops within that domain are licensed for MDOP use.

##### 4.6.1 MDOP Eligibility

Customers with the following have rights to use MDOP and do not need to purchase MDOP separately.

- Windows 10 Enterprise E3/E5
- Windows 10 Education E3/E5
- Windows VDA E3/E5
- Agreement with an August 1, 2015, or later effective date and VDA per device or Windows 10 Enterprise per device.

#### 4.7 Rights to run Clustered HPC Applications

A Licensed Device or a device used by a Licensed User may be used as a Cycle Harvesting Node to run Clustered HPC Applications, as long as the device is not used as a general purpose Server, database Server, web Server, e-mail Server, print Server or file Server, for other multi-user access purposes, or for any other similar resource sharing purpose.

#### 4.8 Software Assurance Lapse on Perpetual Licenses

Windows Enterprise Semi-Annual Channel must be uninstalled on any Licensed Device if Software Assurance coverage lapses. If the Licensed Device was assigned a perpetual Windows Enterprise license, Customer may install on the Licensed Device the version of Windows Enterprise Long Term Servicing Channel that is current at the time of the lapse.

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## Windows Server

### Windows MultiPoint Server

#### 1. Program Availability

Products	DA	L	L/SA	SA	OL	S/S+	MPSA	OV/OVS	EA/EAS	OVS-ES	EES
Windows MultiPoint Server 2016 Premium	10/16	10	15	5							

#### 2. Product Conditions

Prior Version: Windows MultiPoint Server 2012 (12/12)	Product Pool: Server	Down Editions: N/A
Extended Term Eligible: N/A	Prerequisite: N/A	Prerequisite (SA): N/A
Promotions: N/A	Qualified Use Exemption: N/A	Reduction Eligible: N/A
Reduction Eligible (SCE): N/A	Student Use Benefit: N/A	True-Up Eligible: N/A
UTD/Discount: N/A		

#### 3. Use Rights

License Terms: <u>Universal</u> ; <u>Server/CAL</u>	Product-Specific License Terms: All editions	Additional Software: All editions
Client Access Requirements: All editions	External User Access Requirements: CAL	Included Technologies: N/A

Notices: [Internet-based Features](#), [H.264/MPEG-4 AVC and/or VC-1](#)

### 3.1 Server Software Access

Base Access License	Windows Server 2019 Remote Desktop Services CAL and Windows Server 2019 CAL	Windows Server 2019 Remote Desktop Services CAL and CAL Equivalent License (refer to <a href="#">Appendix A</a> )
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#### 3.1.1 Additional Functionality Associated with Windows Server 2019 Active Directory Rights Management Services CAL Windows Server 2019 Rights Management Services

Additive Access License	Windows Server 2019 Active Directory Rights Management Services CAL	CAL Equivalent License (refer to <a href="#">Appendix A</a> )
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### 3.2 Running Instances of the Software

Customer may run on the Licensed Server at any one time one Instance of the server software in each of the Physical OSE and one Virtual OSE. If Customer uses the server software in a Virtual OSE, then server software used in the Physical OSE may be used only to host and manage the Virtual OSE.

### 3.3 Access Licenses

CALs are not required for access in a Physical OSE that is used solely for hosting and managing Virtual OSEs.

### 3.4 Windows MultiPoint Server 2016 Connector

Customer may install and use the Windows Server 2016 MultiPoint Connector software on any device that is licensed to access Windows Server 2016 (or later). It may use this software only to access the MultiPoint Server software. If it accesses the server software from this device solely to use the MultiPoint Dashboard it does not need a Remote Desktop Services CAL.

### 3.5 Installation Type

Customer may only install Remote Desktop Services and deploy and use the MultiPoint Services role.

### 3.6 Additional Software

For a list of Additional Software refer <http://go.microsoft.com/fwlink/?LinkId=245856>.

## 4. Software Assurance

SA Benefits: Server	Disaster Recovery: All editions	Fail-Over Rights: N/A
License Mobility: N/A	Migration Rights: Product Term - October 2016	Roaming Rights: N/A
Self-Hosting: N/A	SA Equivalent Rights: N/A	

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## Windows Server

### 1. Program Availability

Products	DA	L	L/SA	SA	OL	S/S*	MPSA	DV/OVS	EA/EAS	OVS-ES	EES
Windows Server 2019 Active Directory Rights Management Services CAL	10/18	1	2	1							
Windows Server 2019 CAL	10/18	1	2	1							
Windows Server 2019 Remote Desktop Services CAL (Device and User)	10/18	1	2	1							
Windows Server 2019 Remote Desktop Services External Connector	10/18	75	113	38							
Windows Server 2019 Datacenter (2-packs of Core Licenses)	10/18	10	25	15							
Windows Server 2019 Datacenter (16-packs of Core Licenses)	10/18	75	188	113							
Windows Server 2019 Essentials	10/18	5	10	5							
Windows Server 2019 Standard (2-packs of Core Licenses)	10/18	1	3	2							
Windows Server 2019 Standard (16-packs of Core Licenses)	10/18	15	38	23							
Windows Server 2019 Active Directory Rights Management Services External Connector	10/18	125	188	63							
Windows Server 2019 External Connector	10/18	25	38	13							



Windows Server ESU (Standard and Datacenter)

Note: Windows Server licenses (core, and base and additive CALs and SLs) purchased through CSP are subject to different terms as set forth in the [Server Subscriptions for Azure](#) section of these Product Terms.

## 2. Product Conditions

Prior Version: Windows Server 2016 (10/16)	Product Pool: Server	Down Editions: Datacenter to Standard or Essentials, Standard to Essentials (for versions 2008 R2 and prior refer to the Product Terms – September 2018)
Extended Term Eligible: N/A	Prerequisite: N/A	Prerequisite (SA): N/A
Promotions: N/A	Qualified User Exemption: External Connectors	Reduction Eligible: N/A
Reduction Eligible (SCE): N/A	Student Use Benefit: N/A	True-Up Eligible: N/A
UTD Discount: N/A		

## 3. Use Rights

License Terms: <u>Universal</u> ; <u>Per Core/CAL</u> – All editions (except Essentials), <u>Specialty Servers</u> – Essentials	Product-Specific License Terms: All editions	Additional Software: All editions
Client Access Requirements: All editions (except Essentials)	External User Access Requirements: CALs or External Connector	Included Technologies: N/A
Notices: <u>Internet-based Features</u> , <u>H.264/MPEG-4 AVC</u> and/or <u>VC-1</u> , <u>Malware Protection</u>		

### 3.1 Server Software Access

Base Access License	Windows Server 2019 CAL Microsoft 365 F3 User SL	Windows Server Subscription for Azure CAL CAL Equivalent License (refer to <a href="#">Appendix A</a> )
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\*As an exception, users do not need Windows Server CALs when accessing the server software solely to sync between an Active Directory infrastructure running on Customer's Licensed Servers and Azure Active Directory.

#### 3.1.1 Additional Functionality Associated with Windows Server 2019 Remote Desktop Services CAL

Microsoft Application Virtualization for Remote Desktop Services and Windows Server 2019 Remote Desktop Services functionality

Additive Access License	Windows Server 2019 Remote Desktop Services CAL	Windows Server 2019 Remote Desktop Services User SL
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\*Also required for use of Windows Server to host a graphical user interface (using the Windows Server 2019 Remote Desktop Services functionality or other technology).

#### 3.1.2 Additional Functionality Associated with Windows Server 2019 Rights Management Services CAL

Windows Server 2019 Rights Management Services

Additive Access License	Windows Server 2019 Active Directory Rights Management Services CAL	Azure Information Protection Plan 1 User SL CAL Equivalent License (refer to <a href="#">Appendix A</a> )
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#### 3.1.3 Additional Functionality Associated with Microsoft Identity Manager User CAL

Microsoft Identity Manager 2016 functionality

Additive Access License	Microsoft Identity Manager 2016 User CAL CAL Equivalent License (refer to <a href="#">Appendix A</a> )	Azure Active Directory Premium (P1 and P2) User SL
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\*Also required for any person for whom the software issues or manages identity information.

#### 3.1.4 Synchronization Service

Microsoft Identity Manager 2016 CALs not required for users only using Microsoft Identity Manager synchronization service.

### 3.2 Server External User Access

Base Access License	Windows Server 2019 External Connector
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#### 3.2.1 Additional Functionality Associated with Windows Server 2019 Remote Desktop Services External Connector License

Microsoft Application Virtualization for Remote Desktop Services and Windows Server 2019 Remote Desktop Services functionality

Additive Access License	Windows Server 2019 Remote Desktop Services External Connector
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\*Also required for use of Windows Server to host a graphical user interface (using the Windows Server 2019 Remote Desktop Services functionality or other technology).

### 3.2.2 Additional Functionality Associated with Windows Server 2019 Rights Management Services External Connector License

#### Windows Server 2019 Rights Management Services

Additive Access License	Windows Server 2019 Active Directory Rights Management Services External Connector
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### 3.2.3 Additional Functionality Associated with Microsoft Identity Manager External Connector License

#### Microsoft Identity Manager 2016 functionality

Additive Access License	Microsoft Identity Manager 2016 External Connector
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*\*Also required for any External User for whom the software issues or manages identity information (in absence of Microsoft Identity Manager 2016 CALs).*

## 3.3 Additional Terms for Windows Server 2019 Essentials

### 3.3.1 Limitations on Use

- At any one time, Customer may use a Running Instance of the server software in each of the Physical OSE and in one Virtual OSE.
- Customer must run the server software within a domain where the Server's Active Directory is configured as (i) the domain controller (a single server which contains all the flexible single master operations (FSMO) roles), (ii) the root of the domain forest, (iii) not to be a child domain, and (iv) to have no trust relationship with any other domains. If the server software is used in a Virtual OSE, the Instance in the Physical OSE may be used only to run hardware virtualization software, provide hardware virtualization services, or run software to manage and service Operating System Environment on the Licensed Server. That Instance does not need to meet the requirements in (i) through (iv) above.

### 3.3.2 Using the Server Software

A User Account is a unique user name with its associated password created through the Windows Server 2019 Essentials Console. Customer may use up to 25 user accounts. Each user account permits a named user to access and use the server software on that server. It may reassign a user account from one user to another provided that the reassignment does not occur within 90 days of the last assignment.

### 3.3.3 Windows Server 2019 Essentials Connector

Customer may install and use the Windows Server 2019 Essentials Connector software on no more than 50 devices at any one time. It may use this software only with the server software.

### 3.3.4 Windows Server 2019 Active Directory Rights Management Services Access

Customer must acquire a Windows Server 2019 Active Directory Rights Management Services CAL for each User Account through which a user directly or indirectly accesses the Windows Server 2019 Active Directory Rights Management Services functionality.

## 3.4 Windows Server Containers without Hyper-V isolation with Windows Server 2019 Standard and Datacenter

Customer may use any number of OSEs instantiated as Windows Server Containers without Hyper-V isolation on the Licensed Server.

## 3.5 Additional Software for Windows Server 2019

AD Migration Tool	GBUNIECN.EXE Utility
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## 4. Software Assurance

SA Benefits: Server	Disaster Recovery: All editions	Fail-Over Rights: N/A
License Mobility: External Connector only	Migration Rights: Refer <a href="#">Product List - October 2013 and March 2014</a> (prior versions as well as HPC Pack, Windows HPC Server, Windows Server Enterprise, Windows Server HPC Edition, Windows Server for Itanium Based Systems, Windows Small Business Server); <a href="#">Product List - June 2015</a> (Forefront Identity Manager 2010 R2); <a href="#">Product Terms - October and December 2016</a>	Roaming Rights: N/A
Self Hosting: All editions (except Essentials)	SA Equivalent Rights: N/A	

### 4.1 Microsoft Azure Hybrid Benefit for Windows Server

Refer to [Section 8. Microsoft Azure Hybrid Benefit](#) of the Microsoft Azure Product Entry for deploying Windows Server images on Microsoft Azure.

### 4.2 Semi-Annual Channel Releases

Customers with active SA on either Windows Server Standard or Datacenter Licenses, and on Windows Server Base Access Licenses and Windows Server Additive Access Licenses (as appropriate) may install and use Semi-Annual Channel releases (including both Pilot and Broad releases) on Licensed Servers.

#### 4.3 Remote Desktop Services ("RDS") User CAL and User SL Extended Rights

Customer may use its RDS User CALs and User SLs with Windows Server software running in OSEs dedicated to its internal use on either Microsoft Azure Services or the shared or dedicated servers of a License Mobility through Software Assurance Partner for which it has completed and submitted the License Mobility verification form. Other than administrative access by Customer's License Mobility through Software Assurance Partner, no other party may access the OSE(s). For any CAL or User SL Customer has used in this manner, it may later move to Microsoft Azure Services or a new License Mobility through Software Assurance Partner, but not sooner than 90 days after it initiated use in the environment it is leaving.

#### 4.4 Extended Security Updates

Refer to [Extended Security Updates](#) in Appendix B for acquisition and use of Extended Security Updates.

#### 4.5 Windows Virtual Desktop for Windows Server

Refer to the Windows Virtual Desktop section of the [Microsoft Azure Services Product entry](#) for rights to access Windows Virtual Desktop Windows Server virtual machines.

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and under the Annually Prepaid Option, any unused Allocated Annual prepayment will be forfeited on the following Enrollment anniversary date. Customer may contact Microsoft or Customer's reseller about increasing its Azure prepayment or reducing its Allocated Annual prepayment for any future Enrollment anniversary. Customer's reseller (if any) must process reductions with Microsoft prior to the next anniversary.

- B. **Consumption:** Customer pays based on the amount of Microsoft Azure Services consumed during a billing period. Certain features of the Microsoft Azure Services may only be available for purchase on a consumption basis.
- C. **Microsoft Azure Services Plan:** Customer may be able to subscribe to a Microsoft Azure Service as a Microsoft Azure Services Plan.
- D. **Automatic Provisioning:** As part of the Server and Cloud Enrollment, Customers who have not ordered Microsoft Azure Services as part of their Enrollment may receive an activation email from Microsoft inviting them to provision Microsoft Azure Services under their Enrollment without a Azure prepayment.
- E. **Azure Reservations:** Azure Reservations are purchased for specified terms of up to three years with either a single upfront payment or equal monthly payments (when available). Azure Reservations expire at the end of the specified term. Customer will not be refunded payment (paid or scheduled) for unused Azure Reservations. Notwithstanding the terms in Customer's volume licensing agreement, fixed pricing does not apply to Azure Reservations. Azure Reservation pricing will be based on the available pricing at the time of each purchase.
- F. **Azure Spot:** Notwithstanding the terms in Customer's volume licensing agreement, fixed pricing does not apply to Azure Spot virtual machines. Azure Spot pricing is demand-based. The available pricing at the time of each purchase is subject to change at any time. Customer can refer to the Azure portal for pricing adjustments.

#### 4. Pricing

Microsoft may offer lower prices to Customer (or Customer's reseller) for individual Microsoft Azure Services during Customer's Enrollment term on a permanent or temporary (promotional) basis.

#### 5. Payment and Fees

- A. **Using Azure prepayment:** Each month, Microsoft will deduct from Customer's Azure prepayment (or Allocated Annual prepayment, if applicable) the monetary value of Customer's usage of eligible Microsoft Azure Services. Once Customer's Azure prepayment (or Allocated Annual prepayment, if applicable) balance has been exhausted, any additional usage will be invoiced at Consumption Rates (as described below).
- B. **Invoicing Azure prepayment:** If Customer elects the Fully Prepaid Option, Azure prepayment will be invoiced immediately. If Customers elects the Annually Prepaid Option, the first Allocated Annual prepayment will be invoiced immediately, and future Allocated Annual prepayments will be invoiced on the anniversary of the Enrollment effective date.
- C. **Invoicing Azure prepayment Overage:** If Customer's usage is higher than either its Azure prepayment under the Fully Prepaid Option or its Allocated Annual prepayment under the Annually Prepaid Option, such excess will be invoiced at Consumption Rates to Customer (or its reseller) at the end of each Enrollment month.
- D. **Consumption Invoicing:** If Customer provisions Microsoft Azure Services without a Azure prepayment, it (or its reseller) will be invoiced monthly at Consumption Rates. All usage of the Microsoft Azure Services after the expiration or termination of Customer's subscription term will be invoiced to Customer (or its reseller) at then-current Consumption Rates on a monthly basis.
- E. **Azure Services Plan Invoice:** The purchase of a Microsoft Azure Services Plan will be invoiced to Customer (or its reseller), either on an upfront or annual basis, according to the terms of Customer's volume licensing agreement governing payment terms for the order of Online Services generally. Azure prepayment cannot be applied to the purchase of a Microsoft Azure Services Plan; provided, however, that if a Microsoft Azure Services Plan includes the purchase of an initial quantity of a service ("Initial Quantity"), Customer usage that exceeds the Initial Quantity will be billed at Consumption Rates, and Customer's Azure prepayment can be applied to such usage.
- F. **Azure Reservations:** The purchase of Azure Reservations will be deducted automatically from any available Azure prepayment. If Customer has used all of its Azure prepayment or if the cost of Azure Reservations exceeds the available Azure prepayment balance at the time of purchase, the excess will be invoiced as otherwise provided in this "Payment and Fees" section. Azure Reservations Customer purchases via Azure.com will be charged against its credit card on file for the full upfront payment, or the charge will appear on its next invoice. Azure Reserved Instances for a virtual machine or Azure SQL Database services cover compute only (the base rate) and do not include the cost of the software (e.g., Windows Server or SQL Server), storage or back-up. Conversely, Azure Reserved Instances for software do not include the cost of compute.

#### 6. Azure Reservation Options

The following options apply to Azure Reservations Customer has purchased.

- A. **Exchange:** is an option that allows Customer to apply the monetary value of a remaining Azure Reservation term to the purchase of one or more new Azure Reservations of equal or greater monetary value for the same service.
- B. **Cancel:** is an option that allows Customer to receive a prorated refund based on a remaining Azure Reservation term minus an early termination fee (currently 12 percent) and subject to a cancellation limit set by Microsoft (currently \$50,000 per year).
- C. **Assignment:** allows Customer to apply an Azure Reservation to a single (scoped) subscription of the enrollments/account(shared).

#### 7. Five Year Reservations for Azure VMs

As an exception to the general terms for Azure Reservations, we offer five year Azure Reservation terms for select VM families. The early termination fee for a five-year Azure Reservation is 35%. Microsoft reserves the right during a five-year Azure Reservation to move Customer to a newer version of the HB series for reasons including, but not limited to, unavailability of parts for maintenance or lack of support from the hardware vendor. In such cases, the new version and hardware configuration will provide at least the same level of performance.

## 8. Open License, Open Value and Open Value Subscription Programs

### 8.1 Definitions

**Consumption Rates** mean for purposes of the Open License, Open Value and Open Value Subscription agreements, prices for all Microsoft Azure Services.

**Portal** means the online portal through which Customer administers its Subscription.

**Subscription** means a subscription with a value set at time of order that can be redeemed for a quantity of Microsoft Azure Services.

### 8.2 Subscription Term

The Subscription period starts at the time of product key redemption and not the time of order. Once the product key is redeemed, Microsoft will not accept return requests submitted by Microsoft’s partners. Subscriptions are valid for the earlier of 12 months or until the value is consumed. Subscriptions may not be combined. Customer may have multiple active Subscriptions. New Subscriptions can be purchased at any time.

## 9. Microsoft Azure Hybrid Benefit

### 9.1 Microsoft Azure Hybrid Benefit for Windows Server

Under the Microsoft Azure Hybrid Benefit for Windows Server, Customer may use Windows Server Virtual Machines in Customer’s Microsoft Azure service accounts and pay for the cost of compute only (the “Base Instance”). Customer must indicate that it is using Windows Server under the Azure Hybrid Benefit for Windows Server when creating or configuring a virtual machine on Azure. The [Online Services Terms](#) govern use of Windows Server under this benefit. Customer may not concurrently allocate Windows Server Licenses to Azure Hybrid Benefit and assign the same Licenses to its Licensed Servers, except on a one-time basis, for a period not to exceed 180 days, to allow Customer to migrate the same workloads to Azure. On the earlier of completion of migration to Azure or 180 days from the start of migration, Licenses will be deemed “assigned to Azure”. Customer may later reassign Licenses back to its Licensed Servers, provided Licenses remain assigned to Azure for a minimum of 90 days.

Except as provided below for Windows Server Datacenter Licenses allocated as described in “Unlimited Virtualization Rights,” each Windows Server processor License with SA, and each set of 16 Windows Server core Licenses with SA, entitles Customer to use Windows Server on Microsoft Azure on up to 16 Virtual Cores allocated across two or fewer Azure Base Instances. Each additional set of 8 core Licenses with SA entitles use on up to 8 Virtual Cores on one Base Instance. Customer may use Standard or Datacenter software.

#### 9.1.1 Special Use Rights for Windows Server Datacenter Licenses

As exceptions to the general terms governing allocation of licenses and use of Windows Server under the Azure Hybrid Benefit for Windows Server:

- **Unlimited Virtualization Rights.** Customer may use Windows Server in any number of Base Instances on an Azure Dedicated Host or other dedicated physical host in Azure, provided Customer allocates Windows Server Datacenter Licenses with SA for all of the Physical Cores available to Customer on that host. Concurrent use on Azure Dedicated Host or other dedicated physical host in Azure and Customer’s Licensed Servers is limited to the same 180 day migration period.
- **Dual Use Rights.** When exercised in connection with Datacenter Licenses with SA, the Azure Hybrid Benefit for Windows Server provides rights to simultaneously deploy and use the software on Azure and on Licensed Servers in Customer’s data centers. Dual use rights do not apply in the case of Licenses allocated as described in “Unlimited Virtualization Rights.”

### 9.2 Microsoft Azure Hybrid Benefit for SQL Server

Under the Microsoft Azure Hybrid Benefit for SQL Server, for each SQL Server License covered with SA (“Qualified License”), Customer may consume in its Microsoft Azure services accounts the Microsoft Azure Data Services identified in the table below in the indicated ratios. If a customer wishes to use Azure Hybrid Benefit for SQL Server to consume two or more Microsoft Azure Data Services, one or more Licenses must be allocated for each service.

Qualified License	Microsoft Azure Data Service	Ratio of Qualified Licenses to Azure vCores
SQL Server Enterprise (Core)	Azure SQL Database (Elastic Pool and Single Database)/Azure SQL Managed Instance – General Purpose	1 Core License:4 vCores
	Azure SQL Database (Elastic Pool and Single Database)/Azure SQL Managed Instance – Business Critical	1 Core License:1 vCore
	Azure SQL Database (Single Database)/Azure SQL Managed Instance - Hyperscale	1 Core License:4 vCore
	Azure Data Factory SQL Server Integration Services (Enterprise)	1 Core License:1 vCore
	Azure Data Factory SQL Server Integration Services (Standard)	1 Core License:4 vCores
	SQL Server Enterprise Virtual Machines	1 Core License <sup>2</sup> :1 vCPU
	SQL Server Standard Virtual Machines	1 Core License:4 vCPUs

SQL Server Standard (Core)	Azure SQL Database (Elastic Pool and Single Database)/Azure SQL Managed Instance – General Purpose	1 Core License:1 vCore
	Azure SQL Database (Elastic Pool and Single Database)/Azure SQL Managed Instance – Business Critical	4 Core License:1 vCore
	Azure SQL Database (Single Database)/Azure SQL Managed Instance - Hyperscale	1 Core License:1 vCore
	Azure Data Factory SQL Server Integration Services (Standard)	1 Core License: 1 vCore
	Azure Data Factory SQL Server Integration Services (Enterprise)	4 Core Licenses:1 vCore
	SQL Server Standard Virtual Machines	1 Core License <sup>2</sup> :1 vCPU
	SQL Server Enterprise Virtual Machines	4 Core Licenses <sup>2</sup> :1 vCPU

<sup>1</sup>Azure Hybrid Benefit is not available in the serverless compute tier of Azure SQL Database or Azure SQL Managed Instance.

<sup>2</sup>Subject to a minimum of four Core Licenses per Virtual Machine.

With Azure Hybrid Benefit for SQL Server, customers will not be charged for the usage of a Microsoft Azure Data Service, but they must still pay for the cost of compute (i.e., the base rate), storage, and back-up, as well as I/O associated with their use of the services (as applicable). Customers must indicate that they are using Azure SQL Database (Elastic Pool, and Single Database), Azure SQL Managed Instance, Azure Data Factory SQL Server Integration Services, or SQL Server Virtual Machines under Azure Hybrid Benefit for SQL Server when configuring workloads on Azure. Customers may supplement workloads running under Azure Hybrid Benefit for SQL Server with fully metered Azure services.

Customer may not concurrently allocate a License to Azure Hybrid Benefit for SQL Server and assign the same License to (a) shared servers under License Mobility through Software Assurance or (b) a Licensed Server, except on a one-time basis, for a period not to exceed 180 days, to allow Customer to migrate those workloads to Azure.

On the earlier of completion of migration to Azure or 180 days from the start of migration, Licenses will be deemed “assigned to Azure”. Customer may later reassign Licenses back to its Licensed Servers or to shared servers under License Mobility through Software Assurance, provided Licenses remain assigned to Azure for a minimum of 90 days.

**9.2.1 SQL Server Fail-over Rights**

When allocating SQL Server Licenses for use with a SQL Server Virtual Machine under the Azure Hybrid Benefit for SQL Server, Customer is entitled to:

- One Fail-over OSE for any purpose, including high availability; and
- One Fail-over OSE specifically for disaster recovery purposes.

Customer may also run Primary Workload and its disaster recovery Fail-over OSE simultaneously for brief periods of disaster recovery testing every 90 days, and around the time of a disaster, for a brief period, to assist in the transfer between them. Customer may perform the following maintenance-related operations for any permitted Fail-over OSE:

- Database consistency checks or Checkdb
- Log Back-ups
- Full Back-ups
- Monitoring resource usage data

Fail-over OSEs permitted for disaster recovery must be asynchronous and manual. The number of licenses that otherwise would be required for a Fail-over OSE must not exceed the number of licenses required for the corresponding Primary Workload. Fail-over OSEs may not serve SQL Server data to users or devices or otherwise run active SQL Server workloads.

Customer is entitled to one additional Fail-over OSE for high availability for each of its Primary Workloads that runs on the Linux platform and serves as the SQL Server master instance when used in conjunction with Customer’s use of Big Data Clusters. These additional Fail-over OSEs are subject to the same SQL Server – Fail Over Rights limitations.

**9.2.2 SQL Server Enterprise Core Unlimited Virtualization Rights**

As an exception to the general terms governing allocation of Licenses and use of SQL Server under the Azure Hybrid Benefit for SQL Server, Customer may use SQL Server in any number of Virtual Machines on an Azure Dedicated Host or other dedicated physical host in Azure in one of its Microsoft Azure Services accounts, provided Customer allocates SQL Server Enterprise Core Licenses with SA for all of the Physical Cores available to Customer on that Azure Dedicated Host or other dedicated physical host in Azure and Customer’s Licensed Servers is limited to the same 180 day migration period.

10. Windows Virtual Desktop

10.1 Windows Virtual Desktop for Windows 7 and Windows 10

Users licensed with Microsoft 365 E3/E5/F3/Business Premium/A3/A5/Student Use Benefit, Windows 10 Enterprise E3/E5, Windows 10 Education A3/A5, or Windows VDA E3/E5 may access Windows Virtual Desktop (WVD) Windows 7 and Windows 10 virtual machines. WVD virtual machines do not count against a user's device activation count limit.

10.2 Windows Virtual Desktop for Windows Server

Users licensed with RDS User CALs with SA or RDS User Subscription Licenses or using devices licensed with RDS Device CALs with SA may access Windows Virtual Desktop (WVD) Windows Server virtual machines.

10.3 Windows Virtual Desktop for Development and Test

Users licensed with Visual Studio subscriptions and MSDN Platforms with active SA ("Authorized Users") may access Windows Virtual Desktop (WVD) Windows 7, Windows 10, and Windows Server virtual machines for development and test purposes. Customer's end users may also access WVD Windows 7, Windows 10, and Windows Server virtual machines initiated by Authorized Users to perform acceptance tests or provide feedback.

Microsoft Azure Services

1. Program Availability

Online Services	Point	OL	S/S+	MPSA	OV/OVS	EA/EAS	OVS-ES	EES	CSP
Azure SQL Edge (per Device)									
Microsoft Azure Services*	1								
Microsoft Translator API									

\*Also Available through Microsoft Customer Agreement

2. Product Conditions

Terms of Service: OST	Product Pool: Server	Extended Term Eligible: Until canceled for Microsoft Azure Services
Migration Rights: N/A	Prerequisite: N/A	Promotions: N/A
Qualified User Exemption: N/A	Reduction Eligible: Microsoft Translator API, Allocated Annual prepayment for Microsoft Azure Services	Reduction Eligible (SCE): Allocated Annual prepayment for Microsoft Azure Services
Student Use Benefit: N/A	True-up Eligible: N/A	

2.1 Microsoft Azure Services Plans

If subscribed to by Customer as a Microsoft Azure Services Plan, individual Microsoft Azure Services may have different program availability or be subject to different terms. See the Microsoft Azure Services Plan-Specific entries below for more details.

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Microsoft Azure Infrastructure Plans

1. Program Availability

Online Services	Point	OL	S/S+	MPSA	OV/OVS	EA/EAS	OVS-ES	EES	CSP
IoT Suite Predictive Maintenance Plan 1	1								
IoT Suite Predictive Maintenance Plan 2	1								
IoT Suite Remote Monitoring Plan 1									
IoT Suite Remote Monitoring Plan 2									
Azure App Service Plan									
Azure Site Recovery (to Customer Owned Site)									
Microsoft Azure StorSimple Plan with Device (8100 device)									
Microsoft Azure StorSimple Plan with Device (8600 device)									
Microsoft Azure StorSimple Plan 8100 Renewal (no device)									
Microsoft Azure StorSimple Plan 8600 Renewal (no device)									

2. Product Conditions

Terms of Service: OST	Product Pool: Server	Extended Term Eligible: All
Migration Rights: N/A	Prerequisite: N/A	Promotions: N/A

Qualified User Exemption: N/A	Reduction Eligible: Microsoft Azure StorSimple (see 2.2)	Reduction Eligible (SCE): All (except Azure RemoteApp)
Student Use Benefit: N/A	Trade-Up Eligible: N/A	Add-ons and From SA: N/A

**2.1 Microsoft Azure Stack Hub Plan**

Customer may use Microsoft Azure Stack Hub on a Licensed Server, provided it acquires a number of SLs equal to the number of Physical Cores on that Server. Licenses are reduction eligible; however, ongoing use remains subject to the requirement to retain licenses equal to the Physical Cores on the Server.

**2.2 Microsoft Azure StorSimple Plan Offerings**

For each StorSimple Plan with Device purchased, Customer will receive a Storage Array device. Geographic availability and the terms and conditions governing the Storage Array, including warranty, shipping and handling, and duties, are set forth in [Appendix G - Storage Array Terms](#). Each StorSimple Plan purchased by Customer will be associated with a single Storage Array; any additional Storage Arrays used by Customer will be billed at consumption rates. Microsoft Azure StorSimple 8100 and 8600 plans can be reduced at the next anniversary following 12 months of continuous usage.

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## Microsoft Azure Support Plans

### 1. Program Availability

Online Services	Point	OL	S/S+	MPSA	OV/OVS	EA/EAS	OVS-ES	EES	CSP
Azure Active Standard Support*									
Azure Active Professional Direct Support*									
Microsoft Azure StorSimple Standard Support									
Microsoft Azure StorSimple Standard Support to Premium Support									
Microsoft Azure StorSimple Premium Support									

\*Also available through Microsoft Customer Agreement and Reduction Eligible when acquired under that agreement.

### 2. Product Conditions

Terms of Service: OST	Product Pool: Server	Extended Term Eligible: All
Migration Rights: N/A	Prerequisite: N/A	Promotions: N/A
Qualified User Exemption: N/A	Reduction Eligible: Azure StorSimple Standard and Premium Support	Reduction Eligible: N/A
Student Use Benefit: N/A	Trade-Up Eligible: N/A	

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## Microsoft Azure User Plans

### 1. Program Availability

Online Services	Point	OL	S/S+	MPSA	OV/OVS	EA/EAS	OVS-ES	EES	CSP
Azure Active Directory Premium Plan 1 (User SL)	1								
Azure Active Directory Premium Plan 2 (User SL)	1								
Azure Advanced Threat Protection for Users (User SL)									
Azure Advanced Threat Protection for Users Client Management License Add-on (User SL)									
Azure Information Protection Premium Plan 1 (User SL)	1								
Azure Information Protection Premium Plan 1 Add-on (User SL)									

### 2. Product Conditions

Terms of Service: OST	Product Pool: Server	Extended Term Eligible: All
Migration Rights: N/A	Prerequisite: N/A	Promotions: N/A
Qualified User Exemption: N/A	Reduction Eligible: All	Reduction Eligible (SCE): All



Student Use Benefit: See <a href="#">Appendix H</a>	True-Up Eligible: Azure Active Directory, Azure Advanced Threat Protection for Users, Azure Information Protection Premium	Add-ons and From SA: See <a href="#">Appendix C</a>
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**2.1 Extended Use Rights for Azure Advanced Threat Protection for Users (AATP) Customers**

Customer may also install and use Advanced Threat Analytics locally to manage client OSEs (or Server OSEs used as client OSEs) that are used solely by users to whom licenses are assigned. This right expires when Customer's subscription expires.

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## Microsoft 365

### 1. Program Availability

Online Services	Point	OL	S/S*	MPSA	OV/OVS	EA/EAS	OVS-E5	EES	CSP
Microsoft 365 Business Basic (User SL)									
Microsoft 365 Business Standard (User SL)									
Microsoft 365 Business Premium (User SL)									
Microsoft 365 Education A1 (Device SL)									
Microsoft 365 Education A3 (User SL)									
Microsoft 365 Education A3 with Core CAL (User SL)									
Microsoft 365 Education A5 (User SL)									
Microsoft 365 Education A5 with calling minutes (User SL)									
Microsoft 365 Education A3 – Unattended License (SL)									
Microsoft 365 E3 – Unattended License (SL)									
Microsoft 365 E3/E5 (User SL)									
Microsoft 365 E3/E5 Add-on (User SL)									
Microsoft 365 E3/E5 From SA (User SL)									
Microsoft 365 E5 with calling minutes (User SL)									
Microsoft 365 F1/F3 (User SL)									
Microsoft 365 A5 Compliance (User SL)									
Microsoft 365 E5 Compliance (User SL)									
Microsoft 365 E5 eDiscovery and Audit (User SL)									
Microsoft 365 E5 Insider Risk Management (User SL)									
Microsoft 365 E5 Information Protection and Governance (User SL)									
Microsoft 365 A5 eDiscovery and Audit (User SL)									
Microsoft 365 A5 Insider Risk Management (User SL)									
Microsoft 365 A5 Information Protection and Governance (User SL)									
Microsoft 365 A5 Security (User SL)									
Microsoft 365 E5 Security (User SL)									
SharePoint Syntex (SL)									
Extra Graph Connector Capacity (SL)									
Skype for Business Plus CAL Add-on for Microsoft 365 E3 (User SL)									
Experts on Demand (SL)									
VDA Add-on for M365 E3/E5 (SL)									

### 2. Product Conditions

Terms of Service: OST	Product Pool: Server	Extended Term Eligible: All
Migration Rights: N/A	Prerequisite: See below	Promotions: N/A
Qualified User Exemption: F only	Reduction Eligible: All	Reduction Eligible (SCE): Microsoft 365 F3
Student Use Benefit: See <a href="#">Appendix H</a>	True-Up Eligible: All (except From SA)	Add-ons and From SA: See <a href="#">Appendix C</a>

## 2.1 Applicable License Terms

Microsoft 365 is governed by the License Terms of the individual products and services comprising Microsoft 365, as modified by the License Terms in this Microsoft 365 Product Entry.

### 2.1.1 Microsoft 365 Components

- For Microsoft 365 E3/E5 the components include Office 365 E3/E5, Enterprise Mobility + Security E3/E5, and Windows 10 Enterprise E3/E5 Per User.
- For Microsoft 365 A3/A5 the components include Office 365 A3/A5, Enterprise Mobility + Security A3/A5, Windows 10 Education A3/A5, and Minecraft: Education Edition.
- For Microsoft 365 F3 the components include Office 365 F3, Enterprise Mobility + Security E3, and Windows 10 Enterprise E3.
- For Microsoft 365 F1 the components include Enterprise Mobility + Security E3 and limited Office services.
- For Microsoft 365 E3/Education A3 – Unattended License the components include Office 365 E3/A3, Enterprise Mobility + Security E3/A3 and Windows 10 Enterprise E3/A3.

### 2.1.2 License Assignment and Windows Use Rights

The use rights for the Windows component of Microsoft 365 licenses are modified as follows:

- Licensed Users are not required to be the Primary User of any device. Licensed Users may only run Windows Enterprise on devices with a Qualifying Operating System.
- Other than the use of Windows Virtual Desktop (refer to Windows Virtual Desktop section of the [Microsoft Azure Services Product entry](#)), rights to access and use remote virtualized instances of Windows only apply to Licensed Users that are the Primary User of a device licensed with a Qualifying Operating System.

### 2.1.3 Microsoft 365 F1/F3

#### 2.1.3.1 License Eligibility for Firstline Worker Licenses

Microsoft 365 Firstline Worker licenses may only be assigned to users who satisfy one or more of the following conditions:

- Uses a primary work device with a single screen smaller than 10.1”
- Shares their primary work device with other qualifying Microsoft 365 or Office 365 Firstline Worker licensed users, during or across shifts.
  - Other licensed Microsoft Firstline Worker users must also use the device as their primary work device.
  - Any software or services accessed from the shared device requires the device or users to be assigned a license that includes use of those software or services.

Qualifying Microsoft 365 and Office 365 Firstline Worker licenses include Microsoft 365 F1, Microsoft 365 F3, and/or Office 365 F3.

Customers who had Microsoft 365 F1/F3 licensed users prior to June 1, 2020 (Impacted Customers) may license additional users with the same or equivalent service, under the Microsoft 365 F1 License Eligibility terms in the November 1, 2019 Product Terms, until the end of the Impacted Customer’s subsequent subscription renewal term.

#### 2.1.3.2 Windows 10 Use Rights for Microsoft 365 F3

The use rights for the Windows component of Microsoft 365 F3 licenses are further modified as follows:

- Rights to use Windows 10 Enterprise LTSC do not apply.
- Rights to install and use MDOP do not apply.
- Other than the use of Windows Virtual Desktop (refer to Windows Virtual Desktop section of the [Microsoft Azure Services Product entry](#)), rights to access and use virtualized instances of Windows only apply to Licensed Users of a shared device with a Qualifying Operating System.

#### 2.1.3.3 Smartphone and Tablet Devices

Each Microsoft 365 F3 user to whom Customer assigns a User SL may (i) use Microsoft Office for mobile devices for commercial purposes and (ii) sign into Microsoft Office with their org ID on up to five smartphones and five tablets with integrated screens 10.1” diagonally or less.

#### 2.1.3.4 Microsoft 365 F1 User Mailbox Use Rights

M365 F1 does not include rights to an Exchange mailbox. In order to enable a full Teams experience, M365 F1 licenses may come with an additional Exchange Online K1 license. Although the Exchange Online K1 license will provision a mailbox for the user, M365 F1 users are not entitled to use the mailbox. We recommend that you disable Outlook on the web via these steps (<https://docs.microsoft.com/en-us/exchange/recipients-in-exchange-online/manage-user-mailboxes/enable-or-disable-outlook-web-app>) and ask your users not to access the Exchange mailbox via any other methods.

## 2.2 Extended Use Rights for Microsoft 365 E3/E5

### 2.2.1 Office Servers

Each Licensed User assigned a Microsoft 365 E3/E5 User SL may:

- install any number of copies of the following server software on any Server dedicated to Customer’s use: Exchange Server, SharePoint Server, and Skype for Business Server; and
- access to the above server software is exclusive to those users assigned a Microsoft 365 E3/E5 User SL or External Users.

Dedicated Servers that are under the management or control of an entity other than Customer or one of its Affiliates are subject to the [Outsourcing Software Management](#) clause. This entitlement does not apply to User SLs acquired under the Microsoft Cloud Agreement and Microsoft Customer Agreement.

## 2.2.2 Office Professional Plus

### 2.2.2.1 Microsoft 365 From SA User SLs:

For each Licensed User to whom customer assigns a Microsoft 365 From SA User SL, Customer may install:

- one local copy of Office Professional Plus for the sole use of the Licensed User for the duration of the subscription; and
- one local copy of Office Professional Plus for new User SLs added to the same volume license agreement for the sole use of the Licensed User for the duration of the subscription. The number of new User SLs granted those user rights may not exceed the number of From SA User SLs initially covered under the agreement.

### 2.2.2.2 Microsoft 365 User SLs acquired in MPSA

For each Licensed User with a device covered with Software Assurance for Office Professional Plus to whom Customer assigns a Microsoft 365 User SL, Customer may install one local copy of Office Professional Plus for the sole use of the Licensed User for the duration of the subscription.

## 2.3 Microsoft 365 Business Basic/Standard/Premium Use Rights

Customer may not provision more than 300 user subscription licenses. The Use Rights for the Windows component of Microsoft 365 Business Premium are modified as follows:

- Windows Business operates as an Online Service and is not a successor to any prior version of the Windows desktop operating system.
- Rights to use prior versions, different language versions, different platform versions, or lower editions of Windows, including Windows 10 Enterprise LTSC, do not apply.
- Other than the use of Windows Virtual Desktop (refer to Windows Virtual Desktop section of the [Microsoft Azure Services Product](#) entry), rights to access and use virtualized instances of Windows do not apply.

## 2.4 Experts on Demand

Microsoft Threat Experts Customers are eligible to purchase Experts on Demand subscriptions. Customer will be assigned 2 credits on the 1st of each month, which may be used to submit questions; unused credits expire 90 days from date of assignment or at the end of the subscription term, whichever is shortest.

## 2.5 License Prerequisites

License	License Prerequisites
Microsoft 365 E5/A5 Security	Microsoft 365 E3/A3, or Office 365 E3/A3 and Enterprise Mobility + Security E3/A3
Microsoft 365 E5/A5 Compliance	Microsoft 365 E3/A3, or Office 365 E3/A3 and Enterprise Mobility + Security E3/A3
Microsoft 365 E5/A5 eDiscovery and Audit	Any Microsoft 365, Office 365, Exchange Online, SharePoint Online or OneDrive for Business plan license
Microsoft 365 E5/A5 Insider Risk Management	Any Microsoft 365, Office 365, Exchange Online, SharePoint Online or OneDrive for Business plan license
Microsoft 365 E5/A5 Information Protection and Governance	Any Microsoft 365, Office 365, Exchange Online, SharePoint Online or OneDrive for Business plan and Azure Information Protection or Enterprise Mobility + Security E3/A3
VDA Add-on for M365 E3/E5	Microsoft 365 E3/E5
SharePoint Syntex	Microsoft 365 F1/F3/E3/A3/E5/A5 or Office 365 F3/E1/A1/E3/A3/E5/A5

## 2.6 Academic Programs

The following applies to customers in Academic Volume Licensing Programs:

### 2.6.1 Microsoft 365 A1 (Device SL)

#### 2.6.1.1 Term

The term of the Microsoft 365 A1 (Device SL) is six years from the date of order. If the license extends beyond the expiration of Customer's volume license agreement under which the M365 A1 (Device SL) was purchased, the terms of such agreement will survive as necessary for the duration of the M365 A1 (Device SL).

#### 2.6.1.2 Cancellation and Reassignment

The M365 A1 (Device SL) may not be cancelled and can only be reassigned to a new device of the same model (or equivalent manufacturer-provided replacement) upon permanent hardware failure of the device the M365 A1 (Device SL) was previously assigned to.

#### 2.6.1.3 Window 10 Versions

Microsoft 365 Education A1 includes an upgrade to Windows 10 Pro Education for devices licensed with Windows 7 Professional, Windows 8/8.1 Pro, and Windows 10 Pro.

2.6.2 Microsoft 365 A3/A5 (User SL)

2.6.2.1 Office Servers

Customers licensing all faculty and staff, Education Qualified Users, or Knowledge Workers with Microsoft 365 A3/A5 (User SL) under an Enrollment for Education Solutions (any version) may:

- install any number of copies of the following server software on any Server dedicated to Customer’s use: Exchange Server, SharePoint Server, and Skype for Business Server; and
- access to the above server software is exclusive to those users assigned a Microsoft 365 A3/A5 User SL or External Users.

Dedicated Servers that are under the management or control of an entity other than Customer or one of its Affiliates are subject to the Outsourcing Software Management clause. This entitlement does not apply to User SLs acquired under the Microsoft Cloud Agreement and Microsoft Customer Agreement or by way of the Student Use Benefit.

2.6.2.2 Microsoft 365 A3 with Core CAL

Microsoft 365 A3 with Core CAL is available only as a replacement for Education Desktop with Core CAL.

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## Enterprise Mobility + Security

### 1. Program Availability

Online Services	Point	OL	S/S+	MPSA	OV/OVS	EA/EAS	OVS-ES	EES	CSP
Enterprise Mobility + Security E3 (User SL)	1	Y				Y			
Enterprise Mobility + Security A3 (User SL)		Y				Y			
Enterprise Mobility + Security E3 Add-on (User SL)	1	Y				Y			
Enterprise Mobility + Security A3 Add-on (User SL)		Y				Y			
Enterprise Mobility + Security E3 From SA (User SL)		Y				Y			
Enterprise Mobility + Security E5 (User SL)	1	Y				Y			
Enterprise Mobility + Security A5 (User SL)		Y				Y			
Enterprise Mobility + Security E5 Add-on (User SL)	1	Y				Y			
Enterprise Mobility + Security A5 Add-on (User SL)		Y				Y			
Enterprise Mobility + Security E5 From SA (User SL)		Y				Y			

### 2. Product Conditions

Terms of Service: <a href="#">OST</a>	Product Pool: Server	Extended Term Eligible: All
Migration Rights: N/A	Prerequisite: N/A	Promotions: N/A
Qualified User Exemption: N/A	Reduction Eligible: All	Reduction Eligible (SCE): N/A
Student Use Benefit: See <a href="#">Appendix H</a>	True-Up Eligible: All	Add-ons and From SA: See <a href="#">Appendix C</a>

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## Server Subscriptions for Azure

### 1. Program Availability

Online Services	Point	OL	S/S+	MPSA	OV/OVS	EA/EAS	OVS-ES	EES	CSP
SQL Server Standard (2 pack of Core Licenses)									
SQL Server Enterprise Core (2 pack of Core Licenses)									
SQL Server Big Data Node (2 pack of Core Licenses)									
Windows Server Standard (8 pack of Core Licenses)									
Windows Server CAL									
Windows Server Remote Desktop Services CAL (User)									
Windows Server Active Directory Rights Management Services CAL									

The above licenses will be additionally available through Microsoft Customer Agreement.

## 2. Product Conditions

Terms of Service: <a href="#">OST</a> (when deployed on Customers Servers: <a href="#">Universal</a> , <a href="#">Per Core – SQL</a> , <a href="#">Per Core/CAL – Windows Server</a> )	Product Pool: N/A	Extended Term Eligible: N/A
Migration Rights: N/A	Prerequisite: N/A	Promotions: N/A
Qualified User Exemption: N/A	Reduction Eligible: N/A	Reduction Eligible (SCE): N/A
Student Use Benefit: N/A	True-up Eligible: N/A	

### 2.1 Version Upgrade Rights

Customers with Server Subscriptions for Azure may use new versions released during the subscription period subject to the Use Rights in effect when those versions are released. Similarly, CAL and External Connector License Subscriptions for Azure permit access to new versions of the corresponding software released during the subscription period.

### 2.2 Deployment Options for Windows Server

#### 2.2.1 Using the Software on Microsoft Azure

If Customer uses Windows Server Virtual Machines in Customer’s Microsoft Azure Service accounts, Customer will not be charged for the usage of Windows Server but it must still pay for the cost of compute (the “Base Instance”). Customer must indicate that it is using Windows Server under the Azure Hybrid Benefit for Windows Server when creating or configuring a virtual machine on Azure. The [Online Services Terms](#) govern use of Windows Server on Azure. Each set of 16 core licenses entitles Customer to use Windows Server on Microsoft Azure on up to 16 Virtual Cores allocated across two or fewer Azure Base Instances. Each additional set of 8 core licenses entitles use on up to 8 additional Virtual Cores on one Base Instance. During the term of its subscription, Customer may also use RDS CAL Subscriptions for Azure with Windows Server in Customer’s Microsoft Azure Service accounts to permit access to RDS functionality or a graphical user interface hosted on Windows Server using RDS functionality or other technology.

#### 2.2.2 Using the Software on Customer’s Servers

Alternatively, Customer may use Windows Server on Customer’s Licensed Servers. Except as provided in the “Moving Server Workloads to Azure” section, licenses may not be concurrently allocated to Azure. Windows Server Standard Subscription Licenses, and Subscription CALs and External Connector Licenses provide the same rights as other volume licensing Windows Server Standard core licenses, CALs and External Connector Licenses, respectively, subject to the same terms and conditions as stated in “Use Rights” in the Windows Server product entry of the most current version of the Product Terms. During the term of its subscription, Customer is additionally granted rights equivalent to the rights provided to SA customers under Self-Hosting, Disaster Recovery, and for Semi-Annual Channel releases (subject to availability). Use of the software is subject to the same terms and conditions.

#### 2.2.3 Moving Server Workloads to Azure

Customer may not concurrently allocate Subscription Licenses to Azure and Customer’s Licensed Servers, except on a one-time basis, for a period not to exceed 180 days, to allow Customer to migrate workloads from Licensed Servers to Azure. On the earlier of completion of migration to Azure or 180 days from the start of migration, Licenses will be deemed “assigned to Azure”. Customer may later reassign Licenses back to its Licensed Servers, provided Licenses remain assigned to Azure for a minimum of 90 days.

### 2.3 Deployment Options for SQL Server

#### 2.3.1 Using the Software on Microsoft Azure

Customer may consume in its Microsoft Azure Service accounts the Microsoft Azure Data Services identified in the table below in the indicated ratios. If a customer wishes to use Subscription Licenses to consume two or more Microsoft Azure Data Services, a separate set of Licenses must be allocated for each service.

Qualified License	Microsoft Azure Data Service	Ratio of Qualified Licenses to Azure vCores
SQL Server Enterprise (Core)	Azure SQL Database (Elastic Pool and Single Database)/Azure SQL Managed Instance – General Purpose	1 Core License:4 vCores
	Azure SQL Database (Elastic Pool and Single Database)/Azure SQL Managed Instance – Business Critical	1 Core License:1 vCore
	Azure SQL Database (Single Database)/Azure SQL Managed Instance - Hyperscale	1 Core License:4 vCore
	Azure Data Factory SQL Server Integration Services (Enterprise)	1 Core License:1 vCore
	Azure Data Factory SQL Server Integration Services (Standard)	1 Core License:4 vCores
	SQL Server Standard Virtual Machines	1 Core License:4 vCPUs
	SQL Server Enterprise Virtual Machines	1 Core License <sup>2</sup> :1 vCPU
SQL Server Standard (Core)	Azure SQL Database (Elastic Pool and Single Database)/Azure SQL Managed Instance – General Purpose	1 Core License:1 vCore

Azure SQL Database (Elastic Pool and Single Database)/Azure SQL Managed Instance – Business Critical	4 Core License:1 vCore
Azure SQL Database (Single Database)/Azure SQL Managed Instance - Hyperscale	1 Core License:1 vCore
Azure Data Factory SQL Server Integration Services (Standard)	1 Core License: 1 vCore
Azure Data Factory SQL Server Integration Services (Enterprise)	4 Core Licenses:1 vCore
SQL Server Standard Virtual Machines	1 Core License <sup>2</sup> :1 vCPU
SQL Server Enterprise Virtual Machines	4 Core Licenses <sup>2</sup> :1 vCPU

<sup>1</sup>Azure Hybrid Benefit is not available in the serverless compute tier of Azure SQL Database or Azure SQL Managed Instance.

<sup>2</sup>Subject to a minimum of four Core Licenses per Virtual Machine.

Customer will not be charged for the usage of a Microsoft Azure Data Service, but it must still pay for the cost of compute (i.e., the base rate), storage, and back-up, as well as I/O associated with its use of the services (as applicable). Customer must indicate that it is using Azure SQL Database (Elastic Pool and Single Database), Azure SQL Managed Instance, Azure Data Factory SQL Server Integration Services, or SQL Server Virtual Machines under Azure Hybrid Benefit for SQL Server when configuring workloads on Azure. Customers may supplement these workloads running with fully metered Azure services.

### 2.3.2 SQL Server Fail-over Rights

When allocating SQL Server Subscription Licenses for use with a SQL Server Virtual Machine on Azure, Customer is entitled to:

- One Fail-over OSE for any purpose, including high availability; and
- One Fail-over OSE specifically for disaster recovery purposes.

Customer may also run Primary Workload and its disaster recovery Fail-over OSE simultaneously for brief periods of disaster recovery testing every 90 days, and around the time of a disaster, for a brief period, to assist in the transfer between them. Customer may perform the following maintenance-related operations for any permitted Fail-over OSE:

- Database consistency checks or Checkdb
- Log Back-ups
- Full Back-ups
- Monitoring resource usage data

Fail-over OSEs permitted for disaster recovery must be asynchronous and manual. The number of licenses that otherwise would be required for a Fail-over OSE must not exceed the number of licenses required for the corresponding Primary Workload. Fail-over OSEs may not serve SQL Server data to users or devices or otherwise run active SQL Server workloads.

Customer is entitled to one additional Fail-over OSE for high availability for each of its Primary Workloads that runs on the Linux platform and serves as the SQL Server master instance when used in conjunction with Customer's use of Big Data Clusters. These additional Fail-over OSEs are subject to the same SQL Server – Fail Over Rights limitations.

### 2.3.3 Using the Software on Customer's Servers

Alternatively, Customer may use SQL Server on Customer's Licensed Servers. In this case, SQL Server Standard and SQL Server Enterprise Core Subscription Licenses provide the same rights as other volume licensing SQL Server Standard and SQL Server Enterprise core licenses, respectively, subject to the same terms and conditions as stated in "Use Rights" in the SQL Server product entry in the most current version of the Product Terms. During the term of its subscription, Customer is additionally granted rights equivalent to the rights provided to SA customers under Self-Hosting, Disaster Recovery, License Mobility across Server Farms, Fail-over Rights, and Unlimited Virtualization\* as well as rights to use Machine Learning Server for Windows\*, Machine Learning Server for Linux\*, Machine Learning for Hadoop\*, and Power BI Report Server\*. Use of the software is subject to the same terms and conditions.

\*Subject to availability. Rights applicable for SQL Server Enterprise Core customers only.

### 2.3.4 Moving Server Workloads to Azure

Customer may not concurrently allocate Licenses for use on Azure and assign the same License to one of Customer's Licensed Servers, except on a one-time basis, for a period not to exceed 180 days, to allow Customer to migrate those workloads to Azure. On the earlier of completion of migration to Azure or 180 days from the start of migration, Licenses will be deemed "assigned to Azure". Customer may later reassign Licenses back to its Licensed Servers, provided Licenses remain assigned to Azure for a minimum of 90 days.

### 2.3.5 SQL Server Enterprise Core Unlimited Virtualization Rights

As an exception to the general terms governing allocation of Licenses and use of SQL Server under the Azure Hybrid Benefit for SQL Server, Customer may use SQL Server in any number of Virtual Machines on an Azure Dedicated Host Server or other dedicated physical host in Azure in one of its Microsoft Azure Service accounts, provided Customer allocates SQL Server Enterprise Core Subscription Licenses for all of the Physical Cores available to Customer on that Azure host. Concurrent use on Azure Dedicated Host or other dedicated physical host in Azure and Customer's Licensed Servers is limited to the same 180 day migration period.

## 2.4 SQL Server Big Data Nodes

Customer's use of SQL Server Big Data Node is governed by the Use Rights for SQL Server Enterprise Core in the SQL Server product entry, supplemented as follows. Customer may use SQL Big Data Node Instances only with a Master Node. A "Master Node" is an OSE licensed by Customer to run SQL Server Standard Core or SQL Server Enterprise Core under Licenses with SA or with equivalent subscription rights. The following SA rights additionally apply to Customer's use of SQL Server Big Data Nodes used on a Licensed Server: Unlimited Virtualization. As an alternative to deploying the software on Licensed Servers, Customer may allocate Big Data Node Licenses to Microsoft Azure (one License per vCPU and minimum of four Licenses per virtual machine) and run Big Data Node software on Azure virtual machines.

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# Microsoft Dynamics 365 Services

## 1. Program Availability

Online Services	Point	OL	S/S+	MPSA	DV/OVS	EA/EAS	OVS-ES	EES	CSP
Dynamics 365 Business Central Premium/Essentials/Team Member (User SL)									
Dynamics 365 Business Central Premium/Team Members Cloud Add-on (User SL)									
Dynamics 365 Business Central Device (Device SL)									
Dynamics 365 Customer Insights									
Dynamics 365 Customer Insights Additional Profiles									
Dynamics 365 Operations Device (Device SL)									
Dynamics 365 Operations Device Add-on (Device SL)									
Dynamics 365 Operations Device From SA (Device SL)									
Dynamics 365 Operations Activity (User SL)									
Dynamics 365 Operations Activity Add-on (User SL)									
Dynamics 365 Operations Activity From SA (User SL)									
Dynamics 365 Operations Order Lines									
Dynamics 365 Customer Service Enterprise (User SL)	1								
Dynamics 365 Customer Service Enterprise (Device SL)									
Dynamics 365 Customer Service Professional (User SL)									
Dynamics 365 Customer Service Insights (User SL)									
Dynamics 365 Customer Service Insights Additional Cases									
Dynamics 365 eCommerce Tier									
Dynamics 365 eCommerce Tier Overage									
Dynamics 365 Commerce Recommendations									
Dynamics 365 Commerce Ratings and Reviews									
Dynamics 365 Commerce Scale Unit - Cloud									
Dynamics 365 Field Service (User SL)	1								
Dynamics 365 Field Service (Device SL)									
Dynamics 365 Human Resources (User SL)									
Dynamics 365 Human Resources Self Service (User SL)									
Dynamics 365 Human Resources Sandbox									
Dynamics 365 Human Resources from SA (User SL)									
Dynamics 365 Marketing									
Dynamics 365 Marketing Additional Contacts									
Dynamics 365 Marketing Additional Non-Production Application									
Dynamics 365 Supply Chain Management (User SL)									
Dynamics 365 Supply Chain Management Add-on (User SL)									
Dynamics 365 Supply Chain Management From-SA (User SL)									
Dynamics 365 IoT Intelligence Scenario									
Dynamics 365 IoT Intelligence Additional Machines									
Dynamics 365 Finance (User SL)									
Dynamics 365 Finance Add-on (User SL)									
Dynamics 365 Finance From-SA (User SL)									
Dynamics 365 Commerce (User SL)									

Dynamics 365 Commerce Add-on (User SL)	
Dynamics 365 Commerce From SA (User SL)	
Dynamics 365 Sales Enterprise (User SL)	1
Dynamics 365 Sales Enterprise (Device SL)	
Dynamics 365 Sales Professional (User SL)	
Dynamics 365 Sales Premium (User SL)	
Dynamics 365 Sales Insights (User SL)	
Dynamics 365 Team Members (User SL)	1
Dynamics 365 Team Members Add-on (User SL)	
Dynamics 365 Team Members From SA (User SL)	
Dynamics 365 - Additional Customer Engagement Portal Views	
Dynamics 365 - Additional Customer Engagement Production/Non-Production Instance	
Dynamics 365 - Additional Customer Engagement Database Storage	
Common Data Service for Apps Database Capacity	
Common Data Service for Apps File Capacity	
Common Data Service for Apps Log Capacity	
Dynamics 365 - Additional Customer Engagement Social Posts	
Dynamics 365 for Field Service - Resource Scheduling Optimization	
Dynamics 365 Call Intelligence	
Dynamics 365 Remote Assist	
Dynamics 365 Layout	
Dynamics 365 Guides	
Dynamics 365 Unified Operations Plan - Additional Database Storage	
Dynamics 365 Unified Operations Plan - Additional File Storage	
Dynamics 365 Unified Operations - Additional Database Capacity	
Dynamics 365 Unified Operations - Additional File Capacity	
Dynamics 365 Unified Operations Plan - Sandbox Tiers 1-5	
Dynamics 365 Pro Direct Support	
Dynamics 365 Project Operations (User SL)	
Chat for Dynamics 365 Customer Service (Dynamics 365 for Customer Service Chat)(User SL)	
Chatbot Sessions	
Dynamics 365 Digital Messaging	
Dynamics 365 Customer Service Chat	
Dynamics 365 Customer Service Chat Capacity	
Dynamics 365 Additional Asset Management	
Microsoft Relationship Sales solution/Plus	
Dynamics 365 Customer Voice	
Dynamics 365 Customer Voice - Additional Responses	
Dynamics 365 Fraud Protection	
Dynamics 365 Fraud Protection Additional Assessments	
Dynamics 365 Virtual Agent for Customer Service	
Dynamics 365 Chat Session Add-On for Virtual Agent	
Dynamics 365 Field Service Contractor	

## 2. Product Conditions

Terms of Service: <a href="#">OST</a>	Product Pool: Server	Extended Term Eligible: All, except Microsoft Relationship Sales
Migration Rights: N/A	Prerequisite: See below	Promotions: N/A
Qualified User Exemption: N/A	Reduction Eligible: All, except Microsoft Relationship Sales	Reduction Eligible (SCE): All, except Microsoft Relationship Sales
Student Use Benefit: N/A	True-Up Eligible: All	Add-ons and From SA: See <a href="#">Appendix C</a>



**2.1 Unified Service Desk (USD)**

Customers with active Dynamics 365 Customer Service Enterprise subscriptions may install and use USD software for each user. Dedicated Servers used for this purpose, that are under the management or control of an entity other than Customer or one of its Affiliates, are subject to the Outsourcing Software Management clause.

**2.2 Dynamics CustomerSource**

Customers with active Dynamics 365 subscriptions may access and use CustomerSource.

**2.3 Dynamics 365 Plan for Government**

Dynamics 365 Supply Chain Management, Finance, and Commerce are not available in Dynamics 365 Plan for Government.

**2.4 Embedded editions of Dynamics 365 Services**

Embedded editions of certain Dynamics 365 Services are available through the Microsoft Cloud Agreement and Microsoft Customer Agreement. If Customers acquire and use Embedded editions as part of an Embedded Unified Solution, they may not separate the Embedded SL Product from the Embedded Unified Solution or use it with other applications.

**2.5 Team Members License Features for Existing Customers**

Existing customers with Team Members licenses acquired prior to October 1, 2018 may use existing and newly acquired Team Members licenses in accordance with the service description at <http://download.microsoft.com/download/D/B/3/DB37B5D3-7796-4536-AC8D-8EFDB95CD52F/Team-Members-Grandfathering.pdf> through the duration of their existing subscription term and any subsequent subscription term begun prior to July 1, 2020, or through June 30, 2023, whichever is earlier.

**2.6 Dynamics 365 Pro Direct Support**

Customer must acquire enough Dynamics 365 Pro Direct Support licenses to cover each Dynamics 365 per user license on its agreement, up to a maximum of 250 licenses.

**2.7 Prerequisites for Base and Attach user subscription licenses**

When purchasing multiple core Business Applications, the first or Base license must be the highest priced license for the user. Every full user must have a Base license. Dynamics 365 attach user SLs may only be assigned to users with qualifying application licenses.

**2.8 Dynamics 365 Remote Assist and Dynamics 365 Guides**

External Users may access and use the above software on devices licensed with a Dynamics 365 Remote Assist Device SL or Dynamics 365 Guides Device SL.

**2.9 Dual Use Rights**

Certain Dynamics 365 SLs may allow access to the on-premises equivalent. This is mapped in the table below:

Dynamics 365 License	On-Premises Software access	On-premises Server
Dynamics 365 Sales	Dynamics 365 for Sales (On-Premises)	Dynamics 365 (On-Premises)
Dynamics Customer Service	Dynamics 365 for Customer Service (On-Premises)	
Dynamics 365 Field Service	Dynamics 365 for Field Service functionality (On-Premises)	
Dynamics 365 Operations - Activity	Dynamics 365 for Operations Activity (on-premises)	Dynamics 365 for Operations, on-premises
Dynamics 365 Operations - Device	Dynamics 365 for Operations Device (on-premises)	
Dynamics 365 Project Operations	Dynamics 365 for Operations (on-premises)*	
Dynamics 365 Finance	Dynamics 365 for Operations (on-premises)*	
Dynamics 365 Supply Chain Management	Dynamics 365 for Operations (on-premises)*	
Dynamics 365 Commerce	Dynamics 365 for Operations (on-premises)*	
Dynamics 365 Team Members	Dynamics 365 for Team Members (on-premises)	Dynamics 365 (On-Premises) or Dynamics 365 for Operations, on-premises

\*On-premises dual use rights only apply for the specific Dynamics 365 for Operations applications for which the user has a cloud SL. For example, a user licensed for Finance may only use the Dynamics 365 on-premises security roles associated with the Finance USL.

**2.10 License Prerequisites**

Purchases of the following Licenses also require the purchase of a Prerequisite License listed in the table below:

License	License Prerequisites
Dynamics 365 Team Members	Dynamics 365 user SLs other than the Team Members SL
Dynamics 365 Marketing Attach*	10 or more seats of ONE the following:
	Dynamics 365 Customer Service Enterprise
	Dynamics 365 Customer Service Professional
	Dynamics 365 Sales Enterprise

	Dynamics 365 Sales Professional
	Dynamics 365 Field Service
	Dynamics 365 Finance
	Dynamics 365 Supply Chain Management
	Dynamics 365 Commerce
Dynamics 365 Sales Insights	Dynamics 365 Sales Enterprise, or Microsoft Relationship Sales
Dynamics 365 Call Intelligence	Dynamics 365 Sales Insights
Dynamics 365 Customer Insights Attach	Dynamics 365 Marketing, or 20 or more SLs for Dynamics 365 Sales Enterprise, or 20 or more SLs for Dynamics 365 Customer Service Enterprise
Chat for Dynamics 365	Dynamics 365 Customer Service Enterprise
Dynamics 365 Customer Service Messaging	Dynamics 365 Customer Service Enterprise
Dynamics 365 IoT Intelligence Scenario	Dynamics 365 Supply Chain Management
Dynamics 365 eCommerce Tier	Dynamics 365 Commerce
Dynamics 365 Commerce Scale Unit - Cloud	
Dynamics 365 Commerce Recommendations	
Dynamics 365 Commerce Ratings & Reviews	

\*Users with less than 10 seats of the Prerequisites or are new to Dynamics may purchase the Marketing (Standalone) application.

**2.11 Purchasing Minimums - Academic**

Purchases in the Academic segment require a minimum purchase of the Licenses listed in the table below:

Segment	Minimum Quantity	License Prerequisite
Academic	20	Dynamics 365 Customer Service Enterprise, and/or Dynamics 365 Customer Service Professional, and/or Dynamics 365 Sales Enterprise, and/or Dynamics 365 Sales Professional, and/or Dynamics 365 Field Service, and/or

**2.12 Purchasing Minimums – All Programs**

Purchases of the following products require a minimum purchase of the Licenses listed in the table below:

Product	Minimum Quantity	Minimum purchased Licenses
Marketing Additional Contacts	Tier 3: 2 Tier 4: 5 Tier 5: 10	Marketing Additional Contacts Tier 3 Marketing Additional Contacts Tier 4 Marketing Additional Contacts Tier 5
Microsoft Relationship Sales Solution	10	Microsoft Relationship Sales Plus Solution, or Microsoft Relationship Sales Solution
Dynamics 365 Commerce* Dynamics 365 Finance* Dynamics 365 Supply Chain Management* Dynamics 365 Project Operations*	20	Dynamics 365 Finance, and/or Dynamics 365 Supply Chain Management, and/or Dynamics 365 Commerce, and/or Dynamics 365 Project Operations
Dynamics 365 Human Resources	5	Dynamics 365 Human Resources
Dynamics 365 Customer Insights Attach	20 20 1	Dynamics 365 Sales Enterprise, or Dynamics 365 Customer Service Enterprise, or Dynamics 365 Marketing
Professional Direct Support	20 *250 maximum – once met all remaining users are covered with no additional licenses required*	All Dynamics applications

\*Customers may combine Finance, Supply Chain Management, Commerce, or Project Operations base USLs and/or device (2.5 device SLs equal 1 base USL) Licenses to satisfy the 20-user minimum purchase.

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**Office 365 Services**

**Microsoft 365 Applications**

**1. Program Availability**

Online Services	Point	OL	S/S+	MPSA	OV/OVS	EA/EAS	OVS-ES	EES	CSP
Microsoft 365 Apps for business (User SL)									

Microsoft 365 Apps for enterprise (User SL)	2
Microsoft 365 Apps for enterprise From SA (User SL)	
Microsoft 365 Apps for enterprise (Device SL)	

OL	S/S+	MPSA	OV/OVS	EA/EAS	OVS-ES	EES	CSP
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**2. Product Conditions**

Terms of Service: <u>OST</u>	Product Pool: All - Applications	Extended Term Eligible: N/A
Migration Rights: N/A	Prerequisite: Add-on, From SA See <u>Appendix C</u>	Promotions: N/A
Qualified User Exemption: N/A	Reduction Eligible: All	Reduction Eligible (SCE): N/A
Student Use Benefit: See <u>Appendix H</u>	True-Up Eligible: All (except From SA)	Add-ons and From SA: See <u>Appendix C</u>

**2.1 Media Eligibility for Microsoft 365 Apps for enterprise with Windows To Go Rights**

If a user to whom Customer has assigned an Microsoft 365 Apps for enterprise License uses software under Windows to Go Rights, then in lieu of installing a copy of the software provided with Microsoft 365 Apps for enterprise on one of the five permitted devices pursuant to the terms of service for Microsoft 365 Apps for enterprise, that user may 1) install one copy of the Office Professional Plus 2013 software on the USB drive used for Windows to Go Rights, and 2) use the Office Professional Plus 2013 software on that USB drive on any device. Upon termination of Customer’s Microsoft 365 Apps for enterprise subscription it must uninstall Office Professional Plus 2013 software from the USB drive.

**2.2 Open Value Subscription Migration Period**

For each unit of Microsoft 365 Apps for enterprise, Office 365 E3/E5, or Office 365 A3/A5 User SLs Customer activates on or before the expiration of their Open Value Subscription agreement (the “Expiration Date”), Customer may continue to use the copy of Office Standard or Professional Plus licensed to them under an Open Value Subscription agreement. This right expires 180 days after the Expiration Date. Use of Office Standard or Office Professional Plus during this period is subject to the Use Rights effective on the Expiration Date.

**2.3 Office View/Print for Office for the Web Users**

Users licensed with an Office 365 or Microsoft 365 license may use Microsoft 365 Apps for enterprise in Reduced Functionality Mode to view and print files.

**2.4 Academic Programs**

The following applies to customers in the OVS-ES and/or EES Licensing Programs:

**2.4.1 Microsoft 365 Apps for enterprise Device SL in EES**

Institutions with Microsoft 365 Apps for enterprise User SLs assigned to all faculty and staff, Education Qualified Users, or Knowledge Workers in EES may acquire Microsoft 365 Apps for enterprise Device SLs up to the number of Microsoft 365 Apps for enterprise User SLs licensed by the Institution for use on any device within the Institution’s Organization, including any open access lab or library devices.

**2.4.2 Lab and Library Use in OVS-ES**

Institutions with Microsoft 365 Apps for enterprise User SLs assigned to all faculty and staff, Education Qualified Users, or Knowledge Workers in OVS-ES may install Office Professional Plus software on any open access lab or library within the Institution’s Organization. Use of the software is otherwise subject to the License terms for Office Professional Plus.



**Office 365 Suites**

**1. Program Availability**

Online Services	Point	OL	S/S+	MPSA	OV/OVS	EA/EAS	OVS-ES	EES	CSP
Office 365 A1 (User SL)	1								
Office 365 A3 (User SL)	(1)								
Office 365 A5 (User SL)	(1)								
Office 365 A5 with calling minutes (User SL)									
Office 365 A5 Add-on (User SL)									
Office 365 E1 and E3 (User SL)	1								
Office 365 E1 and E3 Add-on (User SL)	1								
Office 365 E1 and E3 From SA (User SL)									
Office 365 E5 (User SL)	1								
Office 365 E5 with calling minutes (User SL)									
Office 365 E5 Add-on (User SL)									
Office 365 E5 From SA (User SL)									

Office 365 E3 without Apps for enterprise Add-on (User SL)									
Office 365 F3 (User SL)	1								
Office 365 Multi-Geo Add-on (User SL)									
Premium Messaging (User SL)									

**2. Product Conditions**

Terms of Service: <a href="#">OST</a>	Product Pool: All Application and Server (E1 and F3 Server only), MPSA – All Application only	Extended Term Eligible: E1/E3/E5, A3/A5, F3
Migration Rights: N/A	Prerequisite: See below	Promotions: N/A
Qualified User Exemption: F only	Reduction Eligible: E1/E3/E5, A3/A5, F3	Reduction Eligible (SCE): F3
Student Use Benefit: See <a href="#">Appendix H</a>	True-Up Eligible: E1/E3/E5 (except From SA), F3	Add-ons and From SA: See <a href="#">Appendix C</a>

**2.1 Office 365 F3 – License Eligibility**

Office 365 Firstline Worker licenses may only be assigned to users who satisfy one or more of the following conditions:

- Uses a primary work device with a single screen smaller than 10.1”
- Shares their primary work device with other qualifying Microsoft 365 or Office 365 Firstline Worker licensed users, during or across shifts.
  - Other licensed Microsoft Firstline Worker users must also use the device as their primary work device.
  - Any software or services accessed from the shared device requires the device or users to be assigned a license that includes use of those software or services.

Qualifying Microsoft 365 and Office 365 Firstline Worker licenses include Microsoft 365 F1, Microsoft 365 F3, and/or Office 365 F3.

Customers who had Office 365 F1/F3 licensed users prior to June 1, 2020 (Impacted Customers) may license additional users with the same or equivalent service, under the Office 365 F1 License Eligibility terms in the November 1, 2019 Product Terms, until the end of the Impacted Customer’s subsequent subscription renewal term.

**2.2 Smartphone and Tablet Devices**

Each Office 365 A1, E1, F3, and Business Essentials user to whom Customer assigns a User SL may (i) use Microsoft Office for mobile devices for commercial purposes and (ii) sign into Microsoft Office with their org ID on up to five smartphones and five tablets with integrated screens 10.1” diagonally or less.

**2.3 Multi-Geo Capabilities in Office 365**

Multi-Geo Capabilities in Office 365 subscriptions are subject to the following:

- A minimum of 250 Office 365 Services subscriptions per Customer; and
- A minimum of 5% of the Office 365 Services subscriptions within a tenant have a corresponding Multi-Geo Capabilities in Office 365 subscription.

Office 365 Services mean any Microsoft 365, Office 365, Exchange Online, SharePoint Online or OneDrive for Business plan license.

**2.4 Project for the web data**

Users licensed with an Office 365 license are granted view rights access to Project for the web Customer Data, restricted to use only within the Project for the web application, only on tenants that have a Microsoft Project Plan 1/3/5 license(s).

- These rights do not grant access to Power Platform applications or other data sets.
- These rights do not apply to Government offers.

**2.5 License Prerequisites**

License	License Prerequisites
Office 365 Multi-Geo Add-on	Any Microsoft 365, Office 365, Exchange Online, SharePoint Online or OneDrive for Business plan license
Premium Messaging	Office 365 F3/E1/E3/E5 or Microsoft 365 Business Basic/Business Standard/Business Premium/F1/F3/E3/E5

**2.6 Academic Programs**

The following applies to customers in the OVS-ES and/or EES Licensing Programs:

**2.6.1 Extended Use Rights for Office Professional Plus**

Each Licensed User assigned an Office 365 A3/A5 User SL may install one local copy of Office Professional Plus for the sole use of the Licensed User for the duration of the subscription. This provision does not apply to User SLs acquired through the Student Use Benefit.

**2.6.2 Microsoft 365 Apps for Enterprise for Shared Device Use in EES**

Institutions with Office 365 A3/A5 User SLs assigned to all faculty and staff, Education Qualified Users, or Knowledge Workers in EES may acquire Microsoft 365 Apps for enterprise Device SLs up to the number of Office 365 A3/A5 User SLs licensed by the Institution for use on any device within the Institution’s Organization, including any open access lab or library devices.

**2.6.3 Office Professional Plus for Lab and Library Use**

Institutions with Office 365 A3/A5 User SLs assigned to all faculty and staff, Education Qualified Users, or Knowledge Workers may install Office Professional Plus software on any open access lab or library within the Institution’s Organization. Use of the software is otherwise subject to the License terms for Office Professional Plus.

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Audio Services

1. Program Availability

Online Services	Point	OL	S/S+	MPSA	OV/OVS	EA/EAS	OVS-E5	EES	CSP
Phone System (User SL)									
Phone System From SA (User SL)									
Advanced Communications									
Audio Conferencing (User SL)									
Audio Conferencing Extended Dial-out minutes to USA/CAN (User SL)									
Audio Conferencing for India Based Users (User SL)									
Audio Conferencing for India Based E5 Users Add-on (User SL)									
Calling Plan (User SL)									
Common Area Phone (Device SL)									
Communication Credits									
Teams Rooms Standard (Device SL)									
Teams Rooms Premium (Device SL)									

2. Product Conditions

Terms of Service: OST	Product Pool: Server	Extended Term Eligible: All
Migration Rights: N/A	Prerequisite: See below	Promotions: N/A
Qualified User Exemption: N/A	Reduction Eligible: All (except for Communication Credits)	Reduction Eligible (SCE): All (except for Communication Credits)
Student Use Benefit: N/A	True-Up Eligible: All (except for Communication Credits)	Add-ons and From SA: See <a href="#">Appendix C</a>

**2.1 Communication Credits**

Communication Credits require an initial payment through the Office 365 Administration Portal. Microsoft will invoice Customer or its reseller immediately for each transaction including, if automatic replenishment is enabled, each time the minimum balance is reached. Any such funds not used within 12 months from the date of the transaction will be forfeited.

Usage charges will be based on Microsoft’s published rates when the services are used. Communication Credits are exempt from fixed pricing, notwithstanding any reference to fixed pricing under the applicable volume licensing agreement.

**2.2 Audio Conferencing for India-Based Users**

Beginning August 1, 2019, an Audio Conferencing for India-Based Users subscription is required for users located in the Republic of India to use Audio Conferencing.

**2.3 License Prerequisites**

License	License Prerequisites
Advanced Communications	Office 365 F3/E1/E3/E5 or Microsoft 365 Business Basic/Business Standard/Business Premium/F1/F3/E3/E5
Audio Conferencing	Office 365 F3/E1/E3/E5 or Microsoft 365 Business Basic/Business Standard/Business Premium/F1/F3/E3/E5
Audio Conferencing for India-Based Users	
Audio Conferencing for India-Based Users E5 Users Add-on	Office 365 E5 or Microsoft 365 E5

Audio Conferencing Extended Dial-out minutes to USA/CAN	Audio Conferencing, Audio Conferencing for India, Microsoft 365 E5, or Office 365 E5
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## Exchange Online

### 1. Program Availability

Online Services	Point	OL	S/S+	MPSA	OV/OVS	EA/EAS	OVS-ES	EES	CSP
Exchange Online Plan 1 (User SL)									
Exchange Online Plan 1 Add-on (User SL)									
Exchange Online Plan 1A for Alumni (User SL)									
Exchange Online Plan 2 (User SL)	1								
Exchange Online Kiosk (User SL)									
Exchange Online Archiving for Exchange Online (User SL)	1								
Exchange Online Archiving for Exchange Server (User SL)	1								
Exchange Online Protection (User SL)									
Office 365 Advanced Threat Protection Plan 1 (User SL)									
Office 365 Advanced Threat Protection Plan 2 (User SL)									
Office 365 Data Loss Prevention (User SL)									
Import Service for Office 365									

### 2. Product Conditions

Terms of Service: <a href="#">OST</a>	Product Pool: Server	Extended Term Eligible: All
Migration Rights: <a href="#">Product List - March 2014</a> (Exchange Hosted Archive)	Prerequisite: See below	Promotions: N/A
Qualified User Exemption: K only	Reduction Eligible: All	Reduction Eligible (SCE): All
Student Use Benefit: See <a href="#">Appendix H</a>	True-Up Eligible: All	Add-ons and From SA: See <a href="#">Appendix C</a>

#### 2.1 License Prerequisites

License	License Prerequisites
Office 365 Advanced Threat Protection Plan 1/Plan 2	Any Microsoft 365, Office 365, Exchange Online, SharePoint Online or OneDrive for Business plan license
Office 365 Data Loss Prevention	Any Microsoft 365, Office 365, Exchange Online, SharePoint Online or OneDrive for Business plan license

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## Microsoft Stream

### 1. Program Availability

Online Services	Point	OL	S/S+	MPSA	OV/OVS	EA/EAS	OVS-ES	EES	CSP
Microsoft Stream (User SL)									
Microsoft Stream Storage Add-on (500GB)									

### 2. Product Conditions

Terms of Service: <a href="#">OST</a>	Product Pool: Server	Extended Term Eligible: All
Migration Rights: N/A	Prerequisite: N/A	Promotions: N/A
Qualified User Exemption: N/A	Reduction Eligible: All	Reduction Eligible (SCE): All
Student Use Benefit: N/A	True-Up Eligible: All	

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# OneDrive for Business

## 1. Program Availability

Online Services	Point	OL	S/S+	MPSA	OV/OVS	EA/EAS	OVS-ES	EES	CSP
OneDrive for Business Plan 1 and 2 (User SL)	1	OL							
Remote Work Starter Plan									

## 2. Product Conditions

Terms of Service: <a href="#">OST</a>	Product Pool: Server	Extended Term Eligible: All
Migration Rights: N/A	Prerequisite: N/A	Promotions: N/A
Qualified User Exemption: N/A	Reduction Eligible: All	Reduction Eligible (SCE): All
Student Use Benefit: N/A	True-Up Eligible: All	

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# Project

## 1. Program Availability

Online Services	Point	OL	S/S+	MPSA	OV/OVS	EA/EAS	OVS-ES	EES	CSP
Project Essentials (User SL)	1	OL				EA/EAS	OVS-ES	EES	
Project Essentials Add-on (User SL)						EA/EAS	OVS-ES	EES	
Project Plan 1 (User SL)						EA/EAS	OVS-ES	EES	
Project Plan 1 Add-on (User SL)						EA/EAS	OVS-ES	EES	
Project Plan 3 (User SL)	1	OL				EA/EAS	OVS-ES	EES	
Project Plan 3 Add-on (User SL)						EA/EAS	OVS-ES	EES	
Project Plan 3 From SA (User SL)						EA/EAS	OVS-ES	EES	
Project Plan 5 (User SL)	1	OL				EA/EAS	OVS-ES	EES	
Project Plan 5 Add-on (User SL)						EA/EAS	OVS-ES	EES	
Project Plan 5 From SA (User SL)						EA/EAS	OVS-ES	EES	

## 2. Product Conditions

Terms of Service: <a href="#">OST</a>	Product Pool: Server, MPSA - All Application only	Extended Term Eligible: All
Migration Rights: N/A	Prerequisite: Add-on, From SA See <a href="#">Appendix C</a>	Promotions: N/A
Qualified User Exemption: N/A	Reduction Eligible: All	Reduction Eligible (SCE): All
Student Use Benefit: N/A	True-Up Eligible: All (except From SA)	Add-ons and From SA: See <a href="#">Appendix C</a>

### 2.1 Deployment Rights for Project

Project Plan 3/5 licensed users may install and use a copy of Project Standard/Professional 2016 or a prior version on devices licensed for and running Office Standard/Professional Plus. Devices licensed for Office Professional Plus by way of the Microsoft 365 From SA Office Professional Plus user entitlement are also eligible.

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# SharePoint Online

## 1. Program Availability

Online Services	Point	OL	S/S+	MPSA	OV/OVS	EA/EAS	OVS-ES	EES	CSP
SharePoint Online Plan 1 and 2 (User SL)	1	OL							
SharePoint Online Plan 1 Add-on (User SL)									
Office 365 Extra File Storage 1 GB (Add-on SL)	1	OL							

## 2. Product Conditions

Terms of Service: <a href="#">OST</a>	Product Pool: Server	Extended Term Eligible: All
---------------------------------------	----------------------	-----------------------------

Migration Rights: N/A	Prerequisite: Add-on, From SA See <a href="#">Appendix C</a>	Promotions: N/A
Qualified User Exemption: K only	Reduction Eligible: All	Reduction Eligible (SCE): All
Student Use Benefit: N/A	True-Up Eligible: All	Add-ons and From SA: See <a href="#">Appendix C</a>

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## Visio

### 1. Program Availability

Online Services	Point	OL	S/S+	MPSA	OV/OVS	EA/EAS	OVS-ES	EES	CSP
Visio Online Plan 1 (User SL)	1								
Visio Online Plan 2 (User SL)									
Visio Online Plan 2 Add-on (User SL)									
Visio Online Plan 1 and 2 From SA (User SL)									

### 2. Product Conditions

Terms of Service: <a href="#">OST</a>	Product Pool: Application	Extended Term Eligible: All
Migration Rights: N/A	Prerequisite: Add-on, From SA See <a href="#">Appendix C</a>	Promotions: N/A
Qualified User Exemption: N/A	Reduction Eligible: All	Reduction Eligible (SCE): All
Student Use Benefit: N/A	True-Up Eligible: All (except From SA)	Add-ons and From SA: See <a href="#">Appendix C</a>

#### 2.1 Deployment Rights for Visio

Visio Online Plan 2 licensed users may install and use a copy of Visio Standard/Professional 2016 or a prior version on devices licensed for and running Office Standard/Professional Plus. Devices licensed for Office Professional Plus by way of the Microsoft 365 From SA Office Professional Plus user entitlement are also eligible.

#### 2.2 Visio View/Print for Office Users

Users licensed with an Office 365 or Microsoft 365 license may use Visio in Reduced Functionality Mode to view and print files.

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## Workplace Analytics

### Program Availability

Online Services	Point	OL	S/S+	MPSA	OV/OVS	EA/EAS	OVS-ES	EES	CSP
Workplace Analytics (User SL)	1								

### Product Conditions

Terms of Service: <a href="#">OST</a>	Product Pool: Server	Extended Term Eligible: All
Migration Rights: N/A	Prerequisite: N/A	Promotions: N/A
Qualified User Exemption: All	Reduction Eligible: All	Reduction Eligible (SCE): All
Student Use Benefit: N/A	True-Up Eligible: All	

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## Other Online Services

### Bing Maps

#### 1. Program Availability

Online Services	Point	OL	S/S+	MPSA	OV/OVS	EA/EAS	OVS-ES	EES	CSP
Bing Maps Known 100 User (SL)	50								







Dynamics 365 Enterprise license <sup>1</sup>	Power Apps Portals that map to licensed Dynamics 365 application context and, Power Apps Portals that map to the same environment as the licensed Dynamics 365 application
Power Apps per app	1 Power Apps portal
Power Apps per user	Unlimited Power Apps portals

<sup>1</sup>Dynamics 365 Sales Enterprise, Dynamics 365 Customer Service Enterprise, Dynamics 365 Field Service, Dynamics 365 Project Operations, Dynamics 365 Finance, Dynamics 365 Supply Chain Management, Dynamics 365 Commerce, Dynamics 365 Human Resources, Dynamics 365 Business Central.

### 2.7 Prerequisites for Power Apps and Power Automate capacity add-on

Purchases of Power Apps and Power Automate capacity add-on require an underlying license purchase of Power Apps, Power Automate, Office/Microsoft 365, or Dynamics 365 licenses.

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## GitHub Offerings

### 1. Program Availability

Online Services	Point	OL	S/S+	MPSA	OV/OVS	EA/EAS	OVS-ES	EES	CSP
GitHub Actions									
GitHub Advanced Security (User SL)									
GitHub Engineering Direct									
GitHub Enterprise (User SL)									
GitHub Enterprise (Service SL)									
GitHub Insights (User SL)									
GitHub Learning Lab for Organizations (User SL)									
GitHub One (User SL)									
GitHub Packages									

### 2. Product Conditions

Terms of Service: OST	Product Pool: Application	Extended Term Eligible: N/A
Migration Rights: N/A	Prerequisite: GitHub Learning Labs for Organizations	Promotions: N/A
Qualified User Exemption: All	Reduction Eligible: GitHub Learning Labs for Organizations	Reduction Eligible (SCE): N/A
Student Use Benefit: N/A	Student Use Eligible: N/A	

#### 2.1 GitHub Enterprise

Customer's Licensed Users may access and use both the GitHub Enterprise Cloud online service (formerly known as Business Cloud) and GitHub Enterprise Server on-premises software (formerly known as GitHub Enterprise or GHE), as included in GitHub Enterprise.

#### 2.2 GitHub Enterprise Licensed via EES

Customer must acquire one GitHub Enterprise Service SL for the organization. For purposes of GitHub Enterprise License Terms, all of Customer's Education Qualified Users (or Knowledge Workers) and Students are deemed to be Licensed Users during the term of its Service SL.

#### 2.3 GitHub Actions and GitHub Packages

Customer may acquire these services only if it has also acquired User SLs for GitHub Enterprise or an offering that includes GitHub Enterprise.

#### 2.4 GitHub Advanced Security

Customer may acquire GitHub Advanced Security User SLs for its Licensed Users of GitHub Enterprise or an offering that includes GitHub Enterprise ("Customer's GitHub Enterprise Users").

#### 2.5 GitHub Insights

Customer may acquire GitHub Insights User SLs for Customer's GitHub Enterprise Users provided that it acquires User SLs for such service(s) for all of Customer's GitHub Enterprise Users. This option does not apply to Enrollment for Education Solutions customers.

#### 2.6 GitHub Learning Lab for Organizations

Customer may acquire GitHub Learning Lab User SLs only for its Licensed Users of GitHub Enterprise or an offering that includes GitHub Enterprise.

### 2.7 Training and Evaluation

Notwithstanding any terms to the contrary in Customer’s volume licensing agreement, access to GitHub Enterprise software or the online service for training or evaluation purposes requires User SLs.

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## Microsoft Defender Advanced Threat Protection for Servers

### 1. Program Availability

Online Services	Point	OL	S/S+	MPSA	OV/OVS	EA/EAS	OVS-ES	EES	CSP
Microsoft Defender Advanced Threat Protection for Servers	1								

See [Windows Desktop Operating System](#) product entry for Microsoft Defender Advanced Threat Protection per User.

### 2. Product Conditions

Terms of Service: <a href="#">OST</a>	Product Pool: Server	Extended Term Eligible: Yes
Migration Rights: See below	Prerequisite: See below	Promotions: N/A
Qualified User Exemption: N/A	Reduction Eligible: Yes	Reduction Eligible (SCE): N/A
Student Use Benefit: N/A	True-Up Eligible: N/A	

#### 2.1 Eligibility to acquire Microsoft Defender Advanced Threat Protection for Servers

Customers with a combined minimum of 50 licenses for one or more of the following may acquire Server SLs for Microsoft Defender Advanced Threat Protection for Servers (one per covered Server OSE): Microsoft Defender Advanced Threat Protection, Windows E5/A5, Microsoft 365 E5/A5 and Microsoft 365 E5 Security User SLs.

#### 2.2 Migration to Azure Security Center

Customers who acquire Server SLs for Microsoft Defender Advanced Threat Protection for Servers, and later during the term of their coverage choose to cover the same Servers with Azure Security Center, will be eligible for a credit toward Azure Security Center.

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## Microsoft Cloud App Security

### 1. Program Availability

Online Services	Point	OL	S/S+	MPSA	OV/OVS	EA/EAS	OVS-ES	EES	CSP
Microsoft Cloud App Security (User SL)	1								

### 2. Product Conditions

Terms of Service: <a href="#">OST</a>	Product Pool: Server	Extended Term Eligible: All
Migration Rights: N/A	Prerequisite: N/A	Promotions: N/A
Qualified User Exemption: All	Reduction Eligible: All	Reduction Eligible (SCE): All
Student Use Benefit: See <a href="#">Appendix H</a>	True-Up Eligible: All	

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## Microsoft Graph data connect for ISVs

### 1. Program Availability

Online Services	Point	OL	S/S+	MPSA	OV/OVS	EA/EAS	OVS-ES	EES	CSP
Microsoft Graph data connect for ISVs (SL)									

## 2. Product Conditions

Terms of Service: OST	Product Pool: Server	Extended Term Eligible: N/A
Migration Rights: N/A	Prerequisite: N/A	Promotions: N/A
Qualified User Exemption: N/A	Reduction Eligible: N/A	Reduction Eligible (SCE): N/A
Student Use Benefit: N/A	True-Up Eligible: All	

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## Microsoft Intune

### 1. Program Availability

Online Services	Point	OL	S/S+	MPSA	OV/OVS	EA/EAS	OVS-ES	EES	CSP
Microsoft Intune (User SL)	1								
Microsoft Intune Add-on (User SL)	1								
Microsoft Intune for Devices (Device SL)									
Microsoft Intune User SL Add-on Extra Storage 1 GB	1								
Microsoft Intune for EDU (Device SL)									
Microsoft Intune for EDU (User SL)									
Microsoft Intune for EDU Add-on (User SL)									

### 2. Product Conditions

Terms of Service: OST	Product Pool: Server	Extended Term Eligible: All
Migration Rights: N/A	Prerequisite: N/A	Promotions: N/A
Qualified User Exemption: N/A	Reduction Eligible: All (except Microsoft Intune for EDU (Device SL))	Reduction Eligible (SCE): N/A
Student Use Benefit: See <a href="#">Appendix H</a>	True-Up Eligible: All	Add-ons and From SA: See <a href="#">Appendix C</a>

#### 2.1 Microsoft Intune for EDU (Device SL)

##### 2.1.1 Term

The term of the Microsoft Intune for EDU (Device SL) subscription ("Intune Device SL") is six years from the date of order. If an Intune Device SL extends beyond the expiration of Customer's volume license agreement under which the Intune Device SL was purchased, the terms of such agreement will survive as necessary for the duration of the Intune Device SL.

##### 2.1.2 Cancellation and Reassignment

The Microsoft Intune for EDU (Device SL) may not be cancelled and can only be reassigned to a new device of the same model (or equivalent manufacturer-provided replacement) upon permanent hardware failure of the device the Intune Device SL was previously assigned to.

#### 2.2 Microsoft Intune (Device SLs)

Microsoft Intune for Devices is a new Intune service. Microsoft Intune (Device SLs), as an alternative to User SLs, are no longer available. Customers with existing Microsoft Intune (Device SLs) can continue to use them subject to the Use Rights in the October 2018 OST. The service may be used under Microsoft Intune (Device SLs) acquired via true-up rights subject to those same Use Rights.

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## Microsoft Learning

### 1. Program Availability

Online Services	Point	OL	S/S+	MPSA	OV/OVS	EA/EAS	OVS-ES	EES	CSP
Microsoft Learning Imagine Academy	75								
Microsoft Learning MCP 1 Exam Vouchers (Services SL)	1								
Microsoft Learning MCP 30 Exam Vouchers (User SL)	75								
Microsoft Learning MTA/MCA Certification 125 Exam Site License (Services SL)	125								
Microsoft Learning MOS/MCE Certification 125 Exam Site License (Services SL)	125								

Microsoft Learning MOS/MTA/MCE Certification 500 Exam Site License (Services SL) 125



## 2. Product Conditions

Terms of Service: OST	Product Pool: Server	Extended Term Eligible: N/A
Migration Rights: N/A	Prerequisite: N/A	Promotions: N/A
Qualified User Exemption: N/A	Reduction Eligible: N/A	Reduction Eligible (SCE): N/A
Student Use Benefit: N/A	True-Up Eligible: N/A	

### 2.1 Vouchers

Vouchers are provided upon purchase and expire 12 months from date of purchase.

**2.2 Microsoft Office Specialist (MOS) Microsoft Technology Associate (MTA) and Microsoft Certification Educator (MCE) Exam Site License**  
 Customer must be a Certiport/Pearson VUE test center authorized to deliver MOS or MTA exams under a site License. The site License will expire 12 months from the date of purchase. Any undelivered exams at the end of the term are forfeited. Academic Customers may only deliver site license exams to their faculty members and registered students.

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## Minecraft: Education Edition

### 1. Program Availability

Online Services	Point	OL	S/S+	MPSA	OV/OVS	EA/EAS	OVS-ES	EES	CSP
Minecraft: Education Edition	1								

### 2. Product Conditions

Terms of Service: OST	Product Pool: Application	Extended Term Eligible: N/A
Migration Rights: N/A	Prerequisite: N/A	Promotions: N/A
Qualified User Exemption: N/A	Reduction Eligible: N/A	Reduction Eligible (SCE): N/A
Student Use Benefit: See Appendix H	True-Up Eligible: N/A	

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## Visual Studio with GitHub Enterprise

### 1. Program Availability

Online Services	Point	OL	S/S+	MPSA	OV/OVS	EA/EAS	OVS-ES	EES	CSP
Visual Studio Enterprise with GitHub Enterprise (User SL)									
Visual Studio Professional with GitHub Enterprise (User SL)									
GitHub Enterprise for Visual Studio Enterprise (User SL)									
GitHub Enterprise for Visual Studio Professional (User SL)									

### 2. Product Conditions

Terms of Service: OST	Product Pool: Application	Extended Term Eligible: N/A
Migration Rights: N/A	Prerequisite: N/A	Promotions: N/A
Qualified User Exemption: All	Reduction Eligible: N/A	Reduction Eligible (SCE): N/A
Student Use Benefit: N/A	True-Up Eligible: N/A	

#### 2.1 GitHub Enterprise

The Licensed User may access and use both the GitHub Enterprise Cloud online service and GitHub Enterprise Server on-premises software as included in GitHub Enterprise as set forth in the [Online Services Terms](#).

#### 2.2 GitHub Enterprise Training and Evaluation

Notwithstanding any terms to the contrary in Customer's volume licensing agreement, access to GitHub Enterprise software or the online service for training or evaluation purposes requires User SLs.

### 2.3 Visual Studio License Terms

The Licensed User may use Visual Studio Enterprise or Visual Studio Professional, respectively, as set forth in the Visual Studio Product Entry subject to the same terms and conditions.

### 2.4 GitHub Enterprise for Visual Studio Licenses

Customer may purchase GitHub Enterprise for Visual Studio Licenses for any of its Visual Studio Enterprise or Professional Licensed Users with active Visual Studio subscriptions.

### 2.5 Step-Up Licenses

Customer is eligible to purchase Visual Studio Enterprise with GitHub Enterprise Step-up Licenses as provided in [Appendix B – Software Assurance](#), “Step-up License Availability” for any of its Visual Studio Professional with GitHub Enterprise Licensed Users.

### 2.6 Windows Virtual Desktop

Refer to the Windows Virtual Desktop section of the [Microsoft Azure Services](#) Product entry for rights to access Windows Virtual Desktop virtual machines.

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# Glossary

## Attributes

Attributes are identified in the tables in each Product Entry, and indicate rights or conditions applicable to the Products.

**Additional Software:** Software identified in the Use Rights for Server Products that Customer is permitted to use on any device in conjunction with its use of server software.

**Add-ons and From SA:** Indicates the Product is available as an Add-on, and/or From SA. Refer to [Appendix C - Online Services Add-ons & Other Transition Licenses](#) for details.

**Client Access Requirement:** Indicates whether or not a Server Product requires CALs for access by users and devices.

**Disaster Recovery:** Rights available to SA customers to use software for conditional disaster recovery purposes; refer to [Servers – Disaster Recovery Rights](#) section of [Appendix B – Software Assurance](#) for details.

**Down Editions:** Permitted lower editions corresponding to specified higher editions. Customer may use the permitted lower edition in place of a licensed higher-level edition, as permitted in the Universal License Terms.

**Extended Term Eligible:** Online services that are eligible for an extended term as described in the Enterprise and Enterprise Subscription licensing agreement.

**External User Access Requirement:** Indicates specific license requirements or options for access by External Users.

**Fail-Over Rights:** An SA benefit that allows Customer to run passive fail-over Instances as described in the Product entry.

**Included Technologies:** Indicates other Microsoft components included in a Product; refer to the Included Technologies section of Universal License Terms for details.

**License Mobility:** Rights available to SA customers either to reassign licenses outside the standard timelines or to use Products on multitenant servers outside their own datacenters; refer to License Mobility section of [Appendix B – Software Assurance](#) for details.

**License Terms:** Terms and conditions governing deployment and use of a Product.

**Migration Rights:** Customer may be able to upgrade from prior versions of the software or other Products under special terms published in the Product Entry or Product List as indicated. Customer may also have non-standard downgrade rights to use prior versions of the same or other Products in place of the licensed version.

**Prerequisite:** Indicates that certain additional conditions must be met in order to purchase Licenses for the Product.

**Prerequisite (SA):** Indicates that certain additional conditions must be met in order to purchase SA coverage for the Product.

**Prior Version:** Earlier versions of Product and their Date Available.

**Notices:** Identifies the notices applicable for a Product; refer to the Notices section of the [Universal License Terms](#) for details.

**Online Subscription Program (OSP):** The Product is available in an Online Subscription program.

**Product Pool:** Indicates the grouping of Products that the Product belongs to for the purposes of determining pricing discounts. There are three Product pool categories; Application, Server and System.

**Product-Specific License Terms:** Indicates that Product-Specific terms and conditions governing deployment and use of the Product are included below the Use Rights table.

**Promotions:** Indicates that limited time offers apply to the Product as described in [Appendix F – Promotions](#).

**Qualified User Exemption:** Exemption applicable to users who access Products solely under one of these licenses. These users are exempt from being counted as a Qualified User under Customer's volume licensing agreement, notwithstanding anything to the contrary in that agreement.

**Reduction Eligible:** An Online Service for a customer that has an Enterprise Enrollment, Enterprise Subscription Enrollment, Microsoft Azure Enrollment or Enrollment for Education Solutions can report a reduction in licenses or Allocated Annual prepayment.

**Reduction Eligible (SCE):** Products for which a Server & Cloud Enrollment customer can report a reduction in subscription licenses or future Allocated Annual prepayment after 12 continuous months.

**Roaming Rights:** An SA benefit that permits the Primary User of a Licensed Device certain access and use rights. The Primary User may use a Qualifying Third Party Device to (i) remotely access and use permitted Instances or copies of the software running on Servers dedicated to Customer's use, (ii) locally use a permitted Instance or copy in a Virtual OSE, or (iii) locally access a permitted Instance or copy of the software on a USB drive via Windows to Go, in each case solely for work-related purposes while the user is not on Customer's premises. No other user may use the software under the same License at the same time. Despite anything to the contrary in Customer's volume licensing agreement, Qualified Desktops and Devices do not include any Qualifying Third Party Devices from which Customer's users access and use the software and any (other) enterprise product solely under Roaming Rights.

**SA Equivalent Rights:** Software SLs acquired under a Server and Cloud Enrollment or Microsoft Products and Services Agreement provide the same SA rights and benefits during the term of the Subscription as Licenses with SA coverage.

**Self Hosting:** An SA benefit that permits use of Products for conditional hosting purposes; refer to the Servers – Self Hosted Applications section of [Appendix B – Software Assurance](#) for details.

**SA Benefits Pool:** Indicates the category of the Product for purposes of determining SA Benefits broadly applicable to that Product Pool, as listed in [Appendix B – Software Assurance](#).



**Student Use Benefit:** The option for Institutions that license a qualifying Product for their Organization-wide count to license a Product for use by their Students at a ratio of 1:15 or 1:40 Students per Education Qualified User or Knowledge Worker (or staff/faculty user) at no additional cost. The qualifying Products and the Products eligible for the Student use, and the applicable ratios are identified in [Appendix H – Student Use Benefits and Academic Programs](#). Such Student Licenses may not be counted toward minimum order requirements. The License Terms for the Products licensed under the Student Use Benefit govern Students’ use. Rights to use Products under the Student Use Benefit expire when Student is no longer affiliated with the Institution.

**Suite:** A Product that is comprised of components that are also licensed separately. A suite is licensed under a single License that is assigned to a single user or device, and allows use of all of its components on the single device or by a single user to which it is assigned. The components of the Suite may not be separated and used on separate devices or by separate users.

**True-Up Eligible:** An Online Service subscription License that an Enterprise or Enterprise Subscription customer can order via the true-up or annual order process rather than monthly.

**UTD Discount:** An Up to Date Discount is a discount available to Open Value Subscription customers ordering licenses for Product during the first year of their agreement if they have a License for the corresponding qualifying Product.

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## Cell Values

Cell Values are used in the Program Availability table in each of each Product Entry to identify how the Product is offered in each program. The volume licensing program agreements define these offering types.

**A = Additional Product:** The Product is offered as an Additional Product.

**AO = Additional Product Organization Wide:** The Product is offered as an Additional Product and must be ordered organization-wide.

**AF = Additional Product Faculty:** The Product is offered as an Additional Product for the School program and must be licensed on an Organization-wide basis covering all Faculty and Staff.

**AP = Additional Product in EES 2017:** The Product is offered as an Additional Product for the Enrollment for Education Solutions (with a publication date on or after October 2017).

**AS = Additional Product School:** The Product is offered as an Additional Product for the School program only.

**E = Enterprise Product:** The Product is offered as an Enterprise Product, but not a desktop.

**ED = Education Desktop:** The Product is offered as an education desktop platform product with either Enterprise CAL Suite or Core CAL Suite under Enrollment for Education Solutions (with a publication date prior to October 2017) and Open Value Subscription – Education Solutions and must be licensed on an Organization-wide basis covering all Faculty and Staff.

**EO = Enterprise Online Service:** The Online Service is offered as an enterprise Online Service or platform Online Service and satisfies the Enterprise Product requirements. EO for Core CAL and Enterprise CAL Suite require the corresponding CAL Suite Bridge.

**EP = Education Platform Product:** The Product is offered as an Education Platform Product under the Enrollment for Education Solutions (with a publication date on or after October 2017) and must be licensed on an Organization-wide basis covering all Education Qualified Users or Knowledge Workers or for the full Student Count.

**OM = Open Minimum:** Each License counts solely as 5 Licenses for purposes of the initial order minimum in Open License and Open Value.

**OW = Organization-wide:** Available under the Organization-wide option.

**P = Non-Organization Wide in Open Value:** The Product is offered on a non-Organization Wide basis in Open Value.

**S = Student Offering School Only:** The Product is offered as a Student Offering under School Program only and must be ordered for the full Student Count.

**SD = School Desktop Platform Product:** The Product is offered as a school desktop platform product with either Enterprise CAL Suite or Core CAL Suite under School Program. An SD is counted as three units.

**ST = Student Offering:** The Product is offered as a Student Offering and must be ordered for the full Student Count.

**SP = Server and Tools Product:** The Product is a server and tools product offered under the Server and Cloud Enrollment.

**UC = United States Government Community Cloud Service:** The Online Service is offered as a Government Community Cloud (U.S. only) Service. For UC availability for Online Service suites, refer to the Program Availability table for each of the suite’s components.

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## Column Headings

Column Headings appear in the Program Availability table for each Product Entry and organize program availability information by program, offering type, points and availability dates.

CSP = Cloud Solution Provider.

**DA = Date Available:** The date a Product is first available, designated as month/year. For software, it is the earlier of the date Microsoft makes licenses available for ordering or available for download from the Volume Licensing Services Center (VLSC).

**EA/EAS = Enterprise Agreement and Enterprise Subscription Agreement:** Includes Enterprise and Enterprise Subscription Enrollments, including the Server Cloud Enrollment.

**EES = Enrollment for Education Solutions:** Includes Enrollment for Education Solutions and the School Enrollment under the Campus and School Agreement (CASA).

**L = License:** Point value designated for the software License indicated. If point value is parenthesis, that is the value for CASA.

**L/SA = License and SA:** Point value designated when License and SA is offered for purchase at the same time.

**MPSA = Microsoft Products and Services Agreement.**

**OL = Open License:** Open License includes Open License, Open License for Academic, Open License for Government, and Open License for Charity, where available.

**OV/OVS = Open Value and Open Value Subscription:** Includes Open Value, Open Value Subscription, Open Value for Government, and Open Value Subscription for Government.

**OVS-ES = Open Value Subscription – Education Solutions.**

**Point =** The value assigned to a Product used to calculate the volume pricing level applicable to Customer’s volume licensing agreement.

**SA = Software Assurance:** Point value designated when SA is offered for the software indicated.

**S/S+ = Select and Select Plus:** This also includes Select for Academic, Select Plus for Academic, Select for Government, and Select Plus for Government.

## Definitions

**Academic Program** means Academic Purchasing Account on MPSA, Academic Select License, Select Plus for Academic, Campus and School Agreement, or Open Value Subscription – Education Solutions.

**Add-on** means a license that is purchased in addition to (and associated with) a previously acquired Qualifying License (or set of Qualifying Licenses). An Add-on license is assigned to a single Qualified User (as defined in Customer’s Enrollment) or to the same Server or device as the Qualifying License(s). For any Add-on User SL not appearing individually in OST, the license terms applicable to a full User SL for the same service apply.

**Additive CAL** means a CAL that must be used on conjunction with a base CAL.

**Additive External Connector License** means an External Connector License that must be used in conjunction with a base External Connector License.

**Authorized Outsourcer** means any third party service provider that is not a Listed Provider and is not using Listed Provider as a Data Center Provider as part of the outsourcing service.

**CAL** means client access license, which may be assigned by user or device, as appropriate. A user CAL allows access to corresponding version of the server software or earlier versions of the server software from any device by one user. A device CAL allows access to corresponding versions of the server software or earlier versions of the server software from one device by any user. CALs allow access to server software running on Customer’s Licensed Servers only.

**CAL Equivalent License** means a User SL or External Connector License identified in a Product’s “Server Software Access” table, or a CAL suite or SL, as identified in the CAL Equivalent Licenses Table, [Appendix A](#), as applicable. A CAL suite is a CAL Equivalent License only if Customer purchased the License after the Server Product’s Date Available or if Customer had active SA coverage as of the Date Available.

**Client OSE** means an OSE running a client operating system.

**Clustered HPC Application** means a high performance computing applications that solves, in parallel, complex computational problems, or a set of closely related computational problems. Clustered HPC Applications divide a computationally complex problem into a set of jobs and tasks which are coordinated by a job scheduler, such as provided by Microsoft HPC Pack, or similar HPC middleware, which distributes these in parallel across one or more computers operating within an HPC cluster.

**Cluster Node** means a device that is dedicated to running Clustered HPC Applications or providing job scheduling services for Clustered HPC Applications.

**Core Factor** means a numerical value associated with a specific Physical Processor for purposes of determining the number of Licenses required to license all of the Physical Cores on a Server.

**Customer Data** means all data, including all text, sound, video, or image files, and software, that are provided to Microsoft by, or on behalf of, Customer through use of the Online Service. Customer Data does not include Professional Services Data.

**Cycle Harvesting Node** means a device that is not dedicated to running Clustered HPC Applications or job scheduling services for Clustered HPC Applications.

**Data Center Provider** means an entity that provides infrastructure or software services, directly or indirectly, to another service provider. Microsoft may also serve as a Data Center Provider through Microsoft Azure.

**Education Qualified User** means an employee or contractor (except Students) who accesses or uses an Education Platform Product for the benefit of the Institution.

**Embedded Unified Solution** means a business application developed by Customer's Reseller that the Reseller licenses to Customer that adds significant and primary functionality to an Embedded SL Product.

**External Connector License** means a License assigned to a Server dedicated to Customer's use that permits access to the corresponding version of the server software or earlier versions of the server software by External Users.

**External Users** means users that are not employees, onsite contractors or onsite agents of Customer or its Affiliates.

**Fail-over OSE** means an OSE (or in the context of Azure Hybrid Benefit, a SQL Server Virtual Machine) in which passive Instances of the server software are running in anticipation of a fail-over event.

**Government Community Cloud (U.S. only)** means Online Services that are available exclusively to the Community. Use Rights for government community cloud services are equivalent to those of their standard multitenant equivalents unless otherwise noted. Qualifying Online Services are offered as government community cloud services and non-government community cloud services. Customers may be provisioned as one or the other but not a mix of both. Online Services designated as government community cloud may not be deployed in the same domain with specific non-government community cloud services.

**Graduate** means a Student who has (1) completed a grade or a level in a school or an educational institution in the Organization that qualifies the Student for enrollment into college or university or (2) earned a diploma or degree from a college or university in the Organization.

**Hardware Thread** means either a Physical Core or a hyper-thread in a Physical Processor.

**High Performance Computing (HPC) Workload** means a workload where the server software is used to run a Cluster Node and is used in conjunction with other software as necessary to permit security, storage, performance enhancement and systems management on a Cluster Node for the purpose of supporting the Clustered HPC Applications.

**Instance** means an image of software that is created by executing the software's setup or install procedure or by duplicating an existing Instance.

**Knowledge Worker** means any employee (including a Student employee), contractor, or volunteer of or for the Institution who uses a Product or Qualified Device for the benefit of the institution or within the user's relationship with the Institution. This definition does not include users of any Product identified in the Product Terms as excluded from the definition of Knowledge Worker.

**License** means the right to download, install, access and use a Product.

**Licensed Device** means a single physical hardware system, dedicated to Customer's use, to which a License is assigned. Dedicated devices that are under the management or control of an entity other than Customer or one of its Affiliates are subject to the Outsourcing Software Management clause. For purposes of this definition, a hardware partition or blade is considered to be a separate device.

**License Mobility through Software Assurance Partner** means an entity identified at <https://www.microsoft.com/en-us/licensing/licensing-programs/software-assurance-license-mobility> and authorized by Microsoft to host customers' software on shared servers.

**Licensed Server** means a single Server, dedicated to Customer's use, to which a License is assigned. Dedicated Servers that are under the management or control of an entity other than Customer or one of its Affiliates are subject to the Outsourcing Software Management clause. For purposes of this definition, a hardware partition or blade is considered to be a separate Server.

**Licensed User** means the single person to whom a License is assigned.

**Listed Providers** include entities identified by Microsoft at <http://aka.ms/listedproviders>. Microsoft may identify additional Listed Providers at <http://aka.ms/listedproviders> from time to time; however, if Customer is using an outsourcer at the time its Authorized Outsourcer status is terminated, then Customer may temporarily continue to use the same entity in its former Authorized Outsourcer capacity for one year from the date of that change in status.

**Management License (ML)** means a License that permits management of one or more OSEs by the corresponding version of the server software or any earlier version of the server software. There are two categories of Management Licenses: Server Management License and Client Management License. There are three types of Client Management Licenses: User, OSE and device. A User Management License permits management of any OSE accessed by one user; an OSE Management License permits management of one OSE accessed by any user; a device Management License (Core CAL or Enterprise CAL Suite) permits management of any OSE on one device.

**Management License Equivalent License** means a User SL identified in a Product's "Management License" table, or a CAL suite or SL, as identified in the Management License Equivalent Licenses Table, Appendix A, as applicable. A CAL suite is a Management License Equivalent License only if Customer purchased the license after the Server Products' Date Available or if Customer had active SA coverage as the Date Available.

**Managing an OSE** means to solicit or receive data about, configure, or give instructions to the hardware or software that is directly or indirectly associated with the OSE. It does not include discovering the presence of a device or OSE.

**Operating System Environment (OSE)** means all or part of an operating system Instance, or all or part of a virtual (or otherwise emulated) operating system Instance which enables separate machine identity (primary computer name or similar unique identifier) or separate administrative rights, and instances of applications, if any, configured to run on the operating system Instance or parts identified above. A physical hardware system can have one Physical OSE and/or one or more Virtual OSEs.

**Physical Core** means a core in a Physical Processor.

**Physical OSE** means an OSE that is configured to run directly on a physical hardware system. The operating system Instance used to run hardware virtualization software or to provide hardware virtualization services is considered part of the Physical OSE.

**Physical Processor** means a processor in a physical hardware system.

**Primary User** means the user who uses a Licensed Device more than 50% of the time in any 90 day period.

**Primary Workload** means either an OSE in which Instances of the server software are running under the "Use Rights" section of a product entry or, in the context of Azure Hybrid Benefit rights, a SQL Server Virtual Machine.

**Production Environment** means any Physical or Virtual OSE running a production workload or accessing production data, or Physical OSE hosting one or more Virtual OSEs running production workloads or accessing production data.

**Qualifying Third Party Device** means a device that is not controlled, directly or indirectly, by Customer or its Affiliates (e.g., a third party's public kiosk).

**Running Instance** means an Instance of software that is loaded into memory and for which one or more instructions have been executed. (Customer "Runs an Instance" of software by loading it into memory and executing one or more of its instructions.) Once running, an Instance is considered to be running (whether or not its instructions continue to execute) until it is removed from memory.

**SL** means subscription License that allows access to software or a hosted service for a defined period of time.

**Server** means a physical hardware system capable of running server software.

**Server Farm** means a single data center or two data centers each physically located either in time zones not more than four hours apart, or within the EU or EFTA. A data center can be moved from one Server Farm to another, but not on a short-term basis. (EU is European Union; EFTA is European Free Trade Association).

**Step-up** means a license purchased in addition to (and associated with) a previously acquired base license. For any Step-up User SL not appearing individually in the OST, the license terms applicable to the equivalent full User SL apply.

**Student** means any individual enrolled in any educational institution that is part of Institution's Organization whether on a full-time or part-time basis.

**Student Qualified Device** means a Qualified Device owned, leased, or controlled by a Student or owned, leased, or controlled by the Organization and assigned for individual, dedicated use by a Student.

**Virtual Core** means the unit of processing power in a virtual hardware system. A Virtual Core is the virtual representation of one or more hardware threads.

**Virtual OSE** means an OSE that is configured to run on a virtual hardware system.

**Web Workload** (also referred to as "Internet Web Solutions") are publicly available web pages, websites, web applications, web services, and/or POP3 mail serving. For clarity, access to content, information, and applications served by the software within an Internet Web Solution is not limited to Customer's or its affiliates' employees.

Software in Internet Web Solutions is used to run:

- web server software (for example, Microsoft Internet Information Services), and management or security agents (for example, the System Center Operations Manager agent);
- database engine software (for example, Microsoft SQL Server) solely to support Internet Web Solutions; or
- the Domain Name System (DNS) service to provide resolution of Internet names to IP addresses as long as that is not the sole function of that instance of the software.

**Windows Server Container with Hyper-V isolation** (formerly known as, Hyper-V Container) is a container technology in Windows Server which utilizes a virtual operating system environment to host one or more Windows Server Container(s). Each Hyper-V isolation instance used to host one or more Windows Server Container is considered one Virtual OSE.

**Windows Server Container without Hyper-V isolation** (formerly known as, Windows Server Container) is a feature of Windows Server software.

**Windows Software Components** means components of Windows software included in a Product. Microsoft .NET Framework, Microsoft Data Access Components, PowerShell software and certain .dlls related to Microsoft Build, Windows Identity Foundation, Windows Library for JavaScript, Debughelp.dll, and Web Deploy technologies are all Windows Software Components.



# Appendix A – CAL/ML Equivalent Licenses

Rights to access server software running on Customer’s Licensed Servers or to Manage OSEs are available under CAL suites and Online Services SLs. If a cell is shaded blue in a server’s row, the CAL suite or SL in that column satisfies the License requirement for access to (or management of) that Server Product’s base or additive functions. CAL suites must be purchased after the Product’s Date Available or have active SA coverage on such date to satisfy access requirements for the current version of the Server Product.

Servers	Office 365 Enterprise/Education			Core CAL				Enterprise CAL				Enterprise Mobility Security		Microsoft 365 Education			Microsoft 365					
	E1	E/A5	E/A5	Suite	Bridge O365	Bridge Intune	Bridge O365+ Intune	Bridge EMS	Suite	Bridge O365	Bridge Intune	Bridge O365+ Intune	Bridge EMS	E3	E5	A3 With Core CAL	A3	A5	F1/F3	E3	E5	
<b>Exchange Server 2019 Standard</b>																						
<u>Base</u>																						
<u>Additive</u>																						
<b>Exchange Server 2019 Enterprise</b>																						
<u>Base</u>																						
<u>Additive</u>																						
<b>SharePoint Server 2019</b>																						
<u>Base</u>																						
<u>Additive</u>																						
<b>Microsoft Audit and Control Management Server 2013</b>																						
<u>Base</u>																						
<b>Skype for Business Server 2019</b>																						
<u>Base</u>																						
<u>Additive (Ent)</u>																						
<u>Additive (Pls)</u>																						
<b>Windows MultiPoint Server 2016 Premium (Academic only)</b>																						
<u>Base</u>																						
<u>Additive</u>																						
<b>Windows Server 2019 Standard</b>																						
<u>Base</u>																						
<u>Additive (RMS)</u>																						
<u>Additive (MIM)</u>																						
<b>Windows Server 2019 Data Center</b>																						
<u>Base</u>																						
<u>Additive (RMS)</u>																						
<u>Additive (MIM)</u>																						
<b>Advanced Threat Analytics 2016</b>																						
<u>Management</u>																						
<b>Microsoft Endpoint Configuration Manager (formerly, System Center Configuration Manager)</b>																						
<u>Management</u>																						
<b>System Center Endpoint Protection 1606</b>																						
<u>Management</u>																						
<b>System Center Service Manager</b>																						
<u>Management</u>																						

**Note:** Office 365 A1, Microsoft 365 A1, and Office 365 Nonprofit E1 do not satisfy the License requirement for access to (or management of) the Products in this table. With the exception of Advanced Threat Analytics 2016 and Microsoft Endpoint Configuration Manager, users licensed through Student Use Benefits do not satisfy the License requirement for access to (or management of) the Products in this table. A license for the Enterprise CAL Suite with active SA coverage provides rights equivalent to Data Loss Prevention and Exchange Online Protection.

# Appendix B – Software Assurance

## Purchasing Software Assurance

There are three different levels of commitment Customer may select when purchasing SA, which may vary by program. Customer can:

1. Commit to attaching SA on all platform products.
2. Commit to attaching SA on all purchases under a particular Product pool (Applications, Systems or Servers), referred to as Software Assurance Membership (SAM).
3. Purchase SA on individual Products without making any commitment to expanding SA to other Products.

SA must be acquired at the time of acquiring the License or upon renewal of an existing SA term. Unless otherwise stated, only licenses for the latest version of a Product are eligible for SA. In the case of a transfer of perpetual Licenses, the transferee may acquire SA for such transferred Licenses within 30 days from the date of transfer and provided that the transferor maintained active SA for the Licenses up until the date of transfer.

Customers may have the option to acquire SA for certain licenses purchased from the Retail channel (full packaged product) or from an Original Equipment Manufacturer (OEM), within 90 days from the date of purchase as described in the table below. Under Open Value, this option applies only to non-Organization-wide/ Company-wide products. Under Enterprise Agreements, it applies only to Additional Products. Customers who acquire SA for OEM or retail licenses have the option of installing and using the Volume Licensing software for the current version at any time.

Pool	Full Packaged Products	OEM	Programs
Application Pool	N/A	SA available only as outlined below	Applies to Open License, MPSA, Select, Select Plus and non Organization wide under Open Value and Additional Products under Enterprise Agreements. It does not apply to Enterprise Products under Open Value and Enterprise Agreements.
Server Pool	SA available	SA available	

Customers who acquire Microsoft Office Professional 2016 or 2019 from an OEM may acquire SA for Microsoft Office Standard in the Open License programs, Select and Select Plus programs, and non Company-wide under Open Value within 90 days from the date of OEM purchase.

Customers who acquire SQL Server 2017 from an OEM prior to March 31, 2020 may acquire Software Assurance for SQL Server within 90 days of the OEM purchase.

Enterprise Agreement customers who transitioned to an Online Service or who purchased a From SA subscription License in lieu of renewing SA may reattach SA to a License at anniversary or renewal without purchasing a new License. SA must be ordered for that License for the remainder of the enrollment term. SA coverage may not exceed the quantity of perpetual Licenses for which SA was current at the time of any prior transition or renewal and may not be reattached to transferred Licenses.

## Renewing Software Assurance

### Renewing Coverage under the Same Agreement

Terms for renewing SA under the same program agreement by which it was initially ordered are contained Customer's volume licensing agreements. Customers may renew SA without the need to simultaneously order a License as long as the SA coverage has not expired. In addition, the following terms apply to specific programs as noted:

#### Open License

SA coverage ordered under an Open License authorization number ends upon expiration of that number. To renew, Customer must submit a renewal order for SA within 90 days after their authorization number expiration date.

#### Enterprise Agreement

To renew SA coverage under the same enrollment under an Enterprise Agreement, Customer must sign a new 2011 or later Enterprise Enrollment and Agreement (if they have not already), and must submit a renewal order for SA (as applicable) for 1) all Enterprise Products, Application Platform Products, Core Infrastructure Products and Additional Products they wish to renew and 2) any Online Services, accounting for transitions (if applicable).

#### Enrollment for Application Platform

EAP customers who have previously deferred Licenses via SA prior L SKUs must buyout their Licenses before they can renew SA.

### Renewing Coverage from a Separate Agreement

Customer may renew SA for any Product if Customer has obtained a perpetual License and SA for that Product under a previous agreement in the same Volume Licensing Program, provided that 1) Customer's new agreement enrollment, or order (for MPSA) must be effective no later than the

day following the date of expiration of the previous agreement or enrollment, and 2) the SA renewal order must be placed prior to the expiration of prior SA coverage, unless such coverage is being renewed from an Open License Agreement. In that case, Customers have 90 days from the expiration to place the order.

Customer may also renew SA from one Volume Licensing program into a different Volume Licensing Program. For Enterprise Products originally purchased under a program with a company-wide coverage requirement, this exception applies only if the customer is renewing SA into the MPSA or a program with a company-wide coverage requirement for Enterprise Products. For Agreement versions 2008 and prior, as long as coverage is renewed within 30 days (90 days if renewing from Open License program), customers will be deemed to have SA coverage during any period of time between when their expiring SA coverage lapsed and when the new coverage begins.

**Renewing Software Assurance Coverage for Client Access Licenses (CALs) and Client Management Licenses (MLs)**

**Transitioning between User and Device CALs:** Customers renewing SA for CALs can switch between User and Device. This transition does not change the CAL edition (i.e. Standard to Enterprise).

**Transitioning between User and OSE Client MLs:** Customers renewing SA for client MLs can switch between User and OSE.

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## Migration License for Discontinued or End-of-Life Products

“Qualifying License,” as used here, refers to a License with SA coverage as of the date specified and for the Product identified in the product entry referencing this section.

“Migration License,” as used here, refers to rights granted in the Product Entry referencing this section.

Unless stated otherwise in the Product Entry:

- Customer may upgrade to and use software under a Migration License in place of software covered by the Qualifying License. The Customer may not use software under both licenses simultaneously.
- Migration Licenses are granted on 1:1 for each of Customer’s Qualifying Licenses.
- If Customer acquired perpetual rights to use software under a Qualifying License, the rights to use software acquired under the Migration License are likewise perpetual; otherwise, rights acquired under a Migration License expire when the underlying Qualifying License expires.
- Upon expiration of SA coverage on the Qualifying License, Customer may acquire SA for the same version and edition of the Product covered by the Migration License, without the need to first acquire separate new Licenses. This option does not apply to customers buying licenses under subscription programs (e.g., Enterprise Subscription Agreements or Open Value Subscription agreements).
- Customer may not transfer Migration Licenses separately from Qualifying Licenses.
- Subsequently acquired licenses for the same discontinued Product under the same enrollment term under an Enterprise or Enterprise Subscription Agreement, Open Value Subscription or Enrollment for Education Solutions, as part of Customer’s scheduled true-up process are also Qualifying Licenses for purposes of the license grant. Coverage for Products under subscription agreements must be continuous.

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## Software Assurance Benefits

Most SA Benefits are available across each Product Pool, as described in the table below. Active SA for any qualifying Product qualifies Customer for the benefits shown in the table below. Some benefits are awarded based on Customer’s SA spend on a given set of qualifying products within a pool. For these purposes, “SA spend” is not literally Customer’s actual dollars spent, but is an approximation of what Customer has spent on SA coverage for those Products under its Select or Enterprise Enrollment, Select Plus registration or Open agreement (For example, SA only purchases and the SA component of L&SA purchases). For customers under subscription programs, it is an approximation of the total dollars Customer has spent licensing those Products under its enrollment or agreement. Software Assurance Membership (“SAM”) is required for some benefits. Customer’s access and rights to use their SA benefits, generally expires upon expiration of their SA coverage, unless otherwise noted below or in the Product Entries. The benefits are subject to change and may be discontinued at any time without notice. Availability of benefits varies by program, region, fulfillment options and language.

Benefit	Applications Pool	Systems Pool	Server Pool
New Version Rights	X	X	X
Office for the web, Office Online Server	X		X
Planning Services		X	
Enterprise Source Licensing Program		X	
Enterprise Sideloading		X	
Microsoft Desktop Optimization Pack (MDOP)		X	
Windows Virtual Desktop Access (VDA)		X	
Training Vouchers	X	X	
Home Use Program	X		

24x7 Problem Resolution Support	X	X	X
Microsoft Dynamics CustomerSource			X
Step-Up License	X		X
Servers – Disaster Recovery Rights			X
License Mobility			X
Servers – Self Hosted Applications		X	
Windows SA per User Add-on Purchase Rights		X	
Windows to Go		X	
Virtualization Rights for Windows and Windows Embedded Desktops		X	

**New Version Rights**

Customer may upgrade to the latest version of an available Product. If Customer acquires perpetual Licenses through SA, it may deploy new version upgrades for those Licenses after SA coverage has expired, but only to versions released during the active SA coverage. Use of the new version is subject to the License Terms for that version.

**Calculating Software Assurance Benefits Points**

Entitlements are calculated on a points-based system for the following benefits:

- Planning Services
- Training Vouchers
- 24x7 Problem Resolution Support (Phone) in MPSA only

Software Assurance Benefits points are calculated based on the number of qualifying licenses, applicable pools, and the points associated with qualifying products as listed in the following table. Points cannot be combined across agreements, enrollments, or Purchasing Accounts to qualify for additional points. Reduction of points as a result of returns and other billing adjustments, where allowed, may result in the loss of entitlements during the present or future entitlement periods.

Office Applications and Server Licenses	Points
Office Application Pool Products (including Office suites, Project Standard and Professional, Visio Standard and Professional), Windows Desktop Operating System Products, Microsoft Dynamics AX Task CAL	1
Microsoft Dynamics 365 Customer Service CAL, Microsoft Dynamics 365 Sales CAL, Dynamics 365 Operations Server, Microsoft Dynamics 365 Operations Activity CAL, Microsoft Dynamics AX Functional CAL, Microsoft Dynamics AX Store Server	2
Windows Server Standard (2-packs of Core Licenses), System Center Standard Server Management License (2-packs of Core Licenses)	5
Windows Server Datacenter (2-packs of Core Licenses), System Center Datacenter Server Management License (2-packs of Core Licenses)	10
SQL Server Standard edition, Windows Server Standard edition, System Center Standard Server Management License (2-processor), Visual Studio Professional Subscription, Visual Studio Test Professional Subscription, and Microsoft Dynamics AX Enterprise CAL, Microsoft Dynamics 365 Operations CAL	25
SQL Server Enterprise edition, SQL Server Business Intelligence, Windows Server Enterprise edition and Visual Studio Enterprise Subscription	50
SQL Server Data Center edition, SQL Parallel Data Warehouse, Windows Server Datacenter edition, Microsoft Dynamics AX Standard Commerce Core Server, and System Center 2012 Datacenter Server Management License (2-processor)	75

*Note: For SQL CALs, see the CAL Suites table in this section*

**Office for the web services and Office Online Server**

Users of a device licensed with the qualifying applications may access Office for the web services and Office Online Server for editing documents from the Licensed Device. The Primary User of the Licensed Device may access Office for the web services and Office Online Server for editing documents from any device.

Qualifying Desktop Application	Office Online rights
Office Standard Office Professional Plus Office for Mac Standard	Office for the web Office Online Server

*Users must also be licensed for SharePoint Online or OneDrive for Business plans to access Office for the web services.*

**Planning Services**

Customers (other than those purchasing through Academic Programs) with a Company-wide commitment or SAM in the Application and Server Pools are eligible for this benefit. The Planning Services benefit provides qualifying customers with pre-determined customized service offerings.

Qualified customers receive a number of Planning Services days based on the number of SA Benefit points from qualifying licenses. The number of days Customer receives for the available Planning Services offerings are combined into a pool of Planning Services days.

Office Applications and Server Licenses	Points
Office Application Pool Products (including Office suites, Project Standard and Professional, Visio Standard and Professional), Microsoft Dynamics AX Task CAL	1
Microsoft Dynamics 365 Customer Service CAL, Microsoft Dynamics 365 Sales CAL, Dynamics 365 Operations Server, Microsoft Dynamics 365 Operations Activity CAL, Microsoft Dynamics AX Functional CAL, Microsoft Dynamics AX Store Server	2
SQL Server Standard edition, Windows Server Standard edition, Microsoft Dynamics CRM Server 2013 and Microsoft Dynamics CRM Server 2015, System Center 2012 Standard Server Management License (2-processor), Visual Studio Professional Subscription, Visual Studio Test Professional Subscription, Microsoft Dynamics AX Enterprise CAL, Microsoft Dynamics 365 Operations CAL	25



SQL Server Enterprise edition, SQL Server Business Intelligence, Windows Server Enterprise edition and Visual Studio Enterprise Subscription	50
SQL Server Data Center edition, SQL Parallel Data Warehouse, Windows Server Datacenter edition, Microsoft Dynamics AX Standard Commerce Core Server, System Center 2012 Datacenter Server Management License (2-processor)	75

**Note:** For SQL CALs, see the CAL Suites table in this section

The total points Customer is eligible for defines the Planning Services Days entitlements as shown below:

Office Applications and/or Server Licenses Points	200-499	→1,999	→3,999	→29,999	→49,999	→99,999	→199,999	→399,999	→599,999	600,000+
Office Planning Services Days	1	3	5	10	15	20	30	40	50	75

Core CAL Suite and SQL CAL SA coverage counts as one (1) point toward the thresholds in the first column below, Enterprise CAL Suite SA coverage counts as two (2) points toward the thresholds in the first column below:

CAL Suites	200-3,999	→9,999	→99,999	→299,999	→599,999	→600,000+
Office Planning Services Days	1	3	5	7	10	12

Customers may select from available Planning Service offerings provided by qualified Microsoft Partners or Microsoft Affiliates. A list of available services can be found at <https://www.microsoft.com/licensing/licensing-programs/software-assurance-planning-services-overview>.

The list of available services and associated service levels may change at any time. Qualified Providers will provide customers with an outline of the available Scope of Work for each of the above service offerings.

- Planning Services may be delivered to Customer by qualified Microsoft Partners or Microsoft Affiliates. Services provided under vouchers are provided under an agreement between Customer and the Qualified Provider Customer can view the list of Qualified Providers here: <https://www.microsoft.com/solution-providers/home>
- Planning Services engagements provide services that covers a pre-determined scope of work that result in a high level deployment plan; the actual deployment of the software cannot be included.
- Planning Services vouchers can only be redeemed by the customer who qualified for the benefit.
- Planning Services vouchers may not be exchanged for cash, monies or other valuable considerations.
- Reduction of qualifying SA coverage as a result of returns and other billing adjustments, where allowed, may lower Customer’s Planning Services entitlement days.
- Voucher types may not be combined. Planning Services engagements must not exceed the maximum specified duration per engagement type.
- Vouchers are only valid with qualified Providers for the specific service type for which the voucher is being redeemed.
- Vouchers must be assigned during the SA coverage period.
- Vouchers will expire 180 days from the date of voucher assignment, independent of SA coverage expiration. All services must be delivered (voucher redeemed) prior to voucher expiration. Vouchers that expire prior to SA coverage expiration will return to the available Planning Services pool of days. The tables above show service days available based on a full 3-year enrollment or agreement. Customers who purchase SA coverage for one-year will receive one third of the stated number of service days. Customers who purchase SA coverage for two-years will receive two thirds of the stated number of service days.

Completed deliverables submitted by the Qualified Provider at the end of the engagement to Microsoft may be used by Microsoft for quality assurance purposes and may be shared with Customer’s Microsoft account team for that purpose.

**Enterprise Source Licensing Program**

Customers with 10,000 or more licensed desktops with SA coverage in the systems pool may be eligible to access to Microsoft Windows source code for internal development and support. Academic programs are eligible for the Microsoft Research Source Licensing Program.

**Training Vouchers**

Customers (other than those purchasing through Academic Programs) with a Company-wide commitment or SAM in the application or systems Product pools are eligible for Microsoft Training Vouchers granting a specific number of training days as described below.

Program	Office System Application Pool products	Systems Pool
Open Value	2 days per 50 licenses (maximum 20 days)	1 day per 50 licenses (maximum 10 days)
SAM 1-249	2 days per 50 licenses or points	1 day per 50 licenses or points
SAM 250-2,399	20 days per eligible enrollment or Purchasing Account	10 days per eligible enrollment or Purchasing Account
SAM 2,400-5,999	30 days*	15 days*
SAM 6,000-14,999	50 days*	25 days*
SAM 15,000 – 29,999	110 days*	55 days*
SAM 30,000 – 49,999	160 days*	80 days*
SAM 50,000 – 99,999	250 days*	125 days*
SAM 100,000 – 199,999	400 days*	200 days*

SAM 200,000 – 399,999	600 days*	300 days*
SAM 400,000 – 599,999	800 days*	400 days*
SAM 600,000 +	1400 days*	700 days*

\*Number of days per eligible enrollment, agreement, or Purchasing Account

- Services provided may include, but are not limited to, Microsoft Official Learning Products either provided directly from Microsoft, through a Microsoft authorized Learning Product reseller or through a Microsoft Partner in the Learning Program (Microsoft Learning Partner).
- Services provided by Microsoft Partners in the Learning Program are provided under an agreement between Customer and the qualified Microsoft Partner.
- Instructor led courses delivered through a Microsoft Learning Partner in an accelerated format require voucher days equivalent to the number of course days for the course delivery set in the SATV Voucher Validation and Reservation System.
- Vouchers cannot be used to cover any fees related to a customer not showing up for a reserved course.
- Vouchers may only be redeemed by the individual approved by the customer to use the voucher.
- Vouchers may not be exchanged for cash, monies or other valuable considerations.
- Vouchers must be assigned during the SA coverage period.
- Vouchers will expire 180 days from the date of voucher assignment. Vouchers that expire prior to SA coverage expiration will return to the available Training Voucher pool of days.
- Vouchers may be used to reserve training with only one qualified Microsoft Learning Partner at a time.
- Vouchers used to purchase Microsoft Official Learning Products may not be transferred or sold.
- Reduction of the number of qualifying licenses for which SA is acquired as a result of returns and other billing adjustments, where allowed, may lower Customer’s Training Vouchers service level eligibility.
- The table above shows training credits available based on a full 3-year enrollment or agreement. Customers who purchase SA coverage for one-year will receive one third of the stated number of training credits. Customers who purchase SA coverage for two-years will receive two thirds of the stated number of training credits.
- Microsoft Official Learning Products available may change at any time without notice.
- The amount of days required to purchase a Microsoft Official Learning Product may change at any time.

**Microsoft Home Use Program**

The Microsoft Home Use Program provides Customer’s employees the right to acquire Microsoft products or services made available through the Microsoft Home Use Program website(s). Customer’s employees may choose to purchase from either the Online Services or Software option.

**Online Services**

The threshold requirement for participation in the Microsoft Home Use Program, for purchase of Online Services, is waived for Customers with SAM coverage for the Application pool. Customer’s employees may acquire a single subscription of either Office 365 Home or Office 365 Personal through the Microsoft Home Use program website.

Office 365 Home or Office 365 Personal subscriptions acquired through the Microsoft Home Use Program website may currently be renewed at the then current Microsoft Home Use Program price regardless of employment or Customer’s SAM coverage status.

**Software**

Customer’s employees, who are users of the licensed qualifying desktop applications identified in the table below may acquire a single License for the corresponding Home Use Program software, to be installed on one device (either a PC or a Mac, specific to the software that is purchased). Academic Select (without SAM), Academic Select Plus (without SAM), and Academic Open programs are not eligible for this benefit.

Home Use Software Licenses expire with termination of employment, termination or expiration of SA coverage for the copy of the corresponding qualifying desktop application that employee uses at work, if the employee is no longer a user of the licensed copy of the qualifying desktop application, or upon the employee’s installation and use of any prior or later version of that qualifying desktop application pursuant to a Home Use Program license.

Qualifying Desktop Application	Corresponding Home Use Program License
Visio Standard 2013/2016/2019 Visio Professional 2013/2016/2019	Visio Professional 2019 HUP
Project Standard 2013/2016/2019 Project Professional 2013/2016/2019	Project Professional 2019 HUP

The terms of use for products and services acquired through the Home Use Program software are between Microsoft and Customer’s employee and are accessed through the Microsoft Home Use Program website(s).

Microsoft assumes no responsibility for compliance with any employment-benefit, tax or reporting obligation that either Customer or its employees may have.

Microsoft may terminate a customer’s participation in the Microsoft Home Use Program, immediately and without notice, in connection with unauthorized access to or licensing through the Microsoft Home Use Program website in connection with that customer’s program code.

For more information on the Microsoft Home Use Program, refer to <http://www.microsoft.com/licensing> or <https://businessstore.microsoft.com/store/home-use-program>.

**24x7 Problem Resolution Support**

Customers (other than those purchasing through Academic Programs) with SA coverage are eligible for 24x7 Problem Resolution Support.

24x7 Problem Resolution Support provides assistance for problems with specific symptoms encountered while using Microsoft products. Microsoft will make reasonable efforts to assist Customer with support requests in a manner consistent with Microsoft Product Support policies. Microsoft reserves the right to refuse unreasonable requests for support services, and may refer Customers to an additional service level agreement which may require an additional charge.

Products that are currently in Mainstream Support as set forth in Microsoft’s Support Lifecycle Policy are eligible for 24x7 Problem Resolution Support. Microsoft can add support for new Products or discontinue support for existing Products. Microsoft will notify Customer if Customer’s implementation of Microsoft products cannot be supported. If Customer does not modify the implementation to make it effectively supportable within 30 days after the notice, Microsoft will not be obligated to provide additional support services for that implementation.

An assisted break-fix support request, also known as an incident, is defined as a single support issue and the reasonable effort needed to resolve it. A single support issue is a problem that cannot be broken down into subordinate issues. If a problem consists of subordinate issues, each shall be considered a separate incident. In certain situations, Microsoft may provide a modification to the commercially available Microsoft Product software code to address specific critical problems (“Hotfix(es)”) in response to an assisted break-fix support request. Hotfixes are designed to address Customer’s specific problems and are not regression tested.

**Phone Support Incident Awards for all programs except MPSA**

The number of permitted phone support incidents varies by customer based upon their SA spend and payment option. SA-spend-based incidents are earned based on server and desktop SA spend under a qualifying Select or Enterprise enrollment, Select Plus registration, Open Value Agreement or Open License Authorization number. Microsoft will award one incident for each Server SA or CAL SA spend of at least \$20,000. Microsoft will award one incident for each Systems Pool or Applications Pool SA spend of at least \$200,000. The table below shows the approximate currency equivalents for SA-spend-based awards for agreements based in currencies other than USD. Due to the fluctuation of exchange rates, this table is subject to change.

Currency Name	Currency Code	Server / CAL - Incident Award Increments	W / Client - Incident Award Increments
US Dollar	USD	\$20,000	\$200,000
Australian Dollar	AUD	30,000	300,000
Canadian Dollar	CAD	27,000	270,000
Swiss Franc	CHF	S Fr. 33,000	S Fr. 330,000
China Renminbi	CNY	CRC 165,000	CRC 1,650,000
Danish Krone	DKK	kr 160,000	kr 1,600,000
EURO	EUR	21,500	215,000
UK Pound	GBP	£13,500	£135,000
Japanese Yen	JPY	JPY 2,400,000	JPY 24,000,000
Korean Won	KRW	KWD 24,000,000	KWD 240,000,000
Norwegian Krone	NOK	kr 165,000	kr 1,650,000
New Zealand Dollar	NZD	35,000	350,000
Swedish Krona	SEK	kr 200,000	kr 2,000,000
New Taiwan Dollar	TWD	NTD 700,000	NTD 7,000,000
India Rupee	INR	INR 1,000,000	INR 10,000,000
Russian Ruble	RUB	RUB 660,000	RUB 6,600,000

Phone Support Incidents that have not been used will expire at the expiration of SA coverage. Phone Support Incidents may not be transferred between enrollments or agreements.

Access to local phone support is available during business hours found on the website <http://support.microsoft.com/gp/saphone>. After-hours phone support may be provided through regional and international support centers. After-hours phone support can only be used to initiate business critical support requests. Business hours are determined on a region-by-region basis. Phone support assistance is not available in all languages in all regions.

**Phone Support Incidents Awards for MPSA**

The number of permitted phone support incidents varies based upon Customer’s SA benefits points earned. If Customer has SA coverage on at least one qualifying Server software Product, Customer is entitled to a complimentary incident. The number of phone support incidents to

which Customer is entitled is based on the total calculated points earned through Customer's Purchasing Account, as shown below (refer to the 'Calculating Software Assurance Benefits Points' section of this document for details of how SA Benefits points are calculated):

Pool	Points per phone support incident
Applications and Systems (combined)	2,000
Server	400
CAL	400

Incidents are entitled over the term of the SA coverage and are available for use from the start of Customer's SA coverage, regardless of whether or not Customer has chosen to spread payments. Purchases made after the initial order will trigger recalculation of the incidents awarded and the annual allotment. Phone Support Incidents that have not been used will expire at the expiration of SA coverage. Phone Support Incidents may not be transferred between Purchasing Accounts.

Access to local phone support is available during business hours found on the website <http://support.microsoft.com/gp/saphone>. After-hours phone support may be provided through regional and international support centers. After-hours phone support can only be used to initiate business critical support requests. Business hours are determined on a region-by-region basis. Phone support assistance is not available in all languages in all regions.

**Web-Based Incidents**

Customers (other than Academic Select License, Select Plus for Academic, Academic Open License, Campus and School Agreement, Open Value Subscription – Education Solutions, and Open License) with Standard, Enterprise and Datacenter Editions of server software covered with SA have access to electronic web-based Problem Resolution Support services on an as needed basis. Access to the electronic support sites is available 24 hours per day, 7 days a week, though responses will occur during Business Hours. Incidents initiated via the Web then converted to phone resolution by Customer will count against the available phone incident balance upon resolution. Incidents initiated via the Web then followed up via phone by Microsoft will not count against the available phone incident balance if resolution continues on Web, email and other electronic means.

SA is required for both server software and related CALs for Web Support incidents. Customers may only submit web-based Problem Resolution Support requests on those licensed copies of server software covered with SA.

**Support Contacts**

The number of permitted support contacts varies by Volume Licensing program and number of licenses covered under SA, as shown below. Contacts must be named individuals and can include individuals from outside Customer's organization. However, an organization, department or group name may not be listed as a contact.

Benefits	OL	OV	S/S+ EA Level A	S/S+ EA Level B	S/S+ EA Level C & MRSA	S/S+ EA Level D
# of Problem Resolution Phone Support Contacts	As Needed	As Needed	As Needed	As Needed	As Needed	As Needed
# of Authorized Web Support Contacts	NA	1	2	3	8	16

**Service Level for Software Assurance Customers**

Estimated response times by severity level and Customer's responsibilities are defined in the following table:

Severity	Situation	Microsoft's Expected Response	Customer's Expected Response
A. Submission via phone	Critical business impact: Customer's business has significant loss or degradation of services	1st call response in 2 hours or less based on support offering Microsoft Resources at Customer site as required.	Allocation of appropriate resources to sustain continuous effort on a 24x7 basis Rapid access and response from change control authority Management notification
B. Submission via phone	Moderate business impact: Customer's business has moderate loss or degradation of services but work can reasonably continue in an impaired manner.	1st call response in 4 hours or less based on support offering Effort during Business Hours only	Allocation of appropriate resources to sustain Business Hours continuous effort Access and response from change control authority within 4 Business Hours
C. Submission via phone or web	Minimum business impact: Customer's business is substantially functioning with minor or no impediments of services.	1st response in one business day or less based on support offering Effort during Business Hours only	Accurate contact information on case owner Responsive within one business day.

1 Contact Microsoft representative for local business hours.

2 Microsoft may need to downgrade the severity level if Customer is not able to provide adequate resources or responses to enable Microsoft to continue with problem resolution efforts.

**Conversion of Software Assurance 24x7 Problem Resolution Support Incidents to Premier Support Services**

With the exception of MPSA, Customers may convert SA 24x7 Problem Resolution Support Incidents (SA PRS Incidents, or “SAB”) to Unified Support, Premier Problem Resolution Support (PRS) hours or Dedicated Support Engineer (DSE) hours (applicable for reactive support activities only).

These services are for use consistent with their Premier Service or Unified Support plan at the time of transfer. The conversion is based on a local rate calculation that will be provided by their Premier Account Team. Customers may be required to purchase additional Support Account Management hours before converting SA PRS incidents. SA PRS incidents that are converted to Premier are considered Premier Problem Resolution Support hours and are subject to the Premier Services Description. Once converted, incidents cannot be returned to Customer’s SA allowance.

**Additional Business Provisions**

SA spend may not be combined across Select or Enterprise enrollments, Select Plus registrations, Purchasing Accounts, or Open Value Agreements to qualify for additional awards. Spending within each enrollment, agreement, or Purchasing Accounts will be used to determine the award for that enrollment, agreement, or Purchasing Accounts.

Reduction of SA Spend as a result of returns and other billing adjustments, where allowed, may result in the loss of Support eligibility or Phone incident awards during the present or future award periods.

**SCE Eligibility**

Customers who have an SCE with a minimum annual average SA spend of \$250,000 on total of qualifying products in either the Application Platform or the CIS Suite and who have an active Premier Services Agreement are eligible for Unlimited 24x7 Problem Resolution Support (PRS) incidents. The two eligible SCE components qualify separately for Unlimited 24x7 Problem Resolution Support. Products listed below, that are currently in Mainstream or Extended Support as set forth in Microsoft's Support Lifecycle Policy in line with a Customer’s Premier contract, are included in this benefit.

The qualifying Application Platform Products are:

- SQL Server (Standard, Standard Core, Enterprise Core, Business Intelligence and Parallel Data Warehouse and CALs)
- BizTalk Server (Standard, Enterprise, and Branch)
- Office SharePoint Server

The qualifying products from the Core Infrastructure Component are:

- CIS Suite Datacenter (Windows Server Datacenter and System Center Datacenter)
- CIS Suite Standard (Windows Server Standard and System Center Standard)

The table below lists the SA spend threshold conversions for agreements based in currencies other than USD. Due to the fluctuation of exchange rates, this table is subject to change without notice.

Currency	Currency Code	Minimum Annual Average SA spend to qualify for Unlimited 24x7 PRS
US Dollar	USD	250,000
Australian Dollar	AUD	375,000
Canadian Dollar	CAD	337,500
Swiss Franc	CHF	412,500
China Renminbi	CNY	2,062,500
Danish Krone	DKK	2,000,000
EURO	EUR	268,750
UK Pound	GBP	168,750
Japanese Yen	JPY	30,000,000
Korean Won	KRW	300,000,000
Norwegian Krone	NOK	2,062,500
New Zealand Dollar	NZD	437,500
Swedish Krona	SEK	2,500,000
New Taiwan Dollar	TWD	8,750,000
India Rupee	INR	12,500,000
Russian Ruble	RUB	8,250,000

When committed annual average SA spend on qualifying Application Platform and/or Core Infrastructure products eligible for Unlimited 24x7 PRS is higher than \$250,000, Microsoft will not award incidents based on actual SA spend on these products. If Customer becomes eligible for Unlimited 24x7 PRS midstream, any incident previously awarded based on SA spend and not consumed will be subtracted from Customer’s balance. Unlimited 24x7 PRS incidents cannot be converted to Premier Problem Resolution Support hours or incidents.

**Parallel Data Warehouse Eligibility**

Customers who acquire licenses for SQL Server Enterprise Edition, deploy Parallel Data Warehouse (“PDW”) and have an active Premier Services Agreement are eligible for Unlimited 24x7 PRS incidents, regardless of being enrolled in an SCE or their SCE spend.

While all qualifying customers will receive an unlimited number of 24x7 PRS incidents, the number of permitted support contacts to manage Unlimited 24x7 PRS does vary by size of the SA spend. All eligible customers are entitled to at least four authorized contacts plus one additional contact per every additional \$125,000 of SA spend under their SCE or VL program (s) under which they purchased licenses for SQL Server Enterprise Edition, deploy PDW. For agreements in foreign currencies, eligible customers are entitled to at least four authorized contacts plus one additional contact for each incremental SA spend amount equivalent to \$125,000 of annual average SA spend in the applicable foreign currency. See table below:

The following table applies to customers who have an SCE or have licenses for PDW:

Annual Average SA spend	Permitted support contacts
\$250,000 - \$374,999	4
\$375,000 - \$499,999	5
\$500,000 - \$624,999	6
\$625,000 - \$749,999	7
\$750,000 - \$874,999	8

The number of permitted support contacts for MPSA is 8 regardless of SA spend. The Unlimited 24x7 PRS benefit only includes Problem Resolution Services. Any time spent by the Technical Account Manager (TAM) or the Designated Support Engineer (DSE) on the resolution of the incident will be accounted for under Customer’s Premier Services Agreement.  
 Note: Customers currently licensed for PDW maintain this benefit as detailed in the [June 2016 Product Terms](#).

**Step-Up License Availability**

The Step-Up License must be acquired, and is valid only when acquired, under the same volume licensing agreement and enrollment (if any), under which SA coverage for the qualifying product was acquired. Customer’s right to the use of software under a Step-Up License is conditioned on their having and retaining a License for the qualifying product. Customers’ perpetual rights under the Step-Up License supersede and replace the underlying License for the qualifying product.

Step Up From	Step Up To
BizTalk Server Branch	BizTalk Server Standard
BizTalk Server Branch	BizTalk Server Enterprise
BizTalk Server Standard	BizTalk Server Enterprise
Core CAL Suite	Enterprise CAL Suite
Core Infrastructure Server Suite Standard	Core Infrastructure Server Suite Datacenter
Desktop Education w/ Core CAL	Desktop Education w/ Enterprise CAL Suite
Desktop School w/ Core CAL	Desktop School w/ Enterprise CAL Suite
Exchange Server Standard	Exchange Server Enterprise
Forefront TMG Standard	Forefront TMG Enterprise
Microsoft Dynamics 365 Team Members On-premises CAL	Microsoft Dynamics 365 Sales On-premises CAL
Microsoft Dynamics 365 Team Members On-premises CAL	Microsoft Dynamics 365 Customer Service On-premises CAL
Microsoft Dynamics 365 Team Members On-premises CAL	Microsoft Dynamics 365 Operations Activity On-premises CAL
Microsoft Dynamics 365 Operations Activity On-premises CAL	Microsoft Dynamics 365 Operations On-premises CAL
Office Standard	Office Professional Plus
Professional Desktop	Enterprise Desktop
Project Standard	Project Professional
SQL Parallel Data Warehouse Core	SQL Server Enterprise Core
SQL Server Standard	SQL Server Business Intelligence
System Center Standard	System Center Datacenter
Visio Standard	Visio Professional
Visual Studio Professional Subscription	Visual Studio Enterprise Subscription
Visual Studio Test Professional Subscription	Visual Studio Enterprise Subscription
Windows Server Standard	Windows Server Datacenter

**Servers – Disaster Recovery Rights**

For each Instance of eligible server software Customer runs in a Physical OSE or Virtual OSE on a Licensed Server, it may temporarily run a backup Instance in a Physical OSE or Virtual OSE on either, another one of its Servers dedicated to disaster recovery, or, for Instances of eligible software other than Windows Server, on Microsoft Azure Services, provided the backup Instance is managed by Azure Site Recovery to Azure. The License Terms for the software and the following limitations apply to Customer’s use of the backup Instance. Any dedicated Server used for these purposes, that is under the management or control of an entity other than Customer or one of its Affiliates, is subject to the [Outsourcing Software Management](#) clause.

### Permitted Use of Backup Instances

The backup Instance can run only during the following exception periods:

- For brief periods of disaster recovery testing within one week every 90 days;
- During a disaster, while the production Server being recovered is down; and
- Around the time of a disaster, for a brief period, to assist in the transfer between the primary production server and the disaster recovery Server.

### Using the Azure Hybrid Benefit for Disaster Recovery

Customer optionally may use Windows Server under the Azure Hybrid Benefit for backup Instances run and managed on Microsoft Azure Services using Azure Site Recovery. In this case, notwithstanding anything to the contrary in the Microsoft Azure License Terms governing Azure Hybrid Benefit, Customer will be permitted to concurrently deploy the same Windows Server Standard Licenses on Microsoft Azure Services under Azure Hybrid Benefit for purposes of testing and during recovery (as described in "Permitted Use of Backup Instances" above) and on the Licensed Servers running the corresponding production workloads. Furthermore, Customer may resume running the same production workloads on the Licensed Servers as contemplated in this Disaster Recovery Rights provision, notwithstanding any limitations on License reassignment.

### Requirements for Disaster Recovery Use

In order to use the software under disaster recovery rights, Customer must comply with the following terms:

- The OSE on the disaster recovery Server must not be running at any other times except as above.
- The OSE on the disaster recovery Server may not be in the same cluster as the production Server.
- Use of the software backup Instance should comply with the License Terms for the software.
- Once the disaster recovery process is complete and the production Server is recovered, the backup Instance must not be running at any other times except those times allowed here.
- Maintain SA coverage for all CALs, External Connector licenses and Server Management Licenses under which it accesses the backup instance and manage the OSEs in which that software runs.
- Customer's right to run the backup Instances ends when Customer's Software Assurance coverage ends.

### Additional Permitted Use of Windows Server

- Other than backup instances run on Microsoft Azure Services, Windows Server License is not required for the disaster recovery Server if the following conditions are met:
  - The Hyper-V role within Windows Server is used to replicate Virtual OSEs from the production Server at a primary site to a disaster recovery Server.
  - The disaster recovery Server may be used only to
    - run hardware virtualization software, such as Hyper-V,
    - provide hardware virtualization services,
    - run software agents to manage the hardware virtualization software,
    - serve as a destination for replication,
    - receive replicated Virtual OSEs, test failover,
    - await failover of the Virtual OSEs, and
    - run disaster recovery workloads as described above.
  - The disaster recovery Server may not be used as a production Server.

## License Mobility

### License Mobility Across Server Farms

Under License Mobility Across Server Farms, Customer may reassign any of its Licenses which are designated as having License Mobility and for which it has SA to any of its Licensed Servers located within the same Server Farm as often as needed. Customer may also reassign these Licenses from one Server Farm to another, but not on a short-term basis (i.e., not within 90 days of the last assignment). Products used for Self-Hosting may be used at the same time under License Mobility Across Server Farms rights.

### License Mobility through Software Assurance

Under License Mobility Through Software Assurance (SA), Customer may move its licensed software to shared servers under any of its Licenses which are designated as having License Mobility for which it has SA, subject to the requirements below. Products used for Self-Hosting may be used at the same time under License Mobility through SA rights, subject to the limitations of the Self-Hosting License Terms.

#### Permitted Use:

With License Mobility through SA, Customer may:

- Run its licensed software on shared servers;
- Access that software under access licenses and for which it has SA, and under its User and Device SLs that permit access to the Products;
- Manage its OSEs that it uses on shared servers; and/or
- Manage its OSEs that it uses on its servers using software that it runs on shared servers.

**Requirements:**

To use License Mobility through SA, Customer must:

- Run its licensed software and manage its OSEs on shared servers under the terms of its volume licensing agreement;
- Deploy its Licenses only with Microsoft Azure Services or qualified License Mobility through Software Assurance Partner; and
- Complete and submit the License Mobility verification form with each License Mobility through Software Assurance Partner who will run its licensed software on their shared servers.

Customer may move its licensed software from shared servers back to its Licensed Servers or to another party’s shared servers, but not on a short term basis (not within 90 days of the last assignment). Customer may also move Instances run or OSEs managed under a particular License from shared servers in one Server Farm to its shared servers in another Server Farm, but not on a short-term basis (not within 90 days of the last assignment). OSEs managed under the same License must be in the same Server Farm. Customer agrees that it will be responsible for third parties’ actions with regard to software deployed and managed on its behalf. Except as provided below, the License Terms applicable to the Product together with the License Mobility through SA terms govern its use. The License Mobility through SA terms supersede any conflicting License terms for a Product when License Mobility through SA is used. License Mobility through SA rights also apply to Listed Providers’ Servers that are dedicated to Customer’s use, subject to these same terms and conditions. Some Products, as outlined below, have different use rights for shared servers under License Mobility through SA:

License Model	Product/Product Type	License	Permitted Number of OSEs or Cores per License
Per Core/CAL	External Connector Licenses	Each External Connector License with active SA coverage	1 OSE per license
Server/CAL	SQL Server	Each Server License with active SA coverage	1 OSE per license
Per-Core	All eligible Products	Each Core License with active SA coverage	One virtual core (subject to the product use rights including the requirement of a minimum of 4 core licenses per OSE)
Management Servers	System Center 2012 R2 Standard	Each Management License with active SA coverage	2 Managed OSEs per Licensed Server
Management Servers	System Center 2012 R2 Datacenter	Each Management License with active SA coverage	10 Managed OSEs per Licensed Server
Management Servers	System Center 2019 Standard	Every 16 Management Licenses with active SA coverage	2 Managed OSEs per Licensed Server
Management Servers	System Center 2019 Datacenter	Every 16 Management Licenses with active SA coverage	10 Managed OSEs per Licensed Server

**Fail-over Rights**

For SQL Server Instances run under License Mobility through SA rights, Customer may run passive fail-over Instances in one OSE on the qualifying shared servers in anticipation of a fail-over event. The number of licenses that otherwise would be required to run the passive fail-over Instances must not exceed the number of licenses required to run the corresponding production Instances on the same partner’s shared servers.

**Servers – Self Hosted Applications**

Self-Hosted Applications means those Products for which Self-Hosted rights apply.

Despite any terms to the contrary in Customer’s volume licensing agreement including the Product Terms, Customer may run licensed copies of Self-Hosted Applications that interact directly or indirectly with its software to create a unified solution (“Unified Solution”) and permit third parties to use it, subject to the terms below.

**Requirements**

Customer must have the required Microsoft Licenses and SA for:

- the Self-Hosted Applications run as part of the Unified Solution; and
- all access Licenses used to make the Unified Solution available to External Users.

All Microsoft software used to create and deliver the Unified Solution must be:

- licensed through a Volume Licensing program; and
- eligible for Self Hosting under these License Terms.

Customer may use Self-Hosted Applications in conjunction with License Mobility through Software Assurance rights to deliver the Unified Solution from shared servers. Because there is no License Mobility for Windows Server, Customer may not use Windows Server (nor Remote Desktop Services External Connector License or any other Windows Server access license) as a Self-Hosted Application on shared servers. Instead, Customer must use Windows Server software licensed through a License Mobility through Software Assurance Partner or Customer’s Services Provider Licensing Agreement, or under another Microsoft Volume Licensing offering permitting use on shared servers. Other Products used in a Unified Solution delivered from shared servers must have License Mobility through Software Assurance. Any dedicated



Server used for these purposes, that is under the management or control of an entity other than Customer or one of its Affiliates, is subject to the [Outsourcing Software Management](#) clause.

Customer's software must:

1. add significant and primary functionality to the Self-Hosted Applications that are part of the Unified Solution (dashboards, HTML editors, utilities, and similar technologies alone are not a primary service and/or application of a Unified Solution);
2. be the principal service and/or application of the Unified Solution, and must not allow direct access to the Self-Hosted Applications by any end user of the Unified Solution;
3. be delivered to end users over the Internet, a telephone network, or a private network from servers under the day to day control of Customer or a third party other than the end user of the Unified Solution (the Unified Solution may not be loaded onto the end user's device); and
4. be owned, not licensed, by it, except that its software may include non-substantive third party software that is embedded in, or operates in support of, its software.

All use of the Self-Hosted Applications remains governed by the License Terms for those products. Customer may not transfer Licenses acquired under its volume licensing agreement except as permitted in that agreement.

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## Extended Security Updates

Customer may purchase Extended Security Updates ("ESU") coverage for Licenses with SA coverage and equivalent Subscription Licenses.

### License Requirements

ESU Coverage is required for each core or server License assigned to the Licensed Server, subject to the same license minimums. ESU coverage is not required (nor available) for CALs or External Connector Licenses; however, Customer must have active SA (or equivalent Subscription Licenses) for CALs and External Connector Licenses permitting access to Servers with active ESU coverage.

### Coverage Eligibility

For any given Server, Customer may acquire ESU coverage for years two and three of the offering only if Customer also acquired coverage for the preceding year. ESU coverage is not required to be co-terminus with SA coverage or SA equivalent Subscription Licenses; however, Customer must have a minimum of one month of qualifying SA coverage or Subscription License term remaining at the beginning of the actual coverage period for each year of ESU coverage purchased (i.e., during year one, year two or year three).

### Use of Updated Software

Except as follows, server software that is updated through ESU coverage may be used only under licenses that have ESU coverage.

- i. Customer may continue to use updated software after coverage expires, but only under licenses to which coverage applied.
- ii. Customer may apply updates provided under their ESU coverage to software Customer licenses and uses solely for development, test and related purposes under corresponding Developer edition licenses or Visual Studio subscriptions.
- iii. Customer may use updated software under licensed SQL Server, Windows Server, and Windows 7 workloads running on Azure Stack Hub.

### Covering Hosted Workloads

Customer may also purchase ESU coverage for workloads running on Authorized Services Providers' servers under License Included offerings. "Authorized Services Providers" means services providers listed at <http://www.microsoft.com/licensing/software-assurance/license-mobility.aspx>. "License Included" means Customer is licensing Windows Server or SQL Server through the Authorized Services Provider, and is not bringing its own licenses (e.g., BYOL). Customer must acquire ESU licenses for all of the Virtual Cores in a Virtual OSE subject to a minimum of 16 for Windows Server and four for SQL Server.

### Azure Stack Hub Workloads

Customer may have access to ESUs for its licensed SQL Server, Windows Server, and Windows 7 workloads running on Azure Stack Hub. The requirements to purchase ESU coverage and to access updated server workloads only under CALs with SA coverage are waived solely with respect to SQL Server, Windows Server, and Windows 7 Instances Customer is running on Azure Stack Hub.

### 24x7 Problem Resolution Support

During the term of ESU coverage, Customer will be eligible to apply available 24x7 Problem Resolution Support incidents to the use of the covered version on its qualifying Servers. Qualifying Servers are Licensed Servers with active SA and ESU coverage and Licensed Servers also licensed for and running Azure Stack Hub.

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# Appendix C - Add-ons & Other Transition Licenses

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## Add-ons

Customer may acquire Add-ons subject to the following conditions:

- i. Customer must have active SA or an active User SL for the corresponding Qualifying Licenses
- ii. Customer may acquire one Add-on SL for each Qualifying License(s), unless provided otherwise in this Appendix
- iii. Customer may acquire add-on SLs between true-up dates in advance of the acquisition of the Qualifying Licenses

Add-ons expire upon the earlier of the expiration of the SA coverage for the Qualifying License or the Add-on SL term, unless provided otherwise in this Appendix. Add-ons may only be reassigned to users or devices with Qualifying Licenses.

### Windows Desktop Operating System

The Licensed User must be the Primary User of a device with either active Windows Desktop Operating System SA coverage or Windows VDA coverage.

Add-on/ User SL	Qualifying License(s)
Windows 10 Enterprise E3 Add-on	Windows 10 Enterprise/Education per device
Windows 10 Enterprise E5 Add-on	
Windows 10 User OLS Activation E3/E5 Add-on	Windows 10 Enterprise E3/E5
	Windows VDA E3/E5

### Microsoft Azure User Plans

Add-on/ User SL	Qualifying License(s)
Azure Information Protection Premium Plan 1 Add-on (User SL)	Enterprise CAL Suite
Azure Advanced Threat Protection for Users Client Management License Add-on (User SL)	Advanced Threat Analytics 2016 Client Management License per User

### Microsoft 365

Add-on/ User SL	Qualifying License(s)
Microsoft 365 E3 Add-on (User SL)	Windows 10 Enterprise/Education E3 Per Device, and Core/Enterprise CAL Suite, and Office Professional Plus
	Windows 10 Enterprise E3 Per User with SA - From SA, and Enterprise Mobility + Security E3 From SA, and Office 365 E3 From SA
Microsoft 365 E5 Add-on (User SL)	SA for the Windows Desktop Operating System, and Core/Enterprise CAL Suite, and Office Professional Plus
	Windows 10 Enterprise E5 Per User with SA - From SA, and Enterprise Mobility + Security E5 From SA, and Office 365 (E5 & E4) From SA
Skype for Business Plus CAL Add-on for Microsoft 365 E3 (User SL)	Office 365 E1/E3

### Enterprise Mobility + Security

Add-on/ User SL	Qualifying License(s)
Enterprise Mobility + Security (E3/A3 and E5/A5) Add-on	Core CAL Suite
	Enterprise CAL Suite
	Core CAL Suite Bridge for Office 365
	Core CAL Suite Bridge for Office 365 and Microsoft Intune

Enterprise CAL Suite Bridge for Office 365
Enterprise CAL Suite Bridge for Office 365 and Microsoft Intune

## Microsoft Dynamics 365 Services

Add-on User SL	Qualifying License(s)
Dynamics 365 Team Members Add-on	Dynamics 365 Team Members User CAL
Dynamics 365 Unified Operations - Device Add-on	Dynamics 365 Operations On-premises – Device CAL
Dynamics 365 Unified Operations - Activity Add-on	Dynamics 365 Operations On-premises – Activity User CAL
Dynamics 365 Supply Chain Add-on	Dynamics 365 Operations On-premises User CAL
Dynamics 365 Finance Add-on	Dynamics 365 Operations On-premises User CAL
Dynamics 365 Commerce Add-on	Dynamics 365 Operations On-premises User CAL
Dynamics 365 Sales Professional Add-on	Dynamics 365 Sales User CAL
Dynamics 365 Sales Enterprise Add-on	Dynamics 365 Sales User CAL
Dynamics 365 Customer Service Professional Add-on	Dynamics 365 Customer Service User CAL
Dynamics 365 Customer Service Enterprise Add-on	Dynamics 365 Customer Service User CAL
Dynamics 365 Case Management GOVCON Add-on	Dynamics 365 Case Management User CAL
	Dynamics 365 Sales User CAL

## Visio

Add-on User SL	Qualifying License(s)
Visio Online Plan 2 Add-on to Visio Professional	Visio Professional
Visio Online Plan 2 Add-on to Visio Standard	Visio Standard

## Office 365 Suites

Add-on User SLs provide Licensed Users server software access rights equivalent to the Qualifying License from any device.

Add-on User SL	Qualifying License(s)
Office 365 E1 Add-on	Core CAL Suite, or
Exchange Online Plan 1 Add-on	Core CAL Suite Bridge for Enterprise Mobility + Security
Skype for Business Online Plan 1 Add-on	
SharePoint Online Plan 1 Add-on	
Office 365 E3 without Apps for enterprise Add-ons	Core CAL Suite, or Enterprise CAL Suite, or
Office 365 E4 without Apps for enterprise Add-ons	Core CAL Suite Bridge for Enterprise Mobility + Security, or
Office 365 A5 Add-on	Enterprise CAL Suite Bridge for Enterprise Mobility + Security
Office 365 E3 Add-on	Core CAL Suite and Office Professional Plus, or
Office 365 E4 Add-on	Core CAL Suite Bridge for Enterprise Mobility + Security and Office Professional Plus, or
Office 365 E5 Add-on	Enterprise CAL Suite and Office Professional Plus, or
Office 365 A5 Add-on	Enterprise CAL Suite Bridge for Enterprise Mobility+ Security and Office Professional Plus
Office 365 E3 Add-on (Available under Open Value Organization Wide and Open Value Subscription Only)	Office Professional Plus

## Exchange Online

Add-on User SL	Qualifying License(s)
Exchange Online Plan 1 Add-on (User SL)	Exchange Standard CAL
	Core CAL Suite

## Project

Add-on User SL	Qualifying License(s)
Project Plan 3 Add-on	Project Professional
Project Plan 5 Add-on	

Project Plan 3 Add-on	Project Standard
Project Plan 5 Add-on	
Project Essentials Add-on	Project Server CAL
Project Plan 3 Add-on	
Project Plan 5 Add-on	

## SharePoint Online

Add-on User SL	Qualifying License(s)
SharePoint Online Plan 1 Add-on	SharePoint Standard CAL
	Core CAL Suite

## Microsoft Intune

Add-on User SL	Qualifying License(s)
Microsoft Intune Add-on (User SL)	Core CAL Suite
	Enterprise CAL Suite
	Core CAL Suite Bridge for Office 365
	Enterprise CAL Suite Bridge for Office 365
Microsoft Intune for EDU Add-on (User SL)	Core CAL Suite
	Enterprise CAL Suite
	Core CAL Suite Bridge for Office 365
	Enterprise CAL Suite Bridge for Office 365

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## From SA

Customer may acquire From SA SLs instead of SA for fully paid, perpetual Licenses subject to the following conditions:

- i. Customer has active SA or is renewing coverage for the corresponding Qualifying Licenses
- ii. Customer acquires no more than one From SA SL for each Qualifying License, unless provided otherwise in this Appendix
- iii. Customer retains the corresponding Qualifying Licenses throughout its From SA license subscription period
- iv. Customer acquires From SA SLs at Enrollment anniversary or renewal

Enterprise Agreement Subscription (EAS) customers with continuous subscription coverage on Qualifying Licenses for no less than three years may purchase the corresponding From SA SLs. Customers renewing an agreement may renew From SA SLs up to the number of corresponding From SA SLs expiring.

As a one-time exception, when transitioning from per device licensing to per user From SA licensing for the first time, customer may purchase a greater number of From SA User SLs, if (1) Customer purchases a From SA User SL for all users of its Qualified Devices, and (2) in the case of Windows Desktop Operating System licenses, Customer adds devices as necessary to comply with the Primary User requirement in the [Windows Desktop Operating System](#) section 2.1.1.

## CAL Suites

From SA User SL	Qualifying License(s)
Core/Enterprise CAL Suite Bridge for Office 365 From SA (User SL)	SA for Parent CAL Suite
Core/Enterprise CAL Bridge for Enterprise Mobility + Security From SA (User SL)	SA for Parent CAL Suite

## Windows Desktop Operating System

From SA User SL	Qualifying License(s)
Windows 10 Enterprise E3/E5 From SA (SL)	SA for the Windows Desktop Operating System

## Microsoft 365

To acquire a Microsoft 365 From SA User SL customer must satisfy the eligibility and License assignment requirements for each component of Microsoft 365. Microsoft 365 From SA User SLs provide the same SA Benefits as the From SA components of the Microsoft 365 From SA User SL. The components of Microsoft 365 E3/E5 are Office 365 E3/E5, Enterprise Mobility + Security E3/E5, and Windows 10 Enterprise E3/E5 Per User.

From SA User SL	Qualifying License(s)
Microsoft 365 E3/E5 From SA (User SL)	SA for the Windows Desktop Operating System, and Core/Enterprise CAL Suite, and Office Professional Plus

## Enterprise Mobility + Security

Enterprise Mobility + Security From SA User SLs qualify Customer for SA Benefits based on the Qualifying Licenses.

From SA User SLs require the corresponding CAL Suite Bridges or USLs listed below:

From SA User SL	Qualifying License(s)	Required CAL Suite Bridge or USL
Enterprise Mobility + Security From SA	Core CAL Suite	Core CAL Bridge for Enterprise Mobility + Security or Office 365 Enterprise/Government E1, E3, E5
	Enterprise CAL Suite	Enterprise CAL Bridge for Enterprise Mobility + Security or Office 365 Enterprise/Government E3, E5

## Microsoft Dynamics 365 Services

Dynamics Price List (DPL) customers with an active Dynamics Enhancement Plan for the Qualifying Licenses may purchase the corresponding Dynamics 365 From SA SLs. Volume Licensing and Dynamics Price List (DPL) customers are eligible to license the From SA SLs in a licensing program other than the one the Qualifying License was acquired.

From SA User SL	Qualifying License(s)
Dynamics 365 Team Members From SA	Dynamics AX CAL
	Dynamics GP CAL
	Dynamics NAV CAL
	Dynamics SL CAL
	Microsoft XAL CAL
	Dynamics POS lanes
	Dynamics RMS lanes
	Dynamics C5 CAL
	Dynamics CRM CAL
	Dynamics 365 Team Members CAL
Dynamics 365 Operations - Device From SA	Dynamics AX CAL
	Dynamics GP CAL
	Dynamics NAV CAL
	Dynamics SL CAL
	Microsoft XAL CAL
	Dynamics POS lanes
	Dynamics RMS lanes
	Dynamics C5 CAL
	Dynamics 365 Operations On-premises Device CAL
	Dynamics 365 Operations - Activity From SA
Dynamics GP CAL	
Dynamics NAV CAL	
Dynamics SL CAL	
Microsoft XAL CAL	
Dynamics POS lanes	
Dynamics RMS lanes	
Dynamics C5 CAL	

	Dynamics 365 Operations On-premises Activity CAL	
Dynamics 365 Supply Chain Management From SA	Dynamics AX CAL	
	Dynamics GP CAL	
	Dynamics NAV CAL	
	Dynamics SL CAL	
	Microsoft XAL CAL	
	Dynamics POS lanes	
	Dynamics RMS lanes	
	Dynamics C5 CAL	
	Dynamics 365 Operations On-premises User CAL	
	Dynamics 365 Unified Plan From SA	
	Dynamics 365 Plan	
		Dynamics AX CAL
Dynamics 365 Finance From SA	Dynamics GP CAL	
	Dynamics NAV CAL	
	Dynamics SL CAL	
	Microsoft XAL CAL	
	Dynamics POS lanes	
	Dynamics RMS lanes	
	Dynamics C5 CAL	
	Dynamics 365 Operations On-premises User CAL	
	Dynamics 365 Unified Plan From SA	
	Dynamics 365 Plan	
		Dynamics AX CAL
	Dynamics 365 Commerce From SA	Dynamics GP CAL
Dynamics NAV CAL		
Dynamics SL CAL		
Microsoft XAL CAL		
Dynamics POS lanes		
Dynamics RMS lanes		
Dynamics C5 CAL		
Dynamics 365 Operations On-premises User CAL		
Dynamics 365 Unified Plan From SA		
Dynamics 365 Plan		
		Dynamics AX CAL
Dynamics 365 Human Resources From SA		Dynamics GP CAL
	Dynamics NAV CAL	
	Dynamics SL CAL	
	Microsoft XAL CAL	
	Dynamics POS lanes	
	Dynamics RMS lanes	
	Dynamics C5 CAL	
	Dynamics 365 Operations On-premises User CAL	
	Dynamics 365 Unified Plan From SA	
	Dynamics 365 Plan	
		Dynamics CRM CAL
	Dynamics 365 Sales Professional From SA	Dynamics 365 Sales CAL
Dynamics 365 Customer Engagement Plan From SA		
Dynamics 365 Plan		
		Dynamics 365 Sales CAL
Dynamics 365 Sales Enterprise From SA	Dynamics CRM CAL	
	Dynamics 365 Customer Engagement Plan From SA	
	Dynamics 365 Plan	
		Dynamics CRM CAL
Dynamics 365 Customer Service Professional From SA	Dynamics 365 Customer Service CAL	
	Dynamics 365 Customer Engagement Plan From SA	
	Dynamics 365 Plan	
		Dynamics 365 Customer Service CAL
Dynamics 365 Customer Service Enterprise From SA	Dynamics CRM CAL	
		Dynamics CRM CAL

	Dynamics 365 Customer Engagement Plan From SA
	Dynamics 365 Plan
Dynamics 365 Case Management GOVCON From SA	Dynamics CRM CAL
	Dynamics 365 Customer Service CAL
Dynamics 365 Business Central Essentials	Dynamics 365 Business edition
	Dynamics AX CAL
	Dynamics GP CAL
	Dynamics NAV CAL
	Dynamics SL CAL
	Microsoft XAL CAL
	Dynamics POS lanes
	Dynamics RMS lanes
	Dynamics C5 CAL
Dynamics 365 Business Central Premium	Dynamics 365 Business edition
	Dynamics AX CAL
	Dynamics GP CAL
	Dynamics NAV CAL
	Dynamics SL CAL
	Microsoft XAL CAL
	Dynamics POS lanes
	Dynamics RMS lanes
	Dynamics C5 CAL
Dynamics 365 Business Central Team Members	Dynamics 365 Business edition
	Dynamics AX CAL
	Dynamics GP CAL
	Dynamics NAV CAL
	Dynamics SL CAL
	Microsoft XAL CAL
	Dynamics POS lanes
	Dynamics RMS lanes
	Dynamics C5 CAL

## Microsoft 365 Applications

From SA User SL	Qualifying License(s)
Microsoft 365 Apps for enterprise From SA	Office Professional Plus

## Office 365 Suites

Office 365 (E1, E3, E4, E5) From SA User SLs provide the same SA Benefits as the Qualifying Licenses.

From SA User SLs require the corresponding CAL Suite Bridges or USLs listed below:

From SA User SL	Qualifying License(s)	Required CAL Suite Bridge or USL
Office 365 E1 From SA	Core CAL Suite	Core CAL Bridge for Office 365 or Enterprise Mobility + Security
Office 365 (E3, E4, E5) From SA	Office Professional Plus and Core CAL Suite	
Office 365 (E3, E4, E5) From SA	Office Professional Plus and Enterprise CAL Suite	Enterprise CAL Bridge for Office 365 or Enterprise Mobility + Security

## Phone System

From SA User SL	Qualifying License(s)
Phone System From SA	Skype for Business Server Plus CAL (Device and User) Skype for Business Plus CAL (User SL)

## Project

From SA User SL	Qualifying License(s)
Project Plan 1 From SA	Project Standard
	Project Server CAL
Project Plan 3 From SA	Project Professional
	Project Server CAL
Project Plan 5 From SA	Project Professional
	Project Server CAL

## Visio

From SA User SL	Qualifying License(s)
Visio Online Plan 1 and 2 From SA	Visio Professional
Visio Online Plan 1 From SA	Visio Standard



# Appendix D – Professional Services

The Professional Services available through Microsoft Volume Licensing are described below.

## Microsoft Premier Support Offerings

Area	Premier Core	Premier Foundation	Premier Standard	Premier Plus
Support Account Management	X	X	X	X
Account Profiling & Reporting	Monthly	Monthly	Monthly	Monthly
Support Assistance (Hours annually allocated)	Up to 10 hours	Up to 10 hours +1 Health Check +1 Workshop	Up to 120 hours	Up to 160 hours
Problem Resolution Support (PRS) (annually allocated)	Up to 40 hours	Up to 30 hours	Up to 80 hours	Up to 140 hours
24x7 Critical Situation Escalation Management (Severity Level 1)	X	X	X	X
Rapid Onsite Support	X	X	X	X
Proactive Information Services	X	X	X	X
Microsoft Premier Online	X	X	X	X
Add-on Hours	Packs of 20	Packs 20	Packs of 20	Packs of 20

<sup>1</sup> Business Hours are defined locally.

Severity	Situation	Microsoft's Expected Response	Customer's Expected Response
1. Submission via phone only	Catastrophic business impact: Complete loss of a core (mission critical) business process and work cannot reasonably continue Needs immediate attention	1st call response in 1 hour or less Microsoft's Resources at customer site as soon as possible. Continuous effort on a 24x7 basis Rapid Escalation within Microsoft to Product teams Notification of Microsoft's Senior Executives	Notification of Customer Senior executives Allocation of appropriate resources to sustain continuous effort on a 24x7 basis <sup>2</sup> Rapid access and response from change control authority
A. Submission via phone only	Critical business impact: Significant loss or degradation of services Needs attention within 1hour	1st call response in 1 hour or less Microsoft's Resources at Customer site as required. Continuous effort on a 24x7 basis Notification of Microsoft's Senior Managers	Allocation of appropriate resources to sustain continuous effort on a 24x7 basis <sup>2</sup> Rapid access and response from change control authority Management notification
B. Submission via phone or web	Moderate business impact: Moderate loss or degradation of services but work can reasonably continue in an impaired manner. Needs attention within 2 Business Hours <sup>1</sup>	1st call response in 2 hours or less Effort during Business Hours <sup>1</sup> only	Allocation of appropriate resources to sustain Business Hours <sup>1</sup> continuous effort Access and response from change control authority within 4 Business Hours <sup>1</sup>
C. Submission via phone or web	Minimum business impact: Substantially functioning with minor or no impediments of services. Needs attention within 4 Business Hours <sup>1</sup>	1st call response in 4 hours or less Effort during Business Hours <sup>1</sup> only	Accurate contact information on case owner Responsive within 24 hours

<sup>1</sup>Business Hours are defined locally.

<sup>2</sup>Microsoft may need to downgrade the severity level if Customer is not able to provide adequate resources or responses to enable Microsoft to continue with problem resolution efforts.

### Associated Business Rules

All Professional Services provide support for commercially released, generally available Microsoft Products (unless specifically excluded on the Microsoft Premier On-Line Web site or the Microsoft Support Lifecycle Web site). Professional Services will generally be charged on an hourly basis, provided remotely, and in English (unless another language is available). Professional Services will be provided in the country in which the VL agreement is signed. On-Site visits are not pre-paid and are subject to resource availability. All Professional Services not consumed on an annual basis will be forfeited. Upon Customer request, Microsoft may access Customer's system via remote dial-in to analyze problems.

## Microsoft Digital Advisory Services Offerings

The Digital Advisory Services offerings contain the following components which will be provided for each year of the Customer's Volume Licensing Agreement:

Area	Digital Advisory Connect	Digital Advisory Foundation	Digital Advisory Portfolio
SKU Product Family	9TH-xxxx	BA3-xxxx	9RO-xxxx

Service Delivery	Up to 400 hours in aggregate of a Microsoft Digital Advisor and the Enterprise Service Delivery Team	Up to 800 hours in aggregate of a Microsoft Digital Advisor and the Enterprise Service Delivery Team	Up to 1600 hours in aggregate of a Microsoft Digital Advisor and the Enterprise Service Delivery Team
Services Delivery Plan (SDP)			
Digital Advisory Network			
Digital Advisory Services Library			
Digital Advisory Capacity (SKU Product Family: 9RS-xxxx)	200 hours of Digital Advisor (can be added to any engagement)		

### Digital Advisory Service Modules

The Digital Advisory engagement includes one or more Digital Advisory service modules, as documented in the Service Delivery Plan.

### Services Out of Scope

The Professional Services in a Digital Advisory engagement do not include problem resolution or break fix support, review of non-Microsoft source code, or technical or architectural consultation beyond the deliverables as described in a Services Delivery Plan. For any non-Microsoft source code, Microsoft’s Professional Services will be limited to analysis of binary data only, such as a process dump or network monitor trace.

### Customer Responsibilities

Customer agrees to cooperate with Microsoft as part of the Digital Advisory engagement, including but not limited to making Customer’s representatives, IT staff, and resources available to Microsoft, providing accurate and complete information, and timely completing responsibilities assigned to Customer by Microsoft. Onsite visits of Microsoft resources must be mutually agreed, and Customer is responsible for reasonable travel and living expenses, as determined by the Digital Advisor.

## Sales Productivity Accelerator Offerings

### Sales Productivity Accelerator Overview

The Sales Productivity Accelerator is a service provided by Microsoft Services over the course of a four (4)-week-term to deliver a fixed-scope implementation of Microsoft Dynamics 365.

The Sales Productivity Accelerator includes the following deliverables:

- **Service Delivery Plan:** created by a Microsoft Consultant to meet the customer’s business goals and objectives.
- **Workshops:** will devote up to a total of sixteen (16) hours for workshops:
  - Up to two (2) discovery workshops, to explore and define key use cases and business requirements, as provided by Customer, to configuration settings;
  - Up to four (4) design review workshops during the Build phase.
- **Reporting:** One (1) native Microsoft Dynamics 365 dashboard with up to four (4) native components and two (2) Excel Power View Reports using Power BI Pro5 configured for up to two (2). The reports display up to two (2) interactive charts per entity with data sourced from Microsoft Dynamics 365.
- **Configuration:** Microsoft Dynamics 365 will be configured to support up to a total of ten (10) users. During this time, Microsoft will devote up to sixty-four (64) hours to configure the lead thru opportunity processes, 3 security roles, 3 persona’s leveraging out of the box security roles, SharePoint and Yammer integration with Microsoft Dynamics 365.
- **Testing:** will devote up to twenty-six (26) hours devoted to up to two (2) tests (e.g., System Test & UAT).
- **Training and Knowledge Transfer:** Provide one (1) product-oriented training for Customer’s users, for up to a total of four (4) hours.
- **Deployment Support:** Provide up to forty (40) hours of deployment and go-live support (week 4) subject to the pre-determined project scope and requirements.

### Customer Responsibilities

Customer agrees to cooperate with Microsoft as part of the Sales Productivity Accelerator service, including but not limited to making Customer’s representatives, IT staff, and resources available to Microsoft, providing accurate and complete information, and timely completing responsibilities assigned to Customer by Microsoft. Where onsite visits of Microsoft Consultants are mutually agreed and not pre-paid, Customer is responsible for reasonable travel and living expenses.

## Appendix E – Program Agreement Supplemental Terms

The terms and conditions below apply to Customer’s volume licensing agreement, as noted.

### Supplemental Terms for Select Plus Program

Select Plus requires a minimum order quantity of 500 points per pool during the first year. This order quantity requirement may be waived if a Qualified Contract is supplied.

#### Price Levels in Select Plus

Customer’s prices are based upon agreement between Customer and Customer’s reseller. However, Microsoft provides reseller with the following price and point criteria to help guide reseller to end customer pricing:

Select Plus Price Level-Commercial	Annual Point Minimums per Pool
A	500
B	4,000
C	10,000
D	25,000

### Definition of Management for Qualified Devices

If Customer’s volume licensing agreement refers to the Product Terms, the Product List, or the PUR for defining managed Qualified Devices, the following terms apply. Customer “manages” any device on which it directly or indirectly controls one or more operating system environments. For example, Customer manages any device:

- it allows to join its domain, or
- it authenticates as a requirement to use applications while on its premises, or
- it installs agents on (e.g., anti-virus, antimalware or other agents mandated by the Customer’s policy), or
- to which it directly or indirectly applies and enforces group policies, or
- on which it solicits or receives data about, and, configures, or gives instructions to hardware or software that is directly or indirectly associated with an operating system environment, or
- it allows to access a virtual desktop infrastructure (VDI) outside of Windows SA, Microsoft Intune (Device) or Windows Virtual Desktop Access Roaming Rights.

A device that accesses a VDI under Roaming Rights only or utilizes Windows To Go on a Qualifying Third Party Device off the Customer’s premises only, and is not managed for other purposes as described here, is not considered “managed” for purposes of this definition.

### Online Services in the Open Programs

Under the Open License, Open Value, and Open Value Subscription programs, the subscription period for Online Services starts at the time of product key activation and not the time of order. Once the product key is activated, Microsoft will not accept return requests submitted by Microsoft’s partners.

Customer qualifies for the Open Value program with a minimum purchase of 5 licenses. Online Services User Subscription Licenses (User SLs) can be counted toward the minimum quantity of 5 licenses. However, 5 User SLs alone does not meet the minimum for Open Value Organization Wide and Open Value Subscription. For OV Organization Wide and OV Subscription the initial order must include a minimum of 5 Desktop Platform or Desktop Component Licenses in addition to any User SLs.

### Supplemental Terms for Professional Services – Legacy Agreements

Customer’s right to use of any consulting and support services Microsoft performs (“Professional Services”) purchased from the Product Terms are governed by (1) customer’s volume licensing agreement, and (2) any master-level Microsoft Services agreement customer may have in place at the time of purchase. In the event of a conflict, the most current Professional Services agreement controls. If Customer’s master agreement for volume licensing is a Microsoft Business Agreement version dated prior to September, 2007 or otherwise does not include terms for Professional Services, and Customer has not signed any other master-level Microsoft Services agreement, the following supplemental terms apply to any Professional Services purchased and used by Customer.

#### Use, Ownership, and License Rights

##### Fixes

If Microsoft provides Product Fixes, modifications or enhancements, or their derivatives, either released generally (such as Product service packs) or to address a specific issue for Customer (collectively, “Fixes”), such Fixes are licensed under the same terms as the Product to which it applies. If the Fixes are not provided for a specific product, any use terms Microsoft provides with the Fixes will apply

**Pre-Existing Work**

All rights in any computer code or non-code based written materials developed or otherwise obtained independent of the Professional Services provided to Customer ("Pre-Existing Work") shall remain the sole property of the party providing it. Each party may use, reproduce and modify the other party's Pre-Existing Work only as needed to perform obligations related to Professional Services. Except as may be otherwise expressly agreed by the parties in writing, upon payment in full Microsoft grants Customer a non-exclusive, perpetual, fully paid-up license to use, reproduce and modify (if applicable) any Microsoft Pre-existing Work provided as part of a Services Deliverable, solely in the form delivered to Customer, and solely for Customer's internal business purposes. The license to Microsoft's Pre-Existing Work is conditioned upon Customer's compliance with the terms of Customer's volume licensing agreement.

**Services Deliverables**

Any computer code or materials other than Products or Fixes that Microsoft leaves with Customer at the conclusion of Microsoft's performance of Professional Services are considered Services Deliverables. Upon payment in full for the Professional Services, Microsoft grants Customer a non-exclusive, non-transferable, perpetual license to reproduce, use, and modify the Services Deliverables solely for Customer's internal business purposes, subject to the terms and conditions governing the Professional Services and Customer's volume licensing agreement.

**Use of technical information from Professional Services**

Microsoft may use any technical information it derives from providing Professional Services for problem resolution, troubleshooting, product functionality enhancements, in Fixes, and for Microsoft's knowledge base. Microsoft agrees not to identify Customer or disclose any of Customer's Confidential Information as part of such use.

**Open Source License Restrictions**

Customer must not install or use non-Microsoft software or technology in any way that would subject Microsoft's intellectual property to obligations beyond those included in these Professional Services terms or Customer's volume licensing agreement.

**Affiliates' Rights**

Customer may sublicense the rights to use Services Deliverables to its Affiliates, but Customer's Affiliates may not sub-license these rights. Customer is liable for ensuring its Affiliates' compliance with these Professional Services terms and Customer's volume licensing agreement.

**Warranties and Limitations of Liability**

**Warranty for Professional Services**

Microsoft warrants that it will perform the Professional Services with professional care and skill. If Microsoft fails to do so and Customer notifies Microsoft within 90 days of the date the Professional Services were performed, then Microsoft will, as the sole remedy for the breach of the warranty, either re-perform the Professional Services or return the price Customer paid for them. **Except for the limited warranty above, Microsoft provides no other warranties or conditions and disclaims any other express, implied or statutory warranties, including warranties of quality, title, non-infringement, merchantability and fitness for a particular purpose.**

**Limitation of Liability**

Microsoft's liability for direct damages will be limited to the amounts Customer was required to pay for the Professional Services. In the case of services provided free of charge, or code Customer is authorized to redistribute to third parties without separate payment to Microsoft, Microsoft's liability is limited to direct damages up to U.S. \$5,000. **In no event will either party be liable for indirect, incidental, special, punitive, or consequential damages, including loss of use, loss of profits, or interruption of business, however caused or on any theory of liability in relation to the Professional Services. No limitation or exclusions will apply to liability arising out of either party's (1) confidentiality obligations; or (2) violation of the other party's intellectual property rights.**

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## Appendix F – Promotions

### Security and Compliance Promotion for Microsoft 365 F1/F3

Customers may acquire the Security and Compliance promotion for Microsoft 365 F1/F3 for its Microsoft 365 F1/F3 licensed users, provided all of the Customer's users with primary work devices with screens 10.1" or larger that do not share their device have either Microsoft 365 E5 licenses or both the Microsoft 365 E5 Security and Microsoft 365 E5 Compliance licenses. The Security and Compliance promotion for Microsoft 365 F1/F3 offer includes Microsoft 365 E5 Security, Microsoft 365 E5 Compliance, Office 365 Data Loss Prevention, Exchange Online Archiving, and eDiscovery Hold and Export for SharePoint Online (including OneDrive for Business files).

### Windows 7 ESU Promotion for Windows E5, M365 E5, and M365 E5 Security Users

Users licensed with Windows E5, Microsoft 365 E5, or Microsoft 365 E5 Security SLs through an Enterprise Agreement or Enterprise Agreement Subscription as of January 14, 2020 ("Qualified Users") may use up to five simultaneous devices to run a local OSE covered by Windows 7 ESU for 2020 or access virtual OSEs covered by Windows 7 ESU for 2020 without the need for a Windows 7 ESU license. Customer may acquire Windows 7 ESU 2021 & 2022 and Windows 7 ESU 2021 & 2022 for Microsoft 365 licenses for such devices without the need to acquire the 2020 ESU license if the devices were used solely by Qualified Users for the duration of the ESU 2020 coverage period. These devices must be assigned ESU licenses for all respective years if used by any users not currently licensed with Windows E5, Microsoft 365 E5, or Microsoft 365 E5 Security SLs.

### Free Audio Conferencing for EA/EAS/EES (A3 Only) Customers

Customers may acquire free Audio Conferencing licenses until the end of their enrollment, up to three years. Offer valid from August 1, 2020, until January 31, 2021, available only for net new Audio Conferencing seats (defined as seats incremental to any existing seats as of August 1, 2020) for EA, EAS, or EES (A3 Only) customers with paid subscriptions that include Teams. Excludes users accessing Teams via a trial offer. Not available to customers and users based in India and to customers in China. Requires at least 20% Teams meetings adoption within the first six months of acquiring promotional licenses to maintain free Audio Conferencing. Teams meeting adoption is calculated as Monthly Active Users divided by Total Paid Teams Licenses. Standard limitations (Audio Conferencing: <https://docs.microsoft.com/en-us/microsoftteams/audio-conferencing-in-office-365>) and Trial Terms (Trial Agreement: <https://legal.office.com/en-us/docid20>) apply. Please contact your Microsoft account representative for more details.

### Free Audio Conferencing for CSP and Web Direct Customers

Customers may acquire free Audio Conferencing licenses for up to twelve (12) months by visiting their admin portal. Offer valid from October 1, 2020, until March 31, 2021, available only for net new Audio Conferencing seats (defined as seats incremental to any existing seats as of August 1, 2020) for CSP or Web Direct customers with paid subscriptions that include Teams. Excludes users accessing Teams via a trial offer. Not available to customers and users based in India and to customers in China. Standard limitations (Audio Conferencing: <https://docs.microsoft.com/en-us/microsoftteams/audio-conferencing-in-office-365>) and Trial Terms (Trial Agreement: <https://legal.office.com/en-us/docid20>) apply.

# Appendix G - Storage Array, and Azure Data Box, Azure Stack Edge, and Azure Stack Hub Ruggedized from Microsoft Hardware Terms

This Appendix G includes the additional or alternative terms that apply to hardware Products that are identified in this Appendix G. If there is a conflict between the provisions of this Appendix G and that of the Product Terms, this Appendix G shall govern and control for that hardware Product.

## Storage Array Terms

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### Availability

The Storage Array is available for delivery in the following geographies only: Argentina, Australia, Austria, Bahrain, Belarus, Belgium, Brazil, Bulgaria, Canada, Chile, Colombia, Costa Rica, Croatia, Czech Republic, Denmark, Egypt, Finland, France, Germany, Greece, Hong Kong, Hungary, Iceland, India, Indonesia, Ireland, Israel, Italy, Japan, Kazakhstan, Kenya, Kuwait, Lebanon, Liechtenstein, Macau, Malaysia, Mexico, Morocco, Netherlands, New Zealand, Nigeria, Norway, Pakistan, Peru, Philippines, Poland, Portugal, Puerto Rico, Qatar, Romania, Russia, Saudi Arabia, Serbia, Singapore, Slovakia, Slovenia, South Africa, Spain, South Korea, Sri Lanka, Sweden, Switzerland, Taiwan, Thailand, Turkey, United Arab Emirates, Ukraine, United Kingdom, United States, Vietnam.

### Shipment and Title

Shipping terms for orders placed are: (i) FCA (Incoterms 2010) Supplier Shipping dock; (ii) Microsoft will pre-pay and invoice freight to Customer; and (iii) for shipments outside the United States, Customer is responsible for clearing the goods for import and paying all import costs including duties, taxes, and other clearance charges. Microsoft will supply the Storage Array to the Customer on a No Charge basis and title for the Storage Array and the risk of loss will pass to Customer upon delivery to the carrier and completion of export formalities at the point of origin. All scheduled shipment dates are estimates only. The Storage Array will be shipped to the address provided by Customer using the StorSimple online form (provided separately). For US transactions, Microsoft has remitted sales tax on the value of the Storage Array(s) based upon the ship-to address provided by Customer for the delivery of the Storage Array(s). For US and Canada transactions, the address used for the shipment of the Storage Array(s) is used strictly for purposes of shipping the device to Customer and does not impact any other ship-to (or Tax Address) provided on Customer's volume license agreement used for purposes of charging sales tax to Customer on purchases made under that volume license agreement.

### Storage Array Software

Microsoft grants Customer a non-exclusive, non-transferrable, limited license to use the Software that runs in the Storage Array ("Storage Array Software") only in connection with Customer's use of the Storage Array. Customer's use of the Storage Array Software is subject to the terms of Customer's volume license agreement governing Software, and Microsoft reserves all other rights.

### Restrictions

Customer may not use the Storage Array Software for comparisons or "benchmarking" except for Customer's internal purposes or publish or disclose the results thereof.

### Certain Third Party Open Source Software

The Storage Array Software may be distributed with certain independent code (e.g., firmware) that is licensed under the GNU General Public License ("GPL"), the GNU Library/Lesser General Public License ("LGPL"), the Apache License Version 2.0 ("Apache License") and/or other open-source licenses ("Open-Source Code"). Any such Open-Source Code is identified in the Third Party Software Notices located at: <http://go.microsoft.com/fwlink/?LinkId=627000>, and is licensed to Customer in accordance with the applicable open-source licenses.

### Activation/Consent for Internet-based Services

Activation associates the use of the Storage Array Software with a specific device. During activation and subsequent use of the device, the Storage Array Software may send information about the Storage Array Software and device to Microsoft. This information includes the version, language, and product key of the Storage Array Software, Customer's Internet protocol address, operating system, browser and name, the version of the Storage Array Software Customer is using, and the language code of the Storage Array running the Storage Array Software. Microsoft uses this information to make the Internet-based services available to Customer. By using the Storage Array and Storage Array Software, Customer consents to the transmission of this information to Microsoft.

### Storage Array Software Updates

The update service for Storage Array Software will allow Customer to download available updates manually, or opt-in to receiving updates automatically. Available updates from Microsoft will be licensed by Microsoft and any third party updates will be licensed by the applicable third party.

### Limited Hardware Warranty

Microsoft warrants that the Storage Array hardware will not malfunction due to a defect in materials or workmanship under ordinary commercial use as described in the applicable product documentation for a period of ninety (90) days from the date of delivery to Customer. If it does not and Customer notifies Microsoft within the warranty term, Microsoft will repair or replace it (at Microsoft's election) at no charge. This is the only

warranty Microsoft gives for the Storage Array, and Customer waives any breach of warranty claims not made during the warranty period. This warranty does not cover problems caused by accident, abuse or use in a manner inconsistent with Customer's volume license agreement or the product documentation and it is void if the Storage Array is opened or modified, damaged by use with Non-Microsoft Products, or damaged by maintenance or repair performed by anyone other than Microsoft or a Microsoft authorized vendor. **Microsoft provides no other warranties or conditions and disclaims any other express, implied or statutory warranties, including without limitation, warranties of quality, title, non-infringement, merchantability, and fitness for a particular purpose.**

#### Indemnification. Defense of third party claims

Microsoft will defend Customer against any claims made by an unaffiliated third party that a Storage Array infringes its patent, copyright or trademark or makes unlawful use of its Trade Secret, subject to the terms of the Customer's volume license agreement regarding defense of third party claims.

#### Limitation of Liability

For any claim related to a Storage Array, each party's maximum, aggregate liability to the other is limited to direct damages finally awarded in an amount not to exceed the amounts Customer was required to pay for the applicable Storage Array. **In no event will either party be liable for indirect, incidental, special, punitive, or consequential damages, including loss of use, loss of profits, or interruption of business, however caused or on any theory of liability. No limitation or exclusions will apply to liability arising out of either party's (1) confidentiality obligations; (2) defense obligations; or (3) violation of the other party's intellectual property rights.**

#### U.S. Export Control Laws

The Storage Arrays are subject to the provisions in Customer's volume licensing agreement regarding U.S. export jurisdiction.

#### Collection of Diagnostic Information

Microsoft may collect information to help Microsoft diagnose problems related to the Storage Array and provide potential solutions. If Microsoft receives indication of a potential problem, it may collect information from the Storage Array through the Azure StorSimple Management Service. The types of information collected may include files that help describe or identify the problem, such as operational logs, whether the problem occurred in the hardware or software, the type and severity of the problem, and device status. Microsoft will not collect memory dumps, keys, passwords, or data that a Customer stores on the Storage Array. Microsoft uses the information to improve the Storage Array and related services, and may also use it to improve third party hardware and firmware included as part of the Storage Array. To the extent that Microsoft provides its hardware vendor with specific information, Microsoft will only provide the information in an anonymized data format unless Microsoft obtains Customer's explicit consent. Microsoft will provide this information for the purpose of resolving an identified hardware related issue. To learn more about privacy for the Storage Array, refer to <https://www.microsoft.com/en-us/privacystatement>.

#### Government Use

Customer understands that in exchange for purchasing one or more StorSimple Monetary Commitment Offerings, Microsoft will provide the Storage Array and StorSimple Support to Customer at no additional charge. Microsoft waives any and all entitlement to compensation from Customer for such Storage Array or StorSimple Standard Support. Microsoft intends that the provision of the Storage Array and StorSimple Standard Support to Customer without charge will fully comply with applicable gift, ethics and other laws and regulations related to gratuitous goods and services. Microsoft intends that the provision of Storage Arrays and StorSimple Standard Support shall be for the sole benefit and use of Customer and not for the personal use or benefit of any individual government employee.

## Azure Data Box Hardware Terms

### Definitions

**Azure Storage** means the Microsoft-managed cloud service that provides highly available and secure storage.

**Azure Storage Account** means a secure account that enables Customer to access and store its information using the Azure Storage service.

**Data Box Device** means a hardware device(s), including Data Box Software, that Microsoft may provide for Customer's temporary use in storing and transporting or transferring data from its premises to an Azure datacenter so it can be uploaded into Customer's Azure Storage Account.

**Data Box Software** means all software in object code form provided on or in conjunction with a Data Box Device, including all tools, updates, and associated documentation.

**Designated Azure Data Center** means the Microsoft Azure Data Center designated by Microsoft as the data center to which Customer will return the Data Box Device, and which may be different than the data center where Customer prefers to store its data and/or the location of Customer Azure Storage Account.

**Microsoft Azure Data Box Service or Service** means the Microsoft Azure service that enables customers to store and transfer on the Data Box Device large amounts of data to and from data centers. For clarity, the Service includes without limitation, any associated technology or functionality, information, materials, and Service updates.

### Data Box Software

The Data Box Software is licensed, not sold. Microsoft grants Customer a limited, nonexclusive, nontransferable license to use the Data Box Software (in object code) installed on the Data Box Device, or used in connection with the Data Box Device, only for the purpose of transporting or pre-processing (where applicable) data as enabled by the Data Box Device, and for no other purpose. Microsoft reserves all other rights. This

license does not give Customer any right to, and Customer may not: (i) use or virtualize features of the Data Box Software separately from the Data Box Device; (ii) publish, copy, rent, lease or lend the Data Box Software; (iii) work around any technical restrictions in the Data Box Software or restrictions in the Data Box Device documentation (if any); (iv) separate and run parts of the Data Box Software on more than one device; (v) install or use non-Microsoft software or technology in any way that would subject Microsoft's intellectual property or technology to any other license terms; or (vi) reverse engineer, decompile, or disassemble the Data Box Software, or attempt to do so, except if applicable law permit this even when these terms do not and, in that case, Customer may do so only as the law allows.

#### Restrictions

Customer may not use the Data Box Software for comparisons or "benchmarking", except for Customer's internal purposes, nor publish or disclose the results thereof.

#### Activation/Consent for Internet-based Services

If activation of the Data Box Software is necessary, activation associates the use of the Data Box Software with a specific device. During activation and subsequent use of the device, the Data Box Software may send information about the Data Box Software and device to Microsoft. This information includes the version, language, and product key of the Data Box Software, Customer's Internet protocol address, operating system, browser and name, the version of the Data Box Software Customer is using, and the language code of the Data Box running the Data Box Software. Microsoft uses this information to make the Internet-based services available to Customer. By using the Data Box Device and Data Box Software, Customer consents to the transmission of this information to Microsoft.

#### Software Updates

The Data Box Device may allow Customer to download available updates manually. If updates are made available, the updates from Microsoft will be licensed by Microsoft and any third-party updates will be licensed by the applicable third party. In order to continue to receive Data Box Device support, Customer agrees that it will stay current with applicable updates by downloading and applying the most recent updates.

#### Limitations

Customer is not required to use the Data Box Device to transfer data to Azure Storage, nor is Microsoft obligated to continue to make the Data Box Device or any other hardware product available in connection with the Service. The Data Box Device may not be available in certain regions or jurisdictions, and even where it is, it is subject to availability. Microsoft is not responsible for delays related to the Service that are outside of its direct control. Microsoft reserves the right to refuse to offer the Service and corresponding Data Box Device to anyone in its sole discretion and judgment. Microsoft may suspend the Service at its discretion in accordance with the requirements for Microsoft Azure Services under the Microsoft Online Services Terms.

#### Azure Service Terms

These Azure Data Box Hardware Terms ("Additional Terms") apply to Customer's receipt and use of the Data Box Device as part of the overall Service. Customer's use of the Service is also subject to the Azure Services Terms located at <https://azure.microsoft.com/en-us/support/legal/>. These Additional Terms supplement but do not amend or modify any existing terms in the Azure Services Terms. As set forth in these Additional Terms, Microsoft may charge Customer specified fees in connection with its use of the Data Box Device as part of the Service.

#### Product Use Rights

Subject to the payment of applicable fees, Microsoft grants Customer permission to use to the Data Box Device to transport, transfer (and where applicable, pre-process) such data, provided that Customer implements certain precautions:

- i. Back up and protect the data before transferring the data to the Data Box Device and prior to sending to Azure Storage;
- ii. Do not delete the data from Customer's premises and equipment before Customer has successfully transferred such data from the Data Box Device to a Designated Azure Data Center.
- iii. Cease using the Data Box Device to transfer data immediately upon notice from Microsoft.

Customer agrees (i) that it is solely responsible for determining the appropriateness of using the Data Box Device as set forth in these Additional Terms, and (ii) that Microsoft shall have no liability to Customer or any other third party for any loss of data or other damages.

#### Possession and Return of the Data Box Device

As part of the Service, Microsoft allows Customer to possess the Data Box Device for a period of time depending on the Data Box Device type. For Data Box Devices that have a specified time period for possession, Microsoft may charge Customer additional daily fees for possession of the Data Box Device beyond that specified time period.

#### Shipment and Title; Fees

- a. **Title and Risk of Loss.** All right, title and interest in each Data Box Device is and shall remain the property of Microsoft, and except as expressly set forth in the Additional Terms, no rights are granted to any Data Box Device (including under any patent, copyright, trade secret, trademark or other proprietary rights. Customer will compensate Microsoft for any loss, material damage or destruction to or of any Data Box Device while it is at any of Customer's locations as described in Shipment and Title; Fees, Table 1. Customer is responsible for inspecting the Data Box Device upon receipt from the carrier and for promptly reporting any damages to Microsoft Support at [databoxsupport@microsoft.com](mailto:databoxsupport@microsoft.com). Customer is responsible for the entire risk of loss of, or any damage to, the Data Box Device once it has



been delivered by the carrier to Customer’s designated address until the Microsoft-designated carrier accepts the Data Box Device for delivery back to the Designated Azure Data Center.

- b. **Fees.** As set forth in these terms, Microsoft may charge Customer specified fees in connection with its use of the Data Box Device as part of the Service, with the current schedule of fees set forth at the following: <https://go.microsoft.com/fwlink/?linkid=2052173>. For clarity, Azure Storage and Azure IoT Hub are separate Azure Services, and if used (even in connection with its use of the Service), separate Azure metered fees will apply. For additional clarity, any Azure services Customer uses after completing a transfer of data using the Azure Data Box Service are subject to separate usage fees. For Data Box Devices, Microsoft may charge Customer a lost device fee, as provided in Table 1 below, if (i) the Data Box Device is lost or materially damaged while it is in Customer’s care; (ii) Customer does not provide the Data Box Device to the Microsoft-designated carrier for return within the time period after the date it was delivered to Customer as provided in the table below. Microsoft reserves the right to change the fees charged for Data Box Device types, including but not limited to, by charging different amounts for different device form factors.

Data Box Device Type	Lost or Materially Damaged Time Period and Amounts
Data Box	Period: After 90 Days Amount: \$40,000.00 USD
Data Box Disk	Period: After 90 Days Amount: \$2,500.00 USD per Disk
Data Box Heavy	Period: After 90 Days Amount: \$250,000.00 USD
Azure Stack Edge	Period: If not returned within 30 days after the termination of Service Amount: \$40,000.00 USD
Data Box Gateway	N/A

- c. **Shipment and Return of Data Box Device.** For those Data Box Devices that are transported or delivered between Customer and a Designated Azure Data Center or a Microsoft entity, Microsoft will provide access to a designated carrier for such shipping and delivery. Customer will be responsible for costs of shipping a Data Box Device from Microsoft or a Designated Azure Data Center to Customer and return shipping of the same, including any metered amounts for carrier charges, any taxes, or applicable customs fees. When returning a Data Box Device to Microsoft, Customer will package and ship the Data Box Device in accordance with Microsoft’s instructions, including by using a carrier designated by Microsoft and the packaging materials provided by Microsoft.
- d. **Transit Risks.** Although data on a Data Box Device is encrypted, Customer acknowledge that there are inherent risks in shipping data on and in connection with the Data Box Device, and that Microsoft will have no liability to Customer for any damage, theft, or loss occurring to a Data Box Device or any data stored on one, including without limitation in transit.
- e. **Self-Managed Shipment.** Notwithstanding the foregoing, Customer may elect to use Customer’s designated carrier or Customer itself to ship and return the Data Box Device by selecting this option in the Service portal. Once selected, (i) Microsoft will inform the Customer about Data Box Device availability; (ii) Microsoft will prepare the Data Box Device for pick-up by the Customer’s designated carrier or Customer itself; and (iii) Customer will coordinate with Microsoft and Designated Azure Data Center personnel for pick-up and return of the Data Box Device by Customer’s designated carrier or Customer directly. A Customer’s election for self-managed shipment is subject to the following: (i) Customer abides by all other applicable terms and conditions related to the Service and Data Box Device, including without limitation, the Online Services Terms and the Azure Data Box Hardware Terms; (ii) Customer is responsible for the entire risk of loss of, or any damage to, the Data Box Device (as set forth in the “Shipment and Title; Fees” section, under subsection (a) “Title and Risk of Loss”) from the time that Microsoft makes the Data Box Device available for pick-up by Customer’s designated carrier or Customer, to the time Microsoft has accepted the Data Box Device from Customer’s designated carrier or Customer at the Designated Azure Data Center; (iii) Customer is fully responsible for the costs of shipping a Data Box Device from Microsoft or a Designated Azure Data Center to Customer and return shipping of the same, including carrier charges, any taxes, or applicable customs fees; (iv) When returning a Data Box Device to Microsoft or a Designated Azure Data Center, Customer will package and ship the Data Box Device in accordance with Microsoft’s instructions and any packaging materials provided by Microsoft; (v) Customer will be charged applicable fees (as set forth in the “Shipment and Title; Fees” section, under subsection (b) “Fees”) which commence from the time the Data Box Device is ready for pick-up at the agreed upon time and location, and will cease once the Data Box Device has been delivered to Microsoft or the Designated Azure Data Center; and (vi) Customer acknowledges that there are inherent risks in shipping data on and in connection with the Data Box Device, and that Microsoft will have no liability to Customer for any damage, theft, or loss occurring to a Data Box Device or any data stored on one, including without limitation in transit when shipped by Customer’s designated carrier.

**Responsibilities if Customer Moves a Data Box Device between Locations**

While Customer is in possession of a Data Box Device, Customer may, at its sole risk and expense, transport the Data Box Device to its different locations to upload its data in accordance with this Section and the requirements of the Additional Terms. Customer is responsible for obtaining, at its own risk and expense, any export license, import license and other official authorization for the exportation and importation of the Data Box Device and associated Software and Customer’s data to any such different Customer location. Customer shall also be responsible for customs clearance at any such different Customer location, and will bear all duties, taxes and other official charges payable upon importation as well as any and all costs and risks of carrying out customs formalities in a timely manner. Customer agrees to comply with and be responsible for all applicable

import, export and general trade laws and regulations should Customer decide to transport the Data Box Device beyond the country border in which Customer receive the Data Box Device. Notwithstanding the foregoing, if Customer transports the Data Box Device to a different location as set forth in this Section, Customer agrees to cause the Data Box Device to return to the country location where Customer received such device initially, prior to shipping the Data Box Device back to the original point of origin, whether a specified Microsoft entity or a Designated Azure Data Center. If requested, Microsoft may provide a list of companies that may be able to assist Customer in importing or exporting the Data Box Device, but Microsoft does not endorse, support, or represent any of the listed companies, and Microsoft disclaims any liability for any damages or liabilities Customer may incur as a result of those services.

#### Disclaimer of Warranty

Microsoft provides the Data Box Device, and any assistance by Microsoft in connection with the Data Box Device, “as is” without any warranties or conditions, and disclaims any express, implied or statutory warranties, including without limitation, warranties of quality, title, non-infringement, merchantability, and fitness for a particular purpose. Customer bears the risk of using them.

#### U.S. Export Control Laws

The Data Box Devices are subject to the provisions in Customer’s volume licensing agreement, Azure Subscription Agreement, or other customer agreement regarding U.S. export jurisdiction.

#### Privacy; Processing of Personal Data

- a. **Privacy.** The Microsoft Privacy Statement applies to the Service and the Data Box Device under these Additional Terms.
- b. **Terms.** Customer agrees to comply with all data protection laws that apply to its use of the Service, its handling of data with the Data Box Device or in Azure Storage, or its moving the Data Box Device as described in the Responsibilities if Customer Moves a Data Box Device between Locations section above.
- c. **Processing of Personal Data.** To the extent Microsoft is a processor or subprocessor of personal data in connection with the software, Microsoft makes the commitments in the European Union General Data Protection Regulation Terms of the Online Services Terms to all customers effective May 25, 2018, at <http://go.microsoft.com/?linkid=9840733>.

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## Azure Stack Edge Hardware Terms

### Definitions

“**Azure Stack Edge Device**” means hardware devices, including Software, that are offered as part of Azure Stack Edge family of devices as described at <https://azure.microsoft.com/en-us/products/azure-stack/edge/>.

**Azure Stack Edge Service** or “**Service**” means the Azure service that enables customers to receive, provision, use and manage an Azure Stack Edge Device. For clarity, the Service includes without limitation, any associated technology or functionality (e.g., creating a share), information, materials, and Service updates.

“**Software**” means all software provided on or in conjunction with an Azure Stack Edge Device, including all tools, updates, and associated documentation.

### Azure Services Terms; Limitations

#### Azure Services Terms

These Azure Stack Edge Hardware Terms (“Additional Terms”) apply to Customer’s receipt and use of the Azure Stack Edge Device as part of the overall Service. Customer’s use of the Service is also subject to the Azure Service Agreement and Terms located at <https://azure.microsoft.com/en-us/support/legal/>, which includes without limitation, the Customer’s customer agreement and the Online Services Terms. These Additional Terms supplement but do not amend or modify any existing terms in the Azure Service Agreement and Terms. If there is a conflict between these Additional Terms and any of the terms comprising the Azure Service Agreement and Terms, the Additional Terms will govern and control for purposes of the use of the Azure Stack Edge Device as part of the Service.

#### Limitations

Customer is not required to use the Azure Stack Edge Device to transfer data to an Azure service or to run any other functionality, nor is Microsoft obligated to continue to make the Azure Stack Edge Device or any other hardware product available in connection with the Service. The Azure Stack Edge Device may not be available in certain regions or jurisdictions, and even where it is, it is subject to availability. Microsoft is not responsible for delays related to the Service that are outside of its direct control. Microsoft reserves the right to refuse to offer the Service and corresponding Azure Stack Edge Device to anyone in its sole discretion and judgment. Microsoft may suspend the Service in its discretion in accordance with the terms for Microsoft Azure services under the Microsoft Online Services Terms.

### Use of Azure Stack Edge Device and Software

#### Conditions for Azure Stack Edge Use

Subject to the payment of applicable fees, Microsoft grants Customer permission to use to the Azure Stack Edge Device, provided that Customer implements the following:

- a. **Data Protection.** Customer agrees to develop and implement a data protection strategy that among other things, preserves and backs up customer data residing and remaining locally on the Azure Stack Edge Device in the event of device failure, loss, or destruction.
- b. **Customer Determination of Appropriateness.** Customer agrees (i) that it is solely responsible for determining the appropriateness of using the Azure Stack Edge Device as set forth in these Additional Terms, and (ii) that Microsoft shall have no liability to Customer or any other third party for any loss of data or other damages. Customer should assess the capabilities and features of the Azure Stack Edge Device based on Customer's intended workloads and applications to determine if the Azure Stack Edge Device is appropriate to meet Customer's business needs. For example, the Azure Stack Edge Device has Service Level Objectives (see the "Service Level Objectives" Section) but no service level agreement commitments (e.g., for uptime, support issue resolution, etc.) and has the capabilities described at <https://aka.ms.AzureStackEdgeDoc>.
- c. **No Transfer or Access.** Customer agrees to not sell, assign, or transfer the Azure Stack Edge Device, and will not directly or indirectly (through a third party) view, open, modify, disassemble, or otherwise tamper with the Azure Stack Edge Device (including the Software).
- d. **Accreditation.** To the extent that the Customer is a governmental entity, Microsoft also grants Customer the right to place the Azure Stack Edge Device through its accreditation processes to meet its needs, including without limitation, accreditation requirements and processes for use in an unclassified, secret, or top secret domain.

## Software

The Software is licensed, not sold. Microsoft grants Customer a limited, nonexclusive, nontransferable license to use the Software with the Azure Stack Edge Device, and for no other purpose. Microsoft reserves all other rights. This license does not give Customer any right to, and Customer may not: (i) use or virtualize features of the Software separately from the Azure Stack Edge Device; (ii) publish, copy, rent, lease or lend the Software; (iii) work around any technical restrictions in the Software or restrictions in the Azure Stack Edge Device documentation (if any); (iv) separate and run parts of the Software on more than one device; (v) install or use non-Microsoft software or technology in any way that would subject Microsoft's intellectual property or technology to any other license terms; or (vi) reverse engineer, decompile, or disassemble the Software, or attempt to do so, except if applicable law permit this even when these terms do not and, in that case, Customer may do so only as the law allows. If there is a conflict between these Additional Terms and any separate license terms for any separate modules or agents used in connection with the Azure Stack Edge Device, the separate license terms for those modules or agents shall govern and control for the use of such modules or agents.

### Restrictions

Customer may not use the Software for comparisons or "benchmarking," except for Customer's internal purposes, nor publish or disclose the results thereof.

### Activation/Consent for Internet-based Services

If activation of the Software is necessary, activation associates the use of the Software with a specific device. During activation and subsequent use of the device, the Software may send information about the Software and device to Microsoft, including device properties (e.g., node, chassis and component numbers, software and firmware versions, timestamps of registration, etc.) and Customer environment details (e.g., internet protocol addresses of device, device name, time and update server IP address). Microsoft uses this information to make the Internet-based services available to Customer. By using the Azure Stack Edge Device and Software, Customer consents to the transmission of this information to Microsoft.

### Software Updates

Microsoft may make updates available for the Azure Stack Edge Device. If updates are made available, the updates from Microsoft will be licensed by Microsoft and any third-party updates will be licensed by the applicable third party. In order to continue to receive Azure Stack Edge support, Customer agrees that it will stay current with applicable updates by downloading and applying the most recent updates.

### Use of the Azure Stack Edge Device

As part of the Service, Microsoft allows Customer to use the Azure Stack Edge Device for as long as the Customer has an active subscription to the Service. If Customer no longer has an active subscription and fails to return the Azure Stack Edge Device, Microsoft can deem the Azure Stack Edge Device as lost as set forth in the "Title and Risk of Loss; Shipment and Return Responsibilities" Section.

### Title and Risk of Loss; Shipment and Return Responsibilities

#### Title and Risk of Loss

All right, title and interest in each Azure Stack Edge Device is and shall remain the property of Microsoft, and except as expressly set forth in these Additional Terms, no rights are granted to any Azure Stack Edge Device (including under any patent, copyright, trade secret, trademark or other proprietary rights). Customer will compensate Microsoft for any loss, damage or destruction to or of any Azure Stack Edge Device while it is at any of Customer's locations or in the circumstances described in the "Responsibilities if Customer Moves an Azure Stack Edge Device between Customer's Locations" Section. Customer is responsible for inspecting the Azure Stack Edge Device upon receipt from the carrier and for promptly reporting any damages to Microsoft Support at [adbeops@microsoft.com](mailto:adbeops@microsoft.com). Customer is responsible for the entire risk of loss of, or any damage to, the Azure Stack Edge Device once it has been delivered by the carrier to Customer's designated address until the Microsoft-designated carrier accepts the Azure Stack Edge Device for return delivery. If Customer prefers to arrange Customer's own pick-up and/or return of the Azure Stack Edge Device pursuant to the "Shipment and Return of Azure Stack Edge Device" Section below, Customer is

responsible for the entire risk of loss of, or any damage to the Azure Stack Edge Device until it has been returned to, and accepted by Microsoft.

Microsoft may charge Customer for a lost device fee for the Azure Stack Edge Device (or equivalent) as set forth in the table located at <https://azure.microsoft.com/en-us/pricing/details/azure-stack/edge/> (i) if the Azure Stack Edge Device is lost or materially damaged while it is Customer's responsibility as described in the previous sentence, or (ii) if Customer does not provide the Azure Stack Edge Device to the Microsoft-designated carrier for return or return the Azure Stack Edge Device pursuant to the "Shipment and Return of Azure Stack Edge Device" Section below within 30 days from the end of Customer's use of the Service. Microsoft reserves the right to change the fee charged for lost or damaged devices, including but not limited to, by charging different amounts for different device form factors.

#### **Shipment and Return of Azure Stack Edge Device**

Customer will be responsible for a one-time metered shipping fee for the shipment of the Azure Stack Edge Device from Microsoft to Customer and return shipping of the same, in addition to any metered amounts for carrier charges, any taxes, or applicable customs fees. When returning an Azure Stack Edge Device to Microsoft, Customer will package and ship the same in accordance with Microsoft's instructions, including by using a carrier designated by Microsoft and the packaging materials provided by Microsoft. If Customer prefers to arrange Customer's own pick-up and/or return of the same, then Customer is responsible for the costs of shipping the Azure Stack Edge Device, including adequate protections against any loss or damage of the Azure Stack Edge Device (e.g., insurance coverage) while in transit. Customer will package and ship the Azure Stack Edge Device in accordance with Microsoft's packaging instructions. Customer is also responsible to ensure that it removes any and all of Customer's data from the Azure Stack Edge Device prior to returning it to Microsoft, including but not limited to, following any Microsoft issued processes for wiping or clearing the Azure Stack Edge Device.

#### **Responsibilities if Customer Moves an Azure Stack Edge Device between Customer's Locations**

While Customer is in possession of an Azure Stack Edge Device, Customer may, at Customer's sole risk and expense, transport the Azure Stack Edge Device to Customer's different locations in accordance with this Section and the requirements of the Additional Terms. Customer is responsible for obtaining at Customer's own risk and expense any export license, import license and other official authorization for the exportation and importation of the Azure Stack Edge Device and associated Software and Customer's data to any such different Customer location. Customer shall also be responsible for customs clearance at any such different Customer location, and will bear all duties, taxes and other official charges payable upon importation as well as any and all costs and risks of carrying out customs formalities in a timely manner. Customer agrees to comply with and be responsible for all applicable import, export and general trade laws and regulations should Customer decide to transport the Azure Stack Edge Device beyond the country border in which Customer receives the Azure Stack Edge Device. Notwithstanding the foregoing, if Customer transports the Azure Stack Edge Device to a different location as set forth in this Section, Customer agrees to cause the Azure Stack Edge Device to return to the country location where Customer received it initially, prior to shipping the Azure Stack Edge Device to Microsoft. Customer acknowledges that there are inherent risks in shipping data on and in connection with the Azure Stack Edge Device, and that Microsoft will have no liability to Customer for any damage, theft, or loss occurring to a Azure Stack Edge Device or any data stored on one, including without limitation in transit. It is Customer's responsibility to obtain the appropriate support agreement from Microsoft in order to meet Customer's operating objectives for the Azure Stack Edge Device; however, depending on the location to which Customer intends to move the Azure Stack Edge Device, Microsoft's ability to provide hardware servicing and support may be delayed, or may not be available.

#### **Fees**

Microsoft will charge Customer specified fees in connection with Customer's use of the Azure Stack Edge Device as part of the Service, with the current schedule of fees set forth at the following: <https://azure.microsoft.com/en-us/pricing/details/azure-stack/edge/>. For clarity, Customer may use other Azure services in connection with Customer's use of the Service, and Microsoft deems such services as separate services that may be subject to separate metered fees and costs. By way of example only, Azure Storage, Azure Compute, and Azure IoT Hub are separate Azure services, and if used (even in connection with its use of the Service), separate Azure metered services will apply.

#### **Survival**

Azure Services Terms, Software, Survival, Disclaimer of Warranty, Privacy Terms and Export Control Laws Section will survive expiration or termination of these Additional Terms.

#### **Disclaimer of Warranty**

THE AZURE STACK EDGE DEVICE AND ANY ASSISTANCE BY MICROSOFT PROVIDED PURSUANT TO THESE ADDITIONAL TERMS IS PROVIDED "AS-IS." CUSTOMER BEARS THE RISK OF USING THEM. MICROSOFT GIVES NO EXPRESS WARRANTIES, GUARANTEES OR CONDITIONS. CUSTOMER MAY HAVE ADDITIONAL CONSUMER RIGHTS OR STATUTORY GUARANTEES UNDER LOCAL LAWS WHICH THESE ADDITIONAL TERMS CANNOT CHANGE. TO THE EXTENT PERMITTED UNDER CUSTOMER'S LOCAL LAWS, MICROSOFT EXCLUDES ALL STATUTORY OR IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

#### **Privacy; Processing of Personal Data**

- a. **Privacy.** The Microsoft Privacy Statement applies to the Service and the Data Box Device under these Additional Terms.
- b. **Terms.** Customer agrees to comply with all data protection laws that apply to its use of the Service, its handling of data with the Azure Stack Edge Device or in Azure Storage, or its moving the Azure Stack Edge Device as described in the "Responsibilities if Customer Moves an Azure Stack Edge Device between Locations" Section above.

- c. **Processing of Personal Data.** To the extent Microsoft is a processor or subprocessor of personal data in connection with the software, Microsoft makes the commitments in the European Union General Data Protection Regulation Terms of the Online Services Terms to all customers effective May 25, 2018, at <http://go.microsoft.com/?linkid=9840733>.

### Service Level Objectives

The Azure Stack Edge Device has Service Level Objectives (SLO) for (a) delivery of the Azure Stack Edge Device; and (b) replacement of Field Replaceable Units or FRUs. The SLOs or failure to meet the SLOs do not provide any basis for financial recovery or remediation. For clarification purposes, the SLOs are separate and distinct from Azure service level agreement (SLA) commitments, as set forth in the Service Level Agreement for Microsoft Online Services. For additional clarity, the Azure Stack Edge Device does not have any applicable Azure SLAs.

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## Azure Stack Hub Ruggedized from Microsoft Hardware Terms

### Definitions

**Documentation** means the Ruggedized Azure Stack Hub user documentation set forth in <https://aka.ms/azurestackhubrfm>.

**Azure Stack Hub Ruggedized from Microsoft or Appliance** means an integrated hardware system, including Software, that Microsoft may offer as part of the Azure Stack family of Appliances as described at <https://azure.microsoft.com/en-us/overview/azure-stack/>, for Customer's use at Customer's designated premises.

**Azure Stack Hub Ruggedized Service or Service** means the Azure service that enables Customers to receive, provision, use, and manage the Appliance in running Azure services. For clarity, the Service includes without limitation, any associated technology or functionality, information, materials, and Service updates.

**Software** means all software in object code form provided on or in conjunction with an Appliance, including all tools, updates, and associated documentation.

### Azure Service Terms; Limitations

#### Azure Service Terms

These Ruggedized Azure Stack Hub Appliance Hardware Terms ("Additional Terms") apply to Customer's receipt and use of the Appliance as part of the overall Service. Customer's use of the Service is also subject to the Azure Service Agreement and Terms located at <https://azure.microsoft.com/en-us/support/legal/>, which includes without limitation, the Customer's customer or other license agreement and the Online Services Terms. These Additional Terms supplement but do not amend or modify any existing terms in the Azure Service Agreement and Terms. If there is a conflict between these Additional Terms and any of the terms comprising the Azure Service Agreement and Terms, the Additional Terms will govern and control for purposes of the use of the Appliance as part of the Service.

#### Limitations

Microsoft is not obligated to continue to make the Appliance or any other hardware product available in connection with the Service. The Appliance may not be available in certain regions or jurisdictions, and even where it is, it is subject to availability. Microsoft is not responsible for delays related to the Service that are outside of its direct control. Microsoft reserves the right to refuse to offer the Service and corresponding Appliance to anyone in its sole discretion and judgment. Microsoft may suspend the Service in its discretion in accordance with the terms for Microsoft Azure services under the Microsoft Online Services Terms.

### Use of the Appliance and Software

#### Conditions for Appliance Use

Subject to the payment of applicable fees, Microsoft grants Customer permission to use the Appliance, provided that Customer implements the following:

- i. **Data protection.** Customer agrees to take certain precautions regarding its customer data: (i) Back up and protect all data prior to copying to and storing on the Appliance; (ii) do not delete the data from Customer's premises and equipment before Customer has successfully transferred such data from the Appliance to Microsoft; and (iii) Apply updates as set forth herein and perform preventative maintenance as recommended by Microsoft.
- ii. **Customer Determination of Appropriateness.** Customer agrees (i) that it is solely responsible for determining the appropriateness of using the Appliance as set forth in these Additional Terms, and (ii) that Microsoft shall have no liability to Customer or any other third party for any loss of data or other damages.
- iii. **Deployment pre-requisites and facility assessment.** Customer agrees to meet Microsoft's requirements necessary to support the installation, use, maintenance, and removal of the Appliance.
- iv. **No Transfer or Access.** Customer agrees to not sell, assign, or transfer the Appliance, and will not directly or indirectly (through a third party) view, open, modify, disassemble, or otherwise tamper with the Appliance (including the Software).

#### Accreditation

To the extent that the Customer is a governmental entity, Microsoft also grants Customer the right to place the Appliance through its accreditation processes to meet its needs, including without limitation, accreditation requirements and processes for use in an unclassified, secret, or top secret domain.

## Software

The Software is licensed, not sold. Microsoft grants Customer a limited, nonexclusive, nontransferable license to use the Software with the Appliance, and for no other purpose. Microsoft reserves all other rights. This license does not give Customer any right to, and Customer may not: (i) use or virtualize features of the Software separately from the Appliance; (ii) publish, copy, rent, lease or lend the Software; (iii) work around any technical restrictions in the Software or restrictions in the Appliance documentation (if any); (iv) separate and run parts of the Software on more than one device; (v) install or use non-Microsoft software or technology in any way that would subject Microsoft's intellectual property or technology to any other license terms; or (vi) reverse engineer, decompile, or disassemble the Software, or attempt to do so, except if applicable law permit this even when these terms do not and, in that case, Customer may do so only as the law allows. Subject to the foregoing limitations, Customer's use of the Software is subject to the software license terms presented to or otherwise made available to Customer in connection with the Appliance, and also includes without limitation, any separate license terms for any separate modules or agents to run additional Azure services on or in connection with the Appliance. If there is a conflict between these Additional Terms and any separate license terms for any separate modules or agents used in connection with the Appliance, the separate license terms for those modules or agents shall govern and control for the use of such modules or agents.

## Restrictions on Benchmarking

Customer may not use the Software for comparisons or "benchmarking," except for Customer's internal purposes, nor publish or disclose the results thereof.

## Activation/Consent for Internet-based Services

If activation of the Software is necessary, activation associates the use of the Software with a specific device. During activation and subsequent use of the device, the Software may send information about the Software and device to Microsoft, as described in the Documentation. Microsoft uses this telemetry to make the Internet-based services available to Customer. By using the Appliance and Software, Customer consents to the transmission of this information to Microsoft.

## Software Updates

Microsoft may make Software updates available for the Appliance. If updates are made available, the updates from Microsoft will be licensed by Microsoft and any third-party updates will be licensed by the applicable third party. In order to continue to receive Appliance support, Customer agrees that it will stay current with applicable updates by downloading and applying the most recent updates in compliance with Microsoft's published or provided policy.

## Delivery, Deployment, and Use of the Appliance

- i. **Delivery.** The Service and the Appliance are offered as a Microsoft first party service under these Additional Terms and the Azure Service Agreement and Terms, and by which Microsoft will deliver the Appliance to Customer's specified location ("Customer Specified Location"), subject to Service and Appliance availability.
- ii. **Deployment.** Microsoft will initiate and complete the deployment of the Appliance at the Customer Specified Location, which can typically take up to fifteen (15) days.
- iii. **Use.** As part of the Service, Microsoft allows Customer to use the Appliance for as long as the Customer has an active subscription to the Service, which use includes but is not limited to, use of the hardware, hardware support, and basic software infrastructure services (e.g., storage, compute, including virtual machines and containers). As part of the deployment and use of the Service and the Appliance, Customer agrees to provide assigned resources at the level reasonably requested by Microsoft to address pre-requisite activities, information, items for deployment, and ongoing management.
- iv. **Optional Services.** Customer may use and subscribe to additional, optional services in connection with the Service and Appliance that will be subject to a separate fee or subscription.

## Title and Risk of Loss; Shipment and Return Responsibilities

### Title and Risk of Loss

All right, title and interest in each Appliance is and shall remain the property of Microsoft, and except as expressly set forth in these Additional Terms, no rights are granted to any Appliance (including under any patent, copyright, trade secret, trademark or other proprietary rights). Customer will compensate Microsoft for any loss, damage or destruction to or of any Appliance while it is at any of Customer's locations or in the circumstances described in Section "Responsibilities if Customer Moves the Appliance between Customer's Locations." Customer is responsible for inspecting the Appliance upon receipt from the carrier and for promptly reporting any damages to Microsoft Support at madbeops@microsoft.com. Customer is responsible for the entire risk of loss of, or any damage to, the Appliance once it has been delivered by the carrier to Customer's designated address until the Microsoft-designated carrier accepts the Appliance for return delivery. Microsoft may charge Customer a lost device fee for the Appliance (i) if the Appliance is lost or materially damaged while it is Customer's responsibility as described in the previous sentence, or (ii) if Customer does not return the Appliance to the Microsoft-designated carrier for return or Microsoft pursuant to Section "Shipment and Return of the Appliance" below, within 30 days from the end of Customer's use of the Service. Microsoft reserves the right to change the fee charged for lost or damaged devices, including but not limited to, by charging different amounts for different device form factors.

### Shipment and Return of the Appliance

Customer will be responsible for a one-time, per Appliance metered shipping fee for shipping costs and return logistics ("Logistics Fee"), in addition to any taxes, or applicable customs fees. The Logistics Fee includes shipping, setup, refurbishment, data destruction, and coverage for loss of the Appliance in transit. When returning an Appliance to Microsoft, Customer agrees to package and ship the Appliance in

accordance with Microsoft's instructions, including the use of a carrier designated by Microsoft and the packaging materials provided by Microsoft. Customer is responsible to remove Customer's data from the Appliance prior to returning it to Microsoft, and follow any Microsoft issued processes for wiping or clearing the Appliance.

#### Disposition at End of Life

Notwithstanding the foregoing, if Microsoft in its sole discretion determines that the Appliance as part of the Service has reached or exceeded its useful lifespan while it is in the possession of Customer, then Microsoft has the right and ability to change the Appliance or any components thereof. Customer agrees to provide Microsoft with limited access to Customer Specified Location and the Appliance for this purpose. Microsoft will discuss logistics and timing of activities related to this change-out of the Appliance or Appliance components with Customer.

#### Retention of Hardware Components Option

Microsoft may provide Customer with separate fee options to retain specified Appliance components (e.g., hard drives) for destruction by Customer or have Microsoft dispose of said components at the end of the Term or Appliance decommissioning.

#### Responsibilities if Customer Moves the Appliance between Customer's Locations

While Customer is using an Appliance during the Customer's use of the Service, Customer may, at Customer's sole risk and expense, transport the Appliance to Customer's different locations to upload Customer's data in accordance with Section "Use of the Appliance and Software" above. Subject to Section "Export Control Laws", Customer is responsible for obtaining at Customer's own risk and expense any export license, import license and other official authorization for the exportation and importation of the Appliance and associated Software and Customer's data to any such different location of Customers. Customer is also solely responsible for customs clearance at any such different location of Customer's, and Customer will bear all duties, taxes and other official charges payable upon importation as well as any and all costs and risks of carrying out customs formalities in a timely manner. Customer agrees to comply with and be responsible for all applicable import, export and general trade laws and regulations should Customer decide to transport the Appliance beyond the country border in which Customer receives the Appliance. Notwithstanding the foregoing, if Customer transports the Appliance to a different location as set forth in this Section, Customer agrees to cause the Appliance to return to the country location where Customer received it initially, prior to returning the Appliance to Microsoft or a Customer Specified Location. Customer acknowledges that there are inherent risks in shipping data on and in connection with the Appliance, and that Microsoft will have no liability to Customer for any damage, theft, or loss occurring to an Appliance or any data stored on one, including without limitation in transit. It is Customer's responsibility to obtain the appropriate support agreement from Microsoft in order to meet Customer's operating objectives for the Appliance; however, depending on the location to which Customer intends to move the Appliance, Microsoft's ability to provide hardware servicing and support may be delayed, or may not be available.

#### Fees

Microsoft will charge Customer specified fees in connection with Customer's use of the Appliance as part of the Service, with the current schedule of fees as provided by Microsoft. For clarity, Customer may use other Azure services in connection with Customer's use of the Service, and Microsoft deems such services as separate and additional services subject to separate subscription or metered fees and costs, as those additional services are installed on the Appliance. By way of example only, Azure Storage, Azure Compute, and Azure IoT Hub are separate Azure services, and if used (even in connection with its use of the Service), separate Azure metered services will apply.

#### Survival

Sections Azure Services Terms, Software, Survival, Disclaimer of Warranty, Privacy Terms and Export Control Laws will survive expiration or termination of these Additional Terms.

#### Disclaimer of Warranty

THE APPLIANCE AND ANY ASSISTANCE BY MICROSOFT PROVIDED PURSUANT TO THESE ADDITIONAL TERMS IS PROVIDED "AS-IS." CUSTOMER BEARS THE RISK OF USING THEM. MICROSOFT GIVES NO EXPRESS WARRANTIES, GUARANTEES OR CONDITIONS. CUSTOMER MAY HAVE ADDITIONAL CONSUMER RIGHTS OR STATUTORY GUARANTEES UNDER LOCAL LAWS WHICH THESE ADDITIONAL TERMS CANNOT CHANGE. TO THE EXTENT PERMITTED UNDER CUSTOMER'S LOCAL LAWS, MICROSOFT EXCLUDES ALL STATUTORY OR IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

#### Hardware Updates; Support

##### Hardware Updates

Microsoft is not required to provide Customer with any new Appliance releases, enhancements, or updates for the Appliance. If Microsoft opts to do so, such new releases, enhancements, or updates ("Hardware Updates") will be subject to the terms of these Additional Terms. Customer agrees to provide limited access to the Customer Specified Location for the purpose of applying new hardware components or the Appliance itself.

##### Support

As part of the subscription to the Service, Microsoft will provide a baseline level of support for the Service and Appliance. Customer will also enroll in the Microsoft Premier Support plan.

#### Maintenance

Customer agrees that it will not allow anyone to access, repair, or otherwise maintain the Appliance at the Customer Specified Location other than Microsoft or its designees upon request, except for an emergency situation such as fire or imminent personal injury.

### Privacy Terms

- a. **Privacy.** The Microsoft Privacy Statement (<http://www.microsoft.com/privacystatement/OnlineServices/Default.aspx>) applies to the Service and the Appliance under these Additional Terms.
- b. **Terms.** Customer agrees to comply with all data protection laws that apply to Customer's use of the Service, its handling of data with the Appliance or in Azure, or Customer's moving the Appliance as described in the "Responsibilities if Customer Moves an Appliance between Locations" section above.
- c. **Processing of Personal Data.** To the extent Microsoft is a processor or subprocessor of personal data in connection with the software, Microsoft makes the commitments in the European Union General Data Protection Regulation Terms of the Online Services Terms to all customers effective May 25, 2018, at <http://go.microsoft.com/?linkid=9840733>.

### Applicability of Service Level Agreement

Service level agreements that apply to specified Azure services listed in the Service Level Agreement for Microsoft Online Services do not apply to the Service or the Appliance, since Customer is running the Service and Appliance locally, where customer controls and has responsibility for the physical environment.



# Appendix H - Student Use Benefits and Academic Programs

This section highlights the specific benefits provided to Students in Open Value Subscription for Education Solutions, School Agreement, Enrollment for Education Solutions, and Cloud Solution Provider programs.

## Student Use Benefit Entitlements by Qualifying Program

The following table defines Student Use Benefits for specific products licensed through Academic programs. For each Product in the first column, the appropriate Student Use Benefit Product(s) are listed along with the number of licenses available for Students per paid Faculty/Staff, Education Qualified User, or Knowledge Worker license.

Qualifying Product	Student Use Benefit	Program Availability	Student Instances Provided per Faculty/Staff or Knowledge Worker
Advanced Threat Analytics	Advanced Threat Analytics	OVS-ES, School, EES	15
Azure Active Directory Premium Plan 1	Azure Active Directory Premium Plan 1	OVS-ES, School, EES, CSP	15
Azure Active Directory Premium Plan 2	Azure Active Directory Premium Plan 2	OVS-ES, School, EES, CSP	15
Desktop Education	Microsoft 365 Apps for enterprise and Windows 10 Education Upgrade	OVS-ES, School, EES (pre-2017)	40
Enterprise Mobility + Security A3/E3	Azure Active Directory Premium Plan 1, Advanced Threat Analytics, Microsoft Intune for Education	OVS-ES, EES, CSP	40
Enterprise Mobility + Security A5/E5	Enterprise Mobility + Security A3 Student Use Benefit, Azure Advanced Threat Protection, Azure Active Directory Premium Plan 2, Microsoft Cloud App Security	OVS-ES, EES, CSP	40
Microsoft 365 Education A3	Office 365 A3 Student Use Benefit, Enterprise Mobility + Security A3 Student Use Benefit, Windows 10 Education A3 Student Use Benefit2, Minecraft: Education Edition	EES, CSP	40
Microsoft 365 Education A5	Office 365 A5 Student Use Benefit, Enterprise Mobility + Security A5 Student Use Benefit, Windows 10 Education A3 Student Use Benefit2, Minecraft: Education Edition	EES, CSP	40
Microsoft 365 A5 Security	Office 365 Advanced Threat Protection Plan 1, Azure Active Directory Premium Plan 2	EES, CSP	40
Microsoft Intune for Education	Microsoft Intune for Education	OVS-ES, EES, CSP	15
Minecraft: Education Edition	Minecraft: Education Edition	EES	15
Office 365 Advanced Threat Protection Plan 1 or Plan 2	Office 365 Advanced Threat Protection Plan 1	OVS-ES, EES, CSP	15
Microsoft 365 Apps for enterprise	Microsoft 365 Apps for enterprise	OVS-ES, School, EES, CSP	15
Office 365 A3	Office 365 A1, Microsoft 365 Apps for enterprise, Office 365 Cloud App Security	OVS-ES, EES, CSP	40
Office 365 A5	Office 365 A3 Student Use Benefit, Office 365 Advanced Threat Protection Plan 2	OVS-ES, EES, CSP	40
Office Professional Plus	Microsoft 365 Apps for enterprise	OVS-ES, School, EES (pre-2017)	15
Windows 10 Education A3 (Per User)	Windows 10 Education A3 (Per User) <sup>2</sup>	CSP	40
Windows 10 Education A5 (Per User)	Windows 10 Education A3 (Per User) <sup>2</sup>	CSP	40
Windows 10 Education E3 (Per User)	Windows 10 Education E3 (Per User) <sup>2</sup>	EES (2017)	40
Windows 10 Education E5 (Per User)	Windows 10 Education E3 (Per User) <sup>2</sup>	EES (2017)	40
Windows 10 Education E5 (Per Device)	Windows 10 Education E3 (Per Device) <sup>2</sup>	OVS-ES, School	40

<sup>1</sup>Licenses acquired through the Student Use Benefit are not eligible for Software Assurance Benefits.

<sup>2</sup>The Student Use Benefit includes rights to Windows 10 E3/A3 only.

### Windows Desktop Operating System Limitations

Licenses acquired through the Student Use Benefit include rights to access Windows Virtual Desktop virtual machines (refer to the Windows Virtual Desktop section of the [Microsoft Azure Services Product entry](#)), but do not include any further Windows virtualization rights.

## Mixed Education Platform Product (EPP) Scenarios

For Enrollment for Education Solutions (2018 version), a mix of Education Platform Products may be ordered to meet the organization-wide commitment as defined in the table below. The Qualifying Product for Student Use Benefits entitlement will be determined based on the lower plan or edition of the EPPs ordered, as shown in the table below, and will be based on the total number of Education Qualified Users covered.

Permitted Mixed EPP Scenario	Qualifying Product for SUA
Microsoft 365 A3 and Microsoft 365 A5	Microsoft 365 A3
EMS E3 and EMS E5	EMS E3
Windows 10 Education E3 and Windows 10 Education E5	Windows 10 Education E3
Microsoft 365 Apps for enterprise and Office 365 A3 and/or Office 365 A5	Microsoft 365 Apps for enterprise
Office 365 A3 and Office 365 A5	Office 365 A3

## Enrollment for Education Solutions (Pre 2017 Version) Program Availability

Qualifying products and requirements for the Enrollment for Education Solutions (pre 2017 versions) are defined in this section.

### Qualification

Products	EES
Desktop Education (Professional or Enterprise)	
Core CAL Suite (Device)	
Enterprise CAL Suite (Device)	
Office Professional Plus 2016	
Windows 10 Education Upgrade (Per Device)	
Windows 10 Education E5 (Per Device)	

### Requirements

- For Enrollment for Education Solutions (pre-2017 versions) Desktop Platform Products may be replaced by platform Online Services only at anniversary as described in the Qualifying Online Services Pre-Requisite table.
- Such platform Online Services licensed by Institution may not be less than the number of Desktop Platform Products being replaced.
- Platform Online Services may be added at any time during the enrollment term.

### Qualifying Online Services Pre-Requisite

Qualifying Desktop Platform Products	Qualifying Online Service
Office Professional Plus 2016, and Desktop Core CAL or ECAL Suite (Device), and Windows 10 Education E5 (Per Device)	Microsoft 365 Education A3/A5 (User SL)
Office Professional Plus 2016 and Core CAL or ECAL Suite (Device)	Office 365 A3/A5 (User SL) and EMS E3/E5
Core CAL or ECAL Suite (Device)	Office 365 A3/A5
Office Professional Plus 2016	Microsoft 365 Apps for enterprise

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Licensing

# Online Services Terms October 2020



Microsoft

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# Introduction

The parties agree that these Online Services Terms govern Customer's use of the Online Services and that the DPA (defined below) sets forth their obligations with respect to the processing and security of Customer Data and Personal Data by the Online Services. The parties also agree that, unless a separate Professional Services agreement exists, these Online Services Terms govern the provision of Professional Services, including but not limited to the terms in Attachment 1 and terms in the DPA for the processing and security of Professional Services Data and Personal Data in connection with that provision. Separate terms, including different privacy and security terms, govern Customer's use of Non-Microsoft Products (as defined below). In the event of any conflict or inconsistency between the DPA and any other terms in Customer's volume licensing agreement (including the Product Terms or the Online Services Terms), the DPA shall prevail.

## Service Level Agreements

Most Online Services offer a Service Level Agreement (SLA). For more information regarding the Online Services SLAs, please refer to <http://microsoft.com/licensing/contracts>.

## Applicable Online Services Terms and Updates

When Customer renews or purchases a new subscription to an Online Service, the then-current Online Services Terms will apply and will not change during Customer's subscription for that Online Service. When Microsoft introduces features, supplements or related software that are new (i.e., that were not previously included with the subscription), Microsoft may provide terms or make updates to the Online Services Terms that apply to Customer's use of those new features, supplements or related software.

## Electronic Notices

Microsoft may provide Customer with information and notices about Online Services electronically, including via email, through the portal for the Online Service, or through a web site that Microsoft identifies. Notice is given as of the date it is made available by Microsoft.

## Prior Versions

The Online Services Terms provides terms for Online Services that are currently available. For earlier versions of the Online Services Terms, Customer may refer to <http://go.microsoft.com/?linkid=9840733> or contact its reseller or Microsoft Account Manager.

# Clarifications and Summary of Changes

Additions	Deletions
Teams Rooms	Meeting Room

## General Terms

**Multiplexing:** Updated multiplexing clause to align with the Product Terms. Update for clarity only. No change to intent.  
**Common Data Service:** Added a clause covering use of the Common Data Service (CDS) when obtained via Microsoft 365 licenses.

## Online Service Specific Terms

**Microsoft Dynamics 365 Services:** Updated terms to accommodate the launch of Dynamics 365 Project Operations.  
**Microsoft Power Platform:** Added language covering inactive Common Data Service (CDS) instances.

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## Definitions

If any of the terms below are not defined in Customer's volume licensing agreement, they have the definitions below.

"Core Online Services" means those Online Services listed as Core Online Services in Attachment 1.

"Customer Data" means all data, including all text, sound, video, or image files, and software, that are provided to Microsoft by, or on behalf of, Customer through use of the Online Service. Customer Data does not include Professional Services Data.

"Data Protection Addendum" (DPA) means the Microsoft Online Services Data Protection Addendum published at <https://aka.ms/DPA>.

"External User" means a user of an Online Service that is not an employee, onsite contractor, or onsite agent of Customer or its Affiliates.

"Instance" means an image of software that is created by executing the software's setup or install procedure or by duplicating such an image.

"Licensed Device" means a single physical hardware system, dedicated to Customer's use, to which a license is assigned. Any dedicated device that is under the management or control of an entity other than Customer or one of its Affiliates is subject to the Outsourcing Software Management clause of the Product Terms located at <http://go.microsoft.com/?linkid=9839207>. For purposes of this definition, a hardware partition or blade is considered to be a separate device.

"Licensing Site" means <http://www.microsoft.com/licensing/contracts> or a successor site.

"Network Server" means a physical hardware server solely dedicated to Customer use and provides resource assistant to computers in a network. Any dedicated server that is under the management or control of an entity other than Customer or one of its Affiliates is subject to the Outsourcing Software Management clause of the Product Terms. The Product Terms is located at <http://go.microsoft.com/?linkid=9839207>

"Non-Microsoft Product" means any third-party-branded software, data, service, website or product, unless incorporated by Microsoft in an Online Service.

"Online Service" means a Microsoft-hosted service to which Customer subscribes under a Microsoft volume licensing agreement, including any service identified in the Online Services section of the Product Terms. It does not include software and services provided under separate license terms (such as via gallery, marketplace, console, or dialog). The Product Terms is located at <http://go.microsoft.com/?linkid=9839207>.

"Operating System Environment" (OSE) means all or part of an operating system Instance, or all or part of a virtual (or otherwise emulated) operating system Instance, that enables separate machine identity (primary computer name or similar unique identifier) or separate administrative rights, and Instances of applications, if any, configured to run on all or part of that operating system Instance. There are two types of OSEs, physical and virtual. A physical hardware system can have one physical OSE and/or one or more virtual OSEs. The operating system Instance used to run hardware virtualization software or to provide hardware virtualization services is considered part of the physical OSE.

"OST" means these Online Services Terms.

"Personal Data" means any information relating to an identified or identifiable natural person. An identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

"Previews" means preview, beta or other pre-release features, data center locations, and services offered by Microsoft for optional evaluation.

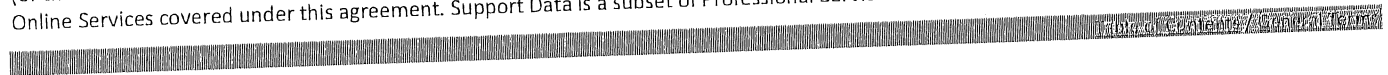
"Professional Services" means Microsoft technical support and consulting services (e.g., for data migration) related to any Online Service.

"Professional Services Data" means all data, including all text, sound, video, image files or software, that are provided to Microsoft, by or on behalf of a Customer (or that Customer authorizes Microsoft to obtain from an Online Service) or otherwise obtained or processed by or on behalf of Microsoft through an engagement with Microsoft to obtain Professional Services. Professional Services Data includes Support Data.

"SL" means subscription license.

"Subprocessor" means other processors used by Microsoft to process data.

"Support Data" means all data, including all text, sound, video, image files, or software, that are provided to Microsoft by or on behalf of Customer (or that Customer authorizes Microsoft to obtain from an Online Service) through an engagement with Microsoft to obtain technical support for Online Services covered under this agreement. Support Data is a subset of Professional Services Data.



# General Terms

## Licensing the Online Services

Customer must acquire and assign the appropriate subscription licenses required for its use of each Online Service. Each user that accesses the Online Service must be assigned a User SL or access the Online Service only through a device that has been assigned a Device SL, unless specified otherwise in the [Online Service-specific Terms](#). [Attachment 2](#) describes SL Suites that also fulfill requirements for User SLs. Customer has no right to use an Online Service after the SL for that Online Service ends.

## License Reassignment

Most, but not all, SLs may be reassigned. Except as permitted in this paragraph or in the [Online Service-specific Terms](#), Customer may not reassign an SL on a short-term basis (i.e., within 90 days of the last assignment). Customer may reassign an SL on a short-term basis to cover a user's absence or the unavailability of a device that is out of service. Reassignment of an SL for any other purpose must be permanent. When Customer reassigns an SL from one device or user to another, Customer must block access and remove any related software from the former device or from the former user's device.

## Multiplexing

Hardware or software that a Customer uses to:

- pool connections or reduce the number of OSE's, devices, or users a Product directly manages;
  - reduce the number of devices or users that directly or indirectly access or use a Product;
  - or access data a Product itself processes or generates;
- does not reduce the number of Licenses of any type that a customer needs.

## Using the Online Services

Customer may use the Online Services and related software as expressly permitted in Customer's volume licensing agreement. Microsoft reserves all other rights.

## Acceptable Use Policy

Neither Customer, nor those that access an Online Service through Customer, may use an Online Service:

- in a way prohibited by law, regulation, governmental order or decree;
- to violate the rights of others;
- to try to gain unauthorized access to or disrupt any service, device, data, account or network;
- to spam or distribute malware;
- in a way that could harm the Online Service or impair anyone else's use of it;
- in any application or situation where failure of the Online Service could lead to the death or serious bodily injury of any person, or to severe physical or environmental damage, except in accordance with the High-Risk Use section below; or
- to assist or encourage anyone to do any of the above.

Violation of the Acceptable Use Policy in this section may result in suspension of the Online Service. If Microsoft suspends the Online Service, Microsoft will suspend only to the extent reasonably necessary. Unless Microsoft believes an immediate suspension is required, Microsoft will provide reasonable notice before suspending an Online Service for the reasons stated above.

## High-Risk Use

WARNING: Modern technologies, and especially platform technologies, may be used in new and innovative ways, and Customer must consider whether its specific use of these technologies is safe. The Online Services are not designed or intended to support any use in which a service interruption, defect, error, or other failure of an Online Service could result in the death or serious bodily injury of any person or in physical or environmental damage (collectively, "High-Risk Use"). Accordingly, Customer must design and implement every application such that, in the event of any interruption, defect, error, or other failure of the Online Service, the safety of people, property, and the environment are not reduced below a level that is reasonable, appropriate, and legal, whether in general or for a specific industry. Customer's High-Risk Use of the Online Services is at its own risk. Customer agrees to defend, indemnify and hold Microsoft harmless from and against all damages, costs and attorneys' fees in connection with any claims arising from a High-Risk Use associated with the Online Services, including any claims based in strict liability or that Microsoft was negligent in designing or providing the Online Service(s) to Customer. The foregoing indemnification obligation is in addition to any defense obligation set forth in Customer's volume licensing agreement and is not subject to any limitation of, or exclusion from, liability contained in such agreements.

## Data Protection and Security

The terms of the DPA apply to Online Services except for Online Services listed in Attachment 1. For Core Online Services, Online Service-specific details on security practices and location of Customer Data at rest are in Attachment 1.

### Use of Software with the Online Service

Customer may need to install certain Microsoft software to use the Online Service. If so, the following terms apply:

#### Microsoft Software License Terms

Customer may install and use the software only for use with the Online Service. The Online Service-specific Terms may limit the number of copies of the software Customer may use or the number of devices on which Customer may use it. Customer's right to use the software begins when the Online Service is activated and ends when Customer's right to use the Online Service ends. Customer must uninstall the software when Customer's right to use it ends. Microsoft may disable it at that time.

#### Validation, Automatic Updates, and Collection for Software

Microsoft may automatically check the version of any of its software. Devices on which the software is installed may periodically provide information to enable Microsoft to verify that the software is properly licensed. This information includes the software version, the end user's user account, product ID information, a machine ID, and the internet protocol address of the device. If the software is not properly licensed, its functionality will be affected. Customer may only obtain updates or upgrades for the software from Microsoft or authorized sources. By using the software, Customer consents to the transmission of the information described in this section. Microsoft may recommend or download to Customer's devices updates or supplements to this software, with or without notice. Some Online Services may require, or may be enhanced by, the installation of local software (e.g., agents, device management applications) ("Apps"). The Apps may collect Diagnostic Data (as defined in the DPA) about the use and performance of the Apps, which may be transmitted to Microsoft, to the extent any Personal Data is contained therein, and used for the purposes described in the DPA.

#### Third-party Software Components

The software may contain third party software components. Unless otherwise disclosed in that software, Microsoft, not the third party, licenses these components to Customer under Microsoft's license terms and notices.

#### Technical Limitations

Customer must comply with, and may not work around, any technical limitations in an Online Service that only allow Customer to use it in certain ways. Customer may not download or otherwise remove copies of software or source code from an Online Service except as explicitly authorized.

#### Import/Export Services

Customer's use of any Import/Export Service is conditioned upon its compliance with all instructions provided by Microsoft regarding the preparation, treatment and shipment of physical media containing its data ("storage media"). Customer is solely responsible for ensuring the storage media and data are provided in compliance with all laws and regulations. Microsoft has no duty with respect to the storage media and liability for lost, damaged or destroyed storage media. All storage media shipped to Microsoft must be shipped DAP Microsoft DCS Data Center (INCOTERMS 2010). Storage media shipped to Customer will be shipped DAP Customer Dock (INCOTERMS 2010).

#### Font Components

While Customer uses an Online Service, Customer may use the fonts installed by that Online Service to display and print content. Customer may only embed fonts in content as permitted by the embedding restrictions in the fonts and temporarily download them to a printer or other output device to print content.

#### Changes to and Availability of the Online Services

Microsoft may make commercially reasonable changes to each Online Service from time to time. Microsoft may modify or terminate an Online Service in any country where Microsoft is subject to a government regulation, obligation or other requirement that (1) is not generally applicable to businesses operating there, (2) presents a hardship for Microsoft to continue operating the Online Service without modification, and/or (3) causes Microsoft to believe these terms or the Online Service may conflict with any such requirement or obligation. If Microsoft terminates an Online Service for regulatory reasons, Customers will receive a credit for any amount paid in advance for the period after termination.

Availability, functionality, and language versions for each Online Service may vary by country. For information on availability, Customer may refer to <https://go.microsoft.com/fwlink/?linkid=870295>.

#### Common Data Service

Common Data Service structures a variety of data and business logic to support interconnected applications and processes. Common Data Service Instances provided with Microsoft 365 licenses includes various features and integrates data that may or may not be available for your product or service you are licensed with. Access to Common Data Service, through an individual product or service, does not grant access to unrelated products, services, features, or data that users are not licensed for. Users only have rights to access data, services, and features within Common Data Service for which they are properly licensed for.

## Other

### Non-Microsoft Products

Microsoft may make Non-Microsoft Products available to Customer through Customer's use of the Online Services (such as through a store or gallery, or as search results) or a Microsoft online store (such as the Microsoft Store for Business or Microsoft Store for Education). If Customer installs or uses any Non-Microsoft Product with an Online Service, Customer may not do so in any way that would subject Microsoft's intellectual property or technology to obligations beyond those expressly included in Customer's volume licensing agreement. For Customer's convenience, Microsoft may include charges for certain Non-Microsoft Product as part of Customer's bill for Online Services. Microsoft, however, assumes no responsibility or liability whatsoever for any Non-Microsoft Product. Customer is solely responsible for any Non-Microsoft Product that it installs or uses with an Online Service or acquires or manages through a Microsoft online store. Customer's use of any Non-Microsoft Product shall be governed by the license, service, and/or privacy terms between Customer and the publisher of the Non-Microsoft Product (if any).

### Previews

PREVIEWS ARE PROVIDED "AS-IS," "WITH ALL FAULTS," AND "AS AVAILABLE," as described herein. Previews are not included in the SLA for the corresponding Online Service, and may not be covered by customer support. We may change or discontinue Previews at any time without notice. We may also choose not to make a Preview service generally commercially available.

Unless otherwise noted in a separate agreement, Previews are not included in the SLA for the corresponding Online Service.

Providing "Feedback" (suggestions, comments, feedback, ideas, or know-how, in any form) to Microsoft about Preview services is voluntary. Microsoft is under no obligation to post or use any Feedback. By providing Feedback to Microsoft, Customer (and anyone providing Feedback through Customer) irrevocably and perpetually grant to Microsoft and its Affiliates, under all of its (and their) owned or controlled intellectual property rights, a worldwide, non-exclusive, fully paid-up, royalty-free, transferable, sub-licensable right and license to make, use, reproduce, prepare derivative works based upon, distribute, publicly perform, publicly display, transmit, and otherwise commercialize the Feedback (including by combining or interfacing products, services or technologies that depend on or incorporate Feedback with other products, services or technologies of Microsoft or others), without attribution in any way and for any purpose.

Customer warrants that 1) it will not provide Feedback that is subject to a license requiring Microsoft to license anything to third parties because Microsoft exercises any of the above rights in Customer's Feedback; and 2) it owns or otherwise controls all of the rights to such Feedback and that no such Feedback is subject to any third-party rights (including any personality or publicity rights).

### Azure Active Directory, Free Edition

As described in <https://docs.microsoft.com/en-us/azure/active-directory/fundamentals/active-directory-what-is>, most Online Services include an instance of Azure Active Directory, a cloud-based user authentication capability ("Azure AD Free"). After Customer configures and uses the first such Online Service, that instance of Azure AD Free, as configured by Customer for its users, may power the user authentication features for each later-acquired subscription of an Online Service.

Customer's instance of Azure AD Free will also enable authenticated users to interact with Microsoft or a third party in contexts outside of the Online Services ("Other AD-dependent Services"), specifically where Microsoft or that third party requires an Azure Active Directory user account. With respect to the operation of Azure AD Free for Other AD-dependent Services, Microsoft remains a data processor, and this use of Azure AD Free constitutes Customer's authoritative instruction to Microsoft that such use is permitted. With respect to the operation of the Other AD-dependent Service, refer to its applicable agreement and privacy policy to determine the role of the provider of the Other AD-dependent Service.

### Competitive Benchmarking

If Customer offers a service competitive to an Online Service, by using the Online Service, Customer agrees to waive any restrictions on competitive use and benchmark testing in the terms governing its competitive service. If Customer does not intend to waive such restrictions in its terms of use, Customer is not allowed to use the Online Service.

### Government Customers

If Customer is a government entity, then the following terms apply to any Online Service provided at no charge to Customer:

1. Microsoft waives any and all entitlement to compensation from Customer for the Online Service.
2. In compliance with applicable laws and regulations, Microsoft and Customer acknowledge that the Online Services are for the sole benefit and use of Customer and not provided for the personal use or benefit of any individual government employee.

### German Online Services

Use of the German Online Services is further subject to the offer-specific terms available at <https://aka.ms/MCAGermanSupplement>.

## Online Service Specific Terms

In addition to the General Terms for Online Services above, the following Online Service-specific terms apply to the listed Online Services. In the event of any conflict or inconsistency between the General Terms and the Online Service-specific terms, the Online Service-specific terms shall prevail as to the applicable Online Services. If an Online Service is not listed below, it does not have any Online Service-specific terms.

### Microsoft Azure Services

#### Notices

The Bing Maps, Professional Services, Azure Media Services H.265/HEV Encoding, Adobe Flash Player, H.264/AVC Visual Standard, VC-1 Video Standard, and MPEG-4 Part 2 Visual Standard and MPEG-2 Video Standard Notices in [Attachment 1](#) apply.

#### Service Level Agreement

Refer to <http://azure.microsoft.com/support/legal/sla/>.

#### Definitions

“Azure Government Services” means one or more of the services or features Microsoft makes available to Customer as Government Community Cloud Services in the “US Gov” regions identified at <http://azure.microsoft.com/en-us/regions/#services>.

“Bing Search Services” means the Bing Custom Search, Bing Local Business Search, Entity Search, Image Search, News Search, Video Search, Visual Search, Web Search, Spell Check, and Autosuggest APIs, and any other APIs identified at <https://aka.ms/r1j7jq>.

“Bing Search Services Data” means Customer Data that are provided to Microsoft by, or on behalf of, Customer through use of the Bing Search Services.

“Customer Solution” means an application or any set of applications that adds primary and significant functionality to the Microsoft Azure Services and that is not primarily a substitute for the Microsoft Azure Services.

“Microsoft Azure Services” means the Microsoft services and features identified at <http://azure.microsoft.com/services/>, except those licensed separately. “Microsoft Azure Services” includes any open source components incorporated by Microsoft in those services and features.

“Microsoft Translator” means Translator Text API and/or Translator Speech API offered by Microsoft as a cloud based machine translation service.

#### Restriction on U.S. Police Department Use of Azure Facial Recognition Services

Customer may not use Azure Facial Recognition Services if Customer is, or is allowing use of such services by or for, a police department in the United States. Violation of any of the restrictions in this section may result in immediate suspension of Customer’s use of the service.

For purposes of this section, “Azure Facial Recognition Services” means facial recognition features or functionality included in Azure Services, such as Face; or the facial recognition functionality in Video Indexer.

#### Limitations

Customer may not

- resell or redistribute the Microsoft Azure Services, or
- allow multiple users to directly or indirectly access any Microsoft Azure Service feature that is made available on a per user basis (e.g., Active Directory Premium). Specific reassignment terms applicable to a Microsoft Azure Service feature may be provided in supplemental documentation for that feature.

#### Retirement of Services or Features

Microsoft will provide Customer with 12 months’ notice before removing any material feature or functionality or discontinuing a service, unless security, legal or system performance considerations require an expedited removal. This does not apply to Previews

#### Data Retention after Expiration or Termination

The expiration or termination of Customer’s Online Service subscription will not change Customer’s obligation to pay for hosting of Customer Data during any Extended Term.

#### Hosting Exception

Customer may create and maintain a Customer Solution and, despite anything to the contrary in Customer’s volume licensing agreement, combine Microsoft Azure Services with Customer Data owned or licensed by Customer or a third party, to create a Customer Solution using the Microsoft Azure Service and the Customer Data together. Customer may permit third parties to access and use the Microsoft Azure Services in connection



with the use of that Customer Solution. Customer is responsible for that use and for ensuring that these terms and the terms and conditions of Customer's volume licensing agreement are met by that use.

#### Use of Software within Microsoft Azure

For Microsoft software available within a Microsoft Azure Service, Microsoft grants Customer a limited license to use the software only within the Microsoft Azure Service.

#### Data Center Availability

Usage of data centers in certain regions may be restricted to Customers located in or near that region. For information on service availability by region, please refer to <http://azure.microsoft.com/en-us/regions>.

#### Sharing

The Microsoft Azure Services may provide the ability to share a Customer Solution and/or Customer Data with other Azure users and communities, or other third parties. If Customer chooses to engage in such sharing, Customer agrees that it is giving a license to all authorized users, including the rights to use, modify, and repost its Customer Solution and/or the Customer Data, and Customer is allowing Microsoft to make them available to such users in a manner and location of its choosing.

#### Marketplace

Microsoft Azure enables Customer to access or purchase products and services which are optimized for use with Azure through features such as the Microsoft Azure Marketplace and the Virtual Machine Gallery, subject to separate terms available at <http://azure.microsoft.com/en-us/support/legal/store-terms>.

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## Azure DevTest Labs

#### Secrets in DevTest Labs

Azure DevTest Labs automatically creates a key vault when a user saves a secret for the first time. Customer may not use this key vault to store anything other than DevTest Lab related passwords, SSH keys, or personal access tokens.

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## Azure Lab Services

#### End User Relationship

While Microsoft provides Azure Lab Services to Customer, as between Customer and Microsoft, Customer is the sole provider of related services to Customer's end users and shall have sole and exclusive responsibility to end users, including any support obligations. Customer's end users are not a party to any agreement with Microsoft regarding the services.

#### Notification; Liability; Bar on Actions Against Microsoft

Customer will notify Microsoft promptly of any incidents that could have an impact on Microsoft such as a data breach, password issues, end user complaint(s), loss of user data, or intellectual property or privacy claims.

Customer acknowledges and agrees that Microsoft has no obligation or liability to Customer or any end user for the end user's usage of the service.

By using the service, an end user may not bring any action against Microsoft in relation to the services. If any end user does bring an action against Microsoft, the Indemnification provision in this section applies.

#### Indemnification

Customer agrees to hold harmless and indemnify Microsoft from and against any claim by an end user, third party, and/or regulatory authority in connection with the service provided to end users. Customer shall pay any resulting judgment, or settlement, and all costs, including reasonable attorney's fees, and expenses related thereto.

#### End User Terms

In order to provide the services to end users, Customer and Customer's end users must validly agree to a binding, written agreement that contain the substance of the following requirements:

**Statement of Relationship:** Customer is the sole provider of the services. Customer is responsible for providing any support to end users. The services will be provided by Customer to Customer's end users under your terms of use and privacy policy.

**Compliance; Acceptable Use:** Customer is solely responsible for ensuring compliance with all applicable laws, including, but not limited to GDPR, with respect to Customer's provision and end users' use of the service. In addition, for clarity and without limiting the Acceptable Use Policy, Customer

and Customer's end users may not use Azure Lab Services to facilitate or engage in cryptocurrency mining. Violation of this prohibition may result in suspension of the service, as set forth in the Acceptable Use Policy.

**Disclaimer of Warranties:** Customer will disclaim any and all warranties in connection with the services, and Customer will disclaim the same with respect to Microsoft.

**Limitation of Liability and Exclusion of Damages:** Customer will disclaim liability and exclude damages in a way that is consistent with the provisions of any applicable agreement(s) between Customer and Microsoft.

#### Updates

Customer is responsible for updating the virtual machines (VMs) in Customer's portfolio. Notwithstanding the foregoing, Microsoft may, but is not obligated to, take any action it deems reasonable in its business judgment with respect to the VMs in your portfolio, including applying any updates or other changes generally applicable to the services.

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## Azure Machine Learning service

### NVIDIA Components

Azure Machine Learning service may include NVIDIA Corporation's CUDA Toolkit, Tesla drivers, cuDNN, DIGITS, NCCL, and TensorRT (the "NVIDIA Components"), Customer agrees that its use of NVIDIA Components is governed by the NVIDIA Cloud End User License Agreement for Compute at <https://go.microsoft.com/fwlink/?linkid=874330>.

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## Azure Maps

### Navigation restrictions

Customer may not use Azure Maps to enable turn-by-turn navigation functionality in any application.

### Database restrictions

Customer may not use Azure Maps or any part thereof to create a competing database or service, or a derived database populated wholly or partially with Customer's data and/or data supplied or created by any third party.

Customer will not use the data delivered by the Azure Maps in combination with any other third-party database, except that Customer may layer onto the data of a type not already included within the Service (such as your proprietary content) or of which Microsoft otherwise licenses.

### API Results

Customer may not cache or store information delivered by the Azure Maps API including but not limited to geocodes and reverse geocodes, map data tiles and route information (the "Results") for the purpose of scaling such Results to serve multiple users, or to circumvent any functionality in Azure Maps.

Caching and storing Results is permitted where the purpose of caching is to reduce latency times of Customer's application. Results may not be stored for longer than: (i) the validity period indicated in returned headers; or (ii) 6 months, whichever is the shortest.

Customer may not display any Results on any third-party content or geographical map database.

### Map Data

Use of content displaying the TomTom copyright notice must be in accordance with restrictions set forth in the TomTom Licensing Third Party Product Terms and EULA ([https://www.tomtom.com/en\\_GB/thirdpartyproductterms/](https://www.tomtom.com/en_GB/thirdpartyproductterms/)). Azure Maps uses Bing Imagery which subject to the Bing Maps Notice in [Attachment 1](#).

### User region parameter

User region parameter in Azure Maps must be used in compliance with applicable laws, including those regarding mapping, of the country where maps, images and other data and third party content that Customer is authorized to access via Azure Maps is made available.

### No warranty for accuracy

Microsoft and its suppliers make no warranty that the maps, images, data or any content delivered by Azure Maps will be accurate or complete.

## Copyright

Customer may not remove, obscure, mask or change any logo and/or copyright notice placed on or automatically generated by Azure Maps.

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## Azure SQL Edge

### Definitions

"IoT Device" means a computing device that (i) is designed or configured for use primarily with an industry- or task-specific software program that provides the primary functionality of the computing device ("IoT Program"), (ii) uses equal to or less than 16 physical cores, and (iii) is not designed to be marketed or primarily used as a multi-functional Server, or a commercially viable substitute for a multi-functional Server. Any IoT Device that is under the management or control of an entity other than Customer or one of its Affiliates is subject to the Outsourcing Software Management clause of the [Product Terms](#) located at <http://go.microsoft.com/?linkid=9839207>.

### Use of Azure SQL Edge

Customer may install and use any number of copies of the Azure SQL Edge software on an IoT Device dedicated to Customer's use and to which a License is assigned. Notwithstanding anything to the contrary in "General Terms," Customer may reassign a License at any time to other IoT Devices dedicated to its use. If Customer installs any features or functionalities other than the Azure SQL Edge software (whether derived from Microsoft or third party software) on the IoT Device, then those other features or functionalities may be used only to support the IoT Program.

The terms of the DPA do not apply to Azure SQL Edge installed on Customer's IoT Device, except to the extent any Personal Data is collected to enable Azure management services and to meter usage for billing purposes, because the operating environment of such IoT Devices is not under Microsoft's control.

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## Azure Stack Hub

### Azure Stack Hub Privacy

The Microsoft Privacy Statement located at <https://go.microsoft.com/fwlink/?Linkid=521839> applies to Customer's use of Azure Stack Hub. If a Microsoft Cloud Agreement or Microsoft Customer Agreement Customer uses Azure Stack Hub software or services that are hosted by a Reseller, such use will be subject to Reseller's privacy practices, which may differ from Microsoft's. To the extent Microsoft is a processor or subprocessor of personal data in connection with Azure Stack Hub, Microsoft makes to all customers, the commitments in (a) the "Processing of Personal Data; GDPR" provision of the DPA and (b) the European Union General Data Protection Regulation Terms in Attachment 3 of the DPA.

### Use of Azure Stack Hub

Customer may use Azure Stack Hub only on the hardware on which it is preinstalled.

### Use of the Default Provider Subscription

The subscription created for the system administrator during the Azure Stack Hub deployment process (the default provider subscription) may be used solely to deploy and manage the Azure Stack Hub infrastructure; it may not be used to run any workload that does not deploy or manage Azure Stack Hub infrastructure (e.g. it may not be used to run any application workloads).

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## Bing Search Services

### Bing Search Services Use and Display Requirements

Customer must comply with use and display requirements for the Bing Search Services which are available at <https://aka.ms/r1j7jq>. Customer must use results it obtains through the Bing Search Services only in Internet Search Experiences (as defined in the use and display requirements) and must not cache or copy results. The results Customer obtains through the Bing Search Services are not Products, Fixes, or Services Deliverables.

### Bing Search Services Privacy

The Microsoft Privacy Statement located at <https://go.microsoft.com/fwlink/?Linkid=521839> applies to Customer's use of Bing Search Services, except that this Bing Search Services section of the Online Services Terms controls to the extent it conflicts with the Microsoft Privacy Statement.

### Use of Bing Search Services Data

Customer is solely responsible for the content of all Bing Search Services Data.

Microsoft may process Bing Search Services Data solely to: (i) provide Cognitive Services to Customer; and (ii) improve Microsoft products and services. Solely for such processing, Microsoft may collect, retain, use, reproduce, and create derivative works of, Bing Search Services Data and Customer grants Microsoft a limited nonexclusive irrevocable worldwide license to do so. Customer will secure and maintain all rights necessary for Microsoft to process Bing Search Services Data as described in this paragraph without violating the rights of any third party or otherwise obligating Microsoft to Customer or to any third party.

This Use of Bing Search Services Data section of the Online Services Terms will survive termination or expiration of Customer's volume licensing agreement. As between the parties, Customer retains all right, title and interest in and to Bing Search Services Data. Microsoft acquires no rights in Bing Search Services Data, other than the rights Customer grants to Microsoft in this Use of Bing Search Services Data section. This paragraph does not affect Microsoft's rights in software or services Microsoft licenses to Customer.

**Application of Data Protection Terms to Bing Search Services**

Only the following sections of the DPA apply to the Bing Search Services: Data Transfers, Use of Subcontractors, and How to Contact Microsoft. These sections do not apply to Previews of the listed services.

**GDPR Terms do not apply to Bing Search Services:**

The GDPR Terms (as defined in the DPA) do not apply to the Bing Search Services.

**Precedence:**

This Bing Search Services section controls to the extent there is any conflict with other parts of the OST or DPA.

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## Cognitive Services

**Limit on Customer use of service output**

Customer will not, and will not allow third parties to use Cognitive Services or data from Cognitive Services to create, train, or improve (directly or indirectly) a similar or competing product or service.

**Microsoft Translator Attribution**

When displaying automatic translations performed by Microsoft Translator, Customer will provide reasonably prominent notice that the text has been automatically translated by Microsoft Translator.

**Cognitive Services in Containers**

Cognitive Services features that are available in containers are designed to connect to a billing endpoint. The containers and the billing endpoint are licensed to Customer under this agreement as Online Services, and the containers are also subject to the terms for Use of Software with the Online Service in this agreement. Customer must configure the containers it uses to communicate with the billing endpoint so that the billing endpoint meters all use of those containers. Provided Customer enables such metering and subject to any applicable transaction limits, Customer may install and use any number of containers (1) on Customer's hardware devices that are dedicated to Customer's exclusive use, and (2) in Customer's Microsoft Azure Service accounts. Any dedicated hardware that is under the management or control of an entity other than Customer or one of its Affiliates is subject to the Outsourcing Software Management clause of the Product Terms located at <http://go.microsoft.com/?linkid=9839207>.

The containers include material that is confidential and proprietary to Microsoft. Customer agrees to keep that material confidential and to promptly notify Microsoft if Customer becomes aware of any possible misappropriation or misuse.

The terms of the DPA do not apply to containers installed on Customer's dedicated hardware, except to the extent any Personal Data is collected in connection with the billing endpoint, because the operating environment of those containers is not under Microsoft's control.

**Inactive Cognitive Services Configurations and Custom Models**

For the purposes of data retention and deletion, a Cognitive Services configuration or custom model that has been inactive may at Microsoft's discretion be treated as an Online Service for which the Customer's subscription has expired. A configuration or custom model is inactive if for 90 days (1) no calls are made to it; (2) it has not been modified and does not have a current key assigned to it and; (3) Customer has not signed in to it.

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## Microsoft Genomics

### Microsoft Genomics Privacy

The Microsoft Privacy Statement located at <https://go.microsoft.com/fwlink/?LinkId=521839> applies to Customer's use of Microsoft Genomics, except that this Microsoft Genomics section controls to the extent it conflicts with the Microsoft Privacy Statement.

### Broad License Terms

Microsoft Genomics includes access to the Genetic Analysis Toolkit (GATK) from the Broad Institute, Inc. ("Broad"). Use of the GATK and any related documentation as part of Microsoft Genomics is also subject to Broad's GATK End User License Agreement ("Broad EULA" located here <https://software.broadinstitute.org/gatk/eula/index?p=Azure>).

Microsoft may collect and share with Broad certain statistical and technical information regarding Customer's usage of the GATK. Customer authorizes Microsoft to report to Broad Customer's status as a user of the GATK in Microsoft Genomics.

### No Medical Use

Microsoft Genomics is not a medical device and outputs generated from its use are not intended to be statements of fact, nor are they to be used as a substitute for medical judgment, advice, diagnosis or treatment of any disease or condition.

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## Visual Studio App Center

### Visual Studio App Center Test Privacy and Security Terms

The privacy statement located at <https://aka.ms/actestprivacypolicy> applies to Customer's use of Visual Studio App Center Test. Customer may not use Visual Studio App Center Test to store or process Personal Data. Please refer to the Product documentation for more information.

### Use for Development and Testing

Customer may only access and use Visual Studio App Center to develop and test Customer's application(s). Only one Licensed User may access a virtual machine provided by Visual Studio App Center at any time.

### Authorized Developer

Customer appoints Microsoft as its authorized developer with respect to Apple software included in Visual Studio App Center. Microsoft is responsible for complying with the terms for any such software included in Visual Studio App Center and will keep confidential any confidential information of Apple accessed as part of Visual Studio App Center.

### Third Party Repository Service Access

If Customer grants Microsoft access to its third-party repository service account(s), Customer authorizes Microsoft to scan the account(s), including the contents of Customer's public and private repositories.

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## Microsoft Azure Plans

### Notices

The Bing Maps Notices in [Attachment 1](#) apply.

### Subscription License Suites

In addition to User SLs, refer to [Attachment 2](#) for other SLs that fulfill requirements for Azure Active Directory Premium, Azure Advanced Threat Protection for Users, Azure Information Protection, and Microsoft Intune.

## Azure Active Directory Basic

Customer may, using Single Sign-On, pre-integrate up to 10 SAAS Applications/Custom Applications per User SL. All Microsoft as well as third party applications count towards this application limit.

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## Azure Active Directory Premium

Customer may, using Single Sign-On, pre-integrate SaaS Applications/Custom Applications. Customer may not copy or distribute any data set (or any portion of a data set) included in the Microsoft Identity Manager software that is included with a Microsoft Azure Active Directory Premium (P1 and P2) User SL.

### External User Allowance

For each User SL (or equivalent Subscription License Suite) Customer assigns to a user, Customer may also permit up to five additional External Users to access the corresponding Azure Active Directory service level.

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## Azure Information Protection Premium

### Notices

The Bing Maps Notices in [Attachment 1](#) applies. Any deployment services provided to Customer are subject to the Professional Services Notice in [Attachment 1](#).

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## Microsoft Dynamics 365 Services

### Notices

The Bing Maps and Professional Services Notices in [Attachment 1](#) apply. Any onboarding, migration, or deployment services provided to Customer are subject to the Professional Services Notice in [Attachment 1](#). In addition, Azure Media Services H.265/HEVC Encoding, H.264/AVC Visual Standard, VC-1 Video Standard, and MPEG-4 Part 2 Visual Standard and MPEG-2 Video Standard Notices in [Attachment 1](#) apply only to Dynamics 365 Commerce.

### External Users

External Users of Dynamics 365 Services do not need a SL to access the Online Service. This exemption does not apply to (1) contractors or agents of Customer or its Affiliates, or (2) External Users using Dynamics 365 client software with Dynamics 365 Services other than services or components included in Dynamics 365 Supply Chain Management, Dynamics 365 Finance, Dynamics 365 Commerce, Dynamics 365 Human Resources, or Dynamics 365 Project Operations.

### Administration Portal

Customers with Dynamics 365 Supply Chain Management, Dynamics 365 Finance, Dynamics 365 Commerce, Dynamics 365 Human Resources, or Dynamics 365 Project Operations SLs may deploy and manage the Online Service through Microsoft Dynamics Lifecycle Services (or its successor), which is subject to separate terms.

### Mixed deployments of Dynamics 365 services

Customers may mix (i) Dynamics 365 Sales Professional and Enterprise licenses, (ii) Dynamics 365 Customer Service Professional and Enterprise licenses, or (iii) Dynamics 365 Business Central and any of the following: Dynamics 365 Finance, Dynamics 365 Supply Chain Management, or Dynamics 365 Project Operations licenses if,

- Each Online Service is deployed under a separate instance, and
- Licensed users only access instances for which they are entitled.

### Mixed deployments of Dynamics 365 Business Central services

Customers may not mix Dynamics 365 Business Central Premium and Dynamics 365 Business Central Essentials licenses on the same tenant.

### Dynamics 365 Marketing

#### Promotional Laws, Regulations, and Industry Standards

Microsoft bears no responsibility for Customer's compliance with any applicable law, regulation, or industry standard governing the Customer's transmittal of promotional communications.

### Dynamics 365 Supply Chain Management, Finance, Commerce, and Project Operations Source Code

Customer may modify for its internal use the X++ application layer source code for Dynamics 365 Supply Chain Management, Dynamics 365 Finance, Dynamics 365 for Commerce, or Dynamics 365 Project Operations.



### Server Use Rights for Dynamics 365 User SLs, From SA User SLs and Add-on User SLs

The server use rights provisions below do not apply to Customers licensed for Dynamics 365 Sales Professional, Dynamics 365 Customer Service Professional, Dynamics 365 Marketing, Dynamics 365 Human Resources, or Customers licensed for Dynamics 365 online services through Open License, Open Value and Open Value Subscription.

#### Dynamics 365 for Operations on-premises Server

Customer's with active subscriptions for Dynamics 365 Supply Chain Management, Dynamics 365 Finance, or Dynamics 365 Commerce may, on a network server or shared servers;

- install any number of copies of the Dynamics 365 for Operations Server software on a network server or shared servers;
- install and use Dynamics AX 2012 R3 Server software in lieu of Dynamics 365 for Operations Server;
- allow access to the server software only to users and devices assigned a qualifying SL;
- receive and use updates related to government tax and regulatory requirements on the server software; and
- modify or create derivative works of plug-ins, runtime, and other components identified in printed or online documentation and use those derivative works, but only with the server software and only for Customer's internal purposes.

#### Dynamics 365 on-premises Server

Customers with active subscriptions for Dynamics 365 Sales Enterprise, Dynamics 365 Customer Service Enterprise, or Dynamics 365 Field Service may, on a network server or shared servers;

- install any number of copies of Dynamics 365 server (on-premises) software on a network server or shared servers;
- install Dynamics CRM 2016 Server software in lieu of Dynamics 365 On-Premise Server;
- allow access to the server software only to users and devices assigned a qualifying SL; and
- allow users and devices assigned one of the following CALs to access the version of the server software that is current as of the subscription start date: Dynamics 365 On-premises for Sales, Customer Service or Team Members CALs; or Dynamics CRM CAL. Users and devices assigned CALs with active Software Assurance may access new versions of the server software.

#### Dynamics 365 Business Central on-premises

Customers with active subscriptions for Dynamics 365 Business Central may, on a network server or shared servers;

- install any number of copies of Dynamics 365 Business Central on-premises software on a network server or shared servers;
- allow access to the server software only to users and devices assigned a qualifying SL; and
- allow users and devices assigned one of the following CALs to access the version of the server software that is current as of the subscription start date: Dynamics 365 Business Central Premium, Essentials, or Team Member CALs. Users and devices assigned CALs with an active maintenance plan may access new versions of the server software.

#### Microsoft Relationship Sales solution

Microsoft Relationship Sales solution includes Dynamics 365 Sales Enterprise and LinkedIn Sales Navigator Team or Enterprise. LinkedIn Sales Navigator Team/Enterprise is for the sole use of the Microsoft Relationship Sales solution Licensed User for the duration of the subscription.

##### LinkedIn Sales Navigator

LinkedIn Sales Navigator is provided by LinkedIn Corporation. Customer may use the LinkedIn Sales Navigator Service only to generate sales leads and not to recruit. Each user of LinkedIn Sales Navigator must be a member of LinkedIn and agree to be bound by the LinkedIn User Agreement available at <https://www.linkedin.com/legal/preview/user-agreement>. Despite anything to the contrary in Customer's volume licensing agreement (including these Online Services Terms or the DPA), the LinkedIn Privacy Policy available at <https://www.linkedin.com/legal/privacy-policy> will apply to Customer's use of the LinkedIn Sales Navigator service. LinkedIn Corporation (as data processor) and Customer (as data controller) will comply with the terms of the Data Processing Agreement located at <https://legal.linkedin.com/dpa>.

#### Dynamics 365 Operations Order Lines

Users or devices do not require an SL to indirectly (not through a client UI) execute the transaction types designated in the Dynamics 365 Licensing Guide (<https://go.microsoft.com/fwlink/?Linkid=866544&clcid=0x409>). The number of allowed transactions is limited to the number of order lines licensed.

#### Dynamics 365 Customer Insights

##### Microsoft Provided Data and Insights

Dynamics 365 Customer Insights may include Microsoft provided data and insights (including, but not limited to, market segment and brand affinity data and insights), which Customer may use for internal business purposes only.

#### Dynamics 365 Fraud Protection

Dynamics 365 Fraud Protection (DFP) processes Customer Data of DFP Customers as described in the Microsoft Dynamics 365 Trust Center to provide the service, which includes providing insights to Customer about the likelihood of fraud for the Customer's payment transactions and other fraud-related events ("Fraud Insights"). Customer acknowledges and agrees that (i) the Customer Data provided to the Online Service will be

deidentified and combined with deidentified Customer Data of other D365 Fraud Protection Customers; (ii) Customer will be unable to access, extract, or delete the deidentified Customer Data that is used to generate Fraud Insights; and (iii) when Customer's subscription to Dynamics 365 Fraud Protection ends, Microsoft will continue to process the deidentified Customer Data for the sole purpose of providing Fraud Insights to other Dynamics 365 Fraud Protection Customers. Fraud Insights generated by Microsoft do not reveal Customer Data or other identifiable information of any Customer using Dynamics 365 Fraud Protection.

**Restrictions on Use**

Customer may only use the Fraud Insights to prevent fraud and help identify legitimate transactions. Customer agrees it will not use Fraud Insights (i) as the sole factor in determining whether to proceed with a payment transaction; (ii) as a factor in determining any person's financial status, financial history, creditworthiness, or eligibility for insurance, housing, or employment; or (iii) to make decisions that produce legal effects or significant personal outcomes concerning a person. Microsoft, in providing Dynamics 365 Fraud Protection, is not a "credit reporting agency" and does not provide "consumer reports" or "credit referencing" (as those practices are defined in the United States' Fair Credit Reporting Act, the United Kingdom's Financial Services and Markets Act, or similar laws).

Customer agrees to comply with any additional restrictions on the use of the Fraud Insights, as Microsoft may deem necessary. Customer shall confirm its compliance with the restriction on use of the Fraud Insights to Microsoft in writing within ten (10) days of receiving a request to do so by Microsoft. If Microsoft needs additional information to assure compliance with these restrictions, Customer will cooperate with Microsoft to provide such information, including documentation, within 30 business days of request.

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## Office 365 Services

**Notices**

The Bing Maps Notices in [Attachment 1](#) apply. Any onboarding, migration, or deployment services provided to Customer are subject to the Professional Services Notice in [Attachment 1](#).

**Core Features for Office 365 Services**

During the term of Customer's subscription, the Office 365 Services will substantially conform to the Core Features description provided (if any) in the Office 365 service-specific sections below, subject to Product restrictions or external factors (such as the recipient, message rate, message size and mailbox size limits for e-mail; default or Customer-imposed data retention policies; search limits; storage limits; Customer or end user configurations; and meeting capacity limits). Microsoft may permanently eliminate a functionality specified below only if it provides Customer a reasonable alternative functionality.

**Administration Portal**

Customer will be able to add and remove end users and domains, manage licenses, and create groups through the Microsoft Online Services Portal or its successor site.

**Office 365 Education**

If Customer's billing address is outside Europe and Customer has an Office 365 Education subscription, then notwithstanding the "Location of Customer Data at Rest for Core Online Services" section of the OST, Microsoft may provision Customer's Office 365 tenant in, transfer Customer Data to, and store Customer Data at rest anywhere within Europe or North America. If Customer's billing address is in Europe and Customer has an Office 365 Education subscription, then notwithstanding the "Location of Customer Data at Rest for Core Online Services" section of the OST, Microsoft may provision Customer's Office 365 tenant in, transfer Customer Data to, and store Customer Data at rest anywhere within the European Union.

**Service Encryption with Customer Key**

Customer assumes all risks of data deletion, inaccessibility, and service outages that result from any unavailability of an encryption key caused by Customer.

**Cortana**

The Cortana core platform service integrated within Office 365 Services, in certain instances, may allow for users to connect to Microsoft services outside the Office 365 Services; if permitted by Customer, users electing to use such services are subject to terms of use other than these Online Services Terms for use of such services and with respect to which Microsoft is a data controller, as identified in product documentation.

**Microsoft Threat Experts**

Any services provided to Customer through the Microsoft Threat Experts Experts on Demand feature are subject to the Professional Services Notice in [Attachment 1](#).



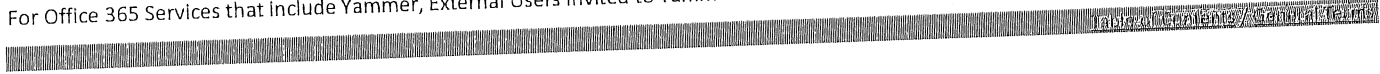


**Endpoint Compliance Features**

Insider Risk Management and Microsoft Information Protection (the "Compliance Services") include endpoint features that integrate Customer Data from Microsoft Defender Advanced Threat Protection (MDATP). If Customer does not have an active subscription to MDATP, an instance will automatically be provisioned for the limited purpose of enabling the endpoint features of the Compliance Services. Only the terms and DPA provisions applicable to MDATP apply to Customer Data collected to provide these endpoint features

**Yammer**

For Office 365 Services that include Yammer, External Users invited to Yammer via external network functionality do not need User SLs.



**Audio Services**

Audio Conferencing	Communication Credits
Calling Plan	Teams Rooms
Common Area Phone	Phone System

**Core Features for Office 365 Services**

Skype for Business Online Plan 2 or their successor services will have the following Core Features capabilities:

**Instant Messaging**

An end user will be able to transfer a text message to another end user in real time over an Internet Protocol network.

**Presence**

An end user will be able to set and display the end user's availability and view another end user's availability.

**Online Meetings**

An end user will be able to conduct an Internet-based meeting that has audio and video conferencing functionality with other end users.

**Notices**

The H.264/MPEG-4 AVC and/or VC-1 Notices in Attachment 1 apply.

**External Users and users not authenticated by Skype for Business Online**

User SLs are not required for External Users and users not authenticated by the Skype for Business Online service.

**Common Area Communications Device**

A Common Area Communication Device ("CACD") is a device shared by multiple users who do not log into the device with their Office 365 credentials and which supports calls, meetings and/or conferencing over voice, Voice over IP, and/or video. Microsoft's Common Area Phone and Teams Rooms offerings are Device SLs that may only be assigned to a CACD. Each CACD Licensed Device may be accessed and used by any number of users.

**Calling Plan and Audio Conferencing Services (Calling/Conferencing Services)**

Calling and Conferencing services are provided by the Microsoft Affiliate or other service provider authorized to administer them. Pricing for Calling and Conferencing services may include applicable taxes and fees. Calling and Conferencing services terms may vary from country to country. All included taxes, fees and country-specific terms of use are disclosed in the terms of use available on the Volume Licensing site at <http://go.microsoft.com/fwlink/?LinkId=690247>.

Exceeding the usage limitations for the applicable Calling and Conferencing service subscription plan as described in the terms of use may result in suspension of the services. Microsoft will provide reasonable notice before suspending Calling or Conferencing services, and customer will be able to make emergency calls during any period of suspension.

**Important Information About Emergency Services**

Customer must notify each user of a Calling Plan that emergency services operate differently than on traditional telephone services in the following ways: (i) Office 365 may not know the actual location of an emergency services caller, which could result in the call being routed to the wrong emergency services call center and/or emergency services being dispatched to the wrong location; (ii) if the user's device has no power, is experiencing a power outage or, for any reason, cannot otherwise access the Internet, the user cannot make an emergency services call through a Calling Plan service; and (iii) although Calling Plan services can be used anywhere in the world where an Internet connection is available, users should not make an emergency services call from a location outside their home country because the call likely will not be routed to the appropriate call center in that location.



## Exchange Online

Exchange Online (Plan 1 and 2)

Exchange Online K1

Exchange Online Archiving for Exchange Online

Exchange Online Archiving for Exchange Server

Data Loss Prevention

Office 365 Advanced Threat Protection

### Core Features for Office 365 Services – Exchange Online

Exchange Online or its successor service will have the following Core Features capabilities:

#### Emails

An end user will be able to send email messages, receive email messages that originate from within and outside of Customer’s organization, and access the end user’s mailbox.

#### Mobile and Web Browser Access

Through the Microsoft Exchange ActiveSync protocol or a successor protocol or technology, Exchange Online will enable an end user to send and receive emails and update and view calendars from a mobile device that adequately supports such a protocol or technology. An end user will be able to send email messages, receive email messages that originate from within and outside of Customer’s organization, and access the end user’s mailbox, all from within a compatible web browser.

#### Retention Policies

Customer will be able to establish archive and deletion policies for email messages.

#### Deleted Item and Mailbox Recovery

Customer will be able to recover the contents of a deleted mailbox and an end user will be able to recover an item that has been deleted from one of the end user’s email folders.

#### Multi-Mailbox Search

Customer will be able to search for content across multiple mailboxes within its organization.

#### Calendar

An end user will be able to view a calendar and schedule appointments, meetings, and automatic replies to incoming email messages.

#### Contacts

Through an Exchange Online-provided user interface, Customer will be able to create and manage distribution groups and an organization-wide directory of mail-enabled end users, distribution groups, and external contacts.

### Core Features for Office 365 Services – Exchange Online Archiving

Exchange Online Archiving or its successor service will have the following Core Features capabilities:

#### Storage

Customer will be able to allow an end user to store email messages.

#### Retention Policies

Customer will be able to establish archive and deletion policies for email messages distinct from policies that an end user can apply to the end user’s own mailbox.

#### Deleted Item and Mailbox Recovery

Customer, through Office 365 support services, will be able to recover a deleted archive mailbox, and an end user will be able to recover an item that has been deleted from one of the end user’s email folders in the end user’s archive.

#### Multi-Mailbox Search

Customer will be able to search for content across multiple mailboxes within its organization.

#### Legal Hold

Customer will be able to place a “legal hold” on an end user’s primary mailbox and archive mailbox to preserve the content of those mailboxes.

#### Archiving

Archiving may be used for messaging storage only with Exchange Online Plans 1 and 2.



**Archiving for Exchange Server**

Users licensed for Exchange Server 2013 Standard Client Access License may access the Exchange Server 2013 Enterprise Client Access License features necessary to support use of Exchange Online Archiving for Exchange Server.

**Smartphone and Tablet Devices**

Each user to whom Customer assigns an Exchange Online User SL may (i) use Microsoft Outlook for mobile devices for commercial purposes and (ii) sign into Microsoft Outlook with their work or school account on up to five smartphones and five tablets. Microsoft Outlook is also subject to the Service Specific Terms applicable to M 365 Mobile Applications.

**Exchange Online Plan 2 from Exchange Hosted Archive Migration**

Exchange Online Plan 2 is a successor Online Service to Exchange Hosted Archive. If Customer renews from Exchange Hosted Archive into Exchange Online Plan 2 and has not yet migrated to Exchange Online Plan 2, Customer's licensed users may continue to use the Exchange Hosted Archive service subject to the terms of the March 2011 Product Use Rights until the earlier of Customer's migration to Exchange Online Plan 2 or the expiration of Customer's Exchange Online Plan 2 User SLs. The Product Use Rights is located at <http://go.microsoft.com/?linkid=9839206>.

**Office 365 Data Loss Prevention Device License**

If Customer is licensed for Office 365 Data Loss Prevention by Device, all users of the Licensed Device are licensed for the Online Service.

**Service Level Agreement**

There is no SLA for Office 365 Advanced Threat Protection.

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**Microsoft Stream**

**Notices**

The H.264/AVC Visual Standard, VC-1 Video Standard, MPEG-4 Part 2 Visual Standard, and MPEG-2 Video Standard Notices in [Attachment 1](#) apply.

**Stream Live Events**

Stream Live Events are subject to the following:

- a. Stream Live Events may not be greater than four (4) hours in length;
- b. Stream Live Events attendees may not exceed 10,000; and
- c. Stream Live Events are limited to fifteen (15) per customer at any single point in time.

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**Microsoft Teams**

**Notices**

The H.264/MPEG-4 AVC Notice in [Attachment 1](#) applies to all Office 365 Services that include Microsoft Teams.

**Health Sector Customers**

Customer is solely responsible for: (1) the accuracy and adequacy of information and Data furnished through use of Microsoft Teams; (2) implementing a secure application-to-application authentication method between any Customer application and/or service and Microsoft Teams; (3) obtaining appropriate consent from end users in connection with end user's and Customer's use of Microsoft Teams; and (4) displaying appropriate warnings, disclaimers, and acknowledgements to end users in connection with end user's and Customers use of Microsoft Teams.

CUSTOMER ACKNOWLEDGES THAT THE ONLINE SERVICES (MICROSOFT TEAMS SERVICE AND APPLICATIONS) (1) ARE NOT INTENDED OR MADE AVAILABLE AS A MEDICAL DEVICE (OR MEDICAL DEVICES) FOR THE DIAGNOSIS OF DISEASE OR OTHER CONDITIONS, OR IN THE CURE, MITIGATION, TREATMENT OR PREVENTION OF DISEASE, OR OTHERWISE TO BE USED AS A COMPONENT OF ANY CLINICAL OFFERING OR PRODUCT, AND NO LICENSE OR RIGHT IS GRANTED TO USE THE ONLINE SERVICES FOR SUCH PURPOSES, (2) IS NOT DESIGNED OR INTENDED TO BE A SUBSTITUTE FOR PROFESSIONAL MEDICAL ADVICE, DIAGNOSIS, TREATMENT, OR JUDGMENT AND SHOULD NOT BE USED TO REPLACE OR AS A SUBSTITUTE FOR PROFESSIONAL MEDICAL ADVICE, DIAGNOSIS, TREATMENT, OR JUDGMENT, AND (3) SHOULD NOT BE USED FOR MEDICAL EMERGENCIES. CUSTOMER IS SOLELY RESPONSIBLE FOR ANY PERSONAL INJURY OR DEATH THAT MAY OCCUR AS A RESULT OF ITS USE OF MICROSOFT TEAMS AND APPLICATIONS, INCLUDING (WITHOUT LIMITATION) ANY SUCH INJURIES TO END USERS OR CUSTOMER PATIENTS.

**Trials**

Microsoft Teams Exploratory Experience may only be initiated by individual end users. Customer may not initiate a Microsoft Teams Exploratory Experience on behalf of end user employees.



## Microsoft 365 Applications

Microsoft 365 Apps for business  
Microsoft 365 Apps for enterprise

Visio Online (Plan 1 and 2)

### Service Level Agreement

There is no SLA for Visio Online.

### Installation and Use Rights

Each user to whom Customer assigns a User SL must have a work or school account in order to use the software provided with the subscription.

These users:

- may activate the software provided with the SL on up to five concurrent OSEs for local or remote use;
- may also install and use the software, with shared computer activation, on a shared device, a Network Server, or on Microsoft Azure or with a Qualified Multitenant Hosting Partner ("QMTH"). Rights to install and use the software with a QMTH do not apply if the QMTH is using a Listed Provider as a Data Center Provider, as those terms are defined in the [Product Terms](#). The Product Terms is located at <http://go.microsoft.com/?linkid=9839207>. A list of Qualified Multitenant Hosting Partners and additional deployment requirements are available at [www.office.com/sca](http://www.office.com/sca). This shared computer activation provision only applies to Customers licensed for Microsoft 365 Apps for business when Microsoft 365 Apps for business is licensed as a component of Microsoft 365 Business Premium;
- must connect each device upon which user has installed the software to the Internet at least once every 30 days or the functionality of the software may be affected; and
- may use Internet-connected Online Services provided as part of ProPlus [and governed by this OST]. Additionally, if permitted by Customer, users may elect to use connected services subject to terms of use other than this OST and with respect to which Microsoft is a data controller, as identified in product documentation.
  - The Online Services will permit Customer to enable or disable these optional connected services; and
  - Customer is responsible for evaluating, enabling or disabling the availability of optional connected services to its users.

### Device-Based Subscription License

Each Device SL permits use of the software provided with the subscription. Users of a Licensed Device:

- may activate and use the software provided on one OSE on the Licensed Device; or
- may install and use the software remotely from the Licensed Device on one OSE on a Network Server, or on Microsoft Azure, or with a Qualified Multitenant Hosting Partner ("QMTH"). Rights to install and use the software with a QMTH do not apply if the QMTH is using a Listed Provider as a Data Center Provider, as those terms are defined in the [Product Terms](#). The Product Terms is located at <http://go.microsoft.com/?linkid=9839207>. A list of Qualified Multitenant Hosting Partners and additional deployment requirements are available at [www.office.com/sca](http://www.office.com/sca).

Customer must connect each OSE on which the software is installed to the Internet at least once every 90 days, or the functionality of the software may be affected.

### Smartphone and Tablet Devices

Each user to whom Customer assigns an Microsoft 365 Apps for business or Microsoft 365 Apps for enterprise User SL may (i) use Microsoft Office for mobile devices for commercial purposes and (ii) sign in to Microsoft Office with their work or school account on up to five smartphones and five tablets.

When versions of Microsoft Word, Excel, PowerPoint, Outlook, OneDrive, and Teams applications for mobile devices ("M 365 Mobile Applications") are used with a work or school account to access Online Services governed by this OST, the terms of the OST that govern the relevant Online Service apply to that use of the M 365 Mobile Applications. Microsoft's commitments related to M 365 Mobile Applications do not extend to data processing, policies, or practices of third-party providers of mobile platforms on which the mobile applications operate (e.g., Apple, Google).

The following terms apply only to Microsoft 365 Apps for enterprise

#### Office Home & Student 2013 RT Commercial Use

The commercial use restriction for Office Home & Student 2013 RT is waived for each Microsoft 365 Apps for enterprise User SL. Except as provided in this section, the terms provided with the Office Home & Student 2013 RT License will govern.



### Office Online Server

For each Microsoft 365 Apps for enterprise subscription, Customer may install any number of copies of Office Online Server on any Server dedicated to Customer's use. Any dedicated server that is under the management or control of an entity other than Customer or one of its Affiliates is subject to the Outsourcing Software Management clause of the [Product Terms](#). Each Microsoft 365 Apps for enterprise user may use the Office Online Server software. This provision does not apply to Customers that license this Product under the Microsoft Online Subscription Agreement, Microsoft Cloud Agreement, Microsoft Customer Agreement, or other Microsoft agreement that cover Online Services only.

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## Office for the web

### Core Features for Office 365 Services

Office for the web or its successor service will have the following [Core Features](#) capabilities: An end user will be able to create, view, and edit documents in Microsoft Word, Excel, PowerPoint, and OneNote file types that are supported by Office for the web or its successor service.

### External Users

External Users invited to site collections via Share-by-Mail functionality do not need User SLs with Office for the web.

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## OneDrive for Business

### External Users

External Users invited to site collections via Share-by-Mail functionality do not need User SLs with OneDrive for Business.

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## Project

Project Essentials  
Project Plan 1

Project Plan 3  
Project Plan 5

### Installation and Use Rights for Project application

Each user to whom Customer assigns a Project Plan 3 or Plan 5 User SL must have a Microsoft Account in order to use the software provided with the subscription. These users:

- may activate the software provided with the SL on up to five concurrent OSEs for local or remote use;
- may also install and use the software, with shared computer activation, on a shared device, a Network Server, or on Microsoft Azure or with a Qualified Multitenant Hosting Partner ("QMTH"). Rights to install and use the software with a QMTH do not apply if the QMTH is using a Listed Provider as a Data Center Provider, as those terms are defined in the [Product Terms](#). The Product Terms is located at <http://go.microsoft.com/?linkid=9839207>. A list of Qualified Multitenant Hosting Partners and additional deployment requirements is available at [www.office.com/sca](http://www.office.com/sca); and
- must connect each device upon which user has installed the software to the Internet at least once every 30 days or the functionality of the software may be affected.

### Use of SharePoint Online

Rights to the SharePoint Online functionality provided with a Project Plan 3 or Plan 5 SL are limited to storing and accessing data in support of Project.

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## SharePoint Online

SharePoint Online (Plan 1 and 2)  
SharePoint Online K1

Duet Enterprise Online for Microsoft SharePoint and SAP

### Core Features for Office 365 Services

SharePoint Online or its successor service will have the following [Core Features](#) capabilities:

### Collaboration Sites

An end user will be able to create a web browser-accessible site through which the end user can upload and share content and manage who has permission to access that site.



**Storage**

Customer will be able to set storage capacity limits for a site created by an end user.

**External Users**

External Users invited to site collections via Share-by-Mail functionality do not need User SLs with SharePoint Online K1, Plan 1 and Plan 2.

**Storage Add-on SLs**

Office 365 Extra File Storage is required for each gigabyte of storage in excess of the storage provided with User SLs for SharePoint Online Plans 1 and 2.

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## Workplace Analytics

**HIPAA Business Associate Agreement**

Even though Workplace Analytics is not specified in the HIPAA Business Associate Agreement (“BAA”), if Customer is a “covered entity” or a “business associate” and includes “protected health information” in Customer Data as those terms are defined in 45 CFR § 160.103, then execution of Customer’s volume licensing agreement for Workplace Analytics includes execution of the BAA, the full text of which is available at <http://aka.ms/BAA>.

**Third-Party Audits**

Microsoft has and will implement and maintain appropriate technical and organizational measures to protect Customer Data and Personal Data against accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, personal data transmitted, stored or otherwise processed in Workplace Analytics. Those measures comply with the requirements set forth in ISO 27001, ISO 27002, and ISO 27018. Microsoft has and will conduct periodic third-party audits to verify compliance with those requirements, consistent with the audits of Office 365 Services.

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## Other Online Services

### Bing Maps Mobile Asset Management Platform

**Service SLs**

A Service SL is required to access the services via the Bing Maps Mobile Asset Management Platform. A Service SL must be purchased with at least one of the following qualifying Add-on SLs for each asset:

- Mobile Asset Management for North America Add-on SL (routing or without routing)
- Mobile Asset Management for Europe Add-on SL (routing or without routing), or
- Mobile Asset Management for Rest of World Add-on SL (routing or without routing)

**Bing Maps APIs**

A Customer with a license to use the Bing Maps Mobile Asset Management Platform Bing Maps APIs in accordance with the Microsoft Bing Maps Platform API Terms of Use and Bing Maps Documentation, including any successors thereto, located at <https://aka.ms/bingmapsplatformapistou> and <https://aka.ms/bingmapsplatformisdks/>.

**Bing Maps Privacy**

The Microsoft Privacy Statement (located at: <https://go.microsoft.com/fwlink/?LinkId=521839>) and privacy terms in the Microsoft Bing Maps Platform API Terms of Use apply to Customer’s use of the Bing Maps Mobile Asset Management Platform.

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## Bing Maps Transactions and Users

Bing Maps Transactions  
Bing Maps Known User

Bing Maps Light Known User

**Authenticated Users**

Users that are authenticated by Customer’s programs that access the service through the Bing Maps APIs must have a SL.



### Bing Maps APIs

A Customer with a license to use Bing Maps Transactions and Users may use Bing Maps APIs in accordance with the Microsoft Bing Maps Platform API Terms of Use and Bing Maps Documentation, including any successors thereto, located at <https://aka.ms/bingmapsplatformapistou> and <https://aka.ms/bingmapsplatformsdks/>.

### Bing Maps Privacy

The Microsoft Privacy Statement (located at <https://go.microsoft.com/fwlink/?LinkId=521839>) and privacy terms in the Microsoft Bing Maps Platform API Terms of Use apply to Customer's use of Bing Maps.

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## Microsoft Power Platform

Microsoft Power Automate  
Microsoft Power Apps  
Microsoft Power Virtual Agents

Microsoft Power BI Pro  
Microsoft Power BI Premium

### Notices

The Bing Maps, H.264/AVC Visual Standard, VC-1 Video Standard, MPEG-4 Part 2 Visual Standard, and MPEG-2 Video Standard Notices in [Attachment 1](#) apply.

### Inactive Common Data Service Instances provided with Microsoft 365 licenses

If a Customer allows its Common Data Service instance that is provided with Microsoft 365 licenses to go inactive, Microsoft may, at its discretion, disable the inactive instance and delete the Customer Data and Personal Data within it. Such Common Data Service instance is inactive if for 90 days 1) no user logged into the instance, 2) no apps, bots, reports or flows have accessed the data contained in the instance, 3) no new apps, bots, reports, or flows were installed on or imported into the instance, and 4) no other actions or activities are registered in this instance through API or background processing jobs.

### Microsoft Power BI

#### Definitions

"Customer Application" means an application or any set of applications that adds primary and significant functionality to the Embedded Capabilities and that is not primarily a substitute for any portion of Microsoft Power BI services.  
"Embedded Capabilities" means the Power BI APIs and embedded views for use by an application.

#### Hosting Exception for Embedded Capabilities

Customer may create and maintain a Customer Application and, despite anything to the contrary in Customer's volume licensing agreement, combine Embedded Capabilities with Customer Data owned or licensed by Customer or a third party, to create a Customer Application using the Embedded Capabilities and the Customer Data together. Any Power BI content accessed by the Customer Application or its end users must be stored in Microsoft Power BI Premium capacity. Customer may permit third parties to access and use the Embedded Capabilities in connection with the use of that Customer Application. Customer is responsible for that use and for ensuring that these terms and the terms and conditions of Customer's volume licensing agreement are met by that use.

#### Limitations

Customer may not

- resell or redistribute the Microsoft Power BI services, or
- allow multiple users to directly or indirectly access any Microsoft Power BI feature that is made available on a per user basis.

#### Access without a User SL

A User SL is not required to view content in Power BI Premium capacity that is shared through the embed APIs or embedded views functionality. With Power BI Premium P series only, a User SL is also not required to view content in Power BI Premium capacity that is shared through the apps or email subscription features, or through Power BI Report Server.

#### Publish to Web

Customer may use the publish to web functionality to share content only on a publicly available website. Customer may not use this functionality to share content internally. Microsoft may display content published through the publish to web functionality on a public website or gallery.

### Microsoft Power Apps

#### Restricted Entities

Customer may not create, modify, or delete any data from entities of the type designated as "restricted" in product documentation at <https://go.microsoft.com/fwlink/?linkid=868812>. Customer has read-only access to such restricted entities.





### Unauthenticated External Users

External Users not authenticated by Power Apps do not need a User SL to access Power Portals.

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## SharePoint Syntex

### Additional AI Builder Credits

Additional AI Builder Credits are included for tenants licensed with 300 or more SharePoint Syntex users.

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## Microsoft 365 - Unattended License

### Service Level Agreement

There is no SLA for Microsoft 365 - Unattended License

### Definitions

“Robotic Process Automation”, otherwise known as “RPA” or “bots” means an application, or any set of applications used to capture data and manipulate applications to perform repetitive tasks. Bots operate upon any UI element of Windows 10 within an OSE and/or operates upon any Office application in any OSE.

“Unattended Bot” – Any bot that doesn’t strictly conform to the definition of “Attended Bot” shall be considered an “Unattended Bot.”

“Attended Bot” - An Attended Bot assists a person to execute automation on the person’s local and/or remote workstations. It operates concurrently with the person on the same workstation/s to accomplish repetitive tasks and is triggered by explicit actions of that person.

### Assignment and Use Rights

- Customer may assign a Microsoft 365 A3/E3 - Unattended License to an Unattended bot running on hardware dedicated to Customer’s use (subject to the Outsourcing Clause in the Product Terms located at <http://go.microsoft.com/?linkid=9839207>) or a virtual machine on Azure.
- Each Microsoft 365 A3/E3 - Unattended License allows the use of the M365 A3/E3 suite in only a single unique physical or virtual OSE for Robotic Process Automation.
- Each Microsoft 365 A3/E3 – Unattended License is allowed a single unique instance of Microsoft 365 Apps for enterprise.
- Bots assigned a Microsoft 365 A3/E3 – Unattended License may access Windows Virtual Desktop (WVD).
- License reassignment for bots follow the same rules for users and devices as if the bot is a user. (See [License Reassignment](#))

### Use Limitation

- Unattended bots may not create or replicate activities or workflows on behalf of an unlicensed user or device. (See [Multiplexing](#))
- Microsoft reserves the right to restrict or disable Microsoft API calls with reasonable notice, due to unreasonable amount of bandwidth, adversely impacting the stability of Microsoft API’s, or adversely affecting the behavior of other apps.

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## GitHub Offerings

[GitHub Enterprise](#)  
[GitHub Actions](#)  
[GitHub Insights](#)  
[GitHub Learning Lab for Organizations](#)

[GitHub One](#)  
[GitHub Advanced Security](#)  
[GitHub Packages](#)  
[GitHub Engineering Direct](#)

GitHub Offerings are provided by GitHub, Inc. By using GitHub Offerings, Customer agrees to be bound by the GitHub terms available at [https://aka.ms/github\\_terms](https://aka.ms/github_terms). Notwithstanding anything to the contrary in Customer’s volume licensing agreement (including these Online Services Terms and the DPA), the GitHub Privacy Statement available at [https://aka.ms/github\\_privacy](https://aka.ms/github_privacy) and the GitHub Data Protection Addendum and Security Exhibit located at [https://aka.ms/github\\_dpa](https://aka.ms/github_dpa) will apply to Customer’s use of GitHub Offerings, including GitHub Enterprise licensed standalone or as Visual Studio Enterprise or Professional with GitHub Enterprise.

### GitHub Actions and GitHub Packages

Customer’s Licensed Users of GitHub Enterprise or an offering that includes GitHub Enterprise may access and use GitHub Actions and GitHub Packages licensed by Customer.



### GitHub Advanced Security

In addition to User SLs permitting access to GitHub Enterprise, Customer must acquire GitHub Advanced Security User SLs for each of its Unique Committers. A "Unique Committer" is a Licensed User of GitHub Enterprise or an offering that includes GitHub Enterprise who has made a code commit in the last 90 days to any repository with any GitHub Advanced Security functionality activated.

### GitHub Insights

Customer's Licensed Users of GitHub Enterprise or an offering that includes GitHub Enterprise may access and use GitHub Insights, provided that all such users are also assigned GitHub Insights User SLs. This does not apply to Enrollment for Education Solution customers.

### GitHub Engineering Direct (Standalone or with GitHub One)

GitHub Engineering Direct is an enhanced level of technical support provided by GitHub, Inc. The GitHub Engineering Direct offer requires a customer to have Microsoft Premier or Unified Support as a pre-requisite. By using GitHub technical support, Customer agrees to be bound by the GitHub terms available at <https://aka.ms/githubsupport>.

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## Microsoft Cloud App Security

### External User Allowance

In addition to access by its Licensed Users, Customer may permit External Users to access the service in connection with access to Customer's resources using SharePoint Online, OneDrive, Teams and other Microsoft hosted services.

### Notices

The Bing Maps and Professional Services notices in [Attachment 1](#) apply.

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## Microsoft Graph data connect for ISVs

### Service SLs

Customer must have an SL for each user data Customer's application processes. For purposes of Microsoft Graph data connect for ISVs (Independent Software Vendors), "user data" is data sourced from the user's Office 365 account, which is held by the Customer's customer. Access to user data is provided to Customer by the Customer's customer.

### Service Level Agreement

There is no SLA for Microsoft Graph data connect for ISVs.

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## Microsoft Healthcare Bot Service

### Definitions

"Customer Healthcare Bot Application" means an application or any set of applications that adds primary and significant functionality to the Microsoft Healthcare Bot Service and that is not primarily a substitute for the Microsoft Healthcare Bot Service.

### Customer Obligations

Customer is solely responsible for: (1) the accuracy and adequacy of information and Data furnished through use of the Microsoft Healthcare Bot Service; (2) implementing a secure application-to-application authentication method between the Customer Healthcare Bot Application and the Microsoft Healthcare Bot Service; (3) obtaining appropriate consent from end users in connection with their use of the Customer Healthcare Bot Application; and (4) displaying appropriate warnings, disclaimers, and acknowledgements to end users in connection with their use of the Customer Healthcare Bot Application, including, as applicable, those set forth in the following [form](#).

### Use Limitation

CUSTOMER ACKNOWLEDGES THAT THE MICROSOFT HEALTHCARE BOT SERVICE (1) IS NOT INTENDED OR MADE AVAILABLE AS A MEDICAL DEVICE (OR MEDICAL DEVICES) FOR THE DIAGNOSIS OF DISEASE OR OTHER CONDITIONS, OR IN THE CURE, MITIGATION, TREATMENT OR PREVENTION OF DISEASE, OR OTHERWISE TO BE USED AS A COMPONENT OF ANY CLINICAL OFFERING OR PRODUCT, AND NO LICENSE OR RIGHT IS GRANTED TO USE THE MICROSOFT HEALTHCARE BOT SERVICE FOR SUCH PURPOSES, (2) IS NOT DESIGNED OR INTENDED TO BE A SUBSTITUTE FOR PROFESSIONAL MEDICAL ADVICE, DIAGNOSIS, TREATMENT, OR JUDGMENT AND SHOULD NOT BE USED TO REPLACE OR AS A SUBSTITUTE FOR PROFESSIONAL MEDICAL ADVICE, DIAGNOSIS, TREATMENT, OR JUDGMENT, AND (3) SHOULD NOT BE USED FOR EMERGENCIES AND DOES NOT SUPPORT EMERGENCY CALLS. CUSTOMER ACKNOWLEDGES THAT THE CUSTOMER HEALTHCARE BOT APPLICATION WILL CONSTITUTE CUSTOMER'S



OWN PRODUCT OR SERVICE, SEPARATE AND APART FROM THE MICROSOFT HEALTHCARE BOT SERVICE. CUSTOMER IS SOLELY RESPONSIBLE FOR THE DESIGN, DEVELOPMENT, AND IMPLEMENTATION OF THE CUSTOMER HEALTHCARE BOT APPLICATION, AND FOR PROVIDING END USERS WITH APPROPRIATE WARNINGS PERTAINING TO USE OF THE CUSTOMER HEALTHCARE BOT APPLICATION. CUSTOMER IS SOLELY RESPONSIBLE FOR ANY PERSONAL INJURY OR DEATH THAT MAY OCCUR AS A RESULT OF ITS USE OF THE MICROSOFT HEALTHCARE BOT SERVICE IN CONNECTION WITH THE CUSTOMER HEALTHCARE BOT APPLICATION, INCLUDING (WITHOUT LIMITATION) ANY SUCH INJURIES TO END USERS.

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## Microsoft Intune

Microsoft Intune (per user)  
Microsoft Intune for Devices  
Microsoft Intune for EDU (per user, per device)

Microsoft Intune Add-on for Microsoft Endpoint Configuration Manager and System Center Endpoint Protection (per user, per device) (“Microsoft Intune Add-On”)

### Notices

Any deployment services provided to Customer are subject to the Professional Services Notice in [Attachment 1](#).

### Manage Devices and Applications

Each User to whom Customer assigns a User SL may access and use the Online Services and related software (including System Center software) to manage applications and up to fifteen devices. Management of a device accessed by more than one user requires a User SL for each user. If Intune Company Portal App is used to manage devices, the terms of the OST that apply to Microsoft Intune Online Services (as defined in the Core Online Services table in Attachment 1 - Notices) apply to the use of Intune Company Portal App. Microsoft’s commitments related to Intune Company Portal App do not extend to data processing, policies, or practices of third-party providers of mobile platforms on which Intune Company Portal App operates (e.g., Apple, Google).

### Microsoft Intune for Devices

Microsoft Intune for Devices may only be linked to devices that are not affiliated with specific users. Product features with user affinity, including but not limited to Conditional Access, App Protection, and optional app installation, cannot be used under Microsoft Intune for Devices SLs. Applications that are typically mapped to specific users, such as Outlook and OneDrive, may not be used under this service.

### Storage Add-on SL

A Storage Add-on SL is required for each gigabyte of storage in excess of the storage provided with the base subscription.

### Windows Software Components in System Center Software

The System Center software includes one or more of the following Windows Software Components: Microsoft .NET Framework, Microsoft Data Access Components, PowerShell software and certain .dlls related to Microsoft Build, Windows Identity Foundation, Windows Library for JavaScript, Debughelp.dll, and Web Deploy technologies. The license terms governing use of the Windows Software Components are in the Windows 8.1 Pro and Enterprise section of the Product Terms. The Product Terms is located at <http://go.microsoft.com/?linkid=9839206>.

### SQL Server Technology and Benchmarking

The Software included with the Online Service includes SQL Server-branded components other than a SQL Server Database. Those components are licensed to Customer under the terms of their respective licenses, which can be found in the installation directory or unified installer of the software. Customer must obtain Microsoft’s prior written approval to disclose to a third party the results of any benchmark test of these components or the software that includes them.

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## Microsoft Learning

### Microsoft Learning E-Reference Library

Any person that has valid access to Customer’s computer or internal network may copy and use the documentation for Customer’s internal reference purposes. Documentation does not include electronic books.

### Microsoft Learning Imagine Academy Service SL

A Service SL is required for each Location that accesses or uses any Microsoft Imagine Academy service or benefit. Location is defined as a physical site with staff under the same administrator, such as a principal, in a single building or group of buildings located on the same campus.

### Microsoft Learning Imagine Academy Program Guidelines

The Imagine Academy program guidelines, located at <http://www.microsoft.com/itacademy>, apply to Customer’s use of the Microsoft Learning Imagine Academy and its benefits.



**Microsoft Learning Imagine Academy Program Benefits Provided by Third-Party**  
Program benefits may only be used by a licensed institution’s faculty, staff and students currently enrolled in the licensed institution.

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## Microsoft Search in Bing

### Microsoft Search in Bing

“Microsoft Search in Bing” means the service that displays enterprise search results from internal resources (e.g. intranet, files, people information) to Customer users who are logged into the service via their work or school account.

### Microsoft Search in Bing Privacy

When a user enters a search query in Microsoft Search in Bing, two simultaneous search requests occur: (1) a search of Customer’s internal resources, for which the query and results returned are Customer Data for purposes of these Online Services Terms, and (2) a separate search of public results from Bing.com, for which the query and results returned are not Customer Data. These Online Services Terms and the DPA apply only to Microsoft Search in Bing. The Microsoft Privacy Statement located at <https://go.microsoft.com/fwlink/?LinkId=521839> applies to public search on Bing.com.

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## Microsoft Threat Protection

### Data Handling

Microsoft Threat Protection integrates Customer Data from other Online Services, including Microsoft Defender Advanced Threat Protection, Office 365 Advanced Threat Protection, Microsoft Cloud Application Security, Azure Active Directory, and other Online Services as configured by Customer, if any (collectively for purposes of this provision “MTP Input Services”). Once Customer Data from MTP Input Services is integrated into Microsoft Threat Protection, only the OST and DPA provisions applicable to Microsoft Threat Protection apply to that data.

[Table of Contents / General Terms](#)

## Minecraft: Education Edition

### Notices

The Bing Maps Notices in [Attachment 1](#) apply.

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## Office 365 Developer

### No Production Use of Office 365 Developer

Each user to whom Customer assigns a User SL may use the Online Service to design, develop, and test Customer’s applications to make them available for Customer’s Office 365 Online Services, on-premises deployments or for the Microsoft Office Store. The Online Service is not licensed for production use.

### Office 365 Developer End Users

Customer’s end users do not need a SL to access Office 365 Developer to perform acceptance tests or provide feedback on Customer programs.

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## Microsoft Defender Advanced Threat Protection

### Data Retention

Microsoft Defender Advanced Threat Protection does not contain extractable Customer Data therefore the Customer Data extraction terms in the DPA do not apply.

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# Attachment 1 – Notices

## Online Services excluded from the DPA

The terms of the DPA do not apply to: Bing Maps Mobile Asset Management Platform, Bing Maps Transactions and Users, Bing Search Services, Cognitive Services in containers installed on Customer’s dedicated hardware, GitHub Offerings, LinkedIn Sales Navigator, Azure SQL Edge, Azure Stack Hub, Microsoft Graph data connect for ISVs, Microsoft Genomics, and Visual Studio App Center Test. Each of these Online Services are governed by the privacy and security terms in the applicable [Online Service-specific Terms](#).

### DPA Terms Geography Exclusions

For Dynamics 365 and Power Platform online services, the specific terms of the DPA as noted in Appendix A stating “Microsoft stores copies of Customer Data and data recovery procedures in a different place from where the primary computer equipment processing the Customer Data is located.” do not apply to the following geographies: United Arab Emirates and South Africa.

## Core Online Services

The term “Core Online Services” applies only to the services in the table below, excluding any Previews.

Online Services	
Microsoft Dynamics 365 Core Services	The following services, each as a standalone service or as included in a Dynamics 365 branded plan or application: Dynamics 365 Customer Service Enterprise, Dynamics 365 Customer Service Insights, Dynamics 365 Field Service, Dynamics 365 Business Central, Professional, Dynamics 365 Customer Service Insights, Dynamics 365 Supply Chain Management, Dynamics 365 Finance, Dynamics 365 Marketing, Dynamics 365 Commerce, Dynamics 365 Human Resources, Dynamics 365 Sales Enterprise, and Dynamics 365 Sales Professional. Dynamics 365 Core Services do not include (1) Dynamics 365 Services for supported devices or software, which includes but is not limited to Dynamics 365 for apps, tablets, phones, or any of these; (2) LinkedIn Sales Navigator; or (3) except as expressly defined in the licensing terms for the corresponding service, any other separately-branded service made available with or connected to Dynamics 365 Core Services.
Office 365 Services	The following services, each as a standalone service or as included in an Office 365-branded plan or suite: Compliance Manager, Cortana, Customer Lockbox, Exchange Online Archiving, Exchange Online Protection, Exchange Online, Microsoft Bookings, Microsoft Forms, Microsoft MyAnalytics, Microsoft Planner, Microsoft StaffHub, Microsoft Stream, Microsoft Teams (including Bookings, Lists, and Shifts), Microsoft To-Do, Office 365 Advanced Threat Protection, Office 365 Video, Office for the web, OneDrive for Business, Project, SharePoint Online, Skype for Business Online, Sway, Whiteboard, Yammer Enterprise and, for Kaizala Pro, Customer’s organizational groups managed through the admin portal and chats between two members of Customer’s organization. Office 365 Services do not include Microsoft 365 Apps for enterprise, any portion of PSTN Services that operate outside of Microsoft’s control, any client software, or any separately branded service made available with an Office 365-branded plan or suite, such as a Bing or a service branded “for Office 365.”
Microsoft Azure Core Services	API Management, App Service (API Apps, Logic Apps, Mobile Apps, Web Apps), Application Gateway, Application Insights, Automation, Azure Active Directory (including Multi-Factor Authentication), Azure API for FHIR, Azure Cache for Redis, Azure Container Registry (ACR), Azure Container Service, Azure Cosmos DB (formerly DocumentDB), Azure Database for MySQL, Azure Database for PostgreSQL, Azure Databricks, Azure DevOps Services, Azure DevTest Labs, Azure DNS, Azure Information Protection (including Azure Rights Management), Azure Kubernetes Service, Azure NetApp Files, Azure Resource Manager, Azure Search, Backup, Batch, BizTalk Services, Cloud Services, Computer Vision, Content Moderator, Data Catalog, Data Factory, Data Lake Analytics, Data Lake Store, Event Hubs, Express Route, Face, Functions, HDInsight, Import/Export, IoT Hub, Key Vault, Load Balancer, Log Analytics (formerly Operational Insights), Azure Machine Learning Studio, Media Services, Microsoft Azure Portal, Notification Hubs, Power BI Embedded, QnA Maker, Scheduler, Security Center, Service Bus, Service Fabric, SignalR Service, Site Recovery, SQL Data Warehouse, SQL Database, SQL Server Stretch Database, Storage, StorSimple, Stream Analytics, Text Analytics, Traffic Manager, Video Indexer, Virtual Machines, Virtual Machine Scale Sets, Virtual Network, and VPN Gateway
Microsoft Cloud App Security	The cloud service portion of Microsoft Cloud App Security.
Microsoft Intune Online Services	The cloud service portion of Microsoft Intune such as the Microsoft Intune Add-on Product or a management service provided by Microsoft Intune such as Mobile Device Management for Office 365.
Microsoft Power Platform Core Services	The following services, each as a standalone service or as included in an Office 365 or Microsoft Dynamics 365 branded plan or suite: Microsoft Power BI, Microsoft Power Apps, Microsoft Power Automate, and Microsoft Power Virtual Agents. Microsoft Power Platform Core Services do not include any client software, including but not limited to Power BI Report Server, the Power BI, PowerApps or Microsoft Power Automate mobile applications, Power BI Desktop, or Power Apps Studio.

Online Services	
Microsoft Defender Advanced Threat Protection Services	The following cloud service portions of Microsoft Defender Advanced Threat Protection: Attack Surface Reduction, Next Generation Protection, Endpoint Detection & Response, Auto Investigation & Remediation, Threat & Vulnerability Management, SmartScreen.
Microsoft Threat Protection	The cloud service portion of Microsoft Threat Protection.

**Security Practices and Policies for Core Online Services**

In addition to the security practices and policies for Online Services in the DPA, each Core Online Service also complies with the control standards and frameworks shown in the table below and implements and maintains the security measures set forth in Appendix A of the DPA for the protection of Customer Data.

Online Service	SSAE 18 SOC 1 Type II	SSAE 18 SOC 2 Type II
Office 365 Services	Yes	Yes
Microsoft Dynamics 365 Core Services	Yes	Yes
Microsoft Azure Core Services	Varies*	Varies*
Microsoft Cloud App Security	Yes	Yes
Microsoft Intune Online Services	Yes	Yes
Microsoft Power Platform Core Services	Yes	Yes
Microsoft Defender Advanced Threat Protection Services	Yes	Yes
Microsoft Threat Protection	Yes	Yes

\*Current scope is detailed in the audit report and summarized in the Microsoft Trust Center.

**Location of Customer Data at Rest for Core Online Services**

For the Core Online Services, Microsoft will store Customer Data at rest within certain major geographic areas (each, a Geo) as follows except as otherwise provided in the Online Service-specific terms:

- **Office 365 Services.** If Customer provisions its tenant in Australia, Canada, the European Union, France, Germany, India, Japan, South Africa, South Korea, Switzerland, the United Kingdom, the United Arab Emirates, or the United States, Microsoft will store the following Customer Data at rest only within that Geo: (1) Exchange Online mailbox content (e-mail body, calendar entries, and the content of e-mail attachments), (2) SharePoint Online site content and the files stored within that site, and (3) files uploaded to OneDrive for Business.
- **Microsoft Intune Online Services.** When Customer provisions a Microsoft Intune tenant account to be deployed within an available Geo, then, for that service, Microsoft will store Customer Data at rest within that specified Geo except as noted in the Microsoft Intune Trust Center.
- **Microsoft Power Platform Core Services.** If Customer provisions its tenant in Australia, Canada, Asia Pacific, France (excluding Microsoft Power Virtual Agents), India, Japan, the European Union, United Kingdom, or the United States, Microsoft will store Customer Data at rest only within that Geo, except as noted in the data location section of the Microsoft Power Platform Trust Center.
- **Microsoft Azure Core Services.** If Customer configures a particular service to be deployed within a Geo then, for that service, Microsoft will store Customer Data at rest within the specified Geo. Certain services may not enable Customer to configure deployment in a particular Geo or outside the United States and may store backups in other locations. Refer to the Microsoft Trust Center (which Microsoft may update from time to time, but Microsoft will not add exceptions for existing Services in general release) for more details.
- **Microsoft Cloud App Security.** If Customer provisions its tenant in the European Union or the United States, Microsoft will store Customer Data at rest only within that Geo, except as described in the Microsoft Cloud App Security Trust Center.
- **Microsoft Dynamics 365 Core Services.** When Customer provisions a Dynamics 365 Core Service to be deployed within an available Geo, then, for that service, Microsoft will store Customer Data at rest within that specified Geo, except as described in the Microsoft Dynamics 365 Trust Center.
- **Microsoft Defender Advanced Threat Protection Services.** When Customer provisions a Microsoft Defender Advanced Threat Protection tenant to be deployed within an available Geo, then, for that service, Microsoft will store Customer Data at rest within that specified Geo except as noted in the Microsoft Defender Advanced Threat Protection Trust Center.
- **Microsoft Threat Protection.** When Customer provisions a Microsoft Threat Protection tenant to be deployed within an available Geo, then, for that service, Microsoft will store Customer Data at rest within that specified Geo except as noted in the Microsoft Threat Protection Trust Center.

## Bing Maps

The Online Service or its included software includes use of Bing Maps. Any content provided through Bing Maps, including geocodes, can only be used within the product through which the content is provided. Customer's use of Bing Maps is governed by the Bing Maps End User Terms of Use available at [go.microsoft.com/?linkid=9710837](https://go.microsoft.com/?linkid=9710837) and the Microsoft Privacy Statement available at [go.microsoft.com/fwlink/?LinkID=248686](https://go.microsoft.com/fwlink/?LinkID=248686).

## Professional Services

Professional Services are provided subject to the "Professional Services Terms" below. If, however, Professional Services are provided pursuant to a separate agreement, then the terms of that separate agreement will apply to those Professional Services. Data protection and security terms for Professional Services Data are in the DPA.

The Professional Services to which this Notice applies are not Online Services, and the rest of the Online Services Terms do not apply unless expressly made applicable by the Professional Services Terms below.

### Professional Services Terms

#### Obligations of the Parties; Warranties

Microsoft warrants that all Professional Services will be performed with professional care and skill. If Microsoft fails to do so and Customer notifies Microsoft within 90 days of the date of performance, then Microsoft will either re-perform the Professional Services or return the price paid for them as Customer's sole remedy for breach of the Professional Services warranty. Notwithstanding the foregoing, **Services Deliverables that are provided without charge are provided "AS-IS," WITHOUT ANY WARRANTY. Microsoft provides no warranties or conditions and disclaims any other express, implied or statutory warranties, including warranties of quality, title, non-infringement, merchantability and fitness for a particular purpose.**

Customer will perform its applicable responsibilities and obligations to support Microsoft's performance of the Professional Services, as specified in the description of each Professional Service. Customer may not use Professional Services or Services Deliverables in any way prohibited by the Acceptable Use Policy and must comply with all laws and regulations applicable to its use of Professional Services and Services Deliverables, including laws related to privacy, Personal Data, biometric data, data protection and confidentiality of communications. Customer is solely responsible for testing, deploying, maintaining and supporting Services Deliverables that are provided or recommended without charge by Microsoft.

#### Limitation of Liability

To the extent permitted by applicable law, each party's total liability for all claims relating to Professional Services will be limited to the amounts Customer was required to pay for the Professional Services or the limitation of liability for the Online Service with which the Professional Services are offered, whichever is greater. For Professional Services and Services Deliverables provided free of charge and Services Deliverables that Customer is authorized to redistribute to third parties without separate payment to Microsoft, Microsoft's liability is limited to direct damages finally awarded up to US\$5,000. **In no event will either party be liable for indirect, incidental, special, punitive, or consequential damages, including loss of use, loss of profits, or interruption of business, however caused or on any theory of liability in relation to the Professional Services, or Services Deliverables. No limitation or exclusions will apply to liability arising out of either party's (1) confidentiality obligations (except for all liability limited to Customer Data and Professional Services Data, which remain subject to the limitations and exclusions above); or (2) violation of the other party's intellectual property rights.**

#### Fixes

"Fixes" are Product fixes, modifications or enhancements, or their derivatives, that Microsoft either releases generally (such as service packs) or that Microsoft provides to Customer to address a specific issue. Each Fix, is licensed under the same terms as the Product to which it applies. If a Fix is not provided for a specific Product, any use terms Microsoft provides with the Fix will apply.

#### Pre-Existing Work

"Pre-Existing Work" means any computer code or non-code based written materials developed or otherwise obtained independent of Customer's volume licensing agreement. All rights in Pre-Existing Work shall remain the sole property of the party providing the Pre-Existing Work. Each party may use, reproduce and modify the other party's Pre-Existing Work only as needed to perform obligations related to Professional Services. If Customer chooses to disclose its source code to Microsoft during a Professional Services engagement, then (1) prior to such disclosure, Customer will remove any third-party source code that Customer is prohibited from disclosing; and (2) Microsoft will treat Customer's source code as confidential information.

**Services Deliverables License**

“Services Deliverables” means any computer code or materials (including without limitation proofs of concept, documentation and design recommendations, sample code, software libraries, algorithms and machine learning models) other than Products or Fixes that Microsoft leaves with Customer at the conclusion of Microsoft’s performance of Professional Services. Microsoft grants Customer a non-exclusive, non-transferable, perpetual license to reproduce, use, and modify the Services Deliverables, subject to and in accordance with the terms and conditions in Customer’s volume licensing agreement and any agreed statement of services. Some Services Deliverables and third-party content may be provided under a separate license, such as an open source license. In the event of a conflict between this Notice and any separate license, the separate license will prevail with respect to the Services Deliverables or third-party content that is the subject of such separate license. Each party reserves all rights (and no one receives any rights) not expressly granted by the foregoing licenses.

**License Restrictions**

Customer must not (and is not licensed to) reverse engineer, decompile, disassemble or work around any technical limitations in any Services Deliverable except to the extent that applicable law doesn’t allow this restriction. Except as expressly permitted in this agreement and any agreed statement of services or separate license, Customer must not (and is not licensed to) distribute, sublicense, rent, lease, lend, sell, offer for sale or otherwise make available any Services Deliverables, in whole or in part, or subject Microsoft’s intellectual property in Services Deliverables to any other license terms.

**Feedback**

“Feedback” means expertise and knowledge, including industry knowhow, as well as comments, input and suggestions regarding the Services Deliverables, Professional Services and the products, technologies, services, or any components of the foregoing, whether pre-release or commercially released, of either Microsoft or Customer. Neither Microsoft nor Customer are required to provide Feedback to the other in connection with Professional Services, but if a party in its sole discretion does provide Feedback, both parties agree that the receiving party should be free to use such Feedback without obligation. Accordingly, to the extent that the party providing Feedback owns or controls copyrights or trade secrets covering such Feedback, that party grants to the receiving party and its Affiliates a worldwide, non-exclusive, perpetual, irrevocable and royalty-free license in such intellectual property to: (1) to make, use, modify, distribute, create derivative works and otherwise commercialize the Feedback as part of Microsoft’s or Customer’s products, technologies, services or any of their components, including without limitation pre-release and commercially released versions of such offerings; and (2) sublicense to third parties the foregoing rights, including the right to grant further sublicenses. Neither party will provide any Feedback subject to any terms that would impose any obligation on or require attribution by on the receiving party. Any party receiving Feedback further acknowledges that (1) it has sole and absolute discretion regarding whether it implements such feedback; (2) it shall base its offerings and marketing plans solely on its own independent research and analysis; and (3) it assumes all risks associated with any implementation of such Feedback.

**Non-Microsoft Technology**

Customer is solely responsible for any non-Microsoft software or technology that it installs or uses with the Online Services, Fixes, or Services Deliverables, including without limitation when Customer asks Microsoft to use or modify such third-party content.

**Affiliates’ Rights**

Customer may sublicense the rights to use Services Deliverables to its Affiliates, but Customer’s Affiliates may not sublicense these rights. Customer is liable for ensuring its Affiliates’ compliance with the terms of this Notice and Customer’s volume licensing agreement.

**Government Customers**

If Customer is a government entity, then the following terms apply to any Professional Services provided at no charge to Customer. Microsoft waives any and all entitlement to compensation from Customer for the Professional Services. In compliance with applicable laws and regulations, Microsoft and Customer acknowledge that the Professional Services are for the sole benefit and use of Customer and not provided for the personal use or benefit of any individual government employee.

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**Notice about Azure Media Services H.265/HEVC Encoding**

Customer must obtain its own patent license(s) from any third party H.265/HEVC patent pools or rights holders before using Azure Media Services to encode or decode H.265/HEVC media.

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## Notice about Adobe Flash Player

The software may include a version of Adobe Flash Player. Customer agrees that its use of the Adobe Flash Player is governed by the license terms for Adobe Systems Incorporated at <http://go.microsoft.com/fwlink/?linkid=248532>. Adobe and Flash are either registered trademarks or trademarks of Adobe Systems Incorporated in the United States and/or other countries.

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## Notice about H.264/AVC Visual Standard, VC-1 Video Standard, MPEG-4 Part 2 Visual Standard and MPEG-2 Video Standard

This software may include H.264/AVC, VC-1, MPEG-4 Part 2, and MPEG-2 visual compression technology. MPEG LA, L.L.C. requires this notice: THIS PRODUCT IS LICENSED UNDER THE AVC, THE VC-1, THE MPEG-4 PART 2 AND MPEG-2 VISUAL PATENT PORTFOLIO LICENSES FOR THE PERSONAL AND NON-COMMERCIAL USE OF A CONSUMER TO (i) ENCODE VIDEO IN COMPLIANCE WITH THE ABOVE (VIDEO STANDARDS) AND/OR (ii) DECODE AVC, VC-1, MPEG-4 PART 2 AND MPEG-2 VIDEO THAT WAS ENCODED BY A CONSUMER ENGAGED IN A PERSONAL AND NON-COMMERCIAL ACTIVITY AND/OR WAS OBTAINED FROM A VIDEO PROVIDER LICENSED TO PROVIDE SUCH VIDEO. NO LICENSE IS GRANTED OR SHALL BE IMPLIED FOR ANY OTHER USE. ADDITIONAL INFORMATION MAY BE OBTAINED FROM MPEG LA, L.L.C. REFER TO [www.mpegla.com](http://www.mpegla.com).

For clarification purposes, this notice does not limit or inhibit the use of the software for normal business uses that are personal to that business which do not include (i) redistribution of the software to third parties, or (ii) creation of content compliant with the VIDEO STANDARDS technologies for distribution to third parties.

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## Attachment 2 – Subscription License Suites

Online Services may be available for purchase as Suites of Online Services. If, in the tables below, a cell is shaded **blue** in an Online Service’s row, the Suite SL for the column the cell is in fulfills the SL requirements for the cell’s Online Services. For Education and Government offers, see the Public Sector table below.

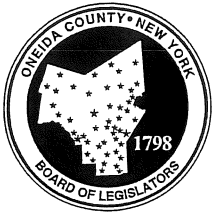
Online Service	Office 365 Enterprise				Microsoft 365 Business Basic	Microsoft 365 Business Standard	Enterprise Mobility+ Security		Microsoft 365 Enterprise				Microsoft 365 Business Premium
	E3	E1	E5	E5 Security			E3	E5	E3	E5	E5 Security		
Exchange Online K1													
Exchange Online Plan 1													
Exchange Online Plan 2													
SharePoint Online K1													
SharePoint Online Plan 1													
SharePoint Online Plan 2													
Skype for Business Online Plan 2													
OneDrive for Business Plan 1													
OneDrive for Business Plan 2													
Phone System													
Audio Conferencing													
Microsoft 365 Apps for business													
Microsoft 365 Apps for enterprise													
Office 365 Data Loss Prevention													
Office 365 Advanced Threat Protection Plan 1													
Office 365 Advanced Threat Protection Plan 2													
Microsoft Power BI Pro													
Microsoft Intune													
Azure Info Protection Premium Plan 1													
Azure Active Directory Premium Plan 1													
Azure Active Directory Premium Plan 2													
Azure Advanced Threat Protection for Users													
Microsoft Cloud App Security													
Microsoft Stream													

<sup>1</sup> Add-on Suite SLs that include “without ProPlus” or “without Apps for enterprise” in the title do not include rights to Microsoft 365 Apps for enterprise.  
<sup>2</sup> In addition to the Online Services identified above, the Microsoft 365 fulfills the SL requirement for Windows SA per User as described in the Product Terms.  
<sup>3</sup> Inclusion of Skype for Business Online Audio Conferencing with Office 365 E5 is dependent on regional availability.  
<sup>4</sup> Microsoft 365 customers with 500 seats or fewer will be onboarded to Microsoft Teams and will not have access to Skype for Business Online.  
<sup>5</sup> Microsoft 365 E5 Security includes Microsoft Defender Advanced Threat Protection.  
<sup>7</sup> Cannot upload or modify videos.  
<sup>8</sup> Cannot create live events.

## Public Sector

Online Service	Office 365 Government <sup>1</sup>					Office 365 Education <sup>2</sup>			Microsoft 365 Education <sup>2</sup>			
	E1	E3	E4	E5	E6	A1	A3	A5	A1	A3	A5	A5 Security <sup>6</sup>
Exchange Online K1												
Exchange Online Plan 1												
Exchange Online Plan 2												
SharePoint Online K1												
SharePoint Online Plan 1												
SharePoint Online Plan 2												
Skype for Business Online Plan 2												
OneDrive for Business Plan 1												
OneDrive for Business Plan 2												
Phone System												
Audio Conferencing												
Microsoft 365 Apps for enterprise												
Office 365 Data Loss Prevention												
Office 365 Advanced Threat Protection P2												
Microsoft Power BI Pro												
Office 365 Advanced Threat Protection P1												
Microsoft Intune												
Azure Info Protection Premium Plan 1												
Azure Active Directory Premium Plan 1												
Azure Active Directory Premium Plan 2												
Azure Advanced Threat Protection for Users												
Microsoft Cloud App Security												
Microsoft Stream												
Minecraft: Education Edition												

<sup>1</sup> Add-on Suite SLs that include "without ProPlus" or "without Apps for enterprise" in the title do not include rights to Microsoft 365 Apps for enterprise.  
<sup>2</sup> In addition to the Online Services identified above, the Microsoft 365 Education fulfills the SL requirement for Windows SA per User as described in the Product Terms.  
<sup>3</sup> Inclusion of Skype for Business Online Audio Conferencing with Office 365 E5/A5 is dependent on regional availability.  
<sup>4</sup> Includes Microsoft 365 A3 with Core CAL.  
<sup>5</sup> Microsoft 365 customers with 500 seats or fewer will be onboarded to Microsoft Teams and will not have access to Skype for Business Online.  
<sup>6</sup> Microsoft 365 A5 Security includes Microsoft Defender Advanced Threat Protection.  
<sup>7</sup> Cannot upload or modify videos.  
<sup>8</sup> Cannot create live events.



# ONEIDA COUNTY BOARD OF LEGISLATORS

ONEIDA COUNTY OFFICE BUILDING ♦ 800 PARK AVENUE ♦ UTICA, N.Y. 13501-2977

Gerald J. Fiorini  
Chairman  
(315) 798-5900

Mikale Billard  
Clerk  
(315) 798-5404

George Joseph  
Majority Leader

Philip M. Sacco  
Minority Leader

December 1, 2020

FN 20 20 - 378

Board of Legislators  
County of Oneida  
800 Park Avenue  
Utica, New York 13501

## WAYS & MEANS

RE: Final Approval of Consolidated Agricultural District # 4 to Include the Towns of Augusta, Vernon, Verona and the City of Sherrill

Honorable Members:

Attached is a packet of information for the final approval of the 8-year review of Oneida County Consolidated Agricultural District #4, now including the towns of Augusta, Vernon, Verona and the City of Sherrill.

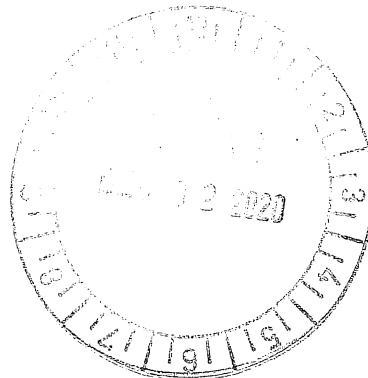
It is recommended by the Oneida County Farmland Protection Board to modify the district to include 27,751.7 acres of farmland. As part of the County's plan to consolidate districts within the County, the boundaries of District #4 were modified to follow municipal boundaries of these towns and the attached documentation will show that this district has been restructured to better reflect geographic boundaries of common agricultural communities.

I respectfully request that this issue be considered by the Board at the meeting of **December 23, 2020.**

Respectfully submitted,

Gerald J. Fiorini  
Chairman of the Board of Legislators

Attachments





# ONEIDA COUNTY FARMLAND PROTECTION BOARD

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Brymer Humphreys, Chair

Thomas Cassidy ♦ Michael J. Cosgrove ♦ Roger Crary ♦ Andy Gale ♦ Paul Snider  
Paul van Lieshout ♦ Marty Broccoli ♦ James J. Genovese II ♦ Kathy Pilbeam ♦ George Joseph

## OC Farmland Protection Board

### Public Hearing

11:00 A.M. Tuesday November 10, 2020 Minutes

#### I. Call to order

Humphreys called the meeting to order at 11:00AM.

#### II. Attendance

The following persons were present: Brymer Humphreys, Mike Cosgrove, Matt Pawlusik, Roger Crary, Marty Broccoli, and Remi Link.

#### III. Approval of minutes from last meeting

Motion by Broccoli to approve August minutes as submitted. Second by Cosgrove. Motion carried.

#### IV. Agricultural District 4 application review – 34 applications were received, 28 consisting of reapplying or ownership change. Pawlusik presented 6 new applications for the board to review for the district. A list of parcels was presented.

Motion to approve 6 new applications to District 4 by Cosgrove. Total number of acres to be submitted to the Board of Legislature for Agriculture District 4 is 27,751.7

Second by Crary. Motion carried.

#### V. Public Hearing for Agricultural District 4 – Humphreys open the public hearing for Agricultural District 4 at 11:30 A.M. and asked for any comments from the floor. There was no public in attendance. Humphreys ask if there are any additional comments from the board. None submitted.

Motion by Broccoli to close the public hearing.

Second by Cosgrove. Motion carried.

Humphreys closed the floor at 11:34 A.M.

#### VI. Board Terms – Link informed the board that the following terms are up on 12/31/20. Humphreys, Cassidy and Snider. Broccoli informed the board that Cassidy will step down from the position. The board will have to make recommendations for that area of the County to be represented. Humphreys is willing to do another term. Recommendation for the open positions to the board will be done at the next meeting.

**VII. Update on Collins Homestead Farm** – Link reported that the matter has been sent to the Department for a 305-a Review of Restrictive Laws. No further comment from this board is needed.

**VIII. Town of Kirkland** – Broccoli reported that the Town is exploring amending their current zoning regulations.

**IX. Town of New Hartford** – Humphreys reported that the Town is in the process to adopting new Solar Regulations.

**X. Adjournment**

Meeting adjourned at 11:55 A.M.

**NEXT MEETING: TBA March 2021**

Sign In Sheet | 2020

NAME	ORGANIZATION	PHONE	E-MAIL	CREDIT
Bryone Humphreys	FLPB			
Roxana S. Crotty	FLPB			
Mike Casjove	FLPB			
Matt Paulsik	FLPB			
Marty Bascoli	FLPB			
Joseph Juana	FLPB			
Rem Link				

**New York State  
Department of Agriculture and Markets**

**AGRICULTURAL DISTRICT REVIEW PROFILE**

**DISTRICT IDENTIFICATION**

County: ONEIDA COUNTY			District No.: 4	
Town(s) in District: AUGUSTA, VERNON and VERONA				
No. acres in district: 27,774.7	No. of acres in farms: <sup>1</sup> 23,588.3	No. of farms in this District: 110	No. acres owned by farmers: 19,766.3	No. acres rented by farmers: 3,822

**AGRICULTURAL DATA ANALYSIS**

A. Since last review, number of acres in District	Added:	Deleted: 1,249.10
B. Since last review, number of acres in farms	Increased:	Decreased: 5,435.8
C. Since last review, number of farms in District – N/A	Added:	Deleted:

<sup>1</sup> Number of acres in farms represents the sum of acres owned by farmers and rented by farmers.



**ONEIDA COUNTY FARMLAND PROTECTION BOARD REPORT FOR  
ONEIDA COUNTY AGRICULTURAL DISTRICT NO. 4  
TOWNS OF AUGUSTA, VERNON, & VERONA  
VILLAGE OF ONEIDA CASTLE AND CITY OF SHERRILL  
NOVEMBER, 2020**

**1. INTRODUCTION**

This report presents the findings of the Oneida County Agricultural and Farmland Protection Board's 2020, eight year review and final recommendations to the County Legislature for Agricultural District #4 in Oneida County in the Towns of Augusta, Vernon, and Verona and the Village of Oneida Castle and City of Sherrill.

**2. DISTRICT REVIEW**

**2.1 Consideration of Review Factors**

Section 303-a of Article 25AA of the New York State Agriculture and Markets Law lists the factors that the Oneida County Agricultural and Farmland Protection Board (FPB) must consider when reviewing an agricultural district. The following text represents the results of the review of these factors as they relate to the review of Oneida County Agricultural District #4.

**2.1.1 The nature and status of farming and farm resources within such district, including the total number of acres of land and the total number of acres of land in farm operations in the district**

The majority of farmland in District #4 is related to dairy operations. This district also has a significant amount of cropland. Due to the presence of the Vernon Downs horse racing track in the Town of Vernon there are also multiple horse farms within the district.

The 2020 modifications to District #4 would remove 1,249.1 acres from the district and reduce the total size of the district to 27,774.7 acres. While this is a decrease in the total acreage within the district, it does not mean that the district is no longer robust; agriculture is still a major economic force and a way of life in District #4. Some factors that may have led to the reduction of acreage and participation in the district are: new property owners not applying (for several reasons), parcel splits and sales that reduce acreage, owners requesting to be removed (one occurrence), land use changes due to development pressure (subdivisions and solar siting). Also, in 2012, there was a strong push by the local assessors to advertise about the agricultural district enrollment process, which was not matched in effort in 2020. The Covid-19 pandemic can't be diminished in its impact either, as many land owners continue to reprioritize plans and future goals.

**NOTE:** The 2020 modifications to District #4 include properties added under Section 303-b of Article 25AA since 1994, including 2020 added earlier in the year.

### **2.1.2 The extent to which the district has achieved its original objectives**

Farming continues to be the predominant land use in the Towns of Augusta and Vernon. Even though a significant amount of agricultural lands in the Town of Verona have been purchased by the Oneida Indian Nation there continues to be a substantial amount of acreage in agricultural production. By and large, the district has served to retain farmland in agricultural production over time. Threats to continued agricultural production include an increase in residential development along rural roads, low prices for milk and other agricultural products, and renewable energy development through wind and solar. These factors have led to an overall decline in the amount of capital investment farmers have put into their operations over the past several years.

### **2.1.3 The extent to which county and local comprehensive plans, policies, and objectives are consistent with and support the district**

#### **County Policies**

The county adopted a Farmland Protection Plan in 2017. The following three main objectives were outlined the plan: 1) Agricultural Economic Development- foster an economic climate that supports and promotes the retention and expansion of agricultural businesses within the county; 2) Ag Awareness/Ag Promotion- educate consumers as to the importance of agriculture in today's society, encourage agricultural producers to explore more direct marketing methods and alternative enterprises; and 3) Farmland Protection- to make government, primarily at the town and county level, more sensitive to the needs of agriculture.

#### **Local Policies**

##### **Town of Augusta**

The Town of Augusta adopted a general plan in 1972. The plan identifies prime agricultural land and notes other areas where agriculture is located. The plan notes that the town should encourage these lands to remain agricultural. Although the plan is almost 50 years old, the agricultural component for the most part still reflects the agricultural areas of the town.

### **Town of Vernon**

The Town of Vernon adopted an updated comprehensive plan in 2005. The plan notes the significance of agriculture in the town and indicates that farmland protection should be part of the town's future vision.

One of the goals outlined in the plan is "To support agriculture and viable farming as the primary economic activity in preserving the rural character and open space qualities of the community". To reach this goal the plan outlines several objectives including maintaining productive agricultural lands for future generations, encouraging clustering, discouraging commercial and industrial uses from locating in agricultural areas, encouraging hobby and specialty farms, and promoting agritourism.

The plan has several recommendations related to agriculture. Discouraging extension of public infrastructure into certified New York State Agricultural Districts, encouraging agriculture as a commercial enterprise, amending the zoning regulations to allow only agriculture in the Agricultural zoning district, and encouraging farmers to take advantage of Purchase of Development Rights and Conservation Easement programs are among the recommendations for maintaining the agricultural component of the town.

### **Town of Verona**

The Town of Verona adopted a comprehensive plan in 1996. The notes the significance of agriculture to the town indicating that half the town at that time was used for agriculture. The town also notes the decline in agricultural lands due to the economy, Oneida Indian Nation acquisitions, and encroaching development.

Objectives outlined in the plan include retaining cohesive agricultural areas, minimizing non agricultural land uses by containing development, enhance preservation of natural resources, and avoiding the extension of public utilities into agricultural areas.

Amending the zoning regulations to create an Agricultural District and a Rural Residential District, requiring or encouraging clustering are plan recommendations.

**NOTE:** Neither the Village of Oneida Castle or the City of Sherrill has a comprehensive plan.

## **2.1.4 The degree of coordination between local laws, ordinances, rules and regulations that apply to farm operations in such district and their influence on farming.**

### **Town of Augusta**

The Town of Augusta has zoning regulations in effect. All lands in the Town of Augusta within District #4 are zoned Agricultural (A). Agriculture, dairying, forestry, general farming, greenhouses, horticulture, livestock raising, and truck farming are identified as permitted principal uses within the A district. However according to the definition of farm within the zoning regulations a 10 acre minimum lot size is required. This minimum lot size requirement could potentially conflict with New York State Agriculture and Markets Law.

### **Town of Vernon**

The Town of Vernon has zoning regulations in effect. The vast majority of lands in the Town of Vernon within District #4 are zoned Agricultural. Farms are identified as a permitted use within A Districts with some restrictions. Two of the restrictions relate to setbacks for manure storage (50') and buildings with animals (100'). One restriction specifies that "no retail or commercial activity shall take place other than the storage, processing, and sale of farm products predominantly produced by the local farmer". The last stipulation may be somewhat restrictive and could potentially conflict with New York State Agriculture and Markets Law.

One parcel is zoned Planned Development (PD). The PD District does not identify specific land uses and encourages a mixture of uses. Existing uses are allowed however the agriculture activity on this parcel would be allowed to continue.

Another parcel is partially within an A District and a Rural Hamlet (RH) District. Farms and agriculture are not identified as a permitted use within the RH District. As a result they are considered nonconforming uses, which means that any expansion would require a use variance which may be difficult for the owner to obtain.

### **Town of Verona**

The Town of Verona has zoning regulations in effect. Lands in the Town of Verona within District #4 fall within four different zoning districts: Rural Residential (RR), Residential (R), Heavy Commercial (HC), and Rural Development (RD). The majority of lands are zoned either RR or RD. Agriculture is identified as a permitted by right use within the RR, RD, and R Districts. Agriculture is allowed within the HC District with a Special Use Permit. Agricultural processing facilities and commercial greenhouses are also allowed with a Special Use Permit in the HC District.

### **Village of Oneida Castle**

There is one property in District #4 within the Village of Oneida Castle. This property is zoned Residential. Agriculture is not a permitted by right use or a use allowed with a Special Use Permit. Therefore the agricultural use of this parcel would be considered nonconforming and any expansion of the operations on this site would require a use variance, which may be difficult for the applicant to obtain.

**City of Sherrill**

There are three properties in District #4 within the City of Sherrill. The City of Sherrill does have zoning regulations in effect. One of the properties (65 acres) is zoned Residential, where farms are a permitted by right use with a 5 acre minimum lot size. The smaller properties are zoned a combination of Commercial and Manufacturing, where farms are allowed.

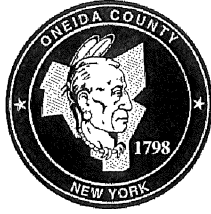
**3. RECOMMENDATION TO CONTINUE, TERMINATE, OR MODIFY DISTRICT**

The Oneida County Agricultural & Farmland Protection Board recommends that Agricultural District No. 4 be modified to include the 250 landowners and 27,774.7 acres of farmland shown on the attached list. It is further recommended that the Oneida County Board of Legislators renew the district, as modified, for an additional eight-year period, and forward the modified district to the NYS Commissioner of Agriculture and Markets for approval and recertification.

OC4AGDISTRICTREPORT\_2020  
11/2020

**GENERAL DESCRIPTION OF DISTRICT  
SEPTEMBER 2012**

The western boundary of OC-4 is the Oneida/Madison County Line. The Oneida/Madison County Line also forms the southern boundary. The eastern boundaries are the Towns of Marshall, Kirkland, Westmoreland, and the City of Rome (Outside District). The City of Rome (Outside District) and the Town of Vienna form the northern boundary.



## ONEIDA COUNTY DEPARTMENT OF LAW

Oneida County Office Building  
800 Park Avenue ♦ Utica, New York 13501-2975  
(315) 798-5910 ♦ fax: (315) 798-5603 ♦ [www.ocgov.net](http://www.ocgov.net)

**Anthony J. Picente, Jr.**  
County Executive

**Peter M. Rayhill**  
County Attorney

FN 20 20-379

December 11, 2020

The Honorable Anthony J. Picente, Jr.  
Oneida County Executive  
Oneida County Office Building  
800 Park Avenue, 10<sup>th</sup> Floor  
Utica, New York 13501

**ECONOMIC DEVELOPMENT  
& TOURISM**

**WAYS & MEANS**

**Re: Agreement with The Convention and Visitors Bureau for Oneida County, Inc.**

Dear County Executive Picente:

Enclosed, please find an Agreement between the County and The Convention and Visitors Bureau for Oneida County, Inc., (Convention Bureau) which allocates a percentage of the revenue collected from the Hotel Occupancy Tax to the Convention Bureau for the purpose of promoting tourism and convention activities throughout Oneida County.

If the enclosed meets with your approval, I respectfully request that you forward the same to the Board of County Legislators for consideration at their next meeting.

Sincerely,

*Robert E. Pronteau*

Robert E. Pronteau  
Assistant County Attorney

Enclosures

Reviewed and Approved for submittal to the  
Oneida County Board of Legislator by

Anthony J. Picente, Jr.  
County Executive  
Date 12-14-20

Oneida Co. Department: County Executive

Competing Proposal \_\_\_\_\_  
Only Respondent \_\_\_\_\_  
Sole Source RFP \_\_\_\_\_  
Other  X

**ONEIDA COUNTY BOARD  
OF LEGISLATORS**

**Name & Address of Vendor:** The Convention and Visitors Bureau for  
Oneida County, Inc.  
P.O. Box 551  
Utica, New York 13503

**Title of Activity or Service:** Regional tourism promotion

**Proposed Dates of Operation:** 10/1/2020 – 12/31/2021

**Client Population/Number to be Served:**

**Summary Statements**

- 1) **Narrative Description of Proposed Services:** By way of this agreement the CVB will receive a percentage of the County's bed tax money to promote tourism and operate the Visitors Information Center.
- 2) **Program/Service Objectives and Outcomes:** To help O.C. tourism and therefore the County's economy.
- 3) **Program Design and Staffing:** N/A

**Total Funding Requested:** N/A - Revenue **Account # A1740**

The total contract amount is unknown as it is for payment based upon Hotel Occupancy Tax Revenue.

**Oneida County Dept. Funding Recommendation:** N/A

**Mandated/Not Mandated:** Mandated

**Proposed Funding Sources (Federal \$/ State \$/County \$):** County bed tax revenues

**Cost Per Client Served:** N/A

**O.C. Department Staff Comments:** None



## AGREEMENT

**THIS AGREEMENT**, made this 1st day of October, 2020 between the **COUNTY OF ONEIDA**, a municipal corporation organized and existing under the laws of the State of New York, with its principal office and place of business at 800 Park Avenue, Utica, New York 13501, hereinafter referred to as the "County," and **THE CONVENTION AND VISITORS BUREAU FOR ONEIDA COUNTY, INC.**, a domestic not-for-profit corporation organized and existing under the laws of the State of New York, with an office located at NYS Thruway, Exit 31, P.O. Box 551, Utica, New York 13503, hereinafter referred to as the "Bureau."

**WHEREAS**, the Bureau is a New York not-for-profit corporation located within the County of Oneida and formed for the purpose, among others, of developing and promoting tourism in Oneida County; and

**WHEREAS**, tourism is a major local industry having a significant economic impact on commerce in Oneida County; and

**WHEREAS**, the County is desirous of having the Bureau actively promote and market Oneida County as a visitor destination, and a site for meetings and conventions; and

**WHEREAS**, Section 224 of the County Law authorizes the County to enter into an agreement with the Bureau to provide promotional and marketing services; and

**WHEREAS**, the Board of County Legislators of the County of Oneida, by Resolution, has authorized the County Executive to execute this Agreement;

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained, it is agreed by and between the parties hereto as follows:

1. **TERM:** The term of this Agreement shall be from October 1, 2020 to December 31, 2021.

2. **SCOPE OF SERVICES (“Services”):**

- A. The Bureau shall actively promote and market local and regional attractions and facilities located in and around Oneida County for the purpose of increasing visitors in our communities, and thereby, increasing the economic impact of tourism in the County.
- B. The Bureau shall consult and collaborate with the Board of County Legislators of the County, the County Executive, other area officials, tourism industry representatives, business leadership and others (including, but not limited to, the Boilermaker Road Race officials, the Utica Comets, and Utica College and MVCC Athletics) so as to enhance commerce in Oneida County through convention and tourism marketing activities.
- C. The Bureau shall operate the Information Center located at Exit 31 of the New York State Thruway. This Information Center shall be open to the public as follows:
  - i. July 1 through August 31, from 9:00 a.m. to 5:00 p.m., Monday through Sunday;
  - ii. September 1 through June 30, from 9:00 a.m. to 5:00 p.m., Monday through Friday; and from 10:00 a.m. through 6:00 p.m., Saturday through Sunday;
  - iii. The Information Center shall be closed on the following holidays: Christmas Day, New Year’s Day, Thanksgiving Day and Easter.
- D. Information Center programs shall include: attraction and event brochures, promotional literature, travel directions and personalized services when needed and appropriate, assistance in locating overnight lodging, a clean rest stop with accessible washrooms, and any additional services required of visitors and travelers entering Oneida County.
- E. The Bureau shall conduct the following programs and activities:

- i. Attendance and participation in travel related shows and displays;
- ii. Promotion of Oneida County as a site for meetings and conventions;
- iii. Assistance of meeting planners as needed;
- iv. Operation of visitor information displays;
- v. Support and promotion of motor coach programs attracting visitors to Oneida County;
- vi. Managing the NYS Matching Funds Program in Oneida County;
- vii. Collaboration with other tourism/visitor-related organizations, including an annual contribution to the Central New York Region of the "I Love New York" tourism network;
- viii. Preparation of materials for use in promoting tourism, encouraging visitors, attracting meetings and conventions, and marketing Oneida County as a visitor destination;
- ix. The Bureau shall be solely responsible for securing the rights and/or permissions for any trademarked, copyrighted or protected symbols, text art or other data used in the materials it prepares, and agrees to indemnify the County in any action brought with respect to the improper or unpermitted use of protected data in the materials prepared;
- x. Conducting a Bureau membership program;
- xi. At its option, continue its Tourism Marketing Grant Assistance Program, for the promotion of tourism; and
- xii. Any other activities that contribute to accomplishing the mission and purposes of the Bureau.

F. The Bureau shall periodically prepare a strategic vision and marketing/promotional plan of action relating to Bureau activities. Such a Plan shall include provisions for

measuring the outcomes of Bureau activities and programs, and reporting such information to the community. Copies of the plan shall be provided to the Board of County Legislators, the County Executive, and any other parties designated by the County. The Bureau shall also provide the County Executive annually with a detailed summary of all of its activities undertaken pursuant to this agreement.

3. **PERFORMANCE OF SERVICES:**

- A. The Bureau represents that it has the qualifications, the specialized skill(s), the experience and the ability to properly perform the Services. The Bureau shall use its best efforts to perform the Services hereinabove such that the results are satisfactory to the County. Bureau shall be solely responsible for determining the method, details and means of performing the Services hereinabove, except where federal, state or local laws and regulations impose specific requirements on performance of the same.
- B. The Bureau may, at its own expense, employ or engage the services of such employees, subcontractors and/or partners as the Bureau deems necessary to perform the Services (collectively, the "Assistants"). The Bureau is a legal entity, separate and distinct from the County. The Assistants are not and shall not be employees of the County, and the County shall have no obligation to provide Assistants with any salary or benefits. The Bureau shall be solely responsible and shall remain liable for the performance of the Services by the Assistants in a manner satisfactory to the County, in in compliance with any and all applicable federal, state or local laws and regulations. The Bureau shall expressly advise the Assistants of the terms of this Agreement. The Bureau shall provide a listing of all Assistants used as a part of its annual summary to be provided to the County Executive pursuant to Section 2(F), above.

C. The Bureau acknowledges and agrees that the Bureau and its Assistants have no authority to enter into contracts that bind the County or create obligations on the part of the County without the prior written authorization of the County.

4. **PAYMENT:**

A. In accordance with Section 12 of Local Law No. 3 of 1993, as amended by Local Law 2 of 2020, a portion of the net revenue of the Oneida County Occupancy Tax received for the period of October 1, 2020 to December 31, 2021 shall be paid to the Bureau by the County in order to enable the Bureau to carry on the above-described activities. For this period, the County shall pay to the Bureau an amount equal to 40% (forty percent) of the net revenue received by the County pursuant to the Oneida County Occupancy Tax.

B. The Bureau shall file with the Clerk of the Board of County Legislators for the County, the Oneida County Comptroller, and the Oneida County Commissioner of Finance, a record of expenditures and receipts for the period of October 1, 2020 through December 31, 2021 on or before January 31, 2022.

C. The Bureau hereby agrees that it will refund all funds remaining in the Bureau's "Cash" and "Cash Equivalent" accounts at the end of this Agreement term to the Oneida County Commissioner of Finance no later than March 31, 2022, except that the Bureau shall be entitled to keep:

- i. Any legally or contractually dedicated funds it may be holding;
- ii. Any funds being reserved for the Tourism Marketing Grant Assistance Program;
- iii. Any funds being reserved for capital purposes in amounts necessary for those purposes;

iv. A \$100,000 cash reserve above and beyond those items listed in paragraphs 4(C)(i), 4(C)(ii) and 4(C)(iii) hereinabove; and

v. The Bureau shall submit to the Oneida County Commissioner of Finance a complete list which specifies all such dedicated and reserved funds for its fiscal year ending December 31, 2021 on or before January 31, 2022.

5. **TRANSFER OF ASSETS:** At such time as this Agreement and any subsequent agreements for these services shall expire, and the Bureau shall cease performing the activities for the County as described herein, the Bureau's assets shall become the sole and separate property of the County, without further compensation, and the Bureau shall cooperate in changing title to such assets.

6. **INDEPENDENT CONTRACTOR STATUS:**

A. It is expressly agreed that the relationship of the Bureau to the County shall be that of an independent contractor. The Bureau shall not be considered a department, division or branch of the County for any purpose and its Assistants shall not be deemed employees of the County for any purpose including, but not limited to, claims for unemployment insurance, workers' compensation, retirement, or health benefits. The Bureau, in accordance with its status as an independent contractor, covenants and agrees that its Assistants will conduct themselves in accordance with such status.

B. Bureau acknowledges and agrees that its Assistants shall not be eligible for any County employee benefits, including retirement membership credits.

C. The Bureau shall be solely responsible for applicable taxes for all compensation paid to the Bureau under this Agreement, and for compliance with all applicable labor and employment requirements, including payroll deductions, workers' compensation insurance, and provision of health insurance where required. The County shall not be responsible for withholding from the payments provided for services rendered for

state or federal income tax, unemployment insurance, workers' compensation, disability insurance or social security insurance (FICA). Bureau shall provide proof of workers' compensation insurance, where applicable, prior to execution of this Agreement.

- D. The Bureau shall indemnify and hold the County harmless from all loss or liability incurred by the County as a result of the County not making such payments or withholdings.
  - E. If the Internal Revenue Service, Department of Labor, or any other governmental agency questions or challenges the Bureau's independent contractor status, it is agreed that both the County and the Bureau shall have the right to participate in any conference, discussion, or negotiations with the governmental agency, irrespective of with whom or by whom such discussions or negotiations are initiated.
  - F. The Bureau agrees to comply with all federal and state laws, as supplemented in the United States and New York State Department of Labor regulations and any other regulations of the federal and state entities relating to such employment and civil rights requirements.
7. **INDEMNIFICATION:** The Bureau shall indemnify and hold harmless the County and its officers, agents and employees from any claims, demands, causes of action and judgments arising out of injuries to persons or property of whatever kind or nature as a result of furnishing the Services provided for in this Agreement.
8. **INSURANCE REQUIREMENTS:** The Bureau shall purchase and maintain insurance of the following types of coverage and limits of liability with an insurance carrier qualified and admitted to do business in the State of New York. The insurance carrier must have at least an A- (excellent) rating by A. M. Best.
-

- A. Commercial General Liability (CGL) coverage with limits of insurance of not less than \$1,000,000 each occurrence and \$2,000,000 annual aggregate.
- i. CGL coverage shall be written on ISO Occurrence form CG 00 01 1001 or a substitute form providing equivalent coverage and shall cover liability arising from premises, operations, independent contracts, products-completed operations, and personal and advertising injury.
  - ii. CGL coverage shall apply to any and all locations where the Bureau has operations.
  - iii. The County and any other parties required by the County shall be included as additional insureds. Coverage for the additional insureds shall apply as primary and non-contributing insurance before any other insurance or self-insurance, including any deductible or self-insured retention, maintained by or provided to, the additional insured(s).
- B. Business Automobile Liability (BAL) coverage with limits of at least \$1,000,000 per each accident.
- i. BAL coverage must include coverage for liability arising out of all owned, leased, hired and non-owned automobiles.
  - ii. Oneida County shall be included as additional insured on the BAL policy. Coverage for these additional insured shall be on a primary and non-contributing basis.
- C. Workers' Compensation and Employers Liability: Statutory limits apply.
- D. **Waiver of Subrogation**: the Bureau waives all rights against the County and their agents, officers, directors and employees for recovery of damages to the extent these damages are covered by CGL maintained per requirements stated above.



E. **Certificates of Insurance**: Prior to the start of any work, the Bureau shall provide certificates of insurance to the County. Attached to each certificate of insurance shall be a copy of the additional insured endorsement where one is required. These certificates and the insurance policies required above shall contain a provision that coverage afforded under the policies will not be canceled nor allowed to expire until at least 30 days prior written notice has been given to the County.

9. **DISPOSAL OF WASTE AND RECYCLABLES**: Pursuant to Oneida County Board of County Legislators Resolution No. 249 of May 26, 1999, the Bureau agrees to deliver exclusively to the facilities of the Oneida-Herkimer Solid Waste Authority, all wastes and recyclables generated within the Authority's service area by performance of this Agreement by Bureau and any subcontractors. Upon awarding of this Agreement, and before work commences, the Bureau will be required to provide the County with proof that Resolution No. 249 of 1999 has been complied with, and that all wastes and recyclables in the Oneida-Herkimer Solid Waste Authority's service area which are generated by the Bureau and any subcontractor in performance of this Agreement will be delivered exclusively to Oneida-Herkimer Solid Waste Authority facilities.

10. **ADVICE OF COUNSEL**: Each party acknowledges that, in executing this Agreement, such party has had the opportunity to seek the advice of independent legal counsel, and has read and understood all of the terms and provisions of this Agreement.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties herein have hereunto set their hands and seals the day and year first above written.

**COUNTY OF ONEIDA**

By \_\_\_\_\_  
**ANTHONY J. PICENTE, JR.**  
**ONEIDA COUNTY EXECUTIVE**

**THE CONVENTION AND VISITORS BUREAU FOR ONEIDA COUNTY, INC.**

By *Kelly Blazosky*  
**KELLY BLAZOSKY**  
**PRESIDENT**

Approved

*Robert E. Pronteau*  
Robert E. Pronteau  
Assistant County Attorney